

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING
OF THE BOARD OF ZONING ADJUSTMENT

1:25 p.m. to 5:19 p.m.
Tuesday, July 26, 2011

One Judiciary Square
441 4th Street, N.W.
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

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Board Members:

MERIDITH H. MOLDENHAUER, Chairperson
NICOLE SORG, Vice-Chairperson,
JEFFREY L. HINKLE, National Capital Planning
Commission Designee
PETER G. MAY, National Park Service Designee

Office of Planning:

PAUL W. GOLDSTEIN
ARTHUR JACKSON
STEPHEN COCHRAN

Also Present:

CLIFFORD W. MOY, Secretary to the Board
SHERRY GLAZER, ESQ.
Office of Attorney General
MARY NAGLEHOUT, ESQ.,
Office of Attorney General

C O N T E N T S

	<u>Page</u>
Chairperson's Preliminary Remarks	4
Application No. 18217 (withdrawn)	8

P.M. Session

Chairperson's Preliminary Remarks11
Application No. 1824216
Application No. 18237	151
Application No. 18197	175
 Conclusion of Meeting	 217

1 PROCEEDINGS

2 CHAIRPERSON MOLDENHAUER: This hearing
3 will please come to order. Good afternoon,
4 ladies and gentlemen. This is the July 26th,
5 2011, Public Hearing in the Board of Zoning
6 Adjustment for the District of Columbia.

7 My name is Meridith Moldenhauer,
8 Chairperson. Joining me today to my right is the
9 Jeffrey Hinkle, representative of the National
10 Capital Planning Commission. To my left is
11 Vice-Chair, Nicole Sorg, Mayoral Appointee, and
12 to her left is Peter May, representative of the
13 Zoning Commission.

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

17 Please be advised this proceeding is
18 being recorded by a court reporter and is also
19 being webcast live. Accordingly, I must ask you
20 to refrain from any disturbing noise or actions
21 in the hearing room.

22 When presenting information to the Board,

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

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

14 The order of procedures for special
15 exceptions and variances are as follows: one,
16 statement of the Applicant and Applicant's
17 witnesses; two, parties and persons in support;
18 three, parties and persons in opposition; four,
19 government reports, including the Office of
20 Planning; five, reports from the ANC; and six,
21 rebuttal and closing statements from the
22 Applicant.

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

10 These time restrictions do not include
11 cross-examinations or questions from the Board.
12 Cross-examination of witnesses is permitted by
13 the Applicant or parties. The ANC within which
14 the property is located is automatically a party
15 to a special exception or a variance case.
16 Nothing prohibits the Board from placing
17 reasonable restrictions on cross-examination,
18 including time limitations and limitations on the
19 scope.

20 The record will be closed at the
21 conclusion of each case, except for any materials
22 specifically requested by the Board. The Board

1 and the staff will specify at the end of the
2 hearing exactly what is expected and the date and
3 time and when the person must submit that
4 information to the Office of Zoning. After the
5 record is closed, no other information will be
6 accepted.

7 The Sunshine Act requires that a public
8 hearing on each case be held in the open before
9 the public. Pursuant to Section 405(b) and 406
10 of the Open Meeting Amendment Act of 2010, the
11 Board may, consistent with the rules and
12 procedures of the Open Meeting Amendment Act,
13 enter into a closed meeting or closed emergency
14 meeting on a case for purposes of seeking legal
15 counsel on a case per Section 405(b)(4) and
16 deliberating on a case pursuant to Section
17 405(b)(13) of the law, but only after providing
18 the necessary Public Notice and taking a roll
19 call vote.

20 The decision of the Board in these
21 contested cases must be based exclusively on the
22 public record. To avoid any appearance to the

1 contrary, the Board requests that all persons
2 present not engage the members of the Board in
3 conversation.

4 Please turn off all beepers and cell
5 phones at this time.

6 The Board will now consider any
7 preliminary matters. Preliminary matters are
8 those which relate to whether a case will or
9 should be heard today, such as requests for
10 postponement, continuance, withdrawal, or whether
11 proper adequate notice of a hearing has been
12 given.

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

16 Mr. Secretary, do we have any preliminary
17 matters?

18 **Application No. 18217**

19 MR. MOY: Madam Chair, the staff is aware
20 of one of the cases in the afternoon where the
21 Applicant is intending to amend the application,
22 which potentially may lead to a possible

1 withdrawal of that application, and that
2 application is Application No. 18217.

3 CHAIRPERSON MOLDENHAUER: Okay. What
4 we'll do is swear in the witnesses, and then
5 we'll take that case first.

6 MR. MOY: You may stand, please, for the
7 oath. Those who intend to testify, do you
8 solemnly swear or affirm that the testimony
9 you're about to present in this proceeding is the
10 truth, the whole truth, and nothing but the
11 truth?

12 [Witnesses sworn en masse.]

13 MR. MOY: Ladies and gentlemen, you may
14 consider yourself under oath.

15 Madam Chair, that application is
16 Application No. 18217. This is the application
17 of Brookland Homes LLC, pursuant to 11 DCMR
18 3103.2, for a variance from the lot width
19 requirements under Section 401 and a variance
20 from the side yard requirements under Section 405
21 to allow the construction of two semi-detached
22 dwellings in the R-2 District at premises 1222

1 Randolph Street, N.E., property located in Square
2 3923, Lots 821 and 822.

3 CHAIRPERSON MOLDENHAUER: Thank you.

4 Will the parties please come forward, and
5 I'm going to turn this over to Vice-Chair Nicole
6 Sorg since I was not a party to this case
7 initially.

8 MS. SORG: Thank you, Madam Chair.

9 Good afternoon. Once you settle, can you
10 please introduce yourselves once again for the
11 record with your name and home address?

12 MS. FULLER: Carlynn Fuller, 127 Abbey
13 Place, N.E., Washington, D.C.

14 MR. TOPJIAN: Sevan Topjian, sole member,
15 Brookland Homes LLC, 1336 Newton Street, N.E.

16 MS. SORG: Thank you very much.

17 Based on the letter that we've received
18 from the Zoning Administrator that we've received
19 in our record, I believe today, it looks like
20 you've gotten a judgment from him, and that
21 you're proceeding with your project as a matter
22 of right, so we'll recognize that letter.

1 And if you would like to withdraw your
2 case, then now might be the time to do that,
3 unless you have other comment.

4 MS. FULLER: No, that was all. We just
5 got the letter late yesterday from the Zoning
6 Administrator, and so Mr. Topjian has signed a
7 letter to withdraw his application. And we just
8 wanted to put that on the record for today.

9 MS. SORG: Great. Thank you.
10 And you could submit that to Mr. Moy.

11 MS. FULLER: All right. Thank you.

12 CHAIRPERSON MOLDENHAUER: At this point
13 in time, we are going to break from the afternoon
14 cases, and we're going to start with the Foreign
15 Mission composition of the Board of Zoning
16 Adjustment. This hearing will please come to
17 order.

18 Good morning, ladies and gentlemen. This
19 is the July 26th, 2011, Public Hearing of the
20 Board of Zoning Adjustment for the District of
21 Columbia convening to act on a chancery
22 application pursuant to the Foreign Mission Act

1 and Chapter 10 of the Zoning Regulations.

2 My name is Meredith Moldenhauer,
3 Chairperson. Joining me today is Mayoral
4 Appointee, Nicole Sorg, Vice-Chairperson; and
5 also Peter May, representative of the U.S.
6 National Park Service.

7 Copies of today's agenda are available to
8 you and are located to my left in the wall bin
9 near the door.

10 Please be advised this proceeding is
11 being recorded by a court reporter and is also
12 being webcast live. Accordingly, I must ask you
13 to refrain from any disturbing noise or actions
14 in the hearing room.

15 When presenting information to the Board,
16 please turn on your microphone, first stating
17 your name and home address. When you are
18 finished speaking, please turn off the
19 microphone, so that the microphone is no longer
20 picking up any sounds or background noise.

21 All persons planning to testify either in
22 support or in opposition are to fill out two

1 witness cards. These cards are located to my
2 left on the table near the door and on the
3 witness tables in front of you. Upon coming
4 forward to speak with the Board, please fill out
5 two cards and give those cards to the court
6 reporter sitting to my right.

7 The order of procedures for a Foreign
8 Mission case is as follows: one, statement of
9 the Applicant; two, government reports, including
10 the United States Secretary of the State and the
11 District of Columbia Office of Planning on behalf
12 of the Mayor; three, reports and recommendations
13 of other public agencies; four, reports of the
14 ANC; five, persons in support; and six, persons
15 in opposition.

16 Please note that requests for party
17 status in a chancery application are not
18 applicable, because this is a rulemaking
19 procedure.

20 The following time constraints will be
21 maintained pursuant to Section 3117.4. The
22 Applicant, including witnesses, will be permitted

1 60 minutes to present their case Persons
2 testifying, whether in support or in opposition,
3 will be permitted 3 minutes each, except an ANC.

4 These time constraints do not include
5 time used during questions, for questions from
6 the Board. The Board may place reasonable
7 restrictions on or permit additional time for
8 testimony as is deemed appropriate.

9 Because this is a rulemaking procedure,
10 there are no parties, and therefore, there is no
11 cross-examination.

12 The record will be closed at the
13 conclusion of each case, except if it will be
14 remained open for any materials specifically
15 requested by the Board.

16 The Board and the staff will specify at
17 the end of each hearing what is expected and the
18 date when the material must be submitted to the
19 Office of Zoning. After the record is closed, no
20 other information will be accepted.

21 The Sunshine Act requires that a public
22 hearing be held on each case in the open before

1 the public. Pursuant to Section 405(b) and 406
2 of the Open Meeting Amendment Act of 2010, the
3 Board may, consistent with the rules and
4 procedures in the Open Meeting Amendment Act,
5 enter into a closed meeting or closed emergency
6 meeting on a case for purposes of seeking legal
7 counsel on a case per Section 405(b)(4) and/or
8 deliberating on a case pursuant to Section
9 405(b)(13) of the law, but only after proceeding
10 with the necessary Public Notice and taking a
11 roll call vote.

12 The decision of the Board in these
13 legislative procedures must be based exclusively
14 on the public record. To avoid any appearance to
15 the contrary, the Board asks that persons present
16 not engage the members of the Board in
17 conversation.

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

21 At this time, the Board will now consider
22 any preliminary matters. Preliminary matters

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

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

8 Mr. Secretary, do we have any preliminary
9 matters?

10 MR. MOY: Madam Chair, the staff is not
11 aware of any preliminary matters for the
12 afternoon session.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 Mr. Moy?

15 MR. MOY: Should I call the first case,
16 Madam Chair?

17 CHAIRPERSON MOLDENHAUER: Yes, please.

18 **Application No. 18242**

19 MR. MOY: That would be Application No.
20 18242. This is the application of the Embassy of
21 the Republic of Serbia, pursuant to 11 DCMR 1001
22 and 22 USC Section 4306 of the Foreign Missions

1 Act. This is to allow the location of a chancery
2 use in the D/R-3 District at premises 2221 R
3 Street, N.W. The property is located in Square
4 2516, Lots 4 and 29.

5 CHAIRPERSON MOLDENHAUER: Thank you.

6 If the Applicant can please step forward?

7 I'd just like to state for the record
8 also while the Applicant gets set up that we do
9 have letters in our submission requesting party
10 status. As I said and read into the record
11 earlier, this is a rulemaking procedure, and
12 thus, party status applicants are not permitted.
13 They will, if anybody is present and wishing to
14 testify -- you will be given 3 minutes, at which
15 point you can step forward and present any
16 concerns you have.

17 That being said, I'll turn it over to the
18 Applicant.

19 MR. COLLINS: Thank you, Madam Chair and
20 members of the Board.

21 My name is Christopher Collins with the
22 law firm of Holland & Knight. Seated to my left

1 is Ambassador Vladmir Petrovic from the Embassy
2 of the Republic of Serbia and to my right Gregory
3 Powe of SAIC, the architect for the project.

4 Could I just raise a preliminary matter
5 or I guess a point of order? Under the Foreign
6 Missions Act, the NCPC representative is to be
7 the Executive Director, and that's just a matter
8 of law. And I was not sure if there's something
9 that you want to put on the record about that.

10 CHAIRPERSON MOLDENHAUER: He is not
11 present today and will not be able to be present,
12 so I will be presiding in his stead.

13 MR. COLLINS: He wouldn't be presiding.
14 It's just that the NCPC representative is
15 supposed to be the Executive Director under the
16 law, under the Foreign Missions Act.

17 MR. MOY: Madam Chair, if I --

18 MR. COLLINS: And if he would read the
19 record, that would be fine.

20 CHAIRPERSON MOLDENHAUER: Mr. Hinkle is
21 not on this case. Is that what you're asking?
22 I'm sorry. I'm confused.

1 MR. COLLINS: Yes. That's what I'm
2 asking. I guess this --

3 CHAIRPERSON MOLDENHAUER: Mr. Hinkle is
4 not on this case.

5 MR. COLLINS: All right.

6 CHAIRPERSON MOLDENHAUER: Mr. Acosta is
7 unable to be here, so it will just be the three
8 members reviewing this case today.

9 MR. COLLINS: Okay. Well, if -- okay.
10 Thank you.

11 This is an application to locate the
12 chancery for the Republic of Serbia to a new
13 location at 2221 R Street, N.W., in the D/R-3
14 Zone with accessory parking in the rear that's
15 located in the R-3 Zone.

16 Threshold determination that must be made
17 by the Board in situations like this when you
18 have a split-zoned property under consideration
19 is whether -- in this case whether the R-3
20 portion of the site, the northern portion, is
21 suitable for consideration in a chancery
22 application.

1 Under the Foreign Missions Act, Section
2 206(b)(2)(B) -- or (b)(2) of the Act talks about
3 appropriate locations for chanceries. Certainly,
4 the matter-of-right location, which you don't
5 ever see, are those which are in the commercial
6 or industrial or waterfront or mixed-use zones.
7 Chanceries also are permitted to locate in two
8 areas with FM-BZA review.

9 Number one, in areas zoned medium-high or
10 high-density residential, that's R-5-D and R-5-E,
11 and also, and I'll quote, in any other area
12 determined on the basis of existing uses, which
13 includes office or institutional uses, including
14 but not limited to any area zoned mixed-use,
15 diplomatic, or special purpose, subject to
16 disapproval by the D.C. Board of Zoning
17 Adjustment in accordance with this section.

18 We have an area; part of the site is
19 zoned R-3. We do believe that it is appropriate.

20 In at least five cases of which I'm aware, this
21 Board had previously determined in issues like
22 this that a lot that is either partially or

1 totally outside of an area -- that's 206(b)(2)(A)
2 or (b)(2)(B), any one of the specific areas --
3 this Board has determined that in any other area
4 has been deemed appropriate for chancery use.

5 The seminal case, the case which really
6 spells this out is your decision in the Embassy
7 of Uganda, and I have copies of that order for
8 the record, which I'd like to hand in. And in
9 that case, the Embassy of Uganda, in your
10 decision, you spent four pages going over that
11 very issue, and you carefully spelled out your
12 authority under the Foreign Missions Act to
13 approve a chancery that's in an area that is
14 either in the R-1 through R-5-C Zones.

15 Again, on pages 4 through 8, you reviewed
16 the background and the creation of the Foreign
17 Missions Act and observed that Congress
18 authorized the location of chanceries in any
19 other area, which you determine to mean an R-1
20 through R-5-C Zone.

21 You looked at the creation of the Act and
22 the regulations, and in that case, you observed

1 that -- this Board observed that although the
2 original mapping of the diplomatic overlay zones
3 after the creation of the (D) overlay and the
4 Foreign Missions Act, used a test of what was
5 known as the one-third/two-third test, meaning if
6 one-third of the square was office or
7 institutional use, then the entire square would
8 be zoned diplomatic.

9 You observed in the Uganda case that that
10 is not a requirement for all time, and that going
11 forward, neither Congress nor the Zoning
12 Commission created and established what was a
13 definitive test. And you determined that the
14 test would be done on a case-by-case basis, and I
15 highlighted in that order that I've given to you
16 today some pertinent provisions of your decision.

17 In the Uganda case, you looked at uses
18 within the same square where the application was
19 located as well as the square across the street
20 and then squares up and down 16th Street, and
21 what you found in that case was that there was
22 one other use in the same square -- actually two.

1 There was the chancery itself of Uganda. They
2 were looking to expand. You found that a church
3 in that square -- you found across 16th Street,
4 you found six buildings owned by a religious
5 movement called Sufism Reoriented, and then you
6 found up and down the street, you found three
7 churches that were located two, two, and four
8 blocks away respectively. And you found a
9 chancery annex located four blocks away and a
10 chancery located seven blocks south and an
11 embassy residence located three blocks south, and
12 on that basis, you determined that that was
13 sufficient to determine that his location was in,
14 quote/unquote, any other area for purpose of
15 consideration of the Foreign Missions Act.

16 In this case -- and I'll ask Mr. Powe to
17 bring the slide up that we have. The slice
18 that's on the screen now shows the location of
19 the site, and then the next slide shows the
20 location of other chanceries, embassies,
21 diplomatic uses, office uses, and other
22 non-residential uses.

1 The purple, the dark purple in the middle
2 is the site. The light purple are chancery and
3 diplomatic uses. The orange colors are embassy
4 residences. There's a few red colors there.
5 Those are offices, and then there are a -- it's
6 hard to distinguish on the thing, but I have
7 copies which I will hand in -- a darker purple,
8 which there's a few on the Florida Avenue side
9 which are Nora's Restaurant and then a few art
10 galleries.

11 So you can see that this site is
12 surrounded by chancery uses to the north, east,
13 west, and south, and that there is a large number
14 of chancery and diplomatic uses in proximity,
15 much more so than in the Uganda case.

16 So I would take the position that this
17 site is appropriate for consideration, both the
18 northern part of the site zoned R-3 as well as
19 the southern part of the site that has the (D)
20 overlay on it.

21 In the Uganda case, you also referred to
22 the case for Hungary and China as well, and you

1 have those in the packet that we submitted just a
2 little while ago.

3 In the Hungarian case, in that case,
4 there was one lot that was zoned R-1, owned by
5 the same country as all the other properties that
6 were in a zone that was permitted for diplomatic
7 use and consideration by the BZA.

8 Same with China, the Republic of China
9 case, which was most recently heard, where there
10 was an R-1 piece of ground together with the
11 R-5-D, and in that decision, I submitted that to
12 you because there was really not even any
13 discussion in that order about the
14 appropriateness. It was just deemed to be
15 appropriate. Then the application just went
16 forward from there.

17 So, with all those, we take the position
18 that the threshold determination that the
19 northern part of the property is appropriate.

20 Now, I would point out that even though
21 we've gone through that determination, the
22 northern part is only being used for accessory

1 parking for residential use. It is not the
2 location of the embassy -- of the chancery
3 building itself. The chancery building will be
4 on the southern part.

5 So, with that, then turning back to if
6 you agree, then we would proceed with the
7 remainder of the application.

8 The application is to be examined under
9 six criteria under the Foreign Missions Act,
10 under Section 206(d), and they are, number one,
11 the international obligation of the United States
12 to facilitate the provision of adequate and
13 secure facilities for foreign missions in the
14 Nation's Capital. That's a determination made by
15 the Department of State.

16 Second is historic preservation as
17 determined by this Board, and this Board has
18 determined on numerous instances that compliance
19 with this provision means referral to the Mayor's
20 Agent; in this case, we've done that -- I mean
21 actually the Office of Zoning has done that, the
22 referral to the Office of Planning, and that is

1 wherein the Mayor's Agent resides.

2 And the architect will testify about his
3 discussions with the Historic Preservation Office
4 on these proposed alterations that are going to
5 be undertaken.

6 The third is the adequacy of off-street
7 or other parking and the extent to which the area
8 will be served by public transportation to reduce
9 parking requirements, subject to any special
10 security requirements as may be determined by the
11 Secretary of State. That's included in the
12 letter as well by the Department of State.

13 Number four, the extent to which the area
14 is capable of being adequately protected as
15 determined by the Secretary of State; number
16 five, the municipal interest as determined by the
17 Mayor -- the Mayor has delegated that authority
18 to the Office of Planning -- and six, the Federal
19 interest as determined by the Secretary of State.

20 Those are the six criteria under which an
21 application is reviewed.

22 So, with that, I'd like to first turn --

1 unless there's any questions, I'd like to turn
2 first to Ambassador Petrovic to give his
3 statement.

4 CHAIRPERSON MOLDENHAUER: There are no
5 additional questions.

6 I would just like to note for the record
7 that the Republic of Hungary case actually also
8 addressed the absence of the NCPC representative
9 from the hearing --

10 MR. COLLINS: Yes, it did.

11 CHAIRPERSON MOLDENHAUER: -- as is the
12 case here today, which is an interesting
13 parallel, but please present the rest of your
14 case.

15 MR. COLLINS: Thank you.

16 Ambassador?

17 AMBASSADOR PETROVIC: First of all, I
18 want to thank the Board for the opportunity to
19 talk to you.

20 The building we're talking about has a
21 lot of history with my country. The building was
22 purchased in 1942 by a former ambassador of

1 Kingdom of Yugoslavia and former minister of
2 Kingdom of Yugoslavia. It was the time of the
3 second world war where Yugoslavia was occupied by
4 Nazi Germany, and our king, King Peter II, had to
5 flee to Britain. And there was some scare that
6 Britain would fall at the time, so the building
7 was bought, so the king could reside in
8 Washington.

9 So the reason why we are keeping the
10 building and want to redo it and want to fix it
11 and bring it to its old glory is because there's
12 a lot of history with our country and with our
13 royal family connected to the building.

14 The building was formerly the residence
15 of the Ambassador of Yugoslavia. Yugoslavia in
16 the past 20 years since 1991 and 1991 ceased to
17 exist. Six countries were made out of it, and so
18 this building wasn't kept in the best shape so
19 far, because we didn't know until several months
20 ago who the owner, which country from the former
21 Yugoslavia, is going to be the owner of the
22 building.

1 Serbia became the owner of the building.
2 That's why we didn't keep it in the best shape,
3 but we decided now to redo it completely.

4 The reason we didn't want to maintain the
5 residence there, but we want to make our chancery
6 there, is because it's a really large building.
7 It was maybe appropriate for Yugoslavia. That
8 was a much bigger country than Serbia, but it's
9 not appropriate for Republic of Serbia to be
10 residence of ambassador because it's a large
11 space, and we didn't want to get rid of it
12 because of the history, so we decided to move our
13 chancery to that location.

