

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 11, 2012

+ + + + +

The Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room
220 South, 441 4th Street, N.W., Washington,
D.C., 20001, pursuant to notice at 9:43 a.m.,
Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
STEPHEN RICE, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
KAREN THOMAS
MAXINE BROWN-ROBERTS
ARTHUR JACKSON
STEPHEN MORDFIN
STEPHEN GYOR
ELISE VITALE

The transcript constitutes the minutes from the Public Hearing and Meeting held on September 11, 2012.

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

10:00 a.m.

CHAIRMAN JORDAN: Let's now move into our public hearing.

MR. MOY: I'm sorry, what was that?

CHAIRMAN JORDAN: We're going to move into the public hearing for today's agenda.

We'll now open this session for today's public hearing agenda. Today is September 11th, 2012. We're here for the public hearing of the Board of Zoning Adjustment. We've already introduced the Members of the Board who are sitting today; and that's Lloyd Jordan, Chairperson; Nicole Sorg, Vice Chair; Michael Turnbull from the Zoning Commission; and Jeffrey Hinkle, Board Member.

Again, I'm going to remind everyone that this is being recorded and the court reporter is also taking minutes from

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1 this morning, so we're going to ask that
2 everyone refrain from disruptive noises.

3 Today's hearing agenda has already
4 been posted and published. All individuals
5 wishing to testify who will be testifying in
6 any case today, if you're going to be
7 providing any testimony in any case on the
8 docket this morning, please stand and take the
9 oath of office from the secretary, please.

10 (Whereupon, the witnesses were
11 sworn.)

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

14 CHAIRMAN JORDAN: In addition, I'm
15 going to ask that prior to your testimony to
16 complete two witness cards and give those to
17 the court reporter who's sitting to my right.
18 So before you testify -- you can begin now if
19 you wish to get the cards and to fill out the
20 cards and give them to the court reporter
21 who's sitting to the right. Two witness cards
22 for each person who's going to testify.

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1 Mr. Moy, is there any preliminary
2 matters that we need to address this morning?

3 MR. MOY: There will be, but staff
4 would suggest that the Board address those on
5 a case-by-case basis, Mr. Chairman.

6 CHAIRMAN JORDAN: Then let's
7 begin. Call the docket, please.

8 MR. MOY: Yes, sir. The first
9 case for the public hearing in the morning
10 session is application No. 18393. This is the
11 application of Marina Martin, pursuant to 11
12 DCMR 3104.1 AND 1202.1, for a special
13 exception to allow a rear deck addition to an
14 existing flat (two-family) row dwelling under
15 section 223, not meeting the lot occupancy
16 (section 403) requirements in the CAP/R-4
17 District at premises 149 D Street, S.E.
18 Property located at Square 734, Lot 74.

19 There is I believe a request for
20 party status in this application, Mr.
21 Chairman.

22 CHAIRMAN JORDAN: Okay. Would the

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1 parties and Ms. -- is it Hofer, come to the
2 witness table, please?

3 MR. GRIFFIN: Good morning.

4 CHAIRMAN JORDAN: Good morning.
5 Would you please identify yourselves, please?
6 And make sure that the button on the
7 microphone is pushed. The button -- the light
8 should be bright green.

9 MR. GRIFFIN: Good morning, Mr.
10 Chairman and Members of the Board. My name is
11 Mark Griffin and I'm here representing Lydia
12 Hofer, who is the owner and occupant of 151 D
13 Street, S.E. And to my left is Eric Daniel,
14 who is an attorney in our firm of Griffin &
15 Murphy.

16 CHAIRMAN JORDAN: Is the applicant
17 present?

18 Yes, would you take the -- yes,
19 all parties involved in this matter, except
20 for witnesses who are not parties, please come
21 and take a seat at the table.

22 Would you introduce yourselves,

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1 please? Make sure the button is pushed and
2 you have a bright glowing green light. There
3 you go.

4 MS. MARTIN: Good morning. My
5 name is Marina Martin. I'm the owner of the
6 property on 149 D Street, S.E., Washington,
7 D.C.

8 MR. THERRY: My name is James
9 Therry. I'm the co-owner of that property.

10 MS. JONES: I'm Kim Jones. I'm
11 the architect working with --

12 CHAIRMAN JORDAN: We have before
13 us a request for special exception to section
14 403 for lot occupancy to allow for a second-
15 floor deck.

16 Additionally, in reviewing of the
17 file; and I don't know how you may want to
18 handle this to go forward, but it's not all
19 the relief that would be necessary if we were
20 to grant this particular application for
21 special exception. It's also recommended that
22 there's relief from section 401 of lot area

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1 and then 2001.3 for nonconforming structure
2 would be required if you were going to have
3 full relief necessary to construct a second-
4 floor deck.

5 I don't know if you had
6 conversation with the Office of Planning prior
7 to today. Has there been conversations with
8 the applicant/Planning?

9 MR. JONES: Yes.

10 CHAIRMAN JORDAN: Okay. And
11 you're aware of the other relief that's
12 required?

13 MR. JONES: They granted us all of
14 the relief that we had applied for. I think
15 there was a letter of approval from Planning.

16 CHAIRMAN JORDAN: Well, you may
17 have had some discussions, but since that time
18 the issue has been raised and been reviewed
19 that lot area -- there's a requirement that
20 you need relief for lot area and also 2001.3,
21 nonconforming structure.

22 So the parties can make an oral

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1 motion to include that in our consideration at
2 this time, if you wish, or you can withdraw,
3 ask for a continuance and take another look at
4 it, but we're open to an oral motion if
5 that's --

6 MR. JONES: What was the
7 nonconforming structure?

8 CHAIRMAN JORDAN: What exactly was
9 the nonconforming structure?

10 MR. JONES: What was the --

11 CHAIRMAN JORDAN: Let's do this:
12 Have you had conversation with the Office of
13 Planning?

14 MR. JONES: Yes, I received a call
15 and an email from them last week that they had
16 reviewed the project.

17 CHAIRMAN JORDAN: It's generally
18 the percentage size of occupancy would make it
19 nonconforming.

20 MR. JONES: Right, and that was
21 what we were asking for relief from.

22 MR. GRIFFIN: Mr. Chairman, may I

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1 be heard?

2 CHAIRMAN JORDAN: No, not at this
3 point, please.

4 What we'll do is just absorb
5 what's necessary for relief under 223 if we
6 were to grant the application, and we will
7 take care of that. There's an issue with what
8 the ZA might have provided you, an issue with
9 the Office of Planning, and then how we would
10 proceed. But it's under 223 for relief. And
11 so, we will just provide all the necessary
12 relief if we grant the 223. There is a --

13 MR. GRIFFIN: Mr. Chairman?

14 CHAIRMAN JORDAN: Yes.

15 MR. GRIFFIN: It's my
16 understanding that if the relief that was --

17 CHAIRMAN JORDAN: Let me proceed
18 to let you become a party before you speak to
19 the Board, if you would.

20 MR. GRIFFIN: Thank you, Mr.
21 Chairman.

22 CHAIRMAN JORDAN: There's a

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1 request by Ms. Hofer for party status; and
2 it's my understanding that you are the
3 immediate neighbor, and we will accept your
4 party status application and approve that.

5 Now, Mr. Griffin is it?

6 MR. GRIFFIN: Griffin.

7 CHAIRMAN JORDAN: Why do you
8 address the Board?

9 MR. GRIFFIN: Well, it was my
10 understanding; and as you pointed out, you
11 don't see me very often down here, that
12 section -- that when you come before the Board
13 of Zoning Adjustment on an appeal from the
14 Zoning Administrator, the issues are limited
15 to the four corners of the letter.

16 CHAIRMAN JORDAN: This is not an
17 appeal case.

18 MR. GRIFFIN: It's -- isn't this
19 come from the -- a letter --

20 CHAIRMAN JORDAN: This is not an
21 appeal case. This is an application for
22 relief under 223 for a special exception for

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1 adding a second-floor deck.

2 MR. GRIFFIN: All right. Thank
3 you.

4 CHAIRMAN JORDAN: We have reviewed
5 the record in this matter, and so we've looked
6 at all the documents. We understand what
7 you're trying to do in regards to the
8 addition. You don't have to go through a full
9 presentation. If there's something you want
10 to tell the Board about your request, then let
11 us know. It's your opportunity. You have --
12 at this point you have the opportunity to make
13 a presentation to the Board. You can
14 reiterate that which you've already submitted
15 to the Board. You don't have to. If there's
16 any additional information you want to present
17 to the Board either by documentation or
18 testimony, please feel free to do so.

19 MR. THERRY: Mr. Chairman, may I
20 reserve that right to speak maybe later in the
21 hearing?

22 CHAIRMAN JORDAN: You do have an

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1 opportunity for rebuttal.

2 MR. TERRY: Thank you very much.

3 CHAIRMAN JORDAN: But if you want
4 to have -- but this is your opportunity if you
5 want to present anything that's necessary.
6 There's things in the record. We've already
7 seen the Office of Planning's report which
8 recommends that this special exception be
9 granted. We have the recommendation of
10 approval from ANC-6B, and we also have a
11 letter of no objection by the Department of
12 Transportation in support of your application,
13 and also a letter of no inconsistency from the
14 Architect of the Capitol. So those things are
15 already in the file and are part of the record
16 which we will consider. But you have the
17 opportunity if you want to present something
18 else. We have your application. We have all
19 your documents.

20 But let me ask the Board: Are
21 there any questions of the applicant at this
22 time?

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1 (No audible response.)

2 MR. TERRY: Mr. Chairman, we've
3 also been reviewed by Historic and been
4 approved by them.

5 CHAIRMAN JORDAN: Very good.

6 MR. TERRY: Thank you.

7 CHAIRMAN JORDAN: Okay. Then
8 let's turn now to the -- oh, okay. Go ahead.
9 Oh, I thought I asked.

10 VICE CHAIR SORG: Thank you, Mr.
11 Chairman. If we're doing questions for the
12 applicant now, it seems like a good way to
13 fill in any of the missing information.

14 I think because of what we can see
15 are going to be some of the discussions that
16 are going to be encompassed today, the first
17 thing I would like to ask you is if you can
18 sort of talk about your interactions with your
19 adjacent neighbors. We do see the ANC letter
20 and other things, but with the neighbors
21 specifically, if you can talk about that a
22 little bit.

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1 MS. MARTIN: We moved and we
2 purchased the house three-and-a-half years
3 ago. And Ms. Hofer is next door neighbors.
4 And we paid her monthly rent, actually one
5 year, check for parking her space. And I have
6 a few of the checks here, \$1,800 for the year
7 for parking our cars, half of the parking.
8 And this year we decided we could save the
9 money because we have Mini Coopers so we can
10 park three Mini Coopers in our spot. That
11 created some unpleasantness between the
12 neighbors and I. But for the rest, we -- we
13 -- we take care our property. The property
14 was abandoned for five years or so. The last
15 three years we are present.

16 VICE CHAIR SORG: If I can just
17 help direct you. I have a Mini Cooper, too,
18 and I like it a lot. But what I was looking
19 for actually is relevant interactions that you
20 may have had; for example, presenting plans or
21 discussions of the project that you're wishing
22 to undergo.

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1 MS. MARTIN: Right. Actually Ms.
2 Hofer met the architect in a couple occasion
3 because we were working with the architect
4 since October last year. And the drawing that
5 we had, we discussed it with her. Actually I
6 forgot, we have the key of her house and I was
7 going to return it to her. We had a very
8 friendly relationship. She was aware of this
9 deck that we want to do, which is a little bit
10 bigger of what we allowed. Also because the
11 steps are falling apart. And she was aware of
12 this. On May and in June we went out for
13 dinner. And so -- oh, actually, yes, can I
14 give the key back to Ms. Hofer just because
15 there was a --

16 CHAIRMAN JORDAN: So let me try to
17 help you. Did you present the drawings?

18 MS. MARTIN: Yes, we presenting --

19 CHAIRMAN JORDAN: Okay. Okay.
20 Okay.

21 MS. MARTIN: -- formally during --
22 what I'm saying is that we had a very friendly

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1 relationship with the neighbors and we made it
2 a point to keep it friendly, even financially.

3 CHAIRMAN JORDAN: Got you.

4 MS. MARTIN: And now --

5 CHAIRMAN JORDAN: So you presented
6 the drawings?

7 MS. MARTIN: -- I'm surprised --

8 CHAIRMAN JORDAN: And the
9 drawings, from the time that you presented,
10 did they change in any way?

11 MS. MARTIN: No, the drawings were
12 from the -- the architect that's here.

13 MS. THERRY: Ms. Sorg, if I may?
14 The adjacent neighbor on the other side lives
15 in Texas. And I contacted him by telephone
16 and emailed him the drawings. That's Mr.
17 Bridwell. I believe you have a letter from
18 him. So I was -- I took care to make sure
19 that the adjacent neighbors had a chance to
20 look at the design and understand what it was
21 that we're trying to accomplish.

22 COMMISSIONER TURNBULL: Did you

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1 submit that letter to the Office of Zoning?

2 MR. THERRY: No, those were the
3 letters that were written to the Advisory
4 Neighborhood Commission.

5 COMMISSIONER TURNBULL: From Mr.
6 Bridwell?

7 MR. THERRY: Yes, that's right.

8 VICE CHAIR SORG: I think if -- we
9 did not receive those letters, but --

10 COMMISSIONER TURNBULL: We have
11 not received those.

12 VICE CHAIR SORG: -- if -- you can
13 have the opportunity now to submit those --

14 MR. THERRY: Sure.

15 VICE CHAIR SORG: -- if you have
16 copies to the secretary.

17 CHAIRMAN JORDAN: Okay. Any other
18 questions of the applicant?

19 COMMISSIONER TURNBULL: I guess
20 the only question is when you talked to Ms.
21 Hofer, what was the outcome of those meetings?

22 MR. THERRY: Well, I had a number

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1 of conversations with her about it, and she
2 was concerned. She wanted to make sure in
3 particular that we weren't going to interfere
4 with access to the alley or with the whole
5 parking situation, and likely so. I mean,
6 that's something that everybody who lives at
7 that end of the alley is very, very concerned
8 about. And on both occasions I assured her
9 that we weren't going to touch the alley, we
10 weren't going to touch the parking situation,
11 that all we wanted to do was replace this
12 stair structure and put a little deck out
13 there. And on both occasions --

14 COMMISSIONER TURNBULL: And there
15 was no argument from Ms. Hofer?

16 MR. TERRY: On both occasions she
17 said, well, I don't want you messing with the
18 parking. And I said we're not going to mess
19 with the parking, Lydia, and she seemed to
20 accept that. So I can't explain why it's
21 gotten this way.

22 COMMISSIONER TURNBULL: Okay.

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1 MS. MARTIN: We had a surveyor
2 come to make sure, because it's a quirky way.
3 And actually there is bekown to our knowledge
4 at the time a 12-foot easement in the alley.
5 So we already are giving up the 12 feet in
6 addition to our parking area, the pad, which
7 has nothing to do with the deck. So we --
8 even if we want to, we can't because there is
9 a 12-foot easement that comes from the parking
10 space that we have now up to the alley. So,
11 and the deck would be I think 40 feet back.

12 COMMISSIONER TURNBULL: Well,
13 basically what you're saying -- I don't see
14 any easement noted on the survey, but you're
15 saying that there is an easement that --
16 basically extending the public alley.

17 MS. MARTIN: It's not --

18 COMMISSIONER TURNBULL: Its
19 access --

20 MS. MARTIN: -- the public alley.
21 It's to be access. It is not technically
22 public alley.

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1 COMMISSIONER TURNBULL: Right.

2 MS. MARTIN: But this is the
3 picture.

4 COMMISSIONER TURNBULL: Right.

5 MS. MARTIN: So what you see from
6 here on --

7 COMMISSIONER TURNBULL: Is access.

8 MS. MARTIN: -- is the access
9 by --

10 MR. THERRY: That's the effect of
11 what you're seeing, yes.

12 MS. MARTIN: Right.

13 MR. THERRY: It is in effect an
14 extension of the public alley. That's right.

15 COMMISSIONER TURNBULL: Okay.
16 Thank you.

17 MS. MARTIN: Yes, and trash can,
18 trash collector come, parking, everything.
19 It's not going to be affected by the deck at all.

20 COMMISSIONER TURNBULL: Okay.
21 Thank you.

22 CHAIRMAN JORDAN: Any other

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1 questions of the applicant?

2 MR. GRIFFIN: From the Board or
3 from the parties?

4 CHAIRMAN JORDAN: From the
5 applicant. From the Board to the applicant.
6 That's where I'm right now.

7 (No audible response.)

8 CHAIRMAN JORDAN: Okay. Then let
9 me ask -- then, Mr. Griffin, if you have any
10 cross-examination?

11 MR. GRIFFIN: Thank you, Mr.
12 Chairman. Ms. Martin, my name is Mark
13 Griffin. I'm an attorney. I'm representing
14 your neighbor, Lydia Hofer.

15 I know that there are some
16 pictures in the record here, but could you
17 describe your house for me? It's two units as
18 I understand.

19 MS. MARTIN: Is it two units?
20 Yes, it is two units. I have a legal rental
21 license issued in 2010 for the second unit.
22 And these are the pictures. And you saw --

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1 came -- matter fact, you came -- when you came
2 out of the parking lot, you speak to us in the
3 parking lot, but --

4 CHAIRMAN JORDAN: Well, you need
5 to show us so --

6 MS. MARTIN: Oh.

7 CHAIRMAN JORDAN: -- that we know
8 what you're talking about.

9 MS. MARTIN: These are the
10 pictures of the rear that shows the two car
11 parked. And this actually is the parking
12 space that we were renting for guests or an
13 extra. This here is Ms. Hofer car parked
14 here. So the deck is coming to what is the
15 fence now. So this is the house.

16 CHAIRMAN JORDAN: Okay.

17 MR. GRIFFIN: Now the first floor
18 is on grade at the front, right?

19 MS. MARTIN: Yes.

20 MR. GRIFFIN: And also on the
21 rear?

22 MS. MARTIN: Yes.

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1 MR. GRIFFIN: And you say you have
2 a rental license?

3 MS. MARTIN: Yes, sir.

4 MR. GRIFFIN: Is that a current
5 rental license, or --

6 MS. MARTIN: Yes, sir.

7 MR. GRIFFIN: -- has it expired?

8 MS. MARTIN: No, it's a current
9 rental license. And matter of fact I just
10 renew it for \$268 along with the Clean Hands.

11 MR. GRIFFIN: Okay.

12 MS. MARTIN: And here -- it's
13 here.

14 MR. GRIFFIN: May I see it,
15 please?

16 MS. MARTIN: No, you may not. You
17 can take a look at it like this. I don't
18 think -- I mean, it's here.

19 CHAIRMAN JORDAN: It's really not
20 relevant to this hearing.

21 MS. MARTIN: Exactly.

22 MR. GRIFFIN: Well, it might be,

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1 Mr. Chairman.

2 Now, tell me --

3 CHAIRMAN JORDAN: Do you want to
4 make a proffer? Otherwise it's not relevant.
5 I'm going to ask you to move on.

6 MR. GRIFFIN: I'm moving on.

7 Thank you.

8 Ms. Martin, the tenants you have
9 are coming in and out all the time, isn't that
10 correct?

11 MS. MARTIN: I don't monitor my
12 tenants. I don't know. They don't check in
13 with me when they come in and out.

14 MR. GRIFFIN: Aren't you operating
15 this as a type of a hotel on a daily basis?

16 MS. MARTIN: No, I do not. Is Ms.
17 Hofer has a license for her rental unit in the
18 back.

19 MR. GRIFFIN: Isn't it a fact that
20 people come and rent your apartment by the
21 day?

22 MS. MARTIN: Not by the day, they

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1 don't.

2 MR. GRIFFIN: By the week?

3 MS. MARTIN: I don't understand
4 what this has to do with the deck. The deck,
5 it's --

6 CHAIRMAN JORDAN: If that's your
7 objection to the question, I will grant that.

8 Move on, please, Mr. Martin.

9 MR. GRIFFIN: Let me make a
10 proffer. It's my understanding that Ms.
11 Martin and her husband are operating a
12 transient facility out of the first floor of
13 their house. A transient facility is not a
14 housing accommodation or a premises, and
15 therefore if they're doing that this case
16 would not be properly held as a 223 case
17 because it's not either an individual
18 residence or a two-flat residence. It's a
19 hotel. And so I don't think that you can
20 provide any relief to her today if she's using
21 her first floor as a transient facility. And
22 we have evidence to show that she's doing just

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1 that.

2 CHAIRMAN JORDAN: Then you've
3 asked the question. She's answered. And your
4 answer was that -- what was your response to
5 the question?

6 MS. MARTIN: I know I have to
7 respond. It's not relevant to the deck. The
8 deck is an area.

9 MR. GRIFFIN: She's not answering
10 the question, Mr. Jordan. That's the point.
11 And I think I'm entitled to get an answer to
12 the question.

13 CHAIRMAN JORDAN: Just a second.

14 We're going to stand in recess for
15 about 10 minutes. Let's go to the back room.

16 (Whereupon, at 10:33 a.m. off the
17 record until 10:54 a.m.)

18 CHAIRMAN JORDAN: We'll go back
19 into session.

20 Mr. Martin, give me a short
21 proffer in regards to why you believe that
22 this unit is being operated as not a single-

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1 family dwelling or a flat.

2 MR. GRIFFIN: We have, and I'll
3 present copies to the Board, an advertisement
4 on craigslist showing that this unit is being
5 offered at \$185 a day. We'll have testimony
6 from our client indicating that she's seen
7 people going in and out of there on a regular
8 basis. Neighbors -- well, we won't have
9 testify from neighbors, but from our -- Ms.
10 Hofer.

11 And the situation, as we see it,
12 is that 223 applies to --

13 CHAIRMAN JORDAN: I'm asking you
14 to just tell me what your evidence is going to
15 be.

16 MR. GRIFFIN: That's my evidence.

17 CHAIRMAN JORDAN: Okay.

18 MR. GRIFFIN: And we would like to
19 have the opportunity to cross-examine the
20 applicant with respect to this as well.

21 CHAIRMAN JORDAN: Do you have with
22 you the craigslist --

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1 MR. GRIFFIN: I do.

2 CHAIRMAN JORDAN: Let me see that
3 first.

4 MR. GRIFFIN: It's coming your
5 way.

6 CHAIRMAN JORDAN: I don't see in
7 here where it says \$185 per day. However, Mr.
8 Martin, for the --

9 MR. GRIFFIN: It's right --

10 CHAIRMAN JORDAN: Mr. Martin?

11 MR. GRIFFIN: I'm sorry

12 CHAIRMAN JORDAN: For the sake of
13 the very limited, very, very, very, very,
14 very, very limited scope of cross-examination
15 in this regard, I think your last question to
16 the applicant was what?

17 MR. GRIFFIN: I'm sorry, I don't
18 remember, but I had asked her to see a copy of
19 her housing business license and she refused
20 to give it to me. I'll renew that question.

21 CHAIRMAN JORDAN: Well, she
22 doesn't have to give it to you. She can --

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1 well, do you have a housing business license?

2 MS. MARTIN: Yes.

3 CHAIRMAN JORDAN: Could you give
4 that to -- would you bring it to Mr. Moy?
5 Could you bring it to Mr. Moy, please?

6 MS. MARTIN: There was a license
7 when we bought the house, so we just renewed
8 it. Yes, we have a Certificate of Occupancy.
9 This was approved.

10 CHAIRMAN JORDAN: Bring it to Mr.
11 Moy to offer --

12 MS. MARTIN: May I?

13 CHAIRMAN JORDAN: All right. I'm
14 going to sustain the objection to submit the
15 -- for you to review the -- it's -- she's
16 already given you testimony that it's a --

17 MR. GRIFFIN: I just wanted to see
18 it. She showed it to me.

19 CHAIRMAN JORDAN: She showed it to
20 you? Okay. You saw it?

21 MR. GRIFFIN: Now I've seen it,
22 yes.

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1 CHAIRMAN JORDAN: Okay. Good.
2 All right. All right. Move on. It's going
3 to go back to the secretary. You shall have
4 it.

5 MR. GRIFFIN: Ms. Martin, in your
6 application you indicate that your family uses
7 the entire structure, is that correct?

8 MS. MARTIN: No, I did not.

9 MR. GRIFFIN: I'm showing you the
10 application that you filed. Read where it
11 says that?

12 CHAIRMAN JORDAN: Would you want
13 to show us?

14 MR. GRIFFIN: I'm sorry.

15 CHAIRMAN JORDAN: Would you tell
16 us what -- where you are?

17 MS. MARTIN: I don't know. This
18 doesn't even have my signature. I don't know
19 what this document is.

20 CHAIRMAN JORDAN: Will you show us
21 where her -- what -- can you tell us what
22 you're looking at, please, Mr. Martin -- Mr.

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1 Griffin?

2 MR. GRIFFIN: It's statement of
3 reasons in support of application of James
4 Therry and Marina Martin for a special
5 exception to permit a rear deck to exceed the
6 allowable lot occupancy. And it came in with
7 their application for the special exception.
8 And it says in the last -- first paragraph,
9 last sentence the Therry-Martin family owns
10 and uses the entire structure, which
11 apparently is not true.

12 MR. THERRY: On the contrary. If
13 I may, Mr. Chairman?

14 CHAIRMAN JORDAN: Go ahead. I'll
15 let you answer this question.

16 MR. THERRY: We do use the entire
17 structure. Occasionally we go down there and
18 use it for office space. Occasionally I have
19 friends over. I use it all the time.

20 CHAIRMAN JORDAN: All right.

21 MR. THERRY: I use the patio. I
22 use the whole structure.

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1 CHAIRMAN JORDAN: Okay. There's
2 your answer, Mr. Griffin. Please continue.

3 MR. GRIFFIN: So that means that
4 occasionally you can get access to the
5 property because it's not rented out, is that
6 true?

7 MR. TERRY: It's my property. I
8 have full access to it.

9 MR. GRIFFIN: I'm just asking if
10 you rent the property out on an occasional
11 basis.

12 CHAIRMAN JORDAN: We're clear.
13 They've already given testimony that they rent
14 the property out.

15 MR. GRIFFIN: They rent it out not
16 on a long-term basis as a residence. They
17 rent it out as a transient facility, and
18 that's the difference here.

19 CHAIRMAN JORDAN: That's your --
20 you're -- I don't need you to testify. I need
21 you to ask questions and I didn't -- so you
22 want to ask your next question, please?

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1 MR. GRIFFIN: Isn't it true that
2 you rent this unit from time to time by the
3 day or by the week?

4 MS. MARTIN: I do not want to
5 answer this because I don't see the connection
6 with the deck.

7 CHAIRMAN JORDAN: Ma'am, would you
8 please answer the question?

9 MS. MARTIN: No.

10 CHAIRMAN JORDAN: I'm asking you
11 to answer the question.

12 MS. MARTIN: Okay. I'm sorry.

13 CHAIRMAN JORDAN: Do you rent it
14 out, and for how long a periods do you rent it
15 out?

16 MS. MARTIN: I rent it out
17 sometimes for two months. Sometimes we don't
18 rent it all. We had two weeks friends from
19 France. Next month I have friends from Italy.
20 We do a house swap. And I had tenant with
21 lease up to February 2012. And I can provide
22 lease. I have D-30 that I file with the

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1 District.

2 CHAIRMAN JORDAN: All right.

3 Thank you.

4 Next question, please?

5 MR. GRIFFIN: You're a CPA in the
6 District of Columbia, is that correct?

7 MS. MARTIN: No, I'm not. I'm
8 enroll agent.

9 MR. GRIFFIN: All right. But you
10 file tax returns on behalf of clients --

11 CHAIRMAN JORDAN: What's the
12 relevance of that question?

13 MR. GRIFFIN: I'm trying to show
14 that she's familiar with --

15 CHAIRMAN JORDAN: Let's move on.
16 I'm finding that out of order. Go ahead.

17 MR. GRIFFIN: All right.

18 CHAIRMAN JORDAN: Move to your
19 next Mr. Griffin.

20 MR. GRIFFIN: Have you ever rented
21 this apartment for less than a week?

22 MS. MARTIN: I don't recall.

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1 CHAIRMAN JORDAN: Okay. Next
2 question?

3 MR. GRIFFIN: Do you pay any
4 transient tax for renting this apartment?

5 CHAIRMAN JORDAN: That's out of
6 order. Next question?

7 MR. GRIFFIN: Why is that out of
8 order?

9 CHAIRMAN JORDAN: Because I just
10 ruled it so. Go to the next question, please.

11 MR. GRIFFIN: How do you get your
12 tenants for this property?

13 MS. MARTIN: Advertisement.

14 MR. GRIFFIN: Where do you
15 advertise?

16 MS. MARTIN: I don't recall.

17 MR. GRIFFIN: What is the rent
18 that you ask for?

19 MS. MARTIN: With -- without using
20 the deck.

21 MR. GRIFFIN: There is no deck.

22 MS. MARTIN: Exactly. So what

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1 this has to do with the deck? I would like to
2 know why we are here --

3 CHAIRMAN JORDAN: I understand.

4 MS. MARTIN: I'm sorry.

5 CHAIRMAN JORDAN: Answer the
6 question, please.

7 MS. MARTIN: The two -- \$1,850 a
8 month.

9 CHAIRMAN JORDAN: One thousand
10 eight hundred fifty dollars a month. Very
11 good. Thank you.

12 MR. GRIFFIN: Have you ever quoted
13 a daily rate for the rental of this property?

14 MS. MARTIN: Yes, if you divide it
15 by 30, it's a daily rate.

16 MR. GRIFFIN: Have you ever quoted
17 a daily rate for this property?

18 MS. MARTIN: I don't recall.

19 MR. GRIFFIN: Does the figure \$185
20 a day stick in your mind --

21 MS. MARTIN: I don't recall.

22 MR. GRIFFIN: -- or refresh your

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1 memory?

2 MS. MARTIN: I don't recall.

3 MR. GRIFFIN: And is it your
4 testimony that you've never had occupants for
5 less than a week in this apartment?

6 MS. MARTIN: I don't recall.

7 MR. GRIFFIN: No further
8 questions.

9 CHAIRMAN JORDAN: Thank you. Any
10 other questions of the applicant by the Board?

11 (No audible response.)

12 CHAIRMAN JORDAN: We'll turn now
13 to the Office of Planning for their report.

14 MR. LAWSON: Thank you, Mr. Chair.
15 Very quickly, Joel Lawson with the Office of
16 Planning. I'm simply here to introduce a new
17 member of the Office of Planning staff to the
18 Board. Her name is Elise Vitale. She has
19 great experience working in planning in the
20 area, and I'll turn it over to her for the OP
21 report. Thank you.

22 MS. VITALE: Good morning, Mr.

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1 Chair and Members of the Board. For the
2 record, Elise Vitale with the Office of
3 Planning.

4 OP staff supports the applicant's
5 request and will stand on the record. I can
6 answer any questions that you might have.

7 CHAIRMAN JORDAN: Any questions
8 for the Office of Planning by the Board?

9 (No audible response.)

10 CHAIRMAN JORDAN: Does the
11 applicant have any questions of the Office of
12 Planning?

13 MR. TERRY: No, thank you.

14 CHAIRMAN JORDAN: Does the
15 intervener have any questions for Office of
16 Planning?

17 MR. GRIFFIN: Yes, Mr. Jordan.

18 CHAIRMAN JORDAN: Yes, please.

19 MR. GRIFFIN: Very briefly. Under
20 a section 223 exception under the Zoning
21 Ordinance isn't it true that it only applies
22 to a dwelling used as a residence or a two-

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1 family dwelling used as a residence?

2 MR. LAWSON: Yes, that's true.

3 MR. GRIFFIN: Would a transient
4 facility be considered to be a residence?

5 MR. LAWSON: It would depend on
6 the nature of the facility.

7 MR. GRIFFIN: If the -- could you
8 elucidate?

9 MR. LAWSON: Sure. If it was a
10 residence with lodgers, which is permitted
11 under the Zoning Regulations, that would be
12 permitted. If it was a residence with a bed
13 and breakfast, a licensed bed and breakfast,
14 that would also be a single-family dwelling
15 with a home-based business and would be
16 eligible for 223 relief.

17 MR. GRIFFIN: But both of those
18 would require separate licenses, isn't that
19 true?

20 MR. LAWSON: I know that the bed
21 and breakfast would. To be honest, I don't
22 know whether lodgers require a separate

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1 license. I don't know that.

2 MR. GRIFFIN: How do you define
3 lodgers?

4 MR. LAWSON: They're defined in
5 the Zoning Regulations, and I don't have the
6 definition in front of me.

7 MR. GRIFFIN: This would be a
8 situation where the residence had multiple
9 occupants one or more of whom were lodgers,
10 correct?

11 MR. LAWSON: I don't -- sorry, I
12 don't understand the question.

13 MR. GRIFFIN: A lodger would be in
14 a -- wouldn't be in a one-bedroom apartment.
15 A lodger would be in a house with multiple
16 rooms.

17 MR. LAWSON: I don't think that
18 the regulations -- that the Zoning Regulations
19 stipulate that, but as I said, I don't have
20 the definition in front of me.

21 MR. GRIFFIN: Unfortunately, I
22 didn't bring the definitions here with me

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1 either.

2 But a transient use, a specific
3 transient use would not be --

4 CHAIRMAN JORDAN: I think he's
5 already asked -- you asked that question. I
6 think he's answered it. And he asked you to
7 be more specific. And you asked him to
8 explain that. And he said it's still a
9 single-family use and dwelling if it's used
10 for -- to have lodgers or bed and breakfast.

11 Is that correct? Was that your
12 testimony?

13 MR. LAWSON: Yes, it was.

14 MR. GRIFFIN: And I just wanted to
15 make sure that I was clear that --

16 CHAIRMAN JORDAN: I was clear.
17 Let's move to your next question.

18 MR. GRIFFIN: -- that it did not
19 include transient facilities.

20 CHAIRMAN JORDAN: Let's move to
21 your next question.

22 MR. GRIFFIN: That's all. That's

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1 all for the Office of Planning.

2 CHAIRMAN JORDAN: I did ask --

3 MR. GRIFFIN: Oh, I'm sorry. I
4 had one more question.

5 Isn't it -- one of the things that
6 would be required that was not actually
7 written up but only noted in report was that
8 you would require a variance for the
9 nonconforming use and --

10 MR. LAWSON: We -- the Office of
11 Planning noted that the existing list is
12 nonconforming to lot area.

13 MR. GRIFFIN: Right.

14 MR. LAWSON: We did not address a
15 use issue because we don't believe that that
16 is relevant to the case before the BZA.

17 MR. GRIFFIN: That the addition of
18 the deck wouldn't fall in violation of that?

19 MR. LAWSON: As a use variance we
20 did not put that -- that was not in our
21 report.

22 MR. GRIFFIN: Okay. Thank you.

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1 CHAIRMAN JORDAN: Is there any
2 other government agency? Department of
3 Transportation is not here. Okay.

4 Anyone from the ANC?

5 (No audible response.)

6 CHAIRMAN JORDAN: We do have a
7 report from the ANC voting to approve in
8 support of the special exception, which will
9 receive great weight by the Board.

10 Is there anyone else in the
11 audience, a person in support of this
12 application who wants to testify?

13 (No audible response.)

14 CHAIRMAN JORDAN: Let's now
15 have --

16 COMMISSIONER TURNBULL: Mr. Chair,
17 speaking of government agencies, do you need
18 me to comment on the Architect of the Capitol?

19 CHAIRMAN JORDAN: We do have the
20 -- if you want to talk about the report we do
21 have.

22 COMMISSIONER TURNBULL: Okay. All

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1 right. I'll just summarize that the Architect
2 of the Capitol under the -- anything to do
3 with a special exception on the Capitol
4 Interest Overlay District is asked by the
5 Office of Zoning to review it for consistency
6 with those regulations as it affects the
7 interests of the United States Congress. And
8 I did review it, looked at it and reviewed it
9 with other people, especially the Capitol
10 Police, and we so interest that it would
11 affect the business operations of the United
12 States Capitol.

13 CHAIRMAN JORDAN: Thank you. And
14 we have that for the record, which will be
15 included in any decision.

16 Mr. Griffin, would you like to
17 present your case, please?

18 MR. GRIFFIN: Yes, Mr. Chairman.
19 I'd like to call Lydia Hofer as my first
20 witness.

21 CHAIRMAN JORDAN: Very good.

22 MR. GRIFFIN: Ms. Hofer, let me

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1 have your full name and your address, please?

2 MS. HOFER: I'm Lydia Hofer. I
3 live at 151 D Street, S.E.

4 MR. GRIFFIN: Prior to the
5 submission of the request for a special
6 exception in this case my Ms. Martin, did you
7 have occasion to see the plans that -- for the
8 deck that she was proposing to build?

9 MS. HOFER: No, I have absolutely
10 no idea. In fact, I was shocked when I had to
11 go down to -- finally did get to see it way
12 after the fact. I went down to ANC because
13 one of my neighbors told me that it was filed
14 down there. I didn't know the process.

15 MR. GRIFFIN: Now, there's a
16 letter on file that has your signature on it
17 that was submitted by the applicants to your
18 local ANC. Can you tell us the circumstances
19 under which you signed that letter?

20 MS. HOFER: I was home sick, very,
21 very sick and there was a knock on the back
22 door, which surprised me. I went to go open

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1 the door. I have bars after that. And it was
2 Marina's husband standing at the door. And I
3 said not now. I said nobody ever comes to my
4 back door. One, I was startled. And two, I
5 was really, really ill. And I told him that
6 and he said, well, this will just take a
7 minute. This is important and it's no -- to
8 me -- and it's no big deal. He said, the ANC
9 just wants to know if you have any problems
10 with putting up a decks, a little deck. And
11 he referred to the little deck again this
12 time.

13 I said, well, not now. And he
14 said, no, no, I need to have this. No big
15 deal. And I didn't know about the ANC
16 process. I thought they were just looking at
17 the historical thing. I didn't know they were
18 going to have a hearing. He never said that.
19 And he told me that September 11th is when --
20 this would be the main hearing, and it's no
21 big deal. And just all I wanted to do was get
22 him out. And he knew I was sick. You can ask

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1 him.

2 And the next day I called him up
3 and I said I don't even know what I signed.
4 I said, you know, I had taken a pain pill
5 because I had really hurt my shoulder. And at
6 the time --

7 CHAIRMAN JORDAN: But you signed
8 it?

9 MS. HOFER: I signed it.

10 CHAIRMAN JORDAN: Okay. Thanks.
11 Your next question, please, Mr. Griffin?

12 MS. HOFER: And he told me he was
13 going to show me the plans at a later date
14 because he didn't have them.

15 MR. GRIFFIN: Did you tell him not
16 to use the letter until you saw the plans?

17 MS. HOFER: I did.

18 MR. GRIFFIN: Did you tell him
19 that --

20 MS. HOFER: He said he'd show them
21 to me. There was no big deal. I never saw
22 the plans. I never met the architect. I

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1 never saw the plans. He said, well, it's a
2 long ways off, which it wasn't, because this
3 was like the end of June, beginning of July.
4 And he said -- I found out later from the
5 ANC --

6 MR. GRIFFIN: Did he tell you that
7 the plans weren't in existence?

8 MS. HOFER: Yes.

9 MR. GRIFFIN: And then --

10 MS. HOFER: He said we don't have
11 them yet.

12 MR. GRIFFIN: -- did he tell you
13 that he would provide the plans as soon as he
14 got them?

15 MS. HOFER: Yes. Yes.

16 MR. GRIFFIN: Did he ever provide
17 plans to you?

18 MS. HOFER: No.

19 MR. GRIFFIN: Did anybody ever
20 provide plans for you?

21 MS. HOFER: No.

22 CHAIRMAN JORDAN: Have you seen

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1 the plans?

2 MS. HOFER: I went down to --

3 CHAIRMAN JORDAN: But you have
4 seen the plans?

5 MS. HOFER: Now I have.

6 CHAIRMAN JORDAN: Okay. All
7 right.

8 MS. HOFER: After the ANC hearing.

9 CHAIRMAN JORDAN: I got you. Yes.

10 MR. GRIFFIN: Did you ever talk to
11 the applicants about their proposed use of
12 their first-floor rental unit?

13 MS. HOFER: They mentioned to me
14 that they were going to do that. I didn't
15 think anything of it because I didn't think
16 that anybody would ever give them a license --
17 that particular block to have transient people
18 coming every two or three days. But they
19 never stay -- there's never been anybody there
20 a month.

