

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 16, 2007

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
CURTIS ETHERLY, JR. Commissioner
MARC D. LOUD Commissioner
SHANE DETTMAN Commissioner (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL Commissioner, FAIA (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLY BAILEY Sr Zoning Specialist
JOHN NYARKU Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
STEVEN COCHRAN
ARTHUR JACKSON

This transcript constitutes the complete minutes from the Public Hearing held on Tuesday, October 16, 2007.

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

2 9:30 a.m.

3 CHAIR MILLER: This hearing will
4 please come to order. Good morning, ladies
5 and gentlemen. This is the October 16th
6 morning Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Ruthanne Miller. I'm
9 Chair of the Board of Zoning Adjustment. To
10 my right is the Vice-Chair, Mr. Curtis Etherly
11 and next to him is Mr. Michael Turnbull from
12 the Zoning Commission.

13 To my left is Marc Loud, Mayoral
14 Appointee. Next to him is Shane Dettman,
15 representing the National Capital Planning
16 Commission on the BZA, and to his left is
17 Sherry Glazer from the Office of Attorney
18 General and Beverly Bailey from the Office of
19 Zoning.

20 Copies of today's hearing agenda
21 are available to you and are located to my
22 left in the wall bin near the door. Please be
23 advised that this proceeding is being recorded

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1 by a Court Reporter and is also web-cast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room.

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

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

19 The order procedure for special
20 exceptions and variances is one, statement and
21 witnesses of the Applicant; two, Government
22 reports, including Office of Planning,
23 Department of Public Works, DDOT, etc.; three,

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1 report of the Advisory Neighborhood
2 Commission; four, parties or persons in
3 support; five, parties or persons in
4 opposition; six, closing remarks by the
5 Applicant.

6 Pursuant to Sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained. The Applicant, persons and
9 parties, except in ANC and support, including
10 witnesses, 60 minutes collectively.
11 Individuals, three minutes.

12 These time restraints do not
13 include cross examination and/or questions
14 from the Board. Cross examination of
15 witnesses is permitted by the Applicant or
16 parties. The ANC within which the property is
17 located is automatically a party in a special
18 exception or variance case.

19 Nothing prohibits the Board from
20 placing reasonable restrictions on cross
21 examination, including time limits and
22 limitations on the scope of cross examination.

23 The record will be closed at the

1 conclusion of each case, except for any
2 material specifically requested by the Board.
3 The Board and the staff will specify at the
4 end of the Hearing, exactly what is expected
5 and the date when the persons must submit the
6 evidence to the Office of Zoning. After the
7 record is closed, no other information will be
8 accepted by the Board.

9 The Sunshine Act requires that the
10 Public Hearing on each case be held open
11 before the public. The Board may, consistent
12 with its rules of procedure and the Sunshine
13 Act, enter executive session during or after
14 the Public Hearing on a case for purposes of
15 reviewing the record or deliberating on the
16 case.

17 The decision of the Board in these
18 contested cases must be based exclusively on
19 the public record. To avoid any appearance to
20 the contrary, the Board requests that persons
21 present no engage the members of the Board in
22 conversation.

23 Please turn off all beepers and

1 cell phones at this time, so as not to disrupt
2 these proceedings.

3 The Board will now consider any
4 preliminary matters. Preliminary matters are
5 those which relate to whether a case will or
6 should be heard today, such as requesting
7 postponement, continuance or withdrawal or
8 whether proper and adequate notice of the
9 hearing has been given.

10 If you're not prepared to go
11 forward with a case today, or if you believe
12 that the Board should not proceed, now is the
13 time to raise such a matter. Does the staff
14 have any preliminary matters?

15 MS. BAILEY: Madam Chair, members
16 of the Board, to everyone, good morning.
17 Staff does not have any at this time, Madam
18 Chair.

19 CHAIR MILLER: Okay, then would all
20 individuals who wish to testify today, please
21 rise to take the oath?

22 Whereupon,

23 WITNESSES AND MEMBERS PRESENT

1 were first duly sworn and presented for the
2 Board of Zoning Adjustment Public Hearing
3 session as follows:

4 CHAIR MILLER: Before we begin, I
5 want to note what we have three cases on the
6 schedule for this morning's agenda, and the
7 Board is inclined to switch two cases, because
8 we want to put them in an order, in which the
9 most complicated case would be last, so that
10 the others could proceed more quickly.

11 So, the schedule, unless we hear
12 otherwise that there's a big problem for this,
13 would as scheduled, 17678, 2000 Massachusetts
14 Avenue would be the first case, but then we
15 would like to have 17674, Fund for American
16 Studies second, and then 17673, Gallery
17 Square, third. Is there any problem with
18 that, from any of the participants here?

19 (No verbal response)

20 CHAIR MILLER: Okay, then Ms.
21 Bailey, would you call the first case, please?

22 MS. BAILEY: Application number
23 17678. This is the application of 2000

1 Massachusetts Avenue, LLC, pursuant to 11 DCMR
2 3104.1, for special exception to replace
3 existing non-conforming uses, (retail), with
4 another non-conforming (restaurant) use.

5 The project is under Section 2003.
6 It's located in Dupont Circle, SP-1 District
7 at premises 2000 Massachusetts Avenue, N.W.,
8 Square 91, Lot 1.

9 Members of the Board, there may be
10 some discussion concerning the proper relief
11 that is required for this project.

12 CHAIR MILLER: Thank you. Good
13 morning.

14 MS. BROWN: Good morning, Madam
15 Chair. I'm Carolyn Brown with the law firm of
16 Holland & Knight, here on behalf of the
17 Applicant, 2000 Massachusetts Avenue, LLC. To
18 my right is Sam Dunn. He is the LLC
19 representative and project developer, and to
20 his right is Ben Van Dusen, the project
21 architect.

22 We're pleased to be here this
23 morning, to request approval for our special

1 exception to switch out non-conforming uses
2 for the basement area of 2000 Massachusetts
3 Avenue.

4 As set forth in our pre-hearing
5 statement, the certificate of occupancy for
6 the building authorizes a hardware store, a
7 plant store and a bike shop for the entirety
8 of that floor. In the -- it calls it both the
9 basement and the first floor, but it is just
10 one level, and we've proposed to switch out
11 the entirety of that level to a restaurant and
12 bakery.

13 As we set forth in our statement
14 and as you will hear from our witnesses today,
15 the application is fully consistent with the
16 special exception standards of Section 2003.
17 There are no adverse effects to the character
18 of the surrounding area. There are no
19 deleterious external effects and neighboring
20 properties are adequately protected,
21 particularly through the HPRB design review
22 that this project was subjected to.

23 We also propose to include office

1 use on the ground level of the addition.
2 Technically, this would require special
3 exception relief under Section 508.1. Here,
4 however, there will be an actual reduction in
5 the overall office use on the site. It's
6 about 1,500 square feet less than currently
7 exists on the site.

8 So, we're not sure if relief is
9 really needed, but out of an abundance of
10 caution, we would ask that the application be
11 amended to include this relief. It was not
12 part of our original application. The uses
13 proposed for the addition have changed over
14 time, as the addition got larger or smaller as
15 it went through the design evolution before
16 HPRB, and once we locked into this design, we
17 locked into this use on the ground floor. So,
18 we do want to have office use on that level.

19 OP is in support of it, as they
20 state in their report and the ANC has provided
21 me, and I believe they faxed a copy into the
22 Office of Zoning this morning, a revised ANC
23 letter of support for both special exceptions.

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1 So, I'll go hand that in, so you can have
2 copies before you.

3 CHAIR MILLER: All right. We
4 haven't seen that. Thank you. Is anyone from
5 the ANC here on this case? Okay, was there
6 another meeting?

7 MS. BROWN: When we presented this
8 at the first meeting, they saw the full plans
9 that showed the office use on the ground floor
10 level in the addition. So, you will note in
11 the letter that it has two phrases. One is
12 the special exception for the switch out of
13 the C-1 uses, and then an additional sentence
14 that says, "Any special exception relief
15 needed for the drawings, as shown to the
16 Commission."

17 So, on that basis, there wouldn't
18 be any prejudice to any party and we have full
19 support for the project. So, we believe it
20 would be appropriate to include Section 508.1
21 relief, if you're so inclined.

22 With that, we are ready to proceed
23 with our first witness, and I'd like to turn

1 it over to the project developer, unless you
2 have any questions on this matter. Mr. Dunn.

3 CHAIR MILLER: Does the Board have
4 questions? No, okay, I think I can hold my
5 questions for your witnesses.

6 MS. BROWN: Thank you.

7 MR. DUNN: Good morning. I'm Sam
8 Dunn. I'm the developer of the project. Just
9 briefly, the way this has all come about was
10 that my partner, John Phillips, had his law
11 firm in this building for many years and he
12 had a First Right of Refusal to purchase when
13 that time came, and that was exercised.

14 This building was built in 1882 by
15 Senator Blaine of Maine. It was later
16 occupied by George Westinghouse, who invented
17 the air brake. It's really a classic and
18 beautiful building and one the few remaining
19 mansions along Massachusetts Avenue. And so,
20 we have the utmost respect for this and are
21 trying to do a really exemplary project for
22 the neighborhood.

23 The building, when we purchased

1 it, had four levels of office space and one
2 level, which we refer to as the basement of
3 retail space, but actually, the basement
4 fronts on P Street, it walks out on P Street,
5 and the main entrance to the building, which
6 led to the office floors, is on Massachusetts
7 Avenue, and then there was a surface parking
8 lot adjacent to it.

9 So, our plan called for an
10 addition to this building, which would occur
11 in the parking lot area, and as we work
12 through this with HPRB and with Ben Van Dusen,
13 our architect, we arrived at a solution, which
14 is a glass and steel, very modern structure,
15 that is not meant to compete with the existing
16 mansion, but is more of a glass back-drop to
17 it.

18 This, we think is a really good
19 solution and the HPRB worked through it with
20 us. It solves a couple of problems that
21 existed on the site. One, a surface parking
22 lot, which didn't -- which wasn't appropriate,
23 we didn't think, adjacent to this mansion, and

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1 the second thing is that there's a 1970's era
2 office building just to the west, which sort
3 of presented a blank face on-line wall the
4 mansion, which has been replaced now with the
5 glass addition, which as I said, gives a
6 reflective back-drop to the mansion.

7 The uses that are planned for this
8 project now include the switch out of these
9 retail spaces in the ground floor on P Street,
10 which is the subject of this application. But
11 just for your information quickly, the first
12 two floors of the mansion will remain an
13 office space, but the upper two will be
14 converted to residential.

15 In the addition, the lower two
16 floors are office and the upper four floors
17 are residential.

18 So, what we wind up with is
19 actually a reduction in the amount of office
20 space on the site, no change in the amount of
21 retail space on the site, and we've added five
22 residential condominiums.

23 There's also a parking garage

1 underneath, which is in the basement of the
2 addition, and it offers parking to the site,
3 which is in compliance with zoning.

4 As to the actual tenancies that
5 we're talking about here, we have two really,
6 we think, perfect tenants for this location.
7 The first one is Pizza Paradiso, which has
8 been down the street for some 16 years, right
9 in the same -- literally in the same block
10 almost, moving up to this, and I think anyone
11 who has been there, thinks of it as a really
12 first class establishment and they will be
13 occupying about half of the basement facing P
14 Street.

15 The other half will be occupied by
16 a French bakery, Le Pain Quotidien, which is
17 in Europe and it had been in New York and Los
18 Angeles and is now moving into the Washington
19 area. The first one just opened in
20 Georgetown, in the block of the -- where the
21 old Biograph Theater used to be.

22 So, we feel that these are
23 perfectly suited to the block and are the kind

1 of, sort of class tenant that will be
2 appropriate to this renovation.

3 Lastly, we've been in close
4 contact with -- excuse me, the office levels
5 on the ground floor of the new addition will
6 be occupied by John Phillip's office, which --
7 he's staying on the property, just moving from
8 the mansion, over to the lower two floors of
9 the addition.

10 Finally, we've been in close
11 contact with the neighborhood throughout this
12 process, with the ANC, the Dupont Conservancy,
13 the Merchant's Association, worked through a
14 variety of issues with them. Thank you very
15 much.

16 CHAIR MILLER: Thank you. I just
17 want to ask you for curiosity, not necessarily
18 for the purpose of your relief here, but why
19 are you replacing the uses that were there
20 with the new uses?

21 MR. DUNN: Well, they've both been
22 there for a very long time and the -- since
23 the 70's, and the operator of the plant store

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1 was actually ready to retire. So, he went off
2 into Vermont and the timing was perfect for
3 him.

4 The hardware store, we attempted
5 to find a way to keep them there, because they
6 did want to stay there, but it was necessary
7 to vacate the building in order to renovate
8 it, and that posed a sort of, a problem that
9 couldn't be solved. And so, they have now
10 moved into the Columbia Hospital for Woman
11 building and we managed to keep them in our
12 building, even after we had started the
13 renovation, so that they could have a seamless
14 transition.

15 CHAIR MILLER: Thank you. Other
16 questions?

17 (No verbal response)

18 CHAIR MILLER: Okay. Thank you.

19 COMMISSIONER TURNBULL: Madam
20 Chair, I wonder if I could ask, the new uses
21 are going in the existing little structure,
22 that's the appendage on P Street. Do those
23 uses go into the existing historic structure,

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1 the Blaine House?

2 MR. DUNN: Yes, the two retail
3 tenants are going into the basement of the
4 Blaine Mansion, where the retail space was --
5 has been for --

6 COMMISSIONER TURNBULL: How much of
7 that space on that ground floor do they take?

8 MR. DUNN: They're taking all of
9 it.

10 COMMISSIONER TURNBULL: All of it?

11 MR. DUNN: Yes. Now, the ground
12 floor of the addition is going to be an office
13 use.

14 COMMISSIONER TURNBULL: Right.
15 Okay, thank you.

16 MR. DUNN: Okay.

17 MS. BROWN: Mr. Turnbull, I think
18 the architect can help clarify some of those
19 questions too, if you want to go ahead, Ben.

20 MR. VAN DUSEN: My name is Ben Van
21 Dusen, Architect, Van Dusen Architects. I
22 guess I can start with some photographs. I
23 don't know how familiar you all are with this

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1 site. But this board shows a number of views.
2 I guess, the more pertinent views would be the
3 ones on the left side here.

4 This is a shot up P Street,
5 looking east, towards the site, and this one
6 is as you approach the site and is viewing the
7 gap between the Blaine Mansion and the OSA
8 building next door.

9 Now, let's see, here we've got a
10 couple of views of the proposed structure.
11 You can see, this is a tall, glass and steel
12 building separated from the mansion by an 11
13 to 15 foot wide gap. This is the
14 Massachusetts Avenue view, and you can see
15 again, how the whole effort of the design was
16 to isolate the mansion and let it be in its
17 original iteration, which -- and I should
18 mention that in the 1920's, there was a
19 significant addition to this structure, that
20 covered most of the west elevation of the
21 building.

22 We have already removed that and
23 the intent, again, was to display the mansion

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1 in its original design, and that actually
2 resulted in a net decrease in the square
3 footage on the ground floor.

4 Why don't I show you -- this is
5 the original floor plan of the ground floor of
6 the mansion. The changes that we have already
7 made, actually, are the removal of this
8 addition, which is outlined here. The
9 original profile footprint of the mansion is
10 -- in fact, I'll mark it with a pen, so you
11 can see it.

12 CHAIR MILLER: Just for
13 clarification, could you just identify which
14 is Massachusetts Avenue and which is P Street?

15 MR. VAN DUSEN: Yes, I will.

16 CHAIR MILLER: Okay.

17 MR. VAN DUSEN: Massachusetts
18 Avenue is here. This is 20th Street and P
19 Street to the south. I've got another site
20 plan, which should help you.

21 CHAIR MILLER: Can you be sure to
22 speak into the microphone also, so the Court
23 Reporter doesn't miss what you're saying?

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1 MR. VAN DUSEN: Sure.

2 CHAIR MILLER: Thank you.

3 MR. VAN DUSEN: All right, the site
4 plan then, can orient you, and I think you'll
5 be able to place this plan on this site plan.
6 The pochette walls represent the mansion. The
7 structure next to it is the proposed addition.

8 Again, this is the original floor
9 plan. We have demolished this portion right
10 here, so that the original footprint of the
11 mansion is here, which you can see, repeated
12 on this site plan.

13 Now, I hope you can read this
14 plan. This is the proposed floor plan of the
15 building. The pochette walls is the mansion,
16 in its 1882 footprint. The addition adjacent,
17 you can see, is separated by this gap.

18 Now, Mr. Dunn described the
19 program for the building, which is actually
20 quite complicated. I think that this section
21 can help everyone, sort of, understand what
22 we're proposing.

23 The dark pochette walls here is a

1 section through the mansion. You can see the
2 ground floor, retail. Floors one and two are
3 office, as they are currently. The top two
4 floors will be converted to residential.

5 The addition, we have two and a
6 half floors of parking, underground. The
7 basement level, which is contiguous with the
8 mansion basement, is office and the first
9 floor, also contiguous with the first floor of
10 the mansion, is office, and above that are
11 four floors of condominiums, residential.

12 This is a drawing that actually
13 cuts through the hyphen connection, which
14 connects the mansion to the addition. So,
15 you're looking at the west elevation of the
16 mansion, cut through this small hyphen that
17 extends up to the third floor.

18 MS. BROWN: Mr. Van Dusen, if you
19 could point out the office space in plan form,
20 in the addition.

21 MR. VAN DUSEN: This is a plan,
22 again, through the -- in the ground floor of
23 the project. So, this is where the

1 restaurants would be and the mansion.

2 The ground floor of the addition,
3 you can see, has this shape that has a pointed
4 end on the Massachusetts Avenue at the north
5 end. This is office, and then the floor above
6 it, which echos that footprint, is also
7 office.

8 MS. BROWN: Mr. Van Dusen, are you
9 aware of any adverse effects that may be
10 created by this or is it your opinion that no
11 adverse effects would be created by the change
12 in use?

13 MR. VAN DUSEN: Well, you know, I
14 think in terms of traffic, I think we've
15 actually made a net improvement. We're
16 directing all traffic into a driveway off of
17 P Street, which is really, an easier street to
18 enter off of than Massachusetts Avenue.

19 Massachusetts Avenue has bus stops
20 on both sides of the street. It's a much
21 busier traffic artery, and we believe that
22 bringing traffic in, as distant from the
23 corner of P and 20th Street as we could, was

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1 the appropriate way to remove traffic from
2 that busy intersection.

3 So, no, I don't believe that we're
4 creating any adverse impact here.

5 MS. BROWN: And in conclusion, is
6 there -- do you believe that this change in
7 use, in both the ground floor of the existing
8 mansion and the proposed office use in the
9 addition, do you believe that that is
10 compatible with the surrounding area and the
11 character of the neighborhood?

12 MR. VAN DUSEN: I do, absolutely.
13 I think that this is really the perfect site
14 for mixed use. It fits the neighborhood, I
15 think, perfectly. P Street is a -- those two
16 blocks of P Street have become, over the
17 years, a pretty bustling restaurant area.

18 So, adding to that mix, I think,
19 is good and a vibrant addition to the
20 neighborhood, absolutely.

21 MS. BROWN: Thank you. That
22 concludes our direct presentation, Madam
23 Chair.

1 CHAIR MILLER: Thank you. Mr. Van
2 Dusen, what's the impact on the neighboring
3 property? It seems that the new office
4 residential building will pretty much abut the
5 neighboring office building and there are
6 windows on the side of that building, is that
7 right?

8 MR. VAN DUSEN: Yes, that's
9 correct. The OSA building, Optical Society of
10 America building, was built in the early 70's.
11 Their east wall is a face on-line wall. They
12 had the option, when they built the building,
13 of installing windows in that wall. But so
14 does the adjacent property owner have that
15 same right, which we have exercised.

16 So, yes, several floors of their
17 building will be covered. I don't have the
18 total window count. But I think there are
19 four floors, six windows on each floor, which
20 will be covered up. Their upper floor, three
21 out of the six windows on their upper floor
22 will remain exposed.

23 But for the most part, yes, their

1 windows are covered up by our's, face on-line
2 windows.

3 MS. BROWN: Madam Chair?

4 CHAIR MILLER: Just a quick
5 clarification. Yes, face on-line, clarify for
6 the Board as a whole and the parties. Is it
7 going to touch the building or is going to be
8 right to the property line, but the other one
9 doesn't go to the property line? How close
10 are they going to be?

11 MR. VAN DUSEN: To the best of our
12 knowledge, their building is on the line.

13 CHAIR MILLER: Okay.

14 MR. VAN DUSEN: We are proposing an
15 inch and a half gap.

16 CHAIR MILLER: Okay.

17 MR. VAN DUSEN: So, we're not
18 actually grouting up to their building. We
19 have a flashing at the top of the wall and
20 we've discussed the detail with the adjacent
21 owner, about how we cover that gap.

22 CHAIR MILLER: And they're going to
23 be looking at a glass wall, is that it, or

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1 what kind of wall?

2 MR. VAN DUSEN: Well, they're going
3 to be -- I mean, they will be covering up
4 their windows, I'd presume. They'd be looking
5 at -- if they left the windows exposed, they'd
6 be looking at concrete block.

7 CHAIR MILLER: Concrete block,
8 okay.

9 MR. VAN DUSEN: Inches away.

10 CHAIR MILLER: And they're not
11 opposed to the project then?

12 MR. VAN DUSEN: Well, I'm sure
13 they're going to miss their windows.

14 CHAIR MILLER: I don't believe --
15 so, they've weighed in on this application, to
16 the best of your knowledge?

17 MR. VAN DUSEN: I don't know.

18 MS. BROWN: Madam Chair, no,
19 there's no letter in the record, in opposition
20 to this project, either from them or anybody
21 else in the neighborhood, and I'd also just
22 point out that the construction is a matter of
23 right, under the zoning. It's just the uses

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1 that we're switching that we need relief for.

2 CHAIR MILLER: But also 508.1, 508
3 is a matter of right, is it not? It's special
4 exception?

5 MS. BROWN: It's just for the use
6 though. So, they could build a new addition
7 with a different use, that is matter of right
8 SP, and so we wouldn't have to be here. But
9 it's just what physically is located in that
10 space that we're here for.

11 CHAIR MILLER: Right, I hear what
12 you're saying.

13 MS. BROWN: Thank you.

14 CHAIR MILLER: They could build a
15 building of the same dimensions and use it for
16 something else.

17 MS. BROWN: Correct.

18 CHAIR MILLER: Without relief from
19 the Board.

20 MS. BROWN: Correct, thanks.

21 CHAIR MILLER: All right. Also, I
22 just want to clarify, I think it's been
23 represented in the papers, but there is no

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1 extensions of the non-conforming use area,
2 correct? It's just replacement of the exact
3 area?

4 MS. BROWN: That's correct.

5 CHAIR MILLER: Okay.

6 VICE-CHAIRPERSON ETHERLY: If I
7 may, Madam Chair, just a very brief question
8 on traffic flow. As you indicated, Mr. Van
9 Dusen, there is a certain bustling nature to
10 this particular corridor, for any of use who
11 have had the pleasure or sometimes, not the
12 pleasure, of cuing up on P Street, waiting to
13 go where ever we want to go, through Dupont
14 Circle or Massachusetts Avenue or what have
15 you.

16 With respect to P Street and the
17 driveway, that driveway -- the programming
18 that you foresee for that particular driveway
19 tracks what's already been in place or is
20 there any kind of change, in terms of ingress
21 and egress for that driveway as it exists now?
22 It's going to be the same movement, basically.

23 MR. VAN DUSEN: Basically, yes. We

1 are moving the curb-cut down P Street
2 somewhat. As I said, we thought it was best
3 to locate the curb-cut as close to the west
4 property line as we could, pulling it farthest
5 away from the corner.

6 Currently, there is a parking lot
7 next to the building. It was surface parking
8 for years. I don't know exactly how many
9 parking spaces they had. It may have been 12
10 or so.

11 VICE-CHAIRPERSON ETHERLY: Okay.

12 MR. VAN DUSEN: Our building will
13 have 19. We're required to provide 17 by
14 Zoning. So, obviously, there's more building
15 on the site and we are proposing additional
16 parking spaces than what is on the site now.

17 VICE-CHAIRPERSON ETHERLY: And with
18 respect to the turning movements from either,
19 I guess, what would be proceeding, I guess,
20 east or west, now, in terms of the current
21 condition, vehicles can turn either from P
22 Street as they're coming --

23 MR. VAN DUSEN: As they're driving

1 east towards Dupont Circle?

2 VICE-CHAIRPERSON ETHERLY: Exactly,
3 but then also, as they're proceeding west,
4 back towards the vicinity of Rock Creek
5 Parkway.

6 MR. VAN DUSEN: Right.

7 VICE-CHAIRPERSON ETHERLY: Vehicles
8 can turn from either direction at this point.
9 There's no prohibition against that. There's
10 no 'no left turn' sign for a particular
11 direction of traffic, and you're planning to
12 continue that type of flexibility, if you
13 will?

14 MR. VAN DUSEN: Yes.

15 VICE-CHAIRPERSON ETHERLY: And as
16 far as you know, there's been no discussion
17 with DDOT about any particular limitations.

18 What I'm getting at is first of
19 all, I don't believe there's anything in the
20 record that suggests that this is going to be
21 a problem. But I'm just anticipating some of
22 the nuances that adhere to this particular
23 area, because as you said, it's extremely

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1 bustling, and that's a good thing.

2 But from the standpoint of
3 traffic, especially since you're moving the
4 curb-cut a little more westward, will that
5 create any pressures or do you anticipate it
6 creating any pressures, in terms of -- because
7 I think as you move westward, you're going to
8 be coming back towards the traffic light.

9 So, does it create any cuing
10 concerns for vehicles that may have to stop
11 and wait to make a turn, to get into the
12 driveway?

13 MR. VAN DUSEN: You know, I think
14 that the increase in the number of parking
15 spaces is not terribly dramatic, in the grand
16 scheme of things. I mean, I'm not a traffic
17 engineer. So, I don't know that I can fully
18 answer your question.

19 But we don't -- I guess I would
20 say that we don't think that there's such a
21 dramatic change from 12 to 19, that it would
22 materially impact the traffic flow there.

23 Certainly, from the -- approaching

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1 the site from the east, there is a wide curb
2 lane, which would allow cars to get out of the
3 stream of traffic.

4 VICE-CHAIRPERSON ETHERLY: To make
5 that turn.

6 MR. VAN DUSEN: To make the turn.

7 VICE-CHAIRPERSON ETHERLY: Okay,
8 currently, those parking spaces were utilized
9 for which tenant? For the offices uses?

10 MR. VAN DUSEN: Yes.

11 VICE-CHAIRPERSON ETHERLY: Okay,
12 and that would continue to be the case? None
13 of those spaces would be dedicated or set
14 aside for the retail uses?

15 MR. VAN DUSEN: Yes, that's
16 correct.

17 MS. BROWN: I believe the
18 requirement for the retail is you have to meet
19 the threshold of the 3,000 square feet.
20 Neither of these retail uses does.

21 VICE-CHAIRPERSON ETHERLY: Okay,
22 excellent. That concludes my questions.
23 Thank you, Mr. Van Dusen.

1 MEMBER LOUD: Good morning. Just a
2 couple of quick questions, for probably Mr.
3 Dunn, and let me also say that I think it's a
4 great project and I don't see anything, from
5 the testimony or the file, that, at this
6 point, gives me any concern.

7 But with respect to the retail
8 space, can you share what the total square
9 footage is that's going to be used by the
10 French bakery?

11 MR. DUNN: In the neighborhood of
12 2,400.

13 MEMBER LOUD: And with respect to
14 the parking, is any of it reserved for the
15 retail tenants, and if so, how much?

16 MR. DUNN: It is not. Actually,
17 the owner of Pizza Paradiso is purchasing a
18 parking place, one parking place.

19 MEMBER LOUD: Okay, that's it.
20 Thank you.

21 MR. DUNN: Okay.

22 CHAIR MILLER: Excuse me for asking
23 another question, which does not really

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1 necessarily bear on this, but I'm just
2 curious. With respect to the whole parking
3 issues, is the parking going to be open in the
4 evenings at all for people who use the
5 restaurant and other restaurants?

6 MR. DUNN: No, that is not the
7 plan.

8 CHAIR MILLER: Okay.

9 MR. DUNN: It's just a difficult
10 think to manage. It's a garage, a very small
11 parking garage.

12 CHAIR MILLER: Okay, that does not
13 necessarily bear on this application. I just
14 was interested in the context.

15 I don't know if this was
16 addressed, but Mr. Van Dusen said that Zoning
17 required 17 spaces and I was just wondering if
18 you could just clarify how you reached that
19 conclusion?

20 MR. VAN DUSEN: You know, those
21 numbers are actually based on a total square
22 footage of their retail, using the formula
23 that Carolyn just elaborated on.

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1 Our calculations were based on
2 roughly 6,000 square feet of gross in the
3 ground floor. In fact, I have the numbers.

4 CHAIR MILLER: And probably Office
5 of Planning can address this too, and I know
6 you're not seeking relief on this, so I don't
7 want to spend too much time. But I know that
8 there were new historic parking regulations
9 that went into effect, and so, I was just
10 wondering how you applied them to this case,
11 if you did.

12 MS. BROWN: There is parking as
13 though this building were constructed new. We
14 provide parking for the entire site, as though
15 it was, as I said, built new.

16 We didn't even take into account,
17 any credit that might be there for the
18 existing uses. So, it's fully parked out and
19 then has two more.

20 CHAIR MILLER: Fine, thank you very
21 much. I also want to say that we'll need, at
22 least in reduced form, copies of all the plans
23 and diagrams that were submitted today at the

1 hearing, that were used, because they're part
2 of the record.

3 I also wanted to ask, I thought I
4 saw in the record, a reference to a photo of
5 the Blaine Mansion before 1921 and I didn't
6 see it in our record. It might have been
7 attached to the Historic Preservation Decision
8 or something like that.

9 If you have that, I think that
10 would be good to get in the record, if you
11 haven't submitted it, if that was inadvertent.

12 MS. BROWN: Yes, I'm not sure if it
13 was in the Office of Planning report or
14 something else. But yes, we're happy to
15 submit a copy of that for the record.

16 CHAIR MILLER: Okay, great. Any
17 other Board questions? Yes, Mr. Turnbull?

18 COMMISSIONER TURNBULL: Thank you,
19 Madam Chair. I just wanted to just pick up on
20 your note. When we -- and it's basically when
21 we talked about the original structure, we
22 were not including the 1921 -- and to use my
23 colleague's term, Mr. Etherly's, the wart on

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1 P Street.

2 Were you ever tempted to do
3 something with your eraser when you looked at
4 that 1921 blivet?

5 MR. DUNN: Well, the HPRB feels
6 that it's an important element, that it
7 represented something of the time --

8 COMMISSIONER TURNBULL: Of the
9 time?

10 MR. DUNN: -- and that it should
11 not only not be removed, but shouldn't be
12 appreciably changed.

13 COMMISSIONER TURNBULL: I see.

14 MR. DUNN: We're going to try and
15 change the color of it, to make it blend in
16 and disappear a little bit. It's very jarring
17 now.

18 COMMISSIONER TURNBULL: Yes.

19 MR. DUNN: Mostly, because of the
20 color and we're going to do --

21 COMMISSIONER TURNBULL: So, you're
22 looking at painting it?

23 MR. DUNN: I think we're looking at

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1 unpainting it.

2 COMMISSIONER TURNBULL: Unpainting
3 it, okay. Well, I notice on the one wall,
4 when you look at the view from P Street down
5 towards it, it looks like the end wall was
6 never painted.

7 So, I'm assuming that that's the
8 brick color that continues down on P Street.

9 MR. DUNN: Well, the end wall, as
10 seen from down there, will be glassed in and
11 made to look like part -- more like it was
12 meant to be.

13 COMMISSIONER TURNBULL: Okay.

14 MR. DUNN: Because in the original
15 1920 drawings, the original incarnation was to
16 carry the retail all the way down across the
17 site, but that second part was never done.

18 COMMISSIONER TURNBULL: Okay. The
19 other thing is, when you're doing your
20 renovation of the existing structure of Blaine
21 House, I'm assuming you're getting all new
22 mechanical, so that the window AC units go
23 away?

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1 MR. DUNN: Absolutely. It's going
2 to have a new heating and cooling plan.

3 COMMISSIONER TURNBULL: That will
4 be nice.

5 MR. DUNN: Yes, oh yes.

6 COMMISSIONER TURNBULL: That's
7 good. Okay, thank you.

8 CHAIR MILLER: Mr. Dettman?

9 MR. DETTMAN: The current retailers
10 that are in the basement/first floor, they've
11 been vacated, that's correct?

12 MR. DUNN: Yes.

13 MR. DETTMAN: How long have they
14 existed?

15 MR. DUNN: Well, the -- I believe
16 the -- actually, since 1973.

17 MR. DETTMAN: Nineteen-seventy-
18 three, okay, and they are legally non-
19 conforming?

20 MR. DUNN: Yes.

21 MR. DETTMAN: And how long have
22 they been out of their current space?

23 MR. DUNN: Just a few months.

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1 MR. DETTMAN: Just a few months,
2 okay, and related to the questions that Mr.
3 Etherly was asking, related -- regarding
4 traffic flow and circulation, how is the
5 current site serviced, in terms of deliveries
6 and trash removal, and is that going to change
7 when the addition is completed?

8 MR. DUNN: Yes, it's currently
9 served through the surface parking lot, which
10 is between the Blaine Mansion and the
11 structure to the west.

12 When it's done, there are going to
13 be -- trash is going to come out of these
14 retail spaces, into the -- onto the
15 Massachusetts Avenue side, and it's going to
16 come out of the -- everything else in the
17 building, out the parking garage.

18 MR. DETTMAN: Okay, thank you.

19 CHAIR MILLER: Any other questions
20 from the Board?

21 (No verbal response)

22 CHAIR MILLER: Okay, then I think
23 we will move to the Office of Planning. Good

1 morning, Mr. Jackson.

2 MR. JACKSON: Good morning, Madam
3 Chair, members of the Board. My name is
4 Arthur Jackson. I'm a development review
5 specialist for the District of Columbia Office
6 of Planning and I will briefly summarize the
7 Office of Planning's report.

8 Basically, the Office of Planning
9 reviewed this application and raised the issue
10 about additional relief that might be
11 required, relative to the location of new
12 offices and the proposed addition.

13 We also looked at issues related
14 to the fact that it is a historic building and
15 as a 25 -- more than 25 percent increase,
16 whether or not that increase would -- whether
17 the parking being provided on site is
18 consistent with an increase in an addition is
19 more than 25 percent of the size of the
20 existing building.

21 We've found that in both cases,
22 the application -- this application meets
23 those requirements. We briefly did a

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1 tabulation of parking requirements, based on
2 the requirements that apply to this district
3 and noted that there's more parking proposed
4 than is required on the regulations.

5 We also checked -- went through
6 the analysis of the -- under 508 for the
7 addition of new office space on the site. We
8 found that there were -- this project was
9 consistent with those regulations.

10 Finally, we went through the
11 standards under 2003, to see what about -- for
12 the change-out of existing -- previous retail
13 uses and new retail uses, and found those
14 standards were consistent.

15 So, essentially, our conclusion
16 was that we supported this application,
17 recommend an approval, contingent on the ANC,
18 the Advisory Neighbor Commission, being
19 notified of this relief. We note that the
20 Applicant has provided an additional letter,
21 where the ANC makes reference to approving
22 plans estimated at the hearing, which
23 satisfies -- we're satisfied that that's

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1 notification for the ANC.

2 We also note that on September 11,
3 2007, the Commission voted to support this
4 application, again, based on the submitted
5 plans, which included the proposed changes.

6
7 With that, that concludes the
8 Office of Planning report and our
9 recommendation approve the special exceptions
10 under 501.1 and Section 2002.3 for new office
11 uses in the addition and the change-out of
12 retail uses in the basement of the existing
13 mansion.

14 That concludes the Office of
15 Planning's report and we're available to
16 answer questions.

17 CHAIR MILLER: Thank you very much,
18 and I think your report is an excellent
19 roadmap for analyzing this case.

20 I just want to clarify with you,
21 the Applicant is amending the application to
22 add relief under 508.1, per your advice, even
23 though they've made the statement that they

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1 don't think they necessarily need it, because
2 it's a reduction in overall office space.

3 However, looking at the
4 regulations, I would think that it's your
5 opinion, based on your position, that because
6 the regulations read `construction of a new
7 office building' or `construction of an
8 addition to a building for office use', and
9 doesn't talk about any -- whether it's adding
10 to the office space or not, requires special
11 exception relief under this provision. Is
12 that your understanding?

13 MR. JACKSON: Yes, Madam Chair. I
14 think, for the sake of being -- of
15 conservative approach to the Zoning
16 regulations and to ensure that there's no
17 confusion when they do go for a permit, I
18 think it's prudent to include this relief for
19 the application, so they can quickly move
20 forward.

21 CHAIR MILLER: Also, I just want to
22 clarify, with respect to the ANC reports,
23 maybe I'm just not putting my fingers on it,

1 but is there another ANC report, other than
2 that letter that was handed to us today, dated
3 October 1st?

4 MR. JACKSON: Yes, I believe the
5 previous ANC report was actually in the
6 Applicant's submission, and in that ANC
7 report, there was no reference made to plans
8 presented. It was -- that they approve that
9 approve the relief that was requested for the
10 change-out of the retail uses.

11 I think what the representative of
12 the Applicant indicated was that the ANC did
13 not require -- that her contact at the ANC did
14 not think and an additional meeting was
15 required because they did review the plans in
16 some detail and were aware of the changes that
17 were proposed.

18 They may -- what the issue is, for
19 us, was that they make them aware that relief
20 was required for the proposed office -- for
21 the office uses that were proposed in the
22 addition.

23 If it were that relief is required

1 for those offices uses, and still have no
2 concern about the office uses, that seems to
3 address our concern that the ANC would be
4 aware of all that they were reviewing and
5 approving.

6 CHAIR MILLER: Okay, I mean, I
7 understand what went on with the ANC, I think,
8 and I can see that they support the project.
9 I'm just trying to reconcile the letters.

10 I see a letter attached to the
11 Applicant's Exhibit-G -- or identified as
12 Exhibit-G, attached to their pre-hearing
13 submission, and it's dated October 1st, and
14 then we have another letter that was given to
15 us today, dated October 1st, and the
16 difference is, the one that was given to us
17 today has the additional statement about
18 supporting special exception relief for the
19 project, as shown in the drawings presented to
20 the Commission.

21 Maybe this goes to the Applicant
22 again, but I'm just a little bit -- I just
23 want to clarify, there are two different

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1 letters dated the same date. Let's go back to
2 you on that, I guess, okay.

3 MS. BROWN: Yes, that was confusing
4 to us too, that they had the same date, but I
5 think that they did that, in order to show
6 that it was part of the same meeting and they
7 simply decided to revise the letter, without
8 re-dating it.

9 CHAIR MILLER: Okay, and they're
10 not here. But there isn't any question. It's
11 in the record that they don't -- they support
12 this application.

13 MS. BROWN: Correct, and the e-mail
14 correspondence I have with the ANC
15 representatives last evening and this morning
16 said that they had submitted to the Office of
17 Zoning by fax this morning, I believe.

18 CHAIR MILLER: Okay, thank you.
19 Any other questions for Office of Planning?

20 VICE-CHAIRPERSON ETHERLY: Yes,
21 Madam Chair, but perhaps, what I'd like to do
22 is, come back to the Applicant and then after
23 our exchange, maybe come to the Office of

1 Planning.

2 One of the things I neglected to
3 touch upon is the issue of signage and
4 illumination. Under 2003.3, we do have an
5 opportunity to kind of touch on some of those
6 issues.

7 Again, I haven't seen anything in
8 the record to raise any concerns, but I wanted
9 to just touch upon what plans, if any, you
10 have, with regard to signage in particular,
11 but perhaps, even speak a little bit to
12 illumination, but primarily signage.

13 Again, with the hustle and
14 bustling nature of the corridor, what are the
15 plans for your tenants, with regard to
16 signage, directing them to the fact that you
17 have -- you're going to have new retail uses,
18 that you obviously want to bring pedestrian
19 foot traffic to? Any thoughts on that at this
20 point, or was there any discussion with HPRB
21 on that issue?

22 MR. DUNN: No, and we will have to
23 go to them with that, but it's a work in

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1 progress. The way our agreements with these
2 tenants work is that they will submit their
3 request for signage and we'll take it through
4 the process.

5 VICE-CHAIRPERSON ETHERLY: Okay.
6 So, at this point, it'd be difficult for you
7 to say, with any specificity, as to what the
8 final outcome would be.

9 Now, did you indicate that you
10 would have to go back to HPRB for that
11 conversation at the appropriate time?

12 MR. DUNN: Yes, and I would only
13 say, it's going to be very classy.

14 VICE-CHAIRPERSON ETHERLY: Okay,
15 and with respect to the office addition,
16 again, you've taken great care and concern for
17 the existing historic mansion. What's
18 happening with respect to the office addition
19 from an illumination standpoint? Are you
20 doing any exterior illumination of that wall?

21 MR. DUNN: Landscape lighting.

22 VICE-CHAIRPERSON ETHERLY: And that
23 essentially it?

1 MR. DUNN: Yes.

2 VICE-CHAIRPERSON ETHERLY: You're
3 not anticipating any roof line lighting or
4 anything like that, looking downward?

5 MR. DUNN: No.

6 VICE-CHAIRPERSON ETHERLY: Okay,
7 thank you.

8 MEMBER LOUD: Just very briefly for
9 Mr. Jackson. I just wanted to clarify. I
10 think in the exchange with Commissioner
11 Miller, you've answered this, but just for my
12 purposes, to be clear.

13 Your report recommended approval,
14 with the condition that the ANC be notified
15 prior to the Public Hearing, regarding the
16 additional zoning relief.

17 As a result of the October 1st ANC
18 letter that came in this morning under Mr.
19 Estrada's signature and then the testimony
20 from Mrs. Brown, is that condition -- you
21 believe that condition has been satisfied?

