

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
SEPTEMBER 22, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:05 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE DETTMAN, Vice Chairman
MERIDITH MOLDENHAUER, Member

ZONING COMMISSION MEMBERS PRESENT:

KONRAD SCHLATER, Commissioner
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
ARTHUR JACKSON
KAREN THOMAS
STEPHEN MORDFIN
MATT JESICK

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

JEFF JENNINGS

The transcript constitutes the
minutes from the Public Hearing held on
September 22, 2009.

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P R O C E E D I N G S

10:05 A.M.

CHAIR LOUD: Everybody stay right where you are. We're getting ready to call the morning hearing calendar.

This hearing will please come to order.

Good morning again, ladies and gentlemen, this is the September 22nd Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, Chairperson. And joining me today are Vice Chair Shane Dettman, representing the National Capital Planning Commission. To my left is Board Member Meridith Moldenhauer. Joining us walking to the dais is Mr. Peter May, representing the Zoning Commission. To Ms. Moldenhauer's left is Clifford Moy, representing -- I'm sorry, Secretary of the BZA; Ms. Sherry Glazer, Office of the Attorney General. And on my far left, Ms. Beverley Bailey, Zoning Specialist, here in the Office

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1 of Zoning.

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

5 Please be advised that this
6 proceeding is being recorded by a court
7 reporter and is also webcast live.
8 Accordingly, we must ask you to refrain from
9 any disruptive noises or actions in the
10 hearing room. When presenting information to
11 the Board, please turn on and speak into the
12 microphone, first stating your name and home
13 address. When you finish speaking, please
14 turn your microphone off so that your
15 microphone is no longer picking up sound or
16 background noise.

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

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1 both cards to the reporter sitting to my
2 right.

3 The order for procedure for special
4 exceptions and variances is as follows:
5 first, statement and witnesses of the
6 Applicant; Government reports including the
7 Office of Planning, the Department of Public
8 Works, etcetera; third, the report of the ANC;
9 fourth, parties or persons in support; fifth,
10 parties or persons in opposition; and finally,
11 closing remarks only by the Applicant.

12 Pursuant to Sections 3117.4 and
13 3117.5, the following time constraints will be
14 maintained: the Applicant, Appellant, persons
15 and parties except in ANC in support including
16 witnesses, 60 minutes collectively; Appellees,
17 persons and parties except in ANC in
18 opposition, including witnesses also 60
19 minutes collectively; individuals, very
20 importantly, individuals are allotted three
21 minutes to testify and only three minutes to
22 testify. So if you're here and you're going

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1 to testify this morning, you feel your
2 testimony is going to run over three minutes,
3 you have an opportunity to work on that
4 testimony and get it down to three minutes.

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

16 The record will be closed at the
17 conclusion of each case, except for any
18 material specifically requested by the Board.

19 The Board and staff will specify at the end
20 of the hearing exactly what is expected and
21 the date when the persons must submit the
22 evidence to the Office of Zoning.

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1 After the record is closed, no
2 other information will be accepted by the
3 Board. If the record is closed at the
4 hearing, no information will be accepted by
5 the Board.

6 The decision of the Board in these
7 contested cases must be based exclusively on
8 the public record. To avoid any appearance to
9 the contrary, the Board requests that persons
10 present not engage the Members of the Board in
11 conversation.

12 Again, I want to repeat. The
13 decision of the Board in contested cases must
14 be based exclusively on the public record. To
15 avoid any appearance to the contrary, the
16 Board requests that persons present not engage
17 the Members of the Board in conversation.

18 Please turn off all beepers and
19 cell phones at this time so as not to disrupt
20 these proceedings.

21 The Board will now consider any
22 preliminary matters. Preliminary matters are

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1 those which relate to whether a case will or
2 should be heard today, such as requests for
3 postponement, continuance, withdrawal or
4 whether proper and adequate notice of the
5 hearing has been given.

6 If you're not prepared to go
7 forward with a case today, or if you believe
8 the Board should not proceed, now is the time
9 to raise such a matter.

10 Does the staff have any preliminary
11 matters?

12 MS. BAILEY: Good morning, Mr.
13 Chairman.

14 CHAIR LOUD: Good morning.

15 MS. BAILEY: Members of the Board
16 and to everyone, good morning.

17 No, Mr. Chairman, we do not.

18 CHAIR LOUD: Thank you, Ms. Bailey.

19 So let's proceed then with the morning's
20 hearing agenda.

21 Would all individuals wishing to
22 testify today, please rise to take the oath

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1 and Ms. Bailey, again, to my far left will
2 administer the oath to you.

3 MS. BAILEY: Please raise your
4 right hand. Do you solemnly swear or affirm
5 that the testimony that you will be giving
6 today will be the truth, the whole truth, and
7 nothing but the truth?

8 (The witnesses were sworn.)

9 MS. BAILEY: Thank you.

10 CHAIR LOUD: Thank you, Ms. Bailey,
11 and thank you, witnesses, and good morning
12 again to everyone.

13 I just want to sort of help me get
14 a gauge on this morning's calendar, we have an
15 ambitious calendar for today. Just by show of
16 hands, how many witnesses are here for the
17 Euclid case?

18 Okay, now all the witnesses that
19 are here for the Euclid case, were you just
20 sworn in by Ms. Bailey? All right. And let
21 me see by show of hands again the witnesses
22 that are here for the Euclid case?

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1 And of those six witnesses, will
2 any of you be testifying in support of the
3 application? All of you will be testifying in
4 opposition? Thank you.

5 I'm sorry? There are two that will
6 be testifying in support. Okay. We're going
7 to call that case at the appropriate time. I
8 just want to remind each of the witnesses that
9 under our rules you'll be given three minutes
10 to testify this morning.

11 Ms. Bailey, would you like to call
12 the first case?

13 MS. BAILEY: Sure, Mr. Chairman.
14 Application 17962 is the application of Moon
15 Star Carry-Out and it is pursuant to 11 DCMR
16 Section 3103.2, for a variance from the use
17 provisions to allow a fast food restaurant
18 under subsection 701.1. The property is
19 located in the C-1 District at 5008 Benning
20 Road, S.E., Square 5340, L95 59.

21 There is an interpreter here with
22 the Applicant in this case. And if you would

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1 please come forward and have a seat at the
2 table.

3 And then second, Mr. Chairman, we
4 do have a report from ANC-7E. We did receive
5 that yesterday and it does need to be waived
6 into the record.

7 CHAIR LOUD: Thank you, Ms. Bailey,
8 and good morning Applicants. Is ANC-7E's
9 representative here this morning? Okay, I
10 guess not. But we do have the report, I think
11 as a preliminary matter, we need to make a
12 decision regarding waiving or not waiving in
13 that report.

14 As I recall, the report is our
15 Exhibit 23. It's dated September 15th, but I
16 think it came in yesterday and it's a report
17 in favor of the application. It indicates a
18 proper notice and a quorum were provided for
19 with respect to the application.

20 (Pause.)

21 Five persons were in support. One
22 was against. Our rules provide that these

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1 reports be submitted prior to the date of the
2 hearing. This was submitted September 21.
3 But Section 3100.5 allows us to waive the
4 rules for good cause shown if there's no
5 prejudice to the parties and would allow us to
6 enter this into our record. We've done that
7 on a number of occasions.

8 I always think it's very important
9 for the community to be able to weigh in on
10 issues that impact their community. And in
11 this case -- and typically, personally, we
12 have found that there's always a little
13 disconnect when reports are due from ANCs
14 right after the summer break, often because
15 many of them don't meet in August. So I'd be
16 perfectly willing to allow this into our
17 record, if other Board Members are. Okay.

18 Mr. May, any thoughts on that?
19 Okay. So what we'll do then for the
20 Applicant, this is a preliminary matter where
21 the ANC has filed a report late. The report
22 is dated September 15th. We did not receive

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1 it until September 21st. By consensus, we are
2 going to allow this report into the record.

3 Did you have any questions or
4 concerns with respect to that?

5 VICE CHAIR DETTMAN: Excuse me, can
6 you turn your mic on, please?

7 TRANSLATOR SIU CHEUNG: Do you want
8 me to translate that into Chinese.

9 CHAIR LOUD: Let me just -- a point
10 of clarification. What's the best way to do
11 this? There's obviously no reason for the
12 court reporter to get the Chinese language
13 version, right? So the best way, I guess the
14 best way to do it --

15 TRANSLATOR SIU CHEUNG: I will talk
16 in here when he responds.

17 CHAIR LOUD: That's correct, all
18 right. I think you can turn your mic off for
19 this part and then turn it back on.

20 TRANSLATOR SIU CHEUNG: He says
21 he's okay with admitting that.

22 CHAIR LOUD: Excellent, then we can

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1 proceed forward on the merits. Thank you.
2 That's fine.

3 Now why don't we do this. Why
4 don't you introduce yourselves for our record
5 and include your address.

6 TRANSLATOR SIU CHEUNG: My name is
7 Siu Cheung. The address is 1308 McLean
8 Crescent Court, McLean, Virginia 22101. And I
9 am the Chinese interpreter for Fuzhouin
10 Chinese.

11 CHAIR LOUD: Good morning.

12 TRANSLATOR SIU CHEUNG: Good
13 morning.

14 CHAIR LOUD: And if you could have
15 your colleagues introduce themselves or you
16 could introduce them.

17 MR. ZI KUI ZHANG: Zi Kui Zhang.

18 TRANSLATOR SIU CHEUNG: I just
19 asked him to go ahead and state his name,
20 because he can do that. And I'm looking here
21 at this address. It's 3412 Newton Street,
22 Apartment 1, Mount Rainier, Maryland 20712.

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1 CHAIR LOUD: Thank you. And than
2 to your left is?

3 MS. XIAO QING ZHANG: My name is
4 Xiao Qing Zhang. I'm Zi Kui Zhang's daughter.
5 My address is 3212 Newton Street, Apartment
6 1, Mount Rainier, Maryland 20712.

7 CHAIR LOUD: Okay, thank you. I'm
8 sorry I didn't get your name. It might take
9 me a while to clarify the names. Are you a
10 witness this morning or you're sitting at the
11 table to support your father?

12 TRANSLATOR SIU CHEUNG: She says
13 she's here to support her father and if needed
14 provide any additional information for his
15 behalf.

16 CHAIR LOUD: Okay, thank you. Have
17 you been sworn in earlier? Okay, excellent.

18 All right, then I think we can
19 proceed. I see the Office of Planning is
20 here, good morning.

21 I think we can proceed with this
22 case. I also think we can truncate a little

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1 of the time necessary, although Board Members,
2 if I get ahead of myself, please stop me, but
3 I think having reviewed what is pretty much a
4 full file in the case, the Applicant needs to
5 make out a case for what's called a use
6 variance. And in order to do that there are
7 three prongs of the test.

8 The Applicant must show an
9 exceptional situation with respect to its
10 application for the relief being requested.
11 It must also show undue hardship, in other
12 words that because of the limitations placed
13 by the zoning regulations on use of this
14 building in this zone, that it creates a
15 hardship to the Applicant that prevents the
16 Applicant from using the property in
17 conformance with the zone and your pleadings
18 and your submissions to date have addressed
19 each of these things, but I'm repeating this
20 on the record so that we can truncate the
21 hearing and kind of zero in on what's going to
22 be before us.

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1 Finally, you need to show that
2 there's o substantial detriment to the public
3 good or to the zone plan.

4 Now the Office of Planning has
5 submitted a report with evidence for our
6 record as to each of these prongs. So for the
7 purposes of this morning, what we're primarily
8 looking at is testimony from the Applicant on
9 each of those three prongs. And again, the
10 Applicant has addressed it significantly in
11 the pleadings. The first prong, exceptional
12 situation is something that the Applicant may
13 want to provide a little more testimony on, as
14 well as the Office of Planning when we get to
15 the Office of Planning in terms of what is it
16 about this application that creates the
17 exceptional situation.

18 MR. MOY: Mr. Chairman, if I could
19 interrupt for just a moment. You said a lot.

20 I think the translator needs to translate
21 everything that you just said.

22 CHAIR LOUD: Yes, sir.

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1 MR. MOY: So you may go through
2 some pauses.

3 CHAIR LOUD: Thank you, Mr. Moy.
4 I'm sitting here looking right at you and just
5 talking, talking, talking.

6 Let me just state it very, very
7 briefly. We have a very full record. And the
8 standard for granting or denying the relief
9 has three prongs. First, some exceptional
10 situation borne by this Applicant that creates
11 an undue hardship for the Applicant and that
12 does not result in substantial detriment to
13 the public good or the zone plan if the BZA
14 were to approve this application. So -- okay,
15 what we're looking for from the Applicant is
16 testimony and evidence that relates to those
17 three standards. Because the record includes
18 a lot of the history, we don't need that
19 repeated formally on the record again, unless
20 it relates to one of those there standards.

21 All right, with that I think we can
22 begin and I'll turn it over to you.

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1 TRANSLATOR SIU CHEUNG: We sat in
2 the back a little bit and she has a letter to
3 read and I think that would address your three
4 issues.

5 CHAIR LOUD: Okay.

6 MS. XIAO QING ZHANG: Hi. I, Xiao
7 Quing Zhang am the owner of carry-out
8 restaurant Moon Star. Now I want to set up a
9 corporation with my son as Moon Star,
10 Incorporated. We will still keep running this
11 same fast food business. We didn't make any
12 change for it. Our fast food Chinese carryout
13 still has been open in this area for many
14 years. Our food is very popular in this
15 district. The neighborhood workers and the
16 residents like our food because it has effort
17 and it has good food quality and taste. And
18 also the price is acceptable and reasonable.
19 Therefore, the neighborhood workers and the
20 residents hope our business keeps going on as
21 to keep with their lifestyle.

22 Near our carry-out they are

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1 building a convenience store. The continual
2 operation of our fast food carry-out will not
3 be harmful because of the traffic, noise and
4 lighting.

5 CHAIR LOUD: Let me interrupt you
6 for just one second. I'm looking at something
7 that's tabbed our Exhibit 3 which appears to
8 be the very letter that you're reading into
9 the record. And I just wanted you to know you
10 actually don't have to read it into the
11 record. It's a part of the record already and
12 we've actually reviewed the record before
13 coming out here.

14 I didn't mean to cut you off. If
15 you wanted to read it, but again for our
16 purposes in evaluating the case, it's already
17 a part of the record.

18 TRANSLATOR SIU CHEUNG: And just
19 for your record, I've already read the letter
20 in Chinese when we sat in the back and so he
21 does acknowledge that is the letter that he
22 wanted and the information submitted.

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1 CHAIR LOUD: Okay, thank you very
2 much.

3 Does the Applicant have any
4 additional statements apart from what's in our
5 Exhibit 3?

6 TRANSLATOR SIU CHEUNG: That's all
7 on their side.

8 CHAIR LOUD: Okay. Then why don't
9 we do this? Why don't we move to the Office
10 of Planning. I'll pause briefly to see if
11 Board Members have any questions for the
12 Applicant. It doesn't appear that there are
13 any at this point, so why don't we move to the
14 Office of Planning. Let's go over your report
15 which is our Exhibit 22 and again, full
16 report, excellent report. You can perhaps
17 just highlight. You recommend approval, why
18 you think this Applicant meets the test.

19 MS. BROWN-ROBERTS: Good morning,
20 Mr. Chairman and Members of the Board. I'm
21 Maxine Brown-Roberts from the Office of
22 Planning.

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1 We're here today to review the
2 Application 17962 at 508 Benning Road, S.E.
3 for a use variance to continue the carry-out,
4 it's a fast food establishment. The property
5 is within the C-1 District that does not allow
6 a fast-food establishment which is why the
7 Applicant is here. In regards to the use
8 variance, I think that the Applicant has
9 proved that there is an extraordinary and
10 exceptional situation. In this case, the
11 uniqueness results from a pre-existing
12 nonconforming use. The Applicant is not
13 proposing to create any new nonconformity.

14 From my research of the Certificate
15 of Occupancy, this store has been used as a
16 commercial use and even longer for the --
17 they've called it a number of things, a deli
18 carry-out, a carry-out deli, a fast-food
19 restaurant. So it has been called, it has a
20 number of names, but it's basically the same
21 operation.

22 The zoning regulation concerning

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1 fast-food establishments has changed twice
2 over the years, in 1985 and again in 2007.
3 And so this restaurant has been operating as a
4 nonconforming use for some time. The
5 uniqueness that has resulted in an exceptional
6 condition and hardship for the property owner
7 because the property, the physical layout of
8 the building, it has limited seating space.
9 It has a large commercial kitchen. It is
10 evident it was intended to be used as a carry-
11 out or fast-food restaurant establishment.
12 And so converting the space to a use permitted
13 in the C-1 District would, to me, be
14 unreasonable and would pose an undue hardship
15 on the property owner.

16 The granting of the variance would
17 not cause any substantial detriment to the
18 public good as there is no immediate adjacent
19 residential district to the building. To the
20 rear of the building is again, there's a
21 private drive and then there is also another
22 commercial building.

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1 The property currently does not
2 provide parking on site. It's impossible to
3 provide parking because there's no curb cut
4 off Benning Road or off of H Street. But the
5 Applicant says that they serve mainly the
6 adjacent community and so many people walk
7 from their homes to the store or if they drive
8 it's just to pick up the food and go.

9 On my visit there, I did not see
10 any parking in front, actually, there were no
11 customers at the time when I visited. But
12 then again, it was in the middle of day and
13 not the time when maybe in the afternoon when
14 they're busiest. But we haven't received any
15 complaints about any parking issues.

16 And therefore, based on these
17 factors, the Office of Planning believes that
18 the use variance can be granted for this
19 application.

20 Thank you, Mr. Chairman.

21 CHAIR LOUD: Thank you. And that
22 was an excellent report. Let me see if the

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1 Board has any questions for you. There are
2 none.

3 Does the Applicant have any
4 questions for the Office of Planning?

5 TRANSLATOR SIU CHEUNG: He shook
6 his head and he also said no.

7 CHAIR LOUD: Just one quick
8 question for the Office of Planning in terms
9 of the undue hardship, your testimony was that
10 it would be unreasonable because of the
11 physical limitations of the current layout
12 used in conformity with permissible C-1 uses.
13 Is that correct?

14 MS. BROWN-ROBERTS: Yes.

15 CHAIR LOUD: And you stand by that?

16 MS. BROWN-ROBERTS: Yes, I do.

17 CHAIR LOUD: Okay. I don't have
18 any additional questions, so why don't we now
19 move on to the ANC report. And again, I'll
20 ask if the ANC is present. And it doesn't
21 appear that they're present, but as indicated,
22 they did submit a report. It's our Exhibit

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1 23. We'll talk about it a little this morning
2 and in essence in the report, the ANC Chair of
3 7E, Ms, Mary Jackson indicates that a meeting
4 was held on September 9th. There was proper
5 notice and a quorum and the recommendation of
6 the ANC was five Commissioners voted to
7 approve the variance and one voted against it.

8 The final vote obviously was five to one. So
9 as the ANC in this matter, that report will be
10 given great weight by the BZA and our
11 deliberations on the case.

12 Are there any questions about the
13 ANC's report? Then what we'll do now is call
14 for any persons that are in support of this
15 application. If you're in the audience and
16 you're in support of the application now will
17 be the time to come forward and give your
18 testimony.

19 Seeing none, if there are any
20 persons in opposition to the application, good
21 morning, sir. Now would be the time to come
22 forward and give your testimony.

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1 Good morning. You're going to have
2 to turn your microphone on. On the base of
3 the microphone, there's a button that you can
4 push and a green light will pop on.

5 MR. THOMAS: I got it.

6 CHAIR LOUD: Good morning.

7 MR. THOMAS: Good morning. My name
8 is Benjamin Thomas. I'm an ANC Commissioner
9 and I have submitted an opposition letter as a
10 citizen of the ward. My address is 1135
11 Chaplin Street, S.E., Washington, D.C.

12 I have lived in the area for 51
13 years and I'm very familiar with the situation
14 of that establishment. In my letter of
15 opposition I stated and I didn't bring a copy
16 with me, but you have a copy of it.

17 CHAIR LOUD: Yes, sir. We do.

18 MR. THOMAS: In talking to the
19 community and the ANC report is not a fact.
20 It's not a true vote. The vote was opposite
21 of what the ANC indicated. I made a motion to
22 reject the application and four people voted

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1 in favor of my objection and they listed me as
2 being opposed to it. I made the motion myself
3 in the ANC meeting as an ANC Commissioner. So
4 that's a false report that the ANC sent in, a
5 false vote count, that they sent in.

6 But my opposition to it is because
7 of the condition of the business. That
8 business, when I first moved in 51 years was a
9 liquor store and ever since then it's been a
10 carry-out. And it is filthy inside. I know
11 all of you have a picture of the inside and
12 outside. The outside appearance is filthy,
13 dirty. You can't see in or out. And the
14 inside, tiles are missing and it is really a
15 filthy situation. I have copies, pictures of
16 the photos that were sent to me by the Zoning
17 Commission as an ANC Commissioner. It is a
18 detriment to the community because 99 percent
19 of the clientele are the young people that
20 hang out on the corner. And they go in and
21 buy their fast food. As soon as they come out
22 of the door, the container is dropped in front

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1 of the business and as soon as they consume
2 the food, the rest of it is thrown out in the
3 community.

4 Now there's no place inside for a
5 trash container. But this building has
6 adequate space for at least four to six table
7 size, like a card table size establishment
8 that could be established, put inside for
9 people to be seated. There's no place inside
10 for the people to sit. They come outside and
11 sit on the wall and wait for their food to be
12 prepared. And it's really a detriment to the
13 community and the condition that that place is
14 in. As far as I'm concerned, it's unhealthy.

15 The bullet-proof glass is nothing but dust
16 and grease on everything that's up there.

17 The front windows are the same way. And I
18 have pictures over here. Graffiti on the door
19 when the door is left wide open during the
20 day. There's graffiti marked on the door.
21 And it's an unsightly condition.

22 When cars dome down, when they

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1 bring the product in, they drove over the
2 sidewalk because there's no cutout and park in
3 front of the establishment right at the door
4 so they can unload and you can see the
5 condition of the concrete because of those
6 trucks being parked in front of it.

7 CHAIR LOUD: Thank you,
8 Commissioner Thomas. We really appreciate
9 your testimony this morning. And I'm going to
10 ask the Applicant if they have any questions
11 for you and then we'll see if Board Members
12 have any questions.

13 TRANSLATOR SIU CHEUNG: They don't
14 have any questions for him and he made a
15 statement which I'm just translating is that
16 they do their best to try to clean up in the
17 establishment.

18 CHAIR LOUD: Okay, thank you.
19 Board Members, are there any questions for
20 Commissioner Thomas?

21 Commissioner Thomas, I have one
22 question regarding the graffiti. Your

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1 testimony was that there's graffiti on the
2 door?

3 MR. THOMAS: There's two doors. If
4 you would look at the picture. When they open
5 up in the morning, they leave the two doors
6 wide open. And right on the inside of this
7 left door is the graffiti that's been there
8 for years, marked on the door, the white part
9 of the inside of the door. You can't see it
10 from the outside.

11 CHAIR LOUD: Right, you can't see
12 it from the picture.

13 MR. THOMAS: You can see it when
14 the doors are opened during business time.

15 CHAIR LOUD: Hold on, one at a
16 time. Is there any other graffiti on the
17 building?

18 MR. THOMAS: Not on the building
19 itself.

20 CHAIR LOUD: Okay.

21 MR. THOMAS: But inside, it is
22 horrible.

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1 CHAIR LOUD: Thank you. I don't
2 have any additional questions. Thank you for
3 your time and your patience this morning, and
4 thank you for appearing to give your
5 testimony.

6 We will now turn to the Applicant,
7 back to you for closing remarks, if you have
8 any closing remarks that you'd like to make.

9 TRANSLATOR SIU CHEUNG: The
10 Applicant on the right said that he does do
11 his best to keep it clean and sometimes the
12 neighborhood is a little rough and they -- it
13 gets a little dirty, but they come out and
14 they clean it as much as they can. Sometimes
15 the younger people come and they might do
16 something there, but they do clean it. She
17 had mentioned while he was talking that even
18 the graffiti, they tried to clean that at
19 least once a week as best as they can.

20 The Applicant on the right said
21 that he does provide trash can and he does ask
22 the customers to pick up their trash and put

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1 it in the trash can and when they don't, they
2 do come out and they do clean it.

3 She says that they sweep and they
4 clean daily, every morning, when they open up
5 the store.

6 CHAIR LOUD: Thank you very much.
7 Is there anything additional you'd like to
8 add? I think we're going to decide as a Board
9 -- I'm sorry, you have some questions, Mr.
10 May?

11 COMMISSIONER MAY: Yes, I just
12 wanted to follow up on the statement regarding
13 loading in front of the building. Do trucks
14 come and unload on the sidewalk in front of
15 the establishment? Delivery trucks, yes.

16 TRANSLATOR SIU CHEUNG: He said
17 once or twice, when it's a new delivery
18 person, they bring the delivery in through the
19 front and he will tell them not to do that and
20 then that doesn't persist. They don't do that
21 the second time.

22 COMMISSIONER MAY: Okay. And then

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1 I have a follow-up question for the Office of
2 Planning which I guess I'd like them to
3 comment on the statements about the
4 cleanliness and the appearance of the
5 establishment and what you witnessed there.

6 MS. BROWN-ROBERTS: When I went
7 there on that day, the business was in
8 operation, but there were no customers. I
9 wouldn't -- it can be improved. The outside -
10 - it's really the inside. I think it could
11 maybe just do with a good cleaning, you know.

12 It's not anything that I think would even
13 need paint. It's just cleaning. As the
14 gentleman said, there may be some grease and
15 that sort of thing. That could help.

16 The outside was clean. I didn't
17 see on that day, because I looked specifically
18 around, walked around to see if there was any
19 trash and I didn't see any trash. But then
20 that was just one day. That was just my
21 observation.

22 COMMISSIONER MAY: Thank you.

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1 CHAIR LOUD: Thank you, Mr. May.
2 Any additional questions for either the
3 Applicant or the Office of Planning? Okay.

4 Then I think we have a couple of
5 options at this point. We can deliberate your
6 case this morning, try to reach a decision on
7 it or we can schedule it out into the future
8 and try to reach a decision on that date.

9 Personally, I think the record is
10 full. I think we have enough information in
11 it to deliberate this morning and I'm prepared
12 to both move forward with it and to start us
13 off.

14 Okay, to sort of recap the
15 evidence, this is an application for fast-food
16 establishment, that has been called variously
17 a delicatessen, a carry-out over the years.
18 It's operating at this site with a proper C of
19 O since at least 1991. This particular
20 Applicant has had a C of O on the site since
21 2003. And that C of O has been stamped,
22 demarcated, however you want to call it,

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1 carry-out, delicatessen, delicatessen carry-
2 out, etcetera. And that's our Exhibit 7 for
3 the 2003 C of O.

4 The business prepares food on site
5 in accordance with some of the exhibits
6 submitted for our record. It sells to
7 customers for consumption off-site only.
8 There's no seating and we heard that from the
9 Commissioner as well as some of the evidence
10 in the record. According to the Office of
11 Planning, the evidence it has submitted, food
12 is served in disposable table ware and there
13 are no receptacles in the public area.

14 There is some testimony in the
15 record regarding and these are my words, not
16 necessarily what's in the record, but an
17 accumulation of trash that comes from -- I
18 think that evidence is pretty consistent from
19 both the Applicant and from the Commissioner.

20 The Applicant suggests that the accumulation
21 comes from the clientele and they being young
22 people, as I understood it. The Commissioner

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1 saying the same thing, that there's an
2 accumulation of trash there, but not
3 necessarily attributing it to young people or
4 anything like that, although he does mention
5 loitering.

6 There's also some testimony about
7 graffiti being on the interior door, having
8 been there for a number of years, never been
9 removed, according to Commissioner Thomas.
10 That's disputed by the Applicant in the sense
11 that the Applicant, I think mentioned there
12 has been graffiti, but the Applicant says it's
13 cleaned weekly and that the trash accumulation
14 is swept every day.

15 In terms of the use variance test,
16 the Office of Planning, both in their
17 submission, our Exhibit 22 and in their oral
18 testimony today has indicated that the
19 exceptional situation prong of the test is
20 met. It's met by the fact that the pre-
21 existing, nonconforming use at the site that
22 dates back at least 18 years for a deli,

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1 grocery, grocery/deli, fast-food establishment
2 and then dates back a total of 43 years for
3 retail years, but for our purposes in terms of
4 it being a fast-food establishment, it dates
5 back at least 18 years and significantly, the
6 2003 C of O issued by the Zoning Administrator
7 authorizes a deli carry-out use as of 2003.
8 And presumably since it was issued by the
9 DCRA, they greenlighted that use in 2003 and
10 this Applicant has been operating it
11 specifically since 2003, but the use goes
12 back, as I said to 1981.

13 In terms of there being an undue
14 hardship, the Office of Planning testified
15 that converting the space to a use permitted
16 in C-1 would be unreasonable and an undue
17 hardship because the physical layout of the
18 space would be cost prohibitive for other uses
19 in the C-1 and really kind of limits what this
20 Applicant can do.

21 In terms of there being substantial
22 detriments to the public good of the zone

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1 plan, the Office of Planning testified that
2 there isn't. There's no parking, but most of
3 the patrons either walk there or live very
4 close by and do not push out any demand for
5 parking. The site also does not abut any
6 residential, according to the Office of
7 Planning's testimony.

8 And so from my perspective, I think
9 this Applicant has made a case for use
10 variance and I'll be supporting the
11 application. In terms of if we get to that
12 point, conditions to mitigate some of the
13 testimony that we heard here this morning, I
14 would be in favor of at least two conditions,
15 based on the testimony. The first condition
16 would require the Applicant to sweep the
17 sidewalk adjacent to the storefront and the
18 curbside adjacent to that sidewalk, at least
19 once daily to mitigate against the
20 accumulation of trash. The testimony from the
21 Applicant is that they're already doing it, so
22 it would not be a burden on the Applicant to

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1 continue doing that.

2 The difference with the condition
3 is that it becomes an enforceable matter for
4 the community and if the community is able to
5 substantiate that it's not being done, that
6 could affect the continued use of the
7 restaurant.

8 Secondly, the issue of graffiti
9 graffiti on the interior of the door and there
10 being some testimony that there has been
11 graffiti over the years and it's not been
12 removed and there's been other testimony that
13 there has been graffiti, but it's removed
14 weekly. With respect to that, I would
15 recommend a condition that would require the
16 Applicant, in accordance with its testimony,
17 to make every effort, to use its best efforts
18 to remove any graffiti on the building, the
19 interior, as well as the exterior, within a
20 week of it appearing on the property.

21 So that's how I'm viewing the
22 evidence and those are the conditions I'd like

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1 to suggest to Board Members.

2 COMMISSIONER MAY: I think I'm
3 comfortable with those conditions. I wouldn't
4 want to make it a condition, but I would also
5 urge the Applicant to clean up the place. If
6 the Office of Planning suggests that it could
7 use a good cleaning, I think that is well
8 worth the effort. And I think the Applicant
9 would be smart to do that. It makes good
10 business sense.

11 CHAIR LOUD: Sorry, is there
12 anything further from Board Members? Okay,
13 why don't we do this and hopefully the
14 translation is being made in terms of some of
15 the very good suggestions that are coming from
16 the Board regarding continued use,
17 particularly Mr. May's concern and that of
18 some of, at least one of the witnesses here,
19 regarding the interior cleanliness issue.

20 That being said, I would like to
21 move approval of Application No. 17962, Moon
22 Star, for a use variance for a fast-food

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1 establishment under Section 701.1 in the C-1,
2 as conditioned.

3 VICE CHAIR DETTMAN: Second.

4 CHAIR LOUD: A motion has been made
5 and seconded. Is there further deliberation?

6 Hearing none, all those in favor say aye.

7 (Chorus of ayes.)

8 CHAIR LOUD: All those opposed.

9 (No response.)

10 CHAIR LOUD: Are there any
11 abstentions?

12 Ms. Bailey, can you read back the
13 vote, please?

14 MS. BAILEY: Certainly, Mr.
15 Chairman. The vote is recorded as 4-0-1 to
16 grant the application. Mr. Loud made the
17 motion. Mr. Dettman seconded. Ms.
18 Moldenhauer and Mr. May supported the motion.

19 The third appointee position is vacant.

20 Are we doing a summary order on
21 this one, Mr. Chairman?

22 CHAIR LOUD: Let me just ask for a

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1 point of clarification. I'd like to do a
2 summary order because there were no parties in
3 opposition. The ANC supported, but there are
4 the conditions that we talked about, so I mean
5 is there a way to do a summary and have those
6 conditions?

7 MS. BAILEY: Yes, Mr. Chairman.

8 CHAIR LOUD: Okay, so why don't we
9 do a summary, but have those conditions
10 indicated in the order.

11 MS. BAILEY: Thank you.

12 CHAIR LOUD: Thank you, Ms. Bailey.

13
14 Thank you for your participation
15 this morning and your patience. We're going
16 to call the next case.

17 (Pause.)

18 CHAIR LOUD: Ms. Bailey, when you
19 are ready, you can call our next case.

20 MS. BAILEY: Mr. Chairman,
21 Application 17963 of Euclid of Virginia is
22 pursuant to 11 DCMR Section 3104.1, for a

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1 special exception to allow a new self-service
2 gasoline station and convenience store under
3 section 706, at premises 4975 South Dakota
4 Avenue, N.W. The property is also known as
5 Square 3899, Lot 76. And it is zoned C-1.

6 COMMISSIONER MAY: Good morning to
7 everyone at the table. I assume everyone has
8 been sworn in at the table if you're going to
9 give testimony.

10 Okay, why don't you stand and Ms.
11 Bailey will administer the oath to you.

12 MS. BAILEY: Please raise your
13 right hand. Do you solemnly swear or affirm
14 that the testimony that you'll be giving today
15 will be the truth, the whole truth and nothing
16 but the truth?

17 MR. G. GOSS: I do.

18 MS. BAILEY: Thank you.

19 CHAIR LOUD: Good morning. Why
20 don't we have everyone at the table just
21 introduce yourselves for our record.

22 MS. FULLER: Good morning, Mr.

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1 Chairman and Members of the Board. My name is
2 Carlynn Fuller. I'm the attorney in this
3 case. My address is 1127 Abbey Place, N.E.,
4 Washington, D.C. 20002.

5 CHAIR LOUD: Good morning. You're
6 the attorney for the Applicant?

7 MS. FULLER: That's correct.

8 CHAIR LOUD: Is the Applicant here?

9 MS. FULLER: Mr. Goss is here.

10 CHAIR LOUD: Okay. Good morning.

11 MR. M. GOSS: Good morning. My
12 name is Michael Goss is 1325 Trinidad Avenue,
13 N.E. Contrary to the submission, that's
14 actually a business address of mine that's
15 listed in the testimony. But my residential
16 is 1325 Trinidad Avenue, N.E.

17 CHAIR LOUD: And Mr. Goss, you are
18 the owner or the representative for the owner?

19 MR. M. GOSS: I'm the
20 representative and the owner.

21 CHAIR LOUD: Thank you.

22 MR. G. GOSS: Good morning, Mr.

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1 Chairman. My name is Gary Goss. I'm also a
2 partner. My address is 2204 14th Street,
3 N.W., Washington, D.C. 2009.

4 CHAIR LOUD: Good morning to each
5 of you. Is the ANC present this morning, ANC-
6 5A? Good morning. My don't you come to the
7 table. You're automatically a party in the
8 case.

9 And as I recall, this is a case
10 where we had about six witnesses that wanted
11 to testify, I believe, or four witnesses that
12 wanted to testify in opposition and we have
13 two witnesses in favor at the table.

14 Let me start us off, if I can.
15 We've reviewed the file and you pulled
16 together a very good file, counsel. It's a
17 case for a special exception under Section
18 7262301 and I believe 706 and there are
19 certain standard requirements that have to be
20 met for the special exception and I don't want
21 to speak for all of the Members of the Board
22 here, but I know in my personal review and in

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1 some discussion, some limited discussions with
2 Board Members, we were of the impression that
3 there are really two issues in the case, one
4 of which -- and they pertain to the standards
5 that we're talking about under 706. One
6 related to objectionable traffic conditions if
7 there were going to be any and that's an issue
8 that's raised by the nature of the project,
9 the size of the lot, the allegations regarding
10 interior circulation, some of what's in the
11 Office of Planning's report, some issues
12 raised by the ANC in their report which is our
13 Exhibit 26, and also by a report submitted by
14 the Civic Association, Exhibit 24. So there
15 were some issues around traffic conditions.

16 There were also some issues around
17 706.5 which is a provision that sort of has a
18 catch-all phrase in it that allows the BZA to
19 take into consideration protections to
20 adjacent or nearby property owners. And
21 again, there were some issues raised in the
22 Civic Association's letter, as well as the

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1 ANC's regarding those two things. And again,
2 mostly around traffic-type issues.

3 Normally, in a situation like this,
4 what we would want to do is look to the report
5 of the Department of Transportation to get
6 their weigh in and their opinion as experts on
7 traffic, pedestrian safety, transportation-
8 related issues, etcetera. And in this case,
9 we don't have a report by the Department of
10 Transportation. What we have is a report by
11 the Office of Planning that references some
12 conversations with the Department of
13 Transportation and that also indicates that
14 there would be a Department of Transportation
15 report subsequently filed. But as of the time
16 that we came out here, that had not been filed
17 and it kind of both places us at a
18 disadvantage, but also places the application
19 itself on a footing that might not be fully
20 ripe for complete review.

21 It's my understanding that the
22 Department of Transportation is here this

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1 morning in the audience. I don't know if
2 they're -- they're at the table this morning.

3 Did Transportation submit a written report?

4 Good morning, Mr. Jennings.

5 MR. JENNINGS: Good morning,
6 Chairman Loud and fellow Commissioners. My
7 name is Jeff Jennings. I work for the
8 District Department of Transportation. We did
9 not submit a written report for this
10 particular case. I am vaguely familiar with
11 this case and have reviewed some of the
12 associated materials. We've spoken at length
13 with the Applicant on another case and we feel
14 the Office of Planning's report and the
15 conversations we've had with Mr. Jackson who
16 is here from OP do support the case for the
17 most part. The Applicant has made some
18 concessions with respect to turning movements
19 into particular curb cuts. The tanker that
20 will be delivering the fuel --

21 CHAIR LOUD: Mr. Jennings, hold on
22 for two seconds. I think we can get into the

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1 merits, but you've testified that you're
2 vaguely familiar with the case. You have
3 spoken with the Applicant at length on another
4 case, but not necessarily this case. Is your
5 testimony today going to be the testimony of
6 the DDOT on this application?

7 MR. JENNINGS: Yes, sir.

8 CHAIR LOUD: Okay, and were you the
9 DDOT person who worked with the Applicant on
10 this case?

11 MR. JENNINGS: Yes, sir.

12 CHAIR LOUD: And you're prepared to
13 answer questions that the ANC or the Board may
14 have with respect to any transportation-
15 related issues?

16 MR. JENNINGS: That's correct.

17 CHAIR LOUD: All right. Well, in
18 light of that I'm comfortable moving forward
19 on the merits of the case this morning, if
20 Board Members are comfortable. I think we
21 have a representative from DDOT that can speak
22 to some of the interior circulation and curb

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1 cut and other issues raised by the pleadings.

2 So unless there's an objection from the Board
3 Members, I think we should proceed forward on
4 the merits.

5 Okay, then why don't we do that and
6 as I've indicated when I first called the
7 hearing calendar this morning, we start with
8 the Applicant's presentation of its case and
9 we go from there to the Office of Planning,
10 assuming there are no questions from the ANC
11 or from the Board.

12 So I turn it back to you, Ms.
13 Fuller, and you can start us off.

14 MS. FULLER: Thank you, Mr.
15 Chairman. Again, my name is Carlynn Fuller
16 and I'm the attorney appearing on behalf of
17 the Applicant, Mr. Michael Goss, who at the
18 time of the filing was the agent but has since
19 entered into a partnership agreement with Mr.
20 Yueng and Euclid of Virginia. And Euclid of
21 Virginia is the developer proposing to develop
22 a new self-service gasoline station and to

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1 raise the existing convenience store at the
2 site and build a new convenience store at 4975
3 South Dakota Avenue, N.E. in Ward 5. The site
4 is currently zoned C-1 commercial. And there
5 has been a convenience store at this site for
6 several years. It started out years ago as a
7 7-11 and then it was sold to Mr. Yueng and the
8 name was changed to Best Four Seasons Mart.

9 The convenience store is permitted
10 as a matter of right in a C-1 zone and so we
11 are requesting here today a special exception
12 under 3104 and 706 as required for all new
13 self-service gasoline stations established or
14 enlarged after May 12, 1958.

15 Mr. Michael Goss is here to present
16 testimony on the merits of the case and why we
17 believe that the proposed construction of this
18 gasoline station and retail store is
19 consistent with the intent of the C-1
20 neighborhood shopping district and will have a
21 minimum impact upon the surrounding
22 residential development.

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1 We have submitted a narrative and a
2 supplemental narrative in this case as part of
3 the application. And so I'm going to turn it
4 over to Ms. Goss to testify as to the specific
5 requirements for the special exception and to
6 answer any technical questions related to the
7 case.

8 CHAIR LOUD: Thank you, Ms. Fuller.
9 Does the ANC have a copy of what you just
10 gave us, this document here?

11 MS. FULLER: No. We can provide
12 her with it.

13 CHAIR LOUD: Why don't we hold off
14 a few minutes while she gets her copy of it.
15 And she should have everything that we have a
16 copy of.

17 MS. FULLER: Okay. It's just the
18 shorter version of the same document.

19 CHAIR LOUD: All right.

20 MS. FULLER: Smaller version.

21 CHAIR LOUD: Very good. Let me
22 just double check and make sure for the ANC

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1 rep, do you have copies of the testimony and
2 the diagram?

3 MS. ALSTON: I do, sir. Thank you.

4 CHAIR LOUD: Excellent. So why
5 don't we turn to you, Mr. Goss.

6 MR. M. GOSS: Before I actually get
7 into my testimony as it's written, would be
8 inappropriate for me to paraphrase this since
9 you all have that in the record or would it be
10 more beneficial for me to just go through it
11 in its entirety?

12 CHAIR LOUD: I think it's
13 beneficial, for my standpoint, for you to
14 paraphrase, hit the highlights of it,
15 summarize the points that are going to hit the
16 Section 706 requirements.

17 MR. M. GOSS: Okay, all right.
18 Well, again, good morning. My name is Michael
19 Goss and as I said I'm a member of Ward 5. I
20 have residence in Ward 5 and I also have two
21 businesses in Ward 5. So I'm also a native
22 son of Washington, D.C. And this project is

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1 one that is very important to me in terms of
2 my upbringing and what I would like to see
3 happen with this area.

4 I grew up in Ward 7 in Marshall
5 Heights. And what we were accustomed to in
6 terms of services provided and offered, I
7 didn't realize how limited that was until I
8 had the opportunity to travel as an adult, go
9 off to college, get into my profession. And
10 what I've noticed is basically a lack of
11 services in these communities, so much so that
12 the communities themselves oftentimes don't
13 realize just how mishandled they've been over
14 the years.

15 So what we decided to do, my
16 brother and I, is to come into the city
17 regardless of the type of business we have, is
18 come into it with a different approach,
19 service-oriented approach, a customer-first
20 approach. And with that said, the project
21 here that you see before you is -- was borne
22 from that basis.

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1 I'll give you a brief description
2 on the site. It is on South Dakota Avenue.
3 And we're proposing to raise the existing
4 retail store and replace it with a newly
5 constructed retail store and a new self-
6 service gas station. The site does abut a
7 branded 24-hour self-service gasoline station
8 owned and operated by BP Oil. The question I
9 know that we're probably going to be faced
10 with today, outside the transportation issues
11 is why another gas station? There's one
12 already there existing.

13 What we would like to demonstrate
14 today is that we're comparing an apple and an
15 orange when we're talking about the two sites.

16 Our site is far more extensive in terms of
17 the services it provides, the convenience it
18 provides, and the thoroughness of its
19 merchandise and that's what we're hoping to
20 start as an igniter for that whole entire
21 community.

22 Other businesses are eyeballing

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1 that area. Other development opportunities
2 are on the table. They are being talked about.

3 We're trying to be first. We're trying to
4 set a standard here. And what we would like
5 to do is would be to raise the bar in terms of
6 what is commonly offered, what is existing
7 there is a junk food store. And I'm just
8 being very frank with you when I speak. It's
9 sodas, chips, and junk food is generally
10 what's being offered not only at the current
11 convenience store, but at the gas station next
12 door.

13 And what we're trying to do is go
14 away from that. Turn towards a movement of
15 being, not only environmentally conscious, but
16 being conscious of humanity and what's right.

