

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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WEDNESDAY,
OCTOBER 21, 1998

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The Board of Zoning Adjustment met in public hearing in Room 220 South, 441 4th Street, N.W., Washington, D.C., at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
ANGEL CLARENS	Zoning Commissioner
JERRY GILREATH	Board Member
ANTHONY HOOD	Zoning Commissioner
JOHN PARSONS	Zoning Commissioner

STAFF PRESENT:

TRACEY WITTEN ROSE	Office of Zoning
BEVERLY BAILEY	Office of Zoning
ALBERTO BASTIDA	Office of Planning

APPEARANCES:On behalf of the Applicant, Republic of Cote D'Ivoire:

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

(9:44 a.m.)

CHAIRPERSON REID: Good morning. First, I'd like to apologize for our delay this morning.

This hearing will please come to order. Good morning, ladies and gentlemen. This is the October 21st public hearing of the Foreign Missions Board of Zoning Adjustment of the District of Columbia.

Joining me today are Vice Chairman Betty King and John Parsons from the Zoning Commission.

A copy of today's hearing agenda are available to you. They are located to my left near the door. Please be aware that this proceeding is recorded electronically, so we must ask you to refrain from any disruptive noises or actions in the hearing room.

If you desire to give any information to the Board, do not speak from the audience, but rather come forward to a microphone, state your name and home address, then proceed to make your wish known. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. After we finish this statement, please proceed to pick them up, fill them out, so that when your case is called you will have them ready to be able to hand over to the reporter.

Upon coming forward to speak to the Board, please give both of the cards to the reporter who is sitting to my right and be seated at the witness table. Please give your name and home address. I repeat, please give your home address rather than your business address. After this, you may proceed to give your testimony

1 or statement.

2 The agenda for a foreign missions case will proceed
3 as follows: statement of witnesses of the applicant, government
4 reports, Secretary of the State, and the Office of Planning on behalf of
5 the Mayor, support of the recommendations by other public agencies,
6 report of the ANC within which the property is located, persons for the
7 application, persons in opposition to the application.

8 The record will be closed at the conclusion of each
9 case, except for any material specifically requested by or offered to
10 and accepted by the Board. The Board and the staff will specify at the
11 end of the hearing exactly what is expected and the date when the
12 persons must submit the evidence to the Office of Zoning.

13 After the record is closed, no other information will be
14 accepted by the Board. The Board has instructed the staff to return
15 any material received after the record is closed to the persons who
16 submitted it.

17 The decision of the Board in this legislative
18 proceeding must be based exclusively on the public record. To avoid
19 any appearance to the contrary, the Board requests that persons,
20 counsel, and witnesses not engage the members of the Board in
21 conversations at any recess until the conclusion of this hearing
22 session. While the conversation may be entirely unrelated to any of
23 the cases that are before the Board, other persons may not recognize
24 that the discussion is not about a case. The staff will be available to
25 discuss procedural questions.

26 At this time, the Board will consider any preliminary
27 matters. Preliminary matters are those which relate to whether a case
28 will or should be heard today, such as requests for postponement,
29 continuance, or withdrawal, or whether proper and adequate notice of

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

4 Does the staff have any preliminary matters? If not,
5 let us proceed with the first case.

6 MS. BAILEY: Madam Chair?

7 CHAIRPERSON REID: Yes.

8 MS. BAILEY: Can you hear me?

9 CHAIRPERSON REID: I can.

10 MS. BAILEY: Okay. One of the cases, application
11 number 16362, application of Philippe Bosshard, the applicant needs to
12 come forward if he or she is present.

13 CHAIRPERSON REID: Is anyone affiliated with case
14 number 16362 here today? If so, please come forward. Okay. I
15 guess not.

16 MS. BAILEY: We'll deal with it after.

17 MS. ROSE: Then we'll deal with this one after this
18 case is heard.

19 CHAIRPERSON REID: All right.

20 MS. ROSE: All right.

21 MS. BAILEY: We have nothing further.

22 CHAIRPERSON REID: Okay.

23 MS. ROSE: The first application is 16383, the
24 application of the Republic of Cote D'Ivoire, pursuant to 11 DCMR
25 1002.1, to permit the subdivision of and expansion of an existing
26 chancery and the construction of a new portion for chancery use by
27 the Embassy of the Republic of Cote D'Ivoire, in a D/R-3 district, at
28 premises 2412-2424 Massachusetts Avenue, N.W., Square 2507,
29 Lots 806, 807, 808, 809, 810, 811, and 816, and Square 2500, Lot

1 831.

2 There will be no swearing in of witnesses in this
3 proceeding.

4 MR. QUIN: Good morning, Madam Chairperson.

5 CHAIRPERSON REID: Good morning.

6 MR. QUIN: May we proceed?

7 CHAIRPERSON REID: Yes.

8 MR. QUIN: My name is Whayne Quin with Paul
9 Tummonds of the law firm of Wilkes, Artis, Hedrick and Lane. We
10 represent the Republic of Cote D'Ivoire in this application. This
11 application seeks the consolidation and expansion of existing
12 chancery buildings at 2412 and 2424 Massachusetts Avenue, N.W., in
13 a D/R-3 zone.

14 The application can be summarized, I think, as an
15 infill project; that is, there are two buildings, which you can see on the
16 model in front of you, that are being connected by a building -- a new
17 portion of a building in between. These will be consolidated in one
18 single structure, and the lot will be one single lot. Now there are eight
19 lots.

20 Our statement, I think, which we filed with the FMBZA
21 is very complete, at least we think it is. And we will try to summarize
22 the pertinent information and move fairly quickly.

23 CHAIRPERSON REID: Thank you.

24 MR. QUIN: We do note that the Office of Planning
25 has a favorable report, the Department of State has its favorable
26 report, the ANC has a favorable report, and we are very pleased with
27 all of those reports. The present buildings --

28 MS. KING: Excuse me, Mr. Quin.

29 MR. QUIN: Yes.

1 MS. KING: I don't have a copy of the ANC report. Is
2 it available to us?

3 MR. QUIN: Yes. We have an extra copy.

4 MS. KING: Sorry to interrupt.

5 MR. QUIN: No. We're very pleased to give you a
6 favorable report.

7 (Laughter.)

8 The application -- the present buildings are not really
9 functional, and that will be described by the first counselor in his
10 testimony. Not functional because of size, the limited size, and space
11 layout. And the total number of employees today is 36, including 10
12 diplomats. So that the real purpose of this is to have better space. It's
13 not to increase. We do not see any increase in the foreseeable future
14 of the staff or the people that are on the site today. It will just be a
15 better facility.

16 As the architect will describe, the new layout will be
17 functional and will meet the needs of the chancery. It will include a
18 below-grade garage for 47 spaces, which should be welcomed by the
19 community. The hours of operation are general 9:00 until 3:00. The
20 fact sheet in our statement is under Tab H, and I will not go through
21 that.

22 But the important point, I think, is that this is very low-
23 density activity. We're talking about approximately three persons per
24 day for business purposes, which is a very minor amount. In fact, I
25 would suggest that it's less dense, except maybe for the employees,
26 of single family homes. And even for traffic purposes, it probably is
27 less dense than for traffic flows.

28 The site obviously has excellent transportation
29 access, both by Massachusetts Avenue and other arteries, as well as

1 Metro access. Both the Historic Preservation Review Board and the
2 Commission of Fine Arts have given conceptual approval, and I would
3 like at this point just to briefly summarize the exhibits that are in our
4 file. I'll go quickly through it, unless -- to see if there are any
5 questions.

6 Under Tab A is simply the locational plat, and Mr. Lee
7 will address that more in his architectural presentation.

8 We have the zoning map, just to verify that it is within
9 the -- that's under Tab B -- the D/R-3 zone. The present lot
10 configuration, those lots -- as you know, since 1958. whenever a
11 building is built, it should have one single lot. Prior to 1958, you could
12 build on multiple lots and there was very little control. So one of the --
13 a part of this application will be the consolidation.

14 Under Tab D, the survey of the property as it exists
15 today. And you may note, which I'll come back to in a minute, on the
16 west side is a four foot side yard, and on the east side is
17 approximately 16 feet. You can see that on the model, the east side
18 being about 16 feet and the west side being about four feet. And that
19 has an impact on one of the deviations which we have.

20 The aerial photographs, I hope you've had a chance
21 to look at those. Then we have the reports; first, the Historic
22 Preservation Review Board under the mandatory referral under
23 Chapter 10; the Commission of Fine Arts report; the statement of
24 facts; and then outlines of our people who are here to testify today.
25 But maybe most important, aside from our witnesses, is the letter from
26 the Department of State.

27 I had talked to Mr. Mlotek. I don't think he's here, but
28 I think the letter speaks for itself if he does not get here.

29 There are the six criteria which you all know very well

1 in the regulations, and I'll summarize those briefly. They are stated in
2 more detail at pages 6 to 10 of our statement.

3 First, is the international obligation to facilitate
4 adequate and secure facilities for foreign missions, and under Tab L,
5 again, the State Department -- this is as determined by the
6 Department of State, the State Department has so determined. And,
7 therefore, we comply with that criteria.

8 Secondly, historic preservation -- the referrals were
9 provided as required under Chapter 10, and both agencies that were
10 involved, HPRB and CFA, have submitted favorable reports.
11 Ultimately, the decision is yours, I should point out, under the Foreign
12 Missions Act, not theirs.

13 The adequacy of off-street parking. We have here an
14 interesting situation because the present demand now is for 30
15 spaces. There are 20 in the lot that will replace -- that this building will
16 replace, and the other spaces are usually on the site at different parts
17 of the driveways. But the important part here is with 47 spaces off
18 site, below -- on site, below grade, that there will be no use and
19 parking in the neighborhood as a result.

20 The next criteria is that there is no special security
21 requirement, and that the building can be adequately protected.
22 That's also established by Exhibit L from the State Department.

23 The next criteria is that of the municipal interest.
24 Does this project meet the municipal interest? Here we have the
25 appropriate zone, the diplomatic overlay zone, R-3, in an area that's
26 commonly referred to as Embassy Row, although the word "Embassy"
27 now is not what the Zoning Commission uses or the FMBZA uses.

28 There are technically two deviations which we pointed
29 out in the statement. The first is that although the R-3 zone, the

1 underlying zone, provides development normally for 60 percent lot
2 occupancy, that's for road dwellings. So that when you do not have a
3 row to row or side yard to side yard -- not side yard -- property line to
4 property line building, and you have a side yard, you then have a
5 limitation of 40 percent.

6 So this project is a little over 54 percent. So
7 technically we do not meet that requirement. It's a little bit ironic
8 because by virtue of providing two side yards and the 54 percent lot
9 occupancy, we have more open space than you could have if this
10 were built as a matter of right. So that's the deviation, first deviation.

11 The second one is due to the driveway configuration,
12 which Mr. Lee, the architect, will describe. And that's unusual, too,
13 because several -- I guess eight, I believe, of the columns are canted,
14 just slightly. And under our zoning regulations, you must have a 20-
15 foot wide driveway but that must be 20 feet wide up to six foot six in
16 height.

17 And here it's -- at the six foot six measurement it's
18 about 19 feet. So there's one foot differential in the cant. So
19 technically, that would not meet -- if this were a normal case, you
20 would have to proceed with a variance. But it's a deviation under this
21 type of application.

22 The last standard -- but that should not be a problem,
23 I should say, because of the nature of the circulation, which Mr. Lee
24 will describe.

25 The federal interest -- that's -- here we have the
26 chancery located in accordance with the foreign missions element of
27 the comprehensive plan adopted by NCPC and ultimately the City
28 Council. And the Department of State has also submitted its letter.

29 So unless there are questions, that's a summary of

1 our case, and I would like to call Mr. Fry Kouadio, who is the first
2 counselor of Cote D'Ivoire Republic, and ask him to give his statement
3 briefly.

4 MR. KOUADIO: Good morning. My name is Fry
5 Kouadio, and I'm the first counselor to the Chancery of the Republic of
6 Cote D'Ivoire. I appreciate the opportunity to stand before you. Today
7 I represent my government in this project of great importance to us.

8 As stated by Mr. Quin, our application requests
9 permission for consolidation and expansion of our existing chancery
10 building, and the subdivision of various lots, and to record lots for our
11 property at 2412-2424 Massachusetts Avenue, N.W. This expansion
12 is necessary because we have inadequate space to conduct our
13 business, and the building is inadequate for our present and future
14 needs.

15 We have used the building of our property for
16 chancery use since 1974. As you might know, most of those buildings
17 were residential and were not designed nor equipped for chancery or
18 office use. Ever since the chancery has been conducting its business
19 in this inadequate and inappropriate facilities.

20 For example, closets and bathrooms, including a
21 bathtub, will serve as filing archives and both of our office copier
22 machines. The heating and electrical systems presents several
23 severe conditions, including risk of fire. The telephone equipment
24 performance left much to be desired, particularly in the raining period,
25 in the rainy season. The roofs and walls are warped. All this needs to
26 be changed for better working conditions for the staff.

27 The chancery has always been modestly staffed and
28 will remain so. Our proposal will not result in an increase of its current
29 number of personnel at the site, now and in the foreseeable future.

1 We currently have a total of 36 employees at the chancery, including
2 10 diplomats, 26 staff, including drivers and maintenance crew.

3 The typical hours of our operation of the chancery are
4 9:00 a.m. in the morning to 3:00 p.m. On average, there are
5 approximately three diplomatic or business visitors to the chancery,
6 and the consular office averages less than a visitor a day, one visitor a
7 day.

8 The project includes 47 parking spaces, which will
9 provide on-site parking. That is sufficient to accommodate the day-to-
10 day needs of our staff, and which also meets your requirements.

11 There are no regularly-scheduled deliveries to the
12 chancery as our administrative section purchases supplies as they are
13 needed. The chancery's trash is picked up by a private company.

14 The application was recommended for approval, as
15 evidenced by the letter in the record of the case from the United
16 States Department of State. Approving this application satisfied the
17 international obligation of the United States to facilitate the provision of
18 adequate and secure facilities for foreign missions in the District of
19 Columbia.

20 And in regard to historical preservation issues, the
21 Historic Preservation Review Board and the Commission of Fine Arts
22 have both granted conceptual design approval of the project. Mr. Lee
23 and Ms. Adams will describe the design of the projects.

24 As discussed in the report of the Office of Planning,
25 and the letter from the United States Department of State, the amount
26 of parking in the consolidated building is sufficient to accommodate
27 the needs of the chancery. In addition, there is adequate public
28 transportation. There are no special security requirements related to
29 parking issues. On the side there is an area capable of being

1 adequately protected.

2 The report of the Office of Planning also concludes
3 that the approval of this application is in the municipal interest of the
4 District of Columbia.

5 Finally, the letter from the United States Department
6 of State concluded the approval of this application is in the federal
7 interest.

8 For these reasons, we believe that our application
9 satisfies the requirements of the zoning regulations to permit the
10 consolidation and expansion of our chancery on our property.
11 Therefore, we request that the Foreign Missions Board of Zoning
12 Adjustment approve this application. Thank you, Madam.

13 MR. QUIN: Are there any questions?

14 MS. KING: No questions. Thank you very much.

15 MR. QUIN: Our next witness is Mr. Wanchul Lee,
16 architect for the project.

17 And, Mr. Lee, I'll ask you to summarize fairly briefly. I
18 think the Board understands this.

19 I'm just sort of looking at you, hoping that you do
20 already. But if you don't, I'm sure you will ask questions.

21 MR. LEE: Good morning. My name is Wanchul Lee.
22 I'm a principal of Wanchul Lee Associates. If you would allow me, I
23 would like to put up the drawings.

24 CHAIRPERSON REID: Your address, please?

25 MR. LEE: My address is 2815 39th Street, N.W.,
26 Washington, D.C.

27 I would like to put up for the Board -- and also, I would
28 like to bring the model to you, close to you so you can see what we
29 have done. I think it describes better if you had -- the property is

1 located between Dupont Circle and below Japanese Embassy. This
2 particular building is the current chancery building, and Dupont Circle
3 is toward that direction, where S Street meets Massachusetts Avenue.
4 There are two existing buildings, 2414 and 2424. The proposed
5 project involves the property between 2412 and 2424, and the vacant
6 lot in between and the property behind.

7 We have taken -- sectioned through the site, just to
8 demonstrate to you the location of the project related to the Rock
9 Creek Park. And this gives you a pretty good idea of how it relates
10 and how the vegetation in the Rock Creek Park itself almost becomes
11 sort of a barrier between the Rock Creek Park. You can hardly see it.
12 I have a photograph, if you'd like to look at the photograph of that site
13 from the property.

14 And the cross section from Massachusetts Avenue,
15 across the street, this is the cross section itself. The visibility of the
16 front of these buildings -- naturally, just like the 40-foot height
17 buildings on the avenue. Whatever we have added on the back,
18 visibly you wouldn't see the back side of it. Again, the model is a good
19 illustration of what happens.

20 Going back to the -- here we have a front elevation
21 from the Massachusetts Avenue. This is the existing structure of
22 2412. This is 2424. This building is a limestone structure. This is a
23 red brick with a white pilaster with a slate roof.

24 The addition that we are proposing is a material
25 similar to limestone. We have gone through several concepts and
26 redesigns to satisfy neighborhood Historic Preservation Committee
27 and the Fine Arts Commission. And this is the end result of all of our
28 several months of effort.

29 I would say you could classify this as a neoclassical

1 design with the front facade that represents very close to residential
2 character, although it is an office building with the central entrance
3 and the building is set back. Other than the front facade of this
4 particular building, there are deep niches, so that these three building
5 facades will stand out prominently. You can see.

6 This elevation represents the elevation of the rear of
7 the building from the park, which you will not really see from the park
8 itself. And this illustrates -- there are two levels of parking below the
9 deck on top of it.

10 These are some of the side elevations of that building
11 that protrudes to Massachusetts Avenue and how the side elevations
12 are resolved.

13 The building actually has a port cochere as a front
14 entrance, although from the avenue you'll see the front opening with
15 what appears to be a window opening. But behind it is the port
16 cochere, and you have the lobby of the Embassy.

17 And this shows you how the parking structure is
18 designed. It's a very tight site, only 100-feet deep. And in order to
19 accommodate 47 parking, we had to basically have a half-level break
20 and the whole parking structure is in a slow ramp, so to speak. And it
21 was a very difficult task to provide the 47-some parking that the
22 Embassy desires.

23 These are --

24 MR. QUIN: Could you cover just briefly the columns?

25 MR. LEE: Yes, I will get down to the parking level.

26 Again, these are some of the elevation end results of our working with
27 the Historic Preservation Committee, how the addition attaches to the
28 side of an existing structure.

29 Here we have ground floor plan, as I have described

1 to you a little bit. Massachusetts Avenue, the main entrance to the
2 parking garage will be through this existing curve cut. We're not
3 making any new curve cut; we are making use of the existing. And
4 presently -- this is at 2424. The original structure will be maintained.
5 Two additions will be demolished to create space behind it. This is the
6 existing structure of 2412.

7 Basic concept being, you have the main drive
8 approach to garage. This port cushion will accommodate ambassador
9 and dignitary who are visiting the Embassy. So this is limited to -- we
10 have a hydraulic bollard that allows only certain cars to approach from
11 this direction.

12 CHAIRPERSON REID: You have a hydraulic what,
13 sir?

14 MR. LEE: Bollard. It's a --

15 MS. KING: A thing that comes up out of the ground.

16 MR. LEE: Yeah.

17 CHAIRPERSON REID: Oh, okay.

18 MR. LEE: Normally, it will prevent anyone driving in.

19 CHAIRPERSON REID: Oh. A security measure.

20 MR. LEE: Well, security measure plus controlling the
21 traffic itself.

22 CHAIRPERSON REID: Okay.

23 MR. LEE: To discourage the normal driver pattern.

24 CHAIRPERSON REID: Oh, okay.

25 MR. LEE: So normal drive pattern will be in and out
26 through this one entrance.

27 CHAIRPERSON REID: Oh, I see. Something like
28 speed bumps?

29 MR. LEE: No, it's actually --

1 MS. KING: No. This is actually a barrier that comes
2 up out of the ground, so that you literally couldn't drive through.

3 CHAIRPERSON REID: To control the traffic, you're
4 saying?

5 MR. LEE: Yes.

6 CHAIRPERSON REID: Okay.

7 MR. LEE: You know, it's typically --

8 CHAIRPERSON REID: I've seen this.

9 MR. LEE: -- just a black steel column that projects
10 above the ground.

11 CHAIRPERSON REID: Okay.

12 MR. LEE: And it's hydraulically controlled so that it
13 goes underground when a car is allowed to drive over.

14 This is a lobby of the new addition with the public
15 space on the ground floor, two staircases that connect three buildings,
16 so to speak, and we have up above -- let me move -- oh, I'd like to add
17 that presently this is blacktop parking. And this is a parking lot right
18 now. We are converting that into -- of course, building addition here
19 and that turns into a more residential character, green lawn and
20 ornamental tree.

21 And this is part of the front landscape. Does not
22 change. Right now, there are some dead trees we are replacing with
23 ornamental trees, again.

24 Moving up to the second level, this will show you the
25 -- how the staircase connects three different buildings. These are in
26 different elevations, so this staircase creates half-level differences to
27 connect this structure from that particular level. And this staircase
28 does the same pretty much. And they are basically office structures
29 and properly-designed toilet facilities for the workers.

1 Third level. This existing structure basically has a
2 roof, and there is a structure above it which is a third floor limited area,
3 staircase which connects to the main, I would say, important function
4 in the chancery building here and there, and then some more on the
5 third floor.

6 And this is the -- looking down from the roof. The roof
7 structure is configured in such a way that you have a continuous
8 mansot roof expression here. And we do have some attic spaces.
9 There are some functions converted to staff lounge, and so forth.

10 Going down to parking level, Mr. Quin mentioned the
11 fact that we have a few columns that are leaning to create 20 foot at
12 the base at least. Coming down, I'd like to mention the fact that traffic
13 is limited to diplomatic basically, early morning and in the afternoon.
14 We will have three visitors parking on the first level as they come
15 down. These are designated as visitors parking.

16 And these are the columns that we mentioned
17 leaning, because typically these office buildings are laid out on
18 approximately 20 by 20 column bay. So that's what's creating -- we
19 do have a requirement for a parking alley, and we also -- at this level,
20 these are the three columns that have to be leaning to meet your
21 requirement.

22 And that takes people down to a lower level, and
23 bring the car down at this level, and then completes at this point. So
24 the column that leans is on the upper level. Yeah.

25 That pretty much completes my presentation.

26 MR. QUIN: Are there questions of the architect?

27 MS. KING: I have none.

28 MR. PARSONS: Mr. Lee, I --

29 MR. LEE: Yes.

1 MR. PARSONS: -- made a rough count of the offices
2 and places for people to sit, and I believe there is room here for 50
3 people, if I've counted correctly. Is that your understanding?

4 MR. LEE: The spaces that -- let me go up to the
5 upper floor. I think that -- as I said, that clarifies a little better your
6 question. This space is assigned a presidential suite. Whenever a
7 president visits Washington, he will be using that particular suite.

8 MR. PARSONS: What floor are you on now?

9 MR. LEE: On the third floor, top floor.

10 MR. PARSONS: All right.

11 MR. LEE: Yes. This is designated as ambassador's
12 suite. We have visiting ambassadors also occupying this part. So it
13 appears it has a lot more space than the initial 37 staff, but these are
14 designated as special use. So the third floor basically is for executive
15 suite, including presidential suite.

16 MS. KING: Wouldn't you say that a visiting
17 ambassador is -- is there not a resident ambassador here in
18 Washington?

19 MR. LEE: Well, typically, you would have resident
20 ambassador and visiting ambassador, from time to time --

21 MS. KING: Oh, I see.

22 MR. LEE: -- for a special assignment. I know this
23 from my experience with the U.S. State Department. Here it may be a
24 different assignment, but that's what I was told. Yes. So that wouldn't
25 be occupied full-time. It would be whenever the visiting ambassador
26 comes.

27 MR. PARSONS: As a matter of fact, I didn't count
28 him or her. But I got seven people on this floor, is that --

29 MR. LEE: There would be --

1 MR. PARSONS: Ministry counsel, a secretary,
2 another secretary, a British counsel, a secretary, and a monitor
3 counsel secretary.

4 MR. LEE: Five, six. And when there is escort, it
5 would be seven, yes.

6 MR. PARSONS: That's what I got. And then when I
7 drop down to --

8 MR. LEE: Including escort. So if we don't have an
9 escort, then -- when we have a visiting president, then that's seven,
10 yes.

11 MR. PARSONS: I see. Then, when I drop down to
12 the other floors and counted offices, the secretaries, and so forth, it
13 came to a total of 52. And what's represented here today is there will
14 be a total of 36 and that's it. And I was just trying to clarify if -- there's
15 also four or five conference rooms, two staff lounges, two reference
16 rooms.

17 MR. LEE: Yes.

18 MR. PARSONS: There seems to be a lot of space in
19 this building, and I know that's typical of chancery buildings, but a lot
20 of space where additional staff over the years to come might be
21 added. So I'm confused by this.

22 MR. LEE: Well, from my experience of the U.S.
23 Embassy designs, there are a lot of common spaces, a lot of
24 conference rooms, and often you don't share the conference rooms.
25 Different commercial attache and military attache, for instance, do not
26 share the same conference room because of the different reasons.

27 MR. PARSONS: I see.

28 MR. LEE: And then Department of State and Bureau
29 people would not share with other users in the Embassy. That's my

1 experience with U.S. Embassy design.

2 MR. PARSONS: All right.

3 MR. LEE: Yes. And here again, I've taken a similar
4 approach to their use. The Embassy concurred with their approach.

5 MR. PARSONS: You've probably got more
6 experience than I do at this.

7 MR. LEE: I'm sorry. I'm sure you do have --

8 MR. QUIN: Mr. Parsons?

9 MR. PARSONS: Mr. Quin?

10 MR. QUIN: Mr. Kouadio is prepared to answer that
11 question, I understand.

12 MR. KOUADIO: Yes. Just to add something to what
13 Mr. Quin has already said. The staff can hardly be more than 36,
14 because it's the typical big embassy, 36 people -- 36. It's not that --
15 it's not only for financial reasons, but it -- within the 36, we have the
16 people we need at the Embassy. You know, the Embassy is -- has a
17 secretary, first counselor, second counselor, commercial attache. And
18 this is the typical presentation of all embassies abroad, and most of
19 the biggest embassies like -- that's in Washington have 36.

20 And if we -- you know, since we have been here, it
21 has always been the same, almost the same for the past 30 years we
22 have been in the state. It has never changed.

23 And the number he is referring to is that from time to
24 time we have inspectors who come, for instance, for the -- to audit the
25 daily working -- work the Embassy staff is doing. And when they
26 come sometimes they need a place to stay for the three days they are
27 in. And those are the type of reasons why it's necessary to have
28 additional offices for the cases when such officials are in the state.

29 And he talked about the presidential suite. And

1 sometimes also, if the Minister of Foreign Affairs goes -- or maybe is
2 visiting his colleague from the State Department, and it's necessary
3 that we have some additional places for them for the two or three days
4 they spend. Thank you.

5 MR. QUIN: Are there other questions of Mr. Lee?

6 MR. PARSONS: Yes. Why did you include 47
7 parking spaces?

8 MR. LEE: That's the maximum I can get out of the
9 whole two levels. We were trying to make the best use of that
10 available space. There are some other storage and mechanical room
11 requirements, so it just happened to be 47, really.

12 MR. PARSONS: So it has nothing to do with the
13 amount of office space you provide?

14 MR. LEE: No. We are going down. It's a very
15 expensive space --

16 MR. PARSONS: Yes.

17 MR. LEE: -- to get down to that level. And that's
18 really the maximum we can get out of that space, taking out the
19 mechanical room. And we have storage requirements, driver's office
20 space or lounge, waiting area, and so forth. So that 47 has no
21 significance relating to any staff.

22 MR. PARSONS: So the times that 47 parking spaces
23 would be required would be receptions, I assume.

24 MR. LEE: The visitors parking is also included in that
25 47. Yes. Yes.

26 MS. KING: It's only five over what's required. They're
27 required to have 42.

28 MR. PARSONS: Thank you.

29 MR. QUIN: Unless there are further questions, I'd like

1 to call Ms. Adams to briefly summarize the historic preservation
2 aspects. You have the full reports from the agency, but maybe Anne
3 could just briefly summarize the process.

4 MR. PARSONS: Well, I'm not -- Mr. Lee, I'd love to
5 see that photograph from the park.

6 MR. LEE: Yes.

7 MR. PARSONS: Thank you.

8 MS. BAILEY: Mr. Quin, excuse me. The ANC report,
9 was that submitted previously or the ANC --

10 MS. KING: What we wanted was this gentleman's
11 testimony, not an ANC report.

12 MR. QUIN: I think Mr. Tummonds handed it over
13 there, copies of it, if I'm not mistaken.

14 MS. ROSE: Are you still in your case in chief, or are
15 we at the ANC?

16 CHAIRPERSON REID: No.

17 MR. PARSONS: No, he was just giving extra copies
18 --

19 CHAIRPERSON REID: No, no, no. We're not at the
20 ANC yet.

21 MS. ROSE: Oh, I didn't think so.

22 CHAIRPERSON REID: We're still in the segment of
23 the case by the applicant.

24 MR. QUIN: We just gave extra copies so you'd have
25 them, in case you didn't have them.

26 CHAIRPERSON REID: Sure.

27 MS. ROSE: If the Board wanted those now, they
28 would need a waiver. That's the only reason we still have them, if we
29 wanted the ANC reports.

1 CHAIRPERSON REID: Well, we don't want those
2 yet.

3 MS. ROSE: Okay.

4 CHAIRPERSON REID: After their segment is over,
5 then we will introduce the ANC segment.

6 MS. ROSE: That's fine.

7 MR. QUIN: We understand it was filed on Friday.

8 CHAIRPERSON REID: It was filed a week before the
9 hearing.

10 MS. ROSE: And it's dated?

11 CHAIRPERSON REID: October 16th.

12 MR. PARSONS: It's dated October 16th.

13 MS. ADAMS: Good morning. My name is Anne
14 Adams. I'm an architectural historian. My address is 5625 Groves
15 Street in Chevy Chase. I have slides here, if anyone would like to see
16 them. Otherwise, I will just give you a very brief summary of what -- of
17 the process of how we got to the current design.

18 As you know, these buildings are contributing
19 buildings in two historic districts, Sherizan Kalorama and
20 Massachusetts Avenue. Neither is an individually-designated
21 landmark. There is a parking lot between the two buildings and
22 significant trees on the site.

23 Because of their location in the historic district, a
24 referral was made to the Historic Preservation Review Board. The
25 Commission of Fine Arts also reviews this to give their
26 recommendations to FMBZA.

27 We met with the staff of the Review Board a number
28 of times, as well as the members of the Sherizan Kalorama Historic
29 District Committee, to get their input. A number of changes were

1 made to the design to come up with what has been presented to you
2 today, which was approved in concept by the Review Board and
3 approved in concept by Fine Arts. And the Review Board has
4 delegated final approval of materials, final design, and so forth, to its
5 staff.

6 There are some really positive things about this
7 project which I think Mr. Lee has not mentioned, one of which is the
8 restoration of the facade of 2424 Massachusetts Avenue, which
9 currently has a garage door in it as well as a contemporary entrance
10 structure. The front yard is paved for parking. All of those things will
11 be undone to return the building to its original appearance.

12 The new construction attaches to the back of that
13 building, which has been altered over time and is not particular
14 architecturally significant, leaving the significant rear elevation of 2412
15 free of any alteration or attachment.

16 The massing with the recessed links is consistent -- or
17 allows the building to be consistent with the kind of rhythm that's on
18 the street. Although there are rowhouses and detached buildings in a
19 district, this is consistent with immediate neighborhood, and the
20 Review Board staff was very pleased about that.

21 The design is clearly a contemporary kind of design
22 reflecting the -- and reflects the use of the building, but it is
23 sympathetic and appropriate in its location, and the Review Board
24 found that to be the case.

25 If you have any questions, I'd be happy to answer
26 them.

27 MR. PARSONS: No questions.

28 CHAIRPERSON REID: Thank you.

29 MR. QUIN: Madam Chairperson and members of the

1 Foreign Missions Board of Zoning Adjustment, that completes our
2 case, unless there are questions later that you wish to ask.

3 I would like to call to the Board's attention that we did
4 file on July 2nd a request for a waiver of our fee, and I'm not sure
5 procedurally how you deal with that. But the fee which was charged,
6 based upon the square footages, was \$11,300, and we go through in
7 our letter the rationale, which is supported by the Department of State,
8 for reducing that to \$1,200.

9 And I don't know how procedurally you deal with that
10 or want to deal with it, but we, of course, would like because of this
11 support of everyone to ultimately get a bench decision, if that's
12 possible. And it's a little presumptuous for me to ask at this point, but
13 I thought since this completes our case I would go ahead and put that
14 before you as something to keep in the back of your head.