22 MR. DUNN: Yes, I do.

23 MEMBER LOUD: Thank you.

1 CHAIR MILLER: Any other questions?

2 (No verbal response)

3 CHAIR MILLER: Okay, and I assume
4 the Applicant has a copy of the Office of
5 Planning report?

6 MS. BROWN: Yes, we do and we're
7 very pleased with it.

8 CHAIR MILLER: Okay, and do you
9 have any questions for the Office of Planning?

10 MS. BROWN: No, we do not.

11 CHAIR MILLER: Okay. Let me just
12 ask again then, is anyone here from the ANC on
13 this case?

14 (No verbal response)

15 CHAIR MILLER: Okay, is there
16 anyone here who wishes to testify, either in
17 support or opposition on this case?

18 (No verbal response)

19 CHAIR MILLER: Okay, not hearing
20 from anyone, any final questions from the
21 Board?

22 (No verbal response)

23 CHAIR MILLER: Any closing remarks

1 from the Applicant?

2 MS. BROWN: Yes, thank you for the
3 opportunity to present our case to you on both
4 the special exception relief under Section
5 2003 and 508.1.

6 We believe that we, through our
7 testimony today and our pre-hearing
8 submissions and the Office of Planning report,
9 demonstrate that we fully comply with the
10 special exception standards set forth in those
11 sections and we would request approval by the
12 Board, and if appropriate, a bench decision
13 today. Thank you.

14 CHAIR MILLER: Thank you. Okay, we
15 are going to proceed with a bench decision
16 today and I think it's appropriate, unless a
17 Board member has an objection, that I would
18 like for us to deliberate under motion, and I
19 will move to approve Application 17678 of 2000
20 Massachusetts Avenue, LLC, pursuant to 11 DCMR
21 Section 3104.1, for special exception to
22 replace existing non-conforming (retail) uses
23 within another non-conforming -- with another

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1 non-conforming (restaurant) use, under Section
2 203, at premises 2000 Massachusetts Avenue,
3 Northwest, and also for relief under 508. Do
4 I have a second?

5 COMMISSIONER TURNBULL: Second.

6 CHAIR MILLER: And 508 deals with
7 construction of an office building or
8 addition, for use as an office building.

9 I think that what I'd like to do
10 is, is use the Office of Planning's report as
11 a road map, because I think they pretty much
12 go through the tests for each of the reliefs
13 that's sought.

14 So, the first one -- and look at
15 our regulations. The first one is under
16 2003.1, changes of uses within structures.
17 Basically, 2003.1 says, "If approved by the
18 Board of Zoning Adjustment, as authorized in
19 3103 and 3104 for variances and special
20 exceptions, a non-conforming use may be
21 changed to a use that is permitted as a matter
22 of right in the most restrictive district in
23 which the existing non-conforming use is

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1 permitted as a matter of right, subject to the
2 conditions set forth in this section."

3 Office of Planning has gone
4 through the sections, and I think that's what
5 I'd like to lead us through.

6 Basically, 2003.2 says that the
7 use shall not adversely affect the present
8 character or future development of the
9 surrounding area, in accordance with this
10 title, and Office of Planning has indicated
11 that the surrounding area is deemed to
12 encompass existing uses and structures within
13 at least 300 feet in all directions from the
14 non-conforming use.

15 This area comprises of commercial
16 and residential uses, including restaurant and
17 offices and Office of Planning concludes that
18 this new use fits in, certainly, as well as
19 the previous uses did.

20 2003.3 says it won't create any
21 deleterious external effects and Office of
22 Planning has looked at the vehicular access to
23 the parking and surface areas that are going

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1 to remain there and found that the parking
2 exceeds what would be required under the
3 regulations and no adverse impact is
4 anticipated.

5 2003.4 isn't applicable because it
6 talks about changing from a non-conforming use
7 to a conforming or more restrictive use.

8 2003.5 is not applicable because
9 it says, "In residential districts, opposed
10 use shall be either a dwelling, flat,
11 apartment house or a neighborhood facility,"
12 and I don't believe this is in a residential
13 district. This is Dupont Circle overlay
14 district and Special Purpose-1.

15 2003.6 talks about changing the
16 use to one that's first allowed in the same
17 use as the previous non-conforming use and
18 Office of Planning states that both existing
19 and proposed retail uses are first allowed in
20 the C-1 District, therefore, this proposal is
21 consistent with this standard.

22 2003.7 allows the Board to require
23 any changes or modifications, to design and so

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1 on -- and recommend any, and I don't think
2 that any is required either.

3 All of this involved here is
4 changing from uses of hardware, bicycle store
5 and plant store to restaurant and bakery. So,
6 I don't think that calls for any special
7 treatment for that change.

8 So, I think that covers the 2003
9 category of changing use. Does anybody want
10 to add on that one, or else we can move right
11 in to 508?

12 (No verbal response)

13 CHAIR MILLER: Okay. As I was
14 saying in my dialog with Office of Planning,
15 508.1 reads, "The construction of a new office
16 building or construction of an addition to a
17 building for office use or conversion of an
18 existing building to office use shall be
19 permitted in an SP district if approved by the
20 Board of Zoning Adjustment as a special
21 exception under 303-104, subject to the
22 provisions of this section as well."

23 This is construction of a new

1 building that will have office use in it. So,
2 I believe that 508.1 is applicable.

3 508.3 talks about the use, height,
4 bulk and design being in harmony with existing
5 uses and structures on neighboring property.
6 We've seen plans today and it's been -- and
7 they've been reviewed by the Historic
8 Preservation Review Board and have been found
9 to be in harmony with the existing structures,
10 and I wouldn't determine any differently.

11 508.4 says, "The use shall not
12 create dangerous or other objectionable
13 traffic conditions." We've already talked
14 about, there's parking provided and surface
15 access and these uses are -- the Paradiso
16 Restaurant has been on this street for a long
17 time and other restaurants, and don't create
18 any particular traffic conditions, so, nor
19 would a bakery, and they're also near the
20 metro, where there's a lot of foot traffic.

21 508.5 also specifically requires
22 special treatment. I don't think that's
23 appropriate in this case as well, because it's

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1 already been reviewed by Historic Preservation
2 Review Board. I don't think any special
3 treatment would be required for zoning
4 purposes.

5 So, other comments?

6 MEMBER LOUD: Excellent summary,
7 Madam Chair. I just wanted to that in
8 addition to all of the above which you've
9 shared, the Dupont Circle Advisory
10 Neighborhood Commission also was briefed on it
11 prior to today's hearing, and supported both
12 the special exception request for the
13 substituted C-1 uses, as well as the special
14 exception relief needed for the office space
15 in the new addition.

16 In addition to that, I believe Mr.
17 Dunn testified that there have been
18 consultations with the Dupont Conservancy and
19 the Merchant's Association, so there appears
20 to be tremendous community support as well.

21 CHAIR MILLER: Thank you. Can you
22 identify where that is in the record, that the
23 Dupont Circle Neighborhood supported --

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1 whatever, Council Advisory Committee,
2 whatever, supported the application?

3 MEMBER LOUD: The Dupont Circle
4 ANC.

5 CHAIR MILLER: Oh, the ANC, okay.
6 I thought there was another group and I didn't
7 have that in my record. Okay, thank you very
8 much. Anything else?

9 (No verbal response)

10 CHAIR MILLER: Okay, then at this
11 time, all those in favor, say 'aye'.

12 ALL: Aye.

13 CHAIR MILLER: All those opposed?

14 (No verbal response)

15 CHAIR MILLER: All those
16 abstaining?

17 (No verbal response)

18 CHAIR MILLER: Okay, Ms. Bailey,
19 would you call the vote, please?

20 MS. BAILEY: Madam Chair, the vote
21 is recorded as 5-0-0 to approve the
22 application. The motion was made by Mrs.
23 Miller, seconded by Mr. Turnbull. Mr.

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1 Dettman, Mr. Loud and Mr. Etherly support the
2 motion and it's granted as approved -- I'm
3 sorry, it is approved as amended to add
4 Section 508.1.

5 A couple of housekeeping chores.
6 You had asked for a copy of the plans to be
7 filed in the record. Did you have a specific
8 time frame for that or just when ever it comes
9 in or prior to the issuance of the order?

10 CHAIR MILLER: I guess, to my Board
11 members, I would suggest that right, prior to
12 the issuance of the order, that we issue a
13 summary order in this case, as there's no
14 opposition, but that we need to have the
15 record completed before we issue that order.

16 So, as soon as those drawings come
17 in, the order will be issued very soon
18 thereafter. Okay.

19 MS. BAILEY: And did you ask for a
20 copy of the HPRB report or did I miss that?

21 CHAIR MILLER: Well, no, what I
22 referenced was, just for a complete record in
23 our case, I saw a reference to a photo of

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1 Blaine Mansion before 1921, and I didn't see
2 it in our record.

3 MS. BAILEY: Okay.

4 CHAIR MILLER: So, the Applicant
5 said that they would also provide that for our
6 record.

7 MR. VAN DUSEN: Excuse me?

8 CHAIR MILLER: Yes. It's in the
9 record?

10 MR. VAN DUSEN: Sure. The drawing
11 you were referring -- or the photograph you
12 referred to, I think it a drawing.

13 CHAIR MILLER: Okay.

14 MR. VAN DUSEN: I don't know of a
15 photograph, and I'll have to double check
16 this.

17 CHAIR MILLER: You know, with
18 respect to that, I'd say our relief isn't
19 dependent on that photograph, but it is
20 dependent on plans, as approved.

21 So, that's almost a courtesy, if
22 you want to submit that into the record, but
23 it was just something that I was interested

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1 in. When I was reading this, I thought I saw
2 a reference to it. But if that's a problem,
3 I would say you're not required to do that.
4 Okay. That's optional, but the plans aren't.

5 Okay, anything else?

6 (No verbal response)

7 CHAIR MILLER: Okay. Well, thank
8 you very much. It does look like a beautiful
9 project.

10 MS. BROWN: Thank you.

11 CHAIR MILLER: Good luck with it.

12 MS. BROWN: Thank you.

13 (Whereupon, the foregoing matter
14 recessed briefly at approximately 10:50 a.m.)

15 CHAIR MILLER: Okay, Ms. Bailey,
16 are you ready to call the next case?

17 MS. BAILEY: Yes, Madam Chair, and
18 that's Application 17674, application of the
19 Fund for American Studies, pursuant to 11 DCMR
20 3104.1, for a special exception to allow the
21 conversion of an existing building from a
22 private school to office use, under Section
23 508.

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1 The property is located in Dupont
2 Circle SP-1 District, at premises 1621 New
3 Hampshire Avenue, Northwest, Square 155, Lot
4 145.

5 CHAIR MILLER: Good morning.

6 MS. BALDWIN: Good morning.
7 Stephanie Baldwin from the law firm of
8 Greenstein, Delormine, Luchs. I'm here with
9 the Fund for American Studies.

10 I'm here today, specifically with
11 Roger Ream, who is the President of the Fund
12 of American Studies, Robert Callahan. He's
13 the Vice President of Finance and
14 Administration, and then Steve Slattery, who
15 is the Vice President of Programs. We also
16 have with us, the architect, Todd Ray, from
17 Studio 27 Architects.

18 We're here today to seek --

19 CHAIR MILLER: I just want to
20 interrupt you for a second, okay?

21 MS. BALDWIN: Please.

22 CHAIR MILLER: And then you can
23 proceed accordingly. We moved you to come

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1 second because basically, you provided a very,
2 full well presented case in writing.

3 MS. BALDWIN: Okay.

4 CHAIR MILLER: So, we don't
5 particularly need a full presentation on this.

6 MS. BALDWIN: We were going to ask
7 if we could forego the presentation.

8 CHAIR MILLER: Okay, I mean, I
9 don't want to disappoint you.

10 MS. BALDWIN: But we wanted to be
11 ready, in case anybody has any questions for
12 anybody.

13 CHAIR MILLER: Right, and if there
14 are things you really feel you want to
15 highlight, that's fine, or if we have some
16 Board questions.

17 But it seemed like a very, kind
18 of, straight forward application. So, if you
19 just want to touch the task, that's fine.
20 Stand on the record, whatever you want. I
21 think it's usually a good idea just to
22 highlight a little bit.

23 MS. BALDWIN: Well, as you know,

1 the Office of Planning and the ANC both
2 support it, the approval of this application.

3 The application meets the
4 applicable standards for a special exception
5 to convert the building from a school to
6 office use in the SP-1 zone district.

7 The use is in harmony with the
8 neighborhood. There is no external changes to
9 the building planned, although there's a
10 potential for a rooftop deck, but the
11 Applicant is aware of the need to go to
12 Historic Preservation, in case they do do
13 that.

14 The use is less intense than the
15 former school. So, they're already in the
16 neighborhood. They have lots of friends in
17 the neighborhood and everybody is happy.

18 CHAIR MILLER: Is this true, that
19 there used to be a -- it used to be office
20 space before it was school space?

21 MS. BALDWIN: That's my
22 understanding, before the school.

23 CHAIR MILLER: Okay. Mr. Etherly?

1 VICE-CHAIRPERSON ETHERLY: Thank
2 you, Madam Chair. Very, very brief questions.
3 I think it's very appropriate for the
4 Applicant to -- just to stand on the record
5 here. This is a very straight forward case.

6 Again, as the Chair said, we hope
7 we don't disappoint anybody, if you wanted
8 your day in the sun. But just two very, very
9 quick questions.

10 One is on the issue of employees
11 that are anticipated to move to the new
12 building. As was indicated in the Office of
13 Planning's report, that is somewhat of an open
14 question or may be an open.

15 I just wanted to ascertain from
16 any of the witnesses, Mr. Ream perhaps, or any
17 of the other appropriate witnesses, because
18 sometimes the VP for Finance always is the one
19 who is put on the spot about this stuff. But
20 with respect to employees, have you set on a
21 final number, as of yet?

22 MR. REAM: We initially plan to put
23 15 employees in the building, most, if not all

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1 of them, moving from our current building
2 across the street to the new building. We
3 take on interns more so in the Summer than in
4 the Fall and may have as many as four or five
5 interns in there as well.

6 But we've structured the two
7 buildings, so that if there is future growth
8 in our staff over the next one to five years,
9 the growth will probably be evenly distributed
10 and not more than about five percent a year.

11 VICE-CHAIRPERSON ETHERLY:

12 Excellent, okay, terrific. My second and last
13 question perhaps, is more directed to Ms.
14 Baldwin.

15 As I had indicated, kind of off
16 the record to the Chair, that occasionally
17 when we have properties that are located in
18 the vicinity of Embassy properties, we will
19 from time to time, have some type of comment
20 from the State Department. It's not required.
21 It's not necessary. It doesn't always appear.

22 I just wanted to ascertain whether
23 or not you had any discussions or any issues

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1 raised, with respect to security concerns
2 relative to any of the neighboring Embassy
3 properties.

4 MS. BALDWIN: I have not had any
5 discussions. I believe -- did you -- you went
6 to the neighbors and --

7 MR. CALLAHAN: Yes, we introduced
8 ourselves to both neighbors by phone and by
9 written letters, and I've had conversation
10 with the one Embassy, Belarus, and they are
11 actually looking forward to working with us.
12 They raised no concerns about security or
13 anything else.

14 VICE-CHAIRPERSON ETHERLY:
15 Terrific. Thank you. That concludes my
16 questions, Madam Chair.

17 CHAIR MILLER: Mr. Loud?

18 MR. LOUD: Just one very brief
19 question. What is the day that is leaving, to
20 make way for the additional office use?

21 MR. REAM: It is the Rock Creek
22 International School. This was one of two
23 buildings they operated in and as I understand

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1 it, they are going out of business or have
2 gone out of business.

3 MR. LOUD: Thank you.

4 CHAIR MILLER: Anything else from
5 the Board?

6 (No verbal response)

7 CHAIR MILLER: Should we go to the
8 Office of Planning?

9 MS. THOMAS: Certainly.

10 CHAIR MILLER: Okay. Good morning.

11 MS. THOMAS: Good morning, Madam
12 Chair, members of the Board. The Office of
13 Planning has nothing further to add. We
14 believe that they satisfied the provisions of
15 the special exception and basically, I'll
16 stand on the record. Thank you.

17 CHAIR MILLER: Thank you. It was
18 an excellent report. Thank you very much.
19 Any questions for the Office of Planning?

20 (No verbal response)

21 CHAIR MILLER: Any questions from
22 the Applicant to the Office of Planning?

23 MS. BALDWIN: No, thanks.

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1 CHAIR MILLER: And does the
2 Applicant have a copy of the Office of
3 Planning report?

4 MS. BALDWIN: Yes, we do. Thank
5 you.

6 CHAIR MILLER: Okay. Is there
7 anybody here from the ANC on this application?

8 (No verbal response)

9 CHAIR MILLER: Is there anybody
10 here who wishes to testify in support or
11 opposition to this application?

12 (No verbal response)

13 CHAIR MILLER: Okay, not hearing
14 from anyone, any other remarks you want to add
15 to the record?

16 MS. BALDWIN: No, just thank you
17 for having us here today, and your
18 consideration.

19 VICE-CHAIRPERSON ETHERLY: Madam
20 Chair?

21 CHAIR MILLER: Yes, please.

22 VICE-CHAIRPERSON ETHERLY: I don't
23 want to jump the gun, but I would suggest

1 given the record, both in terms of submitted
2 testimony and testimony on the record today,
3 I'd be more than comfortable suggesting that
4 we move forward under a motion, with regard to
5 this application.

6 And so, if it's appropriate, I
7 would move approval of Application 17674 of
8 the Fund for American Studies, pursuant to 11
9 DCMR 3104.1, for special exception to allow
10 the conversion of an existing building from a
11 private school to office use under Section
12 508, at premises 1621 New Hampshire Avenue,
13 Northwest and would invite a second.

14 MEMBER LOUD: Second.

15 VICE-CHAIRPERSON ETHERLY: Thank
16 you very much, Mr. Loud. Madam Chair, again,
17 I think the record is very full, with respect
18 to all of the relevant portions of 508, in
19 particular, the discussion of use, height,
20 bulk, design, no changes, as we've discussed,
21 no dangerous or otherwise objectionable
22 traffic conditions and I most certainly,
23 consistent with the Office of Planning's

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1 report, don't see any need for any special
2 treatment under 508.5 with respect to
3 protection of the value of the neighboring
4 property.

5 I think the record is fully
6 complete on this matter.

7 CHAIR MILLER: Thank you. Yes, I
8 just want to add, I think that any impact on
9 the community is diminished, by changing from
10 a school to an office, that you don't have the
11 same traffic problems involved with drop off
12 and pick up and there will be fewer people in
13 this building space. So, I don't see any
14 adverse impact. It's also located near the
15 Dupont Circle metro, I believe.

16 Okay, I just want to also note the
17 support that is here on this application.
18 First, the Dupont Circle Advisory Neighborhood
19 Commission voted to support, by a vote of 7-0,
20 with seven of the nine Commissioners in
21 attendance at a publically -- public regular
22 meeting, and we're going to give this great
23 weight.

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1 Also, Chris and Mary Sydall (sp),
2 American Institute for Cancer Research, Rose
3 Elementary School, German Marshall Fund of the
4 United States and America's Future Foundation,
5 all have submitted letters in support, and we
6 have no opposition registered in this case.

7 Anything else anyone wants to add?

8 (No verbal response)

9 CHAIR MILLER: Okay, then all those
10 in favor, say `aye`.

11 ALL: Aye.

12 CHAIR MILLER: All those opposed?

13 (No verbal response)

14 CHAIR MILLER: All those
15 abstaining?

16 (No verbal response)

17 CHAIR MILLER: Would you call the
18 vote, please?

19 MS. BAILEY: Madam Chair, the vote
20 is recorded as 5-0-0, to grant the
21 application. Mr. Etherly made the motion. Mr.
22 Loud seconded. Mrs. Miller, Mr. Turnbull and
23 Mr. Dettman support the motion.

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1 CHAIR MILLER: Thank you, and I
2 would suggest that this also be a summary
3 order, as there's no opposition in this case.
4 So, that will be issued very soon.

5 MS. BALDWIN: Thank you.

6 (Whereupon, the foregoing matter
7 recessed briefly at approximately 11:00 a.m.)

8 CHAIR MILLER: Ms. Bailey, we're
9 ready when you are.

10 MS. BAILEY: The final case of the
11 morning is Application 17673. It's the
12 application of Gallery Square, LLC, pursuant
13 to 11 DCMR 3103.2 and 3104.1 for special
14 exception from the rear yard requirements
15 under sub-section 774.2, and special exception
16 from the roof structure requirements, under
17 Sections 770.6 and 411, a variance from the
18 parking accessibility requirements under sub-
19 section 2117.4, and a variance from the
20 loading requirements under sub-section 2201.1,
21 to permit the development of a new office
22 building with retail.

23 The project is located in the DD

1 District/C-3-C District, at premises 627
2 through 631 H Street, Northwest, Square 454,
3 Lots 22, 23 and 18.

4 CHAIR MILLER: Good morning.

5 MR. GLASCOW: Good morning.

6 Members of the Board, for the record, my name
7 is Norman M. Glasgow, Jr. of the law firm of
8 Holland & Knight. Here with me today in this
9 case are Ms. Yeni Wong, sitting to my
10 immediate right, Mr. Glenn Golanka, who are
11 Principals for the Applicant, Mr. Chris
12 Morrison, who is at the far end of the table,
13 of the architectural firm of Cunningham Quill,
14 architects for the project, and Mr. Steven
15 Sher, land planner with the firm of Holland &
16 Knight.

17 Mr. Morrison and Mr. Sher are
18 offered as expert witnesses in the field for
19 urban architecture and land use planning
20 respectively.

21 Before proceeding with the
22 testimony of the witnesses, I'd like to offer
23 a brief opening statement.

1 zones, many times it is common that you can
2 have a loading zone in front of the building.
3 We can always request that, but we do not
4 think, given the size of this building and its
5 narrow lot, that we should be required to
6 provide the second -- the service delivery
7 space on site.

8 We also have a special exception
9 for the number of required parking spaces, due
10 to the size and shape of lot. We did note
11 that there was a change in the printing of the
12 regulations. Mr. Sher has been through the
13 orders and we're not sure that the Zoning
14 Commission intended that that now be a special
15 exception. But we believe that we meet the
16 special exception relief, in any event.

17 So, then in summary, we have two
18 variances, one for loading and one for service
19 delivery spaces, and a second to sue car
20 elevators for access to required parking.

21 We have three special exceptions.
22 The special exceptions are for rear yard
23 waiver in the C-3-C zone, move structure set-

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1 back and the number of parking spaces
2 provided.

3 Between the Applicant's statement
4 and the report of the Office of Planning
5 report, we believe that all of the areas of
6 relief and their rationale are explained in
7 the written record.

8 I also have a series of letters in
9 support of the application and I believe the
10 Board has, in its record, the Office of
11 Planning report. These are from the Chinese
12 Consolidated Benevolent Association,
13 Chinatown, Chamber of Commerce, Chinese Youth
14 Club, Lee Family Association and Chinese
15 Merchant's Association, who all have letters
16 in support.

17 CHAIR MILLER: Are those new
18 letters, Mr. Glasgow?

19 MR. GLASCOW: Ms. Wong?

20 CHAIR MILLER: Because I --

21 MS. WONG: Yes.

22 CHAIR MILLER: We were wondering.

23 We hadn't really heard from the Chinatown

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1 community. So, this is it? Give it to Ms.
2 Baily, please. Is anyone here from the ANC?

3 (No verbal response)

4 MR. GLASCOW: So, unless there are
5 any preliminary questions or issues, I'm
6 prepared to proceed with the testimony of the
7 witnesses.

8 CHAIR MILLER: I have just a couple
9 of preliminary.

10 MR. GLASCOW: Sure.

11 CHAIR MILLER: There's been quite a
12 change in representation throughout this case,
13 that's kind of a little bit unusual, and I --
14 it certainly appears that since you're sitting
15 at the table next to Ms. Wong, that you are
16 authorized to represent the Applicant in this
17 case now, correct?

18 MR. GLASCOW: That is correct.

19 CHAIR MILLER: Okay, because there
20 wasn't anything in writing and I -- okay, this
21 is -- is that correct, Ms. Wong?

22 MS. WONG: That is correct.

23 CHAIR MILLER: Okay. However, with

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1 respect to what's been filed previously,
2 that's all by other attorneys, there's still
3 -- would you still deem them as representing
4 your arguments in this case?

5 MR. GLASCOW: With respect to the
6 supplemental statement, what I would do is,
7 where this background discussion is about FAR
8 and TDR's, which I don't think is germane to
9 the case and to CLD's, because we're not
10 asking for any relief on that, when you start
11 at page two and start talking about special
12 exceptions requested and the variance relief,
13 yes, we adopt all of that.

14 CHAIR MILLER: This is just -- this
15 is housekeeping as well. One of our staff
16 noted that the lots that are identified in the
17 application don't all match what appears on
18 the surveyor's report.

19 MR. GLASCOW: I think with respect
20 to the background statement, I guess that is
21 with respect to lot 810.

22 CHAIR MILLER: Eight-ten is there,
23 correct.

1 MR. GLASCOW: Right.

2 CHAIR MILLER: It also represents
3 lots 22 and 23, and we don't see them on the
4 surveyor's report, which is our Exhibit-3.

5 MR. GLASCOW: All right. We have
6 the surveyor's plan, which references lot 53
7 and lot 810, and it's all -- Steven, do you
8 have a comment on that?

9 MR. SHER: For the record, my name
10 is Steven Sher, Zoning and Land Use Services
11 with the law firm of Holland & Knight.

12 Lot 53 is a sub-division, to
13 create a new record lot out of what were the
14 other two record lots which no longer exist.
15 So, technically, as per that plan, it's 53 and
16 810, but it's all the same property, either
17 way.

18 All of this is going to have to go
19 in to one record lot finally, before we can
20 get a permit.

21 MR. GLASCOW: Right.

22 MR. SHER: So, 53 and 810 will be
23 combined into a new lot with a different

1 number at some point.

2 CHAIR MILLER: So, is 53 what was
3 22 and 23?

4 MR. SHER: Yes.

5 CHAIR MILLER: Okay. With respect
6 to the references to TDR's combined lot
7 development, I think it's your position that
8 they're not really relevant to the
9 application.

10 MR. GLASCOW: Right, to the BZA
11 application, that is correct.

12 CHAIR MILLER: Okay.

13 MR. GLASCOW: Because we have to --
14 in order to construct the building, we will be
15 acquiring CLD's and TDR's. The issue that
16 previously existed, I believe, that we worked
17 out with the Office of Planning and have an
18 understanding of how the regulations apply for
19 the CLD's that we believe that we have.

20 CHAIR MILLER: Can you just address
21 briefly, how they impact on this application
22 at all? I mean, if you -- if they grant -- it
23 doesn't impact on the relief you're seeking.

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1 MR. GLASCOW: That's correct.

2 CHAIR MILLER: If we grant the
3 relief you're seeking, but something else
4 doesn't happen in that -- in the combined lot
5 development realm or something, how does that
6 impact the project?

7 MR. GLASCOW: You would not be able
8 to use the project for the amount of office
9 use that we have. That's how it would impact
10 it.

11 CHAIR MILLER: Okay, but it doesn't
12 affect the variance relief.

13 MR. GLASCOW: No.

14 CHAIR MILLER: Okay, good.

15 VICE-CHAIRPERSON ETHERLY: Madam
16 Chair, if it's appropriate, just one last
17 little bit of housekeeping, as was indicated
18 by Mr. Glasgow. There was a request for
19 expert status designation for both Mr. Sher
20 and Mr. Morrison.

21 Mr. Morrison's curriculum vitae is
22 included at Exhibit-G of what is Exhibit-29,
23 but just again, from a housekeeping

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1 standpoint, I would have no objection and we
2 just wanted to be sure that we closed off that
3 particular string.

4 CHAIR MILLER: Okay, will you be
5 offering both of them as expert witnesses, I
6 assume?

7 MR. GLASCOW: That is correct.

8 CHAIR MILLER: And Mr. Sher has
9 testified many times before us. I don't think
10 anyone has any issue. Okay, does anybody have
11 any questions about Mr. Morrison?

12 (No verbal response)

13 CHAIR MILLER: And Mr. Morrison
14 will be testifying as an expert in what?

15 MR. GLASCOW: Urban architecture.

16 CHAIR MILLER: Okay, and what's
17 your experience, just in a nutshell?

18 MR. MORRISON: I'm a principal at
19 Cunningham Quill Architecture in Georgetown.
20 We have many mixed use office, retail, multi-
21 family, residential projects throughout D.C.
22 and projects within the urban corp.

23 CHAIR MILLER: All right, anybody

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1 have any concerns?

2 (No verbal responses)

3 CHAIR MILLER: All right, then you
4 will also be accepted as an expert in urban
5 architecture.

6 MR. MORRISON: Okay.

7 MR. GLASCOW: Thank you. If
8 there's nothing else, I'd like to -- between
9 Ms. Wong and Glenn Golonka, would one of you
10 participate? Identify yourself for the record
11 and proceed with your testimony.

12 MR. GOLONKA: Sure, I'm Glenn
13 Golonka and Yeni and I represent the ownership
14 and management and control of the property
15 that we're discussing.

16 We are a community developer.
17 We've been in Chinatown approximately 15 to 20
18 years. I started working with Yeni when she
19 was nine.

20 CHAIR MILLER: Just yesterday,
21 right?

22 MR. GOLONKA: Just yesterday. We
23 began by developing the corner of 7th and 8th

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1 Street, the Northwest corner, which is now
2 where the Starbucks is located, the Adams
3 Bank, Fido Irish Pub, the subway and the
4 Capital Que.

5 We then expanded to the corner of
6 8th and H, where we built on a 4,000 square
7 foot footprint, our first high rise office
8 building, which is now the Heilo Institute and
9 over the past 10 years, we've been working to
10 assemble the land at the corner, the Northwest
11 -- I'm sorry, Northeast corner of 7th and H,
12 which is the property that we're discussing
13 today.

14 The acquisition started with where
15 the CVS building is located and then it ended
16 about a year and a half ago, with the
17 buildings that we're bringing before Zoning
18 now.

19 Chip will be representing us for
20 our variances and Chris will be talking about
21 the architecture and the plan that we have
22 before you.

23 CHAIR MILLER: Thank you.

1 MR. GLASCOW: I would like to
2 proceed with the next witness. Mr. Morrison.

3 MR. MORRISON: Good morning. I'm
4 Chris Morrison, again in principal with
5 Cunningham Quill Architects here in
6 Washington, D.C.

7 This areal, basically, expands our
8 site plan slightly, so that you can see some
9 of the adjacent structures. What we have
10 outlined in red here is the now raised lot,
11 where our proposed project is going, and it
12 faces on H Street on the South, and a 30 foot
13 public alley toward the North.

14 Immediately North of that is the
15 Association of Landscape Architect's building,
16 which faces I Street, and they are set back an
17 additional 20 feet from the property line.
18 So, we have a total of 50 feet between our
19 proposed projects.

20 The site plan, basically, shows
21 that we are adjacent immediately to what Glenn
22 pointed out was phase one of the Gallery
23 Square project and on the East side of our

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1 property, we have an existing building that is
2 currently under renovation now.

3 Some of the things on the site
4 plan that I think are pertinent are to show
5 that currently, we're providing, in the
6 proposed building, off-street parking and
7 loading that is not there now. Currently, all
8 the service is handled either off of H Street
9 or off of the alley, and there are no loading
10 docks or parking currently.

11 CHAIR MILLER: I'm sorry, could you
12 refresh my memory, what is there currently?

13 MR. MORRISON: The current
14 condition is that the lot is raised.

15 CHAIR MILLER: It's raised, okay,
16 so, you don't need parking or anything for
17 that.

18 MR. MORRISON: No, there were two
19 restaurants there before, previously.

20 CHAIR MILLER: Okay, thank you.

21 MR. MORRISON: The buildings just
22 came down this Summer. What we are proposing,
23 in terms of the parking is three levels of

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1 below grade parking. As indicated in the
2 report, based on our use, we came up with a
3 total of I believe, 37 parking spaces that
4 were going to be required. We're providing 39
5 on three levels of below grade parking.

6 Because of the narrowness of the
7 site, we are requesting that a traditional
8 method of ramps and access to those parking
9 levels is waived in lieu of the two parking
10 car elevators that we've provided.

11 There is a diagram that was
12 submitted, that just basically highlights kind
13 of, what the difficulty is, and if we came
14 down with an access ramp along one side of the
15 building and we did the tightest turning
16 radius that we could, to be allowed for
17 passenger cars, we would need a 24 foot
18 radius, which would put the car path on the
19 other side of the lot, into where all of our
20 core and all of that is.

21 In addition, it would also -- if
22 we did that, the bulk of the floor plate would
23 be taken up with circulation with access to

1 just a little over a half a dozen parking
2 spaces.

3 The ground floor plan, again,
4 shows proximity to the adjacent project.
5 They're two distinct projects that are not
6 connected at the ground floor level. The
7 program for this is basically ground floor
8 retail, second floor retail and an office
9 lobby at ground floor that takes you up to the
10 third through the tenth floors.

11 At the back or the North end of
12 the site, you'll see that the whole 60 width
13 of lot that we have is taken up with two
14 parking elevators, egress out in the one
15 loading berth that we are providing, as well
16 as the loading platform that's adjacent to
17 that space.

18 The floor plans at this point are
19 non-specific, in that they -- the final tenant
20 hasn't been selected, but it indicates that
21 we're basically seeking relief on the rear
22 yard set back. We have a 23 foot requirement
23 based on our height, and so, taking half of

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1 the alley as the measuring point, we have 15
2 feet there. We would be required to have an
3 additional eight feet.

4 However, if we did that, we would
5 not be able to approach the 10 FAR that we're
6 seeking to develop to.

7 CHAIR MILLER: Could you repeat
8 that?

9 MR. MORRISON: Yes.

10 CHAIR MILLER: Because that's
11 important for your variance test, what the
12 practical difficulty is.

13 MR. GLASCOW: I think for the rear
14 yard, it's a rear yard waiver, so it's in the
15 nature of a special exception. It's not a
16 variance test for the rear yard.

17 CHAIR MILLER: Okay, but now I just
18 understand the situation. Thank you.

19 MR. GLASCOW: Sure.

20 MR. MORRISON: We're occupying the
21 property at 100 percent. If we were to take
22 the -- implement the eight foot set-back, in
23 addition to the 15 foot from the center line

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1 of the alley that we're allowed to measure, to
2 get to the total 23, we would not be able to
3 achieve the 10 FAR. We would effectively be
4 a full FAR short, because there's about 4,000
5 square feet all total up in the eight feet
6 over the 10 floors.

7 So, in any case --

8 CHAIR MILLER: Can I ask you one
9 other follow up question on that, and I know
10 it's not variance, but just so we understand
11 the full ramifications, if you lose that one
12 FAR, what does that translate to? Less,
13 fewer tenants? I mean, what happens to the
14 building?

15 MR. MORRISON: I think that the --
16 I think the owner should correct me if I'm
17 wrong, but basically, the economic issues on
18 developing such a small site, in the downtown
19 area, with the excavation for the parking that
20 we're going to do and all of that, really
21 demands as much build-able potential as it can
22 return, in order to make those numbers work.

23 There's just not an economy of

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1 scale that is providing a surplus of economic
2 gain, in order to make this work, and I think
3 that they would testify that their margins are
4 very tight and that this is a part of town
5 that has been not developed for many years and
6 largely, because of all of the complications
7 and the difficulties in doing so with the
8 historic overlay and the limitations on the
9 amount of development.

10 And so, I think it really talks to
11 her desire to have a -- to continue to improve
12 this area, this downtown area. But having
13 said that, it's an extremely project to do and
14 I think that if we can't get to the full FAR,
15 then it compromises the ability to move
16 forward.

17 CHAIR MILLER: Thank you.

18 MR. MORRISON: And then, just the
19 elevations, I don't think there's anything on
20 the elevations that shows that we're existing
21 -- I am missing a board, but you have it in
22 your packets, and I'll go back to the site
23 plan to show you.

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1 The other exception or variance --
2 and I apologize, Jeff, I lost track myself, is
3 on the roof structure set back.

4 Currently, we are set --

5 CHAIR MILLER: It's also a special
6 exception, your attorney said.

7 MR. MORRISON: Pardon me. Our roof
8 structure set back is 18'6 at this point, and
9 we're set back 18'6 from the North property
10 line and the East property line.

11 We are well beyond that on the
12 South property line for the bulk of the set
13 back. However, there was some question that
14 our front feature, the embellishment feature,
15 which slops back and becomes tangent with the
16 West edge of the property line, that that
17 creates a non-conforming condition, in terms
18 of the -- you know, we can't measure from the
19 face of the block for this small portion.

20 And so, the exception is in place
21 to request relief for where ever that is
22 deemed the measuring point from the roof
23 structure.

1 There was some discussion and
2 debate with the Office of Planning, as to how
3 that applied here and in one of the earlier
4 schemes that we had been working with, it was
5 very clear, there was a little notch right
6 there, and so, that was set back and it was
7 three feet short of the 18'6 that we needed,
8 and that was what originally it was applied
9 for.

10 But since that time, that feature
11 now sweeps back and becomes tangent with the
12 West property line and so, if it's necessary,
13 if the Board deems it necessary, then we're
14 requesting and if not, then we've requested it
15 anyway.

16 MR. GLASCOW: All right, Mr. Sher
17 will address that. We believe that there is
18 relief that's required there. On the sheet,
19 that is -- I have it as the fifth floor up,
20 and you can look at the proposed roof plan.

21 What that shows is this area where
22 the building facade turns back, almost like a
23 reveal, that heads back. This would be on the

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1 West side of the building.

2 The roof structure at 18'6 starts
3 here. So, technically, we need relief for
4 this area to set back. If you drew a straight
5 line across and got rid of that architectural
6 feature, you would get rid of the relief, and
7 that's why we determined that the special
8 exception would be appropriate there and we
9 could meet the special exception test, since
10 you're face on-line with this building over
11 here, which Ms. Wong also owns, and it's just
12 for this little set back here in this area.
13 That's why we have the roof structure special
14 exception.

15 Otherwise, it meets all the
16 requirements of set back from all other
17 directions, and by ruling the Board, we don't
18 need to set back where we're face on-line in
19 an interior lot line situation.

20 So, it's just this little piece
21 right here, as to why the relief is being
22 requested, and Mr. Sher can go the technical
23 basis, upon which we meet the requirements for

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1 that relief, and also for the rear yard
2 waiver.

3 CHAIR MILLER: But just so we can
4 conceptualize it a little better, what is it
5 that's going in there? What kind of
6 architectural embellishment?

7 MR. MORRISON: What we are
8 proposing is a -- if you take a look at the
9 elevation, is we're trying to highlight
10 vertical element of this narrow site and we
11 have a large glass bay that has a curved face
12 on it, as it's directed back toward the
13 Chinatown gate and toward the intersection
14 where the Chinatown metro is.

15 So, the idea here is that we have
16 a sweeping strong gesture, but one that
17 reflects the historic buildings and that
18 corner, into the face of this building.

19 And so, being able to return that
20 glass back and have this gesture back toward
21 that primary corner, was an important design
22 and urban gesture that we were making.

23 You'll see in the site plan, the

1 way the curbs comes back to -- this curve
2 picks up and it will be able to reflect and
3 pick up the elements in the gate and the other
4 historic structures.

5 CHAIR MILLER: Is it basically that
6 side of the building, that part, is just
7 curved? Is that what the embellishment is?

8 MR. MORRISON: Yes.

9 CHAIR MILLER: Instead of squared
10 off?

11 MR. MORRISON: Well, it's curved
12 and it extends up, beyond the roof level, in
13 an open -- it doesn't have a roof on it, above
14 the roof, but the curtain wall extends up
15 again, full beyond.

16 CHAIR MILLER: I see, okay.

17 MR. MORRISON: You can see that
18 here. So, this is open from here on up, and
19 the curve is coming in toward the adjacent
20 structure.

21 One of the things we -- normally,
22 what we wanted to do was to have a -- this is
23 an unusual case, where this piece on the wall

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1 side actually has very strong public
2 visibility and will actually act to be a very
3 strong back drop to the phase one portion.

4 Because of the historic nature of those, those
5 buildings are set back 47 feet.

6 So, that whole facade is going to
7 be really exposed and we wanted to do
8 something that was going to be complementary
9 to not only the downtown urban area, but also,
10 the first part of the project, so that they
11 kind of work together.

12 And I think that's everything,
13 unless there are other questions.

14 COMMISSIONER TURNBULL: I wonder if
15 you could go back to the elevation of the
16 embellishment. I guess, my elevation isn't
17 quite as up to date as that. The original one
18 I have shows likes it's the windows that go
19 straight up, but you're actually saying there
20 is a horizontal opening.

21 MR. MORRISON: Yes, there's a
22 horizontal opening at the top. There's no
23 roof on this structure. Merely, the curtain

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1 wall extends up to increase the verticality of
2 this element, in that you'll be -- from the
3 roof terrace, you'll be able to look through
4 that. But there's no roof and it's not even
5 completely enclosed. This is the only portion
6 that extends up, if you look at the East
7 elevation.

8 COMMISSIONER TURNBULL: Well, maybe
9 we could, just for the record, get a correct
10 elevation of that. I don't think -- at least,
11 mine doesn't show it that way.

12 MR. MORRISON: The only difference
13 between what was submitted before and this is
14 the shadow. We just put some shadow on here,
15 so that the boards read from a distance.

16 COMMISSIONER TURNBULL: Now, the
17 spire that goes up, there is a note on our
18 drawing that says 'open to sky above'.

19 MR. MORRISON: This whole element
20 is open to above.

21 COMMISSIONER TURNBULL: Okay.

22 MR. MORRISON: And this is just a
23 shadow from the corners of that curved

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1 portion. But in plan -- and you can see this
2 on your roof plan, this is the only surface
3 that extends up. This whole side is open and
4 is part of the terrace.