14 Our current chancery location is at 2134
15 Kalorama Road. We lease that property from the
16 Government of Ethiopia. Currently, we have 12
17 diplomats and five non-diplomatic staff. Numbers
18 fluctuate periodically, but we have remained
19 constant, consistent over time, so we're not
20 expecting to have more people than that.

21 Existing chancery has three diplomatic
22 parking places on Kalorama Road and five spaces

1 on the side. This is the number of spaces,
2 parking spaces that we will need in the new
3 chancer. We don't require more than that.

4 The hours of normal hours of operation of
5 our chancery are Monday through Friday, 9 a.m. to
6 5 p.m. Most of the chancery interaction with the
7 public is done by telephone or e-mail.

8 The majority of the meetings attended by
9 the diplomatic members of the mission are off
10 site. There is an average of about five visitors
11 to the embassy per week for meetings and other
12 diplomatic business.

13 The consular section is open daily for
14 visas and other services from 10 a.m. until 1
15 p.m., and there is an average of about 25
16 visitors per week for consular services, really
17 not more than that. We don't have visas for U.S.
18 citizens or anything like that, that would
19 require more people to come for consular business
20 to the consular section.

21 The embassy hosts an average of one or
22 two special events per year at the chancery.

1 That's mostly the National Day celebration.
2 These events are usually short in duration, 2 to
3 3 hours. Typically, they are 2 hours, and they
4 don't -- typically attract about a hundred
5 people.

6 The new chancery location, we will
7 renovate the building at 2122 R Street, N.W. We
8 are planning to keep the original looks of the
9 building. We want to refurbish in a way to keep
10 its historic preservation. We also plan to use a
11 lot of green materials to redo the embassy. We
12 are dedicated to that.

13 Also, there is a building in the back of
14 the main building that we currently have a driver
15 living. We are going to redo that building as
16 well, and my driver is going to continue living
17 on that location.

18 Our plans show that we will have seven
19 spaces on site at our new location for parking,
20 and we will request one space on R Street in
21 front of the building to have as a parking space.
22 We will landscape the rear yard, and we will

1 provide an elevator that will be attached to the
2 back of the building. The architect will explain
3 the plans in detail after me.

4 I understand that there is some
5 opposition to our plans to use this as a chancery
6 and not a residence, but as I said, this location
7 is too big to stay as a residence for Ambassador
8 of Serbia, and it's idea for a chancery, its
9 location.

10 It is located -- actually, it's directly
11 next to chanceries, and there's also a lot of
12 chanceries in the area. Right next to us is
13 Cypress, and there's a couple more that are
14 immediately next to us or across from us.

15 Our operations are quiet, and we have
16 never disturbed our neighbors in Kalorama that I
17 know of. We are not planning to cause any
18 problems to the neighborhood. We are planning to
19 give an addition to a neighborhood by fixing this
20 building and not letting it deteriorate anymore.

21 I also understand that there are some
22 concerns about the parking area in the rear of

1 the property. This is going to be employee
2 parking only. Cars will come in the morning and
3 leave in the evening. Cars will not need to back
4 out of the parking onto Decatur Street. The
5 garage doors will only open, be open when cars
6 arrive in the morning and when they leave in the
7 evening. With the doors closed, nobody is going
8 to be -- even going to be able to see that there
9 is parking spaces in the back from the street.

10 We understand that our occupancy of the
11 building will be changed from the current
12 conditions. We intend for this to be a positive
13 change. We will renovate the property and make
14 it beautiful again and are planning to be good
15 neighbors.

16 I also know there's some concerns about
17 our current location, that the building was not
18 kept in perfect order where we currently are on
19 Kalorama. That was brought to my attention. We
20 -- unfortunately, our hands are tied in that case
21 because we are renting it from Government of
22 Ethiopia, and under contract, we are not allowed

1 to do any fixing or anything to a building.

2 And so it's a source of constant
3 frustrations for us to begin, and then I know for
4 the neighborhood, but this is not going to be the
5 case with the new building. We're planning to
6 keep this building perfect as, you know, a mirror
7 of our country to be represented in Washington,
8 D.C.

9 Thank you, and if you have any questions,
10 of course, I'll be happy to answer.

11 CHAIRPERSON MOLDENHAUER: Any questions
12 from the Board at this time?

13 MR. MAY: Yeah, I did have a couple of
14 questions for the Ambassador.

15 You mentioned that the actual ownership
16 of the property was recently clarified. Will
17 there be some action with regard to the title, so
18 that it will be recorded properly? Because
19 according to our records, it's still owned by
20 Yugoslavia.

21 MR. COLLINS: Mr. May, I'm probably the
22 best person to answer that.

1 MR. MAY: Yeah.

2 MR. COLLINS: We just received the
3 documentation from the Government of Serbia which
4 allowed us to do a new deed recordation --

5 MR. MAY: Okay.

6 MR. COLLINS: -- changing the ownership
7 from the Kingdom of Yugoslavia to the Republic of
8 Serbia. That just happened within the last
9 couple of weeks.

10 MR. MAY: Okay. And then --

11 MR. COLLINS: At the Recorder of Deeds
12 office.

13 MR. MAY: Okay, that's fine. I just
14 wanted to know if that was happening.

15 You mentioned, Mr. Ambassador, also that
16 the staff, if they're attending meetings, they're
17 largely going to be meetings off site. Is there
18 another location that they will typically be
19 going to, or they just tend to be meeting at
20 other locations around the city?

21 AMBASSADOR PETROVIC: Well, a typical
22 diplomatic work in Washington, D.C., that you --

1 usually, they go to Congress or they go to the
2 State Department or they go have coffees, have
3 lunches. I mean, most of the diplomatic work is
4 done in that manner, even for ambassadors,
5 usually go and meet somewhere else.

6 It doesn't mean we're not going to have
7 meetings at the embassy, but it just means that
8 it doesn't happen as often.

9 MR. MAY: What I'm getting at is whether
10 this is going to be the sole operation, sole
11 building that you'll be operating for this
12 purpose, and then there's not another satellite
13 location where there are other offices, where
14 there will be regularly people going, because
15 that -- what I'm trying to get at is vehicular
16 traffic coming and going during the course of the
17 day, if that's going to be a significant issue.
18 It doesn't sound like it is.

19 AMBASSADOR PETROVIC: No. And we don't
20 have another location. This is the only
21 location, but it's not, you know, usually -- from
22 the operations that we currently have, there's

1 no, you know, crazy traffic or anything like
2 that.

3 MR. MAY: Okay. That's it. Thank you.

4 AMBASSADOR PETROVIC: And most of the
5 embassies are around, so if we meet with other
6 fellow diplomats, it's, you know, walking
7 distance, so on and so forth.

8 Thanks.

9 CHAIRPERSON MOLDENHAUER: I just have a
10 question. This may be better for the architect,
11 but it's more of an operational question, so I'll
12 ask you, Mr. Ambassador.

13 The existing carriage house, the two-door
14 garage, it's actually going to end up being, it
15 looks like, a through-driveway almost to the rear
16 of the property. You're not planning on then
17 parking two cars there? So there's only going to
18 be the seven spaces shown? You're not going to
19 use the internal garage to park vehicles in as
20 well?

21 MR. COLLINS: The architect will describe
22 that in his testimony.

1 CHAIRPERSON MOLDENHAUER: Okay.

2 MR. COLLINS: We can answer it now or we
3 can --

4 MR. POWE: The simple answer is yes.

5 That's the in and the out to the --

6 CHAIRPERSON MOLDENHAUER: In and the out.

7 MR. POWE: -- motor court behind.

8 CHAIRPERSON MOLDENHAUER: Okay. And then
9 I thought I heard at one point you mention that
10 you had a driver. So is there going to be a lot
11 of in and out in regards to a driver gaining
12 access or during the day? I mean, like how many
13 times in-and-out business do you have typically?

14 MR. POWE: We're asking for one
15 diplomatic space directly out front on R Street.

16 CHAIRPERSON MOLDENHAUER: Okay.

17 MR. POWE: Which is when you see the
18 photos, it's the only space, and it is a logical
19 diplomatic space.

20 There also is a semicircular drive in the
21 front, so typically, the driver, if the
22 Ambassador going in and out, will use the front.

1 CHAIRPERSON MOLDENHAUER: I just want to
2 make sure that that's on the record that that use
3 is not going to be on Decatur Street, but that's
4 more going to be on R Street; is that correct?
5 Okay.

6 AMBASSADOR PETROVIC: Yes.

7 CHAIRPERSON MOLDENHAUER: Thank you.

8 Any other questions from Board members at
9 this time?

10 [No response.]

11 CHAIRPERSON MOLDENHAUER: Then I'll turn
12 it back to the Applicant to present any other
13 witnesses.

14 MR. COLLINS: Thank you.

15 Our next witness is Greg Powe from SAIC.
16 He is the architect in the project.

17 MR. POWE: Good afternoon.

18 What I'd like to do first is give you a
19 little tour of the neighborhood -- I don't know
20 if you want the lights down, it's up to you; I've
21 got my bright screen in front of me -- just to
22 show you R Street and Decatur Street visually,

1 and then we'll go through the elements.

2 Boy, it's one or the other, isn't it?

3 [Laughter.]

4 MR. POWE: Wait up.

5 This is the north side of R Street. Can
6 you see my pointer? Because our laser --

7 CHAIRPERSON MOLDENHAUER: Yes.

8 MR. POWE: -- died in the heat.

9 And as you saw from the colored plan, the
10 north side of R street in our stretch are all
11 chanceries up to this point, and then embassies,
12 residences, and then back to chanceries, so
13 that's the north side of the street.

14 Let's look at the map one more time. The
15 south side, you can see that there are a couple
16 of diplomatic properties that are embassies and
17 some that are designated as residences, so that's
18 the north side.

19 This is our property. We'll come back to
20 it, beautiful canopy, original canopy.

21 This is the south side directly across
22 the street. The white building is an embassy,

1 and it is literally directly across from us.

2 To its right is a guest house, and then
3 to the right of that is a vacant embassy
4 property. These two properties to the left,
5 according to the owner that I spoke with of the
6 guest house, he says he's the only resident owner
7 in that stretch, which I guess is another way of
8 saying these are two rental residential and then
9 another embassy property, so that's the R Street
10 sort of mini Embassy Row, if you will.

11 This is Decatur Street which is if you
12 are familiar with the area, there is a dramatic
13 change in level going uphill from R street up to
14 Decatur. The north edge of Decatur, which I
15 didn't even bother showing in the photograph, is
16 a steep embankment that then climbs up to
17 primarily back yards of S Street.

18 This little building right here is our
19 carriage house, if you can see that, surrounded
20 on this side by three-and-a-half-story typical
21 rowhouses, and on the other side, there's a
22 forecourt with another little carriage house

1 which is used as a residence.

2 Some of the other embassy properties are
3 through properties as well as ours. Egypt comes
4 through near the west end of Decatur and treats
5 its frontage on Decatur this way. Vietnam is now
6 renovating their residence, and their upper level
7 is parking. I'm not sure how much they're
8 renovating that as part of this renovation.

9 Immediately to the west in between these
10 two properties is a property owned by the
11 Philippines, which is a carriage house with a
12 large forecourt. You will see that it is all
13 concrete paved, and the bottom right-hand corner
14 is our neighbor.

15 Our property is just off here to the
16 right, our carriage house, and so you can see
17 that the front yard is set back, this carriage
18 house, and it is entirely brick paved, quite
19 nicely done, except for a little planting strip
20 along the front and along the side and then one
21 tree well. This is done in brick pavers which is
22 of relevance to the way we want to treat our rear

1 auto court.

2 This is the carriage house. It is
3 historic as well, though not nearly as
4 distinguished as everything on our street, except
5 for the Christmas lights which we promised to
6 take down and the garage doors and front door
7 which are not original, and as you can see, there
8 is a side yard to each side of our carriage house
9 that is exactly one car width in width, and you
10 will note that there are two brick walls with
11 gates in it at the back side of the carriage
12 house currently.

13 This is the rear view of the carriage
14 house. You see one of about four terraces, the
15 terrace down from the carriage house level down
16 to the proposed chancery location. There, you
17 can see the existing walls with the gates in it.
18 These are the two side yards, so that's a quick
19 tour.

20 Let me give you a tour of the building.
21 Just to totally confuse everyone with my
22 apologies, this is now oriented instead of north

1 up this way, so our street in these plans from
2 now on will be to the right and north of the
3 property. To the left is where the carriage
4 house is.

5 So just a quick tour of the existing
6 building to give you a sense, here is the front
7 door here. The first floor is the lower
8 left-hand plan, grand first door with a beautiful
9 original canopy, which we will fully restore.

10 This room here with a second front door
11 will become the small consular visa section and
12 also the ADA entrance and the main reception.
13 Like in all grand urban mansions, townhomes, the
14 second level was the main grand living level, so
15 you have a grand ballroom and a grand salon and
16 the old dining room and a kitchen, and then the
17 upper two floors basically, although they've been
18 a bit chopped up over the years, is three rooms
19 in the front and two in the back for each of the
20 two upper floors.

21 These two upper floors will become
22 offices. These will remain largely ceremonial

1 spaces; as I said, the chancery section here and
2 probably a meeting room down here and the main
3 reception and some support space in the back.

4 The courtyard is this space right here,
5 and this is a twin building that mirrors on the
6 bottom line, is a centerline for a mirror-image
7 building, so the courtyard actually mirrors
8 itself and becomes twice as large with a brick
9 wall in between the two. And in fact, the
10 buildings, as you'll see in a minute, were close
11 to mirror image as well.

12 So I did meet a couple times with Steve
13 Callcott at D.C. Preservation Office, met with
14 Mr. Jackson of the Office of Planning on site,
15 particularly to look at the rear yard. We
16 presented before the ANC. We had a meeting
17 scheduled at their request with the neighbors
18 last Thursday, which was canceled, so we had
19 conversations over the weekend, and again last
20 evening with the immediate neighbor.

21 So here's the scope of what we plan to
22 do. This, given that it's been vacant 20 years,

1 is not in bad shape, but we intend to fully
2 restore the exterior, including restoring the
3 original windows as best we can, which I think
4 we'll be able to do so -- in marvelously good
5 shape given the years. The cornice at the top
6 has rotted out, but we will restore that. The
7 original canopy is showing its years, but we will
8 restore that.

9 And there is the secondary door which
10 will become the visa or the consular section, and
11 I'll show you an elevation in a minute, the only
12 change we're going to make to that.

13 The landscaping is old and very tired,
14 and we will certainly redo the landscaping
15 flanking our door.

16 Here is the one parking space between the
17 in-and-out of our semicircular drive, which we
18 will request the diplomatic parking designation,
19 and as you can see, the front can't accommodate a
20 limo.

21 So here is the elevation. The only
22 changes, there's a flagpole existing that I'd

1 like to upgrade. I think we will have signage to
2 either side of the doors identifying the embassy
3 with a coat of arms and the name of the embassy,
4 and a little sign over here for the visa section
5 which will just say "Consular Section" and the
6 hours for that. And then the only real change to
7 the exterior is we need to drop this threshold of
8 this 6-inch step up here flush with the front
9 court, so that it can be ADA accessible, and
10 we'll either extend the door or use a little
11 filler above the door to accomplish that. But we
12 intend to get that as close to the way it looked
13 in the 19th century.

14 So, again, here is the front door, and
15 here is the courtyard. Steve Callcott and I
16 often talk about adding ADA compliance to these
17 old mansions, and the most unintrusive way to do
18 it for the historic building -- and this building
19 very cooperatively has a useful court that will
20 accommodate an elevator, which would be
21 hydraulic. The top of the elevator will not
22 project beyond the top of the existing building.

1 The building, of course, the courtyard is
2 four stories in this shell shape with this
3 two-story element behind it, and the courtyard
4 visually is twice the size. I'll show you a
5 photograph.

6 This is looking at the rear of our
7 building with the two-story. This is the dining
8 room and a level below it, and so back in here
9 will be where that elevator shaft will happen,
10 which this, by the way, you could not see this
11 view from Decatur. This is from the back yard.
12 It's impossible to really see any of the building
13 from Decatur.

14 And here's the court itself. The
15 elevator shaft seems to be the best place to put
16 it, right there. These will be the openings for
17 the elevator. We'll enlarge them and block a
18 couple of openings here.

19 Interestingly, this is the mirror-image
20 shot of the southwest corner of that double
21 court, and the adjacent building has an element
22 in that same corner about the size of our

1 elevator shaft for reasons I'm curious about but
2 don't know.

3 This is not a terribly helpful drawing
4 but a true view of the two-story portion with the
5 court behind. That's the width. It will be
6 brick to match.

7 And then looking west at the side of the
8 courtyard with the four-story building wrapping
9 around it, that is the elevator shaft, which we
10 can cap off even with the cornice.

11 So that's the only exterior change to the
12 historic mansion for the chancery.

13 Here again is the carriage house with
14 these two garage doors. Usually, we have a
15 challenge along Embassy Row with how to deal with
16 parking, and here, the good news was that we have
17 this in-and-out, which can allow us to get into
18 the rear yard where no one but a couple of
19 at-risk windows can actually see the parking.
20 And the intent is for that to be an in and an
21 out, that they would be closed. They would be
22 operated remotely. Each car would have it.

1 On the back side, we've had to put in a
2 double wide garage door, which would open up when
3 someone enters or leaves. The reason for the
4 double wide is to be able to navigate the tight
5 parking area in the back, which we are going to
6 offer to make even tighter to reduce the parking
7 court. I'll show you in a minute the plan.

8 So here are our two neighbors to the east
9 and to the west. To the east, the smaller
10 building is set back with that forecourt, the
11 brick-paved forecourt, and as you can see, there
12 are no at-risk windows here, happily. There's a
13 second floor bedroom window and a first floor bay
14 window here. There is a stone -- a brick wall
15 separating us with, unfortunately, not the
16 original cap on it. It's a crude concrete cap at
17 the moment.

18 And here's the grade at the back of the
19 carriage house, and we need to extend that grade
20 because the parking is going to extend back to
21 about this point here.

22 Can everybody see the pointer, I hope?

1 And so one of the discussions we'd like
2 to have, if we can ever meet with this neighbor
3 to our east, is the offer -- and we'll talk to
4 Steve Callcott as well -- about extending the
5 height of this wall or doing something
6 independent of the original wall on our side of
7 the property to stop the overview from this
8 extended surface, and then the terrace that
9 exists here will not pull out to about this
10 point.

11 There is a tree here that is severely
12 leaning against, aimed right at the neighbor's
13 windows, which we will remove. This tree in the
14 middle of the motor court will have to go.

15 So then we have our neighbor to the west,
16 which is a large three-and-a-half-story
17 townhouse, private residence. It has a rear
18 raised terrace overlooking our back yard. It has
19 a row of three at-risk windows on the lower
20 level, the main level, and apparently a rental
21 flat level that look right out onto the drive of
22 our motor court, and another three windows here,

1 this one is apparently in their living room.

2 There, you can see the existing brick wall.

3 And it was this neighbor that we finally
4 had conversations over the weekend and last
5 evening. Even though these are at-risk windows
6 -- and, oh, by the way, he has a roof terrace for
7 his tenant looking down onto our private yard as
8 well.

9 So this was the site plan that was
10 submitted, just a little color for clarity. You
11 can see the two boxes indicate the little
12 carriage house residence to our east and the
13 bigger townhouse to our west, and this was the
14 original parking that we had showed.

15 So you come in, you negotiate, you back
16 in, or you go into one of these two slots here,
17 so we have five across the back and two across
18 here. And we were proposing to relocate these
19 two walls up a couple of feet set back from the
20 front face of our carriage house. That exposes
21 the side face to just a 3-foot hairpin fence, and
22 we would offer to do one of two things there,

1 too.

2 We could either build an independent
3 fence, or we could build a brick fence to match
4 the one in the back, so that we do an L-shaped
5 fence there to completely conceal that car, which
6 would otherwise be visible through the hairpin
7 fence, but as I said, unfortunately, we haven't
8 been able to talk to this neighbor about these
9 two fence conditions that we'd like to work out
10 something with.

11 Unfortunately, the original drawings
12 mistakenly said asphalt. The intent all along
13 has been that this be brick pavers installed in a
14 pervious manner. I like the color of his
15 forecourt right here of the brick pavers, and if
16 we can get enough pervious out of that material,
17 we'd actually match it. It matches the brick
18 well.

19 You can see how far back the parking
20 court comes, and what we are prepared to do is
21 foreshorten that by 4 to 5 feet. We had a
22 generous negotiation of, but we'll tighten it up

1 to reduce the paving which will help and change
2 the paving.

3 We're showing the pear trees here, but
4 what we're proposing -- and I'm going to show you
5 another drawing in a minute -- is that we instead
6 of two, we show three and let them crown over as
7 much as possible these five parking spaces here.

8 So those two changes, well, the reduction
9 in the paving area, the change in the paving
10 material, and the increased tree canopy cover, as
11 well as this side fences, we are prepared to do.

12 In listening to the concerns of this
13 neighbor to the west, remembering that we weren't
14 able to talk to the one at the east yet, with his
15 at-risk windows looking right on our private back
16 yard, we prepared another site plan literally
17 last night after I was finally able to talk to
18 him.

19 MR. COLLINS: Before you go off that last
20 slide, could you -- just a few questions. Number
21 one, you've used the term "at-risk windows." Can
22 you define that or explain it?

1 MR. POWE: Yes. Under D.C. Zoning, if
2 you have a party wall condition, namely one of
3 the walls of your building is right on a property
4 line and the adjacent property is also entitled
5 to build up to that property line, if you put
6 windows into that location, the term "at risk"
7 means they are just that, that if we were to --
8 wanted to develop our property in the same way as
9 the property next door, we would be entitled to
10 block those windows since they are at risk.

11 They are more of a privilege than a
12 right, if you will.

13 MR. COLLINS: And you said under the
14 Zoning Regulations, but did you mean under the
15 Building Code?

16 MR. POWE: There are Building Code issues
17 with them, too.

18 MR. COLLINS: But in terms of -- oh, I
19 see, so Zoning and Building Code. All right.

20 MR. POWE: Zoning, it creates the problem
21 and then sort of solves it by calling it "at
22 risk." They create it by allowing you to put

1 windows in, but also allowing me as your neighbor
2 to build literally right up against it.

3 MR. COLLINS: And secondly, the
4 dimensions that are shown on that parking area
5 for the drive aisle, what's the current dimension
6 shown there?

