

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 23, 2010

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Shane L. Dettman, Vice Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHANE L. DETTMAN, Vice Chairman  
(NCPC)  
MERIDITH H. MOLDENHAUER, Board Member  
NICOLE SORG, Board Member

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

JOEL LAWSON

ARLOVA JACKSON

The transcript constitutes the minutes from the Public Hearing held on March 23, 2010.

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

9:51 a.m.

VICE CHAIRMAN DETTMAN: Good morning, ladies and gentlemen. This hearing will please come to order. This is the March 23, 2010 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Shane Dettman, Vice Chairman of the BZA representing the National Capital Planning Commission. With me today to my right is Mr. Michael Turnbull representing the Zoning Commission, Meridith Moldenhauer and Ms. Nickie Sorg, Mayoral Appointees to the BZA, Mr. Clifford Moy and Ms. Beverley Bailey with the Office of Zoning.

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

Accordingly, we must ask you to refrain from any disruptive noises or actions in the

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hearing room.

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

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located to my left on the table near the door and on the witness tables. Upon coming forward to speak to the Board please give both cards to the court reporter sitting to my right.

The order of procedure for special exceptions and variances statement and witnesses of the applicant, government reports including the Office of Planning, the Department of Public Works and others, report of the ANC, parties or persons in support,

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parties or persons in opposition, and finally closing remarks by the applicant.

Pursuant to Sections 3117.4 and 3117.5 the following time constraints will be maintained. The applicant, the appellant, persons and parties except an ANC in support, including witnesses, are allotted 60 minutes collectively. The same time period applies to appellees, persons, and parties except the ANC in opposition and finally individuals wishing to testify will be provided three minutes.

These time constraints do not include cross-examination and/or questions from the Board. Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in a special exception or a variance case.

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

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

The Board and the staff will specifically at the end of the hearing state exactly what is expected and the date when the persons must submit the evidence to the Office of Zoning.

After the record is closed no other information will be accepted by the Board. The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary the Board request that persons present not engage the members of the Board in conversation.

Please turn off all beepers and cell phones at this time so as not to disrupt this proceedings. The Board will consider any preliminary matters. Preliminary matters are those that relate to whether a case will or should be heard today such as requests for postponement, continuance, or withdrawal, or

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whether proper and adequate notice of the hearing has been given.

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

Does the staff have any preliminary matters?

MS. BAILEY: Mr. Chairman and Members of the Board, and to everyone good morning. The Office of Zoning staff does not, Mr. Chairman. I'm not sure about the parties but as far as I know we do not.

VICE CHAIRMAN DETTMAN: Thank you, Ms. Bailey. To the parties, to the applicant, as well as the opposition party, any preliminary matters to take care of prior to moving forward? No. Great. Then let us proceed with the agenda.

Ms. Bailey had recommended we not swear in the witnesses since they have been sworn in probably four times prior but why

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don't we just take care of that quickly one more time and then we can move on with today's agenda. Those wishing to testify today please raise and Ms. Bailey will administer the oath.

MS. BAILEY: Do you solemnly swear or affirm that the testimony that you'll be giving today will be the truth, the whole truth, and nothing but the truth?

WITNESSES: I do.

MS. BAILEY: Thank you.

VICE CHAIRMAN DETTMAN: Thank you, Ms. Bailey.

MS. BAILEY: Members of the Board, as you know this is a continuation case from last week, March 16th. It's a remand from the Court of Appeals and it's the application of N Street Follies, Ltd.

The Application No. is 17337-A and it's pursuant to 11 DCMR Section 3104.1 for a special exception to permit a hotel under Section 512 to allow the construction of an

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addition to existing buildings to be used as a hotel. The property is located in the Dupont Circle SP-1 District of premises 1743 through 1755 N Street, N.W. It is also known as Square 158, Lots 69, 835, and 836.

My understanding from last week, Mr. Chairman, is where the Board is in this case is the Office of Planning will be cross-examined. That is the continuation that I am aware of, Mr. Chairman.

VICE CHAIRMAN DETTMAN: Thank you, Ms. Bailey. Thank you for that last point because what I would like to do before we get started is just kind of summarize where we're at in the proceedings and then make a couple of clarifying points. As Ms. Bailey said, we left off with the Office of Planning providing their report and at that point we continued last week's hearing.

At this point I think we'll go to Board questions if there are any right now and then we can go to questions and cross-

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examination of OP by the applicant followed by the opposition party and then once we are through with our questions the Office of Planning will go to rebuttal and closing remarks by the applicant.

The couple of clarifying points I wanted to make is that there have been a couple statements regarding whether or not FAR relief is necessary in this application and parking, I believe. The Board has discussed these couple points and wanted to just take care of them up front.

Where the Board is at with respect to those two questions is this is, in fact, a self-certified application submitted by the applicant for a special exception pursuant to 512 for the establishment of a hotel use in an SP district.

The applicant has testified to and has submitted in its plans information on the FAR and testifies to the fact that that do not believe that FAR relief is necessary based on

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the plans that are before the Board.

I think the Board is going to rely upon the information that they have before us and note that the application is self-certified and FAR relief is, in fact, necessary based on the plans that are before us or the discrepancies and any changes that may result in the plans.

The discrepancies I'm referring to are those that came to light during the work with HP. That will kind of play out during the building permit process and if FAR relief is necessary, the applicant would be required to come back to the BZA for such relief.

However, there is some unclarity that we have on what is being considered residential versus nonresidential use. That question actually applies directly to our analysis under 512 and so perhaps at the close of the hearing the Board will need to discuss whether or not we need additional information in the record that will clearly spell out what

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is being considered to be residential versus nonresidential for the purposes of the 512 analysis.

The second point goes to parking. I believe there was an issue raised that there may be potential for parking relief. Again, the Board is going to rely upon the fact that this is a self-certified application. The plans have been amended once during the course of these proceedings. Right now we have a plan before us that is showing 56 or 58?

COMMISSIONER TURNBULL: Fifty-eight parking spaces.

VICE CHAIRMAN DETTMAN: Fifty-eight parking spaces. The applicant has already testified to the fact that parking is required given the size of the addition. It is greater than 50 percent of the gross floor area of the existing historic structures.

The applicant has already testified that the minimum parking required for this project is 19 spaces and they have presented

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the Board with a plan for 56 spaces.

I think that the Board is comfortable going forward from there and under the provisions of 512 the Board at the appropriate time will determine whether or not 56 spaces is either too much or too little based on what is going on in the existing neighborhood, the existing alley system, and 512 gives the Board that authority. If there are no responses or questions from the applicants or the opposition I think we can go forward. Okay.

Colleagues, do we have any questions for the Office of Planning before moving forward or do we want to wait until we hear what the applicant or the opposition have to say?

MEMBER MOLDENHAUER: I have a few questions but I think what we should do is open up the floor to potential questions from both the applicant and the opposition and then if they haven't addressed some of my questions I'll jump in and ask the applicant

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VICE CHAIRMAN DETTMAN: Right.  
Sounds good, Ms. Moldenhauer.

Mr. Turnbull, Ms. Sorg, sound good?  
Okay.

Mr. Keys, I think it's to you for questions of the Office of Planning.

MR. KEYS: I'm George Keys representing the applicant in this matter. I guess I'll be directing my questions to Ms. Jackson.

Ms. Jackson, in your analysis of 512.5 of the zoning regulations which appears on page 4 of your report, you made an effort and a determination that the requirement of 512.5 necessitated looking to a geographic area around the property. What determined the limits of that parameter for you to look at the uses? What was the basis of that?

MS. JACKSON: Well, we started by looking at the square and an analysis of the square was provided in the application. To get a sense of the mix that is trying to be

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achieved in the District overall we expanded our review to consider both the SP-1 and SP-2 in a larger geographic area to have something to compare it to so to get a sense of whether or not the mix shown within the square was in keeping with the SP overall in a larger probably seven to eight-block radius.

MR. KEYS: So you didn't limit yourself to the SP-1 district per se?

MS. JACKSON: No.

MR. KEYS: And I would like to just look at the map that you have attached, the zoning map. It's the next to last page in your report. I just wanted to understand the area that you considered I noticed there is an SP-2 zone directly to the north of the property across Mass Avenue. That was part of your calculation?

MS. JACKSON: Yes.

MR. KEYS: And that zone continues, doesn't it, up 18th Street north past Dupont Circle?

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MS. JACKSON: Yes.

MR. KEYS: And looking to the south of the subject property, now looking across Rhode Island Avenue and 17th Street, there is an SP zone there that is contiguous?

MS. JACKSON: Yes.

MR. KEYS: And although it's off your map there is also an SP zone that runs up 16th Street. Is that not correct?

MS. JACKSON: Yes.

MR. KEYS: And were all of these areas within your scope of assessment?

MS. JACKSON: Yes.

MR. KEYS: Now, I want to ask you about the Dupont Circle Overlay District. You analyzed 512 section by section by section but when you discussed the overlay district, and that's on page 2, I think it's Section 6, you indicated that the overlay district is served by limiting development to the existing minimums. Is that correct?

MS. JACKSON: Yes.

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MR. KEYS: I don't have any further questions.

VICE CHAIRMAN DETTMAN: Thank you, Mr. Keys.

Board Members, any questions yet? No?

Then Ms. Bray.

MS. BRAY: Thank you. Good morning.

MS. JACKSON: Good morning.

MS. BRAY: Okay. On page 1 of your report, Ms. Jackson, you describe the neighborhood character as predominately medium density, historic buildings converted for office uses, hotels, institutional and residential buildings. Can you identify which buildings in the square in question, Square 158, are currently residential in nature?

MS. JACKSON: There is one to the west that fronts on 18th Street within the square. There's a couple more north of Massachusetts Avenue.

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MS. BRAY: Can you identify which lot you're talking about that fronts on 18th Street in a square that is residential in nature?

MS. JACKSON: I don't know the lot number.

MS. BRAY: Would you be referring to the Palladium Condominium?

MS. JACKSON: I believe so.

MS. BRAY: And that's a mixed use building. Is that right?

MS. JACKSON: Right.

MS. BRAY: Okay. Now, picking up on Mr. Keys was just asking you about the overlay, you had said in your report, I believe it's on page 2, when you talk about the SP zone, it's also in Section 6, you note that the special purpose zones, SP, are designed to provide a buffer between certain commercial and residential zones.

SP districts are transitional areas typically adjacent to commercial zones with a

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mix of uses and often contain buildings of historical significance. Where does that language come from?

MS. JACKSON: I believe I was paraphrasing the language in what might have been the purpose statements.

MS. BRAY: Okay. On page two of your report you note that the permitted uses in the SP-1 zone include conversions to offices but conversions to offices also require like hotels a special exception. Is that right?

MS. JACKSON: Yes.

MR. BRAY: And a special exception is not the same as a permitted use as a matter of right.

MS. JACKSON: Right.

MS. BRAY: Okay. Does conversion to offices under Section 508.1 of the zoning regulations require a similar test for balance of uses as we are looking at today under 512?

MS. JACKSON: Could you repeat

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that? I just got to 508.

MS. BRAY: Sure. I believe we established that conversion to offices require a special exception. I think 508 is the right section like 512 governs special exceptions for hotels. Is there any specific language in 508 which requires the same analysis of balance of uses in the surrounding area as is found in Section 512?

MS. JACKSON: It doesn't have that explicit language, no.

MS. BRAY: Okay. Did you analyze the applicant's proposal against the off-street parking requirements contained in Chapter 21 of the regulations?

MS. JACKSON: We didn't do an independent analysis of their parking requirement. We took their analysis since it's a self-certified request.

MS. BRAY: There's a lot of evidence in the record about the width of the alley in Square 158. I believe the

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applicant's traffic engineer testified that the width of the alley was somewhat less than 10 feet. Is it your understanding that meet the requirements of the off-street parking regulations?

MS. JACKSON: Could you go back one more time?

MS. BRAY: Sure. I said there is lots of evidence in the record about the width of the alley in square 158 including the applicant's traffic engineer's testimony and actually his report in the application which notes that the alley is less than 10 feet wide. Is it your opinion your analysis that an alley that is less than 10 feet wide can meet the requirements of the off-street parking requirements?

MS. JACKSON: I am aware of the section you are referring to that requires it to be 10-feet wide but I guess I didn't make any statements or testimony about what the actual width is.

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MS. BRAY: But the applicant has.  
Is that right?

MS. JACKSON: Correct.

MS. BRAY: And did you review the applicant's -- you said a lot of this is self-certified application and you relied on information provided by the applicant. Did you review the applicant's traffic study?

MS. JACKSON: I thought the statement was made about a measurement from bollard to bollard and so what I did do was look at the Baist maps for the square which actually do show a public right of way that is 10-feet wide.

MS. BRAY: If I could just have the Board's indulgence for one moment. Do you have the application in front of you?

MS. JACKSON: Yes.

MS. BRAY: Can I refer you to page, well, the traffic tab in the application and page 6 under that tab which is an exhibit prepared by O.R. George and Associates,

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Exhibit 3, study area, land use and parking map?

MS. JACKSON: Yes.

MS. BRAY: Do you see an alley width measurement on that in the area of the alley in Square 158?

MS. JACKSON: Yes.

MS. BRAY: And is that measurement 10 feet or above?

MS. JACKSON: They indicate it is 9.5.

MS. BRAY: Okay. My copy says 9.8 in the original application but it's less than 10?

MS. JACKSON: Yes.

MS. BRAY: Okay. In assessing compliance of the proposed project with Section 512.3 of the zoning regulations you indicated in your report that the five-story addition would "be in keeping with the existing scale and design of the buildings on the site and with other structures on the

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block." Do you know how tall the Tabard Inn is?

MS. JACKSON: I don't know the exact height, no.

MS. BRAY: So you didn't measure or review any of the measurements that have been submitted into the record about the Tabard height and the relation?

MS. JACKSON: I believe it's been characterized as being four stories.

MS. BRAY: Okay. Do you know how many existing buildings located on the north side of N Street are four or more stories in height?

MS. JACKSON: I know at least the Topaz. I'm not sure about others.

MS. BRAY: Okay. But your report notes that the block is characterized by low-scale residential. Does that connote buildings of less than four stories?

MS. JACKSON: I thought I said medium density.

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MS. BRAY: Okay. Your report goes on to say, I think, in your analysis of 512.3 that the rear additions would not be visible from the street and the proposal maintains the existing front facade on N Street. 512.3 doesn't say that the height bollard design of the hotel should be in harmony with the facade of structures along the block. Does it?

MS. JACKSON: No.

MS. BRAY: Doesn't the word bulk also include measurements such as lock coverage height and density?

MS. JACKSON: Sure.

MS. BRAY: So how does the bulk of the proposed building in harmony with buildings that are just slightly over 2.0 FAR on the existing block with large open spaces in the rear?

MS. JACKSON: I think the analysis requires that it meet the minimum or the maximum height and bulk regulations for the underlying zone. Because the proposal meets

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those we found that to be acceptable.

MS. BRAY: Okay. Going back to the requirements of the SP-1 zone, aren't the matter of right bulk standards for residential uses for FAR and no more than 80 percent of lot coverage?

MS. JACKSON: Yes.

MS. BRAY: And for commercial uses no more than 2.5 FAR would be allowed. Is that right?

MS. JACKSON: Um-hum.

MS. BRAY: Let's talk about lot occupancy. What is the proposed lot occupancy on this application?

MS. JACKSON: I believe it's 87 percent.

MS. BRAY: And is the entire first floor of the property developed?

MS. JACKSON: I believe there is a terrace from the ground floor.

MS. BRAY: Is it paved?

MS. JACKSON: I'm sure.

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MS. BRAY: Isn't that, in fact, a development of 100 percent of the lot because the first floor is developed throughout the entire lot?

MS. JACKSON: I couldn't make that determination.

MS. BRAY: If you were to -- let's assume that it is. If you multiply five stories by 100 percent lot occupancy what is the effective FAR?

MS. JACKSON: I get what you're saying.

MS. BRAY: That's five FAR.

MS. JACKSON: Right.

MS. BRAY: You state in your report that the 2,400 square foot interior court yard would "break up the mass of the building." I think you repeated that on your direct as well. Can you explain to me how that's possible given the direct testimony of the architect and by all accounts in the applicant's plans that courtyard is in

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entirely enclosed by either building or an interior property line?

MS. JACKSON: I think the fact that it's open your vantage point from a property adjacent to it wouldn't feel that way but I think the fact that there is a 2,400 square foot interior courtyard absolutely breaks up the mass of the building.

MS. BRAY: Is that break in the mass visible from N Street?

MS. JACKSON: Probably not.

MS. BRAY: And would it be visible from the alley?

MS. JACKSON: I'm not sure.

MS. BRAY: You indicate in your report that the proposed building would not have an adverse impact on light to the Tabard because it's set back along the northeast corner which allows additional light and air to the Tabard.

I would like to take a look at the plan and identify for the record what area you

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are talking about with the setback. Do you know how far back on the lot -- I'm sorry. I guess how far south that setback would extend to?

MS. JACKSON: I think it's probably better disguised as a setback because it's only at the top level.

MS. BRAY: It's only at the top level. When you look at the site plan do you know whether that setback would actually have any impact on the Tabard or if it extends further out into the rear yard than the Tabard would?

MS. JACKSON: Well, the entire addition would extend further back.

MS. BRAY: Right, but does that setback actually reach the point at which the Tabard lot is developed or does it stop short of it?

MS. JACKSON: I'm not sure.

MS. BRAY: What is the length or the depth of that setback?

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MS. JACKSON: It's not dimension exactly.

MS. BRAY: Okay. Going back to this balance of uses test under 512, when the Zoning Commission adopted that requirement for special exception for hotel uses and included the language, "The approval of the hotel or inn shall result in a balance of residential office and hotel or inn uses in the SP district in the vicinity of the hotel or inn.

Weren't they contemplating a situation where introducing the hotel would improve the balance of uses by introducing an under-represented use?

MS. JACKSON: I don't believe we testified to the intent of the Zoning Commission at that time.

MS. BRAY: Actually, there was testimony on direct about the relevant orders establishing.

MS. STEINGASSER: My name is Jennifer Steingasser for the record. I would

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refer to Case No. 7901 order where the Commission explicitly states that the Commission recognizes that it is not able to mandate the continued use of apartment houses if an owner were to convert it to some other permitted use. Based on that I would say no, the Commission did not.

MS. BRAY: Are you familiar with BZA Case No. 17443?

MS. STEINGASSER: Did we testify to that case in direct or in our report?

MS. BRAY: No, but this is relevant to the testimony on direct about the balance of uses and the methodology employed on direct by the Office of Planning.

MS. STEINGASSER: We have testified to that case?

MS. BRAY: No.

MS. STEINGASSER: Then we are not in a position to be crossed on that case.

MS. BRAY: You testified that you selected the vicinity for making the

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determination of the special exception if approval would result in the balance of uses by starting with the square and accepting the data provided by the applicant and then extending out seven or eight blocks.

I don't see anywhere in your chart or anywhere in your report a chart showing those uses or a map showing which properties were considered. Do you have a list of the lots that you considered or the uses on those lots?

MS. JACKSON: I can provide that.

MS. BRAY: Well, your analysis under that in addition to extending seven or eight blocks you also note a breakdown in residential institutional office Embassy Hotel commercial and other uses. Is that correct?

MS. JACKSON: Yes.

MS. BRAY: But Section 512 only refers to hotel residential and commercial uses. Is that right?

MS. JACKSON: For the balance.

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MS. BRAY: It doesn't make a distinction between institutional, office, or embassy. It just says office, residential and hotel?

MS. JACKSON: Yes.

MS. BRAY: How many hotels are on this block?

MS. JACKSON: There are two.

MS. BRAY: And are you aware of any other hotels in the vicinity?

MS. JACKSON: Sure. There's the Beacon down the street.

MS. BRAY: Are you aware of any other block in the Dupont Circle Overlay which contains more than three hotels?

MS. JACKSON: I am not aware.

MS. BRAY: Can you explain to me the difference between the SP-1 and the SP-2 zones?

MS. JACKSON: There is a difference in the permitted densities and heights.

MS. BRAY: And the SP-2 zone allows

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additional height bulk and far?

MS. JACKSON: Yes.

MS. BRAY: You testified on direct about order 314. I know there was a lot of testimony in our case regarding the move by the Zoning Commission to create special exception requirements for hotel uses in the SP. Are you aware that prior to order 314 hotels were permitted as a matter of right in the SP-1 zone?

MS. JACKSON: Yes.

MS. BRAY: And that was changed to make it more difficult to have a hotel use in an SP-1?

MS. JACKSON: I'm just going to read from the order where it appears as though the purpose was to ensure compatibility of hotels in SP areas. It states, "The Commission, therefore, believes that special controls on hotel uses are appropriate in the SP district to ensure that any new or expanded hotels are compatible with their surroundings

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and to help foster a mix of uses in the SP district.

MS. BRAY: Doesn't that have the effect of limiting the number of hotels in the SP-1 District?

MS. JACKSON: Not necessarily.

MS. BRAY: Your statement report that the proposal preserves existing historic buildings, doesn't the historic preservation law operate to ensure that any contributing buildings to an established historic district be preserved?

MS. JACKSON: The Historic Preservation Act does, indeed, require preservation of these buildings.

MS. BRAY: So wouldn't any project proposed for the site preserve the historic building?

MS. JACKSON: More than likely. There is, of course, an option to go before the mayor's agent for demolition and limited forms of demolition.

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MS. BRAY: Okay. Have you reviewed the extent of demolition that is proposed?

MS. JACKSON: No, we have not. That is not relevant to the case before the BZA.

MS. BRAY: But you state in your report that you are going to rely on the representations of HPRB and HPO staff with respect to historic preservation concerns?

MS. JACKSON: The Office of Planning embodies the Historic Preservation staff within us. They are the design experts for historic preservation and historic character so, yes, we relied on their negotiations and their conclusion that the building in terms of its design was consistent with the preservation.

MS. BRAY: But has HPRB determined that?

MS. JACKSON: No. As I said, the Historic Preservation staff.

MS. BRAY: Does the HPR staff speak

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for the Historic Preservation Review Board?

MS. JACKSON: They do not but they make recommendations to that board.

MS. BRAY: The application hasn't even been considered by HPRB. Is that right?

MS. JACKSON: It has been on their agenda twice. It has not been decided.

MS. BRAY: I believe the applicant has indicated that the plans might change at HPRB. Is it possible that the HPR staff report could change based on those changes in the plan?

MS. JACKSON: Based on conversations with the staff yesterday they did not feel that there would be significant changes. If there were, then the applicant at their risk would then have to come back to the BZA for any significant changes.