5 COMMISSIONER TURNBULL: So, it's
6 cut back, and then it goes up, once you get to
7 that line?

8 MR. MORRISON: The surface of the
9 curtain wall extends up from the outside and
10 past the roof, so that it essentially forms a
11 -- you'll be able to see sky through the
12 glass, up at the top of the structure.

13 That edge forms the Western edge
14 of the open roof terrace that is here.

15 COMMISSIONER TURNBULL: Do you
16 foresee any signage going up there?

17 MR. MORRISON: We do not at this
18 point, no.

19 COMMISSIONER TURNBULL: Okay, and
20 the spire is just a shaft going up?

21 MR. MORRISON: That is correct.

22 COMMISSIONER TURNBULL: Okay, thank
23 you.

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1 MR. GLASCOW: If there are no
2 further questions, I'd like to call Mr. Sher.

3 MR. DETTMAN: Actually, I have a
4 couple of questions, just related to -- and we
5 can stick with this elevation here, related to
6 what's labeled 'architectural embellishment'
7 on your plan.

8 Now, I believe in an earlier
9 submission, you had mentioned the notch that
10 you had incorporated into your design, and I
11 think the language in the submission that the
12 notch was necessary to help you create a
13 tower, which is above the roof line, that
14 architectural embellishment.

15 The most recent plan shows that
16 the notch was taken away. So, one might make
17 the assumption that you no longer have a tower
18 or you've figured out another way how to
19 characterize the architectural embellishment
20 as a tower.

21 And so, you're proposing 110 foot
22 building from the sidewalk of H to the roof
23 line. How high does the architectural

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1 embellishment, the tower as well as this
2 spire, extend above the roof line?

3 MR. MORRISON: Currently, we're
4 showing approximately 30 feet.

5 MR. DETTMAN: Okay, and I believe
6 in the Zoning regulations, it says that
7 architectural embellishments, it uses that
8 term in the regs, are allowed to exceed the
9 maximum allowable building height.

10 However, that -- and that language
11 is basically pulled from the Height of
12 Buildings Act. However, the Act doesn't use
13 the term 'architectural embellishment'. I
14 believe it tower, spire, minaret, pinnacle.

15 And so, is it your argument that
16 this architectural embellishment, that your
17 agency has designed, falls underneath one of
18 those categories, and I guess my question is,
19 who makes that determination? Is it the ZA?

20 MR. GLASCOW: Mr. Sher, you should
21 respond to that. He wouldn't know.

22 MR. SHER: The fast and direct
23 answer to the question is yes, the Zoning

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1 Administrator would decide that upon review of
2 an application for a permit.

3 CHAIR MILLER: But let me just add,
4 what do you say it is?

5 MR. SHER: I say it's a tower.

6 CHAIR MILLER: Okay.

7 MR. MORRISON: The question about
8 the notch, there is still a set back to create
9 a reveal between the adjacent property and
10 this one. It's just not set back as far as it
11 was in the initial one. But we still have
12 that on the lower floors and then on the upper
13 floors, the curve. That is what allows us to
14 meet the adjacent building, and then once we
15 get to the roof of the adjacent building, the
16 curve sweeps past and -- let's see, I had that
17 here.

18 So, the notch extends up to here
19 and then the curtain wall extends past, once
20 we get above the roof of the adjacent
21 building.

22 MR. GLASCOW: Thank you. All
23 right, Mr. Sher, would you proceed with your

1 testimony?

2 MR. SHER: Madam Chair, members of
3 the Board, again, for the record, my name is
4 Steven E. Sher, the Director of Zoning and
5 Land Use Services with the law firm of Holland
6 & Knight.

7 I'd like to go through the areas
8 of relief that we are requesting from the
9 Board and address each one of those. I'll
10 just start with the roof structure, since
11 that's where we just were.

12 If you put back either the tenth
13 floor plan or -- you don't have the roof plan.
14 I want to -- put the tenth floor plan back up,
15 because that shows it in greater detail.

16 Okay, we don't have the roof plan
17 mounted, but the situation is, as Chris was
18 describing it and as we've been talking about
19 it, this wall, which starts above the fourth
20 floor, to here, up to the fourth floor of the
21 building, goes straight across the front of
22 the lot.

23 From above the fourth floor, you

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1 have this curve that becomes tangent and
2 eventually, this dimension across the front
3 reaches zero, at the point where the curve
4 hits the West property line. But that point
5 is right in front of the South edge of the
6 roof structure when you get to the roof.

7 So, at this point, there is no set
8 back from the wall of the building below.
9 However, it is set back more than 30 feet from
10 the main portion of the front facade, which is
11 out here on the property line.

12 So, it is really just a function
13 of that curve, where it comes back and
14 eventually, narrows to zero right at the
15 property line, where we don't meet the set
16 back, and the reason why we can't meet the set
17 back is, as you look at the function of the
18 core of the building, as Chris indicated
19 earlier, this core is going to be one side of
20 the building or the other.

21 In this case, we've put it on the
22 West side for reasons of functionality, as you
23 look at the whole building from the ground on

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1 up. But within this core, we've got three
2 elevators, we've got an exit stair at the
3 front, we've got an exit stair at the back.
4 We've got mechanical rooms on the roof and on
5 the lower floors, we have mens and ladies
6 bathrooms, all part of the typical core
7 functions of a building.

8 If you had to set this back 18'6
9 from here, you wouldn't be able to meet the
10 set back at the rear side, so we'd be asking
11 for relief on the back side, or you would lose
12 18'6 worth of core, which takes out an exit
13 stair or an elevator or the mechanical space
14 necessary for the building.

15 So, the operating conditions of
16 the building, the width of the lot, require
17 that the core essentially be where it is, and
18 once you do that and you have this curve on
19 the front facade of the building, that's what
20 occasions the need for the special exception
21 on the roof structure.

22 Again, more than 18'6 from the
23 North side, more than 18'6 from the East side,

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1 more than 18'6 from the main front facade of
2 the building, just not complying as it relates
3 to this piece of the curve, as it gets to that
4 West property line.

5 Okay, all right, second special
6 exception is rear yard. Again, this is not a
7 variance, but it is a situation where the
8 Commission for in the regulations, that in
9 certain zones, and C-3-C is one of the zones,
10 an Applicant could come to the Board and ask
11 for a waiver of the rear yard requirements,
12 and the essential standard is to determine
13 that this building, as it relates to other
14 properties to the rear, are not sufficiently
15 close together or are sufficiently further
16 apart, that waiving the rear yard requirement
17 doesn't create an issue for either our
18 building or that building.

19 As Mr. Morrison pointed out
20 earlier, we have a 30 foot alley at the back.
21 We're allowed to measure our rear yard from
22 the center line of the alley in this zone.
23 So, in fact, 15 feet of that 30 foot alley

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1 counts are our required rear yard. So, what
2 we're seeking a waiver for is the additional
3 eight feet.

4 The building on the other side of
5 the alley, to begin with, you've got the 30
6 foot width of the alley. That building is a
7 relatively new building, about 10 years old.
8 It's about another 20 feet back from the
9 alley, and it's an office building.

10 So, there are no habitable rooms
11 in either one of these buildings. Offices in
12 this building. Offices in that building. But
13 the two facing walls of those buildings are
14 about 50 feet apart.

15 So, in terms of a typical
16 condition for construction of downtown office
17 buildings, that far exceeds what would
18 normally be the case and in fact, if our rear
19 yard is 23 feet, their rear yard is required
20 to be less, because it's actually a lower
21 building. But if they eventually built that
22 building up and higher, you would have the
23 total distance between the two walls of the

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1 building, that would meet the requirements of
2 the regulations.

3 It's just, they have actually -- I
4 won't say they have accommodated us, but the
5 wall of their building is 20 feet back. You
6 have a very wide alley in the middle, and then
7 you have an office building here.

8 So, we believe that we have met
9 the requirements of the regulations and meet
10 the intent of what the Zoning Commission was
11 after, when it provided for that relief to be
12 granted by the Board as a special exception.

13 The two variances that we need,
14 one has to do with access to the parking
15 spaces. As we've discussed already, this is
16 a building that is required to have 37 parking
17 spaces. We can get 39 parking spaces in there,
18 but the access to those parking spaces is not
19 by the typical solid concrete ramp that goes
20 down into the building. It is by a pair of
21 car elevators that take you down to the three
22 levels of underground parking.

23 So, we are seeking a variance, so

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1 as not to have an all-weather paved impervious
2 surface as our access lane to the parking
3 spaces.

4 As Mr. Morrison showed you in the
5 diagram, with only a 60 width, if you -- with
6 your car on one side, with your ramp on the
7 other side, with the turning radius necessary
8 to get down from that ramp, you wind up
9 basically having only five or six parking
10 spaces possible on each floor. So, you're
11 just having to go down at least six levels, to
12 get what we can get in three levels, and the
13 difficulty in excavating that far for a return
14 of only six parking spaces per level, we
15 think, is a practical difficulty for the
16 owner.

17 We have all the number of parking
18 spaces that we have. The garages are entered
19 off the 30 foot alley. So, there's no reason
20 to expect any traffic congestion to result by
21 virtue of cars waiting to get into the
22 elevators, and we think therefore, that we
23 have met the standard for that particular

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1 variance.

2 CHAIR MILLER: Can I interrupt you
3 for a second?

4 MR. SHER: Certainly.

5 CHAIR MILLER: Before you move onto
6 the next one, and I know we've had these
7 before and granted variances in this same type
8 of case.

9 Could you just refresh my memory
10 though, why the elevators, the car elevators,
11 don't meet the accessibility requirements of
12 the regulations?

13 MR. SHER: Section 2117.4, each
14 required parking space shall be accessible at
15 all times, directly from improved streets or
16 allies, which we have, or shall be accessible
17 from improved streets and allies via grated
18 and unobstructed private driveways that form
19 an all-weather impervious surface.

20 CHAIR MILLER: Could you say the
21 reg again?

22 MR. SHER: Twenty-one-seventeen-
23 point-four.

1 CHAIR MILLER: Okay, thanks.

2 MR. SHER: And that has been
3 interpreted and applied to mean a solid ramp-
4 type driveway that would not constitute a car
5 elevator.

6 I don't know whether an elevator
7 is an impervious surface or not. One might
8 think it is, but we haven't been able to do
9 that.

10 There are a number of those
11 situations and very few actually, in the city
12 right now, and the ones that are there are not
13 required parking. So, they don't have to be
14 through an all-weather impervious surface.

15 I was here before the Board
16 earlier this year on a case that hadn't been
17 built yet, where we had a similar type relief,
18 and actually, a different type mechanical
19 system in that case. This is an elevator.
20 Once you get down on the floor, you're on a
21 solid garage floor with all spaces that meet
22 the requirements and so forth. The only issue
23 here is the access by elevator, as opposed to

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1 ramp.

2 CHAIR MILLER: If you just look at
3 the beginning of the regulation, where it
4 says, accept as provided in 2117.15, each
5 required parking space shall be accessible at
6 all times, directly from improved streets or
7 allies, and then you get to the `or' part,
8 which talks about impervious surfaces.

9 Would you say that this is
10 directly accessible from the street or alley,
11 by the elevator?

12 MR. SHER: As I understand the way
13 that that particular phase -- it means, you
14 can pull into the parking space directly from
15 the alley or from the street.

16 CHAIR MILLER: I see.

17 MR. SHER: In this case, the
18 parking spaces are in the garage. You have to
19 get down into the garage. We're getting down
20 to the garage through the elevator, rather
21 than a ramp.

22 CHAIR MILLER: Right, right, okay,
23 thanks.

1 MR. SHER: Okay, last variance is
2 with respect to loading. This is, as Mr.
3 Morrison has described, is a building that
4 will have two floors of retail and then
5 offices from the third floor up.

6 The way that the regulations are,
7 are calibrated for a building in a C-3-C
8 district that has 8,000 square feet or more of
9 retail, one 30 foot loading berth and one 20
10 foot service delivery space is required, and
11 for a building which has more than -- it is
12 more than 30,000 square feet of office space,
13 up to 100,000 square feet, is it one 30 foot
14 loading berth and one service delivery space,
15 and the regulations do not allow those to be
16 shared.

17 So, in effect, we have a
18 requirement for two 30 foot loading berths and
19 two service delivery loading spaces.

20 Now, our retail is barely over
21 8,000 square feet. It's 8,000 and a couple of
22 square feet, but it's more than 8,000. So, it
23 technically engenders a requirement for that

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1 additional loading space.

2 Put the first floor plan up. Our
3 issue, with respect to providing that amount
4 of loading is, what can you get on the first
5 floor of the building? As we've indicated
6 before, we have a 60 foot width of the lot at
7 the rear and at the front. If you look at the
8 first floor plan, there's a garage exhaust
9 shaft on the East side of that piece, the two
10 car elevators that take you down to the lower
11 levels, a corridor leading as an emergency
12 egress. The one loading berth that we can get
13 in here, which is a 30 foot berth 12 feet
14 wide, and then another egress stair leading
15 from upstairs.

16 So, our problem is, where do we
17 put two service delivery spaces and another
18 loading berth? They just don't fit on the
19 site. There's no room to put them side-by-
20 side with anything that's already back there,
21 and if -- you are allowed to stack one over
22 another, up to a maximum of two, you can have
23 one service delivery space or two loading

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1 berths stacked together, but if you do that,
2 you're pushing 20 feet, at a minimum, further
3 into the first floor of the building. That's
4 going to take you to right about where the end
5 of the elevator core is here, but it
6 completely wipes out all of the access from
7 the back of that.

8 There's no way to get out of the
9 back of the building, if you wind up putting
10 that additional 20 foot area in here, and it
11 just completely disrupts the first floor of
12 the building.

13 So, we are able to provide the one
14 30 foot berth and we believe, given the size
15 of the building and the nature of the uses in
16 there, that that will be sufficient loading to
17 accommodate this building.

18 As Mr. Glasgow indicated, we could
19 ask for a loading zone on H Street. That
20 would be allotted certain hours of the day.
21 It is also possible, though we don't
22 anticipate that this would be necessary, that
23 one of those car elevators could be blocked

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1 off in the middle of the day, when there's not
2 a lot of traffic going up and down, and you
3 could actually pull a truck in there.

4 The service delivery space is
5 basically designed for the air conditioning
6 mechanics and the plumbers who come in smaller
7 vans. You could actually put one in there if
8 you needed to on a short-term basis. We don't
9 anticipate that that's likely to be necessary.
10 We think that the one 30 foot space that we
11 have will accommodate the needs of this
12 building, as we go forward.

13 So, we think that we've shown that
14 it is not practical and that there would be a
15 practical difficulty for the owner, if we had
16 to carve up that first floor space further, to
17 get all that loading in there, and that we can
18 make it work the way we have suggested.

19 CHAIR MILLER: What kind of retail
20 is going to be in there?

21 MR. SHER: I don't know that it's
22 been determined at this point.

23 MS. WONG: Possible restaurant.

1 COMMISSIONER TURNBULL: Mr. Sher,
2 just a question on that loading dock. Isn't
3 -- just looking at the plan, isn't it for all
4 practical purposes though, only a 20 foot
5 loading berth? If you moved a truck in, all
6 the way back, you'd be hitting a block wall,
7 because the elevator entrance is on the side.

8 So, if you're going to unload, you
9 could only go in 20 feet, to be able to unload
10 and get it into the elevator.

11 MR. SHER: I suspect you could go
12 back more than 20, but probably not to the
13 actual 30th foot. I don't know how much you
14 would -- it would depend on what you were
15 unloading, frankly, out of the back of the
16 truck. So, you might be able to go back 25 or
17 26 feet, and get back in there.

18 COMMISSIONER TURNBULL: Well, I
19 guess unless you had a level platform for them
20 to step onto, they've got to -- truck is three
21 feet high. They're going to have to take it
22 down, then turn, it just, from a practical
23 standpoint, looks like it's a tough one.

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1 You're going to have to give five or six feet,
2 to be able to unload and get things turned
3 sideways and put it in the elevator.

4 MR. MORRISON: There's actually --
5 the loading platform, the 100 square feet
6 required there, is a lift itself, to make all
7 of the vertical transitions from the back of
8 the truck.

9 COMMISSIONER TURNBULL: Yes, but --

10 MR. MORRISON: I understand that
11 this back wall here, but I don't believe
12 there's any requirement that says that the
13 loading space has to be behind the loading
14 berth.

15 COMMISSIONER TURNBULL: Well, I'm
16 just looking at it from a practical
17 standpoint, that if I'm on a truck, I'm
18 handing off a package, which is three feet off
19 the ground, someone has got to take it and go
20 sideways and hand it to someone, that it's --
21 the elevator, the lift is on the one side and
22 you're 90 degrees to it. I think for all
23 practical purposes, it's just only 20 feet of

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1 space.

2 MR. GLASCOW: Mr. Turnbull, the
3 issue that we had there is that many of the
4 trucks downtown, like the soft drink trucks
5 and whatever, they load from the side.

6 COMMISSIONER TURNBULL: Okay.

7 MR. GLASCOW: And so, what we've
8 had is, over a period of time, the Zoning
9 Administrator's Office has just said, all you
10 have to do is have 100 square foot loading
11 platform.

12 If it's on -- as long as it's
13 continuous with the loading space, whether
14 it's behind it or whether it's beside it,
15 that's okay, because I think when you look
16 around the city, you've probably a 50/50 mix
17 as to trucks that load from the rear and
18 trucks that load from the side.

19 COMMISSIONER TURNBULL: Okay, well
20 taken. Thank you.

21 MR. DETTMAN: I have one question,
22 related to your rear yard special exception.
23 I think the existing building to the North,

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1 you had mentioned, is set 20 feet from the
2 property line, and I think what's currently
3 there -- correct me if I'm wrong, they're
4 using it for parking, there's a couple of
5 parking spaces back there.

6 In terms of how your building is
7 going to be serviced, I think most of your
8 deliveries are -- traffic going back there
9 will enter off of H Street through a 15 foot
10 alley and then sort of come around and get
11 into your building.

12 Are you depending upon that 20
13 foot set back of the existing building for
14 circulation, so eventually, if another
15 building is built to the property line, you'll
16 still be okay?

17 MR. SHER: The answer is no and
18 yes. No, we're not depending on it, and yes,
19 we'll be okay.

20 MR. DETTMAN: Excellent, thank you.

21 COMMISSIONER TURNBULL: I wonder,
22 just looking at your site plan, with that
23 alley, it's a four-way alley. How many other

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1 buildings back there are serviced, or how many
2 garages are off of that? I'm just looking how
3 crowded this is going to be in that alley,
4 getting in and out with cars and everything
5 else. How much traffic is actually going to
6 be in that alley?

7 MR. SHER: As to the conditions
8 today, there are mostly late 19th and early
9 20th century buildings along that alley. They
10 are not large office buildings with big
11 garages or loading facilities.

12 The only really new buildings in
13 that square -- and I'll call Wallick House
14 new, because it was built in the last 40
15 years, and then the two small office buildings
16 at 630 and 636 I Street, which front on the
17 North side of the street here -- I'm sorry, on
18 the North side of the square, the South side
19 of I Street, these are all older buildings.
20 These are all older buildings that are in the
21 historic district and whatever is going to
22 happen to them, is going to happen within some
23 fairly significant constraints.

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1 Actually, having a 30 foot alley
2 in the middle of the square is unusual. It's
3 kind of a luxury almost, in a downtown
4 situation, and having the 15 foot access from
5 both H and I Streets, through the square, is
6 also unusual.

7 Often, these things are almost
8 like T's. You've got one 15 foot alley coming
9 up and it spreads out, and the turns are
10 tighter and so forth.

11 Given that the access to most of
12 those sites is going to come off the 30 foot
13 alley, that's probably a better situation than
14 most squares down town.

15 COMMISSIONER TURNBULL: Okay, I
16 mean, my concern was just how much traffic is
17 going to be in that intersection and the blind
18 spots. Can people see each other? Cars
19 coming out, you know, cars coming at the end
20 of the day, and I didn't know how much traffic
21 actually goes through there.

22 MR. SHER: I haven't done counts,
23 so I can't tell you I know precisely.

1 COMMISSIONER TURNBULL: Okay.

2 MR. SHER: My impression is, not a
3 lot. But maybe someone else can answer that
4 better.

5 MR. GOLONKA: Currently, every time
6 I've been down there, the only truck that
7 comes back there is the garbage and there's
8 the cars that park in the landscape
9 architecture building. But I've never seen a
10 service truck back there.

11 COMMISSIONER TURNBULL: Okay.

12 MR. GOLONKA: If you go there
13 during the day, there's nobody there.

14 COMMISSIONER TURNBULL: All right,
15 thank you.

16 CHAIR MILLER: Your question from
17 the service area space, is that correct?

18 MR. SHER: Yes, we're required to
19 have two service delivery spaces and we have
20 none. We're required one -- two loading
21 berths and we have one.

22 CHAIR MILLER: Okay, and for the
23 service delivery spaces, that's a variance or

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1 no?

2 MR. SHER: Yes.

3 CHAIR MILLER: Okay. So, in
4 evaluating that variance, don't we need to
5 have a little bit of an understanding about
6 the service requirements of the building, in
7 order to evaluate the impact?

8 For instance, if the building
9 required a lot of deliveries, then it would be
10 different then if it had the type of tenants
11 that had very little delivery needs.

12 MR. SHER: Yes, the regulations
13 actually judge that, in terms of scale, in
14 terms of size. So, there is not a different
15 loading requirement for one kind of retail use
16 and another. It's based on square footage,
17 and we are at 8,000+ square feet of retail and
18 service space.

19 It might be a bank, might be a
20 restaurant, might be -- you know, I don't want
21 to say Starbuck's. There already is one not
22 too far away. But the actual retail tenants
23 aren't determined. The building isn't at a

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1 point where it can be leased to retail tenants
2 yet.

3 CHAIR MILLER: I understand that
4 and I know you can't address it maybe
5 definitively, but I think that the regulations
6 trigger the requirements of the second space,
7 depending on the area.

8 But when we evaluate whether or
9 not to grant the variance, we look at adverse
10 impacts, potential adverse impacts.

11 So, in order to do that, don't we
12 need to at least have some kind of a -- what
13 kind of frame work are we looking at, to
14 evaluate whether not having this service
15 delivery space will cause an adverse impact or
16 not?

17 MR. SHER: Well, I think, again,
18 we've said there are two possible ways in
19 which service could be addressed, that don't
20 a 20 foot service delivery space. One is
21 through a loading zone at the front and the
22 other is through potentially locking off one
23 of the car elevators during non-peak hours,

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1 when you wouldn't need it otherwise.

2 Our assumptions about -- knowing
3 about the size of the office building and the
4 sizes of the retail spaces that are going to
5 go in there, are that we probably will not
6 have to do that, that the one 30 foot space
7 can accommodate, with some scheduling if we
8 need to, the number of trips in and out for
9 service and loading vehicles.

10 But it's -- I can't be more
11 precise about what that need is, because if
12 it's an office tenant, office tenants move in,
13 they're done, they're there until their lease
14 is up and they get the normal deliveries of
15 paper and files and whatever.

16 But that doesn't generate the
17 demand for loading that the retail might, and
18 the retail will depend. If it's a restaurant,
19 it's going to get deliveries, but there are
20 going to be smaller trucks delivering things,
21 a number of trips a day.

22 If it's a bank, I guess, they're
23 bringing the money in and out, as often as

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1 they need to, but that's quite many fewer
2 deliveries in and out than a restaurant might
3 be, and if it's -- it's not big enough to be
4 a grocery store or a drug store or anything
5 like that.

6 So, it's not going to have that
7 kind of frequency of delivery.

8 CHAIR MILLER: I think I got it.

9 MR. SHER: Okay.

10 CHAIR MILLER: And also, if you
11 were just a little bit under this number, we
12 wouldn't even be looking at that issue.

13 MR. SHER: Right, well, you would
14 be looking at one instead of two.

15 CHAIR MILLER: Okay.

16 MR. SHER: Right.

17 CHAIR MILLER: You're required to
18 do two, and you're not doing any, is that it?

19 MR. SHER: Right, one each for the
20 office and the retail and one each on the
21 loading, for the office and the retail, and we
22 have no service and one loading.

23 MR. DETTMAN: If you decided that

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1 the two spaces on H Street were necessary,
2 once you get up and running and find out that
3 you need these two spaces, currently there are
4 two parking spaces in front of your building,
5 which would be eliminated at certain points of
6 the day.

7 I also know that this is --
8 there's a metro bus loading area somewhere
9 along H Street here. I'm not sure if it's in
10 front of your building though. It's closer to
11 7th? Okay.

12 CHAIR MILLER: Any other questions
13 right now?

14 (No verbal response)

15 CHAIR MILLER: Okay, I think we may
16 have interrupted your -- did you finish?

17 MR. SHER: I think I'm done. I'm
18 happy to talk longer if necessary. But don't
19 know that I need to.

20 CHAIR MILLER: Okay, we may get
21 back to you. Okay, at this point, we'll turn
22 to the Office of Planning.

23 MR. COCHRAN: Thank you, Madam

1 Chair. For the record, my name is Steve
2 Cochran from the Office of Planning.

3 I'll try to summarize.
4 Essentially, the Office of Planning believes
5 that the Applicant has demonstrated that it
6 meets all of the tests for the requested
7 relief. Now, I'd like to go back in and try
8 to clarify some of the confusion in this case.

9 It hasn't been the most -- there's
10 been some difficulty with this case because
11 the amount of information that's presented
12 that has not been germane to the case, over
13 the last several months. I think it's pretty
14 clear right now, but there has been some
15 confusion.

16 With respect to the combined lot
17 development and the TDR's, especially combined
18 lot development, phase one has no residential
19 requirement under Section 1706.20, but phase
20 one is planning to construct enough
21 residential to satisfy the residential
22 requirements of phase two.

23 So, that's how the combined lot

1 development would be handled. It hasn't been
2 handled yet, but that's something that can get
3 handled down the pike. That's the Zoning
4 Administrator's concern.

5 With respect to the FAR, one of my
6 charts has showed it at 10.04. It's actually
7 10.0, so it does meet it.

8 With respect to the tower and
9 whether it complies with the building height
10 regulations, obviously, this is part of an
11 ongoing discussion with another agency, and we
12 feel this does qualify as a tower, spire,
13 minaret or dome, acting as an architectural
14 embellishment.

15 All of things that are cited in
16 the zoning regulations have a vertical
17 component to them. Where this issue has
18 arisen, has been when someone has tried to say
19 not that it's a tower, spire, dome and so on,
20 but just a plain old architectural
21 embellishment.

22 In those instances, the
23 architectural embellishment has been more

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1 horizontal than vertical. This one is clearly
2 more vertical. We feel that it definitely
3 complies with the spirit of the zoning
4 regulations, which we hope in our
5 reconsideration of the zoning regulations over
6 the next few years, will make even clearer.
7 But we don't have a problem with this.

8 At one point, it did look like
9 there was some questions. Did it have a roof?
10 Did it have more than a simple return on the
11 South side? Was there glass on the East side?
12 All of that has been clarified.

13 It's clearly open to the sky. It
14 is not occupy'able space. There is glass on
15 the Western side and for a very small portion
16 of a return on the South side. So,
17 essentially, it's open on two out of the four
18 sides. OP doesn't have a problem with this.

19 Now, I believe that you raised
20 some questions about the fact that this
21 building is in Chinatown and what kind of
22 review has there been. The Chinatown review
23 starts today at 2:00 p.m. It's separate from

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1 the BZA process. I'm sure that as part of the
2 review, design will be considered, but it
3 hasn't happened yet.

4 There will also be review for the
5 public space projection, the four foot
6 projection, that starts at the second level
7 and comprises the tower.

8 Now, let me get into the actual
9 relief requested. For the special exceptions,
10 we've got parking reduction and rear yard.
11 2101.1 has been amended, so that it -- pretty
12 clearly, actually, flat out requires the BZA
13 to approve it as a special exception.

14 There has been some confusion here
15 because the regulations that are on the OZ
16 website don't say that. They haven't been
17 updated. If you look at WestLaw, it has been
18 updated.

19 So, everything was clarified that
20 you all have to look at it as a special
21 exception. It's not just something that can
22 be permitted by the Zoning Administrator.

23 CHAIR MILLER: Are you talking

1 about the reduction, because of the proximity
2 to the metro? What are you talking about?

3 MR. COCHRAN: Exactly, the 25
4 percent reduction.

5 CHAIR MILLER: Okay.

6 MR. COCHRAN: For the rear yard, it
7 meets the special exception requirements.
8 Well, OP is hopeful that the square footage
9 that the Applicant is, in effect, requesting
10 by this rear yard reduction, may be able to
11 give the Applicant some flexibility in the
12 design process, should the Chinatown Steering
13 Committee ask for any kind of revisions, any
14 kind of massing modulation and so on.

15 So, not only do we feel that the
16 Applicant has met the requirements for the
17 rear yard special exception, but we think that
18 it actually gives the Applicant some
19 flexibility, should there be a need for that
20 flexibility, in future design review
21 processes.

22 I'm seeing that you look puzzled
23 by that.

1 CHAIR MILLER: Yes, I am. What
2 kind of flexibility? They're going out 100
3 percent now, right, in the back?

4 MR. COCHRAN: Right.

5 CHAIR MILLER: What kind of
6 flexibility does the rear yard give them?

7 MR. COCHRAN: Okay, Mr. Morrison
8 referred to one FAR not being achievable out
9 of the 10 FAR, if there is -- if the rear yard
10 relief is not granted.

11 That gave the impression --
12 because he said they'd be one FAR short. That
13 gave the impression that that's an
14 entitlement. It's not. The zoning
15 regulations allow up to 10 FAR.

16 By allowing the full, up to
17 maximum permitted, it gives a little bit of
18 flexibility to the Applicant, if there is any
19 kind of design change that is requested by the
20 Chinatown Review Committee. That's just
21 another advantage.

22 I'm only pointing that out. It's
23 not necessarily germane to the relief. It

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1 just -- it does give another advantage to the
2 Applicant, in terms of their future
3 flexibility. It's related to design, not to
4 zoning relief.

5 With respect to the roof set back,
6 I think that the Applicant has adequately
7 explained that notch situation and OP believes
8 that it meets the special exception
9 requirements for that.

10 For variances, the exceptional
11 situations consists of two things. One, it's
12 a small lot, and two, there's a policy that's
13 been incorporate in the zoning regulations
14 that encourages the provision of retail uses
15 on the first two floors.

16 The combination of the two and in
17 this case, the 91 square feet that -- you go
18 over 8,000 square feet, if you're trying to
19 achieve the 1.0 FAR of retail uses, that
20 little bit of square footage makes for an
21 exceptional situation that the Applicant has
22 to address and you've already heard how that
23 carries over into the loading requirements.

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1 With respect to the practical
2 difficulty, we think the Applicant has
3 demonstrated that there is one, it's almost
4 self-evident, for the parking access and
5 clearly, you've granted relief for this before
6 in any number of recent situations.

7 I've already -- I just spoke to
8 the loading and the 91 square feet for that
9 retail that's encouraged by 1705.5. If you
10 actually are concerned about that, I guess it
11 would be possible to put in a condition that
12 the Applicant only load during certain hours
13 of the day. I'm just not sure how enforceable
14 such a condition would be.

15 OP agrees with Mr. Sher, that this
16 almost the perfect alley system. I can think
17 of only one downtown, that might possibly be
18 better, and that's Square 16. It's correct to
19 say, it's a luxury, and if anybody is going to
20 be impeded, let's just say that there's a lot
21 of congestion back there, the only development
22 that would be impeded would be phase one of
23 the Applicant. So, the Applicant has it in

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1 its own self-interest, to make sure that that
2 alley situation is kept clear.

3 Community input, the ANC has voted
4 unanimately to approve it and then the
5 Chinatown review process starts today.

6 Clearly, by the letters that the
7 Applicant has already submitted for the record
8 today, there is a presumption that many in the
9 Chinatown community favor this development,
10 just as it is designed now, and that concludes
11 OP's report.

12 CHAIR MILLER: Okay, thank you.
13 The Chinatown review process, are you saying
14 that it won't affect the relief that's being
15 sought in this case, because it only goes to
16 design?

17 MR. COCHRAN: I can't guarantee
18 that that won't happen. I mean, if the
19 Chinatown Review Committee has lots of
20 problems with this, it's conceivable that the
21 Applicant would choose to respond in ways that
22 might require some additional relief. But at
23 this point, I don't see that as being likely.

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1 I think it is possible that maybe
2 the Committee is going to be -- might wish
3 that this building were, perhaps in scale,
4 more sympathetic with the buildings to the
5 East. Should that be the case and should the
6 Committee ask the Applicant to try to step
7 down, for instance, to the buildings to the
8 East a little bit, the Applicant would
9 certainly need -- the Applicant would be
10 assisted by having that additional 1.0 FAR,
11 that would be enabled by the relief that you'd
12 be granting for the rear yard.

13 It's a very indirect conjunction
14 of events. I'm only pointing out an
15 additional advantage of getting that rear
16 yard, which we think the Applicant has
17 demonstrated that they meet the tests for
18 anyway, for that relief.

19 CHAIR MILLER: I guess this is my
20 first experience dealing with this Chinatown
21 review process. I mean, with often deal with
22 HPRB's process and normally, we deal with it
23 -- an application, after HPRB's pretty much

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1 finished with it.

2 MR. COCHRAN: Right.

3 CHAIR MILLER: And so, we have
4 plans in front of us that aren't going to
5 change, except for minor tweaking, perhaps.

6 So, I'm just wondering, you know,
7 whether it's appropriate for us to be ruling
8 definitely on this now, or waiting for final
9 plans after that process.

10 MR. COCHRAN: Absolutely. There's
11 no presumption that the Chinatown review
12 process will result in anything that requires
13 significant changes to this, or that would
14 require any additional relief.

15 All I'm saying is, I can't
16 absolutely guarantee that. But it is a
17 totally separate process from this, and
18 there's nothing that would indicate that you
19 should wait on ruling today for the Chinatown
20 Review Committee to act.

21 And in terms of historic
22 preservation, there has certainly been a
23 number, if not many instances, that I can

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1 recall where the Applicant has come before BZA
2 before it's completed the historic
3 preservation review process. That's the
4 Applicant's prerogative.

5 So, it's not like you haven't
6 ruled definitively on things that haven't been
7 through a final design, by some other review
8 body.

9 CHAIR MILLER: We were handed some
10 letters this morning in support of the
11 application by some organizations in
12 Chinatown. Is there any relation between
13 these letters -- or organizations, and what
14 will be going on at the Chinatown review
15 process?

16 MR. COCHRAN: I can't guarantee
17 that, but some of the organizations whose
18 letterhead I just saw, and I haven't read the
19 letters, are certainly active, not only in the
20 Chinatown community generally, but on the
21 Steering Committee.

22 CHAIR MILLER: Okay, and with
23 respect to the question about the Height Act

1 and the towers. As I understand you, I think,
2 it's your position that that's not relevant to
3 this application, that that is looked at by
4 another agency and it's just not an issue that
5 we're --

6 MR. COCHRAN: Well, the Zoning
7 Administrator determines whether it complies
8 with the Height Act or not. OP thinks that it
9 does, but again, I'm only addressing it
10 because it was raised by a representative from
11 NCPC.

12 CHAIR MILLER: Okay, and with
13 respect --

14 COMMISSIONER TURNBULL: Madam
15 Chair, I want to just -- before you go onto
16 your next point, I just want to get back to
17 the point about the embellishment.

18 I could make a case for that, as
19 the curtain wall being -- going up and created
20 as a tower effect or a -- up to, I think it's
21 either 18'4 or 18'6.

22 I guess what troubles me, is that
23 the other piece and the spire that go up, to

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1 over twice that height.

2 MR. COCHRAN: I'm sorry, sir, I'm
3 confused about the other spire.

4 COMMISSIONER TURNBULL: If the
5 curtain wall is up to 18 feet or whatever,
6 beyond the roof line -- the floor -- the roof
7 slab, you've got the spire and the shaft going
8 up twice that, beyond the roof deck.

9 MR. COCHRAN: I think I would ask
10 you to ask the architect that question, but
11 what --

12 COMMISSIONER TURNBULL: I guess
13 what really troubles me is --

14 MR. COCHRAN: When I reviewed the
15 plans, I did not see the roof structure
16 exceeding 18'6 over the --

17 COMMISSIONER TURNBULL: Right, on
18 some of the earlier elevations, it only shows
19 the facade going up. Now, there is a spire
20 and another piece that goes up almost twice
21 that, over twice that, and that's what
22 troubles.

23 MR. COCHRAN: I'm sorry, I can't

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1 address that. I'm just not familiar with it.

2 COMMISSIONER TURNBULL: That's just
3 my comment, I mean, I just think that it
4 creates -- I think it goes beyond what's
5 absolutely necessary for the building, as a
6 signature element, and I think it's also going
7 to create -- again, it's not in our purview,
8 but you have the gate just down the street a
9 bit, and I think it's a competing interest for
10 a very significant architectural feature
11 that's already there.

12 As I say, I don't mind the facade
13 going up the 18, if you want to interpret that
14 as a tower, but I think the little shaft and
15 the spire going up over twice that, is maybe
16 and over-statement that it goes beyond what's
17 really necessary.

18 CHAIR MILLER: I guess what I was
19 saying though is, I don't believe it's before
20 us at this point. It could come before us,
21 perhaps as an appeal as an administrative
22 decision, or it could go, I believe, to the
23 Office of Attorney General, to enforce or

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1 something, if somebody thought it was in
2 violation.

3 But as of now, only what's before
4 us, I believe, is the variances and the
5 special exceptions that's been articulated.

6 MR. COCHRAN: That's correct, Madam
7 Chair, and I believe that while there is a
8 limitation on how high a tower, spire, etc.,
9 can go, I believe that it's something like
10 200-some feet. It was based on -- because I
11 remember the St. Matthew's dome, does fit
12 within the maximum allowed by the Height Act.
13 I think it was like 230 feet.

14 CHAIR MILLER: Let me just ask you
15 about the service parking spaces. I thought
16 on your report, that you didn't believe that
17 the Applicant had met the practical difficulty
18 test for that.

19 MR. COCHRAN: I believed that the
20 Applicant hadn't demonstrated that they'd met
21 it. This was pretty technical.

22 CHAIR MILLER: Do you think they
23 have now?

1 MR. COCHRAN: Basically, we do
2 think that they have now, it just didn't seem
3 like OP's business to be doing the Applicant's
4 work.

5 CHAIR MILLER: Okay.

6 MR. COCHRAN: And now, the
7 Applicant has done their work.

8 CHAIR MILLER: Okay. Others?

9 MEMBER LOUD: This is just to
10 clarify with respect to the service deliveries
11 and the reversal of your report, October 9th.
12 I think it's our Exhibit-31.

13 You believe that the practical
14 difficulty is the lot size in the rear, I
15 think Mr. Sher testified it was 60 feet, with
16 their need to put the two car elevators in the
17 back in the exhaust area and loading berth and
18 so on. Is it the practical difficulty that
19 you find is the size of the lot?

20 MR. COCHRAN: Yes, sir.

21 MEMBER LOUD: Okay.

22 CHAIR MILLER: I mean, some of
23 these kind of merge, but I thought the

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1 exceptional situation was the narrowness of
2 the lot, the size of the lot.

3 MR. COCHRAN: Okay, for the service
4 delivery space -- for the loading generally,
5 for the retail, the 91 square feet of retail
6 that goes over the 8,000, basically,
7 exemption, it's the combination of --
8 especially the width of the lot, but also the
9 size of the lot, and the policy that's
10 encouraged by 1705.1, I think it is, that for
11 the preferred use for the retail.

12 Where OP had a reservation, where
13 we felt basically, that the Applicant had not
14 yet demonstrated something, was for the
15 service delivery space for the commercial
16 space above.

17 So, we clearly thought that the
18 Applicant had already demonstrated how it met
19 the tests for the relief, for the retail
20 space. We just sort of, were withholding
21 comment. We weren't yet ready to say that the
22 Applicant had demonstrated how they met all of
23 the tests for the relief, from the commercial

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1 service delivery space, and we believe this
2 morning, they did demonstrate that.

3 CHAIR MILLER: What's the
4 difference though, because my understanding,
5 just based on today's presentation was, there
6 basically wasn't enough space. They showed us
7 the rear with the two car elevators and the
8 corridor and the loading berth and then
9 stairs, and then they're out of room.

10 MR. COCHRAN: Okay, it's possible
11 that some would consider me to have been picky
12 in pointing this out. It's just that the
13 Applicant did not address. It's not that I
14 didn't think that they met the test, it's that
15 they hadn't addressed it yet, and they did
16 actually address it this morning.

17 So, it was a matter of, not do I
18 think that they meet the tests or does OP
19 think that they meet the tests or not? It was
20 whether the Applicant actually had bothered to
21 deal with it, and they dealt with it this
22 morning.

23 CHAIR MILLER: Okay, is that right,

1 though, do we just agree that that is the
2 practical difficulty, that they run out of
3 space, in providing those things?

4 MR. COCHRAN: Yes.

5 CHAIR MILLER: Okay, thanks.
6 Others?

7 MEMBER LOUD: Just with respect to
8 the preferred use issue. I think some of the
9 material submitted for our review indicated
10 that the preferred use should be something
11 like arts or services, community use or
12 something like that.

13 The discussion today has been
14 around it being a restaurant and would that
15 still qualify as preferred use?

16 MR. COCHRAN: Yes, it does.

17 MEMBER LOUD: Okay.

18 MR. COCHRAN: Absolutely.

19 MEMBER LOUD: All right, thank you.

20 CHAIR MILLER: Any other questions?

21 (No verbal response)

22 CHAIR MILLER: Questions from the
23 Applicant to the Office of Planning?

1 MR. GLASCOW: No questions.

2 CHAIR MILLER: Do you have a copy
3 of the Office of Planning's report?

4 MR. GLASCOW: Yes, I do.

5 CHAIR MILLER: Okay. Anybody here
6 from the ANC?

7 (No verbal response)

8 CHAIR MILLER: Anybody here to
9 testify in support or opposition of this
10 application?

11 (No verbal response)

12 CHAIR MILLER: Okay. Not hearing
13 from anyone, any final questions from the
14 Board?

15 (No verbal response)

16 CHAIR MILLER: Any closing remarks
17 from the Applicant?

18 MR. GLASCOW: Just very briefly,
19 Madam Chair. We believe that we've met the
20 burden of proof for the relief requested this
21 morning and if possible, we would like to get
22 a decision from the Board today, with a bench
23 decision and an expedited order, or summary

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1 order.