21 MR. GRIFFIN: But they did talk to
22 you about that?

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1 MS. HOFER: Yes, and I -- and they
2 complain about so many things all the time.
3 I just --

4 MR. GRIFFIN: Well, I wanted --

5 MS. HOFER: Yes.

6 MR. GRIFFIN: And now do you see
7 people going in and out, different people on
8 a regular basis?

9 MS. HOFER: Yes, the neighbors
10 have asked me what's going on.

11 MR. GRIFFIN: How do they get into
12 the apartment?

13 MS. HOFER: They have a keypad.

14 MR. GRIFFIN: When's the last time
15 you saw what -- different people going in and
16 out of the apartment?

17 MS. HOFER: Actually they might
18 still be there. I think it was Sunday when
19 they checked in, because they came to the
20 wrong house. They came to my house and it was
21 a couple with a baby. She came ahead and
22 walked up my walkway just when I was coming

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1 out.

2 MR. GRIFFIN: Now if this deck is
3 built, will it affect your use and enjoyment
4 of your property?

5 MS. HOFER: It's -- we're on top
6 of each other. There's three houses that are
7 alike. Everybody's even in the front, but in
8 the back everybody else is set back and we're
9 very, very close. And I can see everything
10 out of all my windows.

11 MR. GRIFFIN: Now the applicant --

12 MS. HOFER: I'm concerned about
13 noise.

14 MR. GRIFFIN: -- didn't present
15 any evidence with respect to sight lines, but
16 if someone was standing on their proposed
17 deck, can they look into your house?

18 MS. HOFER: Yes.

19 MR. GRIFFIN: And that's because
20 you have a bay window in --

21 MS. HOFER: I have a bay window.

22 MR. GRIFFIN: Now there is a --

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1 MR. MOY: Excuse me. Excuse me,
2 sir. Could you speak into the microphone?
3 The recorder's having difficult.

4 MR. GRIFFIN: Maybe I forgot to
5 push the button. I'll repeat the question.

6 There was no sight line testimony
7 from the applicant, but looking at the
8 proposed deck on the plans will anybody on
9 that deck be able to look into your apartment?

10 MS. HOFER: Yes.

11 MR. GRIFFIN: Or your house.
12 There is a tree in your backyard at the moment
13 that seems to block that window. Are you
14 planning on taking that tree down?

15 MS. HOFER: I've been planning on
16 taking it down for awhile. They can't do it
17 now while it's blossoming. When I had it put
18 in, they told me it wouldn't grow that big.
19 And I don't know that much about plants. It's
20 gotten too big and it's messy, and it has to
21 come down.

22 MR. GRIFFIN: So when that tree

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1 comes down it will be particularly easy for
2 them to look into your house?

3 MS. HOFER: Right.

4 MR. GRIFFIN: Well, they would
5 technically be able to look into your top
6 windows, although they wouldn't -- the sight
7 line would be slightly different, right?

8 MS. HOFER: Not the very top
9 floor, but just the middle floor.

10 MR. GRIFFIN: Middle floor? All
11 right. Now are you worried about their use of
12 the apartment say for barbecuing or
13 entertaining?

14 MS. HOFER: I don't think they
15 really entertain, but the barbecuing -- we're
16 in an alley. In fact, nobody really uses any
17 of the small decks that they have because it's
18 a nasty alley with trash cans and rats and
19 everything else. I just -- people very rarely
20 barbecue back there because it doesn't -- it's
21 just not a residential --

22 MR. GRIFFIN: If there were people

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1 on the back deck --

2 MS. HOFER: Yes.

3 MR. GRIFFIN: -- at a party or a
4 gathering, could you hear them?

5 MS. HOFER: Oh, yes. Well, we're
6 on top of each other practically.

7 MR. GRIFFIN: Are there any
8 animals in their household?

9 MS. HOFER: They have a dog.

10 MR. GRIFFIN: Does the dog bark?

11 CHAIRMAN JORDAN: Mr. Griffin, I'm
12 going to ask that you keep your questions
13 relevant to the effect of the deck in regards
14 to quiet, enjoyment, light and air to Ms.
15 Hofer's property.

16 MR. GRIFFIN: One last thing. On
17 the plans are there any plans for privacy
18 separation between the deck and your house?

19 MS. HOFER: Not that I could see.

20 MR. GRIFFIN: Would you like such
21 a privacy screen?

22 MS. HOFER: That would be good.

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1 MR. GRIFFIN: No further
2 questions.

3 CHAIRMAN JORDAN: Any questions by
4 the Board of the --

5 MR. TERRY: So if a privacy wall
6 was provided that covered up to any height of
7 the windows, would that satisfy your concerns
8 about the deck then?

9 MS. HOFER: It would make it
10 better.

11 MR. TERRY: Okay.

12 MR. GRIFFIN: Assuming that they
13 could build the deck in the first place.

14 MR. TERRY: Right. Right. Yes.

15 VICE CHAIR SORG: I have one
16 question.

17 CHAIRMAN JORDAN: Ms. Sorg?

18 VICE CHAIR SORG: Thank you, Mr.
19 Chairman.

20 Ms. Hofer, the rear of your house,
21 is it set back behind the rear of the
22 applicant's house, or at the same -- on the --

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1 is it on the same line?

2 MS. HOFER: Well, the reason we're
3 on the same line and the walls are so thin, I
4 hear everything. Something was torn down back
5 in the '50s. The house was built either in
6 '68 or '69. So this is not -- these are three
7 identical houses and they're totally even and
8 identical with very thin walls in between.

9 VICE CHAIR SORG: Okay.

10 MS. HOFER: The other houses are
11 set back further. They're -- in the front
12 everybody's even, but in the back -- for
13 instance, the people on the other side are
14 rentals that signed the letter. I've never
15 seen the man, and I've lived there since '92.
16 They're set back further. And all the other
17 applicants that might have signed it are way
18 down at the end of the block, but they're also
19 set back further.

20 VICE CHAIR SORG: So you mean
21 other --

22 MS. HOFER: The others are smaller

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1 and they're not right on -- you know?

2 VICE CHAIR SORG: I understand.

3 So you're saying other than the three houses
4 that were built at the same time -- other
5 houses are set back, but yours --

6 MS. HOFER: Right. Even --

7 VICE CHAIR SORG: -- are on the
8 same line?

9 MS. HOFER: -- that side, yes.

10 VICE CHAIR SORG: Okay. I got
11 you.

12 MS. HOFER: You can see it by the
13 picture that --

14 VICE CHAIR SORG: Yes.

15 MS. HOFER: You can't -- they
16 couldn't even see the patio.

17 VICE CHAIR SORG: Okay. Thank
18 you. And, oh, actually one other question:
19 You also have a privacy -- or a fence around
20 your backyard?

21 MS. HOFER: Yes, it came with the
22 house.

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1 VICE CHAIR SORG: You do? Okay.

2 Thank you.

3 MR. GRIFFIN: That privacy is only
4 about five feet tall and it separates the back
5 yards from the parking pads.

6 CHAIRMAN JORDAN: Any other
7 questions by the Board of Ms. Hofer?

8 (No audible response.)

9 CHAIRMAN JORDAN: Turning now, I'm
10 going to ask the applicant if there's any
11 questions they would like to address to -- or
12 cross-examination of Ms. Hofer, please.

13 MR. THERRY: Yes, thank you, Mr.
14 Chairman.

15 Ms. Hofer, isn't it true that you
16 live -- your house at 151 D Street, N.E. --
17 S.E. is immediately to the east of our house
18 at 149? Is that right?

19 MS. HOFER: I'm next door to you.
20 I don't know --

21 MR. THERRY: Right. Okay.

22 VICE CHAIR SORG: I don't think

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1 that your mic is on. So when you answer the
2 questions, you should make sure.

3 CHAIRMAN JORDAN: Everyone sitting
4 at this table, let's make sure your mics are
5 on, the green button is glowing, just in case.

6 MS. HOFER: Oh.

7 CHAIRMAN JORDAN: I'd rather
8 default that it's on than not on.

9 MR. THERRY: Thank you. And now
10 the house immediately to our west at 147 D
11 Street is a house that has multiple people
12 living there and they -- isn't it true that
13 they frequently have barbecues and parties?

14 MS. HOFER: It's a group house and
15 they do party once in awhile.

16 MR. THERRY: And they do have
17 barbecues. Sometimes they bring in a big 55-
18 gallon barbecue, isn't that right?

19 MS. HOFER: But they're on the
20 ground level. They're not --

21 MR. THERRY: Isn't that right? I
22 mean, don't they barbecue from time to time?

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1 MS. HOFER: They haven't in
2 awhile.

3 MR. THERRY: Thank you. And
4 finally, this tree that's growing next to your
5 bay window, how long has that tree been there?

6 MS. HOFER: Maybe four years. I
7 usually have it cut back, and last year I
8 didn't and it exploded with all the rains
9 we've had. And it's blocking my own view
10 right now and it's going to be cut down.

11 MR. THERRY: Isn't it --

12 MS. HOFER: -- do it until winter
13 because while it's blossoming they can't cut
14 it.

15 MR. THERRY: Thank you. Isn't it
16 true that you had no intention of cutting this
17 tree down until this whole issue arose?

18 MS. HOFER: No, that's not true.

19 MR. THERRY: Okay. Thank you. I
20 have no further questions.

21 CHAIRMAN JORDAN: Mr. Griffin, is
22 there any other evidence you have for us? Any

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1 other testimony?

2 MR. GRIFFIN: Well, I wanted to
3 just ask one question of Mr. Jones who is the
4 architect here with respect to whether he has
5 ever met my client or showed her the plans.
6 And he is sworn in as a witness.

7 CHAIRMAN JORDAN: Okay. Go ahead.

8 MR. GRIFFIN: Mr. Jones, this is
9 my client, Lydia Hofer. Have you ever met her
10 before today?

11 MR. JONES: No.

12 MR. GRIFFIN: Have you ever shown
13 here these plans?

14 MR. JONES: I haven't.

15 MR. GRIFFIN: Thank you.

16 CHAIRMAN JORDAN: Any other? Any
17 Board have any questions of the architect?

18 (No audible response.)

19 CHAIRMAN JORDAN: Okay. Are there
20 any persons in the audience who are in
21 opposition to the application who wish to
22 testify?

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1 (No audible response.)

2 CHAIRMAN JORDAN: Then let's turn
3 now -- turn back to the applicant to do a
4 wrap-up, or closing statement, or rebuttal
5 evidence if necessary.

6 MR. TERRY: Thank you, Mr.
7 Chairman. This will only take a minute.

8 This is a pretty straightforward
9 case. I would like to elucidate one point
10 though, which I think much of the difficulty
11 and confusion turns on. Ms. Hofer did ask me
12 to provide drawings to her. The drawings that
13 she asked, I thought she meant construction
14 drawings. There are no construction drawings
15 yet. We're waiting until we get approval
16 before we do construction drawings. There
17 were plans that have been filed. I thought
18 she had access to those. I thought she wanted
19 to see construction drawings. And I'll be
20 happy to show her construction drawings when
21 they're created.

22 That's it. That's all I have to

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1 say. Thank you.

2 CHAIRMAN JORDAN: Thank you. Any
3 other questions from the Board?

4 Oh, we got a race here.

5 COMMISSIONER TURNBULL: Oh, sorry.
6 Did you show her any drawings?

7 MR. MOY: I don't remember. I
8 don't remember. I talked to her about it and
9 I described it to her. And I showed her by
10 referring to the fence line how far out it was
11 going to come. I even told her what materials
12 we were thinking of making it out of.
13 Described the whole thing to her.

14 MS. MARTIN: Actually one time
15 when we were having wine together. And these
16 are the only drawings that we have. I
17 personally show her the drawing. We were in
18 my living room. She was drinking the white
19 wine. And as you can see, because we were
20 renting her parking space up to June of this
21 year. Then in July we decided not to rent
22 anymore. Incidentally, she change her mind with

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1 the letter.

2 CHAIRMAN JORDAN: Okay. So you --

3 MS. MARTIN: But, what I'm saying,
4 this --

5 CHAIRMAN JORDAN: So you said you
6 did show?

7 MS. MARTIN: Yes, because this is
8 the only drawing that I have. And these are
9 not so fancy, but as you can see, her BMW --
10 matter of fact, I even talked to her. I say,
11 you know, if you want to have more space for
12 parking, we can swap. And your BMW, like I
13 suggested, will have a little bit more room.
14 That's -- I show it to her around September.

15 COMMISSIONER TURNBULL: But did
16 you show a drawing with the proposed deck?

17 MS. MARTIN: Yes, whatever he's --
18 whatsoever the architect had given --

19 COMMISSIONER TURNBULL: You showed
20 her a set of those drawings?

21 MS. MARTIN: Yes.

22 COMMISSIONER TURNBULL: But you

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1 didn't give her a set?

2 MS. MARTIN: No, I didn't give it
3 to her because we were -- like I say, it was
4 in September, around this -- I'm sorry. It
5 was in November and we were discussing
6 actually me going to some St. Maarten where
7 she goes every year. And I said this is this
8 is what we're going to plan to do. And the
9 stairs and the design is going to be like the
10 wood front --

11 COMMISSIONER TURNBULL: Did you
12 offer to give her a set of drawings?

13 MS. MARTIN: She didn't ask. She
14 didn't ask. And honestly, that's the only
15 thing that I had from the architect. Not this
16 fancy. Just the -- but exactly this.

17 COMMISSIONER TURNBULL: Okay.
18 Thank you.

19 MS. MARTIN: And we discuss. I
20 remember very clearly, because we discussed
21 the fact that her BMW will have more room.

22 MR. THERRY: Finally, Mr.

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1 Chairman, we're not trying to sneak by --

2 CHAIRMAN JORDAN: All right.

3 That's --

4 MR. TERRY: -- sneak anything by
5 you.

6 CHAIRMAN JORDAN: Any other
7 questions by the Board?

8 VICE CHAIR SORG: Thank you, Mr.
9 Chairman.

10 For the applicant, would you be
11 willing to provide a privacy screen on the
12 portion of the deck that is between your
13 residence and that of Ms. Hofer?

14 MR. TERRY: Yes.

15 VICE CHAIR SORG: Okay.

16 COMMISSIONER TURNBULL: Including
17 that area covered by the stairs going up?

18 MS. MARTIN: Well, the stairs
19 actually don't going to go up. See actually,
20 if you are standing to the stairs right now,
21 we can look inside their house.

22 COMMISSIONER TURNBULL: Well,

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1 that's what I think she's concerned about.

2 MS. MARTIN: But if -- well, but
3 we have --

4 COMMISSIONER TURNBULL: No, it's
5 the deck and --

6 MS. MARTIN: -- there's this --

7 COMMISSIONER TURNBULL: The deck
8 and the stairs need to be screened from --

9 MR. TERRY: The answer is yes.

10 MS. MARTIN: Yes, we're going to
11 screen. I have no problem with that.

12 COMMISSIONER TURNBULL: The deck
13 and the stairs?

14 MR. TERRY: Yes, that's right.

15 MS. MARTIN: Right. But what I'm
16 -- when I try to make point though, then the
17 stairs right now, the landing --

18 COMMISSIONER TURNBULL: I
19 understand.

20 MS. MARTIN: -- it's right to
21 their house.

22 COMMISSIONER TURNBULL: But the

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1 stairs are typically up and down access. Now
2 you're going to have people up there a lot
3 more. There's going to be more frequent use.
4 There's more opportunity to look into her
5 window.

6 MR. THERRY: I think that's the
7 concern.

8 MS. MARTIN: I don't know,
9 because --

10 COMMISSIONER TURNBULL: Well,
11 identify yourself either, but I think what
12 we're concerned about is her privacy.

13 MR. THERRY: Yes, we are willing
14 to accommodate her privacy.

15 COMMISSIONER TURNBULL: And as far
16 as -- you don't show any additional lighting
17 by this deck. Are you planning to any
18 additional lighting?

19 MR. THERRY: No, not really. I
20 mean, I really hadn't thought about it.
21 There's a flood light out by the back door,
22 which will be -- the existing back door has a

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1 flood light --

2 COMMISSIONER TURNBULL: But that's
3 going to be --

4 MR. TERRY: -- a motion-sensitive
5 flood light. And that will be moved I think
6 more toward the center of the --

7 COMMISSIONER TURNBULL: Well,
8 whatever the lighting should be should be
9 down-lighting.

10 MR. TERRY: Yes, absolutely.

11 COMMISSIONER TURNBULL: There
12 should not be any lighting going onto adjacent
13 properties.

14 MS. MARTIN: Right now she has a
15 light on all night in her property from the
16 bedroom.

17 COMMISSIONER TURNBULL: Well, no,
18 I don't have her case before me.

19 MS. MARTIN: Oh, okay.

20 COMMISSIONER TURNBULL: So I -- we
21 have your --

22 MR. TERRY: The answer is, yes,

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1 down-lighting.

2 COMMISSIONER TURNBULL: Okay.

3 Thank you.

4 CHAIRMAN JORDAN: Well, that
5 concludes the testimony and the evidence in
6 this matter. We will end it. We're going to
7 close this particular hearing.

8 MR. GRIFFIN: Mr. Chairman, do I
9 get a chance to --

10 CHAIRMAN JORDAN: No, you do not.

11 MR. GRIFFIN: All right.

12 CHAIRMAN JORDAN: And so we are
13 closing this hearing. I'm going to ask that
14 the applicant submit to us within -- I don't
15 know how long it would take you to update your
16 plans in accordance with what -- the screening
17 and the other things we talked about here
18 today. Two weeks? For October 2nd.

19 MR. MOY: Mr. Chairman?

20 CHAIRMAN JORDAN: Yes?

21 MR. MOY: If I may, the next
22 regular scheduled public decision meeting is

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1 the afternoon of September 25th. After that,
2 the next one would be October --

3 CHAIRMAN JORDAN: Let's have the
4 plans in by September 25th and place this --
5 and we'll do it -- put it on October 2nd
6 hearing -- October 2nd decision date.

7 MR. MOY: You could always have a
8 special public meeting on October 2nd,
9 otherwise the regular scheduled meeting in
10 October is October the 23rd.

11 CHAIRMAN JORDAN: All right.
12 Let's have the -- what's today? Today's the
13 11th. Let's have the amended plans submitted
14 by the 25th.

15 MR. MOY: Will we get a set of
16 those plans as well?

17 CHAIRMAN JORDAN: If you'll let me
18 finish, I would do --

19 MR. MOY: Thank you.

20 CHAIRMAN JORDAN: And let's be
21 sure that we communicate the copy of the
22 amended plans to Ms. Hofer, or her attorney.

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1 To her attorney, please. And then we'll put
2 this on for a decision -- what is that, Cliff,
3 the 23rd, is it?

4 MR. MOY: October 23rd.

5 CHAIRMAN JORDAN: October 23rd.

6 Okay. There's nothing else to be submitted in
7 this record other than the amended plans.

8 MR. JONES: To the BZA office?

9 CHAIRMAN JORDAN: Yes, to the BZA
10 office and a copy to Mr. Griffin.

11 MR. GRIFFIN: Mr. Chairman, and we
12 have the right to submit a small brief on
13 October 23?

14 CHAIRMAN JORDAN: No, there's
15 nothing else being submitted in this record
16 other than what I said. And I'll say it for
17 the third time: There's nothing else to be
18 submitted in this record other than the
19 amended plans.

20 MR. MOY: So staff understands
21 there's no response to the revised plans, Mr.
22 Chairman?

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1 CHAIRMAN JORDAN: You can -- all
2 right. We'll let that -- only in regards to
3 the plans. You can make your comments in
4 regards to the plan. No other briefing
5 concerns about the plans submitted. Okay?
6 And that needs to be done within a week from
7 the -- what was that, the 25th, I gave a date
8 for --

9 MR. MOY: The revised plans, Mr.
10 Chairman, is on September 25th. A week
11 following September 25th is October the 2nd.

12 CHAIRMAN JORDAN: October 2nd,
13 please. Okay? Thank you. All right. Very
14 good. Then we will conclude this hearing.
15 Thank you very much.

16 MR. MOY: Shall I continue, Mr.
17 Chairman?

18 CHAIRMAN JORDAN: Not just yet.

19 MR. MOY: Yes, this has been quite
20 a September so far.

21 The next application before the
22 BZA is application No. 18394. This is the

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1 application of Eric Schultz, pursuant to 11
2 DCMR 3014.1. This is for a special
3 exception to allow a rear deck and trellis
4 addition to an existing one-family row
5 dwelling under section 223, not meeting the
6 lot occupancy requirements under section 403,
7 rear yard, section 404, and court requirements
8 under section 406 in the R-4 District at
9 premises 58 Rhode Island Avenue, N.W.
10 Property located in Square 3111, Lot 24.

11 CHAIRMAN JORDAN: And would the
12 parties or anyone who's going to testify in
13 this matter please come to the witness table,
14 please? And have you prepared your witness
15 cards and submitted to the court reporter?

16 Would you make sure that the mic
17 is on? It should have a glowing green light.
18 Push the little push button in front. And if
19 you'd identify yourselves for us, please?

20 MS. FELDER: Yes. Hi. Good
21 morning. My name is Tenika elder. I am the
22 architect. I'm also the representative of Mr.

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1 Eric Schultz who is sitting to my left. He is
2 the owner of the subject property located at
3 58 Rhode Island Avenue, N.W. Also to the left
4 of him is Mr. Hugh Youngblood who is the ANC
5 commissioner.

6 CHAIRMAN JORDAN: Before you
7 begin, let -- there's an issue of whether or
8 not this is an open or closed court. I'm
9 going to turn to Office of Planning to advise
10 us regarding this particular court.

11 MS. BROWN-ROBERTS: Good morning,
12 Mr. Chairman and Members of the Commission.
13 I'm Maxine Brown-Roberts representing the
14 Office of Planning.

15 I suppose you're referring to the
16 court to the -- on the right-hand side of the
17 property.

18 CHAIRMAN JORDAN: Yes, the --

19 MS. BROWN-ROBERTS: On the
20 northwest side.

21 VICE CHAIR SORG: Whatever right-
22 hand means.

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1 MS. BROWN-ROBERTS: And that to me
2 seems like an open court.

3 VICE CHAIR SORG: In --

4 CHAIRMAN JORDAN: Go ahead. Go
5 ahead.

6 VICE CHAIR SORG: So I'll just --
7 including with the addition of the trellis, it
8 would remain an open court in your opinion?

9 MS. BROWN-ROBERTS: Well, the
10 trellis would be on the other side of the --
11 would be on the opposite side.

12 VICE CHAIR SORG: The trellis is
13 on the same side as the court.

14 MS. FELDER: May I speak?

15 VICE CHAIR SORG: Yes. Sure. Why
16 not?

17 MS. FELDER: Yes, on the open side
18 of the court, the trellis would be --

19 VICE CHAIR SORG: Right.

20 MS. FELDER: -- along that edge at
21 an angle.

22 VICE CHAIR SORG: Right. So that

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1 wasn't -- our question was the trellis is
2 actually in front of or adjacent to the open
3 court. So I guess that was our question.
4 Does the addition of the trellis create a
5 closed court situation?

6 MS. BROWN-ROBERTS: I think I'm
7 not sure of which side of the -- because there
8 is a court on both sides of the property.
9 There's courts on both sides of the property.

10 If you look at the surveyor's
11 plat, I think we're referring to the court on
12 the -- that says -- it has a notation that
13 says existing neighbor building line. And it
14 was my understanding that the trellis is on
15 the other side of the deck.

16 MS. FELDER: Yes, you are correct.
17 The trellis is on the side where that 5.4
18 number is, where that dog leg occurs.

19 MS. BROWN-ROBERTS: Yes.

20 MS. FELDER: The trellis occurs --

21 MS. BROWN-ROBERTS: Yes, on
22 that --

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1 MS. FELDER: -- that angled
2 portion of the deck.

3 MS. BROWN-ROBERTS: Yes.

4 VICE CHAIR SORG: Right, so that
5 would be the court on the west side.

6 MS. BROWN-ROBERTS: Okay. So
7 that's the court you're talking about?

8 VICE CHAIR SORG: Yes.

9 MS. BROWN-ROBERTS: I was talking
10 about the courts on the --

11 VICE CHAIR SORG: Right. You're
12 talking about the court on the east side.

13 MS. BROWN-ROBERTS: Court on the
14 east side, right. Yes. And that seems to be
15 as if that's an open court also.

16 CHAIRMAN JORDAN: The question is
17 does the trellis affect that and does it make
18 it then a closed court? It's open court now.
19 With the trellis --

20 MS. BROWN-ROBERTS: Yes, but the
21 court is just extending -- the court is
22 extending out.

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1 CHAIRMAN JORDAN: So your reply,
2 if I'm correct, is that the trellis has no
3 effect upon whether or not it's --

4 MS. BROWN-ROBERTS: Right, that's
5 my interpretation. That's correct.

6 CHAIRMAN JORDAN: Okay. We're
7 just trying to make sure we're all on the same
8 page here.

9 MS. BROWN-ROBERTS: Okay.

10 CHAIRMAN JORDAN: It's just a
11 welcome back from August recess September
12 docket today; that's all.

13 MS. BROWN-ROBERTS: No problem.

14 CHAIRMAN JORDAN: Okay. Anybody
15 have any questions about this? Mike, you have
16 any questions on it?

17 COMMISSIONER TURNBULL: No.

18 CHAIRMAN JORDAN: We have the
19 record and we believe the record's pretty
20 full. There may be some questions that the
21 Board may want to ask. You can do a
22 presentation if you want to. I don't

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1 necessarily know if it's necessary, but
2 certainly I'm asking the Board if they have
3 any questions or anything they need to hear
4 from you other than what's already in your
5 application.

6 MS. FELDER: Okay.

7 CHAIRMAN JORDAN: Mr. Turnbull,
8 did you --

9 COMMISSIONER TURNBULL: No, I was
10 just -- yes, the one question I have is that
11 the Office of Planning is supportive, but that
12 it's conditional with the applicant has
13 satisfied the adjacent neighbor that their
14 privacy would not be unduly compromised. And
15 what looks like what would be a very unduly
16 compromise is the apartment building, because
17 you're going to be looking right into a suite
18 of windows. So have you --

19 MS. FELDER: Yes, if I can answer
20 that, please? We met with the owner of the
21 property at 49 T Street, N.W. The owner is
22 Ms. Bertha Holliday. I believe that that is

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1 -- and she has a basement unit. She rents a
2 basement unit, but she lives in the rest of
3 the building.

4 We personally went and met with
5 her way back in -- before we even filed this
6 to let her know of what our plans were. Her
7 concern wasn't with the privacy. It was with
8 the light coming into those windows on the
9 side. What she asked us to do is that if it
10 were possible to stay -- try to stay as close
11 to three feet away from her building as
12 possible. I had expressed to her that we
13 would try to do so, but what would make that
14 determining factor is the fact that the
15 basement, the entry into the basement is above
16 grade and a door to the basement is close to
17 the side that abuts her property. So we were
18 able to come where the deck would be two feet
19 away from her property -- from her building
20 line. And that's what we were able to
21 accommodate.

22 And also in terms of the light,

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1 the structure is kept open so that light can
2 penetrate through. And also in terms of the
3 railings, we went with cable railings to allow
4 the maximum amount of light to be able to
5 penetrate those windows.

6 COMMISSIONER TURNBULL: Do we have
7 a letter from her?

8 MS. FELDER: She -- we -- I -- we
9 told her that the hearing was going to be
10 here. In fact, Mr. Schultz has had several
11 discussions with her. If she had any
12 objections, then she could have course be here
13 to object to that. But we showed her what the
14 plans were and we were going to just take it
15 from there.

16 COMMISSIONER TURNBULL: Did she
17 make any objections to you?

18 MS. FELDER: What her objections
19 was -- what she wanted us to do was to try to
20 stay as far from her property line as
21 possible, and that's what we tried to
22 accommodate based on the conditions of Mr.

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1 Schultz' property.

2 CHAIRMAN JORDAN: She asked for
3 three feet. You guys were able to give her
4 two feet?

5 MS. FELDER: We were able to give
6 her two feet.

7 COMMISSIONER TURNBULL: And then
8 why couldn't you give any more?

9 MS. FELDER: Because if you look
10 at -- okay. This is one of the pictures that
11 I had submitted with the original application.

12 COMMISSIONER TURNBULL: Yes.

13 MS. FELDER: If you look here,
14 this is the -- looking to the rear of the
15 property, this is Mr. Schultz' property here.
16 Ms. Bertha Holliday's building is right -- is
17 this portion of the building here. As you can
18 see, the entrance to the basement is above
19 grade and it's extremely close to that side
20 where her property is. In order to get the
21 maximum amount of space between her building
22 and his deck and not obstruct or place an

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1 obstruction in front of that door going into
2 the basement, then that post -- we tried to
3 put that post as far over as possible. And
4 that will create two feet of space between her
5 building and the side of the deck on that
6 side. So that's why we were only able to
7 accommodate two feet.

8 COMMISSIONER TURNBULL: Okay. You
9 heard my other question to the other applicant
10 in the previous case about lighting on this
11 deck.

12 MS. FELDER: Yes.

13 COMMISSIONER TURNBULL: There's
14 nothing indicated, but are you planning
15 lighting? I see lighting over the existing
16 first floor door, which looks like two
17 spotlights.

18 MS. FELDER: Yes.

19 COMMISSIONER TURNBULL: Again,
20 doing this, I would want to emphasize that all
21 lighting should be down lighting directed at
22 the deck, not at adjacent properties.

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1 MS. FELDER: Yes, and I agree with
2 that. We would be able to accommodate that.

3 COMMISSIONER TURNBULL: Okay.
4 Thank you.

5 CHAIRMAN JORDAN: Mr. Youngblood,
6 is it?

7 MR. YOUNGBLOOD: Yes, sir.

8 CHAIRMAN JORDAN: How are you?

9 MR. YOUNGBLOOD: Fine. How are
10 you doing, Mr. Chair?

11 CHAIRMAN JORDAN: We don't have a
12 report from the ANC in the file. Did the ANC
13 review this and make a determination?

14 MR. YOUNGBLOOD: I don't believe
15 the entire commission reviewed it, but we
16 reviewed it at the single member district
17 level and at the local civic association.

18 CHAIRMAN JORDAN: Was it submitted
19 to the full ANC?

20 MR. YOUNGBLOOD: I've discussed it
21 with my colleagues on the commission, but
22 we've never taken it up as an official piece

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1 of business.

2 CHAIRMAN JORDAN: And did you get
3 a feel from them one way or the other, whether
4 they're support or non-support?

5 MR. YOUNGBLOOD: The typically
6 process in our ANC in these types of cases is
7 to defer to the position of the civic
8 association. And when we took it up at the
9 civic association, there was still some
10 conflict between the applicant and the next
11 door neighbor, Ms. Holliday. And so the civic
12 association elected not to take a position.
13 And so since the civic association had not
14 taken a position, we deferred on adding it to
15 the ANC agenda.

16 CHAIRMAN JORDAN: To the ANC
17 agenda?

18 MR. YOUNGBLOOD: Right. So
19 typically in order -- the entry criteria to
20 get things on the ANC agenda the chairman
21 says, okay, have you been to the civic
22 association? Have they taken a position? And

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1 since they hadn't taken a position, then we
2 never effectively met that entry criteria to
3 get onto the ANC's agenda.

4 At the single member district
5 level though, there is support for the
6 project. And we've been in dialogue with
7 applicant and with Ms. Holliday. She has some
8 concerns, as the applicants have expressed.
9 And we did our best to meet with her and try
10 to come to some agreements. And I apologize
11 for not bringing the letter documenting her
12 position.

13 CHAIRMAN JORDAN: Any other
14 questions?

15 VICE CHAIR SORG: I do. Thank
16 you, Mr. Chairman.

17 So you described speaking to Ms.
18 Holliday, the adjacent neighbor, prior to
19 filing about trying to stay away three feet,
20 and now you've gotten two. So since the plans
21 have been drawn, have you gone back and showed
22 them to her?

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1 MS. FELDER: Well, Mr. Schultz has
2 gone back and showed her the plans, and I'll
3 let him comment.

4 VICE CHAIR SORG: Okay.

5 MR. SCHULTZ: Yes, she's actually
6 received email copies of the plans and we've
7 met actually several times. We're good
8 neighbors. We're friendly.

9 VICE CHAIR SORG: That's good.

10 MR. SCHULTZ: Yes, it helps a lot.

11 VICE CHAIR SORG: Helps a lot.

12 MR. SCHULTZ: So, you know, she
13 just has concerns about air and light into her
14 basement area. What was your question?

15 VICE CHAIR SORG: So you showed
16 her the plans showing where the deck would be
17 in relation to her door?

18 MR. SCHULTZ: Well, there really
19 is no door.

20 VICE CHAIR SORG: Or, I'm sorry,
21 her windows.

22 MR. SCHULTZ: -- windows to her

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1 basement unit, and windows to her own unit.
2 And that she didn't express a concern about.
3 She actually likes the view, as do I, of the
4 street, so we want to keep that open.

5 VICE CHAIR SORG: Okay. Thank
6 you.

7 CHAIRMAN JORDAN: Any other
8 questions, anybody else?

9 (No audible response.)

10 CHAIRMAN JORDAN: Okay.

11 MS. FELDER: I have one more
12 thing, if I may?

13 CHAIRMAN JORDAN: Yes, it's
14 certainly within your case. You can present
15 if you want, but I thought it might be -- to
16 expedite the matter that the Board would ask
17 you questions since you --

18 MS. FELDER: Oh, that's -- yes,
19 this would be very brief. Mr. Schultz also
20 got together a petition of signatures from the
21 neighbors approving -- showing their approval
22 of the deck addition. So I just wanted to

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1 submit that because that wasn't submitted
2 prior.

3 CHAIRMAN JORDAN: Do we have that
4 for the file?

5 MR. YOUNGBLOOD: Mr. Chairman?

6 CHAIRMAN JORDAN: Yes?

7 MR. YOUNGBLOOD: Ms. Bertha
8 Holliday has just joined us.

9 CHAIRMAN JORDAN: Oh, very good.
10 Great. Glad to have you.

11 Ms. Holliday, were you here when
12 we took oath then for sworn witnesses in?
13 Would you stand, please, and take the oath
14 from --

15 (Whereupon, the witness was
16 sworn.)

17 MR. MOY: Thank you.

18 CHAIRMAN JORDAN: And I would need
19 you to complete two witness cards and hand
20 them to the court reporter, please.

21 Is there anything else you might
22 want to present to the Board at this point?

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1 MS. FELDER: Not at this point.

2 CHAIRMAN JORDAN: Okay. And I
3 think the Board asked questions of the
4 applicant already. Are there additional
5 questions of the applicant?

6 (No audible response.)

7 CHAIRMAN JORDAN: Then let's turn
8 to the Office of Planning for their report.

9 MS. BROWN-ROBERTS: Thank you, Mr.
10 Chairman. The Office of Planning, as stated
11 in our report, is supportive of this
12 application. And if the applicant has
13 satisfied the adjacent neighbor; and we see
14 her here, then we would be in full support of
15 this application. Thank you, Mr. Chairman.

16 CHAIRMAN JORDAN: Does the Board
17 have questions for the Office of Planning?

18 (No audible response.)

19 CHAIRMAN JORDAN: Does the
20 applicant have any questions for the Office of
21 Planning?

22 MS. FELDER: No.

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1 CHAIRMAN JORDAN: Do we have any
2 other government agency that's here today?

3 (No audible response.)

4 CHAIRMAN JORDAN: We have a letter
5 from the Department of Transportation. It
6 indicates there's no objection to the
7 requested relief.

8 Are there persons in the audience
9 in support? Oh, excuse me. We just had the
10 ANC discussion. The single member has voted
11 -- you're in support?

12 MR. YOUNGBLOOD: Single member
13 district supports the application pending Ms.
14 Holliday's feedback.

15 CHAIRMAN JORDAN: Okay. Any other
16 persons here in the audience in support of the
17 application who wants to say anything?

18 (No audible response.)

19 CHAIRMAN JORDAN: Anyone opposed?
20 Let me ask, Ms. Holliday --

21 MS. HOLLIDAY: Yes?

22 CHAIRMAN JORDAN: -- if you would

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1 address the Board? Have you seen these plans?

2 MS. HOLLIDAY: Yes, I have.

3 CHAIRMAN JORDAN: And are you
4 agreement to -- are you comfortable with this,
5 or you have any issues with it?

6 MS. HOLLIDAY: I do have issues
7 with it. And I submitted a letter that
8 hopefully you should have.

9 CHAIRMAN JORDAN: When did you
10 submit the letter?

11 MS. HOLLIDAY: I submitted it
12 Friday, and I have a stamped copy somewhere in
13 here.

14 CHAIRMAN JORDAN: Mr. Moy, do we
15 have that letter? Can you find -- have
16 someone find it for us?

17 MR. MOY: I'm looking for it.

18 CHAIRMAN JORDAN: Thank you.

19 MS. HOLLIDAY: Should I bring it
20 to you, or --

21 CHAIRMAN JORDAN: No, just give us
22 a second. They're trying to locate it. But

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1 while they're looking for the letter, if you
2 could tell us your issues with this and your
3 thoughts, please.

4 MS. HOLLIDAY: Okay. What I'll do
5 is just briefly recap the letter. I won't
6 read it line for line. But basically, the
7 former owner of 58 T had built a deck of
8 similar size and similar placement, and that
9 deck was built illegally and it was poorly
10 constructed. And after five years of
11 complaining, working with the DCRA, working
12 with my councilman, helping to organize a
13 mayor's, you know, neighborhood walk so that
14 the senior leaders of DCRA would be present
15 and see the situation themselves, the deck was
16 torn down five years later. The Office of
17 administrative Hearings I believe put a lien
18 on the house. Subsequently, the house was put
19 up for sale. And prior to the sale, the deck
20 was torn down, except for its vertical support
21 elements.

22 When Mr. Schultz moved in, shortly

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1 after he moved in, he indicated he wanted to
2 rebuild the deck using the same vertical
3 structural elements, and I kind of briefly
4 shared with him my saga with the deck and that
5 I wasn't particularly excited about the idea
6 of rebuilding the deck.

7 The deck is -- the old deck, as
8 well as the new deck, is over seven feet from
9 the ground, the floor of the deck. The old
10 deck, in addition, had a seven-foot high
11 wooden plank fence on it. I could literally
12 stick my hand out my window and touch the
13 fence. That's how close the deck was. Okay?
14 The deck is two feet from my house. Okay?

15 So, you know, those were the
16 problems with the deck. And my current
17 concerns are as follows: I outline six
18 concerns in the letter. The first concern is
19 the floor of the proposed deck, which would be
20 two feet from my building and residence, would
21 be above the top of the west side of the
22 basement apartment that I have there. So the

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1 floor of the deck would be above the top of
2 the windows of those apartments. Thus the
3 deck would block three of the apartment's
4 seven windows and forcing window views
5 dominated by structural components of the
6 bottom of the deck.

7 Second of all, this darkening of
8 the apartment would significantly negatively
9 impact the apartment's future rental value, my
10 willingness to eventually live in the
11 apartment. I had built the apartment in such
12 a way that as I became older and no longer
13 wanted to deal with steps and maintenance, I
14 could move into the basement apartment.

15 CHAIRMAN JORDAN: You're not
16 living in the basement now?

17 MS. HOLLIDAY: No, I live in the
18 -- it's a -- I live in the main house --

19 CHAIRMAN JORDAN: House?

20 MS. HOLLIDAY: -- that I own.

21 CHAIRMAN JORDAN: Okay. And the
22 basement, you just use the basement for --

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1 MS. HOLLIDAY: Rental.

2 VICE CHAIR SORG: Rental? Okay.

3 MS. HOLLIDAY: Okay? And also it
4 would negatively affect the resale value of my
5 property. Due to the distance -- the third
6 concern is due to the distance between the
7 deck and my building, which is two feet, and
8 the increase in the height of the deck floor
9 from that of the prior deck, if I'm reading
10 the blueprints correctly, Mr. Schultz proposes
11 to add something on one of the members to
12 raise the deck a little bit more.