7 MR. POWE: We showed a 25-foot aisle in
8 the 19-foot space, and we're proposing to reduce
9 that down to the code minimum, which is 20 feet
10 plus 19 feet plus a curb, so it will go from 55
11 feet plus a curb to 20 plus 19 plus the curb --
12 I'm sorry -- 45 down to 40.

13 MR. COLLINS: Thank you. Please proceed.

14 MR. POWE: So, based on the concerns,
15 what I need to first say is we need eight spaces.

16 It's interesting. I've been before the
17 Board with other chanceries, and usually, the
18 problem with these historic buildings is how do
19 you park. And I thought, "Oh, what a great site
20 here. We've got a garage door. We've got a
21 private yard," not knowing the at-risk window
22 situation.

1 So here is what I talked about, pulling
2 the paving back, making this brick pavers,
3 installing this side wall if they would like in
4 addition to relocating the front wall, raising
5 this portion of the wall where there could be
6 otherwise an overview.

7 I think we'd move the stair to the
8 center, so that the stair wouldn't attempt an
9 overview, too, and then putting in three trees
10 that will canopy over that portion of the
11 parking.

12 Then -- and it needs to be contingent on
13 this. So, if then we had made the decision to
14 only request one diplomatic parking space on our
15 street in the aisle, the one logical place that
16 we're entitled to on the front -- "entitled to"
17 is too strong a word for the attorneys, but we're
18 entitled to ask for -- we had decided since
19 Decatur was a residential street that even though
20 we have sufficient frontage between our curb cut
21 and our property line for one parking space that
22 could be, again, requested to be diplomatic, we

1 intended, since we can get the seven cars here
2 plus the one car there, the eight that we need,
3 we weren't going to ask for any diplomatic
4 parking on Decatur.

5 But if it would comfort the neighbor to
6 the west and if the neighborhood would think that
7 this is a reasonable trade-off to get rid of this
8 side yard parking space in favor of a diplomatic
9 designated parking space there, we could then
10 landscape this side yard, leave the original
11 historic wall there. His living room window kind
12 of straddles that wall here, and then he's got
13 his at-risk here.

14 And then if we did that, we could also
15 tighten the paving here. We had it the full
16 width where the property is 50-feet wide. We can
17 tighten it to 9 times 5 plus a curb, so it would
18 leave us enough of a planting strip here that we
19 could offer growing the tall vertical cedar,
20 which grow very quickly and very vertically, that
21 could filter the light and the view down to the
22 motor court if he would prefer to be looking at

1 greenery rather than the brick motor court.

2 We sent this last evening after some
3 technical -- even more technical difficulty.

4 So, to quickly recap here, we will do the
5 paving and pervious brick motor court. We will
6 reduce the depth of the drive aisle to reduce the
7 amount of paving. We will plant three trees
8 there. We will gladly put a screen wall here
9 with brick to match that, which makes the most
10 sense to me and hopefully to the neighbor instead
11 of his 3-foot hairpin, or we can do something
12 behind it if he wants to leave the hairpin.

13 And if we could get one of our seven cars
14 back here, located out here, then we will agree
15 to landscaping this, and only if we don't have to
16 get a car in here can I then reduce and create
17 this planting strip. If this car needs to remain
18 for our original submission, then I need to get
19 into that spot in, hence, we can't get that
20 planting strip.

21 So all I can say is we're a little bit
22 sorry and disappointed that we haven't been able

1 to -- we don't know why the meeting was canceled
2 last week, so we offered this via e-mail and
3 phone and have not heard back. I'm sure you're
4 about to hear.

5 So, in conclusion, we're going to request
6 a change of use from embassy to chancery. The
7 actual chancery is in the (D) overlay front half
8 of the split lot.

9 By the way, the property line falls back
10 behind the main building. We're going to do an
11 exterior rehab. The only visual change in the
12 front, we'll really be dropping that sill, and
13 we'll find an appropriate way to use the original
14 door.

15 We'll do the planting in the front. The
16 neighbors asked if we'd put a hose bib out there
17 because of the tree and the aisle, which we'll
18 happily do.

19 The carriage house needs that rear garage
20 door to drive through. We'll move and extend the
21 brick side walls to screen our parking in the
22 rear yard, the new brick-paved seven-car parking

1 court, and one diplomatic space on our street
2 being requested, and then the alternative if the
3 neighborhood wants to consider giving up a public
4 2-hour space for a diplomatic space, we could
5 take one car out and do a little bit of a
6 landscaping strip adjacent the west wall.

7 Thank you. Questions? Lights.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much. Yes.

10 Do Board members have any questions?

11 MR. MAY: Thanks.

12 Some of your further description answered
13 my questions about dimensions and such, but what
14 is the actual resulting grade change? How big is
15 your retaining wall going to be at the end of the
16 parking spaces before you get into the rest of
17 the back yard?

18 CHAIRPERSON MOLDENHAUER: You need to
19 actually be on the microphone. Thank you.

20 MR. POWE: I forgot I turned it off.

21 We have three terraces in the back yard.

22 The one that is effectively moving back about 20

1 feet is approximately five risers, so about 4
2 feet, and so really -- let me see if I can find a
3 good picture of that. So really the -- see, that
4 set of stairs, that whole bank just moves back
5 about 20 feet, because about half of that area
6 that's going to be the auto court is already at
7 the upper level, and then it banks down. And
8 we're just moving that bank towards the chancery
9 building by about 20 feet, so that's -- one, two,
10 three, four, five, six -- 7 times 6, it's about 4
11 feet.

12 Would it help to go to the site plan,
13 too? It doesn't show it on there.

14 MR. MAY: The total retaining wall,
15 you're saying would be about --

16 MR. POWE: Well, it isn't a retaining
17 wall. It will be --

18 MR. MAY: It will be a berm?

19 MR. POWE: A green bank.

20 MR. MAY: Okay. Your drawing shows
21 retaining wall.

22 MR. POWE: It does, you're right.

1 MR. MAY: So that's what I'm going from.

2 MR. POWE: Yes.

3 MR. MAY: It's also showing -- let's see.
4 One, two, three, four, five, six, seven, eight,
5 nine -- 10 steps, so 11 risers.

6 MR. POWE: Which is not accurate.

7 MR. MAY: So this is not accurate?

8 MR. POWE: It is redundant, yeah.

9 MR. MAY: I mean, it's helpful to have
10 drawings with --

11 MR. POWE: Yes.

12 MR. MAY: -- elevation marks, so we don't
13 have to ask questions like that.

14 MR. POWE: Yeah.

15 MR. MAY: I'm a little confused. The
16 property -- just looking at this plan, the
17 property at the very top which has that
18 forecourt, right, the next -- the neighboring
19 property, I thought in the photograph that it was
20 identified as an embassy property.

21 MR. POWE: No.

22 MR. MAY: Is it not? It's not, okay.

1 MR. POWE: Do you want to go back to that
2 exhibit?

3 MR. MAY: Yeah, with the photos.

4 MR. POWE: You've got it in front of you,
5 I believe.

6 MR. MAY: Whoops, you just passed it.
7 No. No, I'm not looking at that. I'm not
8 talking about that. I'm talking about the
9 photograph.

10 MR. POWE: Talking about that lot --

11 MR. MAY: Yes.

12 MR. POWE: -- is not shown as being -- I
13 don't know what the story is behind this little
14 piece in the back, but this is the lot you're
15 talking about, and the image of it is --

16 MR. MAY: Right. It's --

17 MR. POWE: -- is that. Right?

18 MR. MAY: Yeah. No, that. Stop.

19 MR. POWE: Yes.

20 MR. MAY: Philippines --

21 MR. POWE: That's a private residence.

22 MR. MAY: Philippines carriage house

1 paved forecourt, so it's not --

2 MR. POWE: That one --

3 MR. MAY: -- associated --

4 MR. POWE: -- is further west.

5 MR. MAY: Oh, that's further to the west?

6 MR. POWE: I just wanted to show you how

7 --

8 CHAIRPERSON MOLDENHAUER: Is it the one
9 on the left-hand side, though?

10 MR. POWE: The lower left.

11 MR. MAY: Oh, it's the one on the
12 left-hand -- got it. Okay. So it would be east
13 neighbor.

14 MR. POWE: The lower left is our
15 immediate eastern neighbor --

16 MR. MAY: Okay.

17 MR. POWE: -- and it is a private
18 residence now.

19 MR. MAY: Okay. So that's what I got.
20 That's what I got mixed up in my head. All
21 right, thanks.

22 MR. POWE: All right.

1 MR. MAY: What is a hairpin fence?

2 MR. POWE: It's a nickname that Historic
3 Preservation uses for -- it's the circular
4 wrought iron fence that comes up and then loops
5 over.

6 MR. MAY: So a hoop fence?

7 MR. POWE: A hoop fence.

8 MR. MAY: Okay.

9 MR. POWE: Also known as "hairpin."

10 MR. MAY: Yeah, I've never heard that
11 term. Interesting.

12 MR. POWE: No? It's what Steve Callcott
13 calls it, so I call it that.

14 MR. MAY: He's the expert.

15 Is the carriage house a contributing
16 structure in the Historic District?

17 MR. POWE: It is old enough to be, yes.

18 MR. MAY: It's old enough to be? Well, I
19 mean, old enough and is are two different -- I
20 mean --

21 MR. POWE: In a Historic District, any
22 building that falls within the area, period of

1 significance, is considered contributing to the
2 Historic District.

3 This property is not specifically
4 individually a landmarked --

5 MR. MAY: And that's not what I meant.
6 I'm asking if it's a contributing structure
7 within the district.

8 MR. POWE: Yes.

9 MR. MAY: I see a nod on the head from
10 Mr. McCarthy in the background. Can I take that
11 as testimony?

12 That's okay. I'll ask the Office of
13 Planning the question.

14 MR. COLLINS: We're assuming that it is,
15 Mr. May.

16 MR. POWE: Yes.

17 MR. MAY: Okay.

18 And finally, did you look at other
19 situations for the elevator? I mean, I
20 understand the benefits of being in the court
21 there and it's fairly well hidden, but the
22 building already kind of suffers from the dining

1 room addition being kind of an odd addition, not
2 really well fitted to the existing building. And
3 then you take that shaft, which is just a blank
4 brick wall with no windows, and you put it up
5 next to that very elegant little bay in the
6 court, and it just -- it's uncomfortably close,
7 and it's a featureless structure.

8 I mean, I don't know if there's any other
9 way to do it, but did you look at other ways?

10 MR. POWE: We looked at putting it in the
11 building. Generally, Historic supports us in
12 this.

13 To make it ADA-compliant, it's an
14 enormous shaft within the building, and it
15 disrupts a lot of the historic fabric,
16 particularly on the second floor, which is really
17 significant. So we looked inside. We looked
18 outside. I've had this discussion a number of
19 times before with Historic, and it's always ended
20 up outside.

21 Interestingly, just as an aside, you
22 comment about the two-story back addition. Given

1 that the mirror-image house has the same
2 condition, I'm not convinced that that wasn't
3 built at the same time. It doesn't look well
4 integrated.

5 MR. MAY: Yeah. Architecturally, it
6 seems like a complete misfit.

7 MR. POWE: It was like a strange
8 coincidence that both neighbors would separately,
9 you know, once this spec, two-building spec
10 development happened here, these two mirror-image
11 buildings, that suddenly they both would build an
12 identical rear two-story addition.

13 MR. MAY: Yeah.

14 MR. POWE: The reality is that you cannot
15 see that shaft from any public area, the brick
16 shaft, and so we're least uncomfortable with it
17 in the courtyard.

18 MR. MAY: Mm-hmm. But the short answer
19 is that you did look at putting it on the inside

20 --

21 MR. POWE: Yeah.

22 MR. MAY: -- and Historic Preservation,

1 Steve CallCott, agreed with you that it was not
2 --

3 MR. POWE: On the basis that it really
4 could not be seen.

5 MR. MAY: He didn't have any problem with
6 where it is. He didn't have any other
7 preferences?

8 MR. POWE: Correct.

9 MR. MAY: Okay.

10 MR. POWE: I shouldn't speak on his
11 behalf, but --

12 MR. MAY: That's okay.

13 MR. POWE: -- you have his report. We
14 met. We talked specifically about that before we
15 drew it, and there it is.

16 MR. MAY: Okay. All right, thanks.

17 CHAIRPERSON MOLDENHAUER: Any other
18 questions from Board members?

19 [No response.]

20 CHAIRPERSON MOLDENHAUER: Thank you. I
21 have no questions, so thank you.

22 MR. POWE: Thank you.

1 CHAIRPERSON MOLDENHAUER: Does that
2 conclude your witnesses?

3 MR. COLLINS: Thank you. That concludes
4 the witness testimony.

5 Because this is a rulemaking case, we
6 don't have cross-examination. I'm going to talk
7 about some of the comments that we've received
8 and are responsive to some of those comments.

9 We have met with the community. We've
10 corresponded with the community residents to
11 address the issues raised on a number of
12 occasions.

13 On May 31st, I met with ANC Commissioner
14 David Bender. Commissioner Lamar wasn't able to
15 attend that meeting, and that was a meeting held
16 in my office to describe the application, to
17 discuss the chancery applications generally, very
18 cordial presentation or cordial meeting.

19 We had an ANC presentation on June 20.

20 Then I received an e-mail on Friday, July
21 15th, from Ms. Kindy French from the Sheridan
22 Kalorama Historical Association. She copied

1 members of the Sheridan Kalorama Historical
2 Association and the SK -- the Sheridan Kalorama
3 Neighborhood Council and the ANC on that e-mail
4 asking for a meeting the following Monday or
5 Tuesday.

6 I responded that after checking that the
7 Ambassador was out of town through Tuesday of the
8 following week, and the architect was out of town
9 through Wednesday, and could we meet the
10 following -- that Thursday night, and, you know,
11 we'd be happy to meet and where would we meet,
12 what time, just give me the details.

13 I received a response the following
14 Tuesday from Ms. French, again, copying members
15 of the ANC, the neighborhood council and
16 historical association. It was that we should
17 meet instead on September. So we were going to
18 have a meeting, and then it was postponed.

19 I've spoken to Mr. Greenwald, the
20 neighbor to the west. He e-mailed me last
21 Thursday about 10:15 at night. I was going out
22 of town on Friday for the weekend to deal with

1 the family emergency and was able to get a number
2 from him and call him from the road on Friday and
3 then call the architect and based on the comments
4 from Mr. Greenwald and see if we could look at
5 some alternatives.

6 Mr. Powe developed those. We had a
7 meeting with the Ambassador yesterday to review
8 those and that's the basis upon which Mr. Powe
9 produced that revised sketch at the end of his
10 slide presentation to attempt to meet the issues
11 that were raised in that discussion. And those
12 were sent to Mr. Greenwald, unfortunately, this
13 morning, because we had some technical
14 difficulties last night with out respective
15 computers.

16 So we tried to be as responsive to issues
17 raised as we heard them. I understand there's
18 opposition here today on some of these issues.
19 Some of these opposition issues that we have
20 heard that are in the record, the loss of green
21 space and tree cover, we'll be taking out three
22 trees and planting three trees plus additional

1 landscaping.

2 We've heard about air and noise pollution
3 and noise and dust from the parking. This is
4 employee parking. It's only for seven vehicles,
5 as the Ambassador mentioned. The cars come in,
6 in the morning. They leave in the evening. The
7 extent of vehicles needed for the Ambassador
8 during the day, that's the vehicle hopefully that
9 will be in the diplomatic parking space on R
10 Street between the two driveway curb cuts.

11 These cars leave -- arrive in the
12 morning, leave in the evening. They do not go in
13 and out during the day. They will not -- these
14 seven vehicles will not create noise or dust or
15 any significant amount of air pollution or noise
16 pollution.

17 We've heard some concerns about lighting
18 of the parking area. The parking area, there's
19 nothing on the plan showing any floodlights. The
20 parking area will not be flood-lit. There will
21 be lighting for safety. It has not been
22 determined exactly what that will be yet, but

1 safety as necessary for the users of the parking
2 area, kind of like the light at your front door,
3 if you think about that. That's what we're
4 thinking about.

5 We've heard about congestion on the
6 street. We have seven cars coming in the morning
7 rush hour and leaving in the evening rush hour.
8 If you take that 1-hour period for seven cars,
9 that's one car on average ever 8-1/2 minutes,
10 might 8-1/2 minutes, but if you compress that to
11 even from an hour to 30 minutes, a 30-minute time
12 for arrival, that's one every 4-1/4 minutes on
13 average. It's not congestion on the street.

14 We've heard concerns about overflow
15 parking on the street. This will only be parking
16 on site for employees. There will be no overflow
17 parking on the street. However, if the parking
18 is denied, then there will be overflow parking on
19 the street, guaranteed. We're trying to
20 accommodate a concern for overflow parking on the
21 street by providing this parking on site.

22 We've heard about the alteration of the

1 character of the neighborhood. The garage doors
2 will only be open in the morning and the evening
3 to allow cars to enter and to exit. With the
4 garage doors closed, the parking will not be
5 visible from the neighborhood at all. There will
6 be nobody who will be able to see this parking
7 area, except to -- except for maybe the neighbor
8 to the west and, to a much lesser extent, the
9 neighbor to the east, and we've tried to address
10 those concerns in our presentation today.

11 We are using, as Mr. Powe pointed out,
12 brick pavers instead of what the plans show.
13 Unfortunately, they showed asphalt. Brick pavers
14 similar to what the neighbor to the east has
15 used. We are providing additional landscaping.

16 The cars will only be there 9 to 5 during
17 the weekday or 9:30 to 4:30, depending on what
18 the hours of the embassy are during the week.

19 This brick-paved area will look much like
20 the forecourt for the neighbor to the east. It
21 will look like a patio. It will look very
22 similar to maybe if there was a clay tennis court

1 that you could put in your property.

2 It's not going to be a hard, either
3 concrete or asphalt parking lot. It will be
4 something that will be pervious, and it will be
5 similar to what anyone else could do in their
6 property as a matter of right for a patio or
7 other hardscape.

8 The Sheridan Kalorama Historical
9 Association letter, which was echoed somewhat by
10 the Sheridan Kalorama Neighborhood Council, cited
11 the Comprehensive Plan and said we were violating
12 the Comprehensive Plan, and they cited Historic
13 Policy 2.5.4. And it was quoted as being
14 entitled "landscaped yards," and there were
15 selective quotes from that provision in the
16 letter from the historical association.

17 That, Madam Chair, is misleading, to be
18 charitable. Historic Policy 2.5.4 is entitled
19 actually "landscaped yards in public space."
20 This is not public space. This is private
21 property. That provision does not apply.

22 As far as we can tell so far, the focus

1 of the opposition is on the parking. These
2 properties have been in common ownership since
3 1941. If the lots were kept separate and the
4 rear yard, rear property was a residential
5 property, single-family residential property,
6 they could have -- they could pave the entire
7 back yard for parking as a matter of right. They
8 wouldn't need to come before this Board.

9 The chancery itself, as stated before,
10 will be in a (D) overlay. The accessory parking
11 will be in the R-3 zone. It won't be visible
12 from public space.

13 The parking will be in the rear yard,
14 which is encouraged by the Zoning Regulations.
15 It won't be in the front yard. It will be in the
16 rear yard. It will be screened. It will be not
17 visible from the vast majority of the
18 neighborhood.

19 The one neighbor who we have discussed
20 this with, we tried to address those concerns as
21 much as we can, and so that's our presentation.
22 I'd just like to remind you about the fact that

1 this is --

2 Oh, I do want to bring one more issue up,
3 and that is that Mr. Jackson in his report raised
4 these issues about the fact that this is --
5 although this is not a variance or special
6 exception case because the variance and special
7 exception criteria don't apply in a chancery
8 application, Mr. Jackson did highlight the fact
9 that we also have an issue with the lot occupancy
10 and the area of the court, and that a waiver
11 would be appropriate for that. And so we asked
12 for that waiver from those two provisions.

13 There is also a possible waiver Mr.
14 Jackson raised in our discussions about the fact
15 that we're having residential on the same lot as
16 a chancery. I pointed out to him, and he
17 reflected in his report, several other cases
18 approved by this Board where chanceries do have
19 on-site residential. In those cases, there was
20 no discussion about whether that was intended to
21 be a customarily incidental and accessory use,
22 the main use, but it is something that this Board

1 has approved on numerous occasions, and we ask
2 that you approve that here as well, since we are
3 combining them to a single record lot.

4 With that, that concludes our
5 presentation. Thank you very much. I'll be
6 happy to answer any questions.

7 CHAIRPERSON MOLDENHAUER: Thank you.

8 We'll hear testimony from the Secretary
9 of State, and then obviously, we'll have any
10 questions made later on.

11 MR. MAY: I was wondering if I could
12 follow up on a couple of points that have been
13 made.

14 CHAIRPERSON MOLDENHAUER: Sure.

15 MR. MAY: You mentioned the waiver of
16 other zoning restrictions, if you will. Did you
17 look at the issue of lot occupancy with regard to
18 any kind of berming and retaining wall that would
19 be necessary, at the very least at the sides?
20 Because that would constitute a structure.
21 Anything that's above 4 feet constitutes a
22 structure in the rear yard, so therefore

1 constitutes lot occupancy or at least that --
2 there's a potential issue there.

3 In the past, I mean, there's been a court
4 case on this having to do with a property that
5 bordered Rock Creek Park where they built a large
6 retaining wall structure, and it was deemed a
7 structure.

8 MR. COLLINS: Yeah. In the facts of that
9 case, it was the nature of that construction,
10 because it was actually within the dirt was
11 actually a woven kind of structure, if you will,
12 that was surrounded by dirt and held it up.

13 We did not count the terraced rear yard
14 --

15 MR. MAY: Right.

16 MR. COLLINS: -- as a lot occupancy
17 issue.

18 MR. MAY: Yeah. I mean, it does change
19 the matter a little bit if it's bermed. I think
20 as a result of that case, there's been some sort
21 of interpretation that if it can be
22 self-retaining, but if it's actually structured

1 soil, then it becomes a structure, even if it's
2 -- if there's a berm as opposed to a retaining
3 wall.

4 It's the sort of thing where I think that
5 the BZA and the Zoning Commission have to pay
6 attention to that question generally, so you
7 might want to actually look at that question. I
8 mean, obviously, it's not a big issue in this
9 case. It's just a question of if we're noting
10 areas of zoning relief that require some sort of
11 waiver, that should either be known -- you know,
12 it should be known whether in fact any kind of
13 relief is needed.