2 CHAIR MILLER: Okay. We're going
3 to deliberate today, now. There's just a --
4 it's one of these with a lot of relief that's
5 requested. So, it's just pulling to together,
6 but I think that the Applicant made a very
7 thorough presentation today and the Office of
8 Planning has also submitted a very
9 comprehensive report.

10 So, I want to first of all, make
11 sure that we have identified -- if nothing has
12 changed, I'm not sure, but identify all of the
13 relief that's being requested, and I see it,
14 there are special exception relief and
15 variance.

16 Special exception, under 2108,
17 from the parking requirements of 2101.1 and I
18 believe that relates to the 25 percent
19 reduction for location near the metro.

20 Special exception for the rear
21 yard minimum depth requirements of 774.1
22 through 774.2, special exception from the
23 minimum roof structure requirements of

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1 770.6(b), that's the set back.

2 I think that's it for special
3 exception relief, and variance -- and I am
4 looking at the Office of Planning's report.
5 The variance from the parking accessibility
6 requirements of 2117.4, which goes to allowing
7 the elevator instead of the parking ramps, and
8 a variance from the loading requirements of
9 2201.1, which goes to reduction -- if I'm
10 correct, from two loading berths to one, and
11 two parking service parking areas to zero. Is
12 that everybody's understanding? Okay.

13 I think at this point, I'm going
14 to put this under motion, if I don't have any
15 objection from my Board members, okay. That
16 would be to approve Application 17673 of
17 Gallery Square, LLC, pursuant to 11 DCMR
18 Sections 3103.2 and 3104.1, for special
19 exception from the rear yard minimum depth
20 requirements of 774.1 through 774.2, special
21 exception from the minimum roof structure
22 requirements of Section 770.6(b), special
23 exception under 2108, from the parking

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1 requirements of 2101.1, variance from the
2 parking accessibility requirements of 2117.4,
3 and variance from the loading requirements of
4 Section 2201.1. Do I have a second?

5 MEMBER LOUD: Second, Madam Chair.

6 CHAIR MILLER: I just want to pause
7 for a second to see how to -- how I want to
8 proceed on these. All right, I think we'll
9 start with the variance requirements, if
10 that's okay with other members of the Board.

11 That one is from the parking
12 accessibility requirements and the other is
13 the loading requirements, and they both stem
14 from the same circumstances of the building,
15 or the property.

16 So, when we're looking at a
17 variance, we look at the first test. Is there
18 an exceptional condition or unique that a
19 practical difficulty in complying with the
20 regulations arises from, and in this case, I
21 believe that the exceptional conditions are
22 one, that it's a very narrow building and two,
23 that it's a property that is in a certain

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1 zone, which encourages as a preference, retail
2 use, and so therefore, some of the
3 difficulties are arising out of that. The
4 site is in the DD/C-3-C zone.

5 So, the first variance that's
6 being sought is to use the elevator access
7 instead of ramps and we've seen this before,
8 especially for narrow buildings, when you get
9 into the situation where you have to start
10 constructing ramps, the ramps take up too much
11 of the building and it's also extremely
12 expensive to go down more floors, in order to
13 provide space for ramps and parking spaces,
14 and the elevator solves that problem by taking
15 up less space and that costs less money. It's
16 more economically feasible.

17 So, there is no evidence in this
18 case of any adverse impact from that kind of
19 arrangement. So, I think that the variance
20 test is met there. Any other comments on that
21 particular variance? That's one of the
22 easiest.

23 Then we have variance sought from

1 the loading requirements and the service
2 parking. Basically, I basically just went
3 over this with Mr. Cochran from Office of
4 Planning. Again, it's a narrow building and
5 we saw the Applicant lay it out for us, that
6 looking at the rear, there's just not enough
7 space for more than one loading berth. There
8 are two car elevators, which can also be used
9 at times for loading and the loading berth,
10 and then a corridor and then stairs and then
11 they're out of space.

12 So, I think that it meets both the
13 exceptional circumstances and the practical
14 difficulty test. We explored whether or not
15 there would be adverse impact from not having
16 another loading berth or service area, and we
17 saw that they're just really over the limit in
18 the number of square footage that triggers
19 this to begin with, and it's possible that
20 they could have a loading area in front and
21 public space, if they want to go seek that,
22 and also use the elevators. So, I think that
23 that test was met.

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1 Okay, let's move on to the special
2 exceptions. Under 2108.1, this is pretty
3 straight forward. There was a question as to
4 even whether we need to have a special
5 exception review, but it appears that we do.
6 2108.1 authorizes the Board to reduce the
7 amount of parking spaces required for non-
8 residential uses, under 2101.1 in accordance
9 with the requirements of 3104 for special
10 exception, pursuant to the provisions of this
11 section.

12 Okay, I'm basically just reviewing
13 the filings. I think -- and I could be wrong,
14 but it looks like the Office of Planning's
15 numbers are a little bit different, but from
16 what I recall hearing today, but it doesn't
17 really matter, with respect to the analysis
18 here.

19 OP says that the Applicant was
20 required to provide 46 parking spaces, but by
21 this provision, it can be reduced by 25
22 percent because the property is within 800
23 feet of the metro station, but not within 800

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1 feet of an R1 through R4 zone district, and
2 that is the case here.

3 Okay, so that would reduce the
4 required number of parking spaces to 35. I
5 thought I heard the Applicant say it's 37, but
6 in any event, I believe they are providing 39.
7 So, they meet the requirement and we have no
8 evidence of any adverse impact in this case of
9 granting them this relief.

10 Any other comments on that one?

11 (No verbal response)

12 CHAIR MILLER: Okay, rear yard
13 minimum depth requirements of 7714.1 through
14 2. Applicant said today that they would be
15 required by the height of their building, I
16 believe, to have a 23 foot rear yard, and they
17 only have 18 feet, is that correct?

18 Okay, under 774, we can waive the
19 rear yard requirements, in accordance with the
20 requirements for special exception relief,
21 provided 774.3 through 774.6 are met. Okay,
22 and then I'm looking at Office of Planning's
23 report where they evaluate this and they state

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1 the Applicant's building -- 774.3 and 774.4
2 require that the Applicant's building shall be
3 separated from other buildings by a distance
4 large enough to ensure the provision of light
5 and air and privacy to all buildings
6 concerned.

7 They meet this requirement because
8 that have that 30 foot alley behind them and
9 then the Applicant also stated today that the
10 building behind them has 20 additional feet.
11 So, there's 50 feet there. So, it doesn't
12 affect the light and air and privacy and it's
13 an office building.

14 774.5 requires the Applicant's
15 project to provide for adequate off-street
16 parking, loading and access. OP found that
17 the Applicant would provide more than adequate
18 parking of the Board granted the 25 percent
19 special exception relief for metro proximity,
20 which we did, and we also addressed already,
21 loading and access, and then 775.6 requires
22 review and assessment by OP, DDOT and if
23 relevant, the State Historic Preservation

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1 Officer, and OP states that the project has
2 been vetted by all of these groups and no
3 objection has been expressed to the request of
4 special exception relief.

5 Any other comments on this? Okay,
6 moving along, that brings us to minimum roof
7 structure requirements of 770.6(b), which
8 deals with set back of roof structure from
9 exteriors walls and a depth to height ratio of
10 not less than one to one, and the Applicant
11 complies with this, but for two to three feet
12 of the Western end of the building's front,
13 and that's due to the curve of a tower that is
14 a part of this building. It's been
15 characterized as a tower by the Applicant.

16 We already discussed that it's not
17 before us, whether or not this is in
18 compliance with the Height Act. So, what is
19 before us is the special exception standard,
20 no adverse impacts that have been put in the
21 record on this. It doesn't impair the
22 intended purpose of the zoning regulations, as
23 far as we know, not considering the Height Act

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1 at all, and it appears to be in harmony with
2 the other structures.

3 Any other comments on this one?

4 (No verbal response)

5 CHAIR MILLER: Okay, this is a
6 minimal amount. Okay, and they also showed
7 how they really couldn't re-configure any
8 other way. So, I would recommend granting
9 that relief as well, and I think that that
10 concludes all the relief that's been sought.

11 I would note for the record, I
12 believe we have the support of the ANC -- they
13 have the support of the ANC in this case, ANC-
14 2C. They voted 3-0 at their regular scheduled
15 meeting on October 3rd, and that's a form for
16 them to support the Applicant's request.

17 Then we also received some letters
18 this morning from the Chinese Consolidated
19 Benevolent Association, Chinatown Chamber of
20 Commerce, Chinese Youth Club, Lee Family
21 Association and Chinese Merchant's
22 Association, in support of the application.

23 I think I'm finished. Do other

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1 have comments on this?

2 MEMBER LOUD: I just wanted to
3 briefly note, I think you may have said it in
4 slightly different words, that with respect to
5 the service delivery parking space issue, OP
6 did reverse its October 9th report, with
7 respect to the Applicant now demonstrating a
8 practical difficulty.

9 So, again, I think you said it,
10 but I just wanted to state it specifically,
11 that the part of that report that had
12 challenges with that issue, I think, has now
13 been withdrawn.

14 CHAIR MILLER: Yes, I think -- just
15 to characterize it a little differently for
16 Mr. Cochran, I think that when OP wrote the
17 report, that felt that the Applicant hadn't
18 demonstrated it at that point, but by the end
19 of this hearing, that it had been
20 demonstrated. Any other comments?

21 (No verbal response)

22 CHAIR MILLER: Okay, then why don't
23 we proceed to vote on all the relief together.

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1 All those in favor, say `aye'.

2 ALL: Aye.

3 CHAIR MILLER: All those opposed?

4 (No verbal response)

5 CHAIR MILLER: All those
6 abstaining?

7 (No verbal response)

8 CHAIR MILLER: Would you call the
9 vote, please?

10 MS. BAILEY: Madam Chair, the vote
11 is recorded as 5-0-0 to grant the application.
12 Ms. Miller made the motion. Mr. Etherly
13 second. Mr. Turnbull, Mr. Loud, Mr. Dettman
14 support the motion.

15 CHAIR MILLER: Okay, thank you, and
16 I believe this could be a summary order, as
17 there's no opposition in this case. So, that
18 will be issued shortly. Thank you very much.

19 (Whereupon, the foregoing matter
20 recessed at approximately 12:35 p.m. until
21 2:00 p.m.)

22 CHAIRPERSON MILLER: Good
23 afternoon, ladies and gentlemen. This hearing

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1 will please come to order.

2 This is the October 16th afternoon
3 Public Hearing of the Board of Zoning
4 Adjustment of the District of Columbia. My
5 name is Ruthanne Miller. I am the Chair of
6 the BZA. Joining me today, to my right is the
7 Vice-Chair, Mr. Curtis Etherly; to my left,
8 Mark Loud, Mayoral appointee; to his left,
9 Shane Dettman, representing the National
10 Capital Planning Commission on the Board;
11 Sherry Glazer from the Office of Attorney
12 General, and Beverley Bailey from the Office
13 of Zoning.

14 Copies of today's hearing agenda
15 are available to you and are located to my
16 left in the wall bin near the door.

17 Please be aware that this
18 proceeding is being recorded by a court
19 reporter, and it is also webcast live.
20 Accordingly, we must ask you to refrain from
21 any disruptive noises or actions in the
22 hearing room.

23 When presenting information to the

1 Board, please turn on and speak into the
2 microphone, first stating your name and home
3 address. When you are finished speaking,
4 please turn your microphone off so that your
5 microphone is no longer picking up sound or
6 background noise.

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

14 The order of procedure for appeals
15 will be as follows, and that is what we have
16 on today's afternoon agenda: Statement and
17 witnesses of the Appellant; (2) the Zoning
18 Administrator or other government officials'
19 case; (3) case for the owner, lessee or
20 operator of the property involved, if not the
21 Appellant; (4) the ANC within which the
22 property is located; (5) Intervenor's case, if
23 permitted by the Board; (6) rebuttal and

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1 closing statements by Appellant.

2 Pursuant to Section 3117.4 and
3 3117.5, the following time constraints will be
4 maintained: The Appellant, persons and
5 parties, except an ANC, in support, including
6 witnesses, 60 minutes collectively; Appellees,
7 persons and parties, except an ANC, in
8 opposition, including witnesses, 60 minutes
9 collectively.

10 These time restraints do not
11 include cross-examination and/or questions
12 from the Board. Cross-examination of
13 witnesses is permitted by the Applicant or
14 parties. The ANC within which the property is
15 located is automatically a party in a special
16 exception or variance case and in an appeal
17 case.

18 Nothing prohibits the Board from
19 placing reasonable restrictions on cross-
20 examination, including time limits and
21 limitations on the scope of cross-examination.

22 The record will be closed at the
23 conclusion of each case, except for any

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1 materials specifically requested by the Board.
2 The Board and the staff will specify at the
3 end of the hearing exactly what is expected
4 and the date when the persons must submit the
5 evidence to the Office of Zoning. After the
6 record is closed, no other information will be
7 accepted by the Board.

8 The Sunshine Act requires that the
9 Public Hearing on each case be held in the
10 open before the public. The Board may,
11 consistent with its rules of procedure and the
12 Sunshine Act, enter executive session during
13 or after the public hearing on a case for
14 purposes of reviewing the record or
15 deliberating on the case.

16 The decision of the board in these
17 contested cases must be based exclusively on
18 the public record. To avoid any appearance to
19 the contrary, the Board requests that persons
20 present not engage the members of the Board in
21 conversation.

22 Please turn off all beepers and
23 cellphones at this time, so as not to disrupt

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1 these proceedings.

2 The Board will make every effort
3 to conclude the public hearing as near as
4 possible to six o'clock p.m. If the afternoon
5 cases are not completed at 6:00 p.m., the
6 Board will assess whether it can complete the
7 pending case or cases remaining on the agenda.

8 At this time, the Board will
9 consider any preliminary matters. Preliminary
10 matters are those that relate to whether a
11 case will or should be heard today, such as
12 requests for postponement, continuance or
13 withdrawal, or whether proper and adequate
14 notice of the hearing has been given.

15 If you are not prepared to go
16 forward with a case today or if you believe
17 that the Board should not proceed, now is the
18 time to raise such a matter.

19 Does the staff have any
20 preliminary matters?

21 MS. BAILEY: Madam Chair, members
22 of the Board, to everyone, good afternoon.

23 Yes, there is, and it has to do

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1 with Case Number 17670. It is also a civil
2 infraction case. The number is 07-0001.

3 There is a request for this
4 hearing to be continued on this civil
5 infraction, Madam Chair.

6 CHAIRPERSON MILLER: Thank you.

7 Are the parties in that case here
8 today? Could you come forward. Maybe you two
9 can step back for a minute. Good afternoon.

10 MR. GREEN: Good afternoon, Madam
11 Chairman, members of the Board.

12 CHAIRPERSON MILLER: Could you
13 first identify yourselves for the record,
14 please.

15 MR. GREEN: Yes. Madam Chairman,
16 my name is Matthew J. Green, Jr. I am an
17 Assistant Attorney General assigned to the
18 Department of Consumer and Regulatory Affairs.

19 MS. PARKER-WOOLRIDGE: Good
20 afternoon. My name is Doris A. Parker-
21 Woolridge, Assistant Attorney General with
22 DCRA.

23 MR. KATZ: Good afternoon. My

1 name is Jonathan Katz. I am the lawyer for
2 the Eimji Inc. --

3 VICE-CHAIRPERSON ETHERLY: Mr.
4 Katz, pardon the interruption. If you could
5 just turn your microphone on and start that
6 introduction from the top. I just want to be
7 sure I get you on the record. Thank you.

8 MR. KATZ: Now it's on. Thank
9 you. I am Jonathan Katz. I am the attorney
10 for the petitioner or Appellant, Eimji
11 Filoramo and Nicholas Filoramo, the owner, who
12 is sitting to my right.

13 CHAIRPERSON MILLER: Thank you. I
14 understand that you are seeking a continuance.
15 Correct?

16 MR. KATZ: That is right, in part
17 because it is a consent continuance motion.

18 CHAIRPERSON MILLER: Okay. There
19 is no opposition to this?

20 MR. KATZ: Right.

21 CHAIRPERSON MILLER: Great. So we
22 need to come up with another date for you.

23 MR. KATZ: Right. Mr. Moy had

1 spoken to me by phone today and suggested
2 January 15th, as an example, but my clients
3 are on vacation then. He and I are wide open
4 after that, and I have spoken with opposing
5 counsel, Ms. Woolridge, about her availability
6 after that as well.

7 MS. PARKER-WOOLRIDGE: I am
8 available any day in January except the 25th
9 of January.

10 CHAIRPERSON MILLER: Mr. Moy, did
11 you have another date, by any chance?

12 MR. MOY: Just give me a second,
13 ma'am.

14 CHAIRPERSON MILLER: Okay. We
15 will look over the calendar. Is the ANC in
16 this case here today?

17 MR. KATZ: I asked, and no one
18 answered. I received a phone call, a voice
19 mail, today from an ANC member saying she
20 didn't know what the case was about, but I
21 didn't have an opportunity to call her back
22 yet.

23 CHAIRPERSON MILLER: So they

1 didn't oppose either? Is that correct?

2 MR. KATZ: I don't know of any
3 opposition. My secretary did send out a copy
4 last week to the ANC.

5 CHAIRPERSON MILLER: Okay. We are
6 thinking we can fit you in February 12th in
7 the afternoon.

8 MR. KATZ: Okay. That's just
9 fine.

10 MS. PARKER-WOOLRIDGE: Fine for
11 the government.

12 CHAIRPERSON MILLER: Okay. I
13 think there is one other matter after we are
14 set on this date. Correct? There was a
15 briefing order that was sent to you all with
16 dates that no longer are applicable, and they
17 weren't met. So you are waiting for a
18 transcript, etcetera.

19 MR. KATZ: Right.

20 CHAIRPERSON MILLER: So we need to
21 schedule the dates around the next hearing
22 date. The briefing order that I am looking at
23 had you scheduled to file your brief by

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1 September 13th for the October 16th hearing.
2 So it was basically about a month in advance.

3 MR. KATZ: Okay.

4 CHAIRPERSON MILLER: So let's look
5 at the calendar and see what we can do here.

6 Let me ask you. Do you think that
7 January 10 would work? Would you have all
8 your information and be ready to file an
9 appeal by then, or do you need a little more
10 time?

11 MR. KATZ: That's fine. I will
12 notify the Board if I am still having trouble
13 getting a complete transcript.

14 CHAIRPERSON MILLER: So we will
15 put that down as the date that the Appellant
16 will file a brief.

17 Then the next date on this
18 schedule was September 25th for the Appellee,
19 which is 12 days later. So that would bring
20 us to January 22nd. Would that be all right
21 with DCRA?

22 MS. PARKER-WOOLRIDGE: Could we
23 have until January 24th?

1 CHAIRPERSON MILLER: I'm not even
2 looking at my calendar to see what day of the
3 week that is.

4 MS. PARKER-WOOLRIDGE: Thursday.

5 CHAIRPERSON MILLER: That's fine
6 with the Board. Is that fine with -- The
7 Appellant has no objection?

8 MR. KATZ: That's fine.

9 CHAIRPERSON MILLER: Okay. Then
10 you would be entitled to file a reply brief,
11 10 days later or so.

12 MR. KATZ: If I could have until--

13 CHAIRPERSON MILLER: Well, we are
14 running into the -- No, we are not. What
15 would you like until?

16 MR. KATZ: I'm doing the math
17 here, 24 plus 4. If I could have until
18 February 6th.

19 CHAIRPERSON MILLER: And our
20 hearing is the 12th. Ms. Bailey and Mr. Moy,
21 if he filed by February 6th, would that make
22 it into our packages? That would? Okay, all
23 right. Then that's fine.

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1 So we have January 10th for the
2 Appellant; January 24th for DCRA; and February
3 6th for a reply, Appellant; and the ANC could
4 also file by the 24th, should they choose to.

5 I just want to remind the parties
6 that a briefing order was sent out to you all.
7 Do you have a copy of that ?

8 MR. KATZ: Yes.

9 CHAIRPERSON MILLER: Okay. So you
10 can look at the rest of that for other
11 instructions. Any questions?

12 MR. KATZ: I have one additional
13 matter. I can certainly put this in writing.

14 With all due respect, I have a
15 letter from Member Loud, who at least as of
16 June 14, 2004, apparently was the Executive
17 Director of Gateway Georgia Avenue, who wrote
18 a letter, at least signed with his name, to my
19 client showing interest in buying my client's
20 property.

21 I think, unless he is not with
22 Gateway Georgia Avenue anymore, I think there
23 is an irrevocable conflict of interest, and I

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1 move orally now for recusal, and I will file
2 a written motion, if that is not going to be
3 entertained now. I understand that the
4 Appellee may want to respond in writing to
5 that.

6 CHAIRPERSON MILLER: I think that
7 Mr. Loud was going to address that at the time
8 of the hearing. However -- and I will leave
9 it to him if he wants to say anything now.
10 Otherwise, I would say that you are free to
11 put that in writing, and then it would be
12 addressed at the next hearing.

13 MR. KATZ: It probably would help
14 administrative efficiency and the efficiency
15 of the parties to know this in advance, but if
16 that is not possible, I'll make my written
17 request unless I hear earlier.

18 I am making an oral motion right
19 now for recusal, and I will file a written
20 request for recusal, if need be.

21 CHAIRPERSON MILLER: Oh. But I'm
22 not sure what you were saying. You are saying
23 it would be better to deal with it right now?

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1 MR. KATZ: No. I would hope that
2 I don't have to wait until the next hearing
3 date to find out if Mr. Loud is being recused,
4 because otherwise then we are taking -- my
5 side is taking time in dealing with that, that
6 we could instead be focusing on the
7 substantive issues. But if we have to wait
8 until the hearing date, next hearing date, to
9 deal with that, we will.

10 MEMBER LOUD: Well, I think the
11 appropriate thing, in light of how you couched
12 the introduction, would be for you to go ahead
13 and file your motion, which would leave -- and
14 I am not certain what time frame you intend to
15 file that motion, but after you file that
16 motion and sort of articulate the reasons why
17 you believe I would not be impartial to your
18 client in this matter, and I have an
19 opportunity to review it, of course, then I
20 don't see why there wouldn't be a response
21 that would be sooner than the hearing date,
22 possibly.

23 MR. KATZ: Sounds great.

1 CHAIRPERSON MILLER: Okay, Mr.
2 Katz. This is what we think as to how we
3 should proceed. You may file a motion
4 whenever you are ready setting forth whatever
5 facts you have and reasons why you think Mr.
6 Loud should be recused from the case, and the
7 other parties to file a response to that, if
8 they so choose.

9 Why don't we set a date for this,
10 though, so we don't leave this hanging.
11 Within 14 days?

12 MR. KATZ: I would ask for
13 November. I've got a brutal Federal trial
14 starting --

15 CHAIRPERSON MILLER: Wait. I
16 don't understand. What date do you want to
17 file your motion by? Do you know?

18 MR. KATZ: I'd like to have until
19 middle of November.

20 CHAIRPERSON MILLER: Oh, you want
21 to file it in middle of November? I mean, we
22 are not in a hurry before the hearing. It
23 sounded like you were. So if you file it mid-

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1 November, Mr. Green, how long -- You haven't
2 seen the motion yet, but it is one issue. How
3 long do you think you would need to respond?
4 Ten days?

5 MS. PARKER-WOOLRIDGE: At least 14
6 days.

7 CHAIRPERSON MILLER: Fourteen
8 days?

9 MS. PARKER-WOOLRIDGE: Yes.

10 CHAIRPERSON MILLER: Okay. So
11 when you are served with the motion, you will
12 have 14 days to respond.

13 MR. GREEN: Thank you, Madam
14 Chairman.

15 CHAIRPERSON MILLER: Okay. And so
16 will the ANC, if they so choose.

17 The Board will take a look at the
18 motions and decide whether or not it can rule
19 on the papers, and if they can, it will use
20 one of the decision meetings to rule on it.
21 If it decides that it doesn't so choose to do
22 that and wants to come in and discuss this
23 before the hearing, it will do that. So we

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1 can't really rule ahead of time without seeing
2 whether we are going to decide in advance of
3 the hearing or not. If we can, we will do
4 that. If we don't think it is appropriate, we
5 won't.

6 MR. KATZ; Thank you.

7 CHAIRPERSON MILLER: Okay.
8 Anything else?

9 MR. KATZ: Not from us.

10 MS. PARKER-WOOLRIDGE: Chairperson
11 Miller, are we talking about 14 business days
12 or calendar days?

13 MR. KATZ: Either one is fine by
14 me, as far as the recusal motion.

15 MS. PARKER-WOOLRIDGE: Calendar
16 days for us.

17 CHAIRPERSON MILLER: Calendar
18 days, 14 calendar days.

19 MS. PARKER-WOOLRIDGE: That's
20 good.

21 CHAIRPERSON MILLER: Well, that's
22 fine by us. We just don't want to get too
23 cramped before the hearing, but if he is

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1 talking about November, then that isn't an
2 issue for us.

3 MR. KATZ: I plan to file mine by
4 November 16.

5 CHAIRPERSON MILLER: Should we
6 just set the dates then for them, from the
7 16th, and then 14 days later?

8 MR. KATZ: Well, I am just being
9 fair by specifying when I plan on filing mine.
10 I don't mind. Either way is fine by me.

11 CHAIRPERSON MILLER: All right.
12 You'll file it by the 16th, and they will file
13 it within 14 days of receipt or service of the
14 motion.

15 MR. KATZ: Okay. Thank you.

16 CHAIRPERSON MILLER: All right.
17 Then we are set. Thank you very much.

18 MS. PARKER-WOOLRIDGE: Thank you.

19 MR. GREEN: Thank you, Madam
20 Chairman.

21 CHAIRPERSON MILLER: Okay. I
22 think at this point then, why don't all those
23 who are intending to testify today stand to

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1 take the oath.

2 MS. BAILEY: If you were sworn in
3 previously, you don't really need to stand
4 again. Would you please raise your right
5 hand.

6 (Witnesses sworn.)

7 MS. BAILEY: Madam Chair, the
8 first case of the afternoon? Ready?

9 That is the Appeal of Friends of
10 Babcock-Macomb House. The number is 17663,
11 pursuant to 11 DCMR 3100 and 3101, from the
12 decision of the Zoning Administrator to
13 approve the construction of a place of worship
14 -- that is a Buddhist Center -- in the
15 D/NOPD/R-1-B District at premises 3417
16 Massachusetts Avenue, N.W., Square 1939, Lot
17 42.

18 As you know, members of the Board,
19 this is a continuation case.

20 CHAIRPERSON MILLER: Thank you.
21 Good afternoon. Would you all identify
22 yourselves for the record when you are ready,
23 please.

1 MS. PLEASANT: Good afternoon,
2 Madam Chair, members of the Board. Shakira
3 Pleasant, Assistant Attorney General,
4 representing the Department of Consumer and
5 Regulatory Affairs, and I have with me Matthew
6 LeGrant, Acting Zoning Administrator for the
7 Office of Zoning at DCRA.

8 MS. PARIS: Good afternoon, Madam
9 Chair, Lori Paris, Deputy General Counsel, on
10 behalf of DCRA.

11 MR. MAGNUS: Good afternoon. I am
12 John Magnus with the Friends of the Babcock-
13 Macomb House. We are participating here pro
14 se.

15 MS. PRINCE: Good afternoon,
16 Allison Prince of Pillsbury Winthrop Shaw
17 Pittman, here on behalf of the property owner,
18 Soka Gakkai International.

19 CHAIRPERSON MILLER: Okay, thank
20 you. It is my recollection that, when we left
21 off the hearing last time, we gave the
22 Appellant an opportunity to respond in writing
23 to the Intervenors' motion to dismiss, which

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1 he did.

2 I don't think we have anything
3 from DCRA in writing on that, do we -- on the
4 motion to dismiss?

5 MS. PARIS: No, Madam Chair, you
6 do not.

7 CHAIRPERSON MILLER: Okay. Then
8 we decided that we would deal with the motion
9 to dismiss as the first matter of today's
10 hearing.

11 So we had had the opportunity to
12 read both the motion to dismiss and the
13 response, which is both very thorough. So I
14 am of the view at this point that -- and you
15 can respond, but I've given you all about 10
16 minutes to just highlight your arguments, if
17 you would like. Then the Board will
18 deliberate on the motion to dismiss.

19 DCRA can also participate in this
20 exercise today, even though you haven't
21 submitted anything in writing, if you so
22 choose.

23 The Appellant would go first, as

1 it is their motion, and then -- not the
2 Appellant. I mean the Intervenor, and then
3 the Appellant, and then DCRA. Any questions?

4 MR. MAGNUS: Just a question to be
5 clear. So you would then anticipate
6 suspending the hearing for a moment so you all
7 could deliberate and decide on the spot today
8 about the motion to dismiss?

9 CHAIRPERSON MILLER: Sometimes we
10 suspend. Sometimes we don't. We have done a
11 lot of thinking about this already, based on
12 your papers, and we are going to hear what you
13 have to say.

14 There may be some questions from
15 Board members, but we will deliberate on it
16 after that. Whether or not we need to take a
17 break, we will just have to see what the sense
18 of the Board is.

19 MR. MAGNUS: Thank you.

20 CHAIRPERSON MILLER: Okay, you can
21 proceed.

22 MS. PRINCE: Good afternoon,
23 members of the Board. Again, Allison Prince

1 of Pillsbury Winthrop Shaw Pittman on behalf
2 of Soka Gakkai International, the property
3 owner.

4 We strongly urge you to dispose of
5 this case by granting this motion, thereby
6 obviating the need for any further discussion
7 or testimony.

8 We are here, because the Appellant
9 has argued that the Zoning Administrator erred
10 in issuing both a detailed ruling and a
11 building permit as a result of his conclusion
12 that the proposed use of the subject building
13 by Soka Gakkai International, a school of
14 Buddhism, is as a house of worship, and that
15 the building is designed to accommodate
16 worship.

17 Although the Appellant bears the
18 burden of proof in demonstrating that the ZA
19 erred and that the building will not be used
20 as a house of worship, he has admitted that he
21 does not know what worship is, only what he
22 believes it is not.

23 During his testimony last week, he

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1 was not able to define the very term that is
2 central to his argument. Instead, he made
3 deeply offensive value judgments that, in his
4 view, the only potential worship that will
5 occur in the building is chanting.

6 He suggested that a religion with
7 lay leaders is incapable of worship, and that
8 all worship must take place in a sanctuary.
9 He even went so far as to make a sarcastic
10 reference to the pursuit of peace and
11 happiness, which are fundamental tenets of
12 Buddhism.

13 He has asserted that all
14 activities other than chanting taking place in
15 the building do not qualify as worship, but
16 has admitted that he has no idea how Buddhists
17 worship.

18 The Constitutional and Federal
19 protections regarding the right to practice
20 one's religion and to define what constitutes
21 such practice could not be more clear and are
22 detailed in my motion.

23 As a result of the allegations

1 such as those promoted by the Appellant, the
2 need for those protections is painfully
3 evident. Nonetheless, we do not have to rely
4 on these protections in seeking the dismissal
5 of this appeal.

6 I do not need to ask this Board to
7 engage in Constitutional inquiry, and that is
8 the one area where I agree with the Appellant
9 in terms of this dismissal.

10 This appeal should be dismissed,
11 because the Appellant has not stated a single
12 factual basis for his claim of error. To
13 prove his case, it is not enough for the
14 Appellant to simply allege that the Buddhists
15 will not worship in this building, and then
16 point to activities which he believe do not
17 constitute worship.

18 He must be able to explain why the
19 Zoning Administrator erred in his decision,
20 not simply that he disagrees.

21 The Appellant has not proffered
22 any reason why the proposed uses are not
23 worship or why the building, as designed,

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1 cannot accommodate worship, which is pivotal
2 for establishing the building as not a place
3 of worship.

4 It is not difficult to ascertain
5 the prevailing views on what constitutes
6 worship. The Applicant could have turned to
7 the dictionary definition of worship or to the
8 seminal Western Presbyterian case, which my
9 firm handled, I should add.

10 The court noted in Western
11 Presbyterian: "Unquestionably, the church's
12 feeding program is in every respect religious
13 activity and a form of worship." The court
14 did not decide that the program was an
15 accessory use. It found that the feeding
16 program, in and of itself, was a form of
17 worship.

18 Again in Western Presbyterian, the
19 court found: "Zoning Boards have no role to
20 play in telling a religious organization how
21 it may practice its religion. A city cannot
22 use its zoning laws to regulate the way a
23 particular religion offers its prayers or the

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1 way a religion celebrates its holidays."

2 Instead, the Appellant chose to
3 make offensive, baseless and even senseless
4 allegations. For example, while he made a
5 claim that the building's use was as a
6 community center, he provided no basis for
7 that allegation, nor was he familiar with what
8 a community center is under our zoning
9 regulation. He showed absolutely no way in
10 which the use meets the definition of a
11 community center.

12 Throughout his response to the
13 motion to dismiss, he alleges that the
14 building is an assembly hall and not a place
15 of worship, suggesting that the two terms are
16 mutually exclusive. Further, he compares
17 Buddhist worship to the Church of Marijuana
18 and suggests that deciding this case in favor
19 of Soka Gakkai will open up the flood gates to
20 bogus churches.

21 Let me first say that, unlike the
22 church of Marijuana, Soka Gakkai is a
23 recognized religion. It is recognized by its

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1 tax exempt status by both the Federal and
2 District governments, and it has established
3 articles of incorporation.

4 Moreover, Soka Gakkai is not
5 promoting illegal activity, and the comparison
6 is offensive. Cases with egregious facts may
7 come forward in the future, and that would be
8 the appropriate time to draw the line.

9 Finally, despite the Appellant's
10 protest to the contrary, the motivations
11 behind this appeal are clear from the
12 statement that I will read from page 13 of the
13 opposition motion filed last night. This is
14 page 13:

15 "To the contrary, it is
16 implausible that an organization as well
17 funded as Soka Gakkai can only find a place
18 for its members to practice their religious
19 faith on one of the most expensive plots of
20 residential land in D.C. Soka Gakkai has no
21 right to build a place of assembly there,
22 merely to enable members to practice their
23 beliefs."

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1 This is not a case of what is or
2 is not worship. This is not an appeal over
3 that issue. This is an appeal about whether
4 a place of worship belongs in the Appellant's
5 backyard.

6 I urge you to dismiss this appeal.

7 CHAIRPERSON MILLER: Any
8 questions?

9 Ms. Prince, with respect to
10 failure to state a claim, is it your position
11 that it is sufficient that we have here a
12 recognized religious group? That is what you
13 said, that they are a recognized religion.
14 Does that mean that that is enough or do you
15 get into the use of the building?

16 MS. PRINCE: I think we,
17 obviously, have to get into the use of the
18 building. I am simply saying, with respect to
19 the failure to state a claim, that Mr. Magnus
20 has stated that he disagrees with the ruling
21 of the Zoning Administrator. But I could not
22 find in 24 pages of his motion his response to
23 my motion, which is the only written document

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1 that was filed outside of the original appeal.

2 I could not understand what the
3 factual error was. I understood that he
4 disagreed, but I could not find where the
5 Zoning Administrator erred, and that is why I
6 believe you can dismiss the appeal.

7 VICE-CHAIRPERSON ETHERLY: Thank
8 you, Madam Chair. Ms. Prince, thank you very
9 much for your comments in support of your
10 motion.

11 There are a couple of things that
12 I am perhaps struggling with in terms of kind
13 of how to treat your motion. So I want to
14 walk through a couple of quick questions, and
15 I think, to an extent, it perhaps begins with
16 where the Chair's question went.

17 First, would it be inappropriate
18 to treat this as a -- you don't use the
19 language; you don't invoke it, but to an
20 extent, I was wondering if this is, in effect,
21 a summary judgment motion. So I just want to
22 be clear that I'm looking at it in the right
23 posture.

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1 MS. PRINCE: It really has become
2 that. I would agree with that. We filed the
3 motion at the outset.

4 VICE-CHAIRPERSON ETHERLY: Okay.
5 And for the benefit of all parties and those
6 kind of following us, summary judgment motion
7 typically means, even if you take everything
8 that the -- I'm just paraphrasing here. Even
9 if you take everything that the Appellants
10 submit as being true and view those facts as
11 favorably as such, you still would not find or
12 rule in favor of the Appellant.

13 MS. PRINCE: Exactly.

14 VICE-CHAIRPERSON ETHERLY: Okay.
15 Because to an extent, the question here is --
16 At least I began to think of it as being, with
17 respect to the March 7th letter of the Zoning
18 Administrator, was there -- the March 2nd
19 letter, 2007, of the Zoning Administrator, the
20 chief error -- and I'm not getting to the
21 issues of timeliness just yet, but the chief
22 error is the determination of the Zoning
23 Administrator in that letter that the proposed

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1 building is, in fact, a place of worship.

2 That on its face would strike me
3 as being a sufficient enough claim. So to an
4 extent, my second question was: Well, is your
5 motion more to the fact that you simply
6 believe the Appellants weren't specific enough
7 with their concerns about the Zoning
8 Administrator's decision and the facts
9 supporting that decision in their claim? But
10 I think your first question takes me where I
11 need to be, which is: Do you want us to
12 essentially view this as a summary judgment
13 motion?

14 We may need to have some
15 discussion up here as to whether we can go
16 that route, but that's how I read it at the
17 outset, that essentially, even if you take
18 everything that the Appellant is arguing as
19 being true and correct and you view it in the
20 light most favorable to the Appellant's
21 argument, you still wouldn't necessarily find
22 -- you wouldn't be able to find for the
23 Appellant under the zoning regs.

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1 So I think I kind of understand
2 that. I just want to be sure, because I am
3 not quite ready yet to venture down the
4 Constitutional road, but from your opening
5 statement with regard to your motion, are you
6 suggesting for the moment we don't even need
7 to touch any of those particular issues with
8 respect to your motion to dismiss?

9 MS. PRINCE: Absolutely, you don't
10 need to touch any of those issues.

11 VICE-CHAIRPERSON ETHERLY: Okay.
12 That concludes my questions for the moment,
13 Madam Chair. Thank you.

14 CHAIRPERSON MILLER: Okay. I
15 just want to jump in here and, with all due
16 respect, disagree with my colleague about at
17 least how we are approaching this motion,
18 because a motion to dismiss has a much lower
19 standard than a motion for summary judgment,
20 and I know that the Appellant responded to the
21 motion to dismiss, in which case he only needs
22 to argue that he did claim an error on the
23 part of the Zoning Administrator and not all

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1 the facts that might support it.

2 I think that we can look at -- I
3 think the motions are actually filled with a
4 lot of information that we can use if we get
5 beyond the motion to dismiss.

6 VICE-CHAIRPERSON ETHERLY: No, and
7 I don't disagree to an extent, but I believe
8 it is an important point here, and let me just
9 not parse words here. The Intervenor, of
10 course, clearly is trying to get rid of the
11 case, is trying to dispose of the case here.

12 Clearly, the Appellant would not
13 like that to happen. What I am trying to sort
14 out is the manner in which the Intervenor is
15 trying to go about that.

16 If it were simply a motion to
17 dismiss for failure to state a claim, O would
18 be inclined to agree with the Chair that that
19 probably isn't sufficient, because I think the
20 March 2nd letter does represent a decision
21 which is appealable, which is properly
22 appealable, again not touching the issues of
23 timeliness just yet.

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1 If, however, it is the
2 Intervenor's intention to view this more
3 properly as a motion for summary judgment,
4 then again the Chair is absolutely correct.
5 That is an entirely different calculus. That
6 is somewhat more in depth, somewhere more
7 involved, and perhaps something of a higher
8 kind of threshold of scrutiny.

9 I'm a little antsy, too, because
10 those words weren't invoked in the written
11 submittal, and I want to be careful that we
12 don't -- what's the word I'm looking for? --
13 inadvertently and unfairly change the motion
14 in midstream, such that the Appellant will not
15 have had an opportunity to adequately prepare
16 for a defense against such a motion. But
17 quite honestly, that is how I read it at the
18 outset.

19 So I just want to be sure, and
20 that is why I asked the question of the
21 Intervenor, first and foremost, how are you
22 encouraging the Board to view or read your
23 motion. I think we have your answer, but

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1 again I'm just trying to highlight what I felt
2 was a little bit of, not confusion, but I just
3 think there were a couple of different ways to
4 read it. So I just want to be sure I'm
5 looking at it in the correct way.

6 CHAIRPERSON MILLER: Okay. What I
7 want to say is -- I mean, regardless of what
8 the Intervenor's intent was, it is a very
9 thorough motion, and it can be used for more
10 than one purpose. But what we said we were
11 going to be dealing with was the motion to
12 dismiss, for two reasons, on timeliness with
13 respect to the construction permits and
14 failure to state a claim with respect to the
15 main claim, and probably the other two.

16 Therefore, that is all the
17 Appellant is on notice to be prepared to
18 address. So I think it would be unfair to
19 treat this as a motion for summary judgment at
20 this point.

21 VICE-CHAIRPERSON ETHERLY: I would
22 respectfully disagree, but let's move forward
23 and see where we are.

1 MEMBER LOUD: I think, just in
2 listening to the exchange, I thought both
3 briefings were very thorough as well, but I
4 would be a little bit concerned about the
5 Appellant not having the opportunity to
6 specifically frame a response in light of the
7 standards for a summary judgment, which would
8 at least have given him the opportunity to
9 state the specific facts that are in
10 contention. And even though I think his
11 response addresses that, and I think the
12 motion addresses it in a way that you could
13 sort of analytically treat it as a summary
14 judgment motion, it is just not specific
15 enough, to me, for the Appellant to have lost
16 that opportunity to respond like that.