15 CHAIRPERSON REID: Okay. You have an
16 opportunity for final remarks at the end of this particular proceeding.
17 At that time, you can address that issue.

18 MR. QUIN: Thank you.

19 CHAIRPERSON REID: Thank you.

20 Government reports. The Secretary of State?

21 MR. MLOTEK: Good morning. May it please this
22 honorable Board, I am Ronald Mlotek, chief legal counsel of the Office
23 of Foreign Missions of the Department of State. And I am appearing
24 here today pursuant to the Foreign Missions Act, representing the
25 Secretary of State and the Department's views and interests in this
26 case.

27 Before we begin, first of all, I want to apologize for my
28 mobile phone going off. And I hope the interruption was not too
29 unseemly. I had meant to turn it off when I entered the room and

1 obviously forgot to do so.

2 I'd also like to ask if the Chair could enlighten me
3 regarding the presence or the absence here of the representative from
4 the National Capital Planning Commission.

5 CHAIRPERSON REID: I'm sorry.

6 MR. MLOTEK: I was wondering whether you could
7 enlighten me about where the representative of the National Capital
8 Planning Commission is.

9 CHAIRPERSON REID: Oh, I'm sorry. I happened to
10 be looking down at the moment. Just one second. While typically
11 there is a representative from the National Capital Planning
12 Commission, and they were made aware of this hearing this morning,
13 however, we don't, as a Board, have any control over their being here
14 or not being here.

15 MR. MLOTEK: No, I understand that. But, I mean,
16 did they -- is there any information --

17 MR. BASTIDA: I think that she answered your
18 question, and you will have to talk to the National Capital Planning
19 Commission in order to find the motive or the reasons why the
20 representative is not here.

21 MR. MLOTEK: With all due respect, I was addressing
22 the question not to the representative of the Mayor but to the Board.

23 MR. BASTIDA: I apologize. I was just trying to follow
24 the procedures that normally are followed in these hearings. And I
25 think that the Chair tried to answer your question.

26 MR. MLOTEK: Well, let me explain the nature of my
27 concern. This is a statutory proceeding. It operates under a federal
28 law, which the Foreign Missions Board of Zoning Adjustment has very
29 important responsibilities with respect to. Also, the Department of

1 State has a very great responsibility and a great interest in it.

2 I have several times in the past raised this informally
3 with various members of the staff, with members of the Board itself, in
4 an informal manner. And now I think I need to elevate it to make a
5 formal memorialization of it on the record.

6 So far as I am aware, the presence of a
7 representative of the National Capital Planning Commission can be
8 thought of as essential when one reads the Foreign Missions Act,
9 Section 4306 of it, to the proceeding. And the proceeding could be
10 open to attack as to its legal legitimacy or sufficiency if either the
11 director or a delegatee of the director is not present. I mean, there
12 may be a quorum under the rules, but I'm not speaking -- I'm not
13 addressing the rules of the Board of Zoning Adjustment. I am
14 addressing the federal law that is involved.

15 Now, I don't want to raise -- I want to make it clear,
16 I'm not raising an objection here. I do believe that in the future, in
17 order to preserve the integrity of the proceeding, and to insulate it
18 against some sort of attack by opposition -- we don't have opposition
19 in this case, fortunately.

20 CHAIRPERSON REID: Certainly, I appreciate your
21 concern, and basically my understanding is that Mr. Griffith, who is the
22 Director of NCPC, is out of the country at this time. And it would be
23 incumbent upon him to designate in writing the delegate he would
24 want to sit on the Foreign Missions BZA. And as he is not in the
25 country to do so, obviously this is the reason why that seat remains
26 empty this morning.

27 MR. MLOTEK: It would seem to me that there is,
28 even though Mr. Griffith is out of the country, someone is still acting as
29 the head of NCPC. And that person, whoever it may be, could have

1 delegated someone to come. But in any event, I would like to make it
2 a matter of record here, and we will be raising it directly with NCPD.

3 MS. KING: Have you discussed it with Mr. Griffith?

4 MR. MLOTEK: Pardon?

5 MS. KING: Have you discussed this --

6 MR. MLOTEK: Yes.

7 MS. KING: -- with Mr. Griffith?

8 MR. MLOTEK: Yes. Several times over the years,
9 because this is not the first time it has occurred. And I think it's very
10 important to maintain the special and unique function. This is not the
11 ordinary Board of Zoning Adjustment. It's operating as the Foreign
12 Missions Board of Zoning Adjustment. It has certain prerequisites,
13 and among those prerequisites could be said to be the presence of
14 two federal representatives.

15 And then, thereafter, one other party is present -- if
16 one other member is present to fulfill a quorum, then one couldn't
17 raise a question under the Foreign Missions Act. That is what I am
18 addressing my comment specifically to, the federal statute that is
19 involved.

20 CHAIRPERSON REID: Sure. And we --

21 MR. MLOTEK: And it is a concern -- if there is any
22 suasion or influence that the Board feels it would be proper in
23 mentioning to the National Capital Planning Commission, that would
24 be appreciated.

25 CHAIRPERSON REID: I --

26 MR. MLOTEK: But we will, of course, pursue it on --

27 CHAIRPERSON REID: -- will certainly -- and
28 obviously, there is nothing that could be done this morning. However,
29 I think that you are of, in particular, addressing subsequent Foreign

1 Missions BZA hearings and would like to just go on record and for us
2 to also indicate to NCPC that we would greatly appreciate -- and I
3 think that they, for the most part, do try to attend. And I think only in
4 the circumstances where it's beyond anyone's control that that doesn't
5 happen. But to -- they try to, as best they can, remedy that situation.
6 Certainly, we'll look into it.

7 MR. MLOTEK: I appreciate that.

8 CHAIRPERSON REID: I appreciate your comment.

9 MR. MLOTEK: Thank you, Madam Chair.

10 With respect to this case of the Embassy of Cote
11 D'Ivoire, the Department has entered into the record a letter dated
12 September 25th from our Deputy Assistant Secretary for the Office of
13 Foreign Missions. I will not regurgitate it verbatim. I will simply note
14 that the Department has approved of the matter coming forward, but
15 the Department supports a favorable outcome to it.

16 That the issues of reciprocity are satisfied, and in this
17 regard I think there is a little extra that I should -- a little extra flavor
18 that I should convey to the Board in light of historical developments
19 that have occurred in the world since the last Foreign Missions zoning
20 case that we have had, and since my last appearance here in that
21 capacity.

22 We are all, of course, aware of the very tragic and
23 heinous attack that was perpetrated against two of our embassies in
24 Africa last August. This has brought about a very major undertaking
25 on the part of the Department of State on an emergency basis to
26 reevaluate all of our foreign posts that are thought to have security
27 that is below an acceptable minimal threshold in the modern world,
28 given local conditions in each country.

29 It has also just brought about -- you may have read --

1 a \$1.4 billion appropriation, agreed upon at least by the House of
2 Representatives, to the Department of State for that purpose. That is
3 only a first step. No one believes that will totally solve the problem.

4 All of this is by way of saying that the question of
5 reciprocity, which is always present in every foreign missions case
6 that appears before you -- this issue in this case, because it does
7 involve one of our embassies in Africa, which we are in the process of
8 attempting to rebuild, to find a new site for and to build a brand-new
9 structure, and for all future cases. It raises the issue of reciprocity to a
10 much higher level of concern and interest, certainly to the Department
11 of State, and hopefully also to this Board.

12 We are going to be asking a variety of foreign
13 governments, including the Cote D'Ivoire in this instance, for the
14 utmost cooperation and facilitation in making it possible for the United
15 States to purchase or acquire a new generation of chancery facilities
16 that is much larger than previously was the case, that has far greater
17 land around it set back from streets and other buildings, which
18 unfortunately we did not have in Dar es Salaam and in Nairobi, and
19 which resulted in what we all saw on the television tragically.

20 And in order for us to succeed in this effort, and to
21 thereby protect our fellow governmental servants who are sent abroad
22 to represent all of us, and to enable the process of American
23 diplomacy to go forward in an efficient but also protective and
24 protected manner, we are going to have to receive a great deal more
25 in the way of facilitation from some of these foreign governments than
26 was the case in the past.

27 At the present time, we are, as I indicated, in the
28 process of attempting to do just this in Cote D'Ivoire. This is a process
29 that began before the events in Kenya and Tanzania, but those events

1 have now given this effort a new urgency and a whole new focus of
2 our attention. So I ask the Board respectfully to bear that concern of
3 the Department of State in mind.

4 I am pleased also that the Embassy has gone as far
5 as it did in working -- this Embassy, Cote D'Ivoire, went as far as it did
6 in working with the community and in arriving at an agreeable solution
7 to their facility needs. The design I think is a good one. The architect
8 is to be commended, and I am glad that the outcome was one that
9 was satisfactory to all of the interests concerned.

10 So with that, I will end my presentation, except for any
11 questions that the Board might like to address to me.

12 MR. PARSONS: No questions.

13 MS. KING: No questions.

14 CHAIRPERSON REID: Thank you very much.

15 MR. MLOTEK: Thank you.

16 CHAIRPERSON REID: All right. The Office of
17 Planning, representative of the Mayor of the District of Columbia?

18 MR. BASTIDA: Good morning, Madam Chairperson,
19 members of the Board. For the record, my name is Alberto Bastida
20 with the D.C. Office of Planning. The Office of Planning filed its report
21 on the Cote D'Ivoire case on October 9th. It is a rather extensive
22 report. I will just highlight one area, which is the municipal interest.

23 The applicant is requesting two deviations from the
24 zoning regulations. Since this is a foreign mission, they are looked at
25 as deviation of the zoning regulations. But looking at it in detail, it
26 could be interpreted as two area variances. The rationale why they
27 fulfill that requirement for those deviations is in my report.

28 Based on that, as the Mayor's designee on this case,
29 we would recommend to the Board that they should approve this case.

1 CHAIRPERSON REID: Mr. Bastida, could I ask that
2 you just briefly summarize the rationale for the variation, please?

3 MR. BASTIDA: Sure.

4 CHAIRPERSON REID: For the record.

5 MR. BASTIDA: The Embassy is located in a D/R-3
6 zone district, in which 60 percent lot occupancy for road dwellings is
7 permitted and detached buildings are limited to 40 percent. So if the
8 Embassy were to build from property line to property line, they will be
9 under the -- way below what is the maximum permitted as lot
10 occupancy. But they have chosen not to do so.

11 Accordingly, they would be -- they could be more as a
12 matter of rights if they were going from property line to property line.
13 And that is regarding the lot occupancy.

14 The other is the deviation of the columns and the
15 width of the parking spaces. That is brought about because of
16 existing historic preservation issues. It really seems it is limited to the
17 use -- the parking is limited for use of the Embassy personnel.

18 It will be a small deviation that the Office of Planning
19 and the Department of Public Works determine that it will not have an
20 adverse impact in the municipal interest. Accordingly, the Office of
21 Planning, based on those analyses, determined that there will not be
22 negative impacts.

23 CHAIRPERSON REID: Okay. Thank you.

24 Mr. Parsons, any questions? Ms. King?

25 MS. KING: You asked for a response to this from the
26 fire department. Did you receive one?

27 MR. BASTIDA: No, we did not. But the Office of
28 Planning is not very concerned about the fire department, because
29 when they go to a building permit the fire department will review it.

1 MS. KING: Okay.

2 MR. BASTIDA: And if they don't fulfill the
3 requirements of the fire preventions and the fire code, a building
4 permit will --

5 MS. KING: Okay.

6 MR. BASTIDA: -- not be issued.

7 MS. KING: Great.

8 CHAIRPERSON REID: So you didn't receive any
9 reports from any of the governmental --

10 MR. BASTIDA: No, we did not.

11 CHAIRPERSON REID: -- that you requested?

12 MR. BASTIDA: No. I consulted informally with the
13 Department of Public Works.

14 CHAIRPERSON REID: Okay.

15 MR. BASTIDA: I mean, the Office of Planning.

16 CHAIRPERSON REID: Okay. Thank you, Mr.
17 Bastida.

18 Reports or recommendations from other public
19 agencies?

20 MS. KING: ANC? Can we waive the rules of --

21 CHAIRPERSON REID: Well --

22 MS. KING: Sorry.

23 CHAIRPERSON REID: -- just before that is the other
24 public agencies, which would be the Historic Preservation Review
25 Board report. Do you have that, Ms. King?

26 MS. KING: Oh, yeah, I do. They have worked closely
27 with the HPRB, and it was at -- and the Board has taken the advice of
28 the staff that they delegate to the staff the -- the staff recommends that
29 the Review Board approve the project in concept, providing the stair

1 tower is flat and unarticulated, and delegate final approval to the staff
2 as well as final approval of the samples of the final construction
3 materials and colors. The staff also recommends that subdivision be
4 approved.

5 CHAIRPERSON REID: Okay.

6 MS. KING: That's unequivocal, and the Commission
7 of Fine Arts --

8 CHAIRPERSON REID: Also did?

9 MS. KING: -- also approved.

10 CHAIRPERSON REID: In support of?

11 MS. KING: Is in support of the project.

12 CHAIRPERSON REID: Thank you very much.

13 MR. PARSONS: I did have a question, I guess, of Mr.
14 Lee on the recommendation of the Historic Preservation Review
15 Board. I notice that that occurred on July 23rd. Your drawings are
16 dated the 25th of August, that you have submitted to us. And I
17 wondered if you had made any revisions to flatten and dearticulate the
18 tower. Or are we looking at the same plans that they reviewed?

19 MR. LEE: Since then, we had to go to the
20 Commission of Fine Arts, and the Commission recommendation is to
21 use low articulation but circular tower to alleviate the impact. They felt
22 that the curvature itself will reduce the visual impact. So this was the
23 Commission of Fine Arts' recommendation, which we have taken.

24 MR. PARSONS: Well, I think it's a handsome
25 solution. I really love that stairwell. Do you think that that will solve
26 the concerns of the Historic Preservation Review Board, as you
27 understood them?

28 MR. LEE: I believe so, yes.

29 MR. PARSONS: Okay. Fine.

1 MR. LEE: Yes. Thank you.

2 CHAIRPERSON REID: Did you want to also
3 comment? I saw you get up.

4 MS. ADAMS: No.

5 CHAIRPERSON REID: Okay.

6 MS. KING: The corporation counsel has approved,
7 and the State Department has approved.

8 CHAIRPERSON REID: Yes. The State Department
9 has given their report.

10 Now we move to the ANC report.

11 MS. KING: I move that we waive the rules in order to
12 receive the ANC report, please.

13 CHAIRPERSON REID: All right. We can do so by
14 consensus, if there is no objection.

15 MS. KING: Thank you.

16 CHAIRPERSON REID: Ms. King, would you like to
17 basically summarize for us the report from the ANC?

18 MS. KING: Yes. The ANC met on October 14th. A
19 quorum was present. In fact, both -- the two members of the ANC,
20 they were both there, and they voted unanimously to resolve to
21 recommend that the BZA approve the application. They had two
22 concerns. One was that the construction begin no earlier than 7:00
23 a.m., and the other that the Embassy assist ANC-1D in enforcing
24 neighborhood parking.

25 They have the experience of the Turkish Embassy,
26 which is currently building just down the street and has caused noise
27 and parking overflowing into the neighborhood, in violation of the
28 parking regulations.

29 Mr. Quin, are your clients able to agree to those

1 conditions, or can they ameliorate the impact on the --

2 MR. QUIN: Yes.

3 MS. KING: -- neighborhood during the construction
4 period?

5 MR. QUIN: Yes, they can ameliorate it in the
6 following ways. One, they would have no problem with the
7 commencement that -- the construction timing, which is dealt with
8 under the building code anyway. But the second part is there is a
9 problem with imposing a contractual requirement on the Embassy.

10 However, what the Embassy is willing to do is to
11 assist the residents. If there is any complaint, they will be, as the
12 statement says, proactive. They have no problem calling, and, in fact,
13 I suspect what they will do is call me and say, "Will you call either the
14 Parking Enforcement Branch or the police department?" And we've
15 done that before in cases, so we have no problem with that part.

16 It was just the contractual part -- we cannot accept the
17 imposition of a new --

18 MS. KING: That's understood.

19 CHAIRPERSON REID: One other issue that was
20 raised by the ANC, sir, is it states that they are concerned about the
21 advent of a large underground parking garage in the neighborhood.
22 "And given the threat of terrorist attacks, we believe an underground
23 parking garage is not ideal. Indeed, there is insufficient security in the
24 neighborhood already, and we have been told the uniformed Secret
25 Service detail is being relocated from our streets to the White House.
26 We believe this is a serious issue that should be considered to protect
27 the residents of the neighborhood from bombs."

28 Could you speak to that, please?

29 MR. QUIN: Well, probably that should be the

1 Department of State, who also -- who has reviewed this from the
2 standpoint of security. But you do have the normal security provisions
3 and policing. I mean, there are guards there all the time, so that in
4 this situation -- and maybe Mr. Lee could address the length of the
5 driveway. I think that's also -- but I really think it's the Department of
6 State because they must make that determination from the standpoint
7 of security.

8 CHAIRPERSON REID: Thank you.

9 State your name, please.

10 MR. MLOTEK: For the record, once again, I'm
11 Ronald Mlotek, the legal counsel for the Office of Foreign Missions.
12 Could I respectfully ask the Chair to repeat the --

13 CHAIRPERSON REID: The concerns?

14 MR. MLOTEK: -- the concerns?

15 CHAIRPERSON REID: Okay.

16 MR. MLOTEK: Because I wasn't aware. I hadn't
17 seen or heard --

18 CHAIRPERSON REID: In the ANC report, sir, it says
19 that "Another concern is the advent of large underground parking
20 garages in the neighborhood. ANC-1D has at least 100 foreign
21 governments located in it, numerous of which are at war in various
22 parts of the world. Given the threat of terrorist attacks, we believe
23 underground parking garages are not ideal.

24 "Indeed, there is insufficient security in the
25 neighborhood already, and we have been told the uniformed Secret
26 Service detail is being relocated from our streets to the White House.
27 We believe this is a serious issue that should be considered to protect
28 the residents of the neighborhood from bombs."

29 MR. MLOTEK: I will respond to that concern, which I

1 was not aware of until the Chair read it just now.

2 First of all, each and every request or application,
3 zoning application, by a foreign government which appears before this
4 Board, is thoroughly vetted by numerous government offices and
5 bureaus, both within the State Department and other agencies.

6 Within the State Department, it is reviewed thoroughly
7 by my own office, as well as by our sister office, the Office of
8 Diplomatic Security, which has as one of its specific functions the
9 protection, or the coordination of protection for and of all foreign
10 missions in the United States, and, most particularly, the embassies or
11 chanceries in the District of Columbia.

12 So they were aware of this project and reviewed it,
13 went to the site, considered it in the context of other embassies, also
14 made a threat assessment given the nature of the country. I did not
15 see the threat assessment, but I would imagine -- I would be very
16 surprised if there was any threat, actual or even projected, against the
17 government of Cote D'Ivoire in the United States, at any time since it
18 first began diplomatic representation here.

19 With regard to underground parking, I am not a
20 security expert, but, of course, I work very closely with them and in
21 these matters, both as regards our posts here and foreign ones
22 abroad. And I can tell you what I know absolutely to be the case --
23 that underground parking garages with controlled access -- you heard
24 the architect describe the bollards, the hydraulic bollards, which are
25 security devices, if they're used. I mean, if you have people raising
26 and lowering them. Even trucks can't drive over those things. You'd
27 need a tank to go through one of them.

28 If the underground parking garage is used in
29 conjunction properly with those security bollards, the underground

1 garage is much safer than an above-surface parking, both to the
2 building itself and to other buildings, from that regard.

3 So I think the concern expressed by the community
4 about an underground garage is misplaced. I think everyone would be
5 better off if they had underground parking.

6 Furthermore, in the unlikely and certainly God
7 forbidden event that someone should try to blow up a building that has
8 an underground parking garage, obviously by trying to interject some
9 sort of a device, a car bomb or something like that, into the garage,
10 obviously the whole structure of the building would absorb much of the
11 explosion, and, you know, in an ironic way protect the surrounding
12 neighborhood.

13 So from the standpoint of security of neighbors,
14 neighboring property owners, civilians, you would be in much better
15 shape if a bomb went off in an underground garage than if it went off
16 in an open parking lot, which most embassies have today. So I don't
17 agree that the concern has really substantive grounds to it.

18 MR. QUIN: Ultimately, it may be the
19 recommendation, if it had been a major concern, would have been
20 embraced within one of the conditions, which it is not.

21 CHAIRPERSON REID: Okay. Basically, for the
22 record, I just wanted to not overlook that concern and have it
23 addressed and aired, so that the ANC would then have a response to
24 their concern in that regard.

25 MR. MLOTEK: There was one more point they made
26 in their findings, as you just read them, Madam Chair, and that was
27 that the Secret Service was reducing the Uniform Division of the
28 Secret Service, was reducing its security presence in the
29 neighborhood because of needs to protect the White House.

1 I am totally unaware of that. The Secret Service has
2 a very large presence in that neighborhood, a very large division of the
3 Uniform Branch, which is totally dedicated, based near UDC at
4 Connecticut and Van Ness and the Federal Building there, the State
5 Department Building, they are dedicated to protecting embassies.
6 That's all they do, although they have general police powers and
7 arrest powers, and they do occasionally use them. But their basic
8 focus is that, and I'm not aware of any intention to do that.

9 I would also point out for the record, and for the
10 interest of this Board, my new superior, as it was, the Ambassador to
11 whom I report, who is also Assistant Secretary of State for Diplomatic
12 Security, Dave Carpenter, is a former -- immediately former retired
13 Secret Service agent.

14 He was the person in charge of President Clinton's
15 Secret Service security detail. He is now my Director. And I can
16 assure you that if he caught wind of any intention to reduce Secret
17 Service protection of foreign missions, he would have something and
18 something very effective to say about it. So I don't believe that that is
19 true, but I will inquire just to be on the safe side.

20 CHAIRPERSON REID: And you may want to just
21 send a letter based upon your inquiry, the results of it, to Linda
22 Bomballo, who is the chairperson of ANC-1D.

23 MR. MLOTEK: I know Ms. Bomballo.

24 MS. KING: Would you like a copy of her letter?

25 MR. MLOTEK: Yes. May I approach to take it?

26 MS. KING: Please do.

27 MR. MLOTEK: Thank you.

28 CHAIRPERSON REID: Thank you.

29 If there aren't any other questions in this regard from

1 Board members --

2 MS. KING: No.

3 CHAIRPERSON REID: Okay.

4 MS. KING: I don't have any questions.

5 CHAIRPERSON REID: Okay. All right. Persons in
6 support of this application? Seeing none, persons in opposition to the
7 application? Closing remarks by the applicant?

8 MR. QUIN: My remarks are very brief. This is one of
9 the processes that has worked with the neighborhood. As in all
10 chancery cases, especially near Kalorama, there is always great
11 consternation about another chancery. And in this case, we started
12 with the ANC.

13 We have had two meetings with the ANC, several
14 meetings with -- that Andy has had, and others, with the Kalorama
15 Historical Society or Association. And I think we came to the right
16 conclusion, and it required a lot of work and a lot of changes, so that
17 we are presenting you a project which I think is acceptable to the
18 community. And for those reasons, we would request, if the Board
19 feel it possible, of a bench decision, and then we would submit a draft
20 order as soon as we can get it down to you. Thank you.

21 CHAIRPERSON REID: Okay. Also, your waiver
22 request.

23 MR. QUIN: I beg your pardon?

24 CHAIRPERSON REID: And also your waiver --

25 MR. QUIN: Oh. Oh, yes.

26 CHAIRPERSON REID: -- of the fees request.

27 MR. QUIN: What I was not sure about, very frankly,
28 is whether this -- the FMBZA Board acted upon the waiver, or whether
29 it was the normal Board, because it's in the regulations. And I didn't

1 quite know which Board would waive this, and that's why I've raised
2 that. If this Board has authority to raise it -- I mean, to waive it, we
3 would request that you waive it.

4 CHAIRPERSON REID: Well, it would be a matter to
5 be taken up with this Board, in that we are the sitting Board for the
6 Foreign Missions BZA.

7 Board members, can we have some discussion on
8 this particular matter, as opposed -- in regard to the disposition of the
9 case today? What is your pleasure?

10 MR. PARSONS: Did you want to discuss this waiver,
11 or did you --

12 CHAIRPERSON REID: I do want to. But my first
13 question is: do we want to -- are we inclined to dispose of this
14 particular case today, or will we do it at our next meeting? You'd like
15 to do it today?

16 MS. KING: Oh, yeah, let's do it today.

17 CHAIRPERSON REID: As such, then we would
18 move, first, to a decision based upon the request for the waiver of the
19 fees, modification of the waiver -- I mean, a request to modify or
20 reduce the fees that have been imposed.

21 MS. KING: I don't know enough about the past
22 events for this --

23 CHAIRPERSON REID: Ms. Rose, could you please
24 give us input as to the basis for the establishment of the fees and the
25 -- and speak to the basis for which they are requesting a decrease?

26 MS. ROSE: I don't know that I'm prepared to go into
27 depth on it. I know Ms. Pruitt-Williams generally deals with these
28 matters. But in the previous request by Foreign Missions, I think it
29 was the Kazekstan case, the Board did waive it. I'm not sure what the

1 authority for that was. That still has to be taken care of.

2 So my understanding was that the Board didn't have
3 authority to waive or reduce fees, but that -- and that they don't have
4 the budget to do that either. So the arguments that are before the
5 Board requesting those --

6 CHAIRPERSON REID: In that instance, the case
7 which you are speaking, was as a result of there being some
8 inconsistency with the decision of the Zoning Administrator. As a
9 result of that, we agreed to waive the fees.

10 MR. PARSONS: Our circumstance is that because
11 these fees are deposited directly into the treasury of the District of
12 Columbia, we're not able to reimburse.

13 MS. KING: Were these fees deposited, or were they
14 held in escrow, since there was a transfer of waiver?

15 CHAIRPERSON REID: That's what happened in the
16 other case. It was not deposited. It was being held, predicated upon
17 the decision made by the Board.

18 MR. PARSONS: Well --

19 MS. KING: Were these monies deposited?

20 MS. ROSE: I don't know. I am without that
21 knowledge. Ms. Pruitt-Williams may know, but I didn't anticipate that
22 she would not be here this morning.

23 MS. KING: Can we postpone a decision on the
24 question of the reduction of fees until our November meeting,
25 November 5th meeting? Would that be appropriate?

26 MR. PARSONS: I think we'll have to. I --

27 MS. KING: I think we should.

28 MR. PARSONS: I think there is --

29 CHAIRPERSON REID: Okay. Yes. Did you have a

1 comment?

2 MR. MLOTEK: Ron Mlotek from the Office of Foreign
3 Missions. Since this is an issue the Department has an interest in,
4 and since counsel for the applicant represented that we supported the
5 request, which we do, I just want to make myself available for any
6 question you might have about our position, and just to very briefly
7 summarize it.

8 There was a change some years ago in the overall
9 Board of Zoning adjustment fee schedule. And this was also applied
10 to chanceries. The Department of State had some concern, which we
11 raised with the previous Executive Director, Ms. Robinson, informally,
12 in informal discussions -- I have not yet had an opportunity to raise it
13 with the current -- present Director.

14 The concern is that the nature and the amount of the
15 new fees that are being applied, which were applied in Kazekstan, but
16 were waived in applying -- would apply now to Cote D'Ivoire --
17 resemble more a tax rather than a fee.

18 Now, diplomatic entities, under international law, have
19 tax exemption. They don't pay the D.C. sales tax, they don't pay sales
20 tax to surrounding jurisdictions, or anything that -- or property taxes.
21 This is part of international law. It goes back for centuries, and, of
22 course, the United States benefits from it at the other end.

23 However, international law specifically does allow --
24 does allow -- for the payment of "fees for services rendered," such as
25 street assessments or garbage trash collection or street lighting, or
26 something of that nature, or tolls on the New Jersey Turnpike, or
27 certain other types of things. They may be called taxes, they may be
28 called fees, but for which the diplomat or the diplomatic entity receives
29 a direct and identifiable and specifiable service or benefit.

1 Now, obviously, in presenting and pursuing an
2 application for the BZA, they are receiving certain benefits. And so
3 the Department of State has no difficulty and no objection to the
4 requirement that they pay some fee which is reasonably related to the
5 work or to the expense and cost that the government of the District of
6 Columbia, in the person or the body of the Board of Zoning
7 Adjustment, incurs in doing this.

8 But the problem is that the current fee schedule, in
9 many instances -- and it depends on a wide variety of variables,
10 because it's a very complicated structure. Sometimes renovation or
11 additions get surcharged or get fees that are higher than brand-new
12 construction. It also depends on which zone it's in. It depends on the
13 nature of the variance being requested or the nature of the relief being
14 requested.

15 But in some cases, the amount of this fee can be, in
16 the view of the Department of State, greatly in excess of what is the
17 reasonable and specific benefit that is being received. So, therefore,
18 to our view, we are concerned that it appears to be a tax which is
19 prohibitive. That's the issue that we have here.

20 So if it is a reasonable amount that does not greatly
21 exceed what would have been charged, let's say, under the old fee
22 schedule, we would not object to it, if it can be reasonably related.
23 And the amount that -- and that's the extent to which we agreed with
24 counsel for Cote D'Ivoire in the amount that he calculated, and he
25 came up to that calculation by arguing that the Zoning Administrator
26 wrongly classified the case in -- no?

27 MR. QUIN: No. The specific rationale is, number
28 one, the Board has the right to waive its rule. That's clear under
29 3301.1. But the real rationale is a section, Mr. Mlotek, that we've used

1 -- 206(b)(3) -- which says that the limitations and conditions applicable
2 to chanceries shall not exceed those applicable to other office or
3 institutional uses in that area.

4 And so what we did was we looked through the
5 zoning regs and said, "What is the closest type of application to this?"
6 And we determined, at least in our view, that a non-profit organization
7 located in a historic district was the most similar type of application
8 that would come before you, and that fee would have been \$1,200.

9 Now, I must say that there is another point that you
10 could consider. I didn't really think about it when I wrote the letter, but
11 that there are two deviations. If you felt that those deviations were
12 significant under the rules for someone else, they would have to pay
13 \$800 per variance. So conceivably, if you felt, which we do not feel,
14 that those two deviations were significant, you would charge another
15 person \$800 per variance, so that the total would be \$1,600 plus
16 \$1,200, which would be \$2,800.

17 I mean, I don't know whether that's helpful or not, but
18 that's the specific remedy based upon what we believe the law ought
19 to be.

20 MR. MLOTEK: And the Department of State's view
21 about that is that we agree with the amount. We don't necessarily
22 agree with the reasoning, because the reasoning is more related to
23 whether it's --

24 MS. KING: We've heard your reason. I move that we
25 defer a decision on the waiver until our meeting of the morning of
26 November 5th.

27 CHAIRPERSON REID: I second.

28 MR. PARSONS: Yeah, I would agree. I think,
29 obviously, if we're going to make a decision on this, it will be a

1 decision that will go to future cases of this kind. It's not a one-time
2 deal, so --

3 CHAIRPERSON REID: Set a precedent.

4 MR. PARSONS: -- it -- I think the unfortunate thing is
5 we received this letter on July 2nd, and we could have staffed this out,
6 if we had known about it. I wouldn't be comfortable voting on this in
7 November, unless we had a revision to our regulations, essentially.

8 MR. QUIN: And we have no objection to postponing
9 that decision. We would still ask for a decision on the merits.

10 CHAIRPERSON REID: Okay. Well, on this particular
11 issue, in regards to the waiver, there is a motion on the floor to defer it
12 until our November 5th -- November 4th meeting. And it has been
13 seconded. All in favor?

14 (Ayes.)

15 Opposed?

16 (No response.)

17 Okay. Now --

18 MS. KING: I move the granting of the application and
19 the bench decision.

20 CHAIRPERSON REID: I second.

21 MS. KING: I think they have made their case. I think
22 it's a good use of the property, and I think that we should grant it.

23 MS. BAILEY: Madam Chair, would there be any
24 conditions that go along with that?

25 CHAIRPERSON REID: Yes. Also, they have
26 adequately complied to the regulations in regard to their application,
27 Section 10 -- what is it, 10001 -- 10001.1. There are, from the Office
28 of Planning, some recommendations -- I'm sorry, from the ANC, there
29 was a request to include some conditions that the applicant does not

1 seem to have a problem with. Would you --

2 MS. KING: The applicant has agreed that no
3 construction will take place before 7:00 a.m. in the morning, and that
4 they will work cooperatively with the neighbors to mitigate the adverse
5 impact of the construction and parking on the neighborhood.

6 CHAIRPERSON REID: And it says also that the
7 ANC-1D expects the applicants to proactively assist the residents in
8 the neighborhood and having violators ticketed by the District
9 government.

10 MS. KING: Right. They will be proactive as was
11 requested. They will cooperate actively with the neighbors in
12 mitigating the impact of the construction.

13 CHAIRPERSON REID: And there is no opposition to
14 this case that we are aware of. The ANC is in support of it, and they
15 are, therefore, given the great weight to which they are entitled.

