

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 10, 2008

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

GREGORY N. JEFFRIES, Vice Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
MAXINE BROWN-ROBERTS
STEPHEN RICE

The transcript constitutes the minutes from the Public Hearing held on June 3, 2008.

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

10:06 a.m.

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. This is the June 20, 2008 public hearing of the Board of Zoning Adjustment. My name is Ruthanne Miller. I'm the Chair.

To my right is Mr. Marc Loud who is our Vice-Chair and next to him is Mr. Michael Turnbull from the Zoning Commission. To my left of Mr. Shane Dettman, another Board member. We have another Board member on our Board, Mary Oates Walker, who should be joining us later in the morning.

Also with us is Mr. Cliff Moy from the Office of Zoning, Sherry Glazer from the Office of Attorney General, and Ms. Beverley Bailey from the Office of Zoning.

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

1 advised that this proceeding is being recorded
2 by a court reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

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

21 The order of procedure for special
22 exceptions and variances is as follows: (1)

1 Statement and witnesses of the applicant; (2)
2 Government reports including Office of
3 Planning, Department of Public Works, DDOT,
4 etc.; (3) Report of the Advisory Neighborhood
5 Commission; (4) Parties or persons in support;
6 (5) Parties or persons in opposition; (6)
7 Closing remarks by the applicant.

8 Pursuant to Sections 3117.4 and
9 3117.5 of the Zoning Regulations the following
10 time constraints will be maintained. The
11 applicant, persons and parties, except an ANC
12 in support, including witnesses, 60 minutes
13 collectively. Persons and parties except an
14 ANC in opposition including witnesses, 60
15 minutes collectively. Individuals, three
16 minutes.

17 These time restraints do not
18 include cross examination and/or questions
19 from the Board. Cross examination of
20 witnesses is permitted by the applicant or
21 parties. The ANC within which the property is
22 located is automatically a party and a special

1 exception or variance case. Nothing prohibits
2 the Board from placing reasonable restrictions
3 on cross examination including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case except for any
7 materials specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning. After the
12 record is closed no other information will be
13 accepted by the Board.

14 The Sunshine Act requires that all
15 public hearings on each case be held in the
16 open and before the public. The Board may
17 consistent with its rules of procedure and the
18 Sunshine Act enter into executive session
19 during or after the public hearing on a case
20 for the purposes of reviewing the record
21 and/or deliberating on a case.

22 The decision of the Board in

1 contested cases must be based exclusively on
2 the public record. To avoid any appearance to
3 the contrary the Board request that persons
4 present not engage the members of the Board in
5 conversation. Please turn off all beepers and
6 cell phones at this time so as not to disrupt
7 the proceeding.

8 The Board will now consider any
9 preliminary matters. Preliminary matters are
10 those which relate to whether a case should be
11 heard today such as request for a continuance,
12 postponement, or withdrawal, or whether proper
13 and adequate notice of the hearing has been
14 given. If you are not prepared to go forward
15 with a case today or if you believe the Board
16 should not proceed, now is the time to raise
17 such a matter.

18 Does the staff have any
19 preliminary matters?

20 MS. BAILEY: Madam Chair, members
21 of the Board, to everyone, good morning.
22 Staff does not.

1 CHAIRPERSON MILLER: Okay. Then
2 let's proceed with the agenda. Would all
3 individuals wishing to testify today please
4 rise to take the oath and Ms. Bailey will
5 administer it.

6 MS. BAILEY: Would you please
7 raise your right hand. Do you solemnly swear
8 or affirm that the testimony you will be
9 giving today will be the truth, the whole
10 truth, and nothing but the truth?

11 WITNESSES: I do.

12 MS. BAILEY: Thank you.

13 CHAIRPERSON MILLER: Thank you.
14 Would you call the first case, please.

15 MS. BAILEY: Thank you, Madam
16 Chair. That is Application 17778, Lorraine
17 Purnell, pursuant to 11 DCMR 3103.2, for a
18 variance from the floor area ratio
19 requirements under Section 402, and pursuant
20 to 11 DCMR 3104.1, a special exception under
21 Section 223, to construct a garage serving a
22 one-family row dwelling not meeting the lot

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1 occupancy requirements in Section 403. The
2 property is zoned R-5-A. It's located at 222
3 Emerson Street, N.W., Square 3323, Lot 12.

4 Is the applicant here for 17778,
5 Lorraine Purnell? Would you please have a
6 seat at the table.

7 CHAIRPERSON MILLER: Good morning.
8 Would you introduce yourself for the record?
9 Give your name and home address to start.

10 MR. WILSON: My name is Yettekon
11 Wilson, architect. My address is 6101 16th
12 Street, N.W., Washington, D.C. Phone number
13 is area code (202) 829-3970.

14 CHAIRPERSON MILLER: Okay. You
15 are here for relief under 223 and also for
16 variance relief from FAR requirements.
17 Correct?

18 MR. WILSON: Correct.

19 CHAIRPERSON MILLER: Do you have a
20 copy of the Office of Planning report?

21 MR. WILSON: I brought in
22 everything I think I have.

1 CHAIRPERSON MILLER: I just want
2 to way that the Board has read the whole file
3 in this case and I'm kind of jumping to that
4 because Office of Planning raised an issue
5 with respect to your request for variance
6 relief. I wanted to see where you were on
7 that.

8 Basically as I understand it they
9 say if you reduce the garage from 25 to 20
10 feet you wouldn't need variance relief. If
11 you don't, then you need to address the
12 variance test.

13 MR. WILSON: Now, if I reduce the
14 garage to 20 feet, the minimum parking space
15 is 9 by 19. That's all right for a lot for
16 public parking but if you try to do that and
17 reduce the garage to 20 feet, by the time you
18 put your walls in, it would reduce it to
19 minimum square feet.

20 If the Board approved it and I
21 went to the Building Department, I still
22 couldn't get a permit and I don't think you

1 would want to do that. I think they made a
2 mistake when they did that.

3 CHAIRPERSON MILLER: Okay. I'm
4 really kind of jumping into some of the heart
5 of this but the other side of that is a
6 variance test is different from a special
7 exception test and it doesn't appear that you
8 addressed the three-prong in your papers.

9 For a variance you need to show
10 that the property is somehow exceptionally
11 unique and that condition leads to a practical
12 difficulty that is exceptional for you and,
13 therefore, you need this relief and then it
14 wouldn't have any adverse impact on the
15 public. Did you address that in your papers?
16 I don't think you did but if you did, you
17 could bring it to our attention or you could
18 address it today.

19 MR. WILSON: I thought I did but I
20 really don't know what the Board was looking
21 for but I thought I had addressed all of those
22 things in photographs and then the writings

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1 that I was asked to do.

2 In receiving this from planning,
3 this isn't adequate for me to present for a
4 permit and I wouldn't present this here to the
5 Board for an exception. If there is some
6 other way that the Board would want me to do
7 it, I would consider it but not this one.

8 CHAIRPERSON MILLER: Okay. If I
9 understand you right, it's not up to us really
10 to tell you to proceed. You have a choice and
11 you want to build your garage and it's not
12 allowed as a matter of right.

13 MR. WILSON: Right.

14 CHAIRPERSON MILLER: In order to
15 -- you need our approval then in order to
16 proceed to permitting. In your case you have
17 identified as well two areas of relief that
18 you need. One is special exception relief and
19 Office of Planning goes through that analysis
20 and doesn't have a problem with you meeting
21 that relief.

22 The other is the variance relief

1 which is a little bit harder because you have
2 to show not only that there is no adverse
3 impact from it, it's in harmony with the
4 character of the neighborhood, etc., but that
5 your situation is somehow exceptional or
6 unique from others. I recall that you went
7 through a variance test that is set forth in
8 our regulations. It's a three-prong test.

9 MR. WILSON: In so doing the
10 garage the way that I have it at the owner's
11 request, I was satisfied as an architect with
12 just doing an automobile garage that would
13 house one car. But since that time her mother
14 passed and she wanted a small amount of
15 storage space to put some of the things that
16 she chose to keep other than dispose and she
17 asked me if I could do it.

18 I told her yes, I would try.
19 That's why it's over .05 which is 85.9 square
20 feet and I didn't think that would be just
21 storage space right above the garage would be
22 any big thing since we aren't doing anything

1 that's going to be habitable.

2 CHAIRPERSON MILLER: Okay. I'm
3 going to let others see if they have any other
4 questions or if you want to say anything else
5 before we go to Office of Planning. It sounds
6 to me that the points you're making like that
7 it didn't seem like it would be a big deal and
8 didn't seem like it would have a big impact on
9 the neighborhood, etc., that does primary go
10 to your special exception which Office of
11 Planning found no problem with but the
12 variance is a little bit different. Maybe
13 I'll let Office of Planning address that when
14 we get to Office of Planning.

15 Do Board members have any
16 questions for the applicant?

17 VICE-CHAIRPERSON LOUD: Good
18 morning, Mr. Wilson.

19 MR. WILSON: Good morning.

20 VICE-CHAIRPERSON LOUD: I just
21 wanted to ask you sort of following on your
22 testimony earlier regarding not being able to

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1 reduce the depth by five feet. If your
2 choices were that the relief would not be
3 granted or that you were able to find a way to
4 reduce the garage by five feet, could you see
5 yourself reducing it by five feet and it
6 working?

7 MR. WILSON: Like I said before,
8 if I reduced it by five feet, it would be 20
9 feet. The minimum parking space is 9 by 19.
10 If I took that and put walls on both ends, it
11 would reduce the parking space down below 19
12 feet. If you approved it and if I went to the
13 Building Department to get a permit, I
14 couldn't get one because it would be too
15 small.

16 VICE-CHAIRPERSON LOUD: Okay. I
17 think I understand your testimony now. Maybe
18 we can point that question to OP. But you're
19 saying if a reduction of five feet met all of
20 the requirements she wouldn't have a problem
21 but it does not meet all of the requirements
22 in your --

1 MR. WILSON: No, it wouldn't meet
2 them if I went to get a permit.

3 VICE-CHAIRPERSON LOUD: Okay.

4 MR. WILSON: I would have to put a
5 wall on both ends and it would reduce the
6 parking space below minimum.

7 VICE-CHAIRPERSON LOUD: Okay.
8 Thank you. I think when we get to OP that
9 will be one of my questions for them. Thank
10 you.

11 MR. DETTMAN: Good morning, Mr.
12 Wilson.

13 MR. WILSON: Good morning, sir.

14 MR. DETTMAN: Just to sort of
15 follow along with Mr. Loud's question. If you
16 were to reduce it to 20 feet, and it looks
17 like you have a stairway at the rear of the
18 garage to access this mezzanine, how wide
19 would you say that stairway is?

20 MR. WILSON: Just three feet.

21 MR. DETTMAN: It's three feet.
22 Essentially you're not even looking at the

1 width of the walls, the rear wall and the
2 garage door wall. You're already down to 17
3 feet because of that need to access the
4 mezzanine?

5 MR. WILSON: Right.

6 MR. DETTMAN: Okay. Instead of
7 sort of shrinking it lengthwise, it looks like
8 you have more room to sort of play with width
9 wise.

10 MR. WILSON: Width wise.

11 MR. DETTMAN: I think you are
12 proposing 16 feet wide. The required parking
13 space is 9 feet so is there a way we can come
14 into the allowable FAR by shrinking the width
15 or does that lead to some sort of difficulty?

16 MR. WILSON: The only thing that I
17 was thinking about along those matters is that
18 the owner would be coming from her house into
19 the back of the garage into the stair area
20 going upstairs storing.

21 Now, if we do what you're talking
22 about to take it off the rear and in some way

1 work it on the side, then that will mean that
2 you would have to come out of the rear of her
3 house and get into the building and then come
4 all the way around and do one of these numbers
5 and then go up the steps.

6 It would be -- well, if she took
7 her car out you could do that but coming in
8 here and going around this way and then you
9 could back in this way is a long route way of
10 doing it but you could do it like that.

11 MR. DETTMAN: Just so I'm
12 understanding you clearly, if we were to
13 shrink the width from, say, 16 feet to
14 whatever it is, does that prevent you from
15 having a staircase going up the back? Does
16 that make you reorient the staircase in order
17 to have access? I don't understand why you
18 would have to sort of come around to the
19 garage door off the alley to access the
20 garage.

21 MR. WILSON: I mean, if -- let me
22 -- if I came -- if I put the stair on the

1 side, then I would have to come across here
2 and come through the garage and get to the
3 stair and then go up. The little storage
4 space up there is a mezzanine so I would have
5 to come from the side to get to the mezzanine
6 because that is the high side of the garage
7 sloping down so that you would have gutter and
8 the water would pick-up and go into the alley.

9 But if I just made the garage,
10 say, 12 feet and then have a little four-foot
11 path on the side, that would kind of reduce
12 the security that the owner was trying to get
13 and she is by herself.

14 MR. DETTMAN: Thank you.

15 MR. WILSON: It could be done but
16 you would have a little miserable space going
17 the whole way this way and she would probably
18 have a fence and a gate here and a fence and
19 a gate here.

20 MR. DETTMAN: Thank you.

21 MR. TURNBULL: Mr. Wilson, how
22 critical is the storage space?

1 MR. WILSON: Like I was saying,
2 her mother passed. She was able to dispose of
3 about everything I suppose and a few things
4 that she wanted to keep. Her house now is
5 kind of crowded with that and she wanted some
6 place to put it so she could get her house
7 squared away.

8 MR. TURNBULL: Thank you.

9 MR. WILSON: Beg your pardon?

10 MR. TURNBULL: I just said thank
11 you.

12 MR. WILSON: Oh, thank you.

13 CHAIRPERSON MILLER: Mr. Wilson,
14 is there something different about this
15 property compared to neighboring properties?

16 MR. WILSON: No. It's a whole
17 block on the south side of Emerson Street
18 that's all rowhouses. Across the street from
19 it is two and three-story apartments. In the
20 back of it, which would be New Hampshire
21 Avenue, it's all apartments which are four
22 stories plus.

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1 On the west 2nd Street is all
2 rowhouses and apartments. The lot is zoned 16
3 feet wide so she can't park in front. No one
4 can. They would either have to have some
5 space in the rear to do it and to relieve the
6 street. You know, it's crowded. The area is
7 crowded.

8 CHAIRPERSON MILLER: Okay. Do
9 other of the rowhouses have garages?

10 MR. WILSON: Well, in taking the
11 pictures I think if you would notice on view
12 one and view five you will see garages there.
13 When you look on your screen they don't show
14 so when speaking with zoning somebody has been
15 bootlegging in garages.

16 CHAIRPERSON MILLER: Could you
17 just direct me to -- you were referring to
18 view one and view five?

19 MR. WILSON: Yes.

20 CHAIRPERSON MILLER: Where is that
21 in the record?

22 MR. WILSON: Beg pardon?

1 CHAIRPERSON MILLER: Where is that
2 in our record?

3 MR. WILSON: Right here.

4 CHAIRPERSON MILLER: Exhibit 6?
5 Okay. Thank you.

6 Okay. Any other Board questions?

7 Mr. Wilson, anything else you want
8 to say at this point before we go to the
9 Office of Planning?

10 MR. WILSON: No.

11 CHAIRPERSON MILLER: We can hear
12 from the Office of Planning if you are
13 finished with your initial remarks. We'll get
14 back to you unless you want to say something
15 else right now.

16 MR. WILSON: No.

17 CHAIRPERSON MILLER: Okay. We'll
18 turn to the Office of Planning then and hear
19 what they have to say and you'll have a chance
20 to react to them.

21 MR. WILSON: Oh, you want me to
22 leave?

1 CHAIRPERSON MILLER: No, no, no.
2 Stay right there. We're just going to hear
3 from the Office of Planning.

4 Good morning, Mr. Rice.

5 MR. RICE: Good morning, Madam
6 Chair.

7 MR. RICE: Good morning, Madam
8 Chair. My name is Stephen Rice with the
9 Office of Planning. OP believes the applicant
10 has met the burden of proof pursuant to
11 Section 223 for a special exception but we
12 cannot support or recommend approval for a
13 variance mainly because the first two tests
14 have not been met.

15 The 15-foot tall garage would be
16 sufficiently distanced from the properties
17 across the alley and it should not create any
18 light and air impairment. There is a 16-foot
19 wide alley to the south that should prevent --
20 provide, I'm sorry, ample buffer space from
21 those south properties. The garage as opposed
22 does not have any windows on its west or east

1 sides.

2 From Emerson Street it's a rear
3 construction so it should not be viewed from
4 Emerson Street but from the two side streets
5 which are at New Hampshire and Third Street
6 those views should be somewhat limited because
7 the alley has sort of a V-angled shape or
8 view. It shouldn't have any negative impacts
9 from those two streets.

10 Regarding the FAR variance, as
11 noted the applicant did not address those
12 tests in the application. The subject
13 property is very similar to its surrounding
14 properties that face Emerson Street to the
15 north both in dimensions and in shape so there
16 is no exceptional situation or unique
17 condition to this property. Since there is no
18 unique situation there is no practice
19 difficulty.

20 As proposed, it appears that the
21 FAR excess would be a created situation based
22 on the dimensions of the garage mainly due to

1 the depth of it which is 25 feet. OP feels
2 that is this is reduced or some other
3 situation is created whereas the FAR could be
4 reduced, a suggestion we made was that if it's
5 reduced from 25 feet to 20 feet, that would
6 alleviate the need for this variance which is
7 .95 as proposed and .9 is what is permitted in
8 the R-5-A.

9 As of the time of drafting this
10 report, OP had not received any comments from
11 the ANC or either of the adjacent neighbors.
12 But since then we have learned that there has
13 been a letter of opposition submitted from the
14 neighbor that lives at 224, I think, is the
15 property to the west, if I'm not mistaken, so
16 there is a letter of opposition from one
17 neighbor.

18 OP believes the applicant has met
19 the burden of proof pursuant to the special
20 exception but we cannot support the variance
21 request. I'm open for questions.

22 CHAIRPERSON MILLER: Do you have

1 any response to Mr. Wilson's comments that if
2 the FAR reduced the garage depth to 20 feet
3 that it wouldn't go through permitting because
4 there wouldn't be enough space for the parking
5 space once the walls were put up?

6 MR. RICE: I think the minimum
7 depth for a parking space is 19.5 feet or so
8 if he did not provide that 19 or so feet, I
9 think they would kick it back to zoning. In
10 order to get that he would have to make the
11 variance test in this case just given the
12 existing structure and what is already on the
13 site and what is proposed. Does that answer
14 your question?

15 CHAIRPERSON MILLER: Let me ask
16 another one. Is there anything -- I think you
17 have addressed this but perhaps not
18 specifically. Is there anything about this
19 property that is exceptional with respect to
20 the need for the FAR increase? You know, the
21 other properties maybe could get a garage
22 pursuant to 223 but his property is somehow a

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1 little bit different that gives rise to the
2 need for the variance in FAR.

3 MR. RICE: I don't know the
4 history of the other properties that have
5 garages. It appears that some may have larger
6 lots as far as the depth but the structures
7 themselves are very similar in nature. There
8 are 20 or so properties facing Emerson Street
9 and of those 26 or 27 or so currently have
10 garages. Now, I'm not sure how they got those
11 garages but I don't see a unique situation
12 with this property.

13 CHAIRPERSON MILLER: And did you
14 have an opportunity to raise the issue of
15 addressing the variance test with the
16 applicant before this hearing?

17 MR. RICE: Yes. We met once and
18 we have spoken at least three or four times
19 about the need to both address the 223 if he
20 chose to go ahead as proposed the need for a
21 variance and with that the need to address
22 those three tests but we didn't receive

1 anything.

2 MR. TURNBULL: Mr. Rice, it sounds
3 like he really needs 21 feet almost to make
4 this work. Where does that put him in the
5 FAR?

6 MR. RICE: I don't have the
7 calculations in front of me but I did as many
8 scenarios as possible and the best scenario
9 that I came with as far as the depth is
10 concerned was 20 feet which placed him right
11 at .9.

12 MR. TURNBULL: Okay.

13 MR. RICE: Anything else would
14 just tilt him over.

15 MR. TURNBULL: Thank you.

16 VICE-CHAIRPERSON LOUD: Good
17 morning.

18 MR. RICE: Good morning.

19 VICE-CHAIRPERSON LOUD: I'm having
20 problems with the math and I want you to help
21 me understand what I'm doing wrong this
22 morning. If I look at the 25 feet depth and

1 it requires a five percent reduction -- is
2 that correct?

3 MR. RICE: Um-hum.

4 VICE-CHAIRPERSON LOUD: -- I come
5 out with 1.4 feet instead of five feet.

6 MR. RICE: Okay. For the FAR?

7 VICE-CHAIRPERSON LOUD: If the
8 total reduction required to bring it within
9 the FAR five percent and I am taking five
10 percent off of the 25 feet --

11 MR. RICE: Not five percent, five
12 feet.

13 VICE-CHAIRPERSON LOUD: Okay, five
14 feet.

15 MR. RICE: Yeah.

16 VICE-CHAIRPERSON LOUD: Why would
17 it be five feet?

18 MR. RICE: Because in order to get
19 the FAR you would have to take the total
20 square footage of all the structures so that
21 would include the primary structure and the
22 proposed structure, the square footage.

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1 This is for the FAR so you take
2 that number and you divide it by the lot area
3 in order to get the square footage at a .9
4 with the width at 16 feet and we didn't look
5 at reducing the width which could probably be
6 a solution but based on the 16-foot width the
7 only way we could get to the .9 would be to
8 reduce the 25 feet to 20 because the existing
9 structure already takes up a certain amount of
10 square footage. I don't have those numbers in
11 front of me but if you give me a minute --

12 VICE-CHAIRPERSON LOUD: I'm
13 following you conceptually but the main idea
14 is that the five percent overage. Right? He
15 said .95 as opposed to .9.

16 MR. RICE: Um-hum.

17 VICE-CHAIRPERSON LOUD: Okay. So
18 that five percent overage is something that is
19 calculated against the entire improvements on
20 the property, not just the rear addition.

21 MR. RICE: That would include the
22 primary structure. With that your numbers are

1 still different?

2 VICE-CHAIRPERSON LOUD: I would
3 have to do the calculations just like you.
4 All right. Thank you.

5 MR. DETTMAN: One quick question.
6 Good morning, Mr. Rice.

7 MR. RICE: Yes.

8 MR. DETTMAN: Would you happen to
9 know if the dwelling actually has a basement?

10 MR. RICE: The existing structure?

11 MR. DETTMAN: Yes.

12 MR. WILSON: Yes, there is a
13 basement.

14 MR. RICE: I'm not sure if it's a
15 basement or cellar.

16 MR. WILSON: It's a cellar.

17 MR. DETTMAN: Okay.

18 MR. WILSON: It's a cellar.

19 MR. DETTMAN: Is it a dwelling
20 unit or is it storage?

21 MR. WILSON: It would be -- the
22 storage that you're talking about, I don't

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1 know what's down there already but I do know
2 what is on the first floor because I've seen
3 that.

4 MR. RICE: If you look on Exhibit
5 20 there is a black and white image. It
6 appears that all of those properties are two-
7 story properties with a few steps that lead up
8 to the first level. Based on this image it's
9 hard to tell whether or not there is a
10 basement.

11 CHAIRPERSON MILLER: Mr. Rice,
12 just for the record, if the applicant were to
13 reduce the steps of the garage in order to
14 eliminate the need for variance relief, he
15 still needs relief under 223 for lot
16 occupancy. Correct?

17 MR. RICE: Let me check. Yes,
18 because the existing structure is at 36
19 percent based on his tabulations and in the R-
20 5-A 40 percent is permitted. I would imagine
21 that even a reduction would throw him over the
22 40 percent but under 223 it could go up to 70

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1 percent. I do believe if he were to meet the
2 .9 we wouldn't have a problem. Well, he
3 wouldn't need a variance so the project
4 shouldn't be held up based on OP's analysis.

5 CHAIRPERSON MILLER: Okay. One
6 last question which goes back to my first
7 question. Your bottom line was you thought
8 with the dimensions it would result by
9 reducing the garage from 15 feet to 20 feet
10 that, in fact, it would go through permitting?
11 The garage would go through permitting?

12 MR. RICE: Do be honest I don't
13 know what exactly they look at but if they
14 require a certain depth and he doesn't meet
15 that depth, I do think they would kick it back
16 to zoning for relief. I don't know what those
17 numbers would be exactly. I just don't know
18 those numbers.

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 Any other Board questions?

22 Mr. Wilson, you have an

1 opportunity if you want to ask Office of
2 Planning any questions based on his testimony,
3 Mr. Rice's testimony, or in his report if you
4 so choose right now you could if you have any
5 questions for him.

6 MR. WILSON: Well, no. I think
7 I've presented and said everything that has
8 caused me to come here and to present this
9 information to you.

10 CHAIRPERSON MILLER: Okay. As I
11 understand it, we don't have a report from the
12 ANC. Is anybody here from the ANC to testify
13 in this case? I'm not seeing anyone. Is
14 there anybody here to testify in support of
15 this application in the audience? Anybody in
16 opposition to this application?

17 Yes, please come forward.

18 MS. WILLIS: Good morning.

19 CHAIRPERSON MILLER: You can start
20 by introducing yourself for the record by
21 giving your name and address.

22 MS. WILLIS: My name is Barbara

1 Willis. I'm at 220 Emerson Street. I'm right
2 next door to the property.

3 CHAIRPERSON MILLER: Okay. You've
4 been listening to the whole proceeding so what
5 would you like us to know?

6 MS. WILLIS: Well, my main concern
7 when coming here I wanted to actually
8 understand the impact that building this
9 garage would have on my property directly as
10 well as the neighborhood. Through Mr.
11 Wilson's testimony he has mentioned that there
12 are other garages that are similar, if I'm
13 correct, but it's deeper in depth. That I
14 would be opposed to, the depth of the garage.

15 CHAIRPERSON MILLER: Have you seen
16 any plans or anything?

17 MS. WILLIS: No, I haven't. This
18 is my first real understanding of the size of
19 the structure.

20 CHAIRPERSON MILLER: Do you think
21 you have an understanding?

22 MS. WILLIS: Just briefly about

1 the depth and adding an extra five feet. My
2 understanding is that it's over the steps that
3 lead to the mezzanine.

4 MR. WILSON: Yes.

5 MS. WILLIS: Okay.

6 MR. WILSON: The whole garage is
7 over that part.

8 MS. WILLIS: Okay. So it actually
9 would not be in line with the other garages?

10 CHAIRPERSON MILLER: It would be
11 further.

12 MS. WILLIS: It would be further
13 into her property. He would come over all of
14 our driveways.

15 CHAIRPERSON MILLER: How would it
16 align with your property?

17 MS. WILLIS: It would -- right now
18 all of the properties are aligned including
19 the garages because the garages actually come
20 right at her driveway so this would actually
21 add five feet over that since we are rowhouses
22 and we are directly adjacent so there would be

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1 some obstruction maybe in the view on my end,
2 you know, because I'm right next to her.

3 CHAIRPERSON MILLER: So if the
4 depth were reduced by five feet, how would
5 that impact you?

6 MS. WILLIS: That would be
7 agreeable to all of the neighbors really
8 because it would be right in line with the
9 rest of the properties. May I answer the
10 question about the basement? We all have --
11 because it's rowhouses all these houses are
12 the same and I have been inside of that
13 property at 222. There is a basement.

14 CHAIRPERSON MILLER: Mr. Rice, if
15 the garage were reduced five feet, is there
16 anything that mandates how it would be reduced
17 like whether it would definitely align? She's
18 saying it's not aligning right now because of
19 five feet.

20 MR. RICE: Well, I don't know the
21 depth of the neighboring garages but if you
22 look at the image in OP's report you can get

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1 an idea of how deep they would be if they were
2 to fit a car in them which would have to be at
3 least 19 feet. I do think I understand what
4 she is referring to.

5 If he has 25 feet and the rest are
6 either 19 or 20 feet, it would come up that
7 the additional five feet closer to the primary
8 structure which could throw that alignment off
9 a little. That's if she's referring to from
10 the rear yard, not from the alley.

11 MS. WILLIS: Not from the rear.

12 CHAIRPERSON MILLER: Okay.

13 Anything else you want to tell us?

14 MS. WILLIS: No, that's it.

15 CHAIRPERSON MILLER: Okay. Any
16 questions?

17 VICE-CHAIRPERSON LOUD: I just
18 want to ask Mr. Rice if all of the neighbors
19 have what could be 20-foot deep garages but
20 Mr. Wilson's client can't because it would
21 exceed what he would be able to get a permit
22 for, does that in any way make the property

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1 unique in your estimation?

2 MR. RICE: The fact that other
3 property owners have 20 or so feet deep
4 garages and they have the same permanent
5 structures and the fact that he doesn't makes
6 him unique?

7 VICE-CHAIRPERSON LOUD: That's Ms.
8 Willis' testimony that everybody -- no? I
9 thought her testimony was that all of the
10 other properties have rear garages and that
11 they all were aligned --

12 MS. WILLIS: They are aligned.

13 VICE-CHAIRPERSON LOUD: -- with
14 each other and that they are all about five
15 feet less than what he proposes to do.

16 MR. RICE: Well, all of the
17 properties don't have garages. I would say
18 one-fourth or maybe a little over one-fourth
19 have garages given the 20 structures on
20 Emerson Street. Some do but not all. I don't
21 see a unique situation.

22 MR. DETTMAN: Mr. Rice, I just

1 want to sort of bounce something off of you.
2 It looks like -- I think you said that five
3 feet is absolutely necessary to get it to .9
4 FAR?

5 MR. RICE: From the depth, yeah.

6 MR. DETTMAN: Just looking at the
7 plans I can see that three feet of that is a
8 staircase which is being incorporated into
9 this FAR calculation.

10 I'm going to throw this back to
11 the applicant to see if this might be feasible
12 but if the staircase were on the outside of
13 the building, you essentially can move the
14 rear wall in three feet so that is taking care
15 of three of the five feet that we are looking
16 to need. The staircase on the outside would
17 still contribute to lot occupancy but it gets
18 taken out of the FAR. Is that correct?

19 MR. RICE: That's my
20 understanding.

21 MR. DETTMAN: Okay. So then we
22 need to find two feet. I'm just wondering if

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1 the mezzanine as it's proposed right now -- I
2 don't know if these drawings have been reduced
3 at all. I can't tell the length of the
4 mezzanine.

5 MR. WILSON: No, it's just half of
6 it.

7 MR. DETTMAN: I know it's half but
8 I can't tell what the length of the mezzanine
9 is. My question to you is could you lose two
10 feet.

11 MR. WILSON: Right now the stairs
12 in the garage is inside the building and you
13 want me to take the stairs and put them on the
14 outside of the building?

15 MR. DETTMAN: I'm not trying to
16 redesign it. I'm just trying to see if there
17 are options out there that could be explored
18 so that you could conform to the FAR. I think
19 we are struggling to find a unique situation.

20 MR. WILSON: If putting a stair on
21 the outside of the building is not going to be
22 included in the FAR, then we could do it.

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1 MR. DETTMAN: So it would be a
2 stair to a landing.

3 MR. WILSON: It would be a stair
4 going right straight up on the outside of a
5 brick wall.

6 MR. DETTMAN: You said that the
7 stairway is three feet and it looks like you
8 would be removing a wall as well, one of the
9 walls, so are we losing around three and a
10 half feet?

11 MR. WILSON: Well, not three and a
12 half. Well, yeah, because we could take the
13 stair out. There are two walls. There's a
14 wall for the garage, for the car, the stair
15 and then the exterior wall. If we take the
16 stair out and take that wall out, you would be
17 losing or gaining three feet.

18 MR. DETTMAN: Three feet. Could
19 you lose two feet of the mezzanine or does
20 that make that storage unusable?

21 MR. WILSON: Well, it makes it
22 awful small. I mean, it's only about eight

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1 feet now. If you took the stair out, it would
2 still stay about the same but it would be
3 reduced just a little.

4 MR. RICE: Let me ask are you sort
5 of hinting at a reduction in the mezzanine
6 would reduce the FAR -- could possibly reduce
7 the FAR?

8 MR. WILSON: No.

9 MR. DETTMAN: The mezzanine is
10 included in --

11 MR. RICE: Let me back up with
12 this because the original proposal was for two
13 stories in the garage which is not permitted
14 in the R-5-A. I met with Mr. Wilson. I told
15 him that he couldn't do that absolutely at all
16 so we figured out a way to go forward and the
17 best solution was to create a mezzanine which
18 would not count toward that FAR. The numbers
19 that we have now does not even include that
20 mezzanine floor or a portion of that floor.
21 A reduction wouldn't change these numbers.

22 MR. WILSON: We really have a

1 storage space. I think something else that
2 really needs to happen in the District
3 Building Department eight feet is minimum
4 story height. When you go, for instance,
5 below grade and it's less than eight feet,
6 it's nonhabitable and it's called a cellar.

7 When you go above the ceiling
8 height and it's below eight feet and it's
9 nonhabitable, it's called an attic and that's
10 what we have here, not a story but an attic.
11 I think that needs to be clarified. Both the
12 Zoning and the Building Department ought to be
13 on the same page.

14 MR. RICE: Okay. To go back to my
15 point, the numbers we have for the FAR do not
16 include the square footage from the mezzanine
17 floor so a reduction wouldn't change that.

18 CHAIRPERSON MILLER: Okay. I
19 think Mr. Dettman is trying to help you out
20 but basically where we're at is kind of where
21 we were at the beginning of this case, that it
22 looks like you have addressed the special

1 exception test and your neighbor --

2 I'm sorry. What's your name?

3 MS. WILLIS: Barbara Willis.

4 CHAIRPERSON MILLER: -- Barbara
5 Willis has actually addressed the special
6 exception test and that if you didn't need the
7 variance for the extra five feet that it
8 wouldn't adversely affect neighboring
9 property.

10 You have gone through the legal
11 test somewhat on the special exception. What
12 the Board and the Office of Planning have been
13 trying to figure out here is basically you
14 need to reduce the feet of the garage so that
15 you don't need a variance for FAR, or else you
16 need to address the variance test.

17 We have been trying to explore
18 that here today. I haven't heard it addressed
19 fully. I would like to give you an
20 opportunity to address it any further and we
21 can perhaps leave the record open if you think
22 you might add more.

1 It's a specific legal test. We
2 can't just say it doesn't look like this would
3 have a negative impact. You have a reasonable
4 reason for it. That is not our test. We have
5 to comply with our regulations and the test
6 for variances is 3103.2 and it talks about
7 your situation, the property being exceptional
8 or unique and, for that reason, giving rise to
9 an exceptional practical difficulty that your
10 neighbors wouldn't share and then there being
11 no adverse impact.

12 What Mr. Rice is saying and what
13 I'm hearing, and I don't know about other
14 Board members, that I don't see that you have
15 shown how your property is unique in some way
16 that we can make this exception for you. You
17 still have an opportunity to address that but
18 the point is you have a choice. You can try
19 to address that better or you can reduce the
20 depth of the garage or stand on the record and
21 we will take a look at this later and reflect
22 on it.

1 MR. WILSON: As he was saying, if
2 we reduce the garage since the stair is in the
3 garage and it's counted in the FAR, if we
4 would take the stair out and, as you'll see,
5 just put it on the exterior wall and then go
6 into the little storage space, that could be
7 done.

8 I just didn't want to -- I
9 personally don't care for them. It looks like
10 a fire escape, a stair on the exterior wall,
11 but if that will do the trick that we can take
12 that wall off and reduce it down about three
13 feet, that would do the trick.

14 CHAIRPERSON MILLER: I don't know
15 if that does the trick. Does it?

16 MR. RICE: We would still need to
17 get to the 20 feet which is sort of the magic
18 number if we keep the same width.

19 MR. WILSON: We can't do that.

20 MR. RICE: Well, then that's a
21 problem because even if you reduce or if you
22 remove the three-foot wide stairway, that

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1 would place you at 22 feet so we need to
2 figure out a way to get it to reduce it an
3 additional two feet.

4 MR. WILSON: For my client, No. 1,
5 I have to get a building permit. Since I'm a
6 little bit over, I've come here to you but
7 they are recommending something that the
8 Building Department won't pass. Like he said,
9 they are going to throw it back to you and it
10 is too small.

11 Just take the garage like it is,
12 take the three feet out, and go from there so
13 I could get a building permit. If you put a
14 car in a space in a garage that is less than
15 the 19 feet, you are going to have problems
16 maneuvering around both ends. On the side is
17 fine but to go around both ends you aren't
18 going to be able to do it.

19 We are going to have to eliminate
20 the 20 feet and then we don't want to do this
21 anymore. We just have to. I mean, she won't
22 get a garage because she won't get a building

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1 permit.

2 MR. RICE: I think that's the
3 issue because what is driving this is the
4 existing structure currently has an existing
5 amount of square footage. Based on that
6 number that limits the amount of square
7 footage you can commit to a new structure. If
8 that can't be met within the FAR parameters
9 and if you can't meet the variance test, your
10 client may have to explore a different option.

11 MR. WILSON: Other than the garage
12 when she wants a garage?

13 MR. RICE: But she would have to
14 meet the law.

15 MR. WILSON: That's why we're
16 here. We are bent over the law to get the
17 minimum building. We're not asking for
18 anything else other than an automobile. You
19 know, you need 10 feet. All of those lots are
20 16 feet so you don't want a path. We wouldn't
21 want a path. She doesn't want one. It
22 doesn't secure her property.

1 CHAIRPERSON MILLER: Okay.

2 Question?

3 VICE-CHAIRPERSON LOUD: I just
4 wanted to ask, Mr. Wilson, you testified
5 earlier regarding a suggestion, I think, by
6 Mr. Dettman regarding reducing the width, I
7 believe.

8 MR. WILSON: That's what we're
9 talking about.

10 VICE-CHAIRPERSON LOUD: We're
11 talking about the reduction of the depth right
12 now from 25 to 22. What was your testimony
13 earlier about reducing the width of the
14 structure because I think if you were amenable
15 to reducing the width, you might also be able
16 to get it under the FAR and I believe that
17 number would be two feet.

18 MR. WILSON: As you know, a
19 rowhouse lot, these rowhouse lots --

20 VICE-CHAIRPERSON LOUD: I'm just
21 asking you for your position on reducing the
22 width of the structure from about 16 feet to

1 14 feet. Does that make it an undoable
2 project for you?

3 MR. WILSON: It wouldn't be what
4 my client wants. She wants to secure her
5 property and to have a space between this
6 property line and her building is not really
7 totally secure. She is by herself and that is
8 what she would like to have more than anything
9 else other than housing a car.

10 VICE-CHAIRPERSON LOUD: Just in
11 that regard, are there any other options that
12 would allow the property to be secured if the
13 structure went 14 feet wide as opposed to 16
14 feet wide? Is the structure the only way that
15 you can secure the property?

16 MR. WILSON: Well, like I said, if
17 you went anyway other than property line to
18 property line and blocked off her whole
19 property with the building, you're either
20 going to have to come up with a wall or you
21 are going to have to come up with a chain link
22 fence on both ends and four feet, or three

1 feet, you know, is kind of miserable and looks
2 like space that you should have been able to
3 use and now you've got space that you can't
4 use.

5 VICE-CHAIRPERSON LOUD: I won't
6 drag it out. There are also security systems,
7 alarm systems, but I just want to be clear on
8 what your position was on reducing the width
9 from 16 feet.

10 MR. WILSON: My job as an
11 architect is to do what my client wants.

12 MR. TURNBULL: Mr. Wilson, one
13 option that I was thinking about here, you
14 could still build on your elevation, your
15 south elevation, you could still build that
16 elevation on the alley.

17 It's just that once you get past
18 the door, the edge of the garage is shorter.
19 If you are worried about security getting in,
20 she could still do that elevation from the
21 alley but just narrow the garage all the way
22 back to get to 25 feet.

1 MR. WILSON: Are you talking about
2 the south elevation?

3 MR. TURNBULL: Right. In other
4 words, you could build that elevation on the
5 alley. It's just that the outside concrete
6 wall is what is shown as your interior wall.
7 If there was nine foot for the car so that you
8 get a narrower garage. It's the narrow garage
9 but it's going back further. From the outside
10 of the alley it looks like you are totally
11 sealed. The whole property goes from property
12 line to property line.

13 MR. WILSON: In other words, you
14 want me to bring this line straight up. That
15 is what we were talking about. If I brought
16 that line straight up, we would have to have
17 some security at the door. It could be gotten
18 over. You could climb over it.

19 MR. TURNBULL: Well, you could put
20 a higher fence along the side. I don't want
21 to get into a lot of solution but just trying
22 to come up with an option to get you at the

1 FAR.

2 MR. WILSON: I understand. That
3 is just about what we were talking about. If
4 we did that, we would still have the space
5 from that side of the wall over to the
6 property line which would be a vacant space.
7 If you got over the gate or the wall or the
8 fence, you would be basically right on the
9 owner's property.

10 CHAIRPERSON MILLER: I think the
11 Board has been very generous with you. We
12 don't always do this in giving you all these
13 different ideas basically because it doesn't
14 look like you haven't made the variance test
15 yet. What I would suggest is that we give you
16 a little more time if you would like it to try
17 to revise your plans to meet the FAR or to
18 address the variance test.

19 MR. WILSON: We just did if we
20 take the stair out of the building and put the
21 stair on the outside wall.

22 CHAIRPERSON MILLER: If you would

1 like to do that, we don't have that in front
2 of us.

3 MR. WILSON: No, you don't.

4 CHAIRPERSON MILLER: No. What you
5 would have to do is revise your plans
6 actually. I think you should show them to the
7 Office of Planning as well before you submit
8 them.

9 MR. RICE: Can I make a quick
10 comment?

11 CHAIRPERSON MILLER: Yes.

12 MR. RICE: I just ran a few
13 numbers. The proposed garage is at 400 square
14 feet. It's 25 by 16. In order to meet the .9
15 FAR that 25 feet needs to be reduced to 20
16 feet which would give you 320 square feet. If
17 you reduced -- I don't know if this is
18 possible. This is sort of a question.

19 The new magic number is 320 square
20 feet so if you kept the depth at 25 feet with
21 the staircase but reduced the width to the
22 number I have which is 12.8 feet wide. That

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1 would place you at 320 square feet. I don't
2 know if that's possible but if you are able to
3 design something with those dimensions, you
4 wouldn't need a variance.

5 MR. WILSON: Something can be
6 designed but you're going to have to eliminate
7 the 20 feet. The 20 feet doesn't work.

8 MR. RICE: The 12.8 would be based
9 on -- that's the width but you would maintain
10 the 25-foot depth. You could keep a mezzanine
11 but it just would be a little narrower.

12 CHAIRPERSON MILLER: I think this
13 conversation could be continued outside of
14 this hearing. I think that would be positive.
15 If you would like the opportunity to revise
16 your plan, I think the Board is certainly
17 amenable to giving you that. You would need
18 to serve any revisions on the ANC and I would
19 request that you also share it with Ms. Willis
20 because we have heard testimony how the garage
21 in a certain way would have an adverse impact
22 on her property. If you are going to change

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1 it, I would like to give her the opportunity
2 to notify us in writing if she has any
3 concerns about that as well.