17 So I tend to agree with the Chair.
18 At least, I'm leaning in that direction as I
19 hear this played out.

20 MS. PRINCE: May I make a point?

21 As you can imagine, we have no
22 interest greater than disposing of this appeal
23 and disposing of it rapidly. Nonetheless, I

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1 don't need or want a procedural dispute to
2 stand in the way of the facts.

3 I think the exchange of motions
4 has been helpful in clarifying both parties'
5 views of the facts. So at the risk of
6 creating procedural difficulties, I would
7 rather just have you treat it as the motion to
8 dismiss. Then if we are required to go
9 forward today, we are fully prepared.

10 VICE-CHAIRPERSON ETHERLY: And I
11 definitely appreciate that, and I am more
12 comfortable with that route. I just wanted to
13 be sure we were absolutely clear in terms of
14 the footing that we are on.

15 So at the risk of being
16 repetitive, just to be sure I'm clear, I
17 almost want to be elementary with this. The
18 failure to -- Using your language, Appellant
19 fails to state a claim of zoning error in
20 regards to the SGI decisions.

21 The failure is the lack of
22 Appellant's additional information other than
23 the fact that the Appellant disagree with the

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1 Zoning Administrator's outcome, or is it the
2 fact that the Zoning Administrator's decision
3 was supported by ample evidence based on what
4 the Zoning Administrator reviewed, and as
5 such, there was no error?

6 MS. PRINCE: The former. It is
7 that the Appellant did not state -- The
8 Appellant simply stated that he disagreed. He
9 did not allege a zoning error. He did not
10 explain in any way what the error was that was
11 made by the Zoning Administrator.

12 VICE-CHAIRPERSON ETHERLY: Okay.
13 Thank you. Thank you, Madam Chair.

14 CHAIRPERSON MILLER: Okay. Why
15 don't we go on to the Appellant?

16 MR. MAGNUS: Good afternoon,
17 members of the Board. I am John Magnus for
18 the Friends of Babcock-Macomb.

19 It will probably come as no
20 surprise to you to hear that we did indeed
21 treat this as what it was labeled as, which
22 was a motion to dismiss and an assertion that
23 we had not stated a claim on which relief

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1 could be granted. We briefed it that way.

2 I am not a sophisticated zoning
3 lawyer. I have never been before this Board
4 before. I don't know what kind of motions
5 practice you typically have or don't have.

6 I wonder where Ms. Prince thinks
7 the information that, in her view, ought to
8 have been set out in our complaint was meant
9 to come from. A great deal of what we know
10 about the decision that DCRA made, we learned
11 last week at the hearing here, and I will just
12 give you a couple of examples.

13 We learned for the first time that
14 Mr. LeGrant went through and identified five
15 rooms in this building as being, in his view,
16 primarily devoted to worship or religious
17 activity. We never knew that before.

18 We never knew what denominator he
19 was using in his square footage calculations.
20 We never heard anything about some kind of a
21 linkage between the number of parking spaces
22 and the room for seating in the Gohansin Room.
23 We will be tugging on those threads quite hard

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1 during cross-examination, if we get there.

2 We learned and understood
3 everything that we possibly could about the
4 Zoning Administrator's decision by trying to
5 participate in the review that he carried out,
6 but the overwhelming majority of those facts
7 were secret, and remained secret until the
8 hearing last week.

9 We only just got the application
10 underlying the permits that were issued, and
11 that includes with respect to the permits that
12 were issued at the end of 2006.

13 So only, in fact, this morning on
14 opening a package this morning did I see how
15 the Applicants had labeled the uses on their
16 applications. The sheeting and shoring
17 application, existing use, assembly, other,
18 proposed use, assembly, other, and then on the
19 covered walkway application, existing use,
20 assembly, other; proposed use, assembly,
21 other. Then you get finally to the building
22 permit application: Existing use, vacant lot;
23 proposed lot, church.

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1 Okay. These documents weren't
2 available to us. The rationale for the
3 decision that was made wasn't available to us.
4 What we did know was all of the highly
5 relevant information that the Zoning
6 Administrator didn't consider or didn't
7 address.

8 So we included in our appeal
9 documents absolutely everything of which we
10 were aware, and even at that, we were able to
11 clarify how he applied the wrong law to the
12 wrong facts, inaccurate numbers that were
13 given to him by the Applicant. That is
14 allegation of a zoning error.

15 I would respectfully submit that,
16 if you assume the allegations in our complaint
17 to be true, you would have absolutely no
18 choice but to reverse the decision of the
19 DCRA, the Zoning Administrator's Office, that
20 this is a building primarily devoted to
21 worship.

22 Very quickly on the motion, D.C.
23 law is very clear. In a residential

1 neighborhood a place of assembly may be built
2 as a matter of right only if the primary use
3 of the building and the primary reason for
4 assembling in the building is to engage in
5 worship.

6 Information on space allocation in
7 the building, on the intensity of various uses
8 is relevant to that decision. Labels used by
9 an applicant may be relevant as well. They
10 are certainly not dispositive.

11 The question is what the primary
12 use of the building is or is likely to be. If
13 a building whose primary use is worship is
14 erected lawfully, it can be used, of course,
15 afterwards for other religious activities --
16 other religious activities, meaning that
17 worship and religious activities are not the
18 same thing, and we certainly will be getting
19 into that during cross-examination, if the
20 case goes that far.

21 CHAIRPERSON MILLER: What are you
22 reading from right now?

23 MR. MAGNUS: Pardon me?

1 CHAIRPERSON MILLER: What are you
2 reading from right now? The line that you
3 said, "other religious activities," -- where
4 are you reading from?

5 MR. MAGNUS: This is a summary of
6 case law.

7 CHAIRPERSON MILLER: A summary of
8 case law? Okay.

9 MR. MAGNUS: Which we discussed in
10 our pleading. You asked for the highlights.

11 CHAIRPERSON MILLER: No, that's
12 fine. I didn't know whether you were reading
13 from some specific regulation I wasn't aware
14 of or something like that.

15 MR. MAGNUS: I didn't open any
16 quotes there, no.

17 CHAIRPERSON MILLER: Okay, sir.
18 This is your summary? Okay.

19 MR. MAGNUS: Yes. If you have a
20 building whose primary purpose is worship that
21 has been erected lawfully, it can be used
22 afterwards for other religious activities that
23 do not entail worship, such as community

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1 activism, book sales, education, etcetera. We
2 don't argue against that. But if the primary
3 use of a building is not for worship but for
4 other activities, whether those are other
5 religious activities or secular activities,
6 then the building may not be built as a matter
7 of right in a residential neighborhood.

8 Regulators, not applicants, decide
9 whether the matter of right privilege applies
10 to a given facility.

11 CHAIRPERSON MILLER: I'm sorry. I
12 just want to interrupt you, because you made
13 an important point, and I don't know whether
14 you have a cite for it or not. Your point is
15 that -- something about if it is built
16 primarily for worship, then it can be used for
17 other activities.

18 MR. MAGNUS: If it has been
19 validly erected or an existing place of
20 worship--

21 CHAIRPERSON MILLER: Are you
22 relying on the Presbyterian case?

23 MR. MAGNUS: That is one of

1 several cases that stand for this proposition,
2 and by the way, don't stand for the
3 proposition that you call something a place of
4 worship in the first instance if it isn't one.
5 If it is already validly in place and built
6 and occupied and in use, and it is a place of
7 worship, other activities can then be
8 permitted. Those cases don't tell you how you
9 decide about a building that doesn't exist
10 yet.

11 CHAIRPERSON MILLER: You don't
12 have a case that goes further than that, that
13 says other activities can be considered
14 religious -- or cannot be considered
15 religious, unless it has already been erected
16 as a church?

17 MR. MAGNUS: It is not about
18 whether activities can be considered as
19 religious. With all due respect, this is
20 exactly the point. Religious is the wrong
21 word. Worship is a particular kind of
22 religious activity.

23 There are many religious

1 activities that are not worship, and we happen
2 to have in the District of Columbia a special
3 regulatory category, and it is limited to
4 churches or houses of worship, not to all
5 buildings that have a religious character or
6 constructed by religious affiliated
7 organizations. Worship is something special
8 within the realm of religious activity.

9 Last week you heard Mr. LeGrant
10 say I concluded that the primary use was for
11 worship or religious activity. Okay. I think
12 that's exactly where we should pick up when
13 the main part of this hearing resumes.

14 They conflated it, and if you do
15 the same thing, then your decision will be
16 vulnerable on appeal. We don't --

17 CHAIRPERSON MILLER: I don't want
18 to get you off track. I just wanted to see if
19 you had a cite for what you were saying.
20 Okay. Go ahead.

21 MR. MAGNUS: The idea that we
22 didn't allege a zoning error is simply
23 ludicrous. We did allege a zoning error. We

1 alleged that he applied the wrong law to the
2 wrong facts, that he conflated things
3 unlawfully in his primary use analysis.

4 The rest of this argument, if Ms.
5 Prince wants to concede that the
6 Constitutional and Federal statutory arguments
7 are not relevant to your disposition of the
8 motion to dismiss, I'll be glad not to talk to
9 you about them. She is an expert in this
10 area, and I am not, and if indeed we don't
11 have to be prepared to brief that issue orally
12 today, I'm happy not to do it.

13 I would very briefly say that the
14 free exercise clause and the Federal statute,
15 in combination, appear to indicate that there
16 has to be a matter of right category. Okay.
17 They don't anywhere, and neither do any of the
18 cases, suggest that that category has to apply
19 beyond houses of worship, nor do they require
20 that any particular project be designated as
21 primarily a house of worship. They just don't
22 go that far.

23 The idea that the Zoning

1 Administrator was precluded from ruling for --
2 from rejecting the matter of right claim
3 because of the Constitution or Federal
4 statutory law, and that regulators really have
5 no legitimate role in this process -- it just
6 can't be right. You know it can't be right.

7 CHAIRPERSON MILLER: Let me just
8 focus you here for one minute, because your
9 burden was to claim that the ZA erred. Okay.
10 I think that you said that the ZA erred in
11 treating the property as a house of worship.
12 Is that correct -- or as a place of worship?

13 MR. MAGNUS: He made two
14 determinations, and he erred in both of them.
15 First, he ruled that there was going to be
16 worship occurring in this facility, and then
17 secondly, he ruled that that was, in fact, the
18 primary use of the facility.

19 CHAIRPERSON MILLER: Okay. So
20 that is -- Your factual error that you are
21 alleging is that worship was going to be going
22 on there as a primary activity. Is that
23 correct?

1 MR. MAGNUS: That it was the
2 primary use of the building and, therefore,
3 determined the character of the building. We
4 understand it to be black letter zoning law
5 that a building is defined by its primary use
6 and not by an accessory or an ancillary use.

7 CHAIRPERSON MILLER: Okay. And
8 you have been making the statement that the
9 error was he applied the wrong law to the
10 wrong facts, and I just want to get one
11 example of what was the wrong fact, what was
12 the wrong law.

13 MR. MAGNUS: He was relying on,
14 for example, calculations that had been
15 submitted to him by the Applicants, suggesting
16 that over 82 percent of the floor space in
17 this building was exclusively devoted to the
18 worship activity

19 CHAIRPERSON MILLER: Okay. So
20 your allegation with respect to mistake in
21 fact was that he mistakenly relied on those
22 facts, and they were incorrect, and you have
23 evidence to the contrary.

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1 MR. MAGNUS: Well, and indeed I
2 do, much of which only existed as of last
3 week's hearing.

4 CHAIRPERSON MILLER: Okay, fine.
5 But I just want to see what we have here. We
6 have -- You have an allegation of a factual
7 error. Right? And does that lead to your
8 allegation --

9 MR. MAGNUS: Factual errors and
10 legal errors. This is garden variety
11 administrative law, as I understand it, that
12 he committed a legal error by applying an
13 impermissible interpretation of the terms in
14 the statute, the term being church or other
15 place of worship; and he made a factual
16 decision that had no support on the factual
17 record in front of him, and was flatly
18 contradicted by all of the factual information
19 that was in front of him.

20 So it was a decision that was
21 flawed legally and factually.

22 CHAIRPERSON MILLER: Okay. I
23 think you've probably had 10 minutes. Do you

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1 have more on that subject?

2 MR. MAGNUS: I don't know how you
3 divide this up between answering your
4 questions and giving our presentation.

5 CHAIRPERSON MILLER: No, go ahead,
6 if you have some more you need to say. We
7 also -- You did a very thorough response, but
8 go ahead if you have a little bit more.

9 MR. MAGNUS: I appreciate that
10 very much, if I could have 15 seconds here.

11 I would like to touch briefly,
12 very briefly, on three decisions of this Board
13 that were cited in support of the motion to
14 dismiss, which we read as being completely
15 irrelevant to what is going on here.

16 One of them, the Dupont Circle
17 Citizens case, which in fact the Board decided
18 on the merits and did not dismiss; the De
19 Britto case where the claim that the filers of
20 the motion -- sorry, the claim that the
21 Appellants had made had nothing to do with
22 whether a permit was validly issued, but
23 whether it had actually been followed

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1 afterward. Very different kind of a legal
2 issue presented. This is an appeal about
3 whether a permit was validly issued, and
4 specifically whether the matter of right
5 ruling was legally or factually flawed, or
6 both.

7 Then an ANC-2A case from 1983
8 having to do with a hotel that got an extra
9 door, the relevance of which is not remotely
10 apparent even from the motion to dismiss
11 itself.

12 The only other thing, I guess,
13 that I would say is -- and I will, I guess,
14 just read into the record the Webster's
15 Unabridged dictionary definition of the word
16 worship. After last week's hearing, it came
17 to my attention that the definition that the
18 Intervenors had brought to your attention was,
19 I think, from Merriam Webster. I believe the
20 statute points you to the Webster's
21 Unabridged.

22 One importance of the difference
23 is that you won't hear the word creed in this

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1 definition. We can certainly talk about the
2 word creed, once the mainstream of this
3 hearing resumes, but this is Webster's
4 Unabridged dictionary definition of worship:

5 "The act of paying divine honors
6 to the Supreme Being; religious reverence and
7 homage; adoration or acts of reverence paid to
8 a god or being viewed as God; to pay divine
9 honors to or to reverence with supreme respect
10 and veneration; to perform religious exercises
11 in honor of; to adore; to venerate; to perform
12 acts of homage or adoration."

13 I don't pretend to be an expert in
14 Buddhist practice. Soka Gakkai's
15 representatives claim that the religious
16 practices that they follow are perfectly
17 legitimate Buddhist practices, and I am no
18 position to say otherwise.

19 There are Nichiren-Shoshu
20 Buddhists who do say otherwise. This is a
21 group that was separated from -- and if you
22 read the press coverage of what happened at
23 the time, was excommunicated from the

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1 Nichiren-Shoshu branch of Buddhism in the
2 early 1990s.

3 Ever since then, it has portrayed
4 itself as a lay group, lay leaders, whose
5 members practice the Buddhism of Nichiren-
6 Dishonin, and perhaps they do it in a
7 perfectly legitimate way, notwithstanding the
8 dispute with the other Nichiren Buddhists.
9 Fair enough. Completely irrelevant to what
10 this Board has to decide.

11 What this Board has to decide is
12 whether the dominant use of this particular
13 building is worship.

14 CHAIRPERSON MILLER: Can I
15 interrupt you here?

16 MR. MAGNUS: Yes.

17 CHAIRPERSON MILLER: We are just
18 dealing with the motion to dismiss, just
19 whether you stated a claim upon which relief
20 can be granted.

21 MR. MAGNUS: Thank you for your
22 time.

23 CHAIRPERSON MILLER: Okay. I just

1 have a couple of questions for you related to
2 the other aspect of the motion to dismiss that
3 goes to the excavation permit and the
4 pedestrian walkway.

5 That is a timeliness argument
6 made, and if an appeal is not timely, the
7 Board doesn't have jurisdiction over it. So
8 this is something we can't waive. So I need
9 to ask you factually, when did you learn of
10 these permits?

11 MR. MAGNUS: The permits came to
12 our attention -- Well, a rumor about the
13 permits came to our attention in December of
14 2006. We had an e-mail from the Zoning
15 Administrator at that time indicating that he
16 himself didn't know what happened -- what had
17 happened, and that he thought it was possible
18 that permits may have been issued over his
19 instructions that they not be issued.

20 When it became clear that permits
21 actually had been issued -- I can go back
22 through my notes and give you a specific date
23 about that. This is a subject that had been

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1 -- This is a topic that had been the subject
2 of a great deal of discussion between our
3 group and the Zoning Administrator's Office,
4 precisely because we wanted to be sure that
5 nothing irreparable was going to happen before
6 the Zoning Administrator had ruled on the
7 matter of right issue, and he said, don't
8 worry about that, the matter of right issue is
9 fundamental, and it will be decided first
10 before anybody starts digging or excavating or
11 doing anything else like that.

12 I have to say, we took him at his
13 word. Then when the digging started, and he
14 said, no, I haven't actually ruled on the
15 matter of right issue yet, our assumption was,
16 therefore, that there must not have been any
17 permits. It took quite a while before we
18 could find out for sure what had happened.

19 At some point, we got copies of
20 the permits themselves, and then had a
21 decision to make: Should we initiate a BZA
22 appeal on the basis of excavating, sheeting
23 and shoring permits, or should we do what he

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1 was urging us to do, which was to wait until
2 he issued a decision on the matter of right
3 issue, which was really what this dispute has
4 been about all the way along, so that we could
5 appeal everything together.

6 CHAIRPERSON MILLER: So,
7 basically, when you got the copy of the
8 permits, you were within the filing time, but
9 you waited because you relied on the Zoning
10 Administrator's representation with --

11 MR. MAGNUS; To be honest with
12 you, I can't remember the date on which we
13 filed our appeal. I know that the Zoning
14 Administrator's decision was made in early
15 March, and we studied it for most of the 60
16 days that were available to us before we
17 initiated this appeal.

18 So I'm sure that we found out
19 about the actual issuance of excavating,
20 sheeting and shoring permits sooner than that.
21 I'm sure that we did. We probably found out
22 about it in January.

23 The only other thing I would say

1 as far as whether there was an error, and I
2 don't know whether the "know or should have
3 known" standard goes to the fact that the
4 permits were issued or the fact that they were
5 issued erroneously, but one of the key reasons
6 why I would argue these were issued
7 erroneously is what I mentioned a moment ago,
8 which we just found out not even last week.
9 We found out yesterday morning, which was that
10 on the application itself for the excavation
11 permit and on the application itself for the
12 covered walkway permit, the applicants had
13 put: Existing use, assembly, other; proposed
14 use, assembly, other. Nothing in there
15 about any kind of matter of right use, and
16 this was in a residential neighborhood.

17 So if the time runs from when we
18 learned about -- and the Zoning Administrator
19 presumably relied on the characterizations of
20 the uses that were in those applications,
21 which turn out to be flagrantly inaccurate.

22 So if the time runs from when we
23 learned about the reasons why this was in

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1 error, then it runs from yesterday morning.

2 CHAIRPERSON MILLER: It doesn't.
3 I don't know if you have seen the regulations
4 on timeliness, but they are set forth at 3112,
5 and 3112.2A states: An appeal shall be filed
6 within 60 days from the date the person
7 appealing the administrative decision had
8 notice or knowledge of the decision complained
9 of or reasonably should have had notice or
10 knowledge of the decision complained of,
11 whichever is earlier.

12 The decision complained of in this
13 context are those two permits that the
14 Intervenor has identified as having been
15 untimely appealed.

16 MR. MAGNUS: In that case, what
17 you are left with is that we were proceeding
18 on the basis of the suggestions of the sitting
19 Zoning Administrator about the timing of
20 formulating our appeal on this, and we may
21 have gotten bad advice and perhaps we are
22 stuck with the results of that now, and also
23 a clear conviction on our part that the main

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1 issue is whether this is or is not a matter of
2 right project and a desire to promote
3 efficiency at the Board in that regard.

4 CHAIRPERSON MILLER: I have one
5 last question. With respect to those permits,
6 though, you are challenging those permits on
7 the basis of the use they are connected with.
8 You are not challenging them per se as being
9 in violation of zoning regulations?

10 For instance, if the pedestrian
11 walkway was going to a building that was a
12 matter of right use, you wouldn't be
13 challenging the pedestrian walkway, would you?

14 MR. MAGNUS: If the building
15 involved here were a legitimate matter of
16 right project, we wouldn't be challenging
17 anything at all.

18 CHAIRPERSON MILLER: Understood,
19 understood. Okay. Any other questions?

20 Does DCRA want to add anything to
21 this discussion?

22 MS. PLEASANT: Yes, Madam Chair.

23 DCRA believes that we did join in

1 the motion at the last hearing. However, I
2 move to orally join in the motion to stay and
3 make two points.

4 First, this appeal is about a
5 church's right to use their land. Soka-Gakkai
6 is the owner of the property. They applied
7 for a building permit, and the former Zoning
8 Administrator, Bill Crews, made the
9 determination of the use of that building
10 based upon that permit and 11 DCMR 201.1(g),
11 which defines that a church is a matter of
12 right use in an R-1 district.

13 Secondly, the district also agrees
14 that the challenge of the permits is untimely
15 based on 11 DCMR 3112.2.

16 Just going quickly to notice, Mr.
17 Magnus did have notice of the permit issuance
18 as of December 2006, which is evidence by the
19 exhibits that he submitted; whereas, I may
20 quote former Zoning Administrator Bill Crews
21 said, "Two permits were approved by my zoning
22 technicians." Thank you.

23 CHAIRPERSON MILLER: Let me ask

1 you, is it your position that this is a
2 religious organization, that DCRA doesn't have
3 to go further as to how it is going to use the
4 building, because in fact, DCRA did go further
5 than that? They really looked into many
6 aspects.

7 MS. PLEASANT: It is our position
8 that the Acting Zoning Administrator's
9 testimony validates what Bill Crews'
10 determination was, that the use of this
11 building is a church based on several
12 different factors that were testified to at
13 the last hearing, and if this motion or this
14 hearing goes forward, he will be able to
15 testify to today.

16 CHAIRPERSON MILLER: Okay. I just
17 polled the Board, and we are ready to
18 deliberate.

19 As I said before, we have read the
20 papers thoroughly, and this was an opportunity
21 for us to hear your highlights and to ask any
22 questions and concerns.

23 I think Mr. Dettman is going to

1 just address his participation in this case.
2 He wasn't here for the last hearing.

3 MEMBER DETTMAN: Thank you, Madam
4 Chair. As you say, I was not present last
5 week when, I believe, that the hearing was
6 started.

7 I will not participate and then
8 vote for a motion to dismiss today. However,
9 between now and the time that the hearing is
10 or isn't commenced, I will have read the
11 record from last week.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. Okay, so the three of us will deliberate
14 on the motion to dismiss. I would like to
15 start out with the excavation permit and the
16 construction of the pedestrian walkway permits
17 in which we have a motion to dismiss the
18 appeal of these two permits based on
19 untimeliness.

20 As I was saying before, the courts
21 have stated in no uncertain terms that this is
22 a jurisdictional question, and we need to look
23 at the facts, and if the appeal is, in fact,

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1 untimely and doesn't fall within the
2 exceptions to the rule, then we cannot
3 entertain them.

4 So looking at these two permits,
5 my notes indicate that the excavation permit
6 was issued November 30, 2006, and 60 days from
7 then, which is what the regulations provide
8 for appealing, takes it to about January 30,
9 2007.

10 With respect to the pedestrian
11 walkway and fence, it was issued December 11,
12 2006, and 60 days takes us to February 10th,
13 and the appeal was filed May 2nd.

14 So they are both untimely with
15 respect to the 60 days. I am going to read
16 the reg again. 3112.2(a) says:

17 "An appeal shall be filed within
18 60 days from the date the person appealing the
19 administrative decision had notice or
20 knowledge of the decision complained of or
21 reasonably should have had notice or knowledge
22 of the decision complained of, whichever is
23 earlier."

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1 Now we don't have evidence that
2 the Appellant knew of the permit or should
3 have known of the permit exactly on the dates
4 that they were issued. However, I questioned
5 the Appellant about this, and I believe that
6 he said they probably knew by January, and
7 still May would be too late, and they
8 certainly should have known based on the
9 evidence here if they were watching the
10 property, engaged in conversations with the
11 Intervenor, certainly, over this property.
12 They should have known, certainly, in time to
13 file the appeal in a timely fashion.

14 There is an exception to this
15 rule, which I would also like to read, and
16 that says that the Board may extend the 60-day
17 deadline for the filing of an appeal only if
18 the Appellant demonstrates that (1) there are
19 exceptional circumstances that are outside of
20 the Appellant's control and could not have
21 been reasonably anticipated and substantially
22 impair the Appellant's ability to file an
23 appeal to the Board.

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1 The Appellant has stated that he
2 perhaps might have been misled by the Zoning
3 Administrator, under the impression that the
4 permits weren't supposed to have been issued,
5 and whatever. But our case law also states
6 that reliance on another party is not
7 sufficient with respect to that test of
8 substantially impairing the Appellant's
9 ability to appeal.

10 So I think it is untimely. I
11 don't think we have jurisdiction over it, and
12 I also would state, though, as the Appellant
13 did, basically, the appeal is based on the use
14 of the building. This really isn't -- These
15 permits aren't really subject to appeal, in
16 and of themselves for any other violations.

17 So, comments?

18 MEMBER LOUD: I just want to agree
19 with you as well and your analysis as well on
20 the issue of the excavation permit, pedestrian
21 walkway permits. There appears to be no
22 conflict at all in terms of when the permits
23 were issued, when the appeal was filed, and in

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1 listening to some of the testimony from Mr.
2 Magnus, there is no reason to doubt that they
3 were not received in time.

4 He says I've got to go back in my
5 notes and give you dates; I cannot remember
6 the date on which it was received, and then
7 kind of contradicts himself and says, well,
8 maybe I got it on time, but was stuck with bad
9 advice.

10 I think that it is fairly clear
11 from what has been presented that we are
12 without jurisdiction to entertain those two
13 appeals. Thank you.

14 CHAIRPERSON MILLER: Okay. So I
15 think that brings us to the meat of this
16 appeal.

17 As I was saying earlier, I think
18 that there is a big difference between a
19 motion for summary judgment and a motion to
20 dismiss. We have a threshold question here as
21 to whether or not the Appellant stated a claim
22 upon which relief can be granted, and I don't
23 think that we at this point dig into how

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1 meritorious we think the claim is. I think at
2 this point we just look at is there a claim,
3 that the Zoning Administrator erred in
4 enforcing the regulations or in issuing the
5 permit, etcetera.

6 In my view, I think there is a
7 minimal claim here, and the claim would be
8 that the Zoning Administrator erred in
9 determining that this was a place of worship
10 and a matter of right use.

11 Then we have heard a little bit
12 more about, well, what facts support that.
13 Today we heard the Appellant say, well, the
14 Zoning Administrator relied on misinformation
15 with respect to calculations of the space, how
16 it was going to be used.

17 So to me, that meets a minimal
18 threshold to hear the claim as opposed to
19 dismiss it. I know in the very few cases we
20 have dismissed cases, and I have certainly
21 gone along with dismissal when I could not
22 figure out what the claim was.

23 We tried and we tried to figure

1 out what are they talking about, what zoning
2 regulation are they alleging has been
3 mistakenly applied, and in this case I can see
4 the main claim. So I wouldn't dismiss it for
5 failure to articulate a claim. Others?

6 VICE-CHAIRPERSON ETHERLY: I would
7 also agree, Madam Chair, both with your first
8 position as it relates to timeliness on the
9 two permits, but most specifically and perhaps
10 most strongly, I think where the case turns
11 here is, in fact, on the March 2, 2007, letter
12 which has been much talked about from the
13 Zoning Administrator where, in relative
14 portion, the Zoning Administrator, then Mr.
15 .Bill Crews, writes, "After careful
16 consideration and reliance upon the attached
17 information provided by SGI, it is clear to me
18 that the principal use of the proposed
19 building will be as a place of worship."

20 That is where I believe the game
21 is absolutely afoot here, and I believe that,
22 in fact, a claim has been very clearly spoken
23 to with respect to an error.

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1 Now, of course, the issue is going
2 to be delving into the facts to support that
3 determination or not, but I think in terms of
4 the threshold, very simple, very
5 straightforward threshold question of is there
6 an error, is there a zoning error that has
7 been alleged here.

8 I think, both in terms of
9 timeliness with regard to the March 2nd
10 letter, the Appellant filed their appeal on
11 May 2, 2007, specifically referencing that
12 particular letter, clearly it is timely from
13 the standpoint of our 60-day time frame, and
14 I think, clearly, the March 2nd letter does,
15 in fact, constitute a decision to be
16 complained of, consistent with our zoning
17 regulations.

18 So for that, Madam Chair, I would
19 also support what appears to ultimately be a
20 denial of the motion to dismiss on the ground
21 of failure to state a claim.

22 MEMBER LOUD: I think, colleagues,
23 it is unanimous. I think that whether one

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1 thinks that the evidence that will support
2 that contention is forthcoming is a discussion
3 we will get into now on the merits, but
4 certainly, the law favors resolution of
5 disputes on the merits, and in this case you
6 want to 12(b)(6), give the nonmoving party the
7 benefit of all of the inferences in the case.

8 They have clearly, both referenced
9 in the March 2, 2007 letter and in their
10 pleadings stated that their contention here is
11 very specifically that this is not a place of
12 worship. Now we are going to get to find out
13 why they believe that and what authority
14 undergirds it, but it is clearly statement of
15 a claim upon which relief can be granted, if
16 it is supported by the evidence.

17 So I would favor the position that
18 you guys have just taken, and ask that we move
19 into the merits.

20 CHAIRPERSON MILLER: Anything
21 else? Okay, then at this point I would move
22 to grant the motion to dismiss with respect to
23 the construction and the pedestrian walkway

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1 permits, and deny with respect to failure to
2 state a claim.

3 VICE-CHAIRPERSON ETHERLY:

4 Seconded, Madam Chair.

5 CHAIRPERSON MILLER: Further
6 deliberation? All those in favor, say Aye.
7 Aye. All those opposed? All those
8 abstaining? Ms. Bailey?

9 MS. BAILEY: Madam Chair, the
10 motion was made by you, Ms. Miller, seconded
11 by Mr. Etherly. Mr. Loud supported the
12 motion. So it is three-zero-two. Mr. Dettman
13 is not voting on the motion, and a Zoning
14 Commission member is not present at this time.

15 CHAIRPERSON MILLER: Thank you.
16 Okay. So where we are now is to pick up where
17 we left off at the last hearing, and we won't
18 be discussing those two construction permits.

19 DCRA, I believe -- MR. LeGrant,
20 you completed your testimony? You were being
21 cross-examined. Is that right?

22 MR. LeGRANT: No. I had not
23 completed my testimony. There is a little bit

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1 more testimony for me to complete, and haven't
2 had the cross yet.

3 CHAIRPERSON MILLER: Is that
4 everybody else's recollection. Good. Okay.

5 MS. PLEASANT: Madam Chair.

6 CHAIRPERSON MILLER: Excuse me.
7 Could you just refresh our memory a little
8 bit, what you have already testified to in
9 general and where you are --

10 WHEREUPON,

11 MR. MATTHEW LeGRANT
12 WAS RECALLED AS A WITNESS BY COUNSEL FOR DCRA
13 and, HAVING PREVIOUSLY BEEN DULY SWORN,
14 TESTIFIED FURTHER AS FOLLOWS:

15 MR. LeGRANT: Okay. I will
16 summarize. To date, talked about my position,
17 how long I have been Acting as Zoning
18 Administrator, the history of the review of
19 the application, my role as then-Deputy Zoning
20 Administrator in reviewing the building permit
21 application, the determination of the previous
22 Zoning Administrator, Mr. Bill Crews, in this
23 regard.

1 Then I spoke to the effect of the
2 zoning districts on this particular lot, some
3 details about my review, and what I found,
4 then a distinction of what Mr. Crews' review
5 entailed and then separate, my own review of
6 the information, and what Mr. Crews'
7 conclusion was, and then we were talking about
8 the breakdown of the use of the space and my
9 own calculations about the use of the space,
10 some clarification of the square footage
11 numbers from my perspective of the plans I
12 reviewed, the zoning computation sheet, that
13 document and that review.

14 That kind of brings us to where we
15 are at this point.

16 CHAIRPERSON MILLER: Thank you.

17 MS. PLEASANT: Madam Chair,
18 members of the Board, may I request your
19 indulgence to just clarify some of the
20 testimony previously given by Acting
21 Administrator?

22 DIRECT EXAMINATION (continued)

23 BY MS. PLEASANT:

1 Q Could you please tell the Board,
2 what does a gross floor area -- how does that
3 relate to your determination that the building
4 was a church?

5 A Again, in reviewing the plans and
6 calculating the gross floor area, which
7 entailed the above-ground portion of the
8 building, it included the two floors of the
9 building, and there is a mezzanine level as
10 well. It excludes the cellar level, which is
11 used for parking, as the Zoning regulations
12 set forth that areas in a cellar are excluded
13 from a gross floor area calculation.

14 I then -- My analysis of the rooms
15 labeled on those plans -- or we looked at what
16 those uses were characterized as, and those
17 included, important for my analysis, what
18 rooms were labeled for, in my mind, what were
19 for religious assembly use.

20 That included a fellowship lounge
21 and a chanting room on the first floor and a
22 large sanctuary, which is the largest room in
23 the building, and a small sanctuary on the

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1 second floor, and looking at all the rooms
2 labeled for program functions -- that is, the
3 universe of rooms which include then studies
4 and offices, a bookstore, a classroom and so
5 forth, and excluding restrooms, corridors and
6 mechanical rooms -- I came up with, I guess,
7 the denominator or the baseline of these
8 represent the program areas for this
9 particular use.

10 CHAIRPERSON MILLER: Can I just
11 ask you this. Ms. Pleasant, right? Am I
12 right today?

13 MS. PLEASANT: Yes, ma'am, you
14 are.

15 CHAIRPERSON MILLER: Okay, good.
16 She said you decided that this was -- How does
17 the gross floor area -- I forget the exact
18 words you used, but relate to your view that
19 it is a church? Did you decide that it was a
20 church?

21 THE WITNESS: Well, I'm just about
22 there.

23 CHAIRPERSON MILLER: Oh, okay,

1 good.

2 THE WITNESS: Sorry. It was
3 probably a little more detailed, because I
4 spoke of this before.

5 I concluded that this room, these
6 areas that I had labeled that I mentioned
7 constituted over 50 percent, in this case 56
8 percent, of that area for religious assembly
9 use.

10 Therefore, going back to the
11 question, as to what is relevant in a gross
12 floor area, this is certainly a subset of the
13 gross floor area, these areas, but that is the
14 relevant piece in my mind that speaks to what
15 is the use of this building.

16 BY MS. PLEASANT:

17 Q And can you please elaborate on
18 what purpose the 50 percent or more
19 determination has and relate to the use of the
20 building?

21 A Well, the test for me in my career
22 now, some 25 years of doing planning and
23 zoning, when there is a case in which a

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1 building may have multiple uses or functions,
2 is -- and I have to classify that under a
3 zoning use, a specified use, is what is the
4 predominant use; because we have, for example,
5 a bookstore, although I know many churches
6 that I visited, large churches here in very
7 famous institutions in the District, have a
8 bookstore. This has a bookstore as well.

9 So the predominant -- or in this
10 case, over 50 percent of the program space was
11 for evidence that I have seen in the plans,
12 for religious assembly, and that helped inform
13 my decision that, in fact, this was a place of
14 worship.

15 CHAIRPERSON MILLER: Can I just
16 interrupt again for clarification, because we
17 are talking about 56 percent of the gross
18 square footage. Is that it?

19 THE WITNESS: No.

20 CHAIRPERSON MILLER: No? Okay.
21 That's why I interrupted. Okay.

22 THE WITNESS: Of the program
23 spaces that were labeled on the plans -- and

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1 I believe the Board received the copies of the
2 plans. On the first and second floors, there
3 is a variety of areas, and first starting with
4 the exclusions: mechanical rooms, restrooms.
5 All buildings have those type of support or
6 adjunct facilities. But then you get down to
7 what -- how are these -- why are people going
8 to come there. They are going to come for
9 these rooms that are labeled fellowship
10 lounge, chanting room, classrooms, bookstore,
11 office and so forth.

12 A subset of those that represent
13 the four rooms that I've mentioned that
14 represent program spaces for religious
15 assembly constitute 56 percent of the -- I
16 think the total of those floor area for those
17 rooms is 4,934 square feet.

18 This is a subset of the overall
19 gross floor area of the building, which is
20 11,247 square feet.

21 CHAIRPERSON MILLER: So this is a
22 subset of the area that excludes mechanical
23 rooms, restrooms, things like that.

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1 THE WITNESS: Yes.

2 CHAIRPERSON MILLER: But not
3 classrooms or bookstores? It includes that?

4 THE WITNESS: I excluded the
5 classroom, the bookstore, the office, the
6 pantry, the three studies and the family room.

7 MEMBER LOUD: I'm sorry. Could
8 you just repeat that one more time?

9 THE WITNESS: Okay. In this set
10 of rooms that I looked at, the rooms I
11 included, included the fellowship lounge, the
12 chanting room, the large sanctuary and the
13 small sanctuary. That represents the 56
14 percent. I didn't -- That does not include
15 the balance of that percentage or the 44
16 percent that is a pantry, the classroom, the
17 bookstore, the office, three studies and a
18 family room.

19 CHAIRPERSON MILLER: So those
20 others are the 44 percent. Correct?

21 THE WITNESS: Correct.

22 CHAIRPERSON MILLER: Okay.

23 BY MS. PLEASANT:

1 Q Just for clarification, can you
2 please describe the square footage of the
3 sanctuary on the second floor?

4 A The sanctuary on the second floor
5 -- There's two of them. The large sanctuary
6 is, as it is so labeled in the plans, is 1,550
7 square feet. There is a small sanctuary of
8 506 square feet.

9 Q And what relevance did the
10 determination of the square feet of the
11 sanctuaries have on your overall determination
12 of the use of the building?

13 A I guess there's two aspects. They
14 are included, as I mentioned now, as part of
15 this 56 percent of the spaces or the program
16 spaces that are, in my mind, for religious
17 assembly use.

18 Also the relevance is the largest
19 room in the building is the large sanctuary,
20 and so it seems to me that, in my professional
21 review of applications for building permits
22 for churches and places of worship, there
23 typically is a large space in which -- It can

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1 be labeled many different ways, but our zoning
2 code does refer to -- for purposes of the
3 parking calculation refers to what is the area
4 of the sanctuary, is a baseline for parking
5 calculation purposes.

6 MEMBER LOUD: A couple of very
7 quick questions. First, are you using
8 religious assembly interchangeably with
9 worship? And if not, just sort of clarify for
10 me what the difference is there.

11 THE WITNESS: For the purposes of
12 the review, the building permit plans, I was
13 looking for places of religious assembly. The
14 overall question as to whether this is a place
15 of worship, I believe -- and I have stated
16 this before -- the information that's in the
17 plans in conjunction with other information,
18 the representations in the application and
19 other information that both Mr. Crews reviewed
20 and then I had opportunity to review as well,
21 helped make the determination as to whether it
22 is a place of worship.

23 To me, then the place of worship,

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1 church or place of worship, is the use that is
2 called out in the zoning regulation.

3 I don't know if that answers your
4 question.

5 MEMBER LOUD: I'll listen as you
6 elaborate further.

7 THE WITNESS: Well, so the -- It's
8 the place of worship that -- The totality of
9 the review has to, in my mind, conclude in
10 whether this is indeed a place of worship, and
11 the places -- the rooms labeled that I have
12 classified as for religious assembly as shown
13 on the plans become part of my analysis as to
14 whether the overall determination can be made.

15 CHAIRPERSON MILLER: Could I just
16 ask you what you understand fellowship room to
17 mean?

18 THE WITNESS: Well, I guess I have
19 to kind of base that on my own personal
20 experience. The church that I attend has a
21 fellowship room, and that is a place where
22 people congregate together for a variety of
23 activities. It is a place of assembly.

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1 CHAIRPERSON MILLER: Okay. Thank
2 you.

3 BY MS. PLEASANT:

4 Q And for clarification, can you
5 please identify what documents, if any, that
6 you reviewed in your totality of the review?

7 A In addition to the permit
8 application and plans that I have now spoken
9 to, I also reviewed additional information
10 that was submitted by Soka Gakkai
11 International in response to a request by the
12 previous Zoning Administrator, Bill Crews, and
13 they had returned a package of information
14 talking about the organization.

15 I looked at the two letters I
16 think I spoke to previously by two
17 organizations here in the District that are --
18 I believe one is the Interfaith Council of
19 Metropolitan Washington. The other is the
20 downtown Cluster of Congregations.

21 I have also looked at the
22 documentation of the IRS 501(c)(3)
23 determination that this is a nonprofit

1 organization.

2 Q And in what capacity did you
3 perform the review of the documents you just
4 mentioned?

5 A There is two rounds of review. As
6 Deputy Zoning Administrator, I was assigned by
7 then Zoning Administrator Bill Crews to review
8 the building permit application and plans, and
9 with the assistant of a zoning technician in
10 the name of David Balden, we sat down, and we
11 did that review in response to the Zoning
12 Administrator's direction.

13 Then I presented the results of my
14 review in a zoning computation sheet to the
15 Zoning Administrator.

16 Following Mr. Crews' departure
17 from DCRA and in anticipation of this appeal,
18 I re-reviewed all the materials that Mr. Crews
19 had access to in terms of his initial -- or
20 his determination leading to his letter of, I
21 believe, March 2nd and the materials I have
22 just spoken to.

23 So those are the two rounds of

1 review, first of the building permit, plans
2 and application, and then the totality of the
3 record, including the materials that were in
4 the file that Mr. Crews had reviewed to make
5 his determination.

6 Q You testified today that Soka
7 Gakkai submitted additional information in
8 response to former Zoning Administrator Bill
9 Crews' inquiry. What did that information
10 reveal?

11 A It revealed an organization that,
12 in my mind, is organized for religious
13 purposes. It described the activities of that
14 organization. It described in the addendums
15 to the initial materials that were submitted,
16 not only materials that they submitted but the
17 attached letters that I have mentioned as
18 well.