MS. BRAY: Last week in your direct testimony you stated that the Dupont Circle Overlay only has to do with PUDs and that's why you didn't find it particularly relevant

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to this application, although you did site to it in your report and noted that the zoning applying to the property is DC/SP-1. Is that right?

MS. JACKSON: Yes.

MS. BRAY: Are you familiar with Section 1505 of the zoning regulation?

MS. JACKSON: That's the section within the overlay.

MS. BRAY: Right. I believe it's entitled, "Limitations on driveways and curb cuts."

MS. JACKSON: Okay.

MS. BRAY: Do you see any restriction in that provision relating to PUDs or limiting it only to PUDs?

MS. JACKSON: No. Perhaps I didn't say it out loud but I believe my testimony stated that the two specific things that it regulates are PUDs and curb cuts.

MS. BRAY: The standards for granting a special exception begin with

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Section 3104 of the zoning regulations. Do they not? And then refer to the specific standards for the particular use proposed?

MS. JACKSON: Sure.

MS. BRAY: 3104.1 states that the proposed use must be in harmony with the general purpose and intent of the zoning regulations and maps. Is that right?

MS. JACKSON: Yes.

MS. BRAY: Can you walk me through 1501.4(a) through (e), the purposes of the Dupont Circle Overlay? Do they make any specific reference to planned unit developments?

MS. JACKSON: I don't believe in our testimony either written or oral did we testify about the purposes of the overlay but I'm happy, and I think this is a really important point for the Board to understand, the Office of Planning -- the purpose statement of any overlay or any regulation applies to the regulations which follow.

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The regulations which follow 1501 are to limit PUDs and to limit curb cuts. In the evaluation of those reviewed that is when those purpose statements come into play. We conferred with the Office of the Attorney General and they agreed with our reading of this regulation.

We also then because this has become such an issue went back to the orders and to the three staff reports and to the reports filed by the legal consultants on behalf of the Dupont Circle task force at that time in 1990. They all focus on the intent of this overlay was to control PUDs. There is an elaborate history of the PUDs that were affecting the area since it was rezoned and it was not the intent to apply to unregulated requirements.

As the BZA knows, had it been the will of the Zoning Commission to regulate these things they would have been specific about what those regulations would be but

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there's not and we can't help but conclude that the intent of the overlay is relevant only to the regulations within the overlay, that they are not just laterally applied to any property within that.

MS. BRAY: Ms. Steingasser, are you familiar with the principles of statutory interpretation?

MS. STEINGASSER: No, I'm not. I don't think I testified to that. I think you would probably want to talk to the Office of the Attorney General about that.

MS. BRAY: You have established that there is no specific reference in the purposes section of the overlay that explicitly refers to PUD. You said you had to go back to the legislative history on that case.

MS. STEINGASSER: We went back to the orders.

MS. BRAY: On that case the orders and the staff reports and the legislative

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history on that and that is where you found a reference to the intent to only limit PUDs. Is that right?

MS. STEINGASSER: That and in conversations with our attorney general about how to read a purpose statement when it is attempted to be read standing alone and our attorney general advised us that the purpose cannot stand alone. It has to have something that it applies to and that would be --

MS. BRAY: And it wouldn't apply to the language in Section 3104.1 which directs applicants to prove that a proposed special exception is in harmony with the purposes and intent of the zoning regulations?

MS. STEINGASSER: Not in this case.

MS. BRAY: Okay. I would like to talk a little bit about, again, the purposes and intent provision. If the Board would bear with me for just a second while I reference the correct piece of paper. Five years of evidence and testimony and notes in this case

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and it's gotten a little out of control.

I believe there was testimony from the Office of Planning at last week's hearing and it is certainly in the report regarding the recommendations of the comprehensive plan with respect to the SP zone and the Central Employment Area. Are you familiar with policy CW 1.2.2 in the Comprehensive Plan?

MS. JACKSON: I don't believe I made any statements about the comprehensive plan or the Central. I just said that the location is located within the Central Employment Area.

MS. BRAY: Which is defined and discussed in the comprehensive plan. Is it not?

MS. JACKSON: I didn't give any testimony about the comprehensive plan.

MS. BRAY: You are an expert in planning. Aren't you?

MS. JACKSON: Are you asking me questions about my testimony?

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MS. BRAY: I'm asking you questions about your report generally in addition to your testimony.

MS. JACKSON: Okay.

MS. BRAY: I'm asking did you review this application against the recommendations of the comprehensive plan?

MS. JACKSON: I reviewed -- no, actually.

MS. BRAY: Do you commonly reference the comprehensive plan in reviewing special exception applications?

MS. JACKSON: Not in BZA cases, no.

MS. BRAY: Would you be surprised to learn that the comprehensive plan contains specific language with regard to the preservation of interiors of squares including alley and uses that provide for off-street loading, deliveries, and garage access?

MS. STEINGASSER: I believe we stated that we did not testify to the intent of the comprehensive plan. It's also

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important for the Board to recognize that the comprehensive plan is not self-effectuating. It is guidance of a general nature overriding in that the Zoning Commission could then act as it feels in its interpretation but it is not a regulation in and of itself and we did not testify to such.

MS. BRAY: Doesn't the comprehensive plan drive the zone maps and zone plans in the District of Columbia?

MS. STEINGASSER: I believe that we've already answered that we did not testify to the comprehensive plan.

MS. BRAY: Well, I'm asking the questions of the Office of Planning making a technical report and recommendation on this case.

MS. STEINGASSER: Based on the conditions of the zoning regulations.

MS. BRAY: 3104.1 of the zoning regulations refer to the general purpose and intent of the zone maps and zone plan. Do

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they not?

MS. STEINGASSER: They do.

MS. BRAY: And so the comprehensive plan then would be relevant in determining what the purposes of the zone plan would be.

MS. STEINGASSER: The comprehensive plan, as I stated, is not self-effectuating. It is a generalized growth document adopted by the city council. In Washington it's very unique in that the comprehensive plan is adopted by the city council as a planning document.

The Zoning Commission then interprets that in terms as it writes its zoning regulations. There is a very clear separation. The Zoning Commission is not obligated to enact in any way what is sent to them through the comprehensive plan.

The law requires that the zoning be not inconsistent. It's a double negative and it's very purposeful and it's a very defined legal distinction between them.

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MS. BRAY: But Section 3104 does reference the purpose and intent of the zone plan in addition to the zoning regulations?

MS. STEINGASSER: The zone plan. That's correct.

MS. BRAY: Okay. Thank you.

I have nothing further.

VICE CHAIRMAN DETTMAN: Thank you.

Board Members, questions?"

MEMBER MOLDENHAUER: I just have a couple. I'll kind of work from the last set of questions and go backwards. It may help. There is some testimony about the DD overlay.

I guess just to provide the Board some clarification I was looking at it just to see whether or not we should apply some of the -- obviously the opposition has argued that we should apply 1501.4 to this application process.

There is testimony that OP believes that the DD overlay, the proposed section is not to be applied because it's more a general

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aspect of that. I guess my question is if you look at 1502, which is the general provisions, that Section 1502.2 says specifically that, "All matter of right uses, buildings and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the map DD overlay is comprised shall be permitted in combination in the combined district."

Then it goes on to say that if there is any conflict between this chapter in the DD overlay and other zoning requirements that the more stringent requirements should be provided or should be applied.

MS. JACKSON: That's correct.

MEMBER MOLDENHAUER: If I can get your interpretation or response to that section to provide us with some --

MS. JACKSON: I'm very happy to provide that.

MS. STEINGASSER: The key words here is provisions and regulations. The

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1501.1 it talks about the purposes. Those are neither requirements nor are they provisions in a regulatory context. To take a purpose statement and apply it to other sections of the code where there is not a direct connection we think would not be the appropriate review criteria for this.

We believe that had the Commission, which I think it went on for two years, discussion on creating this overlay and their focus on this particular neighborhood had they desired for there to be specific design criteria within that special exception they would have made that reference.

They had every opportunity to do so and they chose not to so we don't infer that they meant other -- that that section be applied to anything other than the provisions of 1503 and 04, the overlay, which then is PUDs and curb cuts. It's in that context that those would be evaluated.

MEMBER MOLDENHAUER: Okay. Let's

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see here. In regards to evaluating the eight-block radius and the surrounding area, did you take into consideration, I guess, the proximity to Connecticut Avenue and the high-density developments that are in that corridor?

MS. JACKSON: We were trying to get a sense of the overall mix found in the SP so I can't say that I purposefully was looking at areas that were closer or farther away to high density development. I was trying to get a sense of what the actual mix in the SP was to have something to compare the square to.

MEMBER MOLDENHAUER: And now when you are saying compare the square to, is there an absolute, I guess, black and white criteria as to how many hotels you would need to have it be a perfect balance and how many residential buildings, how does OP, I guess, analyze the term balance in that regard?

MS. JACKSON: I think that is part of the problem because there is not specific

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guidance so I was basically looking for patterns and what the general mix was. From what I found it was overwhelmingly office. The thing that struck me about the mix of uses is that it was overwhelmingly office uses more than anything else.

MEMBER MOLDENHAUER: Can you take that statement maybe to the next step in your analysis?

MS. JACKSON: In the fact that the proposal was that at least two of the buildings previously were used as office uses. I know three at one point in time were residential. The thinking was that, you know, taking uses that at least some of which were previously office and turning them to hotel use wouldn't substantially upset the balance

MEMBER MOLDENHAUER: Okay. Now, kind of switching gears to my next grouping of questions has to do with the alley and Section 512.10 and 512.9. There has been a lot of testimony obviously over the last couple of

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days that you've had these hearings about the size of the alley.

I'm going to kind of discount the ten versus 9.5 but really just the relative -- you know, visually the alley is narrow whether it's 10.5 or whatever the actual width is. There has been testimony from other users of the alley as to people driving into walls.

There has been testimony as to potential danger in that regard, pedestrian use. Can you tell me, I guess, from your report and then obviously from your testimony if you've changed any opinion in regards to the parking issue based on the testimony we've heard?

MS. JACKSON: I believe our report states that we would want the applicant to reduce the parking and not provide what is in excess of the requirement because of the impact and because of the traffic and all the conditions that make travel through the alley difficult.

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MEMBER MOLDENHAUER: So then you recommendation would be for just the 19 spaces?

MS. JACKSON: We recommended that. We were trying to leave ourselves open to suggestions from DDOT if they wanted more or less.

MEMBER MOLDENHAUER: You mean, if DDOT said zero would OP then agree with zero?

MS. JACKSON: Sure.

MEMBER MOLDENHAUER: Now jumping to the interior massing. I have, I guess, a problem just logically accepting an interior courtyard as part of an analysis that goes toward reducing the bulk because most of what we're doing has to do with what is going to be seen or observed.

Your analysis is talking about the balance of other office buildings on the block, on the square, SP evaluating the entire conformity. I guess it's hard to see how an interior courtyard can then contribute to that

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analysis.

If your analysis is still the same, I guess you can just confirm that but my question would be is that similar to other analysis as you provided in regards to allowing an interior courtyard to reduce or provide a breakdown in the bulk or massing?

MS. JACKSON: Sorry. I guess our approach was that the proposal conforms to the controls within the regulations that addressed bulk in terms of height and density so that is how we were evaluating it. The interior courtyard -- I'll leave it at that.

MEMBER MOLDENHAUER: Okay. Thank you very much.

COMMISSIONER TURNBULL: Thank you, Mr. Vice Chair.

Ms. Jackson, I just want to follow up on that same line of questions. This does trouble me on 512.3 about breaking up the mass. It breaks it up internally. It's like a donut so there is a whole inside it but if

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I'm adjacent to that donut, that building, it's a mess. It's a big mess.

There is no relief from my property on either side from the mass that is being proposed. In that sense the adjacencies don't take relief from the breaking up. It's mainly an internal relief for that property.

Looking at continuing on with 512.4 where we're asked is it in harmony with existing structures, I find that a sheer wall that goes up four or five stories next to a property that's a lot less doesn't sound like it's really in harmony or keeping the character.

My struggle with that is sort of not regarding. It's like I have a matter of right and I can do this but I don't have to respect the other properties. Even though, as you say, you are breaking it up but it's not a breaking up that anybody in the community can appreciate.

It's simply a self-serving -- I

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mean, it's a space that doesn't really respect the rest of the overlay. It's not consistent with how you would look at keeping the structures. I will agree that they will look at N Street. They've kept the facade but there is more to the property than just the facade on N Street.

It's how the rest of the back of the building is relating to the rest of the properties. If I built to the max 87 percent or if I build it to such a scale that I'm imposing on the structures next to it, I find that hard to find that compatible.

MS. JACKSON: I understand your point. I think in the absence of requirements or other criteria that would mandate setbacks it's difficult. We also look to the direction of our HPO staff with regard to issues of character and design.

COMMISSIONER TURNBULL: But I have a feeling they are going to focus primarily on design issues for the historic facades. I

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don't know if they are going to get back.

MS. JACKSON: I can guarantee you they do not. They have very carefully reviewed all sides in this building. They have been in and out of the property. They have toured the adjoining property sites. They have looked at the backyard. Then they have gone up and down the alley.

That being said, we recognize the struggle especially with this case. It's a qualitative, not a quantitative review. Where someone's sense of harmony comes into play is very subjective. We relied heavily on our historic preservation staff as the preservation experts, the architectural experts. There is a property across the street that did a very similar thing where it built six stories all the way to the back.

There are some higher story buildings on the street. We kind of acknowledged their expertise in this. However, the Board fully has the right to find

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your own comfort level and pull additional setbacks if that is what the Board is interested in doing.

COMMISSIONER TURNBULL: No, but that is clearly covered under 512.4. I guess getting back to Ms. Moldenhauer's comment, and you agreed with the parking assessment, that if DDOT said zero you would agree with zero because there is a question. When we look at parking and access to that alley is that alley at a max right now.

Is adding five cars, 10 cars going to cause or to increase the situation that already seems highly problematic along with the deliveries. Ms. Moldenhauer is right on target. I'm not sure if we are getting another report from DDOT clarifying what they see as a safety level. Right now anything beyond 19 would be out of the question. Thank you.

MS. JACKSON: Sure.

VICE CHAIRMAN DETTMAN: Ms.

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Jackson, I just have a couple questions. The first one goes to the SP district. Would you agree that sections 530 through 537 set up the maximum height, bulk, etc., that is allowed under this SP district?

MS. JACKSON: Yes.

VICE CHAIRMAN DETTMAN: Would you agree that Section 512 as it pertains to hotels and inns the maximum height and bulk that is allowed under Sections 530 through 537 could potentially be further limited based on the height, bulk, and design of existing buildings and structures on neighboring property?

MS. JACKSON: I think that is up to the Board's discretion.

VICE CHAIRMAN DETTMAN: I think 512.4 says that the Board can require special treatment. However, 512.3, a provision that you applied in your analysis, "The height, bulk and design of the hotel or inn shall be in harmony with existing uses and structures,"

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I read 512.3 to say yes, 530 through 537 allows you to build this maximum.

However, a hotel and inn in the SP district is further limited by the height and bulk of the existing uses and structures on neighboring property. In applying that analysis you almost have to do a comparative analysis of the height and bulk including lot occupancy, FAR, rear yard, etc., of the building constructions on neighboring property. So in applying the analysis did you do that kind of comparative analysis?

MS. JACKSON: We did not do it quite that qualitatively. I guess there is a difference in how you read "shall be in harmony." I think saying "shall be in harmony" to read "shall be further restricted" is a bit of a jump for us. We look at shall be in harmony as the role of the Historic Preservation staff and what their expertise would determine is in harmony. They felt that this design was in harmony.

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VICE CHAIRMAN DETTMAN: So, in other words, you would agree what has been proposed, which maxes out the FAR, the allowable FAR on this site for this use, maxing out the allowable FAR for this use on this property is in harmony with the existing buildings and structures on the neighboring property?

MS. STEINGASSER: That is our conclusion.

VICE CHAIRMAN DETTMAN: Okay. Couple questions about the DDOT report and how DDOT comments factored into your analysis. The latest report we have from DDOT is Exhibit 86 which does reference the '98 off-street parking spaces that has been since reduced. However, they say in no uncertain terms that they cannot recommend approval.

In general DDOT has a standing policy against curb cuts and lay-bys and what not, anything that could potentially impact the pedestrian environment and so in your

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analysis, specifically when you apply 512.9 and 512.10, to what extent did DDOT's analysis of this application factor into your analysis?

MS. JACKSON: Well, first of all, their analysis came in after we submitted our report but we met with DDOT and the applicant on more than one occasion and it was clear in those conversations that they were not happy about the amount of parking spaces so in absence of the previous iteration of this project several years ago DDOT's comments were framed such that they recommended a limited number of parking spaces and they gave an exact number.

In absence of a number I think we assume they would have a similar analysis this time. We suggested no more than what the zoning regulations would require or alternatively a figure that they were comfortable with.

VICE CHAIRMAN DETTMAN: Are you in a position to say whether or not if the Board

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was to entertain the 58 parking spaces that are proposed currently what the Office of Planning's position would be?

MS. JACKSON: I think we would be more comfortable with the matter of right. I'm sorry, the number of spaces that are required for the addition solely.

VICE CHAIRMAN DETTMAN: The 19?

MS. JACKSON: Yes.

VICE CHAIRMAN DETTMAN: If the Board was to make a request of the Office of Planning to provide a supplemental report analyzing this case with 58 parking spaces, would this at all change your recommendation?

MS. JACKSON: Change our recommendation from --

VICE CHAIRMAN DETTMAN: Recommending approval, cannot recommend approval, or recommend denial?

MS. JACKSON: I couldn't say today. If that's what you would like for us to do.

VICE CHAIRMAN DETTMAN: I'm trying

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to get a sense on differentiating between what the Office of Planning is most comfortable with versus a thorough analysis of the proposal that is before us and what OP's position would be on the proposal that the Board has to consider.

MR. LAWSON: I think that we would actually look to, and we would be happy to do this, work further with the Department of Transportation to assess the parking needs. Just note that a number of different uses, I guess, would be permitted technically on this site.

A hotel, I think is one. Because there are parking issues related to the alley, a hotel is one of those uses where I think we can really look at minimizing the number of parking spaces. It's difficult to some extent. I think in any development we would support minimal parking on a downtown urban and urbane site like this. A hotel is one of those uses that could very well get by with

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relatively few parking spaces.

It might be more difficult for residential use, for an office use to get by with little or no parking. Downtown hotels can to a greater extent get by with little or no parking so if the Board wishes we would certainly be happy to discuss this further with DDOT and, frankly, with the applicant and come back with more information but normally DDOT does the analysis of the parking provision and the ability for a site to accommodate that parking.

VICE CHAIRMAN DETTMAN: Since the DDOT report was filed after the Office of Planning had completed their report, would you suggest that the Board rely more heavily on the DDOT report with respect to those provisions in 512 that deal with parking and traffic as opposed to the analysis applied by the Office of Planning in the absence of the DDOT report?

MS. JACKSON: I think it would be

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appropriate to go with the DDOT analysis.

VICE CHAIRMAN DETTMAN: Just one last question. I believe under your analysis of 512.10 you state that the applicant also proposes a lay-by and that in keeping with comments expressed by DDOT you would discourage that.

MS. JACKSON: That was before they removed it from the request.

VICE CHAIRMAN DETTMAN: Okay. We heard testimony from, I believe, the applicant's traffic engineer, Mr. George, that approximately eight to 10 deliveries per day from small trucks will take place in the loading area in front of the hotel presumably using that lay-by that was proposed.

If that lay-by is not there and essentially reestablishes parking in that area, are you able to determine what the impacts would be of those eight to 10 deliveries standing essentially double parked in front of the subject property would have on

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traffic flow on N Street?

MS. JACKSON: I believe there is an established loading zone at the rear and I thought, although this is all subject to approval by public space, but I thought alternatively that they would apply for a loading zone in the front.

VICE CHAIRMAN DETTMAN: I remember some testimony to that so, yes. Thank you.

That's all the questions I have. Board Members, anything?

I think this may be a little uncharacteristic but perhaps we can check in with the applicant and the opposition party to see if they have any questions that have come up since the Board was asking questions and I'll go to the applicant first.

MR. KEYS: No questions, Mr. Chairman.

VICE CHAIRMAN DETTMAN: Ms. Bray.

MS. BRAY: I actually do have one last question. It relates to the questions

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that Mr. Turnbull and Mr. Dettman and Ms. Moldenhauer asked regarding the standards under 512. Did the applicant provide you with any information that is not contained within the application with respect to how the hotel will operate? That is, the operational characteristics of its use, number of staff, hours of operation of particular elements within the hotel?

MS. JACKSON: Nothing more than what was provided during their testimony.

MS. BRAY: Okay. Thank you very much.

VICE CHAIRMAN DETTMAN: Thank you, Ms. Bray.

Before we turn it back to the applicant for rebuttal, I just wanted to check in with the audience to see is the ANC here? No? Okay. According to what I have in my record we did receive a resolution from ANC-2B which is our Exhibit 100. If we did receive a supplement report perhaps staff can inform the

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Board.

So noting that there is no ANC we are back to the applicant for rebuttal. Mr. Keys, how many witnesses do you intend on calling?

MR. KEYS: We have three witnesses, Mr. Chairman.

VICE CHAIRMAN DETTMAN: Three witnesses. Just a general estimate of the amount of time you'll need for rebuttal?

MR. KEYS: Thirty minutes?

VICE CHAIRMAN DETTMAN: Thirty minutes. Okay.

MS. BRAY: Mr. Dettman, if I may, I would like to point out that at the conclusion of the hearing last week Chairman Loud asked the applicant how many witnesses he expected to put on in rebuttal and he identified only one, that was Mr. Andrulis or Mr. Janezich, the architect.

If the applicant has three witnesses, I would ask that he proffer those

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witnesses so that we can determine whether that witness testimony will exceed the scope of the party in opposition's case and whether it would be cumulative at this time, particularly in light of the fact that the party in opposition relied on the applicant's assertion that there would be only one witness and the identification of such and does not have all of its experts here to listen and help to facilitate cross-examination on rebuttal.

VICE CHAIRMAN DETTMAN: Mr. Keys, can you provide a quick proffer as to what you --

MR. KEYS: Yes, I can. Mr. George is going to respond specifically to the statements made by the applicant's traffic expert that were in their case in chief. He will also respond to questions that this Board has had with respect to transportation and circulation issues.

Mr. Janezich will be testifying in

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response to the applicant's architect, in response to Ms. Moldenhauer's questions about mitigation techniques for the impacts on the Tabard Inn.