13 MS. FELDER: If I may --

14 MS. HOLLIDAY: Yes.

15 MS. FELDER: -- just answer you?
16 Yes, there needs to be approximately three
17 risers or three steps from that platform
18 coming out of the kitchen.

19 MS. HOLLIDAY: Yes.

20 MS. FELDER: So that you can get
21 significant -- the proper headroom underneath
22 the deck for someone to be able to enter and

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1 exit properly out of the basement.

2 MS. HOLLIDAY: Yes, and that would
3 make underneath the deck what I --

4 MS. FELDER: Seven feet, seven.

5 MS. HOLLIDAY: Seven feet? I
6 thought it was eight, six?

7 MS. FELDER: No, it's seven feet,
8 seven.

9 MS. HOLLIDAY: Okay. But anyway,
10 the deck floor would be slightly higher than
11 the old deck floor. Okay? And this would
12 result in the proposed deck fence would
13 present serious privacy -- the old deck fence
14 presented serious privacy problems. No, the
15 new deck presents serious privacy problems.
16 The new deck then as proposed will not be the
17 plank wood fence that the old deck had.
18 Instead it will have --

19 MS. FELDER: Cable railings.

20 MS. HOLLIDAY: Yes, pillars. What
21 do you call pillars on a deck?

22 MS. FELDER: Columns?

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1 MS. HOLLIDAY: No, the thing that
2 -- you know, the upright members of the fence.

3 MS. FELDER: The posts?

4 MS. HOLLIDAY: The posts. Yes.
5 It would have wooden posts and then it would
6 have what, about three cables between the
7 posts, and that would constitute three --

8 MS. FELDER: Yes, they're --

9 MS. HOLLIDAY: -- you know, metal
10 cables.

11 MS. FELDER: -- they're cable
12 railings, so --

13 MS. HOLLIDAY: And that would
14 constitute, you know, the fence or the railing
15 of the deck.

16 Now, so we have a thing where you
17 have, you know, cables, which I -- which, you
18 know, the cable part does help me with my
19 light, because before the fence was totally
20 blocking my windows and I was not getting the
21 light, the main part of the residence. But
22 the cable presents other problems, coupled

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1 with the increase in the floor height. And
2 those problems are primarily security. You
3 got two feet between these things. Someone
4 could easily come up there with some cable
5 cutters, knock out my glass and literally walk
6 into my house. Okay?

7 So that presents a real security
8 problem for me and it would necessitate that
9 if this deck were to be built, that I would
10 have to spend thousands of dollars getting
11 security bars on those windows. Okay? And,
12 you know, I don't think I should have to do
13 that.

14 The proposed -- the -- okay. So
15 I've made those points. And then finally that
16 the deck's -- due to the deck's proximity to
17 my property, its size and the uncertainty of
18 the continuity of ownership and maintenance
19 over them, the proposed deck may present over
20 time a hazard to adjacent properties. The old
21 deck, before it was torn down; and it was, you
22 know, less than -- or about five years old

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1 when it was finally torn down, had started
2 leaning towards both of the neighbors. Okay?

3 So the deck fence was literally
4 touching the other neighbor's awning and it
5 was leaning towards my house. You know, every
6 day I'd check to see, you know, how close --
7 you know, is this thing going to fall on my
8 house? And I think that type of leaning and
9 loosening, even if well-constructed, because
10 of the nearness of the deck requires constant
11 maintenance, you know, to make sure the thing
12 doesn't fall over, you know, because it's wood
13 and it's elevated.

14 And so I'm concerned. I can't
15 guarantee that Eric is going to stay the owner
16 forever. I can't guarantee that Eric or
17 whoever might be a later owner is going to
18 maintain the deck. I'm concerned that because
19 of where the deck is being built and its
20 proximity to my house that, you know, over
21 time there would be some real hazards,
22 potential hazards.

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1 CHAIRMAN JORDAN: Okay.

2 MS. HOLLIDAY: The other thing
3 that I pointed out in the letter; I'm not sure
4 if you all --

5 CHAIRMAN JORDAN: We --

6 MS. HOLLIDAY: -- have a clear
7 sense of this, but I think it's important to
8 note that a lot of these problems that I've,
9 you know, cited are really due to the
10 configuration of the land, of the block
11 parcel. And the block parcel is a triangle,
12 okay, starting at -- on the west end the
13 triangle is defined by the intersection of 1st
14 Street, Rhode Island Avenue, T Street. Okay?
15 And then on the east end it's defined by North
16 Capitol. Now, so you have a block that's like
17 this. Okay? And as you go farther east on
18 the block, the triangle gets wider and wider.
19 From the intersection of 1st and Rhode Island
20 and T Street, as one proceeds east, the
21 triangle gets wider and wider.

22 My house, which is located about

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1 40 percent of the way east from the
2 intersection of the north side of T Street is
3 the first house on that side of T Street,
4 N.W., the unit block of T Street, that faces
5 the street. Okay? Mr. Schultz' house on 58
6 Rhode Island is the last house from the
7 intersection on the south side of the unit
8 block of Rhode Island whose rear yard does not
9 abut another rear yard. Instead, his rear
10 yard runs all the way to T Street.

11 Consequently, the west side of my
12 house abuts a great deal of his rear yard, and
13 hence the -- you know, the proximity -- why
14 the deck is so close to my house, because he's
15 not -- his rear yard is not facing another
16 back yard. It's facing T Street.

17 CHAIRMAN JORDAN: Thank you. We
18 do have your letter and we appreciate you
19 coming down and giving your testimony.

20 Let me ask the Board do they have
21 any questions of Ms. Holliday?

22 COMMISSIONER TURNBULL: Ms.

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1 Holliday, do you -- I'm just looking at the
2 aerial view here of the property. Do you own
3 the whole building that fronts on Rhode Island
4 Avenue and then goes back?

5 MS. HOLLIDAY: That building was
6 built -- that entire building was built in
7 1916 as an apartment. I bought the building
8 from a developer who legally subdivided the
9 apartment building into single-family
10 residence.

11 COMMISSIONER TURNBULL: Okay.

12 MS. HOLLIDAY: One single family
13 residence has a --

14 COMMISSIONER TURNBULL: On T
15 Street?

16 MS. HOLLIDAY: Yes. And the other
17 one has an entrance on Rhode Island. And
18 we're connected at the rear.

19 COMMISSIONER TURNBULL: So you --
20 and the one you own is at the rear?

21 MS. HOLLIDAY: Well, it faces T
22 Street.

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1 COMMISSIONER TURNBULL: Faces T
2 Street, I should say. Right. Okay. Thank
3 you.

4 VICE CHAIR SORG: I want --

5 CHAIRMAN JORDAN: Ms. Sorg?

6 VICE CHAIR SORG: Thank you. I'll
7 just ask one follow-up question. So that
8 means, Ms. Holliday, that the wooden balconies
9 that are shown on some of these images that we
10 received, that's part of your rear neighbor?
11 That's not part of your house?

12 MS. HOLLIDAY: I don't -- I'm not
13 quite sure. There are two small balconies on
14 the west side of the house. There are also
15 two small -- well, actually there -- okay.
16 There are four small balconies on the west
17 side of the house, and four small balconies on
18 the east side of the building; not the house,
19 but the building.

20 VICE CHAIR SORG: Sure.

21 MS. HOLLIDAY: Okay?

22 VICE CHAIR SORG: And those are

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1 connected to your neighbor, or your --

2 MS. HOLLIDAY: No.

3 VICE CHAIR SORG: -- rear, or your
4 house?

5 MS. HOLLIDAY: I'm trying to
6 explain it to you.

7 VICE CHAIR SORG: Okay.

8 MS. HOLLIDAY: Two of the -- so
9 altogether there are one, two, three, four,
10 five, six, seven, eight balconies. Four of
11 those balconies are mine, four are the
12 neighbor's, because we are attached at the
13 rear. Okay? So even though the balconies
14 appear to be, and are in fact, adjacent to
15 each other, that -- they signify the
16 demarkation of where, you know, the two -- the
17 rear of the two houses meet. Does that make
18 sense.

19 MS. YOUNGBLOOD: Mr. Chairman, if
20 I may clarify? The two units of her -- of Ms.
21 Holliday's house or of her building are mirror
22 images around those balconies.

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1 CHAIRMAN JORDAN: Yes, right
2 there.

3 MS. HOLLIDAY: Yes, they basically
4 put a firewall down the middle of an apartment
5 building. Okay?

6 CHAIRMAN JORDAN: Any other
7 questions for Ms. Holliday?

8 VICE CHAIR SORG: Sure, I'll ask
9 you one more question if I may, Ms. Holliday.

10 MS. HOLLIDAY: Sure.

11 VICE CHAIR SORG: Do you have a
12 sense of what if any revisions or re-imagining
13 of this planned deck could be helpful for you
14 to be more comfortable or be in support of it,
15 or are you feeling like, you know, I couldn't
16 be in support of any deck? I just want to
17 kind of gauge your feelings there.

18 MS. HOLLIDAY: Well, I've shared
19 with Mr. Schultz that the only thing that I
20 could, you know -- would -- that would resolve
21 most of my -- well, pretty much all of my
22 concerns, is if the deck were built a minimum

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1 of seven feet from my property line, which
2 would be nine feet from my building. So it
3 would be a much narrower deck.

4 MS. FELDER: If I may? The
5 problem with that is that the requirement is
6 only a minimum of six feet. So that's kind of
7 -- I understand your concern dealing with
8 seven feet, but that goes beyond what the Code
9 requires, which would be a minimum --

10 CHAIRMAN JORDAN: I'm going to
11 ask, Ms. Felder, that you respond when we ask
12 you to respond, because right now I don't want
13 to get into a dialogue exchange.

14 Any other questions of the
15 applicant, I mean of Ms. Holliday? Excuse me.

16 COMMISSIONER TURNBULL: Well, I
17 guess just following up on that. So you
18 really want a larger separation, a much larger
19 separation between the deck and your building?

20 MS. HOLLIDAY: Yes, I want to
21 maintain the value of my apartment --

22 COMMISSIONER TURNBULL: Right.

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1 MS. HOLLIDAY: -- which requires
2 me to maintain light to that apartment and
3 requires me to, you know, try to as much as
4 possible protect the view from that apartment.

5 COMMISSIONER TURNBULL: Right.

6 MS. HOLLIDAY: I do not want to be
7 worried about intruders who can walk into my
8 apartment. And I do not want to be worrying
9 about any, you know, leaning railings.

10 COMMISSIONER TURNBULL: Right.

11 Well, thank you for your testimony. Thank
12 you.

13 CHAIRMAN JORDAN: Does the
14 applicant have any questions of Ms. Holliday?
15 Well, it's actually her statement, but I'm
16 going to allow you to ask questions.

17 MS. FELDER: Sure, sure. Just one
18 statement based on what you were saying about
19 the leaning railings and things like that. As
20 you mentioned, that previous deck was built
21 illegally, which is probably why you had a lot
22 of the structural issues that you had. In

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1 this case we're doing things the legal way --

2 MS. HOLLIDAY: Yes.

3 MS. FELDER: -- and the right way.
4 So it's going to be constructed where it would
5 be sturdy and you won't have those issues,
6 dealing with that.

7 As you also stated, dealing with
8 the original deck, I would --

9 CHAIRMAN JORDAN: Are you asking
10 questions of Ms. Holliday, or are you making
11 a statement?

12 MS. FELDER: Well, I have --

13 CHAIRMAN JORDAN: I don't need you
14 to make a statement.

15 MS. FELDER: Okay. Let me --

16 CHAIRMAN JORDAN: I need you to
17 ask questions.

18 MS. FELDER: -- just ask a
19 question then. I actually created another --

20 CHAIRMAN JORDAN: In fact, let's
21 do this: The Board has another question. Let
22 me move into -- give you the opportunity to

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1 speak, whichever way you wish to. Let's move
2 into the rebuttal portion and let you have
3 that opportunity to say what you need to say.
4 Okay. Go ahead.

5 MS. FELDER: Oh, I may do so?
6 Okay. In anticipation of Ms. Holliday's
7 concerns, I devised another sketch that I
8 would like to submit both to the Board and to
9 Ms. Holliday as well, which will kind of be a
10 compromise between what she's asking for and
11 what Mr. Schultz is seeking to gain from the
12 deck. If I may present that to you and also
13 give her a copy?

14 CHAIRMAN JORDAN: Yes, let's go
15 ahead and do that. I'm going to then --

16 MS. FELDER: And basically -- oh,
17 may I speak or --

18 CHAIRMAN JORDAN: This is what I'm
19 going to do: What I'm thinking about doing is
20 to close this hearing based upon what we've
21 already had as testimony, postpone any certain
22 decision, give you the opportunity to meet

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1 with Ms. Holliday over the new plans, give her
2 a chance to look at them, and then report back
3 to us if there's been any acceptance in
4 changing. In that regard, we would need to
5 know about it prior to us rendering a decision
6 one way or the other.

7 Just bringing this and giving it
8 to Ms. Holliday at this point is not giving
9 her ample time to review those things and
10 gives you the opportunity -- I'd rather see
11 things worked out as opposed to being
12 adversarial. And so we would do that.

13 Mr. -- get you to go make copies.

14
15 So as soon as he comes back, we'll
16 give -- we're going to give you another date.
17 We're not going to ask for anymore testimony.
18 We're going to close the record on the
19 testimony, subject to anything major coming
20 out of these new plans.

21 If you would, you can tell us,
22 just for the record, so we all know what the

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1 differences are with your new plan.

2 MS. FELDER: Okay. What we're
3 proposing is originally down her -- the side
4 that abuts her property, the deck was going to
5 come straight down 14 feet. What I am
6 proposing; and this is only due to the
7 existing conditions that are there on Mr.
8 Schultz' property, is that if we can come down
9 her property line seven feet and then kind of
10 create a dog leg in a sense, or cut the deck
11 back, and then create a larger separation for
12 the remainder of the deck down that property
13 line. So that would end up creating almost a
14 six-foot separation between the wall of her
15 building and the deck at a certain point on
16 the deck.

17 CHAIRMAN JORDAN: Okay.

18 MS. FELDER: And you'll see that
19 on the --

20 CHAIRMAN JORDAN: Thanks. Mr.
21 Moy?

22 MR. MOY: Yes, sir?

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1 CHAIRMAN JORDAN: I'm going to
2 close the record on this particular -- on this
3 application, however, we're going to postpone
4 any consideration and allow the applicant and
5 Ms. Holliday to review these new sets of
6 alternative plan --

7 MR. MOY: Yes.

8 CHAIRMAN JORDAN: -- and report
9 back to us in progress. We could then put
10 this on -- it will be October 23rd decision --

11 MR. MOY: Yes.

12 CHAIRMAN JORDAN: -- date?

13 MR. MOY: Yes.

14 CHAIRMAN JORDAN: So then if you
15 could make sure that we have information back
16 to us by -- September 25th was the date I
17 think we're using for a date back to us,
18 information back to us?

19 MR. MOY: For response to the
20 revised plans?

21 CHAIRMAN JORDAN: Yes. Well, yes.

22 MR. MOY: Let's say possibly the

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1 16th?

2 CHAIRMAN JORDAN: So if you
3 would --

4 MR. MOY: Well, if the --

5 CHAIRMAN JORDAN: We're going to
6 put it on the October --

7 MR. MOY: Twenty-third for
8 decision. Okay. And are there going to be
9 any other additional filings?

10 CHAIRMAN JORDAN: I think we --
11 this is giving Ms. Holliday the opportunity to
12 provide a written response, if she wants to.
13 If there's not an agreement, then certainly we
14 want your response to the alternative plan
15 submitted, Ms. Holliday. If you would submit
16 that to us.

17 MS. HOLLIDAY: What's the October
18 23rd date?

19 CHAIRMAN JORDAN: That's when
20 we're going to make our decision. You don't
21 have to be here. It's just the decision date
22 that we will meet and discuss and decide how

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1 we're going to rule.

2 MS. HOLLIDAY: So it will not be
3 like a hearing or --

4 CHAIRMAN JORDAN: No. No, no.

5 MS. HOLLIDAY: Because I know I'll
6 be on a cruise.

7 CHAIRMAN JORDAN: Oh, no, no. Oh,
8 really? So we'll be on a cruise. No. So,
9 no, no, it will not. But that's what we're
10 saying. You can submit your response to us in
11 writing. After you get a chance to review
12 these plans, submit your response to us by --
13 what was the date we were using?

14 MR. MOY: If she can reply by
15 October 9th.

16 CHAIRMAN JORDAN: October 9th?
17 Okay. By October 9th. Anytime before October
18 9th. And then we'll put this on the October
19 23rd --

20 MR. MOY: Correct.

21 CHAIRMAN JORDAN: -- for hearing.
22 I mean, for decision. For decision. Okay?

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1 MR. MOY: That's correct.

2 CHAIRMAN JORDAN: All right. With
3 this, we'll conclude this --

4 COMMISSIONER TURNBULL: Can I --
5 I'm sorry, I had to step out. Have you talked
6 to the other neighbors at the back of her
7 building?

8 MR. SCHULTZ: They're all fine.
9 We have --

10 COMMISSIONER TURNBULL: Do we have
11 something?

12 CHAIRMAN JORDAN: We have -- I
13 think we received just a moment ago a list
14 of --

15 COMMISSIONER TURNBULL: Oh, it was
16 in the petition? She signed as part of the
17 petition.

18 MS. FELDER: The other neighbors,
19 all the other neighbors signed this part of
20 that petition and --

21 COMMISSIONER TURNBULL: Oh, okay.
22 I just wanted to be sure. Thank you.

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1 CHAIRMAN JORDAN: o we will
2 conclude this -- yes, you have a --

3 VICE CHAIR SORG: Sorry, Mr.
4 Chairman. Just one question for you regarding
5 the submissions that you are allowing into the
6 record. Did you -- and I maybe missed this.
7 Did you indicate that if the applicant were to
8 change these plans again that that would be
9 suitable in discussion? Because I think if
10 they go back --

11 CHAIRMAN JORDAN: Yes.

12 VICE CHAIR SORG: -- discuss with
13 the neighbor and then come to something other
14 than the option A or B, then we might want to
15 see that as well. Or allow for that. I'm
16 sorry.

17 CHAIRMAN JORDAN: I think we're
18 going to really keep that door open.
19 Certainly if there's some type of compromise
20 worked out, then submit it to us, if there's
21 a compromise that's agreed upon as a
22 compromise. I don't want any alternative

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1 plans. Just a compromise.

2 VICE CHAIR SORG: Oh, that's what
3 I meant. Yes.

4 CHAIRMAN JORDAN: And that all
5 should be in by that date. Okay?

6 MR. MOY: Mr. Chairman, if I may?
7 Another thought just came to me. Since the
8 Board set the decision for October 23rd, the
9 response from Ms. Holliday by October 9th, are
10 you also including the ANC as well, or only
11 from Ms. Holliday?

12 CHAIRMAN JORDAN: Yes, I would
13 hope that the ANC has a chance to meet by
14 then.

15 MR. YOUNGBLOOD: Yes, sir. We'll
16 get you a letter.

17 CHAIRMAN JORDAN: Very good.

18 MS. HOLLIDAY: Could I -- there is
19 one typo in the letter, and if it's going to
20 become part of the record, I'd like to ask
21 that that typo be corrected. Let's see.

22 CHAIRMAN JORDAN: You can resubmit

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1 the letter. Resubmit the letter to us.

2 Retype it over, whichever way you prefer.

3 MS. HOLLIDAY: It's just one word.

4 CHAIRMAN JORDAN: Okay. Well, so
5 just give it to us then.

6 MS. HOLLIDAY: I put east side and
7 it should be west side, so --

8 COMMISSIONER TURNBULL: Well, you
9 can just cross that out and write it in. You
10 don't have to rewrite the whole thing.

11 MS. HOLLIDAY: And send it back
12 in?

13 COMMISSIONER TURNBULL: Yes.

14 MS. HOLLIDAY: Okay.

15 COMMISSIONER TURNBULL: Just --
16 and initial or whatever.

17 MS. HOLLIDAY: Yes.

18 COMMISSIONER TURNBULL: That's
19 fine.

20 CHAIRMAN JORDAN: Okay. This
21 hearing is concluded. Thank you.

22 MR. YOUNGBLOOD: Thank you, Mr.

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1 Chairman.

2 MS. HOLLIDAY: Thank you.

3 MR. MOY: Shall I continue, Mr.
4 Chairman, or shall I pause?

5 CHAIRMAN JORDAN: We have two
6 Board Members --

7 MR. MOY: Okay. That's right.

8 CHAIRMAN JORDAN: We need a brief
9 recess.

10 (Whereupon, at 12:15 p.m. off the
11 record until 12:20 p.m.)

12 MR. MOY: The next application,
13 Mr. Chairman, is application No. 18391. This
14 is the application of St. Mary's Missionary
15 Baptist Church, pursuant to 11 DCMR 3103.2.
16 This is for a variance from the lot occupancy
17 requirements under section 403, a variance
18 from the rear yard requirements under section
19 404, and a variance from the off-street
20 parking requirements under subsection 2101.1,
21 to allow an addition to an existing church in
22 the R-1-B District at premises 2811 14th

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1 Street, N.E. Property located in Square 4020,
2 Lot 29.

3 Mr. Chairman, for the record,
4 there are three additional filings that walked
5 through the door this morning. Two letters in
6 opposition, one letter in support, I believe;
7 Exhibits 30, 31 and 32.

8 Other than that, I believe there's
9 also a party status request. And that's
10 completes the staff's --

11 CHAIRMAN JORDAN: Those exhibits
12 won't be accepted into the record. They are
13 filed too late.

14 Okay. If you would -- has
15 everyone who's going to testify been sworn in
16 this morning? Were you here this morning?

17 MR. WARDER: Yes.

18 CHAIRMAN JORDAN: Very good. And
19 we provided the court reporter with two
20 witness cards, please?

21 If you'll identify yourselves,
22 please?

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1 MR. WARDER: Okay. Yes, good
2 afternoon, Mr. Chairman, Members of the Board.
3 My name is Jerry Warder. I'm the president of
4 Warder and Associates, Inc. To my right here
5 is Ben Yankey. He is our architectural
6 coordinator of our church building
7 organization. And of course to my left is
8 Reverend Pastor Mary Fowler of Mary's
9 Missionary Baptist Church at 2811 14th Street,
10 N.E.

11 CHAIRMAN JORDAN: Thank you. All
12 right. Let me -- there is a request by Pastor
13 Fowler to be a -- for party status. I don't
14 think you want party status. This is in
15 support of your application already. That's
16 not necessary. And you're also in support, so
17 you can give your statement in regards to
18 proceeding since this is your application. So
19 you don't need to do party status. So if
20 that's all right with you, I'm just going to
21 deny that because you don't need party status.
22 It's automatic kind of. It's your

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1 application, or application of the church
2 which you represent.

3 There are some other preliminary
4 discussions here. We are asking for a
5 variance from the off-street parking
6 requirements. Is that what we're doing?

7 MR. WARDER: That is one of three,
8 yes.

9 CHAIRMAN JORDAN: Okay.

10 MR. WARDER: Yes, I understand
11 there's a request for a variance under 403 and
12 404.

13 CHAIRMAN JORDAN: Okay. Now let
14 me -- before we go to your presentation, let
15 me tell you some of the concerns and issues.
16 I don't think that this application has been
17 presented to us in a manner which might not
18 lead to the relief you're asking for. We need
19 to know what are the unique circumstances,
20 uniqueness of this property and the practical
21 difficulties and/or how you are -- should be
22 allowed -- institution of necessity to make

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1 these changes. And be very, very clear about
2 that to us, because what we have in the record
3 now is that this property is not unique and
4 there's a recommendation from the Office of
5 Planning not to grant the particular relief
6 that's being requested.

7 So in your presentation, I'm going
8 to ask you to hit those points for us, please,
9 and address that for us.

10 MR. WARDER: Thank you. In
11 regards to the property, I mean, we have a
12 5,000 square foot just rectangular property.
13 We also had a meeting, and as you know, we're
14 asking to have a increase which would occupy
15 the 72 percent of the land, whereas we're
16 allowable 60 percent. The use that we're
17 asking for, we have no real property issue
18 other than it's being small. I mean, as far
19 as it being an obstacle for what the church,
20 its pastor and its membership wants to use it
21 for. Wee have stated that also in the filing
22 of the variances, of the three variances.

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1 Pastor Mary here, with her church,
2 she is hoping and prayerfully that she could
3 use this structure to bring in children in the
4 neighborhood. This project, approximately
5 two-and-a-half blocks off of Rhode Island
6 Avenue, N.E., has a lot of people of ex-
7 prisoners, unwed mothers and a lot of babies,
8 infants and children that are left at the door
9 on Sundays just hopefully that they will get
10 food in their bellies.

11 The church also has many members
12 and occupant neighbors who are asking -- or to
13 -- if they could leave computers at their
14 front door that they could also set up
15 computer rooms for the children to teach the
16 youth in the neighborhood about the use and
17 operations of computers, as well as the church
18 desires to have musical instruction, music
19 lessons, especially in regards to piano and
20 guitar.

21 We have many people, many in the
22 neighborhood who come into the church; ex-

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1 prisoners, unwed mothers and various people in
2 need who require consulting. Reverend Mary
3 also is asking for space for consulting these
4 people who are of adverse situations at this
5 time.

6 This is the only real -- the use
7 is that we would like to try to secure through
8 the additional square footage of the church
9 building. Now, we had a meeting somewhere in
10 April, 2011 with DCRA and Chief LeGrant, who
11 approved a 1,457 square foot building
12 structure to 3,000 square foot. But by the
13 time that we -- and gratefully so, to have the
14 3,000 square feet, we would need to of course
15 upgrade and applying for a building permit for
16 the ADA facility requirements. That would be
17 the bathrooms, which require about three
18 times, as you know, due to the turnaround area
19 for wheelchairs and the occupants would
20 require approximately three times the normal
21 size of a bathroom. So that would eat up
22 approximately; or use us, I should say, or

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1 consume approximately 250 square feet of the
2 additional 1,500 square feet granted by Chief
3 LeGrant.

4 So the church decided to extend
5 the building another approximately 757 feet
6 beyond that which was approved by DCRA and
7 Chief LeGrant and seek a variance requirement
8 now hopefully in order to accommodate these
9 various needs. This is why we have requested
10 the actual variance due to more so use of
11 these people who are suffering and having
12 various conditions as I have already
13 stipulated.

14 CHAIRMAN JORDAN: So you're saying
15 your need is based upon institutional
16 necessity for these changes, meaning that you
17 need places for -- to increase the
18 congregation, for -- you need a space so you
19 can have her counseling troubled children and
20 adults and unwed mothers who are in the area,
21 I think I heard you say. You need space for
22 the pastor to have office space/meeting room

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1 for consultation of people. You need room for
2 computer services and etcetera that you need
3 and have. And that you have a concern that if
4 you are to comply with the zoning
5 requirements; if I'm hearing you correctly,
6 that you have a financial burden, a huge
7 financial burden to do so?

8 MR. WARDER: Precisely, if we went
9 up to a second floor, which was also
10 suggested. However, I would like to mention,
11 Chairman, that we're really not increasing the
12 membership of the congregation. This is just
13 for needs of the various services, as we've
14 stipulated.

15 CHAIRMAN JORDAN: Okay. But
16 you're looking to bring other people in the
17 church and need the added space for them,
18 right?

19 MR. WARDER: Definitely. Yes,
20 sir.

21 CHAIRMAN JORDAN: But you needed
22 it?

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1 MR. WARDER: Right. Need it.
2 Right.

3 CHAIRMAN JORDAN: Okay. Any
4 questions for -- any other questions for the
5 applicant?

6 COMMISSIONER TURNBULL: Yes, thank
7 you, Mr. Chair.

8 As you know, the Office of
9 Planning is not in support of this
10 application. And I think what their primary
11 -- and they'll speak to this, but part of the
12 property -- part of the problem is the
13 variance test is very difficult to meet with
14 -- in looking at the strict Zoning Regulations
15 in the zone in which you're in. And I think
16 the main concern is that it's totally out of
17 character with the rest of the neighborhood
18 and that it could be that the amount of use
19 that you want to put here is greater than what
20 the site can hold. In other words, it's the
21 old 20-pound bag and 10-pound bag, and what
22 you're really trying to do.

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1 And I think you had a previous
2 plan that was approved by the ZA. Now, we did
3 not get a copy of that. We -- I don't -- I
4 mean, I'm trying to balance what was approved
5 before, what you're trying to do now, and I
6 guess how much of these needs -- I mean, have
7 you done a plan that actually tried to
8 reconcile the old plan with -- I don't see any
9 computer lab here. I mean, I just see a big
10 multipurpose area room of 70 seats, with
11 tables and chairs.

12 So it's a little bit difficult
13 trying to analyze a plan like this and looking
14 at your needs and recognizing what you're
15 really trying to do. I think it's very
16 difficult for us to look at a plan like this
17 and try to reconcile what was approved by and
18 would have been a matter of right.

19 MR. WARDER: Yes, sir.

20 COMMISSIONER TURNBULL: And now --
21 before you came to us. So I think that's part
22 of the issue before us now is trying to

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1 compare, you know, the apples and oranges
2 here.

3 MR. WARDER: Right. Yes, the
4 multipurpose function, as I've, you know,
5 defined, I mean, it won't have the various
6 rooms, but it's for the space as we just
7 recently drew and provided DCRA and also
8 Planning with last week, just as you must have
9 already in your possession, because the
10 Chairman was reading to us the various room
11 needs all in that multipurpose, that one
12 singular space which had to be of a given
13 square footage.

14 Now we did attempt -- if we saw or
15 had the approved plan of increasing the
16 building from approximately 1,457 square feet
17 to around 3,000, as approved by Chief LeGrant
18 sometime; I believe it was in April of 2011,
19 which was to do precisely as you had stated
20 and requested that shows, you know, what we
21 could do in a minimal situation without going
22 into a variance as far as the rear setback

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1 goes and which would accommodate and satisfy
2 the ground coverage. So, and that was again
3 approved somewhere around April.

4 However, in speaking with the
5 church on previous -- on numerous occasions,
6 they thought it would be best to see if we
7 could accommodate our -- you know, to have a
8 little bit more space is always better than
9 not enough.

10 But the property, the rear setback
11 would go away from that eight feet to the rear
12 property setback, as well as the ground to
13 area ratio or the ground coverage would then
14 go back to 60 percent, precisely as defined by
15 Mr. LeGrant, Chief LeGrant.

16 CHAIRMAN JORDAN: And you're
17 confusing me. Is that in the plans that you
18 previously submitted? The matter of right
19 plans. And why were they pulled back? Why
20 are you not doing the matter of right plan?

21 MR. WARDER: Well again, the
22 church felt that again increasing from 1,457

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1 to approximately 3,000 square foot just still
2 wasn't enough. However, that did accommodate
3 exactly precisely what we need.

4 CHAIRMAN JORDAN: So that plan of
5 a 1,400 square feet, was it?

6 MR. WARDER: We'd go from 1,457
7 existing church building to approximately
8 3,000 square foot, which would be to the
9 maximum of the 60 percent ground coverage.

10 CHAIRMAN JORDAN: And that still
11 was not enough to meet your needs?

12 MR. WARDER: Well, this is -- the
13 church states that they feel that wasn't
14 enough to meet their needs, yes.

15 CHAIRMAN JORDAN: Yes, please.

16 VICE CHAIR SORG: So, okay. I
17 understand you.

18 MR. WARDER: Thank you

19 VICE CHAIR SORG: Don't worry
20 about it. So there's a couple of questions
21 that lead me from what -- your recent
22 statement. If you just say -- tell me the

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1 number. So from the roughly 1,450 square foot
2 matter of right addition, you're now asking
3 for an additional about 950 square feet over
4 that?

5 MR. WARDER: Over and above the
6 total 3,000 square foot.

7 VICE CHAIR SORG: Yes.

8 MR. WARDER: Yes, 750. So --

9 VICE CHAIR SORG: Okay. Seven
10 hundred and fifty more? Okay. Okay. That
11 was one question. That's fine.

12 And then to follow up on Mr.
13 Turnbull's line of questioning, in your
14 opening statements you described some of the
15 institutional needs of the church including a
16 dining room to feed several of the
17 parishioners or neighborhood folks in need, a
18 computer lab, a music room, private meeting
19 space for consultation. Those were the
20 primary areas. And I would echo what some of
21 Mr. Turnbull said is that it's not apparent,
22 some of those spaces in the plans. But I

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1 understand your response to that.

2 But I wanted to go back to the
3 dining room and I wanted to ask; and perhaps
4 this is a question for Pastor Fowler, how many
5 people about are you feeding every Sunday or
6 every weekend?

7 REV. FOWLER: At this point, let
8 me say this: Is it on?

9 MR. WARDER: Yes.

10 REV. FOWLER: Number one, let me
11 say this: We are in one room square. And I
12 have the children over in one end, the adults
13 over here, the young adults back behind me,
14 and everybody is trying to teach their class.
15 And it's so much noise with the little ones,
16 the adults can't hear. The choir can't hear.
17 Nobody can hear. Because I specialize -- and
18 I'll make it quick. I specialize in unwed
19 mothers and their children, and especially
20 across Rhode Island Avenue, all the children
21 over there. And I won't keep going and going.
22 But what happened is that --

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1 VICE CHAIR SORG: That's okay.

2 You can describe it. It's okay.

3 REV. FOWLER: Okay. We -- when I
4 say "we," the church looked after the children
5 because as Mr. Warder said, on Sunday mornings
6 they are dropped off and we don't have a
7 kitchen. You asked about a dining room. We
8 don't have a dining room. We have a little
9 small kitchen, a little small one. And I take
10 them in there and I give them what I can give
11 them to eat, because they all come hungry
12 every Sunday morning and they'll like; and
13 I'll be honest, drive me up the wall, but I
14 love it.

15 VICE CHAIR SORG: Yes. So can
16 you --

17 REV. FOWLER: Because; let me say
18 this again, all the churches cannot run out in
19 Maryland. No disrespect. Somebody needs to
20 stay into the District and help look after
21 these little children.

22 VICE CHAIR SORG: I could not

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1 agree with you more, and I think I speak --

2 REV. FOWLER: And I'm not the one
3 there, that's right.

4 VICE CHAIR SORG: No, no. And I
5 think I speak for all of us that we really
6 respect what you're doing --

7 REV. FOWLER: Yes, and I need --

8 VICE CHAIR SORG: -- and we think
9 it's very important for the community. We
10 just need to get a few metrics so that we can
11 understand this thing. Absolutely. Totally
12 understandable. Totally respect your mission
13 and we're trying to sort of understand the
14 plans that are in front of us so that we can
15 work with you.

16 MR. WARDER: What we were trying
17 to do; excuse me, if I might, was take the
18 small storage area they had there and turn
19 that into a warming kitchen; you know,
20 microwave and refrigerator, not a commercial
21 kitchen simply because of space and economics
22 don't allow it, to feed these hungry children

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1 on Sunday mornings.

2 REV. FOWLER: Trust me, all I have
3 in each bathroom -- one commode in each
4 bathroom and I have to stand at the door as a
5 child -- yes, one child go in. The other one
6 screaming I want to get in. And I have to
7 wait, because there's only one in both
8 bathrooms.

9 CHAIRMAN JORDAN: All right.
10 Thank you.

11 REV. FOWLER: And that is a
12 hardship. It's a very hardship for us.

13 CHAIRMAN JORDAN: I appreciate
14 that. Is there any --

15 COMMISSIONER TURNBULL: Well, I
16 just had one follow-up. Just so I understand,
17 what's labeled "storage" now is food
18 preparation?

19 MR. YANKEY: It's going to be a
20 warming kitchen. That's where they're going
21 to --

22 COMMISSIONER TURNBULL: A warming

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1 kitchen?

2 MR. YANKEY: Yes, warming food --

3 CHAIRMAN JORDAN: So it's not
4 storage anymore?

5 MR. YANKEY: That's what it's
6 going to be. I mean right now it's storage
7 until, you know, I guess it's constructed.
8 And then, you know, they will decide as to --
9 whether to put a refrigerator or a microwave
10 or whatever in there. But that is the intent.
11 And I think it's specified on the -- on one of
12 the drawings.

13 MR. WARDER: It's the small
14 storage area there. It says -- you know, it's
15 a potential kitchen area. But it's not really
16 a kitchen. It's just a warming kitchen.

17 COMMISSIONER TURNBULL: You're
18 talking about feeding people. I think you're
19 going to need a food preparation area. I
20 mean, either it isn't or it is and --

21 MR. WARDER: Yes, well the food
22 preparation area would be, as Mr. Yankey's

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1 saying here, refrigerator and a microwave and
2 a countertop sink.

3 COMMISSIONER TURNBULL: So that's
4 in the storage room?

5 MR. WARDER: That would be it,
6 yes. Yes.

7 CHAIRMAN JORDAN: What's marked on
8 there is "storage." That may be something
9 else?

10 MR. WARDER: Yes, that's true.

11 CHAIRMAN JORDAN: It's marked on
12 here --

13 MR. WARDER: That's true.

14 CHAIRMAN JORDAN: You're
15 proposing --

16 MR. WARDER: Yes, we need it to
17 get DCRA's comments on that, that that's okay.
18 We know warming kitchens are a lot easier to
19 do than a commercial kitchen, obviously.

20 CHAIRMAN JORDAN: Anyone else?
21 Yes, Ms. Sorg?

22 VICE CHAIR SORG: Thank you, Mr.

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1 Chairman. I want to ask -- so it sounds like
2 from -- Pastor Fowler, from your description
3 about your activities with the mothers and
4 their children that they're coming in for
5 classes. And looking at the plans that we
6 have in front of us, that you'll be holding
7 these classes in different areas of the larger
8 multipurpose room. And does that serve your
9 -- does holding the classes in different
10 groups in a larger open area serve your
11 purposes, given the population that you're
12 working with, better than closed classrooms?

13 REV. FOWLER: Well, open. Not
14 certain --

15 CHAIRMAN JORDAN: I think what she
16 said was that presently it's open.

17 REV. FOWLER: It's already open.

18 VICE CHAIR SORG: It's going to be
19 open?

20 CHAIRMAN JORDAN: But it's large,
21 yes. And here's the problem we're having, if
22 I can, and -- -- the plans that we have are

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1 not indicating the uses that you talked about.
2 And these plans are -- so we can't follow on
3 the plans where, for instance, the computer
4 classes will be taught. We can't follow where
5 the meetings will be held.

6 MR. WARDER: Okay. Chairman, yes,
7 we didn't define -- we just merely -- and we
8 just delivered this as Mr. Stephen Galt asked
9 us to do. I just -- we just delivered the
10 drawing last week; you may have it, with just
11 the arrows indicating the use in that one
12 single multipurpose area. Do you have that
13 drawing?

14 CHAIRMAN JORDAN: Yes, we have it.

15 MR. WARDER: It -- what shows the
16 -- an arrow pointing to the -- everything goes
17 to the multipurpose area. It is not true
18 divided by partitions. That would just take
19 up more space. And Reverend Fowler uses at
20 different times with -- different days for
21 different functions. So she could serve it --
22 still use that larger space, accommodating all

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1 these different needs.

2 I do have a copy. It sounds as if
3 that you may have it.

4 MR. MOY: Emailed to us.

5 MR. WARDER: Mr. Chairman, would
6 you like a copy, or do you have it?

7 CHAIRMAN JORDAN: If you can -- we
8 can just make copies of those.

9 Mr. Moy, do we have that document?

10 Okay. Let's do this: We have
11 that and we'll go through it. We understand
12 the needs that -- what you're doing. I
13 understand that this exhibit -- is it 29 --
14 Exhibit 29 shows us in the areas where you
15 will -- those needs that you have will be used
16 within that facility and why you need the
17 additional 1,000-something square feet. And
18 I think your record indicated here -- and you
19 just gave the testimony about -- to do the
20 other plan you have to do a second floor, is
21 that correct?

22 MR. WARDER: Yes.

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1 CHAIRMAN JORDAN: Because matter
2 of right required a second floor?