19 Q And you also mentioned that you
20 reviewed their 501(c)(3) status. What did
21 that reveal?

22 A That it is an organization
23 organized for religious purposes and is exempt

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1 from taxes under the -- from the IRS.

2 Q And based on your review of the
3 case, what is your determination of the use of
4 this building?

5 A I have concluded that, based on
6 the re-review of the materials that Mr. Crews
7 had access to and the plans and application
8 that this is a place of worship, that Mr.
9 Crews did not err in making a determination
10 this is a place of worship, and that the
11 building permit for this organization was, in
12 fact, correctly issued.

13 MS. PLEASANT: Nothing further,
14 Madam Chair, members of the Board.

15 VICE-CHAIRPERSON ETHERLY: Madam
16 Chair -- Thank you, Mr. LeGrant, for your
17 testimony, which I think was very helpful in
18 terms of laying out the analytical
19 underpinnings for the outcome here in terms of
20 the Zoning Administrator's determination.

21 A couple of questions, and I'm
22 going to try my best not to make this sound
23 like a Philosophy 101 or a Religion 101

1 course, but I think we are probably going to
2 have to be very painful -- painstakingly slow
3 in kind of walking through this, but let me
4 perhaps ask an overarching question.

5 For purposes of the zoning
6 regulation, is there a difference between
7 church and place of worship or are they one
8 and the same?

9 THE WITNESS: I think they are one
10 and the same. The regulation reads church or
11 place of worship. So they are, in my mind, to
12 be treated equivalent.

13 VICE-CHAIRPERSON ETHERLY: Okay.
14 And I would tend to, based on the text of the
15 regulations, agree with you in that
16 interpretation. The reason why I asked is I
17 took notes of what I thought were fairly
18 copiously on your initial round of testimony,
19 and I recall that you mentioned or referred
20 to it as a church at our last meeting. So I
21 just wanted to make sure I wasn't hearing a
22 difference in terms of approach versus that
23 day and this day. So I appreciate that.

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1 Let ;me perhaps deal with -- Let's
2 kind of deal with the rooms, and this is where
3 perhaps some of the painstaking stuff is going
4 to come into play.

5 What was it about -- If I
6 understood correctly, the exclusions, the
7 spaces, the program spaces that you excluded
8 were three studies, the family room, pantry,
9 classroom, office and bookstore. Is that
10 correct?

11 THE WITNESS: That's correct.

12 VICE-CHAIRPERSON ETHERLY: What
13 about -- And to an extent, perhaps part of the
14 answer to this question may seem self-
15 explanatory, but I want to be sure we get it
16 on the record.

17 What about those spaces struck you
18 as not being for, as you referred to, for
19 religious assembly?

20 THE WITNESS: Well, certainly,
21 some of those rooms might be used, arguably,
22 for some type of religious assembly. For
23 example, a classroom: Many churches have

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1 Sunday School or religious education purposes,
2 but I was trying to take a restrictive view
3 of, okay, well, maybe the classroom might be
4 used for some other purpose. You know, many
5 places of worship or churches rent out spaces
6 to Twelve-Step groups and a variety of other
7 organizations.

8 So which rooms, to me -- If there
9 is any question, I'll throw them out. I won't
10 include them. But the ones that were
11 indisputably, in my mind, related to religious
12 assembly were the four that I mentioned.

13 VICE-CHAIRPERSON ETHERLY: And
14 that would be the fellowship lounge, the
15 chanting room, the large and the small
16 sanctuary?

17 THE WITNESS: Correct.

18 VICE-CHAIRPERSON ETHERLY: From
19 your perspective, you felt those were
20 indisputably of religious assembly -- for
21 religious assembly purposes?

22 THE WITNESS: Yes.

23 VICE-CHAIRPERSON ETHERLY: Okay.

1 With respect to that 56 percent determination,
2 I believe I understood -- and Mr. Loud's
3 question to an extent walked you through a
4 little bit of this -- the notion that you are
5 looking at what is the predominant use; and
6 based on your experience in zoning and land
7 use, both in this jurisdiction and others, you
8 try to look at what percentage of the space is
9 being used in what way.

10 There is a second piece here that
11 I want to be sure we don't overlook, and that
12 is the issue of -- and to an extent, I think
13 this is where the Appellant is coming -- the
14 issue of use itself, that regardless of what
15 a space may be called, regardless of what the
16 program space may be called, large sanctuary,
17 small sanctuary, chanting room, did you look
18 or consider to an extent exactly how much of
19 religious assembly purposes use would take
20 place in those four rooms, or was there an
21 assumption that those four rooms are pretty
22 much -- I just know that's what is going to
23 happen in those four rooms, or based on the

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1 information that you reviewed that you walked
2 through with Ms. Pleasant, was there -- and
3 perhaps be as specific as possible.

4 What about the submittals
5 convinced you that those four rooms in terms
6 of their use were predominantly going to be
7 for religious assembly purposes?

8 THE WITNESS: I guess I have to
9 answer that. I had to make an assumption at
10 some point, that I did not do an analysis of
11 those rooms beyond what was shown in the
12 plans. As I recall, there was not a
13 description in the applicant's application
14 about the particular activities, a breakdown
15 of those spaces.

16 There is a matrix that talks about
17 -- I think they have a program matrix that
18 shows a schedule -- a hypothetical schedule of
19 use of those rooms, and it breaks that down.
20 But I did not myself delve into the
21 particulars of each room.

22 So I had to make an assumption
23 that, first informed by the overall purpose of

1 the organization and the materials that first
2 Mr. Crews reviewed and then I re-reviewed,
3 that this is an organization that is for
4 religious purposes. So how does then that
5 manifest itself in this space?

6 Okay. Well, if I look at the
7 floor plans and I look at these spaces, well,
8 here are rooms that are labeled for, in my
9 mind, religious assembly use. There are
10 labeled things such as sanctuary, chanting
11 room. They, in the context of the overall
12 plans, represent the largest spaces and the
13 rooms and are the predominant use of the
14 program spaces.

15 So I'm hesitant to get down to
16 overly analyzing space by space. I felt
17 strongly that they have to -- that analysis
18 has to be done in context of the overall
19 package.

20 VICE-CHAIRPERSON ETHERLY: The
21 overall context. And I can definitely
22 appreciate that, and I don't want to invite
23 delving into that. But as you presented your

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1 remarks, as you ran through the remainder of
2 your testimony, again I hate to give witnesses
3 hypotheticals. Sometimes they become a trope
4 that lawyers just rely on entirely too much,
5 but I am thinking of -- and this is clearly
6 not the situation that we are dealing with,
7 but let's say, for example, you happen to have
8 a 10,000 square foot church building, and of
9 that 10,000 square feet, through some quirk of
10 fate, 6,000 of it is a gymnasium and 4,000 of
11 it is the sanctuary.

12 Because the gymnasium happens to
13 be the bigger portion of that church, does
14 that kick that church out of church or place
15 of worship? Again, I'm not inviting you to
16 answer that, because it is a hypothetical. It
17 is not what we are dealing with here, but to
18 an extent, I'm trying to kind of work through
19 the analysis that you are applying and just
20 trying to see how it works in real life, which
21 I think you are very familiar with. I'm not
22 suggesting that your analysis doesn't gel with
23 real life, but I'm just trying to work through

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1 it.

2 THE WITNESS: Right.

3 VICE-CHAIRPERSON ETHERLY: So you
4 may --

5 THE WITNESS: If I may say, you
6 did pose a hypothetical, but if there was a
7 hypothetical that came to me like that, then
8 that would be something I would question and
9 I would then --

10 VICE-CHAIRPERSON ETHERLY: Perhaps
11 dig a little deeper.

12 THE WITNESS: -- dig deeper. I
13 would, you know, press the applicant, what is
14 this gymnasium here; can you tell me what it
15 is and provide documentation that it is still
16 related to the overall use you are asserting.

17 VICE-CHAIRPERSON ETHERLY: But
18 then let me perhaps follow the Appellant's
19 argument a little further. So you have just
20 indicated that to an extent you made some
21 assumptions based on the overall purpose of
22 the organization.

23 That is a little bit of an open

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1 door that, if I'm the Appellant, I am going to
2 kind of probe a little bit and try to
3 ascertain -- Well, to an extent then, aren't
4 you really giving just the benefit of the
5 doubt to the organization that it is what it
6 says it is, without necessarily looking very
7 closely at what is happening in those four
8 specific rooms that you pointed out?

9 Again, I think I understand the
10 logic behind it, and again I'm not inviting a
11 look now, but based on your understanding of
12 the overall purpose of the organization and
13 from the standpoint that you've tried to look
14 at this as restrictively as possible in terms
15 of sorting out which rooms you would include
16 in your gross floor area kind of analysis, you
17 felt the fellowship lounge, the chanting room
18 and the large and small sanctuaries were
19 indisputably or very clearly spaces for
20 religious assembly.

21 THE WITNESS: I would agree. I
22 would also add that any application that comes
23 before me does have a characterization of use,

1 and we do not blindly accept the purported use
2 at face value. We have to see that
3 application in context of what is represented
4 in the plans, what supporting materials are
5 shown as well. But if something then is at
6 variance -- if someone says I'm doing a
7 bowling alley and I don't see any lanes, I am
8 going to probe further.

9 VICE-CHAIRPERSON ETHERLY: And you
10 are going to question that. Okay. Thank you.
11 Thank you, Madam Chair.

12 CHAIRPERSON MILLER: i want to ask
13 you: Where do you get this emphasis that you
14 put on religious assembly? For instance -- I
15 mean, we have a regulation that just talks
16 about place of worship. So I don't know
17 whether it is coming from cases or personal
18 experience or what.

19 I mean, what if you had -- This is
20 rolling it into a few questions -- but a,
21 quote, "church," "temple," whatever, that was
22 divided into a lot of small spaces? That
23 could still constitute a place of worship.

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1 Isn't that right?

2 THE WITNESS: It certainly could.
3 Again, it leads me back to each application,
4 I think, has to be seen on its own merits, and
5 because the materials that talked about the
6 organization overall, talked about its
7 purposes, plus the representation that this
8 was a place of worship, then, well, where in
9 the plans can I -- can anyone see that this
10 activity would be occurring?

11 Then I looked at the floor plans.
12 It might have manifested itself in a
13 completely different arrangement, but those
14 were the rooms that seemed to me most related
15 to the religious assembly and perhaps, by
16 extension, the places where worship would
17 occur.

18 CHAIRPERSON MILLER: I guess we
19 are kind of getting elementary in digging, but
20 I'm just curious about the assembly question.
21 Is that something that -- Where do you draw
22 that from? Is it drawn from -- you know, that
23 there needs to be a place for assembly? Is

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1 that what you see in general in reviewing
2 churches and temples and whatever or is it in
3 case law? It's not in our regulations. There
4 is no discussion about assembly.

5 THE WITNESS: I guess just my
6 career experience in reviewing plans for
7 churches, temples, mosques, other places of
8 worship, is -- I've always found a place for
9 religious assembly.

10 CHAIRPERSON MILLER: I think the
11 Appellant raises issues such as, well, even
12 those these places may be labeled for
13 religious assembly or whatever, that there are
14 going to be other kinds of assembly.

15 Have you reviewed other plans that
16 are laid out like this that are actually for
17 secular uses? Can you tell by the plans alone
18 or is it -- I understand that you read the
19 plans in conjunction with the other
20 submissions.

21 THE WITNESS: Right.

22 CHAIRPERSON MILLER: Do you
23 understand my question?

1 THE WITNESS: Well, yes. I guess,
2 in -- Let me try this. The context that I
3 reviewed the plans was in the context of an
4 assertion that says it's a place of worship.
5 Therefore, I am going to look to that.

6 As to whether there can be an
7 identical building with other spaces that
8 perhaps are similar or maybe the same size for
9 some other purpose, but if -- The bottom line
10 is, if the permit is approved and ultimately
11 affirmed by this Board and then if some other
12 activity occurs, it would be an enforcement
13 issue.

14 CHAIRPERSON MILLER: I don't have
15 any other questions. You are finished with
16 your testimony?

17 THE WITNESS: Yes.

18 CHAIRPERSON MILLER: So we are
19 ready for cross-examination then.

20 THE WITNESS: Yes.

21 CHAIRPERSON MILLER: I'm sorry. I
22 saw a hand go up. Are you with the ANC or
23 anything? Residents can be part of a case and

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1 called upon by a party, but that's all. So if
2 you are not affiliated with a case, I don't
3 believe that we would -- It's not in the
4 procedure. It is in special exceptions and
5 variances, but not appeals.

6 Okay. Are you ready to proceed.
7 We can take a five-minute break, if anybody
8 needs to make any calls or anything.

9 (Whereupon, the foregoing matter
10 went off the record at 3:49 p.m. and went back
11 on the record at 4:02 p.m.)

12 CHAIRPERSON MILLER: We are back
13 on the record. Cross-examination by
14 Appellant.

15 MR. MAGNUS: Thank you very much,
16 Madam Chair. I have a couple of questions for
17 Mr. LeGrant based on his testimony today and
18 a couple of others based on the testimony from
19 last week. I will go in that order, if it is
20 okay.

21 CROSS-EXAMINATION

22 BY MR. MAGNUS:

23 Q Good afternoon, Mr. LeGrant.

1 A Good afternoon.

2 Q First question based on your
3 testimony today: You referred to the math
4 that you did as having included two above-
5 ground floors, and you also referred to a
6 mezzanine level.

7 A Yes.

8 Q And then you said that your
9 denominator excluded the parking level,
10 because D.C. zoning law so prescribes. This
11 would be a mundane question.

12 Can you just say where D.C. zoning
13 law prescribes that, and what the mezzanine
14 level is?

15 A Okay. First, the lowest level of
16 the building is deemed a cellar, and in the
17 definition of gross floor area in Section
18 199.1 it talks about those areas that included
19 in the gross floor area calculations and those
20 excluded, and cellars are specifically
21 excluded.

22 In terms of the mezzanine, there
23 is an area -- it is labeled mezzanine. It

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1 doesn't truly meet the definition of
2 mezzanine in the zoning regulations.
3 Nonetheless, it is a separate area, and I
4 believe it is for mechanical room purposes.

5 Q Thank you. The section that you
6 identified a moment ago, 199.1, on gross floor
7 area -- is that connected in the regulations
8 in any way to decisions about the matter of
9 right category?

10 A No. Section 199.1 lists the terms
11 employed in the zoning regulations as specific
12 definitions of commonly used terms. It is in
13 the permitted uses sections of each zoning
14 district, and in this case the R-1 District,
15 that distinguishes what uses are allowed as of
16 right.

17 Q Thank you. The next question goes
18 to the analytical methodology that you
19 described today, which we were not previously
20 familiar with, in which you go through an
21 initial analysis focusing on religious
22 assembly use, and then a sort of a second
23 stage of your analysis which is a little bit

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1 more mystical perhaps where you decide whether
2 the overall purpose -- on the totality of the
3 information, the overall purpose is worship or
4 primary purpose of a building is worship.

5 My question is: Did that
6 analytical approach exist before? Has it ever
7 been used before or is something that you
8 developed in order to process this case?

9 A I would say my overall analytical
10 approach was as in response to a question from
11 the Board. If a particular building has
12 several uses identified with that building,
13 then the test for me, and the test is not a
14 new analysis -- it is one that I have used in
15 my career in other cases -- is what is a
16 predominant use of the structure.

17 I don't believe it is enumerated
18 specifically in the zoning regulations, but
19 that's what I employed in looking at the
20 program spaces of this particular structure,
21 and then, as I talked about, the percentages
22 and the labeled rooms and the uses of those
23 rooms.

1 Q Okay. I'm sorry, I didn't mean to
2 ask about the overall -- the fact that you are
3 trying to identify the primary use. I'm
4 saying, in this context of a building that has
5 been put forward as potentially a house of
6 worship, this two-stage analysis where you
7 look for indications that may be religious
8 assembly might occur in one or more rooms in
9 a sort of a first stage, and then in the
10 second stage you look at other sources of
11 information, including the purpose of the
12 Applicant or the motivations that it may have,
13 the history that it has, whatever else, and
14 then based on the totality of the information
15 you bring into play the concept of worship.

16 Is that an approach that has ever
17 been applied before, to your knowledge, in any
18 case in the District of Columbia or was it
19 something used for the first time in this
20 case?

21 A Well, I couldn't certainly speak
22 to all the cases in the District of Columbia,
23 as I have 18 months experience. I would say

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1 one of the primary reasons this analysis was
2 done in this way was that the review was
3 started by my predecessor, Mr. Bill Crews, and
4 he, in response to, I guess, concerns or
5 questions in the community about the proposed
6 use, sought out information about the overall
7 purpose of the organization. He used that in
8 his analysis, in his determination, and then
9 I independently looked at that information to
10 see if I could agree with that analysis to
11 come to the same conclusion.

12 Q So the use of that approach in
13 this case was dictated by the fact that Mr.
14 Crews had already looked at some things that
15 were much broader than the building plans or
16 the room by room labels? I just want to
17 understand the pedigree of this analytical
18 method. It's an interesting one.

19 A Okay. Well, I would just say that
20 for this case that is how I got to the point
21 of describing in this forum the analysis. As
22 to whether if I use this analysis, you know,
23 I don't believe I use this type of two-tier

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1 analysis in other cases here in the District,
2 but I certainly have in my career in looking
3 at other uses, zoning matters I have to deal
4 with.

5 Q You mentioned that at the second
6 stage, the totality stage, of the analysis you
7 looked at a couple of letters, and you were
8 kind enough to include those in the package of
9 materials that you served on us from the
10 Interfaith Council and another one from
11 another group that had an opinion on the
12 matter.

13 I was struck by the fact that
14 there were two other letters you didn't
15 mention having checked or consulted or
16 considered, and I wonder if you really did
17 consider them but just forgot to mention it or
18 whether they really were ignored.

19 One is a letter from the Committee
20 of 100 for the Federal City, which we added to
21 the record of this appeal on Friday of last
22 week. The other -- I guess it wasn't a
23 letter. it was actually a resolution that had

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1 been adopted by the local ANC.

2 At the totality stage, did you
3 consult either one of those?

4 A Well, the first one you mentioned,
5 truthfully, I have not read it. My review and
6 analysis occurred before receipt of said
7 letter, the letter of the Committee of 100.

8 The ANC letter -- I do recall
9 looking at that letter, but for me, the issue
10 was is -- In replicating Mr. Crews' review of
11 whether this organization appeared to be an
12 organization that has religious purposes, I
13 saw those two letters as attesting to that.

14 I know that the ANC letter, I
15 believe, disputed that, but ultimately I
16 relied on those other two letters.

17 Q You regard Mr. Crews'
18 determination as a determination that this
19 organization had religious purposes? I just
20 want to make sure I heard you correctly.

21 A Well, Mr. Crews' review included
22 looking at information by Soka Gakkai
23 International to see if, in fact, it was an

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1 organization that engaged or had facilities
2 for religious purposes, and that information
3 talked about the other facilities that Soka
4 Gakkai International has in other
5 jurisdictions.

6 Q Another item you said you
7 considered at the totality stage of your
8 review was the tax status of SGI under Section
9 501(c) of the Internal Revenue Code.

10 As you were paying attention to
11 that, did you pay attention to the date on
12 which that tax status had been determined?

13 A No, I do not recall the date. I'm
14 sorry.

15 Q And none of the information that
16 the Friends of Babcock-Macomb had supplied to
17 Mr. Crews on the aged nature of that tax
18 status determination and the change in facts
19 that had occurred since it was rendered --
20 none of that was brought to your attention by
21 Mr. Crews or anyone else in the Zoning Office?

22 A It was not brought to my attention
23 by Mr. Crews.

1 Q I think I only have one more
2 question about your testimony today.

3 You said that the context -- two
4 more questions about your testimony today.
5 You said that the context for your review was
6 SGI's claim that this was a church or place of
7 worship.

8 Does that mean that, in effect,
9 you answered a yes or no question: It either
10 is or isn't a place of worship? As opposed to
11 looking at this situation and making a
12 decision about which regulatory category most
13 nearly applies or most appropriately applies?

14 In other words, did you treat this
15 as a yes or no case about whether it was a
16 house of worship or did you look at the
17 facility, the proposed facility, and look at
18 all of the regulatory categories and figure
19 out which one was the best fit?

20 MS. PLEASANT: Objection to the
21 form of the question, Madam Chair?

22 CHAIRPERSON MILLER: Why?

23 MS. PLEASANT: Because the

1 question, number one, is, I would say,
2 leading. He is asking him to state whether or
3 not he determined yes or no if it is a place
4 of worship.

5 I would ask that he rephrase the
6 question.

7 CHAIRPERSON MILLER: It seemed
8 like an approach question. Sounds like, did
9 you look at this and decide, oh, is this a
10 place of worship or not. Is that how you
11 approached it, or did you approach this as,
12 oh, what is this, is this -- and look at all
13 the regulations? Is this a house of worship?
14 Is this a community center? Is that what you
15 are saying?

16 MR. MAGNUS: That's right.

17 CHAIRPERSON MILLER: So what was
18 your approach? I don't see the problem with
19 that.

20 THE WITNESS: Yes, I looked at the
21 issue as is this a place of worship, and I did
22 not -- That was the key, crucial question
23 before me, not to entertain other scenarios of

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1 uses.

2 BY MR. MAGNUS:

3 Q Thank you for that. One last
4 question about your testimony today. The very
5 next thing you said was that if other activity
6 occurs or if there is some indication that the
7 facility is not actually being used primarily
8 as a place for worship, assembly for the
9 purpose of worship, then enforcement action
10 could be taken.

11 In that statement, you picked up
12 on something that Mr. Crews had said in the
13 actual letter that he issued in early March,
14 that somehow DCRA would be able to intervene
15 if it appeared that worship was not actually
16 turning out to be the primary use of this
17 facility.

18 Very briefly, because I'm sure it
19 is a complicated topic, but can you explain
20 how you could do that consistent with the free
21 exercise guaranty in the First Amendment of
22 the Constitution?

23 A Well, I guess I would certainly --

1 If the question came before me, I would seek
2 the advice of counsel. But nonetheless, as
3 the case with any use of any facility, if it
4 is operated contrary to the approvals or its
5 ultimate issued Certificate of Occupancy, it
6 is a matter of enforcement, and we do an
7 investigation, and we have to then come to
8 some conclusion as to whether something is
9 exceeding the scope of -- it is in conflict
10 with its issued Certificate of Occupancy or
11 exceeding the scope thereof.

12 Q You think once this facility is up
13 and running and has a Certificate of
14 Occupancy, you can then sniff around about how
15 it is actually being used and regulate the way
16 it is used in order to ensure that worship
17 remains the primary activity?

18 A Well, I would not use the word
19 "sniff around." On the basis of a complaint,
20 we would investigate this or any use of any
21 building that was being used contrary to its
22 approval.

23 Q I'll move on. Now I have just a

1 couple of questions from the earlier
2 testimony.

3 You in your floor space
4 calculations used a denominator -- As I
5 understand it, you had a gross floor area of
6 11,247 square feet, and then you had --
7 Actually, the most pertinent denominator that
8 you used was something a little bit less than
9 that.

10 I guess I'll start by just asking:
11 What was the actual number of the denominator
12 that you used in order to generate these 56
13 percent and 44 percent estimates?

14 A Yes. It's the rooms that we
15 discussed, I think, in detail now, total up to
16 be 4,934 square feet.

17 Q That's the numerator. What was
18 the denominator, sir? 4,934 is 56 percent of
19 what?

20 A Of the total would be -- let me
21 just add them up here. Let's see -- 7,706
22 square feet.

23 Q 7, 706 square feet?

1 A Yes.

2 Q That was the relevant denominator
3 that you used?

4 A Yes.

5 Q To get those percentages?

6 A Yes.

7 Q Okay. In their pleadings, the
8 Applicant used a denominator of a little more
9 than half of that, 4821 square feet. What did
10 you think of that?

11 A Well, they certainly submitted
12 their own analysis, which I was happy to look
13 over, but as I think I have stated before, I
14 did an independent analysis. They assert
15 certain square footages. I've heard lots of
16 different figures used, and looking at the
17 plans themselves, the totals that I came to in
18 a zoning computation sheet and then the
19 figures of the rooms, scaling off the sizes of
20 those rooms -- that's how I came up with the
21 numbers I came up with.

22 Q In your testimony last week and
23 this week, you spoke about some sort of a

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1 legally required connection between the number
2 of off-street parking spaces and the number of
3 seats or the available space for seats in the
4 largest room in the facility, in this case the
5 larger of the sanctuary rooms. This was the
6 first we had heard of this issue.

7 Again, another mundane question.
8 Can you explain what the law or the uncodified
9 DCRA practice is in that regard, please?

10 CHAIRPERSON MILLER: Can I ask a
11 question, just so we understand where you are
12 going. How is this related to whether the
13 Zoning Administrator made an error in
14 determining that this building wouldn't be
15 used for a place of worship?

16 MR. MAGNUS: Mainly, I want to
17 find out why he zeroed in on the sanctuary
18 room in that regard and treated it differently
19 from other rooms which were also in his
20 numerator. But I really, honestly don't
21 understand what the connection is between --
22 that somehow the amount of off-street parking
23 is somehow keyed to the size of the sanctuary

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1 rooms.

2 CHAIRPERSON MILLER: I mean, I
3 will let him answer the question, but I think
4 in general he is going to tell you that we
5 have a table of parking requirements, and some
6 of them go to assembly space.

7 MR. MAGNUS: So that, even for a
8 project that is in the matter of right
9 category, there is a certain need to
10 internalize a certain amount of the parking
11 that is likely to be created?

12 CHAIRPERSON MILLER: It's probably
13 better if you answer this, briefly.

14 THE WITNESS: Yes. Well, the
15 Chairman is correct in that we have a section
16 of the Code -- and this is set forth clearly
17 in the bottom of the zoning computation sheet,
18 which I believe you have a copy of. At the
19 bottom it talks about under Section 2101.1 for
20 the -- It's labeled "Churches." For churches
21 without fixed seating the area of a main
22 sanctuary is divided by 7 as a seven square
23 feet per person standard, and then the parking

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1 requirement is one space per 10 persons.

2 So the result of the math of this
3 was a requirement of 17 spaces for this main
4 sanctuary's area available for seating, which
5 I calculate as 1,207 square feet.

6 BY MR. MAGNUS:

7 Q So matter of right isn't really
8 matter of right, if you don't have one parking
9 spot for every 10 people that you could fit in
10 your main assembly room?

11 A You're correct in that any matter
12 of right use, nonetheless, has certain
13 development standards, including requirements
14 for lot occupancy, setbacks, height of the
15 building itself, and for certain required
16 provisions, in this case parking.

17 If, for example, an application
18 came in that did not have sufficient parking,
19 it could not be approved. It would require a
20 variance from that standard from this body.

21 Q I appreciate your indulgence. We
22 really made every effort to understand the
23 decision that was made here, and asked a

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1 million questions of the Zoning Administrator,
2 and this was not something that was ever
3 explained to us.

4 The Zoning Administrator who was
5 in office when this whole matter began, Mr.
6 Bellow, sent an e-mail to the Chair of ANC-3C
7 at the very, very outset of this proceeding in
8 which he said that, in order to find that a
9 building qualifies as a place of worship, it
10 would be necessary to find that the primary
11 reason for assembling in that building is to
12 jointly engage in worship.

13 My question to you is: Do you
14 agree with that characterization, and did you
15 find that the primary reason for people to
16 assemble in this building would be to jointly
17 engage in worship?

18 MS. PLEASANT: Objection,
19 relevance, and he didn't lay sufficient
20 foundation.

21 CHAIRPERSON MILLER: Also, aren't
22 you supposed to be cross-examining him on his
23 testimony and his analysis?

1 MR. MAGNUS: The fact that Mr.
2 Bellow was the author of this makes actually
3 no difference. I'll retract it to that
4 extent.

5 BY MR. MAGNUS:

6 Q Is the right standard, in your
7 view, that the primary reason for assembling
8 in the building has to be to jointly engage in
9 worship? Is that the right standard or not?

10 A I don't think I can be that
11 simplistic to say that there is one standard.
12 As I believe I testified, I have tried to look
13 at the application in context of its totality
14 of information, but I have stated that, to me,
15 one of the key characteristics was the areas
16 -- if there were predominant areas reserved
17 for religious assembly use.

18 Q That's a, no, you don't agree with
19 that synthesis for summary of the standard?

20 A I would say no.

21 Q Okay, thank you. The room that is
22 labeled chanting room that you identified as
23 one that had a -- that was primarily for

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1 religious assembly , although maybe or maybe
2 not worship -- that came about later in the
3 analysis, but you said this was one of the
4 four rooms that went in the numerator -- had
5 different names in plans and drawings that
6 were submitted to your office.

7 Did you take that into account in
8 deciding how to treat this room, in your
9 calculations?

10 A The plans -- The only plans I saw,
11 it was labeled chanting room.

12 Q You never looked at any of the
13 earlier --

14 A No. No, I was not given plans of
15 earlier iterations of the project. I looked
16 at this -- the plan submitted with the
17 building permit application.

18 Q Thank you. In making your
19 determination, you must have -- This is a
20 little bit of a less mundane question. You
21 must have envisioned various uses and compared
22 them to some working definition of the term
23 worship.

1 At last week's hearing, the Chair
2 suggested -- I thought she suggested, or maybe
3 she just was asking a question -- that if she
4 and I were having a discussion about the Old
5 Testament, that maybe that might qualify as
6 worship. I said I didn't think that that
7 would qualify as worship. I thought it would
8 be a discussion of the Old Testament, but not
9 worship.

10 I'm wondering what is your view on
11 this?

12 MS. PLEASANT: Objection, compound
13 question.

14 CHAIRPERSON MILLER: Well, I am
15 also -- I mean, you are throwing these kind of
16 open questions at the Zoning Administrator
17 when, in fact, he specifically applied certain
18 standards, and I think that is what is at
19 issue, not does he agree with this or that.

20 MR. MAGNUS: I am trying to
21 understand, when he did the totality stage of
22 his analysis -- and I will have some more
23 questions about the things that he actually

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1 considered at that stage, but what he was
2 treating and not treating as worship.

3 CHAIRPERSON MILLER: That is a
4 better question, in my view, if that goes to
5 his testimony.

6 BY MR. MAGNUS:

7 Q As an example, is a discussion --
8 This is a building where a lot of discussion
9 is going to occur. Is a discussion about the
10 Old Testament something that you would -- If
11 it is a building where people are going to
12 spend the whole day talking with each other
13 about the Old Testament, is it a place of
14 worship or not?

15 MS. PLEASANT: Madam Chair,
16 objection to that question in terms of
17 relevance, and also objection to the other
18 question, asked and answered.

19 CHAIRPERSON MILLER: Yes, I agree,
20 because I think you can go anywhere. You can
21 ask all these hypothetical questions. We will
22 be here all day. You know, is doing yoga
23 religion? Is doing, you know, all these

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1 different things religion, in your view?

2 I think what you need to ask him
3 is what were his standards. What did he
4 think. What does he consider in the totality.

5 MR. MAGNUS: I need to know
6 whether discussions about religious texts, in
7 his view, as he applied his views in making
8 the determination that he made, amounts to
9 worship or not?

10 CHAIRPERSON MILLER: Why is that?

11 MR. MAGNUS; Discussions about
12 religious texts are one of the important
13 categories of things that one might expect to
14 happen in a fellowship room or elsewhere in
15 the rooms that he found were for religious
16 assembly.

17 MS. PLEASANT: Objection, Madam
18 Chair, relevance, foundation, and he has
19 already testified.

20 CHAIRPERSON MILLER: I think you
21 can question him on his testimony, but not on
22 all your different versions of what may or may
23 not be worship. If he said, for instance --

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1 I said this to you before. If he said I
2 considered the totality -- He says he
3 considered the plans, what was identified.
4 Pin him down on exactly what he considered,
5 because you are saying he may have made an
6 error in what he considered, but I don't think
7 you can just ask him these wild questions
8 about --

9 MR. MAGNUS: I have only one other
10 question --

11 CHAIRPERSON MILLER: -- is this
12 religion, is that religion?

13 MR. MAGNUS: It is not about
14 whether it is religion. It's worship.

15 CHAIRPERSON MILLER: Worship. Is
16 this worship? Is that worship. You could ask
17 a billion questions on that.

18 MR. MAGNUS: I have only one other
19 hypothetical. I don't have a billion. I have
20 one other. I will turn to that one, and I
21 think you will agree that it is much more
22 tightly related to the project at hand.

23 BY MR. MAGNUS:

1 Q Supposing you and I are sitting in
2 a room and talking about world peace.

3 MS. PLEASANT: Objection,
4 relevance.

5 MR. MAGNUS: Relevance? We have
6 got an organization here whose fundamental
7 purpose is peace culture and education.
8 Couldn't be more relevant. I'd like to know,
9 if we are having a conversation with each
10 other about world peace, are we worshipping,
11 in your view?

12 MS. PLEASANT: Madam Chair, again
13 objection. It is asked and answered. He
14 needs to state a conclusion.

15 MR. MAGNUS: Not asked or
16 answered. If we have a conversation about
17 world peace --

18 CHAIRPERSON MILLER: I don't think
19 that is --

20 MR. MAGNUS: -- is that worship?

21 CHAIRPERSON MILLER: I don't think
22 that is quite appropriate, but I think you
23 could ask him the fact that this was an --

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1 that is an organization that has peace as part
2 of its program or something, how that may have
3 influenced his decision.

4 MR. MAGNUS: I'm trying to bear
5 down very narrowly on the use of this facility
6 or likely use of this facility, which is to
7 have discussions about -- and then not just
8 discussions, but planning sessions, and then
9 not just planning sessions but chanting
10 sessions about world peace; and I am on my way
11 directly to that, and I need to know, first of
12 all, if we are having a conversation about
13 world peace, whether we are worshipping.

14 CHAIRPERSON MILLER: Why don't you
15 go directly to your question? Is your
16 question if there is an assembly devoted to
17 peace, is that worship? Is that your
18 question?

19 MR. MAGNUS: I'm happy to have him
20 answer that question, sure. That's not my
21 only question. I'm very happy to hear an
22 answer to that.

23 CHAIRPERSON MILLER: Did you

1 consider what the worship is about when you
2 look at the space devoted to worship? Do you
3 consider if it is devoted to peace, if it is
4 devoted to a certain god or another god? How
5 does that factor into your analysis?

6 THE WITNESS: The short answer is
7 no.

8 BY MR. MAGNUS:

9 Q I don't know if that is an answer
10 to her question or to mine, which is a
11 different question, which is: If we are
12 sitting together in a room and we are
13 discussing or planning or chanting in parallel
14 with each other about world peace, is that
15 worship for purposes of the decision you made
16 and the law you had to apply?

17 MS. PLEASANT: Madam Chair, same
18 objections.

19 MR. MAGNUS: I don't know how that
20 could be considered an out of bounds question.

21 CHAIRPERSON MILLER: It is, I
22 think.

23 MR. MAGNUS: That is exactly what

1 this chanting room is about.

2 CHAIRPERSON MILLER: Oh, we are
3 talking about chanting? You're talking about
4 chanting. You're talking about discussing.
5 Okay, if your question is: When he looked at
6 the chanting room, did he consider what they
7 were chanting about in his decision making?

8 MR. MAGNUS: You asked him that.
9 I'm asking him something slightly different
10 that involves a conclusion about whether it is
11 worship or not, and if he doesn't know, he can
12 say he doesn't know.

13 CHAIRPERSON MILLER: What is your
14 question?

15 MR. MAGNUS: My question is: If
16 we are in a room together, we have assembled
17 in a place of assembly -- okay? -- and the
18 topic between us is world peace, and we are
19 either discussing or maybe we are going beyond
20 discussing and we are jointly making plans to
21 promote world peace, or maybe we are even
22 going further and trying to accomplish world
23 peace by chanting together, are we

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1 worshipping, in your view?

2 MS. PLEASANT: Same objections,
3 Madam Chair.

4 CHAIRPERSON MILLER: I think that
5 is right for her to object. The point is what
6 he considered in making his decision, not what
7 he considers as religion. It is what did he
8 consider in making his decision.

9 MR. MAGNUS: And if he didn't
10 envision this particular use at all, then he
11 can say I didn't envision that particular use,
12 and so it didn't factor into my decision. I'm
13 guessing that he --

14 CHAIRPERSON MILLER: The question
15 is did it factor into his decision whether or
16 not they were assembling for world peace? Is
17 that your question, and whether or not this
18 was --

19 MR. MAGNUS: I have been very
20 clear about what my question is. If we are in
21 a room together -- I don't care what the label
22 of the room is, but you can call it a chanting
23 room or a fellowship lounge, but if we are in

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1 the room and the use, the activity that we are
2 engaged in, is discussing or planning or
3 chanting in parallel about world peace, are we
4 worshipping? Does that count toward your
5 determination that this is a place of worship
6 or does it count against it?

7 MS. PLEASANT: Madam Chair --

8 MR. MAGNUS: I know you object.

9 MS. PLEASANT: -- objection. It
10 is not relevant and does not go to the use of
11 the building, and there has not been a
12 foundation properly laid for this line of
13 questioning.

14 CHAIRPERSON MILLER: I believe
15 he's answered what he considered in making the
16 determination with respect to those rooms. If
17 you want to elaborate, Mr. LeGrant, as to
18 anything else you considered or didn't
19 consider, you can. But I don't think you have
20 to answer that question directly.

21 THE WITNESS: Yes, I don't think I
22 need to answer the questions.

23 BY MR. MAGNUS:

1 Q In the totality stage of your
2 analysis, you said you considered the
3 materials that were broadly relevant to the
4 purpose for which the Applicant had been
5 established, what their overall program was
6 about. What did you regard those purposes as
7 being?

8 A Well, I believe my analysis would
9 have to see if those purposes were related to
10 the application for the place of worship that
11 was being applied for.

12 Q You said that, after going through
13 an initial stage of your analysis where you
14 looked for something that you referred to as
15 religious assembly, you then looked more
16 broadly at a range of things, including the
17 organization's charter or external indicators
18 of why the organization existed and what the
19 program is about, in order to make the jump
20 from religious assembly to place of worship.
21 That was the second stage in your analysis.

22 I would like to know what -- in
23 that context, what you observed to be or found

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1 to be the purposes for which this organization
2 had been established, and the nature of its
3 overall program. What were they?

4 MS. PLEASANT: Madam Chair,
5 objection. That is a mischaracterization of
6 his testimony.

7 MR. MAGNUS: If I described your
8 analytical method inaccurately, please correct
9 me.

10 CHAIRPERSON MILLER: I think what
11 he is referring to is -- and I got that
12 impression from Mr. LeGrant -- that he looked
13 at the plans and that he looked at other
14 submissions that came in and made a
15 determination based on the totality of the
16 information that this building would be used
17 as a place of worship; and it sounds like the
18 Appellant is just probing a little further as
19 to what in the materials you saw that led you
20 to that conclusion. Is that correct?

21 MR. MAGNUS: Not in that general
22 sense, no. I am specifically asking what he
23 observed about the purpose for which this

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1 organization has been put on this earth in the
2 first place, what they believe their program
3 is, what they state their program is.

4 He said that was part of what he
5 looked at, at this totality stage. I'm
6 wondering what he saw.

7 CHAIRPERSON MILLER: I think that
8 is a little bit broad, because we have to
9 focus on what error did he make. So what did
10 he rely on in his decision? Why should he
11 have to regurgitate everything that he saw in
12 these submissions.

13 MR. MAGNUS: This is about the
14 determination that he made. What did he
15 observe at that stage of his analysis about
16 this organization? What did he observe to be
17 their purpose, because somehow or other he
18 went from a decision about religious assembly
19 in certain rooms to a much different sort of
20 determination, that the fundamental -- the
21 primary reason for assembling in this building
22 was worship. So I want to understand that
23 part of his analysis, and one of the things he

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1 said he looked at was the organization's
2 charter and what its purpose was.

3 VICE-CHAIRPERSON ETHERLY: Would
4 perhaps a clearer way of formulating the
5 question be: Based on the record as you
6 understood it before Mr. Crews during his
7 analysis, were there or are there documents
8 that you could point to that helped to inform
9 or shape your decision as it related to the
10 overall purposes and objectives of the
11 organization?

12 THE WITNESS: I think I could
13 speak to that. The submissions included
14 information about the organization. I believe
15 it was part of the submissions, and I'm trying
16 to put my hands on some of them here. I think
17 there was a printout of the --

18 VICE-CHAIRPERSON ETHERLY: For
19 example, I'm looking at Exhibit Number 1,
20 which is -- actually, Exhibit Number 2, which
21 is part of the Appellant's submission where
22 the Appellant provided a printout of the
23 website page for SGI, which goes into some

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1 detail. Would that be illustrative of what
2 you looked at?

3 THE WITNESS: Well, there was a
4 document dated February 12, 2007, of Soka
5 Gakkai International Buddhist Center usage,
6 and it talks about some of the
7 characterizations of that -- of the uses
8 proposed for the building.

9 VICE-CHAIRPERSON ETHERLY:
10 Excellent. That would be the letter from Ms.
11 Prince.

12 THE WITNESS: Yes.

13 VICE-CHAIRPERSON ETHERLY: To Mr.
14 Crews dated February 12th.

15 THE WITNESS: Yes.

16 VICE-CHAIRPERSON ETHERLY: Okay.
17 And appended to that letter is Proposed Soka
18 Gakkai Buddhist Culture Center Usage, and it
19 runs through chanting sessions, study
20 sessions, so forth and so on.

21 THE WITNESS: Correct.

22 VICE-CHAIRPERSON ETHERLY: So that
23 would be representative of the documentation

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1 that you looked at to reach the conclusion
2 that you did regarding the purposes of the
3 organization?

4 THE WITNESS: Yes, and
5 specifically in context of this building.

6 BY MR. MAGNUS:

7 Q In that context, did you consult
8 anything at all that had not been specifically
9 prepared in connection with the regulatory
10 review that was going on in order to help
11 steer DCRa toward a specific result?

12 A Well, I looked at that
13 information. I looked at -- I think the
14 website page printout was something that is on
15 their website, and then the two letters I
16 mentioned as well, and the 501(c)(3)
17 determination status.