Mr. Andrulis will be testifying with respect to statements of Ms. McCarthy, Ms. Eig with regard to the massing of the property, with regard to the relationship of the properties to the Tabard Inn, with respect to the alley, with respect to rear yards in the alley, and with respect to the courtyard which are important issues that are part of this case. We will do so as quickly as we can.

VICE CHAIRMAN DETTMAN: Ms. Bray, do you have a response to Mr. Keys' proffer?

MS. BRAY: I'm troubled honestly by the fact that Mr. George wasn't identified as a potential witness last week because we certainly could have arranged for our traffic engineer to be here to facilitate. He was specifically not mentioned.

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Also, with respect to some of the testimony being proffered by the architects, I would just remind the Board that it is well within your discretion to limit the evidence and testimony on rebuttal. The Board of Zoning Adjustment follows the Superior Court's guidance.

There is a great deal of discretion obviously but it is likewise within the Board's discretion to cut off any new evidence that could have been presented in the initial case by the applicant. Given the length of time that has passed since that, you know, we are prepared to give some leeway and to withhold objections as appropriate.

I guess we'll proceed with caution with regard to that. If Mr. George will be allowed as a witness on rebuttal, I would request that he be kept until the end and that we be able to take a recess between his direct and cross-examination so that we can consult with our expert by telephone but I would

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really prefer that not come in since we don't have them available to listen live at this moment.

VICE CHAIRMAN DETTMAN: Okay. I think we will proceed with caution as you suggest. Perhaps I'll rely upon my attorney colleagues and the other attorneys in the room to keep us in check in terms of not getting too far afield in terms of what was brought up in the direct case.

Perhaps at the close of the hearing if the Board is not ready to decide the case we can discuss whether or not there could be a post-hearing filing to respond to what was brought out on rebuttal perhaps. With that why don't we proceed.

MR. KEYS: Thank you, Mr. Chairman.

I would first like to proffer to the Board the CV of Mr. Janezich. Mr. Janezich is the partner of Mr. Andrulis and has been very much involved in the development of this project. He has some specific professional experience

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that we think bears on some of the issues raised by Mr. Schwartz. We would like to propose him as an expert in architecture.

VICE CHAIRMAN DETTMAN: Why don't we just take a second and review his CV. Do Board Members have any questions for Mr. Janezich?

COMMISSIONER TURNBULL: This would have been helpful if we had received this information a lot earlier.

VICE CHAIRMAN DETTMAN: Ms. Bray, do you have a response to Mr. Keys' submission of Mr. Janezich as an expert in architecture?

MS. BRAY: Only one question. That is whether Mr. Janezich is a registered architect in the District of Columbia. His CV Doesn't indicate that.

MR. JANEZICH: I am a registered architect.

VICE CHAIRMAN DETTMAN: You need to get on the mic.

MR. JANEZICH: I am a registered

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architect in the District of Columbia. Oh, I'm sorry. I'm also Anton Janezich.

MS. BRAY: Thank you. We have no objection to Mr. Janezich coming in as an expert.

VICE CHAIRMAN DETTMAN: Colleagues, anything? No?

Mr. Keys, I think the Board can recognize Mr. Janezich as an expert in architecture.

MR. KEYS: Thank you. I would also like to put into the record a copy of the HPO report which has been mentioned today several times. I think it's an important document that substantiates the Office of Planning's consideration of this case.

MS. BRAY: I would object to that coming in only because, as noted in the cross-examination of the Office of Planning, the HPRB has not reviewed this. Under the Historic Preservation law the HPO staff is not authorized to speak for the Board. In fact,

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the Board only makes a recommendation to the mayor or his designee agent who is the only person authorized to make approvals of building permits or reviews.

To the extent that it is allowed I would recommend that it come in only with the understanding that it is preliminary in nature and it could change. The HPRB is free to do with it what it will including completely disregard that report.

MR. KEYS: In response I would simply say that the Office of Planning has testified that it relied on the expertise and the specific experience of the HPO staff in rendering its judgment to the Board. This is simply the background document to that.

MS. BRAY: We don't have the --

MR. KEYS: I'm not offering it as evidence of the Historic Preservation Review Board's decision. Clearly that has not been made. It also evidences the applicant's efforts over the course of five years to

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refine its design, to move its design in the direction suggested by HPO staff.

I think that is the only way to understand this site plan is to recognize that is the result of the interaction of the architect, a new architect, and HPO staff that has come to a conclusion jointly that this design represents a project that is in harmony in scale with the historic area and with this particular context.

MS. BRAY: With all due respect that recommendation is inconclusive, as I mentioned, but also it's a government report with an agency who is not here to be cross-examined about its findings. To the extent that OP relied on that report, they could have specifically brought that out or Mr. Keys could have cross-examined OP on the specific findings in that report.

We don't have the benefit of being able to cross-examine Mr. Colcut, or whomever it was, that finalized that report on behalf

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of HPO so I don't believe that is relevant to the discussion today or germane to the case.

VICE CHAIRMAN DETTMAN: Mr. Keys, a question. What information contained inside the HP report influences or factors into the Board's analysis of this project under 512?

MR. KEYS: 512 requires this Board to make a determination about whether the project as proposed can exist in harmony with existing uses and structures. I think that is in this report. It also in speaking about the neighboring property it also addresses other issues.

As the Office of Planning staff indicated, this is not simply a facade treatment but HPO was involved in all four sides of this building. To the extent that the opposition's criticism of this project turns on how it faces the alley, how it faces the Tabard.

We think that the treatment and attention of the staff is relevant. It's an

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official D.C. Government report that I think this Board can take official notice of.

VICE CHAIRMAN DETTMAN: Couldn't the Board make its determination with respect to height and bulk of the project in relation to existing buildings and structures without any knowledge of what characteristics of the project HP looked at and rely upon the recommendation of the Office of Planning and their reliance on the HP report to draw the same conclusion?

MR. KEYS: I would not take issue with that.

VICE CHAIRMAN DETTMAN: Board Members, do you have any comments or questions regarding the HP report and its submission?

We are back on the record. After conferring with my colleagues I think we are going to not allow the report in the record. It clearly informed the Office of Planning's analysis and we have their recommendation.

It's the Board's feeling that the

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information contained in the report is reflected in the design that is before them right now and would not further inform the Board's analysis of this project. I think we are unanimous in not allowing the report in the record and we can proceed.

MR. KEYS: Mr. Chairman, I would like to begin where we indicated at the beginning of the hearing on the 16th of March that we wish to respond to the opposition's claim to both HPRB and to this Board that there were certain discrepancies in the plans.

We have prepared exhibits and amendments to the filed plans that you have that correct those dimensional adjustments and we are prepared to submit those. Mr. Andrulis in his rebuttal testimony will quickly address them so that you can see how insignificant those adjustments are. Nonetheless, they are necessary adjustments to accurately portray the plans.

VICE CHAIRMAN DETTMAN: Mr. Keys, I

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think that the question of what plans the Board was going to consider has been thoroughly discussed and we have discussed the discrepancies that were raised during your discussions with HP last week and there was a thorough discussion on this and there was quoting from the transcript quoting Chairman Loud about the round robin of plan sets here.

I said at the outset of today's hearing that the Board was going to analyze this case based on the plans that are in our record currently in the binder that you provided us. If it's found that additional relief is necessary with respect to FAR, parking, parking access in terms of drive isles and whatnot that would play out at the building permit stage. You are self-certified and you run the risk of having to come back to the BZA.

MR. KEYS: No, Mr. Chairman. There is no change in the basic zoning elements of the case. We are changing a dimension six

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inches here, a foot there. We are moving a window to reflect more accurate measurement. That's the kind of change we're talking about.

VICE CHAIRMAN DETTMAN: Would that change the numbers that are reflected in your FAR tab of your plans?

MR. KEYS: It does in the sense that if the lot 835 is smaller by six inches along its eastern edge, then the building will be smaller by six inches to compensate for that. The overall site area goes down by, I think, 150 square feet. The building area shrinks proportionately. The FAR won't change but the underlying number of gross floor area will change

VICE CHAIRMAN DETTMAN: Ms. Bray.

MS. BRAY: That to me understanding what the meaning of FAR is under the zoning regulations clearly indicates that there will be a change in FAR. I would strenuously object to any further changes in this plan. This is a self-certified application and the

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applicant has had five years to get it right.

In the intervening months since the last round of hearings there have been five months in which these changes can be made. The opposition has the right to point out discrepancies in the case brought by the applicant and the Board has those rights as well.

There has been ample opportunity for the applicant to appropriately amend its case if necessary. These are issues that may not have been raised directly before the Board of Zoning Adjustment but the applicant has conceded they have been raised outside of this proceeding and over at HPRB.

There is ample testimony before this Board that the applicant was aware of these discrepancies well in advance of the March 16th hearing. Any new plans will facilitate further delay in this case which is something that the party in opposition has

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been vehemently opposed to.

We would need additional time to have our architect, our expert in planning and zoning, perhaps our traffic engineer, and certainly our protectional historian review the impact of those changes. Any change that actually facilitates a change in the FAR goes to the very issues that are at stake in this case which is does the application comply with the zoning regulations.

We would strenuously object at this point to any further changes. If this applicant wishes to make changes to its plans it can withdraw and come back with a new application which is probably what should have been done in November of 2005 when this applicant was not ready to proceed.

VICE CHAIRMAN DETTMAN: Ms. Bray, the way Mr. Keys described the changes and how it relates to the result in FAR sounds that if one thing gets smaller, everything else gets smaller and it's the proportion of the gross

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floor area versus the land area that we are really considering here with FAR.

Under the FAR tab according to these numbers we are looking at a total FAR of 3.99. What I hear Mr. Keys saying is that 3.99 doesn't change. I guess my question to you is it sounds as if these discrepancies had to do with elevation and six inches on the one lot.

It doesn't change the extent of the FAR, lost occupancy, etc., and it doesn't change the extent of the relief that is being requested and so, again, my question to you would be why would the Board go forward on a plan set that ultimately cannot be constructed because the dimensions of the lot is not accurate?

MS. BRAY: Well, first of all, we don't know that the FAR will be completely unimpacted because while there might be an overall rejection in FAR both in the gross floor area and the land area, there is no

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indication of whether that changes their program and, therefore, the uses and how FAR is calculated and divided between residential uses which are guest rooms and service areas and other areas of the hotel.

Additionally, the applicant, again, has had ample opportunity to review these plans and took the risk of self-certifying his application that he didn't request the right relief or that the measurements taken were not accurate and, therefore, some minor modification might be warranted later.

Without having seen what changes are proposed it's very difficult for us to do anything other than object to further change at this point.

VICE CHAIRMAN DETTMAN: Would the discrepancies that were found in the plans would they have been found had this project not been self-certified?

MS. BRAY: I think so. I think they probably would have because the zoning

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administrator would have picked them up in his very thorough review of compliance against available documentation in the Office of the Surveyor. The discrepancies that I am aware of that we pointed out at HPRB had to do with the party wall which reduces the width of one of the lots by six inches.

They also relate to the way that the Tabard has been shown in relation to the proposed development and, therefore, goes to a finding of whether the proposed height, bulk, and design of the building is in harmony with structures in adjacent areas.

We have raised those discrepancies in the context of HPRB because they were directly relevant to what HPRB has mandated is to review a proposed development under the historic preservation law, the impact of the development on surrounding or neighboring contributing structures in the Dupont Circle Historic District and how that impacts the character.

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With respect to this case, I think there has been a lot of information that has been drawn out on cross of the architect and during the applicant's case in chief by our own architects.

To the extent that changes can be made, perhaps you could afford the applicant the opportunity to make those changes at the conclusion of the record as a supplement rather than to rely on those changes to prove that the case actually does comply.

I'm not sure if they are truly de minimis, as Mr. Key says, then they shouldn't have an impact on sort of that height, bulk, design issue.

If there is truly no impact on FAR, then there is no impact and it's just a correction for the record which could come in at the conclusion of the hearing in this case and we would have an ample opportunity to respond to that. I think that is a more appropriate way of handling any de minimis

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amendment that might be proposed at this time.

VICE CHAIRMAN DETTMAN: So is it your position that correcting these discrepancies in the plans in one way or another increases the impact that the project will have on your client's property?

MS. BRAY: We believe that the applicant has not appropriately shown the size and height of our client's property and, therefore, to the extent the applicant and perhaps the Office of Planning have made determination that the proposed development is in harmony with those surrounding structures but you can't appropriately make that finding based on what the applicant has submitted because it's incorrect.

VICE CHAIRMAN DETTMAN: And you're suggesting that this amended plan set is something that could be submitted into the record following the hearing and you would be provided an opportunity to respond in writing?

MS. BRAY: Right. I think that

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would be appropriate only to the extent that the changes are truly de minimis as Mr. Keys as asserted and, therefore, they don't really go to the question being considered. That way we are able to proceed with this case. To the extent that he wants to correct the record he has an opportunity to do that but we would ask that we have an opportunity to respond.

VICE CHAIRMAN DETTMAN: I think that the Board can discuss that, your response to the amended plan set. However, is it more appropriate for us to have the plans submitted now so that we can start to look at whether or not they are de minimis or is it more appropriate in your opinion to wait until the close of the hearing and do it all on paper?

MS. BRAY: I think it would be more appropriate to wait until the close of the hearing. However, I would like to see the plans to know exactly what we're talking about.

I mean, I haven't seen anything so

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all I can do is rely upon the assertions of Mr. Keys in his filing and what he said on the record at the last two hearings. I would prefer the opportunity to see those plans before the Board does so that I can elaborate on our objection.

VICE CHAIRMAN DETTMAN: Is that something that will take some time or would a break be appropriate?

MS. BRAY: Are the plans here? I mean --

MR. KEYS: Yes, they are. We are prepared to submit them and we had based our testimony today on the adjusted plans because that is the accurate view of the properties.

VICE CHAIRMAN DETTMAN: Let me ask my colleagues here. Could the Board take a short break to allow the applicant to present the amended plan set to the opposition party and during that time we can decide whether or not based on what we've said about supplemental plan sets in the past whether or

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not we want to allow them in the record at all.

MEMBER MOLDENHAUER: I believe that if these are de minimis changes I would rather see them now. I don't think any potential prejudice the opposition would have could potentially be addressed by allowing them 15 or 20 minutes with their architecture to review these plans.

If they then have an objection and they are not de minimis changes or typographical changes, then we can address those issues at the time.

I think that I would feel better moving forward being able to question the architect about the changes and knowing that I'm working with potentially the final version of the plans now versus at the later date when there is an opportunity in writing and this still also would provide the opposition an opportunity to cross-examine the architect regarding these changes and then also just

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submit something in writing at the close of the case.

VICE CHAIRMAN DETTMAN: Why don't we do this then. Why don't we take a break. I think what the Board wants to do is eliminate any chance for surprise here. We want everyone fully informed.

Mr. Keys, do you think that you can and your team describe and show the plans to the opposition part?

MR. KEYS: I would be happy to.

VICE CHAIRMAN DETTMAN: Thirty minutes?

MR. KEYS: Easily.

VICE CHAIRMAN DETTMAN: Let's break until 12:00 noon and then we'll reassess whether or not, Ms. Bray, you and your team have reached a comfort level with the amended plan set and decide whether or not it's appropriate to proceed with the amended plan set or continue to proceed with what we have on record right now.

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MS. BRAY: Thank you, Mr. Vice  
Chairman.

VICE CHAIRMAN DETTMAN: Okay.  
We'll adjourn until 12:00.

(Whereupon, at 11:33 a.m. off the  
record until 12:07 p.m.)

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

12:07 p.m.

VICE CHAIRMAN DETTMAN: Why don't  
we go back on the record here. Why don't we  
start by hearing from the Tabard and Ms. Bray.  
Let us know whether or not you made any  
progress.

MS. BRAY: Not much. I have to be  
honest with you, Mr. Vice Chairman. One of my  
objections was, or comments on the record, was  
that we wanted to have an opportunity to

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digest what exactly was being proposed prior to cross-examination.

Mr. Keys has made these assertions that the changes are de minimis, trivial, don't impact the case, aren't really meaningful changes. I have to say that the volume of changes that are proposed is astounding.

Just as an example, this is the original application submitted by the applicant. This is what was just handed to me. It is virtually a new application and we have not had enough time in the 30 minutes that we've had today to determine whether we can adequately cross-examine.

At the very if this comes in we would ask for an opportunity to responded in writing at the conclusion of this hearing. We don't want any further delay. If we can finish the hearing today let's finish the hearing today but we need an opportunity to respond to this in a meaningful way and cross-

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examination of the applicant. Applicant's architects on the fly is not going to cut it.

I also note that these plans just in our cursory review over the last 30 minutes they are significantly different than the plans that were submitted by the applicant on July 31 in ways that are not trivial. There are changes to the sections that show the impact on the surrounding areas, or surrounding buildings. There are changes to the FAR. There are changes to bulk that we just don't understand at this time.

Again, we would ask for an opportunity to review this. And I question whether the Board would have the opportunity on the fly to meaningfully ask questions of the architect based on this volume of information. Virtually every plan that was submitted on July 31 has been changed in some way.

MR. KEYS: Mr. Dettman, obviously if the property line moved six inches, then

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every plan that shows the dimensions of the site has to change accordingly and that's the volume. It's cumulative. It's tedious but these are the realities. We don't think there is much so if the opposition wishes to have time to respond, we would have no objection to that.

VICE CHAIRMAN DETTMAN: Ms. Bray, is the response on paper at the conclusion of the hearing something that you feel will be able to convey the position of the opposition or is this something that is going to require another hearing?

MS. BRAY: That's a good question. I would tend to feel that a response in writing would not be sufficient unless it could include a response directly from our written submission directly from our expert in architecture that could be afforded the appropriate weight.

I think it would be better for that to come out on additional direct testimony

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from our architect. I think that perhaps could be done today but, again, you know, we would need more time to prepare that. We don't want another hearing in this case and we have essentially been backed into a corner where one of our only options is to ask for that.

I'm really dumbfounded really at the idea that anybody can digest this much information. It's not just the six inches of the building that has gone away.

The relative height of buildings have significantly changed and, therefore, the impacts on all the things that came out about the Tabard on our direct testimony from the architect and from the Tabard itself have changed. I would submit that most of it is not in the applicant's favor so I leave it to the Board's discretion.

MEMBER MOLDENHAUER: I'm just confused about the last statement. Are you saying that the height changes are to the

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Tabard's detriment or are potentially less of an impact?

MS. BRAY: Right. No, they show there is actually a greater impact on the Tabard Inn. There are sections which show it is actually more harmful to the Tabard. In the 30 minutes that we have reviewed this we have been able to find significant changes that again show the design of their building is higher than they thought and that we've got a larger penthouse which is quizzical to us and additional windows or additional floors rising above the open areas behind the Tabard Inn --

MEMBER MOLDENHAUER: But those changes --

MS. BRAY: -- relative to the Tabard.

MEMBER MOLDENHAUER: But those changes -- oh, relative to the Tabard but not relative in general? Are they larger or higher in general?

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MS. BRAY: They are higher. It's higher to the --

MEMBER MOLDENHAUER: In relation to the Tabard? Okay. So then it would not affect -- as Mr. Keys said earlier, it would not actually affect any overall belief requested in regards to height because it's not changing in regards to the ground level. It's changing in regards to the height of the Tabard or things to that effect, or the distance from the Tabard. Is that what you're testifying to?

MS. BRAY: One would assume so but I didn't get that far in our review to conclude.

MEMBER MOLDENHAUER: I'm using your statements in conjunction with what Mr. Keys has already testified to in his proffers as to what he is submitting.

VICE CHAIRMAN DETTMAN: Quick question, Ms. Bray. Based on your discussions with the applicant over our half-hour break,

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while there may be a lot of changes because what happens on the ground changes things up top, does it at all change the zoning relief that is being pursued? You're not able to tell? It doesn't give rise to any additional areas of relief?

MS. BRAY: I'm not able to tell. Based on what we have concluded the changes in the FAR still suggest that they may be slightly over the FAR but, again, we haven't quite gotten there.

VICE CHAIRMAN DETTMAN: Okay. I think based on what the Board has said in the past in respect to the changes to the plans that have occurred and that we are going to go forward with the plans that we have before us and what we've heard from Ms. Bray. I think the Board right now is inclined not to allow the amended plans in the record.

Perhaps at the close of the hearing depending upon the direction that the Board goes whether or not we are going to exercise

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our authority under 512 to require any design changes.

I'm not suggesting that is where we are headed but if that is the case and we request an amended plan set prior to finally deciding this case, then these discrepancies, or fixes to discrepancies, can occur at that time.

If the Board decides to go forward on the plans that are before them, if it turns out that additional relief is necessary or if a change needs to be made to the plans because simply they can't be constructed as they are shown.

Because of the six-inch discrepancy the applicant can come back to the Board for a minor modification to approve plans and the Board can take that up at that point. So, with that, Ms. Moldenhauer.

MEMBER MOLDENHAUER: I just want to make one point on the record very clear though. Even though we are not going to

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accept these changes I believe that there has been sufficient time over the last couple of years for the opposition and the applicant to understand the general dimensions of each other's buildings and there has been testimony from opposition that potentially the Tabard was shown differently maybe in the applicant's plans but I believe that the Tabard's design plans that are on the record show their understanding of the dimensions and, thus, there would be no difference in the impact that the opposition has presented in regards to their case in chief.

VICE CHAIRMAN DETTMAN: Other Board Members any comments before we proceed? Okay.

Mr. Keys, why don't we get started with your first witness.

MR. KEYS: Mr. Dettman, there is one very practical problem and that is that we have prepared our rebuttal with exhibits that are based on the relationships that are current that are based on the accurate

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measurements of the relative height of the buildings. Now, If you want us to present based on file plans, just give us a moment to figure out how we are going to do that.

MS. BRAY: I would potentially say that if you have testimony that's rebutting the opposition, use some of the opposition's diagrams and then that way that would obviously allow your experts to directly rebut the opposition's testimony and you obviously then can use your plans also.

MR. KEYS: Ms. Moldenhauer, are you directing us we can use the plans that we have prepared? We have to distinguish between what is included in those volumes which we have prepared testimony on, or what's in the file right now. That's what I'm trying to get. Which plans are we able to use today?

VICE CHAIRMAN DETTMAN: Mr. Keys, I guess my question is prior to finding out that there were discrepancies in the plans I assume that you filed this plan set with no knowledge

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of any discrepancies.

As this is rebuttal, the purpose here we're supposed to be narrowing down in the proceedings and your rebuttal is supposed to go to what was brought out on the opposition's case in chief. I don't understand why you would need an amended plan set in order to carry out your rebuttal.