14 MR. COLLINS: Well, then I would ask that
15 if you deem that that waiver that's required,
16 then we would ask for that waiver.

17 MR. MAY: Yeah, okay. But I don't know
18 whether it's required or not, because I haven't
19 looked at whether -- I mean, we're not the -- we
20 don't decipher whether or not that relief is
21 necessary.

22 MR. COLLINS: Well, you certainly as --

1 generally, this Board can stand in the shoes of
2 the Zoning Administrator, so --

3 MR. MAY: Yeah.

4 MR. COLLINS: -- in that regard. So, if
5 you deem that it's necessary, then we --

6 MR. MAY: All right. Well, we can have
7 -- we can have the Office of Attorney General
8 look at that issue whether it qualifies.

9 MR. COLLINS: And if it does, we ask for
10 that waiver. Thank you.

11 MR. MAY: Okay. I just like to be
12 explicit about stuff like that.

13 I do have a couple more architectural
14 questions which go to the site plan.

15 Did you look at -- there are two other
16 questions that I'm wondering if you looked at
17 with regard to the parking. One is whether you
18 looked at the possibility of not altering the
19 carriage house but actually using one of the side
20 yards as an entrance to the parking and whether
21 that could work.

22 MR. POWE: We did discuss it. If you

1 will look at the left-hand side of the drawing,
2 you will see where the existing curb cut is.

3 MR. MAY: Mm-hmm.

4 MR. POWE: It happens to be where the
5 existing garage is, so we thought using an
6 existing curb cut was a good thing, for starters.

7 MR. MAY: Mm-hmm.

8 MR. POWE: Secondly, there's 9 feet
9 there, which is fine for a parking space. It is
10 a parking space width clear, but it's a little
11 tighter than we were comfortable with driving in
12 and driving out. We thought coming through the
13 garage would be a little better, but frankly, the
14 main driver was living with our existing curb
15 cuts rather than going through a whole DDOT issue
16 about --

17 MR. MAY: Okay.

18 MR. POWE: -- introducing two more curb
19 cuts.

20 MR. MAY: All right. Well, I wasn't
21 suggesting two more, but --

22 MR. POWE: Well, you got to get out, too.

1 MR. MAY: I was suggesting you might be
2 able to go in and out through the same one, but
3 if it's not wide enough, I think that sort of
4 addresses it.

5 MR. POWE: All right. That's true. We
6 thought about coming in one and out the other as
7 being easy circulation.

8 MR. MAY: And then the second thing that
9 strikes me about your proposed modified site
10 plan, with the line of trees there, yeah -- I
11 mean, I'm wondering whether the better way to get
12 tree cover over that parking area is to actually
13 have, you know -- to do something with the -- how
14 you draw the lines.

15 I mean, right now you had -- or in the
16 original plan, you had the stairway all the way
17 at the top leading to the access point. I assume
18 that under this plan, you probably move that.

19 MR. POWE: Up here, we're just going to
20 walk between the cars in order to reduce the
21 total paving.

22 MR. MAY: Right. Well, what I was going

1 to suggest is that you could actually incorporate
2 that sort of 5-foot strip, 5-by-19 strip within
3 the parking spaces, and so you get tree cover a
4 little bit deeper into the yard, rather than try
5 to line it up against the building that's
6 immediately to the west.

7 MR. POWE: I would be very pleased to do
8 that. You're suggesting that we -- it would
9 allow us to put a tree right here.

10 MR. MAY: Yeah, something like that.

11 MR. POWE: You know, 5 by 19.

12 MR. MAY: I'm just thinking of that as an
13 alternative, particularly if you're going to have
14 further discussions with the neighbor next door.

15 MR. POWE: This candidly was all about
16 filtering a view of our paved -- brick pavers
17 through at-risk windows.

18 MR. MAY: Okay. Well --

19 MR. POWE: And we have not heard any
20 response. I'm sure we're about to.

21 MR. MAY: Okay.

22 MR. POWE: You know, my personal view is

1 I'd rather have the day light than having those
2 evergreens right outside the window, in which
3 case that would give me that extra 5 feet to play
4 with for a tree, which would be a lovely
5 solution, and we could incorporate the steps into
6 that, too.

7 MR. MAY: Right. All right, thanks.

8 MR. POWE: Thank you.

9 CHAIRPERSON MOLDENHAUER: Just following
10 up on the question of relief for lot occupancy
11 and the retaining wall, we don't actually have
12 any specific diagrams.

13 I know, obviously, one of the comments is
14 that the plans are changing, maybe by this or
15 this new plan that's being shown right now and
16 the PowerPoint slides. We don't have that in our
17 record, nor do we have anything that actually
18 shows the elevation of the rear portion of the
19 lot and how high the retaining walls would be or
20 anything to that effect in regards to the
21 elevation of the rear lot, so I think that that
22 would also be helpful to just understand exactly

1 where retaining walls would be if there was not
2 going to be a retaining wall anymore now right in
3 front of the parking spaces, but rather a -- from
4 what I understand, just an elevated grade of
5 greenery.

6 So, again, it would be better if we could
7 actually have an elevation diagram of this rear
8 area.

9 MR. MAY: Could I just add on that point?

10 You know, I would -- even though we're
11 not -- we're talking about doing a berming
12 between the parking area and the rest of the yard
13 at the sides, then, you know, where you abut the
14 neighbor's property, you're most likely going to
15 have to have your own structural retaining wall
16 there if you're going to be parking cars there.
17 So you're not going to be leaning up against an
18 old brick wall to support your parking, right?
19 You're probably going to wind up having to put
20 concrete to support that.

21 MR. POWE: Yes. And there should be a
22 little curb there to protect the brick and to

1 protect the car.

2 MR. MAY: Right.

3 MR. POWE: And that curb would carry
4 across the south face --

5 MR. MAY: Yes.

6 MR. POWE: -- probably to pick up any
7 surplus runoff because we would --

8 MR. MAY: Right.

9 MR. POWE: -- eventually want to run it
10 --

11 MR. MAY: Yeah. And --

12 MR. POWE: -- north to south.

13 MR. MAY: Right. And not into the --

14 MR. POWE: To the curb there, but I think
15 that if we can, we would have the curb and then a
16 landscaped terrace. I think would be a greener
17 solution than a --

18 MR. MAY: Yeah.

19 MR. POWE: -- than a retaining wall.

20 MR. MAY: Right. And I'm not -- I think
21 you're right making it as green as possible, but
22 you've got to deal with the structure and water

1 needs and so on.

2 MR. POWE: Yes.

3 CHAIRPERSON MOLDENHAUER: I think
4 whatever it is, obviously there's -- to me, my
5 question is either there's a lot of flexibility
6 right now still in what's actually going to be
7 done, and we need to have final plans or a final
8 set of diagrams in regards to what exactly is
9 being presented before us, so it sounds like that
10 might be something that we need to supplement the
11 record with.

12 Any other questions of the Applicant's
13 witnesses?

14 [No response.]

15 CHAIRPERSON MOLDENHAUER: Seeing none, we
16 will now take testimony. Thank you.

17 MR. SEAGROVES: Good afternoon. Madam
18 Chairwoman and members of the Board, my name is
19 Clifton Seagroves, and I am the Acting Director
20 of the Office of Foreign Missions' Office of
21 Diplomatic Property, Taxes, Services, and
22 Benefits. I'm directly responsible for the real

1 estate matters of foreign diplomatic and consular
2 missions in Washington and throughout the
3 country. My office is located at the Harry S.
4 Truman Building at 2201 C Street, N.W.

5 I'm here today on behalf of the Secretary
6 of State in support of the application of the
7 Embassy of the Republic of Serbia concerning its
8 location of the proposed new chancery.

9 As you are each aware, the Foreign
10 Missions Act establishes six criteria under which
11 the Board of Zoning Adjustment must solely
12 consider when making any determination with
13 respect to the location of a chancery, three of
14 which are made by the Secretary of State.

15 As for the first of the three criteria
16 determined by the Secretary, it is the obligation
17 of the United States to facilitate the provision
18 of adequate and secure facilities for Foreign
19 Missions in the Nation's Capital.

20 Second, after consultation with relevant
21 Federal agencies authorized to perform protective
22 services, I have determined that there exists no

1 special security requirement relating to parking
2 in this case.

3 After similar consultation, I have also
4 determined that the subject site and area are
5 capable of being adequately protected.

6 Finally, with respect to the Federal
7 interest in this project, the Governments of the
8 Republic of Serbia and the City of Belgrade have
9 generously assisted with the zoning and land use
10 needs associated with the current construction of
11 a new U.S. embassy in Belgrade. Such cooperation
12 is essential for the successful -- for
13 successfully achieving the Federal Government's
14 mission for providing safe, secure, and
15 functional facilities for the conduct of U.S.
16 diplomacy and the promotion of U.S. interests in
17 Serbia.

18 Due to the fact that the Department as we
19 speak is in the midst of constructing a new
20 chancery in Belgrade, the Department believes it
21 is important for the Board to know that a
22 decision to delay consideration of this

1 application or to ultimately object to this
2 application could have a costly and significant
3 impact on the U.S. Government's reciprocal
4 interest in Serbia.

5 In conclusion, the Embassy of Serbia has
6 successfully met the requirements of three of the
7 six criteria under which this application must be
8 adjudicated.

9 Further, given that the Office of
10 Planning has concluded that the application
11 satisfies the remaining three criteria, in light
12 of the embassy's plan for addressing the concerns
13 raised by the property's immediate neighbors on
14 Decatur Street, the Department strongly believes
15 the Board should, at the conclusion of today's
16 hearing, vote to not disapprove the embassy's
17 application.

18 This concludes my presentation, and if
19 you have any questions, I'll be happy to answer
20 them.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much, Mr. Seagroves.

1 Any questions?

2 [No response.]

3 CHAIRPERSON MOLDENHAUER: Seeing none,
4 thank you very much for your testimony.

5 At this point in time, we'll turn to the
6 Office of Planning.

7 MR. JACKSON: Good morning, Madam Chair
8 and members of the Board. My name is Arthur
9 Jackson of the D.C. Office of Planning.

10 You have before you the Office of
11 Planning's report.

12 Essentially, our recommendation is that
13 the Board of Zoning Adjustment not disapprove the
14 special exception application before you for the
15 relief requested by the Embassy of the Republic
16 of Serbia, and we note a series of -- and we also
17 grant relief from a series of regulations that we
18 have listed in the report.

19 We note that the property -- there are
20 two properties involved, and that the initial
21 application was indicated as being all within an
22 R-3 and mixed-use Diplomatic overlay. However,

1 to be corrected by the Office of Zoning, that
2 that was not the case, and we did our analysis
3 based on that finding.

4 In any case, you've read reports, so you
5 can see that the Office of Planning felt that the
6 application was in compliance with the provisions
7 of 1002.1, 1002.2 -- with the -- all the
8 regulations under 1002. We noted at the time
9 that the Secretary of State had not submitted
10 their comments, but with the presentation today,
11 they have addressed those issues that are
12 outstanding.

13 We noted that there would be some impacts
14 on the rear yard of the property, and we'd ask
15 the applicant to consider some other options with
16 regard to how the property would be changed for
17 the parking requirements, the requirements that
18 the embassy had identified, and we think the
19 Applicant has made significant efforts in
20 addressing the issues that were raised by the
21 neighborhood and by the Department of
22 Transportation.

1 So, with that, we see no reason to change
2 the recommendation that we have presented in our
3 report, and with that, we will conclude our
4 summary. And we will be able to answer
5 questions.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much.

8 Are there any questions for the Office of
9 Planning by Board members?

10 MR. MAY: I'm curious about any kind of
11 analysis or determination on historic
12 preservation issues, and from your report, I
13 didn't see much. And I'm wondering if you have
14 any comment on that.

15 I don't think I have an actual separate
16 report from SHPO staff.

17 MR. JACKSON: Right. We had several
18 meetings where SHPO staff was present, and I
19 think during all those meetings, there were
20 ongoing discussions between the Applicant and
21 their office.

22 Before I drafted this report, I went and

1 asked them whether or not they had any issues
2 with the way the Applicant was addressing the
3 various issues.

4 The one issue that had been raised at our
5 joint meeting, the first joint meeting, was the
6 issue of handicap accessibility. They changed
7 their plan to make the front door, and that had
8 been worked out in that they went with the ramp
9 as opposed to lowing the step and ramping in.
10 But the response we received from Historic
11 Preservation staff was that all the proposals in
12 the current plans were consistent with their
13 standards, and there were no issues.

14 MR. MAY: Okay, thanks. Let me check my
15 notes here.

16 MR. JACKSON: Oh, I would want to make
17 one clarification in my report. I referenced the
18 -- in the report, there's a statement that there
19 are transit lines along R Street. That is
20 incorrect. The transit lines are along
21 Massachusetts, so that the site is one block away
22 from the available transit that runs up and down

1 Massachusetts to Dupont Circle, and there's also
2 some transit routes along Florida, which would be
3 one block to the east.

4 So one block to the south and one block
5 to the east are streets that handle regular
6 transit routes that run to the north and the --
7 north-south and east-west, so the site is
8 convenient to mass transit in the area. In the
9 report, I mentioned there was R street, and that
10 was an error.

11 MR. MAY: Okay. Back to the historic
12 preservation for a second. Did you explicitly
13 discuss the elevator shaft or the elevator
14 placement issue with SHPO staff?

15 MR. JACKSON: Yes. And I think the
16 visibility trumped the design change to building.
17 Since the rear of the building may not be
18 visible from the street, because the existing
19 carriage house was going to be retained and there
20 will be 6-foot walls along the facade, I think
21 SHPO's -- generally, their position is if you
22 can't see it from the public right-of-way, they

1 are much less concerned.

2 And of higher, of more importance to them
3 would be that the interior fabric of the building
4 not be disrupted by the addition, and since this
5 preserves the interior fabric and it's in a
6 courtyard, it's not that visible -- not visible
7 at all from R Street and not visible at all from
8 Decatur in fact, they were satisfied with that,
9 that change would not have any impact.

10 MR. MAY: Okay. And do you know whether
11 the carriage house is a contributing structure in
12 the Historic District?

13 MR. JACKSON: I think they're treating it
14 at such.

15 MR. MAY: Okay, thanks.

16 CHAIRPERSON MOLDENHAUER: Any other
17 questions from Board members?

18 I actually just have one. In your
19 report, you indicate that under Section 1002.6
20 that the Director of Planning finds that the
21 proposal is consistent with the plan, and that
22 does not negatively impact neighboring

1 properties.

2 When you came to that conclusion, did you
3 have the letters of concern from the neighboring
4 property owners? And if you didn't at the time,
5 based on those -- that information now in the
6 record, does that change your opinion at all?

7 MR. JACKSON: We were aware of the
8 recommendations by the Sheraton Kalorama Historic
9 Association and this neighborhood council, and
10 we'd note that those concerns were not about the
11 use but about the preservation of the rear yard.

12 We also noted that that was the basis of
13 our going to the Applicant and asking them to
14 make whatever changes they thought would be
15 appropriate to even going as far as reducing the
16 amount of parking that was -- that would be in
17 the rear yard.

18 The actual proposal is rather innovative
19 in that they were going to keep the historic
20 fabric along the street frontage and use that as
21 a passthrough, so you wouldn't actually see the
22 impacts from the outside. So we noted that,

1 first of all, that was an innovative solution,
2 and we also noted that if the property is
3 appropriate for the use, with the chancery use
4 being in the (D) overlay and the residential use
5 being in the residential area, the next question
6 would be parking. Either they could park it off
7 site in what appeared to be two streets that have
8 limited additional parking resources, or they
9 could park it on site.

10 So, given the trade-offs, we felt that if
11 you're going to have the use, you need to park
12 it, and this seemed to be the only option for
13 actually providing parking on site. And given
14 the fact that beyond that, that they're
15 consolidating the lot, so there will be accessory
16 on the same property, we felt -- we still felt
17 that our recommendation in our finding under 2000
18 -- 1002.6 was accurate. It was accurate.

19 CHAIRPERSON MOLDENHAUER: Thank you.

20 No other questions.

21 And at this point in time, is there
22 anybody in the audience from ANC-2D?

1 MR. LAMAR: Good afternoon, Madam Chair,
2 members of the Board. My name is Eric Lamar.
3 I'm the Advisory Neighborhood rep for ANC-2D, so
4 I'm here representing the ANC today.

5 I want to thank you, first of all, for
6 the opportunity to appear and make a couple of
7 comments.

8 The ANC's position today is of contingent
9 approval, and I had sent a letter to you, Madam
10 Chair, on 11 July, and I just want to briefly
11 restate our position for you and for the record.

12 CHAIRPERSON MOLDENHAUER: Just for the
13 record, we do have that letter, and that's our
14 Exhibit No. 27. Thank you.

15 MR. LAMAR: Thank you, ma'am.

16 ANC-2D urges the FM-BZA only approve the
17 application of the Embassy of the Republic of
18 Serbia, 18242, to renovate the property at 2221 R
19 Street, N.W., for chancery use if, number one, it
20 includes the stipulation that the current plans
21 to remove the green space in the rear of the
22 property replacing it with a paved parking lot is

1 removed from the proposal, and two, that there
2 will be no subsequent attempts to create a
3 parking lot.

4 In addition, Madam Chair, I also have
5 with me today 56 petition letters from residents
6 of Sheridan Kalorama supporting the ANC petition,
7 and I'd like to provide that to the Secretary at
8 the conclusion of my testimony.

9 Now, what I'd like to do is just make a
10 few comments, share with the Board about what our
11 overriding concern is, and that, of course, is
12 that we do everything we can to maintain the
13 character and the feel and the nature of a
14 residential community, and in fact, it's our very
15 strong view that creating essentially a
16 commercial parking lot in a residential
17 neighborhood is going to alter the nature, the
18 feel, the look of the neighborhood.

19 And one of the things that I wanted to do
20 today was to reference a prior order of the BZA,
21 and that is Order No. 16519, which had to do with
22 the Embassy of Benin, which, of course, is

1 currently located in Kalorama Road. And in that
2 FM-BZA order on page 15, in the order from the
3 Board, you said that it would be important to
4 retain and maintain the residential features and
5 appearance of the premises in a manner consistent
6 with the residential character of the
7 neighborhood.

8 And of course, it is our position that
9 creating effectively a commercial parking lot for
10 the proposed chancery would not be in keeping
11 with that prior order. It certainly would not be
12 in a manner consistent with the residential
13 character of the neighborhood.

14 Now, of course, we also have a concern
15 that if this occurs at 2221 R Street and we do
16 have a parking lot there, we believe that we're
17 going to have other chanceries coming forth and
18 requesting the same sort of allowance.

19 And indeed, after the Benin order, the
20 Ambassador of Benin did approach the community
21 and request a parking lot at the Kalorama
22 chancery, and we feel it was because of the

1 Board's order that we were able to sit down with
2 the Ambassador and state our negative position
3 about creating a parking lot there. And indeed,
4 they never went forth with that plan.

5 Let me talk about -- very quickly about
6 parking options at 2221 R Street. I heard an
7 assumption or a set of assumptions today that
8 this was the only way to effectively deal with
9 the parking, and I want to emphasize to you that
10 it's our position that the current layout offers
11 as many as five spaces as it currently is. Of
12 course, if you simply retained the garage as it
13 exists, that's at least two spaces. The driveway
14 in front of the building is at least one and
15 possibly two spaces. The drawings that we saw
16 request a space in front. That's an additional
17 space, and the ANC is also amenable to adding a
18 space on Decatur Street. So we are already
19 talking about an allowable five or six spaces
20 simply using the property as it currently exists.

21 I also want to mention that we saw a
22 slide from the architect today which talked about

1 -- which was focused on Decatur Street and
2 mentioned Egypt and Vietnam and the Philippines,
3 and it discussed those almost in a sense that
4 they would be comparables. And we don't feel
5 that they're comparables because our key position
6 is that we don't want to have a parking lot in a
7 back yard. We don't want to lose that green
8 space, and none of those three, Egypt,
9 Philippines, or Vietnam, are comparable in the
10 sense that they're turning a back yard, a green
11 space into a parking lot.

12 I also wanted to mention the architect's
13 inference that the ANC had attempted to set up a
14 meeting to discuss this issue. I listened to
15 that. I'm puzzled about it, because our public
16 position at our June meeting was that we in fact
17 approve the chancery contingent upon not having a
18 parking lot in the back yard, so that has been
19 our public position. And in fact, there would be
20 no reason for us to sit down and talk about a
21 parking lot, because our public position is one
22 that we don't think it's necessary or useful for

1 the community.

2 So those are my comments, and again, I
3 think I would simply restate that the ANC
4 position is one of contingent approval. We hope
5 that the Board understands that we believe that
6 it's our collective responsibility to try to make
7 changes that are going to retain the residential
8 feel of Sheraton Kalorama, and we do not believe
9 that adding this parking lot will do that, nor do
10 we believe based on the current configuration
11 that it's even necessary, especially because of
12 the petitioner's own comments about public
13 transportation.

14 And I'd like to just close with that, if
15 I may. This is from their compliance document:
16 "The property is adequately served by public
17 transportation, which reduces the need for
18 off-street parking on the property. The Dupont
19 Circle Metrorail entrance at 20th and Q Streets
20 is located within four blocks of the site
21 providing ready access for both embassy employees
22 and visitors. This site has a walk score of 92

1 out of 120 and a transit score of 85, with
2 Metrorail lines within .1 miles."

3 Thank you, Madam Chair. I'll be happy to
4 answer any questions.

5 CHAIRPERSON MOLDENHAUER: Thank you,
6 Commissioner Lamar.

7 Are there any questions from the Board?

8 [No response.]

9 CHAIRPERSON MOLDENHAUER: Seeing none, I
10 have no questions. Thank you very much for
11 coming down.

12 MR. LAMAR: Thank you so much.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 Now, are there any individuals from the
15 audience in support?

16 [No response.]

17 CHAIRPERSON MOLDENHAUER: Seeing no
18 individuals in the audience in support of the
19 application, are there any persons in the
20 audience in opposition to the application?

21 Please come forward.

22 [Pause.]

1 CHAIRPERSON MOLDENHAUER: Can you please
2 introduce yourself?

3 MS. McCARTHY: Good afternoon, Madam
4 Chair. My name is Ellen McCarthy.

5 I had submitted a request for additional
6 time, and Mr. Nero had indicated that that would
7 be conveyed to the Board, but although he copied
8 Mr. Moy on the e-mail response back to us, it
9 doesn't seem like that was transmitted to you.
10 But I would appreciate extra time inasmuch as I
11 am speaking for both of the parties in either
12 side of the property and the Sheraton Kalorama
13 Neighborhood Council.