3 MR. YANKEY: Yes, based on the one
4 that Chief LeGrant approved.

5 CHAIRMAN JORDAN: And it was going
6 to require you to do an elevator?

7 MR. YANKEY: That's right.

8 CHAIRMAN JORDAN: And it's -- you
9 have a financial burden which you could not
10 meet in doing that?

11 MR. YANKEY: Correct. Correct.

12 CHAIRMAN JORDAN: The elevator's
13 going to cost somewhere between \$150,000 to
14 \$200,000, is that correct?

15 MR. WARDER: Somewhere in that
16 neighborhood, yes, for a commercial elevator.
17 Yes.

18 CHAIRMAN JORDAN: Good. Let me
19 now come back to this. Let the Board take a
20 second of this. I want to hear from the
21 Office of Planning as to where we are with
22 this. Have you seen this document that's our

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1 Exhibit 29 that you're receiving now?

2 MR. GYOR: Good afternoon, Mr.
3 Chairman and Members of the Board. Actually
4 I have seen this document.

5 The Office of Planning -- oh,
6 sorry.

7 CHAIRMAN JORDAN: Would you
8 identify yourself and tell us who you are?

9 MR. GYOR: I'm Stephen Gyor with
10 the Office of Planning. The Office of
11 Planning cannot support the applicant's
12 request for a variance.

13 CHAIRMAN JORDAN: Is it Guy?

14 MR. GYOR: Gyor.

15 CHAIRMAN JORDAN: Gyor? Okay.

16 MR. GYOR: It's G-Y-O-R. OP
17 supports the mission of Mary's Missionary
18 Baptist Church, which is very impressive. And
19 OP also understands the church's current space
20 constraints.

21 CHAIRMAN JORDAN: You mean St.
22 Mary's Missionary Baptist?

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1 MR. GYOR: St. Mary's. Excuse me.

2 And the applicant has provided additional
3 information, which we have, which helps to
4 clarify how the mission of the church would be
5 related to the additional space requested.
6 However, OP does not believe the application
7 adequately addresses the variance test,
8 particularly given the extent of the relief
9 and the conforming options available. And
10 with that, we stand on the record and are
11 available for questions.

12 CHAIRMAN JORDAN: What's the
13 conforming use? How would they comply as a
14 matter of right? What would the need to do?

15 MR. GYOR: The applicant could
16 essentially double the size of their current
17 structure from I think it's 1,400 square feet.
18 They can go to about 3,000 square feet, and
19 that would still be -- that would be 60
20 percent lot occupancy.

21 CHAIRMAN JORDAN: Does that
22 require a second floor?

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1 MR. GYOR: That would not require
2 a second floor. Additionally, they could go
3 with a second floor. They have the option to
4 go up to 60 feet in the R-1-B Zone. I
5 understand the cost is prohibitive to do that.

6 COMMISSIONER TURNBULL: Did you
7 have a chance to review the 3,000 square foot
8 layout?

9 MR. GYOR: I have seen a copy of
10 the -- what I think is the original approved
11 by Matt LeGrant.

12 COMMISSIONER TURNBULL: I mean,
13 but basically you're saying it's more intense?
14 The amount of square footage is too intense
15 for the area?

16 MR. GYOR: Right. Yes, it's --
17 well, it's 72 percent lot occupancy in an R-1-
18 B. Normally -- well, single-family structures
19 are permitted 40 percent. Churches are
20 permitted up to 60 percent. So that already
21 is 20 percent over the surrounding properties.

22 COMMISSIONER TURNBULL: Right.

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1 MR. GYOR: But now -- and then it
2 would go to 30 -- you know, if you went to 72,
3 that would be 32 percent higher than
4 surrounding properties.

5 COMMISSIONER TURNBULL: I mean but
6 basically the property is fairly
7 straightforward. There's nothing unique about
8 it. The only way they're going to be able to
9 meet the variance test is by their
10 institutional use, or something clearly -- and
11 are you saying they really haven't explained
12 that yet totally?

13 MR. GYOR: Correct. I think the
14 only way they really could meet that first
15 prong of the test is through some -- an
16 institutional necessity argument, which is --
17 you know, as I advised the applicant, I think
18 they need to flesh that out in order to make
19 that argument. And certainly this diagram
20 helps to display the different uses that would
21 be in the building.

22 CHAIRMAN JORDAN: In your opinion,

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1 what do you mean "flesh it out?" What would
2 they need to -- what are you calling "flesh it
3 out?"

4 MR. LAWSON: Well, I think I would
5 just add that from the Office of Planning's
6 perspective it's not really part of what we
7 analyze as part of a variance request. So we
8 felt that the information that had been
9 supplying so far was a little bit scant and we
10 felt that the Board would find it difficult to
11 get to that kind of a finding based on the
12 information they supplied.

13 Now we understand that they've
14 submitted more information. So if the Board
15 is comfortable with the information that's
16 being supplied related to the institutional
17 issue, then that would satisfy you. But from
18 an Office of Planning standpoint we look at
19 the -- I guess the narrower confines of the
20 three-part test and didn't feel that the
21 applicant had sufficiently addressed that.
22 And the Board will be able to take into

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1 account the rest of the information.

2 CHAIRMAN JORDAN: So you didn't
3 take in consideration institutional necessity
4 in your report? Is that essentially what
5 you're saying?

6 MR. GYOR: Not to any great
7 degree, that's correct.

8 CHAIRMAN JORDAN: All right. That
9 makes me feel better, because I was concerned
10 about the report and -- all right.

11 Is there any other questions for
12 Office of Planning?

13 MR. WARDER: Yes, and thank you --

14 CHAIRMAN JORDAN: No, no, no.
15 Wait.

16 MR. WARDER: Oh, I'm sorry.

17 CHAIRMAN JORDAN: Just from the
18 Board. I'm sorry. Let me be specific.

19 MR. WARDER: By the Board? Excuse
20 me.

21 CHAIRMAN JORDAN: Does anyone on
22 the Board have a question for Office of

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1 Planning?

2 COMMISSIONER TURNBULL: You know,
3 I guess the third prong is the one you're also
4 upset about. I mean, you don't agree with is
5 that it does go against the Zoning Code, the
6 Zoning area. I mean, it definitely changes
7 the character of the neighborhood.

8 MR. GYOR: Correct. I mean, it
9 contravenes the Zone Plan. It's --

10 COMMISSIONER TURNBULL: The Zone
11 Plan. Right. I meant to say that. Okay.
12 Thank you.

13 CHAIRMAN JORDAN: All right. Mr.
14 Warder, you had a question --

15 MR. WARDER: Okay. Thank you.

16 CHAIRMAN JORDAN: -- for Office of
17 Planning?

18 MR. WARDER: Thank you. Yes, sir.
19 Mr. Gyor, thank you so much for all your
20 previous help and communicating with us in
21 email and phone calls.

22 However, by right, at this point

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1 in time we're still granted the 3,000 square
2 feet, which was approved?

3 MR. GYOR: As I understand it,
4 yes.

5 MR. WARDER: Yes. Okay. Thank
6 you.

7 MR. GYOR: You'd still be
8 permitted to go up to 60 percent lot
9 occupancy.

10 CHAIRMAN JORDAN: Is there any
11 other questions from you, Mr. Warder, of
12 Office of Planning?

13 MR. WARDER: No, and thank you.

14 CHAIRMAN JORDAN: All right. Does
15 the Board have any other questions of Office
16 of Planning?

17 (No audible response.)

18 CHAIRMAN JORDAN: Okay. Do we
19 have a letter from the ANC? Yes. We do have
20 a letter from the ANC who voted in support of
21 this application, recommended approval, and we
22 will give great weight to that.

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1 We also have a letter from the -- anyone
2 from the Department of Transportation here?

3 (No audible response.)

4 CHAIRMAN JORDAN: Seeing that they
5 are not, I also have a letter from the
6 Department of Transportation indicating no
7 objection to the granting of this particular
8 relief. And there are letters from
9 individuals in support.

10 Is anyone in the audience here in
11 support of this application?

12 (No audible response.)

13 CHAIRMAN JORDAN: Any person in
14 the audience opposed to the application?

15 (No audible response.)

16 CHAIRMAN JORDAN: Then let me do
17 this: Let me turn back to the applicant for
18 additional statement or rebuttal, if you want.
19 And then the Board has a couple of more
20 questions.

21 So, Mr. Warder, is there something
22 else you want to say to the Board about this

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1 application?

2 MR. WARDER: Well, I mean, as we
3 all can realize the use and need here, and as
4 Mr. Yankey and I have visited this site on
5 many occasions and actually seen and
6 experienced what it is that the church is
7 requesting, and the fact, too, that we do have
8 by right now as I understand by Mr. LeGrant
9 that we can go from 1,400 to 3,000 square
10 feet. So I have nothing else to say in that
11 regard.

12 CHAIRMAN JORDAN: Questions by the
13 Board of the applicant?

14 VICE CHAIR SORG: Thank you, Mr.
15 Chairman. Just one question. How many square
16 feet is the proposed multipurpose room? I can
17 do the math, but I feel like you might know.

18 MR. YANKEY: The proposed, I
19 believe, is 1,542 square feet.

20 VICE CHAIR SORG: Fifteen hundred?
21 Okay.

22 MR. WARDER: Which if you add the

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1 existing 14-something, you'd be at the 3,000
2 that Mr. LeGrant has approved, right. But I
3 believe you may have been asking --

4 VICE CHAIR SORG: I'm asking just
5 one question, and he answered it. Don't worry
6 about it. Thank you.

7 CHAIRMAN JORDAN: Okay. Is there
8 any other questions?

9 COMMISSIONER TURNBULL: Well, yes,
10 I guess for me to try to -- you know,
11 understanding institutional needs, trying to
12 go beyond where we are right now, I guess I
13 would like to see the 3,000 square foot plan
14 that's as a matter of right that you could
15 build and some type of comparison that -- or
16 somehow looking at why the jump to where you
17 are now --

18 CHAIRMAN JORDAN: That's what I
19 was --

20 COMMISSIONER TURNBULL: -- and why
21 that is so key? I need to understand that.
22 I need to know how that jump is made. I

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1 understand the washrooms take up so much, but
2 you would have to have had handicap washrooms
3 whatever facility you're going to -- in any
4 kind of an upgrade. So I need to know that
5 difference. I need to have that explained a
6 little bit better. I think Office of Planning
7 would like to see that to show that jump.

8 CHAIRMAN JORDAN: Okay. This is
9 what I am inclined to do: I'm inclined to
10 postpone the decision in this matter, give the
11 applicant time to supplement the record with
12 the other copy of the drawing, with a more
13 detailed explanation of the uses and why the
14 uses is necessary. And if it cannot fit
15 within the -- into the alternative plan, we
16 need a stronger basis of why it cannot and
17 then why the particular use is a necessity of
18 the church.

19 MR. WARDER: Okay. Are we
20 speaking of by right the 3,000 square foot?

21 CHAIRMAN JORDAN: We need to know
22 why the by right does not work specifically.

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1 MR. WARDER: Okay. But you mean
2 by right and the other additional 700 and
3 some? Okay.

4 CHAIRMAN JORDAN: Yes.

5 MR. WARDER: Thank you.

6 CHAIRMAN JORDAN: Real clear.
7 Real specific. Because as -- I'm polling the
8 Board right now. They are not where they need
9 to be, but I want to make sure we can
10 accommodate that which the church needs. So
11 let's do that.

12 Can we use the same dates, Mr.
13 Moy? I'm going to close the record except for
14 this submission, and Office of Planning
15 certainly can make any comments on any
16 additional documentation submitted.

17 Can we use the same kind of
18 scenario we were using earlier today?

19 MR. MOY: Yes, sir. Which one are
20 you --

21 CHAIRMAN JORDAN: It's my whole
22 morning that's been shot now, but -- I won't

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1 come back to that again, but anyway, moving
2 this for a decision on October 23rd, or 25th,
3 is it?

4 MR. MOY: It's October 23rd.

5 CHAIRMAN JORDAN: And then we need
6 to have the submission by October 2nd, is it,
7 or on October 9th?

8 MR. MOY: October 9th.

9 CHAIRMAN JORDAN: October 9th. So
10 if there's nothing else, I'm going to adjourn
11 this particular -- conclude this particular
12 hearing and move to the next. And so please
13 do that. Get it to us so that the Board can
14 have its questions answered.

15 MR. YANKEY: And that is September
16 23rd, you're saying?

17 CHAIRMAN JORDAN: October 23rd for
18 our decision. You don't have to be here.

19 MR. YANKEY: I'm talking about
20 the --

21 CHAIRMAN JORDAN: October 9th.
22 You need to strengthen your argument for the

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1 institutional necessity, why it's necessary
2 that these things happen, because right now
3 your application is scant.

4 MR. YANKEY: Okay.

5 CHAIRMAN JORDAN: Okay. Let's
6 call the next case, Mr. Moy.

7 MR. MOY: Yes, sir. The next and
8 final application in the morning session is
9 application No. 18392. This is the
10 application of Betty J. Williams, pursuant to
11 DCMR 3104.1. This is for a special
12 exception under section 205 to allow a child
13 development center (12 children and 2
14 teachers) in the R-2 District at premises 5350
15 Chillum Place, N.E. Property located in
16 Square 3751, Lot 138.

17 CHAIRMAN JORDAN: Let's see where
18 we are. This is 18392. I'm getting a little
19 punch-drunk up here. 18392.

20 All right. Would you please
21 identify yourselves, please?

22 MR. HOLAHAN: Good afternoon, Mr.

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1 Chairperson and Board Members. My name is
2 John Holahan. I'm with the law firm of DLA
3 Piper here in Washington, D.C. I'm here
4 representing Ms. Betty Williams, owner and
5 resident of 5350 Chillum Place, N.E. I'm also
6 joined by my colleague Chris Steelman, also
7 with DLA Piper.

8 CHAIRMAN JORDAN: Okay. And you
9 are?

10 MS. ROBERTS: Yes, I'm ANC
11 Commissioner Patricia Roberts, 5278 Chillum
12 Place, N.E.

13 CHAIRMAN JORDAN: Welcome. Good.
14 The Board's had an opportunity -- well, first
15 let me ask just in case: Has everyone been
16 sworn in that's going to testify, if
17 necessary, and have you submitted witness
18 cards to the court reporter? We need two
19 witness cards.

20 Well, let me begin by saying I
21 think we have a very clear record of what's
22 being requested, and the file is very

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1 detailed. The only concern we have is that
2 the Board does not think that additional
3 parking space is required. And there was some
4 type of statement here that you were going to
5 use a neighbor's parking or something, and we
6 don't really think that's necessary. So I
7 don't know where it came from about the
8 parking space. Was that something you want to
9 have or is that --

10 MR. HOLAHAN: No, I can clarify
11 that. We applied for that out of an abundance
12 of caution when we submitted the application.
13 But upon submission, Mr. Nero had called me
14 and said -- and I noted that one parking spot
15 is sufficient for up to four teachers. We
16 don't have anywhere near that number. And she
17 has parking behind her home, so we do not need
18 that and we do not need to discuss that. We
19 only care about the house. That's all.

20 CHAIRMAN JORDAN: Yes, Ms.
21 Roberts?

22 MS. ROBERTS: May I comment on

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1 that --

2 CHAIRMAN JORDAN: Yes.

3 MS. ROBERTS: -- issue now? In a
4 document from DLA Piper, it says in here that
5 section 205.4 required parking, off-street
6 parking spaces for teachers, other employees
7 and visitors. Now, Mrs. Williams has secured
8 the second space, but my question to that is
9 what happens when you have parents picking up
10 and dropping off and you have space for staff?
11 Two spaces aren't necessarily the best. It's
12 good that she has it, but there still needs to
13 be more because where are the parents dropping
14 and picking up the children going to park?

15 CHAIRMAN JORDAN: Okay. Well,
16 under the regulations, they're not required to
17 have an additional parking space. So the
18 other parking space is actually as just
19 something that they were talking about doing
20 on their own, but the regs does not require it
21 to happen.

22 But I'm going to ask Mr. Holahan

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1 to explain how -- the pick-up and the drop-off
2 situation so that Ms. Robertson has comfort.

3 MR. HOLAHAN: Certainly. There
4 are currently five children at the day care
5 home now. Three use public transportation.
6 The home is surrounded by Fort Totten Metro
7 and three different bus lines. So only two
8 children get picked up and dropped off.
9 There's only one teacher, Ms. Williams. There
10 is a substitute. And there will be a new
11 teacher, assuming this gets granted for more
12 children, who uses Metro. So you're talking
13 currently of two people and they simply can
14 pull in the front of the home or in the alley
15 to do a quick drop-off and pick-up. Ms.
16 Williams has parking behind her home, enough
17 for two small cars, or one large SUV. So
18 there's no issue with pick-up and drop-off.
19 And over -- you know, the only other teacher
20 and three children use public transportation.

21 CHAIRMAN JORDAN: Okay.

22 MS. ROBERTS: Just one parting

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1 comment from that issue. I just want the
2 record to show that the section 205.4 of the
3 Zoning Regulations had that requirement.

4 The other thing is the -- not
5 necessarily the pick-up and drop-off, but if
6 it's going to be done in the front, it creates
7 a traffic hazard. Chillum Place is a very
8 congested street. I happen to live on Chillum
9 Place and the house in that area -- and we
10 also have a bus -- that's a bus line street.
11 So there's quite a bit of congestion there.

12 And I want to say this for the
13 record: I want Ms. Williams to have her day
14 care facility. There are just some other
15 issues that I think that need to have some
16 clarification, based on the 12 children that
17 we are expecting to have from a waiting list,
18 as Ms. Williams had stated.

19 CHAIRMAN JORDAN: Okay. Thank
20 you. Are there any other questions of the
21 applicant?

22 (No audible response.)

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1 CHAIRMAN JORDAN: I'll turn now to
2 Office of Planning.

3 MS. THOMAS: Good afternoon, Mr.
4 Chairman, Members of the Board. The Office of
5 Planning will stand on the record and be
6 available to take any questions.

7 CHAIRMAN JORDAN: Any questions
8 for Office of Planning?

9 MS. ROBERTS: I have some
10 additional comments when it's appropriate.

11 CHAIRMAN JORDAN: Yes, certainly.

12 MS. ROBERTS: Thank you.

13 CHAIRMAN JORDAN: Mr. Holahan, any
14 questions for Office of Planning?

15 MR. HOLAHAN: Just to confirm, Ms.
16 Thomas, that the Office of Planning supports
17 this application. Is that correct?

18 MS. THOMAS: That's correct.

19 MR. HOLAHAN: Okay.

20 CHAIRMAN JORDAN: Ms. Roberts, any
21 questions for Office of Planning? You are
22 representing ANC-5A, is it?

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1 MS. ROBERTS: 5A-02, yes.

2 CHAIRMAN JORDAN: 5A-02.

3 MS. ROBERTS: Currently, yes.

4 CHAIRMAN JORDAN: Okay.

5 MS. ROBERTS: I'm waiting for my
6 colleague Tim Thomas to come, because he was
7 actually involved in the process that this
8 went through. I was out of the city, but I
9 was in close communication with the chair and
10 the commission. And these were some issues
11 that I had about this.

12 CHAIRMAN JORDAN: But I --

13 MS. ROBERTS: Beg pardon?

14 CHAIRMAN JORDAN: Yes, but are you
15 testifying as an individual, or representing
16 ANC-5A?

17 MS. ROBERTS: No, no. 5A. It's
18 in the letter here. Ms. Grant in the fourth
19 paragraph stated that I would be present, the
20 letter that she sent back to you.

21 CHAIRMAN JORDAN: I do have a
22 letter in support of the application. The

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1 vote was 6-2 in support of this application?

2 MS. ROBERTS: Yes, correct. So
3 what I'm saying is that --

4 CHAIRMAN JORDAN: So, you're not
5 -- but you're -- which paragraph is that?
6 Paragraph -- which paragraph?

7 MS. ROBERTS: Oh, yes.

8 CHAIRMAN JORDAN: Of the ANC
9 letter?

10 MS. ROBERTS: Oh, I'm sorry. Just
11 a minute. I said four, but I'm not -- but
12 it's three. Paragraph 3, it says Commissioner
13 Roberts, who is out of town, and also that I
14 would be present at this hearing. Well, it's
15 one, two, three. And that's my -- the day
16 care facility is actually physically in my
17 SMD, my single member district.

18 CHAIRMAN JORDAN: Just so we're on
19 the -- okay.

20 MS. ROBERTS: Yes.

21 CHAIRMAN JORDAN: Just so we're
22 all on the same page, it doesn't -- it --

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1 okay. It doesn't say -- it says that you were
2 out of town, period, ending.

3 MS. ROBERTS: Yes.

4 CHAIRMAN JORDAN: I don't see
5 where it says that you're representing the
6 ANC-5A. Because we have a letter from ANC-5A
7 that voted in support. We need to have you
8 designated from the ANC-5A to be the
9 representative there. Maybe I'm wrong. I
10 missed it.

11 MS. ROBERTS: The last paragraph
12 on the second page. May I read this? "The
13 commissioner having heard from the residents
14 of the single member district commission 5A-
15 02, which is represented by Commissioner
16 Patricia Roberts, about their support for the
17 current business. Furthermore, Commissioner
18 Roberts will be in attendance at the hearing."

19 CHAIRMAN JORDAN: Yes.

20 MS. ROBERTS: It's in the last
21 paragraph of the second page. I apologize.

22 CHAIRMAN JORDAN: So but you're

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1 not representing ANC-5A? You're here as a
2 witness, as an individual witness, although
3 you are a single member commissioner?

4 MS. ROBERTS: Yes.

5 CHAIRMAN JORDAN: But you're not
6 representing 5A. And so the position of party
7 status goes to ANC-5A, that the -- and we have
8 a letter in support of that. But you'll have
9 an opportunity to speak again.

10 MS. ROBERTS: Yes.

11 CHAIRMAN JORDAN: Or basically
12 you've already done it, but we're going to
13 allow you to speak again in regards to that
14 when we have parties or opposition and
15 support.

16 So for the record, we already
17 indicated that we have the letter from ANC-5A
18 in support.

19 And so now are there any other
20 persons in support of the application in the
21 audience?

22 (No audible response.)

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1 CHAIRMAN JORDAN: Those in
2 opposition. Ms. Roberts, if you would like to
3 speak, if you're in opposition, or any other
4 questions you may raise about the --

5 MS. ROBERTS: Yes.

6 CHAIRMAN JORDAN: I think you have
7 three minutes.

8 MS. ROBERTS: Okay. Oh, okay.
9 Another thing that I had a question about in
10 terms of having 12 children there, not the day
11 care itself; that's fine, most residents have
12 two cars there and to have to -- well, we
13 dealt with the parking issue. Let me move to
14 something else that's a little more critical
15 as far as I'm concerned.

16 The food and the sleeping area.
17 Is the inside space going to be allocated for
18 the children, the first floor? Because my
19 basement in the 5200 block is larger than the
20 basements in the 5300 block, and to have 12
21 children there -- and I think about the
22 socialization factor also. There are babies

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1 until five and then after school, which could
2 be that the children could be as old as middle
3 school children. So I have like a problem
4 with the socialization of that many children
5 being in a space together.

6 The other part, suppose an
7 accident happens to one of the children and
8 one person has -- and another child has to go
9 to the potty, one person takes the child to
10 the potty. The other one has a fall and skins
11 a knee. What's going on with the other 10
12 children when the two adults are supporting
13 the incident of the two children that have to
14 go to the potty and have a fall? So that is
15 an issue for me in terms of having 12 children
16 there.

17 I mentioned the socialization
18 factor. And also about the sign in the yard.
19 We have a person who's now welding in his
20 front yard. We have had two car repair shops
21 in our alley. And we have gotten rid of those
22 elements. And I'm saying to put signs in our

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1 residential area just brings more undesirable
2 -- and we have quite a few day care facilities
3 already operating, but they are under 12. We
4 have quite a few people who have day care
5 facilities in our SMD. We're talking about
6 2,000 people now, not just that 200-footer
7 area. But I'm talking about the entire
8 community and how that impacts on them. If
9 you start making exceptions for one and have
10 exemptions, you're going to have to do it for
11 everyone. And then you will dilute our
12 residential status. You're changing our whole
13 SMD status when you do that, or at least
14 that's my perception of having a day care
15 facility of 12 children and having it
16 advertised in the front yard when we've
17 already just gotten rid of two people living
18 in a house that had auto repair shops in their
19 off-street parking.

20 CHAIRMAN JORDAN: All right.

21 Thank you. We thank you. Appreciate your
22 testimony. Just for the record, so you know,

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1 the programming, internal programming of this
2 operation is not within the purview of this
3 Board, nor is a signage requirement within the
4 purview of this Board. And the safety of the
5 kids -- the programming and safety of the kids
6 particularly is one of the State Office of
7 Education's purview. And regarding signage
8 and etcetera I believe is DCRA. But we do
9 appreciate your commenting that there is going
10 to have some type of effect upon you.

11 Mr. Holahan, is there anything you
12 want to say in rebuttal for wrapping up or
13 anything?

14 MR. HOLAHAN: No, I'll keep it
15 short. I agree with your point about -- we
16 certainly appreciate Ms. Roberts' comments in
17 their individual capacity regarding the
18 center. I think there may have been some
19 factual errors in those statements, and it's
20 not -- we're not here to talk about that with
21 the Board of Zoning. So thank you.

22 CHAIRMAN JORDAN: Have you had a

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1 chance to look at the Office of Planning's
2 report>

3 MR. HOLAHAN: We did.

4 CHAIRMAN JORDAN: There is listed
5 actually six conditions, five of which the
6 Board would believe they want to put in place.
7 And that would be for, number one, approval
8 shall be for a period of five years; that the
9 number of enrolled children shall not exceed
10 12; that the number of staff shall not exceed
11 2 staff persons; and that the hours of
12 operation are 7:00 a.m. to 6:00 p.m.; and that
13 outdoor activities shall be supervised and
14 concluded by 6:00 p.m. Those conditions are
15 comfortable for you?

16 MR. HOLAHAN: Absolutely.

17 CHAIRMAN JORDAN: Okay. All
18 right. Then I would conclude this hearing and
19 the record in this matter. And the Board
20 appears to ready to deliberate.

21 COMMISSIONER TURNBULL: Just to
22 clarify what you're talking about the hours,

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1 Monday through Friday.

2 CHAIRMAN JORDAN: Monday -- yes,
3 did I say that -- not say that? Monday
4 through Friday? Okay. They didn't put it
5 here. Monday through Friday. Good.

6 So I believe based upon the record
7 and the testimony given that the applicant has
8 satisfied the requirements for special
9 exception and basically for the continuation
10 and the expansion from 6 children to 12
11 children for the child development center.
12 That the applicant has shown that the center
13 is capable of meeting all the applicable
14 building and housing code requirements. That
15 there's no -- that the facility won't create
16 an objectable traffic pattern and condition --
17 or unsafe condition for picking up the
18 children. In fact, they have already shown
19 that and that there is a report from --
20 indicating the traffic pattern, the location.
21 That there's public transportation, etcetera.
22 That there's only three children who are

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1 getting picked up and transported; that the
2 issue of parking does not become an issue, but
3 there's enough under the code, the requirement
4 which is required under the code and that the
5 Board does not see any additional need and
6 necessity, although you have the opportunity
7 to use the one space you have in the back if
8 someone needs to park. That the outdoor play
9 area is something that the Office of State
10 Education is comfortable with. In fact,
11 you're going to maintain the same practice
12 that you have before and that the children go
13 to an off-site location basically when they
14 need to be outside playing, which is a park
15 area. I think I'm correct on that. That the
16 Board doesn't see any special treatment or
17 design or screening necessary for this. And
18 that you have received the approval of the
19 State Office of Education and Department of
20 Transportation, etcetera, for this.

21 So we -- it would be my motion
22 that we approve the application with the

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1 conditions listed that would include that the
2 approval be for a five-year period, that the
3 children shall not -- they can't have more
4 than 12 children. That there's two -- their
5 staff level cannot exceed two. That the hours
6 of operation is from 7:00 a.m. to 6:00 p.m.
7 Monday through Friday. And that all outdoor
8 activities are supervised and concluded by
9 6:00 p.m.

10 And I think I was remiss in saying
11 that also that we have the Office of Planning
12 in support of this, which will be given great
13 weight and ANC-5A in support, which would be
14 given great weight.

15 So that would be my motion.

16 VICE CHAIR SORG: Second.

17 CHAIRMAN JORDAN: Motion made and
18 seconded. Any unreadiness?

19 (No audible response.)

20 CHAIRMAN JORDAN: Seeing none, all
21 those in favor of granting this as I've
22 defined, signify by saying aye?

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1 (Chorus of ayes.)

2 CHAIRMAN JORDAN: The motion's
3 approved. Mr. Moy?

4 MR. MOY: Yes, sir. Staff would
5 record the vote as 4-0-1. This is on the
6 motion of Chairman Jordan to approve the
7 application with six conditions as cited.
8 Second the motion, Vice-Chair Sorg. Also in
9 support of the motion, Mr. Turnbull and Mr.
10 Hinkle. No other Board Members participating.
11 So again the final vote to approve is 4-0-1.
12 The motion carries.

13 CHAIRMAN JORDAN: Thank you, Mr.
14 Moy.

15 Thank you. This hearing's over.
16 Yes, you just got a vote.

17 MS. WILLIAMS: Okay.

18 CHAIRMAN JORDAN: You want
19 something else? You don't want to work
20 backwards.

21 MR. HOLAHAN: Is there any way to
22 have you issue a summary order for this?

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1 CHAIRMAN JORDAN: I'm not issuing
2 a summary order. I just think that's not
3 advisable.

4 We've had a heck of a morning, as
5 you can see. And those of you who practice
6 before this Board, knows it's kind of unusual
7 for me to be hearing -- for us to be hearing
8 the afternoon docket this late since we've
9 been doing some things a little differently
10 here. So that puts us in a point of where we
11 have not taken a lunch break as a Board, as
12 I'm getting beat up by Board Members, as well
13 as myself, that we need to do so.

14 However, this is what I -- the
15 course of action is going to be for this
16 afternoon docket. I'm going to have Mr. Moy
17 call case No. 18386 -- I think it is. Is that
18 the one? Yes, the parking lot one, which is
19 -- yes, which is one that's very
20 straightforward. Then we're going to take a
21 half-hour recess and do 18395.

22 Okay. So if anyone wants to --

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1 that's here for 18395, then -- well, this
2 shouldn't take that long. We're going to take
3 a half-hour recess before we actually get that
4 case.

5 Mr. Moy, would you go ahead and
6 call 18386?

7 If you're here for 18395, as I
8 said, you're probably comfortable with -- what
9 time is now? 2:00? Yes, that sound good.
10 2:00.

11 Mr. Moy? Yes, we're ready. Can
12 you call this, please?

13 MR. MOY: Okay. Should we open
14 the afternoon? Okay.

15 CHAIRMAN JORDAN: We didn't --
16 we're -- all right. We're now moving to the
17 afternoon session. I think we're still on the
18 record in continuation from this morning, but
19 we formally called the afternoon session. I
20 don't think there's any other announcements.

21 Those people who are going to
22 testify in 18386, please raise your hand and

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1 take an oath.

2 (Whereupon, the witnesses were
3 sworn.)

4 MR. MOY: You may consider
5 yourself under oath.

6 CHAIRMAN JORDAN: And we need the
7 two witness cards prepared and given to the
8 court reporter.

9 Would you identify yourselves,
10 please?

11 MR. HUGHES: Good afternoon, Mr.
12 Chair.

13 CHAIRMAN JORDAN: You can identify
14 -- yes.

15 MR. HUGHES: For the record, my
16 name is Dennis Hughes with the firm of Holland
17 & Knight. I'm joined today by, on my far
18 right, Mr. Kyung Rhee, and on my near right,
19 Mr. John Eidberger. Mr. Rhee is the operator
20 of the McDonald's restaurant adjacent to the
21 lot that's the subject of this application and
22 which serves as the parking lot. And Mr.

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1 Eidberger's a constructor manager with
2 McDonald's.

3 CHAIRMAN JORDAN: Okay. Very
4 good. Thanks.

5 We believe we have a full record
6 here, and this matter has been before this
7 Board a whole bunch of times. It's been here
8 for -- over the last -- well, it first was
9 here in 1967, I believe, if that's not --

10 MR. HUGHES: I'm sorry, I did not
11 attend that hearing, but --

12 CHAIRMAN JORDAN: I was going to
13 say you're well preserved, Mr. Hughes. You're
14 well preserved. Since 1967. And this matter
15 has been up for periodic review and is back
16 again for a follow-up review. It was here
17 before this Board August 15th, 1967. It was
18 here July 13th, 2007. And again here March
19 26th, 2012.

20 The request is for a special
21 exception to renew the permit for surface
22 parking lot under 213. I think the record's

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1 full, Mr. Hughes, pretty full. I think the
2 record's been full for awhile on this one. I
3 don't know if there's any testimony that the
4 Board needs to hear. So you can give a
5 statement or not.

6 But let me ask the Board, is there
7 anything that you need?

8 (No audible response.)

9 CHAIRMAN JORDAN: I think we have
10 Office of Planning's report in here. We have
11 ANC 2B's recommendation for approval. We have
12 DDoT's no objection. So you can take it at
13 your risk. If you would like to provide some
14 testimony that might get you into trouble, or
15 you can stand upon the record.

16 Well, wait. Let me go back one
17 second. I think Mr. Hinkle has something.

18 MEMBER HINKLE: Thank you,
19 Chairman. Just a question. I don't see any
20 opposition in this case and any discussion in
21 terms of the objections. So I'm wondering, do
22 you know a little bit of the history and why

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1 there's been this continuous time limit or
2 term limit on these orders?

3 MR. HUGHES: I can only speak to
4 the application from 2007. There was pretty
5 dramatic improvement made to the site as part
6 of that approval, and I think that's shown in
7 the photos that are included.

8 So the only thing I could suggest
9 is that that might have been related. There's
10 been a change. Going forward we would
11 certainly like to not have a limit or
12 definitely would request an extended one.

13 MEMBER HINKLE: Sure.

14 MR. HUGHES: But thank you. And
15 to answer your question, Mr. Chair, I don't
16 have -- we have no additional information to
17 provide.

18 CHAIRMAN JORDAN: Okay. Thank
19 you.

20 MR. HUGHES: Thank you.

21 COMMISSIONER TURNBULL: Mr. Chair,
22 this is just to follow up. Is that when the

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1 brick trash enclosure was added?

2 MR. HUGHES: That's correct.

3 COMMISSIONER TURNBULL: So that
4 was added at that time? Okay. Thank you.

5 CHAIRMAN JORDAN: Is there
6 anything Office of Planning needs to add for
7 us other than what's in your report?

8 MR. MORDFIN: No, Mr. Chairman.

9 CHAIRMAN JORDAN: Okay. All
10 right. Thank you. Then if there's no other
11 -- is there other persons in support of this
12 application in the audience that needs to
13 testify?

14 (No audible response.)

15 CHAIRMAN JORDAN: Anyone in
16 opposition?

17 (No audible response.)

18 CHAIRMAN JORDAN: We already
19 indicated that ANC-2B has voted in favor of
20 approval, and that would be given great
21 weight. And Department of Transportation has
22 voted -- excuse me, has said they have no

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1 objections.

2 Anything else from the Board?

3 (No audible response.)

4 CHAIRMAN JORDAN: Okay. Then
5 we'll close the hearing on this matter.

6 Move to deliberations. Anybody
7 have a feel about this application?

8 (No audible response.)

9 CHAIRMAN JORDAN: Do we have a --
10 what about removing the 10 years?

11 MEMBER HINKLE: Yes.

12 CHAIRMAN JORDAN: Mr. Hinkle?

13 MEMBER HINKLE: You know, I used
14 to live around the corner from this and I
15 recall this was in pretty terrible shape for
16 awhile. And so I certainly appreciate what
17 has occurred I guess, you know, since '07 or
18 so. You know, and I'm looking at the
19 conditions recommends by the Office of
20 Planning. And personally I would be
21 comfortable with removing or extending even
22 further the time limit.

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1 And then just under the condition
2 No. 2 where it states, you know, a minimum of
3 approximately 20.8 percent of the lot shall be
4 landscaped as shown, I would change that verb
5 of "landscape" to "maintain" as shown in the
6 special exception plat.

7 CHAIRMAN JORDAN: Okay. Why don't
8 you make a motion to that effect?

9 MEMBER HINKLE: Landscape and
10 maintain? Okay.

11 CHAIRMAN JORDAN: So what term?
12 Is there a term that you want, or you want to
13 make it cleaner than that, or no change?

14 VICE CHAIR SORG: I can make a
15 comment on that, Mr. Chairman. I think that
16 as Mr. Hughes and also Mr. Hinkle mentioned,
17 you know, it has been -- had a dramatic, yes,
18 improvement in its -- in the previous go-round
19 of this hearing which was five years ago.
20 Right? So I think based upon that I could be
21 in support of a 15-year limit. But that we
22 want to make sure, I think, as Mr. Hinkle is

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1 potentially indicating, you know, to have an
2 opportunity to revisit this. So I'm not sure
3 that I would be in support of -- yes, I
4 wouldn't be in support necessarily of removing
5 a time limit at all.

6 CHAIRMAN JORDAN: Then hearing
7 that, I would recommend that the -- I move
8 that the Board approve the application for the
9 special exception renewal of the parking
10 permit, surface parking lot with the following
11 conditions: (1) That approval be for a 10-
12 year period from the effective date of the
13 order. That a minimum of approximately 20.8
14 percent of the lot shall be landscaped and
15 maintained as shown in the special exception
16 plat. That the McDonald's franchise operator
17 shall maintain the landscape -- landscape
18 maintenance agreement for semi-annual
19 landscape maintenance. Properly contact the
20 landscaping company with whom it has an
21 agreement in the event any planting appears to
22 stress, die and will have the company treat or

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1 replace affected planting. And (C) provide
2 daily, weekly and/or needed regular
3 maintenance, upkeep of landscape including
4 watering, weeding, removal of debris from the
5 landscaped area. And (4) that the trash
6 enclosure shall be kept in a neat and tidy
7 condition and locked and securely covered with
8 not -- covered when not in active use.

9 That would be my motion. Is there
10 a second?

11 COMMISSIONER TURNBULL: Second.

12 MEMBER HINKLE: Motion made and
13 seconded. Any unreadiness?

14 (No audible response.)

15 CHAIRMAN JORDAN: All those in
16 favor of the motion, signify by saying aye?

17 (Chorus of ayes.)

18 CHAIRMAN JORDAN: Those opposed,
19 nay?

20 (No audible response.)

21 CHAIRMAN JORDAN: The motion
22 carries. Mr. Moy?

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1 MR. MOY: Yes, sir. Staff would
2 record the vote as 4-0-1. This on the motion
3 of Chairman Jordan to approve the application
4 request for a special exception under section
5 213 with conditions, the four conditions as
6 the Board cited including the 10-year period
7 and as well as including a minimum of
8 approximately 20.8 percent of the lot to be
9 landscaped and maintained as shown on the
10 revised plat, which I believe is under Exhibit
11 27 in case No. 17618. Second the motion, Mr.
12 Turnbull. Also in support of the motion,
13 Vice-Chairperson Sorg and Mr. Hinkle. And no
14 other Board Members present. So again the
15 vote's 4-0-1. The motion carries.

16 CHAIRMAN JORDAN: Do you have a
17 vote from Rashida McMurray on this? No.

18 MR. MOY: My understanding she
19 didn't physically --

20 CHAIRMAN JORDAN: I thought she
21 submitted paperwork. No?

22 MR. MOY: Yes, but my --

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1 CHAIRMAN JORDAN: Okay. Forget
2 it. She's not here. We'll rock and roll.

3 Okay. And I believe that this
4 matter is set for a summary order, so if we
5 can have a summary order in this, please.

6 MR. MOY: Thank you, Mr. Chair.

7 CHAIRMAN JORDAN: We stand in
8 recess until 2:00.

9 (Whereupon, the hearing was
10 recessed at 1:29 p.m. to reconvene at 2:00
11 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:23 p.m.

3 CHAIRMAN JORDAN: Okay. Will the
4 hearing please come back to order?

5 I'm going to ask that we refrain
6 from any disruptive noises since this is being
7 broadcast live and also the court reporter is
8 recording this.