4 MR. WILSON: May I address that?

5 CHAIRPERSON MILLER: Yes, briefly.

6 MR. WILSON: If you will notice
7 the photographs that were submitted, view 1,
8 they are existing garages. On that end, on
9 the 2nd Street end of the alley, there are no
10 other garages on that side of the street and
11 these are per zoning illegal. There is an
12 opportunity for everybody to do what my client
13 wants to do.

14 Then all of the houses on the back
15 of the alley, as you can see here in elevation
16 2, are apartment buildings. There are no
17 houses. All the houses on Emerson Street have
18 the right to do what she wants to do and it's
19 left up to the owners to do it. No one else
20 has done it.

21 CHAIRPERSON MILLER: Okay. Is
22 that your closing remarks then at this point?

1 MR. WILSON: Well, if the Board
2 would like for me to redo it and bring the
3 square footage down but I can't do 20 feet.

4 CHAIRPERSON MILLER: Let me be
5 clear with you. The Board is not asking you
6 to do anything. The Board is giving you an
7 opportunity if you want to having heard what
8 has gone on at this hearing which is that the
9 Board is having trouble seeing that you met
10 the variance test so, therefore, we are giving
11 you one more opportunity to either try to
12 address that in writing or to come into
13 compliance so you don't need a variance but
14 we're not asking you to do it.

15 It's your choice. You are the
16 applicant. You can rest on the case right now
17 if you want to. After having heard what we
18 said if you want to revise your plans, we are
19 going to give you that opportunity.

20 MR. WILSON: Well, since the Board
21 thinks that it's over, I would have to revise
22 the plan but it will be shorter. The width

1 will be the same but it will just be shorter
2 because I have to be able to get a permit to
3 do what the minimum requirement is that the
4 Building Department requires.

5 CHAIRPERSON MILLER: Okay. I'll
6 say this one more time and then I think we
7 should set a date. You have two choices which
8 you've had all along. One, get rid of the
9 need for the variance which would be revising
10 your plans. Or, two, make a better case in
11 writing why you meet the variance test.
12 That's up to you.

13 MR. WILSON: The only reason we
14 need to do a variance test is that we were
15 over the lot occupancy.

16 CHAIRPERSON MILLER: The FAR.

17 MR. WILSON: That was the start.
18 Now, we can satisfy this. We were also over
19 .05 which is a big deal which is equal to 95.9
20 square feet. If you want us to do that, then
21 we have to work on that.

22 CHAIRPERSON MILLER: Okay. What

1 I'm going to do is I think we need to go on to
2 the next case because I think we are getting
3 repetitive. I'm pretty sure that if you talk
4 with Office of Planning after this hearing,
5 you'll be able to figure out more what you
6 want to do. The Board really isn't in that
7 role.

8 We are really in the role of
9 basically meet the variance test or get rid of
10 the variance. I don't think we need to do
11 anymore in this hearing today. Mr. Rice
12 totally understands the context here. What I
13 would like to do is set this off for a
14 decision.

15 We do that with many cases that
16 aren't ready the day that we hear them. We
17 have a special day once a month for those
18 cases to decide. I'm not sure how much time
19 you need. Our next decision meeting is July
20 1st but I'm not sure if that's enough time or
21 not.

22 MR. WILSON: What, a month?

1 CHAIRPERSON MILLER: How much time
2 would you like? We could go to July 1st.

3 MR. WILSON: I don't have to make
4 the total submission. What we are talking
5 about doing is reducing the plans that would
6 come down. I think that within a month we
7 could reduce the plan of the garage to less
8 than 25 feet.

9 CHAIRPERSON MILLER: Okay. Ms.
10 Bailey, if we set this for a decision making
11 on July 1st.

12 MR. WILSON: July who?

13 CHAIRPERSON MILLER: First.

14 MR. WILSON: First.

15 CHAIRPERSON MILLER: That would
16 require you to file the plan earlier on the
17 Board, on the ANC, and on Ms. Willis.

18 MR. WILSON: Beg pardon?

19 CHAIRPERSON MILLER: I would like
20 you to -- if we set this for decision on July
21 1st you need to in advance like a week earlier
22 at least file it with the ANC and with Ms.

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1 Willis. Even though Ms. Willis isn't a party
2 she has come here and commented on your
3 previous one so I think her views -- she
4 should have the opportunity.

5 MR. WILSON: Well, as far as Ms.
6 Willis is concerned, when I reduce the plan
7 it's going to be the same basically.

8 CHAIRPERSON MILLER: Okay. Let me
9 ask you, Ms. Bailey, when would he need to
10 file the plan?

11 MS. BAILEY: I would suggest,
12 Madam Chair, if you are doing July 1st the
13 23rd of June so the applicant would have the
14 remainder of this week and next week and then
15 on the 23rd the plan should be filed with the
16 Office of Planning with a copy to the Board.

17 CHAIRPERSON MILLER: And the ANC
18 and Ms. Willis.

19 MS. BAILEY: And the ANC and Ms.
20 Willis. Then that would give the Office of
21 Planning until the 27th which is that Friday
22 to file a supplemental report. Is that doable

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1 for the Office of Planning?

2 MR. RICE: That's fine.

3 MS. BAILEY: So the applicant will
4 file by June 23rd to the Office of Planning
5 and the record will be left open for the ANC
6 by June 27th. That should be ready for -- of
7 course, Mrs. Willis if she chooses to file,
8 those things should be ready for the Board's
9 July 1st decision.

10 CHAIRPERSON MILLER: Okay. Great.
11 Any other questions?

12 MR. WILSON: File the plans June
13 23rd?

14 MS. BAILEY: June 23rd, sir. Yes.

15 MR. WILSON: Uh-huh.

16 MS. BAILEY: And you are going to
17 serve those plans on the Office of Planning.
18 They are going to work with you and you are
19 going to serve them a copy. You are going to
20 discuss it with Mrs. Willis and you are going
21 to give a copy to the ANC. We can go over all
22 of this with you after the hearing.

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1 MR. WILSON: Okay.

2 CHAIRPERSON MILLER: Thank you
3 very much.

4 MR. WILSON: Thank you.

5 CHAIRPERSON MILLER: As Ms. Bailey
6 said, any questions you can ask after the
7 hearing to Mr. Moy in the Office of Zoning or
8 Mr. Rice in the Office of Planning. Thank
9 you.

10 We are ready when you are for the
11 next case.

12 MS. BAILEY: Madam Chair, that's
13 Application of Blagden Alley LLC, No. 17770,
14 and it's pursuant to 11 DCMR 3104.1 for a
15 special exception to establish accessory
16 parking spaces under Section 2116. The
17 property is zoned R-4. It's located at 934 N
18 Street, N.W., Square 368, Lot 909.

19 CHAIRPERSON MILLER: Good morning.

20 MR. FURIOSO: Good morning.

21 CHAIRPERSON MILLER: Would you
22 identify yourself for the record, please.

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1 MR. FURIOSO: Sure. My name is
2 Giorgia Furioso. I live at 1612 16th Street,
3 Unit No. 5, Washington, D.C.

4 CHAIRPERSON MILLER: Could you
5 repeat your last name? Furioso?

6 MR. FURIOSO: Furioso.

7 CHAIRPERSON MILLER: Okay.

8 MR. FURIOSO: F-U-R-I-O-S-O.

9 CHAIRPERSON MILLER: And you are
10 the applicant?

11 MR. FURIOSO: Yes. I'm the owner
12 of the property.

13 CHAIRPERSON MILLER: Okay. Do you
14 have anybody with you?

15 MR. FURIOSO: No, just someone who
16 works in my office.

17 CHAIRPERSON MILLER: Okay. We
18 have as a preliminary matter three requests
19 for party status. I doubt that they're here
20 but I'm going to read it just in case they're
21 here. Richard Urban, Craig Larson, Paul
22 Issacson. Are you here?

1 MR. FURIOSO: They were here and
2 they left us because they had a
3 misunderstanding of what I was doing and they
4 actually spoke to Office of Planning so he can
5 speak to what happened.

6 MR. GOLDSTEIN: I spoke to Mr.
7 Urban.

8 CHAIRPERSON MILLER: If you could
9 introduce yourself, Mr. Goldstein.

10 MR. GOLDSTEIN: My name is Paul
11 Goldstein. I'm a Development Review
12 Specialist with the Office of Planning. There
13 were a few neighbors who came to the hearing.
14 Mr. Urban, I believe, was the only one who had
15 actually submitted something at this point.

16 There seemed to be a
17 miscommunication or misunderstanding of
18 exactly what the applicant was applying for.
19 The neighbors spoke with the applicant and
20 then I spoke with the individuals who showed
21 up and they seemed to be satisfied once they
22 were explained what was being applied for

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1 through discussions with the applicant of
2 certain concerns or issues that they had in
3 general so they decided to leave.

4 CHAIRPERSON MILLER: Okay. We do
5 have their applications in the record and they
6 will remain in the record. It was my guess
7 they thought you were using public space
8 instead of --

9 MR. FURIOSO: They thought I was
10 asking for the two spaces in the public alley
11 rather than on my property because there is a
12 parking issue in the alley.

13 CHAIRPERSON MILLER: Okay. Good.
14 I have one other preliminary question and that
15 just goes to the relief here. I guess if was
16 changed from 214 to 2116.

17 MR. FURIOSO: Right.

18 CHAIRPERSON MILLER: Was it
19 advertised as 2116? Do you know?

20 MR. FURIOSO: Advertised in the
21 signage?

22 CHAIRPERSON MILLER: Yes.

1 MR. FURIOSO: I think it was done
2 as the case is being presented today.

3 CHAIRPERSON MILLER: Okay. I
4 think certainly one of the most concerned
5 individuals certainly had knowledge of it and
6 showed up and then we had those other two.
7 This seems pretty straightforward but if you
8 want to just quickly highlight your case. Now
9 there is no opposition I gather.

10 MR. FURIOSO: I don't want to take
11 anymore of your morning. I could read what
12 you have. I guess the only comment I would
13 make essentially is that I have owned the
14 other property at 926 N Street Rear since 1980
15 something and it occupies 100 percent of the
16 lot. It's an historic building and it's in an
17 historic district.

18 There really is no parking in the
19 alley. Because the alley on the west side is
20 faced by townhouses, they don't have the sort
21 of garages that you were talking about so
22 nobody parks in front of their garages. They

1 all park around my building even though some
2 of them are my tenants.

3 What I'm asking for is to be able
4 to do these two parking spaces which will
5 probably be a matter of right if there was a
6 structure on the lot. Because there is no
7 structure, I need to apply for your special
8 exemption. I think I do meet the standards
9 that the special exemption ask for and that's
10 really about it.

11 CHAIRPERSON MILLER: Could you
12 just refresh my memory with the addresses of
13 the lot --

14 MR. FURIOSO: The lot is 934 N
15 Street and the building that is going to be
16 helped through these two parking spaces is 926
17 N Street Rear. It's a two-story 12,000 square
18 foot. It was one of the last carriage houses
19 built in Washington and then the automobile
20 came. It's a beautiful building.

21 CHAIRPERSON MILLER: So basically
22 the relief is to establish accessory parking

1 spaces at 934 N Street for 926 N Street Rear?

2 MR. FURIOSO: Right.

3 CHAIRPERSON MILLER: Okay.

4 MR. FURIOSO: Correct.

5 CHAIRPERSON MILLER: Any questions
6 from the Board members?

7 MR. TURNBULL: Madam Chair, are
8 you going to have a fence?

9 MR. FURIOSO: Well, it's fenced
10 now and the question is, I mean, I'm willing
11 to do what the Board might recommend in terms
12 of any additional. We are going to landscape
13 the N Street side so that the cars wouldn't
14 necessarily be visible though that does
15 provide some issues with security but I'm
16 willing to do that.

17 If we keep the gates in, then the
18 cars could basically use the spaces. If we
19 remove the gates or move them back 20 feet,
20 then the parking becomes probably like, you
21 know, they are parking in my space kind of
22 thing. There are two gates now that open to

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1 the back part of the lot but, like I said, I
2 can either leave those or move them 20 feet
3 back where cars would be parked.

4 MR. TURNBULL: I was just curious
5 how you would control --

6 MR. FURIOSO: I would do a key to
7 the --

8 MR. TURNBULL: -- the parking and
9 they would open the gate and park inside. You
10 are only asking for two spaces.

11 MR. FURIOSO: Yes, that would be
12 normally there if there was a structure. I'm
13 not asking for the rest of the lot.

14 MR. TURNBULL: Okay. All right.
15 Thank you.

16 CHAIRPERSON MILLER: I'm sorry. I
17 missed a little bit of what you said. You are
18 asking for the accessory spaces but the rest
19 of the lot --

20 MR. FURIOSO: Is vacant.

21 CHAIRPERSON MILLER: -- will be
22 vacant.

1 MR. FURIOSO: Yes.

2 CHAIRPERSON MILLER: There will be
3 landscaping on part and gravel on the other
4 part?

5 MR. FURIOSO: It's gravel now but
6 it will be a little bit more gravel where the
7 actual cars are parking. The front of what
8 faces N Street will be landscaped so it won't
9 look necessarily just like an oak chain link
10 fence that you see two cars essentially.

11 CHAIRPERSON MILLER: How is it
12 going to be landscaped, with shrubs?

13 MR. FURIOSO: It's actually
14 euonymus plants that sort of grow like an ivy
15 even though it's drawn like a little bush
16 because my office person doesn't know how to
17 draw. It's actually euonymus that will grow
18 onto the fence so it will be like a green
19 fence essentially.

20 CHAIRPERSON MILLER: What is the
21 right name of the street? Is it 926 N or is
22 it 926 N Street Rear?

1 MR. FURIOSO: No. The application
2 is 926 -- I'm sorry. My carriage house
3 warehouse is 926 N Street Rear is the actual
4 formal address. The property on which I'm
5 parking is 934 N.

6 CHAIRPERSON MILLER: Okay. Any
7 further questions? Anything else you want to
8 say before we go to the Office of Planning?
9 Okay.

10 MR. GOLDSTEIN: Good morning,
11 Madam Chair and members of the Board. Again,
12 my name is Paul Goldstein. Depending on what
13 you would like I can run through the full test
14 or I could just rest on the record, whatever
15 your preference would be.

16 The Office of Planning has
17 reviewed the application and spoken with the
18 applicant several times and does support the
19 special exception request.

20 CHAIRPERSON MILLER: I think
21 highlight.

22 MR. GOLDSTEIN: Sure. I'll just

1 run through it and try to keep it brief. The
2 accessory spaces will be located on the vacant
3 lot No. 909 in Square 368 which is zoned R-4,
4 whereas the building that the parking would
5 service is located at lot 884 in the same
6 square. I wrote it as 926 Rear N Street but
7 maybe it is actually 926 N Street Rear or N
8 Rear Street. I'll just leave it at that.

9 Both lots are owned by the
10 applicant. The building is a contributing
11 building in the Blagden Alley historic
12 district. It does not have any dedicated on-
13 site parking. The applicant's original
14 application, as he mentioned, request relief
15 under Section 214.

16 However, due to the incongruent
17 zoning pattern in the square we have C-2-A for
18 one, R-4 for the other, it just created some
19 complications in trying to technically get the
20 right provision for him to apply. OP
21 suggested Section 216 which seemed to fit his
22 request a bit better. It's a relatively

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1 modest proposal. We are just talking two
2 parking spaces. Based on our review of 216.5
3 and the subsequent sections OP recommends
4 approval.

5 First, with regards to 216.6 OP
6 believes it's not practical to locate the
7 spaces on the same lot as the building. The
8 primary challenge is that the building which
9 dates from the early 20th century occupies 100
10 percent of its lot. OP understands that
11 parking, therefore, cannot be feasibly
12 provided on site.

13 As a result it would be a more
14 efficient use of land to let the applicant
15 park two spaces nearby on the vacant lot.

16 216.7 expresses a preference for locating the
17 spaces on lots that are separated only by an
18 alley from the building that it's intended to
19 serve. Consistent with this preference the
20 applicant will locate the spaces just across
21 an alley.

22 216.8, the applicant is proposing

1 to locate the spaces in a place that is
2 convenient for the building that it would
3 serve. Finally, 216.9, OP is not recommending
4 any additional conditions on the parking
5 spaces. The applicant, as you have already
6 heard, is already proposing to do some
7 landscaping at the front of the property which
8 OP is supportive of.

9 More generally, OP believes that
10 two spaces is not going to harm -- be any
11 detriment to the neighborhood. ANC-2F
12 submitted a letter in support. There were two
13 letters in support of the application from
14 neighbors as well. We have already discussed
15 some of the opposition but it seems that those
16 issues have been resolved through a
17 discussions.

18 Therefore, OP supports granting
19 the request for relief and, of course, I'm
20 here for any additional questions.

21 CHAIRPERSON MILLER: Wouldn't this
22 relief help relieve congestion in the alley if

1 it created two parking spaces?

2 MR. GOLDSTEIN: I would hope so.

3 CHAIRPERSON MILLER: So there
4 would be improvement.

5 MR. GOLDSTEIN: I would hope it
6 would be an improvement. It seems to make
7 sense that if you have some dedicated spots on
8 a lot that those cars wouldn't park in the
9 alley which shouldn't be happening anyway.

10 CHAIRPERSON MILLER: Any
11 questions?

12 MR. TURNBULL: He's only
13 requesting two. What if he had come to you
14 with four?

15 MR. GOLDSTEIN: Well, if he had
16 come to me with four I think we probably would
17 have had some --

18 MR. TURNBULL: Some issues?

19 MR. GOLDSTEIN: -- some issues
20 with it. I don't think we want to create a
21 parking lot in that space.

22 MR. TURNBULL: Okay.

1 MR. GOLDSTEIN: Since it was only
2 two spots, I think that sounded like a pretty
3 modest request and pretty reasonable.

4 MR. TURNBULL: Okay. I hope you
5 are getting a good dollar for those parking
6 spaces.

7 MR. FURIOSO: I think they will be
8 free. I have been a member of Blagden Alley
9 and the only thing about Blagden Alley they
10 unanimously approved it but I think if I had
11 three, they probably would have said, "Wait."
12 I know my neighbors.

13 MR. TURNBULL: All right.

14 CHAIRPERSON MILLER: Any other
15 questions? Do you have any questions for the
16 Office of Planning?

17 MR. FURIOSO: No, thank you.

18 CHAIRPERSON MILLER: Okay. Is
19 anybody here from the ANC? Not seeing
20 anybody. Anybody here to testify in support
21 of the application? Not seeing anybody.
22 Anybody here to testify in opposition? We

1 already discussed the neighbors who were here
2 earlier.

3 MR. FURIOSO: Just for the record,
4 I just want to correct that it's not that I
5 convinced them that this is okay and they
6 thought it wasn't okay. It was a total
7 misunderstanding on how they got notice. In
8 other words, just for the record, it's not
9 that I somehow convinced them I was going to
10 do something or whatever. It was just their
11 lack of understanding of my application.

12 CHAIRPERSON MILLER: Your
13 application went before the ANC?

14 MR. FURIOSO: Yes. This
15 particular neighbor that started it and two or
16 three wasn't at that meeting. He got notice
17 because you have to give notice to the
18 neighbors and he was very upset because he
19 thought I would be parking in front of his
20 building on the alley.

21 CHAIRPERSON MILLER: Just for
22 curiosity, he didn't approach you earlier

1 before this hearing?

2 MR. FURIOSO: No.

3 CHAIRPERSON MILLER: Okay.

4 MR. FURIOSO: I called him as soon
5 as Office of Planning told me yesterday and I
6 cleared it up. I think he wanted to make sure
7 that it was as I said.

8 CHAIRPERSON MILLER: Okay. For
9 the record, the ANC is not here but we do have
10 a report from them. It's our Exhibit No. 16
11 and they said that they met at a duly public
12 meeting on February 6, 2008 with a quorum
13 present and they voted five to zero to advise
14 the Board to approve the special exception
15 request. They say more than that but
16 basically that's the bottom line. It's in our
17 record. Okay.

18 Any final questions from the
19 Board? Any final remarks from the applicant?
20 Okay. I would suggest that the Board
21 deliberate on this now fairly briefly. It's
22 a pretty straightforward case.

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1 I would move approval of
2 Application No. 17770 of Blagden Alley LLC
3 pursuant to 11 DCMR Section 3104.1 for a
4 special exception to establish accessory
5 parking spaces under Section 2116 at 934 N
6 Street to serve the property at 926 N Street
7 Rear N.W. Do I have a second?

8 MR. TURNBULL: Second.

9 CHAIRPERSON MILLER: I almost
10 hesitate to just repeat Office of Planning
11 report because I think Mr. Goldstein went
12 through the analysis both in the written
13 report to which we give great weight as well
14 as here at the hearing.

15 Also we have the submissions by
16 the applicant which clearly show that this
17 relief falls squarely within 2116. It doesn't
18 allow for two open parking spaces on this
19 vacant lot at 926 Rear N Street -- N Street
20 Rear. We'll get that right.

21 The property it's serving can't
22 provide parking because it's an historic

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1 district and it takes 100 percent of the
2 property. The spaces are located near the
3 property that they are serving. The applicant
4 has shown that he is going to be landscaping
5 the northern portion of the vacant lot that
6 faces N Street. There is support from the ANC
7 and support from other neighbors.

8 While there were indications of
9 opposition by a few neighbors in the form of
10 application for party status, they seem to
11 have been based on an misunderstanding which
12 is understandable and did not stay for the
13 hearing once they understood the issues
14 represented to us by both the applicant and
15 Mr. Goldstein.

16 This appears to be also in harmony
17 with the neighborhood and the zone plan. I
18 don't see any adverse impacts at all on
19 neighboring properties. In fact, it may help
20 alleviate some of the parking congestion in
21 the alley.

22 Others? Okay. All those in favor

1 say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining?

5 Would you call the vote, please.

6 MS. BAILEY: Madam Chair, the vote
7 is recorded as four zero one to grant the
8 application as amended. Mrs. Miller made the
9 motion, Mr. Turnbull seconded it, Mr. Dettman
10 and Mr. Loud support the motion and Mrs.
11 Walker is not present at this time.

12 CHAIRPERSON MILLER: Thank you.
13 This can be a summary order as there is no
14 party in opposition.

15 MS. BAILEY: Thank you.

16 CHAIRPERSON MILLER: Any
17 questions? Okay. Thank you.

18 I think we are just going to take
19 a quick five minutes before we start the next
20 case.

21 (Whereupon, at 11:35 a.m. off the
22 record until 11:48 a.m.)

1 CHAIRPERSON MILLER: Okay. We're
2 back on the record. Our other Board member,
3 Ms. Mary Oates Walker, has joined us now so we
4 have a complete Board for this case.

5 Ms. Bailey, whenever you're ready,
6 you can call the next case.

7 MS. BAILEY: Madam Chair, this is
8 an application of James C. Word and the number
9 is 17779 pursuant to 11 DCMR 3103.2 for a
10 variance from the lot area requirements under
11 subsection 401.3, to convert a church building
12 into an eight unit apartment house in the R-4
13 District at premises 3408 Sherman Avenue,
14 N.W., Square 2841, Lot 115. I believe the
15 applicant requested that the application be
16 amended to include Section 401.3 and Section
17 401.11.

18 CHAIRPERSON MILLER: Good morning,
19 Mr. Gell. Whenever you're ready if you could
20 identify yourself for the record to start.

21 MR. GELL: Thank you very much,
22 Madam Chair. My name is Stephen N. Gell. I

1 am representing James C. Word who owns the
2 property at 3408 Sherman Avenue.

3 Preliminarily I would like to ask
4 the Board to recognize our expert witness Nick
5 Reid, Robert Reid who goes by Nick, as an
6 expert witness in the areas that he'll be
7 testifying on which are marketing of the
8 property, marketability of the property, as
9 well as the construction cost and related
10 issues.

11 A major part of our case is the
12 difficulty that Mr. Word will have in bringing
13 the property into some kind of reasonable use
14 without the addition of these four apartment
15 units over and above what he is permitted to
16 do as a matter of right.

17 Let me ask Mr. Word to join me.
18 Could the Board make a ruling on Mr. Reid? I
19 have included his --

20 CHAIRPERSON MILLER: You included
21 his resume?

22 MR. GELL: I did in the earlier

1 submission.

2 CHAIRPERSON MILLER: Okay.

3 MR. GELL: That would have been
4 with the revised application.

5 CHAIRPERSON MILLER: Right. That
6 is our Exhibit 21. You are asking that he be
7 recognized as an expert in marketing of real
8 property and construction cost?

9 MR. GELL: Yes, ma'am.

10 CHAIRPERSON MILLER: Is that it?
11 Construction cost of what, renovation?

12 MR. GELL: Cost of renovating the
13 property to bring it up to code standards and
14 with the ability to rent the units, in this
15 case eight units. Rent or sell.

16 CHAIRPERSON MILLER: Do Board
17 members have questions? These two areas are
18 related but they seem still a little bit
19 different in expertise and I'm just wondering,
20 Mr. Reid, can you just highlight your
21 qualifications or just some experience in
22 marketing property and construction and

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1 assessing construction cost?

2 MR. REID: Hello.

3 CHAIRPERSON MILLER: Good morning.

4 MR. REID: Or good afternoon.

5 CHAIRPERSON MILLER: Why don't you
6 start with identifying yourself for the
7 record, name and address.

8 MR. REID: I'm Robert N. Reid.
9 I'm both a resident of Columbia Heights and a
10 business owner in Columbia Heights. My
11 business which is two businesses. I have a
12 real estate brokerage. My wife and I have a
13 real estate brokerage, Avanti Real Estate, at
14 14th between Monroe and Newton, which is a
15 grand total of four-and-a-half blocks from the
16 subject property.

17 We have been located there since
18 2002 and had moved there from U Street which
19 is still not far away which has a very acute
20 sense of the market conditions. Also I have
21 included a survey of transactions from January
22 1st of '08 to May 30th of '08 to even make it

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1 more specifically accurate. As I'm sure
2 everybody knows, prices have been changing
3 over the last couple of years.

4 Secondly, we have Urban Land
5 Associates which is a small development
6 company that will buy and sell or buy and rent
7 out. In either case there is remodeling and
8 renovation which is different from ground-up
9 development in that it is less predictable so
10 we have experience in what the cost end up
11 being. In this particular case this really
12 requires a pretty extensive retrofitting to
13 convert the use.

14 CHAIRPERSON MILLER: Just curious
15 in general so we know your background or
16 context. Like how many years have you been
17 doing, for instance, this type of renovation,
18 the retrofitting?

19 MR. REID: Right now at 1203
20 Columbia road we renovated that house in 1987.
21 That was one of the first six that we did.
22 We've not done them six at a time but we've

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1 done one, two, three kind of straight through
2 the time. It's probably three dozen all
3 total.

4 CHAIRPERSON MILLER: You've done
5 three dozen houses up in Columbia Road?

6 MR. REID: Not right on Columbia
7 Road but in the Washington area.

8 CHAIRPERSON MILLER: In the
9 Washington area. Okay. Have you done
10 institutional buildings like churches?

11 MR. REID: It's been converted
12 from a church to a residence so that's what
13 I'm saying, it's extensive. There's little
14 that is actually usable in a residential
15 layout so it's got to be completely redone,
16 all systems, from scratch.

17 CHAIRPERSON MILLER: I don't want
18 to belabor this. I just want us all to
19 understand. Basically, for instance, you are
20 going to be testifying about your estimate, I
21 believe, of construction cost, what it should
22 cost to do this. I guess my question is,

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1 okay, well, have you estimated construction
2 cost for this type of thing before to go from
3 an institution to residences or something like
4 that?

5 MR. REID: There is little
6 difference going from an institution to a
7 residence than going from a complete shell to
8 a residence in that all the systems, all your
9 support, joists, ceilings, windows, your air
10 leak prevention, your doors, plumbing,
11 electrical all have to be redone from scratch.

12 There is nothing that generally
13 can be left in place to be used that would
14 reduce what you have to do. Of course, there
15 is the outside shell that has to be handled.
16 Then there is landscaping almost all of which
17 has to meet prescribed code.

18 CHAIRPERSON MILLER: Okay. So you
19 have done three dozen houses or so in over how
20 many years?

21 MR. REID: Twenty years.

22 CHAIRPERSON MILLER: Okay. And

1 then marketing you've done over how many
2 years?

3 MR. REID: I first got my license
4 in late 1985.

5 CHAIRPERSON MILLER: And you've
6 done a substantial amount of marketing in this
7 area?

8 MR. REID: Yes. Our office is a
9 few blocks away.

10 CHAIRPERSON MILLER: Okay. Other
11 questions?

12 MR. TURNBULL: I'm just wondering
13 why nothing regarding estimating cost of
14 construction was included in the record on the
15 resume. The company you mentioned is not
16 mentioned. Urban Land Development or whatever
17 it was is not mentioned in the resume. It
18 talks about Avanti Real Estate but I don't see
19 anything mentioned about your other firm.

20 MR. GELL: Mr. Turnbull, that
21 might have been our doing. The original
22 resume that he gave us didn't include it. We

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1 were aware of it and we told him that he could
2 testify to it if that became an issue. I
3 could obviously have let him answer but he
4 could have included some additional materials
5 based on the other.

6 I notice on the second page in the
7 beginning he worked in the real estate
8 development company established for the
9 purpose of analyzing, renovating, and
10 profitably reselling. All of those skills
11 would be needed for somebody in that business,
12 particularly for the length of time that he's
13 been in.

14 I would venture to say that
15 anybody doing this has to start with whatever
16 there is there whether it's an institution or
17 a residence or something else and determine
18 what it's going to cost to make the change.
19 In addition to which I think we have testimony
20 to the effect that a church simply wasn't
21 making it in that location given that size and
22 that was not one of the options, realistic

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1 options.

2 MR. TURNBULL: The Board would
3 have appreciated having something in writing.

4 MR. GELL: I appreciate that now
5 and I'm sorry that we didn't give that to you.

6 MR. TURNBULL: Okay. Thank you.

7 CHAIRPERSON MILLER: Any other
8 questions? Any concerns in qualifying the
9 witness as an expert in those areas? Okay.
10 We'll accept your qualifications to be
11 considered an expert in those areas. Thank
12 you.

13 MR. GELL: Thank you very much,
14 Madam Chair. You have before you pretty much
15 what our proposal is. We did refine the
16 application to add another provision of the
17 zoning coverage. It essentially says the same
18 thing as the one we mentioned but it
19 effectively seeks to limit the number of units
20 you are allowed to have in the R-4 zone.

21 The Office of Planning pointed out
22 that we might be under 401.11 rather than

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1 401.3 so we included them both. I read them
2 and read them and read them and frankly I
3 think it's a matter of interpretation.

4 It's very hard for me to say how
5 the Board is going to interpret it so we
6 included both for that purpose. I think the
7 Office of Planning now feels since the
8 building was there before 1958 that we are
9 more appropriately under 401.11 but I'll let
10 the Office of Planning testify to that.

11 CHAIRPERSON MILLER: Let me ask as
12 a factual question, did you represent that you
13 thought the date that the building was built
14 was 1960?

15 MR. GELL: I believe we did say
16 that and when the issue came up I had Mr. Word
17 do some more research and he now has deeds and
18 leases and so forth going way back. Even the
19 Office of Planning indicated that the building
20 was shown on a base map dated 1959. We think
21 these buildings go back to 1927.

22 MR. WORD: At least 1927.

1 MR. GELL: We think we have met
2 the 1958 test and we would be glad to produce
3 that material if you want to go into it.

4 CHAIRPERSON MILLER: We thought
5 Exhibit 8 where there is a certificate of
6 occupancy dated 1955 supported a conclusion
7 that this building was built before 1958.

8 MR. GELL: Right.

9 CHAIRPERSON MILLER: Okay. So
10 that's not at issue, the date.

11 MR. GELL: I don't believe it is.

12 CHAIRPERSON MILLER: So then was
13 it your position that 401.3 applies and not
14 401.11 and that it's OP's position that 401.11
15 applies?

16 MR. GELL: We thought obviously
17 when we filed the original one that 401.3 was
18 the appropriate one. When OP pointed out
19 401.11 and I read it, I frankly could not be
20 absolutely clear that 401.11 did not apply.
21 I think you can read it both ways frankly. My
22 position now is I'm willing to agree with OP

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1 as to 401.11.

2 I would like the Board to consider
3 both simply because when we get to the zoning
4 administrator I don't want him raising the
5 issue again that we haven't covered it in the
6 hearing before you. I'm really asking for
7 both unless BZA wants to make that judgment
8 and then I think that would be a guide to the
9 Zoning Office.

10 CHAIRPERSON MILLER: I think we
11 would just like to explore this just a little
12 bit before we get into the substance and ask
13 the Office of Planning to address if they
14 still think that 401.11 applies in addition to
15 401.3 or instead of 401.3.

16 MS. BROWN-ROBERTS: I think that
17 both applies. 401.3 I think it talks about
18 conversion from apartment to house. I think
19 it added in the conversion portion. I don't
20 have the exact language of it in front of me
21 but I'm definitely sure about 401.11 that it
22 applies.

1 CHAIRPERSON MILLER: Do you want
2 to just address why you think 401.11 applies?

3 MS. BROWN-ROBERTS: I think the
4 amendment came about because we had a number
5 of apartment buildings or other buildings that
6 were being converted to apartment buildings.

7 The Office of Planning, who
8 brought this amendment forth, wanted to make
9 it clear that any conversion was -- the
10 conversion was only limited to the four
11 apartment unit because we wanted to preserve
12 our four districts so that was where the
13 amendment was leading.

14 Any building at all regardless of
15 whether of the former use as long as it was
16 going to be converted to apartment use it
17 would limit the number of units that you could
18 have in that building. It was based on the
19 square footage of the lot.

20 MR. GELL: If I might just add at
21 our initial review of this 401.11 starts out
22 with the words "an apartment house." This had

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1 been a rooming house, not an apartment house.
2 Even though the following words "whether
3 converted for a building" didn't seem to fit
4 syntactically so that is why we didn't include
5 it originally but I can see how somebody might
6 read it the other way.

7 CHAIRPERSON MILLER: Okay. Any
8 questions? I don't know that we have to
9 decide this right now anyway. I think we
10 could hear the variances. Is it not the same
11 or would it be different?

12 MR. GELL: The variance would be
13 exactly the same. Both limit you to four
14 units based on the number of square feet we
15 have so we are asking from the provision or
16 provisions which keep you at four units. I
17 will have Mr. Word make a statement now.

18 CHAIRPERSON MILLER: I just want
19 to make sure Board members don't have any
20 other questions on this topic. Okay. All
21 right. Thank you.

22 MR. WORD: Madam Chair and members

1 of the commission, my name is James C. Word.
2 I am a criminal defense attorney with the
3 Criminal Justice Act program of the D.C.
4 Superior Court and part of the Public Defender
5 Service. I am a licensed clinical
6 psychologist and I am an ordained minister.

7 At the time I bought this building
8 I was pastoring a church called the Center of
9 Power and we were looking for a building that
10 would accommodate the congregation. I bought
11 this in the late '90s, 1998, I believe. The
12 building, as Mr. Gell has stated, was probably
13 built before 1927.

14 It was a gas station and it had a
15 convenience store on the first level and a
16 tire store with two entrances, one from Park
17 Road and one from Sherman Avenue. On the
18 second floor it had residences that were used
19 for owners initially and later as a rooming
20 house.

21 There was a third floor added
22 after we purchased the building because we

1 could not use the building because of oil and
2 gas contamination that was in the ground and
3 had been contaminating the water.

4 In fact, when we bought the
5 building there were concessions in price
6 because the sellers were trustees in the Bank
7 of America for owners who were part of, I
8 guess, the AAMCO family and they were not sure
9 whether or not the gas tanks were still in the
10 ground and we weren't either.

11 We bought the building and found
12 out to our dismay that not only was there
13 contamination on the outside of the building
14 where the tanks were on the Sherman Avenue
15 side and on Park Road but there was large
16 areas of contaminated soil that had to be
17 removed on both sides of the building.

18 Behind the main building there is
19 a small garage that was used sort of as a
20 place for servicing automobiles. It also had
21 a gas trap. It had lifts, a tool shed, and it
22 was like a shop for repairing automobiles.

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1 That also had contamination from the gas.

2 We found out that, in fact, the
3 gas tanks had been removed in the '50s and it
4 had been a rooming house for part of the '50s
5 and then beginning in maybe the '60s according
6 to neighbors up to the '90s it had been used
7 as a church. It was a storeroom church.

8 It never really had the structural
9 configuration of a regular church. It was
10 always like a convenience store that had the
11 look of a church with big windows, crosses,
12 and open doors but it was always the shape and
13 size of a store with residences upstairs. The
14 Baptized Believers Church of God owned it at
15 the time that I bought it with our members.

16 It had briefly been used by
17 Muslims but they, like the Baptized Believers,
18 were not able to finance the removal of all
19 the contamination. We set about to do that at
20 an enormous expense. I had never done it
21 before so I didn't realize that digging two
22 stories down in a building can be so

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1 expensive.

2 It turned out that taking the
3 parking lot out was just half of what we had
4 to do. We had to dig the basement down and
5 got permits for underpinnings to remove all
6 the contaminated soil that was under the
7 building and it ran us about \$500,000 apart
8 from the renovation of the inside of the
9 building to what degree we could do that.

10 It took about four years for us to
11 clear out all of the contamination in the
12 building. In the process we had to take one
13 half of the building down. In fact, it
14 collapsed because we had to take so much soil
15 out. One side of the building collapsed and
16 we had to rebuild it.

17 Then we had to put in new
18 footings, new underpinnings, and just
19 restructure the building so that it was safe
20 both in terms of just supporting a
21 congregation of 65 members and in terms of
22 avoiding contamination from water. We got a

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1 certificate of occupancy which we have shown
2 to the Board in, I think, 2006. We added the
3 third floor structure before then so we would
4 have meeting rooms at the time.

5 Over that period of -- it's been
6 eight years now but four to six years the
7 entire market changed and we determined after
8 that expenditure that our group, which is much
9 smaller than 65 members, could not conceivably
10 maintain the building at the cost because we
11 just didn't take in enough money to be able to
12 pay for utilities and maintenance of the
13 building. We decided to move out of the
14 building all together and tried to determine
15 some use that was going to be feasible.

16 At this point after meeting with
17 various groups and real estate folk we decided
18 that the best and highest use would be for
19 residence and that area is R-4 and we were
20 hoping that we could put apartments and
21 condominiums in the building. It is a huge
22 structure as you can see from the plat, the

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1 land area.

2 The actual plat itself is about
3 101 feet long and the building is triangle
4 shaped. It's 38 feet on one end, on the
5 southern most end of the building and 33 feet
6 on the north end and about 32 feet in the
7 middle. It's a triangular structure that is
8 really huge. It has 2,000 square feet per
9 floor.

10 We looked to find out how much it
11 would cost to make a conversion that would
12 work properly. What we determined is that it
13 would not work in terms of profitability to
14 renovate the building for just four units
15 which is what is permitted under the zoning
16 regulations.

17 We determined, I guess, with Nick
18 and others, and our architect, that the
19 building would work better in terms of
20 economics if we were allowed to have eight
21 units as opposed to four. We did a survey of
22 the area and I have a number of photographs to

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1 determine if we would affect the traffic and
2 parking in the area.

3 We would have three off-street
4 parking spaces because we have the garage that
5 has one and we have two parking spaces on the
6 Park Avenue side of the building. I came
7 personally before the BZA about maybe in 2006
8 and was granted three public spaces before we
9 actually got the C of O to use it as a church.

10 We meet the requirement for
11 parking given the zoning regulations. We have
12 one space for each of three units which is the
13 requirement. With the conversation to
14 residential use the three parking spaces that
15 were granted by the BZA as a church would be
16 placed back into general use.

17 I have photographs showing that
18 the parking is really not an issue on the
19 Sherman Avenue side. I have gone out all
20 times of the day during the week and evenings
21 and almost no one uses the Sherman Avenue
22 corridor for parking.

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1 There is a huge church in front of
2 us -- two churches, the Salvation Army on one
3 side and Iglesia ni Cristo that have parking
4 spaces. Then the street is about 100 feet
5 wide and has a lot of public parking that is
6 almost never used.

7 There is less parking on the Park
8 Road side where there are houses and a couple
9 of public buildings but we have photographs
10 showing that almost anytime day or night
11 during the week there are at least five empty
12 spaces on the Park Road side.

13 I and one of my associates went
14 out to talk to the neighbors over a period of
15 about three or four weeks and we got the
16 signatures of 51 neighbors who would like to
17 see the renovations that we are proposing
18 doing.

19 They think it is an exciting idea
20 for renovating something from a gas station to
21 a usable residential structure. Since I'm a
22 pastor I went to a couple of churches and we

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1 got the signature of at least nine trustees
2 from the churches that are located there.

3 In fact, I spoke with one of the
4 churches and met with the trust people and
5 they were in agreement that some of the best
6 use of the building would be for residential
7 purposes and they do not oppose this use for
8 eight apartments as opposed to four. Steve
9 and I went before the ANC twice and put in our
10 proposal to that committee and they voted
11 unanimously in favor of the variance on May
12 14th.

13 We are here hoping that the BZA
14 will agree with the neighbors and with the ANC
15 and will agree to the conversion to
16 residential use and a variance from the
17 requirement that we are limited to four as
18 opposed to eight apartment units. I did say
19 there were three parking spaces that are put
20 back into public use.

21 MR. GELL: Thank you, Mr. Word. A
22 case is that, (a) we have shown uniqueness in

1 the property in that it's triangular shaped.

2 (b) we are dealing with an existing building
3 and, therefore, choices are somewhat limited.

4 (c) I don't think any of the other buildings
5 on the block have the contamination that we
6 found in this building which has been a
7 serious setback to anybody trying to renovate
8 it.

9 On practical difficulty, actually
10 the contamination leads into the question of
11 the economics. I know that very often the
12 Board is leery about looking at economics. We
13 think we can show that it's not just a
14 question of Mr. Word making more money by
15 having eight units but that no other
16 configuration is going to net him any kind of
17 a profit.

18 In fact, it will net him a loss.
19 It's not the intent of the zoning regulations
20 to force people to continue to use property or
21 not develop property if they are forced into
22 a negative financial situation. We have the

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1 Tyler case that backs us up on that.

2 Again, we would agree that if we
3 could show some other use that is within the
4 zoning requirements that would be economically
5 reasonable, then we wouldn't be able to make
6 the case that we are making.

7 I think at this point I will
8 introduce Mr. Reid, you've already met him,
9 and ask him to testify as to the cost and the
10 marketability. I would also ask you to look
11 at a letter that we have from the architect
12 who talks about the configuration of the units
13 and architecturally how eight units really
14 fits in.