14 CHAIRPERSON MOLDENHAUER: It was
15 generally provided to me, so I wasn't sure
16 exactly how much time you'd be looking for since
17 I didn't have anything specifically in writing
18 for you. What are you looking for in regards to
19 timing?

20 MS. McCARTHY: Twenty minutes.

21 CHAIRPERSON MOLDENHAUER: That's
22 significantly more than 6 minutes, which would

1 have been the 2 times 3.

2 MS. McCARTHY: Well, plus the 5 minutes
3 for the Sheraton Kalorama Neighborhood Council.

4 CHAIRPERSON MOLDENHAUER: So I don't
5 think 20 minutes -- how about we try 15? That's
6 3:15, so 3:30. We don't have to put any time on
7 the clock, but I think that should be enough, I
8 hope.

9 MS. McCARTHY: All right, thank you.

10 Good afternoon, Madam Chair and members
11 of the Board.

12 In the interest of time, let me just skip
13 the procedural issues, but they are noted before
14 you in my testimony, and I would appreciate your
15 considering them.

16 So let me skip to the second page of the
17 testimony and deal with the fact that the
18 proposed project is not consistent with the
19 municipal interest.

20 First of all, because the conversion of
21 the chancery into -- from a residential use to an
22 effective commercial use is inappropriate, you

1 have heard this argument numerous times from the
2 Sheraton Kalorama Neighborhood Council and
3 others. There has been expressed a willingness
4 to drop that objection if the Applicant would
5 drop the very inappropriate proposal for
6 treatment of the carriage house.

7 So let me get into the details with
8 respect to the carriage house, because that is
9 the bulk of my testimony today.

10 The conversion of the carriage house at
11 2222 Decatur Place into a parking lot is
12 completely inappropriate, inconsistent with the
13 municipal interest as it is defined in the
14 Comprehensive Plan and the Zone Plan.

15 First, I should note that the character
16 of the houses on this section of Decatur Place is
17 totally different from R Street. I believe
18 that's probably why Mr. Collins was introducing
19 the Uganda case, and as he indicated, the
20 determination is up to the Board on a
21 case-by-case basis.

22 But I would argue if you look at the

1 first page of the graphic and visual submission
2 that I gave you that the Zoning Map makes clear
3 that this little oasis is substantially
4 different, and not only is there no Diplomatic
5 overlay on it, as compared to virtually all of
6 the squares around there, but it is also facing a
7 very steep slope across the street, so it's just
8 the front yards face onto a green slope, and
9 there is within the square, the zone square as
10 indicated, it's virtually completely residential
11 in nature, private residential.

12 I think that is further amplified by the
13 second picture, which shows you not only the
14 front of the so-called "carriage house," but also
15 from Google a picture of the neighbors on the
16 east side of the house who are out in the front
17 yard enjoying the peace and quiet of their --
18 what the architect refers to a their "forecourt,"
19 but which otherwise could be considered their
20 front yard under the shade of their tree.

21 Decatur Place itself in addition to the
22 block being very low density and residential in

1 feel, Decatur Place is quite narrow. Although
2 the Applicant has indicated that it is in the
3 process of applying for a subdivision to make
4 Lots 4 and 29 into 1 lot of record, the fact that
5 they are two separate lots makes it even more
6 outrageous what is being proposed here.

7 In other words, the Board would never
8 approve if the Applicant had come to them with an
9 R-3 residential lot abutting a commercial use and
10 asked for that commercial lot to be turned into
11 -- the back yard of that residential lot to be
12 turned into a commercial parking lot within full
13 view of two single-family residential buildings
14 that are virtually right on the property line.

15 The Applicant is trying to make this
16 palatable to the Board by combining lot, which
17 then results in two primary structures on a
18 single lot of record without any request for
19 relief from the prohibition in the Zoning Regs
20 against more than one principal structure on a
21 residential lot.

22 So let's be clear about the extent of

1 what's being proposed here, because you certainly
2 couldn't get it from the plans that are before
3 you.

4 They are demolishing the back wall of the
5 house with its ornate brick arch and other
6 ornamentation to put in modern, very large
7 automatic garage doors as an entry to a parking
8 lot, destroying a charming fountain and two
9 series of concrete steps that descend the
10 considerable slope of the rear yard, trekking in
11 a huge amount of fill, I would estimate 6 to 10
12 feet of fill to regrade the sloping back yard for
13 a distance, as the architect indicated earlier,
14 of 20 feet, destruction of at least one mature
15 tree, one small tree, and other green space to
16 accommodate the fill and paving material and
17 create a separate residence for chancery staff
18 above the enclosed drivethrough.

19 These changes create an untenable adverse
20 impact on the neighboring properties. Both of
21 them are very close to the property line, as is
22 evident from the photos. Both houses look

1 direction into the back yard of 2222.

2 Despite the fact that you have been
3 assured by the architect that there are no
4 windows at risk on the east side of the property,
5 if you look at the photograph in the package I
6 gave you, this is the view out the bay window on
7 the first floor of that house, and it clearly is
8 at risk in terms of privacy and views into the
9 back yard of the house next to it.

10 The next picture shows you very clearly
11 the extent of the windows that are at risk on the
12 east side, and remember, "at risk" means if you
13 were to build a residential structure next to it,
14 you would have to provide enough relief back for
15 privacy and light and air. But in this case, "at
16 risk" doesn't mean that you're allowed to change
17 a use of a residential back yard into a
18 commercial parking lot and then subject the next
19 door neighbor into that as their view.

20 You also see in the photo following that
21 one the extent of the decorative brickwork and
22 ornamentation on the back of the house that will

1 be demolished to put in the very large garage
2 door, and you also see the view from the deck on
3 the property to the west showing, again, how
4 prominent the green space and views of the rear
5 yard are to the property owner to the west.

6 Even the Office of Planning asked the
7 Applicant to address other options, and while it
8 did not conclude that you should reject the
9 application, it did indicate concern over the
10 impact of the proposed parking lot on the
11 neighboring plans.

12 The number of spaces proposed is
13 completely inconsistent with the amount of
14 parking required for residential and chancery
15 uses and will look and feel like a commercial
16 parking facility. In the morning and evening,
17 neighbors will be treated to the noise of car
18 doors slamming, loud conversations among
19 coworkers, music and ads from car radios, car
20 alarms accidentally going off, the opening and
21 closing of overhead garage doors.

22 In the evening and late winter

1 afternoons, they will be disturbed by lights from
2 car headlights turning around to exist and
3 lighting from the lot itself to assist chancery
4 employees to climb the numerous steps and walk to
5 their cars. And I would stress it's a long
6 distance, and it's a steep slope, so the lighting
7 cannot be something just minimal in order to keep
8 the employees from the chancery who are trying to
9 find their way up to that parking lot from
10 stumbling. So we are talking about adverse
11 impacts from the amount of light provided.

12 But not only is the loss of green space
13 view and the shade of a large tree a loss for the
14 neighbors, but the destruction of the one large
15 tree and several smaller trees violates the
16 purpose and intent of the D.C. Urban Forest
17 Protection Act and the goals established by D.C.
18 Water to reduce impervious surface and attendant
19 runoff. Even if it is paved in brick, we are
20 still talking about a substantially pervious
21 paving.

22 And there's no justification provided for

1 the large number of parking spaces. The total
2 number of spaces that can be squeezed in there
3 will be at least nine, because of the two spaces
4 in the garage and the seven that are proposed in
5 the back yard, with another two spaces possible
6 in the driveways in front of the garage doors,
7 other vehicle storage possible in the driveway of
8 the R Street building. There are only a total,
9 according to what we heard this morning or
10 earlier, of 17 staff members. Why are almost
11 half of them driving and parking cars on site
12 when, as the application states, the location is
13 consistent with the requirement that it be
14 proximate to transit and is a short walk from the
15 Dupont Circle Metro?

16 As I indicated, the rear yard has a
17 rather sizeable slope, which is currently
18 ascended by two sets of stairs with a terrace
19 graced by an ornamental fountain. Not only will
20 the dumping of this fill dirt be disruptive and
21 the hundreds of cubic yards of fill that will be
22 necessary to level this, but the noise and dust

1 of numerous dumptrucks full of dirt unloading
2 them on the site and returning for more and the
3 fill plus the paving could possibly create
4 problems for stormwater runoff and drainage.

5 One of the worst aspects of this is
6 basically its irreversibility. One of the goals
7 has always been to avoid dramatic changes to
8 residential structures when they are used for
9 chancery, so that they might be reversed at some
10 point in the future. As the Board knows, there
11 are a number of carriage houses in Capitol Hill,
12 Georgetown, and Dupont Circle that have proven
13 very attractive as residential structures, but
14 should the Serbians move out of the complex in
15 the future, it seems unlikely that any private
16 citizen would be interested in sending in the
17 heavy equipment necessary to rip out the paving
18 and regrade the property as it was.

19 Further, the use of Decatur Street to
20 serve as the entry point for chancery traffic and
21 parking is very inappropriate. It's one way.
22 It's narrow. It's a cut through for traffic

1 traveling south on Massachusetts Avenue to reach
2 Florida Avenue, and we note that unlike most of
3 the applications that are reviewed before the
4 FM-BZA, there was no traffic study performed in
5 this case.

6 The DDOT report did not address any of
7 the parking and traffic issues with respect to
8 222 Decatur, so the Board has no way of knowing
9 whether or not there would be an adverse impact
10 with respect to traffic and parking.

11 The proposed changes to 222 Decatur
12 street are inconsistent with the Comp Plan. I
13 have cited a number of those elements which
14 specifically address chanceries and specifically
15 address the importance of open space and historic
16 resources, which I won't go into in the interest
17 of time.

18 But it is important to note in addition
19 to being inconsistent with the Comp Plan, the
20 proposed changes are inconsistent with the Zone
21 Plan, making it hard for you to just grant the
22 waivers that Mr. Collins calls for, because they

1 wouldn't meet the basic criteria for special
2 exceptions that are in the Zone Plan. And in the
3 appendix of my testimony, you see an extensive
4 analysis of the Zoning Regulations with regard to
5 the parking.

6 Which gets to the Applicant's failure to
7 address the relief required for the R-3 portion
8 of this property. So I want to note first that
9 the term "accessory" is used in two different
10 ways in the Zoning Regs.

11 First, in terms of uses, "accessory"
12 means subordinate and customarily incidental to
13 the primary use, but for parking, the term
14 "accessory" means anything that's not required
15 parking under the schedule of requirements. This
16 use has no parking requirement due to its
17 historic nature, and the Office of Planning has
18 just agreed that the parking that is on this
19 carriage house site is accessory.

20 Even if this were constructed new, the
21 chancery use would require no more than five
22 spaces, but because of historic preservation, at

1 best it requires the two spaces that are already
2 in the garage. The Applicant, however, has
3 proposed to crowd the lot with a minimum of
4 seven spaces, possibly nine, and additional ones
5 as I discussed earlier.

6 The fact that the parking provided is
7 accessory and not required creates another
8 problem for this application, because it appears
9 the Applicant hasn't requested all the necessary
10 relief. Either the lots are separate, in which
11 case the proposed parking lot site is R-3 and the
12 Applicant should have requested special exception
13 relief under Section 214 of the regs, or the lots
14 are actually combined, in which case the
15 Applicant should have sought a variance from
16 Section 2516, because there are now more than one
17 principal structure on a single lot.

18 It's clear that the parking lot is not
19 required. Such a special exception would be
20 inappropriate given the low density residential
21 nature of the carriage house and the
22 neighborhood.

1 Last, I would note that the conversion of
2 the house at 222 Decatur Place is contrary to the
3 Historic Preservation provisions, and you have
4 been able to see that from the photos of the rear
5 of the building. There is no special merit to
6 justify the partial demolition of a contributing
7 structure, particularly in light of the failure
8 to justify such a high percentage of parking
9 spaces pre employee.

10 Last, I would like to particularly note
11 the important precedent that was established with
12 regard to the Benin chancery, which has been
13 mentioned previously. Not only is this
14 condition, which is reproduced in my testimony,
15 not only is that condition there in 16519 for
16 Benin, but a very similar condition exists in
17 16739 for Latvia and 15501 for Belize.

18 The Board must insert a similar condition
19 if it determines not to disapprove this
20 application to provide minimal protection for the
21 residential character of the Sheraton Kalorama
22 neighborhood.

1 And I would note that all of this is
2 really inappropriate and unnecessary because the
3 State Department has just obtained 44 acres at
4 the Walter Reed Army Medical Center on which it
5 plans to build an entire chancery center like the
6 one on Van Ness, specifically so that these kinds
7 of inconsistent and inappropriate uses can be
8 precluded from low density historic residential
9 neighborhoods like Sheraton Kalorama.

10 So, in conclusion, the proposed
11 conversion of the ambassador's residence to a
12 chancery should be disapproved by FM-BZA because
13 it's a conversion of a residential use to a
14 commercial use, which threatens to overwhelm the
15 residential character of Sheraton Kalorama.

16 Secondly, the proposed partial demolition
17 of 222 Decatur Place and the creation of a
18 parking lot in the back yard should be
19 disapproved by the FM-BZA, A, because the partial
20 demolition of a contributing building in the
21 Historic District is contrary to the Historic
22 Preservation provisions of the Foreign Missions

1 Act in section -- Chapter 10 of the Zoning Regs;
2 two, because the creation of the a parking lot in
3 the back yard is inimical to the municipal
4 interest because of the destruction of a large
5 tree and other green space, is inconsistent with
6 D.C. law and the Comp Plan; two, because the
7 condition of hundreds of cubic yards of fill is
8 environmentally questionable and could cause
9 localized flooding or settlement; three, because
10 the proposed parking lot will have a severely
11 adverse impact on neighboring properties,
12 destroying the, quote, "family environment,"
13 unquote, that is required by the Zoning Regs for
14 the R-3 neighborhood, eliminating the views from
15 the windows that border directly on the back
16 yards of 222 Decatur.

17 The lights on the parking lot and
18 headlights of the cars will destroy the peaceful
19 enjoyment of the staff's homes. The noise from
20 the cars and overhead garage doors will disturb
21 the neighbors.

22 The Applicant hasn't requested the

1 necessary relief granting permission to pave over
2 the back yard and make it a parking lot, will
3 destroy the precedence set in the Benin case and
4 others which follow to preserve existing
5 landscape and vegetation.

6 No traffic study has been done to
7 determine whether the proposed project will have
8 an adverse impact on the road system, and neither
9 the OP nor the DDOT report assessed the impact of
10 the proposed parking lot.

11 If the Board does not disapprove this
12 application, it must impose conditions similar to
13 those established in the Benin case to protect
14 the neighbors from the adverse impact of the
15 parking lot, limit the parking on the site to two
16 spaces contained in the existing garage.

17 Thank you very much.

18 CHAIRPERSON MOLDENHAUER: Thank you.

19 Any questions from Board members?

20 MR. MAY: Okay. Thanks for the
21 photographs. Those in particular are helpful to
22 understand the site.

1 First question I have is on the -- you
2 allege that there may -- they may wind up parking
3 additional cars in front of the carriage house on
4 Decatur Place, in that small portion of front
5 yard?

6 MS. McCARTHY: Right.

7 MR. MAY: Okay. And that's --

8 MS. McCARTHY: The driveway. The
9 driveways that --

10 MR. MAY: -- the driveways.

11 And that front yard, that's public space,
12 right?

13 MS. McCARTHY: Yes. I'm not saying that
14 it would be done legally. I'm saying that --

15 MR. MAY: I know. Believe me, I know
16 that issue.

17 How deep is that front yard space to the
18 sidewalk?

19 ATTENDEE: [Speaking off mic.]

20 MR. MAY: Excuse me. Let Ms. McCarthy --

21 MS. McCARTHY: I --

22 MR. MAY: It's not shown in the drawings,

1 or at least I couldn't find it very easily.

2 MS. McCARTHY: Yeah. I was going to say
3 as with many things in the drawings, topography
4 and other things, it was not --

5 MR. MAY: Well, it's less an issue of the
6 -- this is not opportunity to criticize the
7 drawings. I'm just trying to find information,
8 okay?

9 And it's not clear, and I didn't now if
10 it actually -- there really was going to be an
11 opportunity to do that, because when it's simply
12 not deep enough to park a car, then people are
13 really not going to do it, so --

14 MS. McCARTHY: Right. It appeared when I
15 was there and eyeballed it that it was large
16 enough for at least a compact or, you know,
17 smaller mid-sized car, but I did not have a tape
18 measure with me.

19 MR. MAY: Okay. Presumably, the
20 Applicant can provide actual dimensions on that
21 with whatever future drawings are provided.

22 These -- let's start with this photograph

1 here looking out of a bay window. So this is the
2 property adjacent and to the east?

3 MS. McCARTHY: Yes.

4 MR. MAY: Okay. And we're looking out
5 toward the -- I guess to the south, over the
6 property, and you're pointing out the low wall
7 there. And you say that immediately next to that
8 would be the parking lot, right?

9 MS. McCARTHY: Right.

10 MR. MAY: Okay. So, now --

11 MS. McCARTHY: All of that green space.

12 MR. MAY: Okay. So that seems to be
13 contrary to the -- to what was submitted in the
14 plans where the parking lot would actually end
15 before you even got to the end of the adjacent
16 building. It may not be in the plans that we
17 received, but it was certainly in a slide that we
18 saw where the parking lot didn't actually begin
19 -- I'm sorry -- the parking lot ended before the
20 building that this person is standing is in
21 ended. So what we're looking at is where the
22 intermediate terrace is that would not be paved.

1 MS. McCARTHY: Yes. And it's very hard
2 to tell from the drawings exactly how far back
3 that extends, so it wasn't -- standing in the
4 neighbor to the east's drawing room, it was very
5 hard to tell --

6 MR. MAY: Right.

7 MS. McCARTHY: -- with the plans there
8 how far back we were talking about.

9 MR. MAY: Okay. All right. Well, I seem
10 to recall from an earlier drawing from the
11 Applicant that it would have ended, so we
12 wouldn't actually be seeing the parking lot out
13 this view.

14 MS. McCARTHY: Well, you know, that's --
15 that's -- that -- the parking lot goes back,
16 according to the drawing, at least 60 feet from
17 the front of the building line, so this is not
18 that deep a house as you can see from the Zoning
19 Map. The house to the east is rather shallow.
20 Although it's set back fairly far, it doesn't
21 extend very far in terms of depth.

22 MR. MAY: Mm-hmm. If you look at it as a

1 proportion of the total lot as indicated on the
2 drawings here, you may be right. Well,
3 hopefully, the Applicant can clarify whether any
4 of that would be visible from -- as we see here.

5 On this one from the neighbor to the
6 west, it does seem pretty apparent that if you
7 are standing on that little deck there that if
8 you -- and you look toward the northeast, you
9 will be looking out over the parking lot. Even
10 if they put up a high wall, you're going to wind
11 up looking at it --

12 MS. McCARTHY: Right.

13 MR. MAY: -- because you're pretty high
14 up at that point relative to the grade.

15 MS. McCARTHY: Yes.

16 MR. MAY: And even if they raised the
17 grade 6 feet and put an 8-foot fence on it, it
18 looks like you're at least that high up. You'll
19 be looking over it.

20 MS. McCARTHY: Right. And it was also
21 thinking that, you know -- it's very hard to
22 tell. It's sort of a moving target, but the

1 retaining wall as it was in the plan or the berm
2 or retaining wall as is now being discussed, it's
3 still, you know, a substantial distance down, you
4 know, maybe 4 feet, 6 feet, whatever. So a tree,
5 the notion that one would plant a tree down there
6 and somehow the canopy would grow up and be tall
7 enough to provide blockage of the view and shade
8 comparable to what's there now seemed very hard
9 to imagine. That's got to be one heck of a
10 fast-growing and very wide-spreading tree.

11 MR. MAY: Right.

12 The -- I thought the discussion of the
13 separate lights, combined lots discussion kind of
14 -- that was interesting. I had questions myself
15 about the -- about what could happen on this lot
16 if it were -- if the Decatur Place lot were
17 simply treated as a separate property, and its
18 lot occupancy is clearly below -- its current lot
19 occupancy is clearly below the -- what would be
20 allowed there. I mean, it looks like it's in the
21 20 to 30 percent versus the 40 percent that would
22 be allowed.

1 So it seems to me that that property
2 actually could handle a fairly significant
3 addition to the existing carriage house, could it
4 not?

5 MS. McCARTHY: If -- yes. Under the
6 Zoning Regulations, yes.

7 MR. MAY: Yeah.

8 MS. McCARTHY: And that was why the
9 Ugandan case was interesting, because Mr. Malotek
10 [ph] after 25 years of serving as the State
11 Department's attorney for Foreign Missions cases,
12 then made very cogent arguments about why
13 properties such as this one, which are in R-3 but
14 not in a Diplomatic overlay, should not be
15 considered to be appropriate for the expansion of
16 chancery spaces. And I would definitely
17 recommend to the Board that it take a look at not
18 just the order but also the transcript pages 44
19 through 99 where that argument was made and
20 discussed.

21 MR. MAY: You didn't provide that with
22 your package?

1 MS. McCARTHY: I thought it was like
2 carrying coals to New Castle to bring that to
3 you, but I could certainly --

4 MR. MAY: Well, you know how our results
5 about the record were, right?

6 MS. McCARTHY: I would be very happy to
7 supply that to the Board.

8 MR. MAY: Okay, so you can find that.
9 All right.

10 That's it for my questions.

11 CHAIRPERSON MOLDENHAUER: Any other
12 questions for this witness?

13 [No response.]

14 CHAIRPERSON MOLDENHAUER: Seeing none,
15 then are there any other individuals in the
16 audience in opposition to this case?

17 [No response.]

18 CHAIRPERSON MOLDENHAUER: Seeing none,
19 then are there any final questions from the Board
20 of the Applicant?

21 I have a few for the Applicant. Did the
22 Applicant consider putting two parking spaces

1 inside the garage and doing the same thing as a
2 double-stacked parking garage where you leave
3 your keys in the car and then obviously, you
4 know, somebody has to move a car in order to gain
5 access? And that way, that would obviously
6 reduce the need for the two other parking spaces
7 and reduce the number of parking places out in
8 the rear of the property.