9 Anyone who's going to testify
10 today on -- I think we only have one case left
11 for this afternoon, and that's 18395. Those
12 persons or parties who are going to testify,
13 please stand and be sworn or take an
14 affirmation by the Secretary to the Board,
15 please.

16 (Whereupon, the witnesses were
17 sworn.)

18 MR. MOY: Ladies and gentlemen,
19 you may consider yourself under oath.

20 CHAIRMAN JORDAN: If you're going
21 to testify, then you need to fill out the
22 witness cards, two witness cards each, and

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1 then give them to the court reporter who's
2 sitting over to my right before you testify.

3 Mr. Moy?

4 MR. MOY: Yes, sir. Good
5 afternoon again, Mr. Chairman, Members of the
6 Board. The application you spoke of is
7 application No. 18395. This is the
8 application of CWC WDC, LLC, pursuant to 11
9 DCMR 3104.1. This is for a special
10 exception under section 706, 726 and 2303, to
11 allow the construction of a new gasoline
12 station in the C-2-B District on the portion
13 of the premises located at 2441 Market Street,
14 N.E. Property is located in Square 4327, Lot
15 5.

16 Mr. Chairman, there's I believe
17 also a request for party status under Exhibit
18 26, I believe, in your case folders.

19 And also late this morning there's
20 a new filing in the record which I believe is
21 your -- the Board's also in receipt, which is
22 a motion for recusal of Chairperson Lloyd

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1 Jordan.

2 That completes the staff's
3 briefing, Mr. Chairman.

4 CHAIRMAN JORDAN: Very good.

5 Let's begin with the -- before we go into the
6 other preliminary matter of party status, we
7 received I guess sometime today at 11:19 a
8 letter from Mr. John Ray's office indicating
9 -- requesting that -- well, it just says that
10 potential conflict of interest has come to the
11 attention of the Board of Zoning Adjustment,
12 that Chairperson Lloyd Jordan was employed
13 between the year 2000-2008 for Holland &
14 Knight and that we think there's potential
15 conflict of interest in this matter.

16 It's my intent not to recuse
17 myself in this matter because there is no
18 financial personal interest I have in Holland
19 & Knight. I've left Holland & Knight some
20 years ago. I have no personal interest in
21 Holland & Knight, no financial interest in
22 Holland & Knight. I guess if I ever went to

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1 McDonald's hamburgers, I have one at -- I'd
2 potentially have a conflict of something
3 similar, but if a McDonald case like we had
4 this morning.

5 There's no reason. There's no
6 interest outside of what is being -- will be
7 heard in this courtroom today or what's in the
8 -- I mean, this hearing room today or what's
9 in the court file in which I would base a
10 decision. We've had attorneys representing
11 Holland -- first of all, Holland & Knight's
12 not even a party. Holland & Knight is
13 representing, I understand, maybe one of the
14 parties, but we've had cases here before with
15 Holland & Knight and I've ruled for and
16 against Holland & Knight. I don't think
17 there's an basis that a reasonable person
18 could conclude that I have a conflict based
19 upon that.

20 I'm going to turn to the Board
21 based upon that to find out if there's any
22 issue that the Board has, or opinions about it

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1 contrary to what I've said. Ms. Sorg?

2 VICE CHAIR SORG: Mr. Jordan, I
3 don't have an opinion to the contrary. I
4 would in response from my part from the Board
5 to the letter that we received indicate that
6 I would have no issues with your continuing to
7 preside over this case in this hearing. I, as
8 among the other Board Members, have been aware
9 of your previous employ at a Holland & Knight
10 and have -- can with confidence say that I
11 have seen you prior and I'm sure will again
12 many times in the future reason fairly and
13 justly over cases in which the counsel has
14 been from that firm.

15 CHAIRMAN JORDAN: Thank you, Ms.
16 Sorg.

17 Anyone else?

18 COMMISSIONER TURNBULL: I would
19 agree with the Vice-Chair wholeheartedly. And
20 I would think that if -- following that line
21 of reasoning, if you had to recuse yourself
22 from any case involving Holland & Knight,

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1 you'd probably be out of a quarter of the
2 cases that come before this body. So I think
3 it's nothing that concerns me. I am -- having
4 dealt with you before, I'm -- your judgment is
5 well respected and I feel very confident in
6 your abilities to deliberate on this case.

7 CHAIRMAN JORDAN: Thank you, Mr.
8 Turnbull.

9 Any other?

10 (No audible response.)

11 CHAIRMAN JORDAN: Good. Then that
12 would be denied.

13 Let's move onto the other
14 preliminary matter. There is a request by the
15 Independent Gas Station Operator Alliance for
16 intervention as a -- for party status in this
17 matter. We have been briefed on this matter
18 and we've reviewed the record and documents
19 submitted.

20 I think that this is a real
21 difficult issue in regards to this party
22 status because I think it's kind of on the

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1 outskirts and extremes for being accepted
2 within what we allow for party status.
3 However, based upon the touching the very
4 outward aspect of what can be allowed for
5 party status in regards to the economic
6 impact, then I'm inclined to allow the party
7 status.

8 MR. FREEMAN: Mr. Chairman, could
9 I be heard, please?

10 COMMISSIONER TURNBULL: No,
11 thanks.

12 Anybody else?

13 VICE CHAIR SORG: Mr. Chairman, I
14 too am inclined to allow the party status in
15 opposition to stand.

16 CHAIRMAN JORDAN: Anyone else?

17 (No audible response.)

18 CHAIRMAN JORDAN: With that, I
19 believe we'll go ahead and allow the party
20 status on this matter. However, we need to be
21 real pointed that we're not going to have --
22 unless it can be shown to us that everybody

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1 who's going to testify; if there are going to
2 be 29 people as indicated on the witness list,
3 that the interest and that the statements made
4 are separate, not a cumulative of the same
5 purpose that any other witness has provided
6 us.

7 With that, Mr. Moy, let's -- well,
8 let me ask the parties to come to the table,
9 please.

10 MR. MOY: Mr. Chairman, if I may
11 while there's a little bit of a pause, staff
12 will be distributing some additional filings
13 that came in early this afternoon. I believe
14 there are two filings to supplement the party
15 status opposition earlier filing, as well as
16 a letter of opposition, and I believe another
17 filing from the Deputy Mayor for Planning and
18 Economic Development. So we'll pass that out
19 shortly, if that's the Board's desire.

20 CHAIRMAN JORDAN: All right.
21 We'll accept these filings that were done
22 today only because the Independent Gas Station

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1 Operator Alliance became a party today, and
2 therefore they would fit within the 14-day
3 rule. But we're not going to continue to
4 receive documents at the last minute from any
5 parties in the future, I mean, unless there's
6 very good cause shown. We've been holding
7 hearings and been getting documents filed in
8 front of us at the time of hearing, which some
9 of them change completely the complexion of
10 the whole case that we've been working up and
11 briefing upon.

12 But anyway, let's move on. Would
13 you please identify yourselves?

14 MR. FREEMAN: Good afternoon, Mr.
15 Chairman. My name is Kyrus Freeman. I'm a
16 partner with the law firm of Holland & Knight
17 here on behalf of the applicant.

18 I know the Board has reached a
19 consensus with respect to the party status
20 issue. I understand that there's some
21 additional information being distributed which
22 we have not had an opportunity to see.

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1 CHAIRMAN JORDAN: You have not
2 seen?

3 MR. FREEMAN: No, sir.

4 CHAIRMAN JORDAN: Has it been
5 given to you?

6 MR. FREEMAN: No, sir.

7 CHAIRMAN JORDAN: Well, then we
8 can't accept it.

9 MR. FREEMAN: Well, we're not
10 suggesting that you can't accept it. Our
11 point is if -- we were prepared to oppose
12 party status on four points. One, it was
13 late. Two, the closest operator is 1,927 feet
14 away. Three --

15 CHAIRMAN JORDAN: Give that to me
16 again.

17 MR. FREEMAN: One thousand nine
18 hundred twenty-seven feet, 0.3 miles.
19 Three --

20 CHAIRMAN JORDAN: You said miles
21 or feet?

22 MR. FREEMAN: I'm sorry, 1,927

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1 feet --

2 CHAIRMAN JORDAN: Okay.

3 MR. FREEMAN: -- which equates to
4 approximately 0.3 miles --

5 CHAIRMAN JORDAN: Got you.

6 MR. FREEMAN: -- which is
7 indicated in their own submission.

8 In addition, their arguments that
9 they make are general arguments that anyone in
10 the city --

11 CHAIRMAN JORDAN: Mr. Freeman,
12 we're off that point.

13 MR. FREEMAN: Sir, thank you.

14 CHAIRMAN JORDAN: It's been
15 deliberated upon. Everything you're saying
16 has been considered and we've made the ruling.

17 MR. FREEMAN: Thank you.

18 CHAIRMAN JORDAN: Now I ask, would
19 you do the identification of the people
20 sitting at this table as asked? Thanks.

21 MR. FREEMAN: Good. Again, Kyrus
22 Freeman on behalf of the applicant. To my

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1 immediate left is Renee Hanson, who will be
2 testifying on behalf of the applicant. And we
3 have an authorization letter for her to
4 testify if you would like to have that.

5 To my immediate right is Mr.
6 Steven E. Sher who will be our expert in
7 zoning and land use.

8 To his right is Ms. Jami
9 Milanovich, who will be our primary expert
10 with respect to transportation and planning
11 issues.

12 We'd like to qualify both of them
13 as experts. I believe both of their résumés
14 are in your résumé book. Both of them have
15 testified a number of times before this Board.

16 And to the --

17 CHAIRMAN JORDAN: Wait, wait,
18 wait, wait. Who's not in the book? Steve
19 Sher is in the book. Yes. And, no, well,
20 this is two. That's just two.

21 MR. FREEMAN: We're just
22 qualifying Mr. Sher and Ms. Milanovich as our

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1 experts today.

2 CHAIRMAN JORDAN: You're
3 qualifying him as expert in zoning and --

4 MR. FREEMAN: And land use
5 analysis.

6 CHAIRMAN JORDAN: -- land use?

7 MR. FREEMAN: Yes, sir.

8 CHAIRMAN JORDAN: And Ms.
9 Milanovich?

10 MR. FREEMAN: Transportation
11 planning and analysis.

12 The far right is Mr. Kolas Elion.
13 He will not -- we're not proffering him as an
14 expert, nor would we present direct testimony
15 from him.

16 We also have a number of witnesses
17 and folks available in the audience to answer
18 any questions as they come up.

19 Given the volume of the record,
20 we're going to try to abbreviate our
21 presentation.

22 CHAIRMAN JORDAN: We're not

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1 accepting any repetitive, cumulative testimony
2 here today from any party.

3 MR. FREEMAN: Understood.

4 CHAIRMAN JORDAN: All right. Now
5 could you identify yourselves? Would you
6 please -- first of all, I want to make sure
7 anyone who is sitting at the witness table has
8 provided two witness cards and given them to
9 the court reporter. And make sure that your
10 microphone is turned on. You push the button
11 that says "push," and you should have a bright
12 green light. Continue. Okay.

13 MR. RAY: Mr. Chairman, my name is
14 John Ray. I'm with Manatt, Phelps & Phillips.
15 To my far right here is Jennifer Sincavage
16 from --

17 CHAIRMAN JORDAN: I'm sorry, who
18 is -- what's your far right?

19 MR. RAY: Jennifer.

20 CHAIRMAN JORDAN: Okay. And your
21 last name's Jennifer?

22 MR. RAY: Sincavage.

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1 MS. SINCAVAGE: Sincavage.

2 MR. RAY: And next is Howard --

3 MR. YUAN: Yuan.

4 MR. RAY: -- Yuan?

5 MR. YUAN: Yes. Yes.

6 CHAIRMAN JORDAN: Howard?

7 MR. RAY: Y-U-A-N. They're also
8 with Manatt, Phelps & Phillips.

9 Here to my left is Mr. Mahboob
10 Ahmad. M-A-H-B-O-O-B, first name. Last name,
11 A-H-M-A-D.

12 And we have one person, Mr.
13 Chairman, that we would like to get qualified
14 as an expert witness for traffic.

15 CHAIRMAN JORDAN: And who is that,
16 please?

17 MR. RAY: Mr. Joe Mehra.

18 CHAIRMAN JORDAN: Joe who?

19 MR. RAY: M-E-H-A-R-A.

20 CHAIRMAN JORDAN: M-E-H-R --

21 MR. RAY: M-E-H-R-A.

22 CHAIRMAN JORDAN: Has Mehra been

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1 qualified as an expert here before?

2 MR. RAY: Yes, he has. He's
3 appeared -- he's done quite a bit of work in
4 the city, which is in his résumé that you have
5 there.

6 CHAIRMAN JORDAN: No, I'm asking
7 before this Board.

8 MR. RAY: Yes, he's appeared
9 before the Zoning Commission and before this
10 Board a number of times.

11 CHAIRMAN JORDAN: And do we have
12 his résumé, vita information and --

13 MR. RAY: Yes.

14 CHAIRMAN JORDAN: We do? It's
15 been submitted to us?

16 MR. RAY: Yes, I think --

17 CHAIRMAN JORDAN: What exhibit
18 number is it?

19 MR. RAY: I don't think it's on as
20 an exhibit, Mr. Chairman.

21 CHAIRMAN JORDAN: So the question
22 was has it been submitted to the Board for

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1 review and consideration?

2 MR. RAY: I thought it had, Mr.
3 Chairman, but I have it.

4 CHAIRMAN JORDAN: Okay. Well,
5 let's proceed on while you get that and get
6 that to us before we make a ruling.

7 MR. RAY: We have it, Mr.
8 Chairman.

9 CHAIRMAN JORDAN: And just give us
10 -- when things are filed for the Board, we ask
11 for at least 12 copies. In this case we'll
12 make copies.

13 Let's proceed with the applicant's
14 case.

15 MR. FREEMAN: Thank you. Again,
16 Kyrus Freeman. As the Board knows, we're here
17 today seeking a special exception under
18 section 702, 726 and 2302 of the Zoning
19 Regulations to allow the construction of a new
20 gasoline service station in the C-2-B District
21 on a portion of the property at Square 4327,
22 Lot 5.

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1 I'd like to note that since filing
2 the application; and we'll make sure we get
3 this to the Office of Zoning, that the actual
4 address for the site is 2431 Market Street,
5 N.E. So we'd want to make sure that's
6 accurately reflected.

7 Just in terms of the standards, as
8 you know, Mr. Chairman and Members of the
9 Board, relief granted through a special
10 exception is presumed appropriate, reasonable
11 and compatible so long as we meet the specific
12 regulatory requirements. In the evidence of
13 record here today we'll clearly demonstrate
14 that we meet the special exception standards.

15
16 You're likely going to hear a lot
17 of evidence and information, much of which I
18 posit does not relate to the special exception
19 standards.

20 CHAIRMAN JORDAN: We're not taking
21 any evidence that does not meet section 706
22 and et sequence here today.

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1 MR. FREEMAN: Thank you. As
2 you --

3 CHAIRMAN JORDAN: From anybody.

4 MR. FREEMAN: So in that vein, as
5 shown on the plans included with Exhibit C --
6 and I'm going to reference our prehearing
7 statement, which is included as Exhibit 24 in
8 the record of this case, which I believe you
9 all should have. As shown on Exhibit C, which
10 are the architectural plans and site plans;
11 our architect has those in detail, but what
12 I'll just point out, as I'm sure you've seen,
13 is that the gas station has been sited such
14 that it's a substantial distance from
15 residential uses, over 900 linear feet. And
16 as shown on the renderings, the site includes
17 substantial landscaping and buffering features
18 along South Dakota and New York Avenue.

19 In addition, as described in the
20 materials submitted from Barghausen Consulting
21 Engineers behind Exhibit E of our prehearing
22 statement, the gas station includes extensive

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1 safety and environmental protections. And it
2 is very important to note in this case that
3 many of these systems not only meet, but they
4 exceed -- again, they exceed federal
5 regulatory standards. So again, we're not
6 going to go in detail through all of that, but
7 that information is in our prehearing
8 statement.

9 We have testimony today from Ms.
10 Milanovich. Her report is included behind
11 Exhibit D of our submission. Her report
12 concludes that the proposed station will have
13 a nominal amount of new traffic, which has 20
14 a.m. peak trips and 26 p.m. peak trips. And
15 again, this application is a gas station, so
16 our study focused on the trips generated by
17 the gas station.

18 Again, you'll hear Ms. Milanovich
19 describe the expert studies they prepared
20 regarding the gas station, which, as you know
21 from the DDoT report, their studies were
22 scoped in accordance with DDoT standards, and

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1 DDoT recommended approval of our application.
2 And in doing so, they cited the veracity of
3 our report.

4 Finally, you'll hear Mr. Sher
5 reiterate how we meet the very specific
6 special exception standards, which again is
7 detailed in our prehearing statement, and, as
8 you know, is detailed in the Office of
9 Planning report recommending approval.

10 So again, the evidence and fact of
11 record will lead to one conclusion; i.e., that
12 we meet the special exception standards. You
13 know we have the OP report in support, the
14 DDoT report in support and a new letter from
15 the Deputy Mayor for Planning and Economic
16 Development also in support of our
17 application.

18 CHAIRMAN JORDAN: Mr. Freeman,
19 just one second.

20 MR. FREEMAN: From the Office of
21 the Deputy Mayor.

22 CHAIRMAN JORDAN: Okay. Thank you

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1 Please proceed.

2 MR. FREEMAN: And last but not
3 least, the applicant -- as you will hear Ms.
4 Hanson testify to and you will hear
5 Commissioner King mention today, we've worked
6 extremely hard with the community. And the
7 ANC-5A single member district meeting last
8 night voted to recommend approval of the
9 application.

10 So again, we have a full panel.
11 What I think we will do is we'll have Ms.
12 Hanson do a quick introduction of the
13 applicant. Then we'll have Ms. Milanovich
14 focus on the transportation issues, and then
15 Mr. Sher focus on the planning issues. And
16 then to the extent that we need to present any
17 rebuttal or respond to any questions regarding
18 anything else in our material, we'll be
19 prepared to do that.

20 CHAIRMAN JORDAN: One second,
21 please.

22 All right. I'm sorry. Go ahead.

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1 You can proceed.

2 MS. HANSON: My name is Renee
3 Hanson. I work for Costco Wholesale on the
4 East Coast. We're based out of Sterling,
5 Virginia. The area really includes all of the
6 Eastern U.S. And I work also up in Ontario in
7 the Toronto area. Worked a lot on gas
8 stations, new warehouses, additions to
9 buildings, but we're very excited to see this
10 gas station in D.C. open up also next spring.

11 We've worked extensively with the
12 ANCs over the summer. We've had at least four
13 or five sessions with them, also some night
14 time meetings, and I think we've come up with
15 some really conclusions with them.

16 So with that, we hope that this
17 can get approved at this BZA hearing.

18 CHAIRMAN JORDAN: The Board have
19 any questions of -- well, I'll tell you what:
20 Let's hear your testimony and if the Board
21 needs to ask questions, ask questions.
22 Otherwise, let's keep rolling. And then we

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1 can hold our questions to the end, if
2 necessary.

3 MR. FREEMAN: So our next witness
4 is Ms. Jami Milanovich on behalf of Wells &
5 Associates.

6 CHAIRMAN JORDAN: We've read and
7 we've reviewed your traffic study. If you
8 want to hit some key points, that would be
9 fine.

10 MS. MILANOVICH: Okay. Good
11 afternoon, Chairman Jordan and Members of the
12 Board. For the record, my name is Jami
13 Milanovich with Wells & Associates, the
14 traffic consultant for the subject special
15 exception application.

16 CHAIRMAN JORDAN: And I don't know
17 if I said, but we have accepted you as an
18 expert in this matter, as well as Mr. Sher.

19 MR. FREEMAN: Yes, Mr. Chairman.

20 MS. MILANOVICH: In August 2008,
21 we conducted a traffic study for the Shops at
22 Dakota Crossing, an approximate 430,000 square

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1 foot shopping center that included the Costco
2 store, which is under construction today.

3 The study identified the impacts
4 of the shopping center and recommended --

5 CHAIRMAN JORDAN: Can I just stop
6 you one second? Can we have that light?
7 Thank you.

8 MS. MILANOVICH: That study
9 analyzed the impact of the shopping center and
10 recommended a number of transportation
11 improvements to mitigate or offset the impact
12 of the retail center.

13 At the time the study was
14 contemplated -- completed, the gas station at
15 the Costco store was not contemplated. As
16 such, the traffic generated by the gas pumps
17 was not included in the analysis. Therefore,
18 when the special exception application for the
19 gas station was filed, we were retained to
20 conduct a traffic study that evaluated the
21 incremental impacts of the traffic associated
22 with the gas facility.

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1 At the outset of the project we
2 met with DDoT to scope the study to ensure
3 that they were in agreement with our proposed
4 scope and methodology. The analysis in the
5 study included existing conditions, future
6 conditions without the gas station, and future
7 conditions with the gas station.

8 I want to point out that the
9 future conditions without the gas station did
10 include the Shops at Dakota Crossing, which
11 are currently under construction, as well as
12 several residential projects that are either
13 under construction or planned in the Fort
14 Lincoln area. And then we layered the Costco
15 gas traffic on top of that and we were able --
16 based on a comparison of future conditions
17 without the gas station to future conditions
18 with the gas station we were able to identify
19 the impacts associated with the traffic
20 generated by the gas facility and recommend
21 appropriate mitigation to accommodate those
22 impacts.

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1 This slide depicts the study area
2 that we were requested to study by DDoT. We
3 included the intersection of Bladensburg and
4 V Street at the request of DDoT. We also
5 looked at the intersection of 33rd and South
6 Dakota and at 33rd and Fort Lincoln Drive.

7 Costco gas facilities are a unique
8 land use from a trip generation perspective.
9 The facilities differ from conventional gas
10 stations in that they're open to members only
11 and not the general public. Additionally,
12 Costco gas facilities do not include any
13 supplemental services such as vehicle service
14 stations, convenience markets or car washes.

15 Because of the uniqueness of the
16 site, we spent a great deal of time evaluating
17 various methods for estimating the number of
18 trips that will be generated by the proposed
19 gas facility. We examined data contained in
20 the Institute of Transportation Engineers trip
21 generation manual, which is the industry
22 standard. We also examined data from other

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1 Costco gas facilities. Ultimately, we chose
2 a conservative approach by using trip
3 generation data from the Costco gas facility
4 that exists today in Sterling, Virginia.

5 We believe this approach was
6 appropriate because: (1) the Sterling Costco
7 gas facility is the busiest gas facility of
8 the approximately 100 Costco gas facilities on
9 the East Coast; (2) the average daily traffic
10 volumes on Route 7 adjacent to the Sterling
11 Costco are comparable to the average daily
12 traffic volumes on New York Avenue and South
13 Dakota Avenue near the proposed facility; (3)
14 the trip generation rates that we used from
15 the Sterling gas station are higher than the
16 trip generation rates for the gasoline-related
17 land uses in the industry standard ITE trip
18 generation manual; and (4) the trip generation
19 rates for the Sterling gas facility are higher
20 than the trip generation rates for other
21 Costco gas facilities on the East Coast such
22 as Leesburg, Virginia.

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1 Subsequent to the completion of
2 our study we also had the opportunity to
3 review a study that was conducted for BJ's
4 Wholesale. They evaluated trip generation
5 characteristics at nine BJ's gas stations.
6 And that study showed that those rates are
7 lower again than the trip generation rates
8 that we used -- derived from the Sterling,
9 Virginia gas station.

10 Finally, I would also note that
11 DDoT supported our methodology noting that
12 using case studies for unique land uses such
13 as club member-only gas stations is a
14 preferred method over employing industry
15 standard ITE trip generation manual.

16 The results of our trip generation
17 are summarized in the table on the screen now.
18 A substantial portion of the afternoon trips
19 are what are called internal trips, or trips
20 that are originating or destined to either the
21 Costco store or one of the other retail stores
22 in the shopping center. In other words, you

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1 go to visit the Costco gas store and you stop
2 at the -- the Costco store and you stop at the
3 gas station while you're there. A significant
4 portion of both the a.m. and p.m. peak hour
5 trips are called pass-by trips, or trips that
6 have another origin or destination, but
7 stopping at the gas station in passing.

8 As a result of these two
9 phenomena, the number of new trips added to
10 the roadway network for the exclusive purpose
11 of going to the gas pumps is very small. Very
12 few of us leave home, go to the gas station
13 and then go back home. Most of us stop for
14 gas when we are passing by the site en route
15 to another destination.

16 As shown here, the proposed gas
17 facility would generate 20 new trips during
18 the a.m. peak hour, or approximately 1 trip
19 every 3 minutes. During the p.m. peak hour,
20 the gas facility would generate 26 new trips,
21 or less than 1 trip every 2 minutes.

22 Once we established the trip

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1 generation, we looked at the impact of those
2 trips on the surrounding roadway network.
3 This slides shows in red the traffic that
4 would be present at each of the study
5 intersections without the gas pumps. The
6 green portion of the bars show the traffic
7 that would be added by the gas facility. As
8 you can see, at Bladensburg Road and V Street
9 we are adding 0.24 percent of the traffic
10 during the morning peak hour. At the
11 intersection of South Dakota and 33rd we're
12 adding just 0.138 percent of the traffic. And
13 we do expect a slightly higher percentage at
14 33rd and Fort Lincoln because the driveway to
15 the shopping center is located at that
16 intersection. And so we're showing roughly 10
17 percent increase in traffic there.

18 And we have similar results for
19 the p.m. peak hour. Again, very minor
20 increases in traffic at V Street and
21 Bladensburg Road, very minor increases at
22 South Dakota and 33rd, and approximately 8

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1 percent increase at 33rd and Fort Lincoln
2 Drive.

3 I'd like to take a couple of
4 minute to address a couple of comments raised
5 in the DDoT report. First, we're pleased that
6 DDoT has supported the project. As they
7 requested, the applicant will work with DDoT
8 during the permitting process to ensure that
9 the time adjustments recommended at the
10 intersection of South Dakota Avenue and 33rd
11 Place are incorporated into the larger signal
12 timing adjustments that are being made in
13 conjunction with the larger retail center.

14 The applicant will also continue
15 to work with DDoT to ensure the design of the
16 new traffic signal at 33rd and Fort Lincoln
17 Drive which is proposed in conjunction -- and
18 will be installed in conjunction with the
19 retail center -- we're going to continue to
20 work with DDoT to make sure that signal design
21 incorporates the timing adjustments that we
22 recommended in our study to accommodate not

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1 just the retail traffic associated with the
2 Shops at Dakota Crossing, but also the traffic
3 associated with the gas facility.

4 And finally, the applicant will
5 continue to work with DDoT during the
6 permitting process to ensure that new pavement
7 markings and signage are installed on 33rd
8 Place to ensure that existing queues on 33rd
9 Place and future queues are accommodated.

10 And this slide shows what the
11 proposal is. Currently this area of 33rd
12 Street has -- 33rd Place has no pavement
13 markings and no signage directing the drivers
14 how those lanes are to be used. We've
15 recommended that pavement markings be added
16 and that lane use control signs be added to
17 make it clear to drivers that you can turn
18 left from 33rd Place onto South Dakota Avenue
19 from either the left lane or the middle lane.
20 And that will accommodate the projected --
21 both the existing and projected queues,
22 including the Costco gas traffic.

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1 And just to summarize, the
2 proposed gas facility will generate very few
3 new vehicle trips. The vast majority of the
4 traffic generated by the gas facility will be
5 trips already on the roadway network or
6 already going to the retail center. Traffic
7 associated with the proposed gas facility will
8 have a negligible impact on the study area
9 with the improvements that were recommended in
10 the study.

11 CHAIRMAN JORDAN: Thank you. Do
12 you need the lights off --

13 MR. SHER: Yes.

14 CHAIRMAN JORDAN: -- Mr. Sher?
15 Off?

16 MR. SHER: No, on, please.

17 CHAIRMAN JORDAN: Okay. Thank
18 you.

19 MR. FREEMAN: Mr. Chairman, I
20 apologize. I did not submit a copy of her
21 slides. We do have those. We'll submit those
22 for the record.

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1 CHAIRMAN JORDAN: Okay. Thank
2 you.

3 MR. FREEMAN: Thank you.

4 CHAIRMAN JORDAN: Yes?

5 MR. SHER: Mr. Chairman and
6 Members of the Board, for the record, my name
7 is Steven E. Sher, the Director of Zoning and
8 Land Use Services with the law firm of Holland
9 & Knight.

10 As the case caption has been read,
11 this involves property located in the Fort
12 Lincoln area. It is part of the roughly 44-
13 acre town center of the Fort Lincoln Urban
14 Renewal Area and that town center area
15 encompasses the area bounded by Fort Lincoln
16 Drive, New York Avenue, South Dakota Avenue
17 and 33rd Place, N.E. If you look at the
18 Zoning Map attached to the back of the
19 outline, you will see Square 4327 in the
20 middle of that, and that is the 44 acres of
21 the entire town center. Lot 5, which is in
22 the middle of that, is the site of the gas

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1 station.

2 CHAIRMAN JORDAN: And the other
3 part of Costco is on what -- on another lot?

4 MR. SHER: Yes, it's on a separate
5 -- Lot 4 to the east and to the right as you
6 look at that map.

7 The remainder of the area which is
8 designated on the Zoning Map as Lot 3 is
9 designated for other retail uses to be
10 determined and to be constructed. So within
11 that area, Zone C-2-B, that's an all-
12 commercial area. No residential development
13 anticipated there.

14 As the Board is aware, the C-2-B
15 District is a commercial zone permitting all
16 manner of retail service, office uses and the
17 like, but it also permits residential, though
18 none is anticipated in this part of the C-2-B
19 area.

20 In terms of the gas station use,
21 it is a use identified as one permitted by
22 special exception. And as the Board is aware,

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1 a special exception is a use pre-deemed
2 compatible in the regulations, provided the
3 Board considers and can determine that the
4 specific standards of the regulations have
5 been met.

6 On page 4 of the outline, under
7 Roman numeral V, I've consolidated the
8 specific standards of sections 726, 706 and
9 2302 which are the general -- sorry, the
10 specific standards of the regulations
11 applicable to a gas station in a C-2-B
12 District.

13 In terms of compliance with those
14 standards, I've addressed that on page 5 of
15 the outline that you have in front of you, and
16 let me go down those one by one.

17 The station is not within 25 feet
18 of a residence district. The closest R
19 district is about 900 feet away. So no
20 question about compliance with that.

21 The operation of the use shall not
22 create dangerous or otherwise objectionable

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1 traffic conditions. You've heard the report
2 of Ms. Milanovich. You have the report of the
3 Department of Transportation. I have nothing
4 more to add with respect to that particular
5 criteria.

6 The required parking spaces may be
7 arranged so that they're stacked. We don't
8 have any required parking spaces. There are
9 -- the size of this use does not actually
10 require any parking. There are parking spaces
11 on the lot. None of them are stacked. They
12 are all fully accessible, so we don't have any
13 issue with respect to that criteria.

14 There is no vehicular entrance or
15 exit to the gas station connected with the
16 street at a point closer than 25 feet to any
17 existence residence district. Again, closest
18 residence district is about 900 feet away, so
19 no issue there.

20 The entrance and exit is from
21 Market Street, which is the street on the west
22 side of the site. There's no street

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1 intersection within 40 feet of the driveway
2 entrance. Compliance there.

3 There are no grease pits or
4 hoists, so don't have an issue with that.

5 In terms of compatibility of the
6 use, the overall concept for the development
7 of the center again is a commercial
8 development. The site is more or less in the
9 center of that, or the south-central portion
10 of the site. It is sufficiently buffered and
11 removed from other uses, particularly other
12 residential uses, that it will cause no
13 adverse effects.

14 Given the relative isolation of
15 the site and location of the larger 44 --
16 within the larger 44-acre site, it's my view
17 that the Board does not need to impose
18 additional requirements pertaining to design,
19 appearance, screening or lighting to protect
20 adjacent or nearby property.

21 I conclude, therefore, that as the
22 Board is aware, zoning is applied on a lot-by-

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1 lot basis. The only development on this lot
2 subject to Board approval is the gas station.
3 The application meets the specific criteria of
4 sections 726, 706 and 2302. The analysis by
5 the applicant's expert on DDoT concluded that
6 the use will create no dangerous or otherwise
7 objectionable traffic condition. The use will
8 not adversely affect any nearby property, in
9 my opinion. And therefore, the application
10 should be approved.

11 CHAIRMAN JORDAN: All right.

12 Thank you.

13 MR. FREEMAN: Mr. Chairman, that
14 concludes our direct presentation. We're
15 happy to answer any questions that the Board
16 may have.

17 CHAIRMAN JORDAN: Thank you. I'm
18 going to open the hearing up to the Board.
19 Any questions from the Board, please?

20 (No audible response.)

21 CHAIRMAN JORDAN: Let me ask, Ms.
22 Milanovich, it's my understanding that your

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1 scope of study was dictated by the District of
2 Columbia Government, by the Department of
3 Transportation. Is that correct?

4 MS. MILANOVICH: We met with DDoT
5 to determine the scope, and, yes, they weighed
6 in on three intersections that they wanted us
7 to include in the study.

8 CHAIRMAN JORDAN: And was there a
9 discussion of a larger universe or -- and if
10 there was, why was that not selected?

11 MS. MILANOVICH: There was
12 discussion with regard to the larger retail
13 center, but the conclusion was reached that
14 that study had already been completed and DDoT
15 felt that the traffic that was going to be
16 generated by the gas facility did not warrant
17 a larger study area.

18 CHAIRMAN JORDAN: Okay. Any other
19 questions? Yes?

20 COMMISSIONER TURNBULL: Was there
21 anything else that they wanted you to look at,
22 or is what you have said fairly comprehensive

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1 as to the study?

2 MS. MILANOVICH: Yes, we looked
3 everything the asked us to look at.

4 COMMISSIONER TURNBULL: And you
5 did mention that they really approved -- they
6 liked the case study aspect better than just
7 the book value that you would normally get?

8 MS. MILANOVICH: Right. Again,
9 because it's such a unique use --

10 COMMISSIONER TURNBULL: Right.

11 MS. MILANOVICH: -- they felt that
12 the case study was more appropriate, as well
13 as the information that we gleaned from the
14 Sterling Costco provided more information in
15 terms of the specific type of trips that would
16 be coming to and from the gas station.

17 COMMISSIONER TURNBULL: Okay.
18 Thank you.

19 CHAIRMAN JORDAN: Was there any
20 studies -- did you do a review of any other
21 comparable kind of urban area?

22 MS. MILANOVICH: The data that is

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1 available for Costco did not include any urban
2 areas. I would have to check the BJ's study
3 that we looked at. I'm not sure if any of
4 those are urban. I rather doubt that they
5 were.

6 CHAIRMAN JORDAN: Okay. Probably
7 a more appropriate question is one similarly
8 situated.

9 MS. MILANOVICH: Yes, again, we
10 think the Sterling is similar, understanding
11 that it's a more suburban location. But a
12 large percentage of the traffic that's
13 generated by gas stations is a result of the
14 traffic on the adjacent roadway. And when you
15 look at the daily traffic volume on Route 7
16 near that facility compared with the daily
17 traffic on South Dakota Avenue and on New York
18 Avenue, they're very comparable. So we felt
19 that that was a very appropriate comparison.
20 And as I said, the Sterling site is the
21 busiest in terms of gas sales for Costco on
22 the East Coast.

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1 CHAIRMAN JORDAN: All right. Any
2 other questions from the Board?

3 COMMISSIONER TURNBULL: Well, just
4 following up on your question there.

5 So the comparable traffic between
6 the Sterling and New York and South Dakota,
7 you're talking about car counts in the p.m.
8 and the a.m., similar traffic volume?

9 MS. MILANOVICH: Yes, we looked at
10 the daily traffic volumes. But generally
11 speaking, when the daily volumes are
12 consistent, then the peak volumes are
13 relatively consistent as well.

14 COMMISSIONER TURNBULL: Okay.
15 Thank you.

16 CHAIRMAN JORDAN: Anyone else?

17 (No audible response.)

18 CHAIRMAN JORDAN: Okay. Let's
19 turn now to the Office of Planning for their
20 testimony.

21 MR. JACKSON: Good afternoon, Mr.
22 Chairman and Members of the Board. My name is

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1 Arthur Jackson with the D.C. Office of
2 Planning and I will give a brief summary of
3 the Office of Planning's report.

4 Our report's before you. And
5 briefly I'll just state that we reviewed the
6 standards under sections 706, 726 and 2302 and
7 found that the application met the standards
8 that are stated applicable to this case under
9 the Zoning Regulations, and we recommend
10 approval based on that analysis. That's a
11 brief summary of the Office of Planning's
12 report and we're available to answer
13 questions.

14 CHAIRMAN JORDAN: Okay. Any
15 questions of Office of Planning by the Board,
16 please?

17 (No audible response.)

18 CHAIRMAN JORDAN: Let me go back a
19 second. I need to -- well, any questions of
20 Planning?

21 (No audible response.)

22 CHAIRMAN JORDAN: Let me ask, m Mr.

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1 Freeman, any questions of Planning?

2 MR. FREEMAN: No, Mr. Chairman.

3 CHAIRMAN JORDAN: All right. Let
4 me take two steps back. Let me do this: Let
5 me ask Mr. Ray if he has any questions. Or
6 who -- I don't know who's first chairing this.

7 MS. SINCAVAGE: Mr. Ray is first
8 chair.

9 CHAIRMAN JORDAN: Let me go back,
10 because I didn't give the cross-exam an
11 opportunity of the appellant's -- which I will
12 do. But do you have any questions now that
13 you want to make of Office of Planning?

14 MR. RAY: Mr. Chairman, may I just
15 ask a question on that line? I thought maybe
16 you were going -- you know, complete the --

17 CHAIRMAN JORDAN: You will have
18 the opportunity, as I just said. I just
19 corrected myself and said you -- after you
20 have the opportunity to cross-examine or make
21 -- ask questions of Planning, I'll give you
22 the opportunity to cross-examine the

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1 appellant's witnesses -- the applicant's
2 witnesses.

3 MR. RAY: All right. Thank you,
4 Mr. Chairman. In regards of the -- your
5 report, Mr. --

6 MR. JACKSON: Jackson.

7 MR. RAY: -- Jackson?

8 MR. JACKSON: Yes.

9 MR. RAY: Yes. Your statement is
10 that you reviewed the standards that's
11 required regarding the burden of proof and you
12 found that they meet those standards, and that
13 ended your inquiry.

14 MR. JACKSON: That's correct.

15 MR. RAY: It is also as a District
16 agency, in reviewing this type of a standard,
17 to make sure that you are reviewing the actual
18 owner and operator as required by all the laws
19 of the District of Columbia?

20 MR. JACKSON: The owner operated,
21 correct.

22 MR. RAY: And did you see if there

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1 was any other law that impacted your decision
2 as to whether or not you were considering the
3 appropriate applicant before you?

4 MR. JACKSON: Would you clarify
5 that question a little bit?

6 MR. RAY: What I mean is that here
7 you were looking at a company called CWC WDC,
8 LLC. And my question to you, in terms of the
9 operations was this company the actual company
10 that is the operator and owner of this Costco
11 facility at this location?

12 MR. JACKSON: Well, what we
13 reviewed was the land records at the time.
14 And at the time the land records reflected the
15 owner to be Costco Company.

16 MR. RAY: Do you have a copy of
17 our original submission?

18 MR. JACKSON: Dated August 29th?

19 MR. RAY: Yes, that's right.

20 MR. JACKSON: Yes. August 28th.
21 I'm sorry.

22 MR. RAY: Could you look at the --

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1 just one moment.

2 First of all, look at your own
3 report, a copy of your report.

4 MR. JACKSON: Yes.

5 MR. RAY: And it is indicated by
6 the Chair of the BZA, as well as the applicant
7 here that this is all only about the gas
8 station. Look at your report on page 1 where
9 it says "Project description in brief." And
10 would you read into the record who the
11 applicant is there?

12 MR. FREEMAN: Mr. Chairman, the
13 applicant as we've proffered --

14 MR. RAY: No, Mr. Chairman --

15 MR. FREEMAN: -- in the
16 application, is in the application.

17 CHAIRMAN JORDAN: Wait, Mr. Ray.
18 I think he's making an objection. Would you
19 give him a chance to make his objection?