15 That is how four two-bedroom units
16 really fits into the size and configuration of
17 the building. I'm sorry, eight two-bedroom
18 units. It's far better than any of the other
19 possible configurations. That is Mr. Lenir
20 Williams.

21 CHAIRPERSON MILLER: That is an
22 exhibit in our record or what?

1 MS. BAILEY: Madam Chair, it is a
2 black and white photograph and a letter that
3 was handed to you just after the hearing
4 started this morning and that is what Mr. Gell
5 is making reference to.

6 CHAIRPERSON MILLER: I got it.
7 Now I know what it is. Okay. Thank you.

8 MR. GELL: Thank you. I'll ask
9 Mr. Reid to make a statement really pointing
10 and perhaps describing the financial analysis
11 that he made which shows a bottom line that
12 you can't make enough money on less than eight
13 units.

14 Mr. Reid.

15 MR. REID: Okay. Take a look.
16 There are two pages that kind of have a
17 breakdown and four different scenarios, four
18 different use scenarios.

19 CHAIRPERSON MILLER: Where are
20 those to be found? Are they in our record?

21 MS. BAILEY: Sir, is your
22 microphone on? Okay.

1 MR. GELL: That's in the last
2 formal submission we made before the hearing.
3 It is a letter dated June 4th.

4 CHAIRPERSON MILLER: Okay. That's
5 our Exhibit 24. Okay.

6 MR. GELL: Regrettably at the time
7 we tried to get it in so you would have plenty
8 of time to review it but it was in more of a
9 sketch form. I would be glad to make copies
10 of the one that Mr. Reid has here if that
11 would be easier for you to look at.

12 CHAIRPERSON MILLER: Are those in
13 this packet?

14 MR. GELL: It looks like this.

15 MR. REID: The idea --

16 CHAIRPERSON MILLER: All right.
17 Okay.

18 MR. REID: I'll wait until you
19 have these in front of you.

20 CHAIRPERSON MILLER: Okay.

21 MR. REID: Now, there are four
22 scenarios. The first scenario is one

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1 apartment per floor. Three of the apartments
2 are five-bedroom three-bath, and the fourth
3 one is a six-bedroom three-bath. They are
4 subtracting out some common area for a
5 stairwell that end up being 1,760 square feet
6 each which is really quite large. Besides the
7 actual economics of it, this is a family-size
8 unit.

9 This corner of Sherman and Park is
10 just not a family conducive area. There is no
11 space for children. My mathematical scenarios
12 start with a basic unit, a basic two-bedroom
13 one-bathroom unit and then an extra fee is
14 added to fit each of the specific scenarios.
15 Does that make sense?

16 Now, the second scenario which is
17 arranged as a six unit with four three-bedroom
18 two-bathroom units and two two-bedroom two-
19 bathroom units. The third scenario is a
20 seven-unit building which is three two-bedroom
21 two-bath and four two-bedroom two-bath all of
22 which are getting to be a little smaller as we

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1 move along. Then the fourth scenario is eight
2 units which is comprised of two two-bedroom
3 two-bath and six two-bedroom one-bath.

4 The mathematical representation of
5 these is broken down in this development pro
6 forma 2 where we start with the basic square
7 footage. The developable gross space area of
8 7,527 square feet --

9 CHAIRPERSON MILLER: Wait. I'm
10 not with you on this. Where is that? That is
11 attached to the same letter, right?

12 MR. REID: Yes.

13 CHAIRPERSON MILLER: Where is it
14 in that package? What is this called?

15 MR. REID: Development pro forma.

16 MR. GELL: Right after the table
17 of contents.

18 CHAIRPERSON MILLER: Okay. So
19 development pro forma 2 is what we're looking
20 at?

21 MR. REID: Yes.

22 CHAIRPERSON MILLER: Okay.

1 MR. REID: Okay. Now, the idea is
2 that the development cost per square footage
3 is approximately 200 a square foot and
4 depending upon the level of finishings that
5 are included it could be a little more or a
6 little less but that is a very common number
7 in the renovation industry. Certainly
8 development cost can go considerably more than
9 that.

10 CHAIRPERSON MILLER: \$200 a square
11 foot?

12 MR. REID: Yes.

13 CHAIRPERSON MILLER: Where is that
14 on this page?

15 MR. REID: Okay. Developable
16 gross space area of 7,527 square feet which --
17 okay. You got that?

18 CHAIRPERSON MILLER: That's the
19 hard cost per square foot.

20 MR. REID: Yes.

21 CHAIRPERSON MILLER: Okay. That
22 gives a total standard cost of a million and

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1 500 and 5,000 feet for a 21-bedroom 12-bath
2 unit and the 21 bedrooms comes from four
3 units, three of which have five bedrooms and
4 one which has six bedrooms thereby the 21
5 bedrooms. If at any point I go too fast, I'll
6 back track.

7 Okay. Now, this is compared to
8 what the two-bedroom one-bathroom standard
9 would present. You have five bedrooms and
10 four bathrooms more than the standard. The
11 standard hard cost breakdown at the very
12 bottom I have roughly \$8,000 per bedroom and
13 \$10,000 per bathroom for each extra that is
14 included in that scenario. Does that make
15 sense?

16 We have a base and then everything
17 larger than the base is represented by an
18 additional charge. Unfortunately the inverse
19 of it is that larger units fell for less than
20 smaller units which is the theory that we are
21 going through and demonstrating.

22 MR. DETTMAN: Per square foot?

1 MR. REID: Per square foot, yes.
2 Does that make sense? There's a couple of
3 complicated steps there but I have included in
4 my exhibit the five-month activity analysis of
5 the Columbia Heights condominium market. I'm
6 sorry. What page is that?

7 MR. GELL: That would just be
8 following the diagram; that is, the plans.
9 There's a plat and then comes the five-month
10 activity analysis.

11 MR. REID: That five-month
12 activity analysis is broken into three pages.
13 One page are the active listings that are on
14 the market even right now. The second page
15 will be those that have settled in this five-
16 month period of time. The third page are
17 those that are under contract at this point.

18 The idea was to separate them into
19 two-bedroom two-bathroom design, two-bedroom
20 one-bathroom design. There were none that
21 exceeded three-bedroom. No one has even
22 considered to produce four and five-bedroom

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1 condominiums in the Columbia Heights area.

2 The maximum that I found were
3 three-bedroom two-bath and a three-bedroom
4 three-bath that were actively on the market.
5 If you notice, the square-foot prices are down
6 in the \$383 at the low end and \$389 per square
7 foot at the high end.

8 Whereas the two-bedroom one-
9 bathroom at the low end of \$256.92 a square
10 foot for a 700 square foot unit up to \$396
11 also. \$396 for a two-bedroom one-bath is a
12 little more than the three-bedroom but then
13 the two-bedroom two-bath starts at \$261 a
14 square foot.

15 Interestingly enough for a 654
16 square foot unit up to a \$570 per square foot
17 for a 1,700 square foot unit. Of course, that
18 is the absolute maximum. The point was to
19 show that the smaller the number of bedrooms
20 and bathrooms the higher price per square
21 foot. Questions at this point? Okay.

22 Back to the pro forma where we

1 have gone through and calculated the standard
2 base price. We have added the extra price for
3 the more bedrooms and bathrooms that are added
4 in each scenario.

5 At the bottom of the page we have
6 projected sales based on the square footage
7 per design. At the absolute bottom line you
8 see that when you have the four units with the
9 five and six bedrooms, you cannot or are
10 economically not able to sell at a break-even
11 point.

12 CHAIRPERSON MILLER: Where are you
13 pointing to now for us to follow that? I
14 can't even tell what page you're on. Your mic
15 needs to be on.

16 MR. REID: I'm sorry. The
17 development pro forma is the whole statement
18 and the other documents only support certain
19 line items in them. Okay?

20 CHAIRPERSON MILLER: I understand
21 the theory you are trying to explain to us,
22 you know, that the smaller number of units the

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1 greater the price per square foot but I
2 don't --

3 MR. REID: And the lower the sale
4 price per square foot.

5 CHAIRPERSON MILLER: I guess I
6 don't follow that one. I'm wondering if you
7 can show where that point is on the activity
8 analysis or something.

9 MR. REID: Okay. This one that
10 has the full three sections is active on the
11 market so these have not been sold but these
12 are on the market at this point. This is the
13 number of bedrooms and the bathrooms. The
14 three-bedroom and two-bath and three-bedroom
15 three-bath range from \$383 a square foot to
16 \$394 a square foot.

17 A two-bedroom one-bath ranged from
18 \$256 per square foot all the way up to \$498
19 per square foot. The two-bedroom two-bath
20 range from the low of \$261 a square foot up to
21 a high of \$570 per square foot. That is the
22 point for this large exercise was to

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1 demonstrate that the smaller the apartment,
2 the higher per square foot resale price and
3 obviously the -- not obviously but the smaller
4 the apartment the smaller the development
5 cost.

6 The larger the apartment, the
7 lower resale price but a higher development
8 cost which is why at the bottom of the
9 development pro forma page there is a swing
10 from where you have the four units, the four
11 large one unit per floor you have \$149,000
12 loss per unit.

13 Where you have the six units you
14 have a \$54,000 loss per unit and the seven
15 units you have \$9,800 loss per unit. At the
16 eight units is where you have an \$11,000
17 surplus which is not a huge windfall of any
18 sort because nothing comes out exactly as
19 planned to begin with. At least when you
20 project a margin you have a cushion there to
21 work in.

22 As I have commented earlier, one

1 of the things about renovations and
2 retrofittings are you can never really tell
3 everything that is there. Just as Mr. Word
4 had pointed out when they started remediating
5 the soil to take out the contamination, they
6 had no idea how involved that was going to end
7 up being. The whole thing takes longer and
8 cost more than it was originally planned too
9 often turns out to be true.

10 In this case we've gone to an
11 exercise of pulling actual items that are on
12 the market, actual items that have settled
13 recently, and actual items that are under
14 contract to establish this different in resale
15 value because it would be very normal for a
16 person looking at it to say, "Why do you say
17 these at this end can sell for more a square
18 foot than those at that end if there are five
19 bedrooms it sounds like it has more
20 amenities."

21 It doesn't work that way. Does
22 that make sense? That was kind of a quick

1 summary of the pieces that are there but the
2 fact of the development pro forma that starts
3 off with calculating how much square footage
4 there is to work with in the building,
5 multiplying that square footage times a hard
6 cost for renovation in a standard scenario and
7 then comparing four different scenarios that
8 have more bedrooms and more bathrooms than the
9 standard. Add in a factor for each additional
10 component and it increases the development
11 cost but does not increase the sales value.

12 That is a tremendous burden to Mr.
13 Word and his church as a developer because
14 financing a project that looks like it's
15 losing money right from the conceptual board
16 more so in this day and age frowned upon and
17 rejectable than at any other point in my 20
18 some years of being involved in this business.

19 I might just point out there is a
20 tremendous need for housing in the area, in
21 Washington in general, but in this area that
22 is close to downtown and close to schools and

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1 churches and the opportunity to have someone
2 come along and want to go through the effort,
3 the years and years of effort to provide
4 decent living space deserves some
5 acknowledgement. That thought wasn't in this.

6 CHAIRPERSON MILLER: Did you do an
7 analysis for apartments as opposed to
8 condominiums?

9 MR. REID: Rental apartments? No,
10 I didn't. That was not suggested. Certainly
11 that can be done.

12 CHAIRPERSON MILLER: I guess it
13 just goes to the same issue.

14 MR. REID: I can't just plug in
15 the numbers and get an answer to that.

16 CHAIRPERSON MILLER: I know that.
17 I understand the issue as this is the best use
18 for the building and it can't really be used
19 any other way and we have to have eight units
20 because it doesn't work out otherwise. You
21 showed that economically for condominiums so
22 I was just curious could it work out

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1 differently for apartments. Maybe Mr. Gell
2 wants to address why that is relevant or not
3 relevant.

4 MR. REID: What I would say,
5 though, not being too -- without generalizing
6 too much is that a large five-bedroom
7 apartment is still designed for a growing
8 family, a large family. When you've got a
9 five-bedroom apartment you've got a good
10 number of kids. Three or four kids minimum.

11 Then you've got to have yard
12 space. You've got to have safe recreation and
13 being right on a couple of busy streets, you
14 know, just steps from a couple of busy streets
15 would not attract such a --

16 CHAIRPERSON MILLER: When you do
17 the six units what kind of units are those
18 instead of four or instead of eight?

19 MR. REID: The six units are four
20 three-bedroom two-bath and two two-bedroom
21 two-bath. The two bedrooms can be two adults
22 but with three bedrooms generally is kids.

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1 CHAIRPERSON MILLER: Are there any
2 kids in apartment buildings in this area or on
3 Park Road?

4 MR. REID: There are some
5 children, yes. Not a great deal. I'll stop
6 right there. Anything beyond that would be
7 somewhat speculation without real study.

8 CHAIRPERSON MILLER: The three
9 bedrooms seems to be really different from
10 five bedrooms. That just seems to me to take
11 on a whole different life.

12 MR. REID: There are three-
13 bedroom. Not a lot but there are.

14 MR. GELL: I might point out,
15 Madam Chair, that even the two-bedroom units
16 are very, very large. Putting in six bedrooms
17 would make them even larger. It is an ideal
18 selling size whereas people looking for a
19 three bedroom unit it would be hard obviously
20 to sell those.

21 On the condo issue we thought that
22 was the highest and best use. We didn't do

1 the analysis on rental. If that is a concern
2 of the Board we can do that. We also have the
3 architect's view that, in fact, the building
4 doesn't chop up as well with fewer than eight
5 units, that it's really ideal for eight units.

6 MR. TURNBULL: I would just like
7 to ask Mr. Reid, what I'm getting from all of
8 this, you're saying that if you have an
9 apartment building and you've got two-bedroom
10 two-bath units and then you've got three-
11 bedroom two-bath units it's going to cost more
12 to buy the two-bedroom two-bath units?

13 MR. REID: Per square -- that's
14 what the study has --

15 MR. TURNBULL: No, but are you
16 selling two-bedroom two-bath units for more
17 money or are you just talking about building,
18 construction cost?

19 MR. GELL: Per square foot. This
20 is all based on per square foot. I'm not
21 talking price.

22 MR. TURNBULL: But how are you

1 pricing these units?

2 MR. REID: Dollars per square
3 foot?

4 MR. TURNBULL: That's the
5 construction cost?

6 MR. REID: No, this is a resale.

7 MR. TURNBULL: That's what I'm
8 saying. If I multiply those numbers, the two-
9 bedroom two-bath cost more than the three-
10 bedroom two-bath. If I go to your building
11 and I can buy a two-bedroom two-bath or a
12 three-bedroom two-bath, I'm going to pay more
13 for the two-bedroom two-bath.

14 MR. GELL: That's not what he's
15 saying.

16 MR. REID: Per square foot.

17 MR. TURNBULL: So I'm asking am I
18 missing something here on this?

19 CHAIRPERSON MILLER: I think I get
20 it. It's per square foot that's different so
21 to buy a three-bedroom it will cost more money
22 than the two-bedroom. If you were looking at

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1 each square foot for your value, you are
2 spending more on the two-bedroom. Is that
3 correct?

4 MR. REID: Correct. It's square
5 feet so that's why the two-bedroom is cheaper
6 in total dollars. Each foot is more expensive
7 than the three-bedroom.

8 MR. GELL: Which numbers are you
9 multiplying, Mr. Turnbull?

10 MR. TURNBULL: I'm looking at the
11 570 times 1,700.

12 MR. GELL: Whereabouts is that?

13 MR. TURNBULL: It's on page one of
14 three, your five-month activity. I just
15 picked a number, a high number. I'm trying to
16 get a feel of how these costs are coming up or
17 how these things are actually comparing one to
18 another.

19 I'm getting that if 570 times
20 1,700 is somewhere up near 969,000 and I go
21 down to the 394 times 1,900, I get something
22 like 748,600, what is that cost? Is that the

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1 cost that I'm buying? Is that what you are
2 going to charge me for a unit or is that your
3 cost to build?

4 MR. REID: In both cases you
5 picked the high but --

6 MR. TURNBULL: Well, it doesn't
7 matter. I could have picked the low but --

8 MR. REID: What was the second
9 one?

10 MR. TURNBULL: The second one was
11 394 times 1,900 which is the comparable high
12 in the other category.

13 MR. REID: Okay. The 394 times
14 1,900 is \$748,600.

15 MR. TURNBULL: Right.

16 MR. REID: And that is a 1,900
17 square foot size. The \$510 a square foot
18 times the 1,700 --

19 MR. TURNBULL: It says 570.

20 MR. REID: Yes, it's \$969,000.

21 MR. TURNBULL: So all I'm asking
22 is am I paying \$969,000 for a two-bedroom two-

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1 bath unit?

2 MR. REID: Yes.

3 MR. TURNBULL: And I only have to
4 pay \$748 for a three-bedroom three-bath unit?

5 MR. REID: Yes.

6 MR. TURNBULL: Oh, hell. I'm
7 buying the three-bedroom three-bath unit. I
8 don't have to be an accountant to figure that
9 out.

10 MR. REID: Okay. Right. You're
11 looking at it from the purchaser's side.

12 MR. TURNBULL: Absolutely.

13 MR. REID: If you are looking at
14 it from the developer side, it's more
15 difficult to -- it's less feasible to produce
16 the three-bedroom three-bath than to produce
17 the two-bedroom two-bath.

18 MR. TURNBULL: Something doesn't
19 compute here.

20 MR. REID: Come on. Ask the
21 question.

22 MR. TURNBULL: No. Something --

1 MR. REID: From the purchaser's
2 point of view, yes, it is more economical to
3 buy a large one even though if you have a need
4 for the three bedrooms that works for you.
5 But if it's you as an individual --

6 MR. TURNBULL: You're breaking it
7 down in a way that I have never ever done it.
8 I have always done it by square-foot cost per
9 a whole building and what square footage
10 you're getting. If you are coming up with
11 this, to me this just doesn't make sense.

12 It's not computing into a logical
13 sense for a guy to go in and make a
14 development and make some money because if
15 your costs are coming up like this -- this is
16 not the hearing to do this. I'm not going to
17 get into this cost breakdown. I just think it
18 doesn't make sense.

19 CHAIRPERSON MILLER: I mean, I
20 agree with Mr. Turnbull looking at these
21 results. I don't get it either how you could
22 possibly sell a three-bedroom at a price less

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1 than a two-bedroom. I mean, it is somewhat
2 appropriate but the point of this hearing is
3 for us to understand why it wouldn't work
4 economically other than having eight units.

5 MR. REID: Let me point out the
6 value of using actual numbers as opposed to
7 using speculated numbers. These are actuals
8 on the market. These are asking prices. I
9 might ask you to look at the page that has the
10 settled ones that actually did settle. People
11 tend to like to ask or what people ask for is
12 not always what the final settled proposal is.

13 MR. GELL: May I have a word? I
14 may have done this wrong. I tried to
15 calculate the average. I really think you
16 have to take averages rather than the highest
17 or the lowest.

18 For the two-bedroom unit I get
19 \$522,535. For the three-bedroom unit I get
20 \$719,724. That is much more than the two-
21 bedroom unit. Your figures about the high.
22 It does seem to come out better the other way

1 but not the average.

2 MR. DETTMAN: I just have one
3 comment and one question. With respect to the
4 five-month activity analysis I think there are
5 a lot of assumptions built into these numbers.
6 It could be the quality of the finishes. It
7 could be the location and proximity to metro.

8 It could be differences in one
9 developer trying to get a 50 percent markup
10 out of the development and another one trying
11 to just squeak by with 10 percent profit. I
12 think we could spend a lot of time trying to
13 figure out these numbers but I'm not sure how
14 much it's going to advance our discussion
15 here.

16 I'm looking at the development pro
17 forma and I think an underlying assumption in
18 your calculations on the pro forma is that you
19 are seeking to develop 100 percent of your
20 gross building area. Across all boards
21 between four units and eight units you are
22 going to develop all 7,527 square feet.

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1 MR. REID: Yes.

2 MR. DETTMAN: Looking at your
3 numbers for the four units, in your testimony
4 you have said that this is not a family
5 friendly area. A five-bedroom place is just
6 sort of not feasible. There's no market out
7 there.

8 We look at your activity analysis
9 and there is just no market out there. What
10 is moving is two-bedroom one-bath, two-bedroom
11 two bath. You would never want to make the
12 decision -- I'm not a developer but I would
13 never want to make the decision to build a
14 five bedroom unit if I know it's not going to
15 move.

16 My question for you is did you
17 look at building a four-unit condo based on
18 what you know is moving is a two-bedroom one-
19 bath meaning basically taking the plans that
20 you have drawn up and removing the third floor
21 and the basement. Maybe providing amenities
22 in the basement such as storage which I

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1 personally think is something that no condo
2 provides.

3 Basically you have a four-unit
4 building made up of four units that you know
5 could move, two-bedroom two-bath, two-bedroom
6 one-bath and you are within the zoning
7 regulations by providing 900 square feet of
8 land area per unit.

9 MR. REID: In this particular case
10 where this acquisition and holding cost that's
11 already been expended spread over four smaller
12 units would end up being much higher per unit
13 and thereby it would drive your individual
14 price up because it's starting with a vanilla
15 -- a blank piece of land.

16 That's putting up two floors with
17 four units would be cheaper than putting up or
18 developing four floors. Below ground in some
19 conversations is not considered a floor but in
20 others it is. When you're putting your hard
21 cost into it you've got to pay for it.

22 The public record does not

1 consider below ground as a floor so, yes, in
2 some situations that stepping back in scale
3 would be easier cost wise in a similar type of
4 per-unit bottom line.

5 In this particular case where Mr.
6 Word has found himself, or his church has
7 found itself, might not work out as well to
8 remove those two elements because you've
9 already got the overhead of putting the walls
10 back up, of decontaminating the soil for the
11 whole lot.

12 MR. DETTMAN: Could you just
13 articulate again what that \$800,000
14 acquisition and holding cost entails? That
15 was the remediation?

16 MR. WORD: Unfortunately we
17 started with the gas station. I mean,
18 historically just what was given to us and
19 trying to remediate that much contamination
20 led to that cost. We had to dig out the
21 basement and the parking lot on two sides of
22 the building and move all the dirt, have it

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1 specially removed.

2 That was the unfortunate history
3 with this building. Now we are at the BZA
4 three years later. It would be nice if it was
5 clean soil and just a flat piece of land.
6 Then we would have the possibility of just
7 building two stories.

8 When you start off with a gas
9 station and you're trying to turn it to
10 residential to make it work, that is
11 unfortunate history that can't be erased. We
12 had to do that. Even as a church we could not
13 use the building that had gas deposits in the
14 water. That is the practical difficulty of
15 going from a gas station to a residential.

16 CHAIRPERSON MILLER: I just have a
17 quick follow-up on the contamination issue.
18 Did you say that the total cost was \$500,000?

19 MR. WORD: Just for the removal of
20 the soil but the building was dilapidated so
21 we had to rebuild some of the outside walls,
22 put in all the floors and just get it useable

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1 as a building apart from the --

2 CHAIRPERSON MILLER: Right. Okay.
3 Did you have any other legal recourse related
4 to the contamination or not?

5 MR. WORD: No, we did not. Thank
6 goodness we didn't. I mean, there are a lot
7 of possibilities.

8 CHAIRPERSON MILLER: Okay. Is
9 there more you want to testify to at this
10 point before we go to the Office of Planning?

11 MR. GELL: Well, I just might
12 point out, Mr. Turnbull, that it appears he
13 has noted a mistake in our numbers. The 570,
14 71 at 1,700 was taken as the highest square
15 foot value but that should have been 1,400.
16 At that the price is about 798 for the two-
17 bedroom.

18 Even if you take the high, and I
19 urge you not to because I think the average is
20 more accurate, but that would be a lot closer
21 obviously to the one below. We think the much
22 more accurate one is the 522 as opposed to the

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1 719. I just wanted to clarify that.

2 I think we have made most of our
3 points. One additional point that I would
4 make because there was some discussion of this
5 in the Office of Planning's paper and that is
6 whether we met the zone plan. The building is
7 there, the size of the building. The addition
8 to the third floor was permitted -- I mean
9 permitted, with a permit.

10 Therefore, it went through zoning
11 review to see whether there needed to be an
12 additional rear yard taken off at that level
13 or not. Obviously the zoning office decided
14 that it didn't so we really have a building as
15 it is.

16 Secondly, he is changing from a
17 nonresidential use to a residential use. If
18 that doesn't more fully support the zone plan,
19 especially with so many churches in that area,
20 I don't know what would. With those points I
21 think we can close our testimony and take any
22 questions you have. Thank you.

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1 CHAIRPERSON MILLER: Okay. Thank
2 you. I just want to say to the people in the
3 audience who are here for the 1:00 we are
4 going to reconvene after this case but we're
5 still on the morning session. When we are
6 finished with this case we will need to take
7 a break to get fresh for the afternoon. You
8 have at least until 2:15.

9 I'm not saying we will be back at
10 2:15 but that is the earliest, I think. It
11 will probably be 2:15, 2:30. You are welcome
12 to sit and listen to this or leave and come
13 back at 2:15 or check with Office of Zoning
14 later to see what time we're coming back.
15 Okay. Thanks.

16 VICE-CHAIRPERSON LOUD: Before we
17 do that, Madam Chair, I just had a question
18 for Mr. Gell, more of an observation to see
19 that I'm still on track after the very, very
20 formative walk through the pro forma. It
21 sounds to me, in the context of the variance
22 test anyway, that with respect to the

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1 uniqueness element that your case rest more on
2 the uniqueness being the contamination of the
3 property and not so much the triangular shape
4 of the lot.

5 In other words, I didn't hear --
6 correct me if I'm wrong -- that there is
7 something about the shape of the lot that
8 creates the practical difficulty for your
9 client. It appears to be more the \$800,000 --
10 it's being captured as \$800,000.

11 Maybe it's \$500,000 -- for the
12 ground fill remediation that compels your
13 client to produce more than four units to make
14 up for that cost which is driving the
15 practical difficulty. Can we sort of remove
16 the triangular shape as an element of unique?

17 MR. GELL: I would prefer that you
18 would not. The reason is this. We do have
19 the architect's testimony through his letter
20 that says the configuration works best for an
21 eight-unit building.

22 VICE-CHAIRPERSON LOUD: Is that

1 based on the shape of the lot or the existing
2 building?

3 MR. GELL: He does mention the
4 shape of the lot. I don't know what
5 connection he's making but I have to assume
6 that the shape of the building as it is which
7 is what we're given and the shape of the lot
8 which dictated the shape of the building does
9 have something to do with it.

10 It's a fairly large lot as well.
11 If it were cleared land, you would put
12 something very different there but you are
13 really locked into a building that is already
14 there and it's an unusual shape.

15 VICE-CHAIRPERSON LOUD: If I back
16 \$500,000 out of the pro forma, even at four
17 units, the negative \$149 goes into a positive.

18 MR. GELL: That's right.

19 VICE-CHAIRPERSON LOUD: In that
20 sense the practical difficulty would not be
21 there.

22 MR. GELL: I don't know why we

1 have to choose between the uniqueness.
2 There's more than one way in which this
3 property is unique.

4 VICE-CHAIRPERSON LOUD: I think
5 I'm just trying to clarify for when we get to
6 the point of analysis and deliberation as a
7 Board, at least for myself, what we are really
8 focusing in on as the point of analysis.

9 MR. GELL: No comment.

10 CHAIRPERSON MILLER: Sometimes
11 there's a confluence of factors as in, I
12 guess, the Kilmartin case.

13 MR. WORD: I think Mr. Loud's
14 point is well taken.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Turnbull.

17 MR. TURNBULL: I just had one
18 question on this site trying to go to an
19 apartment use, residential use. The basement
20 is totally below ground. There's only one
21 room that I see that has a window in it, a
22 bedroom. None of the other habitable rooms

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1 have any light, air, or ventilation. Your
2 architect says that's going to pass the
3 building code?

4 MR. WORD: It's going to have an
5 air well. You can see from this drawing here.

6 MR. TURNBULL: There's no air well
7 on our drawings. There are no air wells or
8 extra windows on our drawings. They show no
9 windows on the basement plans. There is only
10 one room, one bedroom, that has a window.

11 MR. WORD: There should be windows
12 in all of the rooms in the basement. The
13 front of the building has an air well where
14 you see what looks like a little fence portion
15 there. That portion of the parking lot is cut
16 out four feet from the building. All of the
17 rooms in the basement have windows.

18 MR. TURNBULL: Okay. All I'm
19 saying is the drawings the Board has does not
20 show that.

21 MR. WORD: Yeah. There would be
22 windows in every room in the basement as well

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1 as the first and second floors.

2 MR. TURNBULL: I'm going to ask a
3 quick question about the parking. Where did
4 you say the three parking spaces were going to
5 be accommodated on site?

6 MR. WORD: There is a garage
7 building that is behind the main building.

8 MR. TURNBULL: That's along
9 Sherman?

10 MR. WORD: That's on the Sherman
11 Avenue side and then two parking spaces on the
12 Park Road side.

13 MR. TURNBULL: Which is the front
14 elevation that we're seeing there?

15 MR. WORD: That's right. On the
16 front side here where this tree is.

17 MR. TURNBULL: Okay. Is that
18 going to warrant a new curb cut?

19 MR. WORD: No. There are two curb
20 cuts already.

21 MR. TURNBULL: Two there already?

22 MR. WORD: There is one that goes

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1 through this end of the building and there is
2 a curb cut that goes to the garage in the
3 back.

4 MR. TURNBULL: Okay. The two
5 spots that are on the Park Road side, those
6 are completely on site and they are not in
7 public space or anything like that?

8 MR. WORD: No, they are on site.
9 I think it's 23 feet wide and about the same
10 length deep. It's regulation size with two
11 parking spaces.

12 MR. TURNBULL: Thank you.

13 MS. BAILEY: Mr. Gell, if you're
14 using this drawing, we would need to keep it
15 because we don't have a copy in the record.
16 Are you aware of that, sir?

17 MR. GELL: Yes. I understand.

18 CHAIRPERSON MILLER: You can make
19 a copy and submit it after the hearing.

20 MR. GELL: Thank you.

21 CHAIRPERSON MILLER: Sure. Okay.
22 Are we ready for the Office of Planning? Mr.

1 Gell, did you finish?

2 MR. GELL: Yes, we're done.

3 CHAIRPERSON MILLER: At least this
4 part. Okay.

5 MS. BROWN-ROBERTS: Good
6 afternoon, Madam Chairman and members of the
7 Board. I'm Maxine Brown-Roberts with the
8 Office of Planning. I think that the
9 application can be reviewed under 401.3 as
10 well as 401.11. I think the basic point is
11 that they need to have at least 900 square
12 feet of lot area for each dwelling unit.

13 The subject property is triangular
14 in shape and was subdivided in 1958. There is
15 also prior use of a gas station which is a
16 nonconforming use in the R-4 District while
17 the church was a permitted use. The Office of
18 Planning does not believe that this has
19 resulted in a unique circumstance that will
20 cause the addition and conversion to eight
21 units which is twice what is permitted.

22 I also must say that the

1 additional height, or the addition of the
2 third floor, was done. We looked at photos in
3 2007 and that addition was not there so that
4 is a late addition to the building. We do not
5 believe that the uniqueness of the property
6 creates a practical difficulty to the
7 applicant.

8 The remediation work that they
9 speak about was done sometime ago and it had
10 to be done regardless of the use of the
11 building and could presumably be -- it should
12 have been factored into the price of the
13 property because the applicant knew that the
14 remediation had to be done.

15 The applicant claims that the
16 property cannot be developed because they are
17 too large. Again, I don't think -- for one
18 thing, the information that the applicant
19 presented today was not submitted to the
20 Office of Planning for review and, therefore,
21 we did not take that into consideration.

22 We still believe that there is a

1 market for larger units. We have been asked
2 about it on a number of occasions at the
3 Office of Planning about larger units so that
4 is something I think we are not quite
5 convinced about.

6 We think that the proposal will
7 impair the intent of the zoning regulations.
8 Section 401 especially states that and was
9 drafted to reinforce the lower density of the
10 R-4 District. We believe that this will be
11 contrary to that. The 401.3 also clearly
12 establishes a limited number of apartment
13 units that are acceptable in the R-4 District.

14 There are some larger
15 nonresidential apartment buildings. There are
16 some larger residential buildings in the area
17 which are predominately but we still think
18 that the area is predominately row dwellings.

19 The conversion of this building
20 and the addition would further increase the
21 number of units which would be contrary to the
22 goal of the zoning regulations. Therefore,

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1 the Office of Planning recommends denial of
2 the application. Thank you, Madam Chairman.

3 CHAIRPERSON MILLER: Thank you.
4 Is it unusual for a church to be converted to
5 residences in the city?

6 MS. BROWN-ROBERTS: We've seen it
7 done before, yes. This is not the first
8 experience.

9 CHAIRPERSON MILLER: Have they
10 complied with 401.11?

11 MS. BROWN-ROBERTS: Yes, they have
12 complied with the regulations.

13 CHAIRPERSON MILLER: Are they in
14 this area or just in D.C. in general?

15 MS. BROWN-ROBERTS: D.C. in
16 general. I couldn't state specifically a site
17 in this area.

18 CHAIRPERSON MILLER: Is there any
19 information in the zone plan or the
20 comprehensive plan to convert this church to
21 residences?

22 MS. BROWN-ROBERTS: Yes.

1 Generally we do not have a problem with the
2 renovation of this building. We do think it
3 should be renovated. It is a horrible looking
4 building in that community so I don't think we
5 have a problem with the renovation of the
6 building. I think our problem comes in when
7 the regulation specifically calls for square
8 footage that should be met and this does not
9 meet that.

10 CHAIRPERSON MILLER: And it's your
11 conclusion that the economics in the area
12 would support the larger bedrooms just based
13 on people coming in and inquiring about
14 developing them?

15 MS. BROWN-ROBERTS: No. Generally
16 the Office of Planning is in the community a
17 lot. Especially when we have planned unit
18 developments come through people are always
19 requesting for larger units. Maybe not five
20 or six bedrooms. I'm not saying that either
21 but we have been asked.

22 Even in the comprehensive plan it

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1 calls out and encourages larger units for
2 families. The applicant said because of the
3 intersection that it's on we have apartment
4 buildings with families on major
5 thoroughfares. I don't think that is much of
6 an issue.

7 CHAIRPERSON MILLER: Any other
8 questions? If we left the record open, which
9 I think we might be inclined to do, would
10 Office of Planning be able to do an assessment
11 of the pro forma and other economics that were
12 submitted today?

13 MS. BROWN-ROBERTS: I think we
14 may. Granted we don't have an economic expert
15 in our office but I suppose we could take a
16 further look at that. I think what we would
17 want is something written because just looking
18 at it right now I really wasn't following a
19 lot of the explanation he was giving so I
20 think we would need something written
21 explaining some of the numbers that he was
22 quoting and that sort of thing.

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1 CHAIRPERSON MILLER: You have the
2 written piece that we have, right? The June
3 4th letter with all those attachments, our
4 Exhibit 24?

5 MS. BROWN-ROBERTS: I just got
6 this.

7 CHAIRPERSON MILLER: You just got
8 it.

9 MS. BROWN-ROBERTS: Right.

10 CHAIRPERSON MILLER: You didn't
11 have it before you when he was going through
12 it?

13 MS. BROWN-ROBERTS: Pardon me?

14 CHAIRPERSON MILLER: You didn't
15 have it before you when he was going through
16 it?

17 MS. BROWN-ROBERTS: Yes, I did but
18 I didn't follow everything that he was saying
19 so I think we would want to have something
20 written explaining what some of these numbers
21 mean.

22 CHAIRPERSON MILLER: Okay. I just

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1 wanted to make sure.

2 MS. BROWN-ROBERTS: He was going
3 back and forth so relating things would be
4 great.

5 CHAIRPERSON MILLER: Okay.
6 Somewhat of a written guide.

7 MS. BROWN-ROBERTS: Exactly.

8 CHAIRPERSON MILLER: Okay.

9 MR. DETTMAN: I have a question.
10 Could you just sort of describe the nature of
11 the remediation again, the extent of it? It
12 was in the garage?

13 MR. WORD: No, it was all of the
14 dirt underneath the building had to be taken
15 out. We had to go down about four feet below
16 the basement and take the dirt out and remove
17 it. Then all the dirt in the parking lot had
18 to be removed and replaced on the Sherman
19 Avenue side and on the Park Road side.

20 It was just digging out the
21 contaminated soil. There were two tanks in
22 the '50s. One tank was on Park Road and one

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1 was on Sherman Avenue and they just leaked and
2 turned the soil to purple. We had to get all
3 that contaminated soil out and replace it and
4 drop the floor in the basement about four or
5 five feet.

6 MR. DETTMAN: Okay. Significant
7 work was being done on the inside of the
8 building as well?

9 MR. WORD: Yes.

10 MR. DETTMAN: So you said the
11 remediation took four years.

12 MR. WORD: It took four years to
13 get all of that done because it was so
14 expensive. We didn't want to abandon it but
15 it was so expensive that we couldn't finance
16 it. You can't do it that quickly either
17 because it's difficult to get a backhoe or
18 some type of instrument into the basement.
19 Outside is a little easier but getting inside
20 and digging was a little more difficult.

21 MR. DETTMAN: So during that time
22 it wasn't being used as a church or anything?

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1 MR. WORD: We've been using it as
2 a church.

3 MR. DETTMAN: When was the
4 addition put on?

5 MR. WORD: I think it was in 2006
6 is when the permit was given. It definitely
7 was on in 2007.

8 MR. DETTMAN: You said that the
9 third floor was put on for a need for meeting
10 rooms?

11 MR. WORD: Right. Just to have
12 some place to meet in the building.

13 MR. DETTMAN: But it was put on
14 during the remediation?

15 MR. WORD: After the remediation.

16 MR. DETTMAN: After the
17 remediation. Okay.

18 MR. WORD: It took four years to
19 do the remediation and then afterwards we put
20 the third floor on.

21 MR. GELL: But the building wasn't
22 used -- I mean, the basement wasn't useable at

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1 that time because you hadn't put in the floors
2 and so forth.

3 MR. WORD: That's right.

4 MR. GELL: There is another point
5 that Mr. Reid mentioned and that is the cost
6 of remediating. It includes taking the soil
7 out of state. It's not a simple matter just
8 to dump it in a land fill. The cost are
9 extraordinarily high but that is part of the
10 reason.

11 MR. DETTMAN: You said the date of
12 the addition was what?

13 MR. WORD: I think it was June
14 2006.

15 MR. DETTMAN: 2006. Just a quick
16 question for DCOP. Would you happen to know
17 the date of this image that is in your report?

18 MS. BROWN-ROBERTS: They are 2007.
19 I'm not sure but I can find out.

20 MR. WORD: Yo, I don't know if we
21 made available the building permit but the
22 third edition is dated November 16, 2006, so

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1 it was put up at the end of the 2006.

2 CHAIRPERSON MILLER: I'm just
3 curious along Mr. Loud's line of questioning.
4 How does the contamination really factor into
5 our analysis if we are looking at just four
6 units won't work and only eight units will
7 work. Right?

8 That is where I think you're
9 going. Why do we care about the
10 contamination? If not for the contamination
11 would anything be different except that
12 recognizing that you've lost a lot or invested
13 a lot?

14 MR. GELL: We are looking at total
15 development cost. We think we are entitled
16 to --

17 CHAIRPERSON MILLER: Is that tied
18 into whether it's four units or eight units,
19 though?

20 MR. GELL: It would be the same
21 contamination cost with either one.

22 CHAIRPERSON MILLER: Oh, okay. So

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1 that goes into the economic analysis. It
2 would be different if you didn't have that.
3 Okay. Any other questions of Office of
4 Planning from the Board? Does the applicant
5 have any questions for the Office of Planning?

6 MR. GELL: I think we covered the
7 issues that Ms. Brown-Roberts had raised. Ms.
8 Brown-Roberts and we have met and she raised
9 some questions. That's what led to our
10 getting some additional information.
11 Unfortunately we didn't get it really in time
12 for her to factor it into her analysis.

13 I think in the meantime we have
14 assured her of some things by showing the
15 evidence so they didn't appear in her
16 testimony even though they may be in the
17 report itself. We basically have a different
18 view of what is required to show both a unique
19 property and the practical difficulty. We
20 think the case will support us.

21 CHAIRPERSON MILLER: Okay. Any
22 other questions from the Board?

1 MEMBER WALKER: Only one question,
2 Madam Chair.

3 Mr. Word, you mentioned that when
4 you purchased the property that some
5 concessions were made in light of the fact
6 that all of this remediation had to be done
7 and there was some uncertainty about whether
8 the tanks were still in the ground and so
9 forth. What were those concessions? How much
10 was the price lowered in view of those issues?

11 MR. WORD: It was lowered 200,000
12 because they thought the tanks were still
13 there. They estimated that the tanks alone
14 would cost 100,000 each to remove but they
15 didn't factor in the soil removal as well. It
16 was sold for, I think, \$180,000 to the
17 Baptized Believers. They dropped it down to
18 \$32,000 so it was much less. They knew that
19 the removal of one small tank was \$100,000.

20 MEMBER WALKER: They dropped what
21 to \$32,000?

22 MR. WORD: The price of -- I mean,

1 it's hard to imagine that a building would
2 sell for so little but the oil company dropped
3 it from a sale price of \$180,000 for a gas
4 station to \$32,000. They sold it very cheaply
5 because they knew that it was contaminated.

6 MEMBER WALKER: Okay. So the gas
7 company lowered the price.

8 MR. WORD: They lowered the price.

9 MEMBER WALKER: And then when it
10 was in turn sold to you?

11 MR. WORD: It was sold to me at
12 that lower price. We paid very little for it.

13 MEMBER WALKER: Thank you.

14 MR. WORD: As opposed to 180 they
15 said -- I think they were trying to get rid of
16 it because they had no way of remediating it
17 and making it useful with the contamination.

18 CHAIRPERSON MILLER: Okay. I
19 think what I would like to suggest is that we
20 carry this to a later decision date and leave
21 the record open for a couple of items that we
22 were talking about today. I just want to

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1 suggest a couple and get a response.

2 First on my list was whether an
3 analysis could be done for apartments because
4 it seems to me that the question here is the
5 configuration restraints are the same. The
6 question is the economics, that you actually
7 have to have eight units in order to make this
8 work. That is why you need the variance.

9 If it would work economically for
10 apartments, then you wouldn't have to get a
11 variance, if it would work for four big
12 apartments, for instance, or six for lesser
13 deviation. Do you know what I'm saying? Feel
14 free to respond if you don't think this is
15 relevant but in my head that is what I'm
16 thinking that we have to be convinced --

17 MR. REID: I would never respond
18 to your request.

19 CHAIRPERSON MILLER: What?

20 MR. REID: I would never respond
21 to your request.

22 CHAIRPERSON MILLER: You couldn't

1 do it? You can't do it?