18 Q You did look at the information on
19 the website?

20 A I looked at the pages printed out
21 from the website.

22 Q Did you learn anything from
23 looking at those about the purpose of the

1 organization?

2 MS. PLEASANT: Objection,
3 relevance.

4 VICE-CHAIRPERSON ETHERLY: Not to
5 speak for the Chair, I think it is more of an
6 asked and answered. I mean, don't get me
7 wrong, Mr. Magnus. I understand, I think,
8 your frustration, but I think we are very,
9 very close to -- You are looking for a certain
10 answer that you can't get, and I'm not using
11 that flippantly. I'm simply saying that I
12 think what you are getting at is what did he
13 look at within the record before him to reach
14 his conclusions, and I think he has answered
15 that.

16 If what you are seeking is did you
17 look at anything beyond the record, I'm more
18 than happy to ask that question, because I
19 think it is appropriate, but I think the
20 answer is going to be no, but for the sake of
21 not putting words in the witness's mouth: Mr.
22 LeGrant, did you look at anything outside of
23 the documents that you have already referred

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1 to with regard to shaping your opinion and
2 your perspective on the organization and its
3 purposes?

4 THE WITNESS: I believe some of
5 the e-mails that Mr. Crews had, e-mail
6 correspondence. I looked at that as well, but
7 the rest of it is in the record.

8 VICE-CHAIRPERSON ETHERLY: Okay.
9 And to the best of your recollection, the e-
10 mail correspondence -- Was that reflective of,
11 again, explanatory text around the purposes
12 and objectives of SGI or do you recall it
13 being providing different or otherwise
14 materially distinctive information from what
15 you have already pointed to?

16 THE WITNESS: Those e-mails did
17 not inform -- further information about the
18 usage of -- either the usage of the space or
19 characterize their organization. It had to do
20 more with, you know, has this plan been
21 reviewed; yes, it is being held for
22 correction; what are the corrections, and so
23 forth; not to the purposes of the

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1 organization.

2 VICE-CHAIRPERSON ETHERLY: And let
3 me perhaps take it a step further. Did you
4 look at -- and I want to be very careful how
5 I phrase this, because there are
6 considerations here that I think are important
7 without needing to go into them.

8 Did you look at other faith based
9 models or structures of worship in terms of
10 making your determination with respect to SGI?
11 In reaching your decision, did you perchance
12 try to draw up some blueprint, if you will?
13 Again, I'm not trying to be -- what's the word
14 I'm looking for? I'm not trying to be
15 flippant with it. I'm trying to be very
16 careful around how I step here, but what I'm
17 trying to get at is: Was there some model of
18 faith or religion that you looked at in terms
19 of how it has been reviewed in other zoning
20 settings here in the District that perhaps
21 informed your thinking on this outcome?

22 THE WITNESS: No.

23 VICE-CHAIRPERSON ETHERLY: Okay.

1 THE WITNESS: I did not use a
2 model in that regard.

3 VICE-CHAIRPERSON ETHERLY: And I
4 recognize -- and I'm saying this as much to
5 Mr. Magnus as I am to Mr. LeGrant. I
6 recognize that these may not necessarily
7 reflect verbatim the questions that you are
8 looking to get at, but I think there comes a
9 point where this Board has to determine what
10 are the answers that we need to reach the
11 decision that we are going to reach, and I
12 think those questions are just as instructive
13 and somewhat speaks to what you are trying to
14 get at.

15 They may not take you directly
16 there, but I think this is a point where this
17 board has to be -- where I would like as one
18 colleague to be forceful in my direction to
19 you that I think those are more helpful
20 questions to us than what you are getting at.

21 MR. MAGNUS: You all had a chance
22 some questions, and I am certainly not trying
23 to abuse your indulgence or your patience

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1 here. Let me try and go in a different
2 direction.

3 BY MR. MAGNUS:

4 Q In the materials that you
5 consulted, did it come to your attention at
6 any point that SGI portrays itself to the
7 public as a lay organization? Did that have
8 any bearing on the decision you made?

9 A I do recall seeing that
10 characterization. No, it did not influence my
11 decision on this matter.

12 Q Did it come to your attention, and
13 did it have any effect on your analysis that
14 SGI had been separated involuntarily from the
15 Nichiren Shoshu sect of Buddhism more than 20
16 years ago?

17 MS. PLEASANT: Objection,
18 relevance.

19 CHAIRPERSON MILLER: Okay. I'm
20 just going to pause here for a minute. Mr.
21 Etherly has to leave us, but we still have a
22 quorum. He has a very important engagement at
23 the Wilson Building, and he is going to be

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1 transformed from a ZAP member to a Zoning
2 Commissioner. So next time you see him here,
3 which we hope you will see him here often, you
4 can refer to him as Commissioner.

5 VICE-CHAIRPERSON ETHERLY: Thank
6 you, Madam Chair, but I will most certainly
7 continue to participate in the case and will
8 be reading the record that represents the
9 completion of our proceedings today and look
10 forward to participating in the remainder of
11 this case. Thank you, Madam Chair.

12 CHAIRPERSON MILLER: Thank you.
13 So we have an objection to a question. What
14 was the question?

15 MR. MAGNUS: The question was
16 whether in his review he had become aware and,
17 if so, had it had any effect on the analysis
18 that he made, that Soka Gakkai was separated
19 in the early Nineties from the Nichiren Shoshu
20 branch of Buddhism through a decision that was
21 described in the press as an excommunication?

22 MS. PLEASANT: Objection,
23 relevance and lack of foundation.

1 MR. MAGNUS: There were numerable
2 press articles on this, all of which were
3 given to the Zoning Administrator. I don't
4 know if Mr. LeGrant saw them or not.

5 CHAIRPERSON MILLER: I'm not sure
6 of the difference between this one and the
7 previous question. He said he was aware that
8 they had represented themselves as a lay
9 organization, or something to that effect --
10 don't quote me on that -- and he answered that
11 -- This question is were you aware of
12 something else; if so, did that affect your
13 determination. I think that is okay.

14 THE WITNESS: I do not recall
15 specifically reading about the separation of
16 this organization from other organizations,
17 and in any event I did not believe it was
18 germane to the issue before me.

19 BY MR. MAGNUS:

20 Q In your analysis, did you consider
21 the intensity of use of individual spaces, and
22 in particular, did you consider the statement
23 by SGI's representatives at a meeting with

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1 neighbors that the sanctuary space is the
2 least used space, regardless of its size --
3 that it is the least used space in an SGI
4 culture center?

5 A Well, again, I do not recall
6 specifically reading about that
7 characterization of the representation it is
8 (quote/unquote) "the least used space."
9 Again, that did not figure into my analysis.

10 CHAIRPERSON MILLER: Does it
11 usually figure into your analysis if you are
12 reviewing permits for a church? Do you
13 usually question how often they are going to
14 use the space? I mean, isn't it true that in
15 a lot of these -- I'm making an assumption
16 here, but I think it's true that in a lot of
17 the churches they are mainly used on Sundays.
18 So that's only one day out of the week that
19 the big sanctuary is being used.

20 THE WITNESS: Yes, I guess my
21 answer is that, if the Applicant represented
22 themselves something about the intensity of
23 the use of the space, I would examine that,

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1 but in the absence of that, at a certain point
2 I have to accept face value the assertion that
3 a use is going to be used as characterized in
4 the application and as described in the floor
5 plans of a submitted building permit
6 application.

7 BY MR. MAGNUS:

8 Q Did you seek to inform yourself
9 about proposed or likely musical uses of this
10 new facility, marching bands and such like?

11 A I guess, no, I did not look into
12 proposed musical uses of the spaces.

13 Q Would it be fair to summarize that
14 you made your decision in this matter on the
15 basis -- exclusively on the basis of documents
16 that the Applicant provided that were entirely
17 geared toward the regulatory review?

18 MS. PLEASANT: Objection, asked
19 and answered.

20 CHAIRPERSON MILLER: I think he
21 did say --

22 MR. MAGNUS: The transcript will
23 show that it hasn't been asked, and it hasn't

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1 been answered. This is a summary of --

2 CHAIRPERSON MILLER: Well, I think
3 what has been answered is what he relied on.

4 MR. MAGNUS: I am wondering if it
5 is accurate to summarize it by saying that he
6 relied exclusively on documents that the
7 Applicant submitted that had been created for
8 the purpose of regulatory review.

9 CHAIRPERSON MILLER: I guess he
10 can answer it. I don't really -- I mean, he
11 is saying -- Say again what you relied on. Is
12 there something outside that category or would
13 you characterize it differently?

14 THE WITNESS: Well, I guess I
15 would have to answer: As in the case of any
16 building permit application, I do rely on the
17 representations set forth in those
18 applications, and in this case there was
19 additional information provided in response to
20 the previous Zoning Administrator's request
21 for additional information about the use.
22 And, yes, I did rely on the totality of that
23 information.

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1 CHAIRPERSON MILLER: Let me ask
2 you, though: When you say you relied, that
3 doesn't mean that that is the only thing you
4 looked at. Is that not right, because I
5 thought I heard today that you looked at the
6 ANC resolution, for instance?

7 THE WITNESS: Right. Not
8 exclusively relied.

9 BY MR. MAGNUS:

10 Q This is my last question, Madam
11 Chair, and it goes back to last week's
12 testimony.

13 You were asked a very simple
14 question by your counsel: What is the
15 dominant use, or what did you determine was
16 the dominant use. And this is according to my
17 notes. I don't know if there is a transcript
18 we can check at this point. But you said, my
19 analysis was that the dominant use is assembly
20 for religious purposes or for worship.

21 I guess I will phrase this
22 question conditionally. If that is what you
23 said, could you unpack it, please; and in

1 particularly, I would like to know, do you
2 think that assembly for religious purposes and
3 assembly for worship are co-extensive?

4 A I guess I see them very similar.
5 Assembly for religious purposes in the context
6 of an application for a place of worship was
7 my -- That was the context of my analysis.

8 I don't know if that speaks to
9 your question. When you said unpack it, I'm
10 trying to understand what you mean by unpack
11 it.

12 Q Well, there are two possible ways
13 to interpret it. One is to say that you were
14 suggesting that, when you say the dominant use
15 is assembly for religious purposes or worship,
16 that you meant to say that they were the same
17 thing. In other words, assembly for religious
18 purposes, i.e., for worship.

19 The other possibility is that you
20 meant to say the dominant use is assembly for
21 religious purposes -- I'm sorry. The dominant
22 use was assembly, and that some of the
23 assembly was for religious purposes, and the

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1 other assembly was for worship. In other
2 words, that assembling for religious purposes
3 and assembling for worship are not the same
4 thing.

5 MS. PLEASANT: Madam Chair,
6 objection. Is he testifying? Is he asking a
7 specific question? It is unclear to me as
8 well.

9 CHAIRPERSON MILLER: It is unclear
10 to me as well, but I thought one of your
11 question was does he equate religious purpose
12 -- predominant use for religious purpose with
13 predominant use for worship. Is that one of
14 your questions?

15 MR. MAGNUS: Yes. I think maybe
16 it was my inflection that threw everybody off.
17 I'll try one more time.

18 CHAIRPERSON MILLER: That's not
19 your question?

20 MR. MAGNUS: It may have been that
21 he meant to say the dominant use is assembly
22 for religious purposes or for worship, two
23 different kinds of assembly, or he may have

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1 meant to say the dominant use is assembly for
2 religious purposes or worship are the same
3 thing.

4 I just want to know if he thinks
5 they are the same thing or he thinks they are
6 two different things. So, yes, I guess maybe
7 you did summarize it accurately.

8 MS. PLEASANT: Again, I object. I
9 would say that he would need to rephrase the
10 question. He can't just ask what is his
11 conclusion. State it in the form of a
12 question.

13 BY MR. MAGNUS:

14 Q Do you think they are the same
15 thing?

16 CHAIRPERSON MILLER: Okay. This
17 is your last question. Is your question: In
18 his analysis of determining whether or not
19 this was a place of worship, did he consider
20 place for religious -- place to exercise
21 religious purpose or something the same as
22 place to worship? Is that what you are
23 getting at?

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1 MR. MAGNUS: I'm not even able to
2 follow how you are reformulating this.

3 CHAIRPERSON MILLER: Okay, we are
4 all getting tired. Okay.

5 MR. MAGNUS: This is -- Based on
6 his testimony, he said in answer to her
7 question -- She said what is the dominant use?
8 The dominant use is assembly for religious
9 purposes or worship, and I couldn't tell where
10 the emphasis was, whether he meant to say that
11 assembling for religious purposes and worship
12 are co-extensive and identical or whether he
13 meant to say that the dominant use was
14 assembly, some of which is for religious
15 purposes and some of which is for worship. I
16 need to know which of those constructs lay
17 behind the decision that he made.

18 Is assembling for religious
19 purposes and assembling to worship the same
20 thing or are they two different things?

21 MS. PLEASANT: Madam Chair, may I
22 interject? Is the question, can he explain
23 what is dominant use? Is that the question?

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1 CHAIRPERSON MILLER: I think the
2 question is what did he mean when he said that
3 the primary use was assembly for religious
4 purpose or worship.

5 THE WITNESS: Well, let me try
6 this, and perhaps at the end of the last
7 session I muddled my words.

8 The key, when I was looking at
9 these spaces, was whether they are a place for
10 religious assembly. That's what I was looking
11 for.

12 BY MR. MAGNUS:

13 Q We would still like to know
14 whether for purposes of this decision your
15 office and you as the decision maker treated
16 assembling for religious purposes as co-
17 extensive with assembling for worship.

18 A Because I am not in a position to
19 evaluate worship, I look for if there is a
20 place for religious assembly, and that is what
21 I found in these plans.

22 Q Then how do you get to worship
23 from there?

1 A As I described earlier, there is a
2 totality of a record that I looked at,
3 including the purposes of the organization,
4 the described usage for this building, the
5 building plans, the permit applications. That
6 totality led me to the conclusion that this
7 was a place of worship. That was the
8 conclusion, not -- Yes.

9 CHAIRPERSON MILLER: Madam Chair,
10 that is all the questions I have for the
11 witness this time.

12 CHAIRPERSON MILLER: Does the
13 Intervenor have any questions?

14 MS. PRINCE: I do.

15 CHAIRPERSON MILLER: Okay.

16 MS. PRINCE: I have two. I
17 promise.

18 CROSS-EXAMINATION

19 BY MS. PRINCE:

20 Q Mr. LeGrant, did your office
21 inquire about the way similar Soka Gakkai
22 International Centers are treated in other
23 jurisdictions when you rendered your decision

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1 about this particular center?

2 A I believe the previous Zoning
3 Administrator did look into other instances of
4 this organization in other communities in this
5 country.

6 Q And what did he find?

7 A My review of the record is that he
8 found that Soka Gakkai International operated
9 facilities in several other cities, I believe,
10 similar to the application applied for here.

11 Q And are you familiar with how
12 other jurisdictions treated the use?

13 A Only in the fact that in Mr.
14 Crews' analysis he did not find any instances,
15 in my understanding of the record, that they
16 were being operated in conflict with those
17 other jurisdictions' zoning regulations.

18 Q Thank you. Are you aware that the
19 Articles of Incorporation for Soka Gakkai
20 International were sent to Mr. Crews prior to
21 the time that he rendered a decision?

22 A I'm not 100 percent sure that I
23 saw that. It may have, in fact, occurred.

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1 MS. PRINCE: Thank you. That's
2 it.

3 CHAIRPERSON MILLER: Thank you.
4 Is anyone here from the ANC?

5 MR. MAGNUS: As I said last week,
6 we have not asked the ANC to come back and
7 participate in this appeal, nor have they
8 chosen to do so on their own. They spoke to
9 this issue before.

10 CHAIRPERSON MILLER: Okay, just
11 checking, because they would be entitled to
12 cross-examine if they were here.

13 Okay. I think it is time for the
14 -- Do you have some rebuttal questions? Is
15 that it?

16 MS. PLEASANT: No, we don't.

17 CHAIRPERSON MILLER: Okay, good.
18 Then it is time for the Intervenor.

19 MS. PRINCE: Good afternoon.
20 Again, my name is Allison Prince, and with me
21 is Bill Aiken, the Public Affairs Director of
22 Soka Gakkai International, the owner of the
23 subject property. We are in opposition to

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1 this appeal.

2 The facts of this appeal are very
3 straightforward. Soka Gakkai, a school of
4 Buddhism, purchased the property at 3417
5 Massachusetts Avenue for its first culture
6 center in the District of Columbia. In
7 Buddhism, Centers are akin to what churches
8 are to Christianity and are permitted as a
9 place of worship in the R-1-B zone district.

10 Upon receiving complaints from
11 neighbors, the Zoning Administrator looked
12 into whether the Center was, in fact, a place
13 of worship and permitted under the zoning
14 regulations.

15 After an extraordinarily highly
16 detailed factual inquiry, he found that the
17 Center constituted a place of worship, and
18 DCRA ultimately issued a full building permit.

19 The Friends of the Babcock-Macomb
20 House appealed the Zoning Administrator's
21 findings, and filed an untimely appeal of the
22 issuance of the first two permits as well as
23 an appeal of his ruling in the full building

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1 permit, both of which were timely.

2 Soka Gakkai will have one witness,
3 Bill Aiken, to testify today. Before Bill
4 begins his testimony, I would like to review
5 the standard for granting an appeal.

6 The Board is obligated to uphold
7 the Zoning Administrator's finding that the
8 Center is a religious place of worship if it
9 finds it reasonable for the Zoning
10 Administrator to believe that the Center
11 qualified as a place of worship under the
12 zoning regulations.

13 Fortunately, in this case the
14 Zoning Administrator documented his decision
15 and the evidence that he relied upon in making
16 it. The Zoning Administrator reviewed
17 evidence which has been provided to the Board
18 demonstrating how the Center will be used.

19 As Mr. LeGrant stated, the
20 evaluation that was done of this building was
21 very conservative. Rooms that would typically
22 be counted in other churches as part of the
23 religious worship, such as classroom

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1 buildings, were not even included in this
2 instance as part of the worship space. He
3 wanted to err on the side of being extremely
4 conservative in light of the concerns that had
5 been expressed.

6 This Board has information
7 regarding the exact use of every room in the
8 building and detailed information as well as
9 a matrix of the hours during which those rooms
10 may be used.

11 Contrary to what the Appellant
12 would have the Board believe, Soka Gakkai has
13 never changed how this building would be used.
14 It reduced the size, but the use has always
15 been the same. It was always going to be a
16 culture center.

17 The Applicant has not successfully
18 refuted any of the evidence upon which the
19 Zoning Administrator has based its decision.
20 In fact, the Appellant has put forth only
21 inconsistent and conflicting evidence of how
22 Buddhists worship to distinguish how he
23 believes the Center will be used.

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1 In his motion, for example, Mr.
2 Magnus has said three things which I find
3 conflict. First, he has said that Buddhists
4 don't worship at all, and that is based on the
5 Washington Post, by the way.

6 Then he said, well, they worship,
7 but it is primarily at home. And finally he
8 said that their only form of worship is
9 chanting.

10 So how on earth could the Zoning
11 Administrator have relied on that kind of
12 factual information in coming up with the
13 decision as he did?

14 The Appellant has provided no
15 evidence that the proposed use of the Center
16 will be inconsistent with Soka Gakkai Buddhist
17 worship. Accordingly, it cannot be said that
18 the Zoning Administrator's finding was
19 unreasonable, and we ask the Board to dismiss
20 this appeal -- I'm sorry, you already
21 dismissed the two aspects of the appeal. We
22 are not asking you to dismiss anymore, just to
23 proceed with the testimony of Mr. Aiken.

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1 CHAIRPERSON MILLER: Can I just
2 ask you what your source is for the standard
3 that you were saying for the Board in
4 reviewing whether or not the Zoning
5 Administrator erred?

6 MS. PRINCE: A number of court
7 cases that I have cited in my statement.

8 CHAIRPERSON MILLER: Okay, thank
9 you.

10 WHEREUPON,

11 BILL AIKEN
12 WAS CALLED AS A WITNESS BY COUNSEL FOR THE
13 INTERVENOR AND, HAVING PREVIOUSLY BEEN DULY
14 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

15 DIRECT TESTIMONY

16 MR. AIKEN: Good afternoon,
17 Chairman Miller and members of the Board. I
18 am Bill Aiken. I am appearing here today on
19 behalf of the property owner, SGI. I am here
20 to strongly defend the city's issuance of the
21 building permits associated with our place of
22 worship. I am also here to defend the ruling
23 of a former Zoning Administrator, Bill Crews.

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1 The Washington region of Soka
2 Gakkai International USA is the second oldest
3 Buddhist community in the Washington, D.C.
4 metropolitan area.

5 Since 1968 we have been located
6 just outside the District at 4603 Eastern
7 Avenue in Mount Ranier, Maryland. Our
8 membership has grown over the years, and the
9 Center now houses four congregations that we
10 refer to as areas. This includes the
11 Washington, D.C. area with a membership of
12 approximately 369.

13 This membership comes from
14 throughout the District, from Anacostia to
15 Georgetown, and reflects the diversity of the
16 District of Columbia.

17 On April 1, 2005, SGI USA
18 finalized its purchase from the Embassy of
19 Cape Verde of a vacant lot adjacent to the
20 Embassy at 3415 Mass. Avenue. This lot was
21 created pursuant to approval by the Mayor's
22 agent for Historic Preservation and other
23 relevant authorities.

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1 This land is now being used by the
2 SGI to construct a place of worship, which it
3 refers to as a culture center. The primary
4 purpose is to serve the religious needs of the
5 members of its Washington, D.C. area.

6 Since Buddhism is unquestionably a
7 religion, our centers are considered places of
8 worship in all areas in which they are
9 located. This is one of the many factors that
10 caused the Zoning Administrator to conclude
11 that our use is permitted in this zone.

12 First, I want to do a slight
13 digression on the use of the term community
14 center, since that has been raised and some
15 question has been raised of why would this
16 terminology be in place, because we are like
17 a community center.

18 In Buddhism -- and I will try to
19 keep this short. But in Buddhism we have what
20 are called the Three Treasures. They are in
21 Sanskrit Buddha, the Darma -- the Darma means
22 the teaching of the Buddha; the Buddha is the
23 Buddha -- and the Sangha. Sangha is best

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1 translated as community.

2 So we have the core of our
3 religion practice, this notion of these Three
4 Treasures of the Buddha, his teachings or his
5 awakening, and the community of practitioners.
6 These are the three sacred components of
7 Buddhism, if you will.

8 Our centers were named by early
9 immigrants, largely Japanese born. For many
10 of them, English was not their primary
11 language, and I can assure you, they were not
12 aware of the other common use of the term
13 community center. For us, it has always
14 connoted the use that it is a center for the
15 use of the religious community.

16 So I think it is important to
17 share this, because, yes, it has been a part
18 of our practice. We also call some of our
19 centers Activity Centers if they are small,
20 and if they are larger, we call them Culture
21 Centers. That is kind of -- I mean, we could
22 split hairs on that one, but that is roughly
23 how it goes.

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1 They are all centers. They are
2 all there for the religious community of SGI,
3 and they all do basically the same thing.

4 As designed, the building will be
5 -- Well, I think testimony has already been
6 given about the size of the building. I put
7 roughly 8,000 square feet, but I will defer to
8 the most precise measurements on this, of
9 program space.

10 In addition, there will be one
11 level of below-ground parking, and I should
12 note that the square footages cited by the
13 Appellant earlier are grossly overstated.

14 The church will be dedicated to
15 the religious practices of its faith community
16 and to functions related to the spiritual
17 support of that community. An overview of its
18 facilities is set forth in the detailed plan
19 depicting the use of every single room in the
20 building.

21 While we are protective of our
22 religious traditions, we chose to provide the
23 Zoning Administrator with an extraordinary

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1 level of detail regarding our exact use of the
2 building. I think this is something that
3 would not even be expected for other churches
4 such as the Mormon Church or others who would
5 be expected to go into such precise level of
6 detail about how every room gets used.

7 We did it with a sense of
8 reservation, but we understood that we wanted
9 to provide as much information as we
10 reasonably could so that a decision could be
11 made on the facts.

12 SGI USA is a 501(c)(3) nonprofit
13 religious corporation, incorporated in the
14 state of California in 1963, registered in the
15 city of Columbia. I believe, if we were a
16 peace advocacy organization, we could not be
17 organized under 501(c)(3). We would have to
18 be organized under some other advocacy sort of
19 group, but we are, first and foremost, a
20 religious organization.

21 Our purpose, our exclusive
22 religious purpose is pretty clearly spelled
23 out in our Articles of Incorporation. Yes,

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1 our 501(c)(3) status is well established over
2 the years, and hasn't changed.

3 Its mission is the study and
4 practice of the teachings of the Nichiren
5 school of Mahayana Buddhism. The roots of
6 this school go back to Thirteenth Century
7 Japan.

8 SGI USA members seek to apply
9 Buddhist principles such as wisdom,
10 responsibility and compassion, to the complex
11 realities of modern living. Toward this end,
12 its corporate worship and communal practice
13 take place in a combination of small and large
14 gatherings.

15 Our regular gathering of the full
16 community, called World Peace Prayer, takes
17 place on the first Sunday of each month, and
18 if we find the community gets too large, we
19 may have to split it, and it may have to be
20 the first and second Sunday of each month, if
21 the community grows so much that the space
22 can't accommodate them. We would have to
23 split the community and have them meet on the

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1 second Sunday, half of them.

2 The Washington, D.C. area
3 anticipates a regular attendance of up to 200
4 people, though I imagine attendance will be
5 limited by whatever the Fire Marshall says we
6 can have there.

7 We meet in smaller groups at other
8 times throughout the month and discuss
9 Buddhist teachings in various groups divided
10 by level of practice, new or experienced
11 practitioners, age, gender, language and other
12 special interests. These groups usually range
13 in size from 10 to 40 people.

14 Nearly all meetings begin with a
15 liturgy that includes a recitation of the
16 Lotus Sutra and other prayers. This service
17 is performed before a Buddhist altar that will
18 be located in four spaces in this center, the
19 rooms identified as the large sanctuary, small
20 sanctuary, the chanting room and the classroom
21 as well.

22 Groups may also gather either
23 during the week or on weekends for communal

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1 prayer recitation, especially if there are
2 special needs for prayer, whether they are
3 praying for peace or for someone to overcome
4 cancer. These would be the kinds of needs
5 that would come up for prayer.

6 The Center houses a small
7 bookstore where practitioners can purchase
8 books on Buddhist teachings, as well as other
9 religious supplies like candles, incense and
10 prayer beads. This store will neither
11 advertise nor have any public commercial
12 presence.

13 A word on worship: I am not an
14 expert on the larger question of what
15 constitutes worship, but I can speak to the
16 matter from a Nichiren Buddhist perspective.

17 At the core of the teachings of
18 the Thirteenth Century Buddhist monk Nichiren
19 is the mantra "nam myoho renge kyo, nam myoho
20 renge kyo." This translates roughly as
21 devotion to the wonderful dharma of the Lotus
22 or the teaching of the Lotus Sutra, one of the
23 most revered teachings in the 2500 year

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1 history of Buddhism.

2 I'll spare you the full religion
3 lesson and focus now on the word nam, meaning
4 devotion. For us, it means more specifically
5 to devote our body and mind to Buddhist
6 practice, and the realization of the dharma or
7 the realization of the Buddhist awakening, the
8 Buddhist enlightenment.

9 This theme is repeated in a noted
10 writing of Nichiren which dates back to the
11 Thirteenth Century and which states, "Exert
12 yourself in the two ways of practice and
13 study. Without practice and study, there can
14 be no Buddhist. You must not only
15 persevere yourself. You must also teach
16 others. Both practice and study arise from
17 faith. Teach others to the best of your
18 ability, even if it is only a single sentence
19 or phrase."

20 So practice and study based on
21 faith is what lies at the core of all of our
22 religious activities. It may take many forms,
23 such as a small men's study meeting, a

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1 chanting prayer session, a study meeting
2 taking place in Korean, Japanese, Spanish or
3 other language, a large congregational
4 gathering or simply two people in dialogue to
5 figure out, not casually discussing what was
6 the meaning of some text, but an intensive,
7 worshipful discussion of how do we apply this
8 teaching to our life, how do we awaken to the
9 heart of Buddhism through this teaching.

10 This is not casual discourse.
11 This is not academic speculation. This is
12 living religion. This is what we do.

13 These are the types of activities
14 that will constitute the overwhelming majority
15 of our use for our Center -- overwhelming.
16 Yes, we are in favor of advancing the virtues
17 of peace, culture and education, but our
18 approach to this is to change the world one
19 life at a time through inner transformation,
20 cultivating the spiritual virtues of
21 responsibility, wisdom and compassion, not
22 through the peace rallies or other events
23 envisioned by Mr. Magnus.

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1 We do as an auxiliary activity
2 sponsor cultural exchange festivals and
3 sometimes exhibits, but these take place
4 usually about a few times a year and are
5 almost always at venues other than our
6 centers.

7 When we needed a large venue --
8 When we need a large venue, we rent one, as we
9 did with Constitution Hall in 2005 or
10 Gaithersburg High School in 2006. We do not
11 try to squeeze big, nonreligious events into
12 our fairly small centers. It just doesn't
13 work.

14 I can assure the Board that a
15 great majority of our use will be for the
16 practice and study of Buddhism. As most of
17 our events are open to the public, this will
18 become apparent to all over time.

19 I do want to make -- and I will go
20 on to say that in the end Buddhist worship is
21 not like Christian, Jewish or Islamic worship.
22 I would probably even prefer to use the term
23 devotion, as Nichiren used, but for us it is

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1 worshipful.

2 It meets the standard of the
3 dictionary definition, as it better suits our
4 creed. But to argue that the intent of the
5 word worship in the District's code
6 contemplates only a narrow Abrahamic vision of
7 religious practice would be to argue from a
8 deeply prejudiced point of view, one that I
9 would urge this Board to reject.

10 I think on the issue of lay
11 leadership that has been raised as though it
12 means something -- I think there are a number
13 of religious organizations that would feel a
14 little uncomfortable at the questioning of
15 one's -- the verity of one's religiosity
16 because their leadership is lay and not
17 clerical. The Mormons come to mind. The
18 Quakers come to mind.

19 Most Hindu practice is done
20 through laity, although there are Hindu
21 priests. In Buddhist texts, it describes four
22 kinds of believers: Monks, nuns, laymen and
23 laywomen. Those four terms are used

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1 universally, and in the Lotus Sutra, our
2 foundational text, this is a text that
3 elevates in particular the role of the laity.

4 We did, in fact, split with the
5 organization, Nichiren Shoshu, back in 1991.
6 Although they called it an excommunication,
7 about 95 percent of the members stayed with
8 Soka Gakkai and about five percent went with
9 the Nichiren Shoshu group.

10 It was over an issue of -- and I
11 won't go here any further. It was over an
12 issue of mediated versus unmediated
13 enlightenment. It was over an issue of
14 religious authority. It was over several
15 other kinds of issues.

16 Since then, we have actually been
17 -- No, we have always been separately
18 incorporated from Nichiren Shoshu. We have
19 never been subsidiary to them in any way,
20 shape or form in the United States. Priests
21 played a rather limited form -- a rather
22 limited role in our organization prior to the
23 split.

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1 Since then, laymen have assumed
2 those responsibilities, and most scholars have
3 viewed the split in a way similar to the split
4 of Martin Luther and Lutheranism from the
5 Catholic church, and there is a lot of scholar
6 evidence available on that. I don't think we
7 want to go down that street.

8 We are recognized as a bona fide
9 religious organization for the purposes of
10 performing weddings, for every other purpose,
11 and we are very proud of our lay role that
12 way.

13 As you are aware, the site is
14 located in the Massachusetts Avenue Heights
15 neighborhood in ANC-3C. In the course of the
16 HPRB approval process, SGI USA and its
17 consultants met four times with the ANC or its
18 representatives, November 8th and 15th in
19 2004, January 20 and 24 in 2005.

20 On December 16, 2004, SGI USA co-
21 hosted a meeting at the Cape Verde Embassy to
22 present its plans to the local residents,
23 answer their questions and listen carefully to

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1 their concerns.

2 In response to neighborhood
3 concerns about intensity of use and the
4 design, SGI USA has made numerous
5 modifications to its plans. These changes
6 include: Rerouting the ingress and egress on
7 the rear alley of Mass. Avenue; reducing the
8 height on part of our building from three to
9 two floors; providing a more articulated
10 design for the rear of the building, so they
11 wouldn't be looking at a monolith; and
12 providing more green landscaping along the
13 rear alley.

14 The above changes are in addition
15 to such good neighborhood gestures as hiding
16 and silencing the HVAC system by placing it in
17 a well on the roof, and voluntarily reducing
18 our lot coverage from 60 percent to 40
19 percent.

20 This appeal appears to center on
21 whether this building will actually be used as
22 a church or rather as a commercial office and
23 conference center or some other unspecified,

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1 inappropriate use.

2 The Appellant has stated that,
3 since our main sanctuary constitutes a limited
4 portion of the building, religious use must be
5 ancillary to other unspecified uses. In fact,
6 the Center's primary use will be for Buddhist
7 study, prayer and practice in the Nichiren
8 tradition.

9 The Appellant also states that,
10 since our religion involves lay Buddhist
11 practitioners and not a more traditional
12 Judeo-Christian leadership structure involving
13 priests, ministers or rabbis, it is somehow
14 less of a religion or not a religion at all.

15 We find this assumption deeply
16 offensive. Certainly, there are other groups
17 who would as well.

18 We recognize that the presence of
19 a church in a neighborhood invariably brings
20 with it some inconveniences, especially
21 related to parking and traffic. We also
22 recognize that any construction project
23 produces some additional noise and traffic.

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1 We have made considerable efforts,
2 as described above, to ameliorate these
3 potential nuisances, to create a building in
4 harmony with its setting, and to respond to
5 the concerns of our neighbors. Despite this
6 challenge, we plan to continue to do so.

7 We thoroughly support and urge you
8 to uphold the city's decision to issue a
9 permit to our matter of right use. Thank you.

10 CHAIRPERSON MILLER: Thank you,
11 Mr. Aiken. You made some very good points,
12 and I just want to say that this Board isn't
13 here to sit in judgment as to whether or not,
14 I don't think, you are a religion or how you
15 practice your religion.

16 We have a specific regulation, and
17 that is what, I think, we are limited to. You
18 raised an interesting point, and I just want
19 to take the prerogative as Chair to switch a
20 question over to Mr. LeGrant.

21 Mr. Aiken raised the question
22 about other organizations that are religious
23 -- that are considered religious, such as the

1 Quakers that practice in a way that is
2 different from the Judeo-Christian model of
3 the sanctuaries, like for instance, Quakers
4 have meetinghouses.

5 So if you were to look at a
6 meetinghouse -- This is really hypothetical,
7 but I think it is kind of apropos -- to
8 determine whether or not it was a place of
9 worship, would you basically look at it in the
10 same way, look at their plans and look at
11 their incorporation or their purpose or things
12 like that?

13 MR. LeGRANT: Well, as you've
14 mentioned, each case has to be looked at in
15 its own merits. If a particular organization
16 came and said they were labeling their use as
17 a church or a place of worship and they
18 presented plans, then I would go through a
19 similar analysis if questions arose about the
20 veracity of that representation of that use.

21 In this case, there were concerns
22 raised by the community, and I believe that is
23 why Mr. Crews did go through a tripart or very

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1 thorough analysis, looking at the
2 organization.

3 It might be that there just wasn't
4 enough familiarity with the organization. So
5 we just had to find out, but I would say, if
6 an equivalent application came before us by
7 another religion, it might be a very similar
8 analysis.

9 CHAIRPERSON MILLER: Thank you.
10 Mr. Aiken, did you say that -- I want to make
11 sure I heard you correctly and, if I didn't,
12 you can correct me.

13 Did you say that in other
14 jurisdictions when your organization has built
15 a building for its use that it has been
16 treated as a religious organization?

17 THE WITNESS: Yes. In fact, the
18 other case I'm working at the moment is down
19 in Atlanta where we are before the Board for
20 a special exception at the moment, because we
21 are operating a church on less than one acre
22 of property, and we are being held by the city
23 of Atlanta to that standard.

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1 We don't even argue that we are
2 not a church. We just accept that we are,
3 that we operate as a place of worship. We are
4 having to go through some appeals down there
5 for, you know, technical dimensions of that,
6 but in their eyes we are certainly a church,
7 and we need to follow those directions, follow
8 those regulations, as well as in the other
9 jurisdictions, in New York, in Phoenix,
10 Arizona.

11 I think these were some of the
12 ones that were polled recently, but numerous
13 other ones. I think the point has been made
14 that, yes, some of our centers are located in
15 commercial areas where we didn't have to meet
16 a particular test, because it was a matter of
17 our use, and so it just wasn't questioned. So
18 there was no real elaborate process.

19 It is usually stated well in our
20 leases or other things.

21 CHAIRPERSON MILLER: So is this
22 the first instance in which you are being
23 challenged on this basis?

1 THE WITNESS: Indeed.

2 CHAIRPERSON MILLER: Okay. Other
3 questions?

4 THE WITNESS: And we have -- I'll
5 just mention, we have over 80 centers
6 throughout the country.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER LOUD: Good afternoon, Mr.
9 Aiken. I just have a couple of brief
10 questions. Actually, it is only one question,
11 but it is a very long one question. But it
12 should be easy for you to answer, given the
13 almost 40 years of experience in this area.

14 There was earlier testimony --
15 First, you testified that the overwhelming use
16 of the facilities will be for what you
17 described as nom -- and is that spelled n-o-m?

18 THE WITNESS: N-a-m.

19 MEMBER LOUD: N-a-m, which you
20 described as devotion of the body and mind to
21 -- and I didn't catch the word after that.

22 THE WITNESS: There is a mantra.
23 I will just repeat this briefly. There is a

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1 mantra that is kind of at the core, the
2 chanting before the scrolls that has been
3 referenced in prior conversations.

4 The mantra that is at the core of
5 Nichiren Buddhist teaching is nam, n-a-m,
6 myoho, m-y-o-h-o, then rengo is the next word,
7 r-e-n-g-e, then kyo, k-y-o.

8 It means -- Nam means devotion,
9 and myoho rengo kyo means the wonderful dharma
10 or the wonderful teaching of the lotus,
11 literally.

12 MEMBER LOUD: Okay. And with
13 respect to the doctrine again, your testimony
14 was that the overwhelming use of the facility
15 would be devoted to that.

16 THE WITNESS: That's correct.

17 MEMBER LOUD: All right. I wanted
18 to walk you very briefly through aspects of
19 Mr. LeGrant's testimony regarding various
20 rooms in the facility that they identified or
21 they included as worship rooms, and just ask
22 you to give me some examples of some of the --
23 I don't want to mispronounce it -- some of the

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1 nam, etcetera, that happens in each of these
2 rooms.

3 THE WITNESS: Yes.

4 MEMBER LOUD: All right. First,
5 let's just start with the large sanctuary.

6 THE WITNESS: The large sanctuary
7 will be used for larger gatherings. The one
8 I mentioned before was the gathering that
9 takes place on the first Sunday of the month,
10 because it is the largest gathering.

11 As this room and three other rooms
12 that I identified all have an altar in them
13 with a mandala there. Generically a mandala
14 -- we call it bohanzai. Mandala is a word
15 that means circle or kind of a sacred space.
16 This is the generic meaning of the scroll that
17 sits in the altar in these four rooms,
18 including the main sanctuary.

19 So it is the sacred space where we
20 carry out the factors of both the recitation
21 of our liturgy, which is the portions of the
22 Lotus Sutra, which is a teaching that is about
23 2500 years, in addition to reciting the

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1 mantra, nam myoho rengo kyo. So that is a
2 liturgy that is done that usually starts off
3 everything we do.

4 Following that liturgy, then the
5 program might advance to a study presentation,
6 a lecture. It might advance to testimonials.
7 It might advance from there -- Community
8 announcements might even be included in what
9 would happen, and there might even be some
10 music. There might even be some devotional
11 worshipful sounds happening there, too.

12 So that would happen in that room.
13 That room would also be used for pretty much
14 any other activity that wasn't suited to a
15 smaller venue, whether it is a study lecture,
16 whether it is a wedding, a memorial service,
17 a funeral, any of those other types of uses
18 would be typical of the use for that room.

19 MEMBER LOUD: Okay, and again I'm
20 not trying to get the exhaustive list of what
21 might happen in the room, although it is very
22 interesting to know.

23 THE WITNESS: Sorry, overeager.

1 MEMBER LOUD: But just those uses
2 that pertain to the worship aspects of what
3 the facility will be used for, and again you
4 don't have to include every single one, just
5 those that typify what will be happening in
6 the rooms.

7 For the small sanctuary, what are
8 some of the uses that --

9 THE WITNESS: It would be similar,
10 just on a smaller scale.

11 MEMBER LOUD: Okay. And the
12 fellowship lounge?

13 THE WITNESS: The fellowship
14 lounge would be, as is often the case with
15 fellowship lounges, a time for more informal
16 dialogue, for one-on-on conversations, for a
17 moment of fellowship. That is important.

18 As I mentioned before, one of the
19 three treasures of Buddhism is the community.
20 It is the sanga. So the bonds of community
21 are very important, and we have come to
22 appreciate that.

23 The Buddha said, good friends is

1 not an important part of Buddhist practice;
2 good friends are Buddhist practice. So we --
3 that's the main role.

4 MEMBER LOUD: So relationship
5 building --

6 THE WITNESS: Relationship
7 building, and also clarifying questions that
8 people have or being able to discuss personal
9 spiritual issues that people may have. That
10 would be another possible place, but I think
11 relationship building would probably be
12 primary.

13 MEMBER LOUD: And finally the
14 chanting room.

15 THE WITNESS: Just as described,
16 it is a room that would be open to our members
17 to come to pretty much when the building is
18 open. They would come in there, and they
19 would use that room to chant for whatever
20 purpose they had in mind, whether it is for
21 such lofty social things as world peace or, if
22 they are praying about a spiritual crisis they
23 are in or they are really fighting depression

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1 or if they are even praying to get a better
2 job or to manage their finances better. What
3 people pray for is unlimited.

