

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

Tuesday

February 3, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 2:17 p.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 MEMBER PRESENT:

GREGORY JEFFRIES

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on February 3, 2009.

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TABLE OF CONTENTS

Application Number 17882..... 4
Opening - Chairperson Miller..... 8
Preliminary Matters..... 13
Application Number 17875..... 14
Applicant..... 15
Office of Planning..... 21
ANC..... 43
Applicant's Rebuttal and Closing..... 107
Closing - Chairperson Miller..... 206

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

2 2:17 p.m.

3 CHAIRPERSON MILLER: Okay. We're
4 back on the record and I'm going to be
5 officially opening the afternoon hearings
6 probably at 3:00 at this point.

7 We were just looking at what was
8 before us for this afternoon. There are two
9 cases on the agenda and we have an indication
10 that one case is being withdrawn. That's
11 17882 and if it is just being withdrawal, then
12 I would say that the parties can all go home
13 and we'll be taking up at 3:00.

14 However, it's not clear to me
15 whether or not the Applicant has any intent of
16 saying anything and opening up this case
17 before it's withdrawn or whether it is
18 actually withdrawn. If it is actually
19 withdrawn, then there's no action required by
20 the Board and we won't be hearing anything on
21 this case.

22 So, if the Applicant's here and you

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1 want to make a very -- just answer my
2 question, that would be great. Because the
3 Board would need to break if we're going to be
4 hearing anything substantive because we need
5 to do that. So.

6 You need to come to the -- actually
7 a microphone.

8 MS. BAILEY: Madam Chair, I don't
9 think the Applicant is here. I think the
10 people who are present at this time are from
11 the neighborhood. But, the Applicant isn't
12 actually in the room.

13 CHAIRPERSON MILLER: Okay. Then if
14 that is the case, then we have an indication,
15 do we not, Ms. Bailey, that the application
16 has been withdrawn?

17 MS. BAILEY: Yes, Madam Chair.

18 CHAIRPERSON MILLER: And then when
19 an application has been withdrawn, then
20 there's no action before the Board. Is that
21 correct?

22 MS. BAILEY: That's clear.

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1 CHAIRPERSON MILLER: Okay. That's
2 what I was trying to figure out. In this
3 case, I didn't want people to be waiting
4 around for a case that has been withdrawn.

5 Your microphone's not on, but did
6 you -- you have a question about what I just
7 said? Because we're not going to take
8 testimony related to the case because there's
9 no case. Okay.

10 Is your microphone on?

11 COMMISSIONER WILSON: Oh, push.
12 Very complicated. Dave Wilson with the --
13 Commissioner with the ANC 4A07 and you have
14 our letter opposing what now has been
15 withdrawn.

16 And the only thing I wish to say is
17 that the notice of withdrawal makes a number
18 of scurrilous statements and all I want to say
19 is that I don't want to try to respond to
20 them. Just that both as a member of the 16th
21 Street High Civic Association and as a member
22 of the ANC, my action and those of my

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1 colleagues were only to make sure that the
2 rule of law was followed. We had told the
3 church dating back to March of 2007 that there
4 is this procedure. They have to come to the
5 BZA. It took a court order and 15 months
6 before they finally filed an application and
7 then when they withdrew, they did so in a very
8 ugly fashion which is totally inappropriate.

9 So, just to repeat, for the ANC and
10 the 16th Street High Civic Association, we
11 were involved because we wanted to see the
12 rule of law followed. Beginning and end to
13 the story.

14 I appreciate your listening to me.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 Okay. So, I guess at this point we
18 will break until 3:00 and pick up with the
19 other case on the agenda for the afternoon.

20 Thank you, everyone.

21 (Whereupon, at 2:21 p.m., off the
22 record until 3:20 p.m.)

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1 CHAIRPERSON MILLER: This hearing
2 will please come to order. Good afternoon,
3 ladies and gentlemen. This is the February
4 3rd, 2009 public hearing of the Board of
5 Zoning Adjustment of the District of Columbia.

6 My name is Ruthanne Miller. I'm
7 the Chair. Joining me today to my right is
8 the Vice Chair Mr. Marc Loud and next to him
9 is Mr. Greg Jeffries from the Zoning
10 Commission. To my left is Mary Oates Walker
11 and Shane Dettman, Board Members. Also
12 joining the Board on the dais is Ms. Sherry
13 Glazer from the Office of Attorney General and
14 Ms. Beverley Bailey from the Office of Zoning
15 and Mr. Clifford Moy from the Office of
16 Zoning.

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

20 Please be aware that this
21 proceeding is being recorded by a court
22 reporter and is also webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

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

11 All persons planning to testify
12 either in favor or in opposition are to fill
13 out two witness cards. These cards are
14 located to my left on the table near the door
15 and on the witness tables.

16 Upon coming forward to speak to the
17 Board, please give both cards to the reporter
18 sitting to my right.

19 The order of procedure for special
20 exceptions and variances is as follows. One,
21 statement and witnesses of the applicant.
22 Two, government reports including Office of

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1 Planning, Department of Public Works, DDOT, et
2 cetera. Three, report of the Advisory
3 Neighborhood Commission. Four, parties or
4 persons in support. Five, parties or persons
5 in opposition. Six, closing remarks by the
6 applicant.

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

15 These time restraints do not
16 include cross examination and/or questions
17 from the Board. Cross examination of
18 witnesses is permitted by the applicant or
19 parties.

20 The ANC within which the property
21 is located is automatically a party in a
22 special exception or variance case.

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1 Nothing prohibits the Board from
2 placing reasonable restrictions on cross
3 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 the
15 public hearing on each case be held in the
16 open before the public. The Board may
17 consistent with it's rules of procedure and
18 the Sunshine Act enter into executive session
19 during or after the public hearing on a case
20 for purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

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1 contested cases must be based exclusively on
2 the public record. To avoid any appearance to
3 the contrary, the Board requests that persons
4 present not engage the members of the Board in
5 conversation.

6 Please turn off all beepers and
7 cell phones at this time so as not to disrupt
8 these proceedings.

9 The Board will make every effort to
10 conclude the public hearing as near as
11 possible to 6:00 p.m. If the afternoon cases
12 are not completed at 6:00 p.m., the Board will
13 assess whether it can complete the pending
14 case or cases remaining on the agenda. I
15 don't think that will be the case this
16 afternoon hopefully.

17 At this time, the Board will
18 consider any preliminary matters. Preliminary
19 matters are those that relate to whether a
20 case will or should be heard today such as
21 requests for postponement, continuance or
22 withdrawal or whether proper and adequate

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1 notice of the hearing has been given. If
2 you're not prepared to go forward with a case
3 today or if you believe that the Board should
4 not proceed, now is the time to raise such a
5 matter.

6 Does the Staff have any preliminary
7 matters?

8 MS. BAILEY: Madam Chair, Members
9 of the Board, to everyone, good afternoon.

10 None at this time, Madam Chair.

11 CHAIRPERSON MILLER: Thank you. I
12 believe we did have a withdrawal for the
13 afternoon case and that's already been taken
14 care of.

15 Okay. Would all individuals then
16 wishing to testify today either in favor or in
17 opposition please rise to take the oath and
18 Ms. Bailey will administer it.

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 this afternoon will be the truth, the whole

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1 truth and nothing but the truth? Thank you.

2 CHAIRPERSON MILLER: Okay. We have
3 just one case remaining for the afternoon and,
4 Ms. Bailey, I think we're ready for you to
5 call it.

6 MS. BAILEY: Yes, Madam Chair, it's
7 Application 17875 which is the Application of
8 BB & H Joint Venture on behalf of Potomac
9 Foods Company pursuant to 11 DCMR 3104.1 for a
10 special exception to permit the continued use
11 of an accessory parking lot serving a burger
12 King restaurant under section 214. The
13 property's zoned R-1-B. It's located in the
14 rear of 4422 Connecticut Avenue, N.W., Square
15 1797, Lot 822.

16 And just prior to -- moving on,
17 Madam Chair, I just wanted to make sure that
18 the Board did have two items and that is the
19 report from the Department of Transportation
20 and there is a resolution from ANC 3F. I have
21 additional copies of the ANC's resolution, but
22 just wanted to make sure the Board did have

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1 those two documents.

2 CHAIRPERSON MILLER: Okay. So, we
3 all have those documents. Correct. Okay.

4 Would you all introduce yourselves
5 for the record please and you need to put your
6 microphones on.

7 MS. BEGUN: Good afternoon. My
8 name is Laura Begun. My -- do you want my
9 address as well? My business address is
10 Troutman Sanders, LLP, 1600 International
11 Drive, McLean, Virginia 22102. I am an
12 attorney representing the applicant, BB & H
13 Joint Venture and with me is Clara Willis.
14 I'll have her introduce herself.

15 MS. WILLIS: My name is Clara
16 Willis and I'm a District Manager with Potomac
17 Foods Group and I'm a District Manager for the
18 Burger King at Connecticut Avenue and our
19 office is in Gaithersburg, Maryland.

20 CHAIRPERSON MILLER: Okay. And I
21 believe the ANC is here also. Correct? Okay.
22 So, we'll call you up here when it's your

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1 time.

2 So, you're here under 214. Am I
3 correct?

4 MS. BEGUN: That's correct.

5 CHAIRPERSON MILLER: And I know
6 that you've been operating under an existing
7 BZA order and that's one of several that
8 you've been operating under over the years.

9 MS. BEGUN: That's also correct.

10 CHAIRPERSON MILLER: Okay. I think
11 very quickly we should see how you meet 214.
12 I don't think there's much opposition about
13 that, but I think that you might as well go
14 through that quickly.

15 MS. BEGUN: Absolutely, I think
16 that the most concise way to address your
17 question would just be to reference our
18 prehearing statement. I apologize for the
19 lack of page numbers on our prehearing
20 statement, but under Section 5, then there's a
21 Section B and those outline our -- Applicant's
22 proposal for how we comply with Section 214

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1 and I'm happy to state those on the record if
2 it would be helpful.

3 CHAIRPERSON MILLER: Okay. Just
4 looking through them, I think there was a
5 question about your not meeting exactly the
6 screening requirements under 2300.

7 MS. BEGUN: I'm sorry. Can you
8 repeat that please?

9 CHAIRPERSON MILLER: Under 214.5,
10 number 4 under your Section 214, when we get
11 to 214.5 --

12 MS. BEGUN: I'm --

13 CHAIRPERSON MILLER: -- the parking
14 lot satisfies the requirements of Chapter 23
15 of the Zoning Regulations.

16 MS. BEGUN: Okay.

17 CHAIRPERSON MILLER: I think
18 there's an issue that you may not satisfy the
19 screen regulation, but that you received a
20 waiver from this requirement in a past
21 application.

22 MS. BEGUN: I see where you're

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1 referring to and the 42-inch high wall. If I
2 could direct your attention also to the report
3 submitted by the Office of Planning, I think
4 that clarifies. We would adopt the
5 representations of the Office of Planning with
6 respect to condition -- that condition and let
7 me turn to it and I can read -- state it for
8 the record if that's helpful.

9 I'm on page 5 of the report from
10 the Office of Planning. I apologize. I think
11 that's page 4.

12 CHAIRPERSON MILLER: I guess I have
13 two points. One is --

14 MS. BEGUN: Page 3.

15 CHAIRPERSON MILLER: -- I'm not
16 sure that -- you say in your statement that
17 you received a waiver from this requirement in
18 a past application, but there's no past
19 application that shows that you actually did.
20 Though, maybe they did and didn't say it.

21 MS. BEGUN: Okay.

22 CHAIRPERSON MILLER: So -- but, in

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1 any event I think it's up to this Board since
2 this is a renewal at this point --

3 MS. BEGUN: Um-hum.

4 CHAIRPERSON MILLER: -- to make a
5 finding to waive it here in order for you to
6 comply with it.

7 MS. BEGUN: Okay.

8 CHAIRPERSON MILLER: So, I gather
9 that the grounds that you're putting forth are
10 -- is the statement the property remains
11 adequately buffered from adjacent residential
12 uses by wooden fences, garage wall and
13 landscaping such as trees and bushes.

14 MS. BEGUN: That is correct.

15 CHAIRPERSON MILLER: And then
16 you're also referring us to the Office of
17 Planning's point that there's an effective
18 visual screen by the existing trees and
19 structures at the top of the slope as well as
20 the slope itself that they state on page 4 of
21 their report.

22 MS. BEGUN: Pages 3 and 4 I believe

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1 of --

2 CHAIRPERSON MILLER: Okay.

3 MS. BEGUN: -- of the report.

4 CHAIRPERSON MILLER: On 3 as well.

5 Okay.

6 MS. BEGUN: Just because at Section
7 2 on 4.5, there is a reference to Chapter 23
8 standards are reviewed below and I just want
9 to incorporate that reference.

10 CHAIRPERSON MILLER: Okay. So,
11 basically, you want to stand on the record for
12 the rest of the -- meeting the requirements of
13 214.

14 MS. BEGUN: That's correct.

15 CHAIRPERSON MILLER: Okay. That's
16 fine. Does the ANC have any cross examination
17 for the Applicant? Oh, do the Board Members
18 have any questions first? Okay.

19 I'm not sure. Did the ANC -- at
20 this point, it would be time if the ANC has
21 any cross examination for the Applicant. No.

22 Okay. Let's go to the Office of

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1 Planning then.

2 MR. JACKSON: Good afternoon, Madam
3 Chair and members of the Board. My name is
4 Arthur Jackson. I'm a Development Review
5 Specialist for the District of Columbia Office
6 of Planning and I'm here today to summarize
7 our report on this application.

8 Basically, we'll stand on the
9 record, but we did make a finding that we
10 support the application. We think they
11 substantially meet the standards under which
12 -- that needs to approval and we recommend a
13 series of conditions that are in line with the
14 previous conditions, but are somewhat
15 modified.

16 Since we've filed our application,
17 we have become aware of the recommendation by
18 the Department of Transportation and by the
19 ANC. So, in light of those recommendations,
20 we'd like to also suggest that the reduction
21 of the term from the current ten years --
22 support for ten years to a lesser term of

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1 possibly five years.

2 We also support the -- because we
3 think the issues raised by the ANC report are
4 pertinent, but they appear to be more to
5 procedural than actually issues of incidents
6 that would violate the spirit of the current
7 approval.

8 We also support the Applicant's
9 recommendations on the changes in terms of the
10 reporting requirements under the application
11 and what we were seeking to do in our
12 condition number 8 where we say the existing
13 wheel stop, signage, guardrail and parking
14 space striping and directional signage painted
15 on the pavement shall be properly maintained
16 is to consolidate three of the existing
17 conditions on the report and thereby -- and
18 put them -- and frame them in such a manner
19 that if the ANC or the neighbors have an issue
20 with any one of these conditions they can move
21 for enforcement action based on one of these
22 conditions not being met.

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1 That is to say if the wheel stops
2 are out of place, the signage was missing, the
3 guardrail was in poor repair and so forth,
4 just the fact that that condition existed
5 would be a basis for the ANC or a neighbor to
6 ask for an enforcement action to bring that
7 into compliance. So, that's why we made the
8 recommendation on that final condition number
9 8.

10 With that, that concludes the
11 Office of Planning's report. Again, we do
12 recommend approval subject to conditions as
13 stated.

14 COMMISSIONER JEFFRIES: So, I just
15 have a question. Is your reason for moving
16 from a ten-year term to five simply because
17 DDOT has recommended it and just you wanted to
18 be in alignment?

19 MR. JACKSON: Well, we think that
20 the DDOT recommendation is -- we would defer
21 to DDOT on issues such as parking, parking
22 lots and such.

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1 COMMISSIONER JEFFRIES: Even for
2 term?

3 MR. JACKSON: Yes.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. JACKSON: And I think they --
6 and we note that the ANC reasonably has asked
7 for two years in the past on this application.

8 COMMISSIONER JEFFRIES: Um-hum.

9 MR. JACKSON: But, we think that we
10 would give some deference to the Applicant
11 because we think in the past four years there
12 not any of the issues that were raised in the
13 previous application with regard to their
14 operation of the lot.

15 They were lacking some elements,
16 but it's in good shape, well maintained and I
17 think again, it's the procedural aspects of
18 the existing order that they were not in line
19 with and it seemed like it was mostly
20 notification.

21 So, in that case, I -- again,
22 that's why we're thinking that DDOT handles

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1 public space and parking and so, we need to go
2 along with what DDOT recommends.

3 COMMISSIONER JEFFRIES: Okay.

4 CHAIRPERSON MILLER: What reporting
5 requirements were they not in compliance with?
6 Reporting to the ANC or what?

7 MR. JACKSON: Well, that -- if
8 you'll on -- in our report, we noted that
9 there were four conditions that the Applicant
10 was not in compliance with. Condition number
11 7, which called for a cable or a chain to be
12 installed across the entrance to the parking
13 lot. If you'll note on our aerial, although
14 it's a grainy black and white, the open -- the
15 parking lot is actually a one-way -- the lot
16 -- does the ANC have a copy of our report?
17 Okay. I'm looking at the map. Okay. Okay.
18 I can -- I can do it.

19 The traffic circulation in the
20 parking lot is counterclockwise and so, what
21 they'd have to do in order to really
22 effectively chain off the parking lot would be

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1 either to extend a chain across the widest
2 part of the lot from the edge closest to the
3 restaurant to the northwest corner or build a
4 wall and that seemed to be an extraordinary
5 expense to go to based on the way the parking
6 lot seemed to operate.

7 The post that we referred to was a
8 post that's on the southeast corner of the
9 lot, but that's the exit from the parking lot.

10 Again, the circulation is counterclockwise.
11 So, if you chain that off, you're not keeping
12 anybody out of the lot. You're basically just
13 asking somebody not to pull down.

14 So, we thought -- in that case, we
15 supported the Applicant's contention that that
16 condition may not be necessary or appropriate
17 on the site.

18 Then there were three other
19 conditions that were listed in our report, but
20 one of them was notifying the adjacent
21 residents about who the current liaison was,
22 the reporting requirement to the ANC about

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1 what they had done in the previous year and we
2 encouraged the Applicant to take action to
3 follow through with those conditions
4 immediately. They did so and we feel that
5 their current -- the current suggestion of
6 reiterating the notification, but saying that
7 when the -- when the person to be notified of
8 issues changes, then to notify them again.
9 Seems like a reasonable compromise.

10 CHAIRPERSON MILLER: Okay. But,
11 initially you thought these conditions were
12 not that serious enough to require a shorter
13 term. So, that the longer term is primarily
14 related to DDOT's assessment.

15 MR. JACKSON: Okay. We had
16 originally suggested the longer term of ten
17 years, but we think that -- we would defer to
18 DDOT on the five years and that they would be
19 better aware of the conditions and a relative
20 and the changing circumstances around the
21 parking lots that are off this alley.

22 COMMISSIONER JEFFRIES: Well,

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1 initially, you guys said ten and you said ten
2 for a reason.

3 MR. JACKSON: Well, the reason was
4 we felt that the parking lot had been
5 maintained, but we didn't happen to have the
6 additional insight or perspective of the ANC
7 and DDOT to go with. Go by.

8 With that additional -- now that we
9 have that additional insight and perspective,
10 we think that it merits due consideration and
11 we think that in line with previous approvals
12 by this Board, you -- when you have
13 applications that have been five years, five
14 years and five years, you've gone with longer
15 terms or even an open-ended term and at this
16 point, we only have one four-year term really
17 where they've gone through -- where they've
18 had continuous good operations and I would not
19 dispute the good will on the part of the
20 restaurant or the way they're operating their
21 facility. But, I think it would be reasonable
22 to give them another five-year term, a total

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1 of ten years to have a good period of
2 operation on site because we went with
3 something much longer. But, again, that's
4 looking in hindsight.

5 COMMISSIONER JEFFRIES: So, wait a
6 minute. I have something I'm looking at here
7 from ANC 3F. There have been three, maybe
8 four, three different terms. What are you --
9 are you saying it's only just one? There's
10 only been one term that's been imposed by the
11 BZA?

12 MR. JACKSON: No.

13 COMMISSIONER JEFFRIES: Am I
14 missing something here?

15 MR. JACKSON: No, in my report, I
16 listed the COs, the approvals that are on
17 file, but note that the parking lot's been in
18 existence -- was in existence a long time
19 before there was any Zoning -- BZA action to
20 establish the authority of the Zoning over it.

21 So --

22 COMMISSIONER JEFFRIES: But, I

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1 guess what I'm saying it's just that there's a
2 history of this parking lot or the owners or
3 operators of the parking lot, you know, being,
4 you know, reasonable, you know, neighbors and
5 so forth I mean.

6 MR. JACKSON: Well, now --

7 COMMISSIONER JEFFRIES: I guess --
8 have I missed it?

9 MR. JACKSON: I would have to say
10 that when I looked at the file for the last
11 application, that was a very contentious
12 hearing with the previous application on this
13 case and that there were -- DDOT was very
14 concerned with some of the issues that had to
15 do with I guess the conflicts between the
16 carwash --

17 COMMISSIONER JEFFRIES: Carwash.

18 MR. JACKSON: -- and the parking
19 lot. Again, that -- and that case was a long
20 one from my understanding. Now, again, I'm
21 just talking about the OP report and what that
22 said and looking at some records --

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1 COMMISSIONER JEFFRIES: Okay.