9 MR. COLLINS: The garage access that's on
10 the current plans are designed for an in lane and
11 an out lane.

12 If we had two cars in the garage, they
13 would then need to back out onto Decatur Street.

14 We know that DDOT favors head-in/head-out
15 parking and head-in/head-out loading for that
16 matter, but that's not an issue here. So the
17 short answer is we did not. That's not part of
18 our plan, no.

19 CHAIRPERSON MOLDENHAUER: I guess just
20 based on some of the opposition we heard today in
21 regards to some of the staff potentially using --
22 or not needing as many spaces, is there any with

1 this new location, any aspect of the staff being
2 able to use public transportation and reducing
3 the total number of parking that's needed by the
4 embassy or for the chancery, rather?

5 MR. COLLINS: The embassy currently has
6 the same number of diplomats and staff. They
7 have the same number of vehicles that they use.
8 The walk score to the existing site is about the
9 same, a little bit -- it's a little bit better,
10 the new site than the existing site. It's just
11 their modes of transportation to get to work.
12 There are seven parking spaces.

13 The driver lives on site. The other half
14 of the employees take public transportation.

15 CHAIRPERSON MOLDENHAUER: Any other
16 questions from Board members?

17 MR. MAY: Yeah. You heard the suggestion
18 from the ANC that there could be five spaces on
19 site without building this parking lot, two in
20 the garage, two on the street, and then I guess
21 the next one was in the circular drive. That's
22 how I got to five. Maybe I got that calculation

1 a little bit different.

2 MR. LAMAR: Five or six.

3 MR. MAY: Five or six, okay. Well, I
4 don't know where the six came from, but even at
5 five --

6 CHAIRPERSON MOLDENHAUER: Two in the
7 circular drive.

8 MR. MAY: Two in the circular, okay.

9 So what about that suggestion? I mean,
10 it seems to me this is a lot of work structurally
11 to get to seven parking spaces versus the five
12 that could be achieved that way. Aren't there
13 other potential solutions to the issue of how
14 much parking is needed? We're not that far away
15 from parking garages, are we? I mean, there are
16 some that are walking distance at Dupont Circle,
17 right, or towards Connecticut?

18 MR. COLLINS: I think Connecticut Avenue
19 like universal south.

20 MR. MAY: Yeah.

21 MR. COLLINS: They're a good distance
22 away, but to get back to your question, two in

1 the garage, two on the street, and then two in
2 the driveway in front, it's an interesting
3 approach.

4 MR. MAY: I'm not suggesting two in on
5 the circular drive, but --

6 MR. COLLINS: Okay. Well, that gets us
7 down then to four.

8 MR. MAY: No. I mean five, two on the
9 street, two in the garage, one in the circular
10 drive.

11 Regardless -- yeah, I am interested in
12 your reaction. I didn't mean to cut you off.

13 MR. COLLINS: Yeah, no. It's always been
14 said that the DDOT and certainly this Board
15 disfavor parking in circular drives in public
16 space.

17 We tried to minimize because of the
18 concerns of the community about taking parking
19 from the public and turning it into spaces. We
20 only limited our original application to one,
21 which was the one right in front of the building
22 between the two curb cuts for the circular drive,

1 thinking that was a logical one, but we were not
2 going to ask for one on Decatur.

3 We only suggested lately the one on
4 Decatur in order to accommodate the concerns of
5 the neighbor to see if we could provide a
6 planting strip, but we won't know the answer to
7 that until after this case is over because we
8 cannot apply -- I'm told we can't apply for
9 diplomatic parking until after the FM-BZA process
10 is concluded.

11 So we are assuming, I think, rightfully
12 assuming or justifiably assuming, that we will
13 get the diplomatic space in front of the building
14 on R Street, and we did hear today that the ANC
15 would support a Diplomatic parking space on
16 Decatur. So, hopefully, that will allow us to
17 accommodate the landscaping, but we need eight
18 parking spaces, and we're having seven on site in
19 the back and the one in the front on the street.

20 We need eight, so if there's a way to get eight,
21 that's a different way, then we could look at
22 that, but right now the plan that we have is the

1 plan that we submitted thinking that was the most
2 reasonable plan to accommodate that in a way that
3 would not take parking from the street on
4 Decatur, would allow in and out without having to
5 back into the street, because we've heard
6 concerns about congestion on the street. We
7 thought what we were doing was addressing what we
8 thought were going to be the issues in this case,
9 and that's what we submitted when we submitted
10 the application back in April.

11 We can look at these other issues and
12 respond.

13 CHAIRPERSON MOLDENHAUER: There's always
14 the saying that there's a difference between need
15 and wants. I think you said you need eight
16 spaces. The question would be is that really a
17 need or is it more of a want, and is there maybe
18 flexibility?

19 MR. MAY: Yeah.

20 CHAIRPERSON MOLDENHAUER: And I think
21 that we have heard some other options in regards
22 to flexibility, so --

1 MR. COLLINS: There are some issues here.

2 CHAIRPERSON MOLDENHAUER: We're not
3 taking any more testimony at this time. Only the
4 Board is asking questions.

5 MR. COLLINS: I think tied to that would
6 be the issue of the need versus wants of the U.S.
7 Embassy in Serbia.

8 CHAIRPERSON MOLDENHAUER: And we heard
9 that testimony as well, so --

10 MR. COLLINS: And you've heard quite
11 strongly --

12 CHAIRPERSON MOLDENHAUER: And we hear --

13 MR. COLLINS: -- from Mr. Seagroves about
14 that issue.

15 CHAIRPERSON MOLDENHAUER: Yes. But I
16 think the one thing that kind of puts -- ties our
17 hands or at least in my view is that you have
18 presented us with some alternative plans, which
19 you guys just finalized last night, which
20 obviously the Applicant trying to work. And we
21 appreciate that, that the Applicant is trying to
22 work with the neighbors, but that does create a

1 problem for us in regards to trying to respond to
2 Mr. Seagroves' comments because we do need final
3 plans in order to make any decision.

4 And I know that you are aware of that.
5 I'm sure you informed the Applicant of that as
6 well, so I think that there is some time here
7 where you need to provide the Board with those
8 additional plans and drawings in writing versus
9 just having them as part of the PowerPoint slide
10 and also making sure that those are finalized.

11 It did seem from your presentation that
12 they were still in the works in regards to
13 whether there was going to be a planting all the
14 way along the one side of the property, whether
15 that was going to potentially change.

16 So what I would suggest is that,
17 obviously, you provide us with the final version
18 of the plans. Whether that is flexible at all is
19 obviously up to the Applicant, and then we'll
20 evaluate that when we put this down for decision.

21 But is there any other comments from
22 Board members in that regard?

1 MR. MAY: No.

2 AMBASSADOR PETROVIC: Can I just please
3 add something?

4 CHAIRPERSON MOLDENHAUER: Absolutely,
5 please.

6 AMBASSADOR PETROVIC: You know, I grew up
7 in a very historic city. Belgrade, you know, was
8 formed in the 11th century, and we have a lot of
9 historic buildings. So, in doing this, the main
10 preoccupation we had is not to change the
11 character of this building.

12 And hearing some of the complaints, this
13 is exactly what we did with this plan. I didn't
14 want anything to be changed, front or back.
15 Nothing is going to be changed in existing
16 building. It's just going to be fixed to look
17 better.

18 That's why I think some of the complaints
19 maybe are not, you know -- not rightful by saying
20 that by building this parking, nobody is going to
21 be able to see except the two neighbors. We saw
22 that one neighbor cannot even see from the

1 window. The other neighbor never came to me,
2 never approached me, except couple days ago to
3 our attorney, and we also wanted to sit down and
4 figure out a way to accommodate him, so he
5 doesn't look at that.

6 So that was our main preoccupation, is to
7 keep this building as it is, because it's
8 historic to us as well as I said at the beginning
9 of our presentation. It has a history to us, and
10 I think we manage with this project, even with
11 this parking lot that's not going to be paved.
12 It's going to have, you know, green material on
13 it, that we manage not to change the outside at
14 all, just to improve it.

15 Thank you.

16 CHAIRPERSON MOLDENHAUER: Thank you.

17 And I think that the front building that
18 fronts on R Street, obviously I think it's a very
19 positive renovation. I don't think that there's
20 really any issues.

21 I think the only concern that I've heard
22 in regards to the Board's concerns is really more

1 the parking and the carriage house, but I think
2 there may be one other question from a Board
3 member.

4 MR. MAY: Yeah. I just wanted to ask if
5 Mr. Seagroves could actually submit his
6 testimony. You gave us -- you read testimony to
7 us, but if the case is relying on making the case
8 for the extra parking as a result of that
9 testimony, it would be very helpful to have that
10 written.

11 MR. SEAGROVES: Yes, we can provide that.

12 CHAIRPERSON MOLDENHAUER: If you can
13 provide an oral statement on the record? I'm
14 sorry. Thank you very much.

15 MR. SEAGROVES: Yes. I'm sorry. Yes, we
16 can provide that in writing.

17 MR. MAY: Okay, very good. Thank you.

18 MR. SEAGROVES: Can I ask one additional
19 question about the record?

20 CHAIRPERSON MOLDENHAUER: Yes.

21 MR. SEAGROVES: There was a statement
22 made concerning testimony by Mr. Malotek in the

1 Uganda case, and what was not raised in the
2 context of that was the successful and very
3 thorough rebuttal of what Mr. Malotek had argued
4 as a citizen at the Uganda case.

5 And so we would like to submit, make sure
6 that the Board has that documentation as well, if
7 that is going to be something that you are going
8 to review.

9 CHAIRPERSON MOLDENHAUER: Oh, I think
10 that will leave the record open for these
11 additional submittals. One would be a copy of
12 your oral statements that were made, and then the
13 second one will be any additional submittal in
14 regards to comments that were made in regards to
15 the Uganda case.

16 Thank you.

17 And then I think that Ms. McCarthy was
18 going to provide a copy of some -- a record that
19 was referenced that will be submitted, and then
20 the Applicant will provide the revised drawings
21 based on follow-up conversations they have or any
22 final drawings, even if they're finalized -- they

1 are now, if there's any changes based on
2 questions from Board members or comments today to
3 this office.

4 MR. COLLINS: We'd also like to respond
5 to some issues that were incorrectly
6 characterized in the opposition testimony.

7 CHAIRPERSON MOLDENHAUER: Is this
8 something you can respond to, to now, and I can
9 give you a few minutes to provide a comment now,
10 or is it something that you feel that you'd
11 rather submit in writing?

12 MR. COLLINS: I'd rather do it in
13 writing. I was making notes while the discussion
14 was going on, but there's some facts in the Benin
15 case that was cited to that just are not correct.
16 The Uganda case, certainly, you know, Mr.
17 Malotek's testimony has nothing to do with the
18 ultimate decision by this Board that refuted his
19 testimony and rejected his testimony and things
20 like that. I think there were some misstatements
21 to the Board that just confused the issue.

22 CHAIRPERSON MOLDENHAUER: Okay. So what

1 we'll do is we'll leave the record open, then,
2 for supplemental documentation, and that will be
3 left open.

4 When do we have the next decision date in
5 September?

6 MR. MOY: September 13, Madam Chair.

7 CHAIRPERSON MOLDENHAUER: September 13?
8 Okay.

9 So what we'll do is we'll leave the
10 record open for all parties to submit additional
11 documentation until September 2nd, and then we'll
12 put this on decision for September 13th.

13 MR. COLLINS: Thank you.

14 CHAIRPERSON MOLDENHAUER: And obviously,
15 if there's any issues with the need for zoning
16 relief when you do finalize the plan in regards
17 to what Mr. May indicated regarding any potential
18 structures that may be over 4 feet tall and be
19 counted towards a lot occupancy.

20 MR. COLLINS: Great. Thank you.

21 CHAIRPERSON MOLDENHAUER: Thank you.

22 Thank you very much, everyone, for coming

1 down, and we will set this for decision for
2 December 13th.

3 What we'll do is we'll just take a quick
4 5-minute break, and then we'll hear the Lab
5 School of Washington application.

6 [Recess taken from 3:54 p.m. to 4:05
7 p.m.]

8 CHAIRPERSON MOLDENHAUER: We're back on
9 the record.

10 Mr. Moy, if you can call the next case?

11 **Application No. 18237**

12 MR. MOY: Yes. Thank you, Madam Chair.

13 That would be Application No. 18237.

14 This is the application of Lab School of
15 Washington, pursuant to 11 DCMR 3104.1, for a
16 special exception to extend the existing cap of
17 182 faculty and staff members and 330 students,
18 for an existing private school. This is the main
19 campus, under Section 206 in the R-1-B District
20 at premises 4759 Reservoir Road, N.W., property
21 located in Square 1372, Lot 25.

22 CHAIRPERSON MOLDENHAUER: Good morning.

1 If the Applicant could introduce themselves for
2 the record? Good afternoon.

3 MS. PRINCE: Good afternoon. I'm Allison
4 Prince here on behalf of the Lab School and with
5 Goulston & Storrs.

6 Lab School is seeking special exception
7 relief to maintain its existing cap of 330
8 students and 182 faculty and staff members. Lab
9 initially came before the Board in 2005 with an
10 application to increase the cap from 310 to 330
11 and to increase its faculty and staff cap.

12 The Board granted the relief but placed a
13 5-year term on the approval, and as you may know,
14 I don't think any of you participated in that
15 case, but it was a controversial case. And it
16 took a lot of the Board's time, two hearings. OP
17 was opposed. I mean, it was a very, very
18 controversial case.

19 But now 5 years later, we're able to
20 return to you with a non-controversial case, due
21 to a lot of time and effort that was put in by
22 Lab School to make this proposal work in a way

1 that's acceptable to the community and the Office
2 of Planning and DDOT.

3 At the time of the last application, the
4 Board was concerned with the school's parking
5 supply and with its trip generation. That's why
6 it imposed the 5-year term. It was a means of
7 checking the school's progress on maintaining an
8 adequate parking supply and minimizing congestion
9 during the morning peak hours.

10 We're pleased to report that we've made
11 great strides in both regards. Five years ago,
12 Lab's parking demand was so great that it was
13 thought that the school would need to build a
14 parking garage to address the demand. In fact, 5
15 years ago, that was a lot of the discussion
16 before this Board was where is the parking garage
17 going to go, and I'm happy to report that we're
18 now in a place where we really do not need a
19 parking garage. And that's a good thing, because
20 as you know, the trend in the city over the past
21 5 years has really been to disincentivize the
22 construction of new parking.

1 Lab has accomplished this reduction of
2 its traffic parking needs through a number of
3 tools, the principal one of which is a very
4 sophisticated shuttle system.

5 As our testimony here today will
6 demonstrate, Lab is providing ample parking at
7 this time, and we really do not believe we have
8 adverse impacts on the surrounding community as
9 is shown by the support of the ANC.

10 We did go to this ANC very early. We
11 went long before this order was to expire. We
12 went before we filed the application to really
13 make sure that they were on board with our
14 general approach to handling the case, and
15 ultimately, they were unanimously in support.

16 With respect to trip generation, Lab has
17 reduced its trip generation below the 165-trip
18 bench mark that was set at the last hearing.
19 That was done through a combination of tools, but
20 again, the shuttle service was a critical part of
21 that reduction.

22 Lab is committed to maintaining its

1 momentum, and it's reached an agreement, as I
2 said, with the ANC whereby it will commit to
3 maintaining its current trip generation. If Lab
4 fails in meeting the trip generation goals, it
5 will ultimately be automatically required to
6 return to this Board. Lab's willingness to make
7 such a stringent commitment has in large part
8 helped garner the support of the ANC and the
9 community, and as you know, OP supports the
10 application.

11 Our testimony today will demonstrate that
12 a permanent approval of the caps will not be
13 objectionable to neighboring property. We will
14 also provide testimony confirming that the school
15 provide ample parking, and that the requested
16 relief can be granted without adversely affecting
17 neighboring properties, the Zoning Regs, and the
18 Zoning Map.

19 We have only two witnesses. Katherine
20 Schantz, the head of the school, will testify on
21 the importance of maintaining the existing caps
22 and Lab's efforts to reach out to the community

1 regarding the same, and Mike Workosky, who we
2 would like to proffer as an expert in traffic
3 engineering. Mr. Workosky will provide evidence
4 that the caps will not create objectionable
5 conditions for the surrounding properties with
6 respect to traffic and parking.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much.

9 In my view, I think the record is quite
10 full. I do provide the Applicant with a lot of
11 success in regards to coming back 5 years later
12 and really only having in our record one letter
13 of opposition and having the ANC in support. I
14 think that that is a great success in regards to
15 showing a school working with its community.

16 I would actually ask that if the
17 Applicant wants that they can rest on the record
18 and limit their testimony and just simply address
19 maybe some of the concerns of the letter of the
20 neighboring property owner that we have in
21 regards to how the Applicant is dealing with
22 these types of issues and what maybe proffers or

1 additional conditions that they would maybe want
2 to provide and might be able to address that.

3 I'll look to the other Board members to
4 see if there's any other comments or questions
5 the Board may have to direct any additional
6 testimony from the Applicant.

7 MS. SCHANTZ: My name is Katherine
8 Schantz, and I reside at 3716 T Street, N.W., in
9 Washington, D.C., and I am the current head of
10 the Lab School of Washington.

11 And I would be glad to respond to the
12 neighbor's letter.

13 First, I think that the neighbor was
14 misunderstanding what we wanted to do, that we
15 are not increasing -- asking for an increase in
16 the cap, but we are asking for permanent approval
17 of the existing special exception to the cap with
18 the 182 faculty and staff and the 330 students.

19 Secondly, in response to his concerns
20 about neighbors parking in the way of his
21 driveway, we have secured the services of a
22 policeman during the high traffic hour in the

1 morning, which has reduced the congestion
2 considerably, but also, because the neighbor is
3 directly across from us, the policeman is able to
4 deter anyone who should choose to park in front
5 of a driveway or in the driveway, so we feel as
6 if we had resolved that issue.

7 We have tried to contact the neighbor but
8 to no avail at this point. He may be away, and
9 we haven't been in touch with him.

10 CHAIRPERSON MOLDENHAUER: And when did
11 you start retaining the services of the police
12 officer?

13 MS. SCHANTZ: The police officer has been
14 there most of the year. I would have to request
15 that Peter Braun telling us the exact date, but
16 he has been for most of this academic school
17 year. He's been there since September.

18 CHAIRPERSON MOLDENHAUER: Okay, since
19 September.

20 And he's there, did you say, at dropoff?
21 Is he also there at pickup time?

22 MS. SCHANTZ: Because our pickup time is

1 so staggered, we have many programs that run
2 different hours, we don't have the same need.
3 There's not the same congestion, and I don't
4 think that the parents are as apt to feel as
5 pressured.

6 CHAIRPERSON MOLDENHAUER: Okay. I was
7 just asking that because the letter says that
8 "find our driveway blocked in the afternoon by
9 people picking up their children," so it was just
10 referring to that as the issue.

11 I see some comments maybe from the
12 audience or another witness maybe that may have
13 some additional information. The Applicant can
14 obviously address that question, but I'm just
15 concerned. They're talking about afternoon
16 pickup being more of the issue, and even in their
17 fourth paragraph at the bottom, individuals
18 picking up students.

19 So, obviously, it's great if you have the
20 police officer there in the morning, but what are
21 you doing exactly then maybe in the afternoon to
22 address some of these concerns?

1 MS. SCHANTZ: Well, we do have our staff
2 members that are available, and we actually have
3 three or four staff members that are working with
4 the flow of traffic at that time.

5 MR. BRAUN: Hi. My name is Peter Braun.
6 I'm the Director of Operations at the Lab
7 School, and I reside at 249 Medlock Lane in
8 Alexandria.

9 And we have had a police -- we have a
10 policeman both morning and afternoon in order to
11 take care of both arrival and dismissal.

12 It might have been Mr. Wolf [ph], it
13 might have been someone else who gave a call to
14 my assistant sometime in the fall. And I believe
15 it was September, October in regard to -- and
16 obviously very annoying for whether or not they
17 were our parents. Somebody was parking in his
18 driveway.

19 We directed then the policeman to
20 specifically look out for that and go, and if we
21 saw anybody, go over and talk to them, which he
22 did on two or three occasions. And to the best

1 of our knowledge, that eliminated the problem.

2 I mean, these were policemen. They're
3 District policemen that we hire privately off
4 duty, and they went up to them and said, "Boy,
5 you better move, or we're going to ticket you."
6 So that seemed to be the effective action

7 We've had policemen on deck for the last
8 3 or 4 years for both arrival and dismissal, with
9 one exception. If in fact there's something
10 happening in the city that prevents them from
11 being there because of their District demands and
12 elsewhere, that's the only occasion then we
13 haven't done that.

14 And as Ms. Schantz has indicated, we
15 certainly have our own staff members that are
16 there at all times, and I can -- believe you --
17 that both myself, my assistant, and the front
18 desk are very responsive to anybody in the
19 neighborhood with any complaints in regard to
20 arrival, dismissal. It has been our radar very
21 much.

22 CHAIRPERSON MOLDENHAUER: Thank you.

1 Do any Board members have any other
2 questions for the Applicant or any of the
3 witnesses?

4 MS. SORG: Thank you, Madam Chair.

5 I think it may just -- for any potential
6 approval, to comment on the possible conditions
7 that have been submitted in your agreement or
8 anything about that.

9 MS. PRINCE: Would you like Ms. Schantz
10 to run through the conditions?

11 MS. SORG: I think either way. I mean,
12 they're here in the ANC report as well as in your
13 prehearing statement and the OP report. I think,
14 from what I can tell, they're pretty much all the
15 same, so I think it may just be a good idea to
16 get it in the testimony.

17 MS. PRINCE: That sounds good.

18 I can have either -- Mike, maybe you're
19 the best person to walk through the conditions.

20 All the conditions are identical, the
21 ANC's, the OP's, and ours. Mike is our traffic
22 engineer, and we can skip over the majority of

1 his presentation, but he can walk through the
2 conditions which really are all about him.

3 MR. WORKOSKY: Good afternoon. For the
4 record, I'm Mike Workosky. I'm a traffic
5 engineer at Wells & Associates.

6 I could walk through the conditions.
7 Condition 1, the maximum enrollment shall be 330
8 students. Condition 2, the maximum number of
9 faculty, staff, and administrative personnel,
10 including part-time employees shall be 182.
11 Within 30 days of each academic year, the school
12 shall provide the ANC-3D a report indicating the
13 current student enrollment and number of faculty
14 staff. Number 4, the school shall fully
15 implement and comply with the Traffic Management
16 Plan submitted for the record.