MR. KEYS: Because part of the opposition's representation, and that was contained in Ms. Bray's March 15 letter to the Board raised a concern about the apparent discrepancies that are merged in the historic preservation process. We wanted to address those in rebuttal by fixing them.

VICE CHAIRMAN DETTMAN: My knowledge of the discrepancies was that at last week's hearing the Board ruled on a motion submitted by you on discrepancies that were discovered throughout the process of work with HP and the Board determined that despite the fact that there may be discrepancies we

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are going to go forward on the plan set that was before us.

MR. KEYS: Because no relief was changing.

VICE CHAIRMAN DETTMAN: Right. I guess my question is with that knowledge that we are going to go forward with the plan sets before us, I think over the course of this past week I would have assumed that you would have prepared your rebuttal based on the plans that are before us and not on some amended plans that hasn't been submitted to the Board yet.

MEMBER MOLDENHAUER: I concur exactly with what Mr. Dettman just said and my recommendation was that if you were trying to rely on different plans that you could potentially use what opposition submitted by their architect in potentially your rebuttal and potentially show whether you agree with certain dimensions or not and use that in conjunction since that was what was decided

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last week.

MR. KEYS: Give me a couple of minutes and let me see what I can put together quickly.

(Whereupon, at 12:21 p.m. off the record until 12:24 p.m.)

MR. KEYS: Are we waiting for Mr. Turnbull?

VICE CHAIRMAN DETTMAN: Mr. Turnbull had to leave and he will read the record from this point forward and participate in the decision on this case. The way we'll proceed I think is that we'll have redirect. I'm sorry. We are on the record. We will have cross of the rebuttal witnesses and there will be no redirect so we are narrowing down here. Perhaps maybe we can even see the finish line. Why don't we get started.

MR. KEYS: Thank you. Mr. Chairman, members of the Board, I would like to ask Mr. Andrulis to come up.

Mr. Andrulis, I want you to start

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with reference to testimony from the opposition regarding the impact on the Tabard, specifically the impact of dining room, patio.

I would like you to respond to that testimony.

MR. ANDRULIS: Good afternoon. I'm Stan Andrulis, one of the architects for the Follies. I would like to first apologize. We put together a slide show that I'm going to skip through some exhibits quickly. You have asked us not to show them. I won't talk about them but you may see a flash of them. I can't delete them from this presentation quickly.

In last week's testimony the Tabard's expert witness pointed out that they believed the proposed Follies design has a negative affect upon the light and air of the Tabard restaurant during the afternoon hours of the summer.

They presented exhibits that illustrated the summer light conditions between the hours of 4:30 and 5:59 and

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asserted that the Follies would grade this quality of light. Pointedly they provided no testimony that I recall that alleged an impact outside these hours.

This slides illustrates information that was downloaded from the Tabard's own website this past Friday. That is a listing of the hours of operation of the restaurant. I've taken the liberty of blowing that up for you here on the right. What that shows is that breakfast is generally from 7:00 a.m. until as late as 10:00 a.m. Lunch is from as early as 11:00 a.m. to as late as 2:30 p.m. Then dinner starts at 6:00 p.m. and goes to as late as 10:00 p.m.

Please note that the restaurant is not open during the hours after lunch between 2:30 and 6:00. It is during that time that the Tabard alleges that impact on light and air. Again, harm is alleged during times of non-operation.

By my calculations the restaurant

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is open 3,430 hours a year. None of those hours occur during the hours alleged of sun effect. They also spoke about the effect upon the light in particular hotel rooms. The hotel and the guest rooms themselves are open about 8,700 hours a year, 24/7 365. The alleged impact affects approximately 3.6 percent of those hours.

Please also remember that the impact occurs during times the rooms are largely unoccupied. I think it's pretty safe to say that guests are usually in the rooms at night. They are there in the morning preparing for the day. During those times we have absolutely no impact on the Tabard's light and air.

I think only a small percentage of guests will regularly occupy a room during the afternoon hours. If you are in the hotel for business you are usually attending to your business. If you are a guest on the weekends, you are a tourist probably and you are

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probably seeing the sites. Certainly there will be people in the late afternoon that are in hotel rooms but it will affect a minor, I think, subset of the hotel guests.

Last October when we presented to the Board we showed animated studies of direct sunlight upon the current and proposed conditions on the Follies site and the Tabard Inn. We have updated this study to reflect new dimensions, new survey information from the Tabard. Now, if I could just explain what is going on here.

MS. BRAY: Mr. Vice Chairman, I would object to the use of any sun studies which were based on amended plans. If the applicant wants to use sun studies and wants to rebut the testimony brought forth by the Tabard, as Ms. Moldenhaur pointed out, he can use the applicant's, the Board's, and/or the hardcopy presentation that we provided to the Board and the applicant last Tuesday.

VICE CHAIRMAN DETTMAN: Mr. Keys,

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do you have a response?

MR. KEYS: We have to look on the machine to see if we have the sun study that was admitted in October.

VICE CHAIRMAN DETTMAN: Do we have a hard copy as well? That might help. The sun study animations that you presented to us previously, are those the same graphics that we see in the sun study tab?

MR. KEYS: They are.

VICE CHAIRMAN DETTMAN: Okay. It would be great if you could find the digital versions but perhaps if you have to you could talk to the hard copies as well.

Mr. Moy, although I would love to watch it, Who Wants To Be A Millionaire is on the TV over there and if we can have that turned off.

MR. ANDRULIS: I think we are ready to proceed. If the Board could indulge us and in the document dated 7/31/09 if they would turn to the last tab -- second to last tab

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called "Sun Studies" and turn to page 9. It's called "Sun Study Page 9." If you unfold we'll go through October -- sorry. I have mispoken. I would like to go through the October sun study first which is sun study No. 1, the first page.

First I would like to give a little background of what these are showing. They illustrate only direct light. They do not show reflective light nor refractive light which are, of course, important contributors to the total amount of light on experiences. That being said, by their nature these studies do overstate the starkness of the contrast between being in shadow and being in direct light.

The sun studies are organized with the existing conditions in the bottom row of drawings and our proposed design on the top row of drawings. There is a still shot taken every hour of the day from sunrise to sunset.

In these diagrams north is up, east is to the

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right, west to the left. The sun obviously rises in the east and through the day comes around to the south and then sets in the west.

That changes on the time of year that you are looking at.

Again, we are showing October 6. That was the date of the original meeting. It seemed to have relevance that you could relate the sun conditions to what you could walk outside and see that day. Perhaps a little less relevance now but because we did it before it seems to make sense to continue with October 6.

So at 8:00 in the morning when the sun is just coming up you can see that -- well, let me back up and describe that's here.

Let's look at 9:00 a.m., the lower drawing of 9:00 a.m. The buildings that are bright white are the Follies, our property with its open space behind it in shadow.

The Tabard are the three properties that are fairly dark gray to the east of us.

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The light gray rectangle to the east of the Tabard is the Topaz Hotel, that 10 or 11 story tall building.

Immediately to the west of us, or the Follies, is the UAW. That is the light gray rectangle with the green behind. So breakfast in the Tabard patio which is in the rear of the Tabard. You can see at 9:00 the dark green area. When it's dark green it's in shadow. When it's lighter green as the rear yard of the UAW is, that means there is direct sunlight falling upon it.

Breakfast begins at 7:00 in the morning. 7:30 I think it was. You can see because the sun is low in the sky in the east that the Tabard itself and the Topaz block sunlight to the Tabard's own garden. As we progress through the morning 9:00, 10:00 the sun condition in both existing and proposed is the same.

If we move to page 2 now we're at 11:00 in the morning. This is the end of the

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breakfast time. You can see again we finally are starting to get some sunlight in the Tabard garden, the lower drawing. You'll notice the same amount of sunlight is falling in the proposed condition.

We move on through the day lunch hour beginning. At noon the same amount of sunlight falling both proposed and existing. 1:00 same amount of sunlight. We go to page 3. At 2:00 this is toward the end of the lunch hour.

Lunch during the week ends at 2:30. You can see that there is a slight difference in the amount of shadow in the Tabard garden. The sun has swung around to the west enough that we are starting to have some effect on the patio.

3:00 lunch is over. Dinner has not begun. The restaurant is closed. You can see we have a bit more effect. 4:00 the sun is getting lower in the sky and so the existing condition itself has very little sun. It

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shows very little sun in the patio, just the far northeast corner.

We continue on to page 4. At 5:00 the restaurant is still not open. You can see we have slightly less effect than 4:00. Then by 6:00 we have no added shadow to the Tabard so we have no sun effect starting at 6:00 and through the end of the evening. This is obviously close to sunset in October but we don't affect the dinner hours.

I would like to show you next June 21st, the summer solstice which is the worst case, the worst day of the year for affect on the Tabard. That would begin on page 9. I think we all understand what is going on here so I'll try to pick up the pace here a little bit.

In the morning the sun is low in the east. The Tabard is shadowed by itself and by the Topaz. Breakfast time. Only at the end of breakfast on page 10 to you start to get any light.

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11:00, 12:00 the conditions are the same, existing and proposed. 1:00 the middle of lunch hour or actually toward the end of lunch hour. 2:00 p.m. still the same conditions. It's not until the end of lunch hour where we start to have a little affect. Lunch is over at 2:30. We create a little bit more shadow in the Tabard's yard at 3:00.

4:00 we have more effect. 5:00 we have effect. 6:00 when the restaurant opens we still have some affect but it is more minor. By 8:00 we have no affect at all.

So if I could characterize what I've just showed you and we could go through the equinoxes and we could do any day of the year if we had the information but what you would find is that we have no affect on the Tabard's direct light at all during winter.

It makes sense. The sun is low in the sky. The Tabard itself is blocking its own sunlight. During the spring and fall there is no practical affect at breakfast or

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at dinner and only a quite limited affected lunch.

During the summer we have no affect on breakfast, very little affect during dinner. In the beginning of dinner we have a little bit and there is some affect toward the end of lunch service. Most of the affect we have is between the period of 2:30 and 6:00 when the restaurant is not in operation. Your indulgence for a second, please.

Thank you. The Follies does make substantial design moves to mitigate its effect upon the Tabard. It does not build to its height limit. We keep the building, the addition eight feet below the 65-foot height limit.

The ordinance requires no penthouse side yard setbacks. Despite this we have moved our elevator core 24 feet away from the Tabard property line. That is essentially one existing lot. It's essentially the width of our 1743.

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We have made the penthouse significantly shorter than it need be. Ordinance allows 18.6. We're at 15 feet and we would like to go lower but the penalties for making cooling towers lower is a huge energy concern. You need to have fan powered cooling towers which we don't want to commit to doing. We also erode the northeast corner of the hotel in direct response to being adjacent to the Tabard.

With the Board's indulgence I would like to ask Anton Janezich, my partner, to spend a few minutes discussing the issue of other ways to mitigate light and air issues at the Tabard.

VICE CHAIRMAN DETTMAN: Mr. Keys, can I just ask if Mr. Janezich's testimony is going to go to something that was presented in the party opposition's case in chief?

MR. KEYS: Yes. It's directly in response to the architect, Mr. Schwartz, and the interaction he had with Ms. Moldenhauer

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regarding mitigation.

MR. JANEZICH: Good afternoon. My name is Anton Janezich. I would like to thank the members of the Board for the gift of their time this afternoon and allowing me to speak with you.

Last Tuesday we were shown a photo of Renior 1876 Le Moulin de la Galette as an example of dappled light. Dappled light is a feature of impressionist art. Renoir is considered by most to be the greatest of the impressionists and this his greatest work. We are left only to marvel in the beauty of the Acacia-shaded courtyard.

The Acacia tree shown in the Le Moulin de la Galette keep out the heat of the Parisian summer afternoon while providing dappled light to its patrons below the tree canopy.

In the northern hemisphere -- I'm sorry. In the northern hemisphere artist studios have been for centuries built with

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windows only on the northern side as north light is a constant light and a good measure of general indoor lighting.

North light is silvery-type light that brings out the cool purplish greenish atmosphere colors. The beauty of north light is that you can paint all day and the subject won't change.

It is with this tacit knowledge of the artist that we all strive for the delicate balance and comfort between soothing atmosphere colors and the comfortable heat produced by the source of all natural light, that being the sun. The proposed Follies scheme has no affect on Tabard's abundance of this desired northern light.

In nature light values that provide soothing atmospheric colors seemingly are designed all by themselves. The dappled light in this image appears as an accident of nature. The nostalgic American barn is disappearing from the landscape. Here a

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midwestern dairy barn in decline shows off the beauty of its dappled light beneath the grand roof brow in an accident of man.

It doesn't take a lot of urban space to develop a desired affect with natural light. Here an artist in Fez uses the light colored palette of this Moroccan city in harmony with the natural light to display his work in a balancing act between light and heat that have been refined over many hundreds of years in urban infrastructure in this part of the world.

A little closer to home summer on the D.C. Mall balances the clear vistas of our national monuments along the east/west access while providing shade on its northern and southern edges to offer relief for its visitors from the summer heat that averages 88 degrees in the summer and is caused by the abundance of natural light in this geographic location.

Many years ago while working with

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Adrian Smith, architect of the United Gulf Bank in Manama Bahrain I designed the exterior wall for this project. Due to the Middle Eastern climate particular attention was given to controlling heat gain inside and outside the building without sacrificing natural light.

This section is a recreated study of an idea how the exterior arcade was kept cool and how light was introduced into the arcade using various small apertures and light-capturing elements in the building facade to reflect direct light through a three-foot thick masonry wall.

In a modern interpretation of ancient Middle Eastern architectural vocabulary perfected over many generations it is used to control light and heat.

Based on a previous sketch the image on the left shows how natural light enhances the experience in the arcade washing it in controlled ambient light while also

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protecting it from heat. Thank you.

The image on the right is a detail of the light scoop used at the top of the arcade to illuminate the plaster ceilings. I'm sorry. Technical difficulties. So these apertures on the right allow light into this arcade space and this light scoop you can see just sort of up here illuminates that ceiling and brings light down.

In a recent piece of architecture, again a little closer to home, I designed the renovation of the GSA regional headquarters here in Washington when I worked with Lewis-Goetz. To turn this massive former federal warehouse into a Class A office building the center of the building was removed to allow for the atrium you see.

The image on the left is looking west in the atrium. The image on the right is looking east. To control the ambient light and the heat gaining entering the atrium a 50 percent open fabric shade was used on the

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exterior south-facing side of the atrium. You can just sort of see a scrim laying along this side of the atrium.

The idea was to allow 50 percent of the direct light to pass through the fabric shade and into the space beyond while reflecting the other 50 percent of the light to the north-facing atrium spaces so everyone would have access to direct light. This project is going forward in the near future.

In a no less sophisticated way the Tabard Inn has designed into their courtyard a fabric parachute to filter part of the direct light into the courtyard while reflecting some of the undesirable light and heat away.

In analogy to Le Moulin de la Galette the parachute is the Acacia Tree of the Tabard Inn controlling the heat of the summer in their courtyard and offering light to filter to the pavement below. In this image taken on a June afternoon in 2009 we can see the shaded west facade of the Tabard Inn.

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I lost my place. And the rear illumination of the north facing facade of the Tabard Inn. In addition we can see the parachute doing its job glowing as it reflects the hot summer heat while offering some sunlight capacity to the patrons below the canopy.

As an idea when the Follies Hotel was complete the desired affect of the signature Tabard parachute can be altered by the Tabard Inn as follows. Working with Stan Andrulis it was observed by moving the parachute up higher in the Tabard courtyard to capture the sun as shown here and they continued to glow in the desired ambient light and reflect filtered light downward into the courtyard while reflecting undesirable heat caused by light.

The idea is simple and may be achieved using modern interpretations of 18th and 19th century technology that was used to install clothes lines between urban buildings.

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There are, of course, other ideas but we thought using the Tabard icon parachute was a good place to start this very doable study.

With the Board's permission I would like to ask Stan Andrulis to continue our discussion with you.

MR. ANDRULIS: I just want to follow up on what Anton was saying that one of the Board Members had asked us last week, asked everyone rhetorically are there other mitigating elements that could be incorporated to help with the light and air situation of the Tabard and we think there definitely are.

Last week the Tabard alleged that there was a privacy issue in this yellow area here between their existing hotel room there and our new proposed hotel rooms here. In fact, here July 31st in the existing condition their room here looked out on the existing party wall.

As we saw the design on the 31st that window looks out on our proposed new

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window that we needed to mitigate by having translucent glass. I can tell you that given this new survey information we have received from the Tabard that conflict has resolved itself. We actually had the Tabard wall several feet too close to our window. When it moves back there is no direct view to that window.

The Follies Hotel is a sensitive and appropriate design for the site that inspects the integrity of its contributing buildings along N Street. Its addition is set back such that it is not visible from the street. Aside from the recessed glass entry and glass canopy the new has no presence on N Street.

MR. KEYS: Stan, take a moment and just orient the Board to the slide that you're showing.

MR. ANDRULIS: Sure. The viewer is on the sidewalk across the street from N Street but he's actually about 15 feet in the

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air. This is the UAW, 1755. This is part of our hotel, 1753, 51, 1751's addition, our new entrance canopy, our new enclosing glass wall of the entry, 1743, 1741 -- sorry, 1745 here, 1743. Those are, again, part of the Follies Hotel, then the Tabard beyond and beyond the Tabard the Topaz Hotel.

You can see that from N Street even up 15 feet in the air you do not see any of the addition. You do not see the penthouse. That is because the addition is set way to the rear of the property and the penthouse height is mitigated so not visible from the street and it is, in fact, set way back on the site as well.

This is a view from the west. N Street is here. In the foreground is the UAW property, the alley. These are the back of the buildings on Massachusetts Avenue. There is the Tabard and our five buildings, one, two, three, four -- one, two three. Three is the addition, four, and five is a little lower

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there. You can hardly see it.

MR. KEYS: There was a discussion concerning what we're doing with the courtyard. It's been described as a donut, the hole in the donut. Can you explain the view that is being seen and the architectural treatment of that?

MR. ANDRULIS: Sure. We have separated the contributing buildings in the front of our site from our addition by a garden. That garden is visible by the public from a couple of different places, from the gardens just to the west of us and obviously inside those buildings as well.

You would get glimpses of the garden from being in the alley here. Then when you're on N Street when you are directly across from our entrance there is a glass wall at the entrance and there is a glass wall exit into the garden but through those two glass walls you would get a sense of the garden beyond.

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MR. KEYS: Mr. Andrulis, what is the enclosure? Could you explain what is glass about the courtyard, what is open in the courtyard?

MR. ANDRULIS: Sure. The existing buildings are all masonry. We chose this geometry for our addition to safeguard the most significant rears of our buildings. We have set these off as one side of the garden. The other side of the garden is our new addition.

We have designed that, we think, to be sensitive to our contributing buildings and to the area as a whole. What we've done inside that courtyard, which is here, that is a glass curtain wall so we relate to our contributing buildings by contrast.

There is a clear understanding of what is old and what is new. That garden space as well is reinstating an older garden. When these buildings were built and as they were first occupied it was open space.

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There was open space behind those buildings. We can imagine the type of residential garden uses that were there. Over the years now that has become a parking lot so we are removing a parking lot and reinstating an historic use.

Using that obviously as an amenity for the hotel it is open to the western sun. It will be a beautiful space in the afternoons. It has this dichotomy between the old and the new and we play that up in how we are articulating the addition.

Now, the interior of the courtyard of our addition is glass. It is unabashedly modern. The other three sides, the UAW, the alley and the Tabard side are masonry relating to the properties that it adjoins. We do this in a very modern vocabulary which I'll discuss a little bit more later.

It also is placed on the rear property line and it provides the light and air to the alley by following the zoning

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ordinance and actually providing more of a rear yard than the zoning ordinance requires.

In this situation the rear yard is measured from the center line of the alley and the rear yard is required to be two-and-a-half inches wide for every foot of height of building or a minimum of 12 feet. That calculation works out to less than a 12-foot rear yard required.

Our rear yard changes dimension as it goes from east there to west. The alley changes dimensions. At the eastern end of our property the alley is 26 foot wide and at the western edge it is 43 foot wide so our rear yard at a minimum is 13 feet and at a maximum is half of 43, 21-and-a-half foot wide, far exceeding what the ordinance requires.

You can see that Johns Hopkins is the building directly behind us. There is a substantial amount of open space. The gray here is the alley. That's the Hopkins property but we have about 100 feet of open

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space between our proposed back and their back. That is by far the largest open space in this whole alley network.

MR. KEYS: Mr. Andrulis, can I get you back to the courtyard for a minute? The courtyard is open to the air. Is that correct?

MR. ANDRULIS: That's correct.

MR. KEYS: The full extent of the courtyard.

MR. ANDRULIS: The full extent of the courtyard is an outdoor garden.

MR. KEYS: And you mentioned the curtain wall. Can you just show us where that curtain wall is going to situate?

MR. ANDRULIS: Sure. The curtain wall will start at this corner, begin at the grade level, come up the building. In fact, the penthouse, this space of the penthouse will be also clad in glass. That is all glass there so this L is glass and then the U that surrounds it on the outside edges of this is

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the masonry.

The placement of the garden here I've mentioned is placed here for a reason, because of the quality of the rears of these buildings. There was testimony last week that our elevator core, which is housed there, might have been better placed more westerly on out site.

You can pick how westerly you would like that to be but if it were westerly in the middle of our site it would be here disrupting this garden and disrupting the contributing elevation. If we moved it way to the west it would do the same thing.

We have made in consultation with preservation staff the decision that this garden is important to these buildings and to allow that to happen we are placing our elevator core at the eastern end of the site.

Previous design firms have that elevator core right at the property line. We have moved it in to allow this relief to basically be able

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to move that penthouse back away from the Tabard to get more sun into the Tabard.

To do this we would have to remove a portion of the rear L of 1743. 1743 is a contributing building. We had long discussions with the HPO staff about what is appropriate to remove and we agreed that 1743 addition is -- I don't want to put words in staff's mouth but the addition or the rear of these properties with the least merit. If something was going to leave, that is what should go away.

Now, when we remove that rear L I think it's significant that we have this garden space which is not required by the ordinance. The ordinance for a hotel allows 100 percent lot coverage. We are at 87 percent lot coverage.

If we had kept those additions my interpretation of the code seems to say that you can't remove additions if it is going to increase the height or bulk of the building

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but clearly it doesn't increase the height or bulk of this building because we have all that open space in which we would move bulk from one part of the site to the other. We have extra open space essentially.