2 MR. JACKSON: -- from the previous
3 case. So, I think the Applicant has
4 successfully come through that and has
5 addressed most of those conditions. There's a
6 -- based on a peace treaty with their
7 neighbors and they do not -- aren't as many
8 violations as there were before, but again,
9 we've -- so, from that contentious period,
10 we've had four years of things being fairly
11 reasonable and well run and so, we supported
12 ten years without -- because we had no
13 knowledge of any specific issues that were
14 raised about the application. But, I think
15 it's reasonable to be cautious and give
16 another five.

17 So, again, we're supporting our
18 sister agency because they are more aware of
19 what's happening on the ground than we are.

20 COMMISSIONER JEFFRIES: They
21 sometimes support you? Do they?

22 MR. JACKSON: Are there any other

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1 questions?

2 MEMBER DETTMAN: Mr. Jackson, not
3 being on any of the previous Board actions and
4 we don't have DDOT here, could you kind of
5 give us an idea of what kind of conflicts
6 we're talking about and kind of the severity
7 of them? The conflicts between the carwash
8 and the subject property.

9 MR. JACKSON: Well, again, I'm
10 referring to comments from the previous
11 review. Let's see. Records from the previous
12 public hearings. It talked about issues
13 regarding the circulation that -- between the
14 carwash and the site where they were parking
15 on the site. They were actually conducting
16 business behind this restaurant on the site
17 that's reserved for the restaurant.

18 I think we also have to look at
19 other things such as the potential conflicts
20 because there's this parking lot, but then
21 there's a -- a parking garage just off of
22 there. Then there's another parking facility

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1 along this alley.

2 This alley has a series of parking
3 facilities that are across from existing
4 buildings and as you go north, there's some
5 storage buildings and you get to McKinley
6 Street I believe. So, there's really a lot
7 going on in this alley.

8 And, of course, this application is
9 being reviewed in the winter. In the summer
10 on a nice day, I'm sure their parking lot is
11 very busy and the hotels are much busier. So,
12 I can understand that DDOT may have some
13 concerns. Well, I won't say what -- have
14 those concerns. May be interested in
15 monitoring this situation for a longer period
16 of time because of the ongoing changes along
17 Connecticut Avenue because, you know, any new
18 business that moves in, any more vitality that
19 comes along Connecticut Avenue, what's built
20 over to the activity in that alley by the
21 supported facilities that are on the adjacent
22 properties.

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1 So, that's the type of thing I
2 believe is in DDOT's mind. I'm not trying to
3 read it per se, but looking at the existing
4 circumstances along that street every property
5 has an accessory parking lot across the street
6 from it and a lot of those properties along --
7 there are several properties on Connecticut
8 Avenue that are not as busy as they could be
9 at this time of year. It's the summertime
10 that really -- where things really are much
11 more -- much busier and probably would bode
12 some monitoring for a few more years before
13 there's a much longer term applied to this --
14 in this case.

15 That's just one perspective.

16 MEMBER DETTMAN: Okay. But,
17 specific to the issue that's highlighted in
18 DDOT's report about the conflicts between the
19 carwash and the accessory parking lot, DDOT
20 gave you an indication that the conflicts that
21 they noted in the previous hearing currently
22 exist today?

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1 MR. JACKSON: We have no knowledge
2 what actually DDOT was referring to because we
3 have had no direction contact with DDOT.
4 We're just referring to the supplemental
5 information that was submitted by the DDOT at
6 the previous hearing and then the -- some
7 statements that were made at the public
8 hearing on the previous case and the previous
9 OP report.

10 MEMBER DETTMAN: Okay. So, it's
11 only this piece of paper that made you go from
12 ten to five years. No conversations have
13 occurred between you and DDOT?

14 MR. JACKSON: No conversations.

15 MEMBER DETTMAN: Okay. Thank you.

16 VICE CHAIRMAN LOUD: Good
17 afternoon, Mr. Jackson. I wanted to commend
18 you on your report. As usual, a very thorough
19 report.

20 I want to switch gears a little bit
21 and talk about something I don't see in the
22 report and candidly, don't see it in the ANC's

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1 report as well.

2 But, it addresses the issue of
3 maintenance of the curbside. I know there's a
4 lot of discussion about maintenance of the
5 parking lot itself. When you went out there,
6 did you observe any trash or debris along the
7 curbside that you could connect to Applicant's
8 fast food place?

9 MR. JACKSON: Yes. Yes. Yes, I
10 visited on two occasions and on the first
11 occasion, I saw there was some trash on the
12 parking lot, but when I returned for the
13 second visit, there was no evidence that the
14 trash is allowed to collect or move around on
15 the parking lot. It apparently is cleaned on
16 a regular basis.

17 VICE CHAIRMAN LOUD: Um-hum.

18 MR. JACKSON: And the trash cans, I
19 happened to look into one of them and they
20 were both empty. I don't think there's any
21 doubt that people who park in that parking lot
22 may leave trash. I think the ANC's concern is

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1 that the management of the Burger King make a
2 considered effort to collect that trash and
3 put it in a receptacle and not do it in such a
4 manner as it impacts the residential --
5 residences on the west of the property up on
6 top of the hill.

7 And I didn't see any evidence that
8 the parking lot is being left in disrepair
9 with the terms of trash collecting and I'll
10 also note that the little trash I did see
11 around the dumpsters themselves did not appear
12 to be such that it had accumulated over time.

13 It was just something that didn't make it in
14 the dumpster, but it appeared that it would
15 the next time someone came out and did the
16 policing of the area.

17 So, it seemed like it was well
18 policed on the two visits that I made.

19 VICE CHAIRMAN LOUD: And so, you
20 didn't observe any accumulation of trash on
21 the curbside, not specifically on the lot
22 itself? You didn't --

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1 MR. JACKSON: Not that I noticed.

2 VICE CHAIRMAN LOUD: Did not.

3 MR. JACKSON: And the curbs
4 themselves were well maintained and had been
5 freshly painted within the -- recently.

6 VICE CHAIRMAN LOUD: Well, if there
7 were an accumulation along the curbside, do
8 you think that we could include -- is it
9 within our authority under 2300 to include
10 maintenance of the curbside as a condition?

11 MR. JACKSON: I don't see why that
12 -- any reason why that wouldn't be.

13 VICE CHAIRMAN LOUD: All right.
14 Just my personal observation sort of working
15 with a corridor that's also heavily
16 trafficked, Georgia Avenue, is that there's
17 often as much or more debris on the curbside
18 than actually on the lot itself and it's much
19 more visible on the curbside than on the lot.

20 I was just curious. It's not in
21 any of the conditions on a record and it's
22 also not noted by the ANC. So, probably in

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1 that community, it's not as a great a problem.

2 Again, just wanted to get your
3 observation on it.

4 MR. JACKSON: Well, one thing to
5 remember though is that this lot is on an
6 alley. So, it's not as if the curb is such
7 that trash would come down from adjacent
8 properties and then come down to this site.

9 To the north of it which would be
10 uphill is the carwash. So, there's no one
11 eating or doing anything at the carwash except
12 washing cars. So, what you tend to have
13 coming down here would be, of course, the
14 water.

15 And to the south of it is another
16 garage. So -- and no one's -- and that's
17 really primarily a parking garage. Nobody's
18 going to go in there and doing anything but
19 park.

20 So, the result is that you're not
21 going to have the activities on this property
22 and any trash that's left on this property

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1 would not be compounded by trash being thrown
2 out at additional restaurant -- the adjacent
3 parking lot due to the fact that it's next to
4 a restaurant or some other existing
5 establishment that would tend to create trash
6 or have trash transferred to it.

7 VICE CHAIRMAN LOUD: That makes a
8 lot of sense and probably would make it
9 difficult to tie curbside cleaning to this lot
10 since it's an alley lot.

11 MR. JACKSON: It's possible. Yes.

12 VICE CHAIRMAN LOUD: Okay. Thanks.

13 CHAIRPERSON MILLER: I just want to
14 follow up on Mr. Loud's question about our
15 jurisdiction over trash. 214.5 says that all
16 provisions of Chapter 23 of this title
17 regulating parking lots shall be complied
18 with, stuff that we can waive and then under
19 2303.1(f) it talks about a parking lot being
20 kept free of refuse and debris. So, we
21 clearly have jurisdiction over that. Okay.

22 Any other questions for Office of

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2 VICE CHAIRMAN LOUD: Well, I saw
3 that.

4 CHAIRPERSON MILLER: Oh, okay.

5 VICE CHAIRMAN LOUD: And I can live
6 with the answer, but it doesn't speak to the
7 curb. It just speaks to the lot and I
8 understand Mr. Jackson point about there --
9 this lot is actually not adjacent to the
10 street I guess.

11 MR. JACKSON: Right.

12 VICE CHAIRMAN LOUD: Right. Huh?
13 So, I mean -- but, the rule itself doesn't
14 extend beyond the lot it would seem to me and
15 so, that was the context of my question.

16 CHAIRPERSON MILLER: Oh, okay. I'm
17 sorry. So, where does the lot end and the
18 curb begin? What do you mean the curb?

19 VICE CHAIRMAN LOUD: This is a
20 digression. In a number of these fast food
21 restaurants, you have the parking lot adjacent
22 to the street. I understand here it's in the

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1 rear. So, you don't have that problem.

2 Well, when it's adjacent to the
3 street, you have just as much accumulation of
4 trash on the curbside often as you do in the
5 lot and frankly, it's a lot more visible on
6 the curbside than the lot because the lots are
7 screened with hedging or something like that.

8 So, my question had been whether or
9 not there was a need to incorporate a
10 condition and if Mr. Jackson thought we had
11 the authority to speak to accumulation of
12 trash on the curbside as well as the lot and
13 he sort of explained the uniqueness of this
14 situation with the rear lot.

15 MR. JACKSON: Yes. Excuse me.
16 Just a point of clarification. So, you were
17 talking about the public space? Okay. So,
18 beyond the property line in the public space.
19 Okay. Just wanted to clarify that.

20 CHAIRPERSON MILLER: Okay. Now, I
21 understand it's a toss up, but do we have an
22 issue of trash in that location?

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1 MR. JACKSON: Not that I've
2 observed.

3 CHAIRPERSON MILLER: Not in this
4 case right now. Okay.

5 MR. JACKSON: Right.

6 CHAIRPERSON MILLER: Other
7 questions. Does the Applicant have any
8 questions for Office of Planning? Do you have
9 a copy of the Office of Planning report?

10 MS. BEGUN: I don't have any
11 questions for the Office of Planning and I do
12 have a copy of his report. Thank you.

13 CHAIRPERSON MILLER: Okay. The
14 ANC, would you like to introduce yourself for
15 the record?

16 COMMISSIONER PERRY: Oh, sorry
17 about that. My name is Karen Perry from --

18 CHAIRPERSON MILLER: It's been
19 awhile.

20 COMMISSIONER PERRY: -- ANC 3F and
21 Commissioner Solomon is here also. She's our
22 chair.

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1 CHAIRPERSON MILLER: Do you have a
2 copy of the Office of Planning report?

3 COMMISSIONER PERRY: Yes, we do.

4 CHAIRPERSON MILLER: And do you
5 have any questions for Office of Planning?

6 COMMISSIONER PERRY: Not at this
7 time.

8 CHAIRPERSON MILLER: Okay. All
9 right. Well, then I think it's --

10 COMMISSIONER PERRY: But, if we
11 can, I'd like to answer Mr. Loud's question.

12 CHAIRPERSON MILLER: Well, I think
13 we're --

14 COMMISSIONER PERRY: Okay. We
15 don't have.

16 CHAIRPERSON MILLER: -- at the
17 point -- well, you -- well, I think we're at
18 the point --

19 COMMISSIONER PERRY: Okay.

20 CHAIRPERSON MILLER: Well, she can,
21 but I mean I think we're at the point of your
22 presentation.

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1 COMMISSIONER PERRY: Okay.

2 CHAIRPERSON MILLER: So, you can
3 proceed however you like at this point.

4 COMMISSIONER PERRY: Ms. Miller, if
5 we may, there is a resident here who has to
6 get back to work. So, if we can take her out
7 of order, we would appreciate it.

8 CHAIRPERSON MILLER: That's fine.
9 I just want to know is she speaking as a
10 resident, you know, an individual or is she
11 your witness?

12 COMMISSIONER PERRY: We'd like to
13 make her a witness if we could.

14 CHAIRPERSON MILLER: Okay.

15 COMMISSIONER PERRY: In addition to
16 our report.

17 CHAIRPERSON MILLER: Well, then
18 that -- she's not out of order then. It's
19 time for your case. So.

20 COMMISSIONER PERRY: Okay. I just
21 -- usually, we do our reports first.

22 CHAIRPERSON MILLER: And in any

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1 event, she should come on forward because we'd
2 be happy to accommodate her.

3 COMMISSIONER PERRY: Okay. Thank
4 you.

5 CHAIRPERSON MILLER: And when
6 you're ready, you can introduce yourself for
7 the record, give your name and address and
8 then proceed with your testimony.

9 MS. GUTTMAN: My name is Corinne
10 Guttman. I live at 4425 35th Street. I'm the
11 property owner there.

12 I'm directly behind the Burger King
13 and am the most directly affected resident.
14 However, neighbors on either side of me are
15 also extremely concerned about this
16 application. We have a long history of
17 concerns with the use of that parking lot and
18 just some of the other ways that Burger King
19 operates there.

20 So, they -- two of them were also
21 suppose to be here today and each were called
22 our of town for their own work and could not

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1 be, but if written comments are still allowed,
2 I'm sure they would be willing to provide
3 some.

4 I'm here because of a long history
5 primarily of noise problems from the Burger
6 King. I've been to these hearings every time
7 this application comes up and the only times I
8 wasn't here was the ANC had already made some
9 progress on our behalf and represented the
10 residents.

11 I oppose the application on the
12 grounds that the previous agreement, the
13 previous order that you all issued with
14 certain conditions has not been met and the
15 length of time of the period being sought is
16 absolutely unacceptable. Ten years is
17 unacceptable. Five years is unacceptable.
18 Two years, I would love to see two years of a
19 problem free time period on that property.

20 I have for about eight/nine years
21 kept a not every day, but I've kept a log of
22 noise whenever it has become so noticeable

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1 that where their windows are closed in the
2 dead of winter with heat running or in spring
3 when the windows are open of noise from the
4 Burger King parking lot that awakens anyone
5 who is on our street in close proximity to
6 Burger King and probably the apartment
7 building there on the corner as well.

8 This is a sample. I have the
9 actual log that I've kept, but there's other
10 things in that notebook as well. This is just
11 a sample I typed up of about 11 months worth
12 of things I wrote down. Again, I don't sit up
13 at night and wait for this to happen. These
14 are incidents where we were awoken from sound
15 sleep by deliveries or trash pickup or use of
16 the dumpster that was so incredibly loud, it's
17 hard to believe it's allowed to exist -- it's
18 allowed to go on a -- in an area bordering a
19 residential area.

20 And I'll just read you a couple of
21 these and I can submit this if you all want,
22 but this is just from an 11 month period and

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1 again, it's not written everyday.

2 But, March 5th, 2007, 4:00 a.m.,
3 truck unloading woke us up.

4 March 7th, 2007, 10:30 p.m., loud
5 truck in parking lot.

6 April 19th, 2007, 7:00 a.m., loud
7 truck arrives, unloading.

8 April 25th, 2007, 5:00 a.m., truck
9 arrives, unloads, loudly unloading.

10 May 30th, '07, 4:30 a.m. and then
11 again at 4:50 a.m. First one truck arrives
12 and leaves. Then a second truck arrives and
13 delivers loud -- a very loud unloading process
14 including the sound of pallets slamming as
15 they unloaded the truck or being dragged --
16 and/or being dragged to the building.

17 That's in spring with the windows
18 closed. You know, we would like to be able to
19 have our windows open in nice weather like
20 anyone else can, but the problems with the
21 noise exist summer, winter, spring and fall.

22 The agreement that was negotiated

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1 with Burger King the last time or the
2 restrictions that you all put on it have not
3 -- have simply not been met.

4 These are pictures I took on August
5 20th, 2007. If you read the agreement or the
6 order -- the restrictions that were placed on
7 the last order, it said deliveries and trash
8 pickup are to be between 10:00 a.m. and 6:00
9 p.m.

10 August -- in August, when between
11 10:00 and 6:00 would it be nighttime out.
12 These pictures were taken at 5:30 a.m. This
13 is the delivery truck. Maines is the company
14 Burger King uses to supply its paper and maybe
15 some of its food products. Here's the truck.
16 Here's the license plate.

17 On several occasions rather than
18 wait for the next time this application came
19 up, I called Potomac Foods and asked can I
20 please speak with somebody who can help the
21 residents of this neighborhood. We're being
22 greatly disturbed by noise from Burger King

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1 and the gentleman that identified himself as
2 -- that he told me he was authorized by the
3 president to be the one to talk to me because
4 his position was something maybe to do with HR
5 or some other position. I was skeptical. I
6 thought I'd like to speak with somebody that
7 really deals with the operation of the
8 restaurant and the deliveries and he said
9 well, you can talk to me and I'll handle your
10 concerns.

11 And when I explained to him the
12 restrictions that were put on this order, it
13 was as if I was talking to somebody from
14 another state, from another planet. He had no
15 recognition that there were any restrictions
16 ever placed, any conditions placed on what
17 times delivery or trash pickup was to occur.

18 And when I even gave him the name
19 of the former representative that we sat in
20 the Burger King and met with before the last
21 application, he called the gentlemen who now
22 works on the Eastern Shore. He remembered the

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1 neighbors very well. He called me back. Very
2 friendly guy, but he too had no recollection,
3 no acknowledgement whatsoever of any
4 conditions placed on the order for use of that
5 parking lot.

6 The deliveries are the number one
7 concern in my opinion. Trash pickup and usage
8 of the dumpster is another concern.

9 There are times and it's noted in
10 this 11-months log, there are times where in
11 addition to the delivery noise there are -- I
12 don't know if they're Burger King staff. I
13 don't know if they're cars that pull up just,
14 you know, from anywhere and unload into that
15 dumpster, but there are the sounds of large
16 quantities of garbage being deposited at all
17 hours of the night and the wee hours of the
18 morning into the dumpster there.

19 You asked about trash on the
20 property. I would say I don't police it
21 everyday, but when I've been in there,
22 sometimes the trash is neatly in the dumpster.

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1 But, I have seen times where there is trash
2 loose. I think it kind of goes with the
3 territory when there's a fast-food
4 establishment. But, I don't -- I just don't
5 have a sense of how consistently that is being
6 policed and I know how consistently the noise
7 is being policed.

8 When I raised the issue with the
9 person at Potomac Foods, when I said can't you
10 -- so I don't have to wait until the Zoning
11 hearing, can't you ask your vendors, the
12 companies you're paying to provide paper goods
13 or supplies or food, can't you tell them the
14 neighborhood is disturbed by deliveries in the
15 middle of the night and early morning hours?
16 Can't you do it during business hours? He
17 said -- he acted like I was asking him to, you
18 know, perform some illegal act. I mean it was
19 -- it was -- it was not -- you know, he was
20 polite enough, but he was not willing to be
21 accommodating to the residents. It was as if
22 I was asking something outlandish by saying

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1 that we were being disturbed by it.

2 The other -- hang on a second. I
3 have -- the other point I wanted to make was
4 the speaker on the drive-thru has been a
5 periodic concern and I think the Board's heard
6 about it before. While not as consistently
7 bad as it was say ten years ago, still it
8 amazes me that we can go through a week where
9 you don't hear the drive-thru speaker at all
10 and then the next day, it like blows you out
11 of your chair it's so loud. It's not being
12 maintained at a consistent decibel level.

13 In your planning report or one of
14 the reports, they talked about a wall and I
15 realize they've been given an exception on the
16 wall. You know, a wall in my opinion would be
17 a great addition because one of the things
18 we've had periodic problems with is rats.
19 It's not consistent and it hasn't happened
20 this winter. It's too cold. But, if there
21 were a wall there, there would be no chance of
22 it because it's hard for a rat to eat through

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1 masonry or concrete.

2 But, when there's fences there,
3 there have been times where -- one time a
4 couple of years ago, we were sitting out in
5 the patio late at night enjoying a nice summer
6 night and low and behold a nice big rat just
7 came up and came to visit us. That's really
8 unacceptable as far as I'm concerned and I
9 think when you bring up the wall, that might
10 be one solution to it.

11 But, again, my primary concern is
12 the noise and the blatant disregard that the
13 users of that property, the Burger King and
14 it's parking lot have had for the order that
15 this body issued on approving the last
16 application four or five years ago.

17 CHAIRPERSON MILLER: Let me ask
18 you. It sounds like the problem wasn't
19 necessarily with the order, but with the
20 enforcement of the order. Did you follow up
21 with the ANC and with DCRA with respect to
22 enforcing the order? Because if they're in

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1 violation, that's why we have this kind of
2 order so that there is teeth, that there is
3 action that can be taken against them in order
4 to insure compliance.