4 So they just -- The room is just
5 set aside for people to come and chant, which
6 is our form of prayer.

7 MEMBER LOUD: Okay. And then
8 finally, I think you testified that you've
9 been around since 1969. There are four
10 different congregations, I think, in
11 Washington region.

12 THE WITNESS: Sixty-eight -- well,
13 we've actually been here since '60, but the
14 building has been there since '68, and there
15 are -- and that building is now used by four
16 congregations -- Well, let me back up. It is
17 now used by four congregations, Washington
18 area, P.G. area, Montgomery East and
19 Montgomery West, but we are about to open a
20 center in Montgomery West that will be used by
21 folks out there, and again I am having to go
22 through zoning issues, because we are a church
23 in Gaithersburg -- with the City of

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1 Gaithersburg.

2 So -- and then I'll have to go
3 through requirements, because we are operating
4 as a church there. Anyway -- So we have those
5 others. We also have centers in Northern
6 Virginia and a center in Baltimore.

7 MEMBER LOUD: Okay. Did I
8 understand correctly that the membership is
9 369?

10 THE WITNESS: For the members in
11 Washington area, give or take. They are in
12 that one congregation, because we are going to
13 keep our center at 4603 Eastern Avenue, Mount
14 Ranier, and it will be used by the P.G. and
15 Montgomery East congregations. They will be
16 sharing that center.

17 The primary users of this center
18 in D.C. will be the folks in Washington area.

19 MEMBER LOUD: Okay. Thank you,
20 sir. Appreciate it.

21 THE WITNESS: Sure.

22 MEMBER DETTMAN: Mr. Aiken, I
23 would like to just sort of continue the same

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1 question that Mr. Loud was asking you related
2 to sort of clarification on what would happen
3 in some of these rooms.

4 Mr. LeGrant, if you could just --
5 I am going to quickly refer to you in a
6 second.

7 The classroom -- You had said that
8 that is one of the rooms -- that is one of the
9 four rooms that an altar might be located. Am
10 I saying that correctly?

11 THE WITNESS: Will be located,
12 yes.

13 MEMBER DETTMAN: Will be located.

14 THE WITNESS: It is ordered. It
15 is in the plans.

16 MEMBER DETTMAN: And some of the
17 activities that you had mentioned were going
18 to occur in the main sanctuary, small
19 sanctuary, fellowship room and chanting room
20 such as personal spiritual issues,
21 clarification questions, gatherings, bonds of
22 community -- It seems to in looking at the
23 plan that was provided, the dialogue room --

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1 the description says for ceremonial use and
2 reception, personal and small group guidance.

3 THE WITNESS: Yes.

4 MEMBER DETTMAN: So the dialogue
5 room is another room that some of these
6 activities will happen. Right?

7 THE WITNESS: If you add another
8 space. What we find is, as we have looked to
9 how we have designed our spaces over the years
10 and what suits our needs best, we have gone --
11 We have reduced the size of our main
12 sanctuaries, because we find that what best
13 serves the spiritual needs of our
14 practitioners is to have more smaller, more
15 intimate spaces.

16 So we do look to spaces that are a
17 number of kinds of spaces that we can use.
18 That's a little bit behind the remark that was
19 alluded to earlier by Mr. Magnus when I was
20 trying to assure the neighbors that the
21 intensity of use for the main sanctuary would
22 not necessarily be similar to what they have
23 seen in other churches, because we tend to

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1 meet in small groups. We find it suits our
2 purposes of worship much better to meet in
3 smaller groups.

4 MEMBER DETTMAN: Thank you.

5 Finally, Mr. LeGrant, in your calculation in
6 determining percentage of program space -- You
7 used program space, correct, not gross floor
8 area?

9 MR. LeGRANT: Correct.

10 MEMBER DETTMAN: In determining
11 the percentage of gross floor area or program
12 space dedicated to religious activities or
13 worship or however you want to determine it,
14 you didn't include the classroom or the
15 dialogue room. Correct?

16 MR. LeGRANT: That is correct.

17 MEMBER DETTMAN: And you came up
18 with 56 percent?

19 MR. LeGRANT: That's correct.

20 These are the four rooms that I've listed.

21 MEMBER DETTMAN: Thank you.

22 CHAIRPERSON MILLER: Any cross-
23 examination?

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1 MR. MAGNUS: Madam Chair, I have a
2 couple of very quick questions.

3 CROSS-EXAMINATION

4 BY MR. MAGNUS:

5 Q Mr. Aiken, you testified that
6 your centers are considered places of worship
7 in all of the places where they are located.

8 A No, I did not say that. I did not
9 say that in all cases where they are located.

10 Q Perhaps I misheard you. What did
11 you mean to say or what did you say?

12 A I mean, certainly, we consider
13 them to be places of worship. In other
14 places, they may not have had -- There may not
15 have had to have been a ruling. So there may
16 not be an existing ruling that says they are
17 places of worship, but they have qualified as
18 places of religious assembly everywhere they
19 are under existing zoning law.

20 CHAIRPERSON MILLER: I don't know
21 what that means.

22 MR. MAGNUS: I don't either.

23 THE WITNESS: I'm not even sure

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1 myself. Let me back out of that one, because
2 I really only know for sure about the
3 operation of this center and our operations of
4 centers locally, and we haven't -- Because we
5 haven't had to have rulings on the use, there
6 may be some instances where the lease may say,
7 you know, that this is being used for
8 religious assembly, and no particular permits.
9 Maybe a conditional use permit wasn't required
10 or only fire inspection was required.

11 So we consider them to be
12 religious use. They may not have been tested
13 in every local jurisdiction.

14 CHAIRPERSON MILLER: Right. I
15 think probably what you said to me earlier was
16 this is the first place you have been
17 challenged as a place of worship.

18 THE WITNESS: Yes. It's been
19 largely a non-issue up until now. So,
20 therefore, speaking to that issue with total
21 confidence that jurisdictional rulings have
22 been made in favor of that would be very
23 difficult, and I am just not prepared to do

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1 that right now.

2 BY MR. MAGNUS:

3 Q I didn't mean to ask about
4 regulatory rulings. I just wanted to
5 understand, when you said they are considered
6 to be places of worship, I wondered who
7 considers them to be places of worship. You
8 mean the group itself considers them to be
9 places of worship.

10 A We certainly do.

11 Q Okay. And you said that this was
12 the first time that it has been contested
13 before a regulatory body. Is this, in fact,
14 the first time that you have sought to locate
15 a center of this kind in a neighborhood of
16 this kind where the matter would come up?

17 A Because my authority and my area
18 of expertise is only in the Washington and the
19 Mid-Atlantic area, I really can't speak to
20 other cases that may have happened.

21 I could find the answer to that to
22 see whether or not there are other
23 neighborhoods which are zoned residential and

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1 where this issue came up. I don't have that
2 answer available, but I can access that
3 answer.

4 Q A moment ago you told the Board
5 that some of your centers are located in areas
6 with commercial or mixed zoning.

7 A That's true.

8 Q I'm just wondering if you can
9 identify a single instance where even one of
10 your community centers -- culture centers,
11 excuse me -- in the United States has been
12 located in a neighborhood whose zoning was
13 limited to detached single family residences.

14 A I believe Phoenix, Arizona, but I
15 would have to check, and I know our Los
16 Angeles Friendship Center is in a
17 predominantly residential area, but I would
18 have to check on both of them to be sure.

19 As I said before, my area of
20 expertise is a more local one, and so I would
21 have to see. As I said, it just hasn't been
22 an issue for us.

23 Q Quick question about the tax

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1 status. You mentioned that the status under
2 Section 501(c)(3) was obtained in the late
3 Sixties. Who was the Applicant for that tax
4 ruling?

5 A We'll have to get the application
6 out.

7 Q I don't want to waste the Board's
8 time. I'm trying to be mindful of your
9 comments earlier about laying a foundation for
10 certain questions. This is designed to lay a
11 foundation for a further question. This is a
12 group exemption ruling that was applied for by
13 a group of Nichiren Shoshu Buddhist
14 organizations in the United States when they
15 were still a group.

16 A That is actually not factually
17 correct. It was applied for by the
18 organization that was then called Nichiren
19 Shoshu Soka Gakkai of America, I believe, but
20 later changed its name through corporate name
21 change filing to Soka Gakkai International
22 USA, and that was not -- The group was always
23 incorporated entirely separately from this

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1 Nichiren Shoshu group that you have referred
2 to before.

3 Q Was the application and the
4 exemption a group application and a group
5 exemption ruling or an individual application
6 and an individual exemption ruling for Soka
7 Gakkai?

8 A I'm not clear on the distinction
9 between individual and group exemption.

10 CHAIRPERSON MILLER: Do we have a
11 copy of this in the record?

12 THE WITNESS: There is -- Is there
13 a copy of this in the record? Well, this is
14 the District of Columbia.

15 MR. MAGNUS: I'm asking about the
16 Internal Revenue --

17 THE WITNESS: The District of
18 Columbia's application, I'll mention, was
19 applied for by Soka Gakkai International USA.
20 The Internal Revenue Service was applied for
21 by Nichiren Shoshu of America, which was at
22 the time the name of Soka Gakkai International
23 USA. There was a name change that was filed

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1 some years later in the Nineties, but they are
2 one and the same corporate entities.

3 We would be happy to submit all
4 the corporate trail of paperwork that followed
5 that one, but yes. So we are the same
6 applicants, corporately speaking.

7 BY MR. MAGNUS:

8 Q You are describing this then as an
9 individual exemption ruling and not a group
10 exemption ruling that was obtained in the late
11 Sixties.

12 A It was a ruling about the
13 religious organization that is known as Soka
14 Gakkai International USA. I didn't realize
15 our tax exempt status was on trial here, but
16 it was a ruling on the organization, Soka
17 Gakkai International USA, and I am reading
18 from the Internal Revenue letter: aka
19 Nichiren Shoshu of America.

20 So I think all of the records have
21 been updated on this.

22 Q What was the involvement in that
23 application for tax exempt status of the group

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1 from which you split in the early Nineties?

2 A I think they had pretty much no
3 involvement in that process. We have always
4 been incorporated separately.

5 CHAIRPERSON MILLER: Can I -- I
6 think what is important is -- I don't know
7 what is important, really, but Mr. LeGrant
8 said he looked at your 501(c)(3) form or
9 something, and is that what you are referring
10 to?

11 THE WITNESS: Is he questioning
12 this?

13 CHAIRPERSON MILLER: You know,
14 that's how it has to be related, to what he
15 looked at to make his decision, and if he made
16 an error.

17 MR. MAGNUS: We gave information
18 to the Zoning Administrator's office
19 indicating that this was a group exemption
20 ruling, and it was obtained specifically
21 because this lay group was part of a broader
22 cluster of Nichiren Shoshu groups which
23 included the Nichiren Shoshu clergy. It was

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1 a religious group, and that was the basis of
2 the ruling that was made in the late Sixties.

3 THE WITNESS: But that's
4 different.

5 MR. MAGNUS: Okay. They are now
6 separate. They are two entirely separate
7 groups that were formerly a group that applied
8 for a group exemption.

9 CHAIRPERSON MILLER: Okay, I think
10 Mr. Aiken has been responding to your concerns
11 about that.

12 THE WITNESS: It is actually not
13 correct to say that Nichiren -- The religious
14 organization that is today known as Nichiren
15 Shoshu was never a party to this tax exempt
16 status. We have always been incorporated
17 entirely independently of the Nichiren Shoshu.

18 There have been some members of
19 our laity who, following the split, following
20 the schism, chose to go and join the
21 organization, the incorporation in the United
22 States that is known as NST or Nichiren Shoshu
23 Temple, always been separately incorporated,

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1 never been a subsidiary.

2 There has never been any group or
3 groups of believers under this, and no one has
4 ever, to my knowledge, challenged the validity
5 of our tax -- our continuing tax exempt status
6 following that split with Nichiren Shoshu.
7 They were never party to our original tax
8 exempt status, and they are not today. So --

9 BY MR. MAGNUS:

10 Q The question didn't go to how you
11 are incorporated. The question went to how
12 you applied for a tax exempt status and how
13 that status was granted by the Internal
14 Revenue Service, whether it was to a group or
15 to your organization specifically.

16 A I understand. I think that would
17 just call for an almost entirely different
18 hearing.

19 CHAIRPERSON MILLER: I'm sorry,
20 and I know it's late, but I don't -- I don't
21 know about my other Board members, but I'm
22 really not following the relevance of this at
23 all.

1 I think you have to remember that
2 what we are focused on is whether the ZAP
3 erred in making his decision, and did he
4 mistakenly look at something that was the
5 wrong certificate? Okay, that would be one
6 thing, but to go into the whole history here
7 -- I don't see any reason for that.

8 MR. MAGNUS: The Applicant here --
9 The reason for it is that the Applicant here
10 waved around 501(c)(3) status that was
11 obtained solely because of their participation
12 in a group application with the Nichiren
13 Shoshu branch of Buddhism, and with whom they
14 are no longer associated.

15 They are now a lay group, and have
16 been since the early 1990s, and they
17 successfully waved that around in front of the
18 Zoning Administrator and persuaded him that it
19 was somehow relevant to the nature of their
20 building.

21 CHAIRPERSON MILLER: Okay. I
22 think you have stated your allegation, and let
23 them finish and respond. You are finished?

1 THE WITNESS: There was no
2 question. It's a baseless allegation. It is
3 not a question. So I won't respond to it.

4 CHAIRPERSON MILLER: Okay. Next
5 question.

6 BY MR. MAGNUS:

7 Q I think this is my last one. In
8 her introductory remarks, Ms. Prince said that
9 in Buddhism, centers are equivalent to what
10 churches are in -- I believe she said in
11 Christian practice, although that may not be
12 totally precise. Is that close enough? Okay.
13 But, clearly, in Buddhism there are temples,
14 and even in Nichiren Buddhism there are
15 temples, and your group doesn't use them.

16 Can you explain how that squares
17 with what Ms. Prince said in her introductory
18 remarks?

19 A Traditionally, we made the
20 distinction that the temples are where the
21 priests were, and certain kinds of ceremonies
22 took place there. We have always been a lay
23 based Buddhist organization. We have always

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1 been a lay based religious organization, and
2 we have always called our places centers.

3 It is a distinction without a
4 difference, as far as we are concerned. It's
5 a difference in nomenclature. I mean, to
6 challenge that as a basis, to me -- Anyway,
7 I'll just leave my answer there.

8 Q Now this really is my last
9 question. You said a lay based religious
10 organization. Is it a lay organization or is
11 it a religious organization or is that
12 question unfair, because they are not actually
13 the opposite of each other?

14 A I believe in our Articles of
15 Incorporation we are described strictly as a
16 religious organization. We are just described
17 as a religious organization. We are not
18 described -- They don't use the term lay
19 religious organization.

20 It is a self-descriptor, because
21 many other religious organizations have
22 clergy. So we often include that.

23 Q So when you say that you are a lay

1 organization, what you mean is that you are a
2 religious organization with no clergy. That's
3 all that means?

4 A I'm sorry. We are a religious
5 organization where the laity play the
6 predominant roles. We actually do have
7 clergy, but the laity play the predominant
8 roles in the organization, and the clergy
9 functions in ceremonial capacities only.

10 MR. MAGNUS: That is all the
11 questions I have.

12 CHAIRPERSON MILLER: Okay. Does
13 DCRA have any questions?

14 MS. PLEASANT: No questions, Madam
15 Chair.

16 MR. LOUD: Madam Chair, I just
17 have one quick question of Mr. Aiken, just so
18 I'm clear on an avenue that Mr. -- an avenue
19 of inquiry that Mr. Magnus opened up.

20 With respect to the IRS exemption
21 ruling, is it fair for me to characterize your
22 testimony as that the exemption ruling was
23 always in the name of Soka International;

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1 therefore, the split in the 1990s with this
2 other organization did not impair your tax
3 exempt status?

4 THE WITNESS: That is correct.
5 The actual nomenclature that was used in 1968,
6 the application, was -- At that time, the name
7 of this religious corporation was Nichiren
8 Shoshu of America. That was the name of our
9 religious organization at the time.

10 We underwent a corporate name
11 change in subsequent years, but the corporate
12 entity has never changed, and there were never
13 priests that were part of that, to begin with,
14 or the Nichiren Shoshu Temple group was never
15 part of that religious organization to begin
16 with.

17 So we have just continued under
18 that same group. However, there was a name
19 change, I think, in the early Nineties
20 following our split with Nichiren Shoshu, and
21 the term Soka Gakkai International USA is the
22 current name that is on the -- with the IRS,
23 that is registered with the IRS.

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1 MEMBER LOUD: Okay, thank you,
2 sir.

3 CHAIRPERSON MILLER: Any other
4 questions? All right. Then I think we are at
5 the point in our proceeding where the
6 Appellant is entitled to make rebuttal and
7 closing remarks, if you have any.

8 MR. MAGNUS: Just very briefly.
9 It's late in the afternoon. We are grateful
10 to have been permitted to go through this
11 testimony and cross-examination process. I
12 think it was essential in framing the issues.
13 It may become essential in framing the issues
14 for future legal proceedings in this matter,
15 depending on how things come out here.

16 As you deliberate, and as we said
17 at the end of our initial presentation, there
18 are just a couple of issues that we would like
19 you to keep in your minds.

20 You heard from the Zoning
21 Administrator today, the Acting Zoning
22 Administrator and the person who really did
23 the analysis that led to this March decision

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1 that he paid virtually no attention to various
2 objective third party information about the
3 Applicant, and based his decision on their own
4 characterization and documents that they
5 prepared specifically for this regulatory
6 review, which conflict rather starkly in many,
7 many different ways with their broader
8 pronouncements about themselves.

9 He also said that he relied on
10 information, including numbers, that they
11 provided, almost all of which turned out to be
12 wrong, some of them, by the way, in ways that
13 were more favorable to their case, some that
14 were wrong in ways that were less favorable
15 to their case.

16 We recognize that an appeal that
17 requires you to make a judgment about what
18 does and doesn't constitute worship is a
19 difficult appeal, perhaps an unpleasant one,
20 from your point of view. There is nobody in
21 the immediately surrounding neighborhood that
22 is pleased to be in this posture.

23 We don't see where you have a

1 choice, because the statute says what it says.
2 It doesn't say that a place of assembly for
3 religious purposes is a matter of right
4 project. Doesn't refer to religious assembly
5 at all. It refers to a church or place of
6 worship.

7 Worship has a definition in the
8 dictionary, even if it doesn't have one in the
9 Code, and the long and short of that may be
10 that there are a great many projects that lots
11 of people would love to see get matter of
12 right treatment that just aren't entitled to
13 it under the law. We didn't write the law.

14 We think the Board has no choice
15 but to enforce it as it is written, and under
16 the laws it is written worship as an ancillary
17 use cannot convert a regular place of assembly
18 into a house of worship. That's a matter of
19 right project.

20 I want to emphasize again and ask
21 you to remember again that this is a dispute
22 about the building and not the Applicant. Mr.
23 LeGrant informed us today that during that

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1 second stage of is analysis after he figured
2 out which were the rooms where people might
3 gather for religious assembly that there was
4 a second stage in which somehow there was a
5 jump made from there to a final determination
6 based on the totality of the evidence about a
7 house of worship.

8 He said that in that context he
9 considered certain things about the Applicant.
10 It appears that the only things he considered
11 at that point were things they had said about
12 themselves in documents that were specifically
13 related to the regulatory review, and
14 certainly we don't want to suggest that this
15 is about who rather than what.

16 We agree that it is about what.
17 It is about the building and its likely uses,
18 but since you can only approach that
19 indirectly, a lot of the evidence that is
20 available is circumstantial evidence.

21 It certainly is relevant that this
22 is an organization that has said in so many
23 words 100 percent of our -- and this is not in

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1 context of a regulatory review, but in regular
2 promotional materials and brochures -- 100
3 percent of our activities are focused on
4 peace, culture and education -- Peace, culture
5 and education.

6 Think of the number of groups
7 whose activities focus on those issues who
8 might be delighted to have matter of right
9 status under D.C. zoning law. If you accord
10 that status to this group purely because it
11 is a Buddhist group, well, then you are
12 favoring religion inconsistently with the
13 establishment clause. We know that can't be
14 the right answer.

15 Religious groups -- not that this
16 is one. It is a law group, although I guess
17 what that really means is it is a religious
18 group without clergy. I'm pretty sure it is
19 also a religious group without temples or
20 churches. Religious groups, however,
21 frequently construct buildings that are not
22 houses of worship.

23 It doesn't matter in the end who

1 they are. It matters what their building is
2 and how it is likely to be used.

3 We don't think the Board can
4 countenance, and we don't think the city can
5 tolerate a matter of right category that has
6 no boundaries and isn't administrable. And
7 that's why we are here. Thank you.

8 CHAIRPERSON MILLER: Thank you.
9 I'd like to ask you a question, similar to the
10 one I asked Mr. LeGrant.

11 You know, I kind of steered you
12 away from hypotheticals, but I want to
13 understand your positions more fully, and
14 that's why I'm going to ask you this.

15 Do you think a Quaker meetinghouse
16 is a place of worship?

17 MR. MAGNUS: I don't claim to know
18 very much about what Quakers do. My
19 impression is that it is pretty quiet, but my
20 impression is also that it is -- that it
21 involves veneration. I would need to know a
22 little bit more about the dogma and the
23 doctrine and so forth in order to fully

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1 understand that, but I would have no
2 hesitation at all in saying that, if it
3 doesn't amount to worship, then a Quaker
4 meetinghouse shouldn't have matter of right
5 status under D.C. zoning law.

6 That is not an intolerable result.
7 If the primary reason for assembling in that
8 building is not to jointly engage in worship,
9 whatever that is, it is not matter of right.
10 What that means is --

11 CHAIRPERSON MILLER: I think you
12 said it right there, though, you know,
13 whatever that is. So okay. Anything else?

14 Okay. I didn't mean to cut you
15 off, but -- Okay, I cut you off. It's almost
16 ten of six. All right.

17 I think at this point I wanted to
18 ask the parties if they wanted to file
19 proposed findings and conclusions of law.
20 That would then encompass in your written
21 pleadings what has come out in the evidence in
22 these hearings.

23 So if you -- It usually is very

1 helpful. Okay. So let's talk about a
2 schedule to do that. We were thinking that,
3 if that were the case, then we would set this
4 for our December 4th meeting for decision.

5 MR. MAGNUS: My only comment on
6 the timing is to key it to when a transcript
7 of these two public hearings is going to
8 become available, because we will need time to
9 work from that in order to put together the
10 pleading that you are talking about.

11 CHAIRPERSON MILLER: Right. Let's
12 look at that and see if that works. Mr. Moy,
13 do you know when the transcript will be
14 available?

15 MR. MOY: Well, typically, they
16 are available 10 to 14 days after a hearing.
17 So for example, for today I'll look out
18 between 10 and 14 days for this transcript to
19 be available.

20 MR. MAGNUS: Ten to 14 days from
21 today, we would have transcripts from both
22 sessions, last week and this?

23 MR. MOY: That is correct.

1 CHAIRPERSON MILLER: We would need
2 your pleadings like a week or so before the
3 deliberation date, before December 4th. A
4 week before December 4th is November 27th.
5 Thanksgiving is November 22nd. Does that work
6 for you all to file? I think there should be
7 only one filing. I don't think we need
8 responses to filings. We've got a lot of
9 filings already.

10 So that date then would be, unless
11 I hear a reaction otherwise, November 27th to
12 file, and decision on December 4th from the
13 Board.

14 MR. MAGNUS: If indeed the
15 transcripts are out on the first of the month,
16 we would be able to get our act together by
17 the date you are talking about,

18 CHAIRPERSON MILLER: Okay. They
19 should be. That would be -- right, November
20 1, and you would have almost a month. Okay.
21 Good. Anything else? Any other questions?

22 Then the record is closed except
23 for -- Do we need anything else in the record?

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1 We talked about -- Is there anything else you
2 want to put in the record before I close the
3 record? Let me just say that.

4 MS. PLEASANT: Nothing further,
5 Madam Chair.

6 CHAIRPERSON MILLER: Okay. I
7 think we have plenty in the record. Okay,
8 then thank you very much, and we will look
9 forward to your filings.

10 We can call the next case, and
11 decide what we are going to do with that one.

12 MS. BAILEY: Madam Chair, would it
13 suffice just to say that the next case is
14 Appeal Number 17657 of 1231 Morse Street, Inc.

15 CHAIRPERSON MILLER: Okay. It is
16 almost six o'clock, and I want to apologize,
17 but it is beyond our control that that hearing
18 took longer than we anticipated.

19 Do you want to just identify
20 yourselves for the record, and then we will
21 discuss how to proceed here.

22 MS. PARKER-WOOLRIDGE: Good
23 evening, Madam Chair. My name is Doris A.

1 Parker-Woolridge. I am Assistant Attorney
2 General for DCRA.

3 MR. GREEN: Good evening, members
4 of the Board, Madam Chairman. My name is
5 Matthew J. Green, Jr., and I am an Assistant
6 Attorney General representing the Department
7 of Consumer and Regulatory Affairs.

8 MR. LEGRANT: Matthew LeGrant, the
9 Acting Zoning Administrator.

10 MS. BOLLING: Good evening.
11 Melinda Bolling, Assistant Attorney General,
12 representing the District of Columbia,
13 Department of Consumer and Regulatory Affairs.

14 MR. BROWN: Patrick Brown,
15 Greenstein DeLorme & Luchs on behalf of the
16 Appellant.

17 MR. DEMUREN: Good evening, Madam
18 Chairman, members of the Board. Taiwo Demuren
19 representing 1231 Morse Street, Inc.

20 MR. BELLO: Good evening. Toye
21 Bello, Bello Bello & Associates.

22 MR. FORD: Vincent Ford, Ford &
23 Associates.

1 CHAIRPERSON MILLER: Okay. It's
2 on the late side. I'm very sorry about that,
3 and I understand that our court reporter may
4 have to leave at 6:30 also. Yes.

5 So we can use the half-hour or we
6 can just reschedule.

7 (Time: 6:00 p.m.)

8 MR. BROWN: And, Madam Chairman,
9 as adverse as I am not to go forward, I think
10 -- and I hope my colleagues from DCRA agree --
11 to start for a half-hour and then stop is
12 probably not the most efficient and productive
13 way to get from where we are now to a speedy
14 conclusion. But I would say -- and again, the
15 Board is subject to the circumstances of the
16 schedule, but we would like a quick return
17 date.

18 In fact, my good friend, Allison
19 Prince, managed to have a later case than mine
20 and got in front of me, for which I will rib
21 her for the rest of her life. But we would
22 like to see if we could turn this around
23 quickly. I think it is in everybody's

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1 interests to do so. So I would just ask that.

2 CHAIRPERSON MILLER: Let me just
3 say this about the schedule of the cases. The
4 reason for that was that Mr. Etherly was on
5 the earlier case and not on the later case,
6 and we knew he had to go be sworn in. So,
7 basically, that's how that happened.

8 MR. BROWN: And I'm not finding
9 fault, and I think the Board last time
10 correctly recognized that there is a critical
11 time element to this case. It has been going
12 on for quite sometime, and scheduled our
13 return visit in a two-week period. I'd like
14 to see if we could maybe do that.

15 We are ready. I will assume DCRA
16 is ready, and we can regroup and regather
17 quickly.

18 CHAIRPERSON MILLER: Okay. I
19 mean, I would agree that we ought to pick a
20 date and continue and not do a little bit
21 today. That's all right with DCRA as well?

22 MR. GREEN: DCRA is amenable to
23 finding a date, as long as we move along

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1 quickly.

2 CHAIRPERSON MILLER: Okay. What
3 we want to do is give you a date where this
4 doesn't happen again. So our next week is
5 very packed. so we don't want to put you
6 there. However, November 6th in the morning
7 has a lot of time in it at this point.

8 So are you able to come back for
9 that?

10 MS. PARKER-WOOLRIDGE: Madam
11 Chair, we have another BZA case on that exact
12 same day, Teeter. That's in the afternoon as
13 well.

14 CHAIRPERSON MILLER: I see two
15 appeals in the afternoon, but how is a
16 conflict with the morning?

17 MS. BOLLING: Well, Madam Chair, I
18 think this proceeding will take most of the
19 day, regardless, because we have several
20 witnesses, and we have pending motions we
21 needed to argue. So I guess it would bump our
22 afternoon one.

23 MS. PARKER-WOOLRIDGE: Madam

1 Chair, also one of our witnesses will be out
2 of the country until November 12th.

3 CHAIRPERSON MILLER: I'm confused.
4 We are supposed to continue today. So -- Oh,
5 you had a witness that was going to come
6 forward today?

7 MS. PARKER-WOOLRIDGE: Yes.

8 CHAIRPERSON MILLER: Maybe we
9 should do that then. What?

10 MR. BROWN: Which witness is that?

11 CHAIRPERSON MILLER: Maybe we
12 should hear that witness today. I don't know.
13 I don't know, or else we can look further down
14 the road, but we have an opening, and you're
15 telling me this is many hours, and I don't see
16 another space where we are going to have as
17 many hours until the spring probably. Am I
18 right?

19 MR. BROWN: Madam Chair, I think
20 the 6th, based on what you are saying, makes
21 sense. I don't know who this witness is, and
22 if we would identify the witness, but there is
23 a question about the value of that witness and

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1 whether, in fact, that witness is critical to
2 this proceeding. So if we could at least
3 start by identifying this witness, it would be
4 helpful.

5 CHAIRPERSON MILLER: Okay. Before
6 we talk too much, I mean, really, time is of
7 the essence. We do have until 6:30. We don't
8 have a big space coming along in our schedule,
9 really, until -- I don't know -- spring or
10 something. I mean, I'm not trying to
11 exaggerate, but -- So we probably need to take
12 advantage of that November 6th date, if we
13 can.

14 Therefore, if there is a witness
15 you want to put on right now, I don't know
16 whether that will work or not.

17 MR. GREEN: Madam Chairman, what
18 about the possibility of some of the other
19 cases either seeking a continuance, settling
20 or in some way moving from the schedule? If
21 they suddenly were to open up, perhaps we
22 might be able to take advantage of one of
23 those days. I don't know, particularly next

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1 week.

2 CHAIRPERSON MILLER: Do you have
3 information that one of those cases is going
4 away next week?

5 MR. GREEN: I don't know.

6 CHAIRPERSON MILLER: I don't.

7 MR. GREEN: But then again, one
8 never knows.

9 MR. BROWN: I don't think we ought
10 to go on an on-call basis. I mean, I think
11 November 6th meets all the criteria, and we
12 ought to take it while it is available.

13 I do not see this case -- We put
14 our case in chief on. It's been subject to
15 cross-examination.

16 CHAIRPERSON MILLER: We have
17 another date, but I don't know if that's too
18 long or not. We have January 15th. That's a
19 whole afternoon.

20 MR. BROWN: That's too long.
21 That's unacceptable.

22 CHAIRPERSON MILLER: We can't
23 count on an idea that a case might drop off

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1 some afternoon.

2 MR. GREEN: You know, I was just
3 advancing a theory to try to move this thing
4 along, Madam Chairman, but then again, you
5 know, let's go to November 6th or whatever you
6 think is appropriate. We will take that.

7 CHAIRPERSON MILLER: Do you need
8 to present your witness today while he or she
9 is here?

10 MR. GREEN: Ma'am, it's not going
11 to work to put anybody --

12 CHAIRPERSON MILLER: It's not
13 going to work, because it's out of order?

14 MR. GREEN: No, ma'am. It just
15 won't work.

16 CHAIRPERSON MILLER: Okay.

17 MR. BROWN: Madam Chair, are we
18 talking about the morning of the 6th, the
19 afternoon?

20 CHAIRPERSON MILLER: No. We are
21 talking about the morning.

22 MR. BROWN: We are certainly not,
23 hopefully, talking about the evening of the

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1 6th?

2 CHAIRPERSON MILLER: No, we are
3 talking about the morning.

4 MR. BROWN: That's fine. My
5 apologies for being flip.

6 MR. GREEN: Madam Chairman, it's
7 been brought to my attention that the 6th just
8 might not work. Anytime after the 12th of
9 November would be a better time frame.
10 Unfortunately, the witness who was going to be
11 out of the country won't be here.

12 MR. BROWN: Why won't the 6th
13 work?

14 MR. GREEN: Because, as I said,
15 the witness is going to be out of the country.

16 CHAIRPERSON MILLER: Is this the
17 same witness who is here today right now?

18 MR. GREEN: Yes, that's absolutely
19 correct.

20 CHAIRPERSON MILLER: Okay. And
21 what is this witness going to testify about?

22 MS. PARKER-WOOLRIDGE: Neil Letren
23 is an inspector with the Building and Land

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1 Regulation Administration or the Business
2 License Administration. He would testify as
3 to his inspection at the premises on April 9,
4 12 and also May 8 and what he observed during
5 that time period, and that he had issued these
6 Stop Work orders, etcetera. But his testimony
7 -- because he is the witness that observed
8 that particular structure after the alleged
9 collapse or whatever, but he is the key
10 inspector in this case.

11 CHAIRPERSON MILLER: Why can't he
12 testify now?

13 MS. PARKER-WOOLRIDGE: We can
14 start it, but we would still need him in the
15 event -- We don't know what their cross-
16 examination would be with out other witnesses.
17 He may be crucial to our other testimony
18 dealing with the others that we are going to
19 call, because there's about four or five
20 witnesses we will be calling in this case.

21 MR. BROWN: Madam Chairman, I'm
22 concerned, because -- and I'm very familiar
23 with Inspector Letren, but he is being

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1 proffered to offer testimony having to do with
2 April of 2007 -- am I correct? -- and the stop
3 work orders that were issued on the 9th, the
4 12th and, I believe, in May of 2007.

5 That really -- That's well over a
6 year after the critical dates, which are,
7 quite frankly, in February of '06. So I don't
8 see the validity or the critical nature of his
9 testimony.

10 In fact, it is irrelevant to what
11 I believe is the Board's focus, based on the
12 inquiries you have made, having to do with the
13 period of February of '06 when the collapse
14 occurred and the first stop work order and the
15 emergency demolition permit.

16 So for somebody to come in and
17 testify about the condition of the property
18 14-15 months later is certainly not
19 particularly relevant and no reason to delay
20 this hearing.

21 I also point out that Inspector
22 Letren was not in on the government's witness
23 list submitted on October 1st. So --

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1 MR. GREEN: Excuse me, Madam
2 Chairman. I rise on a point of personal
3 privilege.

4 The Zoning Administrator, who has
5 been a witness in this proceeding for quite
6 some time without any kind of a break, is in
7 need of one, and I'm quite sure some of the
8 others are also. I want to ask that a two-
9 minute break be granted for all of those who
10 are under such consideration. Thank you.

11 CHAIRPERSON MILLER: All right.
12 Why don't we take a five-minute break, and the
13 Board will take a careful look at the schedule
14 as well in the meantime.

15 (Whereupon, the foregoing matter
16 went off the record at 6:09 p.m. and went back
17 on the record at 6:19 p.m.)

18 CHAIRPERSON MILLER: Okay, we are
19 back on the record. Let's see if we can
20 resolve this before the court reporter leaves.

21 We looked at our schedule again,
22 and we found one other date. I don't know
23 whether that will work, though. That is

1 October 30th. Not to make things complicated,
2 but we do -- That day is actually wide open.
3 We weren't -- Nothing has been scheduled.
4 That was going to be a day off, but we are
5 willing to come in for this case if this day
6 will work for everybody.

7 MR. GREEN: We'll take it.

8 MR. BROWN: That works.

9 MR. GREEN: Yes, we'll take it.

10 One question --

11 CHAIRPERSON MILLER: I don't know
12 if the Board is happy or not. Okay.

13 MR. GREEN: One question, Madam
14 Chairman, out of curiosity. Can we get going
15 on this one, say, about 9:30? Ten o'clock?

16 CHAIRPERSON MILLER: Certainly, by
17 ten.

18 MR. GREEN: Oh, okay. Excellent.
19 Thank you.

20 CHAIRPERSON MILLER: All right.
21 We are in for 9:30. Yes. So nothing else is
22 scheduled as of now. You are going first. So
23 there shouldn't be any problems with

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1 finishing. We just felt, you know, you've
2 had some -- We are sorry about what happened
3 with you today. So we'll do this.

4 Okay, your witness is going to be
5 here? That is going to work out?

6 MS. PARKER-WOOLRIDGE: He will be
7 here.

8 CHAIRPERSON MILLER: Okay, good.
9 All right. Then we will see you October 30th
10 at 9:30.

11 MS. PARKER-WOOLRIDGE: Madam
12 Chair, in reference to one person that wanted
13 to testify, Ms. Lee -- I'm not sure if she
14 understands the procedure. Could you explain
15 if someone is an interested party --
16 interested person in the proceeding, what she
17 needs to do, because it's not -- We were going
18 to call her as one of our witnesses.

19 CHAIRPERSON MILLER: Okay. As I
20 said earlier -- you may not have been here,
21 though -- appeals are different from
22 applications for special exceptions and
23 variances and, therefore, in order for her to

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1 testify in this case, she would need to be a
2 part of a party's case.

3 So you could call her as a
4 witness.

5 MS. PARKER-WOOLRIDGE: Okay. We
6 will supplement our witness list again and
7 include Ms. Lee as well as Ms. Parker, who was
8 here and had to leave earlier to take a test.

9 CHAIRPERSON MILLER: Ms. Parker is
10 going to be a witness?

11 MS. PARKER-WOOLRIDGE: Yes.

12 CHAIRPERSON MILLER: Not The Ms.
13 Parker.

14 MS. PARKER-WOOLRIDGE: Ms. Camille
15 Parker.

16 CHAIRPERSON MILLER: Oh, okay.

17 MS. PARKER-WOOLRIDGE: Not me.

18 CHAIRPERSON MILLER: Let me just
19 get straight what is going to be. We are
20 going to start off when we meet next on the
21 30th, it's DCRA's turn to present their case.
22 Is that correct? You are going to present
23 your witnesses. That's where we are in the

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1 procedure?

2 MS. PARKER-WOOLRIDGE: Yes, that
3 is correct.

4 CHAIRPERSON MILLER: Okay. And
5 you are going to -- Is that it, your
6 supplementation of the witness list? Are you
7 going to submit something in writing to all of
8 us?

9 MS. PARKER-WOOLRIDGE: We did
10 that.

11 CHAIRPERSON MILLER: You did it to
12 them and to us?

13 MS. PARKER-WOOLRIDGE: Yes. I
14 just have to submit another supplement in
15 reference to Ms. Lee and Ms. Parker, but there
16 are also, I believe, the motions. There are
17 about three motions. We are not going to
18 address the motions that you said last time?

19 CHAIRPERSON MILLER: There was a
20 motion to dismiss, I believe. There were
21 these cross-motions. Is this the case:
22 Motion dismissed, motion for summary judgment,
23 and we've already started hearing witnesses on

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1 the case. We held the motion for summary
2 judgment in abeyance. Is that correct? Is
3 that this case?

4 MR. BROWN: Yes, it is. Well, and
5 the Board granted my motion to amend the
6 appeal. So pending is my motion for summary
7 judgment and the government's motion to
8 dismiss that are out there unresolved.

9 I suspect the Board will at least
10 proceed with the testimony and then could, at
11 the conclusion of the testimony, act on the
12 motions.

13 The government, I don't believe,
14 at least not directly has not responded
15 directly to the motion for summary judgment.
16 They have instead filed the motion to dismiss,
17 which -- So --

18 CHAIRPERSON MILLER: Okay. I'm
19 sorry. I was going to refresh my memory in
20 the break between the last hearing and this
21 hearing.

22 I thought that there was a motion
23 to dismiss filed and a motion for summary

1 judgment, and you all were going to respond to
2 each other's motions. Did you do that?

3 MR. BROWN: I responded to -- and
4 I did it in one document. You left the record
5 open for us to answer the three supplemental
6 questions, and as part of my response to that,
7 I also included a response to the government's
8 motion to dismiss I did it in a single
9 document, just so that -- But, hopefully, I
10 was clear enough that, in reading the
11 document, that it would guide you that I was
12 both providing the supplemental response
13 requested as well as responding to the motion
14 to dismiss.

15 I do not believe -- and I will let
16 the government speak for itself, but I don't
17 think the government has responded to my
18 motion for summary judgment.

19 CHAIRPERSON MILLER: I think that
20 the government did do also a response to
21 certain issues that the Board raised. Did
22 you?

23 MR. GREEN: Yes, we did.

1 CHAIRPERSON MILLER: Are you going
2 to do a response to the motion for summary
3 judgment, or not? Did the time pass? Did we
4 give you a deadline to do that?

5 MR. BROWN: Last Friday.

6 MS. BOLLING: And the Chair -- you
7 also said that if we felt that our motion to
8 dismiss was sufficient in our response, that
9 that was okay to stand on that, and that's
10 what we chose to do.

11 CHAIRPERSON MILLER: Okay, fine.
12 And I just want to make sure so there aren't
13 any expectations when we come back that we are
14 going to be ruling on the motion to dismiss at
15 this point, that you plan on going forward
16 with your witnesses. Is that right?

17 MS. BOLLING: Oh, we would
18 absolutely prepare to go forward with our
19 witnesses.

20 CHAIRPERSON MILLER: Okay. So
21 when we are all done hearing the evidence,
22 then the Board can look at the motions and
23 then decide what it wants to do. Okay, good.

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1 All right. Any other questions?

2 MR. GREEN: No, Madam Chairman.

3 Thank you very much.

4 CHAIRPERSON MILLER: Okay, thank
5 you very much. We will see you on the 30th at
6 9:30.

7 MR. BROWN: Thank you very much.

8 CHAIRPERSON MILLER: Ms. Bailey,
9 do we have anything else on the agenda for the
10 afternoon?

11 MS. BAILEY: No, Madam Chair.

12 CHAIRPERSON MILLER: Then this
13 hearing is adjourned.

14 (Whereupon, the foregoing matter
15 went off the record at 6:26 p.m.)

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