This is a view from the north looking at the garden of the Tabard, the green space there. The patio I think they call it.

You can see that the Tabard is a conglomeration of three buildings, one, two with its addition, and three there. There are several other smaller additions there enclosed by a garden wall. The Topaz is here, the buildings across the street from us on N Street and then the edge of our building.

Again we have made significant changes to the design to allow this portion of our building to be more in scale with the Tabard. We have eroded that corner which is going to let admittedly not a huge amount but have Tabard have more openness to the sky. It will add light and air to their space. It

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also develops a scale. This is a four-story piece relating to the geometry of that four-story piece.

The bulk of our building is five stories tall at this wall which is about four -- excuse me, three-and-a-half feet higher than the front of that building. We are in general scale with the surroundings.

As I said we moved the elevator core away from the property line so we could have that 24-foot setback. The whole width of 1743 we set back the penthouse. Ordinance doesn't require that.

I'm a little handicapped here because I next was going to talk about the articulation of our rear elevation. Unfortunately the exhibit I was going to use I may not. I would like to get 731. There it is. Okay. Thank you.

VICE CHAIRMAN DETTMAN: Mr. Andrulis, can I just interrupt for one second?

Mr. Keys, we put you on the clock

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for a hour of rebuttal. Just checking in to see how much time you're thinking for Mr. Andrulis. I think you have Mr. George as well?

MR. KEYS: Yes. He's almost at the end.

VICE CHAIRMAN DETTMAN: Okay.

MR. KEYS: I will move quickly with Mr. George. I apologize, Mr. Chairman, for the inefficiency of our presentation but some of it was occasioned by the fact that we had to work on the fly because of the decision regarding the changes.

MR. ANDRULIS: If the Board could turn to their 731 submission in the tab called Facades there is a drawing called Facades 2. That's the proposed rear elevation of our hotel. It relates to the slide. This is the Tabard Inn here. That's our four-story piece, five stories, and then the penthouse beyond. You see the edge of this elevation in that drawing.

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One of the things we did before commencing the design of this building is walk the alley a lot and look at what is there and the context. If you don't mind, I will grab a couple of boards.

Before we started design we went and walked the alley. We saw several things that stuck out to us. This board illustrates -- a very clumsy architect -- and it is photographs of the rears of some of the more significant to us contributing properties on the alley.

These are N Street properties at the 17th Street side. What they do is they show the contributing buildings of a certain module, a certain width, and that is expressed on the rear of the buildings. The fronts are very formal.

The rears are kind of happenstance. They are masonry. They are of a module of 20, 25 feet. They all have stacked fenestration. They are three and four

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stories, sometimes five stories tall I think. There is lots of black metal.

This is a view of the rear of our property. These are the buildings 1755 through 51 that we believe are the most significant to save. That is essentially the elevation of the north wall of our garden. That's the portion of 1743 that will have to be removed.

I think one thing that is really significant is this view. That is the view from the garden through our entrance to the dome of St. Matthew's. That is going to be saved again through two layers of glass. You can see where these kind of light conditions will be still very very apparent. Then the opposite way you'll be able to see into the garden.

So how does all of this affect the design of the rear elevation? I should go here as well. There are a number of carriage houses on the block, all kinds of different

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doors. Several of the properties have walled gardens.

It is a difficult task to design a large building that relates to historic buildings that are admittedly smaller scale. Many of them are smaller scale. You can do it directly by aping their scale, by aping their geometry, or you can do it in a more abstract way and so we have tried to do it in a more abstract way.

This is an old elevation. When you get a filing at the end of the meeting I encourage you to take a look at the newer version of this which we believe has been improved slightly by comments and --

MS. BRAY: Objection. You're showing the Board a new document that the Board has specifically rejected.

MR. ANDRULIS: No. This is from July. I'm referring to a document that they will see at the end of the submission.

MS. BRAY: If a submission is

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allowed.

VICE CHAIRMAN DETTMAN: That's right. Yeah. I think this is the document we have before us, the July submission, but if we can prevent referring to any of the revised plans that would be great.

MR. ANDRULIS: What we've done here is take the notion of the garden wall which we actually borrow from the Tabard. We extend that across the base of our property continuing that articulation, continuing that base.

The notion of contributing properties being broken up into smaller modules, we've broken this facade up into smaller modules there, there, there, there. This can be seen as one big or several small modules. Those modules that we are breaking it up into relate to the size and the scale of the Tabard and the UAW.

Now, we're not doing this in the depth that the historic properties have. They

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have full rear yards but we're doing it within the facade. These bay windows, linked windows linked together with black metal, project from brick planes which project from other brick planes.

With each of these projections is something like eight inches. It's shallow, it's modern, it's contemporary but we are relating in an abstract manner, abstract and real manner to the adjacent properties.

MR. KEYS: Mr. Andrulis, I think that I would like to -- Ellen McCarthy in her testimony last week spoke about the historic gardens that are evident on the rear of the alley and public access to those gardens and somehow they are public amenities. I would like you to just take the Board on a tour of the alley so that they can see for themselves the situation.

MR. ANDRULIS: Sure. One morning several months ago I took a tour of the alley. I started at 17th Street here. I walked the

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alley up to our property facing north, facing the back of the buildings at N Street. I took a picture of the condition of each building along the way. I went back down to 17th Street and then took pictures of the Massachusetts side of the alley.

The point here is the reality is not quite what you might think it is when you see a drawing. The drawing we saw last week was rendered such to give the impression that perhaps these are all private gardens linked together, no walls, no fences, beautiful green space. That's not the case.

Starting from 17th Street you have gravel, broken concrete. This is early in the morning. There are usually cars there and cars here. As we go up car parking, crumbled concrete, car parking, asphalt, car parking, car parking, car parking.

As we come up further car parking, the Topaz, car parking, beautiful fence, and then the Tabard begins here, car parking. I'm

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not sure how legal these are. I'm not sure how legal the dumpster placement is. That is the Tabard's wall.

Here is the first open space as I would define open space, or garden space I guess I should say, on this side of the alley surrounded by a 12-foot wall. You have very little sense of what is beyond that wall. You can see a little bit of greenery and the tent but you are certainly not participating in that space from the alley. You are participating in a parking garbage collection alley.

You go back down to 17th Street. I took a walk across the street to show you the entrance to the alley. The Peruvian Embassy I believe, the rear of it. As we go up the alley another walled garden. This is actually a private house, I believe, a paved area behind.

Going up trash cars, loading docks, parking, carriage house again illegally

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parked. I believe illegally parked although that's striped. Vans and the back of Johns Hopkins. Again, there are no lush gardens back there. There are no linked backyards. It is a utilitarian space.

I'll draw your attention to the Board. Just in case anyone was unclear where that alley tour occurred, N Street, 17th, 18th and Mass. There is the alley, our property, the Tabard. What I first did was starting from here taking pictures of the rears of these properties until I got to ours. Went back down took the pictures of the rears of these until I got to Johns Hopkins.

Last week Mr. Schwartz, an architect for the Tabard, discussed alternative massing approach that he asserted might be taken with the Follies project as it relates to the Tabard. It was, and is, an elegant idea. It created a low mass along the property line and at each additional floor of the Follies it stepped up and back further

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away from the property line.

In his presentation he added the appropriate caveats that this was just an idea and he did not consider how it worked with the Follies layout or program. This past week I looked at the idea and found that it would eliminate approximately 30 hotel rooms from our programmed 98.

That is a huge penalty that I don't believe the Follies can sustain.

I think you might classify that scheme as an idealist concept. Elegant but perhaps impractical in this case.

VICE CHAIRMAN DETTMAN: Mr. Andrulis, Mr. Keys, another time check. Can we wrap this up in terms of your rebuttal, Mr. Andrulis, and Mr. George in the next 10 minutes?

MR. ANDRULIS: Five. This is another approach. It is a matter of right scheme. It requires no zoning relief and, therefore, the case wouldn't even come before

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the Board. One way to accomplish this matter of right would be to change the building's use to residential.

If we did that, that project could be 4 FAR, it could be 65 feet high, it could have 80 percent lot coverage, it could have an 18 foot 6 penthouse and no sideyard setbacks.

What I have illustrated here there is the Tabard, there is the patio, and that is what a matter of right scheme might do.

Of course, one would have to go before HPRB. It's in the historic district but this could be successfully masked so it has little effect, if any, on N Street.

There is another way, a way that might be more appropriate than either of the first two approaches. It's a way that creates a feasible project that is somewhere between the ideal and the purely practical. This approach built significant below the height limit creates a sideyard penthouse setback of 24 feet, builds a lower penthouse than

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required, and this is, of course, the Follies approach.

If we contrast it with the matter of right, you can see the great lengths that we have gone through to improve the situation with the Tabard. Matter of right, our proposal significantly more access to light and air provided to the Tabard.

This is a view from the west. That's the entire N Street block. Our property is there. Our contributing buildings, our addition, the Tabard, the UAW, the Topaz, the larger buildings on Massachusetts Avenue. I think this is pretty illustrative of the fact that our building is in keeping with the scale of its block.

We are low in the front, consistent with the heights of all the other contributing buildings on that block. Our addition is actually a couple inches lower than the ridge of our front piece. There is a penthouse above it which makes it slightly higher. That

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penthouse is set back so far, 100 feet here and 50 there no visible from the street.

What it does is something nice here. There is a certain scale here surrounded by a certain other scale and that penthouse starts to step the scale up from our contributing buildings to Massachusetts Avenue. I think we are very much in scale here and if we didn't do this addition, it could be argued that we were less in scale with the surroundings. All right. Thanks.

MR. KEYS: I would like to ask Mr. George to come forward and we will quickly go through --

MS. BRAY: Mr. Vice Chair.

VICE CHAIRMAN DETTMAN: Yes.

MS. BRAY: We would appreciate the opportunity to cross-examine both Mr. Andrulis and Mr. Janezich before Mr. George testifies if at all possible since there was pretty voluminous new testimony. I think it makes sense to do it that way.

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VICE CHAIRMAN DETTMAN: I think that's fine.

MS. BRAY: Thank you. Mr. Andrulis, you mentioned that you could do a matter of right residential project at 4.0 FAR and that you could place the penthouse right up to the property line but that would still require HPRB. Would it not?

MR. ANDRULIS: Correct.

MS. BRAY: Are you familiar with the HPO report from 2005 which actually is in the record in this case that said a penthouse up at the property line would not be appropriate?

MR. ANDRULIS: I have read that. It was awhile ago. That seems like that might be in there.

MS. BRAY: Okay. So really what you're presenting is not a realistic indication of what might be approved as a residential project based on the history in this case?

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MR. ANDRULIS: I don't know that I could say that. That was a different design team and entirely different design.

MS. BRAY: Okay. Your proposal to mitigate -- sorry. Your reference to Mr. Schwartz' proposal to mitigate the development and the impact on the Tabard Inn you said you analyzed that and it would reduce your project by approximately 30 rooms making it impractical.

Isn't that simply saying that this proposed use is not appropriate for this site if you can't take adequate steps to mitigate against impacts on surrounding properties since it is a special exception?

MR. ANDRULIS: We have taken adequate steps to mitigate. It is my opinion that what Mr. Schwartz was proposing was beyond.

MS. BRAY: You talked a little bit about the erosion of the fifth floor in the northeast corner of the building. Can you

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tell me where that erosion ends for all intents and purposes relative to the northern most plane of the Tabard Inn?

MR. ANDRULIS: No.

MS. BRAY: Would it sound appropriate to you if I were to show you on a plan that it was at least 14 feet difference between the two?

MR. ANDRULIS: It would depend on -- you need to clarify where you are measuring to and what you are measuring from. I do know --

MS. BRAY: Let me rephrase the question. Does the erosion of that plane on the 5th floor extend to the northern most portion of any floor of the Tabard Inn adjacent to this area.

MR. ANDRULIS: What it does, the purpose of that --

MS. BRAY: I know what the purpose is. I'm just asking whether it actually relates in that fashion with the Tabard's rear

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facade.

MR. ANDRULIS: No, it does not but to just stop there would be an incomplete answer and I would like to elaborate.

MS. BRAY: It's the answer to the question I was looking for so I'm going to move on. You had some photos of the alley details and in the brief moments when I had those photos in front of me I counted 67 cars parked in the alley. Does that sound about right to you? Have you counted them?

MR. ANDRULIS: I did not count the cars in those images.

MS. BRAY: Would you agree that is a significant amount of cars? I think that was the point you were trying to prove that there were cars there and not gardens. Is that right?

MR. ANDRULIS: I was trying to explain to the Board the existing condition.

MS. BRAY: And the existing condition of the alley is that it's heavily

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used by vehicles.

MR. ANDRULIS: Correct.

MS. BRAY: Thank you. You mentioned on the rear of the -- looking at the Facades 2 drawing from the July 31st submission that there are projections of approximately eight inches. Is that just on your metal facade treatment or is that actually a projection outside of the plane of the main volume of the building similar to an oriel or a bay?

MR. ANDRULIS: It is similar to a shallow oriel or bay. It does not project over the property line. In the District those elements can. Those bay windows, if you will, project eight inches from a brick plane that itself projects eight inches from the base elevation of the building.

MS. BRAY: Is that accounted for in your FAR calculation?

MR. ANDRULIS: Yes.

MS. BRAY: Even those that project

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out -- I'm sorry. Did you say there was nothing that projected out over the alley?

MR. ANDRULIS: Correct. You're not allowed to do that.

MS. BRAY: Okay. You had a couple of photographs in your presentation. One was actually a photograph of the St. Matthew's dome, I think, as viewed through the passage which we referred to from time to time on this property. Then there was another perspective drawing which you said was on N Street looking from west to east and you said that was basically across the street and 10 feet up in the air.

MR. ANDRULIS: I think I said it was across the street and about 15 feet up in the air.

MS. BRAY: Okay, 15 feet up in the air.

MR. ANDRULIS: Somewhere in that range.

MS. BRAY: Is that about the height

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that the photograph of St. Matthew's dome was take from?

MR. ANDRULIS: I don't know. I could look at it and give you an estimate if you like.

MS. BRAY: Could you tell me whether the photograph of the St. Matthew's dome was taken from the ground floor?

MR. ANDRULIS: Oh, you know what? I took that -- thank you. I took that photo and I was standing on the ground on the site on terra firma.

MS. BRAY: Okay. You said that view would be preserved for the users of this new hotel. They would be able to look through the passage and see the view of N Street and St. Matthew's. Is that right?

MR. ANDRULIS: I did qualify that, yes, with you are looking through a glass wall to see it.

MS. BRAY: Okay. If you were in the exact same position but you were looking

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from one of the hotel rooms out into the alley system, would you have a similar view or would you be able to see from the interior of the courtyard out to the alley or is it completely blocked?

MR. ANDRULIS: Some of the hotel rooms in the contributing buildings would have a diagonal view to a portion of the alley.

MS. BRAY: Is it your testimony there wouldn't be any impact to the open spaces in the alley by filling in that entire volume as viewed from terra firma on the ground?

MR. ANDRULIS: Could you rephrase that?

MS. BRAY: The photographs that you've taken would show that you have -- and perspective drawings that show that there is appropriate scale and appropriate retention of open spaces were taken from a position that is significantly above the elevation in the alley. Is that not right?

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MR. ANDRULIS: The photographic tour of the alley was taken from --

MS. BRAY: No. The photo of St. Matthew's through the passage and the perspective drawing which was shown at a distance of 15 feet up in the air overlooking the property.

MR. ANDRULIS: The photograph of St. Matthew's was taken from my feet were standing on grade in the current parking lot so it was taken from five-and-a-half-feet above ground level. The image on N Street was taken about 15 feet up because when one takes the image from ground level it cuts off the top of the buildings in the frame that we had so we moved the eye point up.

MS. BRAY: Okay. You noted that in some way the construction of the penthouse was driving the removal of a portion of the building at 1743 N Street. Can you elaborate on that? How are they linked?

MR. ANDRULIS: Ask me that again,

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please.

MS. BRAY: Was it not your testimony that the need to construct the penthouse in some way necessitated the removal of a portion of structure and you have chosen the rear L of 1743.

MR. ANDRULIS: I've got it. The penthouse itself if I gave you that impression I apologize. The penthouse itself didn't cause that. There is an issue in a building like this of where you put the elevator core. The contributing buildings were built before elevators. Actually, a couple of them have them in there but in poor places and they are all coming out as we restore the buildings.

It seemed to us the elevator core needed to be between the contributing buildings and the addition. You could choose to do that anywhere along the whole east/west access of the property where our garden is essentially.

You could choose to do it on the

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far west which would affect 1755 and that block of three which are the most significant contributing buildings so we wanted to keep it away from there. You could put it in the middle. It wouldn't be respecting the integrity of 1751.

Depending on how the geometry was it would destroy that view to St. Matthew's perhaps. It seemed to make sense that the elevator core -- not seemed to make sense. It makes perfect sense that the elevator core is placed on the eastern part of the property.

The other two places you could put the elevator core are in the existing buildings -- we judge that not appropriate -- or in the new. If you put it in either the new or the existing you have a kind of too far to go.

If you put it in the new you have to walk around this big U to get to the far existing rooms. What makes sense is to put it in the middle. You come out of this elevator

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core, you go right into history and you go left into a contemporary addition and use the elevator core to explore that dichotomy.

MS. BRAY: Couldn't you have also constructed the elevator core or done a double elevator core with one in the new building and one in the old and sort of constructed the two as an H instead of connecting them in the area where the rear L of 1743 exist today?

MR. ANDRULIS: That is another possibility. The downside of doing two elevator cores is in this instance because of the number of elevators you need in each core, two, you are doubling, tripling actually the number of elevators and that cost.

Plus, you are putting some of those elevators inside the contributing buildings which we judged was -- well, the one place in the contributing buildings it could receive elevators is where we put them in 1745, a long thin space that is as if somewhat designed an elevator shaft for this future invention.

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MS. BRAY: But wouldn't a design such as you've just described result in the loss of fewer hotel rooms than 30 once you have calculated Mr. Schwartz' proposal might result in? Wouldn't it also eliminate that massing on the east which blocks light and air at the Tabard? Wouldn't you, in effect, have preserved the open spaces between both of these volumes of buildings?

MR. ANDRULIS: It would eliminate a significant number of hotel rooms. I can't tell you that it would be significantly less than 30 but in my judgment it probably would be.

MS. BRAY: Well, let's take a look at that. I'm just looking at your third floor. I kind of picked that at random but it looks to me like in the area in which we're talking about you've got a guest room in the existing building and every year of the existing building at 1745 and then you've got maybe four guest rooms that might be affected

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in that sort of C configuration at the rear of 1745 and 1743 along with your core space so a five-story building maybe you're talking about a loss of 15 rooms.

MR. ANDRULIS: Excuse me, Ms. Bray.

I spent the first part of your question looking for the drawings. Could you point to me?

MS. BRAY: Sure. I'm looking at the third floor elevation or third floor plan from your July 31, 2009 submission.

MR. ANDRULIS: Got it.

MS. BRAY: So just walking through it looks like you've already got a guest room in the original fabric of 1745 N Street in the rear. You've got core space in what remains of the rear of 1743 and you've got maybe a total of three, possibly four guest rooms that might be wiped out if you were to eliminate that entire area and continue your open courtyard to the eastern property line. Is that right? This is just on the third floor.

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MR. ANDRULIS: It looks to me like there would be four per floor eliminated and there are three floors of hotel rooms so 12.

MS. BRAY: Okay, which is less than 30.

MR. ANDRULIS: Is 12 less than 30? Yes.

MS. BRAY: Okay. You talk about the penthouse materials a bit, or maybe Mr. Janezich did when he was going over the materials being used on the penthouse and the curtain wall construction and how all of this garden is actually being preserved and it's going to be enjoyed by everybody.

In fact, the Tabard. There was a comment in there that the penthouse is glass but the volume of the building and the exterior of the penthouse is masonry. Can you direct me to a section or an elevation drawing which might show the materials being used on a penthouse?

MR. ANDRULIS: Sure. If you look

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at the drawing Facade 1 in the Facade tab, this is an elevation from N Street. It's not what you see from N Street. It's a two-dimensional attraction. Over the existing buildings you can see the penthouse 100 feet back. Over on the right there are some notes.

The second one, new glass, curtain wall, and brick penthouse beyond. The arrow the farthest left is pointing to a glass wall.

The arrow pointing to the right is pointing to a brick wall. Again, this is an L-shaped volume and the outside faces of the L are brick. The inside faces are glass.

MS. BRAY: So you're using two different types of material on the penthouse exterior?

MR. ANDRULIS: Yes.

MS. BRAY: Are you familiar with the provisions of Section 411 in the zoning ordinance, the restoring regulation?

MR. ANDRULIS: Not off the top of my head.

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MS. BRAY: Does it refer to roof structures?

MR. ANDRULIS: I'm not familiar with that passage by number.

MS. BRAY: Do you know whether the roof structure provisions allow more than one type of material on a penthouse as a matter of right?

MR. ANDRULIS: We looked into that and I cannot tell you. This is not a very satisfactory answer I suppose. We looked into it. That was our initial thought, initial reading of the ordinance, and we researched further and I cannot quote you line and verse but we reached the decision that this would be appropriate.

MS. BRAY: So you haven't asked for a variance relief?

MR. ANDRULIS: We have not.

MS. BRAY: Okay. Going back to the perspective drawings you had showing the alley system from the west, I believe you said the

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Hopkins property, which is on Massachusetts Avenue, had shown a great deal of open space.

Actually, I think on the drawing that you have up right now you can see that area. That white square or polygon that is immediately behind the proposed development, is that alley or is that open space on Hopkins property?

MR. ANDRULIS: It's hard to know. Well, actually, I can see it in my computer monitor a little better. Essentially what is gray there is alley and what is white is the parking lot of Hopkins.

MS. BRAY: But it's open to the sky undeveloped? The gray area is alley and the white is undeveloped area that may be used for parking at grade?

MR. ANDRULIS: That's correct.

MS. BRAY: Okay. With respect to the curtain wall on the west, you mentioned that the courtyard is going to be open to the

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sky but that it will be enclosed horizontally by the new building, the existing buildings, the party walls of the Tabard on the east and then a curtain wall on the west adjacent to the UAW garden. Is that right?

MR. ANDRULIS: No. No. Let's use this instead. The curtain wall of our penthouse and the building goes from this corner around and over to here so that is all glass. From this corner here around the back and to there is masonry and the building proper from that corner around the back and to there is masonry.

MS. BRAY: And what's between --

MR. ANDRULIS: This is completely open to the sky.