5 MS. GUTTMAN: Well, I have -- as I
6 mentioned to you, I did happen -- took it upon
7 myself to call Potomac Foods myself, but I did
8 -- I have notified by ANC about it. I did not
9 know that I can also go to DCRA.

10 What does that stand for?

11 CHAIRPERSON MILLER: It's
12 Department of Consumer and Regulatory Affairs.

13 MS. GUTTMAN: Okay.

14 CHAIRPERSON MILLER: They are
15 actually the ones that have enforcement
16 authority over the Board's order. But, that's
17 the point of these orders. If they're being
18 violated, they're in violation then of a legal
19 order and they can be forced to comply or
20 otherwise they're subject to penalties.

21 MS. GUTTMAN: They are in violation
22 I would venture -- I would say doesn't of

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1 times is an understatement. It was dozens of
2 times in that one year that I had the time to
3 type up so you didn't have to read my
4 scribbles written at, you know, 3:00, 4:00 or
5 5:00 in the morning with a pad next to our
6 bed. But, I would say there's been dozens of
7 violations.

8 CHAIRPERSON MILLER: Let me just
9 ask you this and I know you have to run, but,
10 you know, our basic authority here is to try
11 to fashion an order that, you know, is
12 appropriate for the circumstances and then it
13 can be enforced later, but as far as the hours
14 go or what was in the order before, I guess
15 before you go my question is -- one is are you
16 fine with just the ANC's resolution of what
17 the -- their proposed conditions or my
18 question is were the hours appropriate, you
19 know, for no deliveries between these hours
20 that was in the previous order? It's just
21 that they were violating those hours.

22 MS. GUTTMAN: The hours would be

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1 absolutely fine. If everything in that order
2 and everything in what the ANC has requested
3 were met, the neighborhood would be very
4 happy.

5 But, it didn't happen for long last
6 time around and that's why I feel so strongly.

7 Five years is unacceptable. Ten years is
8 really unacceptable. Two years, I would love
9 to see two years. I would love to see two
10 years where I don't have one these entries or
11 one of these photos. It would be great.

12 CHAIRPERSON MILLER: Thank you very
13 much. Any other questions? Okay. Does the
14 Applicant have a question before she goes?

15 MS. BEGUN: I just have a brief
16 question. Can you -- what was the year that
17 you made your notes? Just so I can --

18 MS. GUTTMAN: Well, these -- the
19 ones I typed up -- I've been making notes
20 since 2001 and I have similar notes starting
21 in 2001 through four days ago when we were
22 awoken at 5:00 in the morning with a delivery.

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1 But, these that I typed up are from
2 March of '07 through the middle of February
3 '08. I just picked a year. I picked a 12-
4 month period during the current order time
5 frame --

6 MS. BEGUN: Okay. Thank you.

7 CHAIRPERSON MILLER: Did you want
8 to submit those into the record?

9 MS. GUTTMAN: I can. I'd be happy
10 to.

11 CHAIRPERSON MILLER: Okay. In
12 which case, you probably don't have copies.
13 Right?

14 MS. GUTTMAN: I don't have copies.

15 CHAIRPERSON MILLER: You can give -
16 - you want to give them to Ms. Bailey and then
17 she can copy them for us and the Applicant and
18 the ANC.

19 MS. GUTTMAN: These are kind color
20 print. So, I mean -- okay.

21 MEMBER DETTMAN: Ms. Guttman, can -
22 - just a quick question with respect to the

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1 late night deliveries and trash pickup. Can
2 you say that all or most of that activity is
3 attributable to this property, this business?

4 MS. GUTTMAN: That's a very good
5 question. In this case, sadly, I can. I'm
6 very well aware of the noise from the carwash,
7 but the noise from the carwash is from 8:00
8 a.m. to 6:00 p.m. I have -- and I can
9 actually depending -- I can actually see the
10 Burger King. I can see this truck from my
11 property from a second-floor window in the wee
12 hours of the morning in the parking lot. I
13 can usually see somebody throwing things in
14 the dumpster if I really put on my glasses and
15 try to look.

16 So, I am sure that this incidents
17 are with the Burger King.

18 CHAIRPERSON MILLER: I have one
19 more question.

20 MS. GUTTMAN: Yes.

21 CHAIRPERSON MILLER: As far as the
22 noise decibels, I mean can you tell that they

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1 are violating the city's noise regulations?
2 Do you know? They're just --

3 MS. GUTTMAN: I don't know. I know
4 they're violating the order that this body
5 agreed to which had certain conditions for
6 delivery and trash pickup. That I know.

7 CHAIRPERSON MILLER: I mean the
8 loudspeaker.

9 MS. GUTTMAN: Oh, the loudspeaker.
10 At times, I sure it does. I -- I -- you
11 know, I haven't measured it. If somebody
12 teaches me, I'll be happy to be a --

13 CHAIRPERSON MILLER: Okay.

14 MS. GUTTMAN: I balance --

15 CHAIRPERSON MILLER: But, you've
16 heard it where it's acceptable and then you've
17 heard it where it's way loud.

18 MS. GUTTMAN: Exactly. I know it
19 can be done in an acceptable way and that's
20 why it's particularly frustrating to the
21 residents because it's not consistent.

22 CHAIRPERSON MILLER: Okay. Any

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1 other questions? Thank you very much. You
2 have a question? She's your witness. Oh,
3 okay.

4 COMMISSIONER PERRY: I just want to
5 ask one thing.

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER PERRY: If she
8 remembers.

9 CHAIRPERSON MILLER: Okay.

10 COMMISSIONER PERRY: Corinne, Ms.
11 Guttman, do you remember who you spoke with?
12 Was it Brian Timmons?

13 MS. GUTTMAN: At Potomac Foods?

14 COMMISSIONER PERRY: Yes.

15 MS. GUTTMAN: It was -- forgive me
16 if I get the name wrong, but I believe it was
17 Jim Gounairs.

18 COMMISSIONER PERRY: Okay.

19 MS. GUTTMAN: Or -- and -- pardon?
20 Gounairs. That's it.

21 COMMISSIONER PERRY: Okay.

22 MS. GUTTMAN: And when we met with

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1 a representative -- no, it was -- he's now
2 working for the company, but based on the
3 Eastern Shore and I have his name at home.
4 But, that was the last time this application
5 came up.

6 CHAIRPERSON MILLER: When was the
7 last communication you had with the company?

8 MS. GUTTMAN: I gave up. I would
9 say probably a year and a half ago. I just --
10 I was so -- I was so appalled at the way I was
11 treated. Not that he was rude. He just --
12 there was no acknowledgement. It was as if I
13 made up this order that this Board of Zoning
14 Adjustment came up with.

15 I even faxed him the resolution
16 from the prior ANC. I actually faxed him the
17 resolution and they said oh, we've never seen
18 this before, but I didn't have the order or
19 didn't realize I had it. I would have faxed
20 it to them, but they had no knowledge of it or
21 pretended they didn't.

22 COMMISSIONER JEFFRIES: Madam

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1 Chair. So, if we were to go with two years,
2 five years, three years, is there other
3 specific language that you'd want to add to
4 conditions that you can think of in relation
5 to this? Understanding that going forward you
6 would end up going to DCRA and the ANC and
7 your council person. I mean you can make a
8 whole bunch of noise around this, but I'm just
9 wondering if there's certain language you'd
10 want to add in a -- part of conditions.

11 MS. GUTTMAN: Well, I hate to say
12 it because I think just putting it in words
13 has not worked with this company. I
14 personally would request that there be some
15 kind of language that says as soon as this is
16 violated the application comes up for hearing
17 again. You know what I mean? Something that
18 triggers some automatic action because just --

19 COMMISSIONER JEFFRIES: But, you're
20 going to call DCRA and you're going to call
21 them a couple of times or whatever and they're
22 going to come out --

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1 MS. GUTTMAN: Now that I know.

2 COMMISSIONER JEFFRIES: -- and talk
3 with Burger King. Have the order in hand and
4 you know and you'll probably talk to your
5 council person and then, you know, you'll
6 bring enough attention onto it that, you know,
7 they'll get the message. So, I'm -- you
8 know, I'm hopeful that there will be enough
9 safeguards here going forward now that you
10 know, but -- because what you're describing
11 sounds terrible. I mean just absolutely does
12 and it's definitely got me off the ledge in
13 terms of ten years.

14 But, I just -- just trying to
15 wonder if there was certain language that you
16 would add, you know, as, you know, more teeth
17 to some sort of conditions. I mean, you know,
18 I don't know if we're going to decide on
19 anything today, but you know.

20 MS. GUTTMAN: I would just ask for
21 something that gives it more teeth. Because
22 just saying you're not to have deliveries when

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1 Potomac Foods isn't even aware or the person
2 that they put on the phone with a resident who
3 calls repeatedly and isn't aware, it's
4 obviously not getting to the people that make
5 the decisions or who can control the
6 deliveries.

7 So, if there could be some kind of
8 requirement and I made a suggestion thinking
9 maybe the power of the dollar worked when I
10 said to him, can't you talk to your vendors?
11 You're paying them to -- you know, for
12 supplies or services. Can't you tell them
13 we're not going to do business with you unless
14 you deliver during the hours that the
15 neighborhood has agreed upon with the Board of
16 Zoning Adjustment and he said we can't do
17 that.

18 COMMISSIONER JEFFRIES: And, you
19 know, that's interesting because it's
20 something that I would like when we get back
21 to the Applicant, you know, in terms of the
22 feasibility of the time frames that have been

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1 set forth. I mean, you know, is that
2 something that -- you know, I mean obviously
3 they agreed to it before, but now, that's
4 something that, you know, I'd like to -- you
5 know, because obviously Burger King is a big
6 conglomerate with lots of moving parts and
7 tentacles and so forth and, you know, they
8 probably -- you pick up the phone, someone
9 doesn't know, you know, about an order or
10 whatever. I mean --

11 MS. GUTTMAN: Well, I even said --
12 I said can I ask what your position is there
13 and he told me and I said well, I would like
14 to speak to somebody that really deals with
15 the day-to-day operations of the place,
16 ordering your supplies, managing the trucks
17 and he said well, I checked with the president
18 or something like that and I've been
19 designated -- he made me the representative to
20 handle it and I'm like okay.

21 COMMISSIONER JEFFRIES: Yes.

22 MS. GUTTMAN: Well, here's my

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1 concerns and they were not addressed.

2 COMMISSIONER JEFFRIES: Yes, you
3 really have to go to the municipality --

4 MS. GUTTMAN: Yes.

5 COMMISSIONER JEFFRIES: -- and have
6 them be the --

7 MS. GUTTMAN: Yes.

8 COMMISSIONER JEFFRIES: -- many
9 here. I mean you --

10 MS. GUTTMAN: I'll be happy to.

11 COMMISSIONER JEFFRIES: Yes. Yes.
12 Yes. Yes. So, but anyway. That's it Madam
13 Chair for me.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MS. GUTTMAN: Thank you.

17 CHAIRPERSON MILLER: And I know the
18 ANC has recommended different language I think
19 to address some of those concerns.

20 COMMISSIONER JEFFRIES: Yes, I
21 recognize that, but I just --

22 CHAIRPERSON MILLER: Yes.

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1 COMMISSIONER JEFFRIES: -- you know
2 --

3 CHAIRPERSON MILLER: Before she
4 left, you wanted to know.

5 COMMISSIONER JEFFRIES: Yes. Yes.
6 Yes. I just make certain that, you know,
7 because she clearly seems to be very much
8 impacted here. I mean, you know, so.

9 COMMISSIONER SOLOMON: Hi. I'm
10 Jane Solomon the Chair of ANC 3F and I live at
11 2935 Albermarie Street in Washington.

12 COMMISSIONER PERRY: And my name
13 again for the record is Karen Perry and I live
14 at Van Ness South, 3003 Van Ness Street, N.W.

15 Jane is our chair. I'm the vice
16 chair now of our ANC. We just got sworn in
17 Monday night. So, we do apologize for the
18 latest of our resolution. We weren't sworn in
19 as a commission until Monday night. Last
20 Monday.

21 CHAIRPERSON MILLER: And is this
22 located in either of your single member

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1 districts?

2 COMMISSIONER PERRY: No, it's not.

3 It's in Commissioner Banta's single member
4 district. However, she's the newly elected
5 Director of the Council's Office of Policy.
6 Need I say more and after our ANC meeting,
7 they have a two or three-day retreat. So,
8 we're filling in if that's all right.

9 CHAIRPERSON MILLER: That's fine.
10 I know you're very familiar with that
11 property.

12 COMMISSIONER PERRY: Very familiar.
13 I've been on the ANC too long.

14 CHAIRPERSON MILLER: How long has
15 it been?

16 COMMISSIONER PERRY: More time -- I
17 don't want to --

18 CHAIRPERSON MILLER: You don't want
19 to say.

20 COMMISSIONER PERRY: I keep saying
21 it's my last two years every time, but --

22 CHAIRPERSON MILLER: Well, we're

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1 glad you're here. Okay. So.

2 COMMISSIONER PERRY: Are you ready
3 for us?

4 CHAIRPERSON MILLER: Um-hum.

5 COMMISSIONER PERRY: They say you
6 can't judge a book by its cover and you can't
7 judge a parking lot by one or two site visits
8 especially when those visits coincide with an
9 application before the Board. That's when an
10 applicant is or should be on its best
11 behavior, but we're around there all the time
12 and hear from residents continually.

13 The ANC and the Office of Planning
14 are of the same mind in that this application
15 should be approved because not having parking
16 would be worse for the neighborhood
17 residential streets, but we differ with the
18 term of the special exceptions and the
19 conditions and, of course, we prefer you to
20 adopt ours.

21 We thought we'd be best to
22 highlight where our conditions differ with the

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1 Applicant and the Office of Planning.

2 In condition number 1, the
3 Applicant is asking for ten years or an
4 indefinite period. The Office of Planning has
5 just changed that now.

6 In order for our ANC to support
7 that kind of request, we would have to have
8 faith in that Applicant and that Applicant
9 would have to have a record of compliance with
10 previous BZA agreements. That's not the case
11 here.

12 We know how crowded your calendar
13 is and we appreciate the many late nights you
14 spend here, but we're asking you to approve
15 this special exception for only two years in
16 order to see if the Applicant can comply with
17 the conditions or whether our ANC might have
18 to reverse course and ask the BZA to deny
19 further use of this lot in deference to the
20 residential community.

21 We put in our condition number 2
22 stating that the parking lot will be used

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1 exclusively by Burger King and the customers
2 of Burger King eating in the restaurant. That
3 is not the case today. The carwash next door
4 uses the lot for the drying of cars. This was
5 a big issue in the last BZA case and Burger
6 King said it would not happen anymore, but it
7 is happening.

8 It was also a condition in the 2000
9 case just so you know. Not only the last one,
10 but in 2000, it was.

11 The carwash use is especially
12 egregious on weekends and in the spring and
13 the summer when they carwash is crowded.

14 If Burger King does not need the
15 spaces, our ANC would entertain a special
16 request for the spaces from the Flagship
17 Carwash.

18 This ties into our condition number
19 9 where we ask the Burger King to assign an
20 employee to monitor the lot to insure
21 compliance.

22 We agree with the Office of

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1 Planning on their conditions number 2, 3, 4, 5
2 and 6. Although in our resolution, they are
3 numbered 3, 4, 5, 6 and 7, but we want to let
4 you know that Burger King is not complying
5 with condition number 2 regarding deliveries
6 and I think you heard from our witness.

7 We also have reason to believe that
8 Burger King might not have reinforced the
9 fence underground to prevent rodents from
10 entering the neighborhood properties which is
11 part of the Office of Planning's condition
12 number 6 and our number 7 and it was also a
13 condition in the previous BZA order.

14 In the Applicant's prehearing
15 statement, they also indicate that the
16 Applicant received a waiver from the
17 requirements of Section 2303.2 for the
18 landscaping of the wall for 42 inches. We
19 found no covenant in the record and we don't
20 think any waiver carries forth from one
21 application to another. We do think that they
22 should comply with this and as you heard from

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1 the witness, a wall would help with rodent
2 control.

3 We put in a condition number 8
4 stating that a chain shall be installed to
5 close the entrance to the parking lot within a
6 half hour of closing of the indoor restaurant.

7 This has been actually a condition since 1982
8 when the lot was supposedly first designed.
9 It's never been done.

10 The Applicant now states that it is
11 no longer necessary because of the 24-hour
12 operation of the restaurant. That is not the
13 case.

14 I called the restaurant myself.
15 They operate on weekdays until 12:30 in the
16 morning and on weekends until 1:00 a.m.

17 We want to call to the Board's
18 attention the fact that when this parking lot
19 was initially approved, the Applicant was
20 instructed to close the lot at 9:00 p.m. We
21 do not want to interfere with the operation of
22 the restaurant, but at the same time, we want

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1 to remind you that the lot is residentially
2 zone and there are a lot of residential
3 neighborhoods, you know, neighbors near there.

4 We have a high-rise apartment building and I
5 think you have a picture of how close the
6 high-rise is. It's a building -- it's a condo
7 building called The Hastings.

8 We have also added a condition
9 number 10. The Applicant has continually
10 changed their operating hours to go later and
11 later which keeps the lot open later.

12 We have also added a condition
13 number 10 regard the audio volume of the
14 drive-thru loudspeaker. This is especially
15 important to the residents of The Hastings,
16 the condominium with windows and balconies
17 close to the Burger King. At night, the
18 neighborhood is very quiet and you do not have
19 the background noise from Connecticut Avenue,
20 the carwash. So, the loudspeaker stands out
21 especially in the spring and fall when you can
22 open your windows.

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1 In your 1994 order, the decibel
2 level was conditioned at 60 decibels. In the
3 2000 order, it was increased to 70 decibels
4 which exceeds the D.C. Code. We do not have
5 to repeat the condition. We know you don't
6 have to repeat your previous conditions in
7 future order, but hope you will in this case.

8 The drive-thru part of the
9 restaurant stays open a half an hour after the
10 restaurant closes. So, it's until 1:00 a.m.
11 on weekdays and 1:30 in the morning on
12 weekends and we thought it would be important
13 to reiterate the D.C. Code regarding decibels
14 in our resolution. The one thing we weren't
15 sure about is whether you wanted to consider
16 the commercially-zoned decibel level or the
17 residential since this is in the back facing
18 the residences.

19 We agree with the Office of
20 Planning number 7. It just happens to be our
21 number 11. This is very important and the
22 reason I'm saying that is when I would try

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1 calling the restaurant to find out their
2 hours, I discovered something very
3 interesting. Their number is not in the phone
4 book. I checked the Northwest Washington
5 Community Phone Book, our little red one; the
6 Verizon Yellow Pages; something called the
7 Yellow Book and then I called 411. Other
8 Burger Kings were listed, but not this one. I
9 finally got the number by going on-line on my
10 computer.

11 Number 12, regarding a yearly
12 report of compliance, that was in the last
13 order. Burger King has never complied with
14 this condition and we might have had a contact
15 number had Burger King been doing some of
16 this.

17 The Applicant and the Office of
18 Planning has said it should no longer be a
19 condition. We disagree especially if you
20 choose to allow the special exception for any
21 length of time.

22 Ten years is actually five ANC

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1 elections. Institutional memories go away.
2 Neighbors move and new neighbors move in and
3 they won't know that there's a BZA agreement.

4 So, they won't even know that they can
5 complain about noise or what these conditions
6 are that -- under which an applicant operates.

7 We don't feel it's an onerous
8 condition for a business once a year to send
9 the ANC and the neighbors within 200, you
10 know, feet something saying we're in
11 compliance. It jogs everybody's memory that
12 there is a BZA order and it puts everybody on
13 notice.

14 Our numbers 13 and 14 are
15 essentially the same as the Office of
16 Planning's number 8 although our wording might
17 be a little more specific.

18 Just so you know on compliance from
19 DCRA, I've tried that. I think Ms. Miller
20 more than anybody is familiar with the
21 infamous service bays in my single member
22 district. We've been through five civil

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1 infraction cases. The automobile service
2 bays. It stated in 1989 with trying to get
3 compliance. It's now been through five BZA
4 cases of civil infraction notices. It's gone
5 to the Court of Appeals. It's gone to
6 Superior Court and they're still operating
7 illegally.

8 DCRA right now also I've learned is
9 14 inspectors down and they're looking for
10 combo inspectors. To get anybody to come in
11 the middle of the night where the trucks are
12 concerned, they have to witness something in
13 order to cite them, it requires getting
14 overtime. It's almost impossible in these
15 budget times to do it and it was impossible
16 before.

17 And we also have a fast food
18 restaurant in my single member district where
19 the truck comes at 2:00 in the morning. It
20 comes between 2:00 and 4:00 in the morning.
21 They do that because the streets aren't as
22 congested and our area is very congested.

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1 We've tried even getting the police
2 to come out and do something. It's not
3 considered an emergency.