2 MR. REID: No. The answer is
3 irrelevant.

4 CHAIRPERSON MILLER: It's
5 irrelevant?

6 MR. REID: No. I'm saying I would
7 never do that. We'll do a rental analysis.

8 CHAIRPERSON MILLER: Mr. Gell, I
9 guess I would be interested in your opinion if
10 you agree that would be relevant. The reason
11 for the variance would be so that you would be
12 able to use your property at some value. Not
13 necessarily to make a profit but not a loss.
14 Therefore, if you could comply with the
15 regulations that they are apartments, that
16 would be relevant.

17 MR. GELL: Unfortunately I know a
18 little bit too much about the Tenant Right to
19 Purchase Act to think that it is a wise thing
20 to build a rental building. Perhaps Mr. Reid
21 can do the research and make that evident in
22 the figures.

1 It is a decision by the developer,
2 I think, which takes into account the fact
3 that really what has happened to so many
4 rental buildings that try to convert to condo.
5 Maybe it should be a rental building forever.

6 That is a possibility. I think it
7 is desired to have condos and not to be
8 holding the building for a long period of time
9 but it is a very difficult decision to make in
10 this town. I recognize that there is
11 legislation.

12
13 A lot of it makes very good sense
14 but it does really retard the ability to sell
15 the building because anytime you want to sell
16 it you have to have a buyer who is willing to
17 wait four, six, eight months. Under new
18 regulations that are coming on board it's
19 going to be even worse just from the point of
20 view of the owner of the building.

21 VICE-CHAIRPERSON LOUD: Mr. Gell,
22 what is the threshold number of units you have

1 to have in a building before the first right
2 of refusal kicks in?

3 MR. GELL: It's actually not in
4 the building. It's if you own four or more
5 units in the District so if he owns another
6 unit, another rental unit somewhere else.
7 Even with four I think the new regulations are
8 going to give that. I'm not clear but I think
9 it's four more.

10 CHAIRPERSON MILLER: We usually
11 don't get into whether a developer should do
12 a condo or apartments so I'm certainly not
13 going to require you to do an analysis. We
14 don't require it anyway. It was just a
15 thought that I had with respect to you have to
16 do this for economic reasons. I'm just going
17 to leave it at that and leave the record open
18 with respect to the practical difficulty test
19 if you want to add anymore to it.

20 I also have in my notes Office of
21 Planning said they would assess your Exhibit
22 24 material. That is what you went through

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1 today but that a guide would be helpful for
2 the office. Would you be able to do that, a
3 little bit of a written --

4 MR. REID: A verbal explanation?

5 CHAIRPERSON MILLER: Um-hum. That
6 would probably be good for the Board to have
7 before its deliberations in any event.

8 MR. REID: Okay.

9 CHAIRPERSON MILLER: Then we would
10 leave the record open for the Office of
11 Planning then to respond.

12 Then my last point, Mr. Turnbull,
13 I don't know whether we need something further
14 in the record or not with respect to the
15 plans, whether or not they need to show the
16 air wells and windows.

17 MR. TURNBULL: Just for the record
18 I think you would want a current updated plan.

19 CHAIRPERSON MILLER: Does anybody
20 have anything else they wanted for the record
21 in this case? Anything else you know you want
22 to put in the record that isn't encompassed by

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1 anything that was said just now?

2 MS. BAILEY: Madam Chair, we need
3 a copy of the graphic that is on the board.

4 CHAIRPERSON MILLER: The graphic
5 on the board. Right. Okay. Then our next
6 decision meeting is July 1st but I don't know
7 whether that is enough time here for Office of
8 Planning to respond to Exhibit 24 and for you
9 to get some -- maybe. Is it? -- written
10 guidance in the record.

11 If we count backwards for that,
12 Ms. Bailey, what would it be? Time for the
13 applicant to get in the record the final plans
14 with the windows and air wells and the written
15 guide to Exhibit 24 and then Office of
16 Planning to respond.

17 MS. BAILEY: What was the date
18 that you gave?

19 CHAIRPERSON MILLER: Our next
20 decision meeting is July 1st.

21 MS. BAILEY: Similar to what we
22 did earlier this morning. June 23rd for the

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1 submission. Is that okay, Mr. Gell? Which is
2 the rest of this week and next week so the
3 following Monday.

4 MR. GELL: I would like to be sure
5 Mr. Reid has enough time. I wonder if you
6 could tell me what the next possible decision
7 meeting would be?

8 CHAIRPERSON MILLER: Mr. Moy,
9 we're doing July 29th? I'm not sure. I see
10 a public meeting scheduled.

11 MR. MOY: My recollection is that
12 the morning of July 29th is a place holder for
13 decision cases before the August recess.

14 CHAIRPERSON MILLER: Okay. So we
15 could do that if that works for you.

16 MR. GELL: Mr. Reid says he might
17 be out of town. He wouldn't be testifying
18 anyway so that may not --

19 CHAIRPERSON MILLER: It's just our
20 decision. This is just to give you enough
21 time to do your written work.

22 MR. GELL: That would be fine.

1 Thank you.

2 CHAIRPERSON MILLER: Okay.

3 MS. BAILEY: So July --

4 CHAIRPERSON MILLER: That will
5 give him a little bit more time and then also
6 leave some time for Office of Planning.

7 MS. BAILEY: Sure. Sure. So July
8 7th would be for the applicant then, two weeks
9 for OP to do their analysis, July 21st, and
10 then the Board's decision would be on July
11 29th.

12 CHAIRPERSON MILLER: Okay. Before
13 we finish up I just wanted to ask Mr. Gell do
14 you see any concern about responding to the
15 Office of Planning or not?

16 MR. GELL: Do I see a concern?

17 CHAIRPERSON MILLER: Yes. I mean,
18 the way we have it scheduled now is for Mr.
19 Reid to submit a guide for 24 and then for
20 Office of Planning to respond to that.

21 MR. GELL: Oh, after theirs. I
22 think that will give me enough time. It might

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1 have to be a couple days before. If you get
2 your package the Thursday before, that
3 doesn't --

4 CHAIRPERSON MILLER: So by that
5 Wednesday or something or no? We could back
6 up a tiny bit.

7 MR. GELL: One or two days. Maybe
8 the Office of Planning could do a little bit
9 better. I don't know if we can, though. July
10 7th is the date we have to have all of our
11 stuff in. Is that doable?

12 MR. REID: I'm sorry. I thought
13 she said June 24th.

14 MR. GELL: For us to have our
15 stuff in by July 7th.

16 MR. REID: Sure.

17 MR. GELL: That's doable. How
18 about earlier?

19 MR. REID: The 24th?

20 MR. GELL: No, to have our stuff
21 in.

22 CHAIRPERSON MILLER: I guess if

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1 you provide yours a little earlier than Mr.
2 Gell will have an opportunity on the other end
3 in case he wants to respond to anything.

4 MR. REID: Okay.

5 MR. GELL: All right. That will
6 give us a full three weeks. I think we can do
7 that.

8 CHAIRPERSON MILLER: So what are
9 you proposing?

10 MR. GELL: July 1st to get our
11 material in and then if the Office of Planning
12 could back up a week.

13 CHAIRPERSON MILLER: Would that be
14 all right? They are going to give it to you
15 a week earlier and then you would respond by
16 the 14th instead of the 21st.

17 MS. BROWN-ROBERTS: Okay.

18 CHAIRPERSON MILLER: And then in
19 the event the applicant had anything else they
20 wanted to add in response to your response it
21 would be by what date, July 21 or what? I'm
22 sorry, Mr. Gell. I'll wait for you.

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1 MR. GELL: I would say by the 24th
2 or the 25th. What is that Wednesday?

3 MR. MOY: Wednesday is the 23rd,
4 Mr. Gell.

5 MR. GELL: All right. Would the
6 23rd be okay?

7 CHAIRPERSON MILLER: Okay. I
8 think that's it. All right. Is everybody
9 clear about those dates or do you want me to
10 say it or Ms. Bailey? Okay. It's July 1st
11 for the applicant, July 14th for Office of
12 Planning, and then July 23rd for the applicant
13 again. Okay. Our decision will be July 29th.
14 Then the record is closed for anything else.

15 MR. GELL: Thank you very much.

16 CHAIRPERSON MILLER: Okay. Thank
17 you very much.

18 Okay, Ms. Bailey. Do we have
19 anything on the agenda for the morning
20 session?

21 MS. BAILEY: No, Madam Chair. Not
22 for the morning.

1 CHAIRPERSON MILLER: Okay. Then
2 that concludes the morning session and we'll
3 be returning at 2:30 for the afternoon
4 session. This hearing then is adjourned.

5 (Whereupon, at 1:42 p.m. off the
6 record for lunch to reconvene at 2:30 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:53 p.m.

CHAIRPERSON MILLER: Good

afternoon, ladies and gentlemen. This hearing will please come to order. This is the June 10, 2008 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair of the BZA and to my right is Mr. Marc Loud who is our Vice-Chair.

To my left is Mary Oates Walker and Shane Dettman, Board members. Next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Sherry Glazer from the Office of Attorney General, and Ms. Beverley Bailey from the Office of Zoning.

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

1 by a court reporter and is also webcast 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 are 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 two witness cards. These cards are
15 located to my left on the table near the door
16 and on the witness tables. Upon coming
17 forward to speak to the Board, please give
18 both cards to the reporter sitting to my
19 right.

20 The order of procedure for special
21 exceptions and variances is as follows: (1)
22 Statement and witnesses of the applicant; (2)

1 Government reports including Office of
2 Planning, Department of Public Works, DDOT,
3 etc.; (3) Report of the Advisory Neighborhood
4 Commission; (4) Parties or persons in support;
5 (5) Parties or persons in opposition; (6)
6 Closing remarks by the applicant.

7 The order of procedure for appeal
8 applications will be as follows: (1)
9 Statement and witnesses of the appellant; (2)
10 The Zoning Administrator or other government
11 official's case; (3) Case for the owner,
12 lessee, or operator of the property involved.
13 If not, the appellant; (4) The ANC within
14 which the property is located; (5)
15 Intervenor's case if permitted by the Board;
16 (6) Rebuttal and closing statements by
17 appellant.

18 Pursuant to Sections 3117.4 and
19 3117.5 of the Zoning Regulations the following
20 time constraints will be maintained. The
21 applicant, appellant, persons and parties,
22 except an ANC in support, including witnesses,

1 60 minutes collectively. Appellees, persons
2 and parties except an ANC in opposition
3 including witnesses, 60 minutes collectively.
4 Individuals, three minutes.

5 These time restraints do not
6 include cross examination and/or questions
7 from the Board. Cross examination of
8 witnesses is permitted by the applicant or
9 parties. The ANC within which the property is
10 located is automatically a party and a special
11 exception, variance, or appeal case. Nothing
12 prohibits the Board from placing reasonable
13 restrictions on cross examination including
14 time limits and limitations on the scope of
15 cross examination.

16 The record will be closed at the
17 conclusion of each case except for any
18 materials specifically requested by the Board.
19 The Board and the staff will specify at the
20 end of the hearing exactly what is expected
21 and the date when the persons must submit the
22 evidence to the Office of Zoning. After the

1 record is closed no other information will be
2 accepted by the Board.

3 The Sunshine Act requires that all
4 public hearings on each case be held in the
5 open and before the public. The Board may
6 consistent with its rules of procedure and the
7 Sunshine Act enter into executive session
8 during or after the public hearing on a case
9 for the purposes of reviewing the record
10 and/or deliberating on a case.

11 The decision of the Board in
12 contested cases must be based exclusively on
13 the public record. To avoid any appearance to
14 the contrary the Board request that persons
15 present not engage the members of the Board in
16 conversation. Please turn off all beepers and
17 cell phones at this time so as not to disrupt
18 the proceeding.

19 The Board will make every effort
20 to conclude the public hearing as near as
21 possible to 6:00 p.m. If the afternoon cases
22 are not completed at 6:00, the Board will

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1 assess whether it can complete the pending
2 case or cases remaining on the agenda.

3 The Board will now consider any
4 preliminary matters. Preliminary matters are
5 those which relate to whether a case should be
6 heard today such as request for a continuance,
7 postponement, or withdrawal, or whether proper
8 and adequate notice of the hearing has been
9 given. If you are not prepared to go forward
10 with a case today or if you believe the Board
11 should not proceed, now is the time to raise
12 such a matter.

13 Does the staff have any
14 preliminary matters?

15 MS. BAILEY: Madam Chair, members
16 of the Board, to everyone good afternoon.
17 There is and it has to do with Application No.
18 17771 of 440 1st Street LP. That application
19 was withdrawn, Madam Chair.

20 CHAIRPERSON MILLER: Thank you.
21 There is no action required from the Board on
22 that?

1 MS. BAILEY: None is required.

2 CHAIRPERSON MILLER: Okay. Good.
3 Okay. Then at this point would all
4 individuals who wish to testify today in any
5 case that is on our agenda for the hearing
6 please rise to take the oath and Ms. Bailey
7 will administer it.

8 MS. BAILEY: Would you please
9 raise your right hand. Do you solemnly swear
10 or affirm that the testimony you will be
11 giving today will be the truth, the whole
12 truth, and nothing but the truth?

13 WITNESSES: I do.

14 MS. BAILEY: Thank you. Madam
15 Chair, the first case on the agenda
16 Application No. 17762 of District-
17 Properties.Com LLC pursuant to 11 DCMR 3103.2
18 for a variance from the lot area and lot width
19 requirements under 401, a variance for the lot
20 occupancy requirements under Section 403 and
21 a variance from the side yard requirements
22 under Section 405 to construct a new one-

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1 family detached dwelling at premises 2237
2 Ridge Place, S.E.

3 The property is zoned R-2. It's
4 located in Square 5624 on Lot 59. This is a
5 continuation case. The Board previously took
6 this matter up on May 13 and it was continued
7 to today.

8 CHAIRPERSON MILLER: Thank you,
9 Ms. Bailey. Would the applicant introduce
10 himself for the record, please?

11 MR. SIKDER: My name is Mohammed
12 Sikder. My address is 3758 Penderwood Drive,
13 Fairfax, Virginia.

14 CHAIRPERSON MILLER: Okay. I
15 remember you from last time but I don't
16 remember your name from last time.

17 MS. SUGGS: My name is Myshel
18 Suggs and my address is 4908 Torrie Place,
19 Upper Marlboro, Maryland. I own the property
20 at 2235 Ridge Place, S.E.

21 CHAIRPERSON MILLER: Okay. I just
22 want to clarify your role in participating

1 today. I think when you were here last we
2 talked about there were two different ways to
3 participate. One was as a party and one is
4 just as a person in which case you would just
5 testify. Since then I don't believe you filed
6 any party status application. Correct? So it
7 is your intent to testify today when we get to
8 that point?

9 MS. SUGGS: Yes.

10 CHAIRPERSON MILLER: Okay. Then
11 I'll call on you at the appropriate time.

12 MS. SUGGS: Okay. Thank you.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 Mr. Sikder, we have a full file on
16 your case. Is there anything you need to add
17 to it or do you basically want to summarize it
18 briefly?

19 MR. SIKDER: The only thing I want
20 to add which actually I sent to you that I
21 contacted with ANC SMD, single member district
22 of Mr. -- what's his name? Muhammed Anthony.

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1 He asked me to send all the documents which I
2 did and since then I didn't hear anything from
3 him.

4 CHAIRPERSON MILLER: Okay. So you
5 served the ANC Commissioner with all the
6 documents?

7 MR. SIKDER: With all the
8 documents. Right.

9 CHAIRPERSON MILLER: Okay. And
10 haven't heard anything back. Is that correct?

11 MR. SIKDER: Right.

12 CHAIRPERSON MILLER: Did you have
13 a conversation at all with him?

14 MR. SIKDER: Yes, I had a
15 conversation. He was asking me how much I'm
16 going to sell the property which I told him.
17 I mean, there was no meeting so I couldn't
18 meet. Basically he didn't reply to the fax I
19 sent to him.

20 CHAIRPERSON MILLER: So basically
21 this involves a piece of property that was in
22 existence prior to the zoning regulations that

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1 is nonconforming with respect to lot area and
2 width. Okay. So then you are seeking
3 variance from those requirements and then in
4 order to fit a house on that property you are
5 seeking a side yard variance as well. Okay.
6 Anything else? Lot occupancy as well?

7 MR. SIKDER: Yes.

8 CHAIRPERSON MILLER: Any questions
9 for Mr. Sikder? Anything else you want to add
10 to your file before we go to the Office of
11 Planning?

12 MR. SIKDER: No, that's okay
13 unless you want to ask me any questions.

14 CHAIRPERSON MILLER: I don't think
15 the Board has any questions right now so why
16 don't we go to the Office of Planning.

17 MS. BROWN-ROBERTS: Good
18 afternoon, Madam Chairman and members of the
19 Board. I am Maxine Brown-Roberts from the
20 Office of Planning. Basically I think I will
21 stand on the record as outlined in the Office
22 of Planning report that states that the

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1 property was preexisting prior to a 1958 law
2 that currently does not meet the lot area or
3 the lot width.

4 In addition to that the property
5 is at a corner and any development will not be
6 able to attach to another building as some
7 have done within the community. We think that
8 the applicant has met the variance relief and
9 we recommend approval. Thank you, Madam
10 Chairman.

11 CHAIRPERSON MILLER: And you found
12 there were not any adverse impacts on any
13 neighboring property or the zone plan?

14 MS. BROWN-ROBERTS: From the
15 analysis no. I think that the three-foot
16 setback is sufficient. The neighboring
17 building is approximately the same height as
18 the proposed building. I think also because
19 of the location I don't think it will be
20 throwing any shadows through the backyard to
21 affect their light and air. Also, one of the
22 things that they are doing is providing on-

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1 site parking and we think that is an
2 appropriate thing to do.

3 CHAIRPERSON MILLER: Okay. Any
4 questions for Office of Planning?

5 MR. DETTMAN: In your analysis did
6 you at all look at whether or not an effort to
7 sort of gain as much space as we possibly can
8 between this particular house and the
9 neighboring house if whether or not building
10 this house on the other lot line along the
11 alley would be feasible?

12 MS. BROWN-ROBERTS: No. Actually,
13 no.

14 MR. DETTMAN: Okay. You may not
15 be able to answer this but does DCOP have any
16 sort of position in terms of building a semi-
17 detached dwelling on a lot line next to an
18 alley?

19 MS. BROWN-ROBERTS: I think we
20 sort of would prefer not to. We like to have
21 some setbacks from the alley. That is what we
22 generally tend to recommend. If there is any

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1 attachment it's usually to the other side and
2 not along the alley.

3 MR. DETTMAN: Thank you.

4 MS. BROWN-ROBERTS: Again, it's
5 our policy.

6 CHAIRPERSON MILLER: Does the
7 applicant have any questions for the Office of
8 Planning?

9 MR. SIKDER: No.

10 CHAIRPERSON MILLER: I have just
11 one other question. I know that Ms. Suggs is
12 here to testify but I'm wondering if you took
13 a look at her property and the impact on her
14 property of this project.

15 MS. BROWN-ROBERTS: Just from
16 going out there. I think this house is
17 similar in a way to that. I could see it's
18 very much going to line up in the line of
19 houses along that side. They have all the
20 houses that are attached so, you know, this
21 being a single-family detached I think was
22 even better. I didn't see anything that would

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1 greatly impact.

2 CHAIRPERSON MILLER: How about the
3 impact of the narrower side yard, the three-
4 foot side yard?

5 MS. BROWN-ROBERTS: A wider side
6 yard is always better than a narrow one. I
7 think our standard from the Office of Planning
8 three foot is usually something that will
9 accommodate. I think if we go much smaller
10 than that, the house is going to be really
11 tiny, really long which in this case it would
12 not be as compatible or similar to other
13 houses within the neighborhood.

14 CHAIRPERSON MILLER: Okay. Thank
15 you very much.

16 MS. BROWN-ROBERTS: You're
17 welcome.

18 CHAIRPERSON MILLER: Mr. Sikder,
19 do you have a copy of the Office of Planning's
20 report?

21 MR. SIKDER: Yes.

22 CHAIRPERSON MILLER: Do you have

1 any questions for the Office of Planning?

2 MR. SIKDER: No.

3 CHAIRPERSON MILLER: Okay. Is
4 anybody here from the ANC in this case? Okay,
5 not hearing from anyone. Is anyone here who
6 wishes to testify in support of this
7 application? All right, not hearing from
8 anyone. Is there anyone here who wishes to
9 testify in opposition? Come on forward.

10 MS. SUGGS: Hi. My name is Myshel
11 Suggs and you guys have asked all the
12 questions that I needed answers to so at this
13 time I don't need to do anything else.

14 Excuse me. I do have something to
15 say. I didn't understand how they were able
16 -- how he would be able to build a house near
17 the alley. It's such an unsafe place to build
18 a house. It's just not enough space. The
19 vacant lot has been there so many years and no
20 one has ever been able to build on it. That
21 is the part I'm not understanding is how would
22 he be able to build on it now if no one has

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1 ever been able to build on it.

2 CHAIRPERSON MILLER: I'm not sure
3 how many feet away he is from the alley but
4 perhaps Office of Planning can address that.

5 MS. SUGGS: Excuse me. I spoke to
6 one of the inspectors here and they stated
7 that there was no way a house could be built
8 on that particular property by the alley. So
9 many other builders have had this lot prior to
10 Mr. Sikder and they were just not able to
11 build on it so if you could just explain to me
12 how after so many years that a person can
13 build on it now right near that alley, I just
14 would want some more clarity.

15 MS. BROWN-ROBERTS: I don't know
16 that I can answer the question. I don't know
17 what those other people were looking at to
18 decide. I think everyone will have their own
19 criteria as to what they can build. There's
20 lots of things that go into a person's
21 decision as to what they would build and what
22 they would live with so I don't have that

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1 information.

2 The adjacent alley is 10 feet
3 wide. We have lots of those across the city
4 that operate and to the rear is 12 feet. I
5 don't know what are the things. We were just
6 asked to look at the variance for the lot
7 occupancy and the lot width and that sort of
8 thing and that's what we did. We didn't
9 analyze whether it's going to be feasible to
10 build a house, yes or no.

11 MS. SUGGS: Okay.

12 CHAIRPERSON MILLER: Okay. Thank
13 you very much.

14 MS. SUGGS: You're welcome.

15 CHAIRPERSON MILLER: Okay. Any
16 questions from the Board?

17 MS. SUGGS: Excuse me.

18 CHAIRPERSON MILLER: Yes.

19 MS. SUGGS: In no way will this
20 interfere with my property? I have nothing
21 to --

22 MS. BROWN-ROBERTS: In regards to

1 what we were asked to look at, no.

2 MS. SUGGS: Okay.

3 CHAIRPERSON MILLER: Okay. Mr.
4 Sikder, final remarks? I think we're there.
5 There are no more Board questions, are there?
6 Okay.

7 MR. SIKDER: I mean, unless you
8 have another person there is nothing to say.

9 CHAIRPERSON MILLER: Okay. This
10 is a very straightforward application. That's
11 why it's been going along so quickly. The
12 Board is going to take the opportunity to
13 deliberate on it very quickly because it is so
14 straightforward.

15 I would move approval of
16 Application No. 17762 of District-
17 Properties.Com LLC pursuant to 11 DCMR Section
18 3103.2 for a variance from the lot area and
19 lot width requirements under Section 401, a
20 variance from the lot occupancy requirements
21 under Section 403, and a variance from the
22 side yard requirements under Section 405 to

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1 construct a new one-family detached dwelling
2 at premises 2237 Ridge Place, S.E.

3 VICE-CHAIRPERSON LOUD: Second,
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay.
6 Basically this case involves a piece of
7 property that was in existence as a lot prior
8 to the enactment of the zoning regulations and
9 it is nonconforming with respect to lot, area,
10 and width as a result.

11 In order to construct a single-
12 family detached house in scale with what's
13 around it and of a reasonable size, the
14 applicant has also had to seek variances from
15 the side yard requirements and the lot
16 occupancy requirements.

17 Office of Planning did a very
18 thorough report and also basically addressed
19 it, I think, even by saying that he needs
20 those two variances in order to even put a
21 house on the lot. I shows that it would be
22 impossible to put a house on this lot without

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1 the variance relief. That is an exceptional
2 condition of the property that gives rise to
3 practical difficulty in developing it for
4 reasonable purpose.

5 We did not hear any evidence of
6 any adverse impacts on neighboring property or
7 on the public on the zone plan if relief is
8 granted. Does anybody want to add anything
9 else to this analysis? Okay. Any other
10 deliberation? All those in favor, say aye.

11 ALL: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining? Would you
14 call the vote, please?

15 MS. BAILEY: Madam Chair, the vote
16 is recorded as four zero one to grant the
17 application. Mrs. Miller made the motion, Mr.
18 Loud seconded, Mrs. Walker, Mr. Dettman
19 supported the motion. The Zoning Commission
20 member is not present at this time.

21 CHAIRPERSON MILLER: Thank you.
22 This can be a summary order as there is no

1 party in opposition. Thank you.

2 Ms. Bailey, we are ready for the
3 next case when you are.

4 MS. BAILEY: Thank you, Madam
5 Chair. Application No. 17726 of Wisconsin
6 Avenue Baptist Church and it's pursuant to 11
7 DCMR 3104.1, for a special exception to
8 construct an addition to the existing building
9 and to allow a child development center under
10 Section 205, and a special exception to allow
11 a private school under Section 206. The
12 property is located at 3920 Alton Place, N.W.
13 It is zoned R-1-B. It's located in Square
14 1779 on Lot 824.

15 CHAIRPERSON MILLER: Somehow I
16 don't think this case is going to go as
17 quickly. Why don't we start with
18 introductions. I assume these are just
19 parties at the table. Correct? Okay.

20 MR. DePUY: The applicant's
21 parties at the table.

22 CHAIRPERSON MILLER: It's just the

1 applicant's?

2 MR. DePUY: Yes.

3 CHAIRPERSON MILLER: Okay. Let's
4 start with the applicant.

5 MR. ECHEVARRIA: Yes. Hello. My
6 name is Raul Echevarria and I am the
7 curriculum director and co-founder of
8 CommuniKids Language School for Children.

9 MS. CLOUTIER: My name is Laura --

10 CHAIRPERSON MILLER: I'm sorry.
11 Do you mind giving your address as well?

12 MR. ECHEVARRIA: 5109 Western
13 Avenue, N.W., Washington, D.C. 20016.

14 VICE-CHAIRPERSON LOUD: Could you
15 kindly just repeat your name again?

16 MR. ECHEVARRIA: Raul, R-A-U-L,
17 and the last name is Echevarria, that's E-C-H-
18 E-V-A-R-R-I-A.

19 MS. CLOUTIER: Hi. My name is
20 Laura Cloutier and my address is 4418 Ellicot
21 Street, N.W. in Washington, D.C. 20016. I'm
22 here representing the Caterpillar Cooperative

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1 Preschool.

2 CHAIRPERSON MILLER: Did you say
3 -- which Cooperative Preschool?

4 MS. CLOUTIER: Caterpillar.

5 CHAIRPERSON MILLER: Caterpillar.
6 Right. Okay.

7 MS. BALDWIN: Stephanie Baldwin
8 with Greenstein, Delorme & Luchs, attorney for
9 the applicant.

10 MR. DePUY: Jacques DePuy,
11 Greenstein, Delorme & Luchs, co-counsel for
12 the applicant.

13 REV. BERGFALK: Good afternoon.
14 Lynn Bergfalk, Pastor of Wisconsin Avenue
15 Baptist Church. My address is 3568 Brandywine
16 Street, N.W., Washington, D.C. 20008.

17 MR. ANDRES: Good afternoon,
18 members of the Board. My name is Erwin Andres
19 and I'm with Grove Slade Associates. I reside
20 at 2356 40th Street, N.W., Washington, D.C.
21 20007.

22 MR. SPURLOCK: Good afternoon. My

1 name is Stephen Spurlock. I reside at 2328
2 Champlain Street, N.W., Apartment 407,
3 Washington, D.C. I'm here representing the
4 Washington Conservatory of Music and I'm also
5 the architect for the addition with the firm
6 of Wnuk Spurlock Architecture.

7 CHAIRPERSON MILLER: Okay. This
8 table is full so we don't have to do all the
9 introductions yet but I just want to make sure
10 who is here. For instance, I see Ms. Perry
11 and Ms. Wiss so ANC-3F is represented. I'm
12 sorry. Who is the other person? What's your
13 name?

14 You guys can introduce yourself
15 when you come up here to the table anyway.
16 Then how about -- we do have representatives
17 from the party that we granted party status
18 to, that being families neighboring Wisconsin
19 Avenue.

20 You're all here? Okay. When we
21 get to you, you can introduce yourselves but
22 just so the record is reflecting that the

1 parties are represented here. That is all the
2 parties I believe. Okay. Then I'm going to
3 just turn it over to the applicant then.

4 MR. DePUY: Thank you, Madam Chair
5 and members of the Board. Again, for the
6 record, Jacques DePuy, attorney for the
7 applicant appearing with Stephanie Baldwin,
8 co-counsel. We assume you are going to turn
9 the clock on us very soon so, therefore, my
10 remarks will be very brief so as to allow
11 plenty of time for our witnesses to have ample
12 time to address the Board.

13 CHAIRPERSON MILLER: We're going
14 to turn the clock on but we're not super
15 strict here but it's hard to tell. We do want
16 to be able to complete as much of this
17 hearing, if not all of this hearing, today so
18 we will have the clock running but we do make
19 exceptions sometimes. Just so the parties are
20 aware of that. Okay.

21 MR. DePUY: Thank you, Madam
22 Chair. As the Board's aware, this is an

1 application for approval as a special
2 exception of a child development center, one
3 use for two users, the CommuniKids and the Co-
4 op nursery being the two users.

5 Secondly, a special exception for
6 a private music school for the Washington
7 Conservatory of Music. Also the special
8 exception contemplates and proposes a two-
9 story addition to an existing church building
10 at the rear of the church for use by these
11 special exception users as well as by the
12 church for its own matter of right uses and
13 the expansion and reconfiguration of an
14 existing parking lot which currently provides
15 21 spaces to a lot which would have either 28
16 spaces or, in the alternative, 36.

17 You will hear testimony from our
18 various witnesses with respect to these two
19 alternative parking spaces, parking lot sizes
20 and configurations. The special exceptions,
21 as this Board is well aware, are uses that are
22 deemed compatible with the underlying uses in

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1 the zoned district and are reviewed by this
2 Board with respect to potential negative
3 impacts and their amelioration.

4 As the Office of Planning has
5 indicated in its report, the applicant
6 submitted a very detailed summary of its long
7 discussions and negotiations with the
8 neighbors. As you will hear, Rev. Bergfalk in
9 particular will testify the applicant has made
10 numerous efforts to reach an agreement with
11 the neighbors but, unfortunately, that was not
12 possible.

13 However, the applicant has
14 listened to the neighbors and has adjusted its
15 plans to respond to as many of the neighbors'
16 concerns as is possible. For example, as our
17 plans indicate, we removed a proposed
18 additional story on top the existing church to
19 cut back on some potential negative impacts
20 that were perceived by some of the neighbors.
21 It has added an enclosed trash enclosure in
22 the parking lot and done numerous other things

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1 in response to various concerns from
2 neighbors.

3 With that brief opening statement,
4 we'll go right to our first witness. I would
5 like to indicate that Rev. Bergfalk is going
6 to give a brief opening statement but not
7 complete his remarks until the other witnesses
8 have completed theirs so he'll be speaking
9 twice. The other witnesses will be speaking
10 once.

11 We would request the Board to have
12 cross examination occur at the conclusion of
13 all the testimony. We think it will be more
14 efficient for the applicant's case to be put
15 on in toto if that is acceptable to the Chair.

16 CHAIRPERSON MILLER: I don't know.
17 I mean, I guess what I'm saying I just want to
18 hear it first because if it's really long it
19 might be hard to remember and hold those
20 questions. I mean, we can try and see how it
21 goes. I just want to ask some preliminary
22 questions before you go right into the merits

1 here.

2 We have read all the papers that
3 have been filed and there were a lot of papers
4 filed in this case and a lot of information.
5 One question went to the relief that is being
6 sought. There still is an addition. You are
7 seeking relief to build an addition, I
8 believe.

9 I'm wondering relief pursuant to
10 what to build the addition? It seems like a
11 lot of these things are compartmentalized like
12 under 206 for uses of a school and 205 for
13 community center uses. What is the addition
14 coming in under just for our own evaluation?

15 MR. DePUY: It's under both 205
16 and 206 because the special exception users
17 will be using the addition. Obviously if it's
18 used by the church for its matter-of-right
19 purposes, no special exception would be
20 necessary but for the other users to be able
21 to use that space, we need to request special
22 exception use thereof.

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1 CHAIRPERSON MILLER: Okay. That's
2 helpful. Thank you. Is CommuniKids a for-
3 profit use and does that affect the relief
4 that you're seeking?

5 MR. DePUY: It is a for-profit
6 use. We do not believe that is relevant to
7 any consideration that this Board gives to the
8 application. The only question this Board has
9 before it is whether or not this use is an
10 appropriate use and fits the special exception
11 criteria so whether it's for-profit or not we
12 believe is not relevant.

13 CHAIRPERSON MILLER: I think my
14 last preliminary question is with respect to
15 the National Park Service were they notified
16 of the application and, in your view, should
17 they have been?

18 MR. DePUY: They were notified and
19 Rev. Bergfalk can address that in much more
20 detail if that is of concern to the Board.
21 They were not only notified but we reached out
22 to them on several occasions and provided them

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1 with copies of all submissions.

2 CHAIRPERSON MILLER: Okay. Great.
3 Those were just a few concerns that I raised
4 on the pleadings. Okay. Any other
5 preliminary questions? Oh, Mr. Jeffries is
6 here. I would like to introduce Mr. Jeffries
7 from the Zoning Commission. He is here and
8 will be sitting on the case with us. Okay.
9 Thank you.

10 MR. DePUY: Thank you. I would
11 like to call our first witness, Rev. Bergfalk.
12 Would you give the first portion of your
13 testimony to the Board, please.

14 REV. BERGFALK: Madam Chair and
15 Board members, I appreciate the chance to put
16 our application in some context. Wisconsin
17 Avenue Baptist Church began in 1880 before
18 actually there was a Wisconsin Avenue. It was
19 Mt. Taber Church located on the Georgetown
20 Rockville turnpike in a little town of
21 Tenleytown.

22 Fifty years ago the church built

1 the current facilities on Tenley Circle.
2 Actually, that is relevant to our application
3 inasmuch as that facility was never completed.
4 Not only is it not ADA compliant, we don't
5 have an elevator, we don't have restrooms on
6 some of the main levels and that is a very
7 important part for the church quite apart from
8 the application.

9 For years the church flourished
10 until an aging membership and changing
11 demographics resulted in a significant loss of
12 participation. Our BZA application represents
13 a new chapter in our rather long history as
14 the church reconnects with its community and
15 renews its congregation.

16 Five years ago a half dozen
17 families knocked on our door and asked to use
18 a classroom and our playground. There was no
19 room for their small children in existing
20 neighborhood preschools so they formed a play
21 group at our church probably without any idea
22 they were starting a new preschool.

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1 When you take that need and
2 concerned parents and a church with a heart
3 for its community and informal program that
4 turned out to be so good that other families
5 naturally wanted in, you ended up with the
6 Caterpillar Co-op Preschool.

7 Subsequently the church checked
8 what would be required for licensing and
9 discovered the preschool would need its own
10 certificate of occupancy and a special
11 exception.

12 By this time a second organization
13 called CommuniKids had spun off from the
14 preschool both of them focusing on language
15 emersion programs for children. We contacted
16 the zoning attorney and found out each program
17 should have its own C of O under a special
18 exception for a child development center.

19 We also developed a relationship
20 in 2006 with the Washington Conservatory of
21 Music. For years they operated out of Briggs
22 Baptist not far from us. When Briggs closed

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1 the Conservatory moved most of its programs
2 next door to Westmoreland Congregational
3 Church but some lessons over to Wisconsin
4 Avenue.

5 There always has been a close
6 relationship between religion and the arts but
7 this was especially a good fit for our
8 congregation because the Conservatory was
9 willing to help our small church with music
10 for Sunday services.

11 Our attorney advised that we
12 should add the Conservatory to our BZA
13 application and seek a special exception for
14 a private school. I think of a private school
15 with a couple hundred kids in classrooms and
16 not eight or 10 individual music lessons with
17 an occasional ensemble but I understand the
18 Conservatory fits the criteria for a private
19 school so that special exception is part of
20 our application.

21 So our BZA application covers
22 three high-quality programs that are a real

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1 asset which meet real needs in our community.
2 They also reflect the churches own vision and
3 values and, of course, are no different from
4 programs housed at many other churches
5 throughout the city. Our location on Tenley
6 Circle minimizes impact on our neighborhood
7 from expanding these existing programs.

8 For the past 20 years I actually
9 have lived five blocks from the church and in
10 the same ANC so I understand and care deeply
11 about this neighborhood. The church has done
12 everything it can to address the concerns of
13 neighbors and to work with the ANC and has
14 attached a summary of those efforts to our
15 prehearing statement.

16 I first spoke with Single Member
17 District Commissioner Cathy Wiss last July.
18 We presented our plans to the Tenleytown
19 Neighborhood Association last fall. We have
20 held multiple neighborhood meetings including
21 with the neighbors who have opposed our
22 application.

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1 We did amend our application in
2 January to include an addition to our building
3 which is needed for church reasons in addition
4 to providing additional space for the special
5 exception uses. That information was included
6 in advance of all meetings and neighborhood
7 communications even before the amendment was
8 filed.

9 As we have proceeded we have
10 thoroughly responded both to the concerns of
11 our neighbors and to the ANC. We have gone to
12 the ANC four separate times. We haven't been
13 able to agree with everything but we have been
14 able to incorporate a lot of what we have
15 heard, and we appreciate that, into our
16 revised plans and we have made a number of
17 concessions including removing the third floor
18 from the proposed addition.

19 We made this major concession not
20 because we felt there was an adverse impact or
21 a zoning problem but because the additional
22 floor seemed to be a lightning rod for

1 contention. When our ANC asked us to give it
2 up as the basis for an agreement with our
3 neighbors, we did so in good faith even while
4 we waited a number of weeks for our neighbors
5 to respond to a request for us to meet face to
6 face in negotiations.

7 So today we appreciate the chance
8 to present our application to the Board and we
9 believe what we are asking for is consistent
10 with our long history and with our deep
11 commitment to the community. Thank you.

12 CHAIRPERSON MILLER: Thank you.

13 MR. DePUY: Ms. Cloutier.

14 MS. CLOUTIER: Good afternoon. My
15 name is Laura Cloutier and I am here
16 representing the Caterpillar Cooperative
17 Preschool, or Co-op for short. I'm a parent
18 of two children who attend the Co-op and I'm
19 also a resident of Tenleytown.

20 I would like to begin my remarks
21 by giving you a brief history of the Co-op.
22 In the fall of 2003 six families with toddlers

1 organized a moms and dads morning out program.
2 At the time their children were too young for
3 most preschools so they formed this informal
4 group, really a play group, as a temporary
5 activity for their children.

6 The group called around to various
7 churches in the area assuming that many would
8 have space that they would make available to
9 neighborhood parents. The only one who
10 readily offered space was Pastor Lynn
11 Bergfalk, Wisconsin Avenue Baptist Church.

12 For the first two years the church
13 did not charge any rent. Instead, the
14 families made in-kind donations including
15 fixing up the playground which the families
16 continue to maintain and which has become a
17 neighborhood play space open to all community
18 residents.

19 About two years later these same
20 original families started the preschool
21 application process for their own children and
22 they quickly discovered three things. First,

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1 there is a serious shortage of preschool slots
2 in the area. In fact, many of these six
3 families were put on waiting lists for
4 neighborhood preschools.

5 Second, the cost of local
6 preschools was very expensive. Third, there
7 were no affordable Spanish-immersion programs
8 for preschool age children. They also
9 realized something else. This group of
10 families had become a community with real
11 assets. This community of families had a
12 common vision of quality, play-based, Spanish-
13 immersion preschool education for their
14 children.

15 In fact, most of the families had
16 at least one parents who was a native Spanish
17 speaker and they were struggling to find
18 language resources to preserve this heritage
19 for their children.

20 They also had educators in their
21 group so the next step was logical. A couple
22 of years into their moms and dads morning out

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1 program they decided it was time to start the
2 process of formalizing it into a preschool.
3 This moms and dads morning out program
4 naturally evolved into a cooperative preschool
5 model.

6 For those of you who may not be
7 familiar, a cooperative school is one where
8 families are members of the school community
9 so in addition to paying tuition to cover
10 salaries of teachers and other expenses, each
11 family works a set number of hours in the
12 classroom assisting the teacher.

13 The number of hours varies by
14 class and can be as often as once per week or
15 as infrequent as once per month. Each family
16 is also a member of a Co-op committee. These
17 committees are how the Co-op is organized and
18 managed.

19 There are approximately six
20 committees that include oversight such as
21 admissions and housekeeping. The benefits of
22 a Co-op include that it is a parent-run

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1 organization and it also helps keep cost low.
2 Over the last few years with no formal
3 marketing effort the Co-op has grown to where
4 we are today.

5 Today the Co-op has three classes
6 with a total of 23 students. Each class has
7 an assigned teacher and there is always one
8 on-duty parent in each class. Of the 23
9 students we have three sets of siblings for a
10 total of 20 families. In addition, two of our
11 three teachers have children who attend the
12 Co-op also.

13 Our school is divided into three
14 classes. Our youngest class is comprised of
15 seven two-year-olds and they meet twice a week
16 on Monday and Wednesday mornings from 9:00 in
17 the morning until 11:00 a.m.

18 Our class of three-year-olds has
19 eight students and they meet three times a
20 week, Mondays, Wednesdays, Fridays from 9:00
21 in the morning until 12:00 noon. There is an
22 optional lunch bunch for the kids from 12:00

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1 noon until 12:30. On a typical day this class
2 of three-year-olds I would say about half of
3 those students participate.

4 Then our big kids, our four-year-
5 old class, also has eight students and they
6 meet five days a week, Monday through Friday,
7 also from 9:00 a.m. to 12:00 noon. They also
8 have the lunch bunch option from noon until
9 12:30. I would say on most days all of those
10 students participate in that.

11 Each class has its own classroom
12 on the second floor of the church. Bathrooms
13 and handwashing facilities are on the first
14 floor of the church. We also use the fenced
15 playground adjacent to the church for recess
16 every day if weather permits. The Co-op only
17 has classes Monday through Friday, September
18 through June, and the latest we end is 12:30.

19 I'm here today representing the
20 Co-op but the Co-op is nothing more than a
21 group of parents so I would like to take a
22 moment to tell you one parent's story of how

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1 they came to the Co-op and that is my story.

2 In late 2005 my husband and I
3 returned to Washington, D.C. after serving in
4 the foreign service. We had previously been
5 D.C. residents but now we returned to the city
6 with two young children. In January of '06 I
7 applied to four preschools for my then two-
8 and-a-half-year-old daughter for the following
9 fall.