MS. BRAY: Okay. So the curtain wall that you're referring to, that's all interior to the property?

MR. ANDRULIS: It's here.

MS. BRAY: Right, but it's in the interior --

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MR. ANDRULIS: It's not on a property line, no.

MS. BRAY: Okay. Going back to mitigation strategies wouldn't another opportunity to redesign in a way that is more sensitive to the low-scale character of adjacent buildings and particularly the light, air, and open space in the square would have been to pull back the volume that you are proposing on the rear and connect via an interior atrium providing a double bank of rooms in a single volume with an interior atrium as opposed to something that is open to the sky?

MR. ANDRULIS: I appreciate your attempt to describe a scheme. My understanding of what you just said to do would require us to fill in. We have a single-loaded -- let me back up. We have compressed the hotel wing to be as narrow as we can.

If we do a lot of changes, one of

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those being making this an atrium, that serves no particular purpose to us. Our hotel operator, our owner wants to have an open air garden. It relates more closely to its context that way.

MS. BRAY: Couldn't the garden be narrower and maintain the same width of your structure or depth of your structure?

MR. ANDRULIS: The garden from our point of view is already very close to the limit of acceptable width. We would actually like that garden to have been a bit wider.

MS. BRAY: With respect to the privacy issues raised by the Tabard and your response showing the relationship of windows on the Tabard that I think are about 18 inches from the proposed windows on the N Street Follies property, you showed a plan that actually showed two windows looking at each other.

If you were to show that same view at the floor below, wouldn't you find actually

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you would be closing in one of the existing windows on the Tabard due to construction above the party wall?

MR. ANDRULIS: I showed the third floor, what we assume is the third floor of the Tabard. That is the lowest hotel room that has a window facing that way.

MS. BRAY: What about the floor above?

MR. ANDRULIS: What about it?

MS. BRAY: I mean, is it your testimony that your construction project would not require any of the windows on the Tabard to close -- to be filled in?

MR. ANDRULIS: If you're talking about those two windows on that angled portion of the rear of the Tabard they wouldn't be required to be closed in.

MS. BRAY: But one would be 18 inches away from a brick wall?

MR. ANDRULIS: One is -- I don't think it's 18 inches away. I don't think that

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dimension is right but right now it does look -- I thought it was 36 inches away from the existing party wall so that condition exist today. In fact, should I go back to the exhibit?

MS. BRAY: That's okay. I don't think we need to belabor the --

MR. ANDRULIS: We're not changing anything there. That window looks on very closely to the party wall.

MS. BRAY: But the window above that looks above a party wall and not into open space?

MR. ANDRULIS: The fourth floor one does look to open space.

MS. BRAY: Okay. Perhaps I think I started backwards with my question and I apologize for that. Going to the comments again about mitigating light and air, I think this is part of Mr. Janezich's testimony so I don't know if you would like to respond to these questions.

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I think that is probably more appropriate but you showed a great graphic of what would happen if you just raised the parachute on the Tabard's property to the level of the roof of the Topaz and the roof of the proposed development. Doesn't that then create a roof structure above the Tabard Inn?

MR. JANEZICH: Hi. Anton Janezich again. The same parachute that is there now.

VICE CHAIRMAN DETTMAN: Ms. Bray, can I just interrupt real quick? Are you done with your cross of Mr. Andrulis? Are you moving on?

MS. BRAY: I have a couple of other questions for Mr. Andrulis. I was trying to work backwards between their testimony which was separated by Mr. Janezich.

VICE CHAIRMAN DETTMAN: Okay. I only ask because the Board hasn't taken a break for lunch and we actually asked the Office of the Attorney General to come here, Mr. Bergstein, to discuss a matter for an

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upcoming case that the Board is going to have and he's here and so I want to find an appropriate time and maybe take a short break so that we can have that discussion. I'll look to you if you want to break now.

MS. BRAY: Maybe in --

VICE CHAIRMAN DETTMAN: I'm not trying to cut you short.

MS. BRAY: Right. I understand. I think now is as good a time as any to break.

VICE CHAIRMAN DETTMAN: Okay. We're going to take a 20-minute break and then we'll come right out.

(Whereupon, at 2:00 p.m. off the record until 2:34 p.m.)

VICE CHAIRMAN DETTMAN: Okay. So we can back on the record. Thank you to the parties and those in the audience for their indulgence.

Ms. Bray, when you're ready, I think you can continue your cross.

MS. BRAY: Thank you. I believe we

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are moving on to Mr. Janezich and then I would like to come back to Mr. Andrulis.

You testified at length about the affects of light and heat and the strategies to mitigate against both. Did you hear any testimony on direct by Mr. Schwartz or Mr. Cohen about undesirable heat affects on the Tabard patio?

MR. JANEZICH: I heard about dappled light. He had told me what that means and I'm sorry if I said something wrong.

MS. BRAY: I appreciate that. I'm not sure that you said anything wrong. I'm just not sure it was particularly responsive to what was testified in our direct. When you were going over the various scenarios using dappled light, you mentioned, I think, several properties in Morocco and also in Bahrain.

MR. JANEZICH: And Washington, D.C.

MS. BRAY: Right. But aren't you comparing very, very different climates?

MR. JANEZICH: Yes. What I was

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trying to demonstrate, and I guess I didn't do a very good job of it because you're asking me the questions, is that each project has unique sort of circumstances and you really can't go into one with an idea on how to solve the solution.

First you have to know what it is that is being looked for. With the Tabard Inn also I don't know a lot. I do know they love their parachute so I thought if we worked with the parachute that would be something that would be understood.

MS. BRAY: But when Ms. Moldenhauer was asking Mr. Schwartz about strategies to mitigate, was it your understanding that she was asking about strategies to mitigate which would not take place on the subject property and might be taking place on surrounding property?

MR. JANEZICH: My memory is not as good as most but I think the conversation had something to do with light tubes and using

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light tubes to bring light down into the Tabard Inn. That was felt at the time by my colleague on the other side of the table there that would be inappropriate and nothing could be thought of at the time of what may be done so we sat down, gave it some thought, and said, "How about this?"

MS. BRAY: But that would all take place on the Tabard's property and not necessarily on the Follies' property?

MR. JANEZICH: Well, yes and no. In order to make this apparatus work where you would have to lift up the parachute to a higher elevation using something akin to clotheslines which would be sort of aircraft cables, sailboat rigging, you would need to anchor to the New Follies a I'm certain that the owner of the Follies would allow that to happen so it's a combination. It's kind of a joint effort between both parties. That's the way it would work.

MS. BRAY: But it's mostly taking

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place on the Tabard's property and not on Follies' property?

MR. JANEZICH: Yeah, it's exactly the way it is now. The parachute is over the Tabard property.

MS. BRAY: Now, the parachute over the Tabard property now, do you know what the height of that is?

MR. JANEZICH: Well, just kind of. The wall is 12-feet tall. The canopy probably pulls up three to four feet beyond that.

MS. BRAY: Would you say that it's protected from wind and other elements relatively speaking?

MR. JANEZICH: I think a breeze would be really nice down there at the courtyard.

MS. BRAY: What would happen to the parachute if you raise it to 65 feet in the air?

MR. JANEZICH: I don't know.

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MS. BRAY: Would it be protected from wind?

MR. JANEZICH: You would have to so design for that. Yeah, there will be wind up there. Sure.

MS. BRAY: It probably wouldn't be the same type of structure or parachute that works to diffuse the light never mind the distance that it has to diffuse the light.

MR. JANEZICH: It would be the same kind of parachute a U.S. troop would jump out of an airplane several thousand feet in the air. The wind kind of keeps that from falling apart.

MS. BRAY: But those aren't designed to diffuse light.

MR. JANEZICH: No, they're not.

MS. BRAY: With somebody strapped to it coming out of an airplane. Right?

MR. JANEZICH: No, they're not but they do diffuse light, though. There are several shots. You Google it and go on line

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there's all kinds of parachutes being used as sun diffusers.

MS. BRAY: Are you familiar with the principles of passive solar heat?

MR. JANEZICH: As it applies to certain projects I've worked on, yeah, I mean, if I know all the ins and outs. No, but usually with a project I'll sit down and look at it and if there is something I don't know I've got to open up a book like anybody else and kind of look at it and study it.

MS. BRAY: Doesn't the light which currently hits the eastern most walls of the Tabard actually have the affect of warming that wall where that wall absorbs heat and then gives it back off -- a moderate amount of heat and then gives it back off to the patio?

MR. JANEZICH: Yes. It's masonry. It gets hot and long after the sun goes and leaves it I'm sure it's still warm, yes.

MS. BRAY: Again, going back to the fact that there was absolutely no testimony

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about undesirable heat affects, aren't there some heat affects which are actually desirable to make it more comfortable to sit outside for longer hours?

MR. JANEZICH: Depending on the time of year, sure. Sometimes people light fires outside and sit around those.

MS. BRAY: Were you here when Mr. Cohen testified that the Tabard's patio was open at least seven months out of the year?

MR. JANEZICH: I was.

MS. BRAY: And is it your testimony then that heat should be mitigated throughout all seven months of the year rather than used to extend the use of that patio?

MR. JANEZICH: I think most of the things that he was talking about was light. I didn't hear anything about heat.

MS. BRAY: You showed a picture of a GSA building that you had designed.

MR. JANEZICH: Um-hum.

MS. BRAY: Do you have a dimension

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on that interior courtyard or atrium?

MR. JANEZICH: I think it was about 60 feet in width.

MS. BRAY: And how does that compare to the one that is planned here?

MR. JANEZICH: It's a taller building. Which courtyard, you mean the Follies' courtyard?

MS. BRAY: Um-hum.

MR. JANEZICH: Yeah, it's a taller atrium so the ratios are -- I can't really say if the ratios are about the same but they both seemed right when I was doing it.

The one thing they do have in common is that on the northern face of both of these the courtyard or be it the atrium, although one space is enclosed, the GSA Regional Headquarters and the other one is open, is that the north wall is higher than the southern wall and the idea is because it's got these huge east/west accesses that little piece sticking up there the sun will hit it

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and deflect light downward. That was kind of the idea.

MS. BRAY: Doesn't that have the affect of blocking that precious northern light that you began your testimony talking about?

MR. JANEZICH: Our building is not behind the Tabard Inn.

MS. BRAY: No, I wasn't asking that. I was simply asking doesn't having a larger volume to the north tend to block northern light from that which is south of that volume?

MR. JANEZICH: Yeah, you know, if you're lucky enough to have it. Not everybody gets to have northern light. It's a very precious thing.

MS. BRAY: Okay. Going back to Mr. Andrulis, and I think we can wrap this up, you began your testimony --

MR. JANEZICH: Can I get up now?

MS. BRAY: Sure. I think I'm done.

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Thank you.

You began your testimony talking about the hours of operation of the Tabard. Are you aware that the Tabard is open for virtually 24 hours a day?

MR. ANDRULIS: I assume the hotel is.

MS. BRAY: Do you know what time the check-in is?

MR. JANEZICH: My colleague just said 2:30.

MS. BRAY: I think there was testimony on direct -- that seems correct to me. There was testimony on direct by Mr. Cohen that most guests arrive between 3:30 and 6:00 p.m. Those are the exact hours that we were talking about with those sun studies. Were we not?

MR. JANEZICH: You said 3:30?

MS. BRAY: On our -- 3:30 to 6:00.

MR. JANEZICH: 3:30 to 6:00 p.m. I think your exhibits were 4:30 to 5:59.

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MS. BRAY: Okay. With the exception of one hour those two time periods overlap?

MR. JANEZICH: They overlap by an hour and a half, yes.

MS. BRAY: Do you recall testifying on direct on October 6 that at 4:30 no direct sunlight shows from the ground -- is showing in the ground of the Tabard Inn?

MR. JANEZICH: Do I remember that specifically? No.

MS. BRAY: Do you recall testimony from the Tabard Inn with respect to its wedding business?

MR. JANEZICH: I remember some of it, yes.

MS. BRAY: Do you recall which hours?

MR. JANEZICH: They were afternoon hours on the weekend.

MS. BRAY: And do you know what hours the bar operates under?

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MR. JANEZICH: The bar of the Tabard?

MS. BRAY: Um-hum.

MR. JANEZICH: No.

MS. BRAY: Would you be surprised to know the bar is open throughout the day and in between the meal services in the restaurant?

MR. JANEZICH: Yes.

MS. BRAY: And are you aware that patrons are able to patronize the bar and sit on the patio at any given time?

MR. KEYS: Mr. Dettman, I'm sorry but I think she's testifying in the guise of cross-examination.

MS. BRAY: I'm simply asking questions to draw out why Mr. Andrulis felt that it was absolutely critical that the Board determine that between the hours of 4:30 and 5:59 p.m. that there were absolutely no operations on the Tabard which would be impacted by a lack of light.

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VICE CHAIRMAN DETTMAN: Mr. Keys, I think Mr. Andrulis went to great length to establish the hours that the restaurant is open and essentially making the point that outside of those hours this space isn't used.

I think what Ms. Bray is doing is trying to establish that indeed is not correct.

MR. KEYS: That's precisely my point. Who knows that fact? If Mr. Andrulis does not, how does the fact ever become established? It's not a fact that's in evidence. It's the fact she is presuming because of her question.

MS. BRAY: Leading questions are always allowed on cross-examination so I'm certainly leading the witness but not testifying. The witness is answering the questions.

MEMBER MOLDENHAUER: Ms. Bray, I would just say to be a little cautious here. You are providing facts that have not been presented in your direct testimony. There was

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no testimony as to the bar hours of operation in the main portion of the case so I would just give you a little latitude but just be cautious to not provide testimony during your questioning.

MS. BRAY: Understood. I think that is a good stopping point. I don't have anything further for Mr. Andrulis.

MR. KEYS: Mr. George, would you just state your full name for the record.

MR. GEORGE: Good afternoon, Mr. Chairman. For the record, Osborne George of O.R. George and Associates. I'm assisted here by Charlie Wang who has worked with me extensively on this project.

MR. KEYS: Mr. George, I'm going to ask you about testimony that was provided by Mr. Dave Nelson who was the expert witness for the Tabard Inn. I would like to start with Mr. Nelson made reference to the property being in violation or not in conformity with the design and engineering manual of DDOT,

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specifically Section 31.2.2.

MS. BRAY: Objection. Mr. Chairman, obviously there's only so much testifying that can be done as Mr. Keys just pointed out but we haven't established yet whether Mr. George was present for the hearing last week or has read the record or viewed a transcript or viewed the video. I would appreciate some foundation for the knowledge of the direct testimony that came out so we don't have to have any attorneys testifying.

MR. KEYS: I'm not presuming knowledge. I'm simply telling him what Mr. Nelson testified to.

MS. BRAY: But isn't that in and of itself testifying since you are going to put your own unique spin on that and you're having to tell him what exactly came into evidence?

MR. KEYS: I don't think I'm putting any spin on it. I'm virtually quoting directly from Mr. Nelson.

MS. BRAY: Are you quoting from a

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transcript?

MR. KEYS: You know there is no transcript yet.

VICE CHAIRMAN DETTMAN: Mr. Keys, if Mr. George is at all familiar with the proceedings of last week either through the video or attendance, I don't provide if he was in the audience at all, if you can provide any of that foundation, that would be great. Ms. Bray, I get your point but perhaps we can let Mr. Keys ask a few questions just to determine whether or not he can capture last week's proceedings accurately.

MS. BRAY: Sure. I would just suggest that this seems to me a more appropriate time for a narrative testimony rather than questioning if Mr. George wasn't present or hasn't reviewed the record.

MR. GEORGE: Could you please repeat the question so I be clear, Mr. Keys?

MR. KEYS: Let me ask you just generally. Which section of the DDOT design

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and engineering manual would this properly be judged by?

MR. GEORGE: In my opinion it would be judged Section 31.6 which refers to alleyways within historic districts.

MR. KEYS: What's unique about alleys in historic districts?

MR. GEORGE: In reading the DDOT engineering and design manual it is clear that they paid deference to the fact that the situation within historic districts has to be treated more carefully. In other words, based on the historic designation of the zone there is very -- a developer is constrained by the things that can be done. A lot of what exist has to be accepted as given

MR. KEYS: During the hearing last week we saw a photograph showing three cars backed up in the alley. The photograph was taken at night. There was also a line of traffic northbound on 17th Street. Can you explain that circumstance? Can you comment on

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that circumstance?

MR. GEORGE: Yes. I did not see the photograph but I understand the reference was to vehicles proceeding north along M Street -- along 17th Street and stopped at the traffic light with Massachusetts Avenue. As you described it there were approximately three vehicles exiting the alley and seeking a gap in order to proceed north. That was the situation that I understand was described and presented to the Board.

MR. KEYS: How would you assess the likelihood of that? Is that a regular occurrence at this intersection of alley and 17th Street?

MR. GEORGE: Based on the extensive service that we've done at this location over the past five years I would say the situation is quite rare. The reason I would say that is that, No. 1, we have performed a number of counts at the alley observing in and out movements.

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We performed an analysis known as a gap study which is simply looking at the time spacing between vehicles entering and leaving the alley.

MR. KEYS: When was your last gap study of this alley intersection with 17th Street?

MR. GEORGE: In October of last year.

MR. KEYS: And what were the results of that study?

MR. GEORGE: We performed studies both during the morning and afternoon peak hours. I think it's well accepted that during the off-peak periods traffic entering and exiting the alley traffic volumes are quite low and so we performed the studies during the morning peak period and during the afternoon peak period.

As background I would just state that governing speed limit for traffic within an alley is 15 miles per hour. Given the

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conditions within a particular alley that could be lower. It's our estimate that traffic entering and leaving the alley would be generally in the range of 10 miles per hour. That's the rate at which they would proceed.

MR. KEYS: Let me ask you what were the results of the gap? What was the interval between vehicles leaving and entering the alley?

MR. GEORGE: Yes. During the morning peak hour on average the gap between vehicles entering was one-and-a-quarter minutes, approximately 75 seconds. During the afternoon for vehicles exiting, which is the heavier movement, outbound vehicles during the afternoon it was just over two minutes, 136 seconds.

It would probably be presenting an incomplete picture if I didn't also talk about the opposing movements and so we looked at the vehicles in the morning. Yes, the heaviest

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movements are inbound but there is also the occasional outbound movement. If I may, Mr. Keys, just point out during the morning peak period the average time spacing between vehicles was 72 seconds.

As far as the outbound vehicles during that period, it was an average of six minutes, 360 seconds between vehicle movements. Of course there are lesser times but on average those were the types of movements we had. In the afternoon peak period the situation was pretty much the reverse. Outbound would be the heaviest movements and the average time between vehicle was 136 seconds.

As far as the opposing traffic during the afternoon, traffic coming in during the afternoon period, the average time between vehicles was six minutes.

MR. KEYS: In your professional opinion does this seem to be an unsafe dangerous situation at this alley entrance?

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MR. GEORGE: Mr. Keys, based on the observations that I've made on the testimony I gave before, I've seen nothing that represents a dangerous situation of this alley. It is typical of alleyways providing the service needs of land uses within a square or a block.

Furthermore, as a professional I would generally look to the city's records of accidents, or crashes as the term is used these days, to determine whether there is a safety issue. We investigated that issue with the city. Unfortunately we would all wish there were no crashes, no accidents any place but they do occur and they present valuable information to transportation engineers and planners.

The city does not keep record of mid-block accidents. However, they record the accidents as part of the record for the adjacent intersection. Typically the closest intersection adjacent to that point. This intersection is mid-block between N Street to

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the south of Massachusetts Avenue to the north but it's appreciably closer to Massachusetts Avenue.

In our discussion with the DDOT staff they advised that the records of any accident occurrences would like be recorded with the 17th Street at Massachusetts Avenue intersection.

DDOT reports over the past three years for which they have records 2006, 2007, and 2008 they have the following accident occurrences. In 2006 there was seven accidents, 2007 there were nine accidents, and in 2008 there were five accidents for an average of seven accidents per year over the three-year period.

MR. KEYS: And these accidents are really total accidents at 17th and Mass. as well as anything that may have happened at the outlet?

MR. GEORGE: Based on the record keeping process I would say yes.

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MR. KEYS: Are there any other reports the city would maintain that would register concern or complaints about the condition of the alley?

MR. GEORGE: Yes. One of the arrangements that the city has --

MS. BRAY: Excuse me. I'm going to object. I hear a lot of testimony about counts that took place in October of 2009, about reports that took place between 2006, 2007, 2008, 2009 and information that is generally not in the record in this case. I keep hearing new information coming in.

It's very difficult to follow along but also I think that exceeds the scope of the applicant -- the purpose of rebuttal which is to rebut what is brought in on the party opponent's case in chief.

MR. KEYS: Mr. Nelson to my recollection testified to the unsafe situation that existed at the intersection of the alley and 17th Street.

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MS. BRAY: But Mr. George has not updated his report since July of 2009 and any report that took place, or counts that took place subsequent aren't in the record for us to review and to cross-examine Mr. George on. Again, this goes to the element of surprise in the fact that we did not expect Mr. George to be here today to bring in rebuttal testimony.

If they are in the record, I would appreciate if you can direct me to where they are but I don't believe they are part of the applicant's initial traffic impact analysis dated July 30, 2009.

VICE CHAIRMAN DETTMAN: Ms. Bray, if you transportation expert testified to an unsafe condition at the alley or along that particular block of 17th Street it's not clear to me why Mr. George can't rely upon existing data collected by the city to rebut that.

MS. BRAY: I don't have a problem with him relying on existing data collected by

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the city. That's fine. I think that's allowable but that data hasn't been introduced into the record. He's not the custodian of the document.

Although we're not bound strictly by the rules of evidence, we are guided by them and all this data which Mr. George is testifying to we haven't had an opportunity to review and don't have the opportunity to cross-examine the custodian of that document.

VICE CHAIRMAN DETTMAN: Mr. George, do you have that evidence to introduce into the record?

MR. GEORGE: I do, sir.

VICE CHAIRMAN DETTMAN: Mr. Keys, do you have copies for the Board as well?

MR. GEORGE: No copies but I can get some made.

MS. BRAY: I just note for the record it notes that it's DDOT Accident Summary Report R7 dated March 22, 2010, which was yesterday prepared by Eric Walden, who I'm

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not sure who that is, and it's not on DDOT letterhead.

VICE CHAIRMAN DETTMAN: Mr. George, when was this data collected?

MR. GEORGE: I obtained the latest record yesterday. Previously we had reports that were for 2005, 6, and 7. We had that data as of the last hearing. I believe in my testimony I mentioned that we had accident statistics but the Board did not request that we provide it. We are continually in touch with DDOT and we found that they had updated the data with records for 2009 and so we, therefore, took the opportunity to obtain it.