4 So, calling 311 by the time they
5 come if they come the truck is gone. So,
6 enforcement isn't -- it's hard. It's hard for
7 the ANC to get it and it's hard for a neighbor
8 to get it. I'm just -- I just wanted to go on
9 record with that.

10 That really completes our
11 testimony, but I'm going to turn it over to
12 Jane just to clear up one part of the record.

13 We also just want to correct one
14 part of the record that was submitted by the
15 Applicant. The Applicant submitted letters
16 saying they tried to contact our Commissioner
17 Susan Banta and they could never get a hold of
18 her.

19 According to Commissioner Banta,
20 she did call them back. She had trouble
21 getting the Applicant, but they were also
22 invited to our ANC meeting and know

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1 Commissioner Banta did that. They did not
2 come.

3 So, I think -- I don't want to play
4 tit for tat here. I just want to go on record
5 that Commissioner Banta did say she tried to
6 call them back. Just to clear her name.

7 COMMISSIONER SOLOMON: I would just
8 like to add to that. Saying -- to say that
9 Commissioner Banta -- there were some traded
10 phone calls and as she said to me, the only
11 time she was ever able to speak to Ms. Begun
12 was when she -- when Ms. Begun actually picked
13 up the phone. If she left a message, she
14 never did hear back from her.

15 If I can just add a few words to
16 what Karen said in her statement. I would
17 like to reiterate the importance of the two
18 years. We were reluctant as a Commission to
19 come to a decision that really for business,
20 you know, two years is pretty short. For you
21 to hear this again, it's very short, but I'm
22 so glad that Ms. Guttman came and describe her

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1 trials and tribulations because it's a really
2 good reminder that when you live with
3 something day in and day out, it's like a
4 tooth drilled and even two years might seem
5 like an eternity and at the end of the day, we
6 really felt that it's the people who we
7 represent as you know and it's the people who
8 live in close proximity to this situation.

9 Moreover, they're just coming off
10 of what had been a four-year agreement. So,
11 even five years is actually an increase from
12 what just expired and to me, any increase is
13 almost a reward.

14 I'd like to reiterate to the
15 Applicant that as a Commission we also talked
16 about what the future might look like and, you
17 know, we started talking about ten years or
18 even a longer period and we would frankly be
19 only too happy to grant or to support a much
20 longer period of time. However, we really
21 felt that at this moment there needed to be a
22 track record establishment of compliance and

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1 just of a conscientiousness of that situation.

2 One other thing I'd like to -- I'd
3 like to try to tie together a few disparate
4 pieces that have come up during this hearing
5 stating with Mr. Jackson's testimony in
6 talking about the condition that the parking
7 lot be chained off when it's closed and for
8 those of you not so familiar with this site,
9 he made reference to the entrance opening as
10 being very wide and it is. It's very wide.
11 So, I mean you can easily fit two cars side by
12 side. So, this brings me to the carwash.

13 So, the carwash is directly
14 adjacent to it and if anyone of you or I were
15 working in that carwash, we would do exactly
16 what the carwash does. You'd pull out and
17 there's all this open space and you can pull
18 over a car and the guys can work on drying it
19 and Burger King customers can drive right by.

20 So, they're kind of doing the
21 natural thing. So, let me put that over on
22 the side for moment and then come back around

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1 to what Ms. Guttman said about some of these
2 late night activities and to me, it does beg
3 the question and I don't know if the dumpsters
4 are open. I mean because I do know people
5 drive around with mattresses and sofas and all
6 kinds of nonsense looking for a place to dump
7 them and it's entirely possible that if those
8 dumpsters are open and once it's known that
9 they're open and available, that people may
10 dump things in them. Right and sure and they
11 do close.

12 So, just tying all these three
13 things together, while I do agree that having
14 them chain it off in the existing conditions
15 is kind of difficult. However, if there were
16 a narrowing, I don't know, by some kind of a
17 structure or some kind of a sort of permanent
18 narrowing of that opening into the driveway,
19 it would enable the parking lot to be closed
20 after closing. It would keep the carwash from
21 having this naturally open space to just pull
22 over and if it could be closed, it would

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1 prevent an illegal dumping that happens in the
2 middle of the night.

3 So, that's just something I've kind
4 of thought of as I've sat here and listened
5 today.

6 And lastly, I just want to -- we
7 talked a lot about the speaker and I just want
8 to remind everybody we all go through fast-
9 food drive-thrus and just to remind you that
10 all the speaker's doing is communicating from
11 the inside of the restaurant to a person, the
12 driver of a car, whose face is sitting, what,
13 tops 3 feet away from that speaker. So, it
14 seems to me a very reasonable technological
15 fix to have a speaker that is just loud enough
16 for that person to hear and that should not be
17 a big thing to ask.

18 Thank you.

19 MEMBER WALKER: Ms. Solomon, I have
20 a question about the condition related to
21 fencing. I mean chaining the lot and I just
22 want to make sure I'm clear. Was it the

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1 expectation that the entrance to the driveway
2 would be chained or the entrance to the lot?

3 COMMISSIONER SOLOMON: Well, I
4 believe it would be the entrance to the lot.
5 Because remember there is -- you've got the
6 buildings. Then there's an alley and then
7 there is an entrance from the north end of the
8 lot going in and as Mr. Jackson -- which --
9 and that's the wide portion and then more of a
10 single lane width exit on the south end and
11 Karen, you can correct me, but I think on that
12 -- well, I can't see it in the photographs
13 here. I think there's -- I don't know what
14 you call this sort of raised pavement where
15 the parking spaces -- you know, in front of
16 the parking spaces. But, I think on the
17 opposite corner, on the northwest corner, is
18 there -- there's a garage there at this
19 corner. Right? So, and that's the space
20 that's so wide.

21 And I don't know if there's -- I
22 kind of tossed this out. Whether there is

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1 some kind of possibility to put some curbing
2 or something, guardrails, something that, you
3 know, someone's not going to just plow through
4 if they want to get through, but something
5 that effectively narrows that space and still
6 makes it functional.

7 COMMISSIONER PERRY: And if I can
8 from the -- oh. I was going to read from
9 their 1982 order which is when this lot was
10 actually approved the first time, the use was.

11 A concrete curb along the alley
12 will insure that cars use only the entrance
13 and exit lanes to gain access to and from the
14 lot. Guardrails on both side of the lot will
15 keep cars from cutting across adjoining lots.

16 The lot will be closed and chained nightly at
17 9:00 p.m. and this is from when it was first
18 designed and approved.

19 I think it's just stretched since
20 then.

21 MEMBER WALKER: Okay. But,
22 chaining the lot would not alleviate the

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1 dumping problem. Right? Because the
2 dumpsters are actually along the alley. Is
3 that right?

4 COMMISSIONER PERRY: There are
5 trash cans --

6 MEMBER WALKER: Oh, are there?

7 COMMISSIONER PERRY: -- also in the
8 parking lot, but I'll let the Applicant go to
9 that. But, it would help -- I think he has
10 that there's one in the -- Mr. Moy has the --
11 they are in the alley.

12 COMMISSIONER SOLOMON: Okay.
13 Thanks for pointing that out. I actually
14 wasn't aware that they were located right on
15 the alley.

16 COMMISSIONER PERRY: I think some -
17 - there are also trash cans in the parking
18 lot, you know, for people and some of that is
19 that. But, I think it would also help to keep
20 cars out -- to keep the late-night trucks out
21 of the parking lot. It would help. Because
22 they pull up sometimes close to the homes and

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1 whatever.

2 I mean the noise -- a fence would
3 also help because it buffers a little bit of
4 noise and landscaping.

5 MEMBER WALKER: Okay. Thank you.

6 COMMISSIONER SOLOMON: I mean it
7 would be helpful to know from the Applicant if
8 those dumpsters are, in fact, open or is it
9 something that is locked.

10 COMMISSIONER PERRY: I think the
11 Applicants when they close their restaurants,
12 in fact, it's later and later, you know, the
13 staff cleans the restaurant and they use the
14 dumpsters also.

15 CHAIRPERSON MILLER: Can you
16 explain your rationale I think it's for your
17 condition number 2 that talks about the
18 parking spaces being exclusively for Burger
19 King?

20 COMMISSIONER PERRY: Well, Burger
21 King is asking for the special exception and
22 that's why we said the lot was for Burger King

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1 and Burger King's customer. Burger King crew
2 has repeatedly allow their lot to be used by
3 the carwash and that -- you know, the carwash
4 does not have the special exception. If they
5 need one, we'll be happy to -- if Burger King
6 doesn't need the spaces, we'll entertain one
7 from the carwash.

8 CHAIRPERSON MILLER: Well --

9 COMMISSIONER PERRY: But, the
10 carwash is repeatedly using their spaces.

11 CHAIRPERSON MILLER: What's the
12 adverse condition? I mean adverse condition
13 that it's intended to mitigate? I mean we
14 have conditions to mitigate an adverse
15 condition. So, that's my --

16 COMMISSIONER PERRY: I'm not sure
17 really, but, you know, we wanted to make it
18 clear, you know, who uses that parking lot and
19 that the Applicant had something to monitor.

20 MEMBER WALKER: Okay. So, let me
21 make sure that I'm clear. So, the area behind
22 the carwash --

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1 COMMISSIONER PERRY: Um-hum.

2 MEMBER WALKER: -- it has striped
3 spaces. I mean that belongs -- that's a part
4 of the subject lot that we're discussing or is
5 there a separate lot?

6 COMMISSIONER PERRY: If you look --
7 if you talk to the Office of Planning, I'm
8 looking at their previous report, it says
9 during the September 22, 2004 field
10 inspection, OP staff made the following
11 further observations. There was a carwash
12 adjacent. Cars being hand dried or detailed
13 after washing blocked the entrance to the
14 subject parking lot and took up much of the
15 alley space behind the Burger King thereby
16 seriously impeding traffic flow along the
17 alley and they also use the -- there seems to
18 -- they use the -- also for parking.

19 Here is the carwash. If you look
20 at this picture, these are the spaces that --
21 over here where these umbrellas are which is
22 really for the -- there is a -- behind that

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1 white van or whatever that van, there are
2 spaces for the car wash to dry cars. It's
3 just that on weekends and, you know, after the
4 snow or whatever, they have a lot more cars
5 coming through than they have area to dry.
6 So, they use the entrance or the exit to the
7 Burger King lot. They use the alley. They
8 use whatever.

9 I think what we were just trying to
10 say is that Burger King needs to monitor their
11 lot and prevent the carwash from using it so
12 that the entrance is not blocked for the
13 Burger King customers.

14 CHAIRPERSON MILLER: I mean I guess
15 I'm trying -- you know, I hear a lot of real
16 serious to me concerns with respect to noise
17 that's being generated that affect the
18 residents behind the lot. You know, the
19 rodents and things like that. The deliveries
20 late at night, middle of the night and I can
21 see that that's a real concern for a resident.

22 I just could not see what the concern was if

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1 somebody in the carwash happened to park in
2 the Burger King lot space, you know.

3 COMMISSIONER PERRY: Oh, I don't
4 care if somebody from the carwash, but when
5 the carwash people block the actual parking
6 lot and people can't get in and out, that's
7 the problem.

8 CHAIRPERSON MILLER: Okay. And
9 that's a problem you've witnessed?

10 COMMISSIONER PERRY: It's basic --
11 yes, it's basically on weekends. You know, on
12 a nice sunny day when everybody's in line to
13 get their car washed.

14 CHAIRPERSON MILLER: Oh, it's the
15 conflicts between the Flagship Carwash and --
16 okay.

17 With respect to enforcement, I know
18 that your ANC has been active in certain
19 cases, but in this case, have you tried to
20 enforce the order?

21 COMMISSIONER PERRY: Yes and no.
22 The Hastings has tried. Ms. Guttman has

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1 tried. I've called.

2 CHAIRPERSON MILLER: Ms. Guttman, I
3 mean she just called the --

4 COMMISSIONER PERRY: She didn't
5 call DCRA. No. I know I've called DCRA about
6 the parking and got nowhere.

7 CHAIRPERSON MILLER: Okay.

8 COMMISSIONER PERRY: You know, part
9 of it is the lack of inspectors during the
10 night. The fact that people just -- they
11 don't have inspectors that can just sit not
12 knowing when a truck is going to come. You
13 know, whether it's going to come at 2:00 or
14 5:00. They just don't have the people to sit
15 there and unless they visually -- they
16 actually see something, they can't cite it.
17 They don't do it just on my word that I heard
18 from a resident and there's a problem.

19 CHAIRPERSON MILLER: Okay. And
20 have you contacted the Zoning Office's
21 Enforcement Liaison as well? Okay. Because I
22 would hope that those things would help.

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1 COMMISSIONER PERRY: I think it's
2 just a question of staffing hours, overtime
3 and so many complaints from all over the city.
4 The Zoning Office is one of the smallest
5 offices at DCRA staff-wise.

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER PERRY: I think they
8 have two Zoning Inspectors or three for this
9 whole city.

10 CHAIRPERSON MILLER: Other
11 questions from Board Member?

12 COMMISSIONER JEFFRIES: Yes, I have
13 a question. Well, first of all, I'm having
14 some difficulty here. I'm looking at Exhibit
15 1 of OP's report. You know, I'm just looking
16 for something diagrammatic that just shows me
17 exactly what a car does once it turns into the
18 driveway that separates the carwash from
19 Burger King and I have a sense of it although
20 I do have a question about whether there's
21 some easement that someone driving into this
22 parking lot, the accessory parking lot goes

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1 into, but I can ask Mr. Jackson that.

2 But, my question is the distance
3 between the residential zone and the speaker.

4 It seems like it's somewhat far. I mean I'm
5 looking at this -- if I'm looking at the OP's
6 report and it has a scale here, it seems like
7 there's some distance. I mean 120 feet maybe
8 even more from where the speaker is to where
9 the residential homes are.

10 So, I'm just trying to get
11 comfortable with just how much sound could
12 actually -- how disturbing could this be?

13 COMMISSIONER PERRY: I'm not good
14 with distances. So, I'll be the first one to
15 tell you I don't know north from south. But,
16 if you look at this picture, the Burger King
17 is -- the speaker is behind the restaurant.

18 COMMISSIONER JEFFRIES: Right.

19 COMMISSIONER PERRY: And you've got
20 The Hastings right here which is not that far
21 away. This is a condo building.

22 COMMISSIONER JEFFRIES: Oh, so,

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1 that's on the other side of the carwash?

2 COMMISSIONER PERRY: It's on the
3 same side -- yes, right on the other side of
4 the carwash.

5 COMMISSIONER JEFFRIES: Okay.

6 COMMISSIONER PERRY: That big
7 building is The Hastings. It's a condo
8 building.

9 COMMISSIONER JEFFRIES: Okay. So,
10 those are -- okay. Those are the ones that
11 are most impacted.

12 COMMISSIONER PERRY: They are.

13 COMMISSIONER JEFFRIES: It's not --
14 see can you look at the Exhibit 1?

15 COMMISSIONER PERRY: Yes, we're
16 looking at the aerial drawing also.

17 COMMISSIONER JEFFRIES: I'm really
18 focused on this end looking at these
19 residences. But, they're not here. It's
20 really The Hastings that's complaining.

21 COMMISSIONER PERRY: It's The
22 Hastings and --

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1 CHAIRPERSON MILLER: Wasn't that
2 Ms. Guttman though?

3 COMMISSIONER SOLOMON: Ms. Guttman
4 lives in the house --

5 COMMISSIONER PERRY: She lived in
6 the house.

7 COMMISSIONER SOLOMON: -- right
8 where you're pointing to.

9 COMMISSIONER PERRY: I think the
10 problem is at night when the -- this
11 neighborhood is really very quiet at night.
12 There is no ambient noise from Connecticut
13 Avenue or anything to drown it out and a lot
14 depends on the way the winds blow as far as
15 believe it or not the loudspeaker or how high
16 they have their volume turned up.

17 COMMISSIONER JEFFRIES: Um-hum.

18 COMMISSIONER PERRY: Because if the
19 wind is blowing in the direction of the houses
20 and you have your window open, you can hear it
21 and as she said, sometimes they hear it.
22 Sometimes they don't. But, you know, The

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1 Hastings is the one that's the most impacted
2 by the loudspeaker.

3 COMMISSIONER JEFFRIES: You know, I
4 oftentimes say, you know, that certain
5 residents make certain choices and in making
6 those choices, there's certain concessions
7 made and some of that is noise. I mean I live
8 in Columbia Heights and time to time, I just
9 get noise now and then. But, you know, I
10 trade that in for being close to museum -- I
11 mean being close to restaurants and so forth
12 and so on.

13 Now, what Ms. Guttman described
14 seemed to be somewhat excessive to me, you
15 know. So, I am very, very -- I mean I'm
16 sympathetic and I just -- but, I just want to
17 make certain --

18 COMMISSIONER PERRY: I think --

19 COMMISSIONER JEFFRIES: When I look
20 at this Exhibit 1, it just seems like there is
21 some distance here.

22 COMMISSIONER SOLOMON: There is

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1 clearly.

2 COMMISSIONER PERRY: There is.

3 COMMISSIONER SOLOMON: At least 120
4 feet.

5 COMMISSIONER JEFFRIES: Yes. Yes.
6 Yes. Yes.

7 COMMISSIONER SOLOMON: There is.

8 COMMISSIONER PERRY: But, the --
9 but, I also wanted to say that when people
10 moved into this neighborhood, Burger King in a
11 lot of cases closed at 9:00.

12 COMMISSIONER JEFFRIES: Um-hum.

13 COMMISSIONER PERRY: Burger King
14 extended their hours until 1:00 and 1:30 in
15 the morning.

16 COMMISSIONER JEFFRIES: Um-hum.

17 COMMISSIONER PERRY: And it's at
18 those late hours that the loudspeaker is more
19 of a problem than it is at 9:00 p.m.

20 COMMISSIONER JEFFRIES: Okay.

21 COMMISSIONER PERRY: And I think
22 it's just the lateness of the drive-thru and

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1 the loudspeaker and all we're recommending is
2 that the Applicant comply with the D.C. Code
3 and that you reinforce the Code to them
4 whether you use the commercial one or the
5 other one because that to me would be the law
6 and that's enforceable. Whereas, your
7 previous order, the last one anyway that
8 talked about decibel limits put it at 70 which
9 is above the --

10 COMMISSIONER JEFFRIES: Um-hum.

11 COMMISSIONER PERRY: -- order.

12 COMMISSIONER JEFFRIES: Okay.

13 Thank you.

14 MS. BEGUN: If the Board is
15 finished, I have a couple of questions, but
16 wait until you guys are done if that's
17 appropriate.

18 CHAIRPERSON MILLER: Are there
19 further Board questions? Okay. Then you can
20 cross examine.

21 MS. BEGUN: Hi. I just have a
22 couple of questions. Are you aware of when

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1 the ANC first contacted Burger King or the
2 Applicant regarding the current application?

3 COMMISSIONER SOLOMON: It's my
4 understanding from Commissioner Banta that you
5 exchanged phone calls somewhere around
6 Thanksgiving. Sometime in November. That's
7 my understanding.

8 MS. BEGUN: Is that the first time
9 that you are aware that contact was made?

10 COMMISSIONER SOLOMON: Best of my
11 knowledge. Yes.

12 MS. BEGUN: Okay. The location of
13 the speaker for the noise creation, that's
14 located on the Burger King restaurant property
15 and not the parking lot. Is that correct?

16 COMMISSIONER SOLOMON: Yes, I
17 believe that's correct.

18 MS. BEGUN: Okay. Have either of
19 you spoken with Ms. Banta regarding the
20 messages or the intended communication that
21 she had with the Applicant?

22 COMMISSIONER SOLOMON: I was just

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1 told that she received a phone call from you
2 at least twice. That she returned phone calls
3 at least twice. I think that you actually
4 spoke somewhere during that period of time.
5 That you were aware of our meeting last Monday
6 and as you know, no one was in attendance.
7 That's about as much as I know.

8 MS. BEGUN: Can you tell me when
9 the ANC gave notice of the public meeting that
10 was held on Monday?

11 COMMISSIONER SOLOMON: I think we
12 first published it -- we always publish it at
13 least a week in advance and I believe we may
14 have published it in the Northwest Current
15 earlier than that.

16 MS. BEGUN: Would it surprise you
17 if the meeting wasn't -- we weren't notified
18 of the meeting until Thursday the 26th? I'm
19 just asking if that would surprise you.

20 COMMISSIONER SOLOMON: I'm not sure
21 that it would surprise me or --

22 COMMISSIONER PERRY: I think, you

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1 know -- when we notice a meeting, we notice
2 our agenda in the Northwest Current which is
3 the community newspaper. We have an e-mail
4 list. We have a lot of things and I do know
5 that Commissioner Banta told me she tried to
6 reach you, you know, about the meeting.

7 MS. BEGUN: Okay. I have one other
8 question. Are you aware of efforts that --
9 no. Strike that. Are you aware of the phone
10 system at the ANC offices? I'm trying to get
11 a feel for when somebody makes a phone call
12 and nobody answers how they can leave a
13 message and can you speak to the Board about
14 what it's like when you try and call the ANC
15 that's listed on the website?