17 And what's right is your children should have
18 opportunities to have options, not run into
19 the store and the only thing you can buy is
20 sodas and candy. I've operated convenience
21 stores before and I do sell soda and candy,
22 don't get me wrong. But we also offer the

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1 alternatives. We offer fresh food. We offer
2 fruits, vegetables, salads ready to go. And
3 we keep them fresh and we turn every day.

4 The other thing that we do not do
5 is we do not sell rolling papers. We do not
6 intend to file for liquor licenses. We plan
7 to keep the store dry in terms of alcohol.
8 And the hours of operations that we want to
9 open will be from 6 a.m. to 10 p.m. and that
10 came largely from just being out in the
11 community and listening to some of the
12 concerns of the residents around the area.

13 To jump back into some of the key
14 points that you brought out with regard to
15 some of the zoning issues, the 706 requirement
16 states that we need to be 25 feet from the
17 closest residents and we've met that
18 exception. We've also met some of the
19 concerns with regard to traffic.

20 Today, there are three curb cuts on
21 that site. What we're doing is we're actually
22 proposing to close one of those three curb

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1 cuts. The one that's actually closest to the
2 corner of South Dakota and Emerson and you can
3 refer to the document that I gave you on the
4 rear site, page two. The corner at South
5 Dakota and Emerson, you see now that curb cut
6 is closed. There is a traffic light there so
7 that curb could actually today, it does cause
8 a bit of an issue with traffic flow at that
9 point. By closing that curb cut, we've made
10 the site not only less intrusive from a
11 traffic standpoint, but it also gives the site
12 a couple more amenities and it also allows for
13 a better flow, more turning radius for the
14 vehicles traveling through the site.

15 Let me go also to the first curb
16 cut on South Dakota. We are proposing to have
17 that be a one-way curb cut into the site.
18 That will eliminate the eastbound traffic from
19 South Dakota Avenue coming into the site in
20 that direction, so our flow really comes South
21 Dakota westbound into the site. Our fuel
22 truck also comes in that direction and flows

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1 in and out of the Emerson Street curb cut.

2 Also, the curb cut being closed at
3 that corner, it allows us to put in some
4 additional amenities to the site with regard
5 to the future. We are planning to work with
6 Pepco. We've had some preliminary discussions
7 with regard to the future of E-Car charging
8 stations. And this site will have the ability
9 to upgrade to E-Car charging and at that point
10 where the curb cut is closed is where we
11 intend to have that take place down the line.

12 Obviously, that's something that's coming to
13 the future, but we are, like I said, in
14 discussions with Pepco now. That is an
15 initiative that is very important to them and
16 we may find ourselves in alliance with Pepco
17 on that project.

18 With regard to the new fuel
19 station, we are going to be installing a
20 canopy. The canopy will be 14 feet high, so
21 that also is in compliance with the
22 stipulations in 706. The canopy will be

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1 finished in a very beautiful Alucobond finish.

2 It almost appears to be sort of like an auto
3 body silver metallic finish. If you've seen
4 like a brand new silver car. That's what the
5 canopy finish will be like. It will be
6 highlighted by recessed lighting which is not
7 going to be too intrusive to the surrounding
8 neighborhood and also features some LED
9 lighting.

10 From that canopy, we may also be
11 able to generate some solar energy to
12 supplement the site in terms of its energy
13 use. The site itself is being built with a
14 very environmentally-conscious and responsible
15 approach. The contractors that will be
16 assigned to building this project will be LEED
17 certified and there are a number of LEED
18 credit points that we obviously already have
19 in the proposal that are there for your
20 review.

21 In particular, we plan to beautify
22 the site with native species of plants and

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1 trees, more than what's currently there today.

2 Even the store itself will have a vegetated
3 roof for the purposes of not only storm water
4 management, but it makes for a much more
5 energy efficiency space on the interior. So
6 that said, we're looking to raise and enhance
7 what's currently sitting at that site. We're
8 investing very heavily in making sure that we
9 do that and my involvement in this project
10 before Mr. Yeung and I decided to go into a
11 partnership agreement, I had certain criteria
12 that I made sure that we were going to be able
13 to implement. That was part of our agreement.

14 And I feel very confident before you today to
15 say that I know once we have an opportunity to
16 take this and establish this site, we're going
17 to be able to build others like it throughout
18 the city and change the bar, change the whole
19 standard for how fuel and convenience store
20 businesses are operated within the city.

21 One other thing I'm going to
22 address is the parking. Today, the

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1 requirement is that we have six spaces. We
2 have eight proposed, two of which are handicap
3 accessible. So I think the parking
4 requirement we've more than satisfied that as
5 well.

6 One thing I will point to is I have
7 had conversations with members of this
8 community. Gone kind of door to door some
9 days and passed out information and answered
10 questions, passed out business cards and those
11 things. And have reached out. We've attended
12 meetings. And as a matter of fact, the last
13 meeting we attended was the North Michigan
14 Park Civic Association and I had an
15 opportunity to speak there. So we are coming
16 to the table today with a very collaborative
17 mindset. We do want to compromise.

18 We do want to make this something
19 that the community can be proud of eventually
20 and be involved in the process from day one
21 from the time the first hammer starts swinging
22 over there, we really want to involve

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1 ourselves with the community and we have a
2 history and reputation for doing that on our
3 other projects.

4 I've also been in communication
5 with Office of Planning on several meetings,
6 three of which were face to face, that we've
7 exchanged the email banter, or course, and
8 also with Department of Transportation. As
9 Mr. Jennings alluded to, we did meet several
10 weeks back and discussed two issues. This was
11 one of them. And then in a subsequent meeting
12 that Mr. Jennings did not attend, some of his
13 colleagues from Transportation did weigh in
14 with some of their concerns. And I feel as
15 though we met those concerns without
16 exception, without compromise, we made some
17 changes that made sense from a traffic
18 standpoint. We took their wise advice and
19 made it happen.

20 So I think you'll find a site that
21 flows very nice. The turning radiuses are
22 appropriate. The parking is sufficient. The

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1 matriculation of vehicles and pedestrians is
2 taken into consideration. And the entire site
3 is compliant, not only from an environmental
4 standpoint, but from an ADA standpoint and
5 also from a transportation and planning
6 standpoint.

7 The delivery trucks is another
8 issue that is raised. We have an ability --
9 we have 38 stations. And with those 38
10 stations, we have a lot of tanks to fill. So
11 we have a pretty broad fleet of vehicles that
12 we deal with. This site would be appropriate
13 for us to deal with a straight truck. And a
14 straight truck allows us to put a vehicle on
15 that site that's 30 feet long as opposed to a
16 traditional tanker truck which is well over 50
17 feet long. The straight truck was proposed to
18 both Transportation and Planning for their
19 review and that allowed for the truck to come
20 into South Dakota Avenue, fill the tanks, and
21 turn out of the Emerson Street curb cut and
22 back on to South Dakota Avenue from the

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1 traffic light. So we've met that concern by
2 using the appropriate vehicle.

3 Now the other thing with regard to
4 fuel delivery, it's not in our best interest
5 as a fuel company to try to fuel stations
6 during rush hour and high traffic times. We
7 learned that this wastes a lot of time for us.

8 It's inefficient. So most of our deliveries
9 do occur in the wee hours of the morning.
10 However, at this site because of how we intend
11 to operate it, this site will be fueled some
12 time between the hours of 7 p.m. and 10 p.m.
13 is when we intend to fuel this site.

14 So that said, I don't see the
15 tanker truck becoming an issue in terms of
16 rush hour in high peak times. As I said, from
17 a business standpoint it's not good for us,
18 nor is it good for the traffic flow to have
19 trucks in and out of that site during those
20 times.

21 Give me one second to organize
22 myself.

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1 (Pause.)

2 One other thing I just want to
3 mention is with regard to the lot occupancy
4 and what we're asking for with that. We're
5 not asking for any type of special exception
6 there. We're within the floor area ratio
7 that's prescribed in the code. Also, the
8 height of the structure, both the C Store, the
9 convenience store and the canopy is within the
10 requirements.

11 And lastly, just to close this up,
12 I want to speak to the design aesthetic. It
13 is a very modern approach to how the
14 convenience store and the gas station is put
15 together. What you'll find is some very nice
16 finishes that go along with sort of the eco-
17 environmentally friendly theme. The finishes
18 will include the Alucobond finish, wood, and
19 also, we're going to be using recycled
20 materials from the building that we raise in
21 construction backfill to make it a more
22 sustainable site.

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1 The interior of the store will
2 feature wood merchandise displays, recessed
3 lighting, very contemporary furnishings and
4 accessories will be placed inside. And
5 another that we've discovered in terms of the
6 way we do business and what's effective in
7 these stores is to eliminate the bullet-proof
8 glass. That's a very popular application in a
9 lot of these types of stores throughout the
10 city and we don't do it. We don't believe in
11 it.

12 We basically -- we operate our
13 stores hands on and what we found is that good
14 communication is the best security that any
15 store could have, being able to effectively
16 talk to your customers, treat them with
17 respect, field their complaints respectfully,
18 and not only field the complaints, but
19 actually take action on them when they do
20 arise.

21 So what that provides for is just a
22 whole different atmosphere. When you're

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1 trying to do business through three or four
2 inches of glass, both parties are
3 automatically on the defense because of the
4 situation you've put yourself in. What we
5 have found is not only does that enhance the
6 appearance of the store, but it enhances the
7 customer's attitude in terms of doing business
8 with you. And we feel as though once people
9 get accustomed to this style of business, sort
10 of this old throw back, general store way of
11 doing business, getting to know your customers
12 on a first name basis, they tend to take up
13 for you and be your advocates around the
14 corner when something may be getting plotted
15 or schemed.

16 We haven't had any major incidents
17 at our other locations that my brother and I
18 personally operate and this would be a
19 location that my brother and I personally
20 operate and I'm speaking to 14th and W, 1400 W
21 Street location. I'm speaking to our 1803
22 West Virginia Avenue location. So that said

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1 I'm going to conclude my testimony and allow
2 the proceedings to continue.

3 CHAIR LOUD: Thank you, Mr. Goss.
4 Let's see first if Board Members have any
5 questions for you and then we'll turn to the
6 ANC to see if there are any questions from the
7 ANC and then we can move forward to the next
8 witness. And when we do, I'd like to ask if
9 your brother has covered certain aspects of
10 the testimony adequately, you don't have to go
11 over those same points again, so to speak, as
12 to reinforce those points. I think the record
13 is full on those points that he's covered.

14 So why don't we turn to the Board?
15 Mr. May, do you have any questions?

16 COMMISSIONER MAY: Yes. You
17 mentioned LEED points the building or the
18 project would score. Have you actually
19 tabulated a score?

20 MR. M. GOSS: Not in its entirety,
21 sire, because we still are in the embryonic
22 stages of the development. The contract --

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1 when we put out the bid for this building,
2 part of that bid request for proposal will
3 have a requirement that the contractor be LEED
4 certified. Once we have an opportunity to
5 identify that contractor, we'll get into some
6 more of the finer points of how we not only
7 can take what we've proposed as LEED credits,
8 but we found in past projects that contractors
9 also have some additional LEED ideas that
10 would be considered LEED credits to enhance
11 the project even further.

12 COMMISSIONER MAY: I think that's
13 very smart. Do you have an objective in terms
14 of an eventual LEED score, LEED certified,
15 LEED silver, LEED gold? The building itself.

16 MR. M. GOSS: Obviously, we want to
17 LEED gold and that's just because that's the
18 way we believe the industry is turning and we
19 want to be out front on that particular issue.

20 COMMISSIONER MAY: Okay, you
21 mentioned other stations, fuel stations that
22 you operate.

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1 MR. M. GOSS: Yes, sir.

2 COMMISSIONER MAY: Is it the same -
3 - are they the same model in essence?

4 MR. M. GOSS: No, sir. This is
5 going to be the first model -- this is the
6 prototype for our future stations.

7 COMMISSIONER MAY: Right.

8 MR. M. GOSS: My relationship with
9 the fuel company is a brand new partnership.
10 It's only months old. And what we've done is
11 we've, up to this point, is we took the 1400 W
12 location and made some very basic cosmetic
13 changes and policy changes. But as far as
14 doing a new structure in this manner, South
15 Dakota Avenue will be the prototype.

16 COMMISSIONER MAY: Okay. And in
17 those other locations, you also operate the
18 convenience store aspect of it as well?

19 MR. M. GOSS: Yes, sir.

20 COMMISSIONER MAY: And do you have
21 the same sort of product line? You've moved
22 toward more fresh foods and things like that?

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1 MR. M. GOSS: Yes, sir.

2 COMMISSIONER MAY: Is that all
3 doing very well?

4 MR. M. GOSS: Absolutely. We can't
5 keep fruit in.

6 COMMISSIONER MAY: Really. Okay.
7 And then the last question is the straight
8 truck solution?

9 MR. M. GOSS: Yes, sir.

10 COMMISSIONER MAY: For fueling. Is
11 there any -- will there be any difficulty in
12 being able to only receive fuel on those
13 trucks or are they very commonly used? Is it
14 an easy thing for the supplier to be able to
15 come only in straight trucks as opposed to the
16 articulated trucks?

17 MR. M. GOSS: For us, it is. As I
18 mentioned, the partnership has over 30
19 stations. So as far as how we purchase fuel,
20 we do have a bit of an advantage over some of
21 the other smaller independents that have maybe
22 the onesie-twosie types of locations. Unless

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1 you're one of the big major brands, we find
2 ourselves somewhere in the middle.

3 That said, we have a dedicated
4 fleet that just services our stations. Now
5 not all of our stations require the straight
6 truck. Some of them do, just because of the
7 nature of where they're located and how the
8 site is situated. So we wouldn't have a
9 problem keeping up with the demand of the
10 station with a straight truck.

11 COMMISSIONER MAY: Okay. That's it
12 for me.

13 CHAIR LOUD: Thank you, Mr. May.
14 Are there any additional questions?

15 MEMBER MOLDENHAUER: You mentioned
16 that you were not going to be installing
17 bullet-proof glass, but can you elaborate or
18 provide any information on what other security
19 measures that you would be taking?

20 MR. M. GOSS: Well, currently what
21 we do is we obviously have surveillance. And
22 then the other thing that we do is meet with

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1 whoever the local police commander is for that
2 particular area and we kind of discuss a
3 security plan with him or her. And that's
4 just been our way. I have to say that being
5 present in a business as the owner, customers
6 recognize that. And they understand that this
7 is more than just dollars and nickels and
8 pennies to the owner, if they know that
9 they're heavily invested in it, not just from
10 a financial standpoint, but from a time
11 standpoint.

12 My level of passion for this
13 business goes -- shines through to my
14 customers. And because of that I have a lot
15 of people who are advocates for me. And the
16 knuckleheads in the neighborhood that would
17 otherwise be an issue or have historically
18 been issues for some of my neighbors or
19 others, tend to leave me alone quite frankly.

20 And I think it's because of our presence, but
21 aside from that, we do have adequate lighting
22 that we propose, proposing to have the facade

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1 with windows not only on the front, but going
2 around the side, the Emerson Street side,
3 we're going to have windows there. So the
4 store will be in a fishbowl. It will be well
5 lit. So any type of plot or scheme would be
6 very easily detected.

7 MR. G. GOSS: Not only that, let me
8 just add, we also, one of the key things that
9 we do do when we go into a community, we
10 employ local staffing as far as within the
11 community itself. We try to kind of give back
12 and mentor some of the local residents and
13 it's just changed the business ten-fold,
14 really, the impact, because a lot of quote
15 unquote troublemakers you have seen in the
16 past or business owners had, pretty much
17 everybody knows everybody in the community.
18 And when they see you giving back and reaching
19 into community it's a different approach.

20 Also, without the bulletproof being
21 there, there's never been a business that I've
22 ever walked into where you can up sell for

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1 bullet proof or get to know your customer.
2 And we're out on the floor with our customers
3 at two, three o'clock in the morning. Knock
4 on wood, but to this day we have not had a
5 serious incident whatsoever. And the
6 businesses have tripled in the communities.

7 And again, we bring in a fresh
8 product. And if there's something that the
9 local residents need or there's a requirement,
10 somebody is living in a community and has a
11 special need for foods, whatever, we bring
12 those foods in for that person. Almost like
13 your one-stop shopping with customer service.

14 MR. M. GOSS: The surveillance is
15 video surveillance, not just personal eye
16 surveillance?

17 MR. M. GOSS: No, it's videos.

18 MEMBER MOLDENHAUER: And you're
19 talking also about the food and the delivery,
20 can you talk about -- we talked about the gas
21 delivery systems, but can you also talk a
22 little bit about the delivery of all the

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1 different products and the fresh foods, since
2 obviously that's going to need more frequent
3 delivery than a regular store.

4 MR. M. GOSS: If you refer to page
5 two again, the proposed site plan has a
6 loading area designated. That loading area is
7 15 feet wide. Any truck that we get as far as
8 food delivery certainly can very easily fit
9 into that space, be out of the flow of
10 traffic, be out of the flow of the turning
11 radius required to negotiated the site for our
12 customers. And load up and be on its way.

13 We typically take delivery twice a
14 week for just about everything. So it
15 wouldn't be an everyday occurrence, but on
16 those two days a week, typically Mondays and
17 Thursdays, the loading area is already marked
18 and it does not impact the number of parking
19 spaces that we've also provided to our
20 customers.

21 MEMBER MOLDENHAUER: What's the
22 time, do you know the deliveries will be

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1 occurring?

2 MR. M. GOSS: Those deliveries tend
3 to occur in the morning.

4 MEMBER MOLDENHAUER: How early?

5 MR. M. GOSS: Starting at about 8
6 in the morning and flow through the early part
7 of the afternoon. Again, some of our
8 suppliers are not directly controlled by us,
9 like for instance, Coca Cola or Pepsi bringing
10 in those types of product. We do, however,
11 have a four-hour window and we generally have
12 our window of opportunity to get a delivery
13 started at about 8 o'clock. So the other
14 ones, my brother and I control, but something
15 like the major soda brands or some of our
16 potato chip vendors, they give us a window for
17 delivery.

18 MEMBER MOLDENHAUER: Thank you.

19 CHAIR LOUD: Just have a couple
20 really quick questions follow up on your
21 testimony and then a couple of the
22 submissions.

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1 In terms of the testimony, I get it
2 in terms of the eliminating the curb cut on
3 South Dakota than doing one-way for the
4 traffic to enter into, onto the lot from South
5 Dakota. But, how is that going to be made
6 known as a practical matter for that eastbound
7 traffic? Is there going to be a big "Do Not
8 Enter" sign?

9 MR. M. GOSS: But we do intend to
10 tackle that with signage and then also the
11 nature of the curb cut, we plan to design that
12 in such a way that it just encourages the
13 traffic to come in from the westbound side on
14 that side. So, in order to negotiate it from
15 the eastbound, I'm not going to suggest to you
16 that it would be impossible for them to do it,
17 but the way it is designed it would discourage
18 it.

19 CHAIR LOUD: Okay. So if I'm going
20 eastbound, I'm going to, first of all, I'm
21 going to see some signage that is unique to me
22 going eastbound that says "Do Not Enter" or

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1 something like that.

2 MR. M. GOSS: Yes, sir.

3 CHAIR LOUD: And it will be designed
4 in a way that it will be hard for me to
5 actually make that left turn.

6 MR. M. GOSS: Yes, sir.

7 CHAIR LOUD: Okay. In terms of the
8 30-foot straight trucks, those were not a
9 concession mentioned in the OP report as
10 something that had been negotiated out of the
11 original or into the application? Is that
12 something that you're open to as a condition?

13 MR. M. GOSS: Absolutely.

14 CHAIR LOUD: Okay. In terms of some
15 of the other evidence in the record, and I'm
16 going to just briefly go through the ANC's
17 report, Exhibit 26, and the North Michigan
18 Park's Exhibit 24, because they kind of mirror
19 each other and you mentioned that you're
20 working collaboratively, which I think is
21 great, and they're behind you listening to
22 some of this. They raise some concerns that

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1 are not zoning related and I'm going to skip
2 right over those, but they do raise some that
3 are zoning related. And let me just go
4 through it.

5 The, let me see, one concern is
6 that the site is so small that tankers, that
7 there would be no place for these tankers to
8 refill. And I notice that you have, with what
9 you gave us, you have sort of the loading area
10 demarcated --

11 MR. M. GOSS: Yes.

12 CHAIR LOUD: -- I guess for the
13 convenience store deliveries, but where would
14 I put the refueling, where would I draw a
15 circle to indicate where that's going to
16 happen on the site?

17 MR. M. GOSS: If you, if you refer
18 to the site plan --

19 CHAIR LOUD: Okay.

20 MR. M. GOSS: -- where the yellow
21 vehicle sits on pump three, that area is where
22 we intend to fill the tankers. So, during the

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1 few minutes it takes to load those tankers up,
2 that side of pump three will not be available
3 for use to our customers.

4 CHAIR LOUD: Thank you. And then,
5 there was some confusion, I guess, in the
6 community about the hours of operation?

7 MR. M. GOSS: Yes, sir.

8 CHAIR LOUD: And when I look at the
9 record, I'm a little uncertain as to whether
10 the gas station will have the same hours as
11 the convenience store or if they'll be
12 separated out. So just to address that
13 concern raised by the members of the
14 community, what are the hours going to be for
15 the gasoline station?

16 MR. M. GOSS: Through conversation
17 with the community, we have agreed to have the
18 hours be from 6 a.m. to 10 p.m. for the entire
19 site.

20 CHAIR LOUD: And that's Monday
21 through Sunday?

22 MR. M. GOSS: That's every day.

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1 Yes, sir.

2 CHAIR LOUD: So that then would
3 include the convenience store?

4 MR. M. GOSS: Yes, sir. It would.

5 CHAIR LOUD: In the Civic
6 Association's letter, there's a reference to
7 the property not being maintained by way of
8 loitering and trash, and I think that would
9 come under our 706.5, which is sort of a wide-
10 open avenue for the BZA to weigh in on
11 something.

12 MR. M. GOSS: Yes.

13 CHAIR LOUD: But what's your, can
14 you respond to that?

15 MR. M. GOSS: They're absolutely
16 correct in that statement. The current tenant
17 has some flaws with regard to that. He's on
18 month-to-month and that situation is going to
19 come to an abrupt and immediate halt. That is
20 totally opposite to the way we maintain our
21 facilities. Cleanliness is something that
22 we're very, very particular about. And we

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1 have restaurants, we have convenience stores,
2 I mean, we cover a range of different types of
3 retail establishments that we operate. And we
4 are very much sticklers for that end.

5 What we found is, and I'll refer to
6 the case that was kind of before us, Mr. May
7 made a very, very wise statement when he said
8 it just makes business sense. When you keep
9 your business facilities clean and free of
10 clutter and free of loitering it just invites
11 more traffic, people feel more comfortable,
12 they're more willing to shop with you. And as
13 a matter of fact some of our customers, you
14 know, kind of go out of their way past a few
15 other suppliers to shop with us because of
16 that.

17 CHAIR LOUD: Okay. So the
18 testimony's sort of there's a new sheriff in
19 town --

20 MR. M. GOSS: Absolutely.

21 CHAIR LOUD: -- and we're going to
22 handle our business differently. What about

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1 the loitering? You talked about the trash.

2 MR. M. GOSS: It's the same, it's
3 the same thing. We do notice that that is a
4 problem there. And at our other locations we
5 do not allow it. We don't allow, even if you
6 quote unquote came in as a customer and you
7 left and you're standing outside of our
8 establishment, unless there's some business
9 you're handling or just a brief conversation,
10 we don't allow people to linger in front of
11 our stores.

12 MR. G. GOSS: One of the issues too
13 Mike that we address is the panhandling that's
14 really, really strong in this city. It's like
15 all the cities we've gone in as well. And we
16 try to, we have a zero-tolerance for loitering
17 because that's the first stage, the first
18 thing you think about as a customer when
19 you're driving into an establishment, who's
20 hanging out around you, what are you going to
21 have to go through to get services? And one
22 of the things we understand as consumers is

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1 that we don't want to see that. And it's by
2 us being on-hand owners, we're able to address
3 it right away along with our management. So
4 it just cuts out on a lot of, some of the
5 theft that could go on and also the security
6 state. It helps out when you address it right
7 away.

8 CHAIR LOUD: Okay. Thank you. I
9 don't have any additional questions. If Board
10 Members don't have any further we can turn to
11 the ANC.

12 MS. ALSTON: Do you want my direct
13 questions or my statement?

14 CHAIR LOUD: No, at this point it
15 would just be your questions and then later on
16 you can present your case and it would be more
17 your statement.

18 MS. ALSTON: I do have a couple of
19 questions for you. I'm Angel Austin, I'm the
20 chair of the ANC at 5A. More importantly, I
21 am the representative for Single Member
22 District 5803. So this proposed location is

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1 in my Single Member District.

2 I'm being joined at the podium with
3 Commissioner Timothy Thomas, who is the ANC
4 Commissioner for an abutting SMD. So this
5 proposed location services both of the Single
6 Member Districts at the table.

7 CHAIR LOUD: Okay. Before your
8 proceed forward, let me just clarify. The ANC
9 is automatically a party to the case, so the
10 ANC has the opportunity to do what we're doing
11 now, which is cross examination. And you can
12 ask, you know, any, you know, pretty wide
13 parameters. You can ask the questions based on
14 the testimony that you want to ask.

15 MS. ALSTON: Okay.

16 CHAIR LOUD: The ANC that's a
17 single-member Commissioner and has some
18 interest in the case, you can come back later
19 and testify at the point in time where we have
20 witnesses give their testimony, when you'll be
21 given three minutes for that. But this would
22 only be for the ANC person that's representing

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1 the full Commission with respect to its
2 September 17th report. That's our Exhibit 26.

3 Okay?

4 MS. ALSTON: Thank you.

5 CHAIR LOUD: The questions would
6 stem from that authority.

7 MS. ALSTON: With the documentation
8 that he presented me a copy, that you
9 presented me a copy with Mr. Goss, can you
10 clarify your actual relationship? Are you,
11 this says that you are the agent from Mr.
12 Yeung. Are you the agent, are you an owner?

13 MR. M. GOSS: I am actually both.
14 When the application was originally submitted,
15 at that time we were in preliminary
16 discussions on the partnership agreement.
17 However, it was imminent, it was just a matter
18 of some internal negotiations that occurred
19 between Mr. Yeung and myself, and my brother,
20 so G2 Design and Euclid LLC will be developing
21 this site.

22 MS. ALSTON: Okay. So then, that

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1 way, do you have something that shows that you
2 all are in agreement so that you'll be
3 responsible and actually controlling what goes
4 on at this property from beginning to end?

5 MR. M. GOSS: I can provide you
6 with that, absolutely.

7 MS. ALSTON: Okay. Does the LP in
8 this design that you showed me, does this mean
9 lowest price?

10 MR. M. GOSS: It is lowest price,
11 however, the lowest price brand is being
12 revamped. Lowest price is known for having
13 tired, dilapidated facilities. Part of why
14 Mr. Yeung sought us out was to change that
15 whole impression, change the brand, change the
16 way business has been done in the past to this
17 new era we're trying to usher in.

18 So the lowest price brand,
19 everything, the logo, everything will be
20 different, but yes, it is the lowest price,
21 which means we will be able to still offer the
22 competitively priced gas, but in a new

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1 facility.

2 MS. ALSTON: Also, in this design,
3 if I'm looking at the bottom that you just
4 gave me, you said that you're going to take
5 out one of the curb cuts which will then
6 create two. The one-way entrance off of South
7 Dakota Avenue which would then push all of the
8 traffic on to Emerson Street which is a
9 residential area. So since this will be the
10 only -- since the one off South Dakota Avenue
11 is one way, you can't exit there, you can only
12 enter there, since it's one way and it's right
13 turn only. What other way do you have to exit
14 at this facility besides on Emerson? Because
15 once you leave Emerson that's all residential.

16 MR. M. GOSS: That part of Emerson
17 Street that's right there, there are -- I
18 think there's one house that sits on that
19 other side of the street and it is more than
20 25 feet away. The traffic that's going to
21 flow back onto to South Dakota Avenue will
22 basically come out and make a left turn onto

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1 Emerson Street. The whole notion was to
2 eliminate what could potentially be a big
3 problem traffic-wise.

4 The other curb cut was right on top
5 of that traffic light. Actually, it's still
6 there today. It's an existing curb cut that
7 we're proposing to eliminate. And being on
8 top of that traffic light, people coming out
9 of there trying to head eastbound from that
10 light can cause some issues.

11 MS. ALSTON: I'm very familiar with
12 this site. I've lived there all my life.

13 MR. M. GOSS: Okay.

14 MS. ALSTON: So again, when you
15 come out of this Emerson Street which is your
16 only exit, you're at a light. If there are
17 five cars in line and the light is red,
18 they're not going to wait in line. They're
19 going to flood my community which is all
20 residential. You are correct that directly
21 across the street from that site, there is one
22 corner house, but let's not forget that

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1 there's ten houses on that block. And then
2 there are three streets, along with an alley
3 that sits at the back of at least 20 streets
4 on a block --

5 CHAIR LOUD: Commissioner,
6 Commissioner, I just want to remind you that
7 where we are at this point is for your
8 questions. And then later on you can say all
9 of those things that you just said in terms of
10 some of these problems.

11 MS. ALSTON: No problem. Thank you
12 very much.

13 Tell me how many meetings you've
14 attended in the community?

15 MR. M. GOSS: I've attended one
16 formal meeting.

17 MS. ALSTON: Okay.

18 MR. M. GOSS: But my approach with
19 dealing with the community, I like to kind of
20 talk one on one with people. It's just my
21 style.

22 MS. ALSTON: Okay.

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1 MR. M. GOSS: I've walked the
2 neighborhood. I've passed out flyers and
3 that's just the way that I like to do
4 business. It's more personal.

5 MS. ALSTON: So what community did
6 you walk out and pass out flyers and pass out
7 cards in?

8 MR. M. GOSS: The community
9 basically right around the station itself,
10 because I thought that would be more of an
11 effective community to touch because it's --

12 MS. ALSTON: Do you know what
13 streets?

14 MR. M. GOSS: Tenth Street. If you
15 exit from our exit onto Emerson Street, turn
16 right and then make that immediately left on
17 10th Street, we've been on that block passing
18 out flyers and talking to community people.
19 And then if you were to go that same way
20 behind the store on to Emerson Street and
21 those streets that are kind of -- the next
22 block down and the next block over from it,

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1 we've walked and canvassed the neighborhood as
2 well.

3 MS. ALSTON: I also noticed that on
4 this curb cut out, on the curb cut that you
5 are proposing to take away, you keep
6 emphasizing amenities. What other amenities
7 are being offered than four bushes?

8 MR. M. GOSS: Well, the landscaping
9 here is graphic, but I can assure you that it
10 will a vast improvement over what's there.
11 Those are actually trees in combination with
12 some other native species of plants that we
13 intend to plant there.

14 Some of the other amenities as it
15 relates to what's going on in the site is from
16 that area. We will be able to upgrade to the
17 electronic car charging in that particular
18 location with that curb cut being eliminated.

19 MS. ALSTON: Now this entire design
20 that you have, is this within the property
21 lines or does this include some of the -- some
22 of the property behind it? Is this within

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1 your property line, this entire development?

2 MR. M. GOSS: All of it is within
3 the property line and also within the
4 prescribed easement lines.

5 MS. ALSTON: Only because at the
6 meeting, I guess some of the residents were
7 under the impression that you all were working
8 to acquire some additional space behind. Is
9 that correct or incorrect?

10 MR. M. GOSS: No, ma'am.

11 MS. ALSTON: Okay. As far as you
12 saying you were working with MPD and the 4th
13 District Police Precinct to see what their
14 feel was for this location, what contacts have
15 you had so far and what has been their
16 recommendation.

17 MR. M. GOSS: Primarily we've been
18 dealing with 5D. That's where all their
19 businesses are. When I made that statement, I
20 made it out of historically that's our
21 approach, once we go into the community is to
22 form that type of alliance.

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1 MS. ALSTON: This particular
2 location is in the 4th District. So my
3 question is what conversation have you had the
4 4th District regarding this because this
5 particular location requires a lot of
6 attention from PSA 45 already.

7 MR. M. GOSS: And that's something
8 that we intend to do. We haven't had
9 conversation with 4th District, but I just
10 want to make it aware, put it on the record
11 that is how we do business and that's
12 something that is going to be one of our first
13 things. Not only do we just have casual
14 conversation, but we actually go into a full-
15 on discussion with regard to security plans
16 and have them weigh in on how we develop that.

17 MS. ALSTON: Okay, and then you
18 said that in your testimony, you said that
19 this location will provide daily, they will
20 bring in fresh fruit on a daily basis, but
21 then you went back and said that you would
22 only have deliveries two times a week, on

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1 Mondays and Wednesdays. So is it daily or is
2 it twice a week?

3 MR. M. GOSS: The fruit that comes
4 in, my brother and I pick that fruit
5 ourselves.

6 MS. ALSTON: So you bring it in
7 your vehicle?

8 MR. M. GOSS: In our personal
9 vehicles, yes, ma'am

10 MS. ALSTON: Okay, and so when this
11 tanker at pump number three on the opposite
12 side is coming to pump, and it already takes
13 away one of the pumping stations, so it leaves
14 how many other pumps available?

15 MR. M. GOSS: Five.

16 MS. ALSTON: And in the community
17 where there's seniors, how do we regulate
18 time? You say 8 o'clock in the morning for
19 loading. But you're not really sure. So how
20 do we go gauge that when you have a community
21 all based on seniors. And then you say your
22 trucks will come at night. What's the noise

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1 level as far as like the idling with the
2 trucks as they're loading? They will then
3 enter through the same entry and exit points
4 which is this one-way exit on Emerson Street?
5 Which way will they then go?

6 MR. M. GOSS: Okay, let me -- you
7 kind of said two things that I want to
8 clarify.

9 MS. ALSTON: Timing and loading.

10 MR. M. GOSS: Also, the type of
11 delivery. Let me distinguish the food
12 product, the convenience store delivery from
13 the actual fuel tank deliveries.

14 The fuel tank deliveries will not
15 occur in the morning. Those occur after peak
16 hours.

17 MS. ALSTON: After 7 p.m.

18 MR. M. GOSS: After 7 p.m. The
19 other deliveries are the ones that occur in
20 the morning for the store, bringing in the
21 food and merchandise. The truck being that it
22 is a 30-foot truck does not have the same

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1 decibel levels of noise that a tanker would
2 have. So from that standpoint, it's not going
3 to be intrusive and then the other thing that
4 we're going to commit to the neighborhood is
5 that we won't do that after 10 p.m., even
6 though if we did, probably no one would notice
7 because it's not such a noisy type of thing.

8 But our whole approach is to meld
9 in and become a part of this community, not be
10 the outsider kind of coming in trying to run
11 roughshod over the neighborhood. We want to
12 have a very collaborative type of interaction
13 between us because once we're there, we
14 consider ourselves to be members of that
15 community. Although we may not reside there,
16 we do have business there and therefore we are
17 part of it.

18 MS. ALSTON: The type of lighting
19 that you'll use, will it be faced towards the
20 gas station or how will you ensure that the
21 lights won't be directed to the houses and
22 impact the residents?

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1 MR. M. GOSS: The type of lighting
2 that we have is going to be more of a downward
3 light. It's going to be recessed light and
4 with regard to the canopy, that will be lit
5 mainly from a recessed light and then we'll
6 also have LED lighting which is a little
7 softer. It's more of an ambient light and
8 that really is like a big flood light that
9 will be directed in the direction of the
10 homes.

11 MS. ALSTON: So if that lighting
12 becomes an issue because that flood light is
13 directed toward the direction of the homes,
14 how would you address it and how would it be
15 fixed?

16 MR. M. GOSS: We wouldn't install
17 them from Day 1. Yes, ma'am.

18 MS. ALSTON: What's been your
19 police report rates filed at your other
20 locations?

21 MR. M. GOSS: I can count on one
22 hand the incidents that have happened on our

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1 other locations, one of which was an internal
2 theft. We had four employees at a station on
3 14th and W. The money that should have been
4 in the safe wasn't in the safe. So that was
5 handled through --

6 MR. G. GOSS: Pretty much. We
7 pretty much filed a report on that just for
8 insurance purposes. But we handle pretty much
9 everything internally, situations like that.
10 Very rarely do we have problems because we
11 kind of head the problems off. We kind of see
12 the smoke before the fire at a lot of our
13 stations because we have a tremendous amount
14 of money and time invested and also we're
15 there personally a lot of the times. Pretty
16 much our day starts at 4 in the morning and
17 when we talk about bringing fresh product in,
18 fresh produce in, we get to interact with our
19 customers.

20 We also are very conscious about
21 who is in that area or what's going on. Like
22 you living in that community, we'll get to

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1 know you on a one-on-one basis, hopefully.
2 And if there are any concerns going on, maybe
3 two blocks prior to the station, what's
4 happening, if there's too much drug activity
5 going on, if it's loitering going on, we try
6 to address that with you and work with you.
7 Not only that, but work with the local police.

8 I'm sure you're familiar with Ward
9 1, that 14th Street corridor how notorious it
10 was back in the day.

11 CHAIR LOUD: Let me interrupt for
12 just one quick second. It's around 12 noon
13 now or very close to 12 noon and we are going
14 to -- normally we break at 12, but we're going
15 to work through the lunch hour. Board Members
16 have agreed to do that. We're going to try to
17 make it through the four witnesses that are
18 opposed to the case and may end up taking them
19 out of order before Office of Planning, just
20 so we can get through those witnesses. Those
21 are three minutes allotted for each witnesses.

22 This questioning, I think is

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1 generally relevant to 706.5, generally, but
2 it's starting to a little bit beyond the
3 standards -- 1400 W Street and you know.

4 MR. G. GOSS: We're passionate
5 about what we do.

6 CHAIR LOUD: I understand. I
7 understand. And we want to make sure that we
8 don't unfairly limit what you want to say, but
9 we also want -- we have a full calendar today
10 and we want to make sure that we give everyone
11 an opportunity to have their case heard. so
12 if we could again, with the cross, keep it
13 focused on the requirements of Section 706 and
14 the testimony that came out on direct,
15 Commissioner Alston, that would be very
16 helpful.

17 MS. ALSTON: That question only
18 came up because he kept making reference to
19 his other locations and the crime and how they
20 work with the community. So that's what that
21 question was directed from.

22 CHAIR LOUD: Thank you. How much

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1 longer do you think you're going to need for
2 cross of this witness?

3 MS. ALSTON: Like two or three
4 minutes.

5 CHAIR LOUD: Okay.

6 MS. ALSTON: So, does he -- can you
7 clarify for me, the owner still owns the
8 property and he doesn't plan on selling it.
9 You all are just in partnership, or how is
10 that?

11 MR. M. GOSS: No. We plan to
12 develop it, we don't plan to sell it.

13 MS. ALSTON: One clarification.
14 Can I ask you a question?

15 MR. M. Goss: Definitely.

16 MS. ALSTON: Is it possible to see
17 if the other ANC Commissioner has a question
18 to be asked on behalf the ANC since we're in
19 cross examination? Then this portion will
20 close.

21 CHAIR LOUD: Well, typically, the
22 ANC designates one person as its

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1 representative and that one person would
2 confer with whomever they would need to confer
3 with outside of this and come, you know,
4 prepared to answer, ask those questions.

5 MS. ALSTON: Could I have 30
6 seconds to speak?

7 CHAIR LOUD: Thirty seconds.

8 MS. ALSTON: Thank you. Thank you
9 very much sir. My only question, other
10 question, would be, well, two other questions,
11 would be have you, have you reached out to any
12 of the other civic associations in the area
13 that this proposed location services? And
14 then, have you been on South Dakota Avenue at
15 any point in time of day to assess the
16 traffic, its speed, or along with DDOT and how
17 are you all working together since you're
18 closing off one of these curb cuts and it will
19 just be one-way in and one-way out?

20 MR. M. GOSS: The answer to the
21 first question is I've only had interaction
22 with the North Michigan Park Civic

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1 Association. With regard to my conversations
2 and meetings with the Department of
3 Transportation and also the Office of Planning
4 as well, the first meeting that I had was with
5 Mr. Jennings who's on the panel and we've
6 discussed this as a sort of secondary matter
7 to a more pressing issue at that time. And,
8 in that conversation, Mr. Jennings raised
9 several points of concern that he had with,
10 with the site.

11 From that we went back and made
12 some modifications to the site and made some
13 changes and then had another meeting that Mr.
14 Jennings wasn't a party to but members of his
15 office were party to and acknowledged that we
16 had addressed most of those issues and we
17 still had a little more homework to do.

18 MS. ALSTON: Okay, so when you met
19 with the Civic Association, were they for or
20 against the project?

21 MR. M. GOSS: The Civic
22 Association, when we met with them, we had a

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1 very brief opportunity to state our case, to
2 be quite honest with you. And the vote was
3 pretty much in motion. However, some of the
4 commentary that came out once I had an
5 opportunity to speak was the impressions of
6 some of the community members, was different
7 in terms of what I presented from what was
8 presented to them by the, the ANC when they
9 first had an opportunity to hear about what
10 was going on there. And, I think that just
11 comes from just the notion of this being a gas
12 station. And that really here in the
13 background on what it is that we're trying to
14 do. That is different in that it is an
15 enhancement. So the vote that came out was in
16 opposition. However, there was, it was not
17 unanimous, I will say that.

18 MS. ALSTON: Okay. So at this
19 point do you, do you think that the community,
20 do you strongly feel that the community is
21 against support of this?

22 MR. M. GOSS: When I walk that

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1 street and I pass out my flyers and my
2 business card and talk to people, for the most
3 part I feel as though the community is in
4 support of it, yes, I do. And by the way, the
5 curb cut closure was borne out of those
6 conversations with Department of
7 Transportation, so we sought their counsel in
8 terms of what would be best in terms of the
9 site.

10 MS. ALSTON: Okay. And who did you
11 do that survey with in DDOT?

12 MR. M. GOSS: Again, Mr. Jennings
13 on the panel here was party to the preliminary
14 conversation. Mr. Jackson, that's on the
15 panel, was there with some other members of
16 Planning and some other members. It was a --

17 MS. ALSTON: I guess your
18 recommendation is because Mr. Jennings has
19 already said he's not really familiar with the
20 site, so he can't --

21 CHAIR LOUD: Again, Commissioner,
22 this will be the point.

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1 MS. ALSTON: I was asking a
2 question --

3 CHAIR LOUD: To ask, to ask
4 questions. Also, the record is pretty full in
5 terms of where the community stands on the
6 case. I mean, you could continue to ask him
7 questions about it but, you look at the ANC's
8 reports, you look at the Civic Association's
9 report, it gives you a sense of --

10 MS. ALSTON: No problem.

11 CHAIR LOUD: -- at least what the
12 evidence is regarding community, the
13 community's position on it, so --

14 MS. ALSTON: Well, if that's the
15 case, then I'm done.

16 CHAIR LOUD: Okay. Thank you. And
17 I think now we will turn to the second Mr.
18 Goss, if the Applicant still intends to
19 present him as a witness and this will be your
20 opportunity to give your testimony.

21 MR. G. GOSS: I think basically
22 we've covered everything.

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1 CHAIR LOUD: Okay.

2 MR. G. GOSS: Yes.

3 CHAIR LOUD: Let's not drag it out,
4 if it's been adequately covered, it's been
5 adequately covered.

6 We would normally now turn to the
7 Office of Planning, but I think we have a
8 number of witnesses here that were sworn in
9 earlier and I'd like to, with the Board's
10 support turn to those witnesses for their
11 testimony, a bit out of order, but before I do
12 that -- I don't know if you're going to have
13 to move or not. Let me just check and see
14 what the ANC -- are you going to be presenting
15 any witnesses this afternoon for your case
16 where you actually call up the persons as
17 witnesses and then you ask them questions and
18 so on and so forth?

19 MS. ALSTON: No, sir. Just the
20 constituents out of the community.

21 CHAIR LOUD: But are you going to
22 call them as your witnesses for the ANC's

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1 case? I know that they have testimony that
2 they want to give. We're going to give them
3 an opportunity to do that.

4 MS. LEWIS: May I speak? I'm the
5 President of the North Michigan Park Civic
6 Association.

7 CHAIR LOUD: Yes, ma'am.

8 MS. LEWIS: And we've been working
9 in conjunction with the ANC, so the Civic
10 Association witnesses are ANC witnesses.

11 CHAIR LOUD: Yes.

12 MS. ALSTON: I won't have to call
13 them specifically.

14 CHAIR LOUD: Okay, all right. That
15 kind of clarifies how we want to proceed in
16 terms of our next steps. So what we'd like to
17 do then is go a bit out of order and allow the
18 four witnesses that were sworn in earlier who
19 wanted to testify in opposition to the project
20 to come on up to the table and then you can
21 offer your testimony now and upon conclusion
22 of that we will proceed with the Office of

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1 Planning's report. Okay?