10 I applied to schools in the
11 neighboring communities of Tenleytown, Spring
12 Valley, Chevy Chase, and Woodley Park. All of
13 these schools were very expensive ranging from
14 \$8,000 to \$11,000 a year for a half-day
15 program. In the end that didn't matter
16 because we got wait-listed at all four of
17 those schools.

18 When through a CommuniKids class I
19 heard about the Caterpillar Co-op I couldn't
20 believe my luck that a Spanish-immersion
21 preschool existed in my neighborhood. I had
22 come to believe that programs like this did

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1 not exist in D.C., at least not affordable
2 ones or ones for families without a World Bank
3 subsidy.

4 I should say at this time that I
5 was struggling to build a bilingual home at
6 that time. I'm a native Spanish speaker and
7 my husband is not. I was looking for
8 resources and the Co-op was just what I was
9 looking for.

10 I tell you my story to say that
11 I'm not the only one. There is much need in
12 D.C. for programs such as ours. We have never
13 formally advertised the Co-op. Enrollment is
14 mainly through word of mouth. Many of our
15 families found out about the Co-op through
16 CommuniKids language classes and you will hear
17 from CommuniKids in just a moment.

18 There is a synergy between our
19 programs. We are two programs but we are one
20 community. We share classrooms. We have some
21 overlap of teachers and all that is to say we
22 would like to grow a modest small school. We

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1 would like to grow to a total population of
2 about 56 students and seven teachers.

3 That is within the applicant's cap
4 of 80 students and 17 teachers. We know that
5 there's a need for our programs and we would
6 like to be a resource for more D.C. families
7 who have similar goals for their children such
8 as ours.

9 I'll close by simply stating that
10 our school is much more than a school. We are
11 a community. Through the Co-op and
12 CommuniKids we have made friends with other
13 families of different backgrounds and cultures
14 who share a common vision for our children.

15 The Caterpillar Co-op is a type of
16 resource that encourages young families to
17 stay in D.C. instead of moving out to
18 Montgomery County. I hope you will support
19 our community and I hope you will support our
20 school. Thank you.

21 CHAIRPERSON MILLER: Thank you.

22 MR. DePUY: Mr. Echevarria.

1 MR. ECHEVARRIA: Good afternoon.
2 My name is Raul Echevarria. I am curriculum
3 director and a co-founder of the CommuniKids
4 Language School for Children. I am a former
5 Co-op parent. I am the dad who took the
6 mornings off in those days.

7 CommuniKids Language School for
8 Children was created by Jeannine Piacenza,
9 Maria Barria, and myself, three parent
10 educators who sought to provide our children
11 with a multi-lingual preschool education. The
12 three of us came together through the
13 Caterpillar Co-op at the Wisconsin Avenue
14 Baptist Church.

15 The Co-op's intimate
16 characteristics allowed us to draw from our
17 Spanish language heritage, formal education
18 training and teaching experience to create a
19 unique program that allowed our children to
20 develop basic learning skills while working
21 solely in Spanish.

22 During the time our children spent

1 at the Co-op their skills blossomed. We could
2 not help but be inspired when every other day
3 we would see six little kids from various
4 linguistic and ethnic backgrounds playing,
5 singing, listening to stories and working on
6 their crafts while speaking beautiful Spanish.
7 There was, and still is, no other program like
8 the Caterpillar Co-op in the entire Washington
9 Metropolitan area.

10 CommuniKids arose from the desire
11 to reach out beyond the Co-op to the other
12 many families that want to expose their
13 children to quality language education at an
14 early age. CommuniKids was also the first of
15 its kind in the Washington Metro area and it
16 is so popular with parents that several
17 organizations are already emulating our
18 program out in the suburbs.

19 While CommuniKids and the
20 Caterpillar Co-op are two distinct entities,
21 there is a great deal of synergy between the
22 organizations. The Co-op and CommuniKids have

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1 a common education philosophy and share
2 classrooms and materials.

3 CommuniKids trains Co-op teachers
4 in the latest language education techniques
5 and has paid for some Co-op teachers to attend
6 major early childhood education conferences
7 and conventions. It also provides a link
8 between the Co-op and parents who may be
9 interested in enrolling their children in in-
10 depth language-immersion programs.

11 Indeed, many of the current Co-op
12 families learned about it through CommuniKids.
13 Together CommuniKids and the Caterpillar Co-op
14 are helping to satisfy the great need for
15 quality early language education programs in
16 the area by empowering families to come
17 together as part of a unique community of
18 learning.

19 CommuniKids holds its classes by
20 session. There is a fall, winter, and a
21 spring session. We offer immersion classes
22 currently in Spanish but also French, Chinese,

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1 Italian, and Portuguese.

2 Classes usually meet once a week
3 during each session. Most classes are only
4 one hour but some teachers hold intensive
5 classes which are held for one and a half or
6 two hours. Classes are taught by one teacher
7 for up to eight students. Classes are divided
8 into four different age groups to ensure that
9 all activities are developmentally
10 appropriate.

11 We have our baby class which is
12 for children 12 to 24 months. We have our
13 toddler class which is for children 24 to 36
14 months. We also have a preschool class for
15 children three to five years old. We also
16 have advanced classes for school-age children
17 ages six to eight years old, although on a few
18 occasions we have allowed an older student to
19 join our advanced classes at a parent's
20 behest.

21 It should also be noted that the
22 baby and toddler classes require the child to

1 be accompanied by a caretaker. Also it should
2 be noted that some parents enroll their
3 children in more than one class a week.

4 CommuniKids classes are held
5 throughout the day on weekdays but are most
6 often held during morning hours between 9:00
7 a.m. and 1:00 p.m. and after school between
8 3:30 p.m. to 6:00 p.m. On weekdays there are
9 generally only one or two CommuniKids classes
10 offered at anytime with an average of four
11 classes on a weekday.

12
13 On Saturday classes may be held
14 between 9:00 a.m. to 4:00 p.m. but generally
15 are held in the morning. At most there are up
16 to six classes being offered at any one time
17 but we staggered their start times to allow
18 for easier class transitions.

19
20 CommuniKids also holds a summer
21 camp. In the past the summer camp has been
22 held Monday through Friday from 9:00 a.m. to

1 12:00 noon for children ages three to five
2 years old. Starting in the summer of 2008
3 CommuniKids seeks to hold the camp from 9:00
4 a.m. to 3:00 p.m. for up to 30 children and
5 six staff.

6 Children who attend the summer
7 camp our taken outside to play on the play
8 area or the playground as part of their day.
9 The summer camp is onsite and does not go on
10 field trips which would require buses or other
11 transportation to and from the property.

12 CommuniKids does not hold regular
13 weekday classes during the summer months. We
14 do have much reduced number of classes that
15 meet on Saturdays. There are a small number
16 of Saturday classes that will take place.

17 As part of the application
18 CommuniKids seeks a modest expansion to hold
19 three classes at any one time on weekdays to
20 include 24 children and three teachers and to
21 hold up to six classes at any one time on
22 Saturday for 48 children and six teachers.

1 In conclusion, CommuniKids is an
2 organization that developed organically from
3 the Caterpillar Co-op. There is a great deal
4 of synergy between the Caterpillar Co-op and
5 CommuniKids. They share a common philosophy,
6 teaching team, training, spaces and materials.

7 Moreover, they work in tandem to
8 bring together families who are looking for
9 quality early language education programs and
10 bring them into a vibrant and energetic
11 community of learning. Washington D.C.
12 presents special challenges for organizations
13 such as ours. We believe that programs such
14 as ours need to be in the nation's capital.

15 Without the generosity of the
16 Wisconsin Avenue Baptist Church providing
17 appropriate educational facilities at an
18 affordable cost, innovative programs like ours
19 would not be able to develop and thrive in the
20 District. We need you to help us keep our
21 programs in the nation's capital and we ask
22 for your help. Thank you.

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1 CHAIRPERSON MILLER: Thank you.

2 MR. DePUY: Our next witness,
3 Stephen Spurlock, is wearing two hats. He is
4 first going to speak on behalf of the
5 Washington Conservatory of Music and he'll
6 indicate his relationship to that
7 organization. He'll then don his second hat
8 and speak as the architect for the addition
9 and the reconfigured and expanded parking lot.

10 Mr. Spurlock.

11 MR. SPURLOCK: Good afternoon,
12 Madam Chair, and members of the Board. Thank
13 you for the opportunity to address you this
14 afternoon. As Jacques said I am sort of
15 wearing several hats today. Actually I'm
16 going to throw a third one in. I'm also a
17 student at the Conservatory. I take music
18 lessons there.

19 I'm currently the chair of the
20 board of trustees at the Washington
21 Conservatory of Music so I'm here on their
22 behalf. I'll give you just a brief overview

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1 of what the Conservatory is all about. We are
2 a nonprofit independent community music
3 school. We were formed in 1984. We are only
4 one of two nationally accredited schools in
5 the entire Metropolitan area.

6 We put a lot of emphasis on high
7 quality musical education for our students.
8 We primarily in terms of our school function
9 give private lessons. From year to year the
10 number changes but it is usually an average of
11 about 450 students total over the year.

12 We have two campuses, as Jacques
13 said. The primary campus is at Westmoreland,
14 the congregational church which is on
15 Westmoreland Circle, and then we have our
16 satellite campus at the building we are
17 discussing today.

18 The entire faculty is composed of
19 about 50 teachers. Most of these are
20 professional musicians. Some or more or less
21 full-time educators. They average anywhere
22 from two to 18 hours a week. When you hear

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1 large numbers like 450 and 50 teachers,
2 remember that is once or twice a week. It's
3 not that concentrated a group.

4 One of the major efforts of the
5 Conservatory is to provide a concert series
6 for the community. We do these at no cost for
7 the community. In the last 10 years we've had
8 well over 100 free concerts with world class
9 musicians. We have master classes. We also
10 sponsor an adult orchestra which meets at the
11 Cathedral School a little further down
12 Connecticut Avenue. We have a jazz group that
13 goes out to senior citizen's homes and things
14 of that sort. We are very involved in the
15 community and we do try to give back to the
16 community as best we can.

17 In terms of our current request
18 for the facility, we are requesting 10 rooms
19 of use with the maximum of 10 teachers and a
20 maximum of 30 students. In all honesty it's
21 probably 10 students at most any given point
22 in time. The bulk of our activity there are

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1 private lessons.

2 The lessons are anywhere from 45
3 to 60 minutes in length. Because of the
4 different times of the lessons plus our
5 scheduling, those all tend to stagger so at
6 any one given point in time 10 people are not
7 coming and going at once. It's staggered
8 throughout the quarter hour or over the hour.

9 Currently our use there is only
10 about 15 hours a week. We have not been
11 advertising because of our ongoing application
12 process. If we are successful with this
13 endeavor we would probably try to offer the
14 maximum that we are allowed or up to what we
15 are given permission to proceed with.

16 We formed this campus primarily
17 because of our move, as Pastor Bergfalk said,
18 but we also are very excited to be closer to
19 a Metro. We are only a block and a half from
20 the Metro here. We do have students who are
21 city kids or young adults who don't have
22 access to private transportation and use mass

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1 transit. We like being in the city and having
2 that option.

3 As part of my role with the
4 Conservatory I also prepare the schematic
5 plans for the building addition. I'm going to
6 switch hats now. I have larger-scale ones but
7 I believe you all have these 11 by 17s and
8 I'll just refer to those unless you want me to
9 point things out.

10 On the first set of your package
11 there is -- let me back up. I'm sorry. The
12 building was built, as Pastor Bergfalk said,
13 in the early '50s. It was actually built in
14 two phases. The initial sanctuary, or what is
15 now used as the sanctuary was built in 1953
16 and in 1958 they added that sort of half
17 completed educational wing.

18 Actually, the master plan for the
19 church originally contemplated a larger
20 sanctuary which would be located where the
21 parking garage is now -- parking lot is now
22 being proposed to be built but that was

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1 obviously never built.

2 The property, as you will see, is
3 a little over 35,000 square feet of area.

4 It's zoned R-1-B which is the church is a
5 matter-of-right use and obviously these other
6 programs are not. The existing building
7 occupies about 20.9 percent of the property
8 and the addition will add 4 percent more lot
9 occupancy for 24.9 which is considerably under
10 the matter-of-right allowed for that use.

11 The overall dimensions -- if you
12 look actually on this -- I don't have a larger
13 version but in your packet of these existing
14 condition photographs. Do you have these?
15 You'll see that in the view from the southeast
16 there is sort of a missing corner that was
17 actually never built for the education wing
18 and that is what we are proposing to in-fill
19 at this time.

20 The dimensions of the addition on
21 each floor are about 25 by 56 feet which is
22 about 1,400 square feet. There will be a

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1 cellar and two floors which would give you
2 4,200 square feet of building area.

3 CHAIRPERSON MILLER: Do you want
4 us to be looking at that because all of us are
5 looking for it in our files.

6 MR. SPURLOCK: It's not that
7 critical. If you can still hear me, the
8 building was built and it looks a bit
9 unfinished. It's obvious where the addition
10 was always intended to be placed which was --

11 MR. JEFFRIES: You have to stay on
12 the mic, please.

13 MR. SPURLOCK: The original piece
14 of the building was in this area here. It was
15 built in 1953. This educational wing was
16 built in 1958. It was built with a one-sided
17 hallway so as an architect looks at it, it was
18 always intended to be a double-loaded
19 corridor.

20 The real intent, though, I think
21 of the addition and the building upgrades are
22 really more focused on the fact that the

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1 building doesn't function very well. It's a
2 bit antiquated. It's tired. There is a ramp
3 currently for accessibility to the main floor
4 but there are no bathrooms on the floor. One
5 of our major goals in this project is to make
6 the building more accessible for the church
7 and for the other uses.

8 The plans have contemplated
9 putting bathrooms on every level, ADA
10 accessible bathrooms on every level. We are
11 going to put a shower room on the lower floor
12 for people to encourage commuting by bicycle
13 and things of that sort.

14 Assuming this proceeds forward,
15 the Conservatory -- some of these rooms, as
16 you can see on the lower-level plan, are
17 smaller in size and these would be constructed
18 with sort of modern technology which would
19 permit us to contain the sound because that is
20 one of the things that has been a concern not
21 only to the property owners but also to the
22 users of the facility.

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1 There are various technologies
2 that are available now including multiple
3 level walls with offset structure and that
4 sort of thing to do that. The addition allows
5 us to put in new music studios in new space
6 which can then be acoustically instructed.

7 As part of the site plan Mr.
8 Andres will talk about the parking but as part
9 of the site plan the current playground is in
10 this area here. This would be moved to a
11 courtyard which will be formed between the
12 parking lot and the existing building.

13 It will be easily contained with
14 some fencing which will be constructed and
15 playground space will be here so it will have
16 no adverse impact on the adjacent property
17 owners. I really think that's about all I
18 have to say.

19 MR. JEFFRIES: Excuse me. I just
20 want to be clear. Where will the Conservatory
21 classrooms be? Is it the cellar?

22 MR. SPURLOCK: At the moment, yes,

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1 sir.

2 MR. JEFFRIES: The cellar?

3 MR. SPURLOCK: That's correct.

4 MR. JEFFRIES: And then the school
5 -- I'm just trying to make certain I'm clear
6 about where everything is in this development.
7 So the conservatory is in the cellar and then
8 on the first level is what programs? I
9 obviously see where the church is but -- who
10 am I talking to?

11 MR. SPURLOCK: I'm not sure I can
12 fully address how the --

13 REV. BERGFALK: The preschool --
14 there are 10 classrooms which are currently
15 available and those are on the second level.
16 Several classrooms on the lower two levels
17 also are used for CommuniKids classes. The
18 in-fill part of the building predominately
19 will address the need for the Conservatory to
20 have space that is segregated from the rest of
21 the program functions.

22 That will primarily be on the

1 cellar level. There will be restrooms and an
2 elevator which will take, of course, a
3 significant part of the in-fill and then some
4 of that space will be used for the church.

5 MR. JEFFRIES: Okay. Thank you.

6 MR. DePUY: Mr. Andres.

7 MR. ANDRES: Good afternoon, Madam
8 Chair, members of the Board. My name is Erwin
9 Andres and I'm a principal of Grove Slade
10 Associates. We were retained by the Wisconsin
11 Avenue Baptist Church to perform traffic and
12 parking analyses to help support the
13 development.

14 As part of our scope of work the
15 first thing was identify existing conditions.
16 It's important that we go through existing
17 conditions so we can better understand the
18 advantages of the proposed development plan.

19 The site is located at the corner
20 of Nebraska and Alton Place. The site has
21 access currently off of Alton Place. It's
22 important that I point out the access because

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1 the access drive, which serves the rear part
2 of the building with 21 surface parking
3 spaces, is only approximately 12 feet wide.

4 With respect to general traffic
5 engineering standards that is fairly
6 substandard to serve two-way traffic. As a
7 result, any patrons or any family members or
8 any faculty or staff that are entering that
9 driveway need to either wait on Alton Place to
10 allow for vehicles to come out or vice versa
11 has to happen, patrons who are in the parking
12 lot have to wait until somebody comes in.
13 There is sort of a little bit jockeying that
14 goes on, especially in the mornings when the
15 peak arrivals occur.

16 In addition to the existing
17 conditions relative to access, along Alton
18 Place, on the south side of Alton Place, there
19 is a section of frontage on Alton Place that
20 is identified as restricted parking for short-
21 term parking and standing related to the peak
22 morning drop-offs and pick-ups and the peak

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1 afternoon drop-offs and pick-ups.

2 It is important to note that in
3 providing these operations today the church
4 and the surrounding community does experience
5 some congestion on Alton Place. That fact is
6 fairly known. We understand that is a
7 situation that the church is currently dealing
8 with.

9 Now the question is with this
10 proposed development how do we intend on doing
11 that? Well, the first benefit of the plan is
12 one that the church actually doesn't really
13 have any control of and that is location. It
14 is important to note that the church located
15 right off of Tenley Circle is approximately
16 one block, two blocks to the Tenleytown
17 Metrorail portal station.

18 In addition to that there are 10
19 bus routes that either traverse up and down
20 Wisconsin Avenue or along Nebraska that
21 provides exceptional transit service to and
22 from the site.

1 That is important because by
2 providing these alternatives in addition to
3 the fact that it is only a block off of Tenley
4 Circle, the site is well situated to allow for
5 vehicles to basically turn off of certain
6 roadways, get into the site, and basically
7 turn back out onto those roadways.

8 Now, it is important to note that
9 39th Street, which borders the block to the
10 east, is one way northbound. As a result
11 patrons who -- excuse me, parents who come to
12 drop-off their students, whether they choose
13 to drop-off on Alton Place or chose to drop-
14 off in the rear, with respect to the traffic
15 patterns how do they leave?

16 For the most part most of them
17 come out of the driveway, wait for the
18 necessary gaps, turn left, and end up on Alton
19 Place at the intersection of Alton Place and
20 Nebraska.

21 In the mornings, especially in the
22 mornings, Nebraska serves a significant amount

1 of commuter traffic and it's an unsignalized
2 intersection. As a result, vehicles tend to
3 queue up and for the most part need to rely on
4 what is called curtesy gaps to turn left to
5 basically access the circle.

6 Once you access the circle you can
7 basically access any part of the District.
8 You can head north, south, west so it's an
9 important existing condition that actually
10 with the proposed plan we are looking to
11 alleviate.

12 Now, given the existing conditions
13 there are other items or other constraints
14 that we are looking to deal with. As I
15 mentioned before, the driveway that serves the
16 site is fairly narrow.

17 In addition to that, once you get
18 to the actual parking spaces there are 21
19 parking spaces and it's a dead-end parking
20 lot. As a result, it's not very conducive to
21 what is considered in many management
22 practices as efficient turnover.

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Essentially if somebody wants to drop-off their child in the rear of the building they would need to basically perform, depending on the size of the vehicle, a three or four-point turn because there is no efficient way to loop around and head back out. Given these constraints we have been coordinating with the District Department of Transportation because we understand that there are traffic issues that we are looking to address.

We are looking to address them not necessarily by creating additional roads or additional lanes or, for the most part, additional pieces of infrastructure when, in essence, the church should focus on policies, certain programs that would help actually coordinate with some of DDOT's initiatives with respect to identifying ways to get people out of their cars, especially people who are driving in their cars by themselves.

1 There are opportunities here,
2 especially considering that there is a
3 classroom setting, where we can maximize ride
4 sharing, we can maximize carpooling. In
5 addition to that, given its proximity to the
6 Metro station as well as the Metro bus
7 locations, the church is also looking at
8 providing transit benefits to ensure that some
9 of the teachers can use those benefits so that
10 they don't have to take the car.

11 Given the age of some of the
12 students, sometimes it's necessary to take the
13 car. As you have heard before, some of the
14 students' ages have been identified to be
15 younger than two or three years old. As a
16 result, it is difficult sometimes to take a
17 child that young on your bicycle or take a
18 child that age to walk. It becomes difficult.

19 Given that, we are looking to
20 promote these initiative but, at the same
21 time, we still want to make sure that patrons
22 who have no other choice to drive can be

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1 served by the site fairly effectively.

2 With that, we have identified a
3 development plan that we believe works well
4 for several reasons. One, it addresses the
5 church's needs and, two, it provides benefits
6 to the overall community that aren't currently
7 realized because of the existing development
8 plan that is related to an antiquated
9 development site.

10 Given that what is shown up on the
11 board, and just to orient yourself, Alton
12 Place is to the left and north is to the left
13 of the board. Yuma Street is to the south.
14 Currently as the plan is proposed we have
15 identified the existing driveway as a one-way
16 driveway inbound.

17 Given the fact that it is a narrow
18 roadway, we would like to make that one way
19 inbound. The reason why we suggest that it's
20 inbound is because for persons that are not
21 really familiar with the area, if they get the
22 address of the church, it will bring you to

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1 Alton Place.

2 Now, when they get to Alton Place
3 you want to bring them into the site so they
4 are not parking out on public streets. The
5 way to do that is to allow for the existing
6 driveway to be inbound so you are inviting
7 them to come into the site.

8 Once you get them into the site
9 the opportunity for circulation that currently
10 doesn't occur now is an essential part of the
11 circulation plan. As I mentioned before, the
12 existing plan as you enter the site is a dead-
13 end situation where you come into the site and
14 in order to turn around and head back out, you
15 need to make a two or three -- again depending
16 on the size of the vehicle a fairly unwieldy
17 maneuver.

18 Given the plan that is shown here,
19 we have identified a location for a drop-off
20 lane that allows for patrons -- excuse me, for
21 parents who would like to drop-off their kids,
22 especially if their kids are a little bit

1 older, the church has identified this location
2 as a staff location where somebody would be
3 there to basically accept the child so that
4 parent does not need to park.

5 What that does is it enables the
6 parent once they drop-off to leave out of Yuma
7 Street which makes the proposed curb cut, and
8 it's important to emphasize that this curb cut
9 is a proposed curb cut on Yuma Street which
10 will allow for patrons to exit onto Yuma
11 Street, turn right onto Yuma Street to access
12 Tenley Circle. We believe that is a maneuver
13 that would be very effective with respect to
14 addressing the patrons that need to drive to
15 come into the site.

16 It's also important that we have
17 identified the curb cut as a two-way driveway
18 for several reasons. The first is that given
19 that you are off of Tenley Circle instead of
20 -- again, let me take out a map, the site is
21 located on this block.

22 The benefit of having an

1 additional driveway on Yuma Street, a two-way
2 driveway, is if you're heading north or south
3 or from the west you come through the circle
4 and you can turn right onto Yuma and turn
5 directly left into the site.

6 What that does is that gets you
7 out of the intersection which we believe is a
8 fairly congested intersection which is the
9 intersection of Nebraska and Alton because
10 it's an uncivilized intersection.

11 If you can get vehicles out of
12 that intersection and focus them to get out of
13 the Yuma Street driveway, then we are
14 providing a benefit that doesn't exist today.
15 That benefit actually provides a benefit for
16 some of the residents who are forced to wait
17 in that queue.

18 Now if we have the opportunity to
19 shift some of that traffic to Yuma Street and,
20 again, this is traffic that is only traveling
21 half a block on Yuma Street, if we provide
22 that shift of traffic, then we believe we are

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1 absolutely providing a benefit to the overall
2 community.

3 Given that, as I mentioned, we do
4 believe that the driveway -- the proposed
5 driveway serves several advantageous benefits.
6 The first, as I mentioned, it allows for this
7 loop around to operate effectively. The
8 second benefit of the driveway is that it
9 enables more direct access to and from Tenley
10 Circle so that you are out of the Alton Place,
11 Nebraska intersection.

12 The third reason why we believe
13 this is important is because it allows for the
14 loop around. If you do not have this
15 driveway, what happens is after you drop your
16 child off yourself there is no way out so we
17 believe that this driveway is important.

18 Then the last reason why we
19 believe this is important because it is more
20 of an issue related to emergency services.
21 Given the constraints of the existing
22 driveway, we believe that in order to serve

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1 the rear of the building more effectively in
2 the event that an incident occurs, we believe
3 that driveway has a lot of benefit.

4 Now, with respect to parking, as I
5 mentioned before, the existing parking lot has
6 21 parking spaces. The plan that is shown
7 here today provides 36 parking spaces. It is
8 important to note that this plan is a plan
9 that was developed to address the circulation.
10 It was a plan developed to serve the proposed
11 parking demand that the church and the church
12 programs are looking to generate.

13 It's important to note that as we
14 did the analysis with respect to the programs
15 and the potential impact of the transportation
16 demand management measures that we are
17 applying, it is important to note that the
18 church is supporting this plan. We also
19 support the plan that identifies a proposal of
20 28 parking spaces.

21 It's important to note that the
22 church does support both plans. With respect

1 to the flexibility associated with the 36-
2 space plan, we believe there are some
3 additional benefits in that the drop-off lane
4 is completely separate from the parking lanes.
5 As I mentioned before, the church is flexible
6 with respect to supporting both plans.

7 It is important to note that we do
8 believe that the parking demand can be
9 accommodated fairly efficiently because of the
10 fact that we are providing a service that
11 allows for parents to drop-off and pick-up
12 which doesn't occur today.

13 We are inviting parents to drop-
14 off on site which doesn't occur today because
15 the current configuration of basically a very
16 narrow one-way drive there are a lot of
17 parents who don't want to jockey back and
18 forth as they enter the site. What this does
19 is this provides them an extreme benefit. It
20 allows them to get in and allows them to get
21 out.

22 In addition to that, as I

1 mentioned before, we are working with the
2 District Department of Transportation with
3 respect to applying transportation to
4 management measurers that include identifying
5 somebody on the staff that is full-time that
6 is responsible for making sure that the
7 employees and the staff and the patrons are
8 using transit. They will be responsible for
9 monitoring that utilization and eventually
10 reporting those figures to the ANC.

11 In addition to that, as I
12 mentioned before, there is a ride-sharing
13 opportunity here, especially with parents of
14 students in the same classes and other
15 incentives that are identified in the report.
16 I don't want to bore you but it is in that
17 report and we believe we are working hand-in-
18 hand with DDOT and applying those initiatives.

19 So in conclusion we believe that
20 the plan as presented provides many benefits.
21 As I mentioned before, these are benefits that
22 will not only address existing conditions but

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1 would also address the conditions related to
2 the proposed programs that are before you
3 today.

4 With that we believe that the
5 development plan because of the fact it
6 provides many benefits with respect to the
7 overall roadway network that there will be no
8 adverse impact associated with this
9 development. Thank you.

10 MR. DePUY: Madam Chair, Rev.
11 Bergfalk will finish the rest of his testimony
12 and that will conclude our presentation by the
13 witnesses.

14 REV. BERGFALK: Madam Chair and
15 Board members, I appreciate your faith in
16 letting a pastor take the microphone twice and
17 I'll try to be brief. Our application for
18 these two special exceptions is not about the
19 church's matter-of-right use. We are very
20 sensitive to any overlap with church
21 activities that could impact traffic and
22 parking.

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1 We have determined that expanding
2 our parking lot to either 28 or 36 spaces will
3 not only meet the parking demand for both our
4 special exception programs but also any
5 additional need for church staff or visitors.
6 With the exception of a small volunteer-led
7 ESL program on Tuesday and Thursday mornings
8 where the participants walk or take Metro, we
9 do not have church programs during the day
10 program hours.

11 Evening church activities
12 basically overlap only with Conservatory.
13 Program schedules are coordinated to avoid any
14 problems. The only problem, and I'm going to
15 be honest and own up to it, that we
16 experienced this past year a choir which had
17 been meeting across the circle at St. Ann's
18 and they asked to meet in our sanctuary
19 because we were close to St. Ann's and Metro.

20 We discovered that all 90 of them
21 came by car. I don't know why they wanted to
22 be next to Metro. After several months in

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1 April they are out. With the existing parking
2 lot we had, yes, it was a problem.

3 I want to note that we have
4 provided to the ANC and to our neighbors
5 detailed schedules of all of our activities.
6 Not just the special exception uses but also
7 our church activities. From the beginning of
8 this process the church has made a sustained
9 and systemic effort to provide information and
10 invite feedback from the community.

11 We have answered long lists of
12 questions from our neighbors and from
13 Commissioner Wiss in addition to responding to
14 countless questions and various meetings. The
15 three major issues have been parking, the
16 proposed third floor, and the intensity of
17 use.

18 I just want to say here that we
19 have specifically responded and, in fact,
20 incorporated into revisions of our plans input
21 from both neighbors and from the ANC. We have
22 been back to the ANC four separate times. We

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1 have thanked people for input and identifying
2 issues that we could address. We have been
3 very responsive to them.

4 We have dropped the proposed
5 additional floor so I'm not going to talk
6 about that issue. In terms of parking you've
7 heard the Grove Slade report which found our
8 proposed uses would have no adverse impact on
9 the surrounding neighborhood.

10 That report actually doesn't even
11 consider the fact that the church has 300 feet
12 of frontage because we are planning to meet
13 our parking needs onsite in the revised
14 parking lot. Either of the proposed parking
15 options would substantially exceed the number
16 of parking spaces required under the zoning
17 regulations.

18 In regard to present circumstances
19 the perception that people driving to programs
20 at the church take up the available street
21 parking is completely unsupported by empirical
22 data.

1 Last week we again conducted
2 parking counts twice in the morning and
3 afternoon Monday through Friday that
4 reconfirmed earlier surveys in February and
5 March showing an average of 120 open street
6 spaces within a block and a half of the
7 church. Some of those are across 39th Street
8 including 40 percent of the spaces on Alton
9 and Yuma adjacent to the church.

10 There is, as Mr. Andres noted,
11 some parking congestion in the 3900 block of
12 Alton where our main entrance is located. One
13 cause is Ward 3 commuter parking and the other
14 is, as Mr. Andres indicated, the narrow
15 entrance from Alton into our parking lot.

16 Can't do anything about the
17 commuters but the curb cut proposed on Yuma
18 with the expanded lot will improve circulation
19 and would immediately resolve almost all of
20 the issues that we experience on Alton by
21 moving program drop-off and parking onsite.
22 At this point the church and the group of

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1 neighbors here today are in total agreement
2 that we need a larger parking lot and the curb
3 cut.

4 As a footnote, I would note that
5 90 percent of the parking complaints on Alton
6 have centered on one private driveway. I
7 thank DDOT for responding to the church's
8 request to put at eye level an additional No
9 Parking sign up which I believe has resolved
10 that problem.

11 We believe the parking concerns
12 relative to our application have been
13 thoroughly examined and answered and we will
14 be happy to address them further if there are
15 questions.

16 In addition to the parking and
17 removal of the proposed third floor, the other
18 main concern we have discussed with neighbors
19 is intensity of use. Everyone has agreed to
20 a cap of 97 people on site at any one time for
21 the special exception uses.

22 In addition, the church has

1 accepted the request by the neighbors for a
2 daily maximum cap of 291 for all these
3 programs. That is somewhat limited given the
4 fact that some of these programs the lessons
5 turn over. They are half-hour lessons or 45-
6 minute lessons.

7 To further address concerns about
8 the turnover of music lessons or CommuniKids
9 classes, the church has agreed to monitor
10 existing and future program schedules to
11 maintain staggered start or end times and/or
12 transition intervals to manage and minimize
13 potentially overlapping activities.

14 Incidentally, this includes
15 requiring a half-hour interval when multiple
16 CommuniKids classes, for instance, are
17 starting or ending. Finally, as just touched
18 on by Mr. Andres, the church will implement an
19 aggressive set of transportation demand
20 management strategies to further reduce
21 parking demand and traffic.

22 From the beginning of this process

1 has engaged in the good faith effort to
2 resolve outstanding concerns and issues with
3 our neighbors through negotiation and
4 compromise.

5 We already had offered significant
6 concessions by the time we received an initial
7 written response from our neighbors three
8 weeks ago on May 19. We immediately
9 incorporated as much of their language and as
10 many of their suggestions as possible into a
11 formal draft agreement which then was further
12 revised in light of their input.

13 As recently as last week I
14 contacted neighbor spokesperson to see if it
15 might still be possible to sign that agreement
16 prior to our hearing. The draft agreement has
17 been submitted to the Board as an attachment
18 to our prehearing statement. I think it
19 speaks for itself as a comprehensive and fair
20 response to neighbor concerns.

21 I will note that there have been
22 some requests from neighbors and some requests

1 from the ANC that we believe are not relevant
2 to the zoning process, are not really
3 appropriate or needed for the exceptions that
4 we are requesting. We have done whatever we
5 could do in working with our ANC neighbors.

6 I do want to make sure that our
7 testimony includes whatever you need for the
8 record in terms of the special exceptions. I
9 believe we demonstrated that the proposed
10 child development center and private school
11 proposal meets the applicable standards, that
12 we have satisfied the special exception
13 requirements of Section 3104.1 that uses must
14 be in harmony with the general purpose and
15 intent of the zoning regulations and zoning
16 maps and do not tend to affect adversely the
17 use of neighboring property in accordance with
18 the zoning regulations and zoning maps.

19 I think there are a couple things
20 we maybe haven't mentioned. Section 205(a),
21 the center or facility shall be capable of
22 meeting all applicable code and licensing

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1 requirements. We will do this.

2 CHAIRPERSON MILLER: If it's in
3 your pleading, you don't have to repeat it
4 here right now.

5 REV. BERGFALK: Okay.

6 CHAIRPERSON MILLER: You'll have
7 an opportunity for closing because I'm looking
8 at the clock and it looks like --

9 REV. BERGFALK: Okay.

10 CHAIRPERSON MILLER: Okay. Why
11 don't we start if the Board has a few
12 questions and then we'll turn it over to
13 cross.

14 MR. JEFFRIES: I'll start. Mr.
15 Andres. Did I say it right?

16 MR. ANDRES: Yes, that's correct.

17 MR. JEFFRIES: Okay. I'm trying
18 to make certain I'm clear about the universe
19 of parking lot users. I'm just trying to get
20 a sense of beyond faculty. I mean, they will
21 be parked there pretty much all day. What is
22 the average time you think someone would be

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1 parked in the lot? I'm just trying to
2 ascertain just how active this parking lot is
3 going to be.

4 MR. ANDRES: With respect to --
5 again, enclosed as part of the prehearing
6 submission is a schedule of events. I guess
7 it depends on what part of the day you are at
8 the lot. In the mornings primarily it will be
9 CommuniKids and the Co-op. In the evenings it
10 will be the Conservatory and the --

11 MR. JEFFRIES: Well, if you can in
12 the morning time try to enact, and
13 particularly look at your option 1 parking
14 lot. You have people coming in to the
15 internal drop-off and that is a 14-foot wide
16 lane there. Someone will be dropping off
17 their kids. Who is going to be parking? Some
18 of the parking spaces will be faculty. What
19 about the other spaces?

20 MR. ANDRES: The other spaces
21 could potentially be empty. The other spaces
22 would allow -- as the Reverend mentioned,

1 there is an ESL, English as a Second Language,
2 class that would take up some of the spaces
3 that would not be used by parents coming in
4 and out. The spaces are available for
5 parents. As I mentioned before, there are
6 some young kids associated with this program
7 so there is a good number of them that would
8 like to park and walk their child in.

9 MR. JEFFRIES: Okay. So when I'm
10 coming in on that 12-foot lane that is the
11 existing drive, some will make that right turn
12 and drop-off, those with the older kids, and
13 those with the younger kids will park.

14 MR. ANDRES: Yes, the parents.

15 MR. JEFFRIES: The parents. Will
16 there be certain parking spaces that will be
17 dedicated just for faculty? Where is the
18 faculty parking?

19 MR. ANDRES: With respect to
20 faculty parking, just like many other retail
21 uses or institutional uses usually you will
22 put the faculty at the most inconvenient

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1 spaces which is probably the farthest ones
2 out.

3 MR. JEFFRIES: So you're going to
4 show me where they are?

5 MR. ANDRES: Yes. They would most
6 likely be oriented towards Wisconsin Avenue
7 because it is a further walk to the door.

8 MR. JEFFRIES: Okay. So the top
9 two lanes -- I mean, parking spaces will be
10 these parents that have the smaller kids
11 pretty much?

12 MR. ANDRES: Yes. The spaces that
13 are available will allow for some of the
14 overlapping programs, the needs associated
15 with people coming in for a program and people
16 leaving from a program.

17 MR. JEFFRIES: Do you suppose
18 there will be some backup on that 12-foot lane
19 coming in off of Alton?

20 MR. ANDRES: No, because we have
21 worked with typical private schools. We see
22 this as an atypical private school. The

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1 volume associated with the programs that are
2 identified as part of the special exception
3 are much less and it is a different type of
4 program. With respect to that 12-foot
5 driveway that you're talking about just to
6 give you --

7 MR. JEFFRIES: It's one way.

8 MR. ANDRES: Yes, it's one way.
9 Just to give you a sense of scale, this
10 distance is roughly 60 feet so it's 60, 60,
11 and probably another 40 so it's probably about
12 150, maybe pushing 200 feet which is roughly
13 eight car lengths. There are eight car
14 lengths that can stack up in that driveway and
15 we don't foresee it happening but you can fit
16 eight car lengths in this driveway. Plus you
17 would probably fit an additional three or four
18 in this drive.

19 MR. JEFFRIES: I'm still not
20 following why you don't foresee that. I'm
21 still not following why you don't foresee that
22 there is going to be -- that there could be

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1 more cars. You spoke of some comparative
2 analysis but I'm still trying to understand.

3 MR. ANDRES: Reason one is,
4 especially based on some of our experience at
5 other private schools, it doesn't take very
6 long to get a child, especially an older
7 child, in and out of a car. That turnover
8 takes probably between 15 and 30 seconds.

9 The arrival, the number of cars
10 arriving, is less than that. The rate is less
11 than that. In addition to that there is also
12 the parking spaces that people will pull into.
13 In the rare event that a car breaks down or
14 something like that, because you have the
15 redundancy of the additional isles, if
16 something happens people can actually bypass
17 it and park in the space.

18 MR. JEFFRIES: Okay.

19 MR. ANDRES: So that is the
20 benefit of this plan is the fact that there is
21 some redundancy in some of the pieces of
22 pavement that is out there.

1 MR. JEFFRIES: So when I look at
2 parking lot 1 in option 2, I shouldn't be
3 concerned about a 14-foot driveway width
4 because they are consistently moving?

5 MR. ANDRES: Yes. That's right.

6 MR. JEFFRIES: Okay. I may have
7 some other questions, Madam Chair, but I just
8 wanted to get to that.

9 MR. ECHEVARRIA: Excuse me. If I
10 may, I also wanted to point out that during
11 the morning there might be some CommuniKids
12 classes and some CommuniKids parents might be
13 able to use the additional spaces to park
14 while the Co-op is going on so that is another
15 use for those extra parking spaces.

16 MR. JEFFRIES: My assumption is
17 that, I mean, that morning time, perhaps
18 afternoon, are going to be the points when
19 it's most congested. I mean, the most
20 activity.

21 The concern I have is normally in
22 these multi-use buildings when there is a

1 common area where everyone is using it at the
2 same time it's just very labor intensive. I
3 just want to make certain that with all the
4 various schools and components moving at the
5 same time that, you know, that it works.

6 I'm a little more interested in
7 option 2 than 1. In addition to the fact
8 that, you know, I think the District should
9 really try to limit vehicular use as much as
10 possible, particularly close to Metro. I'm
11 just sort of concerned with all the various
12 uses making certain that the parking lot is
13 very, very efficient and the driveways, lanes
14 are sufficiently large and so forth. Anyway,
15 thank you.

16 MR. DETTMAN: I have a couple of
17 questions for Mr. Andres. In the testimony
18 you heard that the proposed number of parking
19 spaces, and I'll assume this is going to apply
20 to option 1 and 2, but the number of parking
21 spaces that are being proposed is going to
22 meet the parking requirement for these uses

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1 for the three schools?

2 MR. ANDRES: Yes, the three
3 schools plus the programs that are currently
4 there. For example, the parking demand that
5 is generated by these programs but there are
6 some smaller programs. Like, for example, the
7 pastor himself and one or two other staff
8 people. That parking demand that we are
9 serving is served by both plans.

10 MR. DETTMAN: It's sort of a two-
11 part question. The first part is does the
12 proposed number of parking spaces that are
13 available, does that include the parking
14 requirement that is associated with the
15 church?

16 If it doesn't include that, to
17 what extent does the program for the church,
18 the services that are offered either during
19 the week or just on the weekend Sunday
20 services, and the schools, how much do they
21 overlap?

22 MR. ANDRES: As part of our

1 prehearing submission the Reverent had
2 submitted basically a count of not only the
3 three programs that are discussed today but
4 all of the other programs, the ESL classes,
5 and there are some other support groups.

6 I believe there is some type of
7 anonymous group that meets there as well.
8 Those programs actually fill in the voids in
9 the schedule where there is available parking
10 that is provided.

11 That is done purposely because of
12 the fact that the pastor knows that there is
13 a finite number of spaces that are provided on
14 site. With respect to scheduling, scheduling
15 is actually a transportation management tool
16 in this respect.

17 REV. BERGFALK: In answer to your
18 question two things. First of all, just to
19 let you know that with the current 21-space
20 lot our parking survey shows that this past
21 week 50 percent of those spaces actually were
22 open on average during the day, 38 percent

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1 were open when we surveyed earlier in the
2 year.

3 More to the point, the required
4 spaces according to zoning regulations for the
5 three programs are actually far exceeded by
6 the parking spots that would be in either of
7 these options. What Grove Slade showed
8 additionally is that if you take the parking
9 demand, not the minimum requirements.

10 Understand that the minimum
11 requirements are minimums and we need to go
12 beyond that. What Grove Slade showed is that
13 either of those lots will meet the full
14 parking demand on site for the three programs
15 and any overflow uses that the church would
16 have concurrently.

17 MR. DETTMAN: Would you happen to
18 know off hand what is the parking requirement
19 for the church? I know it's driven by the
20 number of seats in the main sanctuary. Just
21 to have.