16 COMMISSIONER SOLOMON: Sure. I'd
17 be happy to. Our ANC, we do have an office
18 and we do have office phone. We don't have a
19 staff person. So, messages left in the office
20 are checked very infrequently. That is true.

21 However, on our website, it gives
22 the names, addresses and home phone numbers of

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1 all the commissioners.

2 MS. BEGUN: Okay. And if -- you
3 know, I don't have any other questions.
4 That's it.

5 CHAIRPERSON MILLER: Okay.

6 MS. BEGUN: I don't have any
7 further questions.

8 CHAIRPERSON MILLER: Okay. Any
9 other questions from Board Members? All
10 right.

11 I'm not seeing anybody else in the
12 audience, but this would be the time for
13 anybody else who wanted to come forward to
14 testify in support of the application or in
15 opposition of the application. I don't see
16 it.

17 MS. BEGUN: I believe the Applicant
18 would like to respond to some of the things
19 that were brought up by the ANC.

20 CHAIRPERSON MILLER: You'll have a
21 chance now for rebuttal and closing.

22 MS. BEGUN: Great. That would be

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1 our --

2 CHAIRPERSON MILLER: Yes.

3 MS. BEGUN: -- intention at this
4 time.

5 CHAIRPERSON MILLER: Okay. So,
6 now, we will turn to you.

7 MS. BEGUN: I would like to have
8 Clara Willis testify on behalf of the
9 Applicant and I think I'm going to let her
10 respond to some of my questions, but if it's a
11 dialogue is that permissible? That she can
12 just sort of speak in response to what she's
13 heard. If there's no objection to that, I
14 think that's the way I'd like to have the
15 Applicant present some of the responses.

16 And so, Clara, could you -- I'll
17 try and keep this organized, but if you could
18 respond to some of the things that you heard
19 from the ANC that you think maybe are
20 inaccurate or if you would characterize a
21 little bit differently. I'd like you to tell
22 the Board how you would re-characterize or how

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1 you would describe some of the things -- some
2 of the issues that were brought up.

3 MS. WILLIS: Well, one concern of
4 mine was the issue on the deliveries which
5 there's no doubt that they were coming at
6 inappropriate times like early in the morning.

7 We were --

8 CHAIRPERSON MILLER: Can you remind
9 me again, I'm sorry, what your last name is?

10 MS. WILLIS: Willis.

11 CHAIRPERSON MILLER: Willis and
12 what your position is.

13 MS. WILLIS: District Manager with
14 Potomac Foods.

15 CHAIRPERSON MILLER: So, what's
16 your relationship with respect to the
17 operation of the parking lot?

18 MS. WILLIS: Well, I'm the District
19 Manager for the Burger King on Connecticut
20 Avenue also.

21 CHAIRPERSON MILLER: So, you're in
22 charge of the Burger King and the parking lot

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1 or what?

2 MS. WILLIS: Well, there's a
3 restaurant manager, a general manager and I
4 oversee that particular restaurant plus five
5 other restaurants.

6 CHAIRPERSON MILLER: Okay. So, you
7 oversee both the restaurant, the property that
8 the restaurant's on, the restaurant and the
9 parking lot. Correct? So, you're responsible
10 for the parking lot's compliance with this
11 order. Is that correct?

12 I just want to kind of understand
13 the context of who you are in relation to what
14 you're going to be testifying about.

15 MS. WILLIS: I'm responsible for
16 the maintaining and making sure that it's kept
17 clean and --

18 CHAIRPERSON MILLER: Okay.

19 MS. WILLIS: -- you know and if
20 there's a problem with the noise like from the
21 orders and stuff, I had to get involved in
22 that. But, as far as strict compliance, no,

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1 that's not my --

2 CHAIRPERSON MILLER: Okay. Are you
3 responsible for when deliveries take place?
4 When trash pick up takes place? Is that under
5 your authority?

6 MS. WILLIS: That all goes through
7 our main office, but --

8 CHAIRPERSON MILLER: Okay.

9 MS. WILLIS: Well, the problem was
10 we were aware -- our main office -- Mr.
11 Gounairs may not have been aware, but our main
12 office was afraid of this proposal and the
13 contract that deliveries were to be between
14 10:00 a.m. and 6:00 p.m.

15 We changed vendors. Part of the
16 contract was at Connecticut Avenue location,
17 the deliveries had to come between 10:00 and
18 6:00 -- 10:00 a.m. and 6:00 p.m. This was
19 more of a local vendor out of Baltimore.
20 Their drivers were aware of the traffic
21 situation in the metropolitan area. They were
22 taking it upon themselves to come at an hour

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1 that was not designated to them.

2 We weren't -- we weren't even aware
3 they were coming at that time. No one -- the
4 manager wasn't saying anything. The
5 homeowners association hadn't contacted us at
6 that time.

7 Once we were contacted by the
8 homeowners association, right away we
9 contacted the suppliers to let them know that,
10 you know, the hours that they -- we had a
11 contract with them for the deliveries and it
12 was not stopped immediately because the
13 drivers were still taking it upon themselves
14 to come and so, at this point, it's brought to
15 our attention. So, the manager would call us
16 if they came earlier. So, right away, we
17 would contact the vendor again. That, you
18 know, like we're going to have to pull
19 contract unless you can get there between
20 those hours and to our knowledge since these
21 incidents in '07, there haven't been any of
22 our vendors arriving at inappropriate times.

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1 COMMISSIONER JEFFRIES: Okay.
2 Excuse me, Madam Chair. I just want to go
3 back to the beginning of your testimony
4 because I think Madam Chair asked a very
5 illuminating question and that is are you
6 responsible for the management of that
7 accessory parking lot? Eventually, it's under
8 your -- do you -- are you responsible for the
9 management and maintenance and operation of
10 that parking lot?

11 MS. WILLIS: Anything that needs to
12 be done. Like the restaurant manager, she's
13 the one that maintains it. She sends people
14 out to check it. She does the cleaning.
15 Anything else above that that needs to be
16 done, she would contact me. I would have to
17 contact whoever needed to be -- you know, to
18 have work done.

19 COMMISSIONER JEFFRIES: Okay. So,
20 okay. Well, it appears as if there's not a
21 clear sense of, you know, who is ultimately
22 responsible top to bottom for this accessory

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1 parking lot. I just -- that's all I'm trying
2 to -- it sounds like, you know, in certain
3 situations, this person is. In another
4 situation, that person is and then that goes
5 up.

6 MS. WILLIS: Well, sir, on the
7 daily -- this -- I guess this is the only
8 restaurant we have that has a parking lot with
9 a special assessment. So, normally, the
10 restaurant manager's responsible for the
11 parking lot.

12 When it comes to striping and
13 paving, then we get into a different area.

14 So, the restaurant manager on the
15 day-to-day basis is the one responsible for
16 seeing that the parking lot is --

17 COMMISSIONER JEFFRIES: Okay. It
18 just brings up a sort of inherent problem.
19 You know, I mean because this is a different
20 situation. You're like -- you have -- this is
21 -- normally, you have a lot that's improved
22 with a Burger King and -- but, you got to

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1 cross the alley and there's something else
2 there and I just want to -- just to make --
3 think clear that the employees and everybody
4 understands that ultimately one person whoever
5 that is is responsible for the operations and
6 management. Everything tied to that parking
7 lot as if it was the actual store, you know
8 and that's what I mean. So, I'm just sort of
9 concerned that, you know, you seem a little
10 tentative about who's responsible and that's
11 somewhat --

12 MS. WILLIS: But, on the normal
13 day-to-day, that would be the restaurant
14 manager. That would be the general manager at
15 the restaurant.

16 COMMISSIONER JEFFRIES: And when
17 they are given their performance review,
18 that's part of their performance review?

19 MS. WILLIS: Yes.

20 COMMISSIONER JEFFRIES: You know,
21 operation of that -- and we know that for a
22 fact?

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1 MS. WILLIS: That's correct.

2 COMMISSIONER JEFFRIES: Okay. I'm
3 sorry.

4 CHAIRPERSON MILLER: We're really
5 just here to try to fashion an order that
6 works in the future so that you don't have
7 these conflicts.

8 MS. WILLIS: Okay.

9 CHAIRPERSON MILLER: Because they
10 don't serve anybody. They don't serve the
11 restaurant. They don't serve the parking lot.
12 They don't serve the neighbors. So, we're
13 trying to do a better order this time that
14 will work and so, that's what Mr. Jeffries is
15 asking.

16 For instance, if there are
17 different parts of our order that, you know,
18 one person might be responsible for wheel
19 stops. Somebody else is responsible for trash
20 pickup. Then nobody mainly knows who's really
21 responsible for the conditions in this order.

22 So, for instance, if I were to ask

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1 you -- there's a condition about replacing
2 wheel stops. Do you know who's responsible
3 for that?

4 MS. WILLIS: Yes, at that point, I
5 would have to contact our vendor Danny Lopez
6 and he -- he's responsible for that.

7 CHAIRPERSON MILLER: I mean are you
8 familiar with this order, the order that's in
9 existence now?

10 MS. WILLIS: Yes.

11 CHAIRPERSON MILLER: And has you
12 been over the past few years?

13 MS. WILLIS: Have I?

14 CHAIRPERSON MILLER: Have you been
15 or are you just recently familiar now because
16 there's a new application?

17 MS. WILLIS: I was not familiar
18 with this order until the calls were made in
19 '07.

20 CHAIRPERSON MILLER: Okay.

21 MS. WILLIS: Before then --

22 CHAIRPERSON MILLER: Okay. And

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1 it's your --

2 MS. WILLIS: Well, actually, I was
3 not responsible for the restaurant until '06
4 and I think that was at the time that the
5 person that attended the hearing before left
6 and I was appointed to that restaurant and at
7 that time, I wasn't aware of the order, but in
8 '07 is when I became aware of it.

9 MS. BEGUN: If I could clarify.

10 CHAIRPERSON MILLER: Okay.

11 MS. BEGUN: I don't mean to
12 interrupt, but Mark James was the person who
13 provided testimony at the last hearings. He's
14 been transferred to the Eastern Shore and
15 Clara Willis too her spot. So, if that
16 clarifies the gap with who is responsible and
17 the knowledge transfer. Hopefully that helps.

18 CHAIRPERSON MILLER: Well, I'm
19 trying to figure out the significance of '07.

20 That, you know -- are you saying that there
21 haven't been problems since '07 or there were
22 problems with the vendors, but you've tried to

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1 correct them?

2 MS. WILLIS: As far as I know,
3 there were -- there were problems with the
4 vendors until we changed vendors. We changed
5 the bread vendor and our main supplier and
6 this is when the problem started with them
7 arriving at different times. To the best of
8 my knowledge.

9 CHAIRPERSON MILLER: And that was
10 in '07?

11 MS. WILLIS: This was in '07.

12 CHAIRPERSON MILLER: And to the
13 best of your knowledge, have the problems been
14 solved with respect to them?

15 MS. WILLIS: To the best of my
16 knowledge, they have.

17 CHAIRPERSON MILLER: Well, can I
18 ask you about the chain. I mean if there was
19 a chain up, wouldn't that prevent deliveries
20 being made at off hours?

21 MS. WILLIS: The -- the deliveries,
22 they don't use the parking lot. They don't go

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1 in the parking lot.

2 CHAIRPERSON MILLER: Oh, where do
3 the -- well, we're talking about the parking
4 lot. That's our jurisdiction over the parking
5 lot. Where are the deliveries made?

6 MS. WILLIS: They have to -- they
7 have to park along the drive-thru side, the
8 lane coming up towards there.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER WALKER: Okay. If I could
11 ask a question. What time does the restaurant
12 open?

13 MS. WILLIS: We open at 5:30. The
14 managers arrive at 5:00.

15 MEMBER WALKER: Okay. And how is
16 it then that deliveries are made prior to
17 5:00? I mean how is it? Do the vendors have
18 access to the restaurant?

19 MS. WILLIS: There's only -- only
20 our main supplier. The one -- Maines, it's
21 the name of the company, they have a key
22 because most of our restaurants they can enter

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1 at anytime. So, Connecticut Avenue was the
2 only one with the special exception, but we
3 gave them all keys when we took the new
4 vendors.

5 CHAIRPERSON MILLER: Can I -- I
6 want to follow up on this deliveries question.

7 So, deliveries do not occur on the parking
8 lot even though we have a condition in the
9 last order that says deliveries are limited to
10 the hours of 10:00 a.m. to 6:00 p.m.? They
11 never occur on the parking lot?

12 MS. WILLIS: They never occur in
13 the parking lot.

14 CHAIRPERSON MILLER: So, that may
15 be not relevant. Trash pickup, does that
16 occur on the parking lot?

17 MS. WILLIS: That's also out of the
18 parking lot.

19 MR. JACKSON: Just --

20 CHAIRPERSON MILLER: Yes.

21 MR. JACKSON: Point of
22 clarification. If you look on the OP aerial

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1 in our Exhibit 1, now there are trash -- there
2 may be trash facilities on the restaurant
3 property, but the two dumpsters are on the
4 parking lot. They're circled on the OP map.

5 MEMBER WALKER: We have --

6 MR. JACKSON: Now, it may --

7 MEMBER WALKER: -- pictures that --
8 Mr. Jackson, we have pictures that show the
9 dumpsters outside the parking lot along the
10 alley.

11 MR. JACKSON: Well, again, that's
12 why I refer to the OP aerial. It may appear
13 to be outside the parking lot, but the angle
14 of the -- according to the -- our GIS, the lot
15 configuration actually extends such that the
16 -- the dumpsters are in the lot. They're not
17 in public space. The dumpsters are on the
18 parking lot. It's just -- and may be shaped
19 that way just so that the -- for purposes of
20 draining the parking lot. You have your
21 parking spaces angled down. The water runs
22 into the curb and it runs off the edge. I'm

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1 sure there's an engineering -- there's a
2 reason for that, but the -- there's an angled
3 -- the curb is angled, but the actual property
4 boundaries such that the dumpsters are
5 actually in the parking lot. They may not
6 appear to be, but they are.

7 MEMBER WALKER: Okay.

8 CHAIRPERSON MILLER: Is Applicant
9 contesting that?

10 MS. WILLIS: No.

11 CHAIRPERSON MILLER: Okay. So, we
12 are still looking at trash pickup on the
13 parking lot. Right?

14 MS. BEGUN: Yes.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 COMMISSIONER JEFFRIES: We're going
18 to be all over the place here, but I want to
19 get clarity as to, Ms. Willis, when you got
20 wind of the order was really when you were
21 before us to make a new application here. Is
22 that correct? That's the first time you saw

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1 the order.

2 MS. WILLIS: For the new
3 application?

4 COMMISSIONER JEFFRIES: Yes. Yes,
5 for the old order. The first time you looked
6 at the old order or the order that's -- I
7 don't know. It's expired. Right? Yes. Yes,
8 so the previous order. When did you first
9 become -- I mean get it? Was it when you --

10 MS. WILLIS: It was -- it was after
11 there were complaints made about the delivery
12 times and I contacted Mark James regarding and
13 then he sent me information on it.

14 COMMISSIONER JEFFRIES: Okay. Were
15 employees at the store -- I mean when they
16 first started working, were they familiar with
17 some of the aspects of the --

18 MS. WILLIS: Well, the store
19 manager was familiar with the order.

20 COMMISSIONER JEFFRIES: Okay.

21 MS. WILLIS: Because she -- the
22 same person was the store manager at the time

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1 I guess with the order. So, when I took over
2 the store, at that time, I guess Mark should
3 have -- well, he should have told me about
4 this and somehow -- like there was a transfer.

5 He was moving to the Eastern Shore and -- and
6 he never told me about it.

7 COMMISSIONER JEFFRIES: And I just
8 want to be clear. I think Madam Chair asked
9 this before. When is the last time you got a
10 complaint about noise at the restaurant in
11 terms of trucks coming in? When was the last
12 time?

13 MS. WILLIS: The last time we had
14 any complaints was -- was the complaints from
15 here.

16 COMMISSIONER JEFFRIES: Okay.

17 MS. WILLIS: We haven't received
18 any complaints since those seven.

19 COMMISSIONER JEFFRIES: Okay. So,
20 there were no -- as far as you know, there
21 were no complaints last year in terms of
22 noise?

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1 MS. WILLIS: That's correct.

2 COMMISSIONER JEFFRIES: Because you
3 got that all squared away with all the
4 vendors?

5 MS. WILLIS: That's correct.

6 COMMISSIONER JEFFRIES: Okay. I
7 mean there are some things early in last year
8 that were listed here. I don't know if you --
9 I mean the first couple of months of last
10 year, but it seems that some of the noise went
11 away and unless Ms. Guttman decided to stop
12 surveying, you know, chronicling it. But --

13 MS. WILLIS: I routinely check with
14 the manager about the delivery times and she's
15 reported that they've come within the time
16 frame. So, I don't know.

17 COMMISSIONER JEFFRIES: Okay. I
18 just -- you know, just that you're clear at
19 least for myself, but I would imagine for some
20 of my colleagues. I mean I'm just trying to
21 make certain that, you know, the operations
22 are such that, you know, it just works for

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1 everyone. I mean obviously the store. I
2 mean, you know, the District wants fast food
3 and Burger King is a brand that everyone's
4 familiar with. So, I don't want you to feel
5 as if, you know, we're coming down on your
6 here, but I just want to make certain there's
7 clarity in terms of roles, responsibilities
8 and sort of what's happening.

9 And my suspicion is that, you know,
10 when employees change and different things
11 change, you know, the successor is not give
12 the information in order to, you know, execute
13 properly and so, I -- you know, I just -- you
14 know, something we're going to have to do in
15 this order to sort of safeguard this and it
16 sounds like, you know, you've tried to make
17 some changes.

18 Although Commissioner Perry's, you
19 know, head's going back and forth. She's not
20 quite in agreement with you, but it sounds
21 like you've tried to make some changes and so
22 forth and that's good.

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1 But, I'm just trying to deduce
2 whether you've been a good citizen, a good
3 neighborhood partner and if I feel that, you
4 know, Burger King has been a good partner,
5 then, you know, I'm more open to signing off
6 on this. But, if I feel that, you know, you
7 guys don't quite know what hand is -- what
8 hand is doing, then I'm less, you know,
9 feeling good about, you know, perhaps looking
10 at definitely a longer term.

11 I mean at this point, I'm at five.

12 But, I could probably be convinced to go less
13 because, you know, it doesn't sound like, you
14 know, the operations are fully pulled
15 together. But, I'm listening, you know, for a
16 little more information from you.

17 But, I just didn't want you to
18 feel, you know, that we were coming down on
19 you. I just wanted to get some clarity as to,
20 you know, how things are being operated.

21 MS. BEGUN: If I could address
22 concern that you just raised. Brian Timmons

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1 is the ANC liaison that we have inform the ANC
2 about and I will acknowledge that that
3 information didn't come as timely as it should
4 have, but present to the Board that my
5 interactions with Brian Timmons and since I've
6 been part of this which has been since the
7 beginning of the application, he's made it
8 very clear to me that he wants to centralize,
9 any of the concerns to go to him. He want's
10 to be responsive. Brian Timmons is -- he gave
11 out his e-mail address, his phone number and
12 it's there and he is willing and able to
13 respond to any of the concerns of the ANC
14 going forward and I will acknowledge that this
15 is late in coming, but this is representation
16 that he has made to me and I can represent on
17 behalf of Burger King, the Applicant and him
18 that that's where we are.

19 MEMBER WALKER: And what is his
20 title?

21 MS. BEGUN: Clara, could you
22 answer? He's -- go ahead.

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1 MS. WILLIS: Well, he's our
2 accountant and he works out of our main office
3 which would be a much better person to handle
4 that position because he's there. He's not
5 going to a different location and he'll be
6 much easier to get in contact with.

7 COMMISSIONER JEFFRIES: But, who
8 will be the person who, you know, come
9 performance review time will be also judged on
10 how well that parking lot is managed. I mean
11 this is an accountant who's -- you know, he's
12 somewhere else. Do you understand? I'm just
13 trying to understand who on site is going to
14 be responsible if things are not, you know,
15 operating smoothly, if trucks are coming at
16 4:00 or 5:00 in the morning and they're not --
17 and nothing's happened, that person is fired.

18 I don't know what the situation is, but I'm
19 just trying to -- will he sort of --

20 MS. WILLIS: Well, see that person
21 would be the district manager which right now
22 is myself, but that person can also change,

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1 you know, like -- so, if you would make
2 something like that an issue, you would have
3 to just say the district manager not with a
4 name.

5 COMMISSIONER JEFFRIES: Oh, no.
6 No, that's fine. Fine. A district manager.
7 So, the district manager will be the person.

8 MS. WILLIS: That would -- that
9 would be the person.

10 COMMISSIONER JEFFRIES: So, someone
11 from the ANC, a resident, a councilmember
12 would contact the district manager which at
13 this point is you.

14 MS. WILLIS: That's correct.

15 COMMISSIONER JEFFRIES: Okay. And
16 the assumption is that this person would be
17 familiar with the order, will know all parts
18 of it.