2 MR. JACKSON: Mr. Chairman?

3 CHAIR LOUD: Yes.

4 MR. JACKSON: Just a suggestion in
5 terms of order. Now we're available to make
6 our testimony, but we wanted to make sure that
7 the Department of Transportation had an
8 opportunity to speak. They are on a more
9 restricted schedule, so we would defer to
10 Department of Transportation to answer any
11 questions before our presentation.

12 CHAIR LOUD: Before your
13 presentation?

14 MR. JACKSON: Yes.

15 CHAIR LOUD: I think that's fine.
16 Obviously, we look to get these reports in
17 from the Department of Transportation. We
18 look to have the opportunity to review them as
19 part of our preparation for the case, and when
20 we're not able to, we try to show as much
21 grace and consideration as we can and we just
22 hope on the other end the Department of

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1 Transportation should it in any way is able to
2 stay today, similarly kind of show us that
3 sort of consideration in terms of timing.

4 I don't know what Mr. Jenkins'
5 timing is today, but if there's any way that
6 we can take these witnesses and get through
7 these witnesses, we're more than happy to work
8 with Mr. Jenkins around his timing. Thank
9 you, sir.

10 Okay, why don't we have then all of
11 the witnesses that were sworn in earlier that
12 were going to testify in opposition to the
13 application. If you could come forward now
14 and take a seat at the table. And once you
15 are all present and accounted for, we'll have
16 you introduce yourselves for the record, your
17 address for the record and then we can begin
18 with your testimony.

19 Each of you will be given three
20 minutes to provide your testimony. Now there
21 were four witnesses, I believe, who stood up
22 earlier and were sworn in to give testimony

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1 and we have only two at the table. So this
2 would be your time to step forward if you're
3 going to give testimony. This would be the
4 time to step forward and give that testimony
5 if you've been sworn in. We're not going to
6 have another opportunity for these witnesses
7 to present testimony.

8 Okay, so we have two witnesses that
9 are here. Good afternoon. Thank you for your
10 patience, and you're going to have to cut on
11 your microphone. And why don't you introduce
12 yourself for the record and -- why don't both
13 you introduce yourself for the record, and
14 then we'll go back to you and then you can
15 start your three-minute testimony.

16 MS. LEWIS: My name is Grace J.
17 Lewis. I'm the president of the North
18 Michigan Park Civic Association and I reside
19 at 4945 Sargent Road, N.E. which is about
20 three blocks from this establishment.

21 CHAIR LOUD: Good afternoon, Ms.
22 Jenkins.

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1 MS. LEWIS: Lewis.

2 CHAIR LOUD: I'm sorry. Good
3 afternoon, Ms. Lewis. I stand corrected.

4 MS. SMITH: Good afternoon, Mr.
5 Chairman and Board Members. My name is
6 Rosalie A. Smith. And I reside at 5006 12th
7 Street, N.E., 12th and Emerson.

8 CHAIR LOUD: Good afternoon to you
9 as well, and thank you for your patience.

10 Ms. Lewis, we can turn to you now
11 for your testimony.

12 MS. LEWIS: Well, thank you so very
13 much. In regard to security, you cannot
14 depend on PSA 405 and the 4th District to
15 provide security because you will be deleting
16 the services that are in force for the entire
17 PSA, so if security is a problem that is
18 something that the establishment and the
19 owners would have to take care of for an on-
20 going basis.

21 I would like to say for the last
22 nine to ten years the owner of this property

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1 has been trying to put a cheap gasoline
2 station there and a carry-out, etcetera,
3 etcetera and in each instance the community
4 has voted it down because of the congestion
5 and the size of that property.

6 Those of you who do not realize it,
7 the speed limit on South Dakota Avenue is 45,
8 50, 60 and 70 miles per hour, you know?
9 People speed on South Dakota because it's a
10 main thoroughfare. People are going east and
11 west. So that is an issue and to change the
12 curb cuts there and to have traffic going one
13 way and another way is going to create more
14 congestion there and you have to take into
15 consideration the businesses that are across
16 the street. This place is directly across the
17 street from McDonald's. Okay? You all know
18 how busy McDonald's is.

19 There's a beauty salon there.
20 There's a Chinese carryout there. There used
21 to be a fish market there. There's a sign in
22 the window "for lease." So that's there.

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1 Next door is a BP station that has been there
2 ever since I've been in the community. We
3 have a heavy volume of traffic right next door
4 to this proposed establishment. So that's
5 another issue and a problem.

6 And my concern is mainly the
7 proposal is beautiful, but the location is
8 wrong. There are many under served areas in
9 Ward 5 and the City and I think this group of
10 people should take their business to a place
11 where it's needed.

12 As Commissioner Alston said, this
13 is a retired community. Many of the residents
14 in the community do not work. They're retired
15 federal, professionals, etcetera, etcetera.
16 They do not have a need for what this group is
17 trying to bring in like fresh produce,
18 etcetera, etcetera. They go to the main
19 chains to get their groceries.

20 Also, the Riggs Plaza Apartments
21 are located just up the street. There is a
22 proposed art center that's going to be financed

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1 by the Cafritz Foundation. When the Cafritz
2 folks found out about this cheap gasoline
3 station, they had grave concerns because we
4 are trying to upgrade the community with arts
5 and whatever. We have a new development, the
6 Emerson Estates. Those houses cost \$500,000
7 plus three blocks from this place. When you
8 have a cheap gasoline station, people come
9 from far and near just to say two or three
10 pennies on a gallon. We do not need this
11 extra traffic in the community because we are
12 accident prone because of the heavy traffic on
13 South Dakota Avenue.

14 The other thing that I'm concerned
15 about, when I listen to the plans I say are
16 they talking about the place I've been seeing
17 for the last 40 years? Is that the same
18 location? There is not enough space there.
19 All of us know the size of a Pepsi delivery
20 truck. All of us know the size of a Coca Cola
21 truck, a potato chip truck. I mean where are
22 those people going to go?

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1 Now there will be people working
2 there, okay? Where are they going to park?
3 You know, you talk about very good food. The
4 food may be very good, but six parking spaces,
5 eight parking spaces, come on, where are these
6 people going to park? They'll be all through
7 the community. We have youth who walk the
8 streets. And where are they going to eat
9 their food? It's a carryout. They have to
10 get the food and walk the streets and drop the
11 paper on the street. I mean McDonald's does
12 have a place for them to sit. So we have to
13 take all of these things into consideration.
14 And every time I hear about this development,
15 I hear a different story.

16 I did not go to the ANC meeting,
17 but there were some people at the meeting who
18 heard the first testimony. They could not
19 believe what they were hearing at North
20 Michigan Park. Okay? I heard it at North
21 Michigan Park, okay? Now I'm hearing it
22 today. So what is the real deal? At North

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1 Michigan Park, they said deliveries would be
2 from 10 p.m. to 1 a.m. when the residents were
3 no longer on the street. Today, that part has
4 changed.

5 As to what is the real deal? We've
6 got misinformation on the real use of the
7 building and the facility. Now there's a
8 lottery exchange place, people go there and
9 buy their lotteries. Will lotteries continue
10 to be sold there? It's a very good site.
11 It's got a lot of money and lotteries there.
12 So will you be selling lotteries there? We
13 don't know. Every time you hear from the
14 owners, the developers, we have a different
15 story. So what is the real deal?

16 CHAIR LOUD: Thank you, Ms. Lewis.
17 We appreciate your testimony. That sound
18 denotes that three minutes is up. I think
19 it's very instructive and helpful that you've
20 given your testimony, particularly before the
21 Department of Transportation has left and/or
22 is given an opportunity to weigh in, because

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1 some of what you raise are transportation,
2 traffic issues that we can ask them about when
3 it comes time for them to give their
4 testimony. So again, thank you.

5 What I'd like to do is turn to Ms.
6 Smith for her testimony and then I'll ask the
7 ANC and the Applicant if they would have any
8 cross for the witnesses.

9 MS. SMITH: Thank you very much.
10 As I said I'm Rosalie A. Smith and I live at
11 12th and Emerson. I've been there since '64
12 and I'm an activist here in D.C. as well as a
13 fourth generation native.

14 I'm against it for the simple
15 reason that is close to my home. That's the
16 4900 block of South Dakota. I'm right at the
17 5000 block and our neighborhood, we have long
18 blocks. We have problems with the traffic.
19 Since they put the salt dome up on Fort
20 Totten, we've had a lot of problems with those
21 salt trucks in the winter time or when we have
22 snow. What has happened, because of all the

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1 traffic, our property has shifted. We have
2 cracks in our walls. And as you can see by
3 the people that's here today, we are retirees
4 and government workers, federal government
5 workers, District government workers. We paid
6 our dues. We do not need anything else in our
7 community that's going to cause a hazard to
8 us.

9 Like I said, we lived on a fixed
10 income. Those of us are still here in our
11 community. We do not have young children. We
12 basically have grandchildren, great
13 grandchildren and they're not living most of
14 them in our homes. So like I say, it's
15 hardship for us to have something else come
16 there. It might be nice. We have a gas
17 station right next to Mr. Young's store which
18 has eight pumps. Now they're going to bring
19 six more pumps. This is going to be a hazard
20 for us. We had the same incident happen right
21 on Eastern Avenue and Riggs Road, several
22 years ago. We lost a lot of community people

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1 because of oil spills and some of them died
2 from cancer. My daughter's father-in-law was
3 one of those. So like I said, we cannot have
4 this. We want to live -- we want to live now
5 to be comfortable. Okay?

6 This is why I'm actually against,
7 no personal problems, nothing against you all.

8 But like I say with us, we do not need this
9 in our community.

10 CHAIR LOUD: Thank you, Ms. Smith
11 as well. And again, we appreciate your
12 patience.

13 MS. SMITH: That's quite all right.

14 CHAIR LOUD: Waiting for your
15 opportunity to give testimony. Oftentimes, I
16 wish at these proceedings we had DCRA sort of
17 as a mandatory person in the audience and/or
18 environment as a mandatory person so that they
19 can hear some of the enforcement concerns or
20 licensing concerns outside of BZA, like the
21 gas seepage issue that you referenced on
22 Eastern Avenue. Those issues are outside of

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1 the BZA's jurisdiction and don't factor into
2 our review, necessarily of this kind of
3 application, but your community should remain
4 engaged. There are avenues where those kinds
5 of things will be addressed, issues you
6 testified about cracks in the housing and that
7 kind of thing. Those things are addressed by
8 other areas of the D.C. government and I hope
9 that your community stays engaged throughout
10 the process, wherever the process leads, to
11 make sure that those are taken up seriously.

12 In terms of our jurisdiction
13 though, it's just limited to zoning issues and
14 the criteria under Section 706.

15 At this point, I'd like to turn to
16 the Applicant and then to the ANC to see if
17 there are any questions for the witnesses.

18 MR. M. GOSS: I don't have
19 questions. I could answer the questions
20 raised, but I don't have any questions to
21 them, no.

22 CHAIR LOUD: And they didn't raise

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1 any questions necessarily for you to raise, so
2 what you can do is you can include those
3 concerns you have as part of your closing.

4 MR. M. GOSS: Okay.

5 CHAIR LOUD: A statement that
6 you'll get a chance to do and/or Board Members
7 may have some questions for you later,
8 stemming from some of that.

9 Does the ANC have any questions for
10 the witnesses?

11 MS. ALSTON: I do have some
12 question.

13 CHAIR LOUD: You have to get back
14 on the microphone.

15 MS. ALSTON: I do have one question
16 for Ms. Rose. Ms. Rose, you were present at
17 both the ANC meeting and the North Michigan
18 Park Civic Association meeting, correct?

19 MS. SMITH: Yes, I was.

20 MS. ALSTON: What was the feel of
21 the community about this project at both of
22 those meetings?

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1 MS. SMITH: Well, a lot of people
2 was very upset and they was against it. And I
3 do want to say to you that I did mention that
4 no one from the store didn't come in my
5 neighborhood which I am a block away from the
6 store. And the fourth house from the corner
7 of 12th and Emerson. So like I say, I hadn't
8 seen anyone in my community and I'm in and out
9 every day and none of the people in my block
10 has mentioned anything about anybody coming,
11 asking questions pertaining to the new store
12 that's coming.

13 MS. ALSTON: Also, Ms. Rose, at our
14 July Single Member District meeting, is it, in
15 fact, that the owner of the establishment sent
16 you to our community asking us to consider
17 allowing him to sell beer and wine and he
18 would withdraw his application for a gas
19 station?

20 MS. SMITH: Mr. Yeung, who is the
21 renter, had asked that a lot of the people
22 that be in the store a lot, if they could get

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1 six packs and that he would withdraw, but he's
2 the renter and not the owner.

3 MS. ALSTON: I just wanted to make
4 sure. No other questions.

5 CHAIR LOUD: Thank you. And thank
6 you again to you, Ms. Lewis and Ms. Smith.

7 I think now we're at the point
8 where the Applicant was closing up this case.

9 Your first witnessed testified. Your second
10 witness indicated that there's probably no
11 need to testify. And so normally what we do
12 is turn to the Office of Planning for its
13 report. So why don't we do that and the
14 witnesses that are the table, you can be
15 excused now. Thank you again.

16 As we prepare for the Office of
17 Planning, do Board Members have any questions?

18 Okay. So we'll turn to OP. Good afternoon.

19 MR. JACKSON: Good afternoon, Mr.
20 Chairman and Members of the Board. As I
21 mentioned, in order that the Department of
22 Transportation's responses were included in

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1 the record, I would defer to the Department of
2 Transportation if they're available to answer
3 any questions that you have and I'll wait
4 until you finish with them before you turn to
5 me.

6 CHAIR LOUD: Sounds like you don't
7 want any of this heat from the Department of
8 Transportation this afternoon.

9 What's the best way to proceed?
10 Did you want to just go through your report so
11 we can get that behind us? We're going to
12 break after this case and work straight
13 through the lunch. I know part of your report
14 references some transportation issues.

15 MR. JACKSON: I guess because you
16 have it before you and the Board is usually
17 very good about reading it, I didn't know if
18 you wanted me to stand on record and just make
19 myself available to answer questions or if you
20 wanted me just to highlight, hit the
21 highlights. Whatever is the preference of the
22 Board.

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1 CHAIR LOUD: I think from our
2 standpoint, standing on the record would be
3 adequate. If there's anything -- yes, most of
4 my questions would be transportation-related
5 questions.

6 MR. JACKSON: We just would like to
7 highlight that we were aware that there were
8 concerns out in the community and we do note
9 that the MPD, the Municipal Police Department
10 did submit an email, an email response
11 indicating what their issues were and that the
12 Municipal Police Department was concerned
13 about extending the hours of operation for a
14 period of time and the impact that might have
15 on their need to provide manpower in this
16 area.

17 The Applicant's response did limit
18 their hours or clearly state that their hours
19 were limited. So in light of those changes
20 and other changes that are made to the plans
21 in response to comments from the Office of
22 Planning, we did list four conditions that we

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1 thought would be appropriate for the site.
2 Those conditions being that the hours of
3 operation would be limited to 6 a.m. to 10
4 p.m., daily; that the floodlights would be
5 angled down and shuttered in order to avoid
6 light spillage onto nearby residences; that
7 the canopy lighting would be recessed. Of
8 course, when you recess lighting into a box,
9 the light is also contained on site; and that
10 there be no exterior amplified sound system.

11 Now we understand that most service
12 stations have sound systems on their pumps, so
13 if you have problems they can receive service
14 from inside the building, but we're just
15 saying it should not be amplified since it may
16 bother the neighboring residences.

17 With that concludes our brief
18 summary of the Office of Planning's report.
19 But overall, we think that the Applicant's
20 application and the changes they've made have
21 been consistent with the standard under the
22 zoning regulations with regard to Section

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1 726706 and 2302.

2 CHAIR LOUD: Thank you. Let's see
3 if Board Members have any questions for you.

4 VICE CHAIR DETTMAN: Good
5 afternoon, Mr. Jackson. Two questions. One
6 is that I'm looking at your report, starting
7 at the bottom of page four and it might be a
8 typographical error, but 2302.4, speaking
9 specifically to the distance of any driveway
10 from an intersection?

11 MR. JACKSON: Yes.

12 VICE CHAIR DETTMAN: At the top of
13 page five you note that it doesn't meet the
14 criteria. Is that, in fact, true?

15 MR. JACKSON: That's incorrect. It
16 does meet the criteria.

17 VICE CHAIR DETTMAN: It does meet
18 the criteria.

19 MR. JACKSON: The change, by
20 closing the driveway entrance on the first --
21 the closest driveway to the intersection of
22 Emerson and South Dakota, they eliminated the

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1 driveway that was within the 40-foot
2 dimension. Both the other driveways would be
3 outside of that dimension.

4 VICE CHAIR DETTMAN: And secondly,
5 I know that in other cases that involve
6 gasoline service station, the Office of
7 Planning relies heavily on input from DDOT.
8 And in fact, in a very recent has withheld
9 making a recommendation until DDOT has weighed
10 in. Such is not the case here. So is your
11 recommendation the result of close
12 coordination with DDOT?

13 MR. JACKSON: DDOT was very closely
14 coordinated with us on this case. That is to
15 say that the Applicant has been working on
16 other sites with DDOT and this site had been
17 discussed more than once with DDOT in
18 conjunction with these other sites. Then we
19 had a joint meeting with DDOT present where we
20 discussed it. I met the Applicant on site and
21 we walked around and discussed some of the
22 issues and they had further discussions with

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1 DDOT after our joint meeting.

2 So I was in communication with DDOT
3 and we anticipated that there would be a
4 report, but in discussions with -- emails back
5 and forth, they did not -- they thought that
6 the issues that they had raised with the
7 Applicant had been properly addressed. And
8 the changes that were made on the plan and on
9 that basis we wrote the report expecting that
10 there would be some sort of statement formally
11 made by DDOT with that same sentiment.

12 VICE CHAIR DETTMAN: Okay, thank
13 you.

14 CHAIR LOUD: Thank you, Mr.
15 Jackson. I don't have any questions for you.
16 Mr. Jenkins, do you have testimony, just a
17 quick summary, recap before opening up for
18 questions?

19 MR. JENNINGS: I don't, sir. I do
20 just want to clarify my name, its
21 pronunciations. It's Jennings.

22 CHAIR LOUD: I'm sorry, Mr.

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1 Jennings.

2 MR. JENNINGS: That's perfectly
3 fine.

4 CHAIR LOUD: Before we go to you, I
5 just wanted to see if you had some testimony
6 that you wanted to give. I think we need to
7 turn to both the ANC to give the opportunity
8 to ask Planning questions as well as the
9 Applicant.

10 First of all, do you have a copy of
11 the Office of Planning's report? They
12 submitted a report. It's in support of the
13 application with some conditions and as a
14 party, of course, you have an opportunity to
15 ask Planning questions.

16 MS. ALSTON: I do. I do have a
17 copy of it. I pulled a copy from the file as
18 we were in here. I don't have any questions
19 for OP. I have questions more so for DDOT.

20 CHAIR LOUD: Okay, thank you. To
21 the Applicant, Ms. Fuller, did you have any
22 questions for Planning?

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1 MS. FULLER: No questions.

2 CHAIR LOUD: All right, so why
3 don't we turn to Mr. Jennings and you can give
4 us just a quick summary of the position you
5 take on the application and then we'll open it
6 up for questions.

7 MR. JENNINGS: Sure. And again, for
8 the record, my name is Jeff Jennings. I work
9 for the District Department of Transportation,
10 Policy and Planning Administration.

11 The Applicant has stated that we
12 did meet with them earlier this year. That is
13 correct. We did meet also with, I believe
14 it's a business partner. His name is Ku
15 Yueng. He did submit this particular plan at
16 that time. Some of the specifics did not meet
17 our standards as far as the additional curb
18 cut that has since been removed.

19 The traffic circulation, that's
20 been improved. The delivery of the fuel, the
21 truck being used to deliver the fuel. Those
22 are really some of the more significant

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1 improvements that we saw at the site. Based
2 upon our initial review of it, going back to I
3 believe February and March of this year.

4 I worked closely with the Ward 5
5 transportation planner to understand some of
6 the outstanding concerns. The ANC
7 Commissioner has referenced what are some of
8 the other amenities received out of closing
9 that additional curb cut closest to the
10 intersection of Emerson and South Dakota.
11 DDOT is very, very interested as the Board is
12 aware in understanding how we can improve our
13 multi-modal transportation facilities.

14 The improvement that we saw,
15 including that curb cut, clearly doesn't meet
16 design and engineering standards. It was a
17 safety hazard. The sidewalk gets
18 significantly improved for pedestrian access,
19 for bicycle access, along South Dakota Avenue.

20 So that was one of the major improvements
21 that we saw at this location.

22 I won't go much further. I think

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1 there are plenty of questions out there, so
2 I'm happy to take them at this time.

3 CHAIR LOUD: Thank you, Mr.
4 Jennings, let me open it up to the Board for
5 any questions.

6 VICE CHAIR DETTMAN: Good
7 afternoon, Mr. Jennings. One question. How
8 does DDOT in the absence of a traffic impact
9 study, how does DDOT analyze existing level of
10 service on intersections and then the
11 additional trips that will be generated by the
12 use? How is that analyzed without a study?

13 MR. JENNINGS: We used the study
14 that the Applicant provided to us for the 3710
15 Minnesota Avenue location which in many ways
16 wasn't exactly the same, but had very similar
17 characteristics to it and viewing that and
18 additionally realizing that this particular
19 location would generate some additional trips
20 through the particular intersection that we're
21 seeing here. These are things that we talked
22 over with our traffic engineers internally and

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1 they felt comfortable enough to go forward
2 without some sort of transportation or traffic
3 impacts.

4 VICE CHAIR DETTMAN: Relying upon a
5 study that's been done for a completely
6 different site, not really in relatively close
7 proximity to the site.

8 MR. JENNINGS: That's correct.

9 VICE CHAIR DETTMAN: Is that
10 something that's done commonly?

11 MR. JENNINGS: Not commonly, but we
12 felt for this particular case, it worked.

13 VICE CHAIR DETTMAN: So in terms of
14 the number of trips that this particular gas
15 station will generate is in DDOT's mind
16 similar to what that Minnesota Avenue gas
17 station would generate as well?

18 MR. JENNINGS: That's correct. We
19 took a very hard look at it with respect to
20 improving as much of the safety as possible at
21 the site, knowing that the site, as you've
22 stated all too well, that the site would

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1 generate some trips. We're not looking at a
2 site that's going to necessarily max out the
3 Emerson-South Dakota intersection, but we did
4 take into consideration how the Emerson signal
5 time at that particular intersection would
6 perhaps have to undergo some additional review
7 at a later time.

8 One of the other items based upon
9 the conversation I've been hearing here today,
10 I would probably ask, as -- if this case does
11 go forward with the Board's approval, the
12 Applicant should be responsible to perhaps
13 present to DDOT or the ANC any potential
14 conflicts it sees on a semi-annual basis, if
15 that's at all possible too.

16 VICE CHAIR DETTMAN: Okay, so just
17 one last question in terms of what we did is
18 you looked at the Minnesota Avenue location in
19 terms of the number of trips that were in that
20 study and then applied those additional trips
21 to what was perceived as the existing traffic
22 conditions at Della Field and South Dakota?

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1 MR. JENNINGS: Emerson and South
2 Dakota.

3 VICE CHAIR DETTMAN: Emerson and
4 South Dakota, okay.

5 MR. JENNINGS: That's correct.

6 VICE CHAIR DETTMAN: What is the
7 existing conditions at the intersections that
8 kind of surround the subject property?

9 MR. JENNINGS: I couldn't take it
10 off the top of my head for you. I apologize
11 for that.

12 VICE CHAIR DETTMAN: So how can we
13 take the trips from that other study, how can
14 we apply it to the existing conditions when we
15 don't even really know what the existing
16 conditions are?

17 MR. JENNINGS: I think the way the
18 traffic engineers explained it to me was when
19 you see the volume at South Dakota Avenue and
20 this is just kind of the explanation I
21 received and you see the volume along
22 Minnesota Avenue, it's substantial. And what

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1 you have here is merely, probably a fraction
2 of a percentage of additional trips being
3 produced at this particular intersection.

4 I think we took that into serious
5 consideration, especially with the amount of
6 time that you have at this particular
7 intersection for vehicular travel, the in and
8 out motion as far as which direction the
9 vehicles will be traveling once they perhaps
10 visited the location and then moved on to
11 wherever the next destination was.

12 VICE CHAIR DETTMAN: Okay, thank
13 you.

14 MEMBER MOLDENHAUER: I'm just a
15 little confused about the recommendation to
16 have the South Dakota entrance. I understand
17 you're not going to be able to enter the South
18 Dakota curb cut if you're coming eastbound,
19 but would you be permitted to exit going
20 westbound?

21 MR. JENNINGS: Any direction on
22 South Dakota is only inbound to the site.

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1 MEMBER MOLDENHAUER: Only inbound
2 to the site.

3 MR. JENNINGS: Only inbound to the
4 site. We actually let me know that we would
5 not approve or provide any comments in a
6 positive manner if they did not change that
7 from the initial. So initially, the Applicant
8 had it, I believe, in a two-way direction, so
9 you could leave and enter the site via South
10 Dakota. And we let them know that that was
11 not acceptable.

12 MEMBER MOLDENHAUER: I guess what
13 would be your response from the comments made
14 earlier from some of the ANC witnesses
15 regarding potential congestion on Emerson,
16 having all traffic flowing out of that one
17 exit and then also potential traffic flowing
18 down either Emerson or through 10th Street and
19 to residential streets? How would you respond
20 to that?

21 MR. JENNINGS: I would say with a
22 great deal of confidence that the cut-through

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1 trips through this neighborhood will not be
2 seen. I think you'll see patrons visiting the
3 station and then understanding that exiting
4 Emerson is the best bet. Using South Dakota
5 is going to be the best bet. It's the
6 quickest traveling. As the ANC Commissioner
7 stated here, as well as some of the
8 individuals from the community, oftentimes it
9 is very fast traveling.

10 We're doing our best at DDOT to try
11 and understand how major arteries like this
12 could receive some kind of traffic calming.
13 It's not an easy equation to put together.
14 But as far as the cut-through traffic, people
15 will understand that cutting through the
16 neighborhood will substantially slow them down
17 as is most the case of Washington, D.C.
18 Staying on the main arteries throughout the
19 city gets to your destination faster.

20 MEMBER MOLDENHAUER: Thank you.
21 That's helpful.

22 One last question is there was

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1 testimony from the Applicant about a no
2 entrance sign coming eastbound on South Dakota
3 to enter that curb cut. Is that something
4 that DDOT will work with the Applicant to make
5 sure that there's adequate signage?

6 MR. JENNINGS: We're happy to work
7 with them on all signage, not just that
8 particular signage. If there's signage to be
9 posted up at Emerson at that particular point
10 of access, then we're happy to work with them
11 on that, too.

12 One of the conditions we've had in
13 previous cases and I think it might be helpful
14 here too that the signs should meet DDOT
15 standards or be reviewed with DDOT traffic
16 engineering staff. Once they are designed and
17 made even to a point where they would bring
18 them in to see our traffic engineers and it
19 meets their approval.

20 MEMBER MOLDENHAUER: Thank you. No
21 further questions.

22 CHAIR LOUD: A couple of quick

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1 follow-up questions. Is there a reason why
2 DDOT did not submit a written report that goes
3 into some of what you testified to evaluating
4 the 3710 Minnesota Avenue traffic study,
5 traffic engineers, drawing some conclusions
6 about comparable congestion levels, levels of
7 service, etcetera, and then having that signed
8 by the appropriate official made a part of the
9 record so that the Applicant could review it.

10 The ANC could review it. And indeed, the BZA
11 review it prior to our coming into the
12 hearing?

13 MR. JENNINGS: We felt the
14 Applicant had met all of the expectations that
15 we had put on them at our earlier meeting,
16 knowing that the previous design did not meet
17 any of what we had sought to see from them.
18 And when we saw the final, I believe in the
19 first week in September, we felt very
20 comfortable with it. It was not a report that
21 could be signed by an individual or anything
22 to that effect.

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1 CHAIR LOUD: Well, both from the
2 standpoint of having the transportation study,
3 having an opinion that's based on a
4 transportation study that's not for the
5 particular site which we normally have from
6 you guys, a recommendation based on the
7 transportation for the site and then not
8 having a written report that comes under your
9 own Agency's letterhead, it just -- do you see
10 how that can create some challenges in terms
11 of completing the record for our review?

12 MR. JENNINGS: We do, yes.

13 CHAIR LOUD: Okay. Let me ask this
14 question in terms of an issue raised by the
15 Civic Association. It has to do with their
16 being congestion at the intersection because
17 of the McDonald's, another gasoline station
18 right across the street. I think that's to
19 the north. Is it the opinion of DDOT that
20 notwithstanding the concern about congestion,
21 the conclusion is that it doesn't rise to a
22 level that would present any objectionable

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1 traffic conditions?

2 MR. JENNINGS: That's correct. It
3 doesn't meet any kind of adverse impacts or
4 feelings that this particular site would cause
5 those impacts and I think again, one of the
6 conditions that the Applicant is willing to
7 work with us on is that entrance on South
8 Dakota. I think that perhaps was one of the
9 most important items that we reach with them
10 and then realizing that the outbound had to
11 exit off of the Emerson Street side and go
12 through that traffic signal.

13 CHAIR LOUD: Very quickly, if you
14 can, because I'm a layman on a lot of
15 transportation-related subtleties, but I'm
16 going to take you through the Office of
17 Planning report, the aspects that relate to
18 transportation and you just tell me how this
19 negotiated concession mitigates traffic
20 conditions, okay, just put that on the record.

21 MR. JENNINGS: Sure.

22 CHAIR LOUD: Eliminating one curb

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1 cut on South Dakota and then allow only
2 westbound traffic to enter South Dakota, just
3 very briefly, how does that mitigate?

4 MR. JENNINGS: Access points along
5 the main corridor like at South Dakota should
6 be minimized as much as possible and that
7 perhaps is something I think the ANC alludes
8 to and their testimony is that we have a
9 substantial amount of access points along
10 South Dakota, so deleting that access point
11 actually improves the conditions since you
12 don't have a competing traffic access point
13 there.

14 CHAIR LOUD: Okay. So it reduces
15 the queue?

16 MR. JENNINGS: That's correct.
17 Furthermore, we've never -- if it makes any
18 sense, the design and engineering guidelines
19 within DDOT state that the curb cuts have to
20 be 60 feet away from an intersection. I know
21 the Office of Planning may have used a 40 feet
22 and I think that's relevant towards the BZA,

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1 but we look at these curb cuts with that much
2 more of a careful eye.

3 CHAIR LOUD: Okay, the next several
4 concessions do not appear necessarily to be
5 related to transportation except for the ADA-
6 compliance sidewalks, pedestrian safety and
7 then the bicycle park and ride.

8 MR. JENNINGS: Yes, sir.

9 CHAIR LOUD: And then when we talk
10 about trash enclosures, that has nothing to do
11 with transportation or does it?

12 MR. JENNINGS: We were concerned.
13 I think we mentioned this at our initial
14 meeting with the Applicant. Trash pickup, how
15 that would occur. Perhaps that could be a
16 part of the order, if the case is approved, as
17 far as when those times may occur.

18 CHAIR LOUD: So but does extending
19 the trash enclosure help to mitigate against
20 any transportation -- okay.

21 MR. JENNINGS: No, sir.

22 CHAIR LOUD: All right. Adding

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1 windows along Emerson?

2 MR. JENNINGS: There's this idea in
3 the transportation world that having good shy
4 space and that's the concept of when walking
5 along a structure, how the structure presents
6 itself against the pedestrian environment. So
7 adding glass windows or windows period on the
8 shy space for a pedestrian that actually
9 improves the pedestrian right of way. So if
10 there's any glass windows along the sidewalk,
11 it actually does improve the pedestrian
12 facilities.

13 CHAIR LOUD: And just really,
14 really, really briefly, just explain that to
15 me again.

16 MR. JENNINGS: Sure.

17 CHAIR LOUD: Is that for the
18 pedestrian walking on the sidewalk?

19 MR. JENNINGS: That's right. If
20 I'm walking potentially along a building and
21 the building may have a glass facade to it,
22 there's the -- there have been studies

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1 performed that the pedestrian feels more
2 comfortable having the opportunity to see
3 inside the building or the illumination from
4 the building actually helping with the
5 sidewalk facility.

6 CHAIR LOUD: Okay. Were there any
7 other transportation traffic-related
8 concessions negotiated?

9 MR. JENNINGS: I think you heard
10 today about the fuel truck, the 30-foot fuel
11 truck. We let the Applicant know that we
12 prefer to see that. That would be something
13 that they would have to agree to do. Clearly,
14 the 8-foot sidewalks in front of the address
15 would be very important to us. We look for
16 the most space possible for all users of the
17 right of way. I think you mentioned the bike
18 parking which was an improvement over having
19 nothing there originally.

20 We didn't necessarily hammer out
21 how the staff or employees for this particular
22 location would actually arrive to it. As

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1 you're aware, we sometimes ask for Applicants
2 to provide some sort of transit benefit to
3 their employees. This is a major transit
4 corridor. So I know that we're dealing with a
5 gas station here and maybe the idea is to
6 drive, all employees should be driving to this
7 location. I mean we would prefer to see all
8 employees that work here, 8, 10 hour shifts,
9 whatever they may be, they should be provided
10 some sort of transit benefit.

11 CHAIR LOUD: Thank you, Mr.
12 Jennings. I don't have any further questions.
13 If Board Members don't, we can turn to -- Mr.
14 Dettman?

15 VICE CHAIR DETTMAN: I just need
16 one clarification on one thing. I know that
17 the site plan just shows a right turn arrow
18 coming off of South Dakota Avenue into the
19 site, but I guess reviewing the record, I
20 thought what that meant was right turn in and
21 right turn out. And what we've heard today
22 was just it's an enter only and that's it.

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1 MR. JENNINGS: That's correct.

2 VICE CHAIR DETTMAN: That's
3 correct?

4 MR. JENNINGS: We would not want --
5 you see the size of the proposed curb cut on
6 the rendering here. It's 20 feet wide and
7 that would allow, if you had a wide vehicle,
8 clearly they could get in there easily. If
9 it's two-way, it's probably going to be a
10 minimum of 24 feet.

11 VICE CHAIR DETTMAN: Was the 20-
12 foot width of that curb cut, was that a DDOT
13 directive?

14 MR. JENNINGS: We let them know
15 that that was going to be our preference.

16 VICE CHAIR DETTMAN: I see. Is
17 that a maximum DDOT standard? I know the
18 regs stay 25.

19 MR. JENNINGS: Typically, on one
20 way, we would like to see the least amount of
21 public space being used for curb cuts.

22 VICE CHAIR DETTMAN: Okay.

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1 MR. JENNINGS: We could even go a
2 little further and say it's going to be
3 minimized more. We do realize that there are
4 vehicles wider out there and clearly their
5 fuel truck needs to get into that site too.

6 VICE CHAIR DETTMAN: If you did
7 widen that to match the other one, 25 feet,
8 and you did allow right turn only out of on to
9 South Dakota Avenue, would that have a
10 detrimental effect on South Dakota and would
11 that alleviate some of the traffic along
12 Emerson?

13 MR. JENNINGS: We don't believe so.

14 VICE CHAIR DETTMAN: Okay.

15 MR. JENNINGS: Having that right
16 turn out onto South Dakota presents many
17 difficult conflicts, potential conflicts.

18 CHAIR LOUD: Thank you, Mr.
19 Dettman. Let's turn now to the AJN first, and
20 then let's turn to the Applicant in terms of
21 any questions for Transportation.

22 MS. ALSTON: Questions only,

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1 correct?

2 CHAIR LOUD: Questions only.

3 MS. ALSTON: Do you have a copy of
4 the report you used for 3710 Minnesota Avenue?

5 MR. JENNINGS: Back in my office, I
6 do. That's right.

7 MS. ALSTON: Can I get a copy of
8 that, please?

9 MR. JENNINGS: I'd be happy to
10 email it to you.

11 MS. ALSTON: Let me ask you a
12 question. Since you're with DDOT, can you
13 tell me how many speed bumps and speed hump
14 partitions we have and would DDOT just around
15 this particular site and that includes the
16 alleys, the one-way sign request, the no-
17 through trucks on the street, because of the
18 high traffic volume?

19 MR. JENNINGS: I don't know how
20 many speed hump partitions you have. They are
21 actually being held -- I shouldn't say being
22 held, I hope they're not. They're handled by

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1 a different administration at this point in
2 time. So doing most of my work within the
3 Policy and Planning Administration and when I
4 coordinate a review like I did for this site
5 with our traffic engineers, we don't get to
6 the point of where -- we're kind of in a
7 conversation with them, how does this site
8 have potential adverse impacts. We walk
9 through that. We don't walk through how many
10 various partitions there may or anything that
11 you're citing here.

12 MS. ALSTON: How do you judge it,
13 when you don't do a traffic study and then
14 when the cars exit out of the only exit it
15 can, which is Emerson Street, the only place
16 for them to go is into residential. So if you
17 don't think they'll go into residential, how
18 do you think they would maneuver at that light
19 on Emerson? And then can you tell me the
20 timing at that light on Emerson and South
21 Dakota?

22 MR. JENNINGS: I can't tell you off

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1 the top of my head. I'm --

2 MS. ALSTON: I'm listening to you.

3 You said that's something that you considered
4 the timing at that light, what did you
5 consider? What's the timing?

6 MR. JENNINGS: I think I answered
7 your question.

8 MS. ALSTON: Okay. With regards to
9 this particular location, the ANC has been
10 requesting for the last five years to have its
11 own individual traffic study done. Can you
12 tell me why that wasn't done and another
13 traffic study was used for this particular
14 location?

15 MR. JENNINGS: DDOT doesn't set out
16 to provide land use transportation impact
17 analyses. We rely on what the Applicant
18 provides to us and in this case we felt that
19 this particular site matched in many ways to
20 what they proposed previously for another
21 site.

22 MS. ALSTON: Can you tell me how

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1 many tickets has been written or how many
2 complaints you've had about this speed on
3 South Dakota Avenue through DDOT, from DDOT?

4 MR. JENNINGS: DDOT is not an
5 enforcement agency, as far as traffic speed
6 violations.

7 MS. ALSTON: So when you were at
8 the property, did you pay attention as to how
9 busy South Dakota Avenue was when you were
10 doing your --

11 MR. JENNINGS: We're fully aware
12 how busy South Dakota is, absolutely.

13 MS. ALSTON: So how busy do you
14 think that South Dakota is compatible to
15 Minnesota Avenue?

16 MR. JENNINGS: It's comparable.

17 MS. ALSTON: In what ways?

18 MR. JENNINGS: Functional
19 classification. On the functional
20 classification scale, the way we look at major
21 arterials such as South Dakota, travel, as
22 you've stated all too well, in many off-peak

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1 hours, vehicles will travel at a higher rate
2 of speed. Oftentimes, these are things that
3 have gone in far before the DDOT staff that
4 works there at the current time. so the
5 design of the roadway actually is towards the
6 driver's advantage. You've stated that too
7 well. You've lived here for all your life.
8 You know how fast some of these vehicles
9 travel on South Dakota. When we were out
10 there at the site, you're absolutely right.
11 Some of the off-peak travel velocity or
12 vehicles traveling at high velocity, it's more
13 than obvious.

14 MS. ALSTON: So at this particular
15 location with being very clear, because even
16 the Board has some questions, with a one-way
17 entry and a one-way exit, this space is
18 comparable -- is feasible to accommodate every
19 kind of truck, delivery, car and everything
20 that will come to this site?

21 MR. JENNINGS: We believe so.

22 MS. ALSTON: Without any drawings

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1 or anything to prove to us that it is?

2 MR. JENNINGS: I want to reference
3 here. I hope you have this drawing too. This
4 is the drawing that we've worked off of, as
5 far as trying to understand what they provided
6 to DDOT through our conversations with them.

7 MS. ALSTON: That they provided to
8 DDOT?

9 MR. JENNINGS: As in G2 Design
10 Collective, that's correct, Euclid of
11 Virginia, LLC is down here in the lower right-
12 hand corner.

13 MS. ALSTON: But there's nothing
14 from DDOT that can -- do you have a list of
15 concerns that were DDOT's and that they
16 rectified since then?

17 MR. JENNINGS: I think we went
18 through those with the Chairman.

19 MS. ALSTON: I'm asking do you a
20 list of them to show what they were prior to
21 and what's been fixed now? Because the only
22 thing you've addressed was the curb cut.

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1 MR. JENNINGS: I can probably pull
2 my notes from our conversation we had with
3 them earlier this year. I believe it happened
4 in February or March, and I'll email that to
5 you, too.

6 MS. ALSTON: And since you said in
7 the beginning that you're not really familiar
8 with the site, can you tell me who else in
9 your office was working on this project or
10 plan?

11 MR. JENNINGS: I don't think I
12 necessarily said, and I'll be happy to go back
13 to the record, but I don't think I necessarily
14 said I wasn't familiar with the site. I think
15 --

16 MS. ALSTON: Vaguely familiar.

17 MR. JENNINGS: Vaguely familiar.
18 So that doesn't mean I'm not familiar with the
19 site.

20 MS. ALSTON: Okay, so my question
21 then is who was the person that was really
22 instrumental in approving this plan besides

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1 yourself?

2 MR. JENNINGS: I can provide you a
3 list of names, if that helps.

4 MS. ALSTON: Thanks. I don't have
5 any other questions at this time.

6 CHAIR LOUD: Thank you. Does the
7 Applicant have any questions for the
8 Department of Transportation?

9 MR. M. GOSS: I don't have any
10 questions.

11 CHAIR LOUD: Thank you. And thank
12 you, Mr. Jennings. So the Board Members have
13 no additional questions. I think where we are
14 in the proceeding now is that we would turn to
15 the ANC for presentation of your case, you're
16 a party. I think you testified earlier that
17 you don't have any witnesses to call. It
18 would just be your testimony and the report,
19 of course, of the ANC.

20 MS. ALSTON: Just give me one
21 second.

22 (Pause.)

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1 MS. ALSTON: You have in your
2 possession a copy of the report, the letter
3 from the Advisory Neighborhood Commission 5A
4 asking that you support the community in its
5 opposition to this development. Because it's
6 on the record, I won't read it to you unless
7 you feel that there's a need to. I'll just go
8 and make some other minor points on why my
9 community does not want it.

10 First and foremost, we don't see
11 the need or any personal benefit to my
12 community to have another self-service gas
13 station and/or convenience store. The
14 presentation that was made was wonderful at
15 the beginning. None of the need of a gas
16 station was addressed, so we don't see the
17 need of a gas station. With regards to the
18 comments that were made about the management,
19 if they own the property, then they can go in
20 and just re-manage what's already there.
21 Because all of the concerns that were
22 addressed prior to can deal with management.

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1 Safety is an issue in our
2 community. A lot of our seniors, a majority
3 of our seniors, our residents are seniors.
4 They're retirees. The intersection at Emerson
5 and South Dakota is a traffic disaster. It's
6 very disrespectful that a development of this
7 magnitude that will come and bring trucks,
8 tankers, cars, deliveries, did not deserve
9 that of its own individual traffic study
10 and/or direct attention from DDOT as to why or
11 why not they approve this particular project.

12 With the speed on South Dakota
13 Avenue, the number of tickets, we've had
14 deaths in our community from children as young
15 as five years old because of traffic. At this
16 particular location, there are there entry and
17 exit points. If you close off one and make
18 one an entry and one an exit, it will create a
19 traffic disaster.

20 There are more than 15 individual
21 block and alley and streetway partitions
22 trying to calm some of the traffic issues now.

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1 It's so bad without this added traffic that
2 during the daytime, non-rush hour and rush
3 hour, pedestrians from this site is right on
4 the Maryland-D.C. line, just blocks away.
5 Pedestrians entering and exiting the area cut
6 through the alleys, through the residential
7 communities of this community which makes it
8 very, very, very dangerous. That's one of our
9 biggest concerns is the traffic.

10 If something were to happen with
11 everybody in the parking lot of this facility,
12 with a one exit, imagine what it could do.
13 It's ridiculous. Mentally think about it.
14 Eight parking spaces, six pumps, a delivery
15 truck and a tanker all trying to get out at
16 one time. It just so happens deliveries are
17 made all at the same time. How would they
18 exit? At the corner, it's a traffic light.
19 We don't know the timing of that traffic
20 light. Who is to say that only three cars
21 can't exit that traffic light at one time
22 which would back up the traffic more in the

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1 community which is not industrial, which is
2 not commercial, that community is residential.