MS. BRAY: Can I just ask you how exactly did you obtain it? Was this an online program or did you go down and meet with somebody?

MR. GEORGE: Typically you can do it by phone or by email and they will fax the information to you.

MS. BRAY: So did this come from

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somebody via a fax? How did it come to you?

MR. GEORGE: It came by a fax.

MS. BRAY: By a fax.

MR. GEORGE: Yes.

MS. BRAY: So is this the fax document that you got or did you modify it in any way?

MR. GEORGE: That's the document which I got.

MS. BRAY: I think without foundation I'm willing to accept it as coming from DDOT but with respect to the other reports and counts that Mr. George is referencing that took place after October of 2009, those aren't in the record and I would ask that they be introduced into the record.

VICE CHAIRMAN DETTMAN: Mr. George, do you have that additional information?

MR. GEORGE: We do have the information. It's not in a form that we would like to submit it to the Board but we would be happy to provide it.

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VICE CHAIRMAN DETTMAN: I think we can proceed. The Board is going to accept this DDOT Accident Summary Report into the record.

Mr. Keys, to the extent that your rebuttal relies upon data that is not reflected in this document some time after 2008, I think the Board is going to require that information be submitted following the hearing.

MR. KEYS: Mr. George, I asked for Cohen at the last hearing what percentage of his hotel guests arrive by private vehicle and his estimate was 25 percent. I would like you to make the assumption with me that the proposed project is a hotel that is going to have a comparable clientele with comparable figures and 98 rooms.

Could you work through that analysis with your experience with traffic generation and how traffic might handle and work in this hotel context and tell me what

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conclusions you come to about the amount of vehicles that this project might generate.

MR. GEORGE: Yes. Mr. Keys, I would say that, first of all, we presented quite comparable information and analysis in Exhibit 51 of the case which was our supplemental analysis dated February 20, 2006. That information was worked through. That scenario was worked through on page 9 of that document but I can repeat that.

For clarity, if I may say that in all of the analysis that we've done we started off by using the trip generation database of the Institute of Transportation Engineers. That's the most authoritative source.

ITE advises that when a particular land use is under consideration that is not covered in the database that a professional could use two alternative processes. No. 1, do a local survey of a comparable use or, No. 2, use the operational characteristics of the particular land use, in this case the hotel,

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to come up with an estimate of the trip generation using appropriate safety factors that, of course, are always necessary for planning purposes.

So what we did was started off in this case and we presented in all of our documentation the trip generation based on ITE which says theoretically if you use the database for the typical brand name type of hotels it could generate approximately 40 trips during the peak hours.

However, we pointed out further that since the Boutique Hotel was a somewhat unique phenomenon with each hotel having different characteristics we felt uncomfortable with doing a survey of one so we used the operating characteristics and I can briefly run through the scenario.

Starting with the inventory of 98 rooms we assume that perhaps on a typical weekday you would have 80 percent occupancy so that would be equivalent to roughly 78 rooms

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being occupied on average.

MEMBER MOLDENHAUER: Can I just interrupt here? We're no longer working off the preface of 98 rooms. We're working off the preface of a lot lower. Are we on 98 still? I'm sorry. I'm thinking parking of 58. Okay, 58 parking.

MR. GEORGE: The rooms are still at 98.

MEMBER MOLDENHAUER: 98. Thank you. Sorry.

MS. BRAY: If I could just echo that, though, I believe that we are starting to get into cumulative testimony because there was an extensive amount of testimony in the applicant's case in chief in October for Mr. George about how the analysis was undertaken and the number of rooms, the occupancy assumptions about those rooms and the generation rate. I guess I worry that we are repeating ourselves.

MR. KEYS: What I'm building to,

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and I can tell you where this is going, Mr. Nelson was concerned there was no estimation of net impact on the alley and that would flow from the valet traffic that was going to be moving from the hotel to the alley.

Using this analysis I'm going to take Mr. George to the point of let's start estimating the amount of traffic that is going to be moving and diverted into the alley to make that net impact. I also will also him about conditions in the alley that he's observed that would affect that establishment of net impact.

VICE CHAIRMAN DETTMAN: Okay. I think that is perfectly appropriate but I don't think the Board needs a total recount of the methodology that went into the traffic report. I think it's pretty well spelled out.

MR. KEYS: I'll ask him to bottom line it.

MR. GEORGE: Mr. Chairman, as was presented in Exhibit 51 we went through that

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thorough analysis considering typical turnover, check-in and check-out time which we heard, I think, earlier. Check-in between 3:00 and 6:30 the majority and check-out up to 11:00 in the morning and so on.

In 2000 in Exhibit 51 we estimated that in actual fact the maximum traffic during any one hour would be around nine trips, nine vehicle trips entering and exiting the alley.

That was Exhibit 51 based on 77 rooms.

Using the current inventory of 98 rooms running through the same methodology we estimate that would be approximately 13 vehicles entering and exiting the alley during the peak periods.

Based on our observations there are currently 22 parking spaces within the subject property that are accessed off the alley. Our counts did not take into any particular assessment of when these vehicles came and went. They were part of the normal traffic stream in the alley.

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We think that if you consider 22 vehicles parked on that lot on a typical day, even if you assume half of those vehicles would perhaps enter or leave during the peak hours, either come or go, 50 percent, that would be in the range of 10 or 11 vehicles.

In terms of net impact if, as I've just shown you, using a reasonable assumption regarding hotel operational characteristics that 13 vehicles would enter or leave during the peak hour versus 10 I am confident in saying in my professional opinion that you are talking about the negligible difference in terms of traffic generation during any one hour period. That's my conclusions.

MR. KEYS: I have no more questions for Mr. George.

VICE CHAIRMAN DETTMAN: Ms. Bray.

MS. BRAY: Mr. George, you said that your conclusion now is that it will have negligible impacts on an hour-by-hour basis and somehow that was based on your 2006

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analysis which was a totally different plan.

In your July 30, 2009 technical memorandum on page 7, Section 4.0 you state, "As shown in Section 6.0 it is projected that the subject site will attract 20 to 25 vehicle trips during a typical weekday peak hour." Is it your testimony today that is a negligible impact on this alley?

MR. GEORGE: Okay. Could you kindly refer me to the particular page again? You went through that fairly quickly.

MS. BRAY: Sure. It's page 7 of your technical memorandum of July 30, 2009.

MR. GEORGE: Yes.

MS. BRAY: In Section 4.0.

MR. GEORGE: Yes.

MS. BRAY: The second sentence of the first paragraph you say, "As shown in Section 6.0 it is projected that the subject site will attract 20 to 25 vehicle trips during the typical weekday peak hour." Is it your testimony today that is not correct or

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that 20 to 25 vehicle trips during the typical weekday peak hour is negligible?

MR. GEORGE: Yes. Again, Ms. Bray, I stated that we acknowledged ITE so what you are referring to in Section 6.0 is quoting the ITE rates. I think on Table 6 you see at the middle of the page we have the ITE trip rates which came up with those trips, 25 trips entering in the morning, 23 in the afternoon so that is the attraction we are talking about.

MS. BRAY: I'm sorry. I was under the impression that your 20 to 25 trips, as you just stated in your testimony, are based on the ITE figures as a starting point with appropriate reductions based on the number of foot traffic, proximity to metro, and other comparable uses which reduce the ITE figure.

MR. GEORGE: Yes. We show that there.

MS. BRAY: So is the ITE figure 20 to 25 vehicle trips per peak hour or is that

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your number?

MR. GEORGE: That's the ITE number with an adjustment factor of 25 percent.

MS. BRAY: So it's your number.

MR. GEORGE: Well, yes.

MS. BRAY: Okay. You mentioned there are currently 22 parking spaces on the subject property.

MR. GEORGE: Yes. That's correct.

MS. BRAY: What do those parking spaces serve as I understand those buildings are vacant?

MR. GEORGE: I do not know.

MS. BRAY: Do you know whether that parking use is permitted by special exception or has a certificate of occupancy for a parking lot?

MR. GEORGE: Ms. Bray, I do not.

MS. BRAY: You mentioned that -- Mr. Keys mentioned that Mr. Cohen may have testified that approximately 25 percent arrive by private -- hotel guests arrive by private

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vehicle and you have used that assumption in some manner. Is that based on just hotel guests or are you considering special event traffic as well?

MR. GEORGE: Well, could you clarify Mr. Cohen's assumption? I think his assumption was that 25 percent applied to all trips coming to the hotel.

MS. BRAY: I think the question for you on your direct by Mr. Keys was, "This is what Mr. Cohen said and is that correct?" You had said, "Yes, about 25 percent of private vehicles is correct. We assume something similar." Is that not what your testimony was today?

MR. GEORGE: I do not think so. I think I said the reason that we didn't want to survey a particular hotel was that there might be unusual circumstances that we were not aware of.

In fact, Ms. Bray, I would like to state with you that we did survey the Tobard

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on one occasion just as an academic exercise but we elected not to use that data. They were very favorable and if we had used it, I mean, we could have been really on firm ground in supporting the assumptions that we made.

MS. BRAY: Do you know how many parking spaces are on the Tabard Inn site?

MR. GEORGE: We have that information in our record but as of now I couldn't quote an exact figure to you.

MS. BRAY: Okay. You mentioned that you used the ITE trip generation figure and then you took a 25 percent reduction in that. Does that 25 percent reduction based on typical weekday traffic, weekend traffic, all traffic to the hotel, hotel room guests, or special events or all of that?

MR. GEORGE: When we look at trip generation we look at the totality of person trips coming in and out of the hotel by vehicle.

MS. BRAY: You mentioned again a

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few minutes ago that there are 22 parking spaces on the site but you don't know what they are serving.

MR. GEORGE: Yes.

MS. BRAY: You must have observed people coming and going from that site, though, in conducting your count?

MR. GEORGE: I want to think carefully. We would typically conduct the counts at the alley end, the 17th Street end, so we don't track vehicles to see which particular lot they go to. I would not be able to answer that.

MS. BRAY: The accident records that you introduced into the record that you obtained from DDOT.

MR. GEORGE: Yes.

MS. BRAY: Is there any indication on this DDOT summary report whether these include near accidents or are these all actual collisions?

MR. GEORGE: I'm sorry. I gave up

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my copy. Is there an extra copy that I could use? I'm very sorry, Ms. Bray.

MS. BRAY: That's okay. On this report is there any indication of whether near accidents are included as opposed to collisions?

MR. GEORGE: No, there isn't. I think it actually is a record of actual collisions.

MS. BRAY: Okay. Did you happen to take a count of pedestrians at the same time you were conducting your alley usage survey?

MR. GEORGE: Well, we did. I think that is this report. Yes, we did.

MS. BRAY: And what did you find?

MR. GEORGE: We reported the information in Table 5 of our July 30th report.

MS. BRAY: What was your conclusion about the number of pedestrians in 2009?

MR. GEORGE: We didn't make any particular analysis that lead to a conclusion.

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We observed the movements of our pedestrians. We noted that there was good visibility, good line of sight for vehicles exiting the alley so that they could see the pedestrians.

We are familiar with the fact that the D.C. regulations require motorists to give way to pedestrians. We saw no situation that was particularly unusual. We recorded the pedestrian volumes by direction because we wanted it to be part of the record but we saw no unsafe situation and nothing shows up in the city's records as presenting an issue.

MS. BRAY: You mentioned you conducted a gap analysis of the traffic which I don't see in the record but I do understand your testimony to be that analyzes the time, the number of seconds or minutes between vehicles.

MR. GEORGE: Yes.

MS. BRAY: Did you conduct the same kind of analysis with respect to how often pedestrians cross the alley on 17th Street?

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MR. GEORGE: No, we did not.

MS. BRAY: Finally, with respect to the design manual, you started out your testimony referring to Section 31. I think it was 31.6 of the design manual which you said pays deference to existing constraints. Does 31.6 reference specific alley widths?

MR. GEORGE: 31.6, I do not believe it does.

MS. BRAY: And with respect to the design of this alley do you know when this alley was first established?

MR. GEORGE: Exact time, no, I don't.

MS. BRAY: I believe the applicant questioned Mr. Nelson based on a plat introduced into the record which showed that the alley was established in 1897. Have you reviewed that document?

MR. GEORGE: No.

MS. BRAY: Hypothetically speaking do you know what the design vehicle for alleys

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would have been in 1897?

MR. GEORGE: The automobile was yet to be invented so it would probably be a cart.

MS. BRAY: Okay. Thank you very much, Mr. George. I have nothing further.

MEMBER MOLDENHAUER: It would help if I turn my mic on. Mr. George, I just have a couple of questions. I guess I'll back up and ask you a question because I don't know if it was clearly stated. Did you listen to any of the testimony from the opposition, any of the witness testimony or any of the individuals that testified?

MR. GEORGE: If all of the opposition testified last week, then I missed it all.

MEMBER MOLDENHAUER: You missed it all.

MR. GEORGE: Yes.

MEMBER MOLDENHAUER: Okay. Well, one of the three-minute witnesses were individuals that also use the alley and they

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testified to damage to some of the alley walls from cars running into them and other problems to that effect. Is that something that you considered, I guess, in your analysis? The fact that there are already problems in the alley.

There are already potential accidents whether they are reported obviously.

I appreciate seeing this report that there are possibly property damages that are not considered in this report because they may not be something that DDOT would put into a report like that.

MR. GEORGE: I don't know if I'm really qualified to answer this question. Without knowing the circumstances under which these properties could have been damaged. I would be hardpressed to answer. I would say that it considering the appropriateness of the alley in accommodating the existing traffic and the net impact of the applicant's proposal, we considered, first of all, the

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typical width of a vehicle.

According to the federal guidelines ASHTO, the American Association of Highway and Transportation Officials, the design width for a passenger car or for a truck is less than eight feet, the overall width. That appears to be in keeping with DDOT standards.

I would say, Ms. Moldenhauer, that most passenger cars which constitute, I think, our estimated 96 percent, 95.6 percent of the vehicles which enter and leave the alley over a three-year period that we counted traffic and that's in our report. 95.6 percent of the vehicles were passenger cars.

MEMBER MOLDENHAUER: Okay. That brings up my next question. There has been some testimony back and forth as to the loading in the alley and the fact that there was initially a seeking a -- I'm sorry, a lay-by in the front of the property. Thank you. This has been a long hearing for this case and I'm searching for the words.

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Initially there were statements of a lay-by being in the front of the property. Now we have, I guess, unformalized statements potentially that there will be a loading zone in the front of the property potentially requested. In your report there are statements are to you break up the difference between a regular vehicle and a truck vehicle.

I'm trying to find the page. It's actually page 22 of 24 in your July 30, 2009 report.

MR. GEORGE: Yes, ma'am.

MEMBER MOLDENHAUER: So you're indicating then, I guess, the other deliveries two via the alley.

MR. GEORGE: Yes.

MEMBER MOLDENHAUER: So I guess can you just go through here and explain to me which deliveries would be made via the alley and which deliveries would be made potentially via 9th Street either hopefully by a loading zone?

MR. GEORGE: Yes. I developed this

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in conjunction with the applicant's hotel consultants on what deliveries would typically take place and they have advised that there would be things like delivery of linens and food stuffs and so on some of which, depending on how it is contracted, could come in some level above and could be via 30-foot tall panel type of delivery trucks. So, again, we assume that those would be via the alley.

MEMBER MOLDENHAUER: So how many then? So that is the top section?

MR. GEORGE: No. That would be --

MEMBER MOLDENHAUER: That's the bottom section so two deliveries per day via the alley. Okay.

MR. GEORGE: A 30-foot single unit truck.

MEMBER MOLDENHAUER: And then the rest of them by your discussions with the consultant the eight to 10 deliveries what type of deliveries would those be?

MR. GEORGE: I would think

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stationary. Perhaps some small amount of packaged food stuffs. Most hotels or like offices they would get FedEx and UPS type of deliveries.

Not being as familiar as I should be perhaps with hotel operations, I couldn't name any of the type of deliveries but I would think the typical types of things that a business establishment would use. Perhaps Mr. Andrulis or -- I don't want to go too far beyond --

MEMBER MOLDENHAUER: No, that's fine.

MR. GEORGE: -- which my expertise extends.

MEMBER MOLDENHAUER: I guess my next question would be is the ESI calculations does that include for a hotel? Is it, I guess, worked into the estimates that you're using when you are considering a hotel for additional accessory uses such as meetings and weddings and things to that effect? I'm

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assuming with a lovely outdoor courtyard the hotel would potentially be used for things like that. Is that something that is already worked into the calculations?

MR. GEORGE: You used an acronym which I missed.

MEMBER MOLDENHAUER: I'm sorry. It's the ITE.

MR. GEORGE: Yes.

MEMBER MOLDENHAUER: So that's already included?

MR. GEORGE: Yes. The ITE database they take an existing hotel which includes a restaurant and meeting rooms and all of those things. There is certain screening criteria that they use and they simply, you know, survey a number of them and they say come up with a methodology to say the average rates are such and such.

MEMBER MOLDENHAUER: So this would be an average hotel so would it include like a Days Inn?

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MR. GEORGE: Yes.

MEMBER MOLDENHAUER: A Days Inn probably doesn't have a spa and a restaurant.

I know that you reduced the different numbers of parking but did you also then potentially increase the number of parking that was calculated because of the additional services that are being provided here if you're using an average of hotels that probably don't have the same amenities that are going to be offered?

MR. GEORGE: Yes. I'm sorry that I didn't bring my ITE handbook here but the ITE handbook actually has a number of classes of hotels from the regular business hotel all the way to luxury five-star lodge types of hotels.

We use the one that most closely represented what we think this would entail.

MEMBER MOLDENHAUER: Do you know what that one was in the range?

MR. GEORGE: Yes. I will just try to find the page here to be sure. I'm sorry I

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can't answer your question fully. ITE identifies these hotels by various land use codes and we may have it at the back of -- yes. Okay. If you have a report of July 30th of 2009, Ms. Moldenhauer, I think we have some items in the back that would help you.

MEMBER MOLDENHAUER: Okay. I just found it. I think it's B5.

MR. GEORGE: Exactly, B5 and 6. What we actually did there ITE has descriptions of different types of hotels. The full description is given here. Hotels are places of lodging that provide sleeping accommodation and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms.

MEMBER MOLDENHAUER: Okay. I'll review that in more detail. I appreciate you identifying that.

MR. GEORGE: And you notice the next page on B6 in order to demonstrate how we narrowed it down to using 310 we showed the

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description of All Suites Hotel and business hotels. We actually present information and say this is how we funnel it down into the one that most closely reflected the conditions that we were told would apply here.

MEMBER MOLDENHAUER: Okay. Thank you.

MR. GEORGE: Thank you, ma'am.

VICE CHAIRMAN DETTMAN: Ms. Sorg, any questions before we move on to closing? No?

I think we're at the point it's back to you, Mr. Keys, for closing. However, I think Ms. Sorg needs to make a delivery upstairs before the offices close so if we could take a 10-minute break and then we'll come back for closing. Sorry for the delay on this.

(Whereupon, at 3:35 p.m. off the record until 3:48 p.m.)

VICE CHAIRMAN DETTMAN: We're back. Mr. Keys, I think it's to you for closing.

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MR. KEYS: Yes. Thank you, Mr. Chairman. I appreciate the Board's persistedness and doggedness in staying with this case for as long as it has been. As a curtesy this closing will be even briefer than I thought it was going to be.

We are seeking approval under Section 512, a special exception, to locate a hotel in this location. I think it important also to recognize that the 3104.1 standard, the general standard for special exceptions, requires that there be some recognition that this can be done in harmony with the zone plan and with this underlying zone district.

I think the zone district, the SP district, contemplates that hotels are going to come forward and tries to regulate them in a very specific way and we have complied with that. We have come under the thresholds for the District. I think as the OP analysis indicated, that goes a long way to satisfy what the overlay is looking for as well.

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Reference was made to the comprehensive plan and I think it's important to note that the comp plan really encourages in Policy CW 1.1.10 the recognition in the central employment area and the central Washington area that we've got to encourage hotels. That's going to support the visitor and tourist industry that is a very important mainstay in the D.C. economy.

The reference to the comp plan that you've heard from the opposition are all to the Near Northwest Plan and I think it's really important to look at the reason for that. The Near Northwest Plan is not the location for the subject property but it's on the other side of Dupont Circle.

There the plan says that it's important to manage hotel conflicts, particularly near northwest in areas where large hotels adjoin residential neighborhoods.

It's important to recognize that we're in the central Washington neighborhood.

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We aren't in a residential neighborhood. We are on a block of commercial uses. If you look at the function of the transitional zone and look at the character of this particular block this is a use that can exist without conflicts with its neighbors.

I'm going to rely on the analysis of the Office of Planning. I'm going to rely on the Historic Preservation Office assessment of how we have complied with the Historic Preservation standards.

I'm going to point you toward the endorsement of the D.C. Preservation League, to the Dupont Circle Conservancy, and even to the ANC which has had its battles with Mr. Bender over the years but really wants to see this project conclude in a way that is going to be successful for the city, for the neighborhood, and also to minimize impacts on adjacent properties. I think we've put forward a plan that accomplishes that.

For example, I'm not going to, as I

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might, go through the statute point by point the regulations to say how we satisfy it but I am going to indicate that in terms of balance of uses I think the Office of Planning's assessment was exactly right.

If you look at the broad SP districts that ring this site and you look at the mixture of uses that are presented, one more hotel doesn't change the balance, doesn't change the picture. As they indicated, they were astonished by how much of this area is office and would look forward to a hotel as a different kind of a use and probably one that presents a different profile and different impact than do offices.

I think a very important part of this case has to do with the transportation elements, the elements of both parking and the elements of circulation. I think we established a number of things.

One, that despite appearances the load on the alley represented by the hotel in

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terms of a net addition is really quite light.

This alley has functioned for over 120, 130 years serving the various uses in the alley.

As Mr. George indicated in his testimony from the studies from 2006 to the present alley usage has actually declined. I think that is a significant factor to keep in mind when assessing can it tolerate an additional up to 20 additional cars in a day at peak hours being handled by the hotel.

I think Mr. George has also established that this is not a dangerous intersection. That the report of traffic incidents is really quite low. He would have had a different public record if this were, in fact, a situation where there was danger to the public either for pedestrian or for vehicles.

I think the gap analysis was very revealing about their real situation on the property. Most of the cars that enter here are parked all day and the movement of cars

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doesn't represent a threat. I don't think you can assume that a picture shown of one evening scene is the typical scene.