19 MS. WILLIS: That's correct.

20 COMMISSIONER JEFFRIES: Well --

21 CHAIRPERSON MILLER: I would think
22 that the ANC might contact the ANC liaison

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1 first, but --

2 COMMISSIONER JEFFRIES: Yes. I
3 mean yes. Yes.

4 CHAIRPERSON MILLER: Ideally. Yes.

5 But, I -- right. What Mr. Jeffries is
6 getting at is somebody is responsible for this
7 order.

8 MS. BEGUN: Yes, internally, I
9 would say that the district manager is
10 responsible. For the public and to address
11 their concerns, the liaison Brian Timmons
12 would be the point person. But, internally,
13 the district manager would be insuring the
14 compliance that a order would require.

15 CHAIRPERSON MILLER: ANC liaison
16 was just recently appointed. Is that correct?

17 MS. BEGUN: Officially, yes.

18 CHAIRPERSON MILLER: Even though
19 the order in 2004 required the appointment of
20 a liaison?

21 MS. BEGUN: That's correct.

22 CHAIRPERSON MILLER: Do you have an

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1 explanation for that? Is it because no one
2 was responsible for this order?

3 MS. BEGUN: I don't know if I have
4 a good answer for that other than -- I don't
5 have information as to why it wasn't appointed
6 beforehand.

7 COMMISSIONER JEFFRIES: Because
8 they're selling burgers. This is not what
9 they do. I mean I don't -- don't get me --

10 COMMISSIONER PERRY: The
11 application wasn't up.

12 CHAIRPERSON MILLER: I have a
13 question about the fence and the reinforcement
14 of this underground to prevent rodents from
15 entering neighboring properties. Do you have
16 any information about whether the Applicant
17 took any action to do that in accordance with
18 the order of 2004?

19 MS. WILLIS: Okay. I've checked on
20 that and I tried to find out if -- if the work
21 had been performed. I wasn't able to get any
22 clarification as to it having been done, but

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1 the company is willing to check into it, you
2 know, to see whatever work needs to be done
3 and to complete the work that's necessary.

4 CHAIRPERSON MILLER: We were
5 talking about waiving that -- possibly waiving
6 that provision and 2303.1(f) which talked
7 about -- I think it was (f). Well, about
8 having a wall or evergreens and I think that
9 the -- I think the argument against it was
10 that the fence and the shrubbery that was
11 there was sufficient.

12 Based on what the ANC has said, do
13 you have any further comments about that? Why
14 that is sufficient?

15 MS. BEGUN: I don't think I've
16 anything to add. I can just repeat what I
17 said earlier and I don't think anybody wants
18 to hear that.

19 CHAIRPERSON MILLER: Okay. That
20 the Applicant hasn't taken the action to
21 reinforce the fence and that you're willing to
22 look into that and take it.

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1 MS. BEGUN: I think a fair
2 statement is that we haven't confirmed. I'm
3 not sure that it hasn't been done. I just
4 think that we can get confirmation and that's
5 not something that should be hard to do.

6 CHAIRPERSON MILLER: Okay. I'm
7 going to ask you about one other provision
8 under 2303.1. It talks about landscaping with
9 trees and shrubs shall cover a minimum of 5
10 percent of the total area of the parking lot.

11 Do you know what percentage your landscaping
12 covers?

13 MS. BEGUN: I don't have a
14 mathematical percentage for you, but I -- on
15 my visual visit to the -- the parking lot, it
16 seems that you couldn't really put -- put much
17 more. I mean there's -- it's fully
18 landscaped. There aren't just patches of area
19 that could produce growth that aren't
20 producing vegetation if that's fair.

21 CHAIRPERSON MILLER: The land --
22 the trees and everything that we see that are

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1 buffers --

2 MS. BEGUN: Um-hum.

3 CHAIRPERSON MILLER: -- are they
4 part of the lot or are they not part of the
5 lot? Do you know?

6 MS. BEGUN: I believe the trees are
7 part of the lot. Is that correct? Yes.
8 She's confirming yes.

9 CHAIRPERSON MILLER: Office of
10 Planning, yes.

11 COMMISSIONER JEFFRIES: Yes. Yes,
12 can we ask Mr. Jackson.

13 MR. JACKSON: Yes, well, the --
14 referring back to the aerial of the site. The
15 fence line is on the property line and the
16 fence line is really a collection. It's
17 continuous, but it's continuous what appears
18 to be a 6-foot tall wooden picket fence and
19 then buildings. There are garage buildings
20 which are well over 4-feet tall and then other
21 continuations of the wooden fence.

22 There -- there does -- to be some

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1 structure at the bottom of some of the fence,
2 but I can't tell if that's a reinforcement or
3 if that dates from the original installation.

4 In terms of the landscaping, what
5 we're talking about is basically green grass
6 with a number of trees and bushes. So, it's
7 not a -- it's not a continuous thick hedge or
8 continuous thick trees, but the trees are well
9 grown and are healthy. The shrubbery is --
10 the shrubbery that's there is healthy. But, I
11 think the primary screening element are there
12 -- are -- are the 6-foot tall wooden picket
13 fence attached to the structures at the top of
14 the hill.

15 Building a 4-foot fence really
16 wouldn't add to the visual screen, but I think
17 we deferred to the -- the community's comment
18 that what they want is some reinforcement at
19 the bottom of that fence that keeps the
20 rodents out and it -- you couldn't really tell
21 from -- visually. I could tell at the
22 northern end you can see structure underneath,

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1 but again, I couldn't tell if that -- and this
2 is masonry -- masonry walls reinforcement. I
3 can't tell whether that's new or whether
4 that's the original construction. That was
5 not really visible.

6 And then as you go south, the grass
7 is covered. The grass and ground's covered
8 over and you can't really tell what else is
9 there.

10 COMMISSIONER JEFFRIES: But, the
11 intent of the 5 percent was suppose to be new
12 landscaping or maintenance of what was there?

13 MR. JACKSON: Well, this obviously
14 has been there for a long time. So, it was
15 maintaining what is there.

16 COMMISSIONER JEFFRIES: Okay.

17 MR. JACKSON: The requirement, of
18 course, is for new construction. That you
19 have a minimum of 5 percent.

20 COMMISSIONER JEFFRIES: Five. Um-
21 hum. Um-hum.

22 MR. JACKSON: But, our estimation

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1 is that there's at least 5 percent of the lot
2 that's covered with this landscaping.

3 COMMISSIONER JEFFRIES: Okay.

4 CHAIRPERSON MILLER: Okay. I just
5 want to get clarification on the deliveries
6 now.

7 Where are the deliveries taking
8 place?

9 MS. WILLIS: The deliveries come --
10 if you're looking at the -- as you drive up
11 the lot to the drive-thru side, the trucks
12 have to park there.

13 COMMISSIONER JEFFRIES: Is it
14 adjacent to where the drive-thru is?

15 MS. WILLIS: It's where the side
16 entrance of the Burger King is.

17 COMMISSIONER JEFFRIES: Right.
18 Right. You drive between the --

19 MS. WILLIS: Yes, the -- where you
20 would go to the drive-thru.

21 COMMISSIONER JEFFRIES: Um-hum.

22 MS. WILLIS: That's where the

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1 trucks are allowed to park.

2 COMMISSIONER JEFFRIES: Okay.

3 CHAIRPERSON MILLER: Okay. And
4 that's not on the parking lot?

5 MS. WILLIS: No, it's not on --
6 it's not on the parking lot.

7 CHAIRPERSON MILLER: But, you do
8 have contracts with your vendors that they
9 only deliver between 10:00 and 6:00?

10 MS. WILLIS: That's correct.

11 CHAIRPERSON MILLER: Okay.

12 VICE CHAIRMAN LOUD: So, when your
13 vendors come between 10:00 and 6:00, you
14 actually have to close down your drive-thru?

15 MS. WILLIS: No, the way they park
16 the cars is a little touchy there, but the
17 cars can actually go in another lane and get
18 around them.

19 VICE CHAIRMAN LOUD: There's enough
20 room. Okay.

21 MS. WILLIS: Before they were
22 parking in the alley, but the police, they

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1 told them they couldn't park there to make the
2 deliveries. That's why they have to park on
3 the side of the building.

4 VICE CHAIRMAN LOUD: Okay. Thank
5 you.

6 CHAIRPERSON MILLER: If there were
7 a chain up, would that prevent the trash
8 trucks from coming in during off hours?

9 MS. WILLIS: If -- well, I'm trying
10 to see now how the chain would work if it
11 would have to be out towards the dumpsters.
12 Because before, I thought you were saying from
13 one opening of the lot, but the dumpster are
14 sitting on a pad in front of the parking lot.

15 COMMISSIONER JEFFRIES: This is
16 very tough, you know, really visualizing all
17 that everyone's talking about. I mean, you
18 know, it's just -- I mean it's just tough. If
19 you're not saying north, south, east, west,
20 you're not -- you know, it's just -- it's
21 tough.

22 CHAIRPERSON MILLER: If you -- I

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1 guess my question is, you know, say you tell
2 your vendors what to do and they don't
3 necessarily cooperate say and then you can,
4 you know, say okay, I'm terminating the
5 contract. But, is there any other way to
6 prevent them from getting at the dumpsters
7 during off hours or not based on the testimony
8 we had today about hearing trucks coming in
9 the middle of the night?

10 MS. WILLIS: I can't really --
11 can't really see it. I don't --

12 MS. BEGUN: I'm sorry. Can you
13 rephrase your question?

14 CHAIRPERSON MILLER: My question
15 goes to the testimony that we heard today from
16 Ms. Guttman about hearing trucks arriving in
17 the middle of the night and, you know, you
18 said well, deliveries don't take place in the
19 parking lot. So, that's not at issue right
20 now, but trash deliveries, pick ups, drop offs
21 do and I heard you say that well, you try to
22 get your vendors to cooperate and if they

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1 don't, you know, then you might terminate them
2 and my question is other than that, is there a
3 way to close off the dumpsters during off
4 hours so that no one would be tempted to come
5 and try to dump trash in those dumpsters?

6 I think that the ANC was also
7 suggesting or Ms. Guttman that maybe other
8 people come and dump during off hours because
9 they know the dumpsters are there and that has
10 a bad impact on the neighboring residents and
11 so, I'm just asking is there a way to close
12 them off or you don't really see it? It's
13 just a question.

14 MS. WILLIS: I don't really see how
15 we could close off the dumpsters.

16 MEMBER WALKER: Madam Chair, I
17 think the Board needs to consider whether
18 there is some screening requirements for these
19 dumpsters.

20 CHAIRPERSON MILLER: That's a good
21 point. I think we have seen screening as an
22 option. Okay. Do you want to reference the

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1 provision? We're just going to take a look.

2 Sometimes we've seen screening for
3 dumpsters and that might be a solution here.
4 So, we just wanted to take a look at our
5 regulations and see if it's applicable and I
6 know I asked you a question and it's hard to,
7 you know, necessarily answer on the spot and
8 it might be just something to consider.

9 Mr. Jackson, are you familiar with
10 the provision we're looking for that talks
11 about screening?

12 MR. JACKSON: Madam Chair, we don't
13 actually refer to dumpsters in the
14 regulations, but we do have something for --
15 regulations under 2204.12 for loading berths
16 which is -- that's the closest thing we have.

17 I don't think -- looking under loading
18 service, I don't recall there being -- about
19 dumpster.

20 MEMBER DETTMAN: I don't have it,
21 but there is a reference to a trash enclosure
22 and it's very design specific. The last time

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1 we dealt with it was for the carry-on in
2 Minnesota Avenue. So, the design requirements
3 are fairly specific if we could just find
4 them.

5 COMMISSIONER PERRY: I think you'll
6 find them in the commercial section of the
7 Zoning Regs because I've seen them.

8 COMMISSIONER JEFFRIES: This is
9 clearly just unacceptable. I mean this is --

10 COMMISSIONER PERRY: It talks about
11 a fence.

12 COMMISSIONER JEFFRIES: Oh, it's an
13 alley, but I mean --

14 COMMISSIONER PERRY: There's a lot
15 of people looking at this alley.

16 MEMBER DETTMAN: Madam Chair.

17 CHAIRPERSON MILLER: Um-hum.

18 MEMBER DETTMAN: 733, fast-food
19 restaurants in C-2-A Districts and it might be
20 someplace else in the C-3-A, but this is the
21 first time that I saw it. 733.4 says any
22 refuse dumpsters shall be located in a three-

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1 sided brick enclosure equal to height to the
2 dumpster or 6-feet in height whichever is
3 greater. The entrance to the enclosure shall
4 include an opaque gate. The entrance shall
5 not face a residential district. 733.4.

6 I'll see if that carries over to
7 the C-3. I'm sure it does.

8 CHAIRPERSON MILLER: I think it's
9 good as -- as the standard. Because we're not
10 -- we're not here to grant a special exception
11 for a Burger King. However, I think, you
12 know, there is this overlap between Burger
13 King and the parking lot and we do have this
14 dumpster in the parking lot that seems to be
15 creating a problem at least with respect to
16 the testimony we heard with respect to people
17 using it at off hours and screening would be a
18 possible solution as set forth in this
19 regulation.

20 Do you have the regulations in
21 front of you by any chance?

22 MS. BEGUN: I --

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1 CHAIRPERSON MILLER: No.

2 MS. BEGUN: -- I don't have the
3 regulation with me.

4 CHAIRPERSON MILLER: Okay.

5 VICE CHAIRMAN LOUD: Just for
6 clarification, the accessory lot is in the R-
7 1-B though. Right? And the Burger King is in
8 the C-2 or C-3?

9 MEMBER DETTMAN: Yes, but I was
10 thinking about that. But, these dumpsters
11 belong to a use that's in the C-3-A.

12 VICE CHAIRMAN LOUD: Um-hum.

13 MEMBER DETTMAN: Technically, I
14 would assume that these dumpsters are suppose
15 to be located on that lot.

16 VICE CHAIRMAN LOUD: Um-hum.

17 MEMBER DETTMAN: The only use of t
18 he lot that we're looking at today should be
19 for parking.

20 VICE CHAIRMAN LOUD: For accessory
21 parking.

22 MEMBER DETTMAN: So, I would think

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1 that if there are screening requirements
2 associated with these trash -- these
3 dumpsters, they would apply to these dumpsters
4 located on the R-1-B lot as well.

5 VICE CHAIRMAN LOUD: I would tend
6 to agree and/or even more so that these
7 dumpsters should be on the C-2 or C-3 lot
8 instead of the R-1-B lot.

9 MS. GLAZER: Madam Chair, I just
10 want to point out in keeping with the comments
11 just made, the Board perhaps should look at
12 Section 2303.1 Subsection C which specifies
13 that no other use should be conducted on the
14 premises and that's the parking lot premises
15 and no structure other than an attendant
16 shelter shall be at that lot.

17 CHAIRPERSON MILLER: Unless the use
18 or structure is otherwise permitted in the
19 district in which the parking lot is located.

20 Is this not permitted? A screening around a
21 dumpster.

22 MS. GLAZER: Talking about the

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1 dumpster not the screening. The dumpster to
2 begin with, I would think under this section
3 is another structure that doesn't fall into
4 that subsection. It's not an attendant's
5 shelter.

6 COMMISSIONER JEFFRIES: You're
7 saying a dumpster is a structure?

8 MS. GLAZER: Or a use that's
9 separate from the parking use.

10 COMMISSIONER JEFFRIES: Oh. Okay.
11 Okay.

12 MS. GLAZER: Now, again, under
13 214.5, there should be compliance with 2303.
14 However, the Board can waive or modify some of
15 the conditions.

16 CHAIRPERSON MILLER: You're saying
17 a dumpster's not permitted in the district in
18 which the parking lot is located?

19 MS. GLAZER: I'm suggesting that
20 the Board should consider that as a
21 possibility.

22 VICE CHAIRMAN LOUD: I don't see

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1 why a commercial dumpster would be permitted
2 in the R-1. Does that sound a bit
3 inappropriate? Hum? Okay.

4 CHAIRPERSON MILLER: I think we're
5 going to take a break just because --

6 COMMISSIONER PERRY: Do we get to
7 cross examine, too?

8 CHAIRPERSON MILLER: You will.

9 COMMISSIONER PERRY: Okay.

10 CHAIRPERSON MILLER: So, you can
11 kind of collect your thoughts, too, while we
12 just take a more thorough look at the
13 regulations and you can, too and think about,
14 you know, refining any conditions or if you
15 agree on any conditions. Sometimes that
16 happens when we go out. We come back and we
17 find you're all in agreement.

18 So, we're going to do that. Thank
19 you.

20 (Whereupon, at 5:20 p.m., the
21 evening session began.)
22

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 6:13 p.m.

3 CHAIRPERSON MILLER: Okay. We're
4 back on the record. So, while we broke, did
5 you all come to an agreement? Okay.

6 I think -- well, one of the issues
7 that we were dealing with when we broke was
8 the question of screening of the dumpster and
9 so, what I want to say just at this point is
10 that they're are different regulations, but
11 the authority that we would be acting under in
12 requiring the Applicant to screen the dumpster
13 would be 214 which refers us to 2300 and
14 2303.5 allows for the Board to impose any
15 requirements deemed necessary to protect
16 neighboring property.

17 I'm not looking at the provision
18 right now. I'm paraphrasing it, but I think
19 that's right.

20 And we can address that later when
21 we get to conditions. Yes, 2303.5, the Board
22 may require any special treatment of the

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1 premises that it deems necessary to protect
2 the value of adjacent property and we are
3 considering seriously imposing a requirement
4 for screening of the dumpsters in light of the
5 testimony that we heard and I know that the
6 Applicant has not finished their rebuttal or
7 closing. So, we're not at the point of
8 imposing conditions, but we were discussing
9 that and that is one that the Board is
10 considering.

11 So, where are you with the rest of
12 your case now? Yes.

13 COMMISSIONER JEFFRIES: Let me --
14 before you all get going, I just want to say
15 now obviously the hour is getting late and,
16 you know, we've heard a lot of testimony. So,
17 to the extent that, you know, we can just get
18 through pretty quickly would be greatly
19 appreciated. So.

20 MS. BEGUN: I hear that concern. I
21 think I was asking Clara Willis to speak to
22 any of the testimony that she heard that she

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1 thought needed more clarification or was
2 inconsistent with her understanding of the
3 facts relevant to the Board and that's pretty
4 general. I think we've discussed a lot.

5 There is one thing that I think
6 hasn't been discussed and there might be a
7 couple of things that she wants to say that
8 occurred to her.

9 But, my remaining thought was to
10 discuss the chain that was proposed and
11 whether you think that would eliminate any --
12 the chain across the parking lot and whether
13 that would eliminate any sort of deliveries or
14 late night activity that's causing noise. To
15 that extent, can you speak to the chain
16 requirement and how you interpret that
17 requirement as being helpful or not to the
18 concerns of the ANC?

19 MS. WILLIS: A chain across the
20 parking lot, I think if there's a noise
21 requirement that they're concerned about, I
22 can't see how a chain -- because the

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1 deliveries are actually in the -- in the
2 parking lot.

3 Due to our hours of operation, the
4 parking lot is in use most of the day until,
5 you know, late night.

6 CHAIRPERSON MILLER: Could you
7 clarify? You're talking about the parking lot
8 that's at issue before us. Correct?

9 COMMISSIONER JEFFRIES: Not the
10 parking lot that's right behind --

11 MS. BEGUN: Correct. Just to
12 clarify, the chain would go across the parking
13 lot. To sum up what I'm getting at, is that
14 the deliveries and the -- or the large trucks
15 that are coming are in the alley which aren't
16 in the parking lot. So, putting a chain
17 across the parking lot to me doesn't alleviate
18 the concern that there's large trucks coming
19 in and out of the alley at hours that the ANC
20 is concerned about and that's what I'm getting
21 at. If you'd rather just me summarize my
22 points than have it presented through

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1 testimony, I'm happy to do that. But, that
2 was my point.

3 And the other point that I was
4 trying to make and she can testify if this
5 correct is that given the hours of operation
6 of the restaurant, anywhere from 1:30 as a
7 closing time to 5:00 a.m. as an opening time
8 with employees being there before and after,
9 there might be a two-hour window where an
10 employee wouldn't want to use the parking lot.

11 So, we're not thinking that a chain across
12 the parking lot would be beneficial, one, for
13 the delivery noises and two, for employee use
14 maybe two hours of the day.

15 That's my point and if you have
16 anything to supplement in terms of your
17 personal knowledge, go ahead.

18 MS. WILLIS: No, I don't have
19 anything to add to that.

20 MEMBER WALKER: But, didn't we hear
21 testimony that the managers arrive at 5:00
22 a.m.?

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1 MS. BEGUN: I believe we -- correct
2 me if I'm wrong. The restaurant opens at 5:30
3 and the manager arrives at 5:00 a.m. and if
4 there's a closing at 1:30 of the drive-thru,
5 there's still required to be employees after
6 1:30. So, if that's until 2:00, there's a two
7 or three-hour window there that possibly the
8 restaurant parking would not be needed.

9 COMMISSIONER JEFFRIES: Okay. But,
10 we're here really to discuss the accessory
11 parking lot and not so much the Burger King
12 and the improvement. So, the deliveries are
13 made in the alley or in the parking lot that's
14 adjacent to the Burger King.