3 As far as the owner, it's blatantly
4 disrespectful to the community that on
5 numerous occasions, even today, he himself did
6 not show. He has not come to the community at
7 any invited invitation, he has not accepted.
8 And so because we take pride in our community
9 and we are one of a community-base, we ask
10 that people have a vested interest in our
11 community, not just buy, sell, and develop,
12 and then when you go home, you leave, and
13 we're stuck with the aftermath that comes
14 along with the development. That's why we're
15 not in favor of the development.

16 The 4th District Commander himself
17 has already submitted testimony to say that he
18 is in opposition because he knows the time and
19 attention that this particular location
20 deserves just with traffic himself. The 4th
21 District has to send an individual car to sit
22 at that corner because we have children

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1 crossing the streets coming from schools. We
2 have everything coming out of the residential.

3 We have so much development going on. It's
4 draining the PSA 4 or 5 resources because we
5 have to have a police officer writing tickets
6 at that light every single day. Not just from
7 3 to 7. This is from in the morning to the
8 evening.

9 We would ask that before any
10 recommendation is made that would go against
11 that of our community's request that DDOT be
12 required to give this location its own
13 personal attention, that of a traffic study,
14 and not just give us the generics of oh, I
15 think this is like Minnesota Avenue, because
16 it's not. The residents are different. The
17 community is different and the aspects of this
18 development is different than that of
19 Minnesota Avenue.

20 As for OPM's report, we don't
21 really have anything too much against OPM's
22 report. Again, there's no need for a gas

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1 station in our community, especially if the
2 hours are going to be from 6 a.m. to 10 p.m.

3 And if you're doing your loading at 7,
4 there's no need when there's a gas station
5 right next door, and then another gas station
6 three blocks away. We don't have the type of
7 vehicular traffic in our community that
8 requires that of another gas station.

9 There was a comment made that the
10 community has been mishandled for so long. My
11 community isn't one that has been mishandled.
12 We're not against development. We're just
13 cautious about the development and what
14 development brings. The development is
15 perfect, just not for our community and this
16 particular location.

17 When we look at the amenities and
18 things to come, all of that's wonderful, but
19 were not clearly defined in the plans of the
20 development at this particular phase. We
21 can't guarantee that those things will come
22 along the lines.

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1 Taking out this driveway or this
2 entryway into this development was not done
3 for -- we don't think was done for the sake of
4 our community because it would have allowed
5 another exit. It was only done to meet the
6 guidelines of what was required by DDOT.

7 Meeting dates, meetings with an S,
8 there's only been representation at one
9 meeting and it was clearly defined at that
10 meeting that the community was against this
11 particular development and you talk about
12 being community involved and community
13 concerned, then you would know that this is
14 not a development that's embraced by our
15 community. We're adamantly against it for
16 different reasons, for safety reasons, for
17 environmental reasons, some of which are not
18 zoning issues, so I only stick to the ones
19 related to the zoning issues, but it's clearly
20 defined that the community is against
21 it.

22 The biasness in the DDOT report,

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1 because we don't have facts, you can't show me
2 that this is safe for our community. And that
3 draws a definite concern for the residents of
4 my Single Member District as well as the ones
5 that have taken the time to come and speak on
6 today.

7 Again, I would just ask that the
8 Board of Zoning Adjustment support the
9 community as well as the ANC in their
10 unanimous vote to support the community in
11 opposition of this particular project.

12 CHAIR LOUD: Thank you,
13 Commissioner. We appreciate your patience as
14 well as your testimony and that of the ANC and
15 it will be accorded great weight.

16 Let me turn to the Applicant and
17 then to the Board in terms of any questions
18 for the ANC.

19 MR. M. GOSS: I don't have any
20 questions for the ANC.

21 CHAIR LOUD: Board Members?

22 COMMISSIONER MAY: I'm looking at

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1 the report that we received. It's dated
2 September 17th and what I'm looking for is the
3 -- I guess the numbers here. It doesn't say
4 on here that it was a unanimous vote of the
5 Commissioners present. It doesn't say how
6 many Commissioners were actually present.

7 MS. ALSTON: That may have been
8 left out, but you need the minutes it was a
9 unanimous vote from the Commission.

10 COMMISSIONER MAY: I think we need
11 a piece of paper that says this is what -- I
12 think it needs to be in the record. This is
13 the number of Commissioners needed for a
14 quorum and this was the vote.

15 MS. ALSTON: Okay.

16 COMMISSIONER MAY: I think that's
17 actually a requirement for great weight.

18 You say that there was only one
19 presentation to the community by the
20 Applicant. Was that the North Michigan Park
21 meeting or was it an ANC meeting?

22 MS. ALSTON: No, when this

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1 particular group came out to the community, it
2 was at the North Michigan Park Civic
3 Association meeting.

4 COMMISSIONER MAY: They didn't
5 present to the ANC?

6 MS. ALSTON: No.

7 COMMISSIONER MAY: What information
8 did the ANC base its --

9 MS. ALSTON: We were present at the
10 North Michigan Park Civic Association.

11 COMMISSIONER MAY: All of the
12 Commissioners who voted?

13 MS. ALSTON: No, we have the
14 documents that were submitted to the ANC and
15 four of the ANC Commissioners whose area is in
16 -- who it directly impacts, was present at the
17 North Michigan Park Civic Association, and at
18 our Committee of a Whole meeting we sat down
19 and reviewed seven of the ANC Commissioners
20 were present at the Single Member District
21 meeting and the way in which it's been on our
22 agenda, it is listed. We've been discussing

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1 this issue amongst the ANC since April.

2 COMMISSIONER MAY: Did the
3 Applicant have an opportunity to present their
4 case to the ANC? Were they afforded the
5 opportunity and they didn't show? Were they
6 not given a spot on the agenda?

7 MS. ALSTON: They've never
8 presented directly to the ANC.

9 COMMISSIONER MAY: And why?

10 MS. ALSTON: They did not express
11 interest to present to the ANC.

12 COMMISSIONER MAY: Okay, thank you.

13 MS. ALSTON: Yes, sir.

14 CHAIR LOUD: Are there any
15 additional questions for the Commissioner?

16 Okay, then what we're going to do
17 is we went out of order somewhat and have
18 already gotten the testimony of the persons
19 who were in opposition. So if there are
20 persons in the audience who are in support of
21 the application now would be the time to come
22 up and you would be allowed three minutes to

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1 give your testimony. And seeing none, we then
2 turn to the Applicant for closing.

3 MR. M. GOSS: Thank you. I think
4 we've very clearly stated our position here.
5 I'm not going to belabor that and go back over
6 the whole thing again, but basically I want to
7 make sure that the community is aware of our
8 desire to participate with them. We do want
9 to collaborate.

10 Some of the banter that has been
11 going back and forth is some misunderstandings
12 and that's my honest belief in terms of the
13 community meetings and who spoke to who and so
14 forth. But our approach has always been and
15 will continue to be to be a part of the
16 community in which we operate our businesses.

17 We are a responsible company and in
18 time, I believe we'll make you proud. Thank
19 you.

20 CHAIR LOUD: Thank you. A couple
21 of thoughts here. This is the point in which
22 we could deliberate, render a decision today.

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1 We could deliberate and not render a decision
2 today and continue to a day in the future for
3 decision making.

4 Before we move down that path, I
5 have one question for either the -- I guess
6 it's the Office of Planning because it appears
7 that Mr. Jennings has left and that is the
8 Applicant met with respect to two projects, I
9 think, with DDOT.

10 MR. JACKSON: Yes, they were
11 meeting on a first project and during that
12 discussion they make reference to this other
13 proposal that was going to be going forward.

14 CHAIR LOUD: And what was the
15 address of the first project?

16 MR. JACKSON: I'm not aware of
17 that. The Applicant may be aware of that.

18 MR. M. GOSS: I can answer that.

19 CHAIR LOUD: Yes, sir.

20 MR. M. GOSS: 3710 Minnesota
21 Avenue.

22 CHAIR LOUD: So it's 3710?

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1 MR. M. GOSS: Yes.

2 CHAIR LOUD: And the context of it
3 being 3710, the report, the traffic study for
4 3710 was also reference for the South Dakota
5 project as well?

6 MR. M. GOSS: Apparently so. Let
7 me be clear. That was our initial discussion
8 about this project, but it wasn't our only
9 discussion about this project. It just so
10 happened that our initial discussion about
11 this project occurred while 3710 Minnesota
12 Avenue was a little further down the track.
13 So after that conversation, we've had at least
14 three other conversations and meetings with
15 regard to specifically South Dakota Avenue.

16 CHAIR LOUD: Okay.

17 MR. M. GOSS: With DDOT, yes.

18 CHAIR LOUD: Okay. thank you for
19 that clarification.

20 Well, this is a point at which we
21 would normally either enter into deliberations
22 or decide the direction to move regarding

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1 deliberations.

2 Personally, I think this is a very
3 strong application. I think it's an
4 application by an Applicant that is desirous
5 of bringing some positive change in the
6 neighborhood and has a design that would tend
7 to corroborate my personal opinion. I think
8 that they want to move in the right direction.

9 On the other hand, Section 706.4 is
10 a requirement that they have to walk through
11 in order to get to an approval from the BZA
12 and I'm kind of disturbed that there's no
13 transportation study in this case, that the
14 transportation expert relied on another
15 location's transportation study which just
16 happened to be the address that the Applicant
17 went to see the Transportation Department
18 about in the first place and it was
19 conveniently available for this case.

20 I'm also concerned that there's no
21 DDOT report written into the record that both
22 the ANC would have had an opportunity to

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1 review ahead of time, the BZA would have had
2 an opportunity to review ahead of time and
3 that would have fixed for everybody's
4 evaluation what the points were that DDOT was
5 making and would have referenced the fact that
6 it relied on the 3710.

7 So I'm not prepared to vote on this
8 case today, at least and I'll certainly listen
9 to what Board Members think. I'd like a
10 little more information from DDOT that
11 conforms to how we normally get information
12 from DDOT, addressing some of the concerns
13 that the ANC has raised and that the evidence
14 has suggested regarding what the
15 transportation impacts will be and if the DDOT
16 report is in writing is that they've relied
17 exclusively 3710 Minnesota Avenue, that ought
18 to be a part of our record too. We're
19 supposed to make decisions exclusively on the
20 record. 3710 Minnesota Avenue is not even in
21 our record.

22 So those are some of the concerns I

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1 have regarding the application as presented.

2 COMMISSIONER MAY: If I could talk,
3 I would concur that we do need more on the
4 transportation side of things. Whether we
5 actually need a transportation study, I don't
6 know. But I would rely on DDOT's judgment on
7 whether something like that is necessary and
8 we don't have a written DDOT report. So I
9 think at the very least we need to have that
10 written DDOT report and if they rely on
11 whatever science they rely on to make their
12 judgment I think that we should -- that should
13 be in the record. And I think that's really
14 the major piece.

15 I have to say frankly, the project
16 itself I think is an admirable project in
17 many, many ways. I think that the absence of
18 the traffic information makes it hard for us
19 to evaluate whether they've met the test for
20 this special exception, but I think as I said
21 it's an admirable project and it's not
22 something you often say about gas stations,

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1 frankly. So I think it's got a lot going for
2 it.

3 The community has some legitimate
4 concerns about it. I also think that frankly
5 I'm not sure there's been the right
6 conversation between the Applicant and the
7 community and if between now and whenever the
8 get transportation information from DDOT, if
9 there's an opportunity for the Applicant to
10 make a case directly to the ANC, I think it
11 would be well worth it because it doesn't seem
12 that that case has been made for whatever
13 reason. And I do think that that sort of
14 direct discussion is necessary. It seems like
15 there's a lot of -- that there have been gaps
16 in the information that's been presented to
17 the community and when there are gaps, people
18 jump to conclusions about them. We don't know
19 how correct they are, so I think it's
20 important for the Applicant to have that
21 direct conversation with the ANC, in
22 particular.

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1 CHAIR LOUD: Thank you, Mr. May.
2 Others?

3 VICE CHAIR DETTMAN: Mr. Chairman,
4 I'm in full agreement with your comments as
5 well as the comments of Mr. May, especially
6 with respect to the level of involvement and
7 input that the ANC and the community has had
8 with this. I do think that we need additional
9 information with respect to the traffic
10 impacts of the proposed use and I only maybe
11 suggest that if we do decide to put this off
12 and ask for additional information that the
13 ANC and the community be given substantial
14 time, adequate time to weigh in on whatever is
15 done, whether it be a traffic study, a new
16 traffic study, whether it be a reliance on the
17 Minnesota Avenue one. I think this is a
18 community that's very involved and is very
19 knowledgeable about what's going on in the
20 neighborhood and around this site.

21 I think that they can provide some
22 very valuable information to the Applicant

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1 with respect to traffic. So I just want to
2 make sure that we give them enough time to
3 weigh in.

4 CHAIR LOUD: Thank you, Mr.
5 Dettman.

6 MEMBER MOLDENHAUER: I'm in
7 agreement with the rest of the Members of the
8 Board about providing sufficient time to get a
9 solid report from DDOT to address some of the
10 different issues and provide us the background
11 and analysis that they use to come to their
12 conclusion as we have now incorporated in OP's
13 report which was very thorough and in Mr.
14 Jennings' testimony.

15 Same as the other Members, I would
16 definitely encourage the Applicant and the ANC
17 to get together. There were comments made by
18 both of mutual efforts to work together and by
19 the ANC that this was a positive project, but
20 that there were some concerns. I would focus
21 on those concerns and how they may be resolved
22 because it seems like there were some

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1 potential long-term concerns about through
2 traffic and may not be specifically related to
3 this project, but they may be able to address.

4 CHAIR LOUD: Thank you. It seems
5 like we're pretty much in consensus in terms
6 of a direction to move. It may take a little
7 wordsmithing to get there and let me try to
8 see if I can move us on in that regard.

9 We'd like to see a report from
10 DDOT. It's too bad that they're not still
11 here, but a report from DDOT that addresses
12 the section 706 requirements and the 2303, the
13 grounds for relief, particularly as relates to
14 the traffic transportation elements of those
15 requirements.

16 I think we'd also like to see and
17 articulation in the DDOT report of the basis
18 of their utilizing 3710 Minnesota Avenue
19 study. There was testimony to that regard by
20 Mr. Jennings today, but I think a written
21 articulation of the basis for why they did
22 that and then I'd like to see the 3710 report

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1 as appended to the DDOT report and made a part
2 of our record.

3 Board Members, is that generally
4 where you are with respect to these issues?

5 All right. So there's consensus on that and I
6 think all we need to do is select the date now
7 for some of these reports to come in to both
8 the BZA as well as the ANC and the Applicant.

9 And then select a decision date.

10 I'm looking down at both of you --

11 MR. MOY: That's fine, Mr.
12 Chairman. I just -- just for factors in of
13 it, staff would suggest at least a month, but
14 I think the key driving force is how long DDOT
15 would need. I'm looking at Mr. Jackson, and
16 how long DDOT would need to prepare a report.

17 I see Mr. Jennings has already left.

18 The second consideration is when
19 the ANC meets because I believe they meet the
20 last week of the month, because if I go, let's
21 say for scenario approach, if we give let's
22 say a minimum of a month for DDOT to prepare

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1 all the additional information the Board is
2 requesting, that would put the Board up to
3 October -- today is the 22nd, so that would
4 put us up to October 20th, a Tuesday.

5 Let me just play with this approach
6 and let's say if the Board gave a deadline of
7 October 20th, the ANC would meet the following
8 week, I believe, which would be October 28th
9 or the 29th?

10 MS. ALSTON: The 28th.

11 MR. MOY: The 28th and without the
12 Board to request any responses or allow the
13 Applicant to respond at least another week or
14 two, so that would put a decision point for
15 the Board either November 3rd, the first week
16 of November or November 10th which would be
17 the second week of November.

18 CHAIR LOUD: I'm following you
19 generally and that would give both the ANC and
20 the Applicant an opportunity to respond to
21 what was submitted by DDOT, made a part of our
22 record and when we came on November 3rd, let's

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1 say if we did that for decision, we'd have a
2 full record.

3 MR. MOY: I'd probably just give --
4 just caution for additional time perhaps
5 November 10th.

6 MR. JACKSON: So a point of
7 clarification. For the DDOT submittal, you'd
8 want that by when?

9 CHAIR LOUD: Looks like October
10 20th. Is that the date we're working with?
11 Roughly 30 days from today, so we're looking
12 at October 20th.

13 MR. JACKSON: And that assumes that
14 DDOT, you just want DDOT to report how they
15 came to the conclusion they've come to based
16 on the previous report?

17 CHAIR LOUD: That's another way of
18 saying it. We want them to walk through a
19 section 706, 2302 analysis.

20 MR. JACKSON: Right.

21 CHAIR LOUD: Touching on the
22 transportation-related components of it.

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1 MR. JACKSON: Okay.

2 CHAIR LOUD: As well as an -- we
3 said on the record, an articulation of the
4 decision to utilize the 3710 Minnesota study,
5 why it was done and how it meets their
6 standards for this kind of thing and then
7 append the 3710 study to it. So that's
8 October 20th. Then there would be a copy to
9 Planning. A copy to the ANC. A copy to the
10 Applicant and we'd be looking for the
11 Applicant to submit a response to that by
12 when, Mr. Moy?

13 MR. MOY: Well, if I understand the
14 ANC meeting, the 28th or the 29th of October,
15 the 28th being Wednesday.

16 MS. ALSTON: Yes, sir.

17 MR. MOY: Is it possible for the
18 ANC to submit a resolution or a report by the
19 end of the week?

20 MS. ALSTON: No sir, because if we
21 don't get the report, if the report isn't due
22 to you all until the 20th, we may not get it

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1 until the 23rd or the 26th. That would give
2 us two days to review it and make a decision
3 on the 28th and have a meeting. That's not
4 feasible.

5 MR. MOY: No, my understanding is
6 they would serve, also service the ANC with a
7 copy of their -- the same date as they would
8 serve or submit to the Office of Zoning.

9 MS. ALSTON: Now in order for the
10 ANC to entertain it as a collective body,
11 there has to be a Single Member District
12 meeting where they would have to come to the
13 Single Member District and then based on the
14 community, it would go before the full body,
15 because the full body only supports that of
16 the community. So we're looking at having two
17 meetings, the ANC would have to have two
18 meetings before we could come up with input.

19 CHAIR LOUD: Is there a way you
20 could do both meetings on the same evening?

21 MS. ALSTON: No, sir. Our bylaws
22 state that you have to have a Single Member

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1 District meeting first and once the Single
2 Member District meeting is held, it then comes
3 before the Committee of the Whole, which our
4 Committee of the Whole meeting is the 28th.

5 Now I have to give 7-day notice to
6 the immediate affected community, so if we
7 don't get the reports back until the 20th, we
8 can schedule a meeting for like the 27th or
9 the 28th, but it would have to be the monthly
10 meeting on the 28th. Would that allow enough
11 time or could we like make the date the 16th
12 which would be that Friday that they submit
13 their report to instead of the 20th? That
14 would give us like an extra three days to play
15 with.

16 CHAIR LOUD: I'm fine with that.
17 As long as we can bring this to closure. The
18 hard part is getting to where we are.

19 Most of what DDOT testified to has
20 already taken place. It just sounds like they
21 need to commit it to writing and append a copy
22 of the report, so October 16th sounds fine.

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1 October 16th is the drop dead date. We're not
2 going to
3 -- I don't think we're going to be offering
4 any extensions beyond that. So if we can get
5 that report done the 16th, then we can move in
6 a fashion that meets the needs of the ANC and
7 the calendar for November

8 MR. JACKSON: Again, just for
9 clarification, so you want DDOT's report by
10 the 16th?

11 CHAIR LOUD: That's correct.

12 MR. JACKSON: They normally like 30
13 days, but I'll forward the request.

14 CHAIR LOUD: If you can tell them
15 in this case we've requested the 16th. I
16 think our rules allow them less than 30 days.

17 COMMISSIONER MAY: We normally like
18 to have the reports when we have the hearings.

19
20 CHAIR LOUD: I don't know if you
21 want to go on record saying they normally like
22 30 days when the rules give them a lot less

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1 time than that. But in any event, we're
2 looking at October 16th for DDOT. The ANC
3 will have a copy of that and your report
4 should be submitted to us, if you have any
5 response to it, by what date did we say,
6 October 28th? So a few days after the 28th.
7 Okay, which --

8 MR. MOY: Would you prefer the end
9 of the week on that Friday or the following
10 Monday?

11 CHAIR LOUD: Excellent.

12 MR. MOY: Which would be the 2nd of
13 November which is a Monday.

14 CHAIR LOUD: Excellent. Then we'll
15 be looking for a decision on the case,
16 November 10th, if we can set it for that
17 morning. And the record is closed with
18 respect to any other submissions. No other
19 submissions will be entertained by I think the
20 Office of Zoning if they receive under our
21 rules.

22 MS. BAILEY: Mr. Chairman, Mr. May

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1 asked for, I don't know if he still wants it,
2 but he did ask for the minutes or some
3 statement of the vote of the ANC was unanimous
4 on this disapproval. I don't know if he still
5 wants that or not.

6 CHAIR LOUD: Thank you, Ms. Bailey.

7 I think that's an important point. Mr. May
8 had requested, just confirmation that the ANC
9 had voted in accordance with the testimony
10 here today and if you could just submit that,
11 that should take you a couple of days maximum.

12 Thank you, Ms. Bailey.

13 Okay, is there anything further in
14 this case? All right. Thank you. We
15 appreciate your time and your patience.

16 (Pause.)

17 CHAIR LOUD: Okay, Ms. Bailey, we'd
18 like to call the next case on the morning
19 calendar. And for those of you who are in the
20 audience who are part of the afternoon
21 calendar, we are running a little behind today
22 and we're going to try our level best to make

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1 up for some of the lost time, but we are
2 running behind. We are running significantly
3 behind. If it appears as though we're not
4 going to be able to make it through all of the
5 afternoon cases, then we'll let you know so
6 that we can expeditiously reschedule some of
7 them.

8 I know that we continue the Digital
9 Imaging case from last week and it's my
10 understanding that it's a really straight
11 forward case and it was a really straight
12 forward case last week. If it's still a
13 really straight forward case, we might be able
14 to call that case and hear it, address it,
15 dispose of it and then go back into the case
16 that we're going to call now. But we'll make
17 that decision as we proceed further. We are
18 mindful of your patience last week.

19 MS. BAILEY: Application 17964.
20 This is the application of Emory United
21 Methodist Church and it's pursuant to 11 DCMR
22 Section 3104.1 and 3103.2, for a variance from

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1 the height requirements under section 770, a
2 variance from the floor area ratio
3 requirements under subsection 771.2, a
4 variance from the lot occupancy requirements
5 under section 772, a variance from the loading
6 facility requirements under section 2201, and
7 a special exception for multiple roof
8 structures and required setbacks under
9 subsections 7701.6(a), 777 and 411.11. All of
10 these reliefs are to allow the construction of
11 a new building containing church, office,
12 retail, residential and recreation uses. The
13 property is zoned C-2-A. It's located at
14 6100-6120 Georgia Avenue, N.W., Square 2940,
15 Lots 801, 802, 808 and 813.

16 And just to clear up the record,
17 Mr. Chairman, this project is located in ANC-
18 4A. The ANC has responded, but there is
19 documentation otherwise in the file, but it
20 should be very clear that this project is
21 located in ANC-4A. And finally, the Applicant
22 asks that the pre-hearing statement be

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1 accepted in the record. It was filed 14 days -
2 - it was not filed 14 days prior to the
3 hearing as required.

4 CHAIR LOUD: Thank you, Ms. Bailey.
5 good afternoon, Applicants. I know some of
6 the Applicants. And I just want to say good
7 afternoon to you, thank you for your patience.
8 All right.

9 This is a case in which I have an
10 interest that could be deemed to be -- where
11 my impartiality might be reasonably
12 questioned. There are no specific rules for
13 recusal for administrative law, officials in
14 quasi-judicial proceedings, but the BZA looks
15 to the rules that apply in D.C. Superior Court
16 and they look to the ABA's Code of Judicial
17 Conduct. The relevant section provides that a
18 judge, in this case, BZA Commissioner shall
19 disqualify himself or herself in a proceeding
20 in which impartiality might reasonably be
21 questioned and then they go on to name several
22 different circumstances where that may happen.

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1 In this case, my wife is a member
2 of the Board of Directors of the Emory Beacon
3 of Life which is affiliated with the
4 application in addition to which I serve as
5 one of two persons that chair the Capital
6 Campaign for the Instant Project and have
7 personally invested or donated funds toward
8 the outcome of this project. So for those
9 reasons I am unable to remain a part of this
10 project and I'm going to have to recuse
11 myself.

12 In my stead, Vice Chair Shane
13 Dettman is going to chair this proceeding and
14 this proceeding is in very capable hands.

15 VICE CHAIR DETTMAN: Thank you, Mr.
16 Chairman. I think what we'd like to do now
17 and I conferred with my colleagues is given
18 that we're at about 20 after 1 and the Board
19 has been at it since 9 o'clock, we are going
20 to take a break for I think 30 minutes,
21 colleagues? To grab a bite to eat and discuss
22 this case a little bit and we will return, as

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1 I said in 30 minutes and we can take up any
2 kind of preliminary matters, introductions and
3 party status issues that we might have.

4 Sound good? Okay. We'll see you
5 in 30 minutes.

6 (Whereupon, the above-entitled
7 matter went off the record at 1:24 p.m. and
8 resumed at 2:00 p.m.)

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

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2:02 P.M.

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VICE CHAIR DETTMAN: While we're waiting for Mr. Moy to join us, I think what we can do is we can go through introductions and address some of the preliminary issues that we have. I believe there's a late filing and hopefully Mr. Moy and Ms. Bailey -- there she is, join us.

15

16

17

So that being said, I think we have the Applicant at the table and why don't you introduce yourself for the record.

18

19

20

21

22

MR. KEYS: Good afternoon, Mr. Chairman. My name is George Keys. I'm counsel for the Emory United Methodist Church, the Applicant in this variance and special exception application.

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1 And I will be offering three
2 witnesses for the Board's consideration,
3 Reverend Joseph Daniels, pastor of Emory
4 United Methodist Church; Sean Pichon, our
5 architect; and Edward Papazian, our traffic
6 engineer.

7 As far as -- well, I think we
8 should probably address the preliminary matter
9 as to the late filing, because that would be
10 the next thing that I would address.

11 VICE CHAIR DETTMAN: And just
12 before we take that up, do you intend on
13 offering any of your three witnesses, your
14 architect and your traffic engineer up as
15 experts?

16 MR. KEYS: Yes, Mr. Chairman. In
17 fact, that was the contents of the
18 supplemental filing were the professional
19 resumes of both the architect and the traffic
20 engineer, who have testified before the Board
21 as experts in the past.

22 VICE CHAIR DETTMAN: Okay,

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1 certainly. Well, I think -- the late filing
2 is our Exhibit 25. As Mr. Keys has indicated,
3 there were some supplemental information.
4 There are two resumes, as well as a letter
5 from the Brightwood Community Association. Is
6 that correct, Mr. Keys?

7 MR. KEYS: That's correct, Mr.
8 Chairman.

9 VICE CHAIR DETTMAN: And then the
10 traffic impact study?

11 MR. KEYS: And the traffic study.
12 As well as information that the Office of
13 Planning suggested that the Applicant put
14 forward to facilitate the Board's
15 consideration of the case.

16 VICE CHAIR DETTMAN: And that's the
17 determination of Measuring Point and the other
18 stuff?

19 MR. KEYS: Correct.

20 VICE CHAIR DETTMAN: Well, unless
21 there's anything that you have to add, other
22 than what's on your cover letter, I think that

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1 we can address the preliminary matter right
2 now. You had mentioned that yourself were
3 unexpectedly hospitalized?

4 MR. KEYS: That's correct.

5 VICE CHAIR DETTMAN: Following a
6 conference call on September 2, 2009. Counsel
7 was not released from the hospital until the
8 evening of September 9th. Anything other than
9 that?

10 MR. KEYS: That's all. I mean it
11 just backed up my workload and made it
12 difficult for me to meet deadlines. In fact,
13 by the time I was released, I had already
14 missed a deadline for filing the supplemental
15 information.

16 VICE CHAIR DETTMAN: Okay.
17 Colleagues, any questions for the Applicant
18 with respect to this matter? No.

19 Well, we can do this by consensus
20 of the Board. I think our rule 3100.5 allows
21 us to waive the prehearing submission
22 requirement, which I believe is 14 days. I

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1 think that good cause has been shown. I don't
2 see that there's any prejudice to any party to
3 the case. So I'm inclined to waiving our
4 rules and allowing it into the record. Okay.

5 Let the record show that we're allowing
6 Exhibit 25 which is the supplemental
7 information and the traffic study into the
8 record.

9 So that being said, we now have
10 their resumes of your expert witnesses.

11 And colleagues, if we could just
12 take a moment and look at the resumes for Mr.
13 Sean Pichon and Edward Papazian, is that
14 correct?

15 MR. KEYS: That's correct.

16 VICE CHAIR DETTMAN: Colleagues,
17 any issues with allowing them, qualifying them
18 as expert witnesses to this proceeding? No.

19 Mr. Pichon and Mr. Papazian, have
20 you testified before the Board of the Zoning
21 Commission in prior cases before?

22 MR. PICHON: Yes.

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1 VICE CHAIR DETTMAN: Okay, why
2 don't you come up here and join us? I think
3 they can be allowed as expert witnesses.

4 Ms. Bailey or Mr. Moy, does that
5 take care of any of the other preliminary
6 matters that we have before the Board?

7 MS. BAILEY: It does, Mr. Chairman.

8 MR. KEYS: Mr. Chairman, there are
9 two additional matters. One, just a minor
10 housekeeping matter. When the witnesses were
11 sworn at the beginning of today's hearing, Mr.
12 Pichon was not present and he would need to be
13 sworn before his testimony.

14 VICE CHAIR DETTMAN: Okay, why
15 don't we do that right now then?

16 MS. BAILEY: Would you please stand
17 and raise your right hand? Do you solemnly
18 swear or affirm that the testimony that you
19 will be giving today will be the truth, the
20 whole truth, and nothing but the truth? Thank
21 you.

22 VICE CHAIR DETTMAN: Mr. Keys, you

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1 had a second?

2 MR. KEYS: Yes, Mr. Chairman. With
3 the Board's indulgence, you were probably
4 aware that at 8:05 this morning there was a
5 fax received by the Board in this case from
6 the National Park Service, specifically from
7 Adrian Coleman, the superintendent of Rock
8 Creek Park. This is a new definition of last
9 minute.

10 And because of that, I think it's
11 incumbent on me to ensure that my client has
12 an impartial and fair hearing to ask the Board
13 permission to ask questions of Mr. May, who is
14 an employee of the National Park Service,
15 concerning his personal knowledge of this
16 communication or matters relating to it.

17 VICE CHAIR DETTMAN: Okay, and so
18 what you're requesting of us is for you to
19 just perhaps ask Mr. May a couple of question
20 with respect to his knowledge?

21 MR. KEYS: A brief voir dire as to
22 what his knowledge may be.

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1 VICE CHAIR DETTMAN: I don't see
2 any harm in that.

3 MR. KEYS: Thank you. Mr. May,
4 were you aware of this letter dated, September
5 3rd, 2009 prior to its being filed in the
6 record this morning?

7 COMMISSIONER MAY: I was aware that
8 there was a letter as of yesterday. When I
9 asked the question of the -- within the
10 regional office whether anyone had -- was
11 aware that this case was happening, whether
12 anyone was testifying. And I was told there
13 was a letter. And I was told it would be
14 faxed in today. Prior to that time, I was not
15 aware of the existence of the letter or any
16 discussions of the case.

17 MR. KEYS: Then certainly you did
18 not assist in its preparation?

19 COMMISSIONER MAY: Absolutely not.

20 MR. KEYS: Have you engaged in any
21 discussion with employees of the National Park
22 Service concerning the Emory United Methodist

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1 Church application?

2 COMMISSIONER MAY: Just to the
3 extent that I just mentioned, whether the Park
4 had been involved in this case. I asked the
5 question whether they had been involved, what
6 they had done, and they said there was a
7 letter and they said they would fax it.

8 MR. KEYS: You did not know the
9 contents of the letter?

10 COMMISSIONER MAY: No, I did not.

11 MR. KEYS: You didn't know whether
12 the letter was favorable or unfavorable?

13 COMMISSIONER MAY: I did not know
14 what the letter said at all.

15 MR. KEYS: Have you spoken with
16 Adrian Coleman -- or do you know Adrian
17 Coleman?

18 COMMISSIONER MAY: Yes.

19 MR. KEYS: Have you spoken with
20 Adrian Coleman concerning the Emory United
21 Methodist Church application?

22 COMMISSIONER MAY: I asked her --

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1 she was the one I asked whether the Park had
2 been engaged and that was yesterday at the
3 regional office.

4 MR. KEYS: Did she say anything to
5 you regarding the contents of her letter?

6 COMMISSIONER MAY: No.

7 MR. KEYS: Thank you, Mr. May.

8 COMMISSIONER MAY: Okay.

9 VICE CHAIR DETTMAN: Mr. Keys, do
10 you have any other questions for Mr. May? I
11 don't believe you do. Or any other matters
12 that we need to take up as a preliminary
13 matter?

14 MR. KEYS: Mr. Chairman, could I
15 ask for a minute to speak with my client?

16 VICE CHAIR DETTMAN: Certainly.

17 MR. KEYS: Thank you.

18 (Pause.)

19 VICE CHAIR DETTMAN: Mr. Keys?

20 MR. KEYS: Mr. Chairman, I would
21 respectfully like to move that we postpone
22 this hearing and postpone it until we can have

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1 a member of the Zoning Commission join the
2 panel that's not connected with the National
3 Park Service. And my concern is the last
4 minute nature of this document being filed and
5 the timing of Mr. May's conversation with
6 Adrian Coleman who wrote the letter which was
7 yesterday.

8 VICE CHAIR DETTMAN: So am I
9 interpreting you correctly that you are
10 actually making a formal motion?

11 MR. KEYS: Yes, I am.

12 VICE CHAIR DETTMAN: For recusal of
13 Mr. May?

14 MR. KEYS: Mr. Chairman, yes.

15 VICE CHAIR DETTMAN: And your
16 request was to actually postpone this simply
17 just to have a different Zoning Commissioner
18 sit on this case?

19 MR. KEYS: That's correct, Mr.
20 Chairman.

21 VICE CHAIR DETTMAN: Well, let me
22 just ask a couple of questions. I know that

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1 essentially to allege a bias in a particular
2 proceeding, you have to facts and just based
3 on the question and answer that you had with
4 Mr. May, Mr. May has indicated that he had no
5 prior knowledge to the content of the letter.

6 He only spoke with Ms. Coleman yesterday, to
7 inquire whether or not the National Park
8 Service was going to weigh in on this
9 particular case as an adjacent property owner.

10 What other facts go towards
11 support, the fact that your belief that Mr.
12 May cannot be unbiased in this proceeding?

13 MR. KEYS: I don't have evidence of
14 personal bias. And I'm not sure that's a
15 necessary standard. Mr. May has knowledge
16 before this document was part of the record.
17 I'm not even sure if Mr. May's inquiry
18 prompted the inclusion of this document in the
19 record. I am just concerned having a member
20 of the National Park Service judge this
21 application when the National Park Service has
22 written the letter opposing the application,

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1 especially in the circumstances where the
2 Board has only three Members considering it.

3 VICE CHAIR DETTMAN: Let me ask you
4 this then, I know you have requested for a
5 continuance until we get a different Zoning
6 Commission Member on the case. I'm not
7 certain that the Board Members participating
8 in this hearing can just require or request
9 the Zoning Commission to send a different
10 Member. He's here by way of his position on
11 the Zoning Commission and they sign up for a
12 particular date.

13 So we can either what you've told
14 us so far and the Board can deliberate and
15 decide your motion for recusal right now or as
16 I think you've suggested put off the hearing,
17 allow you to file a formal motion on paper,
18 documenting the facts that you think support
19 the reasons why Mr. May cannot be unbiased in
20 this proceeding and then we can schedule this
21 at a later date and decide the motion then.

22 And let me just refer, as you're

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1 conferring with your client, let me ask OAG to
2 weigh in if that's an appropriate way to
3 handle this motion.

4 MS. GLAZER: I think it would be a
5 good idea for the Board to perhaps recess and
6 discuss it and for the Applicant to make a
7 formal motion for recusal and the Board would
8 take it up at a later date?

9 VICE CHAIR DETTMAN: Okay, well,
10 let's take a five-minute recess and discuss
11 this and we'll come back.

12 (Whereupon, the above-entitled
13 matter went off the record at 2:17 p.m. and
14 resumed at 2:26 p.m.)

15 VICE CHAIR DETTMAN: Back on the
16 record and the Board has discussed this matter
17 and I think Mr. May you wanted to make a
18 statement?

19 COMMISSIONER MAY: Yes, thank you
20 very much, Mr. Chairman.

21 First of all, let me say I have
22 absolutely no doubt that I'm in a position

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1 representing the Zoning Commission and
2 representing the Park Service on the Zoning
3 Commission. I have no doubt that I can look
4 at this case and evaluate it and make a
5 decision on it based solely on the record in
6 an unbiased fashion.

7 However, I will also say that in
8 the interest of moving things along in as
9 uncomplicated a manner as possible, I'm also
10 happy enough to step aside and let someone
11 else from the Zoning Commission take my seat
12 on this case and then decide it for the Board.

13 With that, I'm happy to recuse
14 myself and help things move along.

15 VICE CHAIR DETTMAN: Thank you, Mr.
16 May. So I guess that being said and that
17 leaves two of us, we need to find another
18 date. And I think we looked at the calendar.

19 Is the ANC here actually? ANC is
20 not. I think we've looked at the calendar and
21 we identified a date of December 15th which is
22 the earliest date that we have. If that works

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1 for you, we can put you in there or if you
2 need a little bit more time.

3 MR. KEYS: Mr. Chairman, December
4 15th would be fine with us. Morning or
5 afternoon, do you know?

6 VICE CHAIR DETTMAN: Mr. Moy?

7 MR. MOY: Afternoon would be
8 preferable at 1 o'clock.

9 MR. KEYS: Is that first in the
10 afternoon?

11 MR. MOY: First in the afternoon,
12 sir.

13 VICE CHAIR DETTMAN: And Mr. Keys,
14 I know that just to kind of keep the record
15 very clean, you had made a formal motion of
16 recusal. Mr. May has recused himself at this
17 time. We can say that the motion is now moot
18 or you can formally withdraw your motion?

19 MR. KEYS: I will under the
20 circumstances withdraw the motion.

21 VICE CHAIR DETTMAN: Okay. Mr.
22 Moy, any other matters that we need to address

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1 before we move on for the day?

2 MR. MOY: This Board's action would
3 conclude the morning session of the 22nd.

4 VICE CHAIR DETTMAN: Very well.
5 We'll see you on December 15th.

6 MR. KEYS: Thank you, Mr. Chairman.
7 (Pause.)

8 VICE CHAIR DETTMAN: I think we're
9 going to just break for five minutes. We're
10 going to enter the afternoon session. We're
11 going to go find the Chairman, wherever he may
12 have wandered off to and I think the first
13 case, Mr. Moy, is the Digital Imaging case?

14 MR. MOY: That's correct, sir.

15 VICE CHAIR DETTMAN: Great. So
16 we'll adjourn until then.

17 (Whereupon, the above-entitled
18 matter went off the record at 2:29 p.m. and
19 resumed at 2:46 p.m.)

20 CHAIR LOUD: This hearing will
21 please come to order.

22 Good afternoon, ladies and

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1 gentlemen. This is the September 22nd public
2 hearing of the Board of Zoning Adjustment of
3 the District of Columbia. My name is Marc
4 Loud, Chairperson. Joining me today are Vice
5 Chair Shane Dettman to my left; to my right,
6 representing the National Capital Planning
7 Commission, Mr. Conrad Slater; to his right,
8 representing the Zoning Commission, to my
9 left, Ms. Meridith Moldenhauer representing a
10 Mayoral appointee for the Board; Mr. Clifford
11 Moy, Secretary of BZA; Sherry Glazer, from the
12 Office of Attorney General; and on my far
13 left, Ms. Beverley Bailey, Zoning Specialist
14 in the Office of Zoning.

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

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

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

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

15 The order for procedure for special
16 exceptions and variances is statement and
17 witnesses of the Applicant; Government reports
18 including the Office of Planning, the
19 Department of Public Works, etcetera; the
20 report of the ANC; parties or persons in
21 support; parties or persons in opposition; and
22 finally, closing remarks only by the

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1 Applicant.

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

10 These time restraints do not
11 include cross examination and/or questions
12 from the Board. Cross examination of
13 witnesses is permitted by the Applicant or
14 parties only. The ANC within which the
15 property is located is automatically a party
16 in a special exception or variance case.
17 Nothing prevents the Board from placing
18 reasonable restrictions on cross examination,
19 including time limits and limits on the scope
20 of cross examination.

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

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1 material specifically requested by the Board.

2 The Board and staff will specify at the end
3 of the hearing exactly what is expected and
4 the date when the persons must submit the
5 evidence to the Office of Zoning.

6 After the record is closed, no
7 other information will be accepted by the
8 Board. The Sunshine Act requires that the
9 public hearing on each case be held in the
10 open before the public.

11 The Board may, consistent with the rules and
12 procedure and the Act, enter executive session
13 during or after the public hearing on a case
14 for purposes of reviewing a record or
15 deliberating on the case.

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

22 Please turn off all beepers and

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

3 The Board will make every effort to
4 conclude the public hearing as near as
5 possible to 6 p.m. today. If the afternoon
6 cases are not completed by 6 p.m., the Board
7 will assess whether it can complete the
8 pending case or cases remaining on the agenda
9 and more than likely we will continue whatever
10 cases are being heard at that time to the
11 first available date after today.

12 The Board will now consider any
13 preliminary matters. Preliminary matters are
14 those which relate to whether a case will or
15 should be heard today, such as requests for
16 postponement, continuance, or withdrawal or
17 whether proper and adequate notice of the
18 hearing has been given.

19 If you're not prepared to go
20 forward with a case this afternoon, or if you
21 believe the Board should not proceed, now is
22 the time to raise such a matter.

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1 Does the staff have any preliminary
2 matters?

3 MS. BAILEY: Mr. Chairman, good
4 afternoon.

5 CHAIR LOUD: Good afternoon.

6 MS. BAILEY: Yes. Application
7 17932, M. Sikder, that application was
8 withdrawn, Mr. Chairman.

9 CHAIR LOUD: Thank you, Ms. Bailey.
10 I appreciate that. And if there are no
11 additional preliminary matters, we can proceed
12 with the individuals wishing to testify.

13 Please rise to take the oath and
14 Ms. Bailey would administer that oath to you.
15 And that would include witnesses for any
16 cases this afternoon, not just this first
17 case.

18 MS. BAILEY: Please raise your
19 right hand. Do you solemnly swear or affirm
20 that the testimony that you will be giving
21 today will be the truth, the whole truth, and
22 nothing but the truth?

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1 (The witnesses were sworn.)

2 MS. BAILEY: Thank you.

3 CHAIR LOUD: Let me just see before
4 you call the first case. I think there were
5 five witnesses who stood total and I wanted to
6 get a sense of how many of these witnesses are
7 going to be for the first case which is
8 Digital Imaging? Okay, and the other
9 witnesses that stood, how many of those
10 witnesses, just raise your hand if you are for
11 the D.C. Library case. And if you are for the
12 Central Union case?

13 Thank you.

14 Okay, Ms. Bailey, would you like to
15 call the first case?

16 MS. BAILEY: Mr. Chairman, it's
17 Application 17961, Center for Digital Imaging
18 Arts at Boston University. It's pursuant to
19 11 DCMR Section 3104.1 and 3013.2, for a
20 variance from the off-street parking
21 requirements under subsection 2101.1, and a
22 special exception for a private trade school

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1 under section 912, at premises 1055 Thomas
2 Jefferson Street, N.W. The property is zoned
3 W-3. It's also known as Square 1191, Lot 71.

4 Members of the Board, I place
5 before you a document that was filed today.
6 The title is "Existing Conditions." So
7 everyone should have a copy of that.

8 CHAIR LOUD: Thank you, Ms. Bailey.
9 Is the ANC in this case present? Okay.

10 Why don't we turn to you, Mr.
11 Aguglia, to introduce yourself and the members
12 of your team?

13 MR. AGUGLIA: Thank you, Chairman
14 Loud and fellow Board Members. My name is
15 Richard Aguglia. I'm with the law firm of
16 Hunton & Williams, 1900 K Street, N.W. in
17 Washington. My home address is 15400
18 Carrollton Road, Rockville, Maryland.

19 I will do my best to try to keep
20 our
21 case to 30 minutes.

22 With me today is Robert Frazier.

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1 He is the vice president of the school and
2 assisting me is Nicole Selemno from Hunton &
3 Williams.