20 MR. FREEMAN: The applicant is
21 what we've indicated in our application
22 materials. I mean --

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1 CHAIRMAN JORDAN: Are you making
2 an objection?

3 MR. FREEMAN: I am.

4 CHAIRMAN JORDAN: Okay. Then
5 let's -- what's your objection?

6 MR. FREEMAN: That this -- the
7 Office of Planning report does not dictate who
8 the applicant in our case is.

9 CHAIRMAN JORDAN: So your
10 objection is -- you're talking about
11 relevancy?

12 MR. FREEMAN: Yes.

13 CHAIRMAN JORDAN: Let's move on.
14 What's your question, Mr. Ray?

15 MR. RAY: My question is that the
16 -- it's been presented here that the applicant
17 here is CWC WDC, LLC. I have asked you to
18 indicate based on the report that you have
19 submitted here for the record and I've asked
20 you to read into the record the name of the
21 applicant as shown on your report.

22 MR. JACKSON: Costco Wholesale

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1 Corporation.

2 MR. RAY: It is not Costco
3 Wholesale Corporation WDC, LLC?

4 MR. JACKSON: I don't really know.

5 CHAIRMAN JORDAN: And let's move
6 on, because I don't see the relevance of that
7 particular statement, since that -- even if
8 Costco has a lease right or whatever right to
9 use, it's still applicable for them to -- for
10 the same bit of property. Their study
11 evidently was on the lot itself on the use
12 that's proposed and on the special exception.
13 Is that correct?

14 MR. JACKSON: That is correct.

15 CHAIRMAN JORDAN: Okay. So move
16 on, please.

17 MR. RAY: Well, Mr. Chairman, I
18 would just take this moment, because it
19 certainly will be helpful to me and you and
20 perhaps we will save time down the road.

21 One of the points that I want to
22 make to you, Mr. Chairman and the Board, is

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1 that it is very important in this case because
2 there are several other important laws out
3 there that impact this case. And I think that
4 you and this Board as a government agency, one
5 of a specific type which Congress saw fit to
6 set up in a special way -- but that you have
7 an obligation to make sure that the applicant
8 before you is not in effect running a sham.
9 And here I think you are faced with that
10 question and you need to address that
11 question.

12 And I will state it this way, Mr.
13 Chairman, and I will do this here and now so
14 perhaps we all can save some time, because if
15 you and the Board decide that you don't want
16 to deal with this, then I think we need to
17 move on. The fact of the matter is, Mr.
18 Chairman, there is a law that says you cannot
19 operate sales of alcohol and gasoline. A
20 business cannot do that. A business, an
21 outlet of profit, etcetera.

22 Now what has happened here, Mr.

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1 Chairman, is that this company has through
2 gymnastics set up -- it is only -- it's the
3 only place in the country that we can find
4 this. They've created this separate LLC to
5 operate its gas stations. Nowhere else in the
6 country that we found that they do that. So
7 why would they do it just in Washington, D.C.?
8 Because there's a law which says a business
9 can't do that. And so they've created this
10 separate LLC to get around the law.

11 But in fact, Mr. Chairman, as
12 their own documents will show, this LLC is no
13 more than the parent company. In fact, CWC is
14 the sole member, the sole member of the LLC
15 that they set up. So their argument is the
16 law doesn't apply to them because they have
17 created a separate company that's on a
18 separate lot of land and the store is another
19 company. So they have two separate companies,
20 is their argument. And as such, they are not
21 covered by the law which says a business
22 cannot sell gasoline and alcohol. That is a

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1 sham.

2 CHAIRMAN JORDAN: All right. I
3 understand your pursuit, and I'm finding that
4 line of questioning is not relevant and ask
5 you to move on.

6 MR. RAY: I have no further
7 questions, Mr. Chairman.

8 CHAIRMAN JORDAN: Thank you. Mr.
9 Ray, I'm going to now ask you if you have any
10 cross-examination of the appellant, appellant
11 witness -- applicant's witness.

12 MR. RAY: Well, we do on the
13 traffic study, Mr. Chairman.

14 CHAIRMAN JORDAN: Okay. You can
15 ask the questions.

16 MR. RAY: Okay. Mr. Chairman,
17 could we bring our expert forward as well?

18 CHAIRMAN JORDAN: This is cross-
19 examination. Not presentation.

20 MR. RAY: Actually, I just said
21 can we bring him forward?

22 CHAIRMAN JORDAN: Oh, certainly.

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1 You can have whoever you want to sit there,
2 but everybody's not going to talk.

3 MR. RAY: No, he's not going to
4 talk. Just going to be available.

5 CHAIRMAN JORDAN: And I have not
6 qualified him as an expert yet.

7 MR. RAY: Yes, and I'm -- well,
8 Mr. Chairman, I'm raising it now so that you
9 can --

10 CHAIRMAN JORDAN: We will accept,
11 unless there's an objection by anybody else of
12 the Board. I would rule -- I would accept Mr.
13 Mehra as a expert in transportation and
14 traffic. And let's make sure that he gets
15 added to our witness book.

16 MR. YUAN: So we have a few
17 questions for Ms. Milanovich about the traffic
18 study. And I apologize ahead of time if I
19 jump around a little bit. But first, I'd
20 like --

21 CHAIRMAN JORDAN: Since we have a
22 lot of different people, please identify

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1 yourself again so our court reporter can stay
2 with you and know who's speaking.

3 MR. YUAN: My name is Howard Yuan.
4 I am with Manatt Phelps representing the
5 Alliance.

6 So first I'd like to ask you some
7 questions regarding the study's site trip
8 generation, which is more specifically on
9 pages 7 and 8 of your study. I believe you
10 touched on some of this already, but -- so I'm
11 sorry if I make you repeat yourself, but -- so
12 you are familiar with the ITE handbook, or the
13 trip generation handbook?

14 MS. MILANOVICH: I am.

15 MR. YUAN: And is it fair to say
16 that this handbook is generally accepted guide
17 for traffic studies in your field?

18 MS. MILANOVICH: Yes.

19 MR. YUAN: When conducting traffic
20 studies similar to the one you did here for
21 Costco, do you usually rely on that handbook?

22 MS. MILANOVICH: We do the

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1 majority of the time, but there are some
2 unique circumstances where it's not
3 appropriate to.

4 MR. YUAN: Okay. Did you here
5 rely on the handbook for the Costco Fort
6 Lincoln --

7 MS. MILANOVICH: No, as I
8 indicated in my testimony, we did look at the
9 ITE trip generation data, but ultimately
10 concluded it was more appropriate to use a
11 case study at the Sterling Costco to determine
12 the trip generation rates.

13 MR. YUAN: Sure. Then in the ITE
14 handbook it lists four different categories of
15 trips in terms of gasoline stations, and one
16 of these were diverted trips. Can you -- did
17 -- for the Costco Fort Lincoln study did you
18 consider this type of -- or this category of
19 trips?

20 MS. MILANOVICH: Sure. We assumed
21 that a certain percentage of trips would be
22 diverted from South Dakota Avenue to the gas

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1 station.

2 MR. YUAN: But that did not
3 warrant its own category as listed in your
4 study?

5 MS. MILANOVICH: It's actually
6 included in what we call pass-by trips.
7 There's a very minor distinction between the
8 two. You know, for purposes of our study and
9 for simplifying things, we included the
10 diverted link trip and the pass-by trips
11 together.

12 MR. YUAN: Okay. One moment while
13 I speak with the traffic expert.

14 So just to clarify to make sure we
15 understand you, when for example there is a
16 car driving down New York Avenue and then they
17 were to go into the gas station, would that be
18 as you said this joint category of diverted
19 trips and pass-by trips?

20 MS. MILANOVICH: Yes, there would
21 be trips from New York Avenue that would be
22 diverted to the gas station. There would also

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1 be trips from New York Avenue that would be a
2 new trip to the gas station.

3 MR. YUAN: Okay. So -- and again,
4 the -- just to clarify: So you have equated
5 new trips and diverted trips to each other
6 into one -- or pass-by trips and new --
7 diverted trips?

8 MS. MILANOVICH: No, we've
9 included the diverted trips and the pass-by
10 trips in one category. The new trips are a
11 separate category.

12 MR. YUAN: Okay. Moving on, is it
13 accurate to say that your traffic studies
14 estimates are based on a weekday or more
15 specifically that particular Tuesday?

16 MS. MILANOVICH: I don't recall.
17 Are you talking about the day we did our
18 counts?

19 MR. YUAN: Yes.

20 MS. MILANOVICH: I don't recall
21 what the day was, but, yes, we based our
22 counts on a typical weekday.

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1 MR. YUAN: While conducting the
2 Costco traffic study did you or your
3 colleagues consider studying traffic on a
4 weekend day?

5 MS. MILANOVICH: No, we discussed
6 the scope with the DDoT and they agreed that
7 if we mitigated the impact just during the
8 morning rush and the afternoon rush -- because
9 the traffic volumes on Saturday in that area
10 are so much lower than the weekday traffic.
11 So it was determined that the impacts would be
12 adequately evaluated if we looked at the a.m.
13 and p.m. weekday peak hours.

14 MR. YUAN: During your
15 conversations with DDoT or amongst yourselves,
16 did the ITE data that -- or did you all
17 discuss the ITE data that shows that retail
18 and gas station traffic to be higher on
19 Saturdays?

20 MS. MILANOVICH: I don't recall
21 any specific discussions in that regard. But
22 again, it was thought that if we analyzed the

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1 impacts during the morning and afternoon peak,
2 given the much higher volume of traffic that
3 is present during those peaks today, that the
4 impacts would be adequately analyzed.

5 MR. YUAN: So you've mentioned
6 that it would be higher, or it is your
7 estimation that it would be higher on
8 weekdays, but in fact you haven't -- you're
9 not sure at that location what the weekend
10 traffic would look like?

11 MS. MILANOVICH: We did not
12 analyze Saturday or Sunday traffic.

13 MR. YUAN: So potentially it may
14 be higher?

15 MS. MILANOVICH: I don't know. I
16 can't answer that.

17 MR. YUAN: Are you aware that ITE
18 data shows that Saturday traffic is 60 percent
19 higher on weekends than weekdays, or
20 Saturdays?

21 MS. MILANOVICH: I'm not -- I'm
22 sorry, are you talking about specific to gas

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1 stations or --

2 MR. YUAN: To retail and gas
3 traffic.

4 MS. MILANOVICH: I don't know the
5 actual percentage, but I'm aware that ITE data
6 suggests that weekend traffic is somewhat
7 higher.

8 MR. YUAN: But again you didn't
9 think that applied to this particular
10 location?

11 MS. MILANOVICH: No. Again, you
12 know, we've done a number of studies in that
13 area and I think generally speaking the
14 background traffic, the existing traffic today
15 is worse during the morning commuter rush and
16 during the afternoon commuter rush. There's
17 more available capacity to accommodate those
18 additional trips on a Saturday. So, you know,
19 we have concurred with DDoT that the impacts
20 would adequately be analyzed during the
21 weekday a.m. and p.m. rush.

22 MR. YUAN: So you are of the

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1 opinion and Wells is of the opinion that
2 despite the study originally being based on
3 the 2008 study and this mega gasoline station
4 and the retail that there will not -- there
5 will only be a nominal increase in traffic?

6 MS. MILANOVICH: My opinion is
7 that there will be a nominal increase in new
8 traffic associated with the gasoline facility.

9 MR. YUAN: Okay. Moving on, I
10 would like to ask you some quick questions
11 about your study's use of the Costco in
12 Sterling, Virginia.

13 When choosing the Sterling Costco
14 to be the primary basis of your analysis, were
15 you and your colleagues aware that there were
16 several other big box stores, including other
17 Costcos, in the nearby area?

18 MS. MILANOVICH: We actually have
19 looked at what other gas facilities are
20 nearby. The nearest one -- consult my notes
21 -- the nearest big box that has a gas facility
22 is 11 miles away. And then the second nearest

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1 big box that has a gas facility is 15 miles
2 away.

3 MR. YUAN: I see. And of course
4 you and your colleagues were aware that the
5 Fort Lincoln Costco would be the only big box
6 store and gas station in the District?

7 MS. MILANOVICH: Actually we
8 checked the distance to the nearest gas
9 facilities for Fort Lincoln as well. The
10 nearest Costco with a gas station is 92 miles
11 from the proposed Fort Lincoln site. And the
12 second nearest is Beltsville, which is 12
13 miles.

14 MR. YUAN: Was that --

15 MS. MILANOVICH: So --

16 MR. YUAN: Oh, I'm sorry.

17 MS. MILANOVICH: -- they're
18 actually closer.

19 MR. YUAN: Was that first one in
20 the District as well?

21 MS. MILANOVICH: No, neither are
22 in the District.

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1 MR. YUAN: Neither are in the
2 District? Okay.

3 MS. MILANOVICH: But they're
4 closer than the ones near Sterling.

5 MR. YUAN: Right. But that
6 doesn't particularly address, as Chairman
7 Jordan had already mentioned, the density of
8 the urban areas compared to the suburban
9 outlying areas of Virginia of Maryland?

10 MS. MILANOVICH: I'm sorry, what
11 was the question?

12 MR. YUAN: So at -- and this is
13 again somewhat repeating Mr. Chairperson
14 Jordan's comments or question to you earlier,
15 but the -- your estimates doesn't necessarily
16 take into account the different -- the urban
17 setting, more dense population in D.C. as
18 compared to the suburban areas of Sterling or
19 in Maryland?

20 MS. MILANOVICH: Yes, I guess if
21 you're asking if i agree with that statement,
22 I don't necessarily agree. I mean, the thing

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1 you have to keep in mind about suburbs versus
2 urban, the auto ownership in urban areas is
3 much lower than the auto ownership in suburban
4 areas. You have more cars in the suburbs. So
5 while it might be denser in the city, there's
6 fewer cars per household.

7 MR. YUAN: But was that particular
8 aspect considered in this study?

9 MS. MILANOVICH: Well again, we
10 used the data from the Sterling Costco. In
11 deriving the trip generation data there's not
12 a factor that includes the auto ownership
13 rates. You know, it's pretty straightforward
14 data collection that you do to obtain that
15 trip generation information.

16 MR. YUAN: Okay. Moving on; and
17 this is just to clarify from your
18 presentation, but you disagree with the
19 comment in the prehearing statements that --
20 or in Costco's prehearing statement that the
21 proposed Costco's gasoline station will have
22 fewer trips than other gasoline stations. Is

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1 that correct?

2 MR. FREEMAN: She didn't testify
3 to that.

4 MR. YUAN: Oh. Oh, okay. Then
5 let me ask another way: Costco's prehearing
6 statement notes that the proposed Costco
7 gasoline station will have fewer trips than
8 other gasoline stations because it is limited
9 to only members. Do you agree with that?

10 MS. MILANOVICH: We evaluated the
11 trip generation rates that are in at the
12 Institute of Transportation Engineers trip
13 generation manual, which are based on data
14 collected at conventional gas stations all
15 over the country. And what I can tell you
16 based on our review of that information is
17 that the data -- the trip generation rates we
18 used from the Sterling Costco gas facility are
19 higher than the trip generation rates for the
20 ITE land uses.

21 MR. YUAN: I'm sorry, can you
22 repeat that? So -- or go ahead.

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1 MS. MILANOVICH: The trip
2 generation rates that we used from the
3 Sterling Costco facility are higher than the
4 trip generation rates for the three gasoline-
5 related land uses in the ITE trip generation
6 manual.

7 MR. YUAN: Okay. So based off of
8 those numbers, it seems like you're saying;
9 correct me if I'm wrong, that you disagree
10 with that statement in Costco's prehearing
11 statement?

12 MR. FREEMAN: Mr. Chair, she
13 testified to what her testimony is. She
14 doesn't need to agree or disagree with this
15 statement that he frankly is mis-
16 characterizing.

17 CHAIRMAN JORDAN: Yes, I think
18 it's been asked and answered a couple of
19 times.

20 MR. YUAN: Is it accurate to say
21 that your traffic study in attachment G
22 assumes that 40 percent of all trips are

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1 internal trips?

2 MS. MILANOVICH: I believe it was
3 24 percent of the p.m. peak hour trips are
4 internal trips. I'm sorry, it's 20 percent.

5 MR. YUAN: Twenty percent?

6 MS. MILANOVICH: Right, in the
7 p.m. peak hour. We did not take the internal
8 trips in the a.m. peak hour.

9 MR. YUAN: This was in attachment
10 G, or is this also --

11 MS. MILANOVICH: I'm looking at
12 table 3 on page 9 of our June 11th study.

13 MR. YUAN: Right. One moment.
14 I'm sorry, I was referring to -- not the trips
15 to the gasoline station, but retail trips
16 generally, as mentioned in attachment G.

17 CHAIRMAN JORDAN: What did you
18 just say? Say that again, please? What did
19 you just say?

20 MR. YUAN: We were asking if
21 whether or not the traffic study on attachment
22 G assumes that 40 percent of all trips will be

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1 internal.

2 CHAIRMAN JORDAN: I think she
3 already answered that. She already answered
4 the question. I think you said 20-something
5 or 12 percent, or whatever it was. You
6 answered the question.

7 MS. MILANOVICH: I was -- 20
8 percent of the gas station trips are
9 considered to be internal.

10 MR. YUAN: Right, and I'm asking
11 about retail trips now.

12 CHAIRMAN JORDAN: What are you
13 asking in regards to retail trips?

14 MR. YUAN: What the percentage is
15 of internal trips are.

16 MR. FREEMAN: The only use before
17 the Board is a gas station. I'm not sure
18 which retail trips he's referring to, but she
19 testified as to the gas station trips.

20 CHAIRMAN JORDAN: What are you
21 asking in particular? What are -- you're
22 asking in regards to a gas station?

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1 MR. YUAN: The gas station which
2 -- and also retail trips, because this all
3 goes to whether or not the use will create --

4 CHAIRMAN JORDAN: Do you have the
5 information or not?

6 MS. MILANOVICH: I mean, I'm
7 looking at appendix G and I'm looking at the
8 shopping center. I don't have the percentage
9 listed here.

10 CHAIRMAN JORDAN: She doesn't have
11 the answer. Next question.

12 MR. YUAN: Okay. You discussed a
13 little bit about your conversations with DDoT.
14 Did DDoT ever raise any concerns in regards to
15 a potential queuing problem at the
16 intersection of South Dakota Avenue and 33rd
17 Place?

18 CHAIRMAN JORDAN: As it pertains
19 to the gas station?

20 MR. YUAN: Yes, sir.

21 MS. MILANOVICH: They did. We
22 actually had a couple of conversations with

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1 DDoT with regard to the queue. There is
2 currently a fairly long queue if you're
3 traveling on 33rd Place approached South
4 Dakota Avenue. DDoT asked us to look at some
5 additional mitigation measures to accommodate
6 existing and future queues. And as I
7 testified to, we went back to DDoT with a
8 recommendation to stripe and sign 33rd Place
9 so that you can make a left turn from both the
10 left and middle lane onto South Dakota Avenue.

11 MR. YUAN: Figure 11 of your
12 report states that there are zero trips coming
13 in on South Dakota Avenue and turning right
14 onto 33rd Place.

15 I'm sorry. I'll give you a minute
16 to turn to the page.

17 Is that accurate?

18 MS. MILANOVICH: Yes, figure 11
19 shows there are zero pass-by trips making the
20 right from South Dakota Avenue onto 33rd
21 Place.

22 MR. YUAN: However, your figure 11

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1 also shows that 60 percent of the a.m. traffic
2 and 40 percent of the p.m. Board will be using
3 that route?

4 MS. MILANOVICH: Yes, there's
5 actually a site entrance from the off-ramp
6 from New York Avenue onto South Dakota Avenue,
7 which was not one of our study intersections,
8 so those trips are not shown on this figure.
9 But they would be made into the site directly
10 from the off-ramp.

11 MR. YUAN: I see. So the study
12 doesn't actually address that particular
13 intersection?

14 MS. MILANOVICH: Well, it's a
15 right in only, and so the highway capacity
16 manual methodology -- because they're not
17 opposed by any -- there's no opposing traffic,
18 it would operate as a -- without any delay.
19 So there was no need to analyze that
20 particular intersection.

21 MR. YUAN: One moment, please.
22 Finally, your study, attachment D, states that

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1 the intersection of Fort Lincoln Drive and
2 33rd Place only has stop control on Fort
3 Lincoln Drive, but has free flow on 33rd
4 Place. Is that correct?

5 MS. MILANOVICH: I'm sorry, you
6 referenced -- was it attachment D?

7 MR. YUAN: Yes, ma'am.

8 MS. MILANOVICH: I'm not sure I'm
9 following. Attachment D provides the level of
10 service descriptions.

11 MR. YUAN: Okay. Give me one
12 second.

13 CHAIRMAN JORDAN: Let's move on.
14 Do you have other questions to ask?

15 MR. YUAN: Yes, Mr. Chairman. I
16 was just trying to find an exhibit here. If
17 you'll give us a moment, please?

18 I'm looking on page 3 of the
19 exhibit. Oh, I'm sorry. This is attachment
20 E. I apologize.

21 CHAIRMAN JORDAN: Did you just ask
22 a question, or did you --

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1 MR. YUAN: We're just trying to
2 get on the same page here.

3 The question is I'm just trying to
4 confirm whether -- what the study says, and
5 that is that the intersection of Fort Lincoln
6 Drive and 33rd Place only has one stop control
7 on Fort Lincoln Drive, but has free flow on
8 33rd Place.

9 MS. MILANOVICH: It is actually an
10 all-way stop control at that intersection.

11 MR. YUAN: Is an all-way stop?
12 Okay. So it's an all-way stop, not what the
13 report says?

14 MS. MILANOVICH: It's an all-way
15 stop under existing conditions. Under future
16 conditions, it's a signalized intersection
17 because that signal is being installed in
18 conjunction with the retail center.

19 MR. YUAN: Okay. Great. One
20 final question.

21 CHAIRMAN JORDAN: This is your
22 second final question. He already found with

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1 the last one.

2 MR. YUAN: That was my final
3 question.

4 CHAIRMAN JORDAN: So this --

5 MR. YUAN: I'm sorry.

6 CHAIRMAN JORDAN: All right.

7 So, yes, go ahead, please.

8 MR. YUAN: Thank you. In terms of
9 the traffic study here, you're saying we're
10 looking at the traffic that the gas station
11 generates. Are you -- you know, can anyone
12 really truly evaluate the amount of traffic
13 that will be generated without looking the
14 entire development project there?

15 MS. MILANOVICH: We included the
16 traffic that is anticipated to be generated by
17 the retail development as part of our future
18 traffic forecast. That study was completed a
19 number of years ago, and so it was included in
20 our study, yes.

21 MR. YUAN: And you're saying that
22 the traffic -- the gas station only generates

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1 20 more trips?

2 MS. MILANOVICH: Twenty additional
3 new trips in the a.m. peak hour, yes.

4 MR. YUAN: Thank you.

5 CHAIRMAN JORDAN: All right. So
6 you've had your opportunity to cross-examine
7 the applicant.

8 Do we have anyone here from the
9 Department of Transportation?

10 (No audible response.)

11 CHAIRMAN JORDAN: We do have a
12 report from Department of Transportation
13 indicating that they have no objections to the
14 requested relief.

15 Do we have a representative here
16 from the ANC?

17 MR. KING: Yes.

18 CHAIRMAN JORDAN: Do you want to
19 come forward?

20 I don't think we have an ANC
21 letter here. Do we? From -- do we? Which
22 ANC are you representing? You have -- you do,

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1 you said? We do have an ANC letter? All
2 right. Just one second, please. Let me -- so
3 we do have a ANC-5A letter.

4 MR. KING: -- the seven-day rule?

5 CHAIRMAN JORDAN: Waiving the
6 rule, yes.

7 MR. KING: Yes, sir.

8 CHAIRMAN JORDAN: Correct. And
9 was there a vote taken at the ANC last night?

10 MR. KING: At the single member
11 district. And we have --

12 CHAIRMAN JORDAN: Yes.

13 MR. KING: -- but would be
14 forwarded to the ANC as a whole on the 26th of
15 September.

16 CHAIRMAN JORDAN: Okay. So that
17 was the single member district?

18 MR. KING: Yes, it is.

19 CHAIRMAN JORDAN: Oh, okay. Then
20 we -- we're asking for ANC-5A's -- the ANC for
21 ANC report is what we need for our record.
22 But you can provide us some testimony if you

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1 want as a support or opposition regarding the
2 single member district.

3 MR. KING: Mr. Chairman, I was
4 very hopeful that you would keep your record
5 open because we just returned from recess and
6 will not have our first public meeting until
7 September the 26th.

8 CHAIRMAN JORDAN: Okay.

9 MR. KING: I was trying to have
10 the special meeting last night to meet the --

11 CHAIRMAN JORDAN: Got you.

12 MR. KING: -- deadline for today.

13 CHAIRMAN JORDAN: So you just
14 haven't had it in? Okay. Well, good. And
15 then we're fine. You don't have to make any
16 other testimony at this point. We'll work
17 through that.

18 MR. KING: All right.

19 CHAIRMAN JORDAN: Okay? Good.

20 MR. KING: What are you saying?

21 CHAIRMAN JORDAN: Well, you're --
22 did you get sworn in?

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1 MR. KING: Yes.

2 CHAIRMAN JORDAN: Okay. All
3 right. Tell us what happened in the single
4 member district, if you would?

5 MR. KING: I'd like to just read
6 my statement.

7 CHAIRMAN JORDAN: Okay. Go ahead.

8 MR. KING: All right. Thank you.

9 Mr. Chairman and Members of the
10 Board, my name is Robert "Bob" King and I
11 serve as the ANC representative for Single
12 Member District 5A-12. I have served for
13 nearly 30 years representing the Fort Lincoln
14 community. I am the longest-serving
15 commissioner in the city, secondly only to
16 Marion Barry and to Jack Evans.

17 The District of Columbia Advisory
18 Neighborhood Commission considers a wide range
19 of policy and programs affecting the
20 neighborhood, including traffic, parking,
21 recreation, street improvement, liquor stores,
22 zoning, economic development, policy

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1 protection, sanitation, trash collection and
2 the District's annual budget. ANCs are the
3 body of the government that has the closest
4 official ties to the people in the
5 neighborhood. No public policy area is
6 excluded from the purview of the ANC
7 Commission, and I repeat, no public policy is
8 excluded from the purview of the ANCs. The ANC
9 -- District ANC's 37 agencies are distributed
10 among the eight wards and there are 286 single
11 member district members.

12 Fort Lincoln is comprised of 360
13 acres of land located within the city limits
14 of the District of Columbia and offer a mix of
15 suburban and urban living. When Fort Lincoln
16 is completed there will be nearly 4,000
17 residents who may consider buying food, gas,
18 beer, wine and liquor. Fort Lincoln was
19 conceived by the late president L.B. Johnson
20 to provide first-time ownership to Afro-
21 American families, and I'm proud to be one of
22 those family members since 1976.

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1 The Shops at Dakota Crossing is a
2 44-acre site, 430,000 square feet of retail
3 space. Upon completion there will be about
4 1,200 new jobs. Over the next 30 years the
5 shops will provide 635 million in tax revenue.
6 Costco has already started construction and
7 the opening date is expected to be around
8 November the 28th, 2012. It is my expectation
9 that the landmark development provided is in
10 compliance with the first source agreement.
11 And future additions to Costco; there will be
12 Lowe's Home Improvement Store, Marshall's,
13 Shoppers, sit-down restaurants, banks and some
14 other shops.

15 I'm here today to support the
16 application special exception BZA Case No.
17 18395, 241; I think is the street address has
18 now been corrected, at Square 4327, Lot 5,
19 Costco gas station submitted by Costco
20 Warehouse.

21 On July the 25th, 2012, the full
22 Advisory Neighborhood Commission 5A voted in

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1 a public meeting to do a traffic study because
2 of the concerns that were raised by the
3 community and emphasized in an email from
4 James Cheeks, Department of Transportation.
5 This document will be -- is submitted for the
6 record. There were eight commissioners voting
7 at that public meeting.

8 I presided over my single member
9 district meeting 5A-12 held at Mount Olive
10 Baptist Church Annex on September the 10th
11 where approximately 150 voting residents of
12 Fort Lincoln were in attendance and about 35
13 non-voting residents. At the meeting Costco
14 made a presentation to the community about the
15 proposed gas station including video,
16 demonstration use of the facility, as well as
17 a safety presentation, as well as Wells &
18 Association regarding the traffic study for
19 the entire retail development, which included
20 a presentation of the proposed gas station.

21 After much discussion, a motion
22 was made and seconded by Joanne Haber, who

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1 lives at 3001 Bladensburg Road, to support the
2 proposed gas station, conditioned. See
3 attached motion. The motion was passed and
4 voted by 75 to 31. See the attached motion,
5 Mr. Chairman.

6 The full ANC committee will take
7 this matter up on September the 26th.

8 Mr. Chairman and Members of the
9 Board, development is very painful. The
10 single most important issue facing the
11 residents of Fort Lincoln is with our traffic,
12 I believe within my heart. And those members
13 who have been out here today who may oppose
14 this based on the traffic, I'm going to invite
15 them to be a part of the committee to work
16 with Ms. Renee Hanson of Costco, to work with
17 Mr. Glasgow at Holland & Knight, to work with
18 Mr. Cheeks at DDoT, to rest assured, Mr.
19 Chairman and Members of this Board, that when
20 this gas station open up, we're going to all
21 that we can with respect to the query of the
22 stop lights, the single -- signal lights, the

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1 timing adjustment. And what's most important,
2 how this will lessen the mitigation of the
3 impact of this gas station.

4 I believe again, Mr. Chairman,
5 that this project has been 25 years in the
6 making. I've been a commissioner there for 30
7 years and this thing is -- we're excited about
8 it. The traffic's going to be problem, the
9 2008 traffic study was done for the overall
10 development. I believe that the commissioners
11 had it right when they voted on the 25th.
12 We're going to have to come back, Mr. Chairman
13 and Members of this Board. We're going to
14 come back and do a traffic study. Mr. Ray had
15 it right. Yes, he did. He wanted to know how
16 we're going to -- this traffic involved the
17 whole -- the project there. We have to take
18 a look at that.

19 But I'm urging and suggesting that
20 this Board move forward and support this gas
21 station under the conditions set forth in our
22 motion. Thank you.

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1 CHAIRMAN JORDAN: Thank you, Mr.
2 King.

3 Is there any questions for Mr.
4 King from the Board?

5 (No audible response.)

6 CHAIRMAN JORDAN: Does the
7 applicant have any questions of Mr. King?

8 MR. FREEMAN: No, Mr. Chair.

9 CHAIRMAN JORDAN: Does the
10 intervener have any questions, or the party,
11 independent association?

12 MR. RAY: Yes, I do have a
13 question, Mr. Chairman. Also, I have a point
14 of clarification that maybe I should ask you
15 first.

16 CHAIRMAN JORDAN: Yes?

17 MR. RAY: Is it my understanding
18 that in terms of the ANC report that you are
19 waiting to receive that?

20 CHAIRMAN JORDAN: I didn't -- we
21 haven't made a decision that way -- one way or
22 the other yet. It was we were requested to.

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1 MR. RAY: Further inquiry: Under
2 the rules the ANC is supposed to submit a
3 report --

4 CHAIRMAN JORDAN: Let me --

5 MR. RAY: Yes, but --

6 CHAIRMAN JORDAN: Yes, but the ANC
7 has not given a report because they're not
8 here.

9 MR. RAY: That's correct.

10 CHAIRMAN JORDAN: We have not made
11 a decision. If they come and provide a
12 report, they may ask for leave to submit it,
13 and then we would make a ruling at that time.

14 But I was asking if you have any
15 questions for Mr. King based upon his support
16 statement, because we really are at the point
17 of anyone in the audience in support.

18 MR. RAY: All right. Mr. King, at
19 the meeting last night this -- you said there
20 was a vote. Was this vote by the community,
21 or is that what you mean?

22 MR. KING: Vote was required by

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1 only voting members of my single member
2 district.

3 CHAIRMAN JORDAN: Make sure you're
4 on the microphone, please.

5 MR. KING: It was required by only
6 the residents of Fort Lincoln. That's why we
7 used a card to make sure that they were
8 residents of the Fort Lincoln area.

9 MR. RAY: So this was a vote by
10 the residents if your single member
11 district --

12 MR. KING: Yes, sir.

13 MR. RAY: -- last night?

14 MR. KING: Yes.

15 MR. RAY: Mr. King, have you ever
16 opposed a gas station at this location?

17 MR. KING: Have I ever opposed a
18 gas station?

19 CHAIRMAN JORDAN: If I could, are
20 you asking has the single member district, or
21 has Mr. King individually?

22 MR. RAY: I'm asking him as a --

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1 he's been in ANC, as he's pointed out, for
2 zoom-zum years. I'm asking him in that
3 capacity has he taken a position in opposition
4 to a gas station at this site.

5 CHAIRMAN JORDAN: Has the -- he
6 has -- the testimony that -- the statement he
7 made was in regards to as a single member
8 district 5A-12. That's what he was reading
9 from. And I'm asking you, Mr. Ray, is your
10 question as an individual or has a single
11 member district taken a position in opposition
12 to a gas --

13 MR. RAY: As a single member
14 district.

15 CHAIRMAN JORDAN: Okay. That's
16 it.

17 MR. RAY: Thank you.

18 CHAIRMAN JORDAN: So has single
19 member district 5 --

20 MR. KING: Never. No, have not
21 taken a position on a gas station. No.

22 MR. RAY: Your testimony, as a

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1 single member district of ANC-5A, you have
2 never taken a position in opposition to a gas
3 station?

4 MR. KING: I've never convened a
5 meeting of the residents of Fort Lincoln to
6 take a vote yes or no on a gas station.

7 MR. RAY: My question was not
8 whether you've taken a vote.

9 MR. KING: A position is the same
10 as a vote.

11 MR. RAY: It is not the same as a
12 vote. I've asked you a very straight
13 question. Your testimony here today is that
14 you as a single member district have never
15 taken a position in opposition to a gas
16 station.

17 MR. KING: Then let me make it
18 emphatically clear: In the 30 years that I've
19 been an ANC commissioner I've never taken vote
20 on the gas station.

21 CHAIRMAN JORDAN: Let me ask you,
22 Mr. King: Has the single member district ever

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1 opposed by vote or by activity, gone against,
2 fought against, campaigned against, talked
3 about in opposition to a gas station?

4 MR. KING: No, I'm going to answer
5 the same way, Mr. Chairman. In the 30 years
6 I've been an ANC commissioner, we've never
7 taken a vote for the gas --

8 CHAIRMAN JORDAN: I know. I
9 understand what you say about vote. I'm
10 moving -- have you done anything else other
11 than vote in opposition?

12 MR. KING: No.

13 CHAIRMAN JORDAN: Okay. Let's
14 move on. The answer was no.

15 MR. RAY: Okay.

16 CHAIRMAN JORDAN: Do you have any
17 other questions of Mr. King?

18 MR. RAY: No.

19 CHAIRMAN JORDAN: Okay. Is there
20 any other persons in the audience in support?

21 (No audible response.)

22 CHAIRMAN JORDAN: Is there anyone

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1 else to present testimony in support of the
2 application for the relief sought?

3 (No audible response.)

4 CHAIRMAN JORDAN: Okay. All
5 right. Now moving to the party -- party
6 status, the -- let's now move to opposition,
7 or parties in opposed. The Independent Gas
8 Station Operators. Yes, you can go back.
9 Thank you, very much.

10 You want to present your case?
11 You can begin, please.

12 But opposition has been -- well,
13 we were having parties do their presentations
14 and then we will get to -- after all that's
15 done, persons in opposition will have the
16 opportunity, if the statements are not
17 repetitive, to provide that testimony.

18 MR. RAY: Mr. Chairman, you know,
19 basically we oppose this on three points, and
20 we have discussed the first point earlier in
21 this proceeding. And I would just simply
22 state our first point, Mr. Chairman, is that

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1 in section 101 -- I just want to get the exact
2 cite for you. Section 101.4(d) of the
3 regulations states that -- which is the
4 interpretation of the regulation, is that
5 where there is a law or regulation that
6 imposes a higher standard than the general
7 regulations, that the Board must follow that
8 higher standard.

9 Our argument here, Mr. Chairman,
10 is that there is a higher standard imposed on
11 the Board here because by law the --

12 CHAIRMAN JORDAN: Excuse me, Mr.
13 Ray. If you can give me that cite that again?
14 You said 101.4?

15 MR. RAY: (d).

16 CHAIRMAN JORDAN: Of -- (b) of
17 (d)?

18 MR. RAY: (d). (d) as in dog.

19 CHAIRMAN JORDAN: Of what? Of
20 the --

21 VICE CHAIR SORG: Of the D.C.
22 Zoning Regulation.

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1 MR. RAY: 11 DCMR.

2 CHAIRMAN JORDAN: 11 DCMR?

3 MR. RAY: Yes.

4 CHAIRMAN JORDAN: You can -- why
5 don't proceed?

6 MR. RAY: I can go ahead?

7 CHAIRMAN JORDAN: Yes.

8 MR. RAY: Our argument, Mr.
9 Chairman, is that that section of the
10 regulation imposes a higher standard. It
11 requires the Board to look at the language of
12 relevant laws and regulation in making this
13 determination. And let me say, just because
14 Costco carries its burden of proof the Board
15 is not required to grant the relief requested.
16 It's a discretionary action of the Board. And
17 here they asking for an exception, a special
18 exception to the laws. And I think in making
19 that special exception the Board has to look
20 at 101.4(d) and it has to make a
21 determination --

22 CHAIRMAN JORDAN: 3101.1.

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1 MR. RAY: -- has to make a
2 determination that Costco is indeed complying
3 with other requirements of D.C. law and
4 regulation. And that law specifically states
5 that this company cannot operate a gas station
6 and sell alcohol from the same property, and
7 the same company, the same business cannot do
8 that.

9 And I think it's important that
10 this agency determine that in fact the
11 business that's here before you today is
12 indeed what they say it is, because if they
13 are, then maybe they are outside of this law,
14 the reach of the law. If they're not, they're
15 clearly within the reach. I think, even
16 creating what I think is a sham, Mr. Chairman,
17 they're still not, because the law is very
18 clear and very direct.

19 So, Mr. Chairman, I think this
20 body has an obligation to make sure that those
21 parties that come before it and hold them self
22 out as X, that they are indeed X legally and

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1 it's not being done to circumvent a law of the
2 District of Columbia. And when you look at
3 the record, the complete record before you and
4 what's on public file, that this company has
5 created a scheme to beyond the reach of a law
6 of the District of Columbia, which clearly
7 reaches out and pull them in. And we are here
8 today to say that even though they've created
9 this scheme, it does not take them outside the
10 reach of the law.

11 And thus, our argument is that you
12 should not issue this -- grant this exception,
13 this special exception until the ABC Board,
14 ABRA, has had a chance to make a determination
15 on the record that what they have created here
16 is not within the reach of the ABC laws which
17 says they cannot do what they are doing.

18 And finally on that point, Mr.
19 Chairman, it is important to note that all of
20 the documents that this company has filed with
21 the ABC Board, none of them mention that they
22 will be operating a gas station. None.

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1 There's a document which requires them to set
2 forth the uses on this property.

3 CHAIRMAN JORDAN: Mr. Ray, I want
4 to keep this thing very relevant.

5 MR. RAY: Yes.

6 CHAIRMAN JORDAN: Matters that's
7 before the ABC Board needs to be before the
8 ABC Board. We're dealing for this -- and then
9 we've talked about this early on, and I want
10 to keep us on course and give you the
11 opportunity to present whatever testimony and
12 evidence you have that deals with section 706
13 and deal with 2302. And so that's what I'm
14 going to ask you to present your -- any
15 comments or testimony. ABC matters, we're
16 going to hope that ABC handles that for you.

17 MR. RAY: Are you saying that 11
18 DCMR 101.4(d) is not relevant here today?

19 CHAIRMAN JORDAN: I've already
20 made -- I've -- what -- I've already made
21 what's relevant for this particular hearing is
22 dealing with sections 706 and 2302. So that's

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1 what we're looking for testimony on today.