17 I'm not sure what exhibit number we have
18 for it.

19 The TMP shall mandate that no new trips
20 be generated beyond the existing limit of 165
21 morning peak-hour trips. It shall also require
22 that a traffic monitoring survey be performed

1 once every semester.

2 Number 5, within 45 days of each traffic
3 monitoring survey required in the TMP, the school
4 shall provide to DDOT and ANC-3D a report
5 indicating its compliance with the TMP.

6 Compliance with the TMP shall be measured
7 by whether the school maintains a morning
8 peak-hour trip generation of no greater than 165
9 trips. If the school exceeds 165 trips during
10 the a.m. peak period for two consecutive
11 reporting periods, additional transportation
12 management measures shall be triggered. Such
13 measures shall require stringent obligations from
14 the school to reduce the morning peak-hour trip
15 generation. It may include measures such as
16 prohibiting new staff from arriving to the campus
17 by car.

18 If the school still exceeds 165 trips
19 during the morning peak period after the third
20 consecutive survey is conducted, it must file an
21 application with the BZA for review of the
22 conditions of approval of this application within

1 30 days.

2 Number 6, the Lab School shall host
3 public meetings at least once every 4 months to
4 discuss any matters of concern to the community
5 regarding the school and to discuss possible
6 measures for addressing such concerns. Notice of
7 the time and locations of the meeting shall be
8 sent to the ANC, the Foxhall Community Citizens
9 Association, and the Palisades Citizens
10 Association, and posted on the school's website
11 at least 30 days in advance.

12 I can elaborate on any one of these if
13 you desire to do so.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much. I don't think there's any additional
16 questions.

17 Seeing no additional questions at this
18 time, we'll then move to any individuals in the
19 audience in support or in opposition of this
20 case.

21 [No response.]

22 CHAIRPERSON MOLDENHAUER: Seeing none,

1 we'll move to the Office of Planning for their
2 report.

3 MR. GOLDSTEIN: Good afternoon. For the
4 record, my name is Paul Goldstein with the Office
5 of Planning.

6 The Office of Planning recommends
7 approval subject to the conditions that are
8 offered by the Applicant and have been read into
9 the record and as are also highlighted in the OP
10 report of the Applicant's request for special
11 exception relief pursuant to Sections 206 and
12 3104 to maintain permanently the maximum
13 permitted student enrollment and number of
14 faculty and staff at the Lab's School campus at
15 4759 Reservoir Road, N.W.

16 With that, I am happy to rest upon the
17 record and answer any questions that the Board
18 may have. Thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much for that report.

21 Are there any questions from the Board
22 for the Office of the Planning? I see nodding of

1 heads that's no.

2 Then is there anybody in the audience
3 from ANC-3D present?

4 [No response.]

5 CHAIRPERSON MOLDENHAUER: Seeing no one,
6 I'll just indicate that we do have our Exhibit
7 No. 30, which indicates that the ANC had a
8 properly noticed meeting on June 1st and July
9 6th, and that at the July 6th meeting, the vote
10 of the quorum present, 9 to 0 to support the
11 application, with the following conditions. And
12 that's our Exhibit No. 30 and would receive great
13 weight in support.

14 At this point in time, we would turn back
15 to the Applicant for any closing remarks.

16 MS. PRINCE: We appreciate your time. I
17 think we've simplified this matter greatly by
18 taking care of the problem, reducing trip
19 generation very significantly through the efforts
20 really of Peter Braun and the whole shuttle
21 program at Lab and a lot of additional measures,
22 and I think that's a win-win for Lab and for the

1 community.

2 And we thank you for your time, and we
3 appreciate the abbreviated consideration of this
4 matter.

5 CHAIRPERSON MOLDENHAUER: Thank you.

6 And then if there's any final questions
7 for the Applicant?

8 [No response.]

9 CHAIRPERSON MOLDENHAUER: Seeing none,
10 then that concludes the hearing at this point in
11 time, and we'll go directly into deliberation.

12 This is a request to solidify the
13 existing previous order that had a 5-year term on
14 it to be a permanent order with six conditions to
15 provide the maximum permitted student enrollment
16 and number of faculty and staff on the premises
17 of 4759 Reservoir Road for the Lab School of
18 Washington.

19 And this case, I think the major issues
20 here were questions of parking concerns, ensuring
21 that there was no major impact with the
22 neighborhood and addressing the issues of some of

1 the neighbors. I think that the Applicant did
2 address that.

3 I think that in their TMP report,
4 Transportation Management -- number two also is a
5 written confirmation of what they orally
6 testified to about their off-duty officers that
7 do monitor the area. I think that, you know, the
8 conditions are well outlined in the Office of
9 Planning report, and I'll incorporate the Office
10 of Planning's reference of the 206 standard and
11 the standard for special exception relief under
12 3104.

13 I see no issue with this application. We
14 have OP's confirmation that DDOT is in support of
15 the application. ANC voted unanimously to
16 support this. As the Applicant indicated, after
17 probably a prior, more, much longer hearing, that
18 5 years later to come back, I think this is a
19 perfect example where a term sometimes is a
20 really great thing, so that you can have a period
21 of time to make sure that everything works well,
22 and then if necessary come back. And then

1 hopefully, something goes as quickly as this
2 where everything has been going well for the last
3 couple of years, and we can hopefully recommend
4 approval.

5 I see no reason in going through any of
6 the other issues. I think that the application
7 should be approved.

8 Is there any other deliberation from
9 Board members?

10 MS. SORG: Thank you, Madam Chair.

11 I agree with your analysis. I don't have
12 anything to add, although I would just note for
13 the record that to me, it speaks volumes that
14 what was 5 years ago, you know, a very
15 contentious hearing around exactly these issues
16 has, you know, attracted very, very little
17 opposition and no individuals present in
18 opposition. And it sounds to me based on the
19 testimony of the Applicant that they've really
20 worked hard to put into place measures to help
21 control some of the previous perceived adverse
22 impacts, so I'd be in support of the application

1 as well.

2 CHAIRPERSON MOLDENHAUER: Wonderful.

3 Then I will submit a motion, a motion to
4 approve Application No. 18237 pursuant to 11 DCMR
5 3104.1 for a special exception to extend the
6 existing cap of 182 faculty and staff members and
7 330 students for an existing private school (main
8 campus) under Subsection 206 and at premises 4759
9 Reservoir Road, with the following conditions.

10 As outlined in the OP report, Conditions
11 1 through 6, and then Condition No. 4, it would
12 be Exhibit No. 9 and 26B.

13 A motion has been made. Is there a
14 second?

15 MR. HINKLE: Second.

16 CHAIRPERSON MOLDENHAUER: Motion has been
17 made and seconded.

18 All those in favor, say "aye."

19 [Chorus of ayes.]

20 MR. MOY: The staff would record the vote
21 as 4 to 0 to 1. This is on the motion of
22 Chairperson Moldenhauer to approve the

1 application for special exception relief under
2 Section 206 with six conditions as outlined or
3 stated in the Office of Planning report on page
4 1, Exhibit No. 27.

5 Also second the motion, Mr. Hinkle. Also
6 in support of the motion, Mr. May and Ms. Sorg.
7 No other member participating, so again, the
8 final vote is 4 to 0 to 1.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much, Mr. Moy.

11 Seeing that we have no parties in
12 opposition, the Board would request that we waive
13 our requirements and ask for a Summary Order to
14 be issued.

15 MR. MOY: Thank you.

16 CHAIRPERSON MOLDENHAUER: Thank you.

17 MS. PRINCE: Thank you.

18 CHAIRPERSON MOLDENHAUER: Mr. Moy, I
19 believe you are going to call the next case, but
20 I'll just note that I was not participating in
21 this case previously, and it's being continued,
22 so I will not be participating in the afternoon

1 or the rest of the afternoon, but before I do
2 that, I think that we will do a little procedural
3 issue. And I would like to ask to do a roll call
4 vote at this point in time.

5 [Pause.]

6 CHAIRPERSON MOLDENHAUER: As the Chair of
7 the Board of Zoning Adjustment for the District
8 of Columbia and in accordance with Section 405 of
9 the Open Meeting Amendment Act of 2010, I move
10 that the BZA hold a closed meeting via telephone
11 conference on September 12th, 2011, for the
12 purposes of seeking legal advice from our counsel
13 for the following cases scheduled for an upcoming
14 decision: Application 18264 of Wolfberg,
15 Application No. 18240 of the D.C. Public Library,
16 Application 18236 of the Archdiocese of
17 Washington, D.C., on behalf of the Shrine of the
18 Most Blessed Sacrament, Application 18116 of
19 Kerry Bedard, Application 17540 and 17540A of
20 Capitol Hill Day School, Application 17540 and
21 17541A of Capitol Hill Day School, and
22 Application 18242 of the Embassy of the Republic

1 of Serbia.

2 Is there a second?

3 MS. SORG: Second.

4 CHAIRPERSON MOLDENHAUER: Motion has been
5 made and seconded.

6 Will the Secretary please take a roll
7 call on the motion?

8 MR. MOY: Yes. At this time, I'll call
9 the Board members by name, and if the members can
10 respond by "yea" or "nay" or "yes" or "no."

11 Mr. May?

12 MR. MAY: Yea.

13 MR. MOY: Ms. Sorg?

14 MS. SORG: Yea.

15 MR. MOY: Ms. Moldenhauer?

16 CHAIRPERSON MOLDENHAUER: Yea.

17 MR. MOY: Mr. Hinkle?

18 Mr. HINKLE: Yea.

19 MR. MOY: The vote count appears
20 unanimous, Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
22 Moy.

1 It appears the motion has passed. I
2 hereby give notice that the BZA will hold this
3 aforementioned closed meeting via telephone
4 conference pursuant to the Open Meeting Amendment
5 Act of 2010. Notice will also be posted in the
6 Office of the Zoning electronic reading room,
7 placed on the Office of Zoning's electronic
8 calendar on its website, and published in the
9 District of Columbia's Registry in as timely a
10 manner as practicable.

11 Thank you.

12 [Pause.]

13 MS. SORG: Mr. Moy, when you're ready, we
14 can call the final case for the afternoon.

15 **Application No. 18197**

16 MR. MOY: That case would be Application
17 No. 18197. This is the application of 1211
18 through 1210 -- rather 1211 10th Street N.W. LLC
19 pursuant to 11 DCMR 3103.2 for a variance from
20 the lot occupancy requirements under Section 403
21 and a variance from the court requirements under
22 Section 406 to permit a rear addition to and

1 conversion of a one-family dwelling into a
2 four-unit apartment house in the R-4 District at
3 premises at 1211 10th Street, N.W., property
4 located in Square 368, Lot 82.

5 MS. SORG: Thank you very much.

6 I see that the Applicant has come to the
7 front of the room. If you can introduce yourself
8 for the record? And I see that Mr. May has
9 something to --

10 MR. MAY: I just wanted an initial
11 question. I was not here for either of the
12 attempted hearings for this before, and I trust
13 that there was nothing -- there was no
14 substantive discussions. Those were just
15 requests for postponement, so --

16 MS. SORG: That's correct.

17 MR. MAY: Okay.

18 MS. SORG: If you've reviewed the --

19 MR. MAY: I reviewed the file, and I just
20 want to make sure I didn't miss a transcript or
21 something that I was supposed to be. Okay.

22 MS. SORG: Absolutely not. You should be

1 good to go.

2 MR. MAY: Thanks.

3 MS. SORG: Thank you for that.

4 Please go ahead, and then we can sort out
5 a couple of questions about amending the relief
6 requested after you introduce yourself.

7 MR. SULLIVAN: Okay. Thank you.

8 My name is Martin Sullivan with Sullivan,
9 Styles & Barros, counsel for the Applicant.

10 MR. SISSON: My name is Charles Sisson.
11 I am representing the owner of the property.

12 MS. SORG: Thank you very much.

13 So I see now we have a new iteration of
14 this application. So, if you want to describe
15 the relief that you're requesting, and we can
16 take care of amending that application if that's
17 necessary.

18 MR. SULLIVAN: Yes. The original
19 application requested relief under Section 401.3
20 to provide four units on a property with a land
21 area of 2,309 square feet, which would only
22 permit two units as a matter of right.

1 Also, there was a request for a relief
2 from the maximum lot occupancy restriction, and
3 there was a rear addition contemplated
4 originally.

5 The Office of Planning noted also that
6 there was a need for a relief from a court
7 provision as well.

8 In this amended application, we're
9 requesting relief under 401.3 for three units.
10 We've reduced it from four to three at the
11 request and the urging of the ANC and Office of
12 Planning, I believe, as well.

13 And it's contemplated that there would be
14 an addition on the side of the building rather
15 than the rear, and so while the lot occupancy
16 will be increased slightly, it will be under 60
17 percent, so there's no need for relief from the
18 lot occupancy provisions. However, there is need
19 for relief, I believe, from 405.8 because we'll
20 be reducing an existing side yard.

21 Of course, when we're finished with that,
22 if we get that and the house gets built, we're

1 then conforming, so we're turning a
2 non-conforming situation into conforming, but
3 getting there is prohibited by 405.8, so we're
4 asking for relief from that as well.

5 The initial application was certified by
6 the Zoning Administrator, so the amended one
7 needs to be self-certified, and I don't think you
8 have that on the record yet, so I'd like to
9 submit Form 135.

10 MS. SORG: Great. Thank you.

11 [Pause.]

12 MR. SULLIVAN: Also, we have not yet
13 submitted a revised plat for the revised
14 application reflecting no rear yard addition and
15 the side yard addition instead.

16 [Pause.]

17 MS. SORG: With regard to public notice,
18 you've made reference, I think as you started
19 speaking, to meeting with the ANC. I think the
20 property was posted in its original application?

21 MR. SULLIVAN: That's correct.

22 MS. SORG: And I think that seeing as the

1 degree of relief that's requested, I believe we
2 had this last time. Seeing as the degree of
3 relief that is being requested has been
4 significantly reduced, I think that we can waive
5 a posting requirement in the amended application,
6 but if you can describe a little bit your
7 outreach to the community and the ANC or whomever
8 in -- before we get to the merits in terms of the
9 amended application, that would be great.

10 MR. SULLIVAN: Yes. We met with the
11 Community Design Committee of the ANC-2F, and
12 then we met with the full ANC on July 5th at
13 which time we received a unanimous vote in
14 support of the application.

15 MS. SORG: And did they provide -- I
16 don't think we have anything in our record from
17 them.

18 MR. SULLIVAN: I'm sorry to hear that.

19 MS. SORG: Unfortunately.

20 Do you have a copy of that letter?

21 MR. SULLIVAN: I have not received it
22 either, so --

1 MS. SORG: Perhaps you can try an d--

2 MR. SULLIVAN: If we could leave the
3 record open after this, I'd appreciate the
4 opportunity to submit that.

5 MS. SORG: I think that's a good idea.
6 Okay, great.

7 And that was July 5th, you said?

8 MR. SULLIVAN: That's correct.

9 MS. SORG: Okay.

10 [Pause.]

11 MS. SORG: So I think based on those
12 comments, we can go ahead and amend this
13 application, and if you'd like to go ahead with
14 your presentation, we can begin.

15 MR. SULLIVAN: Thank you.

16 Again, my name is Marty Sullivan with
17 Sullivan, Styles & Barros here on behalf of the
18 Applicant 1211 10th Street N.W. LLC, the other of
19 the property, located at 1211 10th Street, N.W.

20 With me today is the managing member of
21 the LLC, Charles Sisson. Mr. Sisson will present
22 testimony and provide documentation to

1 demonstrate that the application meets the
2 requirements of the area variance test.

3 The Applicant is requesting relief from
4 the minimum lot size requirement under Section
5 401.3 to provide a total of three units within
6 the existing structure on a lot in the R-4 Zone
7 District with a land area of 2,309 square feet.

8 In order to convert the three units as a
9 matter of right, the land area would have to be
10 2,700 square feet or 900 feet for each unit, so
11 the Applicant is effectively asking for relief in
12 the amount of 130 square feet per unit.

13 The application is also requesting relief
14 from Section 405.8 to allow the reduction of the
15 current side yard by way of an addition to the
16 lot line on that side, and the result will be
17 that the structure will then be in conformance
18 with the side yard restrictions as a rowhouse.

19 The lot occupancy percentage, including
20 the side addition, will be 55 percent.

21 As we discussed, the original application
22 requested relief to convert to four units and

1 relief from the lot occupancy maximum. The
2 feedback from the Office of Planning and from the
3 ANC was not favorable to that request; however,
4 the ANC unanimously voted to approve our amended
5 application for three units with no rear addition
6 and no lot occupancy relief.

7 Mr. Sisson will present testimony to show
8 that the property and the structure on the
9 property are indeed subject to a unique situation
10 or condition, primarily related to the structural
11 condition of the property and the effort and
12 expense necessary to restore the existing
13 structure to a status as a safe and productive
14 property.

15 This property is in a Historic District,
16 and I believe Historic Preservation Office has
17 communicated to Mr. Sisson that demolition and
18 reconstruction would not be favored.

19 The structure is severely in disrepair
20 and in need of an extraordinary effort to restore
21 it.

22 Mr. Sisson will present evidence about

1 the financial costs to restore, and the
2 uniqueness of this property has to do with two
3 factors primarily. One is the condition of
4 disrepair, and it's on a block that is not
5 blighted. It's the only property on this block
6 that is in such a condition, and the Board has
7 ruled in the past that that is a unique condition
8 if the property's state of disrepair is very
9 unique for that block.

10 The other thing that's unique about this
11 property is it's a single-family structure that's
12 located in an area that's almost surrounded by
13 multi-family uses. There's a five-story
14 apartment building across the street. There's
15 multi-family buildings adjacent to it and the
16 next two houses to the north. There's an empty
17 lot to the south, and further south, you're into
18 the high-rise apartment buildings along the
19 Massachusetts Avenue and 10th Street area.

20 So the marketability of a single-family
21 house here in conjunction with the state of
22 disrepair makes a two-unit project not

1 financially viable, and that's what Mr. Sisson
2 will talk about.

3 Finally, the application will not be a
4 substantial detriment to the public good because
5 of its location in an area with a lot of larger
6 or multi-family uses.

7 ANC-2F voted unanimously to support the
8 application, nor will this granting of the
9 application impair the integrity of the Zone
10 Plan. We think the size of the requested
11 variance is relatively small, and as far as the
12 variance from 405.8, as noted, it will actually
13 make a non-conforming structure into a conforming
14 structure and therefore has no impact on the
15 integrity of the Zone Plan.

16 If there's no questions, I'd like to
17 introduce Mr. Sisson.

18 MS. SORG: Does the Board have any
19 questions for Mr. Sullivan before his witness?

20 [No response.]

21 MS. SORG: Seeing none, go ahead. I have
22 none either.

1 MR. SISSON: Madam Chairwoman and members
2 of the Board, as I mentioned earlier, my name is
3 Charles Sisson.

4 A little way of background, for many
5 years, in fact until I retired just a few years
6 ago, I worked for the International Monetary
7 Fund, and this is not my general area of
8 expertise, but I am the managing member of the
9 LLC that owns the property.

10 I might mention that I am not only a
11 managing member, I'm one of the owners, and in
12 fact, my family constitute the ownership of the
13 LLC, so that we collectively -- it's a family
14 operation and our attempt to renovate this
15 property.

16 We bought it a little bit less than 3
17 years ago with the indention to renovate it at
18 that time. I had just retired from the IMF, and
19 we thought we would proceed on that basis.
20 Unfortunately, my health didn't allow that. I
21 had a heart attack very shortly after retiring.
22 I now have a pacemaker as a result of that, and

1 then as soon as I recovered from the heart
2 attack, I was discovered to have a pretty severe
3 case of cancer, so these two things have kind of
4 slowed the development process. We would like to
5 have been completed with the project by this
6 time, and that was unfortunately not possible.

7 Mr. Sullivan mentioned the area is really
8 heavily developed. It's a block and a half from
9 the Convention Center. As you know, there's a
10 Metro Center there. There's mass transit
11 available.

12 He mentioned the fact that there is an
13 18-unit apartment house across the street.
14 Adjacent to it is a 60-unit condo project. Two
15 doors up, the second door up on our side of the
16 street, is an eight-unit condo, so a lot of
17 development has taken place in this area, and
18 virtually all of the single-family houses have
19 disappeared.

20 The house itself -- and it is truly the
21 only unrenovated property on the block, so it
22 really stands as a bit of a landmark, if not an

1 eyesore. I think there's a great deal of
2 community interest in making sure that this
3 property gets developed, as we certainly intend
4 to do.

5 The house has been there for a long time.

6 I think it's fair to say that it was built in
7 the latter part of the 18th century, and
8 unfortunately, not much has been done with the
9 property since. It's really just basically been
10 kind of passed along from decade to decade, and
11 the property hasn't been well maintained. It
12 hasn't really had permanent residents for, I'm
13 sure, more than a decade.

14 And the interior is quite dilapidated.
15 The roof has had some severe damage in the past.

16 There has been quite a bit of deterioration in
17 the structure itself. So, in terms of the
18 renovation, it will have to be done in a very
19 careful basis, and in fact, I anticipate quite a
20 bit of structural work will need to be done in
21 terms of shoring up the existing property.

22 That does make it a little difficult to

1 anticipate how much it's going to cost, in all
2 fairness, because until we start tearing out some
3 of the interior walls, we're not really going to
4 be sure exactly how much has to be replaced, but
5 I do think that it is -- I mean, our architect
6 has put a tentative figure of over \$600,000 on
7 the renovation.

8 I think Mr. Sullivan mentioned that our
9 original intention or our original plan was to
10 develop those four units because we felt that
11 that would be the most economically feasible way
12 of proceeding.

13 As you may well know -- I'm sorry. I
14 don't mean to talk down to you. As you certainly
15 know, there is a problem in terms of the more --
16 the less density you get, the less return there
17 is. Obviously, there's a little bit more in
18 terms of additional expense in producing four
19 units than three units, three units than two, two
20 than one, but basically, the overall return is
21 much better in terms of more units per lot.

22 We had hoped, as I say, for four units.

1 The neighborhood resisted that. We accepted that
2 judgment of the neighborhood, and we would like
3 to proceed on the basis of three units.

4 As I say, that means a little bit poorer
5 return in terms of overall revenues, but I think
6 with the delays that actually were somewhat
7 largely self-imposed because of my illness, I
8 don't think we're in a position to really recover
9 the money that we're going to spend on this.