22 REV. BERGFALK: You're talking

1 about for Sunday use?

2 MR. DETTMAN: Anytime you're
3 offering services.

4 REV. BERGFALK: I don't know and
5 I'm not sure for churches if they're
6 grandfathered if they're built in the old
7 days.

8 MR. DETTMAN: I think we can get a
9 general sense if you knew how many seats were
10 in your main sanctuary because the requirement
11 is one for every 10 seats generally.

12 REV. BERGFALK: Okay. There are
13 roughly 300 seats in the sanctuary. We
14 probably seldom have more than 100 people in
15 the sanctuary but there are about 300 seats.

16 CHAIRPERSON MILLER: Just as a
17 follow-up, Mr. DePuy, why don't we factor that
18 in, the church parking.

19 MR. DePUY: Two responses. One is
20 the church was built before that requirement
21 existed so in terms of legal requirements
22 there is none. Obviously in terms of

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1 practical requirements and demand we recognize
2 that there is a need. I think the testimony
3 has been that the church needs can be
4 accommodated because of the fact primarily
5 that the operations occur at different times.

6 CHAIRPERSON MILLER: Thank you.

7 Okay. I guess I'll ask some questions.

8 Mr. Bergfalk, we've heard
9 reference today and then we've seen it in the
10 pleadings to other uses that are happening at
11 the church. I guess I've heard them called
12 programs or whatever. I'm wondering, for
13 instance, like the ESL program is that a
14 church program?

15 If it's not a church program,
16 where does it fall in this equation where we
17 are looking at special exceptions for certain
18 schools. Like why isn't this considered a
19 school if the music conservation is considered
20 a school?

21 REV. BERGFALK: The ESL program
22 is, in fact, a church program. It is a

1 mission of the church and has been for a long
2 time. There are certain other recurrent
3 activities that are not church programs. In
4 our discussion with neighbors we felt that it
5 would be fair to include those programs in the
6 numbers that we are looking at in terms of
7 overall use.

8 CHAIRPERSON MILLER: Are they
9 following under an umbrella of church programs
10 or not really? I mean, it's like support
11 groups or something?

12 REV. BERGFALK: Well, I'm not
13 thinking of support groups which typically
14 would be ministry related. We do have a
15 girl's choir that comes once a week and they
16 have a group of -- two groups of 20. We are
17 comfortable with saying, okay, if there's 20
18 girls singing, we'll count that within the cap
19 of 97 because that's not specifically a church
20 program.

21 CHAIRPERSON MILLER: It's not a
22 school either and it's not really a child

1 development center either.

2 REV. BERGFALK: No. I've been a
3 pastor for 35 years and before being at
4 Wisconsin Avenue I was downtown at Calvery
5 Baptist for 13 years where we had 1,000 people
6 every day in and out. Most churches do have
7 a variety of community related programs.

8 We're not talking now about
9 schools or things that would require special
10 exceptions but activities that go on maybe
11 once a week or on an occasional basis and it's
12 part of being part of the larger community.

13 CHAIRPERSON MILLER: Okay. Thank
14 you. I have a question with respect to the 97
15 people on site at one time and the 291 maximum
16 daily count. How would you anticipate
17 enforcing that kind of condition if it were a
18 condition or an agreement even?

19 REV. BERGFALK: We have given more
20 thought to preparing our statement than maybe
21 to answer that question but I think the answer
22 is that we would require the three programs to

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1 provide us every week with actual attendance
2 figures so that we can monitor that. I think
3 it actually might be easier than you would
4 guess. Well, I think that would also show us
5 the 291 cumulative total for the day. I
6 believe that is doable.

7 CHAIRPERSON MILLER: If you have
8 enrollment numbers they don't always equate to
9 the number of individuals. I guess my point
10 is could you have something that is just more
11 constant like, okay, these are the enrollment
12 numbers for each of these programs and that is
13 all that can be there at one time as opposed
14 to I'm wondering if you are anticipating like
15 somebody is taking attendance of all these
16 programs all the time and turning in records
17 of how many are there. You haven't thought it
18 through yet?

19 REV. BERGFALK: No. The only
20 comment I would offer is that if this were a
21 traditional school I think the enrollment
22 figures would be easier because you are

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1 talking about a conservatory where you have
2 multiple teachers and individual students. It
3 is really more practical to use the actual
4 number and I think it would not be difficult
5 to track.

6 CHAIRPERSON MILLER: My question
7 for Mr. Andres is there were two parking space
8 numbers on the table, the 36 versus 28.
9 Correct?

10 MR. ANDRES: Yes.

11 CHAIRPERSON MILLER: And I think
12 if I understood correctly you are in favor of
13 the 36 spaces. I'm wondering is that driven
14 a lot by the character of the individuals that
15 use the church and all these programs that a
16 lot of them are children that would need to be
17 dropped off?

18 MR. ANDRES: Not necessarily
19 because, as I mentioned before, the church and
20 the programs that we are speaking about today
21 can function with the smaller parking lot.
22 Some of the other benefits of the larger

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1 parking lot are more related to site design.

2 For example, as I mentioned
3 before, you have in this case, which is the
4 larger parking lot, you have a redundancy of
5 parking and driving isles so that if something
6 happens, say, for example, in drop-off isle,
7 somebody's car breaks down or something to
8 that effect, you can still use the drive isle.
9 There is no constraints associated with that.

10 With respect to the smaller
11 parking facility, there is a little bit less
12 redundancy in the system because of the fact
13 the drop-off lane is sort of a shoot-off of
14 the main drive. If something happens it might
15 congest.

16 With respect to the comparison of
17 plans, there are benefits with the larger plan
18 not because of the fact of providing more
19 spaces but because of the way everything is
20 laid out. As part of our proposal, you know,
21 we are supporting the larger parking plan not
22 necessarily because it's more spaces but

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1 because we believe it's laid out a little bit
2 better.

3 CHAIRPERSON MILLER: Thank you.

4 REV. BERGFALK: If I may, I think
5 it's probably important for us to note that
6 our neighbors have been concerned about even
7 though the parking demand studies show that
8 the 28 spaces will suffice that clearly if you
9 have an extra eight spaces that gives you a
10 buffer and that's important to people.

11 MR. JEFFRIES: I have a question
12 about the homes that are along 39th Street.
13 So there is going to be a fence up. It's not
14 a fence currently?

15 REV. BERGFALK: There is a
16 stockade fence. It's been there for a long
17 time.

18 MR. JEFFRIES: What is the
19 distance -- I think I read it somewhere. What
20 is the distance between the back of those
21 homes and that existing driveway? Okay.

22 MR. SPURLOCK: I don't know the

1 exact distance but it's a Google aerial map so
2 I thought that would give you some sense of
3 scale.

4 MR. JEFFRIES: Okay.

5 MR. SPURLOCK: Those houses are
6 probably 25 or 30 feet so it's a standard back
7 yard.

8 MR. JEFFRIES: Okay. Great. I
9 thought there was a drawing with actual
10 dimensions.

11 MR. SPURLOCK: I don't have that
12 information specifically but that might be
13 helpful.

14 MR. JEFFRIES: So historically, to
15 the Pastor, there has not been any concerns
16 from the houses, the owners of the homes, in
17 terms of activities at the church or parking
18 or anything like that. Right?

19 REV. BERGFALK: I have been at the
20 church for seven years and had not heard any
21 concerns until the current application.

22 MR. JEFFRIES: Okay. That's it.

1 That's all I have, Madam Chair.

2 MEMBER WALKER: I have a question
3 for the Pastor. It seems really extraordinary
4 that the church would take on this incredible
5 renovation for the benefit of entities that
6 are not church programs.

7 I'm trying to understand whether
8 your renovated space will benefit your church
9 programs as well and what the relationship is
10 really between these organizations like the
11 conservatory and the preschools with the
12 church? I mean, what is driving the church to
13 provide this space?

14 REV. BERGFALK: The church, and I
15 also have to speak out of my own 35 years of
16 ministry, has a commitment to be engaged with
17 the community and understands the church's
18 life and mission to be broader than Sunday
19 morning worship services and I think that is
20 typical of many churches.

21 In the case of the three
22 organizations that you're asking about,

1 although they are organizationally separate,
2 their commitment to working with children, to
3 building bridges of cultural understanding, of
4 community within an international context,
5 advancing the arts, particularly in
6 relationship to worship or religion, all of
7 these things are compatible.

8 Not only compatible but consistent
9 with our vision and values. I felt very proud
10 of these programs as I heard them present
11 themselves to you today. They reflect what we
12 want to be doing as a church.

13 There is some overflow and
14 interaction and partnership between these
15 organizations whether it's the conservatory
16 providing music for services or us drawing on
17 the educational expertise of people in the Co-
18 op. The Co-op is, in fact, basically a church
19 program although it is not directly under the
20 church. That was part of your question.

21 Oh, you asked about the cost and
22 the addition. The primary driver for that

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1 addition really is that for many years the
2 church has needed it. There is not an
3 elevator. It is not ADA accessible. We do
4 not have restrooms on the main level or the
5 upper level.

6 Working with these organizations
7 provides us with the opportunity to finish the
8 missing piece of that building and address a
9 number of long-standing needs that are
10 important to the church. It also provides
11 some program space for those programs,
12 primarily the conservatory.

13 MR. JEFFRIES: Madam Chair, I just
14 have -- I'm sorry. Okay. Mr. Andres, I'm
15 still trying to make certain I'm clear about
16 beyond that you will get more parking spaces
17 with 36, why you feel that's a better layout
18 than the 28.

19 MR. ANDRES: As I mentioned
20 before, if we look at the 36-space design, as
21 I mentioned before, there is a sense of
22 redundancy. If something occurs, there is a

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1 way around it with respect to the tighter
2 plan.

3 MR. JEFFRIES: You said the
4 tighter plan? The one that has a 20-foot wide
5 drop-off?

6 MR. ANDRES: It's a 20-foot wide
7 drive isle but it's 20-foot wide and a drop-
8 off lane.

9 MR. JEFFRIES: Right.

10 MR. ANDRES: So if something
11 happens in this area, yes, you can still get
12 by but it's sort of in the way. We believe
13 that if you can separate functions such as
14 drop-off as opposed to parking functions, you
15 have a better situation so that there is no
16 sort of overlap of space.

17 That is one of the planning
18 principles that we try and identify. We don't
19 really necessarily like overlapping functions.
20 If you can separate people dropping off from
21 people parking, it's a better situation.

22 MR. JEFFRIES: The 28-space

1 option, what is going to be on the other side
2 of the Crape Myrtles, just grass?

3 MR. ANDRES: Yes. Which ones, to
4 the --

5 MR. JEFFRIES: Yes.

6 MR. ANDRES: In this area here?

7 MR. JEFFRIES: Yes.

8 MR. ANDRES: This is National Park
9 Service land.

10 MR. JEFFRIES: Oh, so you can't --

11 MR. ANDRES: We can't -- I'm
12 sorry. I have misspoken. Yes, it will be
13 maintained as existing green space. For your
14 reference, Park Service land is adjacent to
15 the south.

16 MR. JEFFRIES: Okay. Thank you.

17 CHAIRPERSON MILLER: Any other
18 Board questions? Yes.

19 MR. DETTMAN: Mr. Andres, I'm
20 looking at your parking option 1 which I
21 believe is the 36. Is it? I'm just trying to
22 get a sense and hopefully you can help me. I

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1 can anticipate a little bit of conflict.

2 If someone is coming to drop off
3 via Alton Place, I'm trying to get a sense of
4 what is the amount of queuing that is going to
5 happen when people are coming in from Alton as
6 well as Yuma and essentially we are all trying
7 to get to the same drop-off lane and so that
8 area that is sort of on the eastern boundary
9 of your site, I can see that as sort of a
10 conflict there with respect to the people who
11 are trying to drop-off and with respect to the
12 people who are going to be stuck in that queue
13 waiting to park. Did you look at that and get
14 a general sense of what is going to happen?

15 MR. ANDRES: Yes. Yes, we did. I
16 guess to sort of -- what we did is when we did
17 our analysis to quantify the amount of
18 activity that is associated with the proposed
19 development plan, we have identified actually
20 in our report that during the peak morning
21 period when there is an overlap of Co-op and
22 CommuniKids programs going on you have about

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1 53 vehicles coming in.

2 In rough terms that's one a minute
3 but that is assuming that every single one of
4 them shows up separately within the hour.
5 There is going to be a little bunching that
6 takes place but then also there is a portion
7 of that that is teachers that for the most
8 part will get there a little bit earlier. You
9 know, the teachers don't necessarily come at
10 the same time that the students do. At least
11 you hope not.

12 The second component of that is
13 people who will actually park. They are not
14 associated with the queue so they go right to
15 a parking space, park, walk their child in and
16 then leave so that is the second component.

17 The third component is the
18 component I guess that you're concerned about,
19 actually coming in to drop off. If you
20 whittle down the number of teachers, you
21 whittle down the number of people who choose
22 to park instead of walking, instead of 53 cars

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1 coming in during that peak hour, chances are
2 you'll be down to probably half. Again, half
3 of that number within a period of a half hour
4 you are still at one per minute.

5 Now, if cars are arriving one per
6 minute but you are serving that with an
7 efficient drop-off service, you are serving it
8 quicker than they can come. In addition to
9 that, as I mentioned, we are providing three
10 to four vehicles along this frontage even
11 before you get to the driveway and then along
12 the driveway if it's necessary, and we believe
13 that it's not, you can probably fit another
14 seven or eight.

15 We feel fairly confident that
16 given the magnitude of the programs and the
17 way that the different users are broken up
18 that it works well with what we have here
19 before you.

20 MR. DETTMAN: My last question is
21 more of a curiosity. Looking at the two
22 schemes they are dramatically different when

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1 you go from 28 to 36 spaces and I'm wondering
2 was there a reason for that instead of just
3 sort of taking the eight spaces that separate
4 the drop-off area -- on that scheme right
5 there -- the drop-off and the 20-foot wide
6 drive isle and removing those eight spaces and
7 make it a landscape median or something like
8 that.

9 MR. ANDRES: The major difference
10 between the two schemes with respect to the
11 number of spaces that are provided is if you
12 look at the way that this is set up, in order
13 to construct this you would have to clear
14 basically the entire site in order to do this.

15 If you look at the other plan,
16 what this plan tries to do is right now there
17 are parking spaces that are oriented like this
18 today. These two rows are oriented like this
19 today. The thought was maybe in order to
20 minimize construction you keep that you just
21 sort tack on this additional asphalt. That's
22 why the configurations are a little bit

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1 different.

2 MR. ECHEVARRIA: Excuse me. If I
3 may, I think there is another important aspect
4 that needs to be taken into account and that
5 is that a large number, 31 percent. At least
6 from CommuniKids 31 percent of the children
7 are coming to our programs by carpool with
8 siblings or other schoolmates.

9 That has a significant impact
10 along with the TDM plans that we are going to
11 be putting in place reducing the number of
12 automobiles that are coming into our locale.
13 I think that is significant.

14 MR. JEFFRIES: In terms of the
15 Yuma Street curb cut, what percentage of cars
16 do you suppose are going to be coming through
17 their? That is two-way traffic. Correct?

18 MR. ANDRES: Yes, in this plan
19 it's two-way traffic. If you were to go -- if
20 the thought was that we were to go with the
21 smaller parking lot, the designated arrival,
22 the designated route is you have to come in

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1 Alton and leave on Yuma because there's no
2 circulation area.

3 As I mentioned before, the 36-
4 space plan, what that does is it enables you
5 to disperse that. You don't necessarily have
6 to come in Alton. You can actually come in
7 Yuma. If you are coming from areas further
8 out, chances are you might want to use Yuma
9 because it's much more convenient.

10 MR. JEFFRIES: But I'm not going
11 to go through Yuma to go to the drive-thru,
12 right? I mean, I can only --

13 MR. ANDRES: No, you can do that.
14 What happens is let's say you come in and you
15 come to this area and turn left and then turn
16 left into the drive lot because eventually you
17 would want to be sort of heading in this
18 direction because there is no way for you to
19 get out because this is one way. The driveway
20 is one way in.

21 MR. JEFFRIES: You would have a
22 potential bottleneck up there.

1 MR. ANDRES: Up there?

2 MR. JEFFRIES: Right there.

3 MR. ANDRES: No. Again, as I
4 mentioned to Board member Dettman, because of
5 the volumes, the flow that is envisioned here,
6 it's spread out.

7 CHAIRPERSON MILLER: I thought I
8 read that you -- I'm not sure but that you are
9 providing bicycle parking as well?

10 MR. ANDRES: Yes, as part of our
11 requirements with respect to DDOT we are
12 providing bicycle parking. I don't have it in
13 front of me. We are still in the process of
14 coordinating with DDOT. Actually, we have to
15 coordinate the proposed curb cut as well.

16 CHAIRPERSON MILLER: Okay. Thank
17 you.

18 MR. ANDRES: Normally I believe it
19 is 5 percent of the vehicle spaces are bicycle
20 spaces.

21 CHAIRPERSON MILLER: Okay.

22 MR. JEFFRIES: You know, I have to

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1 say I appreciate what has been proposed here
2 in terms of the parking. Sometimes people
3 don't behave like you would like them to
4 behave, particularly in the morning when they
5 are trying to get to work, they are trying to
6 drop their kids off and some people are just
7 not going to be as dutiful but, you know,
8 maybe that will be the first few weeks and you
9 guys will straighten them all out.

10 I can see myself getting right to
11 that Yuma station and dropping that kid off
12 and make your way through. Maybe I'm a
13 terrible parent but human beings behave very
14 differently. They don't always follow the
15 rules. There has obviously been some thought
16 into this.

17 MR. ANDRES: In response to your
18 concerns, we understand that may be the case
19 and, again, by providing that curb cut you do
20 have that redundancy. If we go with the
21 larger lot, you do have the opportunity to --
22 say the first week or so we identify that is

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1 an issue, then the church has every right to
2 prescribe a route.

3 If anything, that is consistent
4 with a lot of other institutions in the city
5 where they manage their traffic where you have
6 to prescribe a route for which your parents
7 arrive. It will be our part of the monitoring
8 program that the church is doing.

9 REV. BERGFALK: I just want to add
10 that our neighbors also asked some of those
11 questions and we have agreed that we would
12 provide a uniform traffic aid at those points
13 where this would be needed.

14 MEMBER WALKER: I have a related
15 question to Commissioner Jeffries' question
16 about user compliance. I think, Mr. Andres,
17 you said it takes 15 to 30 seconds to drop off
18 an older child or something like that.

19 I think that presumes you have
20 adequate staff to receive those children and
21 I would just like to hear from CommuniKids and
22 from the school groups what thought you have

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1 given to how you are going to receive this
2 large number of children in the morning.

3 MR. ECHEVARRIA: Yes, if I may.
4 There is one thing that we should point out on
5 the site plan there and that is the green area
6 where there is a tree and it's to the north of
7 the parking lot right there. That is actually
8 a playground.

9 One of the things that we would
10 like to do is have staff members and the Co-op
11 receive the students and we would actually
12 have a place for the students to queue up in
13 line and to be able to be taken up into the
14 classrooms. That allows us a great deal of
15 flexibility in being able to keep the line
16 moving, so to speak, as people are coming in.

17 With regards to CommuniKids our
18 classes because of their nature it's probably
19 going to be -- parents are probably going to
20 need to park to some extent. That is why I
21 was mentioning that it is useful to have the
22 additional parking on the isle next to the

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1 drop-off isle because at the same time if
2 there was to be some overlap between
3 CommuniKids and the Co-op, it would still
4 allow for CommuniKids parents to be able to
5 part without interfering with the queue line
6 for the Co-op.

7 Again, there is also management
8 strategies that we could also put in place in
9 terms of the timing of our classes to try to
10 prevent -- staggering the start times and such
11 to try to prevent any possible conflicts as
12 much as possible.

13 MS. CLOUTIER: From the Co-op's
14 perspective, as I mentioned in my remarks,
15 each class of eight students has one teacher
16 as well as one on-duty Co-op parent. You have
17 two adults for eight children.

18 I think it would be pretty easy to
19 work out a routine. Whoever is on duty plus
20 they would have to be there a little early
21 anyway. We haven't finalized any staffing of
22 this but I could see us very easily developing

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1 a plan to accommodate that.

2 In addition if we needed to as
3 part of the Co-op requirements if parents work
4 so many hours per month in the classroom, we
5 could incorporate that into our broader
6 requirement in terms of how many hours they
7 are helping out. If we need to pull in one
8 extra parent in the mornings or in the
9 afternoons, that's fine. We could figure out
10 a way to staff that pretty easily for our
11 group.

12 CHAIRPERSON MILLER: Mr. Bergfalk,
13 I know there is a lot of material in the file.
14 Again, I can't remember whether you all
15 addressed what percentage now of these
16 programs, faculty, and students live in the
17 neighborhood or drive. Do you have those
18 figures?

19 REV. BERGFALK: It's a little bit
20 different for each of those programs and the
21 numbers begin to swim around in my mind, too.
22 The Conservatory, I think, is the one that

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1 probably cast the largest net.

2 CHAIRPERSON MILLER: Is the Co-op
3 very neighborhood oriented?

4 MS. CLOUTIER: Yeah. I don't have
5 the specific zip codes with me of our 20
6 families. I did mention do have three sets of
7 siblings so the 20 families nine of those
8 families live in D.C. We have eight families
9 coming from Maryland, mainly Montgomery County
10 closer in Bethesda area, and three drive out
11 from Virginia if that helps.

12 MR. ECHEVARRIA: With regards to
13 CommuniKids, as of our last session, which
14 just ended, 73 percent of the children in our
15 classes live in the Washington, D.C. area.
16 Fifty-five 55 percent of the children live in
17 the following four zip codes; that's 20016,
18 20015, 20008, and 20007.

19 Eighteen percent of the children
20 live in ten other zip codes in the District.
21 Twenty-three percent of the children live in
22 Maryland. Four percent of the children live

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1 in Virginia. Thirty-one percent of the
2 children carpool with siblings or schoolmates.
3 Twenty-five percent of the families walk, take
4 the bus, or take Metro, and 56 percent of our
5 CommuniKids teachers takes the bus or Metro.

6 CHAIRPERSON MILLER: Thank you.

7 MR. ECHEVARRIA: We've also
8 started buying some Metro cards for our
9 teachers to encourage the use of the transit.

10 MS. CLOUTIER: And if I may, we
11 also have a priority in the admissions process
12 for the Co-op for families who live in the
13 immediate area in northwest D.C.

14 CHAIRPERSON MILLER: Any other
15 Board questions? Okay. Then at this time we
16 can do cross examination by the other parties
17 which would be the ANC and the intervenor
18 party, the families neighboring the church.

19 Do you all have some cross
20 examination questions? Do you want to come to
21 the table? You might need to make some space
22 at the table. Why don't we have the ANC

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1 first. We'll probably need the witnesses at
2 the table.

3 MS. WISS: Good afternoon. Cathy
4 Wiss for ANC-3F. Let me see what I can find
5 here. I would like to ask the Co-op how and
6 where are you incorporated, or are you
7 incorporated? If you're not, are you under
8 any other organization?

9 MR. DePUY: Madam Chair, I would
10 object. I don't believe that's relevant to
11 the application.

12 CHAIRPERSON MILLER: Ms. Wiss, do
13 you want to explain?

14 MS. WISS: Well, we were trying to
15 understand the relationship between the Co-op
16 and CommuniKids because there has been
17 testimony that they are -- that they have
18 synergy, a common philosophy. They share
19 classrooms and materials.

20 They want to be considered one
21 child development center but they need two
22 certificates of occupancy. I'm trying to

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1 understand how they are related to each other
2 other than the fact they share classrooms and
3 maybe some teachers and philosophy.

4 CHAIRPERSON MILLER: If they are
5 being presented as a school, would they need
6 to be incorporated, Mr. DePuy? They are being
7 represented as a school. Correct or no? Just
8 a school?

9 MR. DePUY: Child development
10 center.

11 CHAIRPERSON MILLER: Child
12 development center. Okay.

13 MR. DePUY: Their organizational
14 status is not required by the zoning
15 regulations. The only one that's relevant is
16 that they meet licensing and code requirements
17 and we are certainly prepared to address those
18 but not their organizational requirements.
19 That is just not relevant to any criteria that
20 this Board needs to address.

21 MS. WISS: We'll get to that next.

22 CHAIRPERSON MILLER: Okay. Your

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1 position is that they meet the requirements
2 for a child development center under the
3 zoning regulations?

4 MR. DePUY: Yes.

5 MS. WISS: Well, may I --

6 CHAIRPERSON MILLER: In order to
7 be licensed -- they have to be licensed is
8 what you said. As far as whether or not they
9 need to be incorporated to be licensed that is
10 not up to us to have to go there. Is that
11 your point? They just have to be licensed?

12 MR. DePUY: That's correct. The
13 licensing requirement is another entity, not
14 this Board.

15 CHAIRPERSON MILLER: But that is
16 the requirement under our regulations that
17 they be licensed.

18 MR. DePUY: That they be licensed
19 but that's it.

20 CHAIRPERSON MILLER: And are they
21 licensed?

22 MR. DePUY: That they meet the

1 license -- we all meet the licensing
2 requirements.

3 CHAIRPERSON MILLER: And how do we
4 know they will meet the licensing
5 requirements?

6 MR. DePUY: They have testified
7 that they will meet licensing requirements.

8 CHAIRPERSON MILLER: If they
9 don't, they won't be able to operate. Is that
10 right?

11 MR. DePUY: That's correct.

12 CHAIRPERSON MILLER: Okay. Do you
13 have any further argument?

14 MS. WISS: I was going to also
15 then ask them if they did plan to meet some of
16 those licensing requirements which some of
17 them do relate to zoning, but your regulations
18 require that they be a licensed childcare
19 facility. Some of those requirements have to
20 do with keeping medical records and having
21 everyone take a medical exam.

22 I don't know whether I would be

1 able to ask that kind of question, does
2 CommuniKids plan to ask every single one of
3 their students that takes a one-hour lesson to
4 have a physical exam and to be up to date on
5 their immunizations? That's what is required
6 for licensing and to keep their records on
7 that.

8 CHAIRPERSON MILLER: I don't think
9 that is something that this Board needs to be
10 concerned with. That is something that DHS
11 will have to determine.

12 MR. JEFFRIES: Or it won't make a
13 difference if they're not licensed.

14 MS. WISS: Okay. I guess one of
15 the problems that we see is how will you know
16 that until after this is over with?

17 CHAIRPERSON MILLER: I guess the
18 answer is we won't but they won't be able to
19 operate if they don't get that licensing.

20 MS. WISS: I would like to ask
21 the --

22 CHAIRPERSON MILLER: Excuse me.

1 You really have to come to the microphone but
2 I think the point was made that they are
3 already operating. I don't know whether they
4 have been operating legally or not legally or
5 whatever.

6 They are here under special
7 exception and they are making this
8 representation to us and that is going to then
9 require them to get licensed. That is as far
10 as we can go. We really can't get into areas
11 that we don't have any expertise on.

12 MS. WISS: Okay. That's fair
13 enough. I would like to ask how many parking
14 spaces are in each of the parking plans?

15 MR. ANDRES: The existing parking
16 lot has 21 spaces. The parking plan with the
17 larger parking lot has 36 spaces. The plan of
18 the smaller parking lot has 28 spaces.

19 MS. WISS: Have you counted them?

20 MR. ANDRES: No, I have not.

21 MS. WISS: Well --

22 MR. SPURLOCK: If I can interject,

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1 there was a mistake on my part. I will take
2 full credit for it. The smaller parking lot
3 actually has 27 spaces if you count them. I
4 am not a civil engineer. I put in an extra
5 amount of space for the handicap drop-off
6 isle. I was assuming we would correct that
7 when we had properly engineered the parking
8 plan.

9 MS. WISS: Do you expect it in the
10 final drawings to have 28 or 27?

11 MR. SPURLOCK: We would ask for
12 28. I apologize for that. That was one of
13 those last minute things that came up.

14 MS. WISS: I guess, Mr. Andres,
15 you talked about how older children can get in
16 and out of cars very quickly. How about 12-
17 month-olds, two-year-olds, and so on that are
18 coming? The two-year-olds, three-year-olds,
19 four-year-olds that are coming to the Co-op,
20 do those kids get out of cars really quickly?

21 MR. ANDRES: No. As I mentioned,
22 there are spaces -- the spaces on site have

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1 been identified as parking spaces for some of
2 these younger students where the parents would
3 proceed to park in the spots that are
4 available and walk their child in. That is
5 basically in the existing condition. That is
6 what currently happens today and that is a
7 condition that we are looking to accommodate
8 in the future.

9 MS. PERRY: I guess I just have
10 one question. I think Ms. Walker asked a
11 question about why you were building this
12 expensive building for these three groups.
13 Isn't it true that these groups are also going
14 to be paying rent for the use of this space to
15 the church?

16 REV. BERGFALK: Yes, that's
17 correct. Probably typical for many churches,
18 especially if you are going to maintain a
19 fairly significant facility, you have other
20 partners that are involved and they currently
21 -- as you heard testimony in the beginning, we
22 did not charge the Co-op play group anything

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1 but they all chip in towards cost.

2 CHAIRPERSON MILLER: Okay. Is
3 that it? All right. Thank you.

4 I don't think you had a chance to
5 introduce yourselves for the record either.
6 You can do that now.

7 MR. HIRSCH: My name is Stephen
8 Hirsch. I live at 4415 39th Street. That's
9 on the opposite side of 39th Street, the east
10 side of 39th Street just across from the
11 church. It's about 120 feet, I believe, from
12 the church.

13 MS. CHESSER: My name is Judy
14 Chesser. I live at 3901 Alton which is on the
15 tiny little block of Alton Place that has been
16 much discussed.

17 MR. DePUY: Madam Chair, could I
18 ask a clarification question? When these
19 individuals were qualified as a party they
20 were represented by counsel. I assume Mr.
21 Gell was here but I don't see him so my
22 question is are they represented by counsel?

1 If not, will each be cross examining? Will
2 they have a representative? I would just like
3 to know what the scope of the cross
4 examination is.

5 MS. CHESSER: The two of us have
6 been requested by the neighbors to do the
7 cross examination. There are many more
8 neighbors here but they ask that the two of us
9 perform that role.

10 MR. DePUY: That's fine. We have
11 no objection to that.

12 CHAIRPERSON MILLER: Are you still
13 being represented by Mr. Gell and he is just
14 not here this afternoon?

15 MR. HIRSCH: At the moment we are
16 not.

17 CHAIRPERSON MILLER: Are you going
18 to divide up your areas of questioning?

19 MR. HIRSCH: Yes. We are as
20 mindful of the time as you are and we fully
21 intend to respect that. I hope you will let
22 us know if we are deviating from that too far.

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1 CHAIRPERSON MILLER: Okay.

2 MS. CHESSER: Let me start with
3 Rev. Bergfalk. Buses. This has been a real
4 problem in our neighborhood. There have been
5 buses in the past when there was a school
6 there for I guess I'm going to call it
7 troubled children but children in need of some
8 more intensive attention. That school is no
9 longer there but the summer camps use buses
10 and sometimes there are groups that come to
11 visit the church that come in buses. I guess
12 this year the CommuniKids summer camp is not
13 going to use buses but the church camp will.
14 What our plea is that --

15 CHAIRPERSON MILLER: Wait a
16 second. It's time to ask questions and not to
17 testify. I just want to --

18 MS. CHESSER: Okay. I'm sorry.

19 CHAIRPERSON MILLER: Sometimes you
20 have to say a little bit to set the --

21 MS. CHESSER: That's what I'm
22 trying to do.

1 CHAIRPERSON MILLER: But I wasn't
2 sure. You seemed to be going --

3 MS. CHESSER: I'm sorry. So our
4 plea is that the buses do drop-off and pick-up
5 and park in the parking lot or, if they don't
6 want them in the parking lot and then until
7 the parking lot is expanded, that they be
8 outside of R-1-B. My question is is that the
9 plan?

10 CHAIRPERSON MILLER: You didn't
11 really testify too much about buses. Where
12 are the buses going to park, especially the
13 summer camp buses?

14 REV. BERGFALK: None of the three
15 programs that we are applying for special
16 exception for use buses or have used buses.
17 It is true that the church, as many churches,
18 occasionally does use buses. I am not clear
19 here if the question is for us to speak about
20 church programs or to answer questions about
21 the organizations for which we are requesting
22 the special exception.

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1 CHAIRPERSON MILLER: I understand
2 that this is about the organizations
3 requesting special exception. On the other
4 hand, I think it is somewhat fair game to ask
5 about the other uses that are going to be
6 going on and using the same parking lot. If
7 you can just briefly address where buses are
8 going to be, I think that would be relevant.

9 REV. BERGFALK: Once we have the
10 expanded parking lot with a curb cut the buses
11 will load. We are not talking about many
12 buses. One or two a week during summer camp
13 or something like that, but they would use the
14 parking lot. Prior to that time there is a
15 zoned area by the church main entrance for
16 pick-up. It's a 15-minute parking in the
17 morning and in the afternoon. Until we could
18 access the parking lot we would use that area.

19 MS. CHESSER: Until the curb cut
20 occurs the buses would drop-off and pick-up on
21 Alton Place but where would they park?

22 REV. BERGFALK: We would ask them

1 in response to request from our neighbors to
2 park elsewhere outside of the R-1-B.

3 MS. CHESSER: Thank you very much.
4 Another question. Would you charge for
5 parking in the parking lot? I know in the
6 past they have sometimes been rented and I
7 think you're not going to do that anymore but
8 in the future with the parking lot will
9 anybody have to pay a fee or some sort of
10 scale fees to park in the parking lot?

11 REV. BERGFALK: That probably
12 overlaps transportation demand management
13 strategies. I believe we would want to
14 research that. We have promised DDOT that we
15 will aggressively implement these TDMs so I
16 would probably leave that question until we
17 have had more chance. In the allocation of
18 resources maybe there has to be some fee but
19 I can't answer that question.

20 CHAIRPERSON MILLER: Are you
21 talking about charging faculty or charging
22 parents coming in with their children for

1 drop-off?

2 REV. BERGFALK: I know there are
3 many places that do not offer their employees
4 free parking.

5 MR. JEFFRIES: But, Madam Chair, I
6 think the question is really about adding the
7 additional universe to the parkers in the
8 parking lot. I think that is where the
9 question was going.

10 MS. CHESSER: The question was
11 would the parents have to pay a fee to park in
12 the parking lot.

13 MR. JEFFRIES: Oh, I thought you
14 were just referring to if there was
15 continually open parking spaces would the
16 church just rent those spaces out to people in
17 the neighborhood.

18 MS. CHESSER: That's what has
19 happened in the past.

20 MR. JEFFRIES: Okay.

21 MS. CHESSER: In the future -- I
22 mean, hopefully that will no longer occur in

1 the future. In addition, in the future would
2 they charge parents because if I can park for
3 free in the street or pay a fee in the parking
4 lot, it's pretty obvious where I'm going to
5 park. That is the answer I'm trying to get.

6 CHAIRPERSON MILLER: So is your
7 answer you haven't decided yet?

8 REV. BERGFALK: Well, we haven't
9 discussed that. We will certainly take it
10 under consideration the concern voiced by the
11 neighbors. If that would force people into
12 the street, it would probably defeat the
13 purpose. I'm not sure I can answer questions
14 related to transportation demand management on
15 the fly without more research.

16 MS. CHESSER: It has actually been
17 discussed at the ANC as well as in some of the
18 agreements we --

19 CHAIRPERSON MILLER: We don't want
20 to hear testimony right now.

21 MS. CHESSER: Okay. The parking
22 survey that you did, you excluded before 9:00

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1 which is when all the CommuniKids and Co-op
2 people and you also excluded after 7:30 which
3 is when the Washington City Choir was. Is
4 there a reason you took the time frames you
5 did?

6 REV. BERGFALK: Actually, we don't
7 really have -- we do have surveys that go
8 prior to 9:00. There were some that were
9 taken at 8:45 or right at 9:00 when groups are
10 arriving. We actually try to capture
11 representative periods and peak periods.

12 As far as the evening goes, the
13 counts are always low. I have addressed the
14 question of the Washington City Choir which is
15 gone. Outside of that organization, the
16 Conservatory use is low and counts are low.
17 We do have some counts from 7:00 and 8:00 in
18 the evening. They are very low.

19 MS. CHESSER: You had earlier
20 stated that the Washington City Choir with 90
21 people, which is pretty similar to the 97 at
22 a time cap, so it seemed like -- do you agree

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1 that it was sort of a test drive of what might
2 occur then?

3 REV. BERGFALK: No, I wouldn't
4 agree that it was a test drive. It is
5 completely different. We had no control over
6 this group. They had told us that they wanted
7 to use our facility because of its proximity
8 to Metro. All the people that came appeared
9 to me to be coming in single occupant
10 vehicles. I don't think there is any real
11 similarity to the various programs that we
12 have included in our special exception.

13 MR. HIRSCH: Madam Chairman, I was
14 going to ask some of these questions of Mr.
15 Andres but since we are on the same topic now,
16 your Exhibit E in your submission, I think
17 it's in your prehearing statement, refers to
18 surveys taken during program hours from 9:00
19 a.m. to 7:30 p.m. Is that correct?

20 REV. BERGFALK: Yes, that is
21 correct.

22 MR. HIRSCH: Are you envisioning

1 the program hours only from 9:00 a.m. to 7:30
2 p.m.?

3 REV. BERGFALK: No.

4 MR. HIRSCH: Also in Exhibit E it
5 states that you took surveys from 9:00 a.m. to
6 11:45 a.m., 12:30 to 3:00 p.m., and 3:30 to
7 7:30 p.m. We heard testimony earlier this
8 morning that, I believe it was CommuniKids --
9 it may be Co-op. I'm sorry if I mixed it up
10 -- ends at noon. Why were there no surveys
11 taken between 11:45 and 12:30 which you would
12 expect to be a very peak time?

13 REV. BERGFALK: I don't
14 particularly have an answer for that. I think
15 we just tried to group our group times. Also,
16 yours truly as well as what other staff I
17 could buttonhole did these so we did them when
18 we were able to do them. We have submitted
19 the data to Grove Slade for verification and
20 to check.

21 We do feel these are extensive.
22 There are 32 counts here. I have another one

1 that we did this past week which includes 20
2 counts. I think they are representative.
3 They are pretty extensive. It is true we do
4 not have any right at noon. However, 12:30 is
5 actually when most of the -- many of the Co-op
6 students leave because they stayed for lunch
7 and the younger co-op children --

8 MS. CLOUTIER: The two-year-olds
9 leave at 11:00.

10 REV. BERGFALK: So they would be
11 reflected somewhat in these times.

12 MR. HIRSCH: So the testimony that
13 Ms. Cloutier said that the classes end at noon
14 is incorrect?

15 MS. CLOUTIER: I stated in my
16 remarks that for the three-year-old and four-
17 year-old class on the days they are in
18 attendance the class ends at noon but there is
19 an optional lunch bunch from noon to 12:30.
20 As I stated, the three-year-old class
21 typically about half of those students stay
22 and for the four-year-old class I would say

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1 most, maybe seven out of the eight, would
2 stay. We rarely get all eight to stay for
3 that.

4 MR. HIRSCH: For people who are
5 leaving at 12:30, for those students who are
6 leaving at 12:30, when would you expect --
7 would you expect their parents to arrive to
8 pick them up between 11:45 and 12:30?

9 MS. CLOUTIER: For the students
10 that let out at 12:30 I would say that the
11 parents get there closer to 12:30. When lunch
12 bunch wraps up at about 12:20, 12:25 the
13 teachers pack up all of the kids' backpacks,
14 get their jackets on. They walk down to the
15 main level and they have them lined up ready
16 to go so the parents come in basically right
17 at 12:30. The kids are there and they are in
18 and out pretty quickly.

19 MS. CHESSER: I'm going to come
20 back to the classes in a second but the
21 sanctuary, you had said there are 300 seats in
22 the sanctuary. Does that include the balcony?

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1 REV. BERGFALK: Commissioner Wiss
2 came over with a tape measure and measured all
3 of our pews and she told me that we had 294
4 seats possibly not including the choir loft.
5 I'm basing my response on Commissioner Wiss'
6 information.

7 I will tell you that in 1954 or 5
8 the fire marshal rated the sanctuary at 350
9 seating capacity but I think people were
10 thinner.

11 MS. CHESSER: Well, Commissioner
12 Wiss is an excellent source. CommuniKids.
13 We've had a very difficult time trying to
14 figure out what the different schedules are.
15 Part of it is perhaps because they change from
16 semester to semester. In Exhibit 8 -- I'm
17 just going to do this. I could ask you what
18 does Exhibit 8C say of your submission but I
19 won't do that.

20 Exhibit C says you are 9:00 to
21 12:30 and 1:00 to 5:15 Monday through Friday
22 and Saturday 9:00 to 2:00. You testified you

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1 are 9:00 to 1:00 and 3:30 to 6:00. In the
2 future you have less time than any of those so
3 I'm trying to figure out why you are expanding
4 while getting smaller.

5 MR. ECHEVARRIA: I don't have the
6 exhibit in front of me so I'm not really sure.

7 MS. CHESSER: It's at both your
8 Exhibit C, your future, and our Exhibit C is
9 what you handed to us as to the existing. In
10 your existing you say that you are 1:00 to
11 5:15 today, Monday through Friday. But when
12 you go to your future in the afternoon, you
13 only have like give or take an hour, an hour
14 and a half, Monday through Thursday and
15 nothing on Friday so I'm confused.

16 MR. ECHEVARRIA: What happens is
17 that, again, I think you mentioned one of the
18 issues, our schedule changes each trimester so
19 to speak. One of the things that happens is
20 that we may put classes out there that
21 eventually do not make the required numbers
22 for us to fill.

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1 When we are creating our schedule
2 we keep that in mind. The numbers that
3 actually end up being used may not necessarily
4 be the maximum number of what we may advertise
5 at a certain point. I don't know if that
6 answers your question.

7 MS. CHESSER: Sort of.

8 REV. BERGFALK: Judy, could I just
9 add a footnote to that because I think it may
10 help answer your question. That is why we
11 have proposed the 97 cap because it is so
12 fluid with these classes and sometimes they
13 are not filled even though they may list them.

14 MS. CHESSER: I'll go through the
15 same exercise with the Conservatory. Mr.
16 Spurlock testified that you are currently only
17 operating at WABC 15 hours a week but your
18 existing says you are there Monday through
19 Friday from 2:00 to 9:00 in like 10 different
20 rooms or whatever, and then Tuesday you end at
21 6:00.

22 MR. SPURLOCK: Our use is really

1 very much -- unlike the other applicants based
2 on demand. We can never predict from one
3 semester to the next the total quantity of
4 students we will have. Some teachers teach
5 for an hour or two here or there and they
6 leave.

7 Others come at different times so
8 it's really -- what I mentioned was the spring
9 had been very slow but at other points in time
10 -- again, it's really a moving target for us
11 and it's very hard to give you an exact
12 historical sort of prediction or history
13 because of the fluidity of our demand.