4 Today, we're here before you to ask
5 for a special exception for a school under
6 Section 912, as well as a special exception
7 for parking under Section 2108 where we meet
8 the minimum 75 percent threshold.

9 In the event there's some issues
10 there, I'll hold in abeyance my request for a
11 variance, but I don't think we're going to
12 have to get there.

13 I'm going to give you some very
14 quick background through our Power Point
15 presentation and then I'm going to say how we
16 meet the various tests and then conclude.

17 All right, as you'll see from the
18 screen, this is a slightly unusual case. The
19 Applicant has already had this teaching
20 facility in Georgetown for the last year and a
21 half. When the Applicant applied for
22 additional administrative offices for a

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1 teaching facility, the Zoning Administrator
2 said what school? I did not know there was a
3 school here. And it turned out that the
4 school had a Certificate of Occupancy for a
5 business use. I was then engaged as counsel
6 and I wanted just to show you the background
7 here.

8 If you see the screen, this is the
9 first page of their building plans. You'll
10 see that the school clearly was identified as
11 a university, that the middle part that's
12 circled, the mezzanine level, it clearly
13 showed numerous lecture rooms with one
14 administrative office space. For building
15 code purposes, I don't know why, but for
16 building code purposes, all universities are
17 listed as a business use under the building
18 code. So the school used an outside expediter
19 who obtained for them a Certificate of
20 Occupancy as a business use which is matter of
21 right.

22 Of course, for zoning purposes,

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1 that was not correct. It should have been
2 issued a Certificate of Occupancy as a
3 teaching facility which requires this Board's
4 approval. So that's why we're here today.

5 If you would go to the first
6 picture, the property is in Georgetown at 1055
7 Thomas Jefferson Street, N.W. If you look
8 north, it would be M Street. If you come down
9 south, that would be K Street.

10 Here's a picture known as the
11 Foundry Building. There's a picture of the
12 entrance to the building. The building was
13 built in the late '70s. There's another
14 unique situation in that it's not asking to
15 build the facility. It is in the basement of
16 an existing facility.

17 So as you walk down to the
18 mezzanine level, across this path, next
19 picture, you will walk through some doors and
20 then you'll walk through another set of doors.

21 That is the entrance to the school and you
22 may recognize this if you were a movie fan.

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1 This used to be the Foundry Movie Theater.

2 If you go to the next picture,
3 you'll see here are -- there's one of nine
4 classrooms. You'll see the students there at
5 their desk with their computers. This is
6 another sample classroom. There are nine
7 classrooms and one studio. Here is the
8 studio. So one of the classrooms is always
9 empty when they go into the studio, so there's
10 never more than nine active rooms or
11 classrooms in the space.

12 Here is the backside of the
13 building on 30th Street and that's the parking
14 entrance, so if you were coming down K Street,
15 you would turn right on 30th Street to access
16 the parking in the rear of the building. If
17 you went one more street, you'd come up Thomas
18 Jefferson and turn right if you wanted to drop
19 something off in front of the school.

20 Here is another picture of the 30th
21 Street entrance to the parking. And if you
22 notice, in the middle back of the picture,

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1 that is a bridge that is under construction
2 and as a result, there's very little traffic
3 on that street, other than traffic accessing
4 the various buildings on that street, because
5 it's not a through street. I think it's going
6 to be out of commission for a few years until
7 the bridge is finally constructed.

8 There is the bridge construction.
9 I'm sorry the picture is so dark, but I was
10 trying to get a closer picture of it, but the
11 bridge is closed off and it is not a through
12 street.

13 Here's the underground parking for
14 the facility. Here is a picture of Thomas
15 Jefferson Street facing north towards M
16 Street. You can see the various parking
17 signs.

18 Go back to that one picture for a
19 minute. So you can see that there's no
20 parking along the Tow Path. And there's one
21 hour parking as you're looking from the school
22 going north towards M Street.

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1 Here is the same street, Thomas
2 Jefferson Street looking south towards K
3 Street. And you can see that there is metered
4 parking, but it is definitely filled.

5 Here is Thomas Jefferson Street
6 again on the opposite side of the street
7 facing M Street with various metered parking.

8 And then the same side of the street looking
9 down towards K Street with metered parking.

10 There's also a parking facility
11 right across the street from the Foundry
12 Building. That's in the building opposite on
13 Thomas Jefferson Street.

14 Also, as part of our presentation
15 today, I wanted to indicate that there is
16 tremendous public transportation to this site.

17 The Circulator bus which I take, I think it's
18 a tremendous resource to the District of
19 Columbia for a dollar from downtown through
20 Georgetown, so there's a picture of the
21 Circulator bus. This bus stop is right at M
22 Street and Thomas Jefferson Street. It's

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1 right at the top of the hill. It's less than
2 a half a block walk from the school and the
3 Circulator bus stops there.

4 Also, the Metro bus -- you can see,
5 the blue, white, and red sign at the top of
6 the pole is for the WMATA buses and below it
7 is also a stop for the Georgetown Connection
8 subway. You can access -- that bus services
9 from three different subway stops, Rosslyn,
10 Dupont Circle, and Foggy Bottom. So if you're
11 taking the subway, you can take the Georgetown
12 Connection bus and easily make it into the
13 school and that's one of the routes that the
14 students' takes.

15 Again, that's just another picture
16 of the same bus stop right at the top of M
17 Street and Thomas Jefferson.

18 So that concludes our Power Point
19 presentation.

20 I also wanted to make one other
21 observation that when Mr. LeGrant, when I was
22 engaged and approached Mr. LeGrant about

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1 getting a temporary Certificate of Occupancy
2 for a year within which we had to come to you
3 and get your approval, Mr. LeGrant was very
4 meticulous in that the building had to be
5 totally -- their facility in the building had
6 to be totally reinspected. So it was
7 reinspected for fire, mechanical, electrical,
8 and structural. So that was all redone at
9 great cost to the owner and the tenant because
10 of the issue that was involved that they had
11 an improper Certificate of Occupancy.

12 And in fact, the occupancy load for
13 that space, remember, it was a movie theater,
14 it was 556 and that was on the first page of
15 the Power Point presentation. And we're at
16 about 20 percent of that. So we're well under
17 that. So of course, it was a movie theater in
18 a brick building. It's soundproof which is
19 another one of the issues that we need to meet
20 for our special exception approval.

21 Now Mr. Frazier is going to talk
22 very briefly about the curriculum of the

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1 school and its practicum.

2 Mr. Frazier, would you turn on your
3 microphone and please identify yourself?

4 MR. FRAZIER: Yes. My name is
5 Robert Frazier, and I reside at 59 Oak Hill
6 Road in Southborough, Massachusetts. Thank
7 you for having us here today.

8 We teach at our center five
9 different programs. We teach digital
10 photography, digital filmmaking, 3-D
11 animation, graphic and web design and web
12 development. And the programs run anywhere
13 from 9 to approximately 18 months. Our full-
14 time students are in school from 8:30 to 4:30
15 five days a week, Monday through Friday. And
16 that takes them approximately just under nine
17 months. And our evening students go two
18 nights a week, 6:30 to 9:30, and every other
19 Saturday from 8:30 to 4:30 and that takes them
20 about 18 to 20 months.

21 At the end of the program, the
22 students also do a practicum with a local or

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1 national nonprofit where they actually work
2 with the nonprofit as a client and through
3 that produce either a portfolio, they'll
4 redesign websites. We've done work here
5 locally for the D.C. Public Schools, the
6 National Housing Trust. We've done work for
7 Project Smith and we did a film for I believe
8 it was Habitat for Humanity. That's a few of
9 them. So that's a key part of the school as
10 well.

11 MR. AGUGLIA: All right, Mr.
12 Frazier, I'm going to point out to you that
13 the ANC has written a letter in support of our
14 application with three conditions and I wanted
15 you to address them very briefly before the
16 Board.

17 One was ANC-2E endorsed the
18 application with a parking cap of seven on-
19 street cars. I'll step outside of that letter
20 for a minute and say that they were talking
21 about metered parking.

22 Could you please advise the Board

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1 what steps you are taking to try to limit the
2 number of metered parking used by students?

3 MR. FRAZIER: Well, first of all,
4 we tell our students at orientation that there
5 is no street parking with meters. That they
6 should be using public transportation or
7 parking in our parking garage. We're
8 arranging with our landlord a discounted rate
9 for our students as well.

10 The day students, it's logistically
11 impossible for them to even park on the street
12 because they are in school for eight hours.
13 They'd have to be running out every hour to
14 two hours and moving their car and it would
15 probably cost them about the same as if they
16 parked in the garage. And our evening
17 students, it's the same thing. They'd have to
18 be outside doing that and we have a discounted
19 rate that we have with our landlord for the
20 students so it makes more sense for them to
21 park in the garage.

22 MR. AGUGLIA: Mr. Frazier, a second

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1 condition that the ANC was seeking was to
2 encourage the use of Smart Benefits for
3 employees. I'll step outside of that again
4 and what they're looking for is pre-taxed
5 deductions for employees who use public
6 transportation. Would the school make that
7 available to its employees?

8 MR. FRAZIER: Yes, we're in the
9 process of doing that now.

10 MR. AGUGLIA: And the third and
11 last condition was the ANC wanted to review
12 "the plans again in the fall of 2010." Does
13 the school have any objection to meeting with
14 the ANC on an annual basis to ensure that the
15 parking requirements of the zoning regulations
16 are met?

17 MR. FRAZIER: No, we don't.

18 MR. AGUGLIA: All right, so I would
19 like then to read briefly the test under
20 Section 912 for private schools and trade
21 school as a special exception in the W-3 Zone.

22 The facility shall be designed to

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1 enhance the visual and recreational
2 opportunities offered by the waterfront. Of
3 course, as I've explained, this is a unique
4 situation where the building has already been
5 built. We're in the lower mezzanine of the
6 building, so our answer to this is somewhat
7 moot. But I would say that the building was
8 built in the '70s and the brick architectural
9 style of Georgetown and would meet that
10 definition if it had to.

11 The next point is the use shall be
12 designed and located so that it is not likely
13 to become objectionable because of noise,
14 traffic, number of students or other
15 conditions. The school has been in operation
16 now for two years, a year and a half before
17 the issue came up about a Certificate of
18 Occupancy. There's been no complaints that we
19 know of of noise. Again, it's in an old movie
20 theater in the basement of a brick building
21 and sound proof. There is sufficient parking
22 in the basement of the building accessed

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1 through 30th Street as I showed which is now
2 not a through street.

3 It has a limited number of
4 students. Right number the maximum number of
5 students who can be in the school at any one
6 time is 108. So that's nine classrooms times
7 12 students is 108, far below what would be
8 there in a commercial office setting which
9 would be an occupancy load of 556.

10 So I believe that we meet the
11 special exception test for the use of this
12 facility for a private school.

13 I then wanted to turn, with your
14 permission, please, to the special exception
15 for the parking. And Ms. Bailey has passed
16 out something I filed with her this morning
17 called "Existing Conditions."

18 If you have a copy of that, the
19 student test is one for each ten classroom
20 seats. There are no stadium or auditorium
21 seats. So there are nine classroom times 12
22 seats per classroom, 108 seats divided by 10,

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1 I'm come up with 11 parking spots for the
2 students.

3 The teacher test, and by the way
4 I've attached the regulations in the St.
5 Patrick's case that Mr. Dettman alluded to at
6 our last hearing. Two for each three teachers
7 employed at any one period during the day or
8 night. Now the test for universities revolves
9 around students and teachers. It does not
10 revolve around employees.

11 If you will note from Section 20101
12 which is the very page after my analysis,
13 after my synopsis, while there are
14 requirements for other employees for parking
15 for elementary, junior high, high school, pre-
16 elementary, there is none for colleges or
17 other institutions, including a business or
18 trade school. It goes to teachers and
19 students, but not other employees.

20 So under that test, I've got nine
21 teachers maximum at any one time, one per
22 classroom and I come up with six. I come up

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1 with a total of 17; total students, 11; total
2 teachers, 6, 17 total times 75 percent is 13
3 parking spaces. And I'm relying on Section
4 2118.3 which is the third page of my analysis
5 for the proposition that you count just the
6 number of people who would be there at any one
7 period during the day or night. So whether or
8 not that person teaching is a full-time or a
9 part-time teacher, I counted that as one. But
10 again the test is how many are there at any
11 one time?

12 So we have leased 12 parking
13 spaces. Twelve parking spaces came with their
14 lease of the facility in order to meet the 75
15 percent test, we would lease one other space
16 and then ask you for approval under Section
17 2108 for the 75 percent minimum threshold.

18 Section 2108 basically focuses on
19 the proximity to public transportation
20 including Metro rail stations and the
21 availability of other public transportation in
22 the area. And I think we've shown that. We

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1 have significant public transportation. And
2 I've also provided a transportation study that
3 we did among the students. Only 28 percent of
4 the students drive. Sixty-one percent take
5 public transportation. Others arrive at other
6 methods, for instance, they might be dropped
7 off in a car pool by a parent, but don't drive
8 themselves or park there.

9 There's no congestion to access the
10 parking facility from 30th Street. There's
11 obviously a lot of parking on Thomas Jefferson
12 Street itself, metered parking, but the
13 purpose -- I think the purpose of this
14 particular special exception is met because no
15 one is in favor of more traffic in Georgetown.

16 The more public transportation we make
17 available and the less cars on the street, I
18 think is what -- certainly what we feel is
19 appropriate for the students given their
20 limited budget.

21 Certainly, the ANC would like to
22 see less traffic in Georgetown and I think we

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1 meet the parameters of the special exception
2 for the 75 percent threshold.

3 The last point I wanted to make is
4 you'll see on the bottom half of the first
5 page of the analysis, future conditions. The
6 school would like to lease two or three more
7 classrooms under which, of course, our 75
8 percent threshold would increase and it would
9 increase under the scenario that I put forth
10 there to 17 parking spaces, again at the 75
11 percent threshold.

12 So I thought that -- we think that
13 the ANC's idea that they monitor our situation
14 next year is a good one. And if the Board
15 wanted to monitor situation and have a report
16 back, we would also do that, just to ensure
17 that we were always at the 75 percent
18 threshold.

19 So it's a good checks and balance
20 for the Board for the ANC and the school wants
21 to be a good neighbor. But at the same time
22 the school wants to afford as much public

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1 transportation to its student with as limited
2 a budget as possible.

3 So that's our basic presentation.
4 And we're available for questions.

5 CHAIR LOUD: Thank you, Mr.
6 Aguglia. Let me turn to Board Members now and
7 see if there are questions for you and/or your
8 witnesses.

9 MEMBER SCHLATER: I have a quick
10 question. Those parking spaces that are
11 currently leased, the 12 parking spaces, how
12 are they used or apportioned right now?

13 MR. FRAZIER: With staff right now.

14 CHAIR LOUD: Thank you, Mr.
15 Schlater. Follow up?

16 MEMBER SCHLATER: I just want to
17 clarify one other thing. In the pre-hearing
18 statement it said there were 140 students at
19 any given time and in your testimony, you said
20 108 students at any given time, maximum. I
21 just wanted to clarify which one it was.

22 MR. AGUGLIA: A point well taken.

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1 Currently, with all the classrooms filled 12
2 times 9, 108, with teachers and staff, it
3 might reach as much as 120, 125. I wanted to
4 make it broad. Plus the school wants to
5 expand. So I would say under present
6 conditions, a maximum 140, if you took
7 everybody, whether or not they were full or
8 part-time, there or not. And then I think it
9 would be closer to 160 if they leased two or
10 three more classrooms and brought in a couple
11 more teachers.

12 MEMBER SCHLATER: So if you did
13 lease these additional classrooms, you would
14 then lease four more spaces on top of that and
15 you would go from 13 to 17, is that the idea?

16 MR. AGUGLIA: Correct. We would
17 never fall below the 75 percent threshold.

18 MEMBER SCHLATER: I have no further
19 questions.

20 CHAIR LOUD: Thank you, Mr.
21 Schlater. Any additional questions from the
22 Board? There appear not be any, at least at

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1 this time. So why don't we turn now to the
2 Office of Planning for its report. And if
3 Board Members have some questions of you or
4 your witnesses later, we can return back to
5 you.

6 Good afternoon.

7 MR. MORDFIN: Good afternoon, Mr.
8 Chair, and Members of the Board. I'm Stephen
9 Mordfin with the Office of Planning. The
10 subject application is in conformance with the
11 criteria for the granting of a special
12 exception to permit a trade school because
13 one, no more than 140 students would be
14 expected to be on site at any one time and the
15 school is located within a brick office
16 building in a space originally constructed as
17 a movie theater.

18 Two, almost two-thirds of the
19 students and ten percent of the faculty do not
20 drive to the site and the building has
21 extensive parking available. And three, the
22 hours of operation are typically of what would

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1 otherwise be expected of an office or business
2 within the building or surrounding area.

3 Therefore, the use is not likely to
4 become objectionable and the Office of
5 Planning recommends approval of the request to
6 permit a trade school.

7 The subject application is also in
8 conformance with the criteria for the granting
9 of a special exception to reduce off-street
10 parking by 24 percent because the subject
11 building has a surplus of approximately 200
12 off-street parking spaces. The maximum number
13 of students and faculty expected to be on site
14 at any one time is 140. A maximum of 38
15 percent of the students are expected to drive
16 to the site. The building was designed to
17 accommodate a movie theater that no longer
18 exists and the requested parking reduction is
19 for four spaces only. And the site is located
20 within close proximity to eight bus lines.

21 Therefore, the Office of Planning
22 recommends approval of the special exception

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1 request to reduce the amount of required off-
2 street parking by 24 percent. Thank you.

3 CHAIR LOUD: Thank you, Mr.
4 Mordfin. Does the Applicant have any
5 questions for the Office of Planning?

6 MR. AGUGLIA: No.

7 CHAIR LOUD: You've seen that
8 report?

9 MR. AGUGLIA: Yes.

10 CHAIR LOUD: Board Members, are
11 there any questions? Okay.

12 Just in terms of your interaction
13 with the community, was there any feedback
14 from the community, any issues that you
15 learned of in your outreach?

16 MR. MORDFIN: I did contact the
17 ANC, however, they never did respond to me.

18 CHAIR LOUD: But subsequent to that
19 there's been an ANC report that's been made a
20 part of our record with some conditions in it?

21 MR. MORDFIN: Yes.

22 CHAIR LOUD: I think Mr. Aguglia

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1 spoke to that earlier. Okay. If there are no
2 Board questions for OP, we would now turn to
3 the ANC which is not here, but as Mr. Aguglia
4 had indicated had submitted ANC-2E had
5 submitted a report, late, but they did submit
6 a report. And the report was in favor of the
7 application with the conditions that Mr.
8 Aguglia spoke to earlier, the three
9 conditions. And I believe the Applicant
10 testified to being in support of all three of
11 those conditions. Is that correct?

12 MR. FRAZIER: Yes.

13 CHAIR LOUD: Okay. All right, so
14 why don't we now move on to parties or persons
15 that would be in support of the application.
16 If you're in the audience, now would be the
17 time to come up. Seeing none, parties or
18 persons that would be in opposition to the
19 application, if you're in the audience now
20 would be the time to come up. And you will be
21 given three minutes. Seeing none, as well, we
22 turn now back to the Applicant for closing

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1 remarks.

2 MR. AGUGLIA: I believe we met the
3 special exception test for both the school as
4 well as parking and I would ask the Board to
5 approve both.

6 CHAIR LOUD: thank you, Mr.
7 Aguglia. I thank your witnesses as well. I
8 think where we are now is that we probably
9 have a full record and we can probably
10 deliberate on your application today.

11 MR. AGUGLIA: Thank you.

12 CHAIR LOUD: And so why don't we
13 start with the deliberation and I'll turn to
14 Mr. Dettman to get us started.

15 VICE CHAIR DETTMAN: Thank you, Mr.
16 Chairman. I'd be happy to take the Board
17 through the relevant provisions. And I don't
18 even think -- I mean the case is relatively
19 straight forward and I don't think we actually
20 need to go line by line through each
21 provision. It's an application for the
22 location of a trade school or private school

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1 pursuant to Section 912, located in a
2 waterfront zone, a W-3 zone to be exact, as
3 well as parking reduction, to reduce the
4 required number of parking by as much as 25
5 percent.

6 I think given the information
7 that's in the record and the testimony that
8 was provided today, I think the Applicant does
9 meet the relevant provisions of 912 as well as
10 what is it, the special exception criteria for
11 the parking reduction, Section 2108.

12 Quickly, with respect to 912, as
13 the Applicant testified to, the school has
14 been in operation for one and a half to two
15 years. It's located in a mezzanine, kind of a
16 basement level of an existing building which
17 was built in the 1970s, so therefore the
18 facility is not going to have any kind of
19 detrimental effect on the visual qualities of
20 the waterfront area and the Georgetown area
21 and it would comply with 912.2 which would
22 enhance the visual and recreational

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1 opportunities in the area.

2 Given the relative small size of
3 the school, and that the site is well served
4 by public transportation, it does not appear
5 that the facility will have any kind of
6 objectionable impact with respect to noise,
7 traffic, number of students, and any other
8 conditions as required by 912.3.

9 And let me quickly just check in
10 with Chapter 21, Section 2108 to make sure
11 that we cover all of our bases here.

12 In order for the Board to grant a
13 parking reduction of up to 25 percent,
14 pursuant to 2108, the Board needs to give
15 consideration to a number of things
16 articulated in 2108.3 and I think I'll rely
17 upon the Office of Planning's report with
18 respect to those provisions and say that the
19 provisions of 2108 are met.

20 And with that, Mr. Chairman, I am
21 prepared to make a motion in favor of the
22 application.

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1 CHAIR LOUD: Thank you, Mr.
2 Dettman, that was an excellent recap of the
3 evidence. I think all I would add, nothing
4 necessarily different than what you said, but
5 to incorporate the ANC support of the project,
6 their great weight report which was submitted
7 to us, based on the meeting they held on
8 August 31 and their articulation of three
9 conditions for their support, all of which the
10 Applicant has agreed to. So I think when you
11 do state your motion to the extent it's a
12 motion as conditioned by the ANC's three
13 concerns, that would capture everything.

14 VICE CHAIR DETTMAN: I'll move
15 approval of Application No. 17961 pursuant to
16 11 DCMR 3104.1. I have the old advertised
17 language, so let me muddle through it here,
18 Mr. Chairman.

19 Pursuant to 11 DCMR 3104.1 for a special
20 exception for a trade school under Section
21 912, as well as a parking reduction pursuant
22 to Section 2108, located in a W-3 District, at

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1 premises 1055 Thomas Jefferson Street, N.W.
2 as conditioned.

3 CHAIR LOUD: Thank you, Mr.
4 Dettman. I second the motion. The motion has
5 been made and seconded. Is there further
6 deliberation?

7 Hearing none, all those in favor say aye.

8 (Chorus of ayes.)

9 CHAIR LOUD: All those who are
10 opposed? Are there any abstentions?

11 Ms. Bailey, can you read back the
12 vote for us, please?

13 MS. BAILEY: Sure, Mr. Chairman.
14 The Board has voted 4-0-1, granting special
15 exception relief from Sections 2108 and 912.
16 The motion was made by Mr. Dettman, seconded
17 by Mr. Loud. Ms. Moldenhauer and Commissioner
18 Schlater supports the motion.

19 CHAIR LOUD: Thank you, Ms. Bailey.
20 Thank you, Applicants, appreciate your
21 patience this afternoon and indeed for it
22 being continued an extra week.

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1 I believe this one we can do a
2 summary decision on?

3 MS. BAILEY: Yes, it is, Mr.
4 Chairman.

5 CHAIR LOUD: And how would that
6 work with respect to the conditions that were
7 agreed to?

8 MS. BAILEY: We will include them
9 as a part of the order, list them as part of
10 the order.

11 CHAIR LOUD: Okay, so we'll have a
12 summary decision on it.

13 MR. AGUGLIA: Thank you. Let the
14 record reflect that my Power Point did not go
15 over time, Ms. Loud.

16 CHAIR LOUD: But you promised
17 exactly 30 minutes.

18 Is there anything further, Ms.
19 Bailey, on this case?

20 MS. BAILEY: No, Mr. Chairman, not
21 for this case.

22 CHAIR LOUD: Thank you. And again,

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1 thank you. And you can call the next case
2 when you're ready, Ms. Bailey.

3 MS. BAILEY: Application 17993 of
4 D.C. Public Library. It's pursuant to 11 DCMR
5 Section 3103.2, for a variance from the off-
6 street parking requirements under subsection
7 2101.1, to allow the construction of a new
8 full-service Tenley-Friendship neighborhood
9 library at premises 4450 Wisconsin Avenue,
10 N.W., Square 1729, Part of Lot 808. The
11 property is zoned C-3-A.

12 CHAIR LOUD: Good afternoon. Why
13 don't you introduce yourself, although you're
14 well known to most of us, but for our record,
15 as well as your client or witness at the
16 table.

17 MS. BRAY: Good afternoon, Mr. Loud
18 and Members of the Board. My name is Kinley
19 Bray with the law firm of Arent Fox. And with
20 me today are Dedric Boyd of the D.C. Public
21 Library, Ronnie McGhee with Ronnie McGhee and
22 Associates, Architects, the Architect of

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1 Record on the project; and Ellen McCarthy,
2 also with Arent Fox is in the room.

3 CHAIR LOUD: Good afternoon.

4 MS. BRAY: On behalf of the
5 District of Columbia Public Library. Good
6 afternoon again.

7 And to your right?

8 MR. BOYD: Good afternoon, Dedric
9 Boyd, D.C. Public Library.

10 CHAIR LOUD: Good afternoon, Mr.
11 Boyd, is it B-O-Y-D?

12 MR. BOYD: Yes.

13 CHAIR LOUD: Okay. And finally to
14 your right?

15 MR. MCGHEE: I'm trying to set up
16 the presentation. Ronnie McGhee, Ronnie
17 McGhee and Associates, Architects. Thank you.

18 CHAIR LOUD: All right. And the
19 final, finally to your left, again we know,
20 but for the record.

21 MS. MCCARTHY: Ellen McCarthy of
22 the law firm of Arent Fox.

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1 CHAIR LOUD: Good afternoon. Is
2 the ANC present this afternoon, ANC-3E? They
3 are not present, but they did submit a report,
4 Exhibit 25, which I'm sure you've seen which
5 was a vote to support with conditions which we
6 can talk about later.

7 I think at the outset what we'd
8 like to do is clarify the relief being sought.

9 A couple of things. There was an amendment
10 from the initial filing of the application and
11 then there was some discussion regarding
12 whether the special exception was available
13 under 2514 versus whether a variance would be
14 necessary regarding the split zone and being
15 allowed to use the zoning standards for the
16 least restrictive district. I think where the
17 Board comes out, we'd just like you to weigh
18 in on this a little bit just so we can have it
19 for our record is that the special exception
20 under 2514 would be available and that you
21 could process your case and your evidence
22 forward under the special exception. But it

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1 would be helpful for us if you could very
2 briefly just articulate your interpretation of
3 the regulation that would limit density using
4 that special exception to point four.

5 MS. BRAY: I'd be happy to do,
6 Chairman Loud.

7 CHAIR LOUD: Thank you.

8 MS. BRAY: For the record again,
9 Kinley Bray with the law firm of Arent Fox on
10 behalf of the District of Columbia Public
11 Library.

12 To answer your question directly,
13 we do disagree with the Office of Planning's
14 analysis that perhaps an additional variance
15 is necessary, although we are prepared to
16 request that relief. I hear the Board saying,
17 however, that you would like us to articulate
18 precisely why we would respectfully disagree
19 with the Office of Planning who I note did an
20 excellent job in reviewing this application
21 and produced an excellent staff report. So I
22 want to thank them and Mr. Jesick, in

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1 particular.

2 I read Section 2514.2B which
3 requires the Board to require compliance with
4 2514.1D as a limitation on the FAR of the area
5 outside the 35-foot boundary in which the
6 lesser restrictive zone is being applied so
7 that in this case we are only requesting 11
8 feet in width in property which is classified
9 within the R-1-B zone. And the proposed
10 property line would separate the library
11 property from the Janney School property.

12 We're asking for a width of 11
13 feet, approximately 1,006 square feet of land
14 area that the Board grant a special exception
15 so that the standards of the C-3-A zone are
16 applied to that land area. If our property
17 were to contain Lot 808 as it exists today,
18 which includes all of Janney School as well, I
19 would read 2514.1D through 2514.2B as
20 restricting the land area outside of that 1000
21 square foot area that remains in the R-1-B. I
22 know that's a very difficult way of walking

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1 you through that analysis. It's a difficult
2 provision of the zoning regulations to deal
3 with.

4 The 2514.1 allows, as a matter of
5 right, a lesser restrictive zone to be applied
6 to area which is split zone that carries more
7 restrictions such as the R-1-B in this case.
8 But restricts totally the amount of
9 development that can occur in the R-1-B
10 portion.

11 2514.2 on the other hand, allows
12 the Board to grant a special exception to
13 extend the bulk, use, and height restrictions
14 of the lesser restrictive zone, in this case,
15 the C-3-A to up to 35 feet in width across the
16 property which is classified in the more
17 restrictive zone. In our case, that's 1,006
18 square feet, approximately 11 feet in width.
19 We are well below the 35 foot requirement.

20 2514.2B says the Board shall
21 require compliance with 2514.1D which says .4
22 FAR is the bulk limitation allowed on the

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1 remaining portion of the R-1 property and so
2 if we were extending -- if we had a much
3 larger piece of property and the 35 feet would
4 not cover all of the area within the R-1-B
5 portion of the property that we wanted to
6 develop, it would be the area outside that 35-
7 foot portion to which the .4 restriction would
8 apply.

9 Going back to the Lewis Plan, which
10 introduced the concept of FAR restrictions and
11 bulk restrictions simultaneously in the
12 District of Columbia, Lewis equated FAR with
13 bulk. And in the most recent case that we
14 could find which dealt with this question of
15 how 2514.2 is to be interpreted, which was
16 17399 which is mentioned in the Office of
17 Planning report, the Applicants seemed to
18 argue that the calculation should -- of .4 FAR
19 restriction, the calculation of the .4 FAR
20 restriction should be limited to areas outside
21 the 35-foot boundary.

22 As best we can tell from the record

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1 which is limited to the transcript in that
2 case because it was a summary order, that is
3 the interpretation that the Board accepted and
4 it was not the Office of Planning's suggested
5 interpretation which was that in that 35-foot
6 area the building was limited to .4 FAR.

7 So we believe 2514.2B does not
8 apply in this case because we are not asking
9 for -- asking to develop portions of the
10 property outside of that 35-foot boundary.
11 However, we believe that if the Board were to
12 determine a variance were necessary, we have
13 met those requirements and the Office of
14 Planning has walked through their analysis and
15 we adopt that analysis as our own.

16 CHAIR LOUD: Good. I think that's
17 a threshold question. I think where we're
18 ending up on the question is that the special
19 exception is available to you. I just wanted
20 you to articulate the basis for it as you saw
21 it. Part of your articulation, I think, is
22 precedent by the BZA and the case that you

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1 reference.

2 MS. BRAY: Unfortunately, that's
3 the only case that we've found where there is
4 any significant discussion on the record of
5 that question and the Board, despite the fact
6 that the application was opposed and this
7 issue was briefed in detail, discussed in
8 detail, the Board issued a summary order. So
9 it's not something where there's actually a
10 finding that we can rely on. It was only the
11 deliberation between the members of the Board
12 at that time.

13 CHAIR LOUD: And that may happen
14 yet again in this case.

15 (Laughter.)

16 CHAIR LOUD: Out of a sense of
17 fairness, let me turn to the Office of
18 Planning and just very briefly, obviously not
19 a long, extended discussion, but just for the
20 other side of the discussion.

21 MR. JESICK: Good afternoon,
22 Members of the Board. My name is Matt Jesick.

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1 The Office of Planning reviewed that case
2 that was mentioned, 17399, I believe is the
3 number. In that case, the Board did determine
4 that variance relief to 2514.2B was not
5 required because they were only extending the
6 zoning regulations, I believe it's 34 feet,
7 not surpassing the 35-foot limit.

8 The Office of Planning in reviewing
9 these sections of the regulations did not see
10 I guess where that interpretation came from.
11 So out of an abundance of caution, I guess, we
12 kind of recommended or went through the
13 analysis in our report for an FAR variance
14 which we support. We have no objection to the
15 form of the library, but we did not see where
16 the interpretation that the Applicant has put
17 forth was really derived from.

18 I can go through the language in
19 more specifics if you'd like.

20 CHAIR LOUD: I think the language -
21 - well, it is helpful to the Board, certainly,
22 but I think the regulation is kind of out

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1 there and speaks for itself. I don't know if
2 Board Members had any questions for you or
3 just wanted to weigh in on the issue
4 separately from my asking questions, because I
5 know it was something that a number of Board
6 Members sort of took a look at as well.

7 So let me turn now to other Board
8 Members and see if they have any comments or
9 feedback. Everyone is being shy, except for
10 Mr. Schlater.

11 MEMBER SCHLATER: So is it your
12 interpretation that in the R-1-B zone that on
13 that portion of the lot there can be no more
14 than .4 FAR built?

15 MR. JESICK: That's the way we read
16 the regulations, yes.

17 MEMBER SCHLATER: Is that in your -
18 - in other examples where you have split
19 zoning, is that how the calculation is
20 typically made? My personal opinion is that
21 the language is a little ambiguous.

22 MR. JESICK: Yes, it's definitely

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1 ambiguous, that's true. I have not
2 encountered this situation previously, so I
3 can't say in other examples. The only example
4 that I know of is the one that was mentioned
5 in our report, the case from five or six years
6 ago where the Office of Planning put forth the
7 same argument that I am today. But again,
8 like you say, it is ambiguous. We did seek an
9 interpretation from the Zoning Administrator,
10 but I have not received one to date. We're
11 open to other interpretations if the Board so
12 chooses.

13 CHAIR LOUD: Well, again, I think
14 we're comfortable proceeding forward with the
15 understanding that the -- when the regulation
16 talks about -- when the regulation's language
17 speaks to the portion of the lot that's in the
18 R-1, in this case, that we're talking about
19 the portion that's part of the project in
20 terms of the density. And I think that's the
21 manner under which we're going to proceed for
22 purposes of today. I think it's consistent

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1 with the previous position the Board has taken
2 on it and it would just seem to make a lot
3 more sense in terms of -- especially a project
4 like this.

5 And then also, the part of the
6 regulation that talks about 35 feet, because
7 this only goes 10 feet into -- I think
8 something like 10 or 11 feet into the R zone.

9 With that in mind, unless there are
10 any considerations or questions by the Board,
11 we'll move forward and allow the Applicant to
12 present its case.

13 MEMBER MOLDENHAUER: I just wanted
14 to ask a question that you brought up the
15 issue to Mr. Jesick about. It seems like your
16 opinion in the OP report focuses just on
17 Section D, but I guess have you looked at the
18 issue of the 35 feet? Because that seems to
19 be something that Ms. Bray is kind of focusing
20 on more in regards to the fact that they are
21 within the 35-foot requirement.

22 MR. JESICK: I guess our reading of

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1 is that even within that 35 feet, the previous
2 section, 2514.1D would still apply.

3 2514.2B is very direct in referring
4 to that other section and it says authorizing
5 an extension, the Board shall require
6 compliance with the previous, the other
7 paragraph . It doesn't say beyond the 35-foot
8 boundary, the Board shall require compliance
9 with the previous paragraph or beyond the
10 limits of the structure, the Board shall
11 require compliance with the previous
12 paragraph. It just says in authorizing the
13 entire extension itself, the Board shall
14 require compliance with those FAR limits.

15 That's where we're getting our
16 reading from . Again, like Commissioner
17 Schlater said, it is somewhat ambiguous, so
18 you know, we're open to hearing other
19 interpretations as well.

20 MEMBER MOLDENHAUER: And let me
21 just clarify then, your response to be that
22 would be and I just want to make sure that I

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1 understand, would be that whether or not it's
2 in the 35 feet, the interpretation of Section
3 2514D is that it's overall computation and
4 just to kind of set out a mathematical
5 computation as I see it, it would be the total
6 lot size times your C-1-A or C-3-A FAR
7 calculations plus the portion of the lot size
8 times your .4 FAR calculation, creating a
9 total for the entire lot that is now -- that
10 is split between the two zones.

11 MS. BRAY: That's absolutely
12 correct and that's why the provision itself
13 begins with "for computation purposes the FAR
14 shall be limited."

15 Our reading is that to interpret
16 Section 2514.1D as being a restriction on the
17 amount of building FAR that can be built in
18 the R-1-B portion of the property would be
19 inconsistent with 2514.2 which says that you -
20 - by special exception extend the bulk area
21 and use provisions of the lesser restrictive
22 zone, in this case the C-3-A to the more

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1 restrictive zoned portion of the property.
2 And Lewis Plan supports that.

3 There's a lot of discussion in Case
4 17399 about if not -- if FAR is not bulk, what
5 is it? And the counsel in that case referred
6 the Board to page 106 of the final report for
7 a new zoning plan for the District of Columbia
8 by Harold Lewis which is dated November 9,
9 1956. It's Exhibit No. 37 in 17399. I have a
10 copy I'd be happy to enter into the record
11 here.

12 But Mr. Lewis said the most
13 promising of the direct bulk controls and the
14 one recommended here is Floor Area Ratio and
15 clearly Floor Area Ratio was was meant to
16 control bulk. And when we say in 2514.2 that
17 we extend the use high-end bulk regulations,
18 we mean FAR.

19 MEMBER MOLDENHAUER: Thank you. I
20 would appreciate if you could introduce that
21 into evidence just for our reference. Thank
22 you.

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1 I have no further questions on this
2 issue.

3 CHAIR LOUD: Thank you, Ms.
4 Moldenhauer. I think unless there's some
5 questions from Mr. Dettman or Mr. Schlater, we
6 will turn to the Applicant for its case.

7 Why don't we begin your case and I
8 think if there are questions in the course of
9 the presentation, we can ask those.

10 MS. BRAY: Well, Mr. Loud, we had
11 come to the hearing today planning to be
12 prepared to stand on the record in this case
13 because we believe that the record was quite
14 full. We had the support of the Office of
15 Planning. We have the support of the Advisory
16 Neighborhood Commission.

17 I'm going to suggest that what we
18 do in lieu of simply standing on the record,
19 just to orient the Board to the project is
20 have Mr. McGhee walk through the boards that
21 he has set up to show the project and then
22 we'll have Mr. Boyd give a brief presentation

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1 about the library's programming needs and
2 we'll finish up with Ms. McCarthy and her
3 brief testimony about how we comply with all
4 of the requirements. And we estimate we
5 should need no more than 20 minutes to do
6 that.

7 CHAIR LOUD: That sounds great.
8 Again, if you find an opportunity to truncate.

9 I think the Board has read everything in the
10 record and may have some very specific kinds
11 of questions, so I think the way you've
12 outlined it is a good way to proceed. I'm
13 assuming Ms. McCarthy is not going to read
14 this frightening long statement into the
15 record -- okay, because we have it and
16 reviewed it and all that.

17 Are there witnesses that you need
18 to qualify as experts?

19 MS. BRAY: Yes, we have submitted
20 the resume of Mr. McGhee and Ms. McCarthy as
21 experts in architecture and zoning and
22 planning, respectively, and both have

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1 testified extensively before this body as well
2 as the Zoning Commission and we would ask that
3 you qualify them as experts.

4 CHAIR LOUD: Thank you. I'm
5 familiar with both of your proffered experts
6 and the submission is in our record. Let's
7 see if Board Members have any questions or
8 concerns? There being none, consider that
9 both witnesses have been accepted as experts.

10 MR. MCGHEE: Good afternoon,
11 Members of the Board and staff. Thank you
12 very much for this opportunity to present. I
13 will try to be as brief as possible. I know
14 you've spent time reviewing this project.

15 Basically, we are offering up a new
16 design for a library on the same site as the
17 original library. It's about a 20,000 square
18 foot, 21,000 square foot library on the site
19 of the original library itself. It's a very
20 unique site. It exists in a very active
21 neighborhood, very multi-modal transportation
22 neighborhood, pedestrian, rapid transit,

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1 vehicular environment. If you walk around
2 that site, you notice a very active site and
3 we are very excited to put a new library back
4 in place in that situation.

5 But the site presents some unique
6 problems. It is a very polygonal site. It's
7 basically a site that responds to the street
8 grid that was created back in the days when
9 Tenleytown was first designed. Wisconsin and
10 Albemarle cut right across the front of our
11 site. It creates some unique problems for us.

12 Albemarle is a very active street.
13 It was designed by DOT. It presents a turn
14 lane so there's really no place for cars to
15 stack. It's basically a place for cars to
16 stack. No place for cars to park right in
17 front. No place to access any parking from
18 that street.

19 Wisconsin is a very active street,
20 very high-density street and we're right on
21 the corner, so DOT has opted against allowing
22 us to have any access to parking from the

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1 corner, but as far away as possible. So
2 access to parking is at the farthest edge of
3 our site.

4 That puts us in a severe limitation
5 to provide parking on the site, in addition to
6 having a robust program. This is the
7 smallest in the library system, one of the
8 smallest sites in the library system, only
9 15,000 square feet. So in that environment,
10 we're trying to put that 21,000 square feet of
11 program.

12 So with an eye towards cost and
13 other issues, we've looked at a two-story, two
14 and a half story site that puts most of the
15 public programming on the first floor,
16 children's program, which we've gone through
17 many, many community meetings, NCPC, Fine
18 Arts, to view the project and met the test for
19 all those folks, public and private. And if
20 you want me to walk through details of the
21 design, we can do that. I don't know if you
22 said you -- okay.

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1 I can do it from here. Basically,
2 the building is polygonal. We've taken a
3 motif, the site motif as a design-generating
4 element for the building. The back is the
5 actual design element -- what we're mimicking
6 is a book, like a library book. The back of
7 the book is against the retaining wall of the
8 site, which is the Janney site. The open fin
9 area on the east and
10 -- west and south sides is sort of the pages
11 of the book opening up to the public. The
12 fins, the vertical fins provide shading. It's
13 a LEED Silver Project, which also provides
14 some limitations on what we can do on the
15 site.

16 And the idea is to have public
17 access. We've been to many, many community
18 meetings that the community wanted to have the
19 children's area as large as possible which
20 takes up a lot of the first floor. The idea -
21 - that sort of pushed us in the position of
22 having to require less parking and we'll get

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1 into the details of how much parking we can
2 provide.

3 But the design of the building is -
4 - let's see, can I use this microphone?

5 CHAIR LOUD: As you transition, Mr.
6 McGhee, I just wanted to share that I'm going
7 to step outside for two seconds. I don't want
8 to adjourn the hearing, but I think we should
9 continue with the hearing. As I step outside,
10 I'm going to watch the monitor in our
11 conference room and then I'll return in about
12 three minutes. Mr. Dettman will preside over
13 the hearing as I step outside.

14 MR. MCGHEE: All right, as you can
15 see, the design of the building -- these
16 copper fins are really one of the prominent
17 elements of the building. They provide
18 control of sunlight in the building while
19 providing almost the open-book effect to the
20 public sides of the building.

21 We are engaged on the property line
22 on the back side of the site, so that is

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1 basically no fenestration on that side. And
2 again, if you look at the project, there's a
3 fairly robust program, not much is wasted.
4 This site is probably one of the most highly
5 used, the book turnover over here is one of
6 the highest in the library system. So the
7 idea of providing as many -- all libraries
8 have a competitive number of books. They're
9 basically all equal in size, but the book
10 turnover here is very great, so the idea of
11 how to process and how to have people to come
12 to the site is very important.

13 So you enter on the corner,
14 basically, through a very robust glass area.
15 Come in to the area where the system is
16 controlled. We have a very active public
17 access to the building, so in the evening we
18 are able to close the building off and have
19 people come in and have meetings and have
20 readings and things like that. That was one
21 of the highly sought after elements of the
22 original library that wanted to be repeated.

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1 So we've done that.

2 Some of the interior elements here,
3 very open system, very strong, what we call a
4 power wall system. You walk in the front
5 door. It directs you down a line of the
6 stacks, shows you what's new in the library,
7 what's upcoming and kind of controls the
8 access of the library and that's -- you can
9 see these.

10 Some of the other boards show, we
11 have a LEED Silver. We hope potentially to
12 make gold. There's a third floor which houses
13 the mechanical system and the green roof up
14 there. And we've actually been fighting with
15 DOT to make sure the ground level plain is
16 unique also. They'd like to have concrete.
17 We like to have something else. But we're
18 working with them on that.

19 There's a second through the
20 building. As you see the copper scheme is
21 brought into the building. Some metal panels.

22 It's a steel building. Lot of glass, lot of

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1 openness. Light is brought through the roof
2 of the system to bring down deep into the
3 building so you have natural light throughout.