15 MS. BEGUN: My understanding is
16 that deliveries -- that the trucks are in the
17 alley and not in the parking lot and Clara,
18 there is your area where you have personal
19 knowledge. Go ahead.

20 MS. WILLIS: That's correct. The
21 deliveries we receive from two vendors, a
22 bread supplier and a Maines' delivery which

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1 delivers all of our products, those deliveries
2 are made in the alley. They're not in the
3 parking lot.

4 COMMISSIONER JEFFRIES: So, Madam
5 Chair, what does that have to do with our
6 discussion around this accessory parking lot?

7 CHAIRPERSON MILLER: I think that
8 the point they're trying to make is that we
9 shouldn't be imposing a condition for a chain
10 because the chain wouldn't affect deliveries
11 to the parking lot because there are no
12 deliveries to the parking lot.

13 COMMISSIONER JEFFRIES: Okay.

14 MS. BEGUN: Correct.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER WALKER: Okay. But, just so
17 I'm clear, I thought we heard testimony that
18 the trucks pull into the drive-thru lane and
19 that they take goods from off the trucks and
20 into the store from the drive-thru lane.
21 Isn't that correct?

22 MS. WILLIS: That's correct.

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1 MEMBER WALKER: Okay. But, that's
2 a little different than saying that they --
3 the trucks make deliveries into the alley.

4 MS. BEGUN: Thank you. That is
5 maybe a little inconsistent, but it's still
6 not the parking lot. The drive-thru lane and
7 the alley --

8 MEMBER WALKER: I understand that's
9 not the parking lot.

10 MS. BEGUN: Okay.

11 MEMBER WALKER: But, I mean, you
12 know, we're trying to be precise here. So,
13 you know, please try to be clear.

14 MS. BEGUN: You've made a good
15 point and your point clarifies. That's
16 correct.

17 CHAIRPERSON MILLER: So, is it your
18 opinion that a cable or a chain would not
19 serve any purpose with respect to mitigating
20 any adverse impacts on neighboring properties?

21 MS. BEGUN: That's my opinion. Do
22 you have anything to --

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1 MS. WILLIS: No. No, I just --
2 that's my opinion also.

3 CHAIRPERSON MILLER: Okay. I just
4 want to ask you. So, what we are considering
5 is the screening then of the dumpster to
6 prevent trash pickup or unauthorized dumping
7 in the middle of the night. Do you have an
8 opinion with respect to that type of a
9 condition? It would be some type of an
10 enclosure that could be locked around the
11 dumpster.

12 MS. WILLIS: Most of our
13 restaurants do have trash enclosures. So, I
14 can't see where that would really be a
15 problem.

16 MS. BEGUN: That would --

17 COMMISSIONER JEFFRIES: What type -
18 - ma'am, Ms. Willis, what type of enclosures?
19 Are they brick? Are they wooden?

20 MS. WILLIS: Two of them have brick
21 enclosures and the others have wood
22 enclosures.

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1 COMMISSIONER JEFFRIES: Okay. And
2 those are in similar type locations? Urban
3 settings or --

4 MS. WILLIS: No.

5 COMMISSIONER JEFFRIES: Okay.

6 CHAIRPERSON MILLER: Could you tell
7 me whether there have been extermination
8 services to control the rodents?

9 MS. WILLIS: Yes, there has --

10 CHAIRPERSON MILLER: In the parking
11 lot? Yes.

12 MS. WILLIS: Yes, on a monthly
13 basis.

14 CHAIRPERSON MILLER: Okay. Do you
15 have any further --

16 MS. BEGUN: I just wanted to point
17 out that in Chapter 2303.1(c) if we're talking
18 about enclosing the dumpsters, that would
19 require a structure and as long as we're aware
20 that 2303.1(c) -- as long as the order is in
21 compliance with that regulation. I just
22 wanted to bring that point up before the

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1 Board. I sure you are aware of that.

2 CHAIRPERSON MILLER: Are you
3 familiar with any regulation that speaks to
4 whether this structure is permitted or not
5 permitted in this district?

6 MS. BEGUN: Nothing other than what
7 I just pointed out.

8 CHAIRPERSON MILLER: Okay. Is that
9 it? Do you have any other closing remarks?

10 MS. BEGUN: I'd like to find out
11 first if Clara has anything -- oh, there was
12 one thing that -- strike that. Do you have
13 any other points that you heard in testimony
14 that you don't think that we addressed in
15 terms of you thought were inconsistent with
16 your knowledge of the use of the parking lot?

17 MS. WILLIS: No.

18 MS. BEGUN: Okay. My closing
19 remarks are brief. I would request that the
20 Board approve an order. On behalf of the
21 Applicant, I have to advocate for the ten
22 years that we requested and given the

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1 testimony here today, we're willing to work
2 with whatever conditions are imposed and would
3 be happy to make whatever adjustments are
4 needed to satisfy those concerns of the ANC
5 and I'll leave it at that.

6 If there's any further questions,
7 I'm happy to answer them.

8 CHAIRPERSON MILLER: Okay. And not
9 to prolong this, but I think there's been an
10 issue here about compliance with the order and
11 I just want to be -- just get my facts a
12 little more in order with respect to what's
13 been complied with and what's hasn't.

14 Trash pickup, has that occurred
15 three times a week?

16 MS. WILLIS: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MS. WILLIS: Yes.

19 CHAIRPERSON MILLER: Were the side
20 doors facing the western property line welded
21 closed?

22 MS. WILLIS: They're welded closed.

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1 CHAIRPERSON MILLER: Okay. And you
2 have been doing the monthly extermination
3 services?

4 MS. WILLIS: That's correct.

5 CHAIRPERSON MILLER: Okay. But,
6 you did not reinforce the fence to prevent
7 rodents from entering the neighbors' property.
8 Is that right?

9 MS. WILLIS: That --

10 MS. BEGUN: That remains unclear.
11 It may have been complied with or it may not.
12 So.

13 CHAIRPERSON MILLER: You didn't
14 install the cable or chain. Is that correct?

15 MS. WILLIS: That's correct.

16 MS. BEGUN: That's correct.

17 CHAIRPERSON MILLER: You didn't
18 appoint an neighborhood liaison until --

19 MS. BEGUN: Until we -- after the
20 application was submitted.

21 CHAIRPERSON MILLER: Okay.

22 MS. BEGUN: The renewal

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1 application.

2 CHAIRPERSON MILLER: Did you
3 provide the ANC with a report summarizing
4 compliance?

5 MS. BEGUN: Not that I'm aware of.
6 Are you aware of the report? No.

7 CHAIRPERSON MILLER: And the wheel
8 stops, due to replace nonexistent or misplaced
9 wheel stops?

10 MS. BEGUN: Yes.

11 CHAIRPERSON MILLER: Okay. And
12 there hasn't been an issue with respect to
13 repainting and maintaining the entrance and
14 exit directional arrows. Is that right?

15 MS. BEGUN: The Office of Planning
16 did raise that during one of the visits and we
17 promptly painted and replaced things as
18 necessary.

19 CHAIRPERSON MILLER: Okay. So, you
20 did that when the application was filed or so
21 thereafter. Is that right? After OP
22 investigated, when the application was filed?

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1 MS. BEGUN: That's correct.

2 CHAIRPERSON MILLER: Okay. Okay.

3 I think I've going to try to capture where the
4 Board is and then others can join in.

5 I mean basic -- oh, you want to
6 cross examine Ms. Willis on her recent
7 testimony. I'm sorry. Go right ahead.

8 COMMISSIONER PERRY: Very quickly.

9 Ms. Willis, are you on site on a daily basis?

10 MS. WILLIS: I'm there two to three
11 times a week.

12 COMMISSIONER PERRY: You heard
13 testimony from Ms. Guttman that trucks were
14 pulling into the back parking lot and I think
15 she provided a picture and she's got four
16 years of notes which I'm going to ask the
17 Board to allow her to submit.

18 COMMISSIONER JEFFRIES: When you
19 say back parking lot --

20 COMMISSIONER PERRY: I'm talking
21 about the parking lot in question now. The
22 one that we're talking about.

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1 COMMISSIONER JEFFRIES: The
2 accessory parking lot.

3 COMMISSIONER PERRY: Accessory
4 parking lot.

5 MS. WILLIS: But, I didn't think
6 here comments said that the trucks were
7 parking in the accessory lot. I thought she
8 said that they were making a loud noise.

9 COMMISSIONER PERRY: She talked --

10 MS. WILLIS: Look at the picture.
11 The picture of the Maines' truck is actually
12 in the alley.

13 COMMISSIONER PERRY: It's part in
14 and part out. Well, are you aware that I've
15 been in your restaurant late -- after some of
16 our late ANC meetings and I've seen trucks for
17 the deliveries in that back parking lot? It's
18 the accessory lot. I'll call it that. I call
19 it the back lot, but --

20 MS. WILLIS: No.

21 COMMISSIONER PERRY: Are you aware
22 -- I believe one of your trucks, the Maine

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1 one, is a semitrailer. It's large.

2 MS. WILLIS: Yes.

3 COMMISSIONER PERRY: That it's very
4 hard for it to turn off of a congested
5 Connecticut Avenue across four lanes of
6 traffic in a lot of cases, because we have the
7 reversible lanes there, into that area and
8 that they often use Albermarie Street to
9 enter.

10 MS. WILLIS: No, whenever I've been
11 there, they've entered and they've parked
12 along the side.

13 COMMISSIONER PERRY: But, they've
14 also -- okay. So, you're not aware that they
15 also use Albermarie Street to access the
16 alley.

17 When was the name of Brian Timmons
18 sent to the ANC?

19 MS. BEGUN: Your question's
20 directed to her. I can answer it if you would
21 like.

22 COMMISSIONER PERRY: Yes, please

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1 because we haven't received it.

2 MS. BEGUN: If you look in my
3 prehearing statement, I believe that it's
4 documented there. If not, I will provide you
5 with the letter -- a copy of the letter that I
6 have with me.

7 Just for the record, it was Federal
8 Expressed to Susan Banta and then it was sent
9 to every single member of the 200 -- every
10 single resident within 200 feet of the
11 property at issue. The letter is dated
12 December 17th, 2008.

13 COMMISSIONER PERRY: To Susan
14 Banta, but not to the ANC office.

15 MS. BEGUN: And to the ANC office.
16 Well --

17 COMMISSIONER PERRY: Okay. Because
18 we haven't gotten it. We have a PO box.
19 Maybe that's why and Federal Express doesn't
20 normally deliver to PO boxes, but the first
21 time I saw his name was in your prehearing
22 submission.

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1 VICE CHAIRMAN LOUD: Madam Chair, I
2 think the question's been asked and answered.

3 COMMISSIONER PERRY: Okay.
4 Answered.

5 VICE CHAIRMAN LOUD: And we can
6 probably move on.

7 COMMISSIONER PERRY: Okay.

8 CHAIRPERSON MILLER: Thank you.

9 COMMISSIONER PERRY: The trash
10 truck for the dumpsters in the back -- in the
11 accessory parking lot, where does it pull in?
12 Because that's not one of your delivery
13 trucks. I mean the dumpsters are in the
14 accessory parking lot.

15 MS. WILLIS: Right. It pulls in
16 along Albermarie. Comes that way.

17 COMMISSIONER PERRY: It comes in
18 Albermarie and then goes into the back parking
19 lot to --

20 MS. WILLIS: And it empties the
21 dumpsters there. Right.

22 COMMISSIONER PERRY: It empties the

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1 dumpsters in the accessory parking lot. Okay.

2
3 How do the trash trucks and the
4 delivery trucks exit the alley or exit the
5 area? Do they go through the alley or do they
6 circle around your property and go back out
7 onto Connecticut Avenue?

8 MS. WILLIS: They exit through the
9 alley.

10 COMMISSIONER PERRY: So, the trash
11 truck pulls into the accessory parking lot and
12 then backs out and goes up into the alley?

13 MS. WILLIS: He just dumps the
14 trash and then he backs up and just pulls
15 forward.

16 COMMISSIONER PERRY: Okay.

17 MS. WILLIS: Straight forward and
18 exits.

19 COMMISSIONER PERRY: You mentioned
20 your delivery trucks. That you've cleared it
21 up in 2007, but you're aware that Ms. Guttman
22 testified in -- that there was testimony also

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1 with the ANC Commissioners that the problems
2 were still continuing in 2008.

3 MS. WILLIS: I was not aware of it
4 until her testimony.

5 COMMISSIONER PERRY: Okay. Who is
6 at the restaurant when these delivery trucks
7 come? Because somebody has to let them in. I
8 mean who's -- on your -- on the Burger King's
9 side is in the restaurant that's been
10 accepting these deliveries?

11 MS. WILLIS: If they're coming --
12 if they were coming prior to 5:00 a.m., they
13 had a key and they were letting themselves in.

14 COMMISSIONER PERRY: But, when they
15 come at 2:00 in the morning or 3:00 in the
16 morning as Ms. Guttman's notes or 12:30, who
17 has been -- no, I'm talking about the delivery
18 trucks.

19 CHAIRPERSON MILLER: Okay. But,
20 I'm sorry. If you're talking about delivery
21 trucks, it's not on the parking lot. Our
22 jurisdiction is the parking lot.

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1 COMMISSIONER PERRY: But, Ms.
2 Guttman's testimony and the notes and the
3 pictures are the back -- are the accessory
4 parking lots and I've witnessed trucks in
5 there. So, and we have other testimony that
6 I'm going to ask that the neighbors who
7 couldn't be here today because of travel be
8 able to submit stuff. We have more pictures
9 and more evidence. Ms. Guttman didn't bring
10 everything and unfortunately, she's not here
11 now.

12 VICE CHAIRMAN LOUD: But, I think
13 her answer to your question was that if it was
14 before the hours that they're open, they had
15 the key.

16 COMMISSIONER PERRY: I'm talking
17 about -- okay. I'm talking about this is when
18 in some cases the restaurant is open.
19 Somebody's accepting the deliveries that
20 should have known these trucks were coming is
21 where I guess I'm coming from.

22 VICE CHAIRMAN LOUD: Okay. It

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1 seems like you've moved on.

2 COMMISSIONER PERRY: Okay.

3 VICE CHAIRMAN LOUD: Before you
4 were asking just about before opening time and
5 her testimony was that they had the key. So.

6 COMMISSIONER PERRY: I'm talking
7 during the night, you know, when the
8 restaurant is still open or there's
9 "employees" still there.

10 VICE CHAIRMAN LOUD: Okay.

11 COMMISSIONER JEFFRIES: Ms. Willis,
12 you know, you can answer yes or no or you --

13 MS. WILLIS: Well, they wouldn't
14 know ahead of time what time a truck was
15 coming. The truck would just show up there.
16 So, it's not like they were forewarned and
17 could call someone and say hey, they're going
18 to bring me a delivery. The truck usually
19 would just come.

20 COMMISSIONER PERRY: How often do
21 your managers change at this restaurant?

22 MS. WILLIS: The restaurant manager

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1 has been there for ten years.

2 COMMISSIONER PERRY: Okay. So,
3 he's been aware of this order I would assume
4 or the previous BZA orders?

5 MS. WILLIS: That's true.

6 COMMISSIONER PERRY: Okay. That's
7 it.

8 MEMBER WALKER: So, let me make
9 sure I understand, Ms. Willis. So, when
10 delivery trucks come to the store during the
11 daytime during your busiest hours, they don't
12 enter from Albermarie and the alley, but they
13 actually enter from Connecticut Avenue?

14 MS. WILLIS: They can -- they can
15 come up Connecticut and pull into that --

16 MEMBER WALKER: The drive-thru.

17 MS. WILLIS: -- the drive-thru.
18 That's true.

19 MEMBER WALKER: So, they do that
20 even when, you know, there are patrons using
21 that drive-thru?

22 MS. WILLIS: We have a black-out

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1 time between 11:00 and 2:00 for no deliveries.

2 So, they wouldn't come at our busiest hours.

3 They would either come at 10:00 or after
4 2:00.

5 MEMBER WALKER: And when they -- if
6 a delivery truck comes into the driveway,
7 where does it park?

8 MS. WILLIS: It parks -- the truck
9 would park. It just holds right on the side
10 of the building. It's a wide entrance and
11 it's still space for -- cars can still go up.

12 They can either go around the truck and go
13 into the drive-thru or they can go straight
14 back and go into the parking lot.

15 MEMBER WALKER: So, it pulls up
16 next to the Burger King building or next to
17 the --

18 MS. WILLIS: No, to the Burger King
19 building.

20 MEMBER WALKER: Pulls up next to
21 the Burger King building. Okay. Thank you.

22 CHAIRPERSON MILLER: Okay.

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1 Anything else? Anything else from Board
2 Members? Okay.

3 What were discussing in break also
4 is how we want to proceed in this case, how we
5 thought we would like to proceed and I think
6 it's safe to say that, you know, based on what
7 we've just heard, we would like to set this
8 off for a decision making to next month's
9 decision meeting which would be March 3rd,
10 2009 and ask for submissions with respect to
11 conditions even though you've already
12 submitted conditions. To take another look at
13 them based on the testimony and the questions
14 that have occurred today.

15 But, in particular, we would like
16 the Applicant to provide a screening proposal
17 perhaps consistent with what you do at your
18 other eating establishment. Unless you --
19 unless the attorney determines that pursuant
20 to 2303.1(c) that that would not be permitted
21 in this district. So, I'll leave at that.

22 We haven't had time to go through

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1 the regulations. As far as I know right now,
2 I don't know of a regulation that does not
3 permit it, but if you find that to be the
4 case, we would like you to bring that to our
5 attention.

6 And then we're going to be asking
7 the ANC also to look at their submissions
8 again. Because what the conditions are
9 suppose to do is mitigate adverse conditions
10 that have been identified and there's a
11 history here and one of the adverse conditions
12 that we heard was noise from trucks and trash
13 in the middle of the night and it appears to
14 us that the screening may be the right
15 solution to this. That locks so that -- so
16 there won't be any incentive for trucks to
17 come in on off hours and so, we would like the
18 ANC's opinion on that as well.

19 We'd also like proof from the
20 Applicant that a contractor has looked at the
21 issue of whether a portion of the fence
22 referenced in the previous order needs to be

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1 reinforced underground to help prevent any
2 rodents from entering the neighbors'
3 properties. That issue has been raised and
4 the Applicant was unsure about that and so, we
5 would like an answer on that and what action
6 the Applicant will take to correct or
7 reinforce if necessary.

8 We would like the Applicant to
9 address, ANC can as well, but I think it's
10 better for the Applicant to initially address
11 in its conditions designation of
12 responsibilities to insure the enforcement of
13 the order so that it is clear to the community
14 and to the Applicant who is responsible for
15 making sure that the order is implemented.

16 I guess another question I have --
17 we've talked about the chain and how it
18 wouldn't prevent certain things like delivery
19 trucks and perhaps the enclosed structure
20 around the trash will prevent the problem of
21 the trash trucks coming in. So, I'm not clear
22 whether there's a need to prevent entry into

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1 the parking lot itself at any hours or not.
2 So, if you could address that.

3 And, finally, and then others can
4 jump in, restate the other conditions that you
5 think need to be in the order and then if
6 there are some -- I mean there are some that I
7 think you all agree on and maybe you can
8 highlight that. There's not an issue with
9 that and then if there are other like new
10 ones, for instance, being presented by the
11 ANC, if you might present a very short
12 rationale as to why it might be necessary,
13 that would be useful.

14 Do the Board Members have any other
15 concerns they want addressed by the
16 submissions?

17 COMMISSIONER JEFFRIES: Just in
18 terms of this whole notion of responsibility
19 for the accessory parking lot, I just want to
20 add, you know, that the Applicant should also,
21 you know, give a little detail in terms of,
22 you know, how that's going to be -- not just

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1 who, but how you're going to go about insuring
2 that this thing's going to be enforced. You
3 know, you might end up, you know, discussing,
4 you know, the process of some of the workers
5 and who goes out and mans the parking lot.
6 I'm not certain about all the things that
7 would have to happen, but I just want to make
8 certain you give a little bit more detail as
9 to how that parking lot is maintained. So.

10 CHAIRPERSON MILLER: That reminds
11 me and we don't need to have the names in our
12 public record, but I think that you should
13 also indicate that you have provided the ANC
14 with the contacts who will be responsible for
15 enforcing the order.

16 I think we just want to avoid the
17 problems that we've heard to the greatest
18 extent possible.

19 COMMISSIONER JEFFRIES: And we just
20 want some bread crumbs so we can take it right
21 back to the person who's responsible, you
22 know. So, not -- need a blueprint. So.

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1 MS. BEGUN: I understand.

2 COMMISSIONER JEFFRIES: Yes. So.

3 CHAIRPERSON MILLER: And I want to
4 make one other comment and I don't know that
5 it's necessary for you all to address, but you
6 can just keep it in mind. I mean basically,
7 we've heard that, you know, some things are --
8 what's within our jurisdiction is what happens
9 on the parking lot.