14 MR. HIRSCH: Mr. Bergfalk, Rev.
15 Bergfalk, you mentioned the cap of 97. Mr.
16 Echevarria earlier testified in the case of
17 some of the baby and toddler classes that
18 caregivers are required to attend. Are those
19 caregivers counted in the 97?

20 REV. BERGFALK: Steve, the same
21 answer as we gave you at the ANC meeting when
22 you raised that. On the spot I stood up and

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1 said yes, we will count those in that cap and
2 that holds.

3 MR. HIRSCH: I have some other
4 questions for Mr. Andres unless --

5 MS. CHESSER: Go ahead.

6 MR. HIRSCH: You provided the
7 parties with the May 23rd memo containing what
8 you termed the traffic and parking summary for
9 Wisconsin Avenue Baptist Church. Can you tell
10 us what your traffic counts show? We've seen
11 parking numbers but no traffic.

12 MR. ANDRES: We have not done any
13 traffic counts as part of this analysis. What
14 we've done is a qualitative analysis. Given
15 our experience in working on projects like
16 this we have a good idea of what the usual
17 symptoms are. Based on our analysis we
18 identified there is some congestion on Alton
19 Place that is directly linked to the fact that
20 our driveway only allows for one-way traffic.

21 In addition to that we identified
22 the queues at the intersection of Alton Place

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1 and Nebraska because of the fact that it's
2 difficult to turn left and sometimes turn
3 right from Alton Place onto Nebraska because
4 of the heavy commuter traffic flow.

5 To answer your question, no, we do
6 not do traffic counts. However, we had done
7 a qualitative analysis to identify how to
8 address what the symptoms are.d

9 MR. HIRSCH: Did Grove Slade
10 conduct the parking counts? Were they made by
11 professionals in your industry or were they
12 made by others?

13 MR. ANDRES: As part of my May
14 23rd summary, which you have addressed, I did
15 not cite any parking counts that we had made.

16 MR. HIRSCH: So all the parking
17 counts Rev. Bergfalk just referred to, he did
18 all the counts?

19 MR. ANDRES: Yes. Him and his
20 staff had performed those counts. I gave the
21 Reverend some guidelines with respect to
22 certain time frames to pay attention to and

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1 that is how he did those counts.

2 MR. HIRSCH: In your experience --

3 MR. ANDRES: In addition to that I
4 also supplemented it with field visits. You
5 can go out any day this week and you would
6 roughly get the same idea of how much parking
7 is available on the surrounding streets during
8 certain times of the day.

9 MR. HIRSCH: Where in your
10 experience would you anticipate that drivers
11 who cannot find spaces in the church parking
12 lot, where would you anticipate they would
13 park their cars?

14 MR. ANDRES: Well, based on our
15 analysis we don't believe that situation would
16 occur. We've provided sufficient parking
17 based on our analysis. In addition to that
18 there is some additional parking if we go to
19 a larger lot.

20 In addition to that, these
21 projections that I've made as part of my
22 analysis also take into account aggressive

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1 transportation demand measures which the
2 church and the programs have committed to.

3 Given that, in the event that for
4 some reason if there is a special event that
5 occurs, there is two-hour parking available in
6 the surrounding neighborhoods. We don't
7 intend to use that parking.

8 As part of the exercise that the
9 Reverend did was to address existing concerns
10 of parking that is taking place on
11 neighborhood streets. The exercise that he
12 performed was to validate that the existing
13 parkers on neighborhood streets are not
14 necessarily related to the church programs.

15 If you look at some of the parking
16 that is taking place, a lot of it is related
17 to ward residence who technically have the
18 right to park in that neighborhood but maybe
19 they don't necessarily live in that
20 neighborhood are encroaching on some of the
21 spaces, especially those that are convenient
22 to walk to the Metro station.

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1 MR. HIRSCH: So if there is
2 overflow at a special event, as you just said,
3 you would expect that they would park on the
4 street?

5 MR. ANDRES: There is available
6 parking in front of the church. It is common
7 that institutions although they don't have
8 "ownership" of spaces in front of -- along
9 their frontage, it's common practice that
10 spaces in front of an institution that some of
11 the users may park on those streets if they
12 park legally. If they park beyond any of the
13 RPP time restrictions, then they are subject
14 to violations just like anybody else.

15 MR. HIRSCH: Are you familiar with
16 other situations such as Mount Vernon College,
17 Georgetown Day School, other situations where
18 parking is not permitted at a school or people
19 are coming to specific programs regardless of
20 whether they have Ward 3 stickers?

21 MR. ANDRES: There are some
22 programs that discourage parking in the

1 neighborhoods. As part of the program related
2 to these programs, the church has made it
3 clear in the transportation demand management
4 program that all of the users related to the
5 church regardless of whether they are
6 CommuniKids, Co-op, or Conservatory, just even
7 regular church users, because of the fact that
8 we are making the lot more easily accessible
9 and more convenient, if you look at the plan
10 because of the fact we are filling in the
11 corner of the building, the parking spaces
12 that are proposed in the rear of the site are
13 the most convenient spaces to the building.

14 You will not get any more closer
15 to the building than if you park in the rear.
16 By providing convenient spaces and providing
17 two-way access on Yuma, we foresee that we
18 provided them physical incentives to park as
19 close to the building as possible.

20 MR. HIRSCH: We certainly hope
21 that's the case. Do you see making the
22 traffic management plan more effective rather

1 than just discouraging parking in the
2 neighborhood but prohibiting parking in the
3 neighborhood by people as is done at Mount
4 Vernon College and other places?

5 MR. ANDRES: As I mentioned
6 before, if I was a resident in that ward, and
7 as a matter of fact I am, I have the right to
8 park basically on your street within that time
9 frame.

10 MR. HIRSCH: Not according to some
11 of the programs, for instance, at Mount Vernon
12 College. There is a prohibition against
13 students regardless of where they live. Is
14 that correct?

15 MR. ANDRES: We've been
16 coordinating with DDOT and DDOT has identified
17 the potential for extending or modifying the
18 RPP program to be sort of more restrictive
19 where there isn't a two-hour restriction where
20 it's resident only. Given that opportunity
21 that DDOT has identified, the church because
22 of the fact that we do feel confident that we

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1 can provide the parking that we need on site
2 would coordinate with DDOT on that program.

3 MR. HIRSCH: You cite in your
4 summary memo Parking Generation 5th Edition
5 from the Institute of Transportation
6 Engineers. What does the data in that report
7 say about the effectiveness of transportation
8 management plans such as this in a residential
9 setting?

10 MR. ANDRES: The Institute of
11 Transportation Engineers publishes a document
12 that is empirical data. What they do is they
13 look at different land uses across the country
14 in different settings and says basically for
15 different land uses for different sizes this
16 is in general what the parking demand would
17 be.

18 Would it be different if you are
19 closer to Metro? Potentially yes. Would it
20 be different if you are out in the suburbs and
21 the only way you can get to certain
22 destinations is by driving? Absolutely. With

1 respect to citing that reference in my report,
2 I wanted to identify the potential for
3 turnover for those spaces and that is why I
4 cited that report.

5 Given the fact that we are close
6 to Metro, to your point, does that take that
7 into account? No. If anything we can
8 probably reduce the parking demand because of
9 the fact we are near Metro.

10 MR. HIRSCH: Doesn't the report
11 refer to music conservatories or schools with
12 turnover or what did you cite in the report?
13 What model? What is the turnover of the model
14 that you used in basing your assumptions that
15 this would be sufficient parking?

16 MR. ANDRES: With respect to the
17 actual users, we've gotten that information
18 from surveys of the managers of the different
19 programs. With all my colleagues to the left
20 of me responsible for those managers, they
21 have a very good idea of who drives and who
22 doesn't. Given those characteristics of

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1 travel demand, that is how we identified
2 primarily most of the information related to
3 the parking demand.

4 MR. HIRSCH: If I can turn to the
5 parking plans, the 28 or 27 space design, do
6 you see any differences in safety for students
7 or for people coming from the ADA spaces
8 primarily for the students and people in the
9 parking lot between the 28 and the 36? To a
10 layman one appears inherently safer.

11 MR. ANDRES: I'm having difficulty
12 identifying --

13 MS. CHESSER: The ADA here.

14 MR. ANDRES: Is there a
15 difference? The 36-space plan obviously is
16 much closer potentially to where the access
17 into the building is if that is the point you
18 are trying to make.

19 MR. HIRSCH: Pardon my back to the
20 Board. Under the 27 or 28-space plan do you
21 see any concerns with cars backing up here
22 into the drop-off lane?

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1 MR. ANDRES: No, because
2 potentially those spaces can be employee
3 spaces or staff spaces where they get there
4 early and they leave at the end of the day or
5 at the end of the session.

6 MR. HIRSCH: With 36 that wouldn't
7 be an issue. Right?

8 MR. ANDRES: No. No.

9 MR. HIRSCH: I just have a couple
10 very quick questions for Mr. Spurlock. If I'm
11 running too long, I'll cut them off.

12 CHAIRPERSON MILLER: Well, there
13 isn't a time restriction on cross except for
14 redundancy or something like that.

15 MR. HIRSCH: If I could just take
16 30 seconds and look over my questions to make
17 sure I'm not asking any redundant ones, I
18 think that might save us time.

19 CHAIRPERSON MILLER: Okay.
20 Relevance, too.

21 The court reporter needs a break
22 as well so why don't we take a five minute

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1 break and you can take that opportunity.

2 (Whereupon, at 5:47 p.m. off the
3 record until 6:14 p.m.)

4 CHAIRPERSON MILLER: Okay. We are
5 back on the record. During the break the
6 Board decided to look at the schedule. We
7 have this case, which has a little way to go,
8 I think, and then we have another case also
9 scheduled for this afternoon and I don't
10 believe it's realistic that we are going to
11 get through both cases this afternoon.

12 I wanted to first ask the parties
13 in the case that we're in whether you -- how
14 much time you think is left in representing
15 this case in your best estimates and whether
16 you want to try to do that tonight? There are
17 three of us which is a quorum who can stay and
18 then the other two can read the record if the
19 parties want to stay tonight.

20 Otherwise, we are going to look to
21 -- we only have one date really before our
22 August recess that we could fit you in. The

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1 more we get accomplished tonight the better.

2 Where are you all on this?

3 MR. DePUY: We would like to
4 finish tonight if at all possible.

5 CHAIRPERSON MILLER: Okay. Other
6 parties?

7 MR. HIRSCH: We're at the Board's
8 disposal.

9 CHAIRPERSON MILLER: Okay. ANC?

10 MS. WISS: I would prefer to have
11 the full Board here to hear all of the
12 questions and answers. It does make a
13 difference beyond reading the record which I
14 know is already voluminous.

15 MS. CHESSER: I would prefer to
16 have it continued over to another time so that
17 the full Board is here.

18 MR. DePUY: Madam Chair, there are
19 a lot of witnesses here tonight and there are
20 a lot of parties. It's very difficult to get
21 everybody together without some extended gap
22 and we would strongly advise finishing

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1 tonight.

2 CHAIRPERSON MILLER: Okay. I hear
3 the concern of the other parties but I don't
4 think that is a real factor for us to
5 consider. The other thing Board members can
6 do is view it on -- what is it called, Mr.
7 Moy?

8 MR. MOY: We have our video stream
9 so that they can actually if that is a concern
10 see the demeanor and listen. They wouldn't be
11 here to ask the questions. I understand that.
12 Let me see. It's just that we are very
13 limited. I don't think that the parties would
14 want this case to continue over the August
15 recess and we have a very tight calendar.

16 We only have one spot and I wanted
17 to ask the counsel for the other party
18 basically where we might fit them in but it
19 would be like the third case in the afternoon.
20 This kind of case is very witness intensive
21 and it takes a lot of time. I'm not sure
22 there would be a lot of time that afternoon.

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1 If you all can stay, I think that
2 is the best option. Is counsel here for the
3 other parties as well? The other party that
4 is scheduled for this afternoon. That would
5 be 17746, Reed-Cooke Neighborhood Association.
6 If you could come to the table.

7 MR. BROWN: Charles Brown,
8 Assistant Attorney General, DDOT General
9 Counsel's Office.

10 MS. SIMPSON-MASON: Ann Simpson-
11 Mason, Deputy Associate Director for
12 Transportation Policy and Planning.

13 MR. MARKOU: Matthew Markou,
14 Acting Public Space Manager for the District
15 Department of Transportation.

16 MS. GALLAGHER: Maureen Gallagher,
17 President, Reed-Cooke Neighborhood
18 Association.

19 MR. WEAVER: Brian Weaver, Chair
20 of ANC-1C.

21 MR. BISHOP: David Bishop
22 representing Erie Associates.

1 MR. COLLINS: Chris Collins from
2 Holland and Knight.

3 CHAIRPERSON MILLER: Okay.
4 Looking at our schedule, which we did over the
5 break, it's pretty jammed packed until the
6 August recess except for possibly the best
7 place that we could see we could fit in what
8 might just be an hour for oral arguments on
9 your motion to dismiss.

10 I don't think even if we got
11 beyond that there are really witnesses or
12 anything in this kind of case. Is there? The
13 ANC wouldn't have any witnesses even if we got
14 beyond the motion to dismiss.

15 MR. COLLINS: If there was a
16 witness, it would be a witness.

17 CHAIRPERSON MILLER: Okay. So
18 this isn't a long case as far as I can tell so
19 we are wondering if you are free next Tuesday
20 in the afternoon.

21 MS. GALLAGHER: Chairman Miller,
22 what is the date on that?

1 CHAIRPERSON MILLER: June 17th.

2 MS. GALLAGHER: June 17th. Thank
3 you.

4 MR. BROWN: I'm sorry, Madam
5 Chair. I have a conflict. Charles Brown,
6 DDOT General Counsels Office. But, you know,
7 if that is the only day I have a mediation and
8 I may be able to reschedule but I can't be
9 certain here today.

10 CHAIRPERSON MILLER: If we were to
11 hear this case and put the other one off,
12 would you stay to argue this case today? At
13 this point it is now 6:20. I don't think we
14 are going to have this resolved for another
15 five minutes or so. It will be like 6:30 say
16 if we did this. Could you all stay for that?

17 MR. BROWN: Yes, we can.

18 CHAIRPERSON MILLER: Okay. We
19 know where you are but -- let me say this. It
20 is conflicting on the other side. I know a
21 lot of people want to stay because all the
22 witnesses are here and some of the --

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1 PARTICIPANT: We don't want to
2 stay.

3 CHAIRPERSON MILLER: You don't
4 want to stay. I understand the applicant has
5 witnesses. Oh, you're finished with your
6 presentation but there are witnesses here. So
7 you are split basically whether you want to
8 stay or not stay.

9 MS. PERRY: Mrs. Miller, if I may.

10 CHAIRPERSON MILLER: I don't think
11 I got an answer as to how much time you
12 thought was let for this case.

13 MS. PERRY: I think if we came
14 back next week we could probably do it a lot
15 faster. I mean, the applicant has put on
16 their case which was the majority of it
17 actually. The are witnesses that would be
18 left would basically be the three-minute
19 witnesses, not anybody else. I don't know if
20 they would all need to even come back next
21 week because most of our cross examination has
22 been done already so it's just basically their

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1 attorneys and I think we can put on a better
2 case.

3 CHAIRPERSON MILLER: Do you have
4 witnesses that you are going to put on?

5 MS. PERRY: From what I understand
6 from the neighborhood a couple of people have
7 already had to leave because they couldn't
8 stay. I think the ANC -- I know I can come
9 back and I think Commissioner Wiss can
10 probably. Can you?

11 MS. WISS: Yes. The 17th?

12 MS. PERRY: The 17th I think we
13 can both come back.

14 MR. GANDHI: Madam Chair, is there
15 a way I can get my statement on the record?

16 CHAIRPERSON MILLER: Come on to
17 the table. You are the ANC Commissioner for
18 the single member district?

19 MR. GANDHI: Yes.

20 CHAIRPERSON MILLER: Come forward.

21 MS. PERRY: Not for the single
22 member district. Cathy is the single member

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1 district. Mital has not filled out his
2 witness card yet or been sworn in so you would
3 have to do that.

4 MR. GANDHI: Is there a way I -- I
5 understand schedules. Is there a way I could
6 get my statement on the record at least?

7 CHAIRPERSON MILLER: But you don't
8 want to come back if it's postponed?

9 MR. GANDHI: It's tough.

10 CHAIRPERSON MILLER: Okay. We'll
11 let you do that if we decide to reschedule
12 this to next week.

13 MR. BROWN: Madam Chair, I would
14 also like to add that I could if we had an
15 exact time schedule do 1:00 to 2:00 because my
16 mediation is at 2:30 on June 17th so, I mean,
17 I could possibly do that. I just wanted to
18 let you know that.

19 CHAIRPERSON MILLER: Mr. DePuy,
20 could you come back? Is there anybody who
21 couldn't come back who needs to come back next
22 Tuesday? I'm talking about 17726.

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1 MR. DePUY: Mr. Spurlock, the
2 architect and the representative of the
3 Conservatory, is not sure that he can return
4 next Tuesday. Our other witnesses we believe
5 can return if needed. If they are not needed,
6 we prefer not to bring them back if cross
7 examination is completed.

8 CHAIRPERSON MILLER: Okay. It
9 seems like we are suggesting perhaps if we
10 continue your case that we finish with cross,
11 at least while you have all your witnesses
12 here for that. Then we could possible break
13 when we are finished with the cross of your
14 presentation and pick up next week.

15 MR. DePUY: There is also at least
16 one person in support who I think would like
17 to testify tonight as well.

18 CHAIRPERSON MILLER: Okay. All
19 right. Okay. We've heard all of you and what
20 we're going to do is continue 17726 case to
21 next week, third in the afternoon, but first
22 today before you leave we'll hear from those

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1 who are here who it's difficult to come back
2 next week.

3 Also we'll have you finish the
4 cross while all of the applicant's witnesses
5 are here. Then we will take -- I don't expect
6 that is going to take that much longer. Then
7 we'll take the appeal case 17746.

8 PARTICIPANT: Another hour?

9 CHAIRPERSON MILLER: No, we're not
10 talking another hour until you're coming on.
11 I think they are going to be done in 15 or 20
12 minutes max. Then we'll hear the argument on
13 the motion to dismiss. Thank you.

14 (Whereupon, at 6:26 p.m. off the
15 record until 6:27 p.m.)

16 CHAIRPERSON MILLER: All right.
17 We are back on the record with 17726 finishing
18 up cross examination.

19 MS. CHESSER: While Steve gets
20 organized in the interest of time, can each of
21 you, Raul and Laura and Steve Spurlock, can
22 you each state how long you have been

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1 operating without certificates of occupancy
2 when you first started.

3 MR. DePUY: Objection. I don't
4 know the relevancy of that particular
5 question.

6 CHAIRPERSON MILLER: What is the
7 relevancy?

8 MS. CHESSER: Okay. How about
9 this? How long do you intend to continue to
10 operate without certificates of occupancy?
11 You don't have them now.

12 MR. DePUY: I don't think that
13 question is anymore relevant than the earlier
14 one.

15 CHAIRPERSON MILLER: Isn't it in
16 the record that the intent to get a
17 certificate of occupancy and that is why you
18 are here in part?

19 MR. DePUY: That's correct.

20 CHAIRPERSON MILLER: Okay. I'm
21 not sure why you need to know anything
22 further.

1 MR. HIRSCH: The question, I
2 guess, is will they prior to construction of
3 the new building if it is permitted to go
4 forward will they continue to operate without
5 the licensing and permits and certificates.

6 There is a period of time -- the
7 certificates of occupancy they are applying
8 for the church is applying for, not the
9 programs, and it is for the new building. We
10 are curious what's going to happen in the
11 interim before a new building if they continue
12 to operate without proper licensing.

13 MS. CHESSER: We all know the
14 answer anyway. Nonprofit, CommuniKids. Are
15 you a non-profit or a for-profit?

16 MR. DePUY: That question has
17 already been asked and objected to.

18 CHAIRPERSON MILLER: It was asked
19 and answered, I thought, that you said it was
20 for-profit. Okay. Go ahead.

21 MR. DePUY: It was objected to and
22 then answered. That is correct.

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1 MS. CHESSER: Just for the record,
2 I don't understand why whether it's a for-
3 profit or non-profit is not relevant to zoning
4 since the zoning for churches they clearly
5 state that the programs are supposed to be
6 nonprofit and the zoning for R-1-B
7 contemplates the only for-profit is supposed
8 to be things that are occurring in a person's
9 residence so I don't understand why that is
10 not relevant for the BZA.

11 CHAIRPERSON MILLER: Okay. Let me
12 just say this. It was answered.

13 MS. CHESSER: Okay.

14 CHAIRPERSON MILLER: Whether the
15 attorney thought it was relevant or
16 nonrelevant is actually not relevant at this
17 point.

18 MS. CHESSER: Okay. Thank you.

19 MR. HIRSCH: Just one or two more
20 questions and I apologize. I was looking at
21 the clock before and I was misled so my
22 fault. Question of Mr. Spurlock. Can you

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1 tell us how many classrooms there will be in
2 the new building, the combined new and old
3 building once it's finished in the education
4 wing as it is referred to? How many rooms?

5 MR. SPURLOCK: I haven't actually
6 counted to be quite honest with you. I know
7 in the new addition we were proposing 10
8 classrooms in the new addition.

9 MR. HIRSCH: If I were to tell you
10 that there were 12 currently that would make
11 it 22 plus an additional office and lounge
12 space, does that sound about right?

13 MR. SPURLOCK: Sure.T

14 MR. HIRSCH: There was a
15 discussion earlier about requirements for
16 having bathrooms to allow these groups to be
17 licensed and operate according to licensing
18 and requirements. Are the plans that are
19 currently filed with the BZA the final plans
20 that you plan on using?

21 MR. SPURLOCK: These are schematic
22 plans. I am sure there is going to be some

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1 adjustment to the -- I assume there will be
2 some adjustment to these drawings before they
3 are filed for building permits, yes. They are
4 clearly marked schematic plans. I don't
5 anticipate any change to the footprint but the
6 internal composition of these it's possible.

7 MR. HIRSCH: So the number of
8 bathrooms that are on there, the size of the
9 room and all that is a rough estimate of a
10 plan but may not be actually what is built
11 there?

12 MR. SPURLOCK: Within tolerances,
13 yes. That's correct.

14 MR. HIRSCH: Okay. So the number
15 of bathrooms there is not necessarily what is
16 envisioned?

17 MR. SPURLOCK: I'm not sure. To
18 be quite honest with you, we haven't been down
19 that road far enough.

20 MR. HIRSCH: So the details are
21 not done yet?

22 MR. SPURLOCK: That's correct.

1 These are schematic plans.

2 MR. HIRSCH: Okay. Presumably you
3 will have to redesign these are make these
4 meet with the requirements of Title 29 for how
5 many bathrooms are needed in a child
6 development center?

7 MR. SPURLOCK: We will. That's
8 correct.

9 MS. CHESSER: Excuse me. Also the
10 ADA ramp appears to go right into the
11 elevator?

12 MR. SPURLOCK: What we are
13 proposing right now is an at-grade entrance to
14 an elevator and then the elevator would be on
15 its own level and then you elevate up to the
16 first floor or second floor or to the cellar.
17 It's a way of negotiating without that.

18 MR. HIRSCH: So if there was an
19 emergency you would have to negotiate with
20 either stairs or through the elevator for
21 someone who is stair enabled?

22 MR. SPURLOCK: That's correct,

1 which is conventional at a commercial level.

2 MS. CHESSER: For the record we
3 would say basement.

4 MR. HIRSCH: That's all I have.
5 Thank you very much for your time.

6 CHAIRPERSON MILLER: Thank you.
7 Okay. I think that completes the cross
8 examination. We have two individuals who
9 wanted to testify today, one in support and
10 then the ANC Commissioner.

11 Are you testifying in support or
12 opposition? Okay. You will need to be sworn
13 in. Let me see. Does somebody have a greater
14 time constraint than somebody else? She does?
15 Does she have a greater time constraint? She
16 can go first then. Okay.

17 Ms. Bailey, can you swear in both
18 of them?

19 MS. BAILEY: Please raise your
20 right hand. Do you solemnly swear or affirm
21 that the testimony that you will be giving
22 today will be the truth, the whole truth, and

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1 nothing but the truth?

2 ALL: I do.

3 CHAIRPERSON MILLER: So can you
4 identify yourself for the record, please?

5 MS. SHOOK: My name is Veda Shook
6 and I live at 3643 Alton Place.

7 CHAIRPERSON MILLER: You want her
8 to go first?

9 PARTICIPANT: No problem.

10 CHAIRPERSON MILLER: Okay.

11 MS. SHOOK: I thank you for the
12 opportunity to be here today as a neighbor
13 speaking on behalf of the application. Also
14 my daughter attends Caterpillar Co-op and I am
15 hearing all of these issues today but I just
16 want to iterate the need for quality,
17 affordable care for our children in the
18 community.

19 I hear a lot about parking and
20 issues with that and I wanted to discuss the
21 perspective that we are neighbors and we walk,
22 I would say, 80 percent or more of the time to

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1 the school both ways. When I have driven, or
2 even when we're walking, I've never seen an
3 issue of the parking lot being full so I just
4 wanted to make that point.

5 The school is excellent and I
6 thank them for that every day when we go there
7 but the facilities could certainly use some
8 improvement though. I wanted to just say a
9 couple of things that I have heard today just
10 if I can have a minute or two on that. There
11 are some issues I've been hearing about staff
12 parking there all day. And the co-op, and I
13 think it was from Mr. Jeffries, is just a
14 part-time thing.

15 It is half-day only so it is not
16 like people go there. The comment about
17 parents dropping off their kids and going to
18 work, I don't know of any parents that drop
19 off their children and go to work because it
20 is not reasonable given the time that the
21 children are actually in the school.

22 To give you a perspective on the

1 class that my daughter is in, there are eight
2 students and of those three drive. One of
3 them, the parent, is on staff. One takes the
4 bus and the other one carpools with -- it is
5 actually Pastor Lynn's granddaughter, and
6 three of us walk so it's a real broad mix of
7 transportation.

8 I'm not a parishioner of the
9 church but, again, my daughter goes to school
10 there and just from the sense of community I
11 think that it is something that is important
12 that we have places for children that are
13 affordable and of quality.

14 We don't have fully-funded pre-K
15 and it was a real hardship for me to even find
16 a school for my daughter to attend so I have
17 been grateful for that opportunity and I would
18 like to see more of that available. Thank
19 you.

20 CHAIRPERSON MILLER: Thank you.
21 Any questions from the Board? Okay. Thank
22 you very much.

1 MR. GANDHI: Good evening. How
2 are you? My name is Mital Gandhi. I am an
3 ANC Commissioner in 3F-05. I also serve on
4 the District of Columbia Alcoholic Beverage
5 Control Board so I respect everything that you
6 all do up there. We do that every Wednesday.

7 CHAIRPERSON MILLER: Can I just
8 ask you are you testifying for yourself as
9 opposed to the ANC?

10 MR. GANDHI: As part of the ANC.
11 The ANC has authorized Cathy Wiss, Karen
12 Perry, myself, and Jane Solomon to testify.
13 This is part of that testimony.

14 CHAIRPERSON MILLER: Okay. This
15 is part of it. We will hear more next week?

16 MR. GANDHI: Yes, absolutely. I
17 appreciate you taking me out of turn. What I
18 really wanted to testify to is how much time
19 and energy has gone to this. I'm sorry that
20 you all had to hear this because I really
21 thought we were really close to a compromise.

22 I mean, so much so that we held a

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1 special meeting the week after thinking that
2 everyone else will be signing this document.
3 It didn't happen we're all here at 7:00 at
4 night. I understand that. But the ANC did
5 unanimously vote to not object this
6 application conditionally. I think that is
7 very important and I believe that needs to be
8 given great weight.

9 Furthermore, I said unanimously.
10 You don't know ANC-3F. You don't think we
11 have ever done anything unanimously but it is
12 a testament to the energy and the time that
13 was put into this document.

14 By now you should have received
15 the resolution that we passed. It has certain
16 conditions on there, the main ones being that
17 this building may have been a little bit too
18 big for the space so they decided to pare it
19 down and take off that top floor, whether you
20 want to call it the third floor or whatever it
21 is. That was very important.

22 But also parking was a major

1 issue. I understand that your Board and DDOT
2 and the government of the District of Columbia
3 recommends possibly smaller parking space or
4 parking lot to have others take Metro. I
5 think there is a theoretical argument to that.

6 But to get to Mr. Jeffries'
7 question of why they proposed two, it was to
8 alleviate the neighbors and the ANC. The ANC
9 is in full support of the larger parking lot.
10 We put in our resolution. I understand where
11 you all are coming from but the government as
12 a whole as well should take the neighbors and
13 take the ANC.

14 If everyone else wants a bigger
15 parking lot, you know, why not give them the
16 bigger parking lot? Saying that the
17 government understands these issues and will
18 restrict it to a smaller parking lot
19 questions, I guess, the process.

20 The other major issues including
21 the caps have also been addressed in our
22 resolution. If this Board were to approve

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1 this application conditionally on everything
2 that the ANC has set out, we would be ecstatic
3 because a lot of time and energy has gone
4 through this process.

5 As I said before, I'm humbled by
6 it because every Wednesday I'm where you all
7 are and I have ANCs that come in front of us
8 and we have neighborhood groups that come.
9 You don't understand the process that they've
10 been through until you actually go through it
11 and we definitely did go through that.

12 In closing, I will just ask that
13 this Board give the ANC great weight that it
14 deserves on this process. If you can adopt
15 those conditions that I think are pretty much
16 middle of the line. When you asked me if I
17 was a proponent or opponent, it's neither/nor.

18 I don't think the neighbors like
19 me, nor do I think that the church likes me.
20 I'm okay with that. When people don't like
21 you, you're probably doing something right.
22 That's all I have to say and I'll take any

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1 questions you may have.

2 CHAIRPERSON MILLER: Okay. I'm
3 very impressed with all the work you have
4 done. It does appear that you all got very
5 close to an agreement. I was an ANC
6 Commissioner in another life and I can
7 appreciate how much work is in this and how
8 well it's put together.

9 Two things. One is this Board
10 hasn't made any recommendation or come to any
11 opinion about the parking lots. We are just
12 in the process of hearing the evidence and the
13 arguments as to which is the better one. I
14 don't want you to leave with the impression
15 that we are coming from a certain direction.

16 We are not. We haven't even heard
17 Office of Planning or DDOT yet. Before you
18 go, I was going to be asking this of the
19 parties anyway. There is so much written
20 information in the file. So much analysis
21 that you all did, draft conditions, agreement
22 and resolutions and whatever.

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1 We are wondering -- I think we
2 would like to see what are the conditions that
3 you all agree on because it seems to me that
4 there are plenty you all agree on such as the
5 cap, the parking lot or whatever. What is
6 left? Where are there differences?

7 MR. GANDHI: Madam Chair, you are
8 absolutely right. I think that we did that in
9 our resolution to you all. Do you have a copy
10 of that resolution? It's two pages maybe. I
11 think there are the conditions right there.

12 I mean, after all that whereas
13 stuff, I mean, if you go right to the
14 conditions of them not having a third floor,
15 the 291 cap number, having a traffic
16 management plan in place and reporting back to
17 the ANC, I mean, I just don't know what else
18 there could be as well. You're right.

19 What I did try to do is I tried to
20 take both documents that parties gave me and
21 tried to do a word check, you know, to see
22 what words are missing. I wasn't that

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1 successful. I guess that's a better question
2 to be asked by the parties but in my mind the
3 ANC did the right thing and passed those
4 conditions.

5 Another thing I also want to bring
6 up, a lot of times boards will say they are
7 over here and they are over here. I think the
8 ANC in their resolution was right down the
9 middle. Another big point is that I think one
10 of the whereas clauses says that there has
11 been a lot of support for this type of need
12 and we did hear that at our meetings. I think
13 that is important to note as well.

14 There was a great deal of support
15 for the need of programs such as early
16 childhood care and the development in the
17 neighborhood. To answer your question, if you
18 can adopt that or whatever else you can adopt,
19 some of the things in there you may not be
20 able to adopt as in the for-profit and profit.

21 That was something that we just
22 didn't want to get into as an ANC at least.

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1 I don't know if the BZA has authority over it
2 or if DCRA does but I'm sure your general
3 counsel will tell you.

4 CHAIRPERSON MILLER: Where is that
5 in your resolution?

6 MR. GANDHI: It just simply says
7 that you would see if -- I can find the exact
8 number. It doesn't give you an opinion either
9 way. It just says, No. 3, determine the
10 appropriateness. That's all. It doesn't say
11 we believe this or we believe that. I guess
12 that is your job. That's what you get paid
13 the big bucks for. Right?

14 CHAIRPERSON MILLER: Yeah.

15 MR. GANDHI: Twenty-five bucks an
16 hour. Right? There you go.

17 CHAIRPERSON MILLER: Maybe you
18 part ways with the applicant on No. 6 on the
19 hours, it only goes to 5:00?

20 MR. GANDHI: No, that's on
21 Saturdays only. It's 9:00 a.m. to 9:00 p.m.

22 CHAIRPERSON MILLER: Oh, it is

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1 9:00 to 9:00. Okay.

2 MR. GANDHI: Yeah.

3 CHAIRPERSON MILLER: We'll hear
4 from the applicant. Okay.

5 MR. GANDHI: That is 9:00 to 9:00.
6 9:00 to 5:00 only on Saturdays. We may be
7 parting with the neighbors on that. I'm not
8 sure.

9 CHAIRPERSON MILLER: Okay. Well,
10 I guess if we have other questions for the ANC
11 we will ask Ms. Perry and Ms. Wiss next week.

12 MR. GANDHI: Thanks a lot for the
13 time.

14 CHAIRPERSON MILLER: Thank you
15 very much.

16 MR. GANDHI: I appreciate your
17 time.

18 CHAIRPERSON MILLER: Okay. Is
19 there anybody else here who needs to testify
20 today on this case? Okay. Then what we are
21 going to do is continue this case to next
22 Tuesday.

1 We are going to put you third case
2 in the afternoon which would be the last case
3 so that we can finish it, keep going until
4 it's finished. Our hearings start at 1:00 but
5 you won't start at 1:00. For those of you
6 unfamiliar, you can watch on the internet to
7 see where we are or come down 2:00-ish.

8 The other thing I started to say
9 when I was addressing Mr. Gandhi is that it
10 would be helpful to the Board's deliberation
11 in the end if the Board were inclined to grant
12 the application with what conditions.

13
14 There's a lot of paperwork I hear
15 on conditions and so if the parties could in
16 any way identify what conditions they agree
17 on, we could put them in one category and then
18 we could focus more on the conditions where
19 there are differences. It would be useful to
20 us if that were filed ahead of time and then
21 we would have it in front of us and we could
22 be thinking about it in advance.

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1 In order for it to go in our
2 packages, that would have to be by next --
3 that would be pretty soon. Maybe we should --
4 it could be faxed to us even Monday if you all
5 needed more time to talk to each other if that
6 is a possibility.

7 Why don't you do that.

8 If you can identify the conditions
9 in that manner, that would be helpful to the
10 Board and then get them to the Office of
11 Zoning by Monday and then it could be faxed to
12 us. If we have it in hand, we will be able to
13 refer to it at the hearing and have some
14 appreciation ahead of time.

15 Okay. Are there any questions?
16 One more thing. I just want to be a little
17 more specific with you all about the
18 conditions if you can do that by Monday noon
19 to the Office of Zoning. Then that would give
20 them time to get it to the Board members to
21 review Monday evening.

22 Okay. I think that concludes this

1 case for today and we'll see you next week.
2 Thank you. We're going to take a quick five-
3 minute break while everyone is clearing the
4 room and we'll get our files on this case.

5 (Whereupon, at 6:50 p.m. off the
6 record until 7:00 p.m.)

7

8

9

E-V-E-N-I-N-G S-E-S-S-I-O-N

10

7:00 p.m.

11

12 CHAIRPERSON MILLER: Ms. Bailey,
13 would you like to call the first case of the
14 evening?

14

15 MS. BAILEY: Madam Chair, this is
16 the last case of the day and it's Appeal No.
17 17746 of the Reed-Cooke Neighborhood
18 Association pursuant to 11 DCMR 3100 and 3101
19 from a February 22, 2007 decision of the
20 Department of Transportation, Office of Public
21 Works, to grant a curb cut serving an
22 accessory parking for an apartment building at
premises 2351 Champlain Street, N.W. The

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1 property is zoned R-5-B and is located in
2 Square 2563 on Lot 109.

3 There is a request for subject
4 matter jurisdiction on this case, Madam Chair.
5 I should say there is a motion for subject
6 matter for the Board to dismiss this case
7 because the appellant has asserted that the
8 Board does not have jurisdiction to hear the
9 case.

10 CHAIRPERSON MILLER: We'll have
11 the parties introduce themselves for the
12 record.

13 MR. WEAVER: Hi. Brian Weaver,
14 Chair, ANC-1C.

15 MS. GALLAGHER: Maureen Gallagher,
16 President, Reed-Cooke Neighborhood
17 Association.

18 MR. MARKOU: Matthew Markou,
19 Public Space Manager, District Department of
20 Transportation.

21 MS. SIMPSON-MASON: Ann Simpson-
22 Mason, Deputy Associate Director for

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1 Transportation Policy and Planning, DDOT.

2 MR. BROWN: Charles Brown,
3 Assistant Attorney General, DDOT General
4 Counsel's Office.

5 MR. BISHOP: David Bishop
6 representing Erie Associates.

7 MR. COLLINS: Chris Collins from
8 Holland and Knight.

9 CHAIRPERSON MILLER: Okay. If my
10 memory serves me correctly, I think we have
11 two motions to dismiss that have been filed.
12 One is by the intervenor and one is by DDOT.
13 Is that correct? The intervenor filed the
14 motion to dismiss first so I think we ought to
15 hear that one.

16 I have recently received an
17 opposition to DDOT's motion to dismiss. Did
18 you file an opposition to the intervenor's
19 motion to dismiss as well or does this address
20 both or what?

21 MR. WEAVER: The Reed-Cooke
22 Neighborhood Association filed the motion to

1 dismiss. We're in a support role of the case
2 for the ANC pending.

3 CHAIRPERSON MILLER: Would you say
4 that again?

5 MR. WEAVER: We are here in a
6 support role what the ANC's position is. We
7 have had a long-standing position on this and
8 that is our role here today.

9 CHAIRPERSON MILLER: Okay. You're
10 with the ANC?

11 MS. GALLAGHER: No, I'm with the
12 Reed-Cooke Neighborhood Association.

13 CHAIRPERSON MILLER: You're with
14 Reed-Cooke Neighborhood Association, both of
15 you. Is the ANC here?

16 MR. WEAVER: I am the ANC.

17 MS. GALLAGHER: He is the ANC. We
18 have done this in support of each other for
19 both the motions and the reason for asking for
20 judgment on this as well.

21 CHAIRPERSON MILLER: Okay. I have
22 in opposition by Reed-Cooke Neighborhood

1 Association motion to dismiss. I thought it
2 was addressed to DDOT's motion to dismiss.

3 MS. GALLAGHER: It is addressed to
4 DDOT's motion to dismiss.

5 CHAIRPERSON MILLER: My question
6 is did you all file an opposition to the
7 intervenor's motion to dismiss as well or
8 basically your arguments in this opposition
9 apply to --

10 MR. WEAVER: The arguments other
11 than the timeliness issue will apply to both.

12 CHAIRPERSON MILLER: Right.
13 Exactly. They both address subject matter
14 jurisdiction. Are you going to -- you will
15 have a chance to respond to the timeliness
16 issue here then verbally. All right.

17 Mr. Collins, do you want to argue
18 your motion?

19 MR. BISHOP: I'm going to start
20 off by speaking quickly to the motion which
21 I'm the one who submitted that on behalf of
22 Erie Associates. The first point being that

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1 the decision by the Public Space Committee
2 which we support and agree with did not have
3 anything to do with administering or enforcing
4 the zoning regulations. That was a fair and
5 just decision.

6 The second is the timeliness issue
7 that the appeal was filed much later than it
8 was allowable to. We are making that motion
9 to dismiss in support of DDOT's subsequent
10 motion to dismiss.

11 MR. COLLINS: Madam Chair, if I
12 may just add a few comments on that. The
13 April 29th letter from Erie Associates raises
14 the two points that Mr. Bishop mentioned, that
15 BZA is not the appropriate forum for a
16 challenge to a decision by the Public Space
17 Committee of DDOT and that the motion is
18 untimely.

19 Both the D.C. code and the
20 regulations lay out what the BZA's appeal
21 authority is and they have jurisdictional
22 appeal where it is alleged by an appellant

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1 that there is an error in any order requiring
2 a decision, etc. in the administration or
3 enforcement of the zoning regulations.

4 It's a technical matter here in
5 the opposition that the Public Space Committee
6 did not -- was not interpreting or enforcing
7 the zoning regulations when they took their
8 action. And there is no allegation in the
9 pleading that was filed by the appellant here
10 that there was a decision.

11 In the opposition to the motion to
12 dismiss that was filed by the Reed-Cooke group
13 they did attempt to create a nexus between
14 that but I honestly don't think that there is
15 a nexus there between what the public space
16 committee did and the zoning regulations. The
17 fact that there is parking really doesn't --
18 there is parking but that fact by itself does
19 not pull in the zoning regulations.

20 Secondly, if the Board does find
21 that there is a nexus, the appeal was not
22 timely filed, the decision of the Public Space

1 Committee was February 22nd of '07 and the
2 appeal was filed eight months later in October
3 on October 19th. Section 3112.2 of the
4 regulations is very clear on this that the
5 appeal must be filed within 60 days of the
6 decision or notice of the decision appealed
7 from

8 There are actually two cases that
9 I would like to bring to the Board's attention
10 and I'll just refer them and bring the copies
11 up to you. I'll bring the copies up and then
12 I can discuss them.

13 These decisions which you are
14 getting now are two decisions by the Board.
15 One is 17391 -- Appeal No. 17391 which is from
16 2006. The second is 17468, also from 2006.
17 I'll take the first one, 17391.

18 If you look at page six of that
19 order, you will see a simple statement that is
20 highlighted in yellow that this Board has said
21 time and again is that the D.C. Court of
22 Appeals has held that the timely filing of an

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1 appeal with the BZA is mandatory and
2 jurisdictional. Therefore, if the appeal is
3 untimely, the Board has no jurisdiction. It
4 cites the Mendelssohn case from 1994.

5 On the second case I've handed to
6 you, 17468, if you look on page 3 you will see
7 some highlights there dealing with two issues.
8 The first is on the second full paragraph
9 under conclusions of law where the Board noted
10 that the appellant in that case was appealing
11 the issuance of permits or approvals not
12 related to zoning.