16 Mr. Parsons, do you have any comments?

17 MR. PARSONS: Yes, I do, Madam Chair. I'm going
18 to vote in favor of this motion, but I wanted to say a couple of things
19 before I did that.

20 First, my congratulations to your team, especially to
21 Mr. Lee. I think the solution is a handsome one. But I do want to
22 share the views of the staff of the Historic Preservation Review Board,
23 who said that they felt the building was too large. I concur with that,
24 and I wasn't completely satisfied with the answers to my questions
25 regarding the number of offices.

26 But given the amount of time and effort that has been
27 spent on this, and the support and approvals from others, I'm willing to
28 vote in favor of the motion.

29 CHAIRPERSON REID: Okay. All in favor?

1 (Ayes.)

2 Opposed?

3 (No response.)

4 MS. ROSE: Staff will record the vote as three to zero
5 not to disapprove the application, with Ms. King, Ms. Reid, and Mr.
6 Parsons. Staff would also record the vote as three to zero to defer
7 consideration of the fee waiver -- of the fee reduction, Ms. King, Mr.
8 Parsons, and Ms. Reid.

9 CHAIRPERSON REID: Okay. Thank you. You
10 should have your response in about two weeks -- have the order in
11 about two weeks.

12 MR. QUIN: And we will submit that as soon as we
13 can prepare it.

14 CHAIRPERSON REID: Okay. Do you have a draft
15 order? No, this is a summary order. And if you have -- well, we don't
16 have to draft that. It's not a full order.

17 MR. QUIN: We will submit one anyway.

18 CHAIRPERSON REID: Okay. All right. Thank you.

19 MS. KING: I'm not sure if we do summary orders in
20 chancery cases. But if not, we can just do a --

21 CHAIRPERSON REID: Well, Mr. Quin has agreed to
22 submit to us whatever is appropriate in this instance. Thank you.

23 MR. QUIN: Thank you very much.

24 CHAIRPERSON REID: Okay.

25 MR. QUIN: Thank you.

26 MS. ROSE: The next case on the agenda is 16381,
27 application of H and M Enterprises, pursuant to 11 DCMR 3107.2 for a
28 use variance from the provisions of Subsection 350.4, to allow a retail
29 pet food store on part of the first floor in an R-5-B/R-5-D District at

1 premises 1629 Columbia Road, N.W., Square 2589, Lot 467.

2 Would all persons planning to testify in this application
3 please rise to take the oath? Please raise your right hand.

4 (Whereupon, an oath was administered to those
5 wishing to testify in this application.)

6 You may be seated.

7 MS. MOSS: Good morning, Honorable Chairperson.
8 My name is Erma Moss. I live at 3302 Curtis Drive, Suitland,
9 Maryland. I'm here to help Mr. Turner in presenting his case before
10 the appeals board.

11 The application that we've submitted has all of the
12 pictures involved with the shop. As stated, we're here to apply for or
13 to be able to get a use variance to allow a retail pet food store in the
14 premises at 1529 Columbia Road, N.W. It's a very large apartment
15 building with about maybe 800 or more tenants in it. And the area
16 where Mr. Turner wishes to operate the pet food or pet supply store is
17 in the lobby of the building.

18 There are -- well, I'd like to reiterate it's just pet food
19 and pet supplies -- dry and canned food, and kitty little, maybe dog
20 beds, cat beds, little toys, of that nature of pet supplies. There are
21 several other businesses in the building, but this would be the third pet
22 food or pet supply shop that would be operated from the premises.

23 In the initial -- in applying for the occupancy permit, of
24 course, we had to learn by trial and error. Mr. Turner was fined for
25 operating without an occupancy permit, and he paid his fine. And, of
26 course, we since have appealed for the zoning variance.

27 There is -- well, 1629 Columbia Road, as I said, is a
28 large apartment building, high rise, and it's on a very, very busy street.
29 And the building itself is a pet building. Pets are allowed on the

1 premises. And it primarily serves the tenants of the building, and, of
2 course, the general public at large. But there are a lot of tenants there.

3 Mr. Turner was able to get a hundred names from the
4 tenants in the building who would like to have the pet food or pet
5 supply store in the building. Can I submit these when I'm through?

6 MS. KING: Wasn't there a pet food store in this
7 location prior to this?

8 MR. TURNER: In my lot or in the building itself?
9 Because in the basement there is actually a store. It's called Mrs.
10 Kim's.

11 MS. KING: A grocery store.

12 MR. TURNER: It's like a little -- yeah, a grocery store,
13 or equivalent to a 7-11 more, you know?

14 CHAIRPERSON REID: Excuse me, sir. For the
15 record, you need to identify yourself, your name and address.

16 MR. TURNER: I was just asked a question. I'm
17 sorry.

18 MS. KING: It was my fault. Your name and home
19 address?

20 MR. TURNER: Okay. My name is Vincent Turner,
21 and I live at 1629 Columbia Road, Apartment 431. And for the matter,
22 I live in the same place that I would like to have my store. I was asked
23 by the owner to look into it and open a store, so I did that. From then
24 on, I thought I was under, you know, the owner and I opened up, and I
25 thought it was just an in-house shop, like that, and then, boom, the
26 lady walked right into my store and said, "No, you need an occupancy
27 permit," and I got fined.

28 From then, I said, "Well, I want this to be legal. I'm
29 trying to do a job, and I'm trying to make a living doing this." And so

1 we went and filed the variance, and here we are now, and we're trying
2 -- I'm just trying to get an occupancy permit so I can run a store in the
3 community which needs it and they've warmed up to me, the people in
4 my building.

5 It's one of the only pet buildings in the area that allows
6 dogs and cats and stuff like that. That's why the owner came to me in
7 the first place, to say, "Hey, would you like to open up a pet store in
8 our building?" And I said yes. Because he is trying to get a whole
9 little commercial area down in the bottom -- cappuccino store and --
10 besides the other store and --

11 MS. KING: The other stores that exist in the building,
12 do they have occupancy permits?

13 MS. MOSS: Yes. I think we had to get copies of
14 those and submit them with our application.

15 MS. KING: They're not part of your submission?

16 MS. MOSS: Pardon? We had to submit copies of
17 other applications.

18 MS. KING: Oh, I see. Oh, I see. Here is the Kim in
19 the basement. They have an occupancy permit, retail delicatessen.
20 And the Plaza Joint Venture, is that the owner of the building? Or
21 what is the Plaza Joint Venture?

22 MS. MOSS: I don't know what that -- the building is.
23 It's H and --

24 MR. TURNER: The building is H and M Enterprises.

25 MS. KING: So in addition to your pet store, there is a
26 delicatessen -- what else?

27 MR. TURNER: There's going to be a cappuccino --
28 what's there now? Because things have moved in and moved out, so
29 I -- right now, there's a delicatessen, which is Mrs. Kim's, and there's a

1 cappuccino store right next to her, like Starbucks or something, that's
2 going to be opened up. They have already built it in. It just -- I think
3 they might be trying to get an occupancy permit, too, to open up. I'm
4 not really sure, but I know it's going to be opening up.

5 And I've been told by the owner that he's trying to
6 create a whole little unit of stores down in the commercial area,
7 because there's a commercial area down in the basement,
8 supposedly. And when I was told to open up where I was, I thought I
9 was covered. But obviously I wasn't, so here I am.

10 MR. GILREATH: Are you the only commercial activity
11 on the first floor? The rest of it -- commercial is on the basement?
12 You're on the --

13 MR. TURNER: Yes. I'm the only commercial one,
14 except for there are some doctors in the building. There is a dentist
15 and there is another doctor in the building.

16 MR. GILREATH: What floor are they on? The first
17 floor, too?

18 MR. TURNER: First floor.

19 MR. GILREATH: First floor, yeah. Okay.

20 Do we have any kind of precedent of the BZA about
21 permitting or encouraging appropriate kinds of commercial
22 development in apartment buildings on the first floor? Is there any
23 kind of history?

24 MS. KING: Tracey will correct me if I'm wrong, but I
25 think one of the tests is the degree to which the service will be used by
26 the tenants of the building. Is that not correct, Tracey?

27 MS. ROSE: Well, under Section 354, the zoning
28 regulations allow convenience stores and apartments for foods, drugs,
29 and sundries and personal services for the tenants. But I don't know

1 -- that's not the provision that the Zoning Administrator cited for this to
2 come under or to get a variance from. And I don't know that that
3 would -- that a pet store would be considered any --

4 MS. KING: 3380.

5 CHAIRPERSON REID: Can you please clarify
6 something for us? The Zoning Administrator cited a Section -- let's
7 see --

8 MS. KING: 3380.

9 CHAIRPERSON REID: But that's fees. That one,
10 3380, is fees. Look it up. It's a fee schedule.

11 MS. KING: Oh.

12 CHAIRPERSON REID: He cites Section 350.4. So I
13 don't know where that other --

14 MS. KING: 3380. That's scheduled fees.

15 CHAIRPERSON REID: Yes. So I don't understand
16 why that was cited. But in the letter it's 350.4.

17 MS. KING: Right.

18 CHAIRPERSON REID: So I think that's what we are
19 to operate under.

20 MR. PARSONS: What did we supply, then?

21 CHAIRPERSON REID: 350.4 is the -- Ms. Rose, you
22 were reading from 350.4 in regard to the permitted uses.

23 MS. ROSE: I was --

24 CHAIRPERSON REID: I --

25 MS. ROSE: No. I was reading from 354, Section
26 354, in response to Mr. Gilreath and Ms. King's question.

27 MR. GILREATH: What is 354? What does that say?

28 MS. ROSE: Convenience stores in apartments. You
29 were asking whether -- what is the precedent on allowing these types

1 of -- or service types of facilities in the basements or first floors of
2 apartments. That regulation goes to that issue. But this case comes
3 under 350.4.

4 CHAIRPERSON REID: Why not --

5 MR. CLARENS: Let me --

6 CHAIRPERSON REID: Okay. Mr. Clarens?

7 MR. CLARENS: I think I might be able to help you
8 understand it. I'm guessing as to why this is coming to us as a
9 variance, but I think that it makes sense to me. This is not a
10 convenience store for the benefit of the users of the residence of the
11 apartment house in the way that -- in a way that the zoning regulations
12 are written, and the way the Board has understood them, and the way
13 the Zoning Administrator has understood it in the past.

14 So it comes to us as a variance, a use variance, as
15 opposed to a special exception as a convenience store to members of
16 the building.

17 Now, we can, in fact -- I think we can, in fact, change
18 the provisions under which the Zoning Administrator has forwarded
19 this to us. And if we find that, in fact, it is a convenience store for the
20 benefit of the users of the building, and if there is wording in the
21 regulations that give us that leeway under 354 --

22 MS. BAILEY: In applicant's statement, Mr. Clarens, it
23 indicates that the services would be provided to the tenants of the
24 building as well as the surrounding community as well. So it's not --

25 MS. KING: Is your microphone on, Beverly?

26 MS. BAILEY: Yes.

27 MS. KING: I can hardly hear you.

28 CHAIRPERSON REID: Pull it up towards you, so that

29 --

1 MS. BAILEY: Okay. I was just saying that the
2 applicant's application indicates that the pet store would be used for
3 the residents of the building as well as for the community at large. So
4 it's not being proposed exclusively for just the tenants of the building.

5 MR. CLARENS: Well, but exclusively is not a
6 qualification in the regulations for convenience stores. A convenience
7 store is primarily for that, but it also can serve members of the
8 community at large. I think that we have done that in convenience
9 stores located in apartment buildings in the past.

10 The question is whether we can, as a Board, do away
11 with the recommendation. If we find that the weight of the
12 Administrator -- or do we need to send it back to the Administrator and
13 say, "This is not a variance case. This is not a" -- because a use
14 variance -- first of all, I'm wondering if it should be the owner of the
15 store that should be here and not the owner of the building. It is the
16 owner of the building that needs to ask for a variance relief, and --

17 CHAIRPERSON REID: Well, he needs a letter of
18 authorization from the --

19 MR. CLARENS: From the owner of the building.
20 They do. I see. So they are acting on behalf of the owner of the
21 building.

22 CHAIRPERSON REID: Yes.

23 MR. CLARENS: Okay. So the question is whether it
24 should be as a variance here or whether it's a special exception. And
25 then the question is whether this is a continuation of the previous use
26 and whether that previous use was, in fact, interrupted for any period
27 of time, or do you know? And that's a question now to you. Do you
28 know if the previous use -- the people who used this space before,
29 which according to your application was --

1 MR. TURNER: Yes, they were --

2 MR. CLARENS: -- a travel agency?

3 MR. TURNER: -- a travel agency.

4 MR. CLARENS: And they were there until when?

5 MR. TURNER: They were there, I would say -- I'm
6 not really -- I know they moved out before I moved in. I know that.

7 MR. CLARENS: Sure.

8 MR. TURNER: And when I moved into --

9 CHAIRPERSON REID: What year was that?

10 MR. TURNER: -- the spot, the owner told me if I fixed
11 it up myself I could use it.

12 CHAIRPERSON REID: Do you know how long it had
13 been vacant prior to your moving in? That's a critical question.

14 MR. TURNER: I think it was -- it had to be vacant like
15 about three months or something like that.

16 MS. ROSE: Can you tell when you moved in?

17 MR. TURNER: Huh?

18 MS. ROSE: When did you move in? What year?

19 MR. TURNER: I moved in in about -- about two years
20 ago.

21 MS. KING: Into the shop or into your apartment?

22 MR. TURNER: Oh, into my apartment, of course, but
23 the shop I moved into -- I'm trying to get it straight -- I'd say about a
24 year ago, a year or so ago. I moved into that shop, and when I got
25 fined is when, you know, I went to the judge and he said, "Well, you've
26 got to put this in a variance, but you can work in the store until this
27 comes up to you guys." And he said, "If they deny you, then you have
28 to close down immediately. But if they don't, you can keep on and
29 stay on with your business." And that's -- I'm here now, hoping that --

1 MR. CLARENS: We need to clarify it under, you
2 know, what is it that we're doing. So that's why the discussion is going
3 on.

4 MR. TURNER: Okay. I'm just trying to figure out
5 exactly what you're asking. That's all.

6 CHAIRPERSON REID: It's a little complicated.

7 MR. GILREATH: I think what they're talking about is
8 continued use.

9 CHAIRPERSON REID: Right.

10 MR. GILREATH: If it's interrupted -- if it's closed
11 down -- and I don't know what the time limit is, but if it stays closed
12 down for a long period --

13 CHAIRPERSON REID: Three years of non use.

14 MR. GILREATH: So there was no -- from the time the
15 travel agency closed until you started --

16 MR. TURNER: Oh, no. No, no, no, no.

17 CHAIRPERSON REID: Mr. Clarens, that being the
18 case --

19 MS. KING: But did the travel agency --

20 MR. TURNER: And we don't know that either. I just
21 took that for granted, that they would have one if they were a business
22 there for so long.

23 MR. CLARENS: Okay. Well, we don't have a copy of
24 that certificate of occupancy.

25 MR. TURNER: No. I -- I don't think they really had
26 one myself.

27 CHAIRPERSON REID: You said?

28 MS. MOSS: I have all of the -- I've got all of the
29 certificates that are there now. I don't know about the travel agency.

1 MS. KING: This joint venture, you don't know what
2 business that is?

3 MS. MOSS: No. Huh-uh.

4 MS. KING: Where did you get it from?

5 MS. MOSS: I got it from the -- one of the D.C.
6 departments where I had to go get certificates of occupancy.

7 MS. KING: Oh. Do you mean you got this -- the
8 copies of these certificates of occupancy --

9 MS. MOSS: Uh-huh.

10 MS. KING: -- from the department itself?

11 MS. MOSS: Probably from the department itself. I
12 went to so many departments I can't even --

13 CHAIRPERSON REID: But we don't see the --
14 specifically, the occupancy for the travel agency. So we don't know if
15 there was a break in the use from the time that the certificate of
16 occupancy had been granted for the previous use and whether or not
17 --

18 MS. KING: The Plaza Joint Venture is the rental
19 apartment's 276 units. So that was the certificate of occupancy for the
20 apartment building.

21 CHAIRPERSON REID: For the building itself.

22 MS. KING: The Kim certificate of occupancy --

23 CHAIRPERSON REID: That was in --

24 MS. KING: -- which was in 1980, is for the retail
25 delicatessen. So there are no other extent -- the only C of O's that
26 you are aware of, or that the DCRA is aware of, is for the delicatessen
27 and for the apartment building itself.

28 CHAIRPERSON REID: How long -- do you know --
29 now, Ms. Moss, let me get an understanding as to your role. You are

1 representing -- you're here on behalf of the owner?

2 MS. MOSS: No, Mr. Turner.

3 MR. TURNER: On behalf of me.

4 CHAIRPERSON REID: Well, on behalf of --

5 MS. MOSS: Mr. Turner.

6 CHAIRPERSON REID: I'm sorry. On behalf of Mr.

7 Turner. You were given authorization to do so by the owner.

8 MS. MOSS: Well, Mr. Turner is the one who is trying
9 to get the occupancy permit.

10 CHAIRPERSON REID: Right.

11 MS. MOSS: For the pet supply store.

12 MS. KING: But it's the owner of the property that has
13 to apply for the variance or the exception.

14 MS. MOSS: Well, in going through the procedure --
15 and what we were explained that we had to do in order to get the
16 variance is to apply for the -- first, to apply for the variance and have a
17 hearing, to have -- to get it approved --

18 CHAIRPERSON REID: What is your relationship?

19 MS. MOSS: Pardon?

20 CHAIRPERSON REID: What is your relationship to
21 this case?

22 MS. MOSS: I just helped him put the paperwork
23 together and fill out the --

24 MR. TURNER: I needed somebody to help me out
25 with that.

26 MS. MOSS: -- fill out the application and get it -- and
27 pull all of this information together --

28 CHAIRPERSON REID: I see.

29 MS. MOSS: -- that's required.

1 CHAIRPERSON REID: So you are basically assisting
2 him with his application.

3 MS. MOSS: Yes.

4 CHAIRPERSON REID: All right. Now --

5 MS. KING: But we don't have a letter of authorization
6 from the owner of the property.

7 CHAIRPERSON REID: But the letter of --

8 MS. MOSS: I think there is one in there.

9 MS. KING: This is Mr. Turner's authorizing Ms. Moss.

10 CHAIRPERSON REID: Oh, okay. The owner --

11 MS. KING: But see, I thought it was --

12 CHAIRPERSON REID: I did, too.

13 MS. KING: -- the owner, but it's not.

14 CHAIRPERSON REID: The owner of the property --
15 who is the owner of the property?

16 MR. TURNER: Craig Burnstein.

17 CHAIRPERSON REID: Have you spoken to him?

18 MR. TURNER: Yes. I even have his signature on the
19 papers I just filled --

20 CHAIRPERSON REID: Well, what paper is that, sir?

21 MR. TURNER: That says that they want me in the
22 building.

23 CHAIRPERSON REID: Has he --

24 MR. TURNER: You gave it to --

25 MS. MOSS: Excuse me. Are you requiring a formal
26 letter from him saying that this is what -- from the owner as opposed to
27 -- I thought we had one in there, because I know he had talked to the
28 owner about it. The owner was -- as a matter of fact, has assisted him
29 and gave him the tenants' names and all of that together that --

1 MS. KING: And the owner's name is Craig
2 something?

3 MR. TURNER: Craig Burnstein.

4 CHAIRPERSON REID: We need an owner
5 authorization letter that --

6 MS. KING: We have no such thing.

7 CHAIRPERSON REID: Is that what you're saying
8 that you had given to the staff?

9 MR. TURNER: No. What I gave to her -- them was a
10 thing that says that "We enjoy having" --

11 CHAIRPERSON REID: Can we take a look at that --
12 whatever document he's referring to?

13 MR. TURNER: -- "Paws and Claws in the building."
14 And right under there it says "Craig Burnstein, Owner."

15 MS. ROSE: When did you give us this? Some time
16 ago?

17 MR. TURNER: When did you give them those?

18 MS. MOSS: I gave it --

19 MR. PARSONS: When this hearing started.

20 MS. ROSE: Oh. You just gave it just now? Oh.

21 CHAIRPERSON REID: You said he gave it to staff.

22 MS. ROSE: That was the list of tenants in the
23 building who had signed it -- the --

24 MR. TURNER: And if you look on there it says "Craig
25 Burnstein, Owner" right on there.

26 MS. ROSE: Oh. He just signed a petition saying that
27 he was in support of the application?

28 MR. TURNER: And that he was in support of having
29 me in the building.

1 CHAIRPERSON REID: No, no. That is not the
2 document that --

3 MR. TURNER: Okay. I understand what you're
4 saying.

5 MR. GILREATH: You need a letter from him in which
6 he would authorize you, with his name, saying you're authorized to
7 represent him and speak on his behalf in applying for the variance.

8 MR. TURNER: Okay. Well, I know that everything is
9 okay and we can get that.

10 MS. MOSS: We can get that. But I thought we had a
11 letter in there from him.

12 MR. TURNER: That's no problem.

13 MR. CLARENS: Let me clarify, Madam Chairperson,
14 a couple of things.

15 CHAIRPERSON REID: Okay.

16 MR. CLARENS: I've reviewed 354, and I think the
17 Board needs to make a determination as to whether this is properly
18 before us as a variance, or whether it should be a special exception.
19 And it is my reading of the regulation that it is properly before us as a
20 variance, so that we need to apply the use variance standard to this
21 application.

22 The reason why that's so is that the convenience
23 stores in apartments, which is 354, provides for a special exception for
24 foods, drugs, and sundries, and personal services, those kinds of
25 facilities within apartment houses in R-5 districts, which this is one of
26 those.

27 And so we need to make a determination that this, in
28 fact, is not a food, drug, or sundry, or personal service store. And I
29 think that decision we need to make first. And if we do that, then we

1 can -- yes?

2 MS. KING: I mean, what is --

3 MR. CLARENS: Summaries.

4 MS. KING: I mean, we're talking about a building that
5 permits animals. And since there are so few of those in the District of
6 Columbia, I imagine it's overrun with cats and dogs, not to mention
7 other species. So the provision of supplies to the pets of residents
8 could perhaps be construed as sundries.

9 CHAIRPERSON REID: Mr. Clarens, does it stipulate
10 whether or not they would be allowed to also offer these services to
11 the public?

12 MR. CLARENS: Well, in particular, it does say that --
13 let me see if I can find it now. I read it a minute ago. Ms. Bailey just
14 showed it to me. "The adjuncts authorized under these sections are
15 intended to supply tenants of the apartment house with commodities
16 and services supplementary to those in established commercial
17 districts.

18 "But in order to protect the value and stability of this
19 district, the Board shall give consideration to the following: the
20 proximity of commercial districts to the adjunct proposed, the
21 adequacy and convenience of parking spaces," etcetera, "the
22 adequacy and scope of commodities and services provided within the
23 commercial districts," etcetera, etcetera, "the size and character of the
24 apartment house, since the tenants of the apartment house will be
25 expected to furnish all or substantially all of the financial support of the
26 requested action."

27 So it is clearly that the intention of the regulation was
28 to serve the tenants of the apartment and not people outside the
29 apartment. That's the first sort of threshold.

1 And then the second one is whether this can be
2 considered a sundry, you know, supply or provision --

3 CHAIRPERSON REID: But notwithstanding that --

4 MR. CLARENS: -- of sundries. Whether --

5 CHAIRPERSON REID: But notwithstanding that, if, in
6 fact, this is a service that is being provided to the community at large,
7 then that nullifies that --

8 MS. KING: No, no, no, no.

9 CHAIRPERSON REID: Yes, it does.

10 MR. CLARENS: Well, correct. It does say that it is to
11 serve the tenants of the building.

12 MS. ROSE: Does it say that it cannot serve anyone
13 else?

14 MR. CLARENS: Well, it doesn't say to exclusion. It
15 says basically, "Adjuncts arising under these sections are intended to
16 supply tenants of the apartment house with commodities and
17 services."

18 CHAIRPERSON REID: It appears to me that this
19 provision was promulgated basically to assist persons who live in
20 apartment buildings with various types of conveniences that they may
21 not otherwise be able to get to because of distance. And this is why I
22 think that it speaks to -- takes into consideration the proximity of other
23 commercial services to the building prior to allowing that service to be
24 in the building. That's what it sounds like to me.

25 MR. CLARENS: Correct.

26 MR. GILREATH: Is there a pet store nearby? How
27 close is one to you?

28 MR. TURNER: No, there's not.

29 CHAIRPERSON REID: There is a pet store on U

1 Street.

2 MR. TURNER: U or something.

3 CHAIRPERSON REID: Which is -- well, U Street, on
4 the corner of 17th and U, I think it's called Companions.

5 MR. TURNER: That's it.

6 CHAIRPERSON REID: And it's --

7 MR. GILREATH: How far away is that from your
8 building?

9 CHAIRPERSON REID: This is -- look at it. Right.

10 Okay. Sheila Reid. The closest pet store that I know
11 of is on 17th and U, and this is on 16th and Columbia Road.

12 MS. KING: So it's a good 10 blocks away?

13 CHAIRPERSON REID: Yes, a 10-block walk. So you
14 have to determine whether or not that would be considered in
15 proximity to or not.

16 MS. KING: Is this the provision under which we
17 permitted a dry cleaner in an apartment building in Ward 3?

18 MS. ROSE: More than likely.

19 MS. KING: I do not recall that we imposed any
20 conditions that the -- in fact, I don't think there were -- you know, the
21 intention of the dry cleaner was to have a business that dealt
22 exclusively, preponderantly, very much preponderantly with the
23 tenants of a very large apartment building, but not solely and
24 exclusively. I mean, if somebody from next door wanted to come in
25 and leave their dry cleaning, I don't think we would --

26 CHAIRPERSON REID: Well, the question is, is it
27 under a special exception, 354, or under 350?

28 MS. ROSE: I don't think it's a special anything. I
29 would have to look it up.

1 CHAIRPERSON REID: I think that the -- what you're
2 citing was under --

3 MS. ROSE: Do you have the regulations?

4 CHAIRPERSON REID: -- 3 --

5 MS. ROSE: Do you have yours as well?

6 CHAIRPERSON REID: -- under 3 --

7 MS. ROSE: So we can all kind of look at.

8 CHAIRPERSON REID: This book? The regulation
9 book, do you mean?

10 MS. ROSE: Yes.

11 MR. CLARENS: No, no, no. For you. So you can
12 read it. 354.

13 CHAIRPERSON REID: Yeah. Oh, okay. I just had it.
14 What we were thinking about was whether or not --

15 MS. ROSE: Yes, it is a special exception.

16 CHAIRPERSON REID: Yes. So that particular
17 building with the dry cleaning may have been a special exception. Or
18 was it a variance?

19 MS. ROSE: It was probably a special exception.

20 CHAIRPERSON REID: All right. Let's just deal with
21 what we have here today now. There are many things that we need to
22 kind of capsulize. One is I think we've determined that the Zoning
23 Administrator has cited the correct regulation, which is 350.4.

24 Okay. Now, but that being the case, you have to
25 make a case for a variance. And I did not see, within the material that
26 you submitted, a case being made, as far as your burden of proof, in
27 regard to the three-prong test that you must be able to demonstrate
28 that you are in compliance with. Are you familiar with that test,
29 ma'am?

1 MS. MOSS: No, ma'am.

2 CHAIRPERSON REID: The other thing is, have you
3 talked to the ANC?

4 MR. TURNER: Yes.

5 MS. MOSS: Yes.

6 CHAIRPERSON REID: And the ANC said?

7 MR. TURNER: They liked it. They wanted --

8 MS. MOSS: Well, he was supposed to -- excuse me.
9 I'm sorry.

10 MR. TURNER: Go ahead.

11 MS. MOSS: I had talked to him. He called me. And
12 then let him know that the information that came across his desk --
13 and I called him when we got the notice of the hearing to let him know
14 what it was.

15 MS. KING: Would you speak into the microphone,
16 please? You can move the mike towards you if you're more
17 comfortable that way.

18 MS. MOSS: I notified him of the hearing, and I let him
19 know that if he couldn't be there -- asked him if he couldn't be there if
20 he would send a letter. But I don't know whether he did or not,
21 because I haven't heard from him since then.

22 CHAIRPERSON REID: Did we hear from the ANC?

23 MS. MOSS: Mr. James Whitland --

24 CHAIRPERSON REID: Yes. Mr. Clarens?

25 MR. CLARENS: I am particularly interested in Ms.
26 King's comment that this is an apartment building. First, it's a large
27 apartment building, 800. I heard 800 --

28 MS. MOSS: It's a very large --

29 MR. CLARENS: -- apartments.

1 MS. MOSS: Yeah, it's a very large apartment
2 building.

3 MR. CLARENS: And possibly 800 apartments?

4 MR. TURNER: No, not 800 apartments, 800 people.

5 MR. CLARENS: 800 people.

6 CHAIRPERSON REID: 276 apartments.

7 MR. CLARENS: 276.

8 MS. MOSS: 276.

9 CHAIRPERSON REID: 276 in the building.

10 MR. CLARENS: 276 units. And you have 800
11 people.

12 And this is a building that allows pets.

13 MR. TURNER: Yes, large dogs --

14 MR. CLARENS: It is a rental unit that allows pets.

15 And that's an unusual situation in the District?

16 MR. TURNER: Very.

17 MR. CLARENS: Most apartments do not allow pets.

18 CHAIRPERSON REID: Most apartments -- as a real
19 estate broker, let me address that for you. Most apartments do allow
20 small pets, cats or a small dog.

21 MR. TURNER: Under 20 pounds.

22 CHAIRPERSON REID: Or birds, yes. Most of them
23 allow small pets.

24 MR. CLARENS: I see. But this one allows --

25 MR. TURNER: Big dogs, large dogs.

26 MR. CLARENS: Okay. So that creates a -- so it
27 would be reasonable for this Board to construe that, in fact, this
28 service is a service that supplies in the spirit of the regulation, which is
29 to supply immediate needs that are not within the immediate vicinity of

1 the residents of the building with things that they need on a daily or at
2 least weekly fashion. Right? So that they don't have to walk this 10
3 blocks that we've determined the closest pet shop is.

4 So it seems to me that we could, if we so choose,
5 interpret the regulations and the word "sundries" as inclusive, in this
6 particular case and because of the particular situation of this building,
7 as being one of those sundries, you know, elements that are supplied
8 by this store and treat this as a special exception.

9 CHAIRPERSON REID: We could do that. However, I
10 think that that would be a bit of a stretch, in my opinion. And also, we
11 have to also ascertain from the applicant whether or not he is
12 amenable to serving only the tenants in his building and not the
13 community at large. I think that is a question I'd like for you to
14 address.

15 MR. CLARENS: Well, that is not in the regulation, in
16 fact.

17 MS. MOSS: Is that a -- are you saying this is a
18 requirement of that regulation, or -- I mean, he's just exclusively
19 allowed to -- would be allowed to serve the people in the building?

20 MS. KING: I don't think this -- is it exclusively?

21 MS. MOSS: That wouldn't make -- that wouldn't be --

22 CHAIRPERSON REID: Mr. Clarens, you've just --
23 what did you just read? Certainly, the tenant --

24 MS. BAILEY: It says the adjuncts --

25 CHAIRPERSON REID: Here it is.

26 MS. BAILEY: 354.8.

27 CHAIRPERSON REID: 354.8. All right. Go ahead,
28 Beverly.

29 MS. BAILEY: "The adjuncts authorized under this

1 section are intended to supply tenants of the apartment house with
2 commodities and services supplementary to those in established
3 commercial districts. But in order to provide the value and stability of
4 these districts, the Board shall give consideration to the following,"
5 and it lists four different items.

6 CHAIRPERSON REID: Specifically, (d). Beverly?

7 MS. BAILEY: "The size and character of the
8 apartment house, since the tenants of the apartment house will be
9 expected to furnish all or substantially all of the financial support of the
10 requested adjunct."

11 MR. CLARENS: That's the first -- that's the threshold
12 that we need to meet. And so we need testimony from you as to what
13 percentage of your billings or your sales come from the tenants in the
14 building.

15 MR. TURNER: Well, you can -- I'd say 90 to 85
16 percent of my customers are in the building. The only time I get a
17 customer -- because I'm not allowed to put signs out on my window.

18 MR. CLARENS: That's correct.

19 MR. TURNER: Right? I can't solicit people on the
20 street. The only way somebody would come in off the street is if their
21 friend lives in the building, their friend tells them about my store, and
22 they say, "Yes, we have a pet store in our building," and they come
23 over and they use it. I'm not going to kick somebody out of my store
24 that walks in --

25 MR. CLARENS: Of course.

26 MR. TURNER: -- that I know is a friend of
27 somebody's that lives in the building and not sell them anything. But
28 you can look on the signatures I have. There's like three or four
29 signatures of people that don't live in the building on there. Everybody

1 else lives in the building. Those are my customers that I'm showing
2 you right there that are devout customers that come into my store.

3 MR. GILREATH: It seems to me that he -- not being
4 able to put out a sign to advertise this, that you can say that in general
5 terms this is really primarily for the tenants in the building, but to have
6 some kind of sign saying, "No one from the outside is permitted" is
7 going to the extreme and beyond what would be required. So if he'd
8 put a sign out there, then I would say that we'd have to change it.