I think the issue of parking is one that has come up. I note the direction of the applicant in moving to reduce parking. The last DDOT report, September 29, recommended a substantial reduction from 98 spaces and the applicant made it. We reduced it to 58 spaces.

I think that if the Board is going to consider parking as another issue, that it wants to look at its responsibility in adjusting, I would ask them to consider that DDOT's first recommendation was for 31 spaces based on the size of the hotel and looking at the proposal that we made in describing the floor of the parking structure for 58 spaces we indicated there was a partial level of 12, a next level of 23, and another level of 23 making up our 58.

I think if the Board were going to

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act in a way to restrict or limit parking the obvious thing to do would be to eliminate one of the parking levels. I think that would bring the parking back into harmony with what DDOT was thinking and also what the Office of Planning was thinking.

I think the standards in 511 that we have to satisfy really relate to how well this building works in this neighborhood. I think from the evolution of this property from one that was much larger from one that required five different variances in order to be accepted this has come a long way. This building has been scaled down.

This building has been essentially rethought from the inside out. We have tried to preserve all the things that were wanted for historic preservation and even dipped a little further into the creativity of the architects in coming up with this notion of a courtyard, reestablishing a courtyard, reorienting a courtyard, but an open-air place

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that does, in fact, break up the mass of this building and respects the historic elements inside.

I think Mr. Turnbull was rightly concerned is this a facade job only. No, it's not. This building was thoughtfully designed on all four perimeters as well as from the inside out because we are revealing the history of these buildings on all sides and I think that is very important for what the city's objectives in preservation are. I think that's consistent with what the overlay is all about.

To the extent that Dupont Circle embodies unique buildings and unique situations we're trying to maintain that. It would have been very easy and probably less expensive to have done a very different approach but we have made the effort.

We have also made the effort to diminish the impact on the Tabard and I'm not going to belabor the elements but the building

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was shaped with the Tabard in mind. The building was scaled down with the Tabard in mind. The penthouse was pulled away with the Tabard in mind. The alternatives, I think, are very instructive. A matter of right building would do very much more damage than we are proposing to do.

When you look at the damage, when you look at the effects, and there are harmful effects, there is a harmful effect with afternoon sun through the mid-summer era. We don't hide that. What we note about that is that it doesn't disrupt the actual operations of the Tabard and the use of the Tabard courtyard.

The applicant would ask that you grant this special exception with whatever conditions that you think are appropriate. We would ask that you accept the corrections that we have proffered. We think that they -- we are confident.

We are certain they make no change

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to the parameters that you have to judge by in this case. These are small corrections to elevations, to dimensions that we think should be accepted in the record just so the record is complete with what the applicant proposes.

Finally, though it hasn't really been spoke or said, this has been a five-year struggle to bring this case to a close and I think this represents a genuine concern about issues of preservation, but I also think it represents economic self-interest of an enterprise that doesn't want competition on the street.

I don't think that should be a reason to deny the applicant the opportunity to be considered under the 512 standards as having a building that fits. Thank you very much.

VICE CHAIRMAN DETTMAN: Thank you, Mr. Keys. Thank you to everyone, both parties, the applicant as well as the party opposition and everyone who has testified.

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I think at this point it's a matter of for the Board to decide whether or not they are comfortable going forward on a decision today or if we need additional information. I think where I'm at is that I absolutely need some additional information and some time to look over the record. I think that's the consensus of the Board.

I think the remaining issues that we have before us is to find a date to schedule a decision, identify the materials that the Board needs, additional filings, and then put together a briefing schedule.

Throughout the course of today's hearing I was jotting down some of the additional filings that may be necessary. One is proposed findings of fact and conclusions of law. I think, Ms. Bray, you had indicated that you have an interest in submitting that filing. I think certainly that could be helpful to the Board. That goes for the applicant as well as the party opposition.

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During rebuttal Mr. Andrulis testified to several photos, diagrams, and sketches. I think that it would be helpful for the Board to see those. That is not including the revised plans that you skipped over. Anything that you did show other than the revised plans I think the Board can use.

There might be others as well but this last note I have is that what the Board needs is specific to the FAR is a very, very clear breakdown of the FAR by floor showing what was included in residential and what was included in nonresidential for the purposes of establishing the total FAR of the project and then the nonresidential allowed under the SP zone.

That could be a plan set that's color-coded showing residential versus nonresidential and then a breakout of the square footages by floor. I'll leave it to the applicant to decide how they want to present that information but I think that

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particular way of presenting it could be helpful. That's it.

Board Members, can you think of anything else?

MEMBER MOLDENHAUER: I think that you've identified everything except I just wanted to issue you just said and then maybe bring up another point. In regards to the diagram and the residential versus nonresidential it may be helpful if counsel submits in their finding of facts and conclusions of law their legal basis for why certain elements are considered under the residential side as guest room or service area and then why other elements are determined to be function room or -- I forgot the other term.

It's function room or exhibit space. Thank you. I think that would be helpful to just make sure that we understand, I guess, your analysis along with your delineations. Then in addition to that I

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believe that we had some additional information as to the more recent traffic counts that were testified to that were referenced as being able to be presented but we didn't have them here today so I think that would be a fourth item that we would be interested in seeing.

MEMBER SORG: I think that for the most part I agree that those are plenty of things. There was just one other issue I wanted to mention which is that I think in Mr. Andrulis' testimony today he talked about the treatment of the rear facade and how it was --

I can't remember who spoke about it at the moment but, anyway, how it was thinking about the historic buildings on the alley and how it was incorporated into that context. I kind of have a feeling that we may -- that some of us may not -- that maybe there could be a little bit more clarification if you think on how your treatment of the rear facade is incorporated into the alley scape as it

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were.

I guess the last issue which has been continuing since last week is the additional plans. I think that from what I heard Ms. Bray indicated that she would be fine with allowing in at this point at the conclusion of the hearing so long as obviously there was an opportunity for opposition to provide a written response.

I think that was something that Mr. Dettman referenced. Once we figure out what document we need, we'll then kind of back step from there into the briefing schedule to provide for adequate time.

I don't know if you want to make a suggestion or maybe, Ms. Bray, you can make a suggestion as to the time frame that you would think would be reasonable in your need to review that after it's submitted. That may help us.

MS. BRAY: Thank you for the opportunity to respond to that question. We

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would like at least a week between submission of the additional documentation including the plans which were proffered last week, I suppose, and then earlier today.

Then we would also suggest that we bifurcate that response and the proposed findings of fact and conclusions of law so that when we set about doing the proposed findings of fact and conclusions of law we can base it on the filings of the applicant and the party opponent.

To file them at the same time, I think, would be very difficult for us and we would need additional time to do that. I don't know whether the Board would entertain two separate filing deadlines, one for -- three really.

One for additional information from the application, one for a response from the party opponent to the evidence that we haven't yet seen including how we digest this. Then a later date for proposed findings of fact and

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conclusions of law.

MR. KEYS: Mr. Chairman, I would second that. I think that is an appropriate way to proceed.

VICE CHAIRMAN DETTMAN: Okay. So based on Ms. Moldenhauer's comment -- well, Ms. Moldenhauer, so you're in favor of the amended plans coming into the record so long as we provide adequate time for the opposition to respond. Is that correct?

MEMBER MOLDENHAUER: Yes. I believe that is echoing both parties statements thus far on the record.

VICE CHAIRMAN DETTMAN: Okay. The breakdown of the FAR showing residential versus nonresidential and the legal basis for why something is included in that particular category that would apply to the amended plans that are going to be coming in as well. Right?

MEMBER MOLDENHAUER: Yes, that would be preferential. That way we are not

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looking at an old set of plans in regards to observing the FAR and observing the function room versus service room, service area.

VICE CHAIRMAN DETTMAN: I know that information is going to factor in heavily in our analysis so is there anything additional that the Board needs with respect to the FAR breakdown calculations, square footages and what not? I just want to make sure that it's very clear for the applicant what we're looking for.

MEMBER MOLDENHAUER: I think it is. I think it's very clear. I think that we just simply want -- what I would like to see is the regs spell out there is four different types of uses and two of those are identified as residential and the rest are identified as commercial and so there is a color coding with four different colors.

Obviously guest rooms are already on the diagrams. We can kind of read those and that's a check. That's very easy to

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determine. The other terms obviously it's a question of interpretation and definitions so that is where we would like to see exactly how you get to your calculations and then where the support is for those. That is exactly what I'm looking for.

MR. KEYS: Excuse me, Mr. Chairman.

Mr. George and his associate have to go. Do you have any reason to need them?

VICE CHAIRMAN DETTMAN: I don't think so.

MR. KEYS: Thank you.

MS. BRAY: Excuse me, Mr. Vice Chair. I would just note the architect for the Tabard just pointed out to me that in our brief review of the plans that had been submitted today it doesn't appear that the plans are dimensioned such that whatever FAR breakdown or calculation is provided by the applicant they can be independently verified just using the plans.

One of the things that we might

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suggest is instead of accepting this immediately into the record that the applicant be given an opportunity to actually put accurate dimensions on the plan so that as part of that FAR breakdown so we have an opportunity to review that and verify.

VICE CHAIRMAN DETTMAN: I think that is a good suggestion and we should incorporate that into the briefing schedule.

Mr. Keys, do you know whether or not it would be a problem to put a thorough set of annotations and dimensions on the amended plan set so that not only the opposition but the Board can independently verify the square footages?

That's what you're asking for.  
Right, Ms. Bray?

MR. KEYS: There may be a way to short-circuit. I'll defer to Mr. Andrulis.

MR. ANDRULIS: Would you prefer electronic DWD files?

VICE CHAIRMAN DETTMAN: I don't

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think that's necessary because the Board isn't going to open up a CAD file and --

MR. ANDRULIS: No, not for the Board, for the party in opposition so they can verify our calculations.

MEMBER MOLDENHAUER: I think if the applicant is willing to provide a CAD file to the architect and it simplifies their review, I don't think that's an issue. We can approve it. I think that would be very positive for you to be able to provide that.

MR. JANEZICH: Similar to the way you would do BOMA diagrams. The plans are here and the numbers are there.

VICE CHAIRMAN DETTMAN: First, you're not on the mic. I just want to make sure that what's being responded to, what is being analyzed. The Board has, the opposition party has. If someone is getting a CAD file and doing something with it and manipulating it and then sending something into the Board saying, "Look, see."

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I just want to keep the playing field level so I think we can do this all on paper. It just might require maybe a little extra time for you to put dimensions on these drawings.

MR. ANDRULIS: We'll make sure a paper copy is to scale and with annotations. If there are any left off, you can contact us and we'll help you out.

VICE CHAIRMAN DETTMAN: Okay. Just keep in mind the level of scrutiny these plans are going to go through. If there is the smallest little dimension, maybe you put it on there and we can forego another round of review.

So I have six things on the list here and I just want to get a sense of which ones are going to want a response by the opposition or the applicant and which ones will not.

Ms. Bray, the diagrams and sketches that Mr. Andrulis used in his rebuttal, they

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were photos and little sketches and maybe some models, some renderings, the additional traffic counts and Ms. Sorg's request about the description of how the rear elevation of the proposal relates to existing alley scape.

Are those things that you will want to respond to?

MS. BRAY: I think so.

VICE CHAIRMAN DETTMAN: Okay.

MS. BRAY: We treat that as new evidence.

VICE CHAIRMAN DETTMAN: Okay. So those three items as well as the amended plans with dimensions and a very clear breakdown of the FAR. Perhaps we can set a response time, a submission deadline and a response time for those items and then do a follow-up submission deadline for findings of fact and conclusions.

I don't have a calendar in front of me actually. Okay. Thank you.

Mr. Moy, do you have a calendar?

MR. MOY: Yes.

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VICE CHAIRMAN DETTMAN: I want to allow enough time for Mr. Turnbull to get caught up so he can participate in this as well.

Ms. Bray, did you say that you needed at least a week to respond to the amended plans?

MS. BRAY: Yes, at least.

VICE CHAIRMAN DETTMAN: Okay.

Mr. Keys, other than the amended plans, and obviously the findings of fact and conclusions, how soon can you prepare the information that the Board is requesting? That would be the information that Mr. Andrulis used for his rebuttal, the additional traffic counts, and the description of the rear elevation.

MR. KEYS: Mr. Andrulis thinks that we could provide copies of the material that we used today, any updated transportation information, and I guess the discussion about how the rear facade relates in its context to

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the alley within two weeks.

VICE CHAIRMAN DETTMAN: That puts us at April 6.

Ms. Bray, how much time would you need to respond to that information?

MS. BRAY: As I have a hearing before the Board on April 6th in the afternoon, I would prefer at least a week from April 7th. Perhaps either April 14th or April 16th would give us a full 10 days to review that information and respond.

VICE CHAIRMAN DETTMAN: April 14th you say?

MS. BRAY: I think that would be fine.

VICE CHAIRMAN DETTMAN: Okay.

MS. BRAY: Excuse me one moment, Mr. Chairman. I'm sorry. Our architect is not in town between the 6th and the 14th and we would need to be able to utilize him so would it be possible to -- he arrives back in town on the 14th so would it be possible to

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push that to the following Tuesday, the 20th, so he has several days to review the plans?

VICE CHAIRMAN DETTMAN: We're only talking about three items, the information that was shown in the presentation today, the pictures and the sketches, the additional traffic information, and the description of the rear alley elevation. Is that information that your architect is going to contribute to your response?

MS. BRAY: The rear elevation definitely.

VICE CHAIRMAN DETTMAN: Okay.

MS. BRAY: But it's mostly the new dimension plans that he'll need to focus on.

VICE CHAIRMAN DETTMAN: Okay. Which I suspect is going to take a little bit more time to prepare so it's going to push us out a little bit further.

MS. BRAY: In that case, I think the 20th would probably -- we would request that date to give us enough time to look at

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the alley scape.

VICE CHAIRMAN DETTMAN: Okay.

Mr. Keys, in terms of getting dimensions on the amended plans and then doing that breakout for the FAR how much time are you thinking?

MR. KEYS: Mr. Chairman, the architects remind me that we are going to be presenting to HPRB on the 22nd of April so we would -- and we've got to incorporate survey information for that. We're thinking two weeks after.

VICE CHAIRMAN DETTMAN: What was that date again?

MR. KEYS: The 22nd. That would be May 6th.

VICE CHAIRMAN DETTMAN: May 6th for an amended plan set?

MR. KEYS: Yes.

VICE CHAIRMAN DETTMAN: With the additional information that the Board needs.

Ms. Bray, how much time after that

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would you need to respond?

MS. BRAY: For May 6th?

VICE CHAIRMAN DETTMAN: Um-hum.

MS. BRAY: I would like at least 10 days to respond to a full-amended plan set. Just as a point of clarification Mr. Keys referenced survey information that needed to be added to those plans. Just for clarification when we talk about amended plans I know that these have not been entered into the record today.

When we talk about these with dimensions coming into the record, are we anticipating further changes to the plans, I guess, is the question I have based on HPRB because I wouldn't want to open the door for that. If that is the case, I would actually recommend accelerating the schedule significantly.

VICE CHAIRMAN DETTMAN: Mr. Keys, do you have any indication as to changes that might occur as a result of the HPRB hearing?

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MR. KEYS: I can't say that. I do know that we have yet to get all of the requested data point measurements from our surveyor. We based what we did on the best that we had. We are going to be preparing for HPRB. We don't expect that there are going to be any changes.

VICE CHAIRMAN DETTMAN: So in addition to the changes between what we have in front of us right now and the changes that are reflected in the new binder, the incorporation of the survey information might change things yet again?

MR. ANDRULIS: Our preliminary information from the surveyor, and he's been able to give us some verbal information, is that the existing conditions, information that we have about our properties, appear to be very accurate. He doesn't anticipate any changes or anything at all significant so we believe all changes -- any changes that occur would be de minimis but we can't know for sure

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until we get the information.

VICE CHAIRMAN DETTMAN: When will that be finalized?

MR. ANDRULIS: Apparently any day now.

VICE CHAIRMAN DETTMAN: So by May 6th can the Board receive an amended plan set incorporating the survey changes that you are going to get which are going to happen any day now so you have until May 6th to get those in there with dimensions and an FAR breakdown.

MR. KEYS: Yes, Mr. Chairman. We can do that.

VICE CHAIRMAN DETTMAN: Ms. Bray, if all of that happens by May 6th do you see a need to accelerate the schedule as you suggest?

MS. BRAY: No, I don't think so if there are not substantive changes to the plans.

VICE CHAIRMAN DETTMAN: Okay. You said you need at least 10 days from May 6th in

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order to respond?

MS. BRAY: Yes, please. We would like at least 10 days.

VICE CHAIRMAN DETTMAN: How does May 18th work?

MS. BRAY: That would be fine.

VICE CHAIRMAN DETTMAN: The 18th. May 18th. Okay. So I guess that leaves findings of fact and conclusions of law and no doubt you'll be busy correcting your responses so do you need additional time past May 18th in order to submit that information and how much time?

MR. KEYS: Mr. Chairman, I would say no more than a week because the proposed findings of fact and conclusions of law really can be drafted. There might be some fine tuning to do.

MS. BRAY: I just note that I think -- I'm not sure because it's not showing up on my calendar but I don't know whether the holiday falls within that last week, that

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Monday, Memorial Day. We're talking about a week about from the 18th. Oh, it's June 1st, May 31st. Okay. Yeah, May 25th is fine with us.

VICE CHAIRMAN DETTMAN: Okay. So a deadline of May 25th for findings of fact which would put us at a decision date, Mr. Moy, based on what I have here, of June 8th. Is that correct?

Okay. Let me just summarize here.

With respect to the information that was shown in the presentation today minus any of the revised plans that were in the presentation, the additional traffic information for I think the years 2009 and 2010, and the description of how the rear elevation of the project relates to the existing alley scape we're looking at a submission deadline from the applicant for April 6th and a response to those three filings on April 20th.

Regarding the amended plans

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incorporating the final survey information, the dimensions and the breakdown of the FAR we have a submission deadline for May 6th and a response May 18th.

Then finally findings of fact and conclusions of law filed simultaneously on May 25th. That puts the Board at a decision date of June 8th. Is that consistent with what everyone else has?

MS. BRAY: It is.

VICE CHAIRMAN DETTMAN: Okay. Then if there are no other matters I think we can bring this case to a close. Thanks to everyone.

MS. BRAY: Thank you very much.

(Whereupon, at 4:28 p.m. briefly off the record.)

VICE CHAIRMAN DETTMAN: There are a couple of matters that I think we need to attend to. One is noting the unfortunate departure of Chairman Loud that there is a vacancy in the Chair position and the Board

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needs to take an action to fill that position.

Secondly, I think Ms. Sorg wanted to make a point, a closing point.

MEMBER SORG: Just wanted to note -  
- I thought it would be nice to note for the record another loss that we've had in our community this week. Yesterday, as you all may know, we lost a long-standing and significance presence in the architecture community, Paul Devreaux. He is no longer with us and we wanted to say that we are sorry for the loss.

VICE CHAIRMAN DETTMAN: Thank you, Ms. Sorg.

To the matter regarding the Chair position, again, we currently have a vacancy on the Board for the Chair position and I just wanted to state on the record that it may seem logical that the Vice Chair become elevated to the Chairman position. However, my tenure on the Board is imminent and it's coming to a close very very soon.

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So with that I will support Ms. Meridith Moldenhaur to become the next Chairperson. It's going to take awhile to get used to saying Madam Chair again. I would be in support of making a motion for Ms. Meridith Moldenhaur to become the Chair of the BZA.

I'm not exactly sure how long you've been with us but it hasn't been very long and it's been really impressive watching you get out here, get involved, and really take on the rigorous schedule that the BZA has. Not only keeping up with respect to review of all these cases but coming out here and immediately taking the lead on cases and applying the variance tests and the special exception criteria.

I think very, very much that you'll do a great job leading this team that has really come together around Chairman Loud, his dedication to the team and making sure that the decisions made by the Board are thoroughly informed and that they are fair and equitable

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for the applicants and the opposition and all the organizations that come before the Board.

I have no doubt that you will continue that tradition. With that, I'll make a motion for Board Member Moldenhaur to become the Chair and seek a second.

MEMBER SORG: I will second your motion and also comment that if you leave us I will --

VICE CHAIRMAN DETTMAN: So the motion has been made and seconded assuming that Ms. Moldenhaur wants to become the Chair, which I think she does.

MEMBER MOLDENHAUER: I will accept it. I just have to say on the record that as you have had discussions I wish that we could be supporting your nomination but I very much appreciate your support of my nomination. I hope we don't lose you. It definitely will be a great loss to this team having lost Mr. Loud. Hopefully with your support we can move

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forward and I can get my feet wet hopefully slowly.

VICE CHAIRMAN DETTMAN: The motion has been made and seconded. All those in favor say aye.

ALL: Aye.

VICE CHAIRMAN DETTMAN: Opposed? Abstentions?

Do we have to call the vote, Mr. Moy or no?

MR. MOY: Well, since you took the vote it might be appropriate to do so. I would say, if I may, since I just turned my mic on, the motion of the Vice Chair for nominating and voting on Ms. Moldenhaur as the next Chairperson, seconded by Ms. Sorg. The vote is three to zero to two. Of course, I'm assuming Ms. Moldenhaur voted for herself. That's three zero two.

VICE CHAIRMAN DETTMAN: Having only three Board Members she had no choice but to vote for herself.

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I just wanted to make one additional comment on the record. In discussing who would become the next Chairperson of the BZA I very much appreciate all of my colleagues that sit up here every single day, including Mr. Loud and Ms. Sorg and Ms. Moldenhaur and Mr. Turnbull.

We had a discussion about this last week and their support for me becoming the next Chairman. My decision to withdraw from consideration is solely based on the fact that I will be leaving the Board in the short-term.

It has nothing to do with any of the discussions that have happened outside of the Board with respect to the idea that a federal representative and the perception of a federal representative leading the BZA I certainly hope that, and it's my goal every single Tuesday, to approach my work on the BZA totally blind too the tortured history of federal versus local here.

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I take an enormous amount of pride and consider myself lucky to be a District resident from the very first day I moved down here almost 10 years ago.

I consider myself lucky continuing to be the Vice Chairman of the BZA and look forward to perhaps rallying around the experience that I have and making sure that for the sake of our applicants and the community that we can continue the performance that we have come to become known for with Mr. Loud as our leader. When we reconvene in April it's all yours.

MEMBER MOLDENHAUER: Thank you very much.

VICE CHAIRMAN DETTMAN: With that we'll stand adjourned.

(Whereupon, at 4:34 p.m. the hearing was adjourned.)

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