4 It's basically an attempt to access the high-
5 performing building status that we would --
6 that you like to see in a building that's
7 going to have a lot of children in it. Low
8 VOCs, high light, high access to the outside,
9 so that's really the target of this library.

10 I don't know if we need to get into
11 details of the program which Mr. Boyd will do.

12 MS. BRAY: Mr. McGhee, will you
13 show the Board where the parking is to be
14 located on the site view? If you would point
15 that out? And then also if you would point
16 out the area on the site that remains in the
17 R-1-B zone in which we're asking the C-3-A
18 zone to be applied?

19 MR. MCGHEE: The parking on the
20 site is accessed here from Wisconsin. Let's
21 see if I could show it to you right away.
22 It's accessed to an alley in the back.

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1 There's only seven spaces and one handicap
2 space. We actually had an ANC meeting that
3 requested additional handicap spaces, although
4 they won't be legal handicap spaces, they'll
5 be designed handicap spaces.

6 We have a small area for handicap
7 here and a driveway. All of our loading will
8 be done after hours so we've utilized the
9 space very tightly back there. But we are
10 reduced in parking because of the robust
11 program on the first floor.

12 And again, as you see, we're close
13 to the corner, so we pushed the parking as far
14 down as possible as required by DOT and other
15 agencies so that our access would not block
16 traffic.

17 Now the board that shows you the
18 little sliver -- this is actually the drawing
19 showing the area of the site we're talking
20 about that exists as R-1-B. So this is in the
21 back part of the site. And the Janney site is
22 back here.

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1 Let's see. I think that's all
2 unless there are questions. Again, we wanted
3 to make sure you understand the difficulties
4 it would take to add another floor or do
5 excavation and provide parking and that's part
6 of why we're here today. Thank you.

7 CHAIR LOUD: Board Members, are
8 there any questions for Mr. McGhee? Okay,
9 you're going to go to your next witness?

10 MS. BRAY: Yes. I'd like to
11 introduce Dedric Boyd who is sitting in Jeff
12 Bonvechio's stead, I believe. Mr. Bonvechio
13 is identified as the library's witness.

14 And Mr. Boyd, I'd just like to
15 point out that the specific program
16 requirements of the library are in the record.

17 It was submitted as part of the pre-hearing
18 statement, but if you could just introduce
19 yourself and give the Board a brief overview
20 of the specific programming issues we face
21 with planning the Tenley Library.

22 MR. BOYD: Thank you. I'm Dedric

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1 Boyd with the Office of D.C. Public Libraries.

2 Currently, the library is in the midst of a
3 major transformation with either six new or
4 renovated libraries that will open in 2010
5 with another six opening in 2011. All of the
6 new libraries share a common building program
7 that is adjusted to meet the unique demands of
8 each community the library services.

9 What I'd like to do to share some
10 of the program requirements for the new
11 facilities, first, all of our new libraries
12 need to provide natural light which we plan to
13 do here at the Tenley site. We'll also
14 accommodate every changing technology and
15 provide overall flexibility to change as
16 library services and as communities change.

17 Secondly, DCL desires to build an
18 environmentally-friendly facility and the D.C.
19 Green Building Acts requires us to meet the
20 requirements of the U.S. Green Building
21 Council LEED Silver rating.

22 Finally, with respect to

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1 architectural design, as Mr. McGhee indicated,
2 new neighborhood libraries much reflect the
3 program and goals of the library and the needs
4 of the District of Columbia residents served
5 by each particular facility incorporating
6 forward-thinking approaches to urban design,
7 architecture, engineering, environmental
8 technologies in the public realm.

9 Each new facility must be an urban
10 library, a destination that can attract and
11 support hundreds of users a day and promote a
12 vibrant mixed-use neighborhood and active
13 street environment. The new library must have
14 an architectural presence befitting its
15 location in each community, yet be reflected
16 of the city's modern growth and new
17 innovations in building design and technology.

18 It should not be a duplication of
19 other recently-built libraries in the District
20 or in the U.S., but should take the most
21 successful elements of these new facilities
22 and create architecture for Washington that is

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1 distinctive and of this time. The design must
2 be unique in the nation's capital and
3 representative of 21st century architectural
4 ideals.

5 Now speaking specifically regarding
6 the Tenley Library, the Tenley Library was
7 closed at the end of December 2004 as part of
8 the original capital improvement plan. In
9 2005, this original plan was stopped for
10 various reasons, mainly because a smaller,
11 inadequate facility was being proposed. The
12 library the interim facility in December of
13 2009 and the Tenley Friendship community has
14 been without a full-service library for going
15 on five years.

16 Starting with the new design team,
17 the library design, the building you'll see in
18 front of you this afternoon that Mr. McGhee
19 just presented, this building meets all of the
20 programmatic requirements for the library.
21 However, during the design phase considerable
22 time was spent with the Deputy Mayor's Office

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1 for planning economic development as the idea
2 of a mixed use facility was explored.

3 Due to this exercise, Tenley
4 Library was delayed as compared to the other
5 three libraries that were closed in December
6 2004.

7 In conclusion, the D.C. Library is
8 pleased and excited that this project is
9 moving forward to provide enhanced and
10 expanded library services to the Tenley
11 Friendship community.

12 We're also excited that the library
13 will be an iconic building in the neighborhood
14 and a gathering place for all.

15 That concludes my testimony.

16 CHAIR LOUD: Thank you, Mr. Boyd.

17 Are there any questions for the witness?

18 We can go to your next witness.

19 MS. BRAY: With that we turn to Ms.
20 McCarthy to go over the specific special
21 exception criteria and variance criteria that
22 we have already enumerated in our application.

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1 Ms. McCarthy will briefly go over those for
2 the record.

3 MS. McCARTHY: Very briefly for the
4 record. The site is uniquely, severely
5 constrained due to an inability to add ground
6 area because the other occupant of the lot,
7 Janney School, is also in need of expansion
8 and has no surplus land; steep slopes, the
9 location of the retaining walls and the odd
10 shape of the lot which is pentagon and I think
11 there's only two right angles in the entire
12 lot.

13 These limitations on buildable area
14 are directly linked with the inability to
15 provide a full complement of parking spaces
16 required by the zoning regulations, but relief
17 from that requirement can be granted without
18 adverse impact because it's a neighborhood-
19 serving library. There's a relatively low
20 demand for parking as is evidenced by the fact
21 that there were only four parking spaces there
22 previously, and there are no parking spaces

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1 attached to the interim library.

2 There's the presence of two other
3 libraries within five to ten minutes' drive,
4 Chevy Chase and Cleveland Park and Chevy Chase
5 has a relatively large parking lot. There's a
6 presence within walking distance of three
7 elementary schools, two middle schools, and
8 three high schools, plus another set of
9 schools accessible by bus a short distance
10 down Wisconsin Avenue.

11 The integrity of the zone plan
12 isn't impaired by reducing the number of
13 parking spaces, because the regulations for
14 libraries which were adopted in 2003 already
15 contemplated providing relief for the number
16 of spaces required when circumstances such as
17 a nearby Metro Station and in this case, it's
18 directly across the street, when the presence
19 of Metro Station reduces the need for parking.

20 With regard to the special
21 exception under 2514.2, the library meets the
22 requirements for that special exception as the

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1 proposed density is substantially less than
2 the calculations that would be done under
3 2514.2B. We're only proposing 22,000 square
4 feet and doing the calculations, assigning .4
5 to the R-1-B section would give us 60,000
6 square feet of density that is permitted just
7 on the library site.

8 In addition, there's no harm to --
9 no adverse impact on the neighboring property
10 because there's no intrusion on the privacy,
11 light, and air of any residences since there
12 aren't any residences that adjoin that portion
13 of the lot where we'll be moving the zoning
14 boundary. And the perceived bulk of the
15 building that will actually be in the R-1-B
16 zone is substantially minimized by the fact
17 that there's a huge retaining wall behind it
18 and a much higher piece of ground behind that.

19 So in short, the plans for the
20 library meet all the tests established in the
21 zoning regulations for granting relief for
22 this innovative, well-designed project which

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1 will greatly increase the quality of library
2 services to the community and provide them in
3 a comfortable and inviting setting.

4 Thank you, Mr. Chair.

5 CHAIR LOUD: Thank you, Ms.
6 McCarthy. Are there any questions for Ms.
7 McCarthy?

8 Let's turn back to the Applicant to
9 see if that's the close of your case?

10 MS. BRAY: That is indeed the close
11 of our case. I have a couple of comments in
12 summary.

13 CHAIR LOUD: Okay. And you'll do
14 those in closing? Okay.

15 Then let's turn to the Office of
16 Planning.

17 MR. JESICK: Thank you, Mr.
18 Chairman, and Members of the Board. My name
19 is Matt Jesick.

20 I think we've already discussed to
21 some degree a lot of what I was going to say,
22 so I'll just try to be very brief in my

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1 analysis.

2 I'll go through the areas of relief
3 that we're discussing today and examine the
4 criteria that the Office of Planning used to
5 reach its conclusions. For the special
6 exception, I think we did talk about the 35-
7 foot limit and certainly the application is
8 within that. We also discussed at length the
9 next criteria which is the FAR. The third
10 criteria is the extension shall have no
11 adverse effect on the character of the
12 neighborhood and we found that this library
13 would indeed not have any adverse impact on
14 the neighborhood. Wisconsin Avenue is a major
15 commercial corridor and that is a place where
16 you would expect to see important civic
17 buildings such as libraries.

18 On the other side of the building
19 are institutional uses like the Janney
20 Elementary School, St. Anne's Academy and
21 Church and those, in effect, act as a buffer
22 between the library and the residential

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1 neighborhood beyond.

2 The last criteria is that the Board
3 may impose conditions on the approval of the
4 library and the Office of Planning recommends
5 none. So we find that the special exception
6 criteria have been met.

7 In regards to the parking variance,
8 we did find that the site is uniquely
9 constrained. The size of the library property
10 is somewhat smaller than other similar
11 libraries in the District. It's about 15,000
12 square feet, where other libraries are upwards
13 of 25,000 or almost 30,000 for their property
14 size.

15 Also, the library property as has
16 been noted today is land locked, so to speak.

17 It cannot expand to the south or to the west
18 as the Janney play field is located in that
19 spot.

20 So we feel that that unique
21 condition leads to the extraordinary -- sorry,
22 the practical difficulty on the Applicant that

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1 it would be unnecessarily burdensome to either
2 expand the property which I've already
3 described as very limited in possibility or to
4 construct underground parking which would be
5 very expensive, or to somehow replace or
6 remove the retaining walls which would also be
7 very expensive.

8 We found that the relief to parking
9 would not be detrimental to the public good.
10 The library again has been noted as directly
11 across from the Tenleytown Metro and there's
12 also public parking available in the
13 neighborhood in parking garages.

14 That being said, we don't feel that
15 there would be many drivers coming to the site
16 in any event as it would be mostly used by
17 members of the immediate community.

18 So that concludes our testimony.
19 We're happy to recommend approval of the
20 application and I'd be happy to take any
21 questions.

22 CHAIR LOUD: Thank you. That was

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1 an excellent report, both submitted as part of
2 our record, Exhibit 24 and then your testimony
3 as well.

4 Do Board Members have any
5 questions?

6 MEMBER SCHLATER: I just have a
7 quick question. What is the status of the
8 city's plans to redevelopment the adjacent
9 site and potentially this site over the
10 library?

11 MR. JESICK: What I understand is
12 that the plants for redevelopment of the
13 Janney site are kind of just off the table at
14 the moment. However, I do understand that the
15 library will be built structurally to
16 accommodate development on top of it should at
17 some point in the future development be
18 contemplated for the Janney School site or
19 this site.

20 CHAIR LOUD: Thank you, Mr.
21 Schlater. Any follow up?

22 Just to sort of briefly follow up

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1 Mr. Schlater's question, is that what the
2 discussion alluded to earlier about the delay
3 in the project and the conversations with the
4 Deputy Mayor regarding the mixed use project.

5 They are going to try to figure out a way to
6 do some housing on the site?

7 MR. JESICK: Yes. I don't know how
8 long the process lasted exactly. I think an
9 RP went out from the Deputy Mayor's Office to
10 solicit proposals for what could be
11 accomplished on the site. Both the library
12 site specifically and extending into the
13 Janney property. But again, that process is I
14 think gone away and I don't think there are
15 any proposals out there right now.

16 CHAIR LOUD: Okay. With that then,
17 let me see if the Applicant has any questions
18 for Planning. Okay.

19 It appears we've been joined by Mr.
20 Jennings from the Department of Transportation
21 and the Department of Transportation did
22 submit a report into the record. It's our

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1 Exhibit 26. Does the Applicant have a copy of
2 that? Okay.

3 MS. BRAY: We do.

4 CHAIR LOUD: Good afternoon, Mr.
5 Jennings.

6 MR. JENNINGS: Good afternoon.

7 CHAIR LOUD: Your timing is
8 impeccable. Why don't you just go through
9 your report and summarize your conclusions and
10 then how you got to that.

11 MR. JENNINGS: Sure. For the
12 record, my name is Jeff Jennings. I work for
13 the District Department of Transportation. We
14 didn't really have much in the way to go on as
15 far as the application is concerned, and what
16 I mean by that is there was no formal
17 transportation report or study as we stated in
18 some of the initial comments.

19 I think one of the biggest problems
20 that we had with the application is trying to
21 understand how a site so close to a
22 substantial amount of mass transit, the

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1 additional parking or the parking that is
2 being proposed for the site. I think we have
3 a total of seven parking spaces, two of those
4 are ADA which we completely understand, but
5 the five parking spaces and the way that they
6 are positioned or according to the plans, the
7 way that they are proposed off of Wisconsin,
8 it doesn't leave us feeling too comfortable as
9 far as how those parking spaces are situated
10 up against the building. A single drive aisle
11 is the way we understood it and much of that
12 is reflected in our comments.

13 I'd be happy to answer any
14 questions.

15 CHAIR LOUD: Let me turn first to
16 the Applicant to see if the Applicant has any
17 questions and then we'll turn to Board
18 Members.

19 MS. BRAY: I do. Good afternoon,
20 Mr. Jennings.

21 MR. JENNINGS: Good afternoon, Ms.
22 Bray.

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1 MS. BRAY: Mr. Jennings, in
2 reviewing this application and preparing your
3 report, did you consult the zoning regulations
4 in Chapter 21 thereof?

5 MR. JENNINGS: We did.

6 MS. BRAY: And are you aware that
7 the parking requirement for this type of
8 facility, this size of facility in the C-3-A
9 is at least 18 spaces?

10 MR. JENNINGS: We did see that and
11 you referenced that in your July 20 Statement
12 of Reasons.

13 MS. BRAY: Can you elaborate what -
14 - which plan you were reviewing when you
15 commented that you were concerned about the
16 access to the property? I believe there was
17 something in your report referring to a curb
18 cut on Albemarle, just to clarify for the
19 record.

20 MR. JENNINGS: Yes, the curb cut on
21 Albemarle, we took that from the diagrams as
22 part of the -- I believe it's July 20, the

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1 application. And there's no page numbers and
2 I apologize for kind of -- it's a Freelon
3 rendering, architect rendering.

4 MS. BRAY: Can I direct your
5 attention to the site plan prepared by Freelon
6 which is identified as Sheet C4, dated March
7 20, 2009. It appears on the second page of
8 Tab B in the application documents.

9 MR. JENNINGS: I believe I have
10 that. I have Sheet C1 which is the one I
11 think we used to look at an Albemarle curb
12 cut.

13 MS. BRAY: Can you read the caption
14 on drawing C1?

15 MR. JENNINGS: One hundred percent
16 construction documents, existing conditions --

17 MS. BRAY: And that's an existing
18 conditions plan, is it not?

19 MR. JENNINGS: I would assume so.

20 MS. BRAY: With respect to the
21 Department of Transportation's concern over
22 the access to the parking, were you reviewing

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1 the access to the parking as if it were on
2 Albemarle or as if it were coming from
3 Wisconsin Avenue? That's not clear to me.

4 MR. JENNINGS: Wisconsin.

5 MS. BRAY: Okay, just to clarify
6 for the record, the Albemarle curb cut, isn't
7 that being closed?

8 MR. JENNINGS: Okay. How is that
9 relevant to the discussion or the comments we
10 had?

11 MS. BRAY: The DDOT report actually
12 specifically points out the fact that there is
13 a concerning curb cut on Albemarle which is
14 being maintained, which is incorrect.

15 MR. JENNINGS: I think the gist of
16 my comments from earlier when Chairman Loud
17 pointed out how he'd like to kind of put
18 together a brief synopsis of the comments, the
19 parking is positioned off of Wisconsin, the
20 curb cut on Wisconsin, as I understand it has
21 already been approved, and therefore those
22 parking spaces are being proposed here today.

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1 MS. BRAY: Are you agreeing then
2 there is no adverse impact in the reduction of
3 parking on the site?

4 MR. JENNINGS: I don't think we're
5 taking that position.

6 MS. BRAY: You're advocating for
7 further reduction of parking?

8 MR. JENNINGS: That's correct.

9 MS. BRAY: Acknowledging that the
10 zoning regulations require significantly more
11 parking than what is being proposed?

12 MR. JENNINGS: We completely
13 understand.

14 MS. BRAY: I have nothing further
15 for DDOT.

16 CHAIR LOUD: Thank you. Board
17 Members, are there questions for DDOT?

18 I have a couple of questions. In
19 your report, you indicate that providing
20 additional public parking at the library, I
21 guess additional to the handicapped spaces
22 would encourage driving and induced demand for

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1 even more parking. Is that a problem? Is
2 there an adverse impact to having five
3 additional cars have the opportunity to park
4 at the site?

5 MR. JENNINGS: We stated our
6 position the way we did because we're not
7 clear how if you're pulling into that drive
8 aisle off of Wisconsin, how do you know those
9 parking spaces are open? In the instance that
10 none of them are open, all seven or so parking
11 spaces are taken, what's the action that you
12 would, as a driver of an automobile, what do
13 you do from there? It's a single drive aisle,
14 as we understood it, the way that we looked at
15 the various plans.

16 And as I think we tried to describe
17 to the best of our ability, you would then
18 have to back up on southbound Wisconsin Avenue
19 which is never, never an idea that we would
20 want to introduce for parking of any type,
21 especially along business Wisconsin Avenue
22 which has I believe has ADT, the last ADT,

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1 average daily traffic counts that we have for
2 Wisconsin, southbound I want to say it's in
3 the ballpark of like 23,000 vehicles.

4 CHAIR LOUD: So it's not that it's
5 really over-parked or they're offering too
6 many spaces. That would be true if they had
7 three spaces or even two spaces. It's the
8 potential for traffic conflicts, traffic
9 congestion around the uncertainty of what's
10 inside of that parking lot.

11 MR. JENNINGS: That's the first
12 point. I think the second point is did the
13 Applicant explore all potential options in
14 advance of saying seven is the right number to
15 put here on this spot. And one of the ideas
16 that we pitched in the comments, when you look
17 at the area, you've got an underground parking
18 garage that's under utilized at the Tenleytown
19 Metro Station, where there's retail, including
20 Best Buy, a hardware store. The last I
21 checked I think those numbers are somewhere in
22 the area like 300 or so parking spaces. I'm

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1 sure there might be the opportunity to do some
2 type of parking provision there.

3 What about St. Anne's Catholic
4 Church right next door where there's a
5 substantial amount of parking on site at that
6 location as well? I guess where I'm going
7 with this is is there a parking inventory that
8 may provide those parking spaces that the
9 Applicant seems to -- I guess, right choice of
10 words, to want. Is there a want here or is
11 there a need? I guess the way we saw it, it's
12 very much a want.

13 CHAIR LOUD: Well, it might be
14 considered a legal requirement, according to
15 certain analyses. But let me ask this
16 question, given the layout of the lot, and
17 your experience, your considerable experience
18 in transportation, do you see some ways to
19 mitigate against some of the concerns you just
20 raised without necessarily going to the extent
21 of utilizing say the St. Anne's lot or the
22 underground nearby garage that you're talking

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1 about? Just from your experience, are there
2 other mitigating strategies that can be used?

3 MR. JENNINGS: I think when you
4 view who may be using this library, will folks
5 be walking? Probably. Is there the
6 opportunity for people to be using other modes
7 of transportation, as opposed to offering the
8 parking that the Applicant wants? There are
9 other choices that can be made in advance of
10 this five parking space provision that is
11 being talked about. I mean we can go probably
12 into much greater detail. If you were to send
13 me back and talk about how you get people out
14 of their cars and avoid this potential hazard
15 of this single drive aisle circumstances
16 that's being proposed.

17 CHAIR LOUD: I see a couple of
18 Board Members itching to ask some questions.
19 Let me just ask the Applicant for a response
20 to what DDOT has sort of drawn out as a
21 potential adverse impact with respect to
22 queuing on the busy street and not being able

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1 to with the single drive out, not being able
2 to predict --

3 MS. BRAY: I'd actually like to ask
4 Ms. McCarthy to address that as an expert in
5 planning.

6 MS. McCARTHY: I think our response
7 would be two-fold. One, that the relief that
8 we're requesting is to reduce the legally-
9 required number of spaces and what DDOT has
10 said is that not only do they feel there's no
11 adverse impact from reducing them to the level
12 that we've asked for, but they wouldn't see an
13 adverse impact from reducing it even further.

14 So I would say to the extent that our burden
15 is to meet the task, the DDOT report supports
16 that.

17 But secondly, with regard to the
18 safety issues, I think we're a little
19 perplexed. If you go to the site plan which
20 is labeled as C-4, I think it's the second
21 page under Tab B in the application, the
22 notion -- it's on the board, okay.

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1 (Pause.)

2 CHAIR LOUD: As Mr. Schlater
3 indicated, I don't think your microphone is
4 on.

5 MS. MCCARTHY: Right, I think the
6 essence of DDOT's concern, as I understand it,
7 is that first of all, you wouldn't be able to
8 see whether there are parking spaces available
9 or not and that seems hard to imagine since if
10 you're coming southbound on Wisconsin Avenue,
11 you see where the curb cut is. By that point,
12 the point in time in which you'd be turning
13 right, there's only six parking spaces to see,
14 whether they are occupied or not here and the
15 additional handicapped parking space is here.

16 So number one, they'd be visible if
17 you were going south, and certainly if you
18 were coming north and turning left, it would
19 be very apparent, whether they are filled or
20 not. There is a small space to do a three-
21 point turn to turn around in the event that
22 there's a big van or something that's one of

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1 the -- in one of the spaces parked closest to
2 the street and you can't, indeed, not see all
3 the way. It is possible to turn around.
4 You'll be fronting out onto Wisconsin and you
5 see the width of the sidewalk here which would
6 mean that as you pull up to the curb cut
7 itself, you will have very ample opportunity
8 to see cars which are coming over the hill and
9 down toward you, as well, if you are turning
10 right as well as then looking further down the
11 hill toward the cathedral.

12 So I don't think -- and I think
13 that if you think about typical library
14 patrons, there are a small number of toddlers
15 that come for story hour and there a small
16 number of frail, elderly which may not be
17 formally handicapped and therefore able to use
18 a handicapped space, but for whom at least a
19 minimal amount of parking would be a major
20 convenience and may or may not be reasonable
21 to think that they would all be using public
22 transportation.

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1 So I think we can accommodate them
2 with reasonable sight lines in actually a much
3 safer location than had been the case for the
4 four parking spaces that were there off of
5 Albemarle and the most important thing is, I
6 think that we had the burden of proof to show
7 there wouldn't be an adverse impact from
8 reducing the parking and that has been shown
9 by us, I believe, and further reinforced by
10 DDOT.

11 MR. MCGHEE: If I may add, the van
12 space that's used for actual deliveries,
13 because of the maintenance schedule, supply
14 schedule the library has will be unoccupied
15 during the day. So you can actually pull into
16 that space to make your Y-out turn to come
17 out. So you're really not dead-ended into the
18 lot. So if you were to arrive at the lot that
19 was full, you could pull into that space and
20 make your Y-out and come out of the lot. So
21 we don't feel like you're trapped in there if
22 you do arrive and they are full.

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1 MS. BRAY: Mr. McGhee, following up
2 on that point, have you prepared any turning
3 diagrams that you might be able to share with
4 the Board?

5 MR. MCGHEE: Yes, we have a turning
6 diagram for the truck or large van that might
7 arrive, showing how it would work. It assumes
8 that spaces are unoccupied in the evening, but
9 it does show you that space if you'd like to
10 see that. I don't know if you've entered that
11 into the record or not.

12 MS. BRAY: I would like to enter
13 that into the record, yes.

14 MEMBER SCHLATER: I guess first
15 question for the Applicant, are any of these
16 spaces going to be reserved for staff
17 employees?

18 MS. BRAY: None will be reserved
19 for staff and employees and that's something
20 that actually the ANC asked us to address
21 before ANC-3E to explore off-site parking for
22 employees as it is done at the interim library

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1 which has no parking.

2 MEMBER SCHLATER: Okay. Second
3 question for Mr. Jennings of DDOT. I think
4 some of the questions you raise are certainly
5 legitimate just in terms of safety and turning
6 radiuses. We may not have all -- we don't
7 have a transportation report in front of us,
8 nor do we have a lot of transportation
9 expertise up here to analyze the sight lines
10 are right or whether the turning radiuses are
11 proper.

12 Is there a process the Applicant is
13 going to go through to get the curb cut off of
14 Wisconsin Avenue for the library?

15 MR. JENNINGS: To the best of my
16 knowledge, it's already been approved.

17 MEMBER SCHLATER: And was DDOT
18 involved in that process?

19 MR. JENNINGS: We were.

20 MEMBER SCHLATER: Do they take into
21 consideration what those curb cuts are used
22 for?

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1 MR. JENNINGS: I'm not entirely
2 clear since the process happened away from my
3 particular work.

4 MEMBER SCHLATER: Is it a public
5 space process or how does it work?

6 MR. JENNINGS: That's correct.

7 MEMBER SCHLATER: Okay.

8 MR. JENNINGS: I would also point
9 out, Commissioner, that adjacent to this
10 particular curb cut, you do have another curb
11 cut for St. Anne's and I think you are someone
12 who may be familiar with how wide a curb cut
13 can get. so in this particular instance, you
14 have the curb cut for the DCPL site and then
15 you have a one-way outbound curb cut which I
16 presume gets heavily utilized on Sundays when
17 parishioners are leaving the St. Anne's
18 Catholic Church site. I don't know if the
19 Applicant took a look at that. I can honestly
20 say I know I did arrive here a little bit
21 late. Is there a transportation study that's
22 been submitted into the record?

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1 MEMBER SCHLATER: Not that I know
2 of. Are libraries open on Sunday?

3 MR. BOYD: Yes, they are open on
4 Sunday, but they have very abbreviated hours,
5 so they will not be there generally after 5
6 p.m. I believe they're generally 1 p.m. to 5
7 p.m. on Sundays.

8 MEMBER SCHLATER: Maybe the
9 Applicant can speak to the public space
10 approvals process and where you've gone thus
11 far. You've got before DDOT and gotten this
12 approval? Did you have to provide any sort of
13 transportation plan, traffic plan?

14 MR. BOYD: Yes, we did meet with
15 DDOT and one of the questions that was raised
16 was in regards to Mr. Jennings' question.
17 However, I think one of the proposals that was
18 made to DCPL was in essence to us to contact
19 St. Anne's and in essence ask them could we
20 sort of move their property line over which I
21 think we felt was a bit much to ask them to
22 give us space on their property just for the

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1 curb cut. So that was one of the questions
2 raised in our review with DDOT.

3 MR. MCGHEE: If I can add, one of
4 the questions came up before DDOT was the
5 width of that access point where if you're at
6 St. Anne's, it's a double wide; and ours,
7 which we originally had as a double-wide, DDOT
8 requested that we narrow it down so that
9 pedestrians would have less travel from one
10 side to the other in case traffic was on it.

11 St. Anne's has a pulse of traffic
12 that occurs with school obviously, and the
13 library is sort of more constant. But the
14 idea there was to reduce the amount of
15 jeopardy that a pedestrian might be in. So
16 there's one side of DDOT while the other side
17 has another opinion. We think we've satisfied
18 both that we give you a way in and out, narrow
19 the access, reduce the parking. So we tried
20 to satisfy all concerned in that regard.

21 MS. MCCARTHY: And it's probably
22 important to note that the peak of the

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1 activity at St. Anne's Church is Sunday
2 mornings when the library is not open and
3 during the weekday at the school in the early
4 morning when the library is not open and then
5 at 3 o'clock which is not a peak time of use
6 for the library.

7 So the opportunity for conflict is
8 small, but because the St. Anne's alley abuts
9 our curb cut and entrance, it means that there
10 is quite a wide distance of sight line if
11 you're coming northbound on Wisconsin Avenue
12 to be able to see into the parking lot and to
13 be able to see out as you're turning either
14 left or right. There's no building, in other
15 words, that's right up to the curb that's
16 precluding your ability to see traffic as you
17 pull out.

18 MR. JENNINGS: Chairman Loud, I
19 would venture to -- on Sundays, is there
20 something that prohibits a St. Anne's
21 parishioner from parking in the DCPL parking
22 lot? Nothing. So I mean the way that it

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1 could be viewed is it's just another access
2 point to gain close parking to the entrance to
3 St. Anne's. So it's an extension on Sundays
4 of their parking lot.

5 CHAIR LOUD: Thank you, Mr.
6 Jennings. I believe Board Member Moldenhauer
7 had some follow-up.

8 MEMBER MOLDENHAUER: Question for
9 Mr. Boyd. Do you know currently how many of
10 your current clients are users of a public
11 library, park or park around or how many
12 actually use different forms of public
13 transportation or walk?

14 MR. BOYD: No, I don't have that,
15 although when we met with the ANC, they were
16 very vocal with having that ability to park,
17 not only for themselves, but for the more
18 mature citizens of that area as well as some
19 of the family members that still have small
20 children that would definitely use the
21 parking, but I don't have the exact number of
22 patrons that would request parking.

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1 MEMBER MOLDENHAUER: Then it was a
2 concern of the neighborhood?

3 MR. BOYD: Yes, it was.

4 MEMBER MOLDENHAUER: Thank you.

5 MR. BOYD: You're welcome.

6 MS. BRAY: Mr. Boyd, are there any
7 parking spaces provided at the interim library
8 currently?

9 MR. BOYD: Currently, there are no
10 parking spaces provided at the Tenley interim
11 located at 4200 Wisconsin.

12 MS. BRAY: And are you aware of any
13 library patron complaints regarding the lack
14 of parking at that location?

15 MR. BOYD: No, I'm not aware of any
16 at the time.

17 CHAIR LOUD: I think we're probably
18 sufficiently briefed on this point and ready
19 to move forward. I just wanted to share an
20 observation. It's not necessarily evidence
21 although I think there is some evidence in the
22 record regarding our reduced parking and

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1 making it available and reducing the demand,
2 etcetera, but it's my experience with these
3 neighborhood libraries that have really
4 minimal parking that the surrounding community
5 knows that there's very minimal parking and
6 that they're largely frequented by the
7 surrounding neighborhoods and because the
8 communities realize that there's very limited
9 parking, members of the community don't
10 necessarily choose to drive as the way to get
11 there, or if they do, they drive with the
12 understanding that they're probably not going
13 to get parking or they're going to be very
14 lucky to get parking. And either use another
15 means of transportation to get there, walk,
16 bike, or simply trying to find some temporary
17 parking off-site.

18 So I'm having a hard time, unless
19 there's some data behind it, I'm having a hard
20 time really finding it compelling that you're
21 going to find a lot of neighbors in that
22 community who are familiar with this library

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1 and have been familiar with this process and
2 followed it, that are going to be really
3 struggling to get to these five, six parking
4 spaces on a consistent basis, where it would
5 result in any kind of safety or congestion
6 issues.

7 It's just a personal observation.
8 If you're in touch with some information or
9 some data that suggests differently, I think
10 it would be important to put that on the
11 record.

12 MR. JENNINGS: And I guess I would
13 respond to that with all very good points.
14 What's the hazard in reducing the parking even
15 further? I mean you make a very good point
16 with folks may know that there is a very
17 limited inventory, limited opportunity.
18 Therefore, I may not drive there or I may park
19 in the Whole Foods parking spaces and walk
20 across the street with my children for story
21 hour, while I can drop them off, do the
22 shopping and then head on over.

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1 I think your points are ones that
2 we certainly took into consideration while we
3 wrote these comments too. Can this space be
4 perhaps used for something else? Sure. Do
5 you need parking? Does it invite the
6 opportunity for folks to want to try and pull
7 in?

8 Each curb cut, the way we see it,
9 and we know that this curb cut has been
10 approved, but that additional trip generation
11 through there, it's just one additional
12 intersection along a main corridor like
13 Wisconsin Avenue where on Saturdays and
14 Sundays it's teeming with pedestrians. It's
15 bustling with cyclists and vehicles, whether
16 there's a three-point turn opportunity to pull
17 back out, the sidewalk is not incredibly wide.

18 So it's not an equal surface for everybody,
19 for all users of the right of way presenting
20 potential hazards for drivers as well as
21 pedestrians and cyclists. Thanks.

22 CHAIR LOUD: I think we'll perhaps

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1 agree to disagree on some aspects of it. Are
2 there additional questions for the Department
3 of Transportation? Okay.

4 I think where we are in the case is
5 that -- and thank you, Mr. Jennings. I
6 appreciate your time and your report and your
7 presence here today.

8 The ANC, the ANC is not here, but
9 they did submit a report. It is our Exhibit
10 25 and they did submit a resolution supporting
11 the application with three conditions, one of
12 which is that an additional parking space for
13 use solely by a handicapped individual be
14 designated, so that there would be two set
15 spaces designated, apparently one had already
16 been designated. Secondly, that the five
17 remaining spaces for use would be by non-DCPL
18 visitors to the library and I think Mr.
19 Schlater had asked the question regarding
20 that. And the third is that the portion of
21 the library built in a residential zone shall
22 not project further than 11 feet, plus or

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1 minus a few inches, into the residential zone
2 and I think that the evidence on the record is
3 that it's ten feet into the residential.

4 Did the Applicant agree to all of
5 these conditions?

6 MS. BRAY: It did.

7 CHAIR LOUD: And this was a
8 resolution for ANC-3E that indicates that it
9 was properly noticed and had a quorum present
10 and by vote of 5-0, the ANC supported the
11 application.

12 Are there any concerns, questions,
13 comments regarding the ANC's report? Hearing
14 none, then we would go to any parties or
15 persons in the audience that might be in
16 opposition, I'm sorry, in support of the
17 application and seeing none, if there are
18 parties or persons in the audience who are
19 opposed to the application?

20 Also seeing none, we turn back to
21 you, counsel, for closing remarks of the
22 Applicant.

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1 MS. BRAY: Thank you, Chairman
2 Loud. I'll be very brief. You heard from Mr.
3 McGhee and Ms. McCarthy that the Applicant has
4 demonstrated that its proposed design meets
5 the programmatic requirements of the District
6 of Columbia Library on a constrained site and
7 that the parking which is provided is the most
8 parking that could be provided to satisfy the
9 requirement of 18 spaces that the zoning
10 regulations require on this site for a library
11 of this size.

12 You heard Ms. McCarthy state, as
13 well as the Office of Planning, that the
14 extension of the C-3-A zone use, height, and
15 bulk regulations into approximately ten feet
16 of the R-1-B portion of the site would have no
17 adverse impact on the surrounding community
18 and meets the requirements of Section 2514.2
19 of the zoning regulations.

20 The Office of Planning articulated
21 quite well the analysis under 2514.2 and the
22 District Department of Transportation itself

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1 sees no adverse impact in producing, in
2 providing less parking spaces than are
3 required under Section 2101.1 of the zoning
4 regulations. In fact, they would like us to
5 reduce the parking further. But we have a
6 legal requirement to meet and the District of
7 Columbia Public Library believes that its
8 patrons will use these parking spaces, that
9 the neighborhood, as demonstrated by the ANC
10 resolution requests that as much parking be
11 provided on the site as possible, particularly
12 to address the needs of handicapped patrons of
13 the library, and that the reconstruction of
14 this library to meet the programmatic
15 requirements for the Tenley Friendship branch
16 is long overdue.

17 With that, we respectfully request
18 that the Board grant the requested relief
19 under 2514.2 and under 2101.1 from the off-
20 street parking regulations.

21 CHAIR LOUD: Thank you, counsel,
22 and thank you, all of your witnesses as well

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1 for your presentation. Thank you, Mr.
2 Jennings, and thank you to the Office of
3 Planning as well for excellent reports. I
4 think we are ready to deliberate the case
5 today. I think it's a full record and I'd be
6 happy to start us off.

7 Before I do that though, I think,
8 counsel, there was a question of the relief
9 being requested having changed from the
10 initial filing and it's in your pre-hearing
11 statement, Exhibit 23, I guess. But I guess
12 you should go on the record and formally amend
13 the --

14 MS. BRAY: Indeed, we respectfully
15 request that the Board allow us to amend the
16 application to include relief under Section
17 2514.2 of zoning regulations that would be a
18 special exception to extend the zone C-3-A,
19 zoning requirements into the R-1-B portion of
20 the property as we discovered after filing the
21 application that the property is split zoned.

22 CHAIR LOUD: Thank you. And as you

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1 indicated, we can enter deliberations now.
2 This is a request for variance relief for
3 parking requirements from Section 2101.1. I
4 think 18 spaces are required and the Applicant
5 is offering seven spaces. As well as special
6 exception relief under 2514 to apply the
7 zoning standard for the least restrictive zone
8 in a property that's split zoned between the
9 C-3-A and R-1-B.

10 With respect to the variance test,
11 we heard evidence during the course of the
12 hearing from the Office of Planning, as well
13 as from the Applicant's witnesses that the
14 property is exceptional because of its
15 pentagon-shaped size. I think Ms. McCarthy
16 testified to that. It's also a small lot
17 that's relatively speaking inconsistent with
18 the size lot that the library is seeking to
19 build these, I think there's 20,000 square
20 foot facilities on as a part of their master
21 facilities plan.

22 There was also testimony regarding

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1 the retaining walls that are currently on the
2 site and how they constrain the site and that
3 in order to get the full use of the site, it
4 would require removing these retaining walls
5 at extraordinary expense and so I think that
6 evidence supports a finding that there would
7 be an exceptional situation, a uniqueness to
8 the lot with respect to the variance test.

9 In terms of there being a practical
10 difficulty, there was testimony to go
11 underground to satisfy the parking requirement
12 might cost anywhere from \$25,000 to \$40,000
13 per space. That was in the exhibits, and the
14 testimony on the record here today that it
15 would be cost prohibitive to seek to do that.

16 The lot itself is not subject to being
17 expanded because it's boarded by the Janney
18 Elementary School and there's certainly a lot
19 of discussion about their need for the land
20 and potential projects that they have in the
21 pipeline for the lot. So there's no
22 opportunity to expand.

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1 And again, we talked about the
2 practical difficulty of trying to remove the
3 retaining walls.

4 With respect to there being
5 substantial detriment to the public good and
6 the zone plan, the Office of Planning
7 testified that the Applicant met this
8 requirement. Most patrons, according to the
9 Office of Planning's evidence will probably
10 walk. I think that was consistent with the
11 Applicant's testimony as well, and that even
12 those not walking have available to them a
13 tremendous amount of mass transit in the
14 immediately surrounding area.

15 We also have the report from the
16 ANC which is our Exhibit 25 which to the
17 extent that they weigh in on public detriment
18 standards have indicated that they support the
19 application, as long as the Applicant is
20 willing to live with their conditions and
21 there's testimony that the Applicant is
22 willing to live with those conditions.

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1 There was testimony from the
2 Department of Transportation that reached the
3 opposite conclusion and their perspective is
4 that there is substantial detriment to the
5 public good, particularly from having the five
6 spaces that are going to be available to the
7 public and there not being a clear line of
8 sight for would-be patrons to the library to
9 recognize early enough that the lot might be
10 full and then the inconvenience difficulty
11 and/or downright danger of entering on to the
12 lot and not being able to turn around and get
13 back out safely.

14 But equally in our record was
15 testimony from the Applicant that there is
16 room on the lot for a three-point turn that
17 would allow persons that enter onto the small
18 lot an opportunity to get back out safely.

19 There was also I think an admission
20 on the part of the Department of
21 Transportation that many of the persons who
22 would use this lot are going to be familiar

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1 with the limited parking and as a result
2 perhaps that would tend to reduce the demand
3 for the lot. I think if I understood the
4 testimony, the Department of Transportation
5 went on to testify that if you had even fewer
6 spaces there would be even fewer demands, so I
7 think that's sort of a tasked acknowledgement
8 that the demand for these parking spaces might
9 b limited to the extent that you really might
10 not have an actual congestion or safety
11 problem.

12 With respect to the special
13 exception under 2514, I don't think I could
14 say it any better than the Office of Planning
15 has indicated in their report and so rather
16 than go through each of the elements through
17 my verbal articulation, I'll just adopt by
18 reference the report of the Office of Planning
19 with respect to each element of Section 2514
20 as my own articulation in support of the
21 application.

22 So I support the application. I

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1 support it as conditioned by the ANC's
2 negotiated agreement with the Applicant that
3 the Applicant has consented to, and with that
4 I'll open it up to Board Members.

5 MEMBER MOLDENHAUER: I would just
6 like to note that even though we are going to
7 accept the OP's report that we did vary from
8 the report in regards to the parking analysis
9 under the special exception that we applied,
10 that the special exception did not jump to the
11 variance test based on our interpretation of
12 2514D.

13 CHAIR LOUD: Thank you, Board
14 Member Moldenhauer. That's an excellent
15 point, distinction to make.

16 With that being said, I'm prepared
17 to submit a motion for the application. I'd
18 like to move for approval of Application No.
19 17993 for variance relief from Section 2101 of
20 our regulations, as well as special exception
21 relief under Section 2514 of our regulations,
22 as conditioned. Is there a second?

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1 MEMBER SCHLATER: Second.

2 CHAIR LOUD: Motion has been made
3 and seconded. Any further deliberation?
4 Hearing none, all those in favor of the
5 application say aye.

6 (Chorus of ayes.)

7 All those opposed?

8 (No response.)

9 Are there any abstentions?

10 (No response.)

11 Ms. Bailey, could you read back the
12 vote for us, please?

13 MS. BAILEY: Sure, Mr. Chairman.
14 Mr. Schlater, you seconded the motion?

15 MEMBER SCHLATER: Yes.

16 MS. BAILEY: Thank you. The vote
17 is recorded as 4-0-1, to grant the
18 application, as amended. Mr. Loud made the
19 motion. Mr. Schlater seconded. Mr. Dettman
20 and Ms. Moldenhauer support the motion.

21 CHAIR LOUD: Thank you, Ms. Bailey.
22 Is there anything further in this case?

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1 MS. BAILEY: Summary order, Mr.
2 Chairman?

3 CHAIR LOUD: There's no opposition.
4 The ANC supported it, conditioned, but they
5 supported it, so if we can do a summary order,
6 we'd like to go ahead and do that.

7 MS. BAILEY: And then finally,
8 there were some graphics that are on the
9 easel. Are all of those graphics in the
10 record?

11 MS. BRAY: I don't believe that
12 they are, but I have a hard copy that I can
13 submit into the record now.

14 MS. BAILEY: Yes, please.

15 (Pause.)

16 MS. BRAY: I'm sorry. I misspoke,
17 but I'd be happy to submit those into the
18 record within the next 24 hours.

19 CHAIR LOUD: Thank you. And with
20 that I think that this case is through. We
21 appreciate your patience this afternoon, the
22 patience of your witnesses, and I think we can

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1 call, this is our final case of the day.

2 (Pause.)

3 CHAIR LOUD: Let me ask as the
4 parties approach and are preparing your
5 exhibits, how many witnesses are there for
6 this case, if you could just raise your hand
7 if you are from Central Union, and as to these
8 witnesses are there any witnesses in
9 opposition to the case that are here today?
10 Okay, is the ANC present. Okay, and the ANC
11 is in support of the application, with
12 conditions, okay. I believe I did see the
13 report. You can come on up to the table too,
14 because you're automatically a party. I think
15 I read one of the conditions regarding an
16 assurance that it would not revert to a
17 community-based residential facility, if I
18 understood correctly.

19 Okay, so it appears as though
20 you've worked with the community and gotten a
21 lot of the earlier opposition out of the way
22 and this appears to be a case that will move

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1 fairly rapidly? You think so. Okay, because
2 we're at 4:45 and normally --

3 MS. BRAY: I certainly hope so.
4 We'll try and stick to the areas which are not
5 adequately addressed in the record and be as
6 brief as possible in our presentation.