9 CHAIRPERSON REID: Well, the regulations say that
10 the visitors of the premises will be expected to furnish all or
11 substantially all. So that's your operative word here.

12 MR. GILREATH: And he said substantially, 85
13 percent.

14 CHAIRPERSON REID: Yes. I know. If it just said
15 "all" and just left it at that -- but since they then went into "or
16 substantially all," so then that gives a little weasel room to be able to --
17 for us to make that decision.

18 MS. ROSE: Madam Chair, the concern that I have is
19 that this application didn't come to the Board under Section 354, and
20 that it was advertised under Section 350.4.

21 CHAIRPERSON REID: That's correct. And I was
22 going to come back to that. This is an issue that Mr. Clarens had
23 basically introduced.

24 MS. ROSE: Right.

25 CHAIRPERSON REID: And then --

26 MS. ROSE: Well, I had brought it up.

27 CHAIRPERSON REID: -- he was making a case
28 about the fact that he thinks it should be maybe under special
29 exceptions. And if that is the case, then we have to determine how we

1 can proceed under the special exceptions. But before even going
2 there --

3 MS. ROSE: Okay.

4 CHAIRPERSON REID: -- what we're doing now is
5 just kind of deliberating as to whether or not it's plausible to even
6 make that change.

7 MS. BAILEY: Well, Madam Chair, just to add another
8 monkey wrench into all of this, if you look at the photographs, it seems
9 to me that this building is quite visible from the outside, from the pet
10 store. And 354.4 says no part of the adjunct or the entrance to the
11 adjunct shall be visible from the sidewalk. And from looking at some
12 of those photographs, the pet store -- people can see it from the
13 sidewalk. Can they not?

14 MR. TURNER: They can see in there. They can see,
15 like, me walking around or something. I don't have any signs, except
16 for the sign that I was told to put up there.

17 CHAIRPERSON REID: Ms. Bailey, are you reading
18 from the 354 or 350?

19 MS. BAILEY: 354.

20 CHAIRPERSON REID: 354. Okay.

21 MS. BAILEY: Point 4.

22 CHAIRPERSON REID: Okay. And it says that no
23 part -- could you read it again?

24 MS. BAILEY: "No part of the adjunct or the entrance
25 to the adjunct shall be visible from a sidewalk." And you can see the
26 pet supplies, and so forth, from the street, based on the pictures that
27 are in the file.

28 CHAIRPERSON REID: And the entrance you can
29 see from the sidewalk.

1 MR. CLARENS: Madam Chairperson, that -- yeah,
2 that is an issue. But that is an issue that we should look at once we've
3 determined that, in fact, we're going to -- because that is meeting the
4 requirements of the special exception and whether this application
5 meets the requirements of it.

6 We first have to determine whether we should be
7 looking at it as a special exception or as a variance. Still, I don't know
8 that we've crossed that threshold. So we need to look at whether this
9 should be a special exception.

10 And then if we judge it to be a special exception, how
11 do we then deal with it in view of the fact that it was advertised and it
12 has come to us as a variance requirement? So I think that that's the
13 order that I suggest we proceed.

14 CHAIRPERSON REID: Okay.

15 MR. CLARENS: First, it's to determine whether it is --
16 in our opinion, should be a special exception, based on the criteria for
17 special exception, which is the provision of services to an apartment
18 building for -- let me see if I can find it -- for food, drugs, and sundries,
19 and personal services. Whether these constitute a personal service, I
20 don't know. You know, it depends on --

21 MS. KING: Also, does it meet the 354.3? "There
22 should be no direct entrance to the adjunct from the outside of the
23 building."

24 MR. CLARENS: No, no, no. But --

25 MR. TURNER: There is none.

26 MS. MOSS: There is none.

27 MR. TURNER: There is none.

28 CHAIRPERSON REID: There is no entrance.

29 MR. CLARENS: But what I'm saying --

1 CHAIRPERSON REID: Wait a minute. The other
2 part -- "no part of the adjunct or the entrance to the adjunct should be
3 visible from a sidewalk."

4 MS. MOSS: Okay. Excuse me. May I address that?
5 Within the next 30 days, that will be taken care of anyway. We
6 needed to first find out if we were going to be allowed to get the
7 occupancy permit or get it approved for the pet food store.

8 And the owner had discussed with Mr. Turner about
9 moving the pet store --

10 MR. TURNER: He's moving me into the basement.
11 Go ahead.

12 MS. MOSS: -- to the basement. And so that issue
13 won't be an issue after that. The problem is if we're going to be able
14 to do it at all. If not, you know, after that -- if that becomes -- well, just
15 to let you know that this is in the process, because from what I can
16 understand they're supposed to be doing some renovations in the
17 front, the area where he is, they have him right now. So, and he had
18 talked to him about moving his operation to the basement.

19 CHAIRPERSON REID: The basement.

20 MS. MOSS: Uh-huh.

21 CHAIRPERSON REID: Okay. Well --

22 MR. TURNER: They are moving me to the basement,
23 so --

24 CHAIRPERSON REID: Ms. Rose, isn't that -- that's a
25 different application, isn't it?

26 MS. ROSE: I think so.

27 MS. BAILEY: Well, 354.2 said it can occupy the main
28 floor or below.

29 CHAIRPERSON REID: Yeah, it sure does.

1 MS. BAILEY: 354.2 --

2 MS. MOSS: Which provision are we under? 350.4 or
3 354.4, or both of them?

4 MS. BAILEY: 354.2.

5 MR. TURNER: 354.

6 MS. ROSE: The Board is just trying to determine
7 whether you could possibly come under 354.2 as a special exception
8 as a convenience store.

9 CHAIRPERSON REID: But also, it's been advertised
10 as being on the first floor, not the basement.

11 MS. ROSE: I think it would have to be readvertised
12 anyway to do this. But --

13 MS. KING: Well, and then there's another defect,
14 which is this question of we don't have a letter from the owner --

15 CHAIRPERSON REID: Right.

16 MS. KING: -- of the property authorizing Mr. Turner to
17 apply for this relief.

18 CHAIRPERSON REID: Well, I think that we would
19 probably all agree that this particular case needs to be deferred.

20 MS. KING: Or readvertised as a --

21 CHAIRPERSON REID: So as to be readvertised.

22 And also --

23 MS. KING: There seems to be amongst the Board
24 members all of the goodwill in the world to try and work this out for Mr.
25 Turner and the owner of the building. But the proper work hasn't been
26 done. I mean, it isn't -- we've got to have a letter from the owner of
27 the property.

28 MS. MOSS: We'll get that for you.

29 MS. KING: A tenant of the property cannot apply for

1 zoning relief.

2 MR. TURNER: Okay.

3 MS. KING: The owner of the property has to do it.

4 CHAIRPERSON REID: Well, he can authorize you.

5 MS. KING: He can authorize you to do it.

6 MR. TURNER: Okay.

7 MS. KING: He can say, "Mr. Turner can do this."

8 Now --

9 MR. TURNER: Now, a telephone call wouldn't do
10 anything right now?

11 MS. KING: No. The other thing is you have applied
12 for this variance for the first floor. You're now saying that they want
13 you to move into the basement. If we gave this to you today, and we
14 got your order in two weeks' time, which is the usual amount of time,
15 and you were then moving into the basement, you would have to start
16 all over again applying for an occupancy permit, because you've
17 applied for the first floor and you're now talking about moving --

18 CHAIRPERSON REID: Right. I mentioned that
19 because I want -- he just told me recently that the owner -- he hasn't
20 moved him there, but he had told him that -- had suggested to him that
21 he would move him to the basement because they wanted to do
22 something on the first floor. If that became an issue. But --

23 MS. KING: And then there is a question as to
24 whether this was properly advertised because of the legal reference.
25 Is that correct? So we may have to go back to square one on this
26 whole project.

27 MS. BAILEY: Ms. King, there is a fourth issue.

28 MS. KING: Which is?

29 MS. BAILEY: The surveyor's plat is incorrect on this

1 application.

2 MS. KING: The what?

3 MS. BAILEY: The surveyor's plat.

4 MS. KING: Oh.

5 MS. BAILEY: This isn't the applicant's fault.

6 Somehow there is a mistake. She received --

7 MS. KING: Oh, I see. Yeah.

8 MS. BAILEY: -- four -- she received 467, which fronts
9 on Argonne Place. And this property fronts on Columbia Road, which
10 is 476. It's just that the lot numbers became transposed.

11 MS. KING: Okay. They've got the wrong thing.

12 MS. BAILEY: So she needs to get a new surveyor's
13 plat to show the correct lot.

14 MS. KING: This is --

15 MS. MOSS: Excuse me. What was the correct
16 number?

17 MS. KING: My suggestion is that -- and I don't know
18 exactly how to couch this. But my suggestion would be that -- that the
19 staff assist Mr. Turner in applying for what he really wants and getting
20 the proper documentation, and that we -- I mean, we can't give him
21 what has been advertised and what has been requested at this
22 juncture. I don't see how we can do it.

23 MR. TURNER: Is the --

24 MS. KING: So, but is it possible for us to dismiss this
25 case without prejudice and ask that it be refiled, that --

26 MS. BAILEY: I think --

27 MS. KING: -- get the necessary authorization from
28 the owner of the property, get clarification as to where in that property
29 he is going to operate his business, and work with our staff on

1 applying for -- and the zoning office on applying for what he really
2 needs. I mean, we're clearly -- you know, there is nobody here who is
3 hostile to your -- we're trying to work it out for you.

4 MR. TURNER: I know. I really understand that.

5 CHAIRPERSON REID: And the reason why we are
6 going from the initial provision that was put forth by the Zoning
7 Administration, 350.4, is a variance and a variance is a harder burden
8 of proof for you to be able to meet.

9 MR. TURNER: Right.

10 CHAIRPERSON REID: With a special exception, it's
11 a little less restrictive. So that's why we're trying to see if, in fact, we
12 could be able to do it under the special exception.

13 However, Ms. Rose, I have not been involved in
14 changing the directive from the Zoning Administrator to -- I mean, here
15 on the Board from one type of relief to another. I don't know how that
16 is best accomplished.

17 MS. KING: But, I mean, we can't do it because it has
18 to be readvertised if he's not going to be on the first floor.

19 CHAIRPERSON REID: But what is being
20 readvertised? You see? That's what we have to ascertain.

21 MS. ROSE: We can -- staff can work with the
22 applicant and the Zoning Administrator to make a request that they
23 look at it again.

24 CHAIRPERSON REID: Okay.

25 MS. ROSE: Let me just point out that the Board did
26 not go into whether or not the applicant meets the burden of proof for
27 a use variance under 350.4 today.

28 CHAIRPERSON REID: No, we did not.

29 MS. ROSE: And --

1 CHAIRPERSON REID: And they did not know or
2 understand what, in fact, that burden of proof was all about.

3 MS. ROSE: Right. So, you know, I just want you to
4 be mindful of that, that there is no evidence that they don't meet it,
5 because they didn't testify about the uniqueness of the property,
6 etcetera. I didn't know if you wanted to go into that or just wait until
7 this case comes back before the Board to address that. Maybe they
8 could apply in the alternative, either a use variance or a special
9 exception under 354.

10 CHAIRPERSON REID: Well, that can be done, Ms.
11 Rose, when they come to staff to basically receive the counseling and
12 the guidance that they need. But for today, I think that Ms. King -- was
13 it a motion?

14 MS. KING: If it's appropriate, I would like to move that
15 we dismiss this case without prejudice, so that it can be perfected and
16 brought back to us.

17 MS. ROSE: They may have to pay another fee if it's
18 dismissed --

19 CHAIRPERSON REID: All right.

20 MS. ROSE: -- to bring it back.

21 CHAIRPERSON REID: So what is the best -- what
22 do we do?

23 MS. ROSE: Postpone it.

24 CHAIRPERSON REID: Postpone. Okay.

25 MS. ROSE: And maybe if it has to be revised, we can
26 dismiss it at that point.

27 CHAIRPERSON REID: All right. Then, can you
28 amend your motion to --

29 MS. KING: Yes. We postpone this and instruct the

1 staff to work with Mr. Turner to perfect the publication of this case and
2 the details of it, so that we can consider it at a future hearing.

3 MR. GILREATH: I'll second the motion.

4 CHAIRPERSON REID: All right. All in favor? Now,
5 we can vote without Mr. Clarens?

6 MS. ROSE: Yes.

7 CHAIRPERSON REID: All in favor, aye?

8 (Ayes.)

9 Opposed?

10 (No response.)

11 MS. ROSE: Actually, officially it's called a
12 continuance. So we'll continue the case.

13 MS. KING: Whatever needs to be done to postpone
14 it. But you've got to get the letter from your landlord.

15 MR. TURNER: That won't be a problem.

16 MS. MOSS: I'll get that today.

17 MS. KING: And decide where you're going to be in
18 the building before we reconvene.

19 MR. TURNER: I wish he knew. That's my major
20 thing is like I'm up on the first floor, and I've been there for a while.

21 MS. KING: But you all work that out.

22 MR. TURNER: MR. TURNER: Okay. Okay.
23 I just wanted to know --

24 MS. KING: But bear in mind that that first floor
25 position, since it can be seen from the sidewalk --

26 MR. TURNER: Is no good.

27 MS. KING: -- may cause some difficulties for you.

28 MR. GILREATH: So it will be harder to -- for us to
29 approve it. That's not to say it cannot be done. Whereas, if you're

1 down in the basement, you can't see the entrance, you can't see the
2 pet material, so I think you could get over a hurdle by not having to
3 take care of that particular requirement.

4 MR. TURNER: Okay. Thank you very much.

5 MS. MOSS: Madam Chair?

6 CHAIRPERSON REID: Yes.

7 MS. MOSS: Will we be instructed directly what we
8 need to do --

9 MS. ROSE: I'm getting --

10 MS. MOSS: -- by letter? And --

11 MS. ROSE: Someone will contact you.

12 Ms. Bailey, is this your case?

13 MS. KING: But you also -- Ms. Moss, you should take
14 the time to get in touch with --

15 MS. MOSS: Oh, I'll be doing it --

16 MS. KING: -- this office to -- with our staff, to help you
17 work things out.

18 MS. MOSS: Yes.

19 MS. ROSE: Well, I will have this case continued until
20 the last case on December 16th, just to give a date certain. And if it
21 has to be readvertised, then we will readvertise it for a new date. But
22 we'll set a date certain right now.

23 MR. GILREATH: This does not jeopardize him being
24 able to continue to operate until such time as this has been resolved,
25 right?

26 MR. TURNER: Yeah. That's what I wanted to know.
27 Yeah.

28 MR. GILREATH: Is there any kind of time limit by --

29 MS. ROSE: That's up to DCRA. DCRA generally will

1 hold off any further citations while you're pending before the Board,
2 but that's a judgment that they have to make.

3 MR. TURNER: That's what has happened so far.
4 The lady has come back in and checked to see if it was --

5 MS. KING: It's up to DCRA to do that.

6 MR. TURNER: Okay.

7 MS. KING: It is their -- but it is their usual process.

8 MR. GILREATH: But could we provide them with a
9 letter saying the case has been postponed and it's still being
10 considered, so that DCRA, whatever it's called, would know at least it
11 is pending? So it wouldn't just be his word. We're saying, "Here. This
12 is an official explanation." We could say, "We are considering this
13 and" --

14 MS. KING: Yes.

15 CHAIRPERSON REID: Okay.

16 MS. ROSE: Did you take a vote?

17 CHAIRPERSON REID: Yes, we did.

18 MS. ROSE: Oh, okay.

19 MS. BAILEY: Mr. Clarens, did you want to vote, or is
20 it too late?

21 MR. CLARENS: It's okay. I mean, I agree with the
22 Board's --

23 CHAIRPERSON REID: It was moved and seconded
24 that it be continued to a date certain to address the issues that have
25 come up this morning adequately.

26 MS. KING: And, if necessary, to readvertise it.

27 MR. GILREATH: Also, special exception rather than
28 a variance. They're going to investigate that, which is a better way to
29 go.

1 MS. ROSE: Well, I'll include Mr. Clarens in the vote.
2 Four to zero, with Ms. King, Mr. Gilreath, Ms. Reid, and Mr. Clarens,
3 to approve the motion to continue the case to December 16th.

4 MS. MOSS: Okay. Is that it?

5 MS. ROSE: Yes, that's it.

6 MS. MOSS: Thank you.

7 CHAIRPERSON REID: Thank you.

8 MR. TURNER: I thank you.

9 CHAIRPERSON REID: You're welcome.

10 MR. TURNER: I didn't want to bring it up before the
11 hearing, but I started all of this because I came down with multiple
12 sclerosis. So this is something very important to me, to work inside
13 my building.

14 CHAIRPERSON REID: Thank you.

15 MR. TURNER: I didn't want that to, you know, cloud
16 anything. Have a good one.

17 CHAIRPERSON REID: Thank you.

18 MS. ROSE: Is the applicant in case 16362 present?

19 We'll move on to the last case of the morning.

20 CHAIRPERSON REID: Do we need to dispose of
21 that case by dismissing it or something? I mean --

22 MS. ROSE: We would need to postpone the case
23 because the -- there was inadequate notice sent out for a second
24 time.

25 CHAIRPERSON REID: Oh. You mean we sent out
26 inadequate notice?

27 MS. ROSE: Well, they were supposed to supply -- I
28 think this is the case where they were supposed to supply us with
29 clarified addresses, and that was not supplied to the Board in a timely

1 fashion. And it was not sent out. So the case would have to be
2 postponed again.

3 CHAIRPERSON REID: Okay.

4 MS. ROSE: We ask that someone be present to
5 discuss it. So we'll try one more time after we do this case.

6 16378, the application of NationsBank, N.A., pursuant
7 to 11 DCMR 3108.1, for a special exception to continue to operate an
8 accessory parking lot of six parking spaces in an R-2/C-2-A District at
9 premises 5201 Wisconsin Avenue, N.W., Square 1665, Lot 9.

10 Would all persons planning to testify in this application
11 please rise to take the oath? Please raise your right hand.

12 (Whereupon, an oath was administered to those
13 wishing to testify in this application.)

14 You may be seated.

15 All right. Proceed.

16 MR. KEYS: Good morning, Madam Chair. My name
17 is George Keys. I'm a partner in the firm of Jordan, Keys, Jessamy &
18 Botts, and I'm representing NationsBank in connection with the
19 application for the special exception to operate the accessory parking.

20 I've got with me Denise LeBorne, who is an agent of
21 the owner, and Steven Wolf, who is the contract purchaser. And I
22 think we've made it clear in our application, but I'll explain the
23 connections between them.

24 This particular site is at the corner of Harrison and
25 Wisconsin Avenue, N.W. It's one the Board should be familiar with,
26 since it has been here so much. It's been reviewed by the Board in
27 1959, 1964, '73, '76, '86, '91, and now currently. The use has been
28 consistent since the original application.

29 The peculiar feature of this particular property that

1 really kind of dictates this whole thing I think is illustrated best on
2 Exhibit 4 in the material submitted by the applicant, which is a plat that
3 shows Lot 9. And if you're looking at it, you will see on the Wisconsin
4 Avenue end of the property you have the bank building itself, you've
5 got a parking lot, and all of that lies within the C-2-A zone. It's 185
6 feet deep, perpendicular to Wisconsin Avenue.

7 From that point on, it becomes R-2. And a portion of
8 the lot, that midsection, I believe is outlined on yours in green, is the
9 six parking spaces that are in question in this application. To the
10 eastern end of the property on Lot 9 is an area 100 feet by 145 feet
11 that is vacant, and we're going to refer to that as the vacant lot so that
12 you can understand the components of this property.

13 CHAIRPERSON REID: Okay. Mr. Keys?

14 MR. KEYS: Yes, ma'am.

15 CHAIRPERSON REID: Let me interrupt you for one
16 second. Let me get some idea as to the participation in this case.

17 Are there persons here in opposition to the case?
18 Persons in support?

19 Okay. Seeing that you have no opposition, we could
20 basically even expedite and for the most part stand on your
21 prehearing submission information that we have read, we're very
22 familiar with, and basically give us the highlights --

23 MR. KEYS: Sure.

24 CHAIRPERSON REID: -- of your case and --

25 MS. KING: Address the legal issues that we have to
26 consider.

27 CHAIRPERSON REID: Yes, to include how you
28 comply with Section 214 --

29 MR. KEYS: Certainly.

1 CHAIRPERSON REID: -- I think you're coming
2 under. Thank you.

3 MR. KEYS: One thing I do want to draw your
4 attention to -- and it's in your official records -- it's the decision of the
5 Board in 1959, and I think it's important to look at this because at that
6 point American Security Bank, which was then the owner,
7 NationsBank being the successor to American Security, American
8 Security Bank came before the Board and asked permission in the
9 same context for -- you know, the bank building was there, wanted to
10 use the parking area -- they wanted the parking lot to extend the entire
11 length of Lot 9.

12 And at that point, in 1959, the Board said, "No. We
13 don't want you to use that eastern end of the property, the 100 feet,
14 for parking purposes." They instructed the applicant to erect a
15 masonry wall at the point in which their parking lot really ended, which
16 is where it is now, and that's the --

17 MS. KING: Is that line -- is that an alley, by any
18 chance?

19 MR. KEYS: It is not.

20 MS. KING: It's not. It's just -- it's all part of --

21 MR. KEYS: There's an alley to the north of the
22 property. I think you can see that. You can see that on that diagram.

23 MS. KING: Okay.

24 MR. KEYS: That is not an alley.

25 MS. KING: Okay. Sorry to interrupt.

26 MR. KEYS: Now, this application comes before the
27 Board a little sooner than it might have. The last appearance before
28 the Board was 1991. The Board authorized a 10-year operation of the
29 facility. We're here early because of an important event that we think

1 is beneficial to the community at large, and we're trying to harmonize
2 the interest of the community and the interest of NationsBank.

3 And we're asking the Board's participation by being
4 willing to consider this two, two and a half years earlier than it might
5 otherwise have, to enable a residential development to go forward on
6 this site.

7 The applicant's burden in coming before the Board is
8 to meet the standards in Section 214 of the zoning regulations, the
9 standards of 3108.2 pertaining to special exceptions, and also as part
10 of the 214 standards we also have to satisfy the requirements of 2303,
11 which pertain to a parking lot and parking lot operations.

12 We have laid out in our submission the elements --
13 this is a long existing use. It has been periodically ratified and
14 reviewed by the Board. There has never been an opposition to this
15 particular use. In fact, today, as you'll see, we have support from a
16 very, very close neighbor to the plans for the property.

17 Ms. LeBorne, in her testimony, will talk a little bit
18 about how the parking lot operates and the experience of the owner
19 with that parking lot operation. It's an existing lot. It complies with the
20 public works standards for parking lots. And I think that rather than
21 repeat all of that, I will, as you suggest, rely on the record for now.

22 What I'll do is introduce Ms. LeBorne and let her
23 explain her role in relation to the property and how this property
24 operates.

25 Ms. LeBorne?

26 MS. LeBORNE: Hi. My name is Denise LeBorne. I
27 currently reside at 1836 Metsurrat Road in Adelphi, Maryland. I am
28 employed by Charles E. Smith as a commercial property manager,
29 and NationsBank, in 1993, contracted Charles E. Smith to manage

1 their NationsBanks in the Washington and Baltimore areas.

2 I have been personally managing 5201 Wisconsin
3 Avenue since April of '98. And at that time -- well, let me tell you, the
4 facility is a NationsBank. The hours of operation are Monday through
5 Thursday from 9:00 to 3:00 and Fridays from 9:00 to 5:30. The bank
6 is closed on weekends.

7 The adjacent parking lot is open 24 hours a day, and
8 while utilized by the area clients that go to restaurants, shops, and
9 movie theaters. As of this date, there have been no assaults, thefts,
10 or vandalisms on that property. And Charles E. Smith makes sure
11 that the property is well-maintained, keeping in line with the security
12 lighting, landscaping, lot cleaning, and, in inclement weather, snow
13 removal. We also make sure that it's properly striped and paved on
14 an annual basis.

15 Currently, there are six parking spaces which were
16 originally zoned residential, and we come forth now because
17 NationsBank has an offer from the developer, Mr. Wolfe, to develop
18 the lot that's currently overgrown by -- it looks like a jungle, to be
19 honest. I did walk it on site inspections, and there is cardboard boxes,
20 evidence of homeless, in that lot right there.

21 We would like to sell it. Because we're not going to
22 turn it into a parking lot, we have no use for it. NationsBank just wants
23 to liquidate it. And we feel that having Mr. Wolfe develop it into three
24 single-family townhomes would be a great use. It would increase
25 revenue for the District, as well as the appraisal values for adjacent
26 residential property.

27 CHAIRPERSON REID: Excuse me. How many
28 townhomes?

29 MS. LeBORNE: There's three.

1 CHAIRPERSON REID: Three?

2 MR. KEYS: Ms. LeBorne, can I ask you, has
3 NationsBank had interaction with the community, particularly the ANC,
4 in connection with this proposal?

5 MS. LeBORNE: Yes. In September -- I'm sorry --
6 November of '97, we had agreement -- or we were trying to make an
7 agreement to receive a permanent special exception for these six lots.
8 And it was withdrawn because NationsBank thought that for some
9 reason -- I guess the flexibility of a long-term situation -- that the ANC
10 might be reluctant.

11 However, at that time, NationsBank agreed -- and still
12 maintains to keep that agreement -- that the NationsBank would be
13 either used as a financial facility, or if it was sold to make sure that it
14 was an office building for general use, and we wouldn't have anything
15 like any night clubs or anything like that.

16 MR. KEYS: For the Board's information, we did
17 submit with our supplemental material that was submitted to the Board
18 the first week of October a copy -- in fact, I think it was the original --
19 of the agreement with the ANC that really established the basis that
20 the ANC is prepared to work on with this. They want to see this
21 happen.

22 I think their concern is that NationsBank simply
23 maintain the existing use. They want the status quo. They like the
24 status quo, especially since NationsBank is willing, and has been
25 willing, to keep the lot open as opposed to locking it at the end of the
26 business day.

27 MR. GILREATH: Why are these six additional
28 accessory parking spaces needed? To meet your C-2-A zoning
29 requirement? Or you actually need those spaces just to

1 accommodate the community? They're saying they don't to see these
2 six go because they get to use them, basically. All right. Why do you
3 even need the six additional accessory parking spaces?

4 MR. KEYS: I think the size of the lot is dictated by the
5 uses on the lot, the employees at the bank, the amount of traffic the
6 bank handles. And there is also -- I think you can --

7 MS. LeBORNE: That retaining wall.

8 MR. KEYS: I'm testifying.

9 MS. LeBORNE: I'm sorry.

10 MR. KEYS: Would you explain what other facilities
11 there are on the bank that automotive uses?

12 MS. LeBORNE: For the drive-thru. There is also a
13 drive-thru location, so it's the additional --

14 MR. GILREATH: So you need the six spaces for
15 practical use, as well as meeting the C-2-A requirement. For a certain
16 kind of use, you've got to have X number of parking spaces.

17 MS. LeBORNE: That's correct.

18 MR. GILREATH: I see. Okay.

19 MR. CLARENS: I have a question, Madam
20 Chairperson. You were granted, in '91, a special exception for a 10-
21 year special exception to have six accessory parking spaces in an R-2
22 zoning district. Is that correct?

23 MR. KEYS: That's correct.

24 MR. CLARENS: And that was granted to the property
25 which includes the part of the -- it's one lot. So you're subdividing the
26 lot.

27 MR. KEYS: I think --

28 MR. CLARENS: Or you're proposing the subdivision
29 of the lot.

1 MR. KEYS: Mr. Clarens, there is currently a contract
2 -- and I think Mr. Wolfe could go into that if you -- the question goes
3 there -- to sell that land. At that point, there would be a subdivision to
4 a new owner. There would be a further subdivision as the residential
5 development proceeds.

6 MR. CLARENS: Sure.

7 MR. KEYS: My concern as a lawyer, in looking at
8 this, in looking at the history of it, is that by implication the Board's
9 orders run to the entire parcel, simply because it's identified as Lot 9.
10 And to the extent that the Board at one time said, "We don't want you
11 to use this 100-foot ground. This ground was described as a buffer
12 between the residential community and the others."

13 So I'm trying to sever the parking lot use and special
14 exception from this ground. And that's --

15 MR. CLARENS: Have you submitted a plan that
16 shows the configuration of the -- and I'm looking for it now and I don't
17 see it --

18 MR. KEYS: Yeah. I think if you look at Exhibit -- I
19 think it's Exhibit 6.

20 MS. KING: It's 9 in our numbering.

21 MR. KEYS: Well, then, I think it's 9. There's a
22 tentative plan that shows --

23 MS. KING: This is what you're talking about, right?

24 MR. KEYS: Yes, that's correct. It shows how the
25 vacant lot could be subdivided into three buildable residential lots.

26 MS. KING: Generous size, too.

27 MR. CLARENS: My concern is that with this
28 subdivision what kind of buffer will exist between the area of the
29 parking lot that encroaches into the residential area and the extended

1 residential area, which would result as a result of this change?

2 MR. KEYS: I think Ms. LeBorne can describe what is
3 there currently.

4 MS. LeBORNE: There is a brick wall that acts as a
5 retaining wall, to be honest with you, that is probably -- I know it's
6 taller than I am. It's probably about six feet tall. And then as it gets
7 back to the north of the property, it goes -- drops down to about five
8 feet or so. And also, it continues along the north side of the property,
9 so it's --

10 MR. CLARENS: And is there any landscaped area
11 between the parking spaces and that wall?

12 MS. LeBORNE: Yes, there's landscaping. There's
13 trees --

14 MR. CLARENS: Between the parking and the wall?
15 And I'm trying to find the pictures.

16 MS. LeBORNE: Not between the parking and the
17 wall, but there are trees in the parking area.

18 MR. KEYS: I think if you look at photograph number
19 2 --

20 MR. CLARENS: I see a photograph, yes, of Harrison
21 Street, N.W., adjacent to --

22 MR. KEYS: Correct.

23 MR. CLARENS: -- the entrance of the parking lot on
24 subject property.

25 MR. KEYS: Mr. Clarens, I believe I only submitted
26 one set of color photographs.

27 MR. CLARENS: Yeah. I have --

28 MR. KEYS: This is the color photograph.

29 MR. CLARENS: I'm looking at it.

1 MR. KEYS: Okay. Of number 2 that shows the
2 configuration of the two walls.

3 MR. CLARENS: Yes. And so there is a curb, there is
4 a concrete sidewalk of sorts. And you can look, Madam Chairperson,
5 and show them the picture. And a little curb and a sidewalk, a narrow
6 sidewalk, and then the wall.

7 MS. KING: Is this what you're referring to?

8 MR. CLARENS: Yes. That's the wall --

9 MS. KING: Right. And then there's --

10 MR. CLARENS: -- and then that's this little sidewalk,
11 and there's no -- no vegetation on this side.

12 MS. KING: Right.

13 MR. CLARENS: So I'm wondering --

14 MS. KING: And that's a curb cut there, too, which
15 means this is either an entrance or an exit from the parking lot.

16 MS. LeBORNE: It's an entrance.

17 MS. KING: Is it an entrance or --

18 MS. LeBORNE: It's the entrance. The exit is on the
19 other side.

20 MR. CLARENS: So I'm wondering if it would be a
21 deal breaker, as far as the bank is concerned, and the owner -- and
22 the proposed buyer, if we were to maintain a buffer area along the -- I
23 assume it's going to be the east line or the property line running
24 parallel to that wall.

25 MR. KEYS: Mr. Clarens, I think Mr. Wolfe might be
26 able to address some of that. So I'd like to introduce Steve Wolfe.

27 MR. CLARENS: Okay.

28 MR. WOLFE: Good morning. Steve Wolfe,
29 7500 Woodmont Avenue, Bethesda, Maryland.

1 The vacant lot has a frontage of 100 feet, and under
2 the current zoning regulations that will permit one 40-foot lot, which
3 will be a detached house --

4 MS. KING: Would you pull the microphone to you
5 mouth, so we can hear you.

6 MR. WOLFE: -- and two lots of 30 feet each, which
7 will permit two semi-detached houses. So to complete the
8 development as we have it planned, we need to use the total frontage,
9 the total 100 feet. As far as a buffer between the western-most lot and
10 the eastern-most edge of the parking lot, we can certainly arrange for
11 landscaping along that inside the wall, inside the brick wall on the lot's
12 property to provide a visual screen from the parking lot.

13 MR. CLARENS: Yeah. And that would be ideal, but
14 how do we know what that's going to look like?

15 MR. WOLFE: Well, I think the market will determine
16 that. I think the purchaser of that house will be aware of the parking
17 lot, and in his purchase of the house --

18 MR. CLARENS: No. But we are -- I understand that.
19 But we're not the market; we're the BZA. We need to make sure that,
20 in fact, the residential area is protected from the encroachment of the
21 commercial use, which is the parking lot, into a residential area. And
22 at this point, and in the history, as you pointed out, of the previous
23 special exceptions, it was that vacant land that created more than an
24 adequate buffer, perhaps too much of a buffer, between the
25 commercial area and the residential area.