10 So, for instance, the provision
11 that talks about deliveries being limited on
12 the parking lot, it's not really accurate it
13 seems to me. So, it needs to be cleared up.
14 It may be that no deliveries may occur on the
15 parking lot. I mean -- no, I want the
16 conditions to reflect accurately the situation
17 and then it may be -- and, you know, we can
18 discuss this at the deliberation.

19 But, it may be that, you know, the
20 loud speaker is not on the property at issue.

21 We may not have jurisdiction over that and
22 that may be something for Burger King to work

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1 out with the neighbors. It doesn't seem like
2 it should be something that can't be worked
3 out. But, in any event --

4 COMMISSIONER PERRY: Just so you
5 know, that's the one thing we did work out
6 while you were gone.

7 CHAIRPERSON MILLER: Good. Okay.

8 MEMBER WALKER: But, to the extent
9 there are BZA orders out there that apply to
10 the Burger King lot, then please make the
11 Board aware of those orders as well.

12 MS. BEGUN: Thank you very much.
13 I've taken detailed notes on all of these
14 conditions that you would like Applicant to --
15 not conditions, further information.

16 Is there a deadline two weeks
17 before the 3rd of March or is there something
18 else the Board would like to propose?

19 CHAIRPERSON MILLER: If you can do
20 it within two weeks, that's good. We need it
21 at least a week before March -- before the
22 date of the next meeting.

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1 MS. BEGUN: Okay.

2 CHAIRPERSON MILLER: So.

3 MS. BEGUN: So, at least one week
4 before the March 3rd hearing. Earlier the
5 better.

6 CHAIRPERSON MILLER: That's
7 correct. Right. I mean if you can work with
8 each other, that's great, but we'll see what
9 happens.

10 COMMISSIONER PERRY: I hate to ask
11 this, but is it possible to change the March
12 3rd date and let me tell you why. The ANC has
13 to vote everything and do everything in public
14 especially if we're modifying the conditions
15 and/or adding new ones and our next meeting is
16 not until February the 17th and at that
17 meeting, we now have Walgreens coming before
18 us for three variances and we have another BZA
19 application and I know it doesn't sound like a
20 lot, but we'll be there until probably
21 1:00/2:00 in the morning without this because
22 of the -- you know, we have -- in addition to

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1 other issues that might come up.

2 So, I think my concern is, you
3 know, trying to get it all in in time.
4 Because I think we're probably going to be
5 late as it is with the seven days on the other
6 two applications that we have.

7 CHAIRPERSON MILLER: Okay. Now,
8 are you saying that you don't want to discuss
9 it until your next ANC meeting or are you
10 saying can you --

11 COMMISSIONER PERRY: No, we can --
12 you know, a lot of us can get together and
13 draft something, but we have to adopt it in
14 public and hear public testimony like Ms.
15 Guttman again or whoever, you know, wants to
16 come before us. We can't stop them and
17 knowing our schedule and how hard it is
18 sometimes after a meeting to turn stuff around
19 to get it here, I'm just being very honest
20 with you. I don't think we can get everything
21 here a week before your March 3rd meeting.

22 You know, we have two very -- we

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1 have one that we don't think will be a
2 complicated BZA special exception request, but
3 we do know the Walgreens one is going to be
4 very controversial with their three -- you
5 know, at our last meeting when Walgreens just
6 presented, we had over -- we had probably
7 about 70 residents there. So, I can imagine
8 on the -- when we try to write a resolution at
9 the meeting or the decision hearing.

10 All the changes or we don't know
11 what's going to happen. I'll be honest and we
12 don't know what else is going to come up. So,
13 I guess what I'm saying is I don't mind -- we
14 just have a lot for this one meeting in
15 February.

16 CHAIRPERSON MILLER: Do you need
17 their proposed conditions before your ANC
18 meeting? Would that be helpful to you?

19 COMMISSIONER PERRY: It would be
20 helpful to us to have what they're proposing.
21 Of course, it would.

22 CHAIRPERSON MILLER: Okay. Well,

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1 if we could -- maybe that would help focus the
2 ANC. Because I don't see too many issues for
3 the ANC to consider. You've already
4 considered the whole parking lot issue and
5 actually, we've asked the Applicant to do
6 things that actually respond to --

7 COMMISSIONER PERRY: Um-hum.

8 CHAIRPERSON MILLER: -- the ANC's
9 concerns. So, we're just looking at some
10 conditions which is not that complicated, but
11 what I would say is sometimes we do give, you
12 know, a little bit more leniency with respect
13 to when it comes to the Board.

14 COMMISSIONER PERRY: I just wanted
15 to be up front with you that we're going to
16 have a hard time getting everything to you
17 seven days in advance.

18 CHAIRPERSON MILLER: Okay. So, Mr.
19 Moy, if we were -- or Ms. Bailey, either one,
20 if we were to give them a little more time,
21 what would be the date that we would need to
22 have it so that the Board has time to consider

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1 it? If not seven days, what would it be?

2 MR. MOY: Well, I -- you know, we
3 can go into that Thursday or Friday of that
4 week which would put us on 26th or the 27th.
5 Twenty-seventh I believe is a Friday.

6 COMMISSIONER PERRY: Okay.

7 MR. MOY: Would that work?

8 COMMISSIONER PERRY: That's fine.
9 We hope so. Yes. Yes.

10 MR. MOY: And with the staff --

11 COMMISSIONER PERRY: You know, we
12 don't have staff people. That's part of the
13 problem, you know. We've been there.

14 MS. BEGUN: Can I request --

15 COMMISSIONER JEFFRIES: Madam
16 Chair, I just want to -- I still want clarity
17 on exactly the scope of the conditions. I
18 mean these conditions are really going to
19 purely address the accessory parking lot. So,
20 there are not going to be any conditions
21 around the sound of the speaker or any
22 activity that's, you know, in the space that

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1 -- on the land that's improved by the Burger
2 King. Everything's going to be focused
3 entirely on the accessory parking lot. We're
4 all clear on that.

5 MS. BEGUN: I'm clear.

6 COMMISSIONER JEFFRIES: Okay.
7 Thank you.

8 CHAIRPERSON MILLER: Yes, I don't
9 think there's too much involved here really.

10 MS. BEGUN: I would just request
11 that the ANC deliver its statement or proposed
12 conditions to me directly since it's going to
13 be a couple of days before the hearing and I
14 didn't have a chance to look at the one.

15 COMMISSIONER PERRY: We'll be happy
16 to fax them to you or whatever.

17 MS. BEGUN: Thank you.

18 COMMISSIONER PERRY: I just know
19 we're going to need some --

20 CHAIRPERSON MILLER: Okay. There
21 won't be another hearing though.

22 COMMISSIONER PERRY: I just know

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1 we're going to need some time, you know, to
2 turn everything around.

3 CHAIRPERSON MILLER: Right. Okay.

4 And you are both obligated to serve each
5 other.

6 But, I think we've heard plenty and
7 we're just looking for the appropriate
8 conditions to try to mitigate the adverse
9 impacts that we've heard about that will
10 actually work and then we're -- and we're
11 actually trying to get, you know, you all in
12 compliance with the order the best that we
13 can.

14 COMMISSIONER JEFFRIES: Madam
15 Chair, the record is closed with the exception
16 of those items.

17 CHAIRPERSON MILLER: Right.

18 COMMISSIONER JEFFRIES: Okay.
19 Okay.

20 CHAIRPERSON MILLER: Yes.

21 MS. BEGUN: And our appearance is
22 not needed on March 3rd?

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1 CHAIRPERSON MILLER: That's correct
2 and we also are on line if you want to listen
3 to our deliberations. You can come down if
4 you want. You can listen or you can just
5 whatever.

6 MS. BEGUN: We don't have a chance
7 to address the Board?

8 CHAIRPERSON MILLER: No, because --
9 no, sometimes we might ask a question if we're
10 in deliberations. Sometimes in a complicated
11 case, but I don't foresee that that would be
12 the case here. I think we've had a very
13 thorough vetting of the issues here.

14 MS. BEGUN: Thank you for the --

15 COMMISSIONER PERRY: Just so I get
16 clarified, is the record closed as far as the
17 other two neighbors submitting their comments
18 that couldn't be here today or Ms. Guttman
19 putting in the rest of her notes which is what
20 she asked to do?

21 CHAIRPERSON MILLER: Oh, we have
22 her notes. Do we not?

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1 COMMISSIONER PERRY: Well, you only
2 have one year of them. She has all four. She
3 just didn't get a chance to type them all up
4 and Xerox them.

5 CHAIRPERSON MILLER: Does the
6 Applicant have an objection to that?

7 MS. BEGUN: I do have an objection.

8 CHAIRPERSON MILLER: In that you
9 wouldn't be able to cross examine? Is that
10 it?

11 MS. BEGUN: That is the basis of
12 the objection and I'd like the chance to
13 respond and if we're introducing new evidence,
14 then it's just going to open up everything.

15 CHAIRPERSON MILLER: Okay. I think
16 we've heard plenty of evidence.

17 COMMISSIONER PERRY: Okay.

18 CHAIRPERSON MILLER: I think we
19 really have a -- I think we have a really
20 good --

21 COMMISSIONER JEFFRIES: Ms. Perry -
22 - Commissioner Perry, you've done a really

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1 good job. All of it has gotten in. You guys
2 have done your job quite well. So, just rest
3 assured we heard you up here.

4 CHAIRPERSON MILLER: Okay. I think
5 it's pretty clear and I just -- I do want to
6 reiterate, too, I guess the Applicant in the -
7 - we haven't had a chance to thoroughly study
8 the regulations on that issue with respect to
9 the screening. That if you find that it is
10 not permitted, you may, you know, submit that.

11 Would we say in lieu of the screening
12 proposal or in addition and we'll decide.
13 Yes.

14 If you could and we'll look at both
15 and we'll look at the law as well.

16 MS. BEGUN: Okay.

17 CHAIRPERSON MILLER: All right.

18 MS. BEGUN: Understood.

19 CHAIRPERSON MILLER: Just I want to
20 make sure we're clear on that.

21 COMMISSIONER JEFFRIES: And I would
22 just, you know, also -- I mean I know that

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1 you're going do this, but just, you know, I
2 think some of the conditions that were
3 proposed by the ANC are somewhat -- pretty
4 good. I would hope that you would seriously
5 take a look at them and try to incorporate
6 some of those conditions. Yes.

7 MS. BEGUN: Noted.

8 COMMISSIONER JEFFRIES: Okay.

9 CHAIRPERSON MILLER: Ms. Bailey, do
10 you want to reiterate the dates for the
11 filings?

12 MS. BAILEY: Madam Chair --

13 MEMBER DETTMAN: I'm sorry. I'm
14 sorry to interrupt.

15 CHAIRPERSON MILLER: I'm sorry. Go
16 ahead.

17 MEMBER DETTMAN: Just a quick
18 question for Madam Chair. What level of
19 detail are we expecting these plans to be at?

20 Because I think just to follow up on your
21 last point, I think we're going to go back and
22 actually study the regs without being rushed

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1 because of the late hour.

2 We might find that we might be
3 asking the Applicant to do something that the
4 regs actually don't allow. So, I'm not sure
5 we actually want really highly detailed
6 architectural drawings of this screening.
7 Conceptual.

8 CHAIRPERSON MILLER: I think --

9 MEMBER DETTMAN: Okay.

10 CHAIRPERSON MILLER: -- yes, my
11 understanding is that because the Applicant
12 has these type of structures in its other
13 locations that it could give us an example of
14 the type that it would propose here.

15 So, if you think that, for
16 instance, a wood one -- wooden structure would
17 be appropriate here, you'd give us a picture
18 of, you know, that. The one that you have at
19 another location.

20 COMMISSIONER JEFFRIES: Well --

21 CHAIRPERSON MILLER: No?

22 COMMISSIONER JEFFRIES: Yes, you

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1 can do a picture, but just make certain that
2 we -- just give us some context a little bit
3 in terms of where -- how it's going to set.
4 So, I mean a picture's fine, but we need to --
5 you know, sometimes, you know, there's
6 something that you can show us in a photograph
7 that is not quite appropriate for this
8 location. So, I just want to make certain
9 that those two reconcile. That's all. So.

10 CHAIRPERSON MILLER: Okay. I think
11 you can sense the concern here is that we
12 don't want to ask you to undertake a great
13 expense in, you know, drafting plans or
14 whatever in the event that there's a question
15 here of whether the use is -- whether that
16 structure is permitted or not.

17 It's an open question right now.
18 We're going to go back and look at the
19 regulations and you're going to look at the
20 regulations.

21 But, I think that we don't know
22 which way that's going to go. So, that we

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1 want something at least that's adequate to --
2 if we were to go for the screening, that we
3 have it.

4 We don't delay you further.
5 Because the only thing that is at issue really
6 in this case are the conditions not that the
7 parking lot should continue. Okay.

8 MS. BEGUN: I think I am clear on
9 the Board's position and I will --

10 CHAIRPERSON MILLER: Okay. Good.
11 Thank you.

12 MS. BEGUN: -- I will address that.

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER PERRY: Ms. Miller,
15 would it be possible for the Zoning
16 Administrator to weigh in on this? For staff
17 to contact him. Because he would know the
18 reg.

19 CHAIRPERSON MILLER: We can figure
20 out the regs, too.

21 COMMISSIONER PERRY: Okay.

22 CHAIRPERSON MILLER: It's just

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1 that, you know, this came up in the middle of
2 a hearing.

3 COMMISSIONER PERRY: I was trying
4 to --

5 CHAIRPERSON MILLER: But, no, I
6 think he's got a lot of work to do and we have
7 our attorneys and the Applicant has an
8 attorney and I don't think that's a problem.
9 It's just that, you know, in the middle of a
10 hearing it's hard to pinpoint. So. Okay.

11 I will say this though that be
12 cognizant of the problem that we're trying to
13 address. That there seems to be a problem
14 here and if screening is not going to be the
15 answer which seems like a good answer, but if
16 it's not allowed, we don't know, but that
17 maybe you can come up with another solution if
18 possible. Sometimes, you know, there is no
19 solution, but hopefully there is. So. Okay.

20 Anything else?

21 COMMISSIONER JEFFRIES: But, they
22 are left with they need to present us a

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1 screening. I don't think we want to leave
2 them with --

3 MS. BEGUN: Unless it's determined
4 that it's illegal. If our position is that
5 it's illegal, should we still submit a
6 proposed screening on the possibility that the
7 Board deems it's legal?

8 COMMISSIONER JEFFRIES: See we're
9 in world of attorney here in Washington, D.C.
10 and, you know, one attorney will say one thing
11 and another one will say something else.

12 I sense that the spirit of the regs
13 doesn't apply here to that, but, you know, I
14 just -- do your research, but just please
15 understand that at least this Board Member
16 would love to very much see a screen now.
17 Yes. So.

18 MEMBER WALKER: And if it's -- and
19 again, I ask you about any other orders that
20 may come into play here. I mean if there is
21 an order, you know, that was issued related to
22 the other property that, you know, may have

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1 something to do with the placement of these.

2 It's just peculiar that we have
3 these dumpsters that are kind of sitting in
4 the middle of this lot and it's odd that
5 they're not on the lot with the restaurant and
6 so, if there's another order that speaks to
7 this, I mean that would help. You know, give
8 us some context and help us understand how all
9 this came to be.

10 COMMISSIONER JEFFRIES: I just -- I
11 mean from where I sit, I just -- is the glass
12 half empty. Is the glass half full. I guess
13 what I'm saying is if you're going to be
14 looking at some strict interpretation that
15 puts you on the side of this is illegal and
16 you're going to be very strict about it --

17 MS. BEGUN: My intention isn't to
18 figure out a way to wiggle out of this.

19 COMMISSIONER JEFFRIES: Yes. Yes.
20 I would hope that there would be massive,
21 massive, massive evidence that this is an
22 illegal thing, you know, and I guess that's

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1 what I wanted to leave you.

2 CHAIRPERSON MILLER: I guess my
3 hope was that, you know, you could come up
4 with a screening portrayal that doesn't cause
5 you great expense in the event that it's
6 determined that it's not legal.

7 MS. BEGUN: I understand.

8 CHAIRPERSON MILLER: Some kind of a
9 balance between, you know, full plans and a
10 picture. Right.

11 COMMISSIONER JEFFRIES: Well, she's
12 not going to go -- they're not going to go
13 down -- they're not going to spend a lot of
14 money if they make some determination that
15 it's illegal, you know. I mean I just want to
16 make certain that they're looking at this with
17 a broad lens and not one that's pretty narrow.

18 MS. BEGUN: My first objective is
19 not to figure out how this is illegal.

20 COMMISSIONER JEFFRIES: Okay.
21 Okay.

22 MS. BEGUN: I'm going to do my due

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1 diligence to make sure that we're not, you
2 know, flying in the face of something and
3 we'll talk to Burger King a screening proposal
4 and present it to the Board.

5 CHAIRPERSON MILLER: Okay. But,
6 obviously, if it's not legal, then we're not
7 going to be able to impose that requirement.

8 MS. BEGUN: Understood.

9 CHAIRPERSON MILLER: But, you won't
10 know that. I guess we won't really rule on
11 that until that day.

12 MS. BEGUN: I will summarize my
13 legal findings.

14 COMMISSIONER JEFFRIES: You know,
15 we've all worked with -- I've had some pretty
16 good attorneys that I've worked with in the
17 past in a lot of places and I'm confident that
18 you can work it out.

19 MEMBER DETTMAN: My last comment
20 and then we can all go home. You know, we're
21 tiptoeing around kind of something here and I
22 would just suggest just look at your whole

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1 operation with respect to the dumpsters.

2 Ms. Walker said that it's kind of
3 weird that the dumpsters are kind of located
4 on this lot when they really should be located
5 on site.

6 If you have an opportunity and you
7 find that the dumpsters could be located on
8 site, I think it's going to clear up a lot of
9 questions.

10 So, I'm just going to say that on
11 the record and put it out there. It could be
12 to your advantage.

13 CHAIRPERSON MILLER: Okay.

14 MS. BEGUN: Thank you very much for
15 your --

16 CHAIRPERSON MILLER: Thank you.
17 We'll look forward to your submissions.

18 MS. BAILEY: Madam Chair, before we
19 leave, I didn't get the date the Applicant is
20 going to file her submission.

21 MS. BEGUN: One week prior to the
22 March 3rd hearing. Sooner would be

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1 appreciated. But, the deadline was --

2 CHAIRPERSON MILLER: No. No. No,
3 we talked about you providing the ANC with
4 your conditions before their meeting. Which is
5 when?

6 COMMISSIONER PERRY: Tuesday, the
7 17th.

8 CHAIRPERSON MILLER: Tuesday,
9 February 17th.

10 COMMISSIONER PERRY: Or Tuesday --
11 I think --

12 MS. BAILEY: It's the 17th. This
13 is third Monday?

14 COMMISSIONER PERRY: Usually the
15 third Monday, but I think it turned out to be
16 a holiday.

17 MS. BAILEY: Right.

18 COMMISSIONER PERRY: So, we're
19 meeting on Tuesday or Wednesday. I forgot
20 which myself. I think we're meeting the third
21 -- the third --

22 CHAIRPERSON MILLER: Your

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1 microphone isn't on, Ms. Perry.

2 COMMISSIONER PERRY: We normally
3 meet the third Monday of the month, but that's
4 a holiday. So, if I'm not mistaken, we are
5 meeting on the 17th or the 18th. I forgot
6 which, but I think it's the 17th.

7 CHAIRPERSON MILLER: And when would
8 you need their conditions and their submission
9 by in order to consider it at your meeting?

10 COMMISSIONER PERRY: It would be
11 nice to have them by Friday the 13th so that
12 we can look at them over the weekend and maybe
13 do something with them over the weekend.

14 CHAIRPERSON MILLER: That's ten
15 days from now.

16 MS. BEGUN: Okay. Ten days from
17 now.

18 CHAIRPERSON MILLER: Okay. Good.

19 MS. BEGUN: I will work.

20 COMMISSIONER PERRY: And can we get
21 them by fax or something? Not by mail since
22 it's the weekend.

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1 MS. BEGUN: Absolutely.

2 COMMISSIONER PERRY: And we'll give
3 you a fax number.

4 MS. BEGUN: Thank you.

5 CHAIRPERSON MILLER: Okay. We're
6 set. Are we not?

7 MS. BEGUN: I think. I don't have
8 anything further.

9 CHAIRPERSON MILLER: Okay. Ms.
10 Bailey, did I ask you to just reiterate the
11 dates? Then we're done.

12 MS. BAILEY: The Applicant's
13 submission is February 13th. The ANC is
14 scheduled to meet on February 17th or 18th.
15 The ANC's response is due February 27th and
16 then the Board is going to consider a decision
17 on March 3rd.

18 CHAIRPERSON MILLER: And does the
19 Office of Planning want to file anything?

20 MR. JACKSON: We don't think that
21 will be necessary.

22 CHAIRPERSON MILLER: Okay. I don't

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1 think so either really, but just wanted to
2 give you that option.

3 Okay. Then this hearing is
4 adjourned.

5 (Whereupon, the hearing was
6 concluded at 7:30 p.m.)

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