2 MR. RAY: So --

3 CHAIRMAN JORDAN: Anything else
4 outside of that is not going to be considered
5 relevant, and that's just the ruling. So you
6 can either move on or do whatever you need to
7 do, but we're not going to take any other
8 testimony, please, on anything else.

9 MR. RAY: Our next argument, Mr.
10 Chairman, is that we think the traffic study
11 is flawed and we will have an expert that will
12 present our side of that case.

13 And then finally, Mr. Chairman, I
14 want to put on the record that the report from
15 the Office of Planning is incomplete and does
16 not put before this body all the relevant laws
17 and policies for the District of Columbia that
18 should be taken into consideration in this
19 Board exercising its discretion.

20 CHAIRMAN JORDAN: Mr. Ray, let me
21 say this again: The report of OP as it
22 relates to the sections that I just talked

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1 about of the Zoning Regulations is what we're
2 dealing with today. If there's -- and
3 anything else outside of that is not going to
4 be allowed to be addressed by this Board.

5 MR. RAY: Mr. Chairman, I have put
6 on the record my feelings.

7 CHAIRMAN JORDAN: Yes, you did.

8 MR. RAY: Thank you.

9 CHAIRMAN JORDAN: Want to call
10 your witness or --

11 MR. RAY: Yes.

12 MR. MEHRA: My name is Joe Mehra
13 with MCV Associates. Wells & Associates
14 prepared a traffic study for the proposed
15 gasoline station. I reviewed the study and
16 wanted to give some comments on that.

17 In summary, the traffic analysis
18 has significant errors and is fundamentally
19 flawed, and the traffic analysis results are
20 therefore meaningless. Further, the traffic
21 study does not address the safety of the
22 current conditions, nor the safety after the

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1 gasoline station would be in operation with
2 additional fuel delivery trucks traveling on
3 that roadway.

4 In terms of significant errors,
5 there are several of them, and I'll just give
6 a few of them. For example, the intersection
7 of Fort Lincoln Drive and 33rd Place is
8 analyzed having a stop control on Fort Lincoln
9 Drive only with free flow on 33rd Place,
10 whereas there are stop signs on all
11 approaches.

12 Several of the figures that are in
13 the report, particularly in let's say figure
14 13, which shows the total traffic during the
15 a.m. and p.m. peak hours after the gas station
16 is constructed and utilized, the data from
17 that figure 13 was used in the Synchro model
18 to estimate the a.m. and p.m. peak hour levels
19 of service, the delays and the queues. Most
20 of the numbers that are given in those figures
21 do not match the numbers that are included in
22 the Synchro model. And generally speaking,

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1 the traffic volumes that are in the Synchro
2 model are less than the traffic volumes
3 presented in the report.

4 The traffic study utilized the
5 pipeline development, which is the other
6 retail development that there's been some
7 conversation about in terms of the Shops at
8 Dakota Crossing. That traffic was utilized as
9 a background traffic, which is a standard
10 industry practice. In that particular traffic
11 -- in the pipeline development, let's assume
12 that 40 percent of the trips will be traveling
13 between Costco store and other retail stores
14 in the shopping center, which are internal
15 trips, and therefore they do not go onto the
16 external roadway network.

17 In their own report they have
18 included a survey from the Leesburg Costco and
19 the Leesburg Costco shows that there's a 10
20 percent interaction between Costco and other
21 stores on the site. So there's a big
22 difference between the 10 percent and the 40

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1 percent. If you use those numbers, there will
2 be additional 195 trips that would be using
3 the roadway network and that will result in
4 increased delays and increased queues on 33rd
5 Place at South Dakota Avenue.

6 CHAIRMAN JORDAN: You said 104?

7 MR. MEHRA: Hundred and ninety-
8 five.

9 CHAIRMAN JORDAN: Hundred and
10 ninety-five?

11 MR. MEHRA: Now the fundamental
12 flaw in their traffic analysis. There are
13 four different types of trips that can come to
14 a gas station or a retail use. Those four
15 different types are: You got internal trips
16 that would be traveling from say the gas
17 station to the retail, or gas station to some
18 other use. There will be pass-by trips. Now,
19 the definition of pass-by is that you're
20 traveling on a road that is adjacent to the
21 site. So if you're traveling on Bladensburg
22 Road, you're not a pass-by trip. If you're

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1 traveling on New York Avenue, let's say from
2 the District going towards Maryland, going
3 north, going east, whichever direction it is,
4 that is not a pass-by trip. It's called a
5 diverted trip. Diverted because you've got to
6 divert from your route and go into the gas
7 station to fill up gas.

8 CHAIRMAN JORDAN: Now what was a
9 pass-by trip again?

10 MR. MEHRA: Pass-by trip is where
11 you -- if you're driving -- for example, if
12 you're on South Dakota Avenue between
13 Bladensburg and New York Avenue -- if you're
14 driving on South Dakota going from Bladensburg
15 to New York Avenue, you turn left to go into
16 a gas station, that is called a pass-by trip.
17 The advantage of a pass-by trip is that that
18 trip is already driving on South Dakota
19 Avenue. So when the gas station opens, all
20 they do is they turn left or turn right to go
21 into the gas station, fill up gas and then
22 continue along their way.

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1 But if you're on Bladensburg Road,
2 you're not on South Dakota Avenue. You're not
3 a pass-by trip. You are a -- what we call is
4 a diverted trip. That trip is an additional
5 trip that you added to the intersection of
6 South Dakota and 33rd Place. You cannot
7 assume that trip is already there. They made
8 that assumption those trips are already there,
9 and that's a big, big impact.

10 And the reason it's a big impact
11 is because as you saw in the slide that they
12 say that only 20 trips, 20 new trips from the
13 a.m. peak hour and 26 trips during the p.m.
14 peak hour. But when you correct for this
15 error; or the fundamental flaw, as I call it,
16 that number jumps up to 167 in the a.m. peak
17 hour and 165 during the p.m. peak hour. These
18 are additional trips that will go through the
19 intersection of South Dakota and 33rd Place.
20 When you put those additional trips and you
21 run the Synchro model, run the delays again,
22 run the queues again, it's going to give you

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1 a totally different result.

2 Now let me give you what the
3 problems are. There is currently based on the
4 analysis that Wells did -- there's a
5 southbound left turn storage of about 115
6 feet. If you're coming on 33rd Place and you
7 want to make a left turn onto South Dakota
8 from 33rd, there's 115 feet of left turn
9 storage. Their own analysis shows that during
10 the p.m. peak hour that queue that brings up
11 is 413 feet. Now this is with the 26 trips,
12 26 new trips. Imagine what will happen when
13 that number jumps up to 165. What will happen
14 to that 413 feet of left turn storage?

15 Secondly, their own analysis shows
16 -- and again this is based on their, you know,
17 heavy pass-by trip percentage. They show that
18 the level of service at the intersection of
19 again South Dakota and 33rd is level of
20 service E during the p.m. peak hour and it's
21 a level of service D during the a.m. peak
22 hour. When you increase the numbers of the

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1 additional traffic that will be using that
2 intersection, then that level of service D in
3 the a.m. is most likely to drop to an E, which
4 is an unacceptable level of service. And the
5 level of service E in the p.m. peak hour could
6 potentially drop to a level of service F. And
7 at the same time the queues will increase.

8 So essentially what you're saying
9 is that the section 706.4 which says that the
10 operation of the use shall not create
11 dangerous or other objectionable traffic
12 conditions have technically not been met.

13 Now, in terms of the worst case
14 analysis, the Saturday traffic analysis. If
15 you look at the retail uses which are in the
16 Shops at South Dakota -- or Dakota Crossing
17 and the trips from the gasoline station, on a
18 Saturday those trips are about 44 percent to
19 61 percent higher than on a weekday. And
20 really speaking, when you look at the queues
21 on 33rd Place at South Dakota, all this
22 traffic, the additional 44 percent and 61

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1 percent of retail and gasoline, is going to
2 queue up on that Saturday, not on a weekday.
3 So I think Saturday traffic should have been
4 done. And typically; and this is a standard
5 industry practice, when you are looking at a
6 retail analysis or a gasoline station analysis
7 where retail is a critical component, we
8 typically do a Saturday analysis.

9 In conclusion, the flawed traffic
10 analysis shows that there are significant
11 impacts on the queues and levels of service at
12 the intersection of South Dakota Avenue and
13 33rd Place. Correcting for the flawed
14 analysis show even worse conditions.
15 Therefore, the applicant has not met the
16 requirements of section 706.4. Thank you.

17 CHAIRMAN JORDAN: Mr. Ray, is
18 there any other testimony, evidence?

19 MR. RAY: Yes, Mr. Chairman. We
20 have some other witnesses. We also have a
21 couple of questions we'd like to ask as well.

22 CHAIRMAN JORDAN: I'm sorry? What

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1 do you mean questions? Questions of who?
2 What? You want to ask questions of whom?

3 MR. RAY: Well, we want to -- that
4 we want -- things we want to get on the
5 record.

6 CHAIRMAN JORDAN: You're going to
7 do that through testimony?

8 MR. RAY: Yes.

9 CHAIRMAN JORDAN: Okay. Call your
10 witness. This is time for your -- put on your
11 case.

12 MR. RAY: Yes.

13 CHAIRMAN JORDAN: And you just
14 finished the traffic witness. I'm asking you
15 do you have any other witness that you would
16 like to put on?

17 MR. RAY: Chairman, you want to
18 call all the witness and then just -- you're
19 going to see if there's any questions from the
20 other side, or --

21 CHAIRMAN JORDAN: We can do it
22 either way. Does the Board have any questions

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1 of this witness?

2 (No audible response.)

3 CHAIRMAN JORDAN: Mr. Freeman, is
4 there any questions you have of the witness?

5 MR. FREEMAN: No, sir.

6 CHAIRMAN JORDAN: Okay. Your next
7 witness?

8 (No audible response.)

9 CHAIRMAN JORDAN: Mr. Ray, I had
10 from you I think a number of witnesses on the
11 witness list.

12 MR. RAY: Well, there's only going
13 to be -- we're not going to have 29. There's
14 only going to be four.

15 CHAIRMAN JORDAN: Okay. That's
16 not a cumulative, right? It's not cumulative
17 in their testimony?

18 MR. RAY: Well, some of it may be,
19 but you can --

20 CHAIRMAN JORDAN: Okay. All
21 right.

22 MR. RAY: -- do what you want to

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1 do with it.

2 CHAIRMAN JORDAN: Very good. Yes.

3 Would you identify yourself,
4 please?

5 MR. AHMED: Mr. Chairman and
6 Members of the Board, my name is Mahboob
7 Ahmed. Mahboob created lot of pronunciation
8 difficultly years ago and there was a
9 grandmother from Oregon and she called me
10 Tony, so I took the name Tony and became Tony
11 Ahmed.

12 CHAIRMAN JORDAN: Okay.

13 MR. AHMED: So there's actually
14 story behind it.

15 CHAIRMAN JORDAN: Okay.

16 MR. AHMED: I am here on behalf of
17 the Independent Gas Station Operator Alliance
18 to express my opposition to Costco's
19 application for a special exception to
20 construct a gas station.

21 I have been in business for 25
22 years and fortunately I have stayed in East --

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1 Northeast part of the Washington. I was on
2 2651 Benning Road at the corner of Oklahoma
3 and Benning Road across from the Spingarn High
4 School. I was there 13-14 years. Then I
5 moved to 45 Benning Road, N.E. next at the
6 intersection of East Capitol and Benning, and
7 I have a Gas 'n Go. And I operated full
8 service gas station with three bays at 4100
9 Hunt Place, N.E. It's very close to the
10 Minnesota Metro station next to the fire
11 station. So I would like to bring to your
12 attention the difficulties that mega gas
13 station that will bring upon us. We are small
14 business operator and I would like to read my
15 statement to you, sir.

16 Costco low price gas station would
17 attract people from all over District,
18 including Maryland reducing the number of
19 customers at these full-service gas stations
20 which are very few in the District. They are
21 dying breed. So people living in District of
22 Columbia in dense populated areas already have

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1 very few facilities to go to when they need
2 auto repairs. That's one of the points I
3 would like to bring to you so you can consider
4 the hardship. If we are eliminated and we go
5 out of business, you can imagine the hardship
6 of the community that it will go through.

7 Our group consists of 29
8 independent service operators who manage 34
9 gasoline station in the District. All 34 of
10 these stations are within the radius of 4.5
11 miles. You can see we are like a wedding
12 group. You know, I mean, you can't increase
13 it. We are already occupying a small area
14 with a lot of gas stations serving the
15 community. And in my view, Your Honor, there
16 is no need for such gas station. There is no
17 need. We are not on a big highway where
18 people are just traveling and they want lot of
19 gas.

20 However, most of customers are
21 economically at disadvantage and they are
22 buying gas \$3, \$5, \$7 and they make trips on

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1 daily basis. Sometimes we see them twice a
2 day. And if we lose them for some reason,
3 we'll go out of business. And at my age --

4 CHAIRMAN JORDAN: Your gas station
5 is how -- what's the distance between that and
6 what this proposed Costco gas --

7 MR. AHMED: Sir, it will be less
8 than three miles.

9 CHAIRMAN JORDAN: Less than three
10 miles?

11 MR. AHMED: Yes, sir.

12 CHAIRMAN JORDAN: Okay.

13 MR. AHMED: So we are, you know,
14 already saturated market. Further, or members
15 operate nine gas stations which are full
16 service and 25 are gas and go. And Mr. Ray
17 has well pointed the point that I think cannot
18 be overlooked, and I hope you will consider
19 it. Having a gas station close to liquor
20 store by same business. I haven't done in 25
21 years. I would have made more money by
22 selling liquor, in the summer by selling beer.

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1 I know a gas station; and that I would like to
2 give you address, right behind Beltway Plaza
3 on Greenbelt Road. it's a Shell gas station.
4 They don't care about selling gas when they
5 are selling beer.

6 So I was not allowed. Why should
7 they be allowed? Because their pockets are
8 deep? Because they're international company?
9 If I go out of business, their bottom line
10 still be very big. And billions, not
11 millions. So please consider that because
12 it's illegal and I hope the government has
13 enough common sense to stop this kind of
14 circumventing the law by such a big company.

15 The furthestmost, the local
16 resident where we are located in neighborhoods
17 like Hunt Place and Minnesota and Nannie Helen
18 Burroughs Ave -- I apologize, Burroughs
19 Avenue, all these are apartments, row houses
20 and people who did not have reach the height
21 of -- in their life and they weren't lawyers
22 and doctors and all that. They are surviving

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1 here. And sometimes they walk to our
2 businesses. When it snow, when their tire is
3 flat, they're not going to spend \$85 to take
4 it to Costco because they're a full-service
5 car department. I can fix it \$8. Let's not
6 have this. Let's not victimize such people,
7 at least.

8 I think we can't separate and take
9 all the human compassion out of businesses.
10 What we have done -- I have been here 40
11 years, mid-19 -- April 23rd, 1972 I came when
12 gas was \$0.26 a gallon. When Toyota Corolla
13 cost \$1,500 and they gave you a polish and
14 they gave you other stuff. Things have
15 changed. But one thing I would not like to
16 see change that we become have no compassion
17 for our brothers and sisters. That's not the
18 day we look forward. Thank you very much.

19 CHAIRMAN JORDAN: All right.

20 Thank you.

21 Any questions of this witness?

22 Yes, Ms. Sorg?

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1 VICE CHAIR SORG: Thank you for
2 your testimony, Mr. Ahmed. I wanted to ask
3 you, in your location where your gas station
4 is now, what you said is Benning Road and?

5 MR. AHMED: That will be Gas 'n
6 Go. It's East Capitol and Benning Road next
7 to Denny's restaurant.

8 VICE CHAIR SORG: Okay. So is
9 that gas station in a stand alone? Is it in
10 a strip center? Is there retail next to you?

11 MR. AHMED: It's -- you can call
12 it. It's at the intersection. It's across
13 from the Benning Road Metro station.

14 VICE CHAIR SORG: Yes.

15 MR. AHMED: It's not in a strip
16 mall. It's my itself and we are at the light
17 of Benning Road and East Capitol.

18 VICE CHAIR SORG: And then do you
19 have other retail neighbors? You mentioned
20 the Denny's.

21 MR. AHMED: I have a restaurant.
22 And there is a gas station across the street,

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1 when you cross the East Capitol Road.

2 VICE CHAIR SORG: Yes. And what
3 about your other retail neighbors? Is there
4 any -- is there like a -- you know, a 7-
5 Eleven? Is there like a grocery store? Is
6 there like a clothing -- is -- are there other
7 retail neighbors?

8 MR. AHMED: There is a restaurant
9 across the street, Chinese restaurant.

10 VICE CHAIR SORG: Okay.

11 MR. AHMED: The Shrimp Boat.

12 VICE CHAIR SORG: Okay.

13 MR. AHMED: Thank you.

14 VICE CHAIR SORG: Thank you.

15 CHAIRMAN JORDAN: Any other
16 questions of the witness?

17 (No audible response.)

18 MR. AHMED: Thank you.

19 CHAIRMAN JORDAN: Thank you. No,
20 wait, wait, wait. Mr. Freeman?

21 MR. FREEMAN: No.

22 CHAIRMAN JORDAN: Good. Thank you

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1 very much. We appreciate it. Thanks.

2 Your next witness, please?

3 Please identify yourself, please?

4 MR. SADEGH: My name is Mostafa
5 Sadegh.

6 CHAIRMAN JORDAN: Spell your last
7 name, please?

8 MR. SADEGH: Mostafa Sadegh, S-A-
9 D-E-G-H.

10 CHAIRMAN JORDAN: And have you
11 been sworn in or affirmed --

12 MR. SADEGH: Yes, sir.

13 CHAIRMAN JORDAN: -- and filled
14 out the witness cards?

15 MR. SADEGH: Yes, sir.

16 CHAIRMAN JORDAN: Thank you.
17 Okay. Proceed.

18 MR. SADEGH: I operate a gas
19 station on 1925 Bladensburg Road, which is the
20 intersection of Bladensburg and New York
21 Avenue, N.E. My station is less than a mile
22 away from the proposed Costco gas station.

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1 Seventeen years ago I quit my job
2 as a professor at Howard University. I took
3 my retirement and all of my savings and bought
4 this gas station. And now I'm faced with the
5 reality that Costco can put me and many of
6 other people who are in the same shoes out of
7 business.

8 I appear here today before the
9 Board to voice my strong opposition against
10 the Costco gas station in Fort Lincoln and I'd
11 like to elaborate a few points in here: There
12 is no need for gas station in Fort Lincoln.
13 Anyone who has been in this section of D.C.
14 knows that we have been over abundance of gas
15 stations. There are 44 gas stations already
16 in this area, and several of them are full-
17 services station within four miles radius of
18 the proposed gas stations of Costco.

19 There is no need for 16-pump, 4-
20 island do all dispenses at this shopping
21 center which would pump 12 million gallons
22 annually estimated per year. This would

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1 approximately come to 30,000 gallons a day,
2 which is lines of cars and traffic congestion
3 in the area, and also many environmental
4 hazards. This cannot be for the Fort Lincoln
5 community, not for it be good for the
6 residents and the small businesses in the
7 area. Where is the need analysis that shows
8 sufficient evidence of public need for such a
9 large gas and go or gas station?

10 Secondly, it is clear that
11 District government has not given any
12 consideration to the hands of the small
13 independent gas stations when they encourage
14 Costco to come and do business in the
15 District. I'm personally not against Costco's
16 store, but when D.C. government gives \$13
17 million in financing assistance to these big
18 corporation, they least they could do was to
19 ensure that there is some protection for we as
20 the small businesses and the customers who
21 depend on us.

22 My gas station provides an

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1 essential service to other -- and other
2 amenities to the Fort Lincoln community. I
3 sell gasoline. I also sell the small grocery
4 products at my C stores. Residents in this
5 neighborhood can come to my station 24 hours
6 a day. Can Costco really do this? As a 24
7 hour/7 business, I live, work, spend a lot of
8 time in this community and know my customers
9 well. I let the community use my spaces for
10 fund raising events for their schools,
11 churches and even I provide refreshments for
12 their events.

13 As a gas station operator I just
14 want to provide my customers with good
15 service, fair prices and products that they
16 need. Like me, most of us are concerned with
17 Costco that can put our businesses out of
18 place and ground us. Studies have shown that
19 big box stores have threatens and often left
20 to the demise of many small businesses.
21 Costco will likely drive us out of business,
22 and worse still, close the remaining full-

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1 services stations in the area.

2 One of the mayor's priorities is
3 to promote and foster local and disadvantaged
4 businesses. If that's the case, the BZA ought
5 to reject Costco's request.

6 Thirdly, why privilege Costco over
7 local gas stations and carry-out liquor
8 stores? I'm also outraged to learn that
9 Costco has an ABC liquor license that will
10 permit Costco to sell spirit and gasoline from
11 the same location. If Costco is allowed to do
12 this, all 108 gas stations in D.C. area could
13 do and also be allowed to sell beer, wine and
14 liquor. I can copy Costco by subdividing the
15 land area of my gas stations, purchase a
16 liquor license and set up an alcohol shop
17 right next to my gas station. Perhaps the
18 liquor stores in D.C. can run to DCRA, set up
19 separate LLC or entity and start selling
20 gasoline, too. Thirteen million dollars with
21 government assistance and ABC license, and
22 still they want gas stations in their

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1 location? How can we compete? This is so
2 unjust.

3 And finally, Costco needs to
4 respect the law on prohibition of alcohol and
5 gasoline sale. I'm not a lawyer, but I have
6 a Ph.D. in information science. I can read.
7 D.C. law section 25-313(b) is very clear. No
8 license shall be issued for an outlet,
9 property, establishment or businesses which
10 sell motor vehicle gasoline. We know that
11 Costco has acquired ABC license already. Did
12 the ABC Board know that Costco was going to
13 build a gas stations on the same site when
14 they were reviewing their license transfer
15 application? If the ABC Board did not know
16 about the gas station or their intention, then
17 I think Costco was not truthful in its
18 representation to ABC Board.

19 When was ANC-5A informed about the
20 law? On June 23rd, 2012. I attended a
21 meeting at Mount Horeb Church and I recall
22 that an exchange between the Costco

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1 representative and an individual from the
2 community who raised the environmental issue
3 about the gas station. In responding to this
4 community member, the Costco representative
5 responded there was nothing that prevented
6 Costco from moving forward with its gas
7 station. She stated that the gas station is
8 a done deal.

9 It was clear to me that people in
10 this audience and ANC appeared to be unaware
11 of the D.C. Code 25-313(b). If it is my -- it
12 is my understanding that Costco is trying to
13 imply the gas station and the stores are owned
14 by different owners. Whether it is Costco
15 Wholesaler, CWC, WDC, LLC, everybody knows
16 it's the same business.

17 For this reason, I respectfully
18 the Board to reject Costco's application for
19 a special exception until the ABC liquor
20 license/gasoline issues are cleared --
21 clarified. Thank you very much for giving me
22 the opportunity to talk.

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1 CHAIRMAN JORDAN: Thank you for
2 your testimony.

3 Does the Board have any questions?

4 (No audible response.)

5 CHAIRMAN JORDAN: Mr. Freeman?

6 MR. FREEMAN: No, Mr. Chair.

7 CHAIRMAN JORDAN: Thank you very
8 much. Appreciate it.

9 Any additional witnesses?

10 Welcome. Tell us your name,
11 please?

12 MR. KIFLU: Good afternoon. My
13 name is Petros Kiflu.

14 CHAIRMAN JORDAN: Spell the last
15 name?

16 MR. KIFLU: P-E-T-R-O-S, K-I-F-L-
17 U.

18 CHAIRMAN JORDAN: And I take you
19 were here for the taking of the taking of the
20 oath earlier, correct?

21 MR. KIFLU: Yes, I am.

22 CHAIRMAN JORDAN: And you provided

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1 witness cards, too?

2 MR. KIFLU: Yes.

3 CHAIRMAN JORDAN: Thank you.

4 Okay. Proceed, please.

5 MR. KIFLU: I am the independent
6 operator of the Shell gas station located at
7 3355 Benning Road, N.E. in Ward 7. I have
8 been running this station for 13 years. At
9 this Shell gas station there's a convenience
10 store and an Enterprise Rental Car facility.
11 Eighteen employees work at the rental car
12 company and six employees work at the
13 convenience store.

14 I come today because, like fellow
15 members of the Independent Gas Station
16 Operators Alliance, I oppose the Costco Board
17 zoning adjusting request to allow it to build
18 a large gas station at Fort Lincoln.

19 My gas station is less than four
20 miles away from this jumbo 16-pump gas to go
21 facility. Let me be clear, this Costco gas
22 station is not your normal gas station. In

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1 fact, it is not a gas station. It is a truck
2 stop. This Costco truck stop will pump an
3 estimated between 10 millions gallon of gas
4 annually.

5 Let me put this in perspective for
6 the Board Members as you can appreciate what
7 we have to face. To sell 10 million of
8 gallons a year, the Costco gas to go will
9 dispense more than 24,000 gallons a day. That
10 means three truckloads of gasoline must be
11 delivered to the Costco station daily for 365
12 days a year. That is a lot of gasoline and
13 the D.C. Costco gas to go may well become the
14 largest and busiest truck stop in this area in
15 no time.

16 For the past two years Costco has
17 been trying to build a similar gas station at
18 Wheaton Plaza, which had the Kensington
19 Heights community up in arms. While the
20 Kensington Heights community worries about
21 their quality of life, I worry about the
22 survival of my gas station and the livelihood

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1 of many employees who work at the gas station.
2 I'm afraid for the 44-plus small gas stations
3 in the vicinity. Each station has an average
4 of four employees. Think about the impact
5 this big Costco gas station will have on about
6 200-plus employees and their families. I'm
7 also worried about the neighborhood and
8 residents that we serve because they might
9 wake up one day and find my station closed.

10 In appearing before the Board in
11 Zoning Adjusting today, I realize that my
12 voice is a mere whisper among the voices of
13 other gas station operators that are here to
14 testify. I'm here to ask the Board to do the
15 right thing, reject Costco's application.
16 Your disapproval will ensure that this goliath
17 of a gas station will not cause harm to my gas
18 station, my employees and the small local gas
19 stations in D.C.

20 Finally, I am told that Costco
21 also plans to sell alcohol. I wish I could
22 sell alcohol at my Shell station, but it is

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1 against the law. It would be a good way to
2 increase my revenue and there's a lot of money
3 to be made from the sale of alcohol. If the
4 Board allows Costco to build this gasoline
5 facility, this Costco with its liquor license
6 and the proposed gas station will certainly
7 make maximum profit at the expense of small
8 gas stations operators like us. Costco should
9 also be required to abide by the law that
10 prohibits a business from the sale of alcohol,
11 especially hard liquor and gasoline. Thank
12 you.

13 CHAIRMAN JORDAN: Thank you.

14 Thank you for your testimony.

15 Any questions from the Board to
16 this witness?

17 (No audible response.)

18 CHAIRMAN JORDAN: Mr. Freeman?

19 MR. FREEMAN: No, Mr. Chair.

20 CHAIRMAN JORDAN: Thank you very
21 much.

22 MR. ANENIA: Thank you, Mr.

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1 Chairman and Member of the Boards. My name is
2 Alexander Anenia.

3 CHAIRMAN JORDAN: Spell your last
4 name again?

5 MR. ANENIA: A-N-E-N-I-A.

6 CHAIRMAN JORDAN: Okay. Thank
7 you. And you turned over your cards to the
8 court reporter and took the oath?

9 MR. ANENIA: Yes, sir.

10 CHAIRMAN JORDAN: Okay. Please
11 proceed.

12 MR. ANENIA: Okay. I'm the gas
13 station operator at the Shell station at 1830
14 Rhode Island Avenue in Northeast. This
15 station is not far from the proposed Costco
16 site, about 1.8 miles. I have been working at
17 this station for six years. There is a repair
18 bay and a convenience store at my gas station.
19 Currently I'm trying to find a tenant for my
20 repair bay. The last tenant recently left the
21 businesses because it was not making money.
22 A total of eight employees work at this

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1 facility.

2 I am here to request the Board of
3 Zoning Adjustment to deny Costco application
4 for a special exception to construct a large
5 gasoline facility at Fort Lincoln. This is
6 not your ordinary neighborhood gas station
7 like mine. This kind of gasoline station is
8 four or five times larger than my gas station.
9 Many of the counterparts, especially in
10 Maryland, have been -- have seen and
11 experienced the terrible effect of the Costco
12 gas and go stations. That is, fewer
13 customers, slow business, reduced revenue,
14 shrinking profits and loss of jobs.

15 I'm here to support our fellow
16 dealer, especially the 28 independent gas
17 station operators who have gas station close
18 to the proposed Costco site. I urge the Board
19 to consider the financial hardship to my
20 fellow gas station operator if Costco are
21 allowed to build this huge gas and go. I have
22 a family; two children, and this large Costco

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1 gas station will threaten my business and my
2 livelihood.

3 There are plenty of gas station in
4 Fort Lincoln area. This is 44 gas station
5 within a 4-mile range. It simply does not
6 make sense for Costco to build a 16-nozzle, 4-
7 island, double-pump gas station that can
8 dispense 1,000 an hour, up to 24,000 gallon a
9 day. This huge Costco gasoline operator --
10 operation will hurt my fellow dealers and me
11 down the road.

12 I respectfully ask the Board
13 Members to be considerate of these small
14 neighborhood station and their operator and
15 not grant Costco any special exception to
16 build the gas and go gas station. And I thank
17 you.

18 CHAIRMAN JORDAN: Thank you for
19 your testimony.

20 Questions, Board? Ms. Sorg?

21 VICE CHAIR SORG: Mr. Chairman,
22 I'll ask one question.

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1 Thank you for your testimony, Mr.
2 Anenia. We definitely appreciate hearing from
3 small business owners.

4 To the extent that you can speak
5 for yourself and perhaps your fellow
6 association members; I'm not sure, but the
7 applicant has indicated that only members of
8 Costco will be able to fill their gas tanks at
9 the Costco station. How does that play into
10 the extent to which you feel threatened by the
11 large scale gas station that's coming? Do you
12 think that the people that are coming
13 regularly to you will join -- you know, pay
14 the dues and join up and go over there? Or do
15 you think that that will temper how much loss
16 of customers that you might have?

17 MR. ANENIA: I believe there are a
18 lot of people are Costco member, including
19 myself.

20 VICE CHAIR SORG: Oh, I'm not, so
21 I don't know. Sorry, Costco.

22 CHAIRMAN JORDAN: Seems we have a

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1 conflict. No, no.

2 MR. ANENIA: So I'm load the van.
3 I have a convenience store less than two mile
4 from the proposed station, which is good for
5 the neighborhood, but I'm against for the gas
6 station. I mean, they're going to give a
7 cheaper price for the neighborhood. I know --
8 I'm sure I'm going to close that convenience
9 store that I work all my life for, but at
10 least, you know, if they open the gas station
11 -- I don't mind closing the grocery store and
12 I'm going to be forced to close the gas
13 station, too. And it is going to be real hard
14 for me and my family.

15 VICE CHAIR SORG: So you think
16 based on what you understand of your customers
17 that they're going to probably join up and you
18 will see them move away to the new gas
19 station?

20 MR. ANENIA: True.

21 VICE CHAIR SORG: Okay. Just
22 asking. Thank you.

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1 CHAIRMAN JORDAN: Let me ask you,
2 do the independent gas association do joint
3 buying of gas, or everybody buys separately
4 from different people?

5 MR. ANENIA: Say that again?

6 CHAIRMAN JORDAN: Do you joint buy
7 gas?

8 MR. ANENIA: Joint buy gas?

9 CHAIRMAN JORDAN: Yes, wholesale.
10 Do you guys buy gas collectively or do you
11 individually have your relationships with
12 different gas providers?

13 MR. ANENIA: We have independent
14 providers.

15 CHAIRMAN JORDAN: All right. Any
16 other questions?

17 COMMISSIONER TURNBULL: I just
18 have one. I'm just curious, do you -- as an
19 independent do you offer incentives for cash
20 sales rather than charge?

21 MR. ANENIA: I take both. I do
22 charge and --

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1 COMMISSIONER TURNBULL: But it's
2 the same price?

3 MR. ANENIA: The same price.

4 COMMISSIONER TURNBULL: So you got
5 a problem with guys like me. I don't belong
6 to Costco. I look for cash -- if a gas
7 station is going to give me cheaper gas, I'll
8 buy cash. And that's just me. It's just I'm
9 a penny pincher and I look for the best deal.
10 You know, I don't belong to Costco or any of
11 them. I just -- I'm -- yes, you know, I have
12 several gas stations I go to on a regular
13 basis and if their prices are competitive,
14 I'll buy it. And I'm good friends with a lot
15 of the gas stations, but if the guy down the
16 street's going to give me a nickel off for
17 paying cash, that's what I'm going to do. I
18 mean, but that's just me. I'm just a -- I'm
19 a maverick buyer, I guess.

20 CHAIRMAN JORDAN: Any other
21 questions by the Board?

22 (No audible response.)

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1 CHAIRMAN JORDAN: Mr. Freeman?

2 MR. FREEMAN: No, Mr. Chair.

3 CHAIRMAN JORDAN: Thank you very
4 much for your testimony --

5 MR. ANENIA: Thank you.

6 CHAIRMAN JORDAN: -- taking your
7 time for being us today.

8 Is there any other witnesses from
9 the --

10 MS. SINCAVAGE: Mr. Chairman, we
11 don't have any further witnesses, but we'd
12 like to make a closing statement.

13 CHAIRMAN JORDAN: Go ahead,
14 because you're still within your time to
15 present your case.

16 MS. SINCAVAGE: Okay. So, thank
17 you. My name's Jennifer Sincavage. I'm from
18 Manatt, Phelps & Phillips here on behalf of
19 the Alliance. And the Board has made it clear
20 that its determination today is restricted to
21 the Zoning Regulations. And as Mr. Ray
22 pointed out, section 101.4(d) is part of the

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1 Zoning Regulations. And it says that the
2 provisions of any statute or other municipal
3 regulations shall govern whenever they impose
4 higher standards than are required by this
5 title. And 25-313(d) of the D.C. Code
6 prohibits the sale gasoline and alcohol at the
7 same location. And we're not asking that the
8 BZA interpret that regulation, only that it
9 hold its determination today in abeyance until
10 ABRA can properly determine whether Costco can
11 sell both alcohol and gasoline at its location
12 as it's proposed.

13 John?

14 MR. RAY: Thank you, Mr. Chairman.
15 That concludes our presentation.

16 CHAIRMAN JORDAN: Okay. Thank
17 you.

18 Is there any other testimony from
19 anyone in the audience who wants to speak in
20 opposition? Come forward, please. And did
21 you take the oath of office -- oath of
22 affirmation or -- did you? No. Well, Mr.

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1 Moy, please?

2 MR. MOY: Would be my pleasure.

3 CHAIRMAN JORDAN: Let me. Mr.

4 Moy, I'm sorry.

5 Is there anyone else who's going
6 to testify in opposition who has not taken the
7 oath? If you've taken the oath, then -- okay.
8 All right. Then we just have one person.

9 Okay. Go ahead. I'm sorry.

10 Start off again.

11 MR. MOY: No, not at all. Not at
12 all.

13 (Whereupon, the witnesses were
14 sworn.)

15 CHAIRMAN JORDAN: We had a summer
16 break over August and this is our first day
17 back, and it's been a heck of a day. This
18 morning just kind of threw us for a loop and
19 it's been a long day.

20 Did you provide -- did you
21 complete the witness cards

22 MS. STOKES: Yes, I did.

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1 CHAIRMAN JORDAN: -- and give them
2 to the court reporter, please? Okay. Thank
3 you. Would you tell us your name?

4 MS. STOKES: All right. I'm
5 Gloria Stokes and I'm currently a resident of
6 the Fort Lincoln community and have been for
7 over 30 years. And I'm pleased to testify
8 today relative to the Costco Warehouse
9 application for special exception to build a
10 gas station in the Fort Lincoln shopping
11 center.

12 While I am not in opposition to
13 the Costco Warehouse, at this time I am not in
14 agreement with the special exception to build
15 a Costco gas station. It appears that the
16 traffic study conducted under the auspices of
17 the D.C. Department of Transportation is
18 insufficient and limited. And the inclusion
19 of a gas station would create problems to
20 residents of the community until
21 transportation issues are adequately
22 addressed.

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1 During presentations made to the
2 Fort Lincoln community by representatives of
3 Wells & Associates, despite being asked and
4 questioned from several persons about the
5 methodology used, it was never explained.
6 Instead, the community was presented data on
7 a PowerPoint with no handouts indicating the
8 number of additional trips projected to the
9 area created by the inclusion of a gas station
10 to the proposed project.

11 The projection was based on some
12 type of observation made by the researchers at
13 two identified sites. But again the audience
14 was not informed on the following: Days of
15 the week the data were collected; if the data
16 collected were traffic flowing east to west or
17 vice versa; or the time frame the study was
18 conducted. Moreover, a time series method of
19 collecting data. Data collected at different
20 times, but at the same point within a given
21 time period, 6 to 12 months of time, may have
22 been a better method to be utilized in this

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1 situation.

2 This data was limited to two
3 entrances into the Fort Lincoln community.
4 The two closet to the shopping center; 33
5 Street entrance and the V Street entrance,
6 which there's no entrance to the community off
7 of V Street, but that street does dump into
8 South Dakota Avenue. The Fort Lincoln
9 community has five entrances. The 31st and
10 33rd entrances off South Dakota Avenue, two
11 entrances off of Bladensburg and one entrance
12 off of New York Avenue.

13 It should be noted that the
14 community is surrounded by three major streets
15 that transport many commuters in and out of
16 the city daily. So why was the transportation
17 study limited to the 33rd Street entrance to
18 the community, because that exit or entrance
19 into the community affects all of the
20 entrances, depending on whether or not you're
21 going east or west on South Dakota Avenue into
22 the Fort Lincoln community.

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1 It appears to truly have an
2 adequate picture of the effects of the
3 shopping center, to include the proposed gas
4 station, all entrances into the community must
5 be assessed because all people us all
6 entrances, especially the entrance at Eastern
7 Avenue and Bladensburg, New York Avenue and
8 31st and 33rd entrance into the community on
9 any given day at any given time. And I don't
10 know if you all are familiar with that area,
11 but you know, New York Avenue brings people in
12 and Bladensburg, 202 from Maryland, dumps in.
13 So those entrances are very busy at all times.

14 Moreover, additional factors
15 affect the traffic flow into the community.
16 The community on one side is encased by the
17 Fort Lincoln community cemetery, so there are
18 frequently long burial funeral processions
19 that go into the entrance on South Dakota or
20 Bladensburg into the Fort Lincoln cemetery,
21 which tends to have an effect upon the flow of
22 the community.

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1 Also, the Department of Recreation
2 provides on a fee basis rental to community
3 organizations to use the park which is located
4 on Fort Lincoln Drive, the tennis courts and
5 the baseball fields, which in the evenings and
6 on weekends, in season, that's additional
7 traffic to the community.

8 The proposed improvements by the
9 Department of Transportation are not adequate
10 and will only negatively affect the quality of
11 life for residents, especially those who live
12 on one of the thoroughfares. Moreover, in
13 addition, to collect trip data, it is -- in
14 addition to collecting trip data, it is
15 suggested that focus groups be conducted with
16 community residents to get a complete picture
17 of the impact of the total development on the
18 community.

19 CHAIRMAN JORDAN: Ms. Stokes, I'm
20 going to have to ask you to wrap up. Your
21 three minutes have -- you've exceeded it,
22 but --

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1 MS. STOKES: Okay. I've got one
2 sentence. I'll be through.

3 Researchers and evaluators today
4 see the merits of having both qualitative and
5 quantitative data when critical decisions have
6 to be made that will affect large numbers of
7 people. I'm asking that no decision be made
8 on the Costco project until more data have
9 been collected on the affects of changes on
10 the Fort Lincoln community.

11 CHAIRMAN JORDAN: I really thank
12 you. I got a awful lot of relevant testimony.
13 Thank you very much for shortening your
14 statement to three minutes.

15 Any questions to this witness?

16 (No audible response.)