26 But now we're going to push the residential area all
27 the way to the wall, and there's going to be no buffer, which
28 traditionally has been in the way of a planting strip of some sort. So
29 what we need to see is a configuration that either establishes a

1 landscape easement or a landscape plan that modifies the existing
2 parking lot, to incorporate some sort of a buffer area that would,
3 regardless of who buys it for the protection of the common good, that
4 the two areas are separated and screened by a buffer.

5 MR. KEYS: Mr. Clarens, the proposal -- the lot, as it
6 is currently configured, meets the requirements. If you look at the
7 special exception requirements, we have a brick wall, a masonry wall.
8 We have a conforming lot for the special exception.

9 Now, the test, of course, is a subjective one of, will
10 the use be objectionable in the residential community?

11 MR. CLARENS: There's no residential community.

12 MR. KEYS: Exactly. And the best test of it is it's the
13 reason why these aren't permanent conditions. These are limited
14 licenses to allow the opportunity for a community voice or a
15 community sentiment that says, "No, this lot is not working well in
16 relation to residential." That's the safety valve.

17 Mr. Wolfe, would you continue to explain the
18 contingency in this contract that you've got with NationsBank and how
19 this development -- over what timeframe this development would
20 proceed? How quickly are you prepared to go?

21 MR. WOLFE: Assuming approval is granted, we
22 would proceed with submitting building plans to the city for approval.
23 Once the building permits are issued, we will be in a position to begin
24 construction, acknowledging that December, January, and February
25 will be forthcoming. It's reasonable to assume that construction would
26 actually start sometime in March.

27 MR. GILREATH: Place certain restrictions on -- I
28 think maybe it's a children's day care center, which shouldn't exceed a
29 certain number of children, and so forth. Could we say that we -- we

1 all agree that and approve this provided that -- a condition saying that
2 appropriate landscaping, not necessarily a -- just a certain buffer,
3 maybe how many feet, where along the wall there could be
4 appropriate screen or something like that.

5 CHAIRPERSON REID: We would do that.

6 MR. GILREATH: Yeah.

7 MR. CLARENS: I have another question. The
8 request is for a permanent special exception.

9 MR. KEYS: It was not. It's for 15 years.

10 MR. CLARENS: It's for 15 years.

11 MR. KEYS: Correct. And we really arrived at that by
12 looking at the world of the possible. I mean, we noticed that Fannie
13 Mae had an application before this Board last year in which they
14 requested permission to utilize accessory parking in an R-1-D zone,
15 just down Wisconsin Avenue, and received a 15-year grant.

16 We thought since the uses are roughly comparable,
17 the situation is similar, that we would also seek a 15-year -- and I think
18 NationsBank, quite honestly, feels more secure in giving this land up,
19 if they know they've got some window of time they can continue to use
20 it. If at the end of that time the community finds that this is not a
21 workable framework, then they can express that view at the time the
22 bank comes back in to seek a further renewal of the special exception
23 operation.

24 MS. KING: I understand from your submission that
25 your parking lot is not chained and locked, and so forth, when you're
26 not using it for bank business. In other words, in the evening it's
27 available for use by the neighbors.

28 MS. LeBORNE: That is correct, and they utilize it
29 well. Also, outside people that are coming into D.C. to watch movies

1 or have dinner will utilize that parking space instead of going for street
2 parking, which is nice for the community because then the community
3 can park in front of their homes on the street. So it frees up more
4 parking for that.

5 MS. KING: I think it's significant that the Advisory
6 Neighborhood Commission was prepared to support this, and I gather
7 is still prepared to support this with the inclusion of this covenant.

8 MR. KEYS: That is correct. I think Mr. Wolfe has met
9 with and spoken to the Advisory Neighborhood Commission. Perhaps
10 you might summarize your interaction with them recently.

11 MR. WOLFE: I attended -- prior to their meeting in
12 October, I spoke with the chairperson and the ANC member living
13 most closely to the property. We acknowledged we had worked on
14 this last year. They continued their support, reaffirmed their support.
15 And in the October meeting which I attended, there was support for
16 this, and there were no concerns or comments raised by the
17 individuals attending the meeting.

18 MR. CLARENS: And what is the nature of the
19 covenant or the agreement between the ANC --

20 MS. KING: That it will never be anything but a bank
21 or a similar institution.

22 MR. CLARENS: In that location.

23 MR. KEYS: Yes. I think that we will maintain this as
24 a bank, a financial institution, or a general office purpose. What the
25 community is concerned about is a sale that results in a drastic
26 change of use, such that the parking lot then becomes not a business-
27 related parking lot but --

28 MR. CLARENS: A commercial related --

29 MS. KING: -- or a restaurant, a nightclub, anything

1 that -- a C-2-A use that might be a much more obvious potential for
2 adverse impacts on that community. At that point --

3 MR. CLARENS: Well, the special exception is tied to
4 the bank. It's tied to the specific use, correct? This is not -- I mean, if
5 the use changes, then the special exception needs to come back for
6 review?

7 MR. KEYS: No, it's a matter of right use.

8 MR. CLARENS: It's a matter of right use, but the --

9 MR. KEYS: The bank use -- it's a matter of right use.

10 MR. CLARENS: -- special exception, the parking on
11 the R-2 zone, is a special exception, which is tied to the matter of right
12 use.

13 MR. KEYS: Well, Mr. Clarens, that's an interesting
14 theoretical question. I would think that if you've approved special
15 exception for a use -- accessory parking to a matter of right use --

16 MR. CLARENS: It goes with the matter of right use.

17 MR. KEYS: -- that even if the use -- if the use, as
18 long as it's matter of right, the parking right goes with it.

19 MR. CLARENS: Okay. So --

20 MR. KEYS: It's not personal to the --

21 MR. CLARENS: Okay. So that the agreement
22 between the ANC and the bank at this point is going to remain as an
23 agreement between the ANC and the bank.

24 MR. KEYS: It is --

25 MR. CLARENS: And the ANC is not asking us to
26 condition the order.

27 MS. BAILEY: Well, we normally condition this order
28 as a matter of within -- most parking lot orders are conditioned. There
29 are certain standard conditions. Probably the number of years, I think,

1 has changed. I don't think there is any hours of operation.

2 But also, I think to answer your question, Mr. Clarens,
3 you're saying if it's no longer -- the applicant is no longer NationsBank,
4 if it is some other entity --

5 MR. CLARENS: Well, no. What I'm saying is shall
6 we condition the order, if we were to choose to approve this
7 application, shall we condition the order to paraphrase the agreement
8 between the ANC and the present owner.

9 MR. KEYS: I think as another alternative, Mr.
10 Clarens, I think if you'd look at the agreement, the agreement reflects
11 the intention of both parties that it be recorded, that this be an
12 enforceable covenant between the ANC and NationsBank that would
13 run with the land.

14 MS. KING: And this has been filed with the proper
15 authorities, and so forth, so it is, in fact, a covenant --

16 MR. KEYS: Oh, no, it has not, because it's really a
17 covenant that's dependent upon the order -- the permission being
18 granted. If it's -- you could make the recording of such a covenant --

19 MS. KING: A condition --

20 MR. KEYS: -- a condition in the order, and that would
21 suffice, rather than having to go into the detail of it.

22 MS. KING: Right.

23 MR. KEYS: But we do intend that that be a
24 permanent relationship between this land and the community.

25 CHAIRPERSON REID: Well, I think that Mr. Clarens'
26 concern about the issue of its -- this agreement is with NationsBank.
27 And if, in fact, that were to change, if there was a merger or something
28 like that, would it still have the same --

29 MR. KEYS: It wouldn't affect it because this

1 agreement would be recorded against the land.

2 CHAIRPERSON REID: The land.

3 MR. KEYS: It will become a covenant that runs with
4 the land.

5 CHAIRPERSON REID: Okay.

6 MR. KEYS: It's a private covenant, so we're not
7 asking the -- we're not seeking the Board's involvement in a private
8 arrangement between the community and NationsBank. We're simply
9 offering that as a demonstration of what the bank is willing to do to
10 meet the community's need or concern about the future of this site.
11 They're willing, essentially, to guarantee a use out into the future. And
12 if the use changes in a drastic way, then the parking lot will have to be
13 reviewed again.

14 MR. CLARENS: And you are basically saying that
15 there is a question as to the authority of this Board to condition a
16 special exception order for a matter of right use, and tie the use of the
17 R-2 zone to a specific use of the commercial zone.

18 MR. KEYS: I think that's right. I think it's an issue
19 that you don't have to get to in order to --

20 MS. KING: But what he's suggesting is that we
21 condition it on the filing of the agreement with the ANC.

22 MR. CLARENS: Yeah. And I have a question as to
23 whether we can bring to our conditions a private agreement between
24 the parties.

25 CHAIRPERSON REID: Well, no -- yes and no. Well,
26 the thing about it is this agreement, we are aware of it, we can
27 acknowledge its existence. However, typically, the purpose of
28 including such agreements are with an enforcement provision. But
29 they have other -- they have the -- being a private agreement, they

1 have other recourse in the event there is a breach of that agreement.

2 So it is not really necessary.

3 MS. BAILEY: And one of the ways that the Board
4 previously has dealt with this type of situation is just to give a general
5 statement in the conditions to say something like, "The applicant shall
6 abide by the terms of the agreement between the ANC and" blah,
7 blah, blah, blah. Sort of a general statement indicating that there is an
8 agreement and --

9 CHAIRPERSON REID: To acknowledge it.

10 MS. BAILEY: Exactly.

11 MR. CLARENS: So conceivably, the community, if it
12 felt harmed by changes, in the future could come back to this Board
13 and appeal the order, appeal the decision, and a special exception on
14 the basis that that provision has not been kept.

15 MS. BAILEY: That's right.

16 MS. ROSE: The provision in the agreement, or the
17 one that Beverly has mentioned?

18 MR. CLARENS: The one that Beverly has
19 mentioned. That's right.

20 MR. KEYS: They would actually have a choice of
21 remedies, Mr. Clarens. They can also pursue --

22 CHAIRPERSON REID: And in the alternative, they
23 could take either or of the parties -- the entities involved to court, as
24 another remedy. I think that's what you were going to say, Mr. Keys.

25 MR. KEYS: That's correct.

26 CHAIRPERSON REID: Yes. Okay.

27 MR. KEYS: That's correct, Madam Chair.

28 CHAIRPERSON REID: All right. Any other
29 questions? Okay.

1 We'll move now to the government reports. No Office
2 of Planning report. I don't think we had any other government reports.
3 And there was a report from the ANC.

4 MS. KING: The ANC report is not for this case. It's
5 out of date, the ANC letter.

6 CHAIRPERSON REID: It's not for what?

7 MS. KING: Well, no, I beg your pardon.

8 CHAIRPERSON REID: Yes, it is. September 14th?

9 MS. KING: Yes.

10 CHAIRPERSON REID: ANC-3E?

11 MS. KING: They met. They are in support of the 15-
12 year variance on the portion of the parking lot in the R-2 zone. They
13 supported a -- they have previously supported, in '97, a permanent
14 special exception, but they feel that the 15 years is within a permanent
15 timeframe, and so we support that. But they also reiterate their
16 support -- that their support is contingent on the building and property
17 continuing to be used by the current owner or other financial
18 institutions. In other words, the covenant that we were discussing at
19 some length before.

20 There is no indication, however, that they -- that there
21 was a quorum present.

22 CHAIRPERSON REID: Okay. So as such, we do
23 acknowledge the support from the ANC --

24 MS. KING: Right.

25 CHAIRPERSON REID: -- 3E. All right.

26 Persons or parties in support?

27 MS. NG: I think it's appropriate to say good
28 afternoon. My name is Lily Ng. I own the property at 4203 Harrison
29 Street. My parents own the property immediately adjacent to this lot,

1 which is 4305 Harrison Street. We are the two houses most close to
2 this buffer zone that we've been talking about this morning.

3 We have been working with Mr. Wolfe. We have
4 attended the ANC meetings, and we believe that Mr. Wolfe has
5 demonstrated to the community that he has intentions of improving it.

6 I don't mean to oppose what Denise LeBorne says,
7 but the property, as it stands now, is horrendous. It is not maintained
8 well. There is a lot of illicit sort of activities going on, and we feel that
9 despite the fact that the community has been using that plot as sort of
10 the plot -- as a flowering garden type area, we're willing to vacate that
11 in support of homes and homeowners.

12 It's a very older community. The five homes that are
13 adjacent to this lot are probably the occupants on the neighborhood of
14 elderly. And so as they get older, the property has deteriorated. So
15 we only feel that this is improving this property, and that we have
16 every -- we have -- Mr. Wolfe has given us every intention that he'd be
17 willing to work with us to make sure that the construction would be
18 done as the neighbors have asked him, and that he has agreed that
19 we will sit down and look at some of the construction proposals that he
20 has -- we have discussed.

21 So this is to say that we are in support of Mr. Wolfe's
22 petition.

23 CHAIRPERSON REID: Thank you.

24 Persons or parties in opposition to this application?
25 Seeing none, closing remarks by the applicant?

26 MR. KEYS: Madam Chair, I think we've described a
27 fairly unusual context for a parking lot application to come in. We
28 want to make way and make the opportunity for a significant
29 residential development. Putting three significant homes in this

1 community will be a plus for the District, both in terms of revenue and
2 taxes, but also getting this land into some productive use.

3 NationsBank does not need it. But it does want the
4 assurance that it still has what it always had, which is the ability to
5 maintain this parking lot as an adjunct and an accessory to the
6 primary use. We think we've carved out some provisions in this
7 covenant that makes it -- that make us trustworthy to allow this to
8 happen. That there are protections in the covenants.

9 And there is also an opportunity -- we've done this for
10 almost 40 years in this community. I think there is reason to think --
11 without any objection, there's reason to think we can continue in that
12 way. If not, the Board will have another chance to say with the
13 community that this parking lot is an intrusion.

14 I think the record really shows that it's really a
15 complimentary factor in this neighborhood. And we would request the
16 Board's consideration of the request for a 15-year continuation of the
17 special exception. And we'll see you in 2013.

18 CHAIRPERSON REID: Are you asking for a bench
19 decision and a summary order?

20 MR. KEYS: I would request a bench decision. I was
21 about to say summary order, but I think that there are probably
22 conditions -- well, perhaps a summary order might be appropriate, too,
23 because the conditions can be encompassed within the --

24 CHAIRPERSON REID: So it's a --

25 MR. KEYS: -- so requested.

26 CHAIRPERSON REID: Okay. Board members?

27 MR. GILREATH: Well, I'll make a motion we approve.
28 First of all, this is an extension of a use, and we've approved it before.
29 And putting additional houses there with the high wall there with any

1 kind of reasonable landscaping I think will take care of the
2 invasiveness of the area. So I think it's a plus and should be
3 extended. So I'll make a motion to that effect.

4 MS. KING: I second the motion and would suggest
5 that we include that it be for a period of 15 years, and that the
6 applicant be required to file or -- what is the proper legal word for what
7 needs to be done to the covenant?

8 MR. KEYS: Record.

9 MS. KING: Record.

10 MR. KEYS: Among the land records in the Office of
11 the Recorder of Deeds.

12 MS. KING: What he said.

13 MR. KEYS: Yes.

14 MS. KING: The covenant with ANC, bah, bah, bah,
15 bah. 3E, as in Edward.

16 MS. BAILEY: Ms. King, can I suggest that also the
17 conditions that are contained in the previous order also accompany
18 this one as well?

19 MS. KING: Oh, yes. And all of the parking lot
20 provisions as in the previous order. Yeah. In the order dated January
21 31, 1992, all of the provisions, 1 through 7, should be incorporated
22 into the new order.

23 CHAIRPERSON REID: If you could just highlight
24 them for the record.

25 MS. KING: Well, no. I'm sorry. One is out because
26 it's 15 years. Of the areas devoted to driveways, access lanes,
27 parking areas shall be maintained with a paved surface, bumper
28 stops, no vehicle projecting over the lot lines. All parts of the lot
29 should be kept free of refuse and debris and should be paved or

1 landscaped. Landscaping needs to be maintained in a healthy,
2 growing condition.

3 No other use can be conducted from or upon the
4 premises. No structure other than the intended shelter, and all lighting
5 used shall be confined to the area of the surface of the parking lot.

6 CHAIRPERSON REID: Okay. The usual.

7 MS. KING: The usual.

8 CHAIRPERSON REID: All right. Mr. Clarens, did you
9 have any -- Mr. Clarens? Okay.

10 MS. ROSE: The termination date of this would be 15
11 years from the final date of the order?

12 MR. KEYS: Yes.

13 MS. ROSE: Okay.

14 MS. BAILEY: Mr. Clarens, you didn't have any
15 landscaping --

16 MR. CLARENS: Isn't there a landscaping provision in
17 the previous order? I don't have the previous order with me.

18 MS. KING: Yeah. Yeah, there is a landscaping
19 provision. It says, "Maintained in a healthy and growing condition,"
20 the usual.

21 MR. CLARENS: Okay. And there is a lighting
22 provision, to keep the lighting --

23 MS. KING: Yeah. Shall be confined to the surface of
24 the parking lot.

25 MR. CLARENS: Okay. So we maintain the
26 conditions of the previous order, except for the time. That goes to 15
27 years.

28 MS. KING: Fifteen years and the recordation of the
29 covenant.

1 MR. CLARENS: And the wording that Ms. Bailey
2 suggested, which is that the -- that the special exception -- I can't
3 remember exactly how you worded it, Ms. Bailey, but that it is --

4 MS. BAILEY: The applicant shall abide by the terms
5 and conditions of the agreement established between ANC-3E, dated
6 November 18, 1997, or something to that effect.

7 MR. CLARENS: Is that okay?

8 MS. KING: I didn't hear what she said. I can't hear,
9 even though I've got my mike turned off so that my speaker is on. I
10 can't hear what she said.

11 CHAIRPERSON REID: Ms. Bailey, please repeat
12 that.

13 MS. BAILEY: Sure. The applicant shall abide by the
14 terms and conditions --

15 MS. KING: I don't think your microphone is working.

16 MS. BAILEY: The light is on. Can you hear me?

17 CHAIRPERSON REID: Project.

18 MS. BAILEY: The applicant shall abide by the terms
19 and conditions of the agreement established between ANC-3E, dated
20 November 18, 1997, or something to the wording to acknowledge the
21 agreement.

22 You can't hear, Ms. King?

23 MS. KING: I essentially heard it. That's fine with me.

24 MR. CLARENS: Yeah. And I think that in the same
25 paragraph then we can do what Ms. King suggests, which is to say,
26 "And the agreement shall be recorded by the Recorder of Deeds,"
27 etcetera, etcetera.

28 MR. KEYS: One further request. I believe that what
29 we filed in this case was the original of that agreement. If that's the

1 case, I'd like to replace the Board's copy with a copy, because it's the
2 original I would like to record.

3 MR. CLARENS: Sure. That's agreeable with you,
4 Ms. --

5 CHAIRPERSON REID: That's okay with me.

6 Ms. King?

7 MS. KING: Sure.

8 CHAIRPERSON REID: All right.

9 MR. CLARENS: Very good. Call the question.

10 CHAIRPERSON REID: All in favor?

11 (Ayes.)

12 Opposed?

13 (No response.)

14 MS. ROSE: Staff will record the vote as four to zero,
15 with Mr. Gilreath, Ms. King, Mr. Clarens, and Ms. Reid, to grant the
16 application and the authorization of a summary order with conditions.

17 MR. CLARENS: Very good.

18 CHAIRPERSON REID: Thank you.

19 MS. ROSE: Madam Chair, before you -- I think that
20 we need to postpone case number 16362 of Philippe Bosshard.

21 CHAIRPERSON REID: I thought we continued that
22 case. We did. We continued it.

23 MS. ROSE: No. We hadn't decided this because the
24 applicant has never -- hasn't been present from the morning.

25 CHAIRPERSON REID: I called it twice. But go
26 ahead. So you will give us a date certain?

27 MS. ROSE: Yes.

28 CHAIRPERSON REID: All right.

29 MS. ROSE: January 6th at 1:00.

1 CHAIRPERSON REID: Okay. Is that it?

2 MS. ROSE: Yes.

3 CHAIRPERSON REID: Okay. This concludes this
4 morning's session.

5 (Whereupon, at 12:55 p.m., the proceedings in the
6 foregoing matter went off the record.)

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

15 (1:38 p.m.)

16 CHAIRPERSON REID: The afternoon segment of the
17 October 21, 1998, meeting of the Board of Zoning Adjustment will now
18 commence.

19 I've already read opening statements earlier today, so
20 at this time what I will do is entertain preliminary matters. If anyone
21 here has any preliminary matters related to the afternoon session, if
22 so, please come forward.

23 MS. ROSE: Madam Chair?

24 CHAIRPERSON REID: Yes.

25 MS. ROSE: I don't think the parties here have heard
26 your opening statement, though.

27 CHAIRPERSON REID: Do you want me to should I
28 reread it?

29 MS. ROSE: Yes, they haven't heard it.

1 CHAIRPERSON REID: Oh, okay.

2 The rules require that we read the opening statement,
3 so I will do so.

4 MS. KING: Why? I don't think we -- I disagree. I'm
5 sorry. I don't think -- do we have to do it? We don't usually do it twice
6 a day. Read the opening statement twice a day?

7 CHAIRPERSON REID: I thought you did, but --

8 MS. KING: We're running so late, I suggest that
9 unless somebody wants to -- it to be read to them, that we go right
10 ahead. Most of the people here look very familiar to me.

11 CHAIRPERSON REID: Are the Board members --

12 MR. PARSONS: That's fine.

13 MR. GILREATH: Yeah. I don't have a problem with
14 that.

15 CHAIRPERSON REID: Okay. All right.

16 Ms. Rose, you've been overruled.

17 All right. Again, preliminary matters. Does anyone
18 have any preliminary matters? Please come forward.

19 MR. JOHN BROWN: Good afternoon, Madam Chair,
20 members of the Board. My name is Patrick Brown, and I'm counsel
21 for the applicant in case number 16372. I previously had filed a
22 request for a continuance of this case. That is a result of a notice
23 problem that occurred when the 40-day mailed notices were sent out
24 and almost uniformly came back undelivered by the post office.

25 We'd like to request a continuance to the next
26 available date that meets the 40-day notice provisions. We have
27 provided a correct mailing list -- corrected mailing list to the Board
28 staff. They have requested we provide that in labels, and we'll do so
29 first thing tomorrow morning.

1 So that based on the notice provisions, we'd request
2 that the matter be continued until December 2nd, or the next meeting,
3 December 16th, which again meet the notice requirements and allow
4 this matter to go forward. At this stage, no opposition has come
5 forward in the case. It has been voted in favor of by the ANC. So I
6 think it's a case that's ready to move forward as expeditiously as
7 possible. And we'd also indicate that it's going to be a fairly limited
8 scope of the hearing, given the posture of the case.

9 So I'd ask the Board's cooperation and assistance in
10 rescheduling it as quickly as possible.

11 CHAIRPERSON REID: Okay. Board members, is
12 there any --

13 MR. GILREATH: Is there any reason we couldn't? I
14 need to hear something why we shouldn't.

15 CHAIRPERSON REID: Why they cannot meet
16 today? Why they cannot --

17 MR. GILREATH: I don't know we can't -- is there any
18 problem being rescheduled? Do you have --

19 MS. ROSE: No.

20 CHAIRPERSON REID: You don't have a problem
21 with this, Mr. Hood?

22 MR. HOOD: No, I don't have any problems.

23 CHAIRPERSON REID: Ms. King?

24 MS. KING: No problem whatsoever.

25 CHAIRPERSON REID: By consensus, yes, we will
26 allow a continuance. To what date certain?

27 MS. ROSE: I think we --

28 CHAIRPERSON REID: Or do you want -- it's
29 postponed, right?

1 MS. ROSE: Well, it's postponed because it hasn't
2 been heard.

3 CHAIRPERSON REID: Okay.

4 MS. ROSE: I think we have room on December 16th
5 in the afternoon.

6 CHAIRPERSON REID: Is December 16th okay with
7 you?

8 MS. ROSE: As far as I can tell.

9 MR. JOHN BROWN: If that's the earliest available
10 date, that would be greatly appreciated. If there's something available
11 on the 2nd of December, obviously that would be better. But --

12 MS. KING: I don't think we can meet the 30-day
13 requirement on the second.

14 MR. JOHN BROWN: The 40-day, I think we can.

15 MS. KING: 40-day, I mean.

16 MR. JOHN BROWN: Well, according to my staff, we
17 can. The 16th, again, if that's what is available.

18 MS. ROSE: Yes, I would suggest the 16th. We
19 already have five cases on the afternoon of December 2nd.

20 CHAIRPERSON REID: Okay.

21 MR. JOHN BROWN: Thank you very much.

22 CHAIRPERSON REID: Thank you.

23 Are there any other preliminary matters?

24 Does staff have any preliminary matters?

25 MS. ROSE: No, Madam Chair.

26 CHAIRPERSON REID: Okay. Then we'll call the first
27 case of the afternoon, please.

28 MS. ROSE: The first case of the afternoon is 16373,
29 the application of Homes Brown and M.A. Shaker, pursuant to 11

1 DCMR 3107.2, for a variance from the use provisions of Subsection
2 330.5, to allow general office use in a CAP/R-4 District at premises
3 403 East Capitol Street, S.E., Square 817, Lot 30.

4 Would all persons planning to testify in this application
5 please rise to take the oath? Please raise your right hand.

6 (Whereupon, an oath was administered to those
7 wishing to testify in this application.)

8 You may be seated.

9 You may proceed.

10 MR. DePUY: Thanks. Madam Chair and members of
11 the Board, I'm Jacques DePuy, attorney with Greenstein, DeLorme &
12 Luchs, representing the applicants in this proceeding. I have a very
13 brief opening statement.

14 The subject application is a variance to permit the
15 office use on the first floor and in the basement of the subject building,
16 which, as the testimony and the other exhibits indicate, was built for
17 and used continuously for commercial uses. The variance will permit
18 the applicants who live on the second and third floor, with their two
19 children who are in attendance today, to use the portion of the building
20 for their own consulting business.

21 The application, the testimony and exhibits will show,
22 meets the three-part test for the use variance. First, as to uniqueness,
23 the building and the lot are unusually large, and they were built for and
24 configured for commercial use. And I'm summarizing the case here.

25 Secondly, with respect to hardship, it would be
26 impractical and economically infeasible to convert the building, given
27 its size and configuration, to a flat or other permitted use.

28 And, third, we'll show that there are no adverse
29 impacts because of the fact that the subject site has sufficient parking

1 for six employees. And the use generates very little foot traffic or
2 vehicular traffic.

3 We're pleased to say that the application has received
4 the support of ANC-6B. Secondly, although the Capitol Hill
5 Restoration Society, a representative of whom is here today, initially
6 filed an application -- or filed a request to appear as a party in
7 opposition, we have been advised that they will withdraw that and
8 appear as a person in conditional support.

9 The file indicates, as members of the Board should
10 know, there are 14 letters in support of the application, and there are
11 several neighbors here also in support. And to our knowledge, there
12 are no persons here who are in opposition.

13 Having said that, I'd like to call Ms. Peggy Shaker.

14 CHAIRPERSON REID: Did you say that you had
15 received a letter from the ANC in support?

16 MS. KING: It was on my desk.

17 MR. HOOD: I think there's --

18 MS. KING: Didn't you get one, too?

19 MR. HOOD: -- a letter requesting a waiver.

20 MS. KING: Yes, we need -- we'll have to waive that
21 in, but they are in support.

22 CHAIRPERSON REID: I didn't see that.

23 MS. KING: It may be under or on it or around
24 somewhere.

25 CHAIRPERSON REID: Okay. Then we'll put the
26 ANC portion in.

27 MS. KING: Also, you mentioned that you had -- that
28 there were six parking spaces. The material I read said there were
29 four parking spaces.

1 MR. DePUY: That's correct. We submitted a plat
2 which shows four large parking spaces, but the reality is that six cars
3 can park, and do park, on a regular basis in that area, in that space.

4 MS. KING: Okay. And is this application for an office
5 to be established there, or is this a home occupation?

6 MR. DePUY: It's an office. It does not quality as a
7 home occupation.

8 MS. KING: Okay. And how many employees will
9 there be?

10 MR. DePUY: Currently, there are seven.

11 MS. KING: Seven employees, plus the two
12 proprietors?

13 MR. DePUY: Including --

14 MS. KING: Or the two of you plus five.

15 MR. DePUY: Including the two.

16 MS. KING: And what is the maximum number of
17 employees that they wish to have, including themselves?

18 MR. DePUY: Seven non-resident employees, and
19 that was a condition which we discussed at great length with a
20 representative of the Restoration Society. And that is down from an
21 initial request of 10. The original request was 10 employees, and now
22 we're --

23 MS. KING: Seven employees, including the
24 proprietors.

25 MR. DePUY: Seven non-resident. The way it was
26 structured was seven non-resident employees. So it could be a
27 maximum of nine if the --

28 MS. KING: Okay. I understand.

29 MR. DePUY: -- owners lived in the building. But if

1 not, then it would be seven employees.

2 MS. KING: Okay. Thank you for that clarification.

3 MR. DePUY: Thank you.

4 Ms. Shaker, would you identify yourself and give your
5 testimony to the Board?

6 And I do have copies of her statement I'll hand out.

7 MS. SHAKER: And you're going to put up the
8 pictures.

9 MR. DePUY: Sure.

10 MS. SHAKER: Okay. My name is M.A. Shaker.
11 Please call me Peggy. My statement is entitled "Why We Are
12 Requesting a Use Variance."

13 CHAIRPERSON REID: Address, please.

14 MS. SHAKER: Oh. 403 East Capitol Street, S.E.
15 And the application is number 16373.

16 CHAIRPERSON REID: Okay.

17 MS. SHAKER: I have lived in the District of Columbia
18 for 33 years, and along with my spouse have owned property on
19 Capitol Hill since 1976. The city and our neighborhood is important to
20 us, and to our two children, Ariel and Amara, who are sitting back
21 behind me. Our family has occupied the second and third floors of our
22 building at 403 East Capitol Street as our residence since 1989, and
23 we use the ground floor to operate our family-owned consulting
24 business, APT & Associates.

25 I'm going to talk about the block in a little bit, but the
26 building that I'm speaking of is the red building on the far right with the
27 name APT & Associates above it.

28 APT & Associates is an environmental policy
29 consulting firm that was incorporated in D.C. in 1986 by Holmes and I.

1 I am the president, and I'm the major stockholder of the company.
2 The company works exclusively for interstate contacts, state
3 governments, regional associations, and federal government
4 agencies, and non-profit groups. We provide information and
5 communication services and other services that do not require a lot of
6 foot traffic, or we do not -- obviously, we're not a retail operation. We
7 don't sell anything.

8 APT & Associates currently occupies the first floor.
9 The business employs six full-time professional employees, including
10 myself and Holmes, and also a part-time law clerk. So when we were
11 talking earlier about the numbers, a total of nine, and two of those
12 would be likely to be part-time intern law clerk type of folks. But we do
13 count them because they are in the building.

14 Business is carried out mainly by phone, fax, and e-
15 mail, with fewer than five clients visiting each month and fewer than 12
16 visits during the week from delivery and other service persons. Many
17 of these delivery services, such as mail and UPS, are normal to the
18 neighborhood, in any case.

19 The office is open from 9:00 to 6:00 Monday through
20 Friday. Six off-street parking spaces are provided, as Jacques told
21 you, and one is reserved for us. The other four are used by
22 employees, and one is left open for the legal intern or for whatever
23 use it might be needed.

24 One of our employees Metros to work, and visitors to
25 the office arrive by Metro or cab or by foot.

26 We're seeking a variance to allow us to continue our
27 business as a general office use on the ground floor and in the
28 basement. We understand that a use variance must meet three tests
29 -- uniqueness, undue hardship, and no harm to the public or the zone

1 plan. And I want to discuss those three tests.

2 The first one is the unique nature of the property and
3 the building, the dimensions and structure. Our building was
4 constructed in the early 1870s to house commercial operations and, in
5 some cases, retail operations on the ground floor and in the
6 basement, with residential space above.

7 The building was designed for commercial use on the
8 ground floor, as you can see by its configuration. The ground floor,
9 unlike other large residential buildings on Capitol Hill, is not elevated
10 but is at street level. And for over a hundred years, there were heavy
11 paving stones covering the front yard. Both these features facilitated
12 the coming and going of horse-drawn milk carts.

13 This is the building. This is where the paving stones
14 were. If you look on the side here, and you will have some drawings
15 which we'll submit for the record, there are two metal posts. And this
16 is where the horses went through. The horse-drawn carriages went
17 through to a barn in the back.

18 This was what the building was built for in 1870.
19 Since 1870 -- and it says in my testimony in some detail how we
20 figured this all out -- but it has been used for many purposes. And
21 interestingly enough, it has only had four owners since 1870. The first
22 owner was a woman whose name was Elizabeth Waggoner, and she
23 ran a dairy in here until 1922.