7 CHAIR LOUD: Okay. I tell you
8 what, let's take a five-minute break. You can
9 get all of your exhibits together. It's
10 mostly a bathroom break and then in five
11 minutes exactly we'll go get people out of the
12 bathroom, bring them back here and we'll
13 resume with the case.

14 (Whereupon, the above-entitled
15 matter went off the record at 4:52 p.m. and
16 resumed at 4:57 p.m.)

17 CHAIR LOUD: Good afternoon. We're
18 back on the record and I think we are ready to
19 begin with your case, Ms. Bray.

20 There was a transportation report
21 that came in on this case too. Did you get a
22 copy? Okay, excellent.

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1 Why don't we go ahead and Ms.
2 Bailey, you have called this case or have you
3 actually called the case?

4 MS. BAILEY: No, Mr. Chairman, I
5 haven't called it as yet. Very quickly,
6 Application 17717 of Central Union Mission,
7 Mr. Chairman, as you know the application was
8 revised, so I'll be calling the revised
9 version. It's for a special exception
10 pursuant to 11 DCMR Section 3104.1, to permit
11 the development of a property in excess of
12 12,000 square feet within the Georgia Avenue
13 commercial overlay district.

14 This would be a mixed-use building
15 with 37 residential units, office, and retail
16 uses. The property is zoned GA/C-3-A. It's
17 located in Square 2895, Lots 825, 826, 830 and
18 831.

19 And Mr. Chairman, as you had
20 ascertained earlier, there is no one here in
21 opposition to the application, but we do have
22 in the record four requests for party status

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1 in opposition to the application and those
2 matters have not been taken up by the Board
3 previously.

4 CHAIR LOUD: Thank you, Ms. Bailey.

5 That's an excellent introduction. Why don't
6 we begin with taking up those party status
7 applications. They are in our record and I'm
8 going to recite what I have, Ms. Bailey, and
9 if you have something different, let me know.

10 Exhibit 42, Exhibit 48, Exhibit 36,
11 and Exhibit 30, is that correct?

12 MS. BAILEY: Those are the exhibits
13 that I have, sir.

14 CHAIR LOUD: Let me just very
15 briefly for our record, I don't see the party
16 status applicant for Exhibit 42 in our
17 audience. Is Darren Jones present today in
18 our audience? Is Clarence Moore present today
19 in our audience? And is Habitra Mohanran
20 present today in our audience?

21 Okay, what I would suggest,
22 colleagues, is that there are four party

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1 status applications. These applications date
2 to a period of time I think before the
3 application changed away from being a
4 community-based residential facility
5 application to a mixed-use housing retail. I
6 do believe that's a correct statement.

7 And none of those parties are here
8 today, so in order to participate as a party,
9 you really have to be present. You have to be
10 engaged in the application and be available to
11 ask witnesses questions and put on your case.

12 So it would be my suggestion that each of
13 those party status applications be denied and
14 that we move to the merits of the case.

15 And seeing heads nod in consensus,
16 then I think formally for our record, each of
17 those exhibits I just mentioned will be denied
18 and we'll move forward on the merits of the
19 case.

20 Why don't we turn to you, counsel,
21 you can get us started with respect to
22 presentation of the case.

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1 MS. BRAY: Thank you, Mr. Loud.
2 Good evening, once again, Members of the
3 Board. My name is Kinley Bray with the law
4 firm of Arent, Fox on behalf of the Applicant
5 in this case, the Central Union Mission. With
6 me today to my right, the Board's left is
7 David Treadwell, the Executive Director of the
8 Central Union Mission. To his right is
9 Christopher Graae, the architect of record on
10 the project. To my left is Ellen McCarthy,
11 also with the firm of Arent, Fox, all
12 representing the Applicant in this case.

13 Just a brief introduction, the
14 Mission began this process in 2006 and 2007
15 when it began assembling the parcels which are
16 the subject of this application. The Georgia
17 Avenue overlay was proposed and set down for
18 hearing in late 2006 in the midst of this
19 assemblage. We filed this application in the
20 fall of 2007. As you know, the Mission had
21 property control. And at that point the
22 overlay had not yet been approved the Zoning

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1 Commission.

2 So you'll see in our application
3 documents that we may reference certain
4 sections of the Georgia Avenue overlay which
5 are -- were not codified in that particular
6 manner. We've tried to correct all of those
7 in our pre-hearing statement which you'll note
8 we request to amend the application so that
9 the use is reflective of 37 affordable housing
10 units, along with first floor retail,
11 approximately 2500 square feet of retail along
12 the Georgia Avenue frontage; approximately
13 3700 square feet of office uses which may be
14 reserved for Mission administrative functions;
15 and 27 parking spaces in a below-grade garage.

16 That is the description of the use.

17 The Applicant has agreed to not
18 place a homeless shelter or a community-based
19 residential facility of any kind on this site
20 and it is for that reason that we believe that
21 the Advisory Neighborhood Commission, the
22 Office of Planning, and numerous community

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1 members are in support and we do not have the
2 throngs of community members in opposition as
3 we did when this case has been called
4 previously and postponed.

5 The Mission is the record owner of
6 the subject property and has tried
7 unsuccessfully to sell the property or to find
8 a development partner which would realize the
9 District's goal of affordable housing on this
10 site. This site was subject to a proposed
11 transaction with the Mission to move the
12 Mission's homeless shelter to the Gale School
13 and the District of Columbia would have
14 acquired this site and developed affordable
15 housing on the subject property.

16 The Mission is moving forward with
17 its plans for development of this property as
18 it is the record owner and consistent with its
19 tax-exempt purposes and the furtherance of the
20 Georgia Avenue corridor plan recommendations
21 and the requirements of the Georgia Avenue
22 zone, it's proposing a mixed-use facility with

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1 retail on the ground floor and residential
2 above.

3 The Office of Planning and ANC have
4 reviewed and filed their support of the
5 amended application of record in this case.

6 We would like to point out one
7 error in our application, as amended. We
8 stated in our pre-hearing statement that the
9 building as designed meets all of the
10 requirements of the overlay in terms of design
11 and specifically that the building had been
12 designed so that 75 percent of the street wall
13 at the street level is constructed to the
14 property line in accordance with 11 DCMR
15 Section 1328.2. That is not correct.

16 You'll hear from the architect that
17 the building has, in fact, been designed to
18 address the street, but that the building as
19 designed does not meet the 75 percent street
20 wall requirement. We realized this in the
21 last couple of days as we were preparing our
22 case for this evening.

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1 We submit the compliance with 11
2 DCMR 1328.2 would actually have a detrimental
3 effect on the surrounding neighborhood and
4 that the building as designed is consistent
5 with the purposes and intent of the overlay
6 and the Georgia Avenue-Petworth Metro corridor
7 plan upon which the overlay is based. In
8 fact, the intent of this provision is to
9 prevent auto-oriented uses from being placed
10 along Georgia Avenue and the other areas in
11 which the overlay is mapped. No such use is
12 proposed.

13 If an Applicant in the Georgia
14 Avenue overlay desires relief from any design
15 requirement, it would be in the form of a
16 special exception granted pursuant to 11 DCMR
17 1330.2. We submit that we meet the general
18 and specific criteria for granting such
19 relief. Ms. McCarthy will address those
20 issues in her testimony, and we therefore
21 request that the Board allow us to amend the
22 application further to request the additional

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1 special exception relief pursuant to 1330.2
2 and that the Board waive the requirement of
3 1328.2 that buildings shall be designed and
4 built so that not less than 75 percent of the
5 street wall at the street level be constructed
6 to the property line abutting the street right
7 of way. Buildings on the corner lot shall be
8 constructed to all building lines abutting
9 public streets. That's the text of Section
10 1328.2.

11 Given the late date on which we
12 realized this error, we would also and having
13 discussed this with Mr. Valenti who is here
14 representing the ANC, we also have no
15 objection to leaving the record open so that
16 the ANC or others could address this specific
17 relief. But we respectfully request that the
18 Board allow us to amend the application and
19 request the additional relief.

20 CHAIR LOUD: Thank you. I don't
21 have any problems with the amended request for
22 relief. I'll open it up to my colleagues here

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1 on the Board. I just wanted to ask, once they
2 do, I wanted to ask OP if they agreed with
3 your argument that 1330.2 allows through a
4 special exception process a waiver of 1328,
5 but I don't have any challenges with the
6 amendment itself.

7 Okay, so the Board is fine with the
8 amendment. I just wanted to turn to OP
9 briefly for your reaction to special exception
10 as an appropriate means to get to allow the
11 Applicant to address 1328?

12 MR. MORDFIN: Yes, the requirement
13 that 75 percent of the street wall at the
14 street level be constructed to the property
15 line is under the design requirements of 1328.

16 And 1330.2 states that exceptions from the
17 design requirements to the Georgia Avenue
18 commercial overlay district as set forth in
19 1328, shall be permitted as a special
20 exception as approved by the BZA. So yes, it
21 is appropriate that it be considered as a
22 special exception.

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1 CHAIR LOUD: Thank you, sir. So I
2 think if you're ready, we can move into
3 presentation of your case for the overlay,
4 meaning the overlay as well as the
5 requirements for the waiver from the design
6 part.

7 MS. BRAY: Thank you. With that,
8 I'd like to introduce -- first, as a
9 preliminary matter, I would like to -- I've
10 submitted Mr. Graae's resume for the Board's
11 review. And Mr. Graae is an architect and
12 expert in architecture. We'd like to have him
13 qualified as such. And Ms. McCarthy, who
14 testified in the last case, and who has
15 testified numerous times before this Board, we
16 would also like to have her qualified as an
17 expert in planning and zoning.

18 CHAIR LOUD: Thank you. Did you
19 submit that to Mr. Valenti? Do you have an
20 extra copy?

21 As Mr. Valenti looks it over, do
22 Board Members have any questions for the

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1 proffered expert witnesses?

2 I don't think the Board has any
3 concerns. Let's see if --

4 MEMBER SCHLATER: I just have one
5 question for Mr. Graae. Just looking over the
6 resume that's been provided to the Board, most
7 of the project experience listed seems to be
8 institutional use. Does the firm have
9 extensive background in residential design as
10 well?

11 MR. GRAAE: Yes, yes, we do. I
12 haven't adjusted my -- I don't put every
13 project on it. I've been working on it for 35
14 years, so it was probably tailored to an RFP
15 at that point, but yes, we have quite a bit of
16 residential experience.

17 MEMBER SCHLATER: No further
18 questions. Thank you.

19 CHAIR LOUD: We're just waiting for
20 Mr. Valenti to have an opportunity to review
21 it. I think he just got it and see if he has
22 any questions?

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1 (Pause.)

2 MR. VALENTI: I'm fine with it.

3 CHAIR LOUD: Okay, then I think by
4 consensus of the Board and there being no
5 issues raised by the ANC, we're fine with both
6 Ms. McCarthy and Mr. Graae being accepted as
7 expert witnesses in their fields of expertise.

8 MS. BRAY: Thank you very much.
9 With that, Mr. Chairman, I'd like to turn over
10 to David Treadwell to give a very, very brief
11 description of the Central Union Mission and
12 what the Central Union Mission does in the
13 District of Columbia.

14 MR. TREADWELL: Mr. Chairman, for
15 125 years, the Mission has been serving the
16 homeless, the hurting, the needy of
17 Washington, D.C. And for about ten years,
18 we've been looking for a new facility to do
19 that in. We've been driven by zoning. We
20 tried to cooperate. We've been looking for C-
21 3-A which is, of course, the place that a
22 community-based residential facility should be

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1 located. And that's how we came upon the
2 property on Georgia Avenue.

3 We certainly encountered strong
4 community opposition and in doing that, we
5 worked with Mr. Valenti and the ANC and Mr.
6 Graae, the Ward 1 Council Member to try and
7 find -- okay, if this isn't going to work, we
8 can't just have a vacant lot there. It's
9 building up taxes. Interest rates are going.

10 We've got to use the property. What is the
11 next best use for this property? And we
12 believe, largely influenced by Mr. Graae, that
13 the best use that we can find for this
14 property is the retail on the first floor and
15 to have mixed use up stairs to make affordable
16 housing available for people here in
17 Washington which has such a shortage today.
18 And we think the Mission can continue to meet
19 needs of people in Washington in that manner.

20 MS. BRAY: Mr. Treadwell, are you
21 proposing a homeless shelter or community-
22 based residential facility of any kind on the

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1 property?

2 MR. TREADWELL: We are not. We are
3 clearly not going to put our shelter on this
4 facility. We are looking downtown, Gale
5 School looks better to us. We're not sure if
6 that's going to work out, but we've been
7 looking at other alternatives, but we will not
8 put a CBRF on Georgia Avenue.

9 MS. BRAY: Unless, the Board has
10 any questions, I'd like to then turn to our
11 next witness, Mr. Graae.

12 CHAIR LOUD: Well, let's see if the
13 Board or Mr. Valenti have any questions.
14 Board Members? Okay, and Mr. Valenti?

15 MR. VALENTI: Is approval of this
16 development contingent upon that the CBRF be
17 part of the terms of approval? So we want to
18 make sure that they're willing to submit that
19 as part of the terms of approval, that there
20 be no CBRF?

21 CHAIR LOUD: Okay, I think perhaps
22 when we get to conditions we can discuss that,

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1 but I think the clear testimony was that not
2 only in this section of Georgia Avenue, but I
3 heard him say that they're not going to put
4 any CBRF or homeless shelter on Georgia Avenue
5 at all. So I think that that is responsive to
6 your question, but when we get to conditions,
7 we can make sure if it's appropriate that it's
8 written in as a condition.

9 MR. VALENTI: Okay.

10 MEMBER SCHLATER: Mr. Treadwell,
11 I'm new to this case and I haven't followed
12 all the history, but you gave a good, brief
13 synopsis of the arc of this and you said that
14 affordable housing over retail was considered
15 particularly by the local community as the
16 next best option. Was consideration given to
17 just selling the land and moving on from the
18 project?

19 MR. TREADWELL: We have considered
20 that and are willing to do that, but it's not
21 a very good market for finding buyers.

22 MEMBER SCHLATER: I understand

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1 that. And you're giving consideration to
2 using a portion of this space as office space
3 for Central Union? Is that still under
4 consideration?

5 MR. TREADWELL: There are two
6 options there. One is if we found the right
7 partner or we did it ourselves, we might want
8 to put some of our -- such as our
9 administration, our finance, our development
10 people up there. That would be a good
11 location for them. Or as we sell the
12 property, then we think that's another good
13 use for it, because it's not as good retail.
14 If you see the way it's centrally located in
15 the building, it would be good for office
16 space, but not real good for retail.

17 MEMBER SCHLATER: Are you pitching
18 this project as an affordable housing project
19 and would you be comfortable with that being
20 one of the conditions of the project? Because
21 clearly that limits the value of your
22 property, if we approve it as an affordable

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1 housing project.

2 MR. TREADWELL: We need to be in
3 the affordable housing business. We're not in
4 the profit-making business.

5 MEMBER SCHLATER: I was just
6 wondering if you're trying to get -- you did
7 spend quite a bit of money, I'm sure, to
8 acquire the property?

9 MR. TREADWELL: Yes.

10 MEMBER SCHLATER: And have cash
11 needs. With respect to the affordable housing
12 that's going to be a part of this project, do
13 you have a targeted population for the
14 affordable housing?

15 MR. TREADWELL: Well, the rates
16 that work out, I mean I have worked with both
17 Montgomery County and the District to try and
18 find housing for people like policemen and
19 firemen and mid-level people like that that
20 there's just such a shortage of. We can't
21 specifically target that, but we know that
22 there are people in that range that need

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1 housing and we're very open for that type of
2 use.

3 MEMBER SCHLATER: Will there be a
4 formal tie between the units and the Central
5 Union Mission and the population served by the
6 Central Union Mission?

7 MR. TREADWELL: We're not that
8 developed in our plans at this point.

9 MEMBER SCHLATER: Okay. No further
10 questions. Thank you very much, Mr.
11 Treadwell.

12 CHAIR LOUD: Any questions from
13 Board Members? Just a follow-up question to
14 Mr. Schlater's question in terms of the
15 formula for affordable housing. Is there a
16 formula that would incorporate a range like
17 say 30 percent AMI all the way up to 80
18 percent?

19 MR. TREADWELL: Yes, there is and
20 it takes a lawyer to explain it.

21 CHAIR LOUD: Without going through
22 the whole formula, what is the range? Where

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1 does it start and where does it end in terms
2 of percentage of AMI?

3 MS. BRAY: The application states
4 that we're targeting a range from 50 percent
5 upward to 80 percent AMI. So we're talking
6 about moderate income housing as that's
7 defined by the zoning regulations.

8 CHAIR LOUD: Thank you. I didn't
9 have any further questions. It sounded as if
10 the Board did not as well. I believe Mr.
11 Valenti, had you exhausted your questions for
12 Mr. Treadwell? Okay.

13 So I believe we can move to your
14 next witness.

15 MS. BRAY: Thank you. Mr. Graae is
16 going to walk through the features of the
17 property and will address the street wall
18 requirement.

19 Mr. Graae, I think the record is
20 quite full in this case with respect to
21 design, so if you can focus your testimony on
22 the 75 percent street wall requirement and how

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1 that has changed in its application, I would
2 appreciate it.

3 MR. GRAAE: Good afternoon, or
4 should I say good evening, after five, Board
5 Members. My name is Chris Graae. I'm a
6 principal with Cox, Graae and Spack,
7 Architects. And we've been working with the
8 Mission on this site for I guess I've lost
9 track, a couple of years now.

10 I think the thing that is probably
11 quite relevant is it was a series of lots that
12 were assembled, and there was a car wash here
13 and it had an inlet and an outlet and there
14 was a parking lot here that had a curb cut
15 onto Newton. All three of those curb cuts are
16 going away, happy to say. And our basic
17 building, access will be off of the public
18 alley which is a good public alley in that
19 three ways in and out. So it's good for
20 circulation.

21 The other things I'd point out, it
22 may be a little hard to see in this small

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1 Google satellite photo, but basically Newton
2 is composed of townhouses. You can see that
3 we have a pocket of C-3-A here and it sort of
4 cuts into the R-4 zone a bit. But basically
5 this is all townhouses except for an apartment
6 building here that's roughly the scale of our
7 proposed building and then townhouses that go
8 all the way down Newton.

9 And as sort of a preview to why we
10 carved our building envelope the way we did,
11 this is a small townhouse residential context
12 with buildings set back from the property
13 lines with little front yard and porches and
14 stoops. And it's that kind of context and of
15 course, Georgia Avenue is primarily right now
16 one, two, perhaps a few three-story buildings.

17 So our challenge was to develop a project
18 that was quite a bit bigger than what was
19 there before, of course, in a way that would
20 address the commercial retail context of
21 Georgia Avenue, but also respect the small
22 context of the residential neighborhood

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1 immediately on its door step in the R-4 zone.

2 And again, that can be illustrated
3 somewhat probably by these -- these are the
4 two most relevant photographs. This is that
5 parking lot in between the two buildings. Our
6 site is the corner here, back to there. And
7 you can see the row houses on either side
8 immediately adjacent to our property in that
9 context and how they're generally pulled back
10 from the property line. There are other
11 context photos that we can draw back on, if we
12 need to.

13 And probably I'll start with really
14 the first floor. It's probably the most
15 important one to understand. Newton here,
16 Georgia there, townhouses pretty much starting
17 about here and heading that way and this being
18 all townhouses, all of them fronting on
19 Newton.

20 Since our approach was to take the
21 basic building that had been developed
22 earlier, the basic envelop that had sort of

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1 sound planning principles behind it, we
2 essentially departed this reincarnation with
3 the previous design and building envelop and
4 3D configuration and basically filled the box
5 with a different user. And the essence of it
6 is the retail is located on Georgia. The
7 lobby -- this is again the basic design had
8 been there originally. This is a corner-
9 oriented building with the main lobby entrance
10 off of the corner and then a community room
11 that supporting the occupants of the building.
12 And then there's the office component.

13 One change we made from the last
14 design was we pulled back this facade to get
15 light and air into this office because
16 originally there was program in there that
17 didn't need it and we thought that this was a
18 good potential location and use for the office
19 component.

20 And then on this one floor, we have
21 four apartments that get the best of the light
22 and air as typically would be the topology of

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1 the townhouses adjacent to it. And we set
2 back this line here which is one of these
3 issues of the 75 percent street frontage on
4 the lot line. We pulled back basically there
5 to defer and reference the setbacks that start
6 here and go all the way down Newton and to
7 lower the scale and modulate the building and
8 add more stimulation and interest to the
9 structures so that it's not imposing.

10 And then we made a fairly strong
11 corner treatment with the corner entrance and
12 sort of flanking wings that come out to the
13 property line and then we indented it again at
14 this point where some of the retail is, again,
15 to tend to foster that ability for a retail
16 tenant to perhaps put a nice café seating area
17 out there. And there's some generous space to
18 bring some life and interest to the street
19 without being kind of being right on Georgia
20 Avenue.

21 So this kind of modulation was our
22 way of kind of carving the larger scale of the

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1 building and bringing it down, giving it life
2 and interest and shades and shadows.

3 And as I said, the curb cuts that
4 are here and here are gone. Our garage will
5 be accessed via this alley, down a ramp and
6 into the garage which we have increased the
7 parking capacity for. We're at 29 spaces, 27.

8 And then there are building support functions
9 here for storage and mechanical and electrical
10 space and then skipping from the first, well,
11 I should probably -- I thought I'd throw in
12 the current 3D model of what the building
13 looks like as viewed from that corner to help
14 describe how this carving of the building, we
15 think, significantly helps the volume and the
16 context -- relate to the context that's here.

17 That's that indentation that I mentioned
18 earlier. And the same thing happens here.
19 This is pushed in at the apartments that are
20 on this first floor and then it's set back yet
21 again on the top two, three, and fourth
22 floors.

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1 So all of the above first floor are
2 all apartment layouts and you are -- you enter
3 the building at this corner point and there
4 will be a retail, active retail tenant there
5 and then there will be green backyards or
6 possibly yards to use for the apartments if we
7 so choose to do that.

8 And then your typical floor, once
9 you get to the second floor extrudes to the --
10 up through the rest of the building, of
11 course, so we can stack efficiently. And our
12 mix are basically primarily roughly a 60/40
13 split between one and two bedrooms within the
14 ranges of what that market type wants to
15 provide and they are arrayed around on the
16 corridor here and then there's a corridor with
17 a laundry room on each floor and some
18 additional support and mechanical space, the
19 two elevators and tower and the stairs on
20 either end. And that basically, like I say
21 extrudes through.

22 On this second floor, we do have

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1 the ability to come out onto a terrace from
2 apartments and again, we're studying those
3 options and then at the top there's a
4 penthouse that will obviously have the rooftop
5 equipment in it. Some of the elevations that
6 we've studied, again, this is quite similar to
7 the more or less the feel of the previous
8 project, but with obviously fenestration and
9 orientation set up for the predominant
10 apartment use.

11 This is that community room that's
12 the entrance point that you're sort of looking
13 at obliquely. That's the first set back for
14 the first floor apartments and then the rest
15 of the building sets back from that.

16 This is looking at the rear of the
17 property. The garage will be entered from a
18 ramp that will come down here. There's a
19 loading dock, even though the zoning code
20 requirement -- there were no requirements for
21 loading and platform. We're providing that.
22 And then the other elevation is the street

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1 front along Georgia Avenue. This is the
2 retail. It's, of course, that 50 percent,
3 we're trying to keep the openness, the
4 visibility, the ability to see through into
5 that retail tenant space. It could be one.
6 It could be several retails. It's quite
7 flexible there. And then the rest of the
8 building, as I mentioned, of course, are the
9 apartments.

10 The basic materials are brick
11 facade which is going to give us that
12 durability that we need down at street level
13 with a stone base and then a stucco system
14 above and it's meant to be kind of contextual
15 with the kind of scale and feel of the smaller
16 to medium-sized buildings that are in the
17 area.

18 And that's the site plan. That's
19 actually the old site plan. We have an
20 updated, but it's very similar to this. So
21 you can see the three lots that were assembled
22 to make the one property and that garage is

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1 accessed from this back alley and that's the
2 loading dock area, all of which is pushed off
3 behind the building away out of sight.

4 MS. BRAY: Mr. Graae, the Georgia
5 Avenue overlay requires Section 1328.5,
6 requires that each building fronting on
7 Georgia Avenue shall devote not less than 50
8 percent of the surface area of the street wall
9 at the ground level to entrances to commercial
10 uses or to the building's main lobby and to
11 display windows having clear or clear
12 emissivity glass, decorative or architectural
13 accents do not count towards the 50 percent
14 requirement. Has the building been designed
15 to comply with this requirement?

16 MR. GRAAE: Yes, this area this
17 zone that you see here along Georgia Avenue,
18 basically it's three quarters of that facade
19 is designed to be that kind of context with
20 14-foot ceilings and lots of openness and
21 plenty of opportunity for entrances.

22 MS. BRAY: Can you point out where

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1 the entrances the commercial uses?

2 MR. GRAAE: For the retail?

3 MS. BRAY: For the retail, right.

4 MR. GRAAE: That's one entrance
5 there and an alternative -- of course, it
6 could be divided into even smaller spaces if I
7 go back to that floor plan. This is the area
8 we're talking about which takes more than
9 three quarters of the building's frontage on
10 Georgia. This could be one tenant. This
11 could be another tenant. They're configured
12 in a way that probably would foster smaller
13 retail in a good way as well.

14 MS. BRAY: And finally, what's the
15 clear, floor to ceiling height of the first
16 floor?

17 MR. GRAAE: It's 14-foot
18 requirement in the overlay.

19 MS. BRAY: Thank you very much.

20 CHAIR LOUD: Thank you. Are there
21 any questions for the witness?

22 MEMBER SCHLATER: I have a quick

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1 question, two quick questions on the design.
2 The first is on the retail space. I don't
3 have a scale on your drawings, so can you just
4 tell me generally what is the depth of the
5 retail space from the frontage to the back
6 there?

7 MR. GRAAE: In the shallower one?

8 MEMBER SCHLATER: Yes.

9 MR. GRAAE: The one you're
10 wondering about?

11 MEMBER SCHLATER: Yes.

12 MR. GRAAE: Hang on one second. I
13 would say that's about 25 feet, on the shallow
14 one, 25 to 30 feet. On the deep one, yes,
15 that's probably 45 to 50 on the deep one.
16 This one is about 23, 24, something like that.

17 MEMBER SCHLATER: Do you think
18 that's sufficient depth to acquire a retail
19 tenant? I'm just curious, from what I've
20 heard many retailers require more depth in
21 their space in order to lay out a store.

22 MR. GRAAE: Well, again, if it was

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1 a single tenant, they would have the benefit
2 of this deeper support space. I think it
3 really depends on the kind of -- at one point
4 we were proposing a café in this zone, a very
5 small kind of a café.

6 MEMBER SCHLATER: The only reason
7 why I mention that is the -- I believe one of
8 the overriding purposes of the recently
9 approved Georgia Avenue plan was to create
10 retail spaces that were retail spaces. And I
11 think that's partly addressed by having
12 sufficient retail space, but also the layout
13 of that space would be important too.

14 MR. GRAAE: If that were an issue
15 from a marketing point of view, I think we
16 could adjust things in here and add depth to
17 it. I really think that could be accomplished
18 pretty easily.

19 MEMBER SCHLATER: And the other
20 question I had was on the facade and the
21 materials chosen for the facade. I noticed
22 you're using masonry on the base, is that

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1 right?

2 MR. GRAAE: Yes, brick masonry, the
3 tanner brick, darker material that you see
4 there is a brick facade with perhaps a stone
5 base.

6 MEMBER SCHLATER: Okay.

7 MR. GRAAE: And then precast
8 details like the coursing and window jack
9 arches and sills and things like that. And
10 once you get above the second floor, it's a
11 stucco system, a very durable, easily
12 maintained stucco.

13 MEMBER SCHLATER: That's EIFS?

14 MR. GRAAE: That is known
15 generically as EIFS, yes.

16 MEMBER SCHLATER: In the city we
17 don't like EIFS. It's stuff you see
18 oftentimes out in the suburbs. I just wonder
19 if you had thought about potentially other
20 materials up there. I'm not a huge fan
21 personally of that. I'm concerned -- I just
22 don't want -- this is Georgia Avenue. It's an

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1 area where there's been under investment for
2 many, many years and understanding that this
3 is affordable housing project and there's a
4 socialness to this project, so it doesn't have
5 unlimited budget. I also know we've seen
6 plenty of cases of affordable housing projects
7 that have come through with inventive uses of
8 cheaper materials, but that have -- I don't
9 know, a better presence than EIFS maybe.

10 MR. GRAAE: I would just respond
11 that you can see very substantial durable
12 materials are being used at the lower parts of
13 the buildings which get the most wear and
14 tear. And I would also add that EIFS has
15 matured dramatically in the last five or so
16 years. It did have a bad rep. It did have
17 performance issues. The product is
18 substantially better and we're comfortable
19 using it again. There were years for our
20 firm where it was banished until certain
21 issues were addressed which we feel they have
22 not done so.

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1 MEMBER SCHLATER: No further
2 questions, thank you.

3 CHAIR LOUD: Any additional
4 questions from the Board Members?

5 Just a couple of quick follow-up
6 questions from me, Mr. Graae. In terms of the
7 75 percent threshold requirement regarding the
8 street wall, and you may have said this and I
9 just didn't zero in on it, but what is the
10 percentage now? It's less than 75 percent.

11 MR. GRAAE: Yes.

12 CHAIR LOUD: If you have that
13 number available.

14 MR. GRAAE: I should have that at
15 my fingertips. It is probably about 30
16 percent, 25 to 30 percent on Georgia Avenue.
17 Because as you see in terms of the plan, let
18 me go back to that, the building, we chose to
19 do a corner treatment here which obviously
20 means that you're cutting a corner off, which
21 is a fairly standard architectural planning
22 situation on Georgia Avenue. Many of the

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1 buildings that you'll see there do have corner
2 -- in fact, right across the street at Newton
3 is the smaller version of the same thing. So
4 we were kind of responding to some of the
5 context there by that approach. So
6 immediately once you decide to use that
7 device, we're pulling away from the lot line.

8 And then we did choose to indent this area in
9 order to sort of make this a corner entrance,
10 almost a shallow tower, if you will, be a
11 strong presence and to allow more to happen on
12 the street front in terms of perhaps a café
13 wanting more depth to arrange umbrellas and
14 chairs.

15 So on that side, we are probably,
16 like I say, a third, 30 to 35 percent, let's
17 say. And I can come back and give you actual
18 dimensions. Unfortunately, I didn't bring a
19 scale with me.

20 On Newton, which frankly I'm
21 mystified why that would be a benefit,
22 frankly, on a residential street like that,

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1 but on that frontage we're probably less,
2 we're in the range of 25 percent.

3 But it's the net benefits, in our
4 view that we get by providing more outdoor
5 space, more places to landscape and green and
6 there's no way people are going to park on
7 this because they're going to be prevented
8 from doing that. We don't have curb cuts any
9 more and it allowed us to carve the building
10 and make what would otherwise be a pretty
11 intimidating facade, to bring this thing right
12 up to the property lines for 75 percent of
13 those two lengths of the building would be a
14 pretty unrelenting, heavy-duty, commercial
15 feeling building. And we thought it wouldn't
16 have that context, with respect to the context
17 and it would have kind of that residential
18 feel that we were trying to achieve there by
19 kind of breaking the box.

20 CHAIR LOUD: Thank you, and this is
21 sort of an academic question for counsel, but
22 do you think when they did the overlay that

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1 they intended, that they contemplated wrap-
2 around buildings like this, corner buildings
3 that would end up not -- where a substantial
4 part of the building would not be on Georgia
5 Avenue?

6 MS. BRAY: I think that's probably
7 a question better addressed to Ms. McCarthy
8 and her testimony. However, I will say that
9 the Office of Planning's set down report in
10 Zoning Commission Case No. 06-48 which is the
11 proposal for the Georgia Avenue overlay, noted
12 that auto-oriented uses, particularly where
13 parking is proposed between a building
14 frontage and Georgia Avenue should be
15 discouraged and they cite to specific portions
16 of the comprehensive plan and the Georgia
17 Avenue-Petworth Metro corridor plan for that
18 statement.

19 The second sentence of that section
20 which says that for corner lots, the property
21 should abut both street frontages. I think it
22 was clearly intended that the property not be

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1 set back significantly from one portion of the
2 property to the other.

3 Here, we have a building that is
4 addressing both street frontages, although not
5 abutting it for the entirety and even for the
6 majority of the property line.

7 I also note that for purpose of
8 interpreting the language of that requirement,
9 1328, there's no possible way to actually make
10 the street frontage, 75 percent of the street
11 frontage on Georgia Avenue abut the property
12 line, because there is a significant building
13 restriction line along Georgia Avenue which
14 requires that the building be set back. I
15 believe it's nine feet along Georgia Avenue.
16 So we're going right up to the building
17 restriction line where we can and carving out
18 in that small area where the retail entrance
19 is proposed.

20 CHAIR LOUD: Thank you. Does the
21 ANC have any questions?

22 MR. VALENTI: No.

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1 CHAIR LOUD: All right. Your next
2 witness?

3 MS. BRAY: With that I'd like to
4 turn it over to Ms. McCarthy.

5 MS. McCARTHY: Good evening,
6 Chairman Loud, Members of the Board. I'd like
7 to start today with just a little bit of
8 context about Georgia Avenue which may be
9 unnecessary in the case of Mr. Loud who I know
10 is very familiar with Georgia Avenue, at least
11 the upper part, but we are talking about an
12 avenue that people have been talking about the
13 revitalization of for way more than 30 years.

14 Probably many of us can remember one of Bill
15 Clinton's first gestures to the city, walking
16 on Georgia Avenue with former Council Member
17 Jarvis to show the commitment of the Federal
18 Government. It's been a series of
19 disappointments and not much in the way of
20 reinvestment, especially not in the lower part
21 of Georgia Avenue.

22 In 2000, Mayor Williams thought

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1 that an important action to help revitalize
2 Georgia Avenue would be to put the Department
3 of Motor Vehicles at the Petworth Metro
4 Station. Unfortunately, there are people who
5 lived in the neighborhood didn't think that
6 was such a hot idea and after a couple --
7 almost two years of controversy and discussion
8 that proposal was withdrawn. The Office of
9 Planning did a SNAP plan, a Strategic
10 Neighborhood Action Plan. One of the
11 recommendations of which was the need for a
12 small area plan to look at the revitalization
13 of the area.

14 So starting in 2003, and concluding
15 in 2004, the Georgia Avenue-Petworth Metro
16 Station Area and Corridor Plan which addressed
17 this area was done and one of the
18 recommendations that came from that plan was
19 having an overlay which would address some of
20 the land use related issues that developed.

21 I was not in charge of neighborhood
22 planning when that planning study began, but

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1 some point along the lines I became Deputy
2 Director for Neighborhood Planning, in
3 addition to Historic Preservation and
4 Development Review, and it was staggering the
5 amount of reinvestment in this area and for
6 those businesses that were extant the amount
7 of redundancy, braiding shops, nail salons,
8 liquor stores, check cashing, the amount of
9 auto-oriented uses which made it almost
10 impossible to attract other kinds of
11 retailers. So the discussion that took place
12 in the study and the actions were then
13 translated into the overlay were very much
14 geared around trying to eliminate that kind of
15 blight.

16 And I think it's important to have
17 that as the context when we look then at the
18 provisions of the overlay and see how this
19 project measures up against them. First, to
20 realize that in terms of understanding the
21 site, it was the home of a former car wash,
22 apartment house, and convenience store, with

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1 vacant parcels. There's a mixture in the area
2 immediately around there of commercial
3 buildings and vacant store fronts along
4 Georgia Avenue with predominantly low-scale
5 row houses on either side of Georgia Avenue,
6 some of which are also vacant and one of the
7 only new investments in that stretch other
8 than the new Donnatella and Klein project at
9 Petworth Metro is a charter school, the design
10 of which is probably -- well, I'll just say
11 the design of which predates the overlay,
12 unfortunately.

13 When the Office of Planning
14 published its revitalization strategy report,
15 the plan concluded in the beginning "The
16 avenue is in need of revival. With a
17 distinctive residential building stock and a
18 strong housing market, the area still
19 experiences pockets of crime, vacant and
20 deteriorating residential and commercial
21 properties, a steady increase in automobile-
22 oriented business, and declining

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1 infrastructure and public realm."

2 So while the plan predominantly
3 addressed opportunities for redevelopment
4 where there were large amounts of vacant
5 property, it did recommend the creation of an
6 overlay zone " to stabilize existing desired
7 businesses and encourage redevelopment and to
8 implement design standards to improve the
9 quality of the public realm."

10 The Comprehensive Plan then came
11 along in 2006, designated this a main street
12 mixed-use corridor in the generalized land use
13 map and designated it as mixed use, medium
14 density residential and moderate density
15 commercial in the future land use map. The
16 Rock Creek East element of the plan, the area
17 element, recognized the importance of creating
18 additional affordable housing to deal with
19 what were then rapidly increasing housing
20 prices in order to retain the diverse
21 character of the area. It also reinforced the
22 need to encourage redevelopment of the

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1 commercial areas and to encourage more
2 pedestrian-oriented retail.

3 The overlay was adopted by the
4 Zoning Commission in 2007 with the aim of
5 furthering these goals.

6 So let's look specifically at the
7 special exception criteria. The main ones
8 that you're familiar with from 3104, that the
9 use is in harmony with the general purpose and
10 intent of the zone regulations and zone maps,
11 and that the use is not likely to adversely
12 affect neighboring property. And then the
13 specific conditions that are specified in the
14 neighborhood commercial overlay broadly and
15 with regard to the Georgia Avenue plan.

16 As we've discussed before and I
17 think you've seen in the record and I don't
18 think we need to go into in detail, in terms
19 of the design criteria that are in the overlay
20 we're in conformance. I just wanted to put
21 the issues that Mr. Graae was dealing with in
22 a design sense with regard to the 75 percent

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1 requirement in a little bit of planning
2 context for you.

3 The -- let's see, the Newton Place
4 is an extraordinarily narrow street. It is 50
5 feet wide. You can't say that about very many
6 streets in this city. And when you look, if I
7 could direct your attention to the application
8 -- to the pre-hearing statement on the plan
9 section which is number two, there is a photo
10 in the middle of page two, the bottom row,
11 right in the middle that says Newton Place
12 view west with site on left. It makes Newton
13 Place look a little bit wider than it actually
14 is, because it's a foreshortened view of
15 Newton Place. But what I wanted to direct
16 your attention to is that not only is Newton
17 Place only 50 feet wide, but you can see from
18 the townhouses that are on the right how close
19 they are to the street. I haven't measured
20 the sidewalk there, but it's quite narrow and
21 putting a taller building immediately across
22 the street from that would have been not only

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1 -- would have itself had an adverse impact had
2 we followed the requirement of putting the
3 building closer to the street wall.

4 That's one rationale for why we
5 don't meet the 75 percent and the other reason
6 we don't meet it is the chamfered corner at
7 Georgia and Newton. But it's important again
8 to pull back in a broader context and realize
9 one of the things that -- one of the rallying
10 points for the plan and for hopes for the
11 revitalization of Georgia Avenue was the
12 opening of the Petworth Metro. We expect it
13 to have the same kind of impact that opening
14 the Metro in Columbia Heights had on an area
15 that had been decimated in the civil
16 disturbances in '68 and had seen virtually no
17 reinvestment for the 40 years after that,
18 until the Metro Station opened and things
19 began to gel.

20 So orienting the corner of that
21 building north toward the Petworth Metro
22 Station is an important gesture

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1 architecturally, I think, to orient the
2 building toward Metro to the pedestrian
3 traffic that's coming and going from the Metro
4 Station and to penalize the building for
5 having made that gesture, I think would be a
6 mistake, particularly because as we've already
7 stated, really the requirements in the overlay
8 to get to Georgia Avenue and the property line
9 was so we weren't having parking lots with a
10 building set behind them. It wasn't so we
11 couldn't put a gesture at which we could put
12 café tables or allow people the opportunity to
13 gather outside the front door of the building
14 and meet and greet their neighbors or step
15 back a building to have the opportunity to
16 give a little more light and air to the people
17 who live across Newton.

18 And I would note with regard to
19 that, Ms. Bray has indicated that we'd be
20 willing to amend the application for a special
21 exception, but I would also direct your
22 attention both in Section 1304, the broad

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1 section of the neighborhood commercial overlay
2 and then 1330.3, the specific section that
3 deals with the Georgia Avenue overlay. Both
4 of them permit the Board to impose
5 requirements with regard to design and massing
6 to protect neighboring property and the
7 proposed setbacks would certainly be
8 acceptable to the Applicant if the Board would
9 like to impose them and we just happened to be
10 prescient enough to have drawn them into the
11 plans that were submitted to you in advance.

12 The last thing that I wanted to
13 direct your attention to and another important
14 reason why that gesture to step back on Newton
15 Place is important is to look again at the
16 first set of plans where in the pre-hearing
17 statement where you see in yellow the boundary
18 that the C-3-A zone takes. As you'll see, it
19 takes this funny jump in, a substantial
20 distance for this property, so that you could
21 have had commercial development going
22 substantially far into that block which would

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1 have put it then directly across from this
2 whole narrow set of townhouses. And I think
3 (a) the fact that the land use choice has been
4 to put residential there and then secondly to
5 step it back is just an important recognition
6 of the fact that the odd placement of the C-3-
7 A boundary makes it even more important to
8 develop design and gestures in the building
9 that will respect that neighboring property
10 that is across the street.

11 So the important thing that you
12 need to find with regard to the requested
13 special exception for properties of 12,000
14 feet and above is that the proposed use is not
15 likely to affect adversely the use of
16 neighboring property. We've already addressed
17 a number of those and just to run down the
18 reasons for the record, the retail use along
19 Georgia Avenue is consistent with the
20 requirement to provide retail along Georgia
21 and the existing development in the corridor
22 and will certainly be consistent with the

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1 future development of the vacant parcels to
2 the south of the property which will also have
3 to abide by the same overlay requirements.

4 And I guess I would say with regard
5 to Commissioner Schlater's concerns, while it
6 is true that there's a certain amount of depth
7 that is required for retail, one of the things
8 that we noted was a problem for retail on
9 Georgia Avenue was so many of these spaces
10 were obsoletely deep, so that you had,
11 especially those that have kind of the little
12 boot on the front, but they tend to be space
13 that is so deep that a retailer, especially
14 one that needs to relate to street with shop
15 windows can't really use the depth of the
16 property behind it. So I think having a
17 shallower based, which is still 25 feet or 28
18 feet, with the opportunity to then expand in
19 the back with the right set of tenants, I
20 think is not a recipe, it is a recipe for
21 retail success of the kind of retail that I
22 think we need to encourage here.

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1 So the commercial side of the
2 property along Georgia Avenue would not have
3 an adverse impacting on the neighboring
4 property along Georgia, and then as you turn
5 the corner onto Newton Place and would become
6 residential in character, we've got sufficient
7 parking, the entrance of the parking is off
8 the alley. The design of the project is
9 residential and echoes the materials of the
10 other residential uses on that block. All of
11 those reasons I think taken together are
12 reasons why we can safely conclude that there
13 is no adverse impact on neighboring uses.

14 Skipping ahead, well, it also has
15 to be consistent with the OP plan and the
16 Great Streets plan and those -- the purpose
17 for those included: encouraging additional
18 residential uses, encouraging approved
19 commercial uses, encouraging vertically mixed
20 uses with ground floor commercial and
21 residential above from Park Road to Shepherd
22 Street and the proposed project is clearly

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1 consistent with those purposes. We've
2 addressed the design criteria.

3 So I guess in the end I would
4 conclude if you look at the recommendations in
5 the Office of Planning's Georgia Avenue plan,
6 specifically when it came to doing the
7 overlay, the recommendation said apply
8 transit-oriented development principles to
9 generate a dynamic place with increased
10 variety and intensity of land uses and
11 activities within walking distance of the
12 Metro Station that draws the community and
13 visitors alike to socialize, shop, live and
14 interact. The 3500 block of Georgia Avenue
15 has been waiting a long time to see investment
16 in a new building that will achieve these
17 ends. Not only will the proposed project not
18 have adverse impact on its neighbors, it is
19 hard to imagine a project that could be more
20 in tune with the goals the community set in
21 2004.

22 Thanks.

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1 CHAIR LOUD: Thank you, Ms.
2 McCarthy. Are there any questions for the
3 witness?

4 Mr. Valenti?

5 MR. VALENTI: I just want to make a
6 comment about some of the stuff that was said.
7 One is on the orientation of the building. I
8 think that the building it is replacing is
9 also oriented kind of in the same way with the
10 entrance facing toward the Metro. So I think
11 that would be a good thing. But in terms of
12 when zoning on Georgia Avenue changed from C-
13 2-A to C-3-A back in I think it was 2004, the
14 neighborhood was opposed to it and one of the
15 Georgia Avenue corridor plan and the overlay
16 and some of the other things that we've been
17 involved in since then, the overwhelming thing
18 that I hear is that you want to massing of
19 buildings to go down as you move south from
20 the Metro Station.