10 But my original intention was that if we
11 couldn't make -- if it didn't look feasible to
12 develop, that we would sell it, and in fact, we
13 did try to sell the property for some period of
14 time, particularly since I wasn't in a position
15 to proceed, but we never found a potential buyer
16 at the price we thought we could not take too
17 large a loss.

18 Anyway, so to sum up, in our case, we did
19 originally intend to have four units. The
20 neighborhood was in unanimous support of three
21 units. The Office of Planning had reservations
22 about the four units and still is concerned with

1 the three units, but we felt that in view of the
2 multi-family use of the neighborhood that we
3 would have a legitimate reason for trying to
4 market three condominiums in this area, and that
5 the practical difficulty is that trying to
6 restore this to a single-family house would be
7 financially impossible.

8 So, since we do have unanimous ANC
9 support and, in fact, as far as I know the
10 community as a whole is in support, I would very
11 much appreciate it if the Board would support our
12 -- grant our appeal.

13 Thank you.

14 MR. SULLIVAN: I actually have some
15 information that I didn't know we had before, so
16 I hadn't submitted it yet, but it's financial
17 estimates from the architect that I'd like to
18 submit to the Board.

19 MS. SORG: I think that's a great idea.
20 thank you.

21 [Pause.]

22 MS. SORG: Oh, well. I don't think we're

1 supposed to do this. I think you can give the
2 rest of those -- there you go.

3 Does that conclude your presentation,
4 then?

5 MR. SULLIVAN: Yes. We have nothing
6 further. Thank you.

7 MS. SORG: Great.

8 Do Board members have questions for the
9 Applicant?

10 Mr. May, please.

11 MR. MAY: Okay. All right. Much of your
12 case hinges on the construction of the building.
13 Can you explain to me in greater detail some
14 things about the building? I'll just ask you
15 some questions.

16 The construction of the building itself
17 seems to be -- it looks like it's brick on one
18 side, stucco on another, and then aluminum siding
19 on the front. I assume that the actual structure
20 itself, the four walls are brick. Is that
21 reasonable?

22 MR. SISSON: I think the facade is brick.

1 MR. MAY: Right. So, under the aluminum,
2 there's probably brick?

3 MR. SISSON: Yes, yes.

4 MR. MAY: Okay. And the back side, it
5 looks like a series of additions over the years,
6 now coated in aluminum side, but who knows what
7 they actually are.

8 MR. SISSON: That's correct.

9 MR. MAY: Okay. And the existing
10 structure has three working floors, right? Full
11 floors?

12 MR. SISSON: Yes, three floors. Yes.

13 MR. MAY: Three full floors.

14 MR. SISSON: Yes.

15 MR. MAY: So the lowest level is a full
16 floor, even if there's some change in grade in
17 the site, right? Because there's a change in
18 grade as you go to the back of the site, right?

19 MR. SISSON: That's correct.

20 MR. MAY: Okay.

21 MR. SISSON: Some of it has 7-foot
22 ceilings, but yes.

1 MR. MAY: In the basement?

2 MR. SISSON: Yes.

3 MR. MAY: Yeah. Is the roof currently
4 keeping water out?

5 MR. SISSON: With minor leaks, yes.

6 MR. MAY: Okay. And the structural
7 damage you say there is to the inside, is that
8 water driven, or is it just use over the years?
9 I mean, I'm familiar with older houses. I know
10 how they can age, but certain structural elements
11 as long as they stay, you know, you don't cut
12 into them, and you don't pour water on them, they
13 will survive more than 100 years.

14 MR. SISSON: Yes.

15 MR. MAY: So tell me more.

16 MR. SISSON: I was just involved in
17 helping my daughter renovate an older house, and
18 it is amazing what you find when you open up
19 walls.

20 I think there is this image that somehow
21 in the past, construction techniques were
22 magnificent and they're --

1 MR. MAY: No, I'm well aware that there
2 were no great carpenters back a hundred years
3 ago-- well, there were a few, but they never
4 worked on houses that I owned.

5 MR. SISSON: Yes. Sir, but what you're
6 saying is correct.

7 MR. MAY: Tell me about the specifics of
8 this house --

9 MR. SISSON: Sure.

10 MR. MAY: -- and whether -- I mean, you
11 know, what -- what is the structural problem? Is
12 it just that it's old, or is it that there
13 actually is structural failure from cutting
14 stairs in, in the wrong places or water damage?
15 If you're going to make this case, you have to be
16 very specific about this, if necessary.

17 MR. SISSON: Sure. In the past -- in the
18 past, that clearly was our problem with the roof,
19 and there was substantial water damage over a
20 potential period of time.

21 And then, of course, in any area where
22 you have water generally available for a long

1 period of time -- I'm talking about water service
2 -- something like a bathroom or a kitchen,
3 typically the timbers underneath are rotted out
4 and need to be replaced in any case. So all of
5 that is a factor, yes, sir.

6 Again, I don't think the full extent of
7 the deterioration will ever be known until we
8 open up the side walls and find out just what is
9 --

10 MR. MAY: That's fine. That's fine.

11 Do you have -- is much of the original
12 plaster intact, or is it --

13 MR. SISSON: Not intact, no, sir. I
14 mean, a lot of it has fallen. The lath is
15 generally intact, yes.

16 MR. MAY: Okay. And then on the outer
17 brick walls, does that come off, or has it been
18 laminated with drywall?

19 MR. SISSON: I think the areas that were
20 probably worse were covered with the aluminum
21 siding with that --

22 MR. MAY: I mean, on the inside, on the

1 inside.

2 MR. SISSON: I'm sorry. On the exterior
3 walls, you're --

4 MR. MAY: No. The exterior walls but on
5 the inside of the building.

6 MR. SISSON: Yes, sir.

7 MR. MAY: So there's typically brick, and
8 then there's a couple of coats of plaster?

9 MR. SISSON: Yeah. In fact --

10 MR. MAY: Is that plaster still intact?

11 MR. SISSON: No. It's not -- it's pretty
12 -- you know, it's bubbled, and if it hasn't
13 fallen, it has bubbled.

14 MR. MAY: Okay. I'm just trying to get a
15 sense of --

16 MR. SISSON: Sure.

17 MR. MAY: -- how bad that is.

18 And you say it was roughly 10 or more
19 years before -- since it was last occupied?

20 MR. SISSON: I'm -- I'm sure of that,
21 yes.

22 MR. MAY: Okay.

1 MR. SISSON: Beyond -- I mean, there
2 might have been the caretaker or something there,
3 so-called caretaker, but in terms of its being
4 rented for -- in a commercial basis, it's been
5 sometime.

6 MR. MAY: Okay. Let's tal about your
7 existing plans -- or sorry -- the plans that I
8 have that look to be the most recent which are
9 part of the prehearing statement, so from July --
10 submitted July 12th, right?

11 So I assume this is the most accurate,
12 recent plan?

13 MR. SISSON: July 12th, yes, sir.

14 MR. MAY: Okay. So it seems that each of
15 the units is a two-bedroom unit?

16 MR. SISSON: That's the envision, yes.
17 That's the envision.

18 MR. MAY: Okay. And each -- and one of
19 each of those bedrooms is landlocked; in other
20 words, it's got no outside exposure, no outside
21 windows. Am I reading that incorrectly somehow?

22 MR. SISSON: I'm sorry. I haven't looked

1 at this for sometime. The plans have changed, as
2 you say.

3 MR. MAY: Well, there's a middle bedroom,
4 and it's got closets and the bathroom on one
5 side. It's got the living room, dining room on
6 another side. It's got a corridor on the other
7 side, and it's got a bedroom on the fourth side.

8 MR. SISSON: Yes.

9 MR. MAY: So it doesn't look like there
10 are any windows.

11 MR. SISSON: That's -- that would be as
12 well.

13 MR. MAY: All right. The reason I bring
14 that up is that the -- that's sort of a
15 fundamental flaw in what you're planning to
16 develop here, and it makes me question the
17 quality of the design work overall, which makes
18 me question the quality of the analysis that we
19 received on the financial side of things.

20 There may be a perfectly reasonable
21 explanation. I assume that you didn't draw these
22 yourself, that you had an architect do it. I

1 don't -- I just have to question based on the
2 limited pieces of information I have about the
3 quality of information we've received here.

4 This is also certainly not up to snuff in
5 terms of the drawings that we would ordinarily
6 receive. In other words, we would want to see
7 exterior elevations and things like that.

8 MS. SORG: Dimension plans.

9 MR. MAY: Dimension plans. Yeah, that's
10 good too.

11 I mean, it's just not enough information
12 here for us to understand the project, and you're
13 asking for significant relief by going from flats
14 to three units, and I've participated in cases
15 before where this was considered, and it's not
16 considered lightly. If you're going to make that
17 case on an economic basis, it has to be very,
18 very solid information. And this, frankly, is
19 too weak for me.

20 MR. SISSON: Well, I'm sorry. I have
21 been out of the country for the last month, going
22 back for cancer treatment at Mayo, but let me

1 just say I'm sorry.

2 It may be due to the fact that at short
3 notice, we changed from the four-unit approach to
4 the three-unit approach. I think that maybe this
5 hasn't been fleshed out as well as it should have
6 been.

7 MR. MAY: Right. And I can certainly
8 understand that there might be circumstances that
9 would lead to this, and I'm not rendering
10 judgment on the whole case based on this. All
11 I'm saying is that right now, the information we
12 have is not of a quality and persuasive enough
13 for me to really take -- I mean to be inclined to
14 grant relief. That's my initial reaction to
15 this. This is not very well cooked.

16 Now, it doesn't mean it couldn't be
17 better cooked. I mean, obviously, it was cooked
18 well enough for the ANC to be persuaded, but we
19 have to look at it in a little bit finer level of
20 detail, so --

21 MS. SORG: Thank you.

22 MR. MAY: That's it for my questions

1 right now. I will probably have questions for
2 the Office of Planning.

3 MS. SORG: We'll go to the Office of
4 Planning. Great, I agree. Thank you, Mr. May.

5 I think we can see -- you know, we've
6 already sort of started generating a list of
7 materials that we're going to require, which
8 started before we even got to the merits of the
9 case with the ANC letter.

10 So I think what we'll do is let's
11 continue and -- unless we have other questions
12 from the Board at this time. I'm getting shaking
13 of heads.

14 And then we'll come back and flesh out
15 what it is that the Board will leave the record
16 open for.

17 I agree with Mr. May's comments regarding
18 what are fairly clear in my understanding code
19 violations in the plans that have been submitted.

20 So we'll talk about that a little bit later in
21 the hearing.

22 Now we will see if there's any

1 individuals in the audience in support or --
2 we'll see if there's any individuals in the
3 audience in support or in opposition of the case.

4 Seeing no one, we can move on to the
5 Office of Planning, please.

6 MR. COCHRAN: Thank you, Madam Chair.

7 As I think one of the Board members has
8 indicated, this has been a bit of a moving target
9 of an application. OP submitted its report in
10 April, but since we received the new drawings and
11 new application only last Monday, we weren't able
12 to get a report in, in time for Tuesday, so I'll
13 do the best I can to update OP's analysis based
14 on the information we have as of literally just 5
15 minutes ago.

16 OP can certainly understand the
17 Applicant's desire for this conversion, but even
18 with the reduction in the requested relief, OP
19 has to recommend that the Board deny the case.
20 The Applicant simply hasn't demonstrated how the
21 tests for granting of variance are met.

22 The Applicant suggests that the property

1 is subject to several exceptional conditions or
2 situations that lead to a practical difficulty.
3 This is in OP's analysis. Many of the building
4 sin the block and alley, Historic District, are
5 historic and can't be torn down either.

6 Having a lot size too small to allow
7 conversion to an apartment building is not
8 uncommon in the R-4 Zone. In fact, on the
9 Applicant's 1200 block of 12th Street alone,
10 there are at least 20 lots that are too small to
11 permit conversion to apartment buildings if those
12 conversions were done today.

13 According to the City's database, there
14 remain seven single-family houses and at least 12
15 two-unit buildings in that same block of 1200 of
16 12th Street that the Applicant's property is on.

17 The existence of vacant, unpurchaseable
18 lots next to the Applicant's does not really seem
19 germane to the case. Nothing precludes the owner
20 or owners of those lots from seeking variances to
21 build on them, and the inability to purchase them
22 doesn't preclude the Applicant developing flats

1 on his own property.

2 As the Applicant stated, the crux of the
3 argument is economic. He states that he can't
4 afford to renovate the house unless he gets a
5 return of at least three units rather than the
6 two that would be permitted as matter of right.

7 Now, the Applicant did provide
8 information today. I have not had an opportunity
9 to assess it. I think Commissioner May does
10 point out some of the difficulties in the plans
11 that were submitted. I'd note that the four-unit
12 version did have windows in each of the bedrooms.
13 This one doesn't.

14 While the house is undoubtedly in need of
15 substantial repair after being unoccupied for
16 several years, the Applicant has only anecdotally
17 given us some information about the extent of the
18 deterioration. There is no actual documentation
19 typical to what we would normally see in a case
20 like this.

21 The Applicant also hasn't gone into
22 whether two units would provide a reasonable

1 return on investment or whether it has to be
2 three or four. There's just no way to judge that
3 sort of thing.

4 In short, the Applicant hasn't
5 demonstrated an exceptional condition or
6 situation that would lead to a practical
7 difficulty.

8 And with respect to the harm that the
9 granting the relief might give to the
10 neighborhood or to the Zoning Regulations, the
11 addition of another unit is not likely to result
12 in substantial harm to the public good. The
13 design itself maintains the existing
14 rowhouse-like appearance, and there are many
15 other and larger apartment buildings, as the
16 Applicant has testified, nearby.

17 But the granting of relief would cause
18 significant harm to the Zoning Regulations. It
19 would create another apartment building on a
20 property the regulations consider to be too small
21 for such a use.

22 Section 330.3 states that the R-4

1 District shall not be an apartment district since
2 the conversion of existing structures shall be
3 controlled by a minimum lot area per family
4 requirement.

5 The maintenance of the R-4 Zone as one
6 for single-family houses was reinforced by a text
7 amendment back in 2007. Both the Zoning
8 Regulations and the Comprehensive Plan places
9 value on maintaining rowhouse neighborhoods
10 within the central part of the city.

11 The Applicant's property and for that
12 matter much of the Shaw area is zoned R-4, and
13 the Comp Plan designates it for moderate density
14 residential uses.

15 As for the requested relief from the
16 non-conforming side yard, OP would certainly not
17 take issue with recommending relief for that.

18 And that concludes our testimony.

19 MS. SORG: Thank you very much. I think
20 you did pretty good for 5 minutes.

21 Do any Board members have questions for
22 the Office of Planning? I think Mr. May

1 indicated that he did.

2 MR. MAY: Yeah. I have one question,
3 which is the Applicant indicates that reduction
4 of the side yard requires relief from 405.8, and
5 I'm a little confused about that. I thought that
6 you actually could eliminate a side, a
7 non-conforming side yard without seeking relief
8 to that. Do you all have an opinion on that?

9 MR. COCHRAN: No, I don't.

10 MR. MAY: Okay.

11 MS. SORG: Do Board members have other
12 questions for the Office of Planning?

13 [No response.]

14 MS. SORG: Seeing none, does the
15 Applicant have any questions for the Office of
16 Planning?

17 MR. SULLIVAN: Just one question. It
18 sounds like, Mr. Cochran, when it comes to the
19 condition or the potentially unique condition of
20 the state of disrepair, it's possible that this
21 property could be subject to that condition, and
22 what you're saying is it hasn't been proven to

1 you with the information that you have in front
2 of you. Would that be correct?

3 MR. COCHRAN: That's correct.

4 MR. SULLIVAN: Okay, thank you.

5 MS. SORG: Thank you very much.

6 Now we will turn to see if anybody from
7 ANC-2F is here, though I suspect they're not, and
8 they are not.

9 We have the Applicant testifying on the
10 record that they did, in fact, present their
11 project on July 5th in front of the full ANC and
12 receive their unanimous support, and we are
13 hopefully hopeful of receiving at some point in
14 the future a report illustrating those findings.

15 And now we can move back to the Applicant
16 for any closing statements.

17 MR. SULLIVAN: Thank you.

18 I'm not going to disagree with a lot of
19 what was said here. The architect is admittedly
20 old school and old, frankly, and I would just
21 appreciate the opportunity to take another crack
22 at showing what we think is the true situation

1 with the property and provide more information,
2 hopefully sufficient, to show that the state of
3 disrepair is a unique condition that makes strict
4 compliance with the regulations a practical
5 difficulty.

6 Thank you.

7 MS. SORG: Okay. Thank you very much.

8 I think based on our back-and-forth, you
9 know, we can have several things that we want to
10 request, and we can get that out on the record
11 and also look for a decision date in September
12 sometime.

13 So I think I will begin by going through
14 what I think based on some of Mr. May's comments
15 and some of the things I noticed that we want to
16 see from the Applicant, one is, you know, if we
17 can get the ANC to produce their report. That
18 would be great. Additionally -- how do I ask
19 this? I think some sort of further demonstration
20 of the financial practical difficulty, if that's
21 as has been said, where the crux of your case is
22 lying in this idea of a two-unit building versus

1 a three-unit building, if that's where you're
2 going.

3 I think certainly some evidence that
4 indicates the state of disrepair of the building
5 exterior and interior, you know, it is customary
6 for architects when getting into projects like
7 this, you know, that have these kinds of existing
8 conditions, to take a test and look behind walls
9 and things like that, and perhaps some statements
10 from an architect -- certainly as the Applicant
11 indicated, it is difficult to put some existing
12 conditions, but certainly, I think we can get a
13 lot more demonstration and evidence as to the
14 state of deterioration of the residence.

15 If any other Board members want -- and
16 certainly plans that are complete and well
17 thought out and up to code and dimensioned and
18 clear for us to see and understand, I think would
19 be a good addition.

20 Other Board members want to jump in with
21 anything further, please?

22 MR. MAY: Yeah . Actually, if you want to

1 go to -- if you're really going to make a case
2 about the conditions, photographs of the interior
3 conditions would be very helpful, particularly
4 where you're seeing actual evidence of structural
5 damage.

6 I don't know -- I mean, a lot of times
7 when contractors look at projects, they -- the
8 immediate reflex is to just tear everything out
9 and start over again, and, you know, sometimes
10 that's necessary, sometimes it's not. And if
11 it's not really necessary, that may make it
12 possible for you to proceed without doing the
13 conversion of three units, which you have a high
14 bar to clear in order to get to that, so --

15 MS. SORG: Thank you, Mr. May.

16 I agree that, you know, pictorial
17 illustration would be very useful in this case as
18 well as definitely further financial
19 documentation of what that means for the project.

20 And given time, could OP -- subsequent to
21 these filings, given enough time, could OP supply
22 a supplemental report?

1 MR. COCHRAN: We'd be happy to.

2 MS. SORG: Okay, great.

3 MR. COCHRAN: And to continue working
4 with the Applicant.

5 MS. SORG: Yes, great.

6 Anything else to add?

7 [No response.]

8 MS. SORG: Okay. Let's take a look at
9 some dates. I don't have my calendar in front of
10 me, but if you can suggest?

11 MR. MOY: If this is for a decision date,
12 then we're looking at September 13th. Okay.
13 Certainly, Office of Planning is going to need
14 some time to write a supplemental report. Then
15 perhaps they can submit materials that you
16 requested perhaps 2 weeks prior to the 13th, that
17 will give a week at least for Office of Planning
18 to prepare a supplemental report.

19 MR. COCHRAN: Excuse me. Would you need
20 to have our supplemental report in the typical
21 week beforehand?

22 MS. SORG: I think that if you were to

1 submit that maybe the Friday before, that would
2 be fine.

3 MR. COCHRAN: All right, thank you.

4 MR. MOY: In that case, then the
5 Applicant perhaps can -- perhaps the Applicant
6 can -- given the entire month of August and the
7 rest of this week, the first week of September or
8 the last week of August? We're looking at the
9 first week --

10 MS. SORG: I think, if I can jump in.
11 I'm sorry. We said, you know, a date of
12 decision, and that's something that we could do,
13 but also I think since we're asking for so much
14 supplemental information, I want to give the
15 Applicant the opportunity to request an
16 additional hearing. And I think that we would be
17 open to that request as well, and perhaps we can
18 look for a decision on that date or set a further
19 date.

20 MR. SULLIVAN: We would appreciate that
21 opportunity. Thank you for suggesting that.

22 MS. SORG: Okay. So that being said,

1 let's change our tack a little bit here, because
2 I don't think that we can do hearings on
3 September 13th; is that correct?

4 MR. MOY: That's correct.

5 MS. SORG: So what would be our next
6 hearing date?

7 MR. MOY: Next hearing date will be
8 September 20th. We have two appeal cases which I
9 think for the afternoon for the 20th.

10 MS. SORG: So can we look at the morning
11 of the 20th?

12 MR. MOY: For the morning of the 20th, we
13 have one, two, three, four cases in the morning.

14 MS. SORG: Oh, I found my calendar.

15 MR. MOY: For September the 20th. So
16 that's up to the Board. Otherwise, we're looking
17 at --

18 MS. SORG: I think, can we look at
19 September 27th? Is the Applicant amenable to
20 that date? It makes our lives a lot easier.

21 MR. SULLIVAN: Yeah. That's good for us.

22 MS. SORG: Good, great. So let's set

1 this for hearing on -- in the morning on
2 September 27th.

3 Okay. So we'll take this as the first
4 case in the morning on September 27th. Okay?
5 Mr. Secretary, that works with what you're
6 understanding of our schedule is?

7 MR. MOY: The morning of September 27th
8 sounds terrific.

9 MS. SORG: Okay, great. So that means
10 that if OP can submit a supplemental report by
11 Friday the 23rd, that should give you plenty of
12 time, and we'll ask for all of the filings from
13 the Applicant by -- let's give a little extra
14 time. How about Monday, September 12th?

15 MR. SULLIVAN: Okay. Thank you.

16 MR. MOY: So, once again, if I may, Madam
17 Chair. So the Applicant will file all their
18 materials by Monday, September 12th. Office of
19 Planning will submit a supplemental report on
20 Friday, by Friday, September 23rd, and the Board
21 will continue hearing this application on
22 September 27th, first case in the morning.

1 MS. SORG: All right. Thank you very
2 much. See you in September.

3 MR. SULLIVAN: Thank you.

4 MS. SORG: And that concludes our
5 afternoon public hearing.

6 [Whereupon, at 5:19 p.m., the Public
7 Hearing was adjourned.]

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