24 And then, from then on, there were a number of other
25 uses, including a dry cleaners, a notions store. And in 1942, it was
26 purchased by Drs. Lendall and Claudine Gay, and they put their
27 medical offices in on this floor. We purchased it from them in 1988;
28 actually, from Dr. Claudine Gay in 1988.

29 There has always been two entrances to the building.

1 This is the residential entrance. This is the commercial entrance. The
2 residence is upstairs. I think if you look at some of your drawings,
3 there is an overhead photo that shows you how it's configured in the
4 back.

5 The upper two floors cannot be reached directly from
6 the ground floor. There has always been separate entrances. I
7 already said that.

8 The total square footage of the building is 6,709 feet,
9 which is three times that of the average Capitol Hill residence. It's 32
10 feet wide, more than twice the width of the majority of Capitol Hill
11 residences. And furthermore, the lot is unusually large because it
12 includes a total of three legal lots.

13 The building is too large for use as a single-family
14 dwelling and has never been used as such since it was built.

15 The other thing I want to talk about is the unique
16 nature of the property in terms of its past use. I did talk about it being
17 in continuous commercial use since the 1870s, and about Elizabeth
18 Waggoner. Some of the other uses have been a tailor shop, a
19 grocery, a delicatessen, a dress shop, a beverage store, an electrical
20 appliance store, a laundry, and a dry cleaner, and a watch repair
21 shop.

22 The 1944 to '88 use we have in some detail in my
23 testimony. And basically, by the time we purchased it, it had been
24 used for two to three doctors and staff. And they, in fact, leveled this
25 -- there were two buildings here, and they leveled these buildings to
26 put in parking for their patients. That's how many patients they had
27 coming and going.

28 Interestingly enough, they used to arrive by streetcar,
29 and they took the buildings down and put the parking lot in when the

1 streetcar stopped running.

2 The current proposed use maintains the historic
3 mixed use character of the property, while considerably eliminating the
4 obtrusive features of retail and the high-traffic commercial use it has
5 had in the past.

6 Now, this next point -- the south side of the 400 block
7 of East Capitol is almost entirely composed of buildings that house
8 commercial facilities on the ground floor with residential space above.
9 I just want to explain a little bit about that, because that's one of our
10 uniqueness discussions.

11 There are -- the block goes from here. This is Jimmy
12 T's Place, which is a diner. This is a grocery store; two offices, one of
13 which is a pediatrician's office; Society of Women Geographers; Irish
14 National Caucus; Capitol Hill Chiropractic Clinic; Capitol Hill Valet.
15 This is us at APT & Associates. This is now an apartment building.
16 Interestingly enough, this was the first Washington, D.C. theater. It
17 was called the Nickelodeon, and Dr. Gay took it apart and put it --
18 made it into apartments.

19 You can see that all of these have historic fronts
20 which show commercial use, and we have -- again, in our supporting
21 testimony we show what some of those uses have been over the
22 years. The point there is that not only is our property unique but the
23 block is unique. We're the only block of this type in an R-4 zone on
24 Capitol Hill. There is no other block like us.

25 Right across the street from us is -- and I don't know
26 how many of you are familiar with Capitol Hill -- but is Grubbs
27 Pharmacy and the Congress Market. So if you look directly across the
28 street onto the corner, that's what you see from our house.

29 The current use of the building does not alter the

1 character of the neighborhood. It is compatible with the neighborhood
2 and represents a significant improvement over past uses, most
3 recently the use from 1944 to 1988.

4 Okay. That's the first test, uniqueness.

5 The second test, undue hardship. It would be
6 uneconomical to convert the building from its historic commercial use
7 to a solely residential use, such as an apartment building. There is no
8 central staircase. The interior stairways are wooden and not
9 enclosed. The office entrances, front and rear, are separate from the
10 second floor entrances. And the layout of the entire building does not
11 lend itself to legal apartment use.

12 Two of the four potential apartment units would
13 require the addition or expansion of bath facilities in the ground floor,
14 which would require the installation of a full kitchen. Utility services
15 would have to be added, and space would be needed to be
16 partitioned, and an additional internal access stairway would need to
17 be constructed.

18 We have done a hardship supporting document,
19 which looks like this. I don't want to go through it all unless you have
20 questions. But basically, the point is that calculations show that the
21 property reconfigured into four units has no chance of generating
22 sufficient income for an investor or owner. Therefore, the building is
23 not commercially viable as a residential rental property. Converting its
24 use to four units construes an undue financial hardship on us, or any
25 other owner of the building.

26 In addition, we would have to start the variance
27 process again to get a variance for the building to be able to use --
28 have four apartments in it, since we're in an R-4 zone. And we, as
29 current owners, would definitely have to move out because it would

1 not suit our needs. So it would obviously present a hardship to us as
2 individuals.

3 As I say, I won't go through this, but this is -- we
4 employed an appraiser, an accountant, and talked to a realtor to try to
5 get this down as much as we could, to give you some fairly close
6 figures for this kind of calculation.

7 So that's the second test.

8 The third test -- the relief will not impair the intent,
9 purpose, or integrity of the zoning regulations. The variance would
10 permit a use that is unobtrusive. The variance is appropriate for a
11 non-conforming structure that has been continuously in commercial
12 use. And this is my evidence over here.

13 The business use and land area and the portions of
14 the building previously used for commercial purposes have not been
15 expanded. The current use is an improvement over the historic
16 commercial use. Foot and vehicular traffic associated with the office
17 is minimal. The current use has reduced the number of people
18 occupying the upper floors of the building from previous uses, and the
19 building is not configured for single-family use instead of apartments
20 above.

21 The inclusion of the business in the property has
22 enabled us to completely renovate the interior and exterior of the
23 buildings, to landscape it, and the property has been certified as
24 contributing to the character of a historic district. The business does
25 not attract a regular flow of visitors and does not, therefore, adversely
26 impact the neighborhood.

27 No commercial signs have been posted on the
28 building. The building is occupied day and night and has motion-
29 activated security lights and building-wide security system, which adds

1 to the security of our block.

2 For these reasons, I would like to ask you, on behalf
3 of my family, to approve the variance. Thank you. And I'd be glad to
4 answer any questions.

5 MR. DePUY: Mr. Brown has a statement, and the
6 Board could either, if it has questions, ask them of Ms. Shaker now, or
7 hold until Mr. Brown finishes his statement. Should we have him give
8 his testimony?

9 MS. KING: Go right ahead.

10 MR. DePUY: Okay. Mr. Brown?

11 MR. HOLMES BROWN: Okay. Thanks. My name is
12 Holmes Brown, and I also reside at 403 East Capitol Street. What I
13 wanted to do is to briefly discuss our application and securing
14 neighborhood support for the application.

15 When we purchased the property in 1988, the seller
16 and the realtors that we dealt with told us that given the building's
17 history we could continue the long-standing, non-conforming
18 commercial use of the building that was built in the 1870s. And we
19 were -- it was indicated that the D.C. Zoning Office would allow similar
20 continued use.

21 In 1989, soon after purchasing the property, we
22 applied to continue the long-standing, non-conforming commercial
23 use, which had been granted to the previous owners.

24 However, the application was never processed by the
25 Office of the Zoning Administrator, despite repeated calls, meetings,
26 and hiring a zoning lawyer to regularly check on the status of the
27 application. I also personally went down, on two or three occasions,
28 to that office in pursuit of the application.

29 And after four years of inaction by the Zoning Office,

1 we stopped contacting them, knowing that we had filed an application
2 appropriately and done everything possible. We went on about our
3 business and waited for the District to recognize our efforts to obtain a
4 permit.

5 Then, moving to more recent times, in February of
6 1988 we completed the application and filed for a use variance
7 because of the impending development of the vacant property next to
8 us at 405 and 407 East Capitol Street. And that's the vacant lot that's
9 pictured here.

10 It has been vacant for almost 40 years now. I believe
11 that those houses were taken down in 1960 or '62.

12 Over the past several months, we have developed
13 information supporting our request for a use variance. We have
14 written to, spoken with, and met with our neighbors. We have met
15 twice with the Zoning Committee of the Capitol Hill Restoration
16 Committee, and we have met once with our neighborhood ANC.

17 In terms of neighborhood support, in August we
18 communicated in writing with all of our new neighbors, providing
19 information and plat drawings. We noted that if neighbors had any
20 concerns or questions we were available for discussion. We held a
21 number of these meetings and were pleased with the support our
22 neighbors gave us, including 14 individual letters of support, 13 of
23 which I believe are in your file and circulated to Board members. And
24 other neighbors have come down today to testify on our behalf.

25 We are aware of only one letter of opposition that's in
26 the file.

27 In terms of the Advisory Neighborhood Commission,
28 6B, which covers our area, prior to the meeting with 6B, I met with
29 staff to discuss information needs and provided information to them.

1 On October 13th, we met with the full ANC to explain our application.
2 At that time, we proposed a series of conditions we were willing to
3 accept as part of the variance, and the ANC voted to support our
4 request for a variance. And I believe that letter was recently received
5 by the BZA and should be in your files.

6 In terms of the Capitol Hill Restoration Society, we
7 have been in ongoing communication with the Society since August.
8 We submitted two separate packets of information to them and have
9 appeared twice before their Zoning Committee. In response to
10 questions from the Society, particularly in the hardship area, we hired
11 an appraiser and a CPA to develop financial information. That's the
12 hardship packet that Peggy referred to.

13 We also asked our attorney to draft language and to
14 respond to a series of questions from individual members of the
15 Zoning Committee, including the committee chair.

16 As a result of all of these discussions, we have
17 amended two of the earlier conditions, and we have added further
18 limitations. And as a result, the Capitol Hill Restoration Society has
19 agreed to support our application for a variance, I believe with
20 conditions. I think that's how that is explained. But those are
21 conditions that we and the Society have worked out together and
22 mutually agree upon.

23 Limits of future use -- to meet any potential concerns
24 about future use of a building, we have proposed nine conditions to
25 accompany the use variance. And these are conditions that we
26 initially proposed and again modified in response to discussions with
27 Capitol Hill Restoration Society.

28 As noted above, these conditions have been agreed
29 to by both the ANC and the Restoration Society. Our neighbors

1 actually supported us. The letters were written without dependency
2 on the conditions, but I think they will certainly be satisfied with them.

3 We have made a concerted effort to comply with
4 zoning requirements, and we ask that the Board grant us the use
5 variance. We need to continue mixed use of our residence.

6 Finally, this was attached to my statement. You had
7 received an earlier version of the conditions. Again, we modified them
8 over the last week or so. I will just run through these very quickly.
9 The concern here is that our neighbors at present have felt very
10 comfortable with what we're doing. Obviously, there is an interest in
11 having the current unobtrusive nature of the operations continue into
12 the future.

13 For that reason, we have proposed that office use
14 would be limited to the first floor and the basement, which has been
15 the traditional commercial use of the building. We wish to both limit
16 the types of enterprises that can use the business. We want to list
17 both those that are approved and those that are not allowed, and
18 those are covered in the second paragraph. We want to restrict the
19 hours to the weekdays, to the same hours that we keep, 9:00 until
20 6:00. We have already discussed the issue of the number of persons
21 working in the building.

22 We quote Section 2034.4, subparagraph 1 of the
23 zoning regulations having to do with vehicular business to the
24 premises. I think ours will be far below those that are established in
25 that section.

26 Landscaping -- we don't have too many of the -- I
27 think you have some before and after pictures. Well, anyway, I can
28 assure you that the before pictures present a very different scene. We
29 have made a real effort to restore this to the 1870s mode and to

1 maintain landscaping, and so on, and our requirement would be that
2 that be maintained.

3 Exterior signs would be severely limited to one small
4 brass plaque on the ground floor door and on the basement door.
5 And, again, we had talked about parking. The current configuration
6 would be maintained to accommodate both owners and employees.

7 And finally, the most recent condition -- as long as the
8 building contains office use, the second and third floors of the building
9 shall be used as a one-family dwelling, so that that would maintain the
10 residential nature of the second and third floors. So that's just a brief
11 summary of the conditions.

12 Again, the result of all of our discussions with
13 neighbors, with various organizations, and so on, is that we have 14
14 letters of support, and both the ANC and the Restoration Society are
15 supportive of the application. So I think that concludes our joint
16 presentation, and we'd be happy to respond to any questions.

17 CHAIRPERSON REID: Questions?

18 MS. KING: Yes. The current parking space
19 configuration shall be maintained at six spaces to accommodate, is
20 that right?

21 MR. HOLMES BROWN: Yes, that's correct.

22 MS. KING: So it's six spaces that you would have?

23 MS. SHAKER: Yes.

24 MS. KING: And will continue to have.

25 MR. HOLMES BROWN: That's right.

26 MS. KING: Where are they? In the front?

27 MS. SHAKER: In your packet of information, there
28 should be a drawing, a plat drawing.

29 MS. KING: Can you show me on your photograph?

1 MS. SHAKER: They're behind the building.

2 MS. KING: Oh, they're behind the building.

3 MS. SHAKER: Yes. There's a lot. It goes like this,
4 and then there's an L. It goes on to --

5 MS. KING: Oh, okay.

6 MS. SHAKER: -- and it's behind here.

7 MR. HOLMES BROWN: That's one of the unique
8 features of the property is the L shape. So it's -- there's a 20-foot wide
9 band that leads out to 4th Street.

10 MS. KING: Okay.

11 CHAIRPERSON REID: I had a couple of questions.
12 One, I'm not clear on -- this is a variance. Under what section of the
13 regulations?

14 MR. JOHN BROWN: It's a use variance under the
15 general variance section. And since offices are not permitted in the R-
16 4 zone, there is no particular section of the R-4 zone which is
17 applicable.

18 CHAIRPERSON REID: Well, this is interesting
19 because this is a self-certified, self-certification --

20 MR. JOHN BROWN: That's correct.

21 CHAIRPERSON REID: -- application. And generally,
22 we have it tying to a specific regulation rather than just generally.

23 MS. ROSE: Well, in use variances, the citation is of
24 the position that provides the uses for that district. And that's what he
25 is saying; Section 330.5 gives the uses for that district. Since this one
26 -- this use, the proposed use, does not meet any of those, they need a
27 use variance from that provision.

28 CHAIRPERSON REID: Also, I had -- the reason why
29 I got a little confused about it was because there was also the letter

1 from the Zoning Administrator, I think, in regards to a home occupancy
2 permit.

3 MS. KING: That was their original application, on
4 which no action was taken.

5 MR. JOHN BROWN: That's correct.

6 CHAIRPERSON REID: Yes. How did that get -- why
7 was that done like that? I wasn't sure why that came to us in the
8 package.

9 MR. HOLMES BROWN: Well, I think the -- we had
10 wanted to indicate that we had made an effort to explore the zoning
11 options when we first purchased the property. And we applied both
12 for that, and -- I'm sorry, what was the second, the --

13 CHAIRPERSON REID: Continuing a non-conforming
14 use.

15 MR. HOLMES BROWN: -- continuing a non-
16 conforming use.

17 CHAIRPERSON REID: You applied for both.

18 MS. SHAKER: No. We applied for the home
19 occupancy. We were turned down because it was deemed that the
20 building did not meet the requirements for home occupancy, since it's
21 so big, and, you know, so many employees pass the people who live
22 there. So we went back in for another -- a continuing and non-
23 conforming use, and that was not acted upon. That's the thing in
24 Holmes' testimony where it talks about that never got acted upon.
25 We're talking 1989.

26 MR. HOLMES BROWN: Yes. The reason those
27 were in there were simply to establish a historic record. We are
28 currently applying for a separate -- I guess Jacques has -- under a
29 separate section.

1 CHAIRPERSON REID: I see. Okay. I understand
2 now.

3 MR. HOLMES BROWN: All right.

4 CHAIRPERSON REID: I'm a little confused.

5 MS. KING: I was confused by that, too.

6 CHAIRPERSON REID: Okay. All right. Thanks.

7 Questions, any of the Board members? What is that?

8 MR. HOLMES BROWN: That's our overhead, I
9 guess.

10 MS. SHAKER: This explains where the parking --

11 CHAIRPERSON REID: First of all, you have to give
12 this -- right.

13 MS. KING: But we have this already, I believe. It's
14 already in the file.

15 CHAIRPERSON REID: Okay. All right.

16 MR. HOOD: I did have a question, Madam Chairman.
17 I have read the material, but I just want to get a brief
18 -- in brief detail, what are you using each floor for? Basement? The
19 first floor? The second floor? And third? Very brief.

20 MS. SHAKER: Okay. Very brief. The second and
21 third floor we live in. Our family lives on the second and third floors.
22 Okay? The first floor and the basement -- the first floor we use as an
23 office; the basement we use as storage for the office equipment and
24 for files. And so it's office use, the basement and the first floor.

25 MR. HOOD: The basement is storage.

26 MS. SHAKER: Right. And for the office equipment. I
27 mean, equipment -- anyway, yes. That's short.

28 MR. HOOD: And the first floor?

29 MS. SHAKER: The first floor and the basement are

1 storage of equipment and -- I'm sorry. The basement is storage of
2 equipment and files for the office file room, and the main floor is office
3 use. And that continues the use that was used by the doctor that had
4 been in there since '44 -- '42.

5 MR. HOOD: Okay.

6 CHAIRPERSON REID: Are there any parties here
7 that will testify in this case? Okay. Parties please come forward and
8 identify yourselves.

9 Mr. Schauer, are you --

10 MR. SCHAUER: Madam Chairperson, my name is
11 Lyle Schauer. I'm the Zoning Chair, Capitol Hill Restoration Society.
12 We did request party status here to appear in opposition, but we have
13 since had some considerable negotiations with the applicants. We
14 withdraw our request for party status, and we will appear here to
15 conditionally support this application.

16 CHAIRPERSON REID: The ANC? Representative --
17 is that person here? Okay. Thank you.

18 Thank you. We'll bring you back up for closing
19 remarks.

20 MR. DePUY: Madam Chair, before we leave, the
21 photographs that are presented and discussed are similar to prior
22 photographs that are already in the record. But these photographs
23 are not in the current form in the record, and we'd request that they be
24 accepted. And if necessary, we'll request a waiver of the rules to so
25 accept these photographs.

26 CHAIRPERSON REID: Those photographs differ
27 from those that were --

28 MR. DePUY: They're different from the ones that
29 were submitted before. These are more complete.

1 CHAIRPERSON REID: Does it have to renew the
2 waiver, or can they -- we'll so waive the record and allow you to
3 submit them at this time.

4 MR. DePUY: Thank you very much.

5 CHAIRPERSON REID: Government reports? We
6 have no Office of Planning report or any other government reports, I
7 don't think.

8 MS. KING: You're right, I think. We have no
9 government reports.

10 CHAIRPERSON REID: What is this one? Let me
11 see. Just a second.

12 MS. KING: Oh. It's just a confirmation about the age
13 of the building and that it contributes to the --

14 CHAIRPERSON REID: We don't need that?

15 MS. KING: No.

16 CHAIRPERSON REID: Okay.

17 MS. KING: I mean, it's not addressed to us, so we
18 don't --

19 CHAIRPERSON REID: Okay. ANC? There's no
20 ANC --

21 MS. KING: We have to waive -- the ANC has asked
22 for a waiver.

23 CHAIRPERSON REID: Yes. The ANC -- there is no
24 representative, but there is a report. And Ms. King, could you just kind
25 of summarize that for us?

26 MS. KING: Well, I would ask on behalf of ANC-6B
27 that we waive the requirement, that they met on the 13th of October,
28 and, therefore, could not meet the deadline for submission of --

29 CHAIRPERSON REID: And the letter is dated August

1 19th. We will so waive the rule to allow the letter.

2 MS. KING: And the letter is mercifully brief. It says
3 that ANC-3B has voted five to none, with three abstentions, to support
4 the above-referenced application, which is 16373. The ANC voted
5 that at its properly-noticed meeting of October 13th, with a quorum of
6 commissioners -- that is, seven present. So we give that great weight.

7 CHAIRPERSON REID: Okay. Those parties who are
8 appearing here in support of the application today come forward,
9 please. Your name and address?

10 MR. GARRISON: I am pleased to appear in support
11 of 16373. My name is David Garrison. My wife, who is with me, and I
12 reside at 8 4th Street, S.E. If we look familiar to you, it's because we
13 were here two weeks ago in conjunction with the special permission
14 that you gave us to renovate the back of our house.

15 We have been at this address for 27 years. We abut
16 the Shaker-Brown property on the south. The Shaker-Browns have
17 been very good neighbors. They bought a unique and hard and
18 expensive to renovate structure, principally because of its size. They
19 have invested a lot of time and treasure to bring the property to its
20 current very good condition.

21 They operate a business on a street that is nearly
22 entirely filled with first floor commercial enterprises. Their business
23 has no adverse impact on the neighborhood, and, in particular, there
24 is off-street parking for all employees who drive to work.

25 The Shaker-Brown application includes a number of
26 conditions that would run with the variance. These conditions have
27 been discussed with us at length. With these conditions attached, the
28 Shaker-Brown application has our full support. We urge the Board to
29 approve it as soon as possible. Thank you.

1 MS. CANNING: My name is Judith Canning. I live at
2 21 5th Street, S.E., with my husband, Michael Canning, who is also
3 here today. We have lived on the same block as this building since
4 1969, and I would like to say that we wholeheartedly support the
5 application for a variance. And we did write a letter of support.

6 I would like to note that we took both of our daughters
7 to Dr. Claudine Gay, who was in the building for many years, and to
8 the doctor who took over her practice. So we are very familiar with the
9 building.

10 We support the variance because of its long-term
11 commercial use, and it almost amuses me to refer to the commercial
12 use of the building, because until recently I thought there was no
13 commercial use there whatsoever. There is no indication from the
14 outside that there is any commercial or business activity going on,
15 since the current owners took over. It looks like a single-family
16 dwelling, though large.

17 There is less foot traffic around the building going in
18 and out now than there ever has been before, and I walk past and
19 around the building every day. I also have to note the improved
20 appearance of the building since the current owners took over. Great
21 physical improvement to the property and the land around it.

22 And for those reasons, my husband and I support the
23 variance. Thank you.

24 CHAIRPERSON REID: Thank you.

25 For the record, we also have several letters, around a
26 dozen, in support of the application.

27 Mr. Schauer, you have testified about the conditions?

28 MR. SCHAUER: Again, for the record, my name is
29 Lyle Schauer. I'm Zoning Chair, Capitol Hill Restoration Society. I

1 reside at 1107 Independence Avenue, S.E.

2 Madam Chairperson, members of the Board, this
3 case has been very difficult for us. And I think you probably gathered
4 that when Mr. Brown remarked that he had attended two Zoning
5 Committee meetings in this matter. That very rarely happens, so we
6 considered this case at considerable length, and it is not an easy
7 case, because as you well know we are very concerned about
8 commercial use in residential districts. And normally, we'll oppose
9 them fiercely.

10 However, in this case, there are some facts that have
11 been developed by the applicants, and some equities that they have
12 mentioned, that we feel should modify our approach to this case.

13 Also, we consulted with the neighbors, and we found
14 no opposition to the present use in that building. Our concern, then, is
15 to maintain the level of use intensity at no greater than the present
16 level. And so we are prepared to not contest the elements of the use
17 variance. That is, that it's unique, and undue hardship to the
18 applicant, and that it has no adverse effect on the zoning regulations.

19 And in return, we negotiated some of the conditions
20 that the applicants had put forward. We modified them in several
21 ways. Most importantly, to control the use of the two upper floors to a
22 single-family residence under this use variance. I think that's very
23 important because the overall impact to the building is not only the
24 office but the residential floors as well.

25 It also limits the office occupancy, the number of
26 people who are employed there, to approximately the present levels.
27 It limits the uses, and it spells them out in considerable detail. We feel
28 that these provisions will protect the residential area, will protect the
29 neighborhood, and will protect the Society's interest.

1 So we recommend to this Board approval of this, with
2 the conditions that are before you. Thank you.

3 CHAIRPERSON REID: Thank you.

4 All right. Persons or parties in opposition to the
5 application, please come forward. Persons or parties in opposition to
6 the application, please come forward. Note for the record that there
7 was one letter that we received in opposition, and that was from a
8 David -- a Donald Anderson.

9 Closing remarks by the applicant?

10 MR. DePUY: Madam Chair, members of the Board,
11 in view of the fact that there is no opposition, I believe we presented a
12 case which addresses the tests of the variance. We would not give --
13 either call the witnesses, the applicants, back for any rebuttal, since
14 there was none, and I'll waive the closing statement. So we would
15 request, if the Board is so inclined, to grant a favorable bench decision
16 with the conditions that were submitted.

17 CHAIRPERSON REID: Board members, I'd move
18 that we approve this application.

19 MS. KING: I second.

20 CHAIRPERSON REID: I think that they have
21 demonstrated that they have met the burden of proof, that there
22 definitely is a unique condition. The building appears to be larger than
23 what's normally in this particular district. They also have proved
24 undue hardship in regard to trying to convert it to comply with the
25 existing zoning regulations.

26 There does not appear to be any adverse impact,
27 noticeably. And it does not, also, appear to impair the intent or
28 purpose of the zoning map and the zoning regulations.

29 If there was a second -- did we get a second?

1 MS. KING: Yes. I seconded earlier on.

2 CHAIRPERSON REID: Oh, okay. Any other
3 comments?

4 MS. KING: I think that we need to incorporate the
5 conditions that are proposed by the applicant.

6 CHAIRPERSON REID: Absolutely. With the
7 amendment of -- does staff have a copy of this?

8 MS. ROSE: Yes.

9 CHAIRPERSON REID: Okay.

10 MS. KING: With the amendment in the next-to-the-
11 last item, where it says, "The current parking space configuration shall
12 be maintained," I want to insert the words "at six spaces."

13 CHAIRPERSON REID: And what about -- are those
14 the same conditions that Schauer also --

15 MS. KING: Yes, I believe these are the ones that
16 were negotiated with the neighbors and with the ANC and with -- and
17 particularly, modified at the request --

18 CHAIRPERSON REID: But that fulfills your
19 requirement, Mr. Schauer, as well?

20 MR. SCHAUER: Madam Chair, we took no position
21 on the language that was submitted by the applicants. We find it
22 acceptable. We have no argument; if you want to make it more
23 specific, that's fine.

24 MS. KING: I just wanted to make sure it was six
25 spaces, because parking is such a hot issue.

26 CHAIRPERSON REID: Okay. And then, did you
27 indicate each one of them?

28 MS. KING: Yes.

29 CHAIRPERSON REID: Summarize them for the

1 record?

2 MS. KING: I don't -- well, the applicants have, in fact,
3 read them for the record. So the document that --

4 CHAIRPERSON REID: As reflected in the testimony.

5 MS. KING: Yeah, as reflected in the testimony. But
6 the document that was presented to us called "Limits to Future Use:
7 Proposed BZA Conditions" should be incorporated into our order in
8 the appropriate form.

9 CHAIRPERSON REID: Okay. All in favor?

10 (Ayes.)

11 Opposed?

12 (No response.)

13 MS. KING: A summary order?

14 CHAIRPERSON REID: He asked for -- a summary
15 order. You should have your order in about two weeks.

16 MS. ROSE: Staff will record the vote as four to zero,
17 with Ms. Reid, Ms. King, Mr. Hood, and Mr. Gilreath, to grant the
18 application with conditions and the issuance of a summary order.

19 The next application is 16374 of E. Frank Snellings,
20 pursuant to 11 DCMR 3107.2, for a variance from the parking
21 requirements for two spaces, Subsection 2101.1, for the construction
22 of a two-unit flat in a CAP/R-4 District at premises 405-407 East
23 Capitol Street, S.E., Square 817, Lot 31.

24 Would all persons planning to testify in this application
25 please rise to take the oath? Please raise your right hand.

26 (Whereupon, an oath was administered to those
27 wishing to testify in this application.)

28 You may be seated.

29 MR. CAIN: Good afternoon, Madam Chairman,

1 members of the Board. My name is Michael Cain. I'm a member of
2 the law firm of Hamilton & Hamilton, representing the applicant, Mr.
3 Frank Snellings, in this case.

4 Serendipitously, we are the property adjacent to the
5 case you just heard, to the east. We're Lot 31 in Square 817.

6 This is a vacant parcel and it has been for a number
7 of years. Mr. Snellings desires to build a home on the property, and
8 because the property is in the Capitol Hill Historic District, has
9 engaged Mr. David Waggoner to prepare a design and present that
10 for conceptual review to the Historic Preservation Review Board.

11 The Review Board has made it clear, and the design
12 so reflects, that there should not be a curb cut on East Capitol Street.
13 This is a land-locked parcel with no other access to the public street or
14 public alley. Accordingly, we are before you requesting a variance
15 from the on-site parking requirement for one space for a flat in the R-4
16 zone.

17 Unless the Chair of the Board has any questions for
18 me, I'd like to ask Mr. Snellings to address you at this point.

19 Mr. Snellings, would you please state your full name
20 and address.

21 MR. SNELLINGS: Frank Snellings. I live at 634 A
22 Street, S.E., in Washington, D.C.

23 MR. CAIN: Is that your permanent residence?

24 MR. SNELLINGS: Hopefully not.

25 (Laughter.)

26 MR. CAIN: And do you own a parcel of land on
27 Capitol Hill known as Lot 31, in Square 817?

28 MR. SNELLINGS: Yes, I do. And I purchased that lot
29 approximately a year ago. My wife and I moved to Washington in

1 January of '97. She has a distinction of being the youngest woman
2 ever elected to the United States Senate, and so we came north from
3 Louisiana. And with two very young children, one who is six, the other
4 who is 15 months old, and with her schedule, what we have tried to do
5 is to locate our family on Capitol Hill. Otherwise, if we were to live in
6 Virginia or Maryland, we would not see the children very often.

7 So when we bought this property about a year ago,
8 it's a 36-foot wide lot by 100 feet deep. In Louisiana, we call that a
9 double wide. And so we want to build this home there for the two of
10 us and our two children, and began the process by hiring Mr.
11 Waggonner from New Orleans, who had spent a good bit of time in
12 the D.C. area as a young man, and who has some impeccable
13 credentials, to design a house for us that would work for our family.

14 The beautiful quality of the house is is that it is literally
15 a five-minute walk for my wife to walk either into the Senate chamber
16 or to her office. I use the Metro to get to work downtown. And then
17 our children -- Connor, who is six, goes to school at St. Peters. He
18 plays on a couple of different sports teams. We frequent Jimmy T's.
19 And Mary Sharon will probably end up going to the Library of
20 Congress Child Development Center, which is just about a block
21 away, as did our son Connor when we first arrived.

22 So the whole import of our existence here on Capitol
23 Hill is to have a nucleus for our family to work within and have some
24 quality family time together.

25 We have done everything we could to take care of the
26 situation with regard to the requirement that we have on-site parking.
27 The folks who were here immediately before this case have a 20-foot
28 wide strip or driveway which abuts the back 80 feet -- excuse me, the
29 back 20 feet of our lot. Their lot only goes back 80 feet; ours goes

1 back 100. And that 20-foot strip goes out to 4th Street.

2 And so we have had several communications with
3 them, in writing and by verbal, asking them to give us or sell us
4 access. And we've even offered a substantial amount of money to get
5 that access to alleviate this problem, not only because it's a
6 requirement of the zoning regulations, but we would, quite frankly, like
7 to have a garage on the property which we could park in.

8 They have, as you have heard earlier, for the
9 purposes that they have their property used for, declined to give us
10 access. The only other possibility was the curb cut, which we do not,
11 as owners of the property, want, nor advocate.

12 And in earlier discussions about this property with the
13 Historic Preservation Review Board, with a person earlier about three
14 years -- two years ago who wanted to put a curb cut there, he was
15 turned down flatly by the Historic Preservation Review Board. So I
16 think that's a moot issue, so we are land-locked.

17 We sent, in early August, a letter to the people within
18 a 200-foot radius of the property asking for their support. You will find
19 in your record those little cards that were sent back saying, "Yes,
20 Frank, we support your variance application." That represents 21 of
21 the properties within the 200-foot radius. We got no negatives on that.

22 We have appeared before the ANC-6B and voted
23 unanimously to support that application. I have appeared before the
24 Historic Preservation -- excuse me, the Capitol Hill Restoration
25 Society. They have unanimously supported that. And Mr. Schauer is
26 here and will speak to that, I'm sure, at the appropriate time.

27 So here we are with the house. We had lived down at
28 the Landsburg for almost the first two years of our presence here in
29 Washington, and just about 10 days ago found a house on 6th Street,

1 634 A Street, that we could rent until we are able to get the house
2 built.

3 So we're glad to be now physically within about a two-
4 block run from where we hope to build this house. We're very much
5 looking forward to it. We think it will be a tremendous addition to the
6 neighborhood, and we have been, quite honestly, very taken by the
7 friendliness of the people on Capitol Hill since we moved there about
8 10 days ago.

9 So I will be happy to answer any questions, if you
10 have any more for me.

11 CHAIRPERSON REID: Did you say, sir, that you had
12 received a report or a letter from the ANC-6B?

13 MR. CAIN: Madam Chair, we have not seen it. We
14 know what the vote was. Mr. Snellings was present. We have not
15 seen a written report.