17 CHAIRMAN JORDAN: Let me ask you,
18 where is the cemetery, the address of the
19 cemetery?

20 MS. STOKES: The cemetery is
21 directly next to the Fort Lincoln community.
22 If you're going down Bladensburg eastbound, it

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1 is a huge Fort Lincoln cemetery right there.
2 And it's a very big cemetery and they have
3 funerals and burials all day long. So when
4 that traffic comes into Fort Lincoln to go to
5 the cemetery, the traffic is held up by
6 that --

7 CHAIRMAN JORDAN: Oh, it's on the
8 other side? Okay.

9 MS. STOKES: -- funeral
10 procession.

11 CHAIRMAN JORDAN: Got it.

12 MS. STOKES: Also, sir, there are
13 three buses that are -- make trips in the
14 community every 20 minutes. So when they have
15 to come out of the community and go onto South
16 Dakota, that's another hindrance.

17 CHAIRMAN JORDAN: Then the backup
18 there from Bladensburg and kind of get boxed
19 in? Is that what you're saying?

20 MS. STOKES: And also up --
21 sometimes the traffic is backed up to South
22 Dakota Avenue.

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1 CHAIRMAN JORDAN: Got you. All
2 right. Thank you.

3 MS. STOKES: Okay. Thank you.

4 CHAIRMAN JORDAN: Is there any
5 questions of this witness?

6 (No audible response.)

7 CHAIRMAN JORDAN: Any questions
8 from the applicant?

9 (No audible response.)

10 CHAIRMAN JORDAN: Questions from
11 the independent dealers?

12 (No audible response.)

13 CHAIRMAN JORDAN: Okay. All
14 right. Any other person that wants to testify
15 in opposition? Yes, come up, please.

16 Good evening.

17 MR. WILLIAMS: Good evening.

18 Well, my name is Michael Williams. And what
19 I want to do is present some issues.

20 CHAIRMAN JORDAN: Mr. Williams,
21 did you provide the court reporter your --

22 MR. WILLIAMS: Yes, I did, and I

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1 took the oath.

2 CHAIRMAN JORDAN: All right.

3 Thank you. You have three --

4 MR. WILLIAMS: The first issue is
5 that justification for a facility of this
6 magnitude -- what I want to do is paint a
7 picture what this looks like. I, among other
8 things, am a member of Costco. I shop at
9 Beltsville, long before this was even planned.
10 Been doing it for years. I don't even go to
11 the gas station. The gas station in
12 Beltsville -- if you've ever gone down 95 and
13 had to gas up on a holiday and you sit there
14 for an eternity, that's what the gas station
15 looks like. I wouldn't even call it a gas
16 station. It's a crime to call this a gas
17 station. It does not fit.

18 When we think of a gas station is
19 what these gentlemen have been talking about,
20 what we're familiar with, community gas
21 stations. This looks like something off of 95
22 that you dump into a community and have long,

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1 long, extremely long lines of patrons trying
2 to get gas because at 95 you have to if you
3 want to go down the road. Down here it's so
4 cheap. That's why they're there.

5 CHAIRMAN JORDAN: I'm going to
6 back up or pull back your mic because you're
7 kind of --

8 MR. WILLIAMS: All right. So
9 that's what -- that's the picture. If you've
10 ever gone down 95 and at that -- north up the
11 turnpike, up 95, Delaware, Maryland on a
12 weekend, on a Sunday or a Friday, or a
13 holiday, that's what this looks like. Fifty,
14 sixty cars lined up in rows. That's what it
15 looks like in Beltsville. I would not go. I
16 shop there when I go. I've been over there
17 towards the gas station. It even smells. The
18 toxic smell is horrendous. That's what's
19 being proposed to dump at Fort Lincoln.

20 The traffic. You cannot go down
21 South Dakota Avenue right now. It's 5:00.
22 You dare not go down South Dakota Avenue at

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1 this time. Right now, before this facility's
2 been built, it's jam-packed. I live in North
3 Michigan Park. I live in Ward 5. Excuse me
4 from my introduction; I skipped that. I don't
5 live too far from there. I have to frequently
6 go down South Dakota, get to 50, the Beltway,
7 etcetera, during rush hour, and particularly
8 the p.m.

9 I'm glad the lady before me spoke
10 about the cemetery. The weekends, you really
11 are -- when you go through Fort Lincoln on
12 weekends, you see a funeral, you better start
13 figuring out how you're going to get around
14 that right now. That is one of the largest
15 cemeteries in this area and on weekends
16 there's two, three funerals going on at the
17 same time. The police have to direct traffic
18 on weekends when there's so many funerals
19 going around and through Fort Lincoln. That
20 exists today, everyday.

21 CHAIRMAN JORDAN: I have to ask
22 you to wrap it up, please.

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1 MR. FREEMAN: All right. I've
2 only got one more, two more points.

3 The liquor store. I used to work
4 for the city council member in the '80s, the
5 late Hilda Mason. I remember coming on -- and
6 this debate was going on then. And it was --
7 the Council made a law eventually, after many,
8 many debates, and resolutions have actually
9 been passed, that the two should be separate.
10 There's a long legislative history behind the
11 justification for having liquor stores and gas
12 stations separate. This is a clear violation
13 of the law from when -- sitting here in the
14 audience, they're trying to run a sham. If in
15 fact what I've heard that they've actually
16 created another corporation for the liquor
17 license and then to sell gas under yet another
18 one, then clearly they're in violation of the
19 intent of the law.

20 CHAIRMAN JORDAN: All right. As I
21 said, you have to wrap up.

22 MR. WILLIAMS: Yes, sir. The last

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1 one is the residents. All right. I heard a
2 study about -- being presented by the
3 proponent about a study in Sterling, Virginia.
4 Well, let me tell you about what's at Fort
5 Lincoln. You have residents there. There are
6 homeowners, there are renters and there are I
7 believe five, six tall senior citizen
8 buildings there. There's one across the
9 street, right across the street from this
10 development. It must be about a 10-story
11 senior citizen building. There's at least
12 three or four other buildings in and around
13 Fort Lincoln, senior citizen buildings. This
14 is not Sterling, Virginia. This isn't even
15 Beltsville where you have merchants up and
16 down Route 1. This is a community of
17 residents. That's the end of my testimony.

18 CHAIRMAN JORDAN: Thank you. Any
19 questions for this witness?

20 (No audible response.)

21 CHAIRMAN JORDAN: Thank you. Mr.
22 Freeman?

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1 MR. FREEMAN: No, Mr. Chair.

2 CHAIRMAN JORDAN: Mr. Ray?

3 MR. RAY: No.

4 CHAIRMAN JORDAN: Thank you for
5 your testimony.

6 Anyone else? Yes, we have another
7 person.

8 You have -- as soon as we reset
9 the clock, you have three minutes.

10 MR. BOTA: Thank you, Your Honor.
11 My name is Stephen. Last name is Bota, B-O-T-
12 A. I own two gas stations adjacent to the
13 site. And for the sake of the record, I'm a
14 Costco proud member, been since 1987. I
15 utilize the facility in Beltsville and one in
16 Arlington. And what I'm here is not to walk
17 against Costco, because Costco is a good
18 neighbor. They actually pay highest in the
19 Council per hour than most of their peers. So
20 I'm very glad we finally have Costco in D.C.

21 The only thing I would like to
22 make sure is we state the facts. They didn't

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1 just come in because all of a sudden they
2 discover there's Washington, D.C. Because we
3 are the nation's capital, so Costco always
4 knew that we exist, because all the laws
5 originate from Washington. So it's not a
6 coincidence that all of a sudden the magic
7 chain stores; Costco, Walmart and the rest
8 have found or discovered Washington, D.C. So
9 what we as the local merchants are saying is
10 there's nothing wrong having competition,
11 because that's the only way you thrive.
12 Competition is good. It's just has to be --
13 which I respect Costco as a competitor. I
14 mean, it's a good competition as an entity.

15 The only problem I have with
16 Costco in this case is if you look at the
17 location in Beltsville, I'm not aware that
18 they sell liquor -- I'm sorry, I'm not aware
19 that they sell alcohol or wine, but their
20 location in Arlington does sell alcohol and
21 wine. They are the -- the two locations look
22 at test value. Arlington does not sell

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1 gasoline, but they actually have gas. The
2 laws in Arlington, I'm not familiar with them,
3 because I'm a D.C. resident. But Arlington
4 allows them to sell beer and wine in volume,
5 but no gas.

6 So what I'm asking for Costco as a
7 good business partner is to do what they did
8 in Arlington. Arlington is basically set up
9 right down in Pentagon City, more or less the
10 same setting as in downtown D.C. D.C. square
11 mileage is very small. So you consider D.C.
12 to be similar with Arlington in the sense that
13 you can walk from end to another. So
14 replicate Arlington and everybody will be
15 happy.

16 Finally, what I'd like to say is
17 what my other gentleman just finished saying
18 about long lines and Costco. I use Costco.
19 I'm a member, executive member for life. I
20 love Costco. It's no discussion. But I've
21 never used their gas. Well, not because I own
22 a gas station. Just because I cannot imagine

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1 people sitting on those lines just to save
2 three cents. You buying more gas just moving
3 from one car to another until you get bumped.
4 Then as a businessman it doesn't make sense
5 and I'm not about to start using.

6 Finally, for those of us who run
7 most gas stations in D.C., my gas station is
8 not -- I'm likely to be affected. I can stand
9 here and say I'm -- I care less they open
10 tomorrow. But we all belong to a niche, and
11 the niche is we actually put most kids in
12 school in D.C. And how do we do that? We the
13 liquor stores -- I mean, we and the liquor
14 stores basically fund D.C. schools by the sell
15 of D.C. Lottery.

16 I'm a big volume of D.C. Lottery
17 in my stores. I care less about the gas. I
18 don't really make money selling gas. I mean,
19 I hope you all know that. I don't. I make
20 three cents which adds up to 2,000 a month at
21 my business location. My other small one
22 maybe 900. This is information you need to

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1 use. We're not sitting here saying we don't
2 like a good competition town because all of a
3 sudden we're going to be beggars. No, we
4 cannot apply for D.C. Lottery license as a
5 sole license holder just come out of the
6 street and -- I would like to do that. That's
7 what I'd really like. I make more money per
8 week than I'm making in six months selling
9 gas, just commission -- my commission on
10 lottery.

11 So what I'm saying, if all of a
12 sudden I'm forced to shut down my gas
13 business, I couldn't stand up as an entity as
14 a D.C. Lottery because the law requires that
15 you have to be doing another business to be an
16 agent of the D.C. Lottery. So the laws are
17 there for a reason.

18 And I'm summarizing by saying,
19 yes, you're shutting down liquor stores by
20 allowing Costco to do beer and wine. It's
21 simple, because CVS is a good example. CVS
22 came in town. They bought Peoples Drug. All

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1 of a sudden, slowly they have applied liquor
2 store licenses and, yes, maybe your Board has
3 approved it. So CVS now sells beer and wine
4 in most -- the ones that I've been given.

5 Yes, I know one. You want an address? It's
6 Tenleytown. So my summary is CVS is a good
7 example. The neighborhood stores do not exist
8 anymore because CVS sells everything. The few
9 liquor stores that used to exist are soon not
10 going to exist because CVS sells the beer and
11 wine now.

12 And finally, if you get rid of us,
13 the local gas station, you're are basically
14 shutting down the D.C. Lottery. I can assure
15 you right now that who are going to be
16 affected are the kids who receive the funds
17 through the sale of D.C. Lottery, and that's
18 -- I'm just sitting here saying it just -- it
19 will not help the long run.

20 CHAIRMAN JORDAN: Thank you.

21 MR. BOTA: Thank you for you --

22 CHAIRMAN JORDAN: Thank you.

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1 Thank you for your testimony. Wait just a
2 second.

3 Any questions of this witness,
4 anyone? Anyone?

5 MR. FREEMAN: No, Mr. Chair.

6 CHAIRMAN JORDAN: Mr. Ray?

7 MR. RAY: No.

8 CHAIRMAN JORDAN: Thank you very
9 much. I've learned a lot from these
10 witnesses.

11 Anyone else? Going once?

12 MR. WILDS: Good afternoon, Mr.
13 Jordan and Board Members.

14 CHAIRMAN JORDAN: Good afternoon.
15 How are you doing?

16 MR. WILDS: My name is Franklin
17 Wilds, a former ANC commissioner 5A-02, former
18 D.C. chairman, a Ward 5 Democrat, and a member
19 of Lamond-Riggs Civic Association. For over
20 25 years I've lived in Upper Northeast of
21 Washington, D.C.

22 I'm here as a small businessman,

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1 and I understand the problems that these
2 businesses are facing. When a giant
3 corporation come in, they change dynamics of
4 the market. And I'll tell you this because I
5 have experienced this. I have a business.
6 Been in business for over 25 years. I had to
7 reduce my price to maintain business. After
8 six months of trying to survive, I had to
9 finally close down because the big boys
10 undercut me. So I had to close my shop down.

11 Secondly, I was the vice-president
12 of Schlitz Beer Company in the city. And for
13 15 years the liquor stores, the class A liquor
14 store, the large giant liquor stores, Calvert
15 Woodleys, they start advertising their
16 product, the liquor. So what happened, the ma
17 and pop outlets start losing business.

18 When we allow a big box or giant
19 corporation come in and change the dynamics of
20 our marketplace, it creates a problem. We
21 start losing jobs, we start losing tax
22 dollars. The big boys are going to pay so

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1 much. They're getting the write-offs. Where
2 a mom/pop store, there's so much they can
3 write off. And I understand this and I'm
4 speaking as a business person. It's very
5 difficult for us to survive when we are
6 competing against the big guys.

7 So what we need to look at, we
8 should reject Costco gas and go. We should
9 reject a liquor store because you have five
10 liquor stores in that area on Bladensburg
11 Road, Rhode Island Avenue, and several gas
12 stores. Mr. Turnbull asked about a discount.
13 Yes, Shell gas station give you a discount if
14 you shop at Giant. You get points and you can
15 get gas as a discount. So when we let a big
16 company like Costco come in, buy up our
17 neighborhood, they create a problem. There's
18 no trust in our community between the
19 corporations and our citizens because they're
20 coming in offering all kinds of deals to
21 people that support them.

22 I'm here on my own, not

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1 representing any company or any organization.
2 I'm here as a citizen of Ward 5, less that
3 four miles from where Costco. And like the
4 young man say, I'm a Costco card holder, yes.
5 I do not buy gas from them. Same reason. The
6 lines. It's the lines.

7 And so we need to look at that.
8 And when you put a liquor store and a beer
9 store -- I mean a liquor store a gas station
10 together, you're asking for an explosion.

11 I want to thank you very much for
12 letting me testify this afternoon. Thank you.

13 CHAIRMAN JORDAN: Appreciate it.
14 Appreciate it, Mr. Wilds.

15 Any questions, anyone?

16 (No audible response.)

17 CHAIRMAN JORDAN: Okay. Thanks.
18 Appreciate it. And thank you for being to the
19 second. I know you know what you're doing.

20 Next, please? It's old home day.

21 MR. JONES: Yes. Yes.

22 CHAIRMAN JORDAN: Okay, Mark. Go

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1 ahead.

2 MR. JONES: Good afternoon,
3 Chairman Jordan, other Members of the Board of
4 Zoning Adjustment. My name is Mark Jones and
5 I've lived in Ward 5 for more than 41 years.
6 I'm vice-president of the State Board of
7 Education and the elected school board member
8 in Ward 5, a Ward 5 business owner, and a
9 former ANC commissioner.

10 I'm here today to express my
11 opposition to the application request for a
12 special exception to build a large gas and go
13 station at Fort Lincoln. I must admit I was
14 unaware of the can gas sell but no alcohol, or
15 vice versa, can sell alcohol but no gas laws
16 in the District of Columbia, but I believe
17 it's a good law and a sound public policy.

18 While I think it is a great idea
19 to have Costco at the Shops at South Dakota
20 Crossings, because I too am an executive card
21 member of Costco -- but I'd like to address
22 the issues whether there is a need for a 16-

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1 pump, 8-lane gas and go motor fuel structure
2 on this 2-acre site. I strongly feel the
3 issues involving D.C. Code section 25-313
4 should be resolved before the decision to
5 grant or deny a special exception is made.

6 Chairman Jordan, I agree with you
7 that your decision is one thing and that
8 ABRA's decision is another, but I think it
9 makes good public policy for our community
10 that this decision is not made separately and
11 in vacuum. I believe that it our
12 responsibility as city leaders that we must
13 require companies to abide by the law, and it
14 is the law that gas station operators cannot
15 own ABC licenses.

16 Now as a school board member, I
17 want to remind the Board that Fort Lincoln is
18 mostly a residential area with an elementary
19 school close by, Thurgood Marshall Elementary
20 School, the Fort Lincoln Recreation Center
21 with its outdoor and indoor swimming pools,
22 and one of the most premier senior centers,

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1 the Theodore Hagans Cultural Center. And more
2 housing is being built as we speak.

3 So why would Costco Corporation
4 come in and decide to put a large gas and go
5 gasoline station here? As a benefit to the
6 community -- it is a benefit to Costco's
7 bottom line, not our community. It is as
8 simple as that. There are plenty of gas and
9 go stations in the Fort Lincoln area and the
10 District. We need more full station -- full-
11 service stations, not gas and gos.

12 If they amend their application
13 for just gas, I'm in support, but not gas,
14 beer, wine and liquor. There is no Costco in
15 this region that has all of that. This will
16 be the very first. There are none in Maryland
17 that serve beer, wine and spirits and
18 gasoline. Only in Virginia. And I must
19 admit, I've been to the Costco in Sterling and
20 those traffic studies -- and I'm certainly not
21 a professional in traffic studies, but clearly
22 I can see that the traffic patterns that are

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1 in Sterling are very different from the
2 traffic patterns that will exist at Fort
3 Lincoln.

4 Now in the interest in time --

5 CHAIRMAN JORDAN: Yes, begin to
6 wrap up for us, please.

7 MR. JONES: Yes, sir. So in
8 conclusion, and lastly, I just want to speak
9 to the other gentleman's comment, because I
10 was at one point the chief operating officer
11 of the D.C. Lottery, we must realize we are
12 going to put businesses out of business. The
13 people who will shop at Costco gas and go are
14 the people like us who are bankable, but we're
15 going to leave out many of our other citizens.
16 Because it's not us, doesn't mean we don't
17 have a responsibility to care for them.

18 Those people who are not bankable,
19 don't have Costco cards. Those people who are
20 not bankable, don't have credit cards, those
21 people who don't have bank debt cards. Those
22 are the people in the demographics who will be

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1 forced to go further to buy their gas because
2 they only have to pay cash. They can't afford
3 a Costco card or a bank card to make that
4 transaction. Thus, those other service
5 stations are going to be left with the lower
6 demographic of their market, not the people
7 who can fill up, not you and I, but the person
8 who will be filling up -- or just coming to
9 the station to buy \$4 to get to work, or maybe
10 get to home.

11 So in conclusion, I hope the Board
12 will consider the long-term ramifications of
13 granting Costco a special exception. Thank
14 you for giving me the opportunity to speak.

15 CHAIRMAN JORDAN: All right.
16 Thank you. We appreciate your testimony.
17 Any questions for Mr. Jones,
18 anyone?

19 (No audible response.)

20 CHAIRMAN JORDAN: No? Thank you.
21 I think we have one more person.
22 Yes?

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1 MS. FORD: Hello and thank you for
2 giving me the opportunity to speak. My name's
3 Natalie Ford and I'm a resident of Fort
4 Lincoln. Forgive if I ramble. I was up all
5 night worrying about this meeting today and
6 feeling as if I had no time to prepare
7 adequately.

8 I attended numerous meetings at
9 the Fort Lincoln Association.

10 I first moved to the neighborhood
11 I guess about eight years ago -- five years
12 ago. And I lived at the bottom part of Fort
13 Lincoln on Banneker Drive and I was given an
14 incentive to move to the top. I'm a breast
15 cancer survivor and environmental issues and
16 health issues are very, very important to me.
17 I have followed what has happened in
18 Kensington in terms of their reservations
19 about health issues, about traffic, about
20 pollution, about -- and in this case we had
21 marshland that was basically shorn to nothing.
22 Trees are gone. Animals are gone.

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1 And I voted for Costco coming into
2 the area. I appreciate what they're doing.
3 I understand what this will do in terms of
4 economic development for our area, but having
5 a gas station, another one -- we have so many.
6 We have so many. We need schools. We need
7 different businesses. And when we're talking
8 about all these traffic problems, I mean we
9 need more buses for people that are moving
10 into the area as it stands. We have those on
11 the road. We'll have vendors coming from all
12 over adding to the traffic situation.

13 I haven't heard anybody talk about
14 the trucks or the tankers that are coming.
15 There's three tankers that are coming a day.
16 What would happen if there was an
17 environmental catastrophe? Let's just say one
18 gets tipped over, one gets hit. We have no
19 kind of evacuation plans for anybody in that
20 area.

21 I live on Fort Lincoln Drive and
22 literally I am boxed in in the event of a

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1 funeral, in the event of a picnic, in the
2 event that BW Parkway is blocked off. Those
3 are some things that we can -- we should
4 consider. It's 9/11. 9/11. Do we have any
5 kind of endorsement from Homeland Security
6 that this kind of development is safe?

7 I have a couple of other little
8 issues, and --

9 CHAIRMAN JORDAN: You have --

10 MS. FORD: -- forgive me, I'll run
11 them down as quickly as I can.

12 CHAIRMAN JORDAN: Well, you're
13 going to have -- I'm going to give you 30
14 seconds.

15 MS. FORD: Thirty seconds? Given
16 the kinds of traffic that are coming here,
17 does Costco have the obligation to ensure that
18 our infrastructure in this area is going to be
19 adequate, that it's not damaged, that it can
20 support the type of traffic that we're talking
21 about?

22 And the last thing that I want to

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1 say is you as a group, you have a moral
2 conscience and a moral obligation to everyone,
3 all of your citizens. If you make a precedent
4 to have an exception in this case, you owe it
5 to other businesses. It should not be borne
6 on how much money you have, how much legal
7 counsel you can bring here, how many experts
8 you have. This is a community. We have a
9 legacy that we want to give to our children,
10 and it shouldn't be determined by a super gas
11 station that belongs on a parkway or something
12 that you find on the way to New Jersey. This
13 is a community.

14 Thank you for your consideration
15 and please, please think of all of us, small
16 businesses and residents.

17 CHAIRMAN JORDAN: Thank you.

18 Any questions of this witness,
19 anyone?

20 (No audible response.)

21 CHAIRMAN JORDAN: Thank you.

22 MS. FORD: Can I say one more

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1 thing?

2 CHAIRMAN JORDAN: No, no,
3 you're --

4 MS. FORD: Just one more thing.
5 One more thing. Just two seconds.

6 CHAIRMAN JORDAN: How about --

7 MS. FORD: Please, please. It's
8 very important.

9 CHAIRMAN JORDAN: Go ahead. Go
10 ahead.

11 MS. FORD: I was at the meeting
12 yesterday and there were many of us that were
13 disenfranchised. The meeting was three hours
14 long. There were so many people there with
15 concerns asking for studies, environmental
16 assessments, traffic reports. They were never
17 given to us. A lot of the senior citizens
18 came, and rightfully so, they were bused in.
19 A lot of the people that have families, single
20 people. We were told we could vote then.

21 CHAIRMAN JORDAN: We're beyond two
22 seconds now.

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1 MS. FORD: I'm sorry. We were
2 told we could vote.

3 CHAIRMAN JORDAN: I got the gist
4 of it. Thank you.

5 MS. FORD: And I'd like to see
6 another vote done on a transparent ballot
7 basis, because the community didn't agree.

8 CHAIRMAN JORDAN: Mr. Freeman,
9 I've heard a couple of times that the traffic
10 study was not given to the community. Have we
11 given --

12 MR. FREEMAN: We can --

13 CHAIRMAN JORDAN: -- the various
14 entities or organizations in the community the
15 traffic study?

16 MR. FREEMAN: We have had at least
17 four to five community meetings --

18 CHAIRMAN JORDAN: So they've been
19 available?

20 MR. FREEMAN: -- with -- all our
21 team has been there. The traffic study's in
22 the record.

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1 CHAIRMAN JORDAN: Okay.

2 MR. FREEMAN: So I'm not sure of
3 the basis of the comment.

4 CHAIRMAN JORDAN: All right.
5 Thanks.

6 Well, let me have your wrap-up,
7 please, Mr. Freeman.

8 MR. FREEMAN: We do have some
9 rebuttal that we'd like to present here.

10 You've already decided that the
11 ABC issues are not relevant to this
12 proceeding, and that is in fact the correct
13 ruling. So we would ask that to the extent
14 that you're going to make a decision that we
15 do that based on the special exception
16 standards, and the ABC Board will deal with
17 the ABC issues.

18 I know this isn't relevant, but I
19 think there are a lot of people here who have
20 complained of that, so it's important to note.
21 The gas station is on a separate lot from the
22 warehouse store. The gas station has a

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1 different address and the gas station has a
2 different legal owner. Alcohol will not be
3 sold at the gas station. That's a fact worth
4 clearing up, because I think that might be
5 unclear.

6 Again, you heard how we meet the
7 special exception standards. We're going to
8 respond to a couple of those, the comments
9 that we heard regarding the special exception
10 standards. There is no need requirement.
11 There is no requirement to show that you're
12 the only gas station within X number of feet
13 from other gas stations. You don't have to
14 establish a need for the gas station. You
15 have to establish that you meet the special
16 exception standards, which again I posit that
17 we have today.

18 In terms of -- we've heard a lot
19 about generalized environmental and safety
20 features, but we have specific information our
21 materials. Again, we didn't go through that
22 today. I'm happy to put that testimony on

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1 today. We've got specific information in our
2 materials about the safety, the environmental
3 features of our site. Our gas detection/gas
4 leak monitors are 30 times more sensitive to
5 the federal requirement. Thirty times more
6 sensitive.

7 You heard a lot from folks about
8 economic competition. I would let the Board
9 note that you have found in other cases that
10 economic competition; i.e., me coming in and
11 saying you're going to put me out of business,
12 that's not a legitimate factor for the BZA to
13 consider, and a number of courts across the
14 country have come to that determination.

15 Economic competition is not a proper argument
16 for denial of an application. And I am citing
17 a BZA case. So that -- the proper standards
18 are those as set forth in the Zoning
19 Regulations.

20 I'll turn to Renee -- I'm sorry,
21 Ms. Hanson to speak about -- well, let's do
22 this: Let's turn to Jami Milanovich, because

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1 most of the testimony that was relevant --

2 CHAIRMAN JORDAN: About what?
3 What is not going to be repetitive that we
4 don't -- that we need to hear again?

5 MR. FREEMAN: Well, there are a
6 number of things that were inaccurate as
7 stated by Mr. Joe Mehra, so I would like to
8 rebut some of his testimony, because he
9 actually went into detail about how our study
10 was flawed, and we would like to respond to
11 that.

12 CHAIRMAN JORDAN: All right. Go
13 ahead.

14 MS. MILANOVICH: Thank you. I
15 just want to quickly go through a few points
16 that Mr. Mehra raised.

17 He had indicated that the analysis
18 -- the volumes in our analysis reports found
19 in the technical appendices were incorrect.
20 We actually spent several minutes after his
21 testimony and in fact confirmed that the
22 numbers that were plugged into the analysis

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1 software that we use are in fact correct.

2 He had indicated that some of the
3 traffic volumes in our study in some cases
4 were less with the gas station than without
5 the gas station, and I would just note that
6 that is due to pass-by traffic. So if are on
7 your way home from work and you're stopping at
8 the gas station; say you're traveling
9 southbound on South Dakota Avenue, on a normal
10 day you would continue straight through the
11 intersection of South Dakota Avenue and 33rd
12 Place. If you happen to decide to stop at the
13 gas station on that particular day, rather
14 than traveling straight through, you would
15 turn left. So in our traffic study, we added
16 that volume to the left turn and subtracted it
17 from the through movement. And I think that's
18 where he's noting that there was some decrease
19 associated with the gas station.

20 Third, Mr. Mehra asserted that we
21 did not add enough traffic to the 33rd
22 Place/South Dakota Avenue intersection. In

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1 fact, we added 139 trips in the morning peak
2 hour turning in and out of 33rd Place at its
3 intersection with South Dakota Avenue. And
4 during the p.m. peak hour we added 161 trips
5 turning in and out of 33rd Place at its
6 intersection with South Dakota Avenue.

7 Fourth, Mr. Mehra suggested that
8 we had data in our study that indicated only
9 10 percent of the Costco trips interact with
10 the other retail stores on site. And he
11 indicated that that contradicted the 40
12 percent that we used in estimating the traffic
13 for the Shops at Dakota Crossing. I do want
14 to point out that the 10 percent that Mr.
15 Mehra referenced is actually a 10 percent
16 interaction between the gas pumps and other
17 stores in the shopping center, not the Costco
18 store and other stores in the shopping center.

19 He also discussed the left-turn
20 queue. I would like to note that as our study
21 shows the traffic associated with the gas
22 pumps will add just one vehicle length to that

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1 southbound left-turn queue during the peak
2 hours from 33rd Place onto South Dakota
3 Avenue. And as I indicated in my testimony,
4 we did work with DDoT and respond to DDoT's
5 comment and actually recommended some
6 improvements to accommodate that queue.

7 Trucks. We indicated in our
8 traffic study that Costco anticipates two to
9 three trucks per day. Those trucks will come
10 in off of New York Avenue, use the site
11 driveway directly from that off-ramp from New
12 York Avenue, enter the site that way. And
13 then they will exit by turning out of the site
14 onto 33rd Place and down to South Dakota
15 Avenue. So we're keeping the trucks off of
16 the residential streets. And the applicant
17 has agreed -- committed to the community that
18 they will enforce their trucks using that
19 particular route.

20 And finally, we heard some
21 comparisons to the Beltsville store, and I
22 just want to note for the record that there

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1 are significant differences between the layout
2 for the gas facility at the Beltsville store
3 and the layout that's proposed at Fort
4 Lincoln. The Beltsville store was built about
5 14 years ago. Over the years Costco has
6 really perfected the layout and made it more
7 efficient.

8 The Beltsville store, the pumps
9 are actually stacked three deep, whereas at
10 this store they'll be only two deep. The
11 Beltsville store was a very tight site, so the
12 bypass lane is actually very tight and you're
13 almost having to parallel park if you want to
14 pull in between two cars at the first and the
15 last pump in the three-pump queue, whereas as
16 the Fort Lincoln store -- or facility the
17 bypass lanes are much wider and much easier to
18 bypass. So it really will operate more
19 efficiently than the Beltsville store does.

20 MR. FREEMAN: We'd like to have
21 Ms. Hanson just -- you heard a lot of
22 testimony here about the Montgomery County,

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1 Wheaton Costco gas station. Can -- she'd just
2 like to make a couple of points on that.

3 MS. HANSON: Our Wheaton, Maryland
4 project has been in the news quite a bit
5 lately as being really close to residential
6 areas. The residents actually are about 150
7 feet away, and they were trying to go through
8 and try to get a zone change to keep us -- I
9 guess the gas station even further away from
10 that. The Zoning Board recently changed that
11 to be 300 feet from an actual public space,
12 like a recreational space. Our store -- or
13 actually the gas station; here you can see on
14 the plans, are over 900 feet from the closest
15 residential area. So even -- we'd be
16 conforming to whatever Montgomery County had
17 decided on a couple months ago.

18 MR. FREEMAN: It's actually a
19 little hard to read. Some folks also
20 mentioned a community center. So if we could
21 have Kolia Elion just read out loud the
22 distances to the different uses from the gas

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1 station site, that would be helpful.

2 MR. ELION: Thank you. My name is
3 Kolas Elion, the architect for the project as
4 well. Going -- I'm basically going to go
5 counter-clockwise from the actual fuel
6 facility warehouse. The -- in the lower
7 corner, you can see down there, you can see
8 New York Avenue. Going straight up, that's
9 the new residents, the town homes that are
10 actually being built currently. We're 965
11 feet from the actual -- the corner of the
12 canopy and the tanks down to those -- as the
13 crow flies to those residences. Going again
14 counter-clockwise, 2,850 feet to Marshall
15 Elementary School, which is the furthest one
16 away. Then again, 2,310 to the community
17 pool, which is a community center. Two
18 thousand three hundred and fifteen feet to the
19 day care and recreation center. And then
20 again, all the way down to the end where we
21 have the closets residents who are currently
22 -- the closest town homes are currently there.

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1 It's 1,500 feet to the -- to that residential
2 area as well.

3 MR. FREEMAN: And just for the
4 purposes of comparison; and I can submit this
5 for the record, the two existing gas stations
6 on South Dakota Avenue, I think you heard;
7 they're listed, they're 190 feet away from the
8 closest residence, 90 feet from a park. And
9 I can submit that for the record. So our
10 distances are substantially different --
11 substantially more than the distances from
12 those existing gas stations, some of which
13 we've heard from today.

14 I'd also like to have Mr. Sher --
15 you heard Mr. Ray and his colleagues refer to
16 some increased standard under section 104.4 of
17 the Zoning Regulations. I'd like to respond
18 to that, if we might.

19 MR. SHER: Mr. Chairman, I --
20 there are two sections there; 101.3 and 101.4,
21 and they do not in my opinion apply any
22 greater standard for this Board to apply in

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1 judging a special exception application. It
2 says where these regulations, meaning the
3 Zoning Regulations, are more restrictive, they
4 control whatever happens. If there is another
5 regulation that controls something else, then
6 it governs. In other words, you have to
7 satisfy whatever is the most restrictive
8 requirement wherever you happen to go. So
9 when the District government reviews in its
10 entirety all of the permits and all of the
11 approval necessary for this facility,
12 whichever gets to be more restrictive is
13 what's going to control.

14 So if the ABC regulations are more
15 restrictive than the Zoning Regulations, they
16 will control in that instance. If the
17 environmental regulations are more
18 restrictive, they will control. If the Zoning
19 Regulations impose a greater setback of some
20 sort, they will control. But that doesn't
21 give this Board any additional jurisdiction to
22 apply other regulations. It's the

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1 responsibility of DDOE, ABC Board or whoever
2 to apply their own regulations and figure out
3 what goes on.

4 As Mr. Freeman took my thunder in
5 his remarks a few minutes ago, your
6 jurisdiction is constrained to what the Zoning
7 Regulations require you to determine. And I
8 believe that we have, and I'm not going to go
9 through it again. We have specifically
10 addressed the requirements of the regulations
11 that apply here, and I believe we have met all
12 of those.

13 MR. FREEMAN: That concludes our
14 rebuttal. And I don't know if we're at the
15 point for a closing statement, but if we are,
16 I'm prepared.

17 CHAIRMAN JORDAN: I think your
18 rebuttal pretty much closed, didn't it? I
19 think it did.

20 MR. FREEMAN: Yes. Yes.

21 CHAIRMAN JORDAN: You feel the
22 need that you really need to close?

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1 MR. FREEMAN: I just want to
2 reiterate that we meet all of the standards.
3 I know you've heard a lot of testimony.

4 CHAIRMAN JORDAN: Just give me one
5 second, please.

6 All right. Let's do one-minute
7 closings. One-minute closing.

8 MR. FREEMAN: We're actually --
9 we'll just rest on our last presentation.

10 CHAIRMAN JORDAN: Mr. Ray, one-
11 minute closing? And I'm holding strict to one
12 minutes, folks. One minute, not one hour.

13 MR. RAY: Well, Mr. --

14 CHAIRMAN JORDAN: Oh, I got to put
15 you on the clock. Hold it one second, please.

16 MR. RAY: You gave them all --

17 CHAIRMAN JORDAN: He has a right
18 to rebuttal under the rules. And I'm allowing
19 you all to close, which is not necessarily
20 under the rules, so I'm letting you do that.
21 So our rules are very strict here about what's
22 required under the regulations. And he had a

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1 right to present rebuttal.

2 You have one minute to close, if
3 you want, beginning now.

4 MR. RAY: Mr. Chairman, I'd like
5 to direct the record -- she indicated that our
6 traffic effort testified that the gas station
7 would produce less traffic, and that is not
8 what he stated, and the statement will be
9 found more specifically on page 1, paragraph
10 2, as to what was actually stated. And we
11 want to point out that is the statement, for
12 the record for this.

13 And finally, Mr. Chairman, we take
14 strong exception to the interpretation that's
15 been put forth that there's two different
16 companies here, we take exception to the
17 interpretation of the standard, and we take
18 exception that one agency can overlook a sham
19 put before it. Thank you.

20 CHAIRMAN JORDAN: Thank you.

21 MR. RAY: Mr. Chairman, I would
22 ask you something which has nothing to do with

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1 the --

2 CHAIRMAN JORDAN: We're really
3 over the period of time for your closing, so
4 I hope it's not a closing statement.

5 MR. RAY: This is not --

6 CHAIRMAN JORDAN: All right. Yes.

7 MR. RAY: It requires you to make
8 a ruling one or another. I have some
9 petitions that was collected by the various
10 operators, and I would like to submit these
11 for the record.

12 CHAIRMAN JORDAN: I'm about to
13 close the record on what we've already had
14 because it might require others to go back
15 through it and make some response or rebuttal
16 to it at another point. We're not doing that
17 at this point. Those things could have been
18 submitted prior to today or during the
19 hearing. But we're at the point of -- I'm not
20 going to open the door.

21 MR. RAY: Well, we're at the
22 hearing, Mr. Chairman.

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1 CHAIRMAN JORDAN: I'm not opening
2 the door for that because then I'm going to
3 have to go to let the applicant do something
4 with it, go through it, challenge it, test it.
5 We're just not doing that at this point.

6 All right. We're going to close
7 the record on this, except for I'm going to
8 keep this record open and require the parties;
9 the applicant and the Independent Gas Station
10 Owners, to present proposed findings of fact
11 and conclusions of law to the Board. I would
12 like to have those by October 9th and jointly
13 served on each party. Responses are going to
14 be due to the -- each -- the others' proposals
15 of findings of fact and conclusions of law
16 October 16th. And we'll set this for an
17 October 23rd decision date.

18 Now you can spend time talking
19 about other things if you want in these
20 briefs, but as you know, our jurisdiction is
21 established by the Code and by the regulations
22 of what we can hear and listen to. So I'm

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1 going to tell both parties that's probably
2 where you want to keep your focus.

3 Any other matter that might be in
4 another silo, I wish you the best in dealing
5 with those silos, but we have ceratin very
6 limited jurisdiction here and we're not open
7 to just doing anything in the universe, as
8 some people have requested us to do. However,
9 the case law is very clear about we have to
10 stay within our confines and we cannot just
11 open the door to any and everything. So I'm
12 going to suggest that for you at this point in
13 your briefs.

14 But those are the dates. October
15 9th for the findings of fact and conclusions
16 of law. Both parties be sure to serve it on
17 each other. I would like to be sure to see a
18 certificate of service that has been made.
19 And then responses to the opponent's briefing
20 due October 16th. And the decision date, we
21 put it on the October 23rd decision -- we have
22 a lot on October 23rd, don't we?

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1 What's our next decision date?

2 MR. MOY: I'm sorry, sir?

3 CHAIRMAN JORDAN: When's our next
4 decision date?

5 MR. MOY: After -- you mean after
6 the 23rd, or before the 23rd?

7 CHAIRMAN JORDAN: After, after,
8 after.

9 MR. MOY: Well, I had to ask.
10 That would be November 7th.

11 CHAIRMAN JORDAN: November 7th?
12 Is there an ABC hearing on this matter? Okay.
13 What's the date? November 27th?

14 MR. MOY: November 7th.

15 CHAIRMAN JORDAN: November 7th?
16 Okay. Then we'll put this on for decision for
17 November 7th. But I want to keep the same
18 dates in regards to the --

19 MR. MOY: Okay.

20 CHAIRMAN JORDAN: Okay. With
21 that, I'm concluding this hearing, except for
22 those submissions that I requested.

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1 Thank you, everyone, for coming.

2 We will now adjourn this
3 particular public hearing, but move -- I'm
4 going to now move into a public -- special
5 public meeting just very briefly.

6 (Whereupon, the hearing was
7 adjourned at 5:43 p.m.)

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