13 In this case they were electrical,
14 fire, plumbing, and mechanical trade
15 approvals. The Board observed there that none
16 of these approvals were based in whole or in
17 part on the zoning regulations but on the
18 building code. That's kind of where we are
19 with this case. Accordingly, the Board would
20 not have subject matter jurisdiction over the
21 decisions alleged to be the subject of this
22 appeal.

1 Then further on down the last full
2 paragraph of that page where the Board again
3 reiterates its point that an appeal must be
4 filed in 60 days from the date the person
5 filing the appeal had notice or knew of the
6 decision or reasonably should have known
7 whichever is earlier. And then proving that
8 the Board has no jurisdiction to hear an
9 untimely appeal citing an earlier case --
10 actually, a later case, the Waste Management
11 case of Maryland.

12 The Board clearly in the past has
13 observed two things. No. 1, if an appeal is
14 based upon something other than zoning
15 regulations, the Board has no subject matter
16 jurisdiction and then an appeal that is not
17 timely filed does not vest the Board with
18 jurisdiction.

19 Stated another way, the Board has
20 no jurisdiction if the appeal is untimely.
21 Those are technical issues having nothing to
22 do with the merits of the appeal but that is

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1 the position that the Board has taken
2 consistently in the past.

3 CHAIRPERSON MILLER: Have you
4 concluded?

5 MR. COLLINS: Sorry?

6 CHAIRPERSON MILLER: Have you
7 concluded?

8 MR. COLLINS: Yes.

9 CHAIRPERSON MILLER: I just wanted
10 to ask you one question. With respect to the
11 subject matter jurisdiction as to what
12 regulation, the appellant is alleging -- has
13 interpreted or implied or whatever where it
14 says, "A vehicular access and egress shall be
15 designed and located so as to minimize
16 conflict with pedestrian ways to function
17 efficiently and to create no dangerous or
18 otherwise objectionable traffic condition."
19 Then I believe that comes from 1403.1(b).

20 MR. COLLINS: That has to deal
21 with when you need an exception from those
22 regulations. Since this project did not

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1 require an exception, that doesn't bootstrap
2 the jurisdiction. It's been our position that
3 if the Zoning Commission in its wisdom wanted
4 to preclude curb cuts in the Reed-Cooke
5 Overlay they could have done so as they did in
6 the Dupont Circle overlay in the downtown
7 development district but they did not do so in
8 the Reed-Cooke Overlay.

9 CHAIRPERSON MILLER: Can you refer
10 us to that?

11 MR. COLLINS: Sure. If you look
12 at the letter from Erie Associates on page 2,
13 the second full paragraph, you'll see that the
14 final sentence in that second full paragraph
15 on page 2 of that April 29th letter indicates
16 the two sections 1505 in the Dupont Circle
17 overlay and Section 1701.4 in the downtown
18 development district overlay where the Zoning
19 Commission did specifically preclude curb cuts
20 in certain instances.

21 Had they wanted to do so in the
22 Reed-Cooke Overlay they could have done so but

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1 they did not. The bottom line is there is no
2 preclusion of curb cuts in the Reed-Cooke
3 Overlay.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 Any questions? Okay. Would you
7 like to argue your opposition to the motion to
8 dismiss?

9 MS. GALLAGHER: Sure. First of
10 all, on the jurisdiction we would hold that
11 you actually do have jurisdiction because you
12 do have jurisdiction over the -- I'm sorry.
13 You do have jurisdiction over the parking
14 regulations under Title 11, Chapter 31,
15 Section 2101 of the zoning regulations.

16 We would hold that in addition to
17 this meeting they are able to meet the zoning
18 regulations for this as one for each two
19 dwellings by having a safe access and egress
20 to the back of the building.

21 In order for them to -- this was
22 for additional parking spaces over and above

1 the one to two that they needed for the front
2 of the building for the curb cut which we
3 would also maintain also inhibits safety in a
4 very densely populated area of the Reed-Cooke
5 Overlay as well.

6 Both of those you have
7 jurisdiction over, the zoning regulations for
8 the Reed-Cooke Overlay and the parking. As
9 far as the timeliness goes, the Reed-Cooke
10 Neighborhood Association filed. In March we
11 said that we would file the resolution that
12 said that we would join with the ANC in
13 opposing this curb cut as well as their
14 appeal.

15 I am going to let Brian talk to
16 you about all of the steps that they went
17 through over the timeliness issue of trying to
18 appeal this and all of the issues that he had
19 gone through which we were a party to as well.

20 CHAIRPERSON MILLER: Let's take
21 the issues separately because that is less
22 confusing. With respect to subject matter

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1 jurisdiction, I mean, in general BZA has
2 jurisdiction over a lot of things like
3 driveways and parking and heights and
4 whatever.

5 When we are talking about appeals,
6 you know, we are looking specifically at that
7 language and it talks about an "administrative
8 decision based in whole or in part upon any
9 zoning regulation." I'm reading from what you
10 submitted.

11 MS. GALLAGHER: Right.

12 CHAIRPERSON MILLER: In general
13 that language goes to an interpretation or
14 enforcement or administration of a specific
15 zoning regulation where you would be alleging
16 that person made an error in interpreting or
17 implying that zoning regulation. What zoning
18 regulation did DDOT misapply or misinterpret?

19 MS. GALLAGHER: I would say that
20 they missed -- in addition to the parking one
21 they misinterpreted the Reed-Cooke Overlay for
22 pedestrian safety which was the one we cited

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1 on 14 -- I'm sorry, 1400.4. I'm sorry,
2 1400.2(c) to protect an adjacent nearby
3 residence from damaging, traffic, parking,
4 environmental, social and aesthetic impacts.

5 CHAIRPERSON MILLER: You are
6 saying that they violated the purpose of --

7 MS. GALLAGHER: Yes.

8 CHAIRPERSON MILLER: Okay. In
9 general the purpose regulations are used to
10 actually interpret other regulations in the
11 zoning regulations. Okay. I'll let you go
12 from there. 1400.2(c) is what you are citing
13 that DDOT violated the purpose of the RC
14 Overlay district. Okay. Any other zoning
15 regulation?

16 MS. GALLAGHER: No, that's it.

17 MR. WEAVER: Madam Chair, ANC-1C
18 from the time the curb cut was originally
19 proposed in 2003 we have reiterated
20 continually our opposition to the curb cut and
21 part of our citing has been zoning.

22 We have continually cited that the

1 location of the application falls within the
2 boundaries of Chapter 14 of the Reed-Cooke
3 Overlay, that it's R-5-B and having met the
4 requirements under Title 11, 2101 providing
5 one parking space for two dwelling units.
6 An additional four parking spaces underground
7 through a curb cut would be in contradiction
8 and violation of Title 11 1404.

9
10 CHAIRPERSON MILLER: Did you say
11 1404?

12 MR. WEAVER: Sorry, 1400.4.

13 CHAIRPERSON MILLER: Okay, hold
14 it. We want to take a look at that. "Where
15 there are conflicts between this chapter and
16 the underlying zone district the more
17 restrictive regulations shall govern." That's
18 what was violated?

19 MR. WEAVER: The argument has been
20 that if you have a dwelling, if you have an
21 apartment building that had 20 some units that
22 has been downsized to make eight high-end

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1 condo units and there were six or seven off-
2 street parking spaces available already that
3 the idea of a curb cut to create four more
4 violates the intent of zoning which is to
5 create more parking spaces beyond what is
6 already required within zoning. They were
7 already within what was required within
8 zoning.

9 CHAIRPERSON MILLER: Where does it
10 say you can't have more parking spaces than
11 what is required?

12 MR. WEAVER: I think that is where
13 we lead into the Reed-Cooke Overlay. That's
14 where we are saying now you are creating --
15 you are now creating a problem for members of
16 the public. You are creating a pedestrian
17 safety which is part of the Reed-Cooke Overlay
18 is to protect citizens based on pedestrian
19 safety in the neighborhood.

20 Having a residential neighborhood
21 that creates curb cuts on places that are low-
22 impact, high-density neighborhoods will create

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1 a neighborhood of curb cuts. This seemed
2 contradictory to almost everything that has
3 come forward from zoning.

4 CHAIRPERSON MILLER: I guess DDOT
5 also has a motion to dismiss on subject matter
6 jurisdictions. When you are finished with
7 this argument, I think I'll bring them in
8 before we get to your timeliness argument.

9 MR. WEAVER: That's fine.

10 CHAIRPERSON MILLER: I would just
11 ask you is pedestrian safety an issue in every
12 district? Why is it more of an issue in the
13 Reed-Cooke Overlay?

14 MR. WEAVER: It is specifically
15 stated within the Reed-Cooke Overlay.

16 CHAIRPERSON MILLER: Probably in
17 that special exception provision.

18 MS. GALLAGHER: It is in that
19 special exception provision.

20 CHAIRPERSON MILLER: Okay.
21 1403.1(b). Right?

22 MS. GALLAGHER: Yes.

1 CHAIRPERSON MILLER: Okay.
2 Anything else you want to argue on the subject
3 matter jurisdiction before we bring DDOT in?

4 MR. WEAVER: Not at this time.

5 CHAIRPERSON MILLER: Any other
6 questions right now? Okay.

7 MR. BROWN: Yes, Madam Chair. I
8 would like to first before I go into my motion
9 make an objection to this court of 1403.1(b)
10 simply because in preparation for this when we
11 first received the appeal from the Reed-Cooke
12 Neighborhood Association there were no
13 particular violations or zoning regs that were
14 cited so we were kind of clueless as to what
15 particular claims we were posing.

16 Then when we did receive a filing
17 on those particular cites, 1403.1(b), unless
18 I'm overlooking it, was not part of the
19 opposition memorandum.

20 We did not have an opportunity to
21 address those particular cites and I don't
22 think we can continue to expand the argument

1 beyond particularly the initial filings. I
2 just wanted to make that objection noted on
3 the record that we would be limited to those
4 cites that were put in the initial filings or
5 documents.

6 As it relates to our particular
7 motion to dismiss, we want to first make it
8 clear that the DDOT public space committee
9 clearly speaks to issues regarding the use of
10 the public space. The curb is within the
11 public space and they make decisions based
12 upon public or private uses of that public
13 space.

14 In that regard the particular
15 permit at issue here related to the expansion
16 of an existing curb cut which allowed access
17 to and from a preexisting off-street parking.
18 Okay, it wasn't a new curb cut. It just
19 expanded an existing one to allow more access
20 to parking that was already there and I would
21 have to go a little bit further and say that
22 particular parking that was available.

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1 I'll let the property owner speak
2 to that but this goes to the jurisdictional
3 issue that the parking had previously been
4 approved obviously through some other process,
5 DCRA, or what have you.

6 I would have to say at the outset
7 the appropriate place for any appeal should
8 have been the building plans that were
9 submitted initially to DCRA or whomever when
10 that initial process went through. Here our
11 public space committee simply did what was
12 within their jurisdiction which is grant a
13 permit for the extension of a curb cut.

14 CHAIRPERSON MILLER: Can I
15 interrupt you for a second just so I
16 understand that? There were building plans
17 that showed what? They show the expansion of
18 the curb cut or what do they show?

19 MR. BROWN: No.

20 CHAIRPERSON MILLER: No. That's
21 your decision?

22 MR. BROWN: When the public space

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1 committee considers any particular request for
2 a curb cut, and I have other individuals here
3 who sit on that committee that can speak to
4 it, they also look at plans. You have to
5 have, I guess, a plan for available parking
6 before the PSC can consider whether or not a
7 curb cut is appropriate or allowable.

8 Even if they do grant it in that
9 meeting, you never physically receive that
10 particular permit until there are some
11 approved plans by DCRA or whomever that that
12 particular usage of that private property has
13 been approved for parking. Then you get the
14 permit to allow you to have this curb cut to
15 access that particular parking.

16 What we are saying is the PSC
17 simply made a decision based upon a curb cut.
18 Did not make a decision dealing with zoning or
19 issues as to whether additional parking would
20 be provided or should be providing additional
21 parking but the fact of the matter is they had
22 plans before them that there would be existing

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1 available parking and they expanded an already
2 preexisting curb cut.

3 All the issues that emanate out of
4 that in terms of the pedestrian issues, as you
5 noted, have always been there. Any other
6 additional issues were there before the PSC
7 made it's decision in terms of the parking
8 that was available on this private property.

9 Nonetheless going in order we
10 articulated in our original filing that we
11 believed the Reed-Cooke Neighborhood
12 Association failed to initially articulate any
13 specific allegations of error in the PSC's
14 administrative decision. That was prior to us
15 receiving their actual filing of last week.
16 Consequently, we did receive that filing and
17 ultimately were able to address and look at
18 the issues that were brought before us.

19 We have filed a paper, I guess a
20 motion with an incorporated memorandum, and
21 I'm not going to go into it because I'm sure
22 the Board has it, but just for the record we

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1 have argued that this matter should be
2 dismissed because we believe this particular
3 Board likes jurisdiction to review decision to
4 grant that permit because the subject permit
5 can only expand a preexisting curb cut and
6 does not speak to any issues regarding the
7 overlay regs nor any issue regarding any
8 zoning regulations.

9 Alternatively we have argued that
10 if this body should determine that it does
11 have some jurisdiction over the issues, that
12 still it should be dismissed because there are
13 no particular violations of any zoning regs or
14 any overlay issues that we have violated.

15 Given the current opposition that
16 was filed, we also had a few other points we
17 wanted to point out. Initially I was looking
18 at the fact that the Reed-Cooke Neighborhood
19 Association alleged that the select in the
20 subject curb cut permit provide additional
21 parking. Of course, we have indicated earlier
22 that was correct.

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1 The permit only allowed the
2 expansion of something that was there already.
3 Thus, it appears that the appropriate venue
4 for the particular appeal should have been
5 earlier in the DCRA process. Nonetheless, the
6 Reed-Cooke Neighborhood also cites Title 11,
7 Chapter 31, Section 2101 of the zoning
8 regulations.

9 In that argument they indicate
10 that there is a limit on parking I think of
11 one parking for two dwellings. However, just
12 as an aside, I have reviewed the 11 2101 and
13 the initial portion, 2101.2 and 2101.3,
14 indicates that nothing in this section shall
15 limit or prohibit parking spaces in an amount
16 that may exceed 2101.1. As it relates to that
17 particular argument, I think that argument is
18 moot.

19 Lastly, the appellant also
20 attempts to argue a conflict with the Reed-
21 Cooke Overlay but this argument lacks
22 credibility as well because, as I stated for

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1 the fifth time, this particular curb cut only
2 simply expanded something that was there
3 before and obviously there were deliberations
4 made as to the legitimacy of that particular
5 plan for that private property.

6 In closing, DDOT and the PSC we
7 respectfully caution -- we would like to
8 caution this Board that should it choose to
9 review this particular matter and say it has
10 jurisdiction, then this may lead to a flood
11 gate or open a flood gate of similarly
12 improperly placed appeals before this body as
13 it relates to issues that are determined by
14 PSC relating to simply and only the public
15 space.

16 In this regard we ask that you
17 respectfully consider these argument and
18 dismiss this matter.

19 CHAIRPERSON MILLER: Okay. With
20 respect to the claim of violation of
21 1400.2(c), which is under the purposes of the
22 RC Overlay district, do any of the movers of

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1 the motions to dismiss want to address the
2 question as to whether someone can allege an
3 error of the administration of the zoning
4 regulation by alleging a violation of a
5 purpose in a vacuum not connected to any other
6 zoning decision?

7 MR. COLLINS: Madam Chair, if I
8 may address that. The purpose clause of
9 Chapter 14 is like the purpose clause of every
10 other chapter of the zoning regulations and
11 the first section of every chapter usually
12 ends with 00 and it is the section that gives
13 the purposes of the regulation which is
14 intended to give guidance in interpreting the
15 remaining portions of that chapter.

16 They are not self-effectuating.
17 They don't provide any limitations. They
18 don't tell you what the minimum or maximum are
19 or what you may do. They are policy decisions
20 and they are not the type of things that you
21 can -- they don't give any specific guidance
22 to an architect or a designer or anyone else.

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1 They simply provide policy statements and
2 guidance in interpreting the regulations.

3 If there is nothing that they are
4 tied to specifically that says based upon, for
5 instance, issues of public safety that you
6 must not allow -- we do not allow curb cuts or
7 we do not allow new curb cuts, we do not allow
8 more parking than what is required by the
9 regulations, if that is found in the
10 regulation, then that would be appropriate.

11 There is nothing that ties the
12 purpose to a specific provision that has been
13 cited in this appeal other than Section
14 1403.1(b) which is a section dealing with when
15 you need a special exception and this case did
16 not require a special exception.

17 CHAIRPERSON MILLER: Thank you.
18 That is my understanding as well. There
19 aren't any standards that are specific enough
20 to find that someone violates a purpose, a
21 clause like that.

22 Is there anything else anyone has

1 to add to the subject matter jurisdiction?
2 Otherwise, we will go to the timeliness
3 question. That was just a statement I was
4 making. We are obviously going to deliberate
5 the motion either today or another day.

6 MR. WEAVER: Sure. Two things the
7 ANC would like to bring to the attention of
8 the Board. One is in dealing with this curb
9 cut, it is the expansion of a curb cut. The
10 expansion of the curb cut is to a different
11 property. It's a nonconforming curb cut that
12 was made pre-1984 to a building that doesn't
13 meet any of the current statuses.

14 It's not this property's curb cut.
15 There was an attempt to create the curb cut
16 there. In bringing it to the BZA's attention,
17 part of what our arguments have been has been
18 that this is not an appropriate use, not an
19 appropriate area.

20 Residential areas that are that
21 dense, Adams Morgan, Mt. Pleasant, Columbia
22 Heights, to have curb cuts in front of

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1 people's homes is not an appropriate use for
2 the creation of parking. It was a
3 nonconforming curb cut that happened there.

4 It's been the policy of this ANC
5 reflected in the comprehensive plan to work
6 against curb cuts to try to work away from
7 some of the parking requirements that we are
8 seeing in many of these overly dense
9 neighborhoods and try to create more towards
10 mass transit, Flexcard, Zipcard, car-sharing
11 proposals which we think is completely in what
12 the comprehensive plan is looking at. The
13 mid-city portions of the comprehensive plan
14 reflect a lot of work that this ANC did. It's
15 inappropriate use.

16 As far as arguments of zoning,
17 these arguments of zoning were made at PSC.
18 We have no idea what relevance they would have
19 had at that moment. We talked there being
20 substantial parking for this applicant already
21 in this, that a curb cut was inappropriate.

22 It is a neighborhood that had an

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1 overlay. It is a neighborhood that had issues
2 with parking. Taking away 24 feet of curbside
3 parking was an inappropriate use for a densely
4 populated neighborhood when you already have
5 seven or eight spaces available in the back.

6 As to the Reed-Cooke Overlay or to
7 the zoning regulations, I guess in a certain
8 sense it would be a vacuum but if we are
9 making that argument before the Public Space
10 Committee, we are not just pulling this out of
11 the air.

12 We are saying at this moment at
13 public space these are the reasons why this
14 curb cut should not be allowed. These are the
15 reasons why it's an inappropriate use. These
16 types of parking situations in Adams Morgan
17 you can't take away public space to create
18 private spaces.

19 We think it's an inappropriate use
20 and we think that it was reflected in the
21 Reed-Cooke Overlay and in the zoning
22 regulations. These are arguments that we made

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1 before the Public Space Committee and so it
2 was only logical if those were not taken into
3 consideration that we would have to come to
4 appeal this here.

5 CHAIRPERSON MILLER: What other
6 option of appeal do you have for Public Space
7 Committee decision?

8 MR. WEAVER: We appealed to the
9 chair. We appealed to the Mayor. We appealed
10 to zoning. We were told by Denise Wiktor, the
11 former manager of the Public Space Committee,
12 that we had to take it to the courts full well
13 knowing that ANCs are not allowed to take
14 things to public courts. Our hands became
15 completely tied in the situation and BZA was
16 one of the last best places for us to make
17 this argument.

18 CHAIRPERSON MILLER: Reed-Cooke
19 Overlay could go to court, though.

20 MR. WEAVER: They could go to
21 court but up until this moment, up until this
22 stuff we have been the sole person asking to

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1 be heard on this and asking for a written
2 decision on this.

3 MS. GALLAGHER: Reed-Cooke can go
4 to court on this and we are fully aware of
5 that but we wanted to make sure with the ANC
6 that we exhausted all administrator avenues
7 that we could before we take it to court.
8 That is kind of our last resort.

9 MR. DETTMAN: Can I ask a quick
10 question of DDOT? Not having any idea what
11 the public space permit process is, Mr. Brown
12 -- it's Brown, right?

13 MR. BROWN: Yes.

14 MR. DETTMAN: You mentioned DCRA
15 or something like that. When a public space
16 permit is being processed is that sent to DCRA
17 for a review? This is just sort of a general
18 question.

19 MR. MARKOU: Commissioner Dettman,
20 if I can, my name is Matt Markou. I'm the
21 public space manager. I am in the position
22 that Denise Wiktor was in at the time the

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1 committee made its decision. Let me clarify
2 a little bit about the public space committee
3 itself.

4 It actually is not a DDOT body.
5 It is a body comprised of members from a
6 variety of agencies within the District
7 government. There's a representative from the
8 District Department of Transportation who
9 chairs the committee. Deputy Associate
10 Director Ann Simpson-Mason is currently the
11 chair of the committee.

12 There is a planner from the
13 District Department of Transportation who sits
14 on the committee. There is a member from the
15 Department of Consumer and Regulatory Affairs
16 who sits on the committee. There is a member
17 of the Executive Office of the Mayor, the
18 Office of the Secretary, who sits on the
19 committee.

20 There is also a member of the
21 Office of Planning who sits on the committee.
22 It is actually multi-jurisdictional and multi-

1 agency so it has a variety of inputs to the
2 decisions that the committee makes. DDOT is
3 essentially the administrative body that
4 handles the day-to-day tasks of the committee.

5 The material that comes before the
6 Public Space Committee is quite broad. ANCs
7 are notified of every Public Space Committee
8 item as are roughly a dozen or more different
9 bodies within the government. It involves
10 DCRA for appropriateness of fire code.

11 It involves DCRA on the committee
12 itself so in terms of DCRA those are the two
13 primary bodies who would sit in and hear the
14 case. And to clarify the process regarding --
15 well, I think that answered your question. I
16 don't know if you need more.

17 MR. DETTMAN: When looking at a
18 public space permit application does anybody
19 do sort of a zoning analysis on it to make
20 sure that it doesn't violate any sort of
21 zoning reg?

22 MR. MARKOU: To be specific about

1 driveways, to speak specifically to driveways,
2 one of the issues that we deal with regarding
3 driveways is to ensure that there is private
4 -- that there is parking on private property
5 that is served by the driveway. In other
6 words, our premise is that the driveway serves
7 private property.

8 Therefore, since it serves private
9 property, the issue regarding the
10 appropriateness of the parking on the private
11 property is a matter that is dealt with by the
12 Department of Consumer and Regulatory Affairs
13 which has the Office of the Zoning
14 Administrator. The premise is if there are
15 parking issues the appropriate place to bring
16 that question forward is with DCRA because it
17 is the one that is approving a building plan.

18 We have run into this actually not
19 infrequently with a variety of curb cut issues
20 but we always direct that to DCRA and to the
21 Office of the Zoning Administrator within DCRA
22 for review and analysis for any entity who is

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1 concerned about that aspect of it. We do work
2 hand in hand with them on a variety of issues
3 but we don't normally send our driveway
4 applications to them for review and comment.

5 MR. BROWN: I would like to add at
6 the end because that's a separate process and
7 the curb cut only deals with the public space
8 issues that are jurisdictionally before PSC,
9 the Public Space Committee.

10 MR. DETTMAN: Okay. I'm just
11 trying to think this through. Yes, it is a
12 curb cut in public space and that is what you
13 look at but it is also a driveway. The regs
14 do have some very specific things about the
15 location of a driveway.

16 I can't see a situation where a
17 public space committee could approve a curb
18 cut when it's closer than 25 feet to an
19 intersection which would be a violation of the
20 zoning regs. I'm just trying to get a general
21 sense. Was this sent over to BZA or someone
22 and they came back and said, "It looks good

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1 from a zoning perspective."

2 The public space committee used
3 that information to make their decision
4 because in that sense there was a
5 determination made but it would not be you.
6 It would be someone else making that
7 determination.

8 MS. SIMPSON-MASON: No,
9 commissioner. The applications are sent to a
10 variety of review agencies and they are given
11 a 30-day review and comment period. When the
12 Public Space Committee meets once a month, all
13 of that information is presented to us and we
14 make a decision based on comments from those
15 various agencies.

16 MR. DETTMAN: And so from a zoning
17 perspective the Public Space Committee is not
18 necessarily making any determinations with
19 respect to a zoning reg. If there is a
20 determination being made, it would be done by
21 DCRA through the zoning administrator.

22 MS. SIMPSON-MASON: Exactly.

1 MR. MARKOU: Actually, there is
2 one point I want to clarify. Our policy in
3 the Department of Transportation is actually
4 more strict than zoning regulations regarding
5 the location of driveways. In many ways our
6 regulations will not supersede zoning
7 regulations but will go beyond them.

8 For example, our current
9 requirements are, I believe, 60 feet from an
10 intersection. We are aware of there being
11 zoning regulations regarding where parking
12 location can occur so we do notify applicants.
13 For example, we know that parking must occur
14 on the side or in back of a property as
15 opposed to in front of a property even if it's
16 a setback from the property line.

17 Parking is not allowed in public
18 space so we do ensure that is part of the plan
19 that is presented to us but we are not passing
20 on the portion of the plan that shows the
21 parking on private property. We leave that
22 with DCRA.

1 MR. WEAVER: See, this becomes
2 part of our frustration over this because we
3 now have a public space that is being used for
4 entrance and regress from a building that had
5 appropriate zoning regulated parking in the
6 back that we alley accessed.

7 All of the documentation including
8 anything that came from the ZA's office that
9 we have asked for time and time again we've
10 seen none of this from the Department of
11 Transportation. To this very moment I have no
12 idea why the Public Space Committee voted the
13 way that it did.

14 CHAIRPERSON MILLER: I asked you
15 before what other avenues of appeal you have
16 because I was trying to figure out what is
17 basically the meat of your concern. I mean,
18 you called it a zoning concern but just
19 because you're in the overlay but, other than
20 that, if it's a safety concern --

21 MR. WEAVER: There's an element to
22 it that is a safety concern but also it's just

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1 a completely inappropriate use for
2 neighborhoods. Anyone who lives in a
3 neighborhood that is dominated by rowhouses
4 can't think of people coming through and
5 putting curb cuts in front of the rowhouses.

6 Adams Morgan and Mt. Pleasant see
7 a lot of those homes being converted into four
8 condo, five condo apartment buildings which
9 used to be single-family homes. This was an
10 apartment building that had 20 some residents
11 and met the zoning requirement with the
12 parking that it had in the back.

13 It flips to a high-end condo use
14 of eight units and now all of a sudden we have
15 to have 12 spaces so we went from bear minimum
16 zoning requirement vis-a-vis parking into
17 something that is now going to have a larger
18 community impact which is removal of 24 feet
19 of parking in front of the building.

20 Where do we go with this? We were
21 originally told to appeal it to the director.
22 The director told us that we would have to

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1 take it to ZA. ZA said that we should take it
2 to you. The Mayor's office has us meet with
3 the Deputy Mayor's office. They asked why it
4 was no longer in the Board of Commissions.

5 There used to be oversight
6 hearings of the Board of Commissions for one
7 of their interagency conflicts. The Public
8 Space Committee no longer is part of that
9 interagency conflict. Denise Wiktor suggested
10 that we had to take it to court. It's been
11 the football that everyone wants to kick down
12 the road to someone else.

13 CHAIRPERSON MILLER: Well, before
14 we deliberate, I will just say it sounds to me
15 like there may not be a violation of any
16 regulation but that it may be something that
17 shouldn't be. Maybe you think there should be
18 a regulation that prevents what you are
19 concerned about and there just may not be one
20 right now.

21 MR. WEAVER: If we look at any of
22 the traffic elements or midtown elements to

1 the comprehensive plan, there is no way that
2 what happened at the Public Space Committee
3 would be what the master plan is supposed to
4 be for the city.

5 If each agency of the government
6 continues to kick the football down the road
7 and no one is going to take ownership for
8 individual decisions, you are going to allow
9 the public space committee to do things that
10 are in complete conflict to what the
11 comprehensive plan has for the city,
12 particularly midtown congested areas of D.C.

13 CHAIRPERSON MILLER: Okay. I may
14 be getting a little conversational but I do
15 want to say that if you're not aware of it,
16 the Office of Planning is going through this
17 whole process of reviewing the zoning
18 regulations and having roundtables and input
19 on proposed languages to address in part where
20 there may be gaps and other things.

21 MS. GALLAGHER: Actually, we have
22 met with the Office of Planning on another

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1 issue but we did get into a discussion of all
2 of this as well. Because of Reed-Cooke being
3 so dense we have -- in fact, I have to write
4 a letter to the Office of Planning -- we have
5 volunteered to be a test case for their smart
6 growth, smart initiative not to offer parking
7 in our area.

8 I think we have been before this
9 Board before. I think you know parking in
10 Adams Morgan and parking in Reed-Cooke is
11 crazy so we are trying not to offer that. We
12 have developers who have also offered like one
13 met just the minimum requirements of the
14 regulation and have had outdoor parking in
15 high-end condos behind it.

16 We just didn't feel that this one
17 met those conditions to be truthful with you.
18 Yes, we fully support all of the new
19 regulations. In fact, I looked at the new
20 parking regulations before I came in to
21 comment on those as well. Yes, we do want to
22 do that.

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1 CHAIRPERSON MILLER: Okay. Other
2 questions? I guess I should get focused
3 again. If there's nothing else on the subject
4 matter jurisdiction at this point, there is
5 also the question of timeliness if you want to
6 address that.

7 MR. WEAVER: The issue of
8 timeliness, and I believe the BZA has the same
9 regulations here, in D.C 1309.10 under the ANC
10 Act all decisions of government agencies and
11 boards and commissions need to be given in
12 writing. At the end of that writing period is
13 actually when the decision clock starts to
14 tick. As of today we still have not received
15 any decision from the Public Space Committee
16 as to why the ANC's great weight was
17 overturned.

18 Especially at that meeting the
19 motion that was made by one of the members of
20 the committee was to support the ANC's
21 recommendation and then was reversed without
22 note, without any sort of substance as to why

1 the ANC's great weight or what the rationale
2 was for the decision. The clock starts
3 ticking at the end of the written portion of
4 it, not the vote.

5 CHAIRPERSON MILLER: The clock for
6 filing before the Board of Zoning Adjustment
7 starts -- what?

8 MR. WEAVER: There's no written
9 decision. I mean, it's tough for me to sit
10 here and argue about the zoning portion since
11 a majority of our case talked about it being
12 a violation of zoning but it wasn't accessible
13 to the Reed-Cooke overlook.

14 If I don't have the paperwork to
15 show you why the Public Space Committee
16 overruled the great weight of the ANC or
17 explained why it wasn't a violation of the
18 zoning at that time, it's tough for me to come
19 before you and say, "Watch me pull a rabbit
20 out of my hat. This is what I think they are
21 going to say," which is essentially what we've
22 done here.

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1 We are pulling the elements of the
2 arguments that we made that day which was
3 dealing with the inappropriateness of parking,
4 vis-a-vis the Reed-Cooke Overlay and that they
5 already had the substantial -- that they
6 already met the zoning requirement with one
7 space with every two households.

8 CHAIRPERSON MILLER: What are you
9 saying? You got notice of a decision but it
10 wasn't a written decision?

11 MR. WEAVER: They voted from the
12 dias but there was no decision. There was no
13 meat to it. We were told there was going to
14 be a written decision and we have continually
15 asked for the written decision and as of today
16 we still have not received a written decision.

17 MS. GALLAGHER: Also the ANC
18 through this process, and I think Brian
19 alluded to it a couple of times before, went
20 to several different agencies as well back to
21 the director to appeal the decision, back to
22 the Mayor's office.

1 This all took a lot of time as
2 well so it wasn't like we just dropped the
3 ball right then and there and didn't do
4 anything about the decision from the dias and
5 at the same time asking for the actual written
6 decision.

7 In fact, through this process I
8 asked for it as well because Reed-Cooke
9 Neighborhood Association didn't receive
10 anything either. I was told that I would get
11 it before this hearing. As Brian said, we do
12 not have any explanation as to why they made
13 their decision.

14 CHAIRPERSON MILLER: Just to be
15 clear, you're appealing the decision as voted
16 upon in public. Is that it? How did you
17 decide when to appeal?

18 MR. MARKOU: At the point that we
19 had gone to essentially every agencies of the
20 District of Columbia asking for a written
21 decision, that this was a violation of the
22 law. There is a whole other side to this

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1 which is we feel it was an improper decision
2 at the public space committee.

3 In asking that and seeing that
4 this plan was going to go forward and us
5 having a series of zoning questions, the Reed-
6 Cooke Neighborhood Association essentially has
7 come forward to appeal the decision that this
8 was not an appropriate use with vis-a-vis
9 zoning.

10 The ANC we are a little bit left
11 out in the dark. Until someone in the
12 District of Columbia, be it the Department of
13 Transportation, be it the Public Space
14 Committee, be it the Mayor's office, actually
15 gives us written ability to tell us why this
16 decision was turned down from the Public Space
17 Committee or that our rationale was wrong, why
18 our great weight was not taken into account,
19 our hands are fairly tied.

20 CHAIRPERSON MILLER: Do either of
21 you want to address that?

22 MR. BROWN: Well, we did not file

1 a motion based upon timeliness so I think
2 really that argument is more appropriately
3 addressed by the filing.

4 MR. COLLINS: Madam Chair, the
5 letter that was filed by Erie Associates, the
6 motion to dismiss dated April 29th has some
7 attachments to it and they include requests
8 from the ANC to Director Amonimay and other
9 documents that clearly indicate that the ANC
10 certainly had notice of the decision because
11 they are asking for reconsideration of the
12 decision.

13 There are articles from newspapers
14 indicating that there was a decision. The
15 regulation requires that the appeal be made
16 within 60 days of notice of the decision or
17 knowledge of the decision, whichever occurs
18 earlier.

19 Certainly with all this public
20 attention to this decision and an appeal that
21 was filed eight months after the decision, not
22 only is there not subject matter jurisdiction

1 on the timeliness issue, this Board is, as it
2 has said in the past and as the Court of
3 Appeals has said in the past, the court is
4 without jurisdiction to hear an appeal that is
5 untimely.

6 CHAIRPERSON MILLER: I don't know
7 how public space works. Are they going to
8 come out with a written decision? I mean, if
9 you had a BZA decision it wouldn't be timely
10 until there was a written decision.

11 MR. BROWN: The public space
12 decision is final from the day it is rendered
13 from the bench. There is a process whereby
14 the public space committee if an ANC objects
15 they can give some written note of the great
16 weight it provided but it has no connection to
17 the finality of the decision. It is simply a
18 formality and curtesy to the ANC based upon
19 the objection.

20 MR. WEAVER: I would strongly
21 object to that. I think that the law is
22 barely clear. "In all cases the government

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1 entity is required to articulate the decisions
2 in writing. Written rationale decisions shall
3 articulate with particular precision the
4 reasons why commissions do not offer
5 persuasive evidence under circumstances.

6 In doing the government entity
7 must articulate finding specific conclusions
8 with respect to each issue and concern raised
9 by the commission. Further, the government
10 entity is required to support its position on
11 the record. The government entity shall
12 comprehend to the commission and respective
13 ward and the council member a copy of its
14 written decision."

15 This isn't something that public
16 space is just allowed to do. The BZA does it,
17 ABRA does it, Zoning does it. Every other
18 agency in the District of Columbia is able to
19 fulfill their obligations of the law. This is
20 the law.

21 MR. BROWN: Which law? Where are
22 you citing that from? That sounds like a

1 general provision.

2 MR. WEAVER: It's the ANC Act 1-
3 309.10.

4 MS. SIMPSON-MASON: As a curtesy
5 to the ANC -- not curtesy but I think an
6 apology and curtesy to the ANC, he is
7 absolutely right. We do after a decision send
8 the ANC the reasons how great weight was
9 applied.

10 In this case unfortunately we have
11 not and that is an apology that we make as
12 chair of the Public Space Committee. That
13 letter is being drafted and will be sent to
14 you even at this late date. You will get that
15 in writing. But to be fair about the
16 situation, the ANC did testify at the public
17 hearing that we had on this case and members
18 of the committee voted after hearing the ANC
19 and the applicant present their case.

20 It was our determination that the
21 approval of the curb cut based on the
22 information presented to us not only by the

1 applicant and the ANC but by the review
2 agencies that had provided us with comments on
3 this matter met approval or led the committee
4 to approve the curb cut.

5 MR. BROWN: But according to the
6 Mayor's order that establishes the Public
7 Space Committee, my reading of it indicates
8 that when the ANC objects the Mayor is
9 provided with a written determination.

10 There was nothing in here that
11 indicates that affects the finality of the
12 decision. My argument today would be it does
13 not affect the finality of the PSC's decision
14 if the ANC objects. The decision was rendered
15 when it was issued from the bench.

16 MR. WEAVER: Two quick points.
17 The follow-up with the directors of office and
18 with the Public Space Committee specifically
19 asked for a written order. We lined up all
20 the reasons that we thought it was a wrong
21 decision. We asked for a reconsideration to
22 the motion and we also asked for a written

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1 order to this.

2 Our belief was that because of the
3 arguments that were made by our ANC there had
4 to be reasons within zoning that was not
5 inappropriate use. So much of our case was
6 based in inappropriate use of the Reed-Cooke
7 Overlay and to the applicant already having
8 the appropriate amount of parking behind the
9 building in zoning that had to be there. That
10 would give us the footprint that we are
11 looking for to bring that case before the BZA
12 today.

13 CHAIRPERSON MILLER: Okay.
14 Anything else?

15 MR. COLLINS: I'll just make an
16 observation. Regardless of whether the order
17 was issued in writing or not issued in
18 writing, there has been no nexus establishing
19 a connection between a purpose clause and the
20 Reed-Cooke Overlay and a prohibition on curb
21 cuts or additional parking in the Reed-Cooke
22 regulations. They simply don't exist and the

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1 Board has no subject matter jurisdiction.

2 CHAIRPERSON MILLER: Okay. All
3 right. We're ready to deliberate on this. I
4 think it is pretty straightforward. I don't
5 believe that this Board has subject matter
6 jurisdiction in that the section which gives
7 us jurisdiction over appeals states that, "The
8 appeal of an administrative decision based in
9 whole or in part upon any zoning regulation or
10 map."

11 In this case the decision with
12 respect to the curb cuts, as far as I can see,
13 is not based on any zoning regulation that was
14 either cited in the pleading or referenced
15 here. The first one that we discussed here
16 was 1400.2(c) which goes to the purpose of the
17 Reed-Cooke Overlay.

18 That's what has been called
19 precatory language by the Court of Appeals and
20 it doesn't stand to standards by which you can
21 hold someone accountable under the zoning regs
22 by itself. It does have to be read in

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1 conjunction with the zoning regulations that
2 follow.

3 The Court of Appeals case that
4 does talk about precatory language is
5 Georgetown Residence Alliance v. District of
6 Columbia Board of Zoning Adjustment. That is
7 a 2002 case. That was the first regulation
8 that was mentioned here. I guess we talked
9 about 1403.1(b). That is under the special
10 exception provision and that goes to standards
11 that the Board of Zoning Adjustment is
12 supposed to apply.

13 This appeal does not go to any
14 actions by the BZA with respect to granting or
15 denying a special exception so that doesn't
16 apply. Then we talked about 2100, I guess,
17 the parking requirements, and that this
18 exceeded what was required but there was no
19 regulation that was cited that talked about
20 someone not being allowed to have an
21 additional parking space but the decision in
22 this case doesn't even go to allowing more

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1 parking spaces. It goes to the curb cut.

2 As the intervenor pointed out,
3 there are regulations in other overlays that
4 actually address curb cuts and there is not
5 one in the Reed-Cooke Overlay so we can't read
6 that into it. For that reason I don't believe
7 that this Board has subject matter
8 jurisdiction.

9 Others want to comment? Okay. I
10 don't believe that we need to even entertain
11 the question of timeliness because we are
12 finding that we don't have subject matter
13 jurisdiction. Therefore, I would move to deny
14 the Appeal No. 17746 of Reed-Cooke
15 Neighborhood Association of the decision that
16 the DDOT Office of Public Space in the alleged
17 violation of curb cut and parking requirements
18 at 2351 Champlain Street, N.W. Do I have a
19 second?

20 MEMBER WALKER: Second.

21 CHAIRPERSON MILLER: Further
22 deliberation? Okay. All those in favor, say

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1 aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining?

5 Would you call the vote, please.

6 MS. BAILEY: Madam Chair, the vote
7 is recorded as three zero two to deny the
8 motion -- I'm sorry, to deny the appeal of the
9 Reed-Cooke Neighborhood Association
10 Application No. 17746. The motion was made by
11 Mrs. Miller, seconded by Mrs. Walker, and Mr.
12 Dettman supports the motion. Mr. Loud and the
13 Zoning Commission member is not present at
14 this time.

15 CHAIRPERSON MILLER: And for
16 completeness of the record, I think I would
17 also like to move to grant the motions to
18 dismiss of the intervenor and appellee. Is
19 there a second?

20 MEMBER WALKER: Second.

21 CHAIRPERSON MILLER: Okay. All
22 those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON MILLER: All those
3 opposed? All those abstaining?

4 Would you call the vote on that
5 one also, Ms. Bailey, please.

6 MS. BAILEY: Madam Chair, the vote
7 is recorded as three zero two to grant the
8 motion of the intervenor based on timeliness.
9 Mrs. Miller made the motion, Mrs. Walker
10 seconded, Mr. Dettman supports the motion.
11 Two other Board members are not present at
12 this time.

13 CHAIRPERSON MILLER: Thank you.
14 Maybe I said this in deliberation but I think
15 Mr. Collins also said that jurisdiction is one
16 of those things that either you have it or you
17 don't so it's mandatory.

18 MS. GLAZER: Madam Chair, I'm
19 sorry but I think Ms. Bailey may have
20 inadvertently said that the Board was
21 dismissing based on timeliness.

22 CHAIRPERSON MILLER: Thank you. I

1 already had gone off in another direction.
2 Okay, no. The Board moved to dismiss based on
3 lack of subject matter jurisdiction and did
4 not reach the question of timeliness because
5 we didn't need to or could because we didn't
6 have subject matter jurisdiction. Thank you.

7 Thank you all. Sorry such a late
8 evening.

9 Ms. Bailey, anything else on the
10 agenda for tonight?

11 MS. BAILEY: No, Madam Chair.

12 Let's go home.

13 CHAIRPERSON MILLER: Okay. Thank
14 you. This hearing is adjourned.

15 (Whereupon, at 8:05 p.m. the
16 hearing was adjourned.)

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