16 MS. KING: I think we have to waive it in again
17 because --

18 MR. SNELLINGS: Yes. Because they just met last
19 week on the 13th, and that's the reason --

20 CHAIRPERSON REID: Thank you.

21 MR. GILREATH: I have one question.

22 MR. SNELLINGS: Yes, sir.

23 MR. GILREATH: It seems like I read someplace in
24 the documents that you plan to have the lower -- a basement
25 apartment as well. Is that my --

26 MR. SNELLINGS: Yes, sir. And that, as I said
27 earlier, is what we would call a double-wide lot in Louisiana. So we
28 will put an apartment in the basement. We currently have ourselves
29 one vehicle for the two of us and the two children. Neither one of us

1 uses it. It's used primarily for the children's transportation.

2 And our anticipated occupancy of the apartment
3 downstairs is hopefully to have one person. It will be a one-bedroom
4 apartment, and hopefully it will be someone who works in the Capitol
5 and walks to and from work each day. We anticipate putting in the
6 lease a restriction that it not -- if they have a vehicle, they only have
7 one, and hopefully we can rent it to only one person. At the most, a
8 couple would be what we would anticipate renting it for, because
9 simply we live above it and we want it to be -- hopefully, it's going to
10 be a Congressman who will leave every weekend and go back to the
11 district.

12 (Laughter.)

13 MR. GILREATH: Thanks.

14 MS. KING: But that is a matter of -- a two-family
15 dwelling is a matter of right, is it not?

16 MR. SNELLINGS: That's correct.

17 MR. GILREATH: I was asking about the parking. If
18 someone rented the basement, and there were three people, they'd
19 have three cars. They just park on the street. Okay.

20 MR. CAIN: Technically, we're talking about a flat.
21 That's correct.

22 MR. SNELLINGS: And I have also, with the three
23 neighbors immediately surrounding us, one of whom I think is here
24 today to testify in favor of it, gone over with them the plans that we
25 have and how we will impact on our respective properties with the
26 construction of the house, because it's important that they be involved
27 in that.

28 And finally, we are using the Capitol Hill Valet, which
29 is immediately to the east of our property, for -- as our cleaners. If any

1 of you all know Ms. Monica there, she is quite an engaging lady from
2 Korea. And because I go there by car most times, when I do go there
3 in the mornings and in the evenings, to pick up or drop off the laundry,
4 I find that the parking is fine and we have no problems with it there.

5 The thing I'm amazed at over on 634 A, where we've
6 been about 10 days now, is that we literally have parked in front of the
7 front door every single night, and I will knock on wood that that
8 continues.

9 CHAIRPERSON REID: Thank you.

10 MR. CAIN: Thank you. I'd like to ask Mr. David
11 Waggonner to identify himself officially for the record and describe his
12 assignment and connection with this project.

13 MR. WAGGONNER: My name is David Waggonner,
14 Waggonner and Ball Architects, in New Orleans. We were employed
15 in the summer or retained in the summer of 1997 by Mr. Snellings to
16 design this residence for his family.

17 Do you want me to proceed with --

18 MR. CAIN: Yes. Would you explain what you did to
19 carry out the assignment and what you did particularly with respect to
20 the Historic Preservation Review Board?

21 MR. WAGGONNER: Right. First, let me establish
22 that it's zoned Capitol Hill R-4, so it is a matter of right that the
23 apartment be there. It's in the Capitol Hill Historic District. My first call
24 to the Capitol Hill Restoration Society got Mr. Schauer, and I was told
25 before I spoke that there would be no curb cut allowed for this. They
26 had opposed that previously. I tried to assure him that we had no
27 intention of violating that 40-foot setback on East Capitol Street with a
28 curb cut or a parking space in front.

29 We did meet before in November 1997, got

1 conceptual approval from the Historic Preservation Review Board, and
2 we'll be back tomorrow talking to them for hopefully final approval of
3 where we are on this design. We've been impeded for some six
4 months or so now from proceeding with this one issue with the curb
5 cut.

6 The property is about 36 by 100, as Frank said, 100
7 feet deep. It presents, in design terms, one or two unusual problems.
8 Frank's rural Louisiana reference to a double-wide is to a trailer. It is
9 almost twice as wide as your typical Capitol Hill lot. That presented
10 something of a design challenge because Mr. Schauer also told me
11 the house was too big to be treated like a standard row; that is, just
12 with one bay. So that the design was broken down into more like two
13 bays to reduce the apparent width of this unit. The building next door
14 was a dairy and is much broader than the typical Capitol Hill dwelling.

15 The other unique design problem there is the height
16 variation, because you have a three-story building, fairly large, high,
17 three-story building, and a relatively low two-story building. And this
18 design has to -- this open space has to mitigate that stepping, and
19 we've done some things in the design with Mansard, and so forth, to
20 pull that height down.

21 It's a relatively traditional design. It's masonry, which
22 was our 19th century way to build. That's set back in a green law, and
23 it's got some cast stone accents. It's still treated with design elements
24 of our time, but it is intended to be a good neighbor and to solve some
25 particular site problems in that respect.

26 MR. CAIN: Mr. Waggoner, has the Review Board
27 given conceptual approval to the design?

28 MR. WAGGONER: Yes.

29 MR. CAIN: Was the issue of curb cut discussed with

1 the HPRB staff or with the Board itself?

2 MR. WAGGONNER: Yes. It was discussed. It was
3 made clear at the Historic Preservation Review Board that there could
4 be no curb cut. At the hearing the Capitol Hill Restoration Society
5 registered that at that hearing in November of 1997.

6 MR. CAIN: I have nothing further from Mr.
7 Waggonner, if the Board has questions.

8 CHAIRPERSON REID: Yes?

9 MS. KING: There is going to be an in-ground pool, is
10 that correct?

11 (Laughter.)

12 MR. SNELLINGS: That is my wife's pool. And I've
13 always believed that a pool -- the best pool to have is have your
14 neighbor have a pool.

15 (Laughter.)

16 And this is -- we've kind of gone back and forth and
17 back and forth on it. So I'm not going to put any money on it, but I'm
18 hoping not to have a pool there at the end of the day.

19 MS. KING: I just -- I can't -- I was trying to lay hands
20 on it, but I thought I saw a plan, you know, sort of an aerial view.
21 Here's the house, here's the pool, here's --

22 MR. SNELLINGS: Yes.

23 MS. KING: And just because I do have an in-ground
24 pool, and I wouldn't trade it for all the diamonds and pearls in the
25 world, so --

26 MR. SNELLINGS: Well, I need to keep you away
27 from my wife.

28 (Laughter.)

29 MS. KING: But it looked to me as if it was too close to

1 the property line.

2 MR. SNELLINGS: Yes, it is. And if we --

3 MS. KING: You would have had to come back to us
4 for another --

5 MR. SNELLINGS: That's correct. We would have to
6 do something because I think the requirement is six feet, and if we
7 were to put one in we would feel the necessity of putting it three feet
8 away, which would then require a variance. And that may be one
9 thing that keeps us from getting it.

10 (Laughter.)

11 MS. KING: Okay. I thought you wanted it.

12 MR. SNELLINGS: Well, no. There's a split decision
13 in the family.

14 (Laughter.)

15 MR. CAIN: Ms. King, at the moment, we've been told
16 that that is a matter of building code variance, and we're kind of going
17 down that track.

18 MS. KING: Yeah. No, no. I was just raising the fact
19 because I had to change the design of my pool in order not to have to
20 come before the BZA. So I just thought I'd flag that in a friendly kind
21 of way, thinking that you wanted it.

22 MR. WAGGONNER: There are financial
23 considerations, Ms. King, about building any house. I keep telling
24 Frank, "Be prepared to give up a few things, and that pool is an easy
25 one to give up."

26 MS. KING: For him.

27 (Laughter.)

28 MR. WAGGONNER: Yes. And his wife is a forceful
29 person, so we'll see.

1 MS. KING: No other questions.

2 MR. CAIN: If there are no more questions for Mr.
3 Waggoner, I'd like to ask Mr. Dobbins to identify himself for the
4 record, please.

5 MR. DOBBINS: Yes. Good afternoon, Madam Chair
6 and members of the Commission and staff. My name is Al Dobbins. I
7 reside at 2105-B Suitland Terrace, S.E., in Washington, D.C. I am an
8 urban planner in private practice and a founding principal of A.G.
9 Dobbins and Associates.

10 I had been retained by Mr. Snellings back in the early
11 summer to review his proposal to construct his private home at 405-
12 407 East Capitol Street. He asked me to determine if his proposal
13 was consistent with the city's planning policies and with neighborhood
14 planning issues. And he asked me to determine if his request for relief
15 from the off-street parking requirement would meet the burden of proof
16 for a variance.

17 I did an investigation that included visiting with the
18 Office of Planning, visiting with the surveyor's office, surveying the
19 neighborhood on a number of occasions during the morning, the
20 afternoon, and the evening hours, to determine the availability of
21 parking spaces, to determine if there was public access not only to the
22 block in question but to the surrounding squares, and to survey the
23 uses in the area.

24 I did a thorough review of the comprehensive plan,
25 both the city-wide elements of the plan and the ward plan and the
26 federal elements of the plan, and I did a thorough evaluation of the
27 three tests that are typically applied to area variances. Those three
28 tests provided to me a listing of those three tests provided to me by
29 the Office of Planning.

1 MR. CAIN: Mr. Dobbins, at this point, did you submit
2 a report for the record?

3 MR. DOBBINS: Yes, I did. That report, I believe, is
4 Attachment N with the applicant's prehearing submission. And it goes
5 into great detail, the results of my investigation.

6 MR. CAIN: Thank you. Would you kindly summarize
7 your investigation and your conclusions with respect to the three
8 elements of the area variances?

9 MR. DOBBINS: I think at the end of my report, in the
10 area of findings and conclusions, I speak specifically to the three
11 areas that involve testing for a variance; those three areas being the
12 unique and exceptional situation or condition associated with the
13 property, the property -- the variance's potential impact on the public
14 good, and the variance's impact on the zoning regulations.

15 With respect to unique and exceptional conditions, I
16 found that those conditions did exist. They consisted of the property's
17 mid-block location, the fact that there was no public alley access to the
18 site, and that there was no -- that access from East Capitol Street via
19 a curb cut would be prohibited by the Historic Preservation Review
20 Board.

21 In addition to the site's unique and exceptional
22 conditions, I also noted that the square itself was unique in the sense
23 that it had no public alley. The neighborhoods in Capitol Hill are noted
24 for their public alleys and their interior courts. I found that every single
25 square surrounding Square 817 did, in fact, have a public alley, as
26 indicated in one of the attachments to my report, except for Square
27 817.

28 I found that the variance could be granted without
29 substantial detriment to the public good. From my point of view, this

1 project provides two units of desirable housing; desirable not only to
2 the community, in particular, but to the city as a whole. That the
3 design, as described by Mr. Waggoner, contributes significantly to
4 the character of the neighborhood.

5 We now have a vacant lot that is a gap in the block
6 face, that is to some extent an attractive nuisance in the sense that it
7 serves, at times, as a repository for litter and debris, but that the
8 design and the development that's being proposed will correct that
9 situation. But more importantly, I think I have found that there will be a
10 minimal impact on parking in the area as a result of this variance.

11 As I indicated earlier, I did visit the neighborhood on a
12 number of occasions. On all occasions I found parking available. I
13 found, certainly, more parking available during the course of the day
14 when the residents were either at work or elsewhere. But even late in
15 the evening, as I passed to and from my residence in downtown
16 Washington, I did find parking available within a block or two of the
17 subject site.

18 I would also add that it's interesting -- the Ward 6
19 element of the comprehensive plan makes reference to the fact that
20 the parking requirement for 19th century neighborhoods really should
21 be investigated further, in that in many instances by requiring off-site
22 parking and a curb cut, you take a parking space away from the street
23 and replace it with a parking space off street. But often times that
24 parking space off street is not occupied. Therefore, you really have no
25 net gain, and, in fact, have a net loss in parking in the area.

26 So it appeared to me that the curb cut was not only
27 undesirable from a historic preservation point of view, but really was
28 not -- did not serve to meet the needs associated with providing
29 parking in the area.

1 Finally, I found that the variance could be granted
2 without substantially impairing the intent, purpose, and integrity of the
3 zone plan. I found that the proposed variance supports a use that is
4 permitted in the zone district. I think we've already established that
5 fact. That it is consistent with no less than 12 individual goals and
6 policies of the comprehensive plan, and those are described in great
7 detail in my report.

8 And that from my point of view and from the point of
9 view of the zoning regulations, it really provides the only means by
10 which this property could be developed. Residential development on
11 this particular block, as proposed by Mr. Snellings, is a low-density
12 development proposal. And I think that if this particular project could
13 not go forward, then that probably could never be developed.

14 MR. CAIN: Mr. Dobbins, did you determine what the
15 on-site parking requirement would be under the zoning regulations?

16 MR. DOBBINS: Yes, I did. And, again, I make
17 reference to that in my report. There are actually two sections of the
18 zoning regulations that speak to the parking requirement associated
19 with this project. In 11 DCMR Section 1201.2A, there is a statement
20 where the requirement for parking is one for each two dwelling units in
21 an R-4 district. And in this case, since we do have a two-dwelling unit
22 flat, then the requirement would, in fact, be one parking space.

23 And then in Section 2101.1, I find that the zoning
24 regulations require that all parking spaces be located on the same lot
25 with the buildings and structures they are intended to serve. In plain
26 English, that means that this property requires one parking space to
27 be located on site.

28 MR. HOOD: Madam Chair, I had a question. Just a
29 point of clarification. In plain English, could you explain to me what a

1 windshield survey is in your report?

2 MR. DOBBINS: It is driving down the street and
3 looking out the window.

4 (Laughter.)

5 MR. HOOD: Thank you.

6 MR. DOBBINS: We have, I think, at least one big
7 transportation planner in the audience who probably knows how to do
8 it a lot more scientifically than that. But I think for the purposes of this
9 case that was sufficient.

10 MR. CAIN: Mr. Dobbins, is there anything else that
11 your analysis or --

12 MR. DOBBINS: Yes. There is something that I didn't
13 deliberately hold back. It's actually something that I discovered late
14 last night as I began to look over my testimony and the zoning
15 regulations. With your permission, I'd like to pass it forward to staff so
16 they can pass it on to you.

17 MR. DOBBINS: What's being passed out is a page
18 from the District of Columbia municipal regulations, Zoning Section
19 2103, entitled "Exceptions to the Schedule of Requirements for
20 Downtown Urban Renewal Areas."

21 Now, let me be the first to say that this is not a
22 downtown urban renewal area, so I --

23 (Laughter.)

24 -- I will acknowledge that right off the bat. But I have
25 put an asterisk next to two provisions that I think speak very directly to
26 the situation that we find ourselves in with this particular case. And
27 those provisions relate to the fact that there are certain areas of the
28 city in the downtown urban renewal area, and also elsewhere,
29 including the Capitol Hill area, where curb cuts are not permitted on

1 lots which -- on streets which -- that face lots.

2 And that, in some instances, there are no other
3 alternative access points to those lots. And that this particular section
4 specifically allows for not providing on-street parking, on-site parking,
5 or reducing the requirement for parking, in instances where curb cuts
6 are not permitted or in instances where alternative access points are
7 not available.

8 Again, this is not necessarily a precedent because it
9 doesn't speak specifically to this issue. But I think it does illustrate
10 how the zoning regulations have acknowledged the fact that in certain
11 neighborhoods, and there are 19th century residential neighborhoods
12 within the downtown urban renewal area, it is impractical and
13 undesirable to have curb cuts. And it is not possible to have public
14 access to every lot.

15 And, therefore, it is appropriate to either eliminate the
16 requirements for on-site parking or reduce it. So I submit that as, I
17 think, further evidence of the fact that zoning regulations will not be
18 harmed by your granting of this variance.

19 CHAIRPERSON REID: Thank you.

20 MR. CAIN: Mr. Dobbins, did you locate any other
21 vacant parcels in this immediate vicinity?

22 MR. DOBBINS: Yeah. I drove the full length of East
23 Capitol Street that lies within the Capitol Hill Historic District. I did
24 locate four vacant or, I would say, undeveloped parcels. Three of
25 those four undeveloped parcels were being used, mostly sideyard
26 uses -- play areas for residences or parking areas with access from
27 the alleys.

28 This particular property that we're talking about today
29 is the only vacant undeveloped use that's not in active use. Only

1 vacant undeveloped lot that's not in active use on East Capitol Street
2 within the Capitol Hill Historic District.

3 MR. CAIN: Thank you.

4 Mr. Snellings?

5 MR. SNELLINGS: Yes. Thank you, members. And
6 as we wrap up, I just would like to say thank you so very much for
7 your attention, and hopefully you all can rule in our favor so that we
8 can build this house, and my wife and I will worry about the pool later.

9 CHAIRPERSON REID: You'll have another
10 opportunity, too, in your closing remarks.

11 MS. BAILEY: Madam Chair, can I please ask Mr.
12 Cain a question?

13 CHAIRPERSON REID: Yes.

14 MS. BAILEY: If that's okay. Mr. Cain, do you have a
15 copy of the Zoning Administrator's memorandum? The Zoning
16 Administrator's memorandum, do you have --

17 MR. CAIN: Hold on a second. There should have
18 been -- there is one attached to the application, but I do have a spare
19 if you need it.

20 MS. BAILEY: Okay. In that memorandum, it
21 indicates that you need a variance from one parking space, and it also
22 indicates that the property is located at 405, or the address is
23 identified as 405 and 405-B East Capitol Street. Can you explain why
24 is that written that way? Is this a mistake or -- it was presented
25 differently to the Zoning Administrator's office.

26 MR. CAIN: Originally, this property consisted of two
27 lots. Mr. Snellings wanted to preserve the option, if he could do it, to
28 keep both addresses. Both lots had originally been approved. It's my
29 understanding the Zoning Administrator's practice when you have a

1 flat is to assign one street address, and then a B for the lower level. If
2 we have to do that, we will do that.

3 But we would prefer to be able to have separate
4 addresses. We can work that out with the Zoning Administrator. But
5 the property is Lot 31 in Square 817.

6 MS. BAILEY: Okay.

7 MR. HOOD: Madam Chair, I did have one other
8 question I wanted to ask Mr. Dobbins. In your windshield survey, in
9 the community and surrounding areas, there is a zone -- do they have
10 zone parking?

11 MR. DOBBINS: Yes, they do.

12 MR. HOOD: Okay. So it's a two-hour limit?

13 MR. DOBBINS: Yes. There's a two-hour limit for
14 individuals who do not display Ward 6 stickers. And you bring up
15 another point that was discussed in my report. I did find that there
16 was a great availability of public transportation in the area. East
17 Capitol Street, in particular, is a major bus route. I did note that, as
18 Mr. Snellings has noted, that the U.S. Capitol employment complex is
19 in walking distance.

20 And all of that, coupled with the availability of some
21 off-street parking in the interior ports and alleyways suggested to me
22 that this was a community that really did not rely, to a great extent, on
23 private ownership of automobiles. I think probably without actually
24 going out and looking at the statistics you will find that there are many
25 fewer -- much fewer automobiles in ownership in that area than in
26 other parts of the city.

27 CHAIRPERSON REID: Thank you.

28 Any questions?

29 MR. CAIN: We have nothing further. Thank you,

1 Madam.

2 CHAIRPERSON REID: Wait one second. I wanted
3 to ask, is there any party in opposition to this application? Any party in
4 opposition? All right. What about ANC representative?

5 Okay. Thank you. Next, we'll have government
6 reports. And, of course, the Board of Historic Preservation -- Ms.
7 King, could you --

8 MS. KING: The staff recommended and the Board
9 accepted the recommendation that the project be approved in concept
10 as consistent with the purposes of D.C. Law 2-144 and support the
11 owners' attempts to satisfy the parking requirement in a way that does
12 not require a new curb cut, and delegate final approval of the project
13 to the staff.

14 This is from the Historic Preservation Review Board.
15 And the issue that's before us is really solely a matter of the parking.
16 And, therefore, the Historic Preservation Review Board's denial of a
17 right curb -- curb cut essentially rules out there being any parking on
18 land-locked lots.

19 CHAIRPERSON REID: Okay. There is no Office of
20 Planning report. Any other government reports?

21 We now move to the ANC report. There is no
22 representative from the ANC? Ms. King, would you please read into
23 the record -- first, we have to --

24 MS. KING: Would you agree to waive in this
25 document which was received yesterday?

26 CHAIRPERSON REID: Yes. So waived.

27 MS. KING: "The members of the ANC-6B voted eight
28 to nothing in support of this project. It was a properly-noticed meeting
29 with a quorum present." So we --

1 CHAIRPERSON REID: Did they give any great
2 weight to what they're entitled?

3 Persons and parties in support of this application
4 come forward.

5 MR. SCHAUER: For the record, once again, my
6 name is Lyle Schauer. I am the Zoning Chair, Capitol Hill Restoration
7 Society, and I reside at 1107 Independence Avenue, S.E.

8 We are pleased to support this application for a
9 variance from the off-street parking requirement. We could hardly do
10 otherwise, because we are -- we opposed curb cuts, and we have
11 appeared before the HPRB on this case, the Historic Preservation
12 Review Board. We opposed the curb cut there. The Board agreed
13 with us and denied the application that included one.

14 So insofar as that is true, we are part of the reason
15 that the applicant is here today. And so we could hardly oppose the
16 condition that we oppose the addressing of the condition that we have
17 helped to create.

18 But I want to talk to you just a little bit about this
19 general problem of curb cuts and the reason why people like Mr.
20 Snellings have to come here. Our feeling is that they shouldn't have
21 to come here, that there should be exceptions built into the zoning
22 regulations that would waive the off-street parking requirement for a
23 land-locked lot.

24 Now, we have had two cases like that before this
25 Board this year from Capitol Hill. In fact, within the last few months.
26 The last one was decided in July and involved a vacant lot at 6th and
27 Pennsylvania Avenue, S.E.

28 These cases are tortuous for the applicants. They
29 force them to spend time and, maybe even worse, money to try to

1 address what has become a pretty routine thing. That is, once the
2 curb cut is denied, this Board, I believe, almost invariably, if not
3 invariably, approves the variance.

4 Therefore, it's our feeling that these cases should be
5 dealt with by exceptions in the regulations, rather than through the
6 variance process because we're not doing anybody any good here.
7 The HPRB has made the decision, and from thence on it becomes an
8 almost automatic thing.

9 The Board of Directors of the Society met last night,
10 and they passed the resolution that the Society request the Zoning
11 Commission establish a case to add a section to Chapter 21 of the
12 regulations. And we'd propose wording something like this. "No
13 parking spaces shall be required in the row dwelling districts, R-3 and
14 R-4, for a building or structure to be erected on a lot which does not
15 have access to a public alley which is at least 15 feet in width."

16 Now, you'll notice that resolution talks in terms of the
17 R-3 and R-4 districts, not the historic district, because the historic
18 district is the one that brings the problem to you now. But the
19 difficulties with curb cuts, and off-street parking as a result of curb
20 cuts, is that it is self-defeating for this city to attempt to do it.

21 Before this arrangement had been developed by
22 which the HPRB would deny a curb cut, we had a number of
23 developments on Capitol Hill that required curb cuts, and they were, in
24 fact, installed.

25 Now, Mr. Dobbins indicated that these were -- that
26 these garages were used only intermittently by the owner; and,
27 therefore, the value of that off-street parking was reduced at the same
28 time you're taking one parking space away on the street for the curb
29 cut. But I will go farther than that. If our experience is city-wide, those

1 garages almost immediately become converted to living quarters. And
2 as a result, there is no garage off the street. But there is a curb cut.

3 And so you've now lost not only the parking space
4 that was required in the dwelling, but you've also lost the street
5 parking space, with a net loss of two in my calculation.

6 So this is a self-defeating kind of thing, and we feel
7 that it should be handled by a change in the regulation. And we will
8 be submitting a letter to the Zoning Commission asking them to
9 amend the rules. And we would hope we'd have the support of the
10 Board and the members as we proceed in that. Thank you very much.

11 CHAIRPERSON REID: Thank you, Mr. Schauer.
12 You certainly have my support. That's my sentiment exactly. I think
13 that your point is well taken. And I don't know if there are any current
14 proposals pending before the Zoning Commission in this regard for
15 properties that are land-locked and have that parking requirement.

16 Do you know, Ms. Rose?

17 MS. ROSE: No, I am not aware of what the Zoning
18 Commission has before it.

19 CHAIRPERSON REID: Okay. That will certainly be
20 something for us to put forward to them and submit it for the final
21 rulemaking.

22 Mr. Hood?

23 MR. HOOD: I just wanted to say that I believe -- and
24 you might want to check with the Office of Zoning -- there will be a
25 hearing with the Zoning Commission with recommendations from the
26 community dealing with the process from the Control Board and with
27 the existing regulations. I'm not sure exactly what the date is, but you
28 may want to check with the office. November 5th? I think it's
29 November 5th. Thank you.

1 CHAIRPERSON REID: Okay. Thank you, Mr.
2 Schauer.

3 MR. GARRISON: Thank you, Madam Chairperson. I
4 appear in support of 16374. My name is David Garrison. I reside at 8
5 4th Street, S.E. This, as I said in the earlier appearance this
6 afternoon, is the house in which we've lived for 27 years. This
7 property abuts the Snellings property on the south.

8 There are a number of issues that we have with this
9 project, and I'm pleased to say that Mr. Snellings has been open to
10 discussing various of these issues. Indeed, we met yesterday with Mr.
11 Snellings and his architect to discuss some of the matters. For
12 example, there is an addition to the possible swimming pool, which we
13 actually didn't discuss in detail.

14 There is a proposal in their project to build an
15 accessory building at the back of the lot, which would abut our house.
16 And we had an extensive discussion, and I thought a positive
17 discussion about how that might be done.

18 There are two issues in conflict in this case -- parking
19 and the development of the vacant lot. As Ms. King said, parking is a
20 hot topic in this town, and it's an especially hard commodity to acquire
21 on Capitol Hill, particularly in the neighborhood in which we live. And I
22 say that with all respect to the applicant and his consultants. The fact
23 is that parking is very difficult up there.

24 Indeed, it just so happens that when we returned to
25 our house on Sunday night about 10:00 there was no place to park
26 within blocks of our house, and it took me 48 hours before I was able
27 to move the car into proximity with our house. So the evening parking
28 situation is very difficult there, and I want the Board not to be -- to
29 misunderstand the situation.

1 Nevertheless, in this situation, while there would be a
2 couple of additional cars added to the mix, there seems to be no
3 alternative. This is a land-locked property, and it's clearly in the
4 interest of the community, of the neighborhood, to have that property
5 redeveloped. Indeed, the proposed project that Mr. Snellings has
6 presented is a first-class undertaking and will clearly benefit us all.

7 So we look forward to having them as neighbors, and
8 we look forward to cooperating with them in all ways we can, as
9 neighbors, to help them settle the project out. The fact that there's no
10 interior public alley, obviously, makes this a situation which, as Mr.
11 Schauer said, was a fairly perfunctory matter.

12 However, I did want to appear and be clear that as
13 the abutting neighbor to the south, we are in support of the project,
14 and we urge the Board to grant the variance. Thank you.

15 CHAIRPERSON REID: Okay. Are there persons and
16 parties in opposition to this application? Seeing none, and I don't
17 think there are any letters either, we'll have closing remarks by the
18 applicant.

19 MR. CAIN: Thank you, Madam Chairman. Just very
20 briefly, we appreciate --

21 CHAIRPERSON REID: I should also note for the
22 record that we received numerous notes and letters in support of your
23 application.

24 MR. CAIN: I'd like to thank staff for a copy of the ANC
25 resolution, by the way. I'd like to thank Mr. Garrison for his support,
26 and Mr. Schauer for coming down this afternoon.

27 We believe that on the basis of the evidence and the
28 exhibits that we've met the tests that you need to measure this
29 variance application against. For the record, we ask that all

1 documents and materials we have previously submitted be formally
2 accepted into the record if they have not already been.

3 I'd also like to draw your attention, if you have any
4 issues at all about the efforts Mr. Snellings has made to reach an
5 accommodation with his neighbors, to Attachment E to our prehearing
6 submission, which kind of chronologically documents the efforts made
7 that were not fruitful.

8 Really, we are in the position of having to ask you to
9 help Mr. Snellings out of this regulatory stalemate. We hope that you
10 will see your way clear to doing that. And if you feel it's appropriate,
11 we certainly would hope that a bench decision could be reached. It
12 would enable Mr. Snellings, of course, to get underway with the
13 business of building the home as soon as possible. Thank you.

14 CHAIRPERSON REID: Are you going to request a
15 bench decision and summary order?

16 MR. CAIN: Yes, Madam Chair.

17 CHAIRPERSON REID: Well --

18 MR. CAIN: I would appreciate, if you can see your
19 way clear, if you deem it appropriate, to --

20 CHAIRPERSON REID: Thank you. Okay.

21 MS. KING: I move that we approve this application.
22 It seems to me that in the face of the Historic Preservation Review
23 Board's denial of the ability to make the curb cut, that all of the criteria
24 -- the hardship, and so forth, that are necessary to prove that Mr.
25 Snellings and his attorney have met the burden of proof more than
26 adequately, and this will be -- the new dwelling will be a great asset to
27 the Capitol Hill neighborhood. So I move the approval of the
28 application.

29 MR. HOOD: I second the motion.

1 CHAIRPERSON REID: And also, it does not appear
2 that it will have any great negative impact in regard to traffic or parking
3 in the community.

4 MS. KING: Correct.

5 CHAIRPERSON REID: And does not appear to
6 impair the integrity and intent or purpose of the zoning plan and
7 zoning maps.

8 MR. GILREATH: It will also preserve the historic
9 character of the street by avoiding a curb cut.

10 CHAIRPERSON REID: Exactly. Absolutely.

11 All in favor?

12 (Ayes.)

13 MS. KING: Did somebody second?

14 CHAIRPERSON REID: Yes.

15 All opposed?

16 (No response.)

17 MS. ROSE: Madam Chair, what should the address
18 be in the order?

19 CHAIRPERSON REID: I'm sorry?

20 MS. ROSE: What should the address be?

21 CHAIRPERSON REID: The address as -- Mr.

22 Snellings, is it 403?

23 MR. CAIN: Madam Chair, it's 405 and 407, and those
24 were the addresses of the two townhouses that were there when the
25 property was leveled almost 40 years ago. So if we could have it 405
26 and 407.

27 CHAIRPERSON REID: For right now. And then I
28 think we --

29 MR. BASTIDA: Madam Chairperson? The Zoning

1 Administrator is the ruler of the mountain, and the Zoning
2 Administrator has ruled that it's 405 and 405-B. Accordingly, I would
3 put that on the record.

4 CHAIRPERSON REID: Okay. All right. We have to
5 basically go along with the address as has been so stipulated by the
6 Zoning Administrator. And if you later choose to change that, or to
7 subdivide, or whatever, then you can do it through that process. But
8 we cannot inadvertently make a decision to change the address. It's
9 beyond the purview of this Board.

10 MR. CAIN: We'll deal with that administratively.

11 CHAIRPERSON REID: All right. Thank you.

12 MR. CAIN: Thank you very much.

13 CHAIRPERSON REID: Okay. You should, then,
14 have your order in approximately two weeks.

15 MS. ROSE: Staff will record the vote as four to zero,
16 with Ms. King, Mr. Hood, Mr. Gilreath, and Ms. Reid, to grant the
17 application and the issuance of a summary order.

18 CHAIRPERSON REID: Thank you all very, very
19 much.

20 MS. ROSE: The last application is 16379, the
21 application of George --

22 MR. BASTIDA: Excuse me, Madam Chairperson.
23 Before you go into the next application, I have a preliminary matter
24 regarding that application.

25 CHAIRPERSON REID: All right.

26 MR. BASTIDA: The Office of Planning submitted a
27 report on October 9, 1998, regarding that application. That report is
28 not in the record.

29 CHAIRPERSON REID: Which application, the one

1 we just heard or the one coming up now?

2 MR. BASTIDA: No, the one that's coming up.

3 CHAIRPERSON REID: GW?

4 MR. BASTIDA: Yes.

5 CHAIRPERSON REID: She hasn't called it yet. You
6 said that --

7 MR. BASTIDA: I'm requesting for a preliminary
8 matter prior to the call of the application.

9 CHAIRPERSON REID: Okay. Mr. Bastida, are you
10 saying that you had submitted a report?

11 MR. BASTIDA: Yeah. On October 9th.

12 CHAIRPERSON REID: You're saying it's not in our
13 package?

14 MR. BASTIDA: I couldn't find it.

15 MR. HOOD: Madam Chair, point --

16 MR. BASTIDA: I have a copy with me of the report
17 we submitted, but the original obviously would be with the Board, and
18 it's not part of the record.

19 MR. HOOD: Madam Chair, point of clarification. Do
20 we call the case first and then we go to preliminary matters, or do we
21 go to preliminary matters before we call the case?

22 CHAIRPERSON REID: Preliminary matters first,
23 usually. Usually.

24 MR. HOOD: Okay.

25 CHAIRPERSON REID: Mr. Bastida, we call for
26 preliminary matters before -- Mr. Bastida was not here.

27 MR. BASTIDA: Oh. Preliminary matters for all three
28 cases.

29 CHAIRPERSON REID: I called at the beginning of

1 this session this evening --

2 MR. HOOD: Okay.

3 CHAIRPERSON REID: -- and he wasn't here.

4 MR. HOOD: Oh, okay. I'm sorry. Thank you.

5 CHAIRPERSON REID: Now, Mr. Bastida, could you
6 provide us with copies of your --

7 MR. BASTIDA: I'd be glad to do that.

8 CHAIRPERSON REID: -- we have not had the
9 pleasure of looking at yet.

10 MR. BASTIDA: I'd be glad to do that. I will request
11 the staff to make copies so it will be available also for the parties and
12 any party in opposition.

13 CHAIRPERSON REID: Thank you.

14 MR. BASTIDA: Thank you.

15 MS. ROSE: The next application is 16379, the
16 application of George Washington University, pursuant to 11 DCMR
17 3108.1, for a special exception under Section 210 for further
18 processing of an approved campus plan to allow the alteration of an
19 existing building and the construction of an additional building (Media
20 and Public Affairs Building) on a parking lot of the campus in an R-5-D
21 District at premises 2035 H Street, N.W., Square 101, Lot 62.

22 Would all persons planning to testify in this application
23 please rise to take the oath? Please raise your right hand.

24 (Whereupon, an oath was administered to those
25 wishing to testify in this application.)

26 You may be seated.

27 Would the applicant please come forward? The
28 applicant?

29 MS. GIORDANO: Good afternoon, members of the

1 Board. My name is Cynthia Giordano of Linowes & Blocher law firm,
2 representing the applicant, The George Washington University, this
3 afternoon. To my left, from the university, is Dr. Ingle, who is
4 Associate Vice President for Business Affairs from the university. In a
5 moment, Dr. Ingle will present an overview of the project, and the
6 university's planning and outreach efforts with respect to the project to
7 date.

8 Our presentation will also include a review of the
9 project plans by the project architects, KCF SFG, with Coke Florance
10 presenting. Mr. Florance has in the past been accepted as an expert
11 in architecture by this Board, and I would ask that the Board do so
12 again today.

13 After Mr. Coke Florance's testimony, there will be a
14 presentation from Lou Slade of Grove Slade and Associates, the
15 transportation planning consulting firm that has submitted for the
16 record a transportation report on the project. We ask that this Board
17 accept Mr. Slade also as an expert in transportation planning. Mr.
18 Slade has been accepted previously by this Board as an expert in this
19 area.

20 Before we proceed with the presentation, I'd like to
21 briefly review the special exception criteria which are applicable to this
22 application. First, the applicable provisions include Section 210, which
23 provides that the proposed use should be permitted by the Board in R-
24 5-D district, provided that it is found to be not likely to become
25 objectionable to neighboring properties because of noise, number of
26 students, or other objectionable conditions.

27 The overall general exception criteria in 3108.8 also
28 are applicable. This provision provides that the use shall be found to
29 be, by the Board, in harmony with the general purpose and intent of

1 the zoning regulations and the maps, and that, again, it will not tend to
2 adversely affect neighboring properties.

3 We will demonstrate that the proposed project meets
4 these criteria. First, the site is almost completely surrounded by other
5 university uses and commercial and institutional uses.

6 CHAIRPERSON REID: Ms. Giordano, excuse me for
7 interrupting. First, let me accept Mr. Slade as a professional --

8 MS. GIORDANO: Okay. And Mr. Florance?

9 CHAIRPERSON REID: And Mr. Florance.

10 MS. GIORDANO: As well.

11 CHAIRPERSON REID: Mr. Florance is --

12 MS. GIORDANO: He is the representative from --
13 he's right here on my right. The representative from the architectural
14 firm. He's been accepted by this Board as an expert in architecture.

15 CHAIRPERSON REID: Okay. And Mr. Slade is?

16 MS. GIORDANO: Mr. Slade is the transportation
17 planner.

18 CHAIRPERSON REID: Oh, okay. Okay. Okay.
19 Very well. Both are so recognized.

20 Could I have an indication as to persons here in
21 opposition to this particular application? One person? Okay.

22 All right. Thank you. Proceed.

23 MS. GIORDANO: Okay. And feel free to interrupt us.
24 We've submitted quite a bit of information in the record. And if you
25 feel we're being repetitive over what we've submitted, we can
26 summarize.

27 CHAIRPERSON REID: Well, we have read your pre-
28 submission materials, and we are very well familiar with this particular
29 case. So you could basically highlight the component parts that you

1 feel will help to make your case and move it with --

2 MS. GIORDANO: Okay. I'm almost finished with my
3 introduction. I just wanted to mention that -- again, that the -- as far as
4 adverse impact goes, the proposed use is also similar in scale and
5 intensity to the other uses in the immediate vicinity.

6 The one smaller scale abutting property on the east,
7 which is owned and occupied by the Bureau of Catholic Indian
8 Missions, has -- we have -- the Board has a letter from the Catholic
9 Missions in the record in support of the project.

10 Further, the proposed project meets all of the matter
11 of right zoning standards for the R-5 district. That is height, FAR, lot
12 occupancy, etcetera. It is also consistent with the approved campus
13 plan as to FAR, parking, and use designations. Finally, the design of
14 the project we think is first-rate, and the programs which it will house,
15 the building itself we believe will be an asset to the city as well as the
16 university.

17 And with that, we'd like to proceed with the
18 presentation with Dr. Ingle's statement.

19 CHAIRPERSON REID: Very well.

20 DR. INGLE: Thank you. Good afternoon, Madam
21 Chair and members of the Board. I am Al Ingle, Associate Vice
22 President for Business Affairs at The George Washington University.
23 In that capacity, I am responsible for service, including student retail,
24 mail, food service, access, moving, and parking, and facilities,
25 including architecture, engineering, construction, operations and
26 maintenance, and space management.

27 CHAIRPERSON REID: Give your address, please.

28 DR. INGLE: I reside at 933 25th Street, N.W.,
29 Washington, D.C. 20037.

1 CHAIRPERSON REID: Thank you.

2 DR. INGLE: On behalf of The George Washington
3 University Board of Trustees, President Steven Joel Trachtenberg,
4 and Vice President and Treasurer Louis H. Katz, I want to thank the
5 Board for the opportunity to present our proposal for the construction
6 of a teaching facility for media and public affairs at the northeast
7 corner of H and 21st Street on District Square 101.

8 I want to say a word or two about the need to
9 enhance our media and public affairs facilities. The George
10 Washington University is proud of our School of Media and Public
11 Affairs. While the university does not plan to expand our media and
12 public affairs program beyond normal growth of the university as a
13 whole, we do hope to continue to enhance our outstanding programs
14 as they exist, to be the finest in the country.

15 Professor and Director Jean Folkerts of the program
16 has said it best in her public brief offered to all of us on the world wide
17 web. And I quote, "No other city can compare with Washington, D.C.
18 as a world-class hub for both the practice of politics and
19 communications in all its forms. From the White House to Congress,
20 from the scores of embassies to the dozens of communication outlets,
21 the nation's capital is the epicenter for the news of global importance.
22 The GW School of Media and Public Affairs is a higher learning
23 institution that is closest to it all.

24 "We offer undergraduate programs of study leading to
25 the bachelor of arts degree, with a major in electronic media,
26 journalism, and political communication. The School of Media and
27 Public Affairs is extending the classroom into Washington, D.C.'s
28 professional community to offer unparalleled internship and
29 employment opportunities for students; recruiting distinguished faculty

1 members from private industry, politics, major media organizations,
2 law and public relations; sponsoring and participating in research and
3 conferences on varied communications issues; and we house the
4 Journalism and Mass Communication Quarterly, the premiere
5 scholarly journal in the field.

6 "We enhance facilities to offer students the latest
7 radio and television production capabilities, computer laboratories,
8 and video archives, as well as access to international wire service
9 reports and the Lexus/Nexus database.

10 And finally, we are fielding a nationally recognized
11 debate team currently.

12 The university faculty includes scholars with
13 international reputations who have published extensively and are
14 frequently quoted in major news media commenting on current issues
15 affecting the world today. Media and public affairs faculty bring
16 extensive scholarship and professional experience to the classroom,
17 and they lead the way on contemporary issues through research,
18 publishing, and professional work." (End quote)

19 If all of this, as Professor Jean Folkerts has said, is to
20 become a reality, we and university administration must give our
21 faculty the tools for success, including a building that works, state-of-
22 the-art teaching space, and related equipment to make it all happen.

23 The process of planning and analysis related to this
24 project has been extensive. We believe our internal planning and our
25 external discussions with the Advisory Neighborhood Commission, the
26 West End Citizens Association, and the Foggy Bottom Association, all
27 allow us to now offer our university community and the broader Foggy
28 Bottom community an outstanding development program.

29 Our teachings needs analysis, the traffic study, the

1 site evaluation, a community review, all have been favorably
2 completed. With this work done, we have met with the proper D.C.
3 regulatory agencies to ensure the appropriateness of our request to
4 develop this facility. We are now ready to begin with your approval. A
5 word or two about the concerns of the community. Of particular note
6 is our effort to conduct an outreach program with the Foggy Bottom
7 community at large. Our efforts have been toward ensuring
8 compatibility with adjoining buildings and surrounding facilities.

9 During the last year, our proposal, in its current form,
10 has undergone the scrutiny of review by all major organized
11 community constituencies, and the university has participated in
12 numerous community meetings where the facility has been discussed
13 and we have been made -- and we have made our plans known,
14 asking for community input.

15 More specifically, at an open meeting with the
16 Advisory Neighborhood Commission 2A, West End Citizens
17 Association, and Foggy Bottom Association, as invited guests on 31
18 March 98, at the Advisory Neighborhood Commission 2A on 29 April,
19 Department of Public Works on 25 August, and the Office of Planning
20 on 21 September.

21 In correspondence to the ANC-2A dated 24
22 September 98, we asked the Commission for a final opportunity to
23 present our plans prior to today, and we made a presentation at the 15
24 October meeting of the ANC-2A, to respond to any Commission and
25 public questions regarding the project.

26 At that meeting, no verbal objections were expressed
27 by the Commission or community related to the building or site zoning
28 issues. Project information has been made available to more than
29 500 community people before, after, and during these various

1 meetings that we have attended.

2 We also transmitted to the Commission complete
3 copies of our final schematic plans and our traffic study for their review
4 and information.

5 We have gone further. The university, through
6 meetings with the property owner immediately to the east, the Catholic
7 Indian Mission at 2021 H Street, N.W., in these discussions we have
8 earlier reached agreement to straighten their easement that zigzagged
9 across the property in question, to an improved location at the rear of
10 the property.

11 The Catholic Indian Mission has written a letter of
12 support to the BZA dated 19 October noting their acceptance of this
13 development project.

14 Now a word about the facility and the programming
15 aspect that will be presented in the architectural presentation. The
16 School of Media and Public Affairs Building is planned for the core of
17 the campus in space designated in the current approved campus plan
18 for -- and I quote from the plan -- "educational mixed use, classrooms,
19 laboratories, libraries, student activities, facility, faculty offices,
20 parking, parks and open space, related support functions." (End
21 quote)

22 The site is currently approved by the Board for use as
23 a surface parking lot for the university on the northeast corner of 21st
24 and H Streets, N.W. The academic teaching building will house a
25 400-seat auditorium, teaching facilities for media and public affairs, a
26 public university art gallery, and offices for related faculty, staff, and
27 student support.

28 The building is organized on six levels and a cellar.
29 Two levels of additional parking space for 65 cars will be

1 accommodated below grade. Mechanical equipment is housed on the
2 rooftop penthouse conforming to D.C. regulation.

3 The building is proposed at 80 feet and will have a
4 footprint of approximately 16,000 square feet. The proposed building
5 mass accommodates less than the allowed FAR for the site, and the
6 program calls for about 103,000 square feet of gross space, not
7 including parking.

8 Internal loading space for large trucks is located off of
9 H Street, with small trucks servicing the building from the basement
10 parking levels also accessed from H Street. This fully ADA-compliant
11 teaching facility will be designed in traditional teaching configuration
12 for buildings of the type, with primary teaching spaces on the first
13 levels and faculty administrative spaces on the upper levels.

14 The first level of the building is linked by a stair to the
15 cellar, the mezzanine, and third level of the building. These levels
16 serve the general student population. The three levels of building up
17 above contain academic media spaces and offices, and they are
18 serviced by elevator.

19 The building would house the School of Media and
20 Public Affairs, History and the Media, Public Administration, Public
21 Policy, Political Management, and other single-office institutes and
22 research programs related to the media and public affairs program.
23 The building will contain 36 teaching-related spaces, a small library,
24 labs, studios, and edit rooms, major classrooms seating up to 100,
25 smaller seminar rooms for up to 20 students, a major teaching studio,
26 and a large teaching auditorium to seat up to 400.

27 Additionally, a large teleconferencing center capable
28 of seating 100, designed for distance learning, and a 20-station
29 computer lab will be accommodated.

1 These spaces will be supported by approximately 110
2 faculty administrative work areas, an ADA-accessible art gallery that
3 will be scheduled for public access, and as well as a public exhibit
4 space for the history of collection of the Radio History Society of
5 Washington.

6 We have done our homework on the project, and we
7 ensure the nature of our teaching needs and the proper development
8 of the project. In the process, we have taken appropriate actions to
9 ensure the rights of others in our community.

10 The testimony today by The George Washington
11 University contract consultants here today, Mr. Coke Florance,
12 architect of KCF SHG, Incorporated, for design, and Mr. Lou Slade of
13 Grove Slade Associates, Incorporated, for traffic analysis, will
14 demonstrate conclusively that the project should be approved in
15 compliance with all District of Columbia regulations affecting such
16 development.

17 Thank you for your attention. And, once again, on
18 behalf of President Trachtenberg and the Board of Trustees, we thank
19 you for your time and your thoughtful consideration in this regard.

20 MS. GIORDANO: Would you like to hold questions
21 and proceed with the rest of the presentation?

22 CHAIRPERSON REID: Do Board members have any
23 questions at this time? Not at this time.

24 MS. GIORDANO: Mr. Florance?

25 MR. FLORANCE: Good afternoon. My name is Coke
26 Florance. I am an architect practicing in Washington. I have been
27 asked to establish my credentials for university buildings.

28 We have a long history with George Washington. We
29 were the architects for the National Law Center and also for the

1 support building, and we have done the law school at Catholic
2 University, the business school at George Mason, the business school
3 at the University of Maryland, the central administration building there.

4 Currently at work we have College of Art, Science,
5 and Letters at the University of Michigan, Dearborn. We are working
6 on three law schools across the country, and we're about to begin the
7 design of an engineering laboratory at the University of Maryland.
8 That's not intended as a commercial but simply to establish the
9 credentials for the Board.

10 In this building, we have some very clear design
11 goals. The first of those is that the building be responsible
12 urbanistically and take its place around the university yard, which is
13 the major public space on the George Washington campus.

14 We are concerned, very much concerned, that we
15 provide adequate and competitive spaces for the School of Media and
16 Public Affairs. Right now, the school is housed in this wonderful
17 church that we're all familiar with, but it is an entirely make-shift
18 provision. That church is on 20th Street just above H Street, before
19 you get to Pennsylvania Avenue.

20 The other thing that we have stressed -- and I hope I
21 can demonstrate with the design and the drawings -- is that this
22 building needs to be compatible with its environment in Foggy Bottom,
23 and yet it needs to have a quality, a freshness, so that it is, as the
24 previous architect said, relevant to the House and Capitol Hill. It has
25 clear and identifiable elements of our time.

26 So with those four goals in mind, we set to work. I
27 want to set the context, if I may -- and this will go all the way over to
28 the model, if it will. Can you see the model? What can we do about
29 this? Fine.

1 Here you see the university yard, the National Law
2 Center, Corcoran, a distinguished 1924 Georgian revival school
3 building, and this is the interesting Lisner Bell Stewart building at that
4 location. We're here on the corner of 21st and H. Here is the famous
5 or infamous 2000 Penn, and here you see Lisner, a very early modern
6 building, and here you see -- have the Marvin Center, a 19 -- early -- a
7 late 1970s/early 1980s modernist structure.

8 We have taken the position urbanistically that we are
9 closing this square with this structure, and that some day in the future
10 there will be a companion piece here, and that will create a very clear
11 quadrangle.

12 This is the townhouse for the Catholic Indian
13 Missions. There is a comparable townhouse in this location, and that
14 is a public walkway in that location. So you can see the context of this
15 building.

16 Now, again, you can see, in terms of materials, three-
17 dimensionality, the nature and character of the university yard and
18 other surrounding buildings, the Romanesque revival townhouses that
19 flank the walkway that I just mentioned, the of red brick, the use of
20 simple punched openings -- windows of that nature -- and always an
21 identification of a base, and then a subtle but elegant kind of string
22 course towards the top. Those kinds of subdued but very attractive
23 kinds of building ornamentation. We will -- I'll show you that we
24 capitalize on those.

25 This plan, then, shows you again where we are, and it
26 shows the university yard. And we are just immediately south of a
27 commercial building and the interesting street animation of Tower
28 Records, those kinds of things. And so it's a fine site. And, of course,
29 you remember it as the site for WETA.

1 Now, a quick run through the plans which Dr. Ingle
2 has already described to you. You can see the site plan here, and this
3 is the relocated easement serving the Bureau of Catholic Indian
4 Missions at this location. This is the rear of 2000 Penn, and their
5 existing truck service area. The building is on a low plinth, which is
6 consistent with the nature of some of the buildings in the university
7 yard. And we then have handicapped access and stepped access to
8 that plinth.

9 The loading that Dr. Ingle mentioned comes off H
10 Street, and so does the parking access, and that is all contained
11 entirely internally, so that that is not evident from the street. There is a
12 major academic entrance here, and the auditorium entrance here.

13 Now, the lower levels, the first two levels, are parking.
14 As indicated earlier, there are 65 parking spaces. The cellar plan, as
15 we call it, still below grade, it has a 150-seat classroom, another
16 classroom, and mechanical equipment, things of that nature. There is
17 a monumental stair at the corner which rises up through the first floor
18 plan, and at the first floor you find the 400-seat auditorium and certain
19 other support facilities for it. And you can see the nature of the base
20 or the plinth upon which the building sits.

21 As you go up in the building, the second floor, you
22 see the upper part of the 400-seat auditorium. But this is the location
23 of the Dimick Gallery, the university gallery, on the second floor with
24 views out to the street and with views from the street back into the
25 gallery, a very nice and elegant kind of organization of a very
26 important art collection.

27 Classrooms on the third floor, faculty offices on the
28 fourth floor. The fifth floor has the studios and the technical support
29 facility for both the television and the audio operations of the media

1 school. And then, as you reach the sixth floor, you have the upper
2 level of the studio and more offices for faculty and administration.

3 So it's a very simple plan that works on a very simple
4 basis. Of course, the penthouse in this location.

5 Now, can you see this, or should we move this a little
6 closer to you? Can you see it okay? Fine. Good.

7 The first move that we have made is to use a
8 compatible red brick. This is a red brick university yard. We have put
9 the building, then, on a base with a limestone string course at this
10 point, and then at the next -- at the top floor an additional limestone
11 course, precast concrete or limestone, with a precast corner, so that
12 we have divided the building, like the others, into a three-part division.

13 The base is, indeed, two floors. And there is an
14 ornamental spandel treatment which will have ornamentation reflective
15 of the electronic nature and character of what goes on in this building.

16 At the entrance there will be, at the second level, a
17 glass and steel canopy marking that entrance, and above that will be a
18 slightly projecting glass bay window which runs the full height of the
19 building. And the point of that is to make very clear how one enters
20 this building on 21st Street.

21 As one -- it's important, then, to begin to see the
22 relationship between the new building, its brick, its organization, its
23 division horizontally, and the nature of its window openings as it
24 relates to the 1924 Georgian revival. We are not imitating that
25 building at all. We're saying that this is a building of 1998, but we are
26 respecting it with compatible elements. And that is consistent in its
27 approach to the H Street facade, which has across the way the Marvin
28 Center.

29 And, again, you see the field of brick in the main

1 facade, the projecting corners, string courses at the sixth floor and at
2 the second floor, the glass bay which marks the academic entrance to
3 the building, and the canopy. And we carry through, then, with the
4 same kind of treatment and the same effort to relate to the nature and
5 character of the university yard.

6 The north and the east elevations, again, are
7 consistent. This is where the easement is located for the Catholic
8 Indian Missions. This is the facade against which that building abuts.
9 So there is not much more to say about the building. I think you see
10 the point of the design. We are excited about this. We think it's a
11 good addition to the university. We think we've combined a
12 compatibility, good neighborliness, respect for what's gone before,
13 with freshness, as I've said, and a clearly evident urbanistic response.

14 I like this corner because it has an early modern
15 building Lisner. It has the modernist building Marvin. It has the 1924
16 Georgian revival building. And it puts me in mind of a phrase that I
17 read somewhere that I think is very important for George Washington
18 University and other cities, to which city is -- the city is time made
19 visible. And I haven't got anything more to add to this presentation but
20 that. Okay? Thank you.

21 CHAIRPERSON REID: Thank you very much.

22 MS. GIORDANO: Thank you. We're ready to
23 proceed with the transportation consultant, if the Board would like us
24 to do that. Or --

25 MS. KING: I'd like to ask a question.

26 MS. GIORDANO: Sure.

27 MS. KING: The height of your building is 98-1/2 feet?

28 MR. FLORANCE: No. The height is 80 feet.

29 MS. KING: Oh. So it's within the permitted height.

1 MR. FLORANCE: Absolutely. Everything about this
2 building is matter of right.

3 MR. GILREATH: The maximum height for it is 90
4 feet, so you're 10 feet below the maximum --

5 MR. FLORANCE: Well, in this zone, the height is 10
6 feet less than the width of the street, which happens to be 80 feet.
7 And so that's what we are, and that's to the parapet, not to the roof
8 lab.

9 MS. KING: And what is it to the roof?

10 MR. FLORANCE: The roof lab is less.

11 MS. KING: I see. Okay. I have a note to -- okay. I
12 must have misread something or something was wrong in the
13 presentation. But you're under the height limit?

14 MR. FLORANCE: We are right at the height limit, 80
15 feet.

16 MS. KING: Okay. Great. Thank you very much.

17 MR. FLORANCE: You're welcome.

18 MS. GIORDANO: If you'd look at the R-5-D, you'll
19 see 90 feet. But it's the Act to regulate buildings. It's based upon the
20 street width that sets a more restrictive standard, the 80 feet for the
21 site.

22 Okay. Mr. Slade?

23 MR. SLADE: Madam Chair, members of the Board,
24 my name is Louis Slade. I reside at 3500 Crasada Street, N.W.,
25 Washington, D.C. I'm a principal with Grove Slade Associates. We're
26 traffic and transportation consultants. I have a very brief presentation
27 for you. I'm going to summarize what's in our report, which is in the
28 documents you have.

29 And let me just give you a very quick overview and

1 then tell you what our conclusion is.

2 This project has virtually no negative effects on traffic,
3 and it has some modest improvements to traffic and parking
4 conditions. Currently, the site is a 53-space parking lot with its single
5 driveway near the intersection of H Street and 20th. And we are
6 replacing that with this building, which will have a 65-car parking
7 facility. So we're adding about 12 parking spaces.

8 And that addition is well within the range of parking
9 that's required of and allowed by the campus master plan. We're at
10 about, in round numbers, 2,800 parking places on the entire campus
11 now, and this will increase that by about 12 spaces.

12 The access to that parking -- so the new parking
13 facility will be moved approximately 130 feet to the east, further away
14 from the intersection, so turns in and out of the driveway will interfere
15 less with the intersection operations than they currently do.

16 We're providing for the loading requirements for
17 trucks within the facility, directly adjacent to the driveway to the
18 parking garage, so the trucks will be able to pull off the street into that
19 loading facility. And there will be a door that will be closed, so that
20 you won't be aware of the activities within that loading facility, which
21 are predominantly going to be related to the electronic transmission of
22 TV and radio signals.

23 Other trucks will be -- smaller trucks will be
24 accommodated in the parking garage. A few of these new 12 parking
25 spaces will be set aside for that purpose.

26 So in general terms, we're not changing things much,
27 but we're changing them a little bit for the better, a little bit more
28 parking, and handling the trucks very conveniently right there on H
29 Street.

1 We looked at the accumulative effects of other
2 projects that the university has approved or is planning, just to ensure
3 that the condition -- traffic conditions around this site would remain
4 operated without undue delay to motorists, and so forth. And just in
5 brief, that includes the Health and Wellness Center, which was heard
6 by the Board last year and approved. It will be under construction
7 sometime in the near future. And then, a new hospital project and a
8 new parking expansion project that will be heard by the Board
9 sometime in the near future.

10 And we took all of those three new projects into
11 account in looking at the traffic conditions around this site. And what
12 we found was -- when we did our traffic counts of existing conditions,
13 and when we were projecting the future conditions, that the
14 intersections in the immediate vicinity of this site will continue to
15 operate at adequate levels of service.

16 Having completed those analyses, and I also met with
17 DPW, we and the DPW concluded that this project will have no
18 adverse impacts on traffic or parking conditions on the university
19 campus. Thank you.

20 CHAIRPERSON REID: Thank you.

21 MS. KING: What would happen to the cars that --
22 while the construction is going on, what happens to the 53 cars?

23 DR. INGLE: We have made provision to be certain
24 there is adequate parking. We are implementing valet parking at the
25 Marvin Center, as well as we have a signed agreement with the
26 Kennedy -- valet parking will give us 120 spaces that are approved
27 spaces in the Marvin Center. And we have signed an agreement with
28 the Kennedy Center for a guarantee of 150 spaces during the daytime
29 there.

1 We have also included in our specifications to the
2 contractors that their employees will park at a site of their choosing off
3 campus and be shuttled in. So with those two actions, the displaced --
4 the 53 cars that are displaced will go to these other locations on
5 campus that we're making available, and the contractor will park -- the
6 contractor's people will park their cars off campus.

7 We at no time in the next two to three years expect to
8 drop below 2,725 spaces on a window of 27 to 3,000. And for the
9 most part, we'll hover around 2,900.

10 MS. GIORDANO: The window is the campus plan --

11 DR. INGLE: Yes.

12 MS. GIORDANO: -- range.

13 DR. INGLE: The 27 to 3,000 is what's in the
14 approved campus plan.

15 MS. KING: On the last page of your report, you say
16 the university is in the process of planning a future parking plan that
17 will summarize the effects of planned construction activity on the
18 university's inventory of parking spaces over the next three years.
19 When is that going to be available?

20 DR. INGLE: We are working on that plan. We have
21 developed, as I said, the Marvin Center valet parking --

22 MS. KING: No, no. My question was: when will it be
23 available? When will this plan, this three-year plan, be available?

24 DR. INGLE: We anticipate that along with the parking
25 garage addition. But if you give me a moment, let me verify whether
26 we should discuss that now. I'm advised that the hospital and the
27 parking garage addition is anticipated to come before the Board in
28 November. And, therefore, we should review that at that time.

29 But I want to emphasize that we can't testify today --

1 MS. KING: This matter was brought before us by
2 your consultant today. I mean, is it unreasonable --

3 MS. GIORDANO: But -- right. But if you --

4 MS. KING: I mean, there it is on page 23.

5 MS. GIORDANO: Right. But I think it says that
6 they're in the process of preparing that.

7 MS. KING: And my question was: when will it be
8 available?

9 MS. GIORDANO: I'm not sure exactly. It's being
10 done in-house primarily by the university, not by the people who are
11 involved in this project. And it will be submitted to the Board for a
12 November hearing. That's when the issue is going to be directly
13 before the Board. So I'm not sure exactly when it will be submitted,
14 but I know that it will be before the Board by the November hearing.

15 DR. INGLE: I can give the Board an indication of the
16 additions to our parking and the deletions that will answer that
17 question, to a large extent.

18 MS. KING: The question was answered. The report
19 is going to be available in November. Ms. Giordano just said it.

20 MS. GIORDANO: It may be before that time, but it
21 will definitely be before the Board at the hearing in November.

22 MS. KING: Fine. That's all I asked. Simple question.
23 Didn't expect it was going to create such a problem for you all. But
24 November is when we'll find it, so that's fine. That's all I wanted to
25 know.

26 CHAIRPERSON REID: Thank you.

27 Ms. Miller, are you here as a party to this particular
28 case?

29 MS. MILLER: I am the Chair of ANC-2A representing

1 the ANC-2A today. I am here today representing 2A as the Chair and
2 the --

3 CHAIRPERSON REID: Okay. I understand.

4 MS. MILLER: Our lawyer had to leave, so I have a
5 comment from him to make and --

6 CHAIRPERSON REID: Okay.

7 MS. MILLER: -- a few other --

8 CHAIRPERSON REID: Okay. I didn't know what role
9 you were going to be in.

10 MS. MILLER: I play all of them, but today I get to play
11 the chief.

12 CHAIRPERSON REID: Okay. Well, now, do you
13 have any cross examination questions?

14 MS. MILLER: Yes, I do.

15 CHAIRPERSON REID: Okay.

16 MS. MILLER: In March, the BZA took up the parking
17 renewal. And because there was not a quorum available to sign the
18 order, that is coming back before you. And at that time, I tried -- I'm
19 making a statement, but I'm leading to a question.

20 CHAIRPERSON REID: Okay. That's based on the
21 testimony here today?

22 MS. MILLER: I beg your pardon? Oh, absolutely.

23 CHAIRPERSON REID: Okay.

24 MS. MILLER: At that time, I raised the question that
25 they were asking for renewal of parking lots that they definitely
26 planned to eliminate. And the lawyer for GW said to you all, "Well,
27 they were not before you today." Well, now the order has not been
28 signed. It's coming back to you, and these -- all of these parking lots
29 that are going to be removed will be before you.

1 And the other thing is I want to know -- the Kennedy
2 Center tells us that they're going to be enlarging and changing their
3 lots and will not have that much space available to GW. Maybe they
4 have told them something different from what they've told us. But --

5 CHAIRPERSON REID: Your question is?

6 MS. MILLER: The question is: I question Mr. Ingle's
7 comments about the parking arrangements when they're eliminating
8 four lots and the Kennedy Center that he says is going to lease them
9 lots --

10 CHAIRPERSON REID: Okay. But, Ms. Miller,
11 directly to --

12 MS. MILLER: The question is --

13 CHAIRPERSON REID: -- Mr. Ingle. This is cross
14 examination.

15 MS. MILLER: The question is: how are you going to
16 accommodate these cars, as Ms. King asked, when you are building,
17 when the Kennedy Center is going to be remodeling so they won't be
18 able to afford you space, you are building the hospital, and you are
19 asking for a garage that hasn't been granted yet, and we have asked
20 that nothing be accepted until after a campus plan schedule is set up.

21 So I don't think that your statement is quite accurate,
22 and I would like proof of it. And we have asked for the parking plan,
23 and we have asked for the traffic report. And we have not gotten
24 them.

25 CHAIRPERSON REID: Is your question, when will
26 you receive these reports?

27 MS. MILLER: That's right.

28 CHAIRPERSON REID: Okay.

29 MS. MILLER: In fact, they're coming before us next

1 Wednesday, and we are supposed to have it before then.

2 CHAIRPERSON REID: Okay. Well, keep it -- can
3 you respond, please, sir?

4 DR. INGLE: The answer to the Kennedy Center is
5 that the signed agreement with the Kennedy Center is for us to use --
6 have guaranteed access to 150 spaces from 7:00 a.m. to 7:00 p.m.
7 They don't use their parking during the day to a large extent.

8 We also have a separate reciprocal agreement with
9 the Kennedy Center where they use our parking at night when it's
10 needed and we use other parking space beyond the 150 spaces
11 during the day.

12 MS. KING: Could we see a copy of that agreement?

13 DR. INGLE: We can make that available to the
14 Board.

15 MS. KING: It would be excellent if you would, please.

16 MS. MILLER: And would you make a copy available
17 to ANC-2A? Because we are told by the Kennedy Center --

18 CHAIRPERSON REID: Don't testify.

19 MS. MILLER: Okay.

20 CHAIRPERSON REID: All right. You specified that
21 you'd like for him to make a copy available to your ANC.

22 MS. MILLER: Correct.

23 CHAIRPERSON REID: And he has agreed to do so.
24 Do you have any other questions?

25 MS. MILLER: Yes. We would like to have copies of
26 just where are they going to put these cars and these cars for the
27 construction that are going to park off campus, of course, as always,
28 Foggy Bottom. Is that what you plan -- where --

29 DR. INGLE: The question --

1 MS. MILLER: -- you plan to put the --

2 DR. INGLE: I think the answer to the question is that
3 the contractors will have their employees park, in all probability,
4 outside