21 One of the concerns that we did
22 raise was the building is probably a little

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1 larger than what we would like to see. The
2 use of the stucco is supposed to help blend
3 that in some. So I'd just like you to
4 consider that.

5 CHAIR LOUD: Okay, thank you. I
6 think in terms of how we proceed that we allow
7 -- it might be better if we allow the
8 Applicant to finish out its case. Then we'll
9 go to Office of Planning and then we'll come
10 back to you and to the ANC's report and then
11 you can delve into it a little more fully
12 without being concerned that we're going out
13 of order here.

14 So I think the Applicant can sort
15 of chew over what you just said and we'll come
16 back to you for that kind of testimony. But
17 if you have any specific questions for any of
18 the three witnesses that the Applicant has
19 presented this will be a good time to follow
20 up.

21 MR. VALENTI: So the Georgia Avenue
22 Overlay District does state which desired

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1 types of commercial uses or retail uses would
2 be listed. What are your ideas specifically
3 for the kinds of retail uses that would be in
4 the building?

5 MR. TREADWELL: The idea that we
6 had originally was café and bookstore.
7 However, we have to be honest. There's going
8 to be retail interest there. We're going to
9 find out who is going to make money and be a
10 good tenant and so you don't want to do
11 anything without studying the neighborhood,
12 finding out what needs are, what are people
13 looking for there. But the two ideas that we
14 had in mind initially were a café and a
15 bookstore.

16 MR. VALENTI: That's all.

17 CHAIR LOUD: Thank you, Mr.
18 Valenti, and if you have some additional
19 questions come to mind, we can see if we can
20 get those questions in and to the witnesses
21 for you.

22 Applicant, are you through with

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1 your case?

2 MS. BRAY: I have a couple of very
3 brief questions on redirect for Ms. McCarthy
4 and Mr. Graae.

5 CHAIR LOUD: Okay.

6 MS. BRAY: Mr. Graae, were you able
7 to find a scale?

8 MR. GRAAE: I was. I did use my
9 graphic scale and the depth is 28 feet on the
10 shallow part and it's about 64 on the deep.

11 MS. BRAY: Okay. And Ms. McCarthy,
12 with respect to the design requirements and
13 the special exception criteria for waiver of
14 the design requirements under 1330.2 should
15 the Board find that that special exception
16 relief is necessary, is there any, from a
17 planning perspective, is there in your review
18 or in your experience as a planner, is there
19 any reason to believe that the parking traffic
20 associated with the project or noise
21 associated with the project would be
22 objectionable or have a significant impact on

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1 the neighboring property?

2 MS. McCARTHY: Yes, I'm glad you
3 reminded me, because it was in my testimony,
4 but I didn't mention it. But those are the
5 two other conditions and yes, I believe that
6 the number of parking spaces, there are only
7 27 and the entry and exit is off of the alley,
8 so the likelihood of having an adverse impact
9 on the residential neighbors that are behind
10 that is extremely small and the way that the
11 building is constructed with the major retail
12 use being on the front and with it stepping
13 down to the residential uses behind it, I
14 think would minimize any noise or disruption
15 to the residential uses that are behind it.

16 MS. BRAY: Thank you. Chairman
17 Loud, that concludes the Applicant's
18 presentation.

19 CHAIR LOUD: Thank you and unless
20 we have questions for these witnesses, we'll
21 turn to the Office of Planning. Are there any
22 questions?

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1 Okay, so we'll turn to the Office
2 of Planning. Good early evening.

3 MR. MORDFIN: Good early evening,
4 Mr. Chairman and Members of the Board. I'm
5 Stephen Mordfin with the Office of Planning.
6 And the subject application conforms to the
7 criteria for the granting of a special
8 exception because the property is in excess of
9 12,000 square feet of land area and with the
10 exception of the 75 percent street wall built
11 at the street level, built to the property
12 line, the building is designed in conformance
13 with the design requirements of the Georgia
14 Avenue Overlay District with modern retail
15 space on the ground floor and residences
16 above.

17 The application will advance the
18 recommendations of the Great Streets framework
19 plane for 7th Street/Georgia Avenue through
20 the elimination of parking lots on Georgia
21 Avenue and will contribute to the
22 transformation of Georgia Avenue to an

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1 attractive residential and retail core.

2 All vehicular access would be from
3 the alley and all existing curb cuts along
4 Georgia and Newton would be eliminated and the
5 design of the building steps back after the
6 first floor along Newton Street toward the row
7 houses west of the alley.

8 In reference to the additional
9 special exception requested by the Applicant
10 having to do with the 75 percent of the street
11 wall, the building, even though it doesn't
12 come all the way up for 75 percent, one of the
13 design requirements was that you wanted to
14 bring the buildings to the street and make it
15 so that people could walk easily into the
16 buildings and also to create a street wall,
17 not parking lots along the side. And what
18 this building does as you see, as it goes
19 around from Georgia from the south property
20 line around the corner, it goes up to the
21 sidewalk, whether that sidewalk be a part of
22 the public space or part of the private space.

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1 So it is achieving that goal of bringing the
2 building to the street because it would be
3 imperceptible to anyone walking down the
4 street where the public and private line would
5 be. And so you would be able to walk into all
6 of those buildings.

7 So I think in reference to that, I
8 think the requested special exception to
9 reduce that 75 percent is justified. And
10 therefore the Office of Planning recommends
11 approval of the application.

12 Thank you.

13 MS. MCCARTHY: And Mr. Chair, I
14 should note this as a point of privilege that
15 I had some involvement in the Georgia Avenue
16 plan. Mr. Mordfin was there at all of the
17 planning meetings and is the author of the
18 overlay. So if he says we comply, you can
19 take it from a good authority that we comply.

20 CHAIR LOUD: Thank you. And that's
21 your unbiased, totally objective opinion on
22 it.

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1 Are there any questions for the
2 Office of Planning?

3 Mr. Valenti, do you have any
4 questions?

5 MR. VALENTI: I would just like
6 clarification on 1327.3(e) and 1330.2(a) which
7 state that the strategy would incorporate
8 uniform building design and enhance urban
9 design features in the immediate vicinity in
10 which it's located.

11 What buildings within the immediate
12 vicinity were used to make the judgment that
13 it is actually conforming?

14 MR. MORDFIN: I'm sorry, you said
15 1327.3(e) which is the uniform building design
16 standards and I'm sorry --

17 MR. VALENTI: And the 1330.2(a)
18 which says enhance urban design features in
19 the immediate vicinity in which it's located.

20 MR. MORDFIN: Correct, to enhance
21 the urban design features, when we looked at
22 what was on Georgia Avenue and we surveyed it

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1 up and down Georgia, what we noticed was that
2 there were a lot of buildings there that did
3 not exhibit modern features. Many of them
4 were built originally as residential row
5 houses that had been converted to commercial
6 store fronts. And these, and of them also we
7 had a lot of automobile-oriented uses there.
8 Like the car wash that's on this site. And
9 what we wanted to do was change those. And we
10 wanted to enhance the urban design features by
11 allowing for or encouraging buildings that
12 would be built up to the street line to the
13 extent possible that would eliminate all of
14 the parking lots on Georgia Avenue and
15 eliminate the curb cuts and provide modern
16 retail store, modern retail spaces that had
17 the minimum 14-foot height for the interior of
18 the store to attract modern retailers to the
19 area.

20 I don't -- did I address the other
21 one? Well, the uniform building design
22 standards they -- the design includes things

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1 like the 14-foot minimum height by also
2 requiring the clear, what is the word, the
3 glass, not wanting the windows to be blocked
4 up. Some of the stores along Georgia Avenue
5 had cinder blocks that had blocked up all the
6 windows. You couldn't see in. You couldn't
7 see out. You didn't know what was being sold
8 there. We wanted to encourage them to have
9 windows there that you could see into.
10 Encourage maybe street shopping, which might
11 then encourage people to actually purchase
12 things on Georgia Avenue. So that's what we
13 meant by the uniform building design standards
14 and that's what we also meant by encouraging,
15 by improving the urban design features.

16 CHAIR LOUD: Thank you Mr. Valenti.

17 And again, if some additional questions
18 surface for you, we can always take the
19 opportunity to ask the Office of Planning
20 those questions.

21 Ms. Bray, did you have any
22 questions for the Office of Planning?

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1 MS. BRAY: I do not, thank you.

2 CHAIR LOUD: Okay.

3 MS. BRAY: Other than to say I
4 think it was an excellent report.

5 CHAIR LOUD: Okay. Thank you. And
6 I do believe also that there is a report that
7 was filed by the Department of Transportation.

8 I do see Mr. Jennings. Good early evening to
9 you again and thanks for the long day you've
10 had. Also, thanks for getting in the report
11 that the Department has submitted for us. I
12 believe the report is not a timely report, so
13 I think the first order of business for us
14 would be to waive in to our record, barring
15 some concerns, that I'm going to give the
16 Applicant an opportunity to raise if there are
17 such or Board Members, or ANC.

18 MS. BRAY: The Applicant has seen
19 the report and is prepared to question DDOT
20 and/or address it in closing remarks or
21 rebuttal testimony if necessary.

22 CHAIR LOUD: Okay. And I don't

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1 believe I hear any concerns from the Board
2 necessarily. So we'll waive our requirements
3 with respect to the timeliness issue and make
4 this a part of our records and then allow the
5 Applicant to address some of the things that
6 you raise in it.

7 So why don't we then turn to you,
8 Mr. Jennings, for the essence of your report.

9 MR. JENNINGS: Good evening,
10 Chairman Loud, and Members of the Board. My
11 name is Jeff Jennings. I work for the
12 District Department of Transportation. I'm
13 not really sure as to where to begin because
14 we don't have an updated transportation impact
15 study for the amended application. So we
16 provided comments on what the original
17 proposed plan for this site.

18 I'd be happy to take any questions.

19 I think we'd prefer to have an updated or
20 supplemental transportation impact study
21 representing the residential building with 37
22 apartments and ground floor retail.

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1 CHAIR LOUD: Thank you. I'm going
2 to let the Applicant weigh in on the
3 transportation study and it's propriety or
4 lack thereof, and of course, if Board Members
5 have questions for you, but based on the
6 testimony that you have heard, and I don't
7 know if you had an opportunity to read the
8 Applicant's pre-hearing statement, which I
9 believe sort of corrected the earlier
10 project's presentation, 14 CBR facility, but
11 again, looking at those two parts of the
12 record, the Applicant's written submission and
13 then the testimony you've heard today, do you
14 feel like DDOT has an opinion with respect to
15 the application?

16 MR. JENNINGS: I haven't had the
17 opportunity to read the pre-hearing statement
18 and I honestly cannot say, sir. I don't know.

19 CHAIR LOUD: Okay. Board Members,
20 are there any questions for Department of
21 Transportation? Why don't we turn to Ms.
22 Bray, to see if you have any questions?

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1 MS. BRAY: I'm not sure I have any
2 questions based on Mr. Jennings' assertion
3 that he hasn't reviewed the pre-hearing
4 statement. I would like to note for the
5 record that the traffic impact study that was
6 submitted with the original application
7 reviewed a proposed 60,000 square foot
8 structure as noted in DDOT's report which was
9 essentially the maximum allowed on the site
10 and at this point we are proposing a project
11 that is significantly below 60,000 square feet
12 and not of the same scale and scope as the
13 project that was reviewed.

14 We provided the -- nonetheless, we
15 provided the pre-hearing statement and the
16 traffic analysis which the Mission
17 commissioned back in 2007 to DDOT to aid in
18 its review of this project last week upon
19 DDOT's request.

20 MEMBER SCHLATER: Have you
21 considered getting an updated traffic study?

22 MS. BRAY: We have not at this

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1 point because as a matter of course when an
2 Applicant is proposing a use which is
3 significantly less than what would be
4 permitted as a matter of right, and is
5 complying with the parking requirements and
6 layout requirements, we typically don't advise
7 our clients, particularly nonprofit clients to
8 go to the extra expense of a traffic impact
9 analysis. If this were a PUD, absolutely, we
10 would have submitted an updated traffic
11 analysis or if we were proposing more square
12 footage than would be permitted as a matter of
13 right.

14 MEMBER SCHLATER: I guess I would
15 say if the program has changed, was there
16 retail in the previous program?

17 MS. BRAY: There was approximately
18 1500 square feet of retail that would have
19 been operated by the Mission.

20 MEMBER SCHLATER: And how is that
21 proposed to be loaded and serviced?

22 MS. BRAY: There's actually no

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1 loading requirements for the -- under the
2 zoning regulations for the amount of retail
3 that is being proposed, but Mr. Graae can
4 point out on the site plan where proposed
5 loading facility is located.

6 MR. GRAAE: Yes, both the retail
7 and the office tenants can gain access from
8 the loading dock through this corridor to
9 service the retail and the office sites.

10 MS. BRAY: What size loading berth
11 and loading platform are proposed?

12 MR. GRAAE: Let's see. We just
13 talked about it as a loading area. Since
14 there wasn't specific criteria required, it's
15 about -- there's a loading platform of at
16 least 200 square feet, I would say, 150 square
17 feet, let's call it. And then a loading berth
18 that would certainly accommodate a 30-foot
19 truck quite easily. Because not only are we
20 setting back for our rear yard, you can see
21 there's a further setback here to get a truck
22 in there and a loading dock. So it's pretty

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1 generous considering we were under the
2 minimums anyway.

3 MEMBER SCHLATER: Are the parking
4 spaces, the number of parking spaces the same
5 as in the previous proposal?

6 MS. BRAY: No, there are additional
7 parking spaces that are required which is tied
8 to the change in use from a proposed
9 community-based residential facility which
10 requires only one parking space per ten beds,
11 I believe. And we had proposed 19 parking
12 spaces to one parking space per three dwelling
13 units in the C-3-A, as well as the retail and
14 office use was providing some parking for
15 those, although the zoning regulations do not
16 require provision of parking for those uses
17 unless they meet a minimum square footage
18 threshold of which we have not met.

19 MEMBER SCHLATER: Thank you. No
20 further questions.

21 CHAIR LOUD: Just a quick question
22 I guess for your expert, Ms. McCarthy.

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1 In terms of the overlay, what are
2 the transportation-related elements that you
3 think the evidence would be relevant to?

4 MS. McCARTHY: I'm sorry, that the
5 evidence would be relevant to?

6 CHAIR LOUD: That the DDOT evidence
7 would align with -- essentially you're before
8 us to establish that you meet the conditions
9 of the overlay and the general special
10 exception requirements. And now the special
11 exception for the waiver related to the 75
12 percent threshold. And so with respect to the
13 standards that we're looking at, where do you
14 see the DDOT testimony connecting?

15 MS. McCARTHY: Well, the Great
16 Streets report which was a DDOT and Deputy
17 Mayor for Planning Economic Development
18 Initiative was particularly focused on
19 reinforcing the pedestrian character of
20 Georgia Avenue, and encouraging transit use.
21 So to that extent having, in effect, a wider
22 sidewalk and providing better streetscape

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1 because the opportunity to put café tables and
2 to reach out to the street along with, as Mr.
3 Mordfin pointed out, perception on the part of
4 the pedestrian that it suggests a wider and a
5 more pleasant pedestrian environment, I think
6 that that's what bears more on what DDOT
7 established as goals for the Great Street for
8 Georgia Avenue to be a great street.

9 And Ms. Bray is right, that there
10 is a presumption, generally, in the zoning
11 standards that the parking spaces and loads
12 that are prescribed in the zoning regs under a
13 matter of right development are compatible
14 with the infrastructure of -- and the
15 configuration of the streets around there.

16 Typically, when at least when I was
17 at the Office of Planning, we only looked for
18 traffic impacts when people were proposing to
19 go beyond the matter of right zoning and
20 intensity. So since we are substantially
21 below the matter of right zoning, since we are
22 talking about a clientele that probably will

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1 have relatively low rates of auto ownership
2 because we are talking about affordable
3 housing units, and because it's 2000 some
4 square feet of retail, we're not talking a big
5 box retail or kind of major activity
6 generators. If you look at the list of retail
7 that's prescribed in the overlay, those are
8 low impact, very neighborhood-oriented uses
9 and we would expect that the retail would
10 largely serve the residents of the
11 neighborhood and probably would be served
12 largely by pedestrian trips.

13 CHAIR LOUD: And that would kind
14 of relate to the general special exception
15 standard regarding the potential adverse
16 impacts to neighboring properties. Your
17 expert opinion is will there be an adverse
18 impact?

19 MS. MCCARTHY: I don't see an
20 adverse impact at all. I think as has been
21 stated, going beyond the requirements to
22 include a loading zone that wasn't required,

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1 to include the access off of the alley to the
2 parking to set it back from the street
3 somewhat, to reinforce pedestrian activity, I
4 think those are all actions which the Mission
5 has taken that go above and beyond to make
6 sure that there isn't an adverse impact from
7 the project.

8 CHAIR LOUD: And do you think your
9 reaching that conclusion is in any way
10 affected by not having an updated
11 transportation study?

12 MS. McCARTHY: I do not.

13 CHAIR LOUD: And why not?

14 MS. McCARTHY: Because, as I said,
15 the C-3-A zone was set with an assumption that
16 the density under the matter of right under a
17 C-3-A zone is compatible with the neighborhood
18 and we are talking about a project that could
19 go up to 60,000 square feet and is at 46,800
20 or something along those lines. So I don't
21 see that as requiring 27 parking spaces. I
22 don't see that as requiring it.

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1 Even if every one of those parkers
2 deciding to leave at the same time, that would
3 be -- my brain was on a great glide path there
4 to doing that math in my head, but somehow
5 with the hour, it just fractured, but it would
6 be one per -- even if they only left at the
7 rate of one per minute, that would be a half
8 hour's worth of traffic on the neighboring
9 street. And you know they're not all leaving
10 at the same time. And you know, even if some
11 of them were leaving at the same time, it
12 would be a few seconds apart. we're not
13 talking about streets that are over saturated
14 in terms of their ability to access Georgia
15 Avenue.

16 CHAIR LOUD: Thank you. Board
17 Members, are there any additional questions?
18 Okay.

19 Thank you, Mr. Jennings. I don't
20 believe there any additional questions for you
21 right now. And I don't believe necessarily
22 that there are questions for the other

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1 witnesses.

2 We will now turn to the ANC for its
3 report and I believe it's our Exhibit 67.
4 Thank you, Mr. Dettman. And it's dated, I
5 believe, September 17. But in any event, it's
6 a part of our record and thank you for your
7 patience and we now turn to you for the ANC's
8 report.

9 MR. VALENTI: Sure. And maybe
10 instead of just reading the report, I'll just
11 give you kind of the broad points and kind of
12 let you know how we arrived at that decision.

13 The first thing is the retail space
14 reserved along Georgia Avenue. We definitely
15 view this as a plus for Georgia Avenue.
16 Currently, there are retail uses on Georgia
17 Avenue, but I don't know what they're used
18 for, honestly, because they are businesses
19 that I don't think anybody in the neighborhood
20 uses. And they seem like they're closed half
21 the time, even though they're viable,
22 legitimate businesses apparently.

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1 So I think the addition of 27,000
2 square feet of retail on Georgia Avenue that
3 will be for true, viable neighborhood-serving
4 business, an essential element that we really
5 need to support.

6 A point of controversy was a lot of
7 people were concerned about the fact that
8 every project that's approved for Georgia
9 Avenue currently is 100 percent affordable and
10 we need to start mixing up, getting some
11 market rate development on Georgia Avenue as
12 well. But that issue was addressed -- we
13 decided as an ANC, we're going to take that up
14 separately and not target any one project.
15 And that this could help start, get some
16 construction going on Georgia Avenue, get some
17 more residential and then we could move from
18 there toward building up more of a mix of uses
19 and stuff.

20 Another point of contention at the
21 meet was a lot about the architectural
22 elements. I think everybody views The Sidney

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1 on Georgia Avenue which was -- it opened last
2 year. It's a new building. That would be a
3 totally conforming of what we pictured Georgia
4 Avenue to be like with the overlay and
5 everything. And then you have the EL Haynes
6 on the other extreme which would be the exact
7 opposite.

8 I think our conclusion was that
9 this project is somewhere in the middle. And
10 you know, ultimately, we decided that the
11 residential aspects and retail aspects would
12 be good and that we were willing to waive that
13 concern with the guarantee that there will be
14 no CBRF because the overwhelming element of
15 the meetings that we've had on this was that
16 everybody is afraid that this is some trick to
17 get a community-based residential facility of
18 150 homeless men into the neighborhood and
19 that would definitely be detrimental to
20 commerce in the area and you know, the area
21 already has an abundance of shelters and we
22 just want to make sure that that is spread

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1 throughout the city so that it's not all
2 available in one specific neighborhood.

3 So those were all the concerns that
4 we raised and I think I really want to thank
5 the BZA for extending this meeting three times
6 because it allowed us the opportunity to come
7 up with something that was mutually
8 beneficial. And I also want to thank the
9 Mission for being willing to step back and
10 reevaluate their plans and provide us with the
11 guarantees that the neighborhood to feel like
12 we're on a successful path. And that's all I
13 really have to say.

14 CHAIR LOUD: Thank you, Mr.
15 Valenti.

16 Does the Applicant have any
17 questions for the ANC?

18 MS. BRAY: I do not. Thank you.

19 CHAIR LOUD: Board Members have any
20 questions? Okay.

21 Then we will now see if there are
22 any persons in the audience who are in support

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1 of the application, now would be the time to
2 come up. You'll be given three minutes. And
3 seeing none, if there are any persons in the
4 audience who are in opposition, seeing none,
5 we turn to the Applicant for closing.

6 MS. BRAY: Thank you very much, Mr.
7 Chairman, and Members of the Board.

8 I, too, on behalf of the Mission
9 would like to thank the ANC for its
10 involvement following this application, their
11 patience and our requests for postponement as
12 the Mission has wrestled with what to do on
13 this property for nearly two years.

14 I'd also like to thank the Office
15 of Planning and DDOT for their review of the
16 proposal and their excellent reports.

17 The proposed use is a matter of
18 right in the C-3-A zone district in the
19 Georgia Avenue Overlay District. The proposed
20 building proposes significantly less FAR in
21 height than would be permitted as a matter of
22 right in the C-3-A. The building has been

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1 designed to conform to the requirements of the
2 overlay and the recommendations of the
3 planning tools upon which the overlay is based
4 as Ms. McCarthy testified. And also, as Ms.
5 McCarthy and Mr. Graae testified, the
6 application meets the general and specific
7 criteria for special exceptions of over 1200
8 square feet in land area in the Georgia Avenue
9 overlay.

10 The use is in harmony with the
11 general purpose and intent of the zoning
12 regulations and zoning maps. Again, the uses
13 are permitted as a matter of right. The use
14 will not tend to adversely impact the use of
15 neighboring property. You've heard the
16 building has actually been designed
17 specifically to address the architecture and
18 the low-scale development along Newton, in
19 particular. The use, building or feature at
20 the size and intensity in location will
21 substantially advance the stated purpose of
22 the Georgia Avenue overlay, nor be detrimental

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1 to the health, safety, convenience, or general
2 welfare or persons residing or working in the
3 vicinity.

4 We submit that by changing the
5 proposed use from a community-based
6 residential facility proposing 170 beds in a
7 homeless shelter environment, from that to a
8 medium-density residential facility with
9 commercial uses on the ground floor and
10 meeting the need for affordable housing in
11 this neighborhood, we have satisfied the
12 requirements of 1304.1(a).

13 You heard Ms. McCarthy testify that
14 vehicular access and egress are located so
15 that they minimize conflict with the principal
16 pedestrian ways as required by 1304.1(c). The
17 design of the project enhances the urban
18 design features of the immediate vicinity in
19 which it is located as required by 1330.2(a).

20 You heard Mr. Gray testified that the
21 entrance has been oriented toward the Metro,
22 that the property has been designed in such a

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1 way that it allows for seating or a café space
2 on the sidewalk in front of the retail along
3 Georgia Avenue, and it mirrors the lower-scale
4 residential development along Newton Place
5 which is a very narrow street and warrants
6 special treatment, that there are no parking
7 or traffic conditions associated with the
8 operation of the proposed use which would
9 significantly impact adjacent or nearby
10 residences. In fact, the traffic impact
11 analysis which was submitted with the
12 application when it was proposed initially as
13 a CBRF at 60,000 square feet proposed less
14 than ten spaces less than what is proposed now
15 and found no significant impact associated
16 therewith.

17 We submit we meet all the specific
18 and general criteria required for approval of
19 the special exception in the Georgia Avenue
20 overlay and appreciate the Board's time and
21 patience in reviewing this application. We
22 request that the Board approve the relief

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1 requested.

2 CHAIR LOUD: Thank you. I do
3 believe the record is full. I believe it's
4 probably something that we can deliberate on
5 today, but I do want to check with my
6 colleagues here before we get too far into
7 that.

8 Okay, I'd be more than happy to
9 start us off. This is an application, as
10 amended, for Section 3401 relief, obviously,
11 general special exception requirement as well
12 as Section 1328 compliance with the Georgia
13 Avenue overlay and as further amended for a
14 waiver of Section 1328.2 under the provisions
15 of Section 1330 which allow waiver of that
16 provision which addresses the 75 percent
17 threshold.

18 With respect to the general special
19 exception requirements under 3104, we did hear
20 testimony from the Office of Planning as well
21 as the Applicant's expert regarding the
22 project being in harmony with the general

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1 purpose and intent of the zone regs and the
2 zone map. Additional testimony from the
3 Office of Planning and the Applicant's expert
4 regarding the proposed use not being likely to
5 adversely affect the use of neighboring
6 property. There were some potential questions
7 raised by the Department of Transportation in
8 its report and in its oral testimony regarding
9 potentially adverse uses, but they were open
10 ended and they were qualified by the fact that
11 there wasn't a transportation report that they
12 could review and that they did not have the
13 opportunity to review the most recent
14 submission from Applicant's counsel regarding
15 the change, nature of the project from a CBRF
16 facility to 37 units residential and ground
17 floor retail.

18 So the evidence there with respect
19 to their being some adverse, potentially
20 adverse impact was inconclusive. On the other
21 hand, we had strong testimony from the Office
22 of Planning and Applicant's expert regarding

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1 there not being any adverse impacts to
2 neighboring properties.

3 With respect to the Georgia Avenue
4 overlay provisions, rather than just
5 regurgitate everything that both Ms. Bray has
6 just said and that's also in the Office of
7 Planning's report and that was testified to by
8 Ms. McCarthy as well, I would just like to
9 adopt by reference and incorporate by
10 reference the way that that -- those overlay
11 requirements are laid out in the report of the
12 Office of Planning and suggest that I
13 incorporate that in both -- find that evidence
14 persuasive.

15 With respect to the waiver from
16 1328.5 regarding the street wall of the
17 project not meeting the 75 percent threshold,
18 we did hear testimony from the Office of
19 Planning that notwithstanding that the
20 building achieves the goal of bringing the
21 property to the street level by bringing it as
22 close to I guess the setback sidewalk as it

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1 could and that that would be imperceptible to
2 members of the public, that they were not
3 meeting the 75 percent threshold, in addition
4 to which there was testimony by the Applicant
5 regarding the narrowness of Newton Street
6 being 50 feet, regarding the design direction
7 to set back the corner of the property,
8 regarding the desire to landscape, in
9 particular, the new site which had the ground
10 floor residential. And so there was some
11 testimony -- not that the waiver requires that
12 kind of evidence, but nonetheless there was
13 some testimony offering reasons why the 75
14 percent threshold was not met.

15 There was also the report of the
16 ANC that was fully supportive of the special
17 exception as conditioned by a permanent
18 statement that there would never be any CBRF
19 or homeless shelter facilities on the project
20 and the ANC's report was properly noticed, had
21 a quorum and the vote, I think, was eight to
22 zero in support of the project.

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1 And so for all of those reasons the
2 full record before us, I'm in support of the
3 application and I'll open it up to Board
4 Members.

5 VICE CHAIR DETTMAN: Mr. Chairman,
6 I think you've done a great job taking us
7 through the relevant provisions. I think the
8 provisions have been met. The special
9 exception burden has been met and I'm with you
10 in your support for the application.

11 CHAIR LOUD: Thank you, Mr.
12 Dettman. Is there anything further?

13 Okay, then I would like to -- let
14 me see if I can get this straight. I would
15 like to move approval of Application No. 17717
16 for special exception relief under 3104.1 and
17 1330.2(b) and 1328, as amended, and as
18 conditioned by the ANC. I just want to make
19 sure I have all the amended relief as well.

20 I would like to move approval of
21 said application as I just described it. Is
22 there a second?

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1 VICE CHAIR DETTMAN: Second.

2 CHAIR LOUD: Further discussion?

3 MEMBER SCHLATER: Just one point of
4 clarification. I just wanted to make sure
5 that one of the conditions of the order is
6 that there be affordable housing as part of
7 the project? I don't know if that comes
8 naturally as an outgrowth of the application,
9 but I just want to make sure that's
10 formalized.

11 CHAIR LOUD: Thank you. No harm.
12 I think the Applicant has testified that that
13 would be the case, 50 percent to 80 percent
14 AMI and I think it's part of their mission,
15 but I think we can write that in as a
16 condition.

17 There was some testimony from the
18 ANC regarding the whole affordability issue,
19 but I think it ended up cresting was that they
20 would take that up in another forum. So I
21 think that's an excellent condition.

22 Board Members? Okay, I don't hear

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1 any objections from the Board on that.

2 And again, by affordable, we're
3 talking 50 to 80 percent of the AMI range.

4 MEMBER MOLDENHAUER: Would that be
5 a continual requirement or would we put a
6 limit on that? I don't like seeing -- if this
7 isn't currently required, but just having a
8 look, I guess, affordable housing until -- I
9 can see the ANC -- one of their goals is to
10 try to encourage marketable housing. If for
11 some reason the Mission ended up deciding that
12 you know they wanted to sell that property and
13 seek other areas, maybe that were more need in
14 the District.

15 MEMBER SCHLATER: I guess how I
16 would put it is that I think there are certain
17 qualities of the design that are necessitated
18 by the social mission of the building and if
19 it were a market-rate building might not be --
20 we might not grant the special exception were
21 it not an affordable building. So that's why
22 I'm pushing that.

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1 I think it's always reasonable to
2 put a term on the affordable housing mandate.

3 Sometimes it's 15 years. Sometimes it's 30
4 years. And I'd be open to discussion on that
5 point, but it's -- I think it comes with the
6 approval.

7 What I wouldn't like to see is the
8 property sold with the zoning approval and
9 then there not be affordable housing on it. I
10 guess that's what I'm trying to guard against.

11 MS. BRAY: Mr. Chairman, if I may?

12 CHAIR LOUD: Yes, please.

13 MS. BRAY: Board's indulgence. The
14 inclusionary zoning requirements, which have
15 recently gone into effect will require that a
16 portion of the units which are proposed in the
17 proposed development be maintained as
18 affordable in perpetuity.

19 The remaining units will be
20 constructed as affordable units, but we have
21 not proposed, because we have not gotten into
22 that stage in development frankly an

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1 affordable housing covenant other than what we
2 know will be required as a part of the
3 inclusionary zoning requirements, but I
4 believe it's the desire of the Mission to --
5 if it sells this property or partners with
6 another entity, that it be developed as
7 affordable housing and we would address that
8 in the transactional documents related to
9 that.

10 But at this time, we can proffer
11 that the units which must satisfy the
12 inclusionary zoning requirements would remain
13 so in perpetuity as required by the zoning
14 regulations and the DHCD requirements.

15 MEMBER SCHLATER: Just with all due
16 respect to Ms. Bray, I'm not asking for what's
17 already required in the zoning regulations.
18 I'm asking for something above and beyond
19 that.

20 MEMBER MOLDENHAUER: I believe
21 right now we're actually in the discussion
22 section.

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1 CHAIR LOUD: We are.

2 MEMBER MOLDENHAUER: So I would
3 definitely be willing, as long as there were
4 some limited period of time, even the 15
5 years, I probably -- but 10 years, to that
6 extent a portion beyond, whatever, the IZ
7 requirements are.

8 CHAIR LOUD: Mr. Schlater, I'm
9 going to weigh in after the exchange between
10 the two of you. I've got some concerns,
11 questions.

12 MEMBER SCHLATER: I'll bring a
13 little bit of my limited Zoning Commission
14 experience into the discussion. When we get
15 affordable housing as an amenity in a PUD, the
16 affordability period that we typically see is
17 maybe the useful life of the unit which --
18 units do require after a period of time
19 reinvestment and recapitalization. So at
20 least on a Commission level we acknowledge
21 there's -- it's okay to have a limited period,
22 but usually that period is somewhere between

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1 15 and 35 years.

2 So I would be comfortable somewhere
3 within that range.

4 MEMBER MOLDENHAUER: I would throw
5 this back out to the other two Board Members
6 to see -- if I'm the sole Member in dissent,
7 let's just go forward. That's fine.

8 VICE CHAIR DETTMAN: I think
9 typically when the Board conditions or places
10 conditions on an application, it serves to
11 mitigate something. And I think -- I'm not
12 quite certain -- I heard Mr. Schlater's
13 comment about his comment about maybe he
14 wouldn't support the application if it wasn't
15 an affordable building given some of the
16 architectural details of the building.

17 I kind of differ in that respect.
18 The basis for my support for the application
19 is not because it's being proffered as an
20 affordable project. I basically see before us
21 an apartment building that they intend to
22 build as an affordable project, but that

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1 certainly did not factor into my support for
2 the project.

3 So to put a condition that requires
4 them to do all affordable housing, either in
5 perpetuity or for a certain amount of time,
6 I'm just not quite certain what that goes to
7 mitigate. We occasionally will do a condition
8 that mitigates for impacts to traffic or
9 impacts to the pedestrian realm or the public
10 realm, but here I'm not seeing it.

11 CHAIR LOUD: Mr. Schlater, did you
12 want to respond?

13 MEMBER SCHLATER: I think quality
14 over design is the key aspect of the review
15 criteria in front of us with respect to the
16 recently approved plans that were approved by
17 Council and part of high-quality urban design
18 is immaterial to the architecture. I think we
19 have testimony from the ANC saying that while
20 the building is not objectionable from a
21 design standard, it is certainly not what they
22 would consider superior architecture and

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1 design which is something that we are striving
2 for in the Georgia Avenue corridor and the use
3 of the highest quality materials.

4 We're trying to step it up and
5 pushing it in that direction, but I also
6 understand it's an affordable housing project,
7 so we can only push so far in this respect.
8 If this were a market-rate developer coming
9 before us and proposing this building and
10 saying without the affordable housing being
11 proffered, I personally would not support the
12 building.

13 CHAIR LOUD: I think I understand
14 Mr. Schlater's concern and direction. I kind
15 of see it in terms of mitigating, Mr. Schlater
16 saying that this tends to mitigate toward the
17 overlay design issues. Because a lot of the
18 overlay just deals with design and complying
19 with the design intent, etcetera. His very
20 clear statement that if this project were
21 before us with this design and he were looking
22 at it as measured against the overlay, and

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1 what the overlay was designed to help us get
2 to on Georgia Avenue which actually includes a
3 lot of the testimony that Applicant's expert,
4 Ms. McCarthy, addressed in her testimony
5 regarding the direction for Georgia Avenue,
6 its development. I can both understand and
7 emphasize with Mr. Schlater's condition.

8 I don't see any harm in doing it
9 particularly since the Applicant has testified
10 that it's part of its mission to so do that
11 and that any resale of the property would
12 include some covenant regarding affordability
13 as part of the transactional documents. It
14 didn't say what percentage, but I mean clearly
15 some provision there with a sunset in it,
16 could be ten years. I don't know what the
17 appropriate period would be. But I'm not
18 clearly seeing what the harm would be to the
19 Applicant based on the testimony that's a part
20 of the record already and I can clearly see
21 what in Mr. Schlater's mind it mitigates
22 against in terms of the overlay.

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1 MS. GLAZER: Mr. Chair, I just want
2 to caution the Board. I'm sorry to interject,
3 but I don't know that a condition standing
4 alone would be enforceable without covenants.

5 So I just wanted to interject that. I think
6 it may be an academic discussion unless
7 there's a covenant.

8 MEMBER SCHLATER: I would hope you
9 would enforce it with a covenant I guess would
10 be my point.

11 CHAIR LOUD: Let me suggest we go a
12 little bit out of order because we're sort of
13 raising the issue of the condition in
14 deliberation and now having gone over it
15 significantly during the evidentiary part of
16 the hearing, so I think it's appropriate for
17 counsel for the Applicant to weigh in as we
18 proceed further in our discussion and then
19 we'll close down the evidence part of it and
20 go back to pure deliberations with the Board
21 Members.

22 MS. BRAY: I appreciate that, Mr.

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1 Chairman.

2 While I certainly understand Mr.
3 Schlater's reasoning and his analysis, there
4 are a couple of reasons why proposing such a
5 condition could have potential adverse impact
6 on the Applicant.

7 First of all, any such condition
8 may have a chilling effect on the Applicant's
9 ability to find a development partner and/or
10 market the property for development of
11 affordable housing. While we are proposing an
12 affordable housing project, most developers
13 which are in the market, including some of
14 those that the Mission has spoken to, are
15 using low-income tax credit financing to do
16 so, which is only available for a period of
17 ten years.

18 So once that period has run, the
19 developer could not continue to claim the
20 credit against -- I see you shaking your head,
21 Mr. Schlater.

22 MEMBER SCHLATER: If you're using

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1 affordable housing tax credit financing,
2 there's going to be an affordability period of
3 at least 30 years.

4 MS. BRAY: There's definitely going
5 to be an affordability period associated with
6 the project. The problem is that the Mission
7 doesn't yet know what the financing vehicle
8 will be for this development. Nor does it
9 know whether it's going to be developing it on
10 its own or with a development partner or
11 perhaps the District of Columbia. The Mission
12 is trying to keep all those options open and
13 it would be premature to set a period now
14 other than to say that the units will be
15 constructed as affordable units and perhaps
16 the Applicant will condition or covenant in
17 any real estate transaction that the
18 affordable units be maintained as such. But I
19 don't think the Mission is at this point in a
20 position to agree to a term because that
21 financing vehicle hasn't been determined.

22 I'm probably not, in terms of the

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1 Mission's advisor, probably not the best
2 person to speak to financing of this project.

3 But Mr. Treadwell or Kevin Keagan who is with
4 us today from the Brailsford and Dunley, the
5 Mission's consultants with respect to facility
6 planning and who have advised on several of
7 the proposals to join with the developer on
8 this project may be able to add something to
9 the discussion there.

10 MR. TREADWELL: If I might add,
11 there's some great irony here. The
12 neighborhood wants us to bring in more
13 affluent occupants and having some of the
14 units available for the more affluent may be
15 appealing to someone who would partner with
16 us. And so maybe even make a little different
17 brick on the front that the ANC would like.
18 So the more flexibility in doing that, the
19 neighborhood's concern was that we were going
20 to lower the threshold and now we're looking
21 at something that's going to be put a ceiling
22 on it and look at increasing of the threshold.

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1 So I'm caught in an irony here that's hard to
2 address at this point.

3 MS. BRAY: And I'll also add that
4 when the Mission, when we last appeared before
5 this Board and we sought postponement, we did
6 so in April of 2009 after meeting with Council
7 Member Graham who requested that the Mission
8 consider very seriously developing a project
9 of mixed income which would include some
10 market rate units.

11 While the Mission, as developer of
12 this project, is absolutely committed to
13 development of affordable housing because it
14 is consistent with its tax-exempt purposes,
15 I'm concerned about the chilling effect that
16 such a condition may have on the Mission's
17 ability to finance the project and to join
18 with the developer. Of course, anybody can
19 come back and modify the condition, but it's
20 the chilling effect of having that type of
21 condition prematurely applied to a project
22 that has not been financed at this point that

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1 I'm concerned about.

2 MS. MCCARTHY: I think it might
3 also be relevant to observe with regard to Mr.
4 Schlater's analogy to the Zoning Commission
5 that affordability requirements in the Zoning
6 Commission tend to be very long term for a PUD
7 because you are asking for a substantial
8 increase in density which will last in
9 perpetuity for the building. So asking for
10 extra density and balancing that with public
11 benefit is a very different kind of situation
12 than actually providing less than what is
13 matter of right and aiming to do affordable,
14 but not having things gelled at this point.

15 I suppose one way out of the box
16 would be to say if the desire to require
17 affordable housing is linked to the use of
18 EIFS, then do we put in a condition that says
19 okay, if it's semititious siding then we can
20 go to mixed income and if we go up to all
21 masonry, then we can be luxury? It's a -- we
22 should note the EIFS is not at the lower

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1 levels where people will see it. It is only
2 at the upper levels of the building.

3 CHAIR LOUD: Okay, I think the
4 record is full. I really do and I think a
5 sense of where the votes is probably not going
6 to change. So I think what we'll do now is go
7 back into deliberation, address this issue of
8 the proposed condition for affordable housing.

9 It takes three votes to get approval on
10 something, so we'll address that. Then
11 there's still a motion on the table for
12 approval of the application as conditioned
13 only with the ANC's recommended condition and
14 then I think we're in a position to vote on
15 this case and close it out.

16 So what's on the table now I think
17 is the affordable housing requirement that
18 will be 100 percent affordable. The
19 suggestion from Board Member Moldenhauer is
20 that there be some sort of sunset provision
21 put to it. And are you willing to consider
22 the sunset provision and what period of time

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1 would you be willing -- okay, 15 years.

2 Okay, so the proposed condition is
3 that affordable housing, 100 percent
4 affordable housing be made a condition of the
5 application for our vote in deliberation. All
6 those who are in favor of that condition
7 indicate by saying aye. All those opposed
8 indicate by the appropriate saying and then
9 we'll check for abstentions.

10 I have upon listening to further
11 evidence from the Applicant, although I'm not
12 totally on board with the inclusionary zoning
13 piece. I don't know if it's ten percent. I
14 don't know what the percentage is and we don't
15 have to go into the record to go into it, but
16 I'm a little more persuaded that having the
17 inclusionary zoning piece, giving the
18 Applicant some flexibility moving into the
19 future in terms of its financing and the
20 ultimate mix at the site is probably not a bad
21 thing to do. It's probably not a bad thing to
22 do.

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1 Earlier I supported it. Mr.
2 Schlater, but listening to the evidence coming
3 in, I think where I am not is that I would not
4 want to saddle the project for the requirement
5 for 100 percent affordability. So that being
6 said, all those in favor of the proposed
7 condition, please indicate by saying aye.

8 All those who are opposed to it,
9 please indicate by saying opposed. There's
10 one in favor, one opposition, and all those
11 who abstain?

12 So it looks like there's one in
13 favor. There is one opposition. There's two
14 abstentions. The proposed condition does not
15 carry, so we can go back now to the original
16 motion for approval of the application as
17 conditioned by the ANC.

18 Is there further deliberation on
19 that motion?

20 Okay, so it's been moved that the
21 application be approved as conditioned by the
22 ANC. Is there a second?

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1 MEMBER MOLDENHAUER: Second.

2 CHAIR LOUD: It's been moved and
3 seconded. Is there further deliberation?
4 Okay, hearing none, all those in favor of the
5 application indicate by saying aye.

6 (Chorus of ayes.)

7 All those opposed? And are there
8 any abstentions? And Ms. Bailey, can you read
9 back the vote, please?

10 MS. BAILEY: Who seconded the
11 motion, please?

12 CHAIR LOUD: Ms. Moldenhauer.

13 MS. BAILEY: Thank you. It's a
14 little difficult to hear on this end, but I
15 believe the vote was 3-1-1. The motion was
16 made by Mr. Loud, seconded by Ms. Moldenhauer,
17 supported by Mr. Dettman. Mr. Schlater is
18 opposed to the motion. Thank you. The Board
19 has approved the application, as amended, and
20 as conditioned and the condition is that there
21 would not be a CBRF developed at the site.

22 CHAIR LOUD: Thank you. And I

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1 believe there's no opposition in our record to
2 it, so I believe that we can do a summary
3 order that incorporates a condition I think
4 that we've agreed and voted upon.

5 MS. BAILEY: Thank you, sir.

6 CHAIR LOUD: Is there anything
7 further with this case?

8 MS. BAILEY: No, Mr. Chairman.

9 CHAIR LOUD: And is there anything
10 addition for today's calendar?

11 MS. BAILEY: That's it, Mr.
12 Chairman.

13 CHAIR LOUD: Thank you very much.
14 Thank you. We appreciate your time and your
15 patience. And on that note, this hearing is
16 adjourned.

17 (Whereupon, at 6:53 p.m., the
18 hearing was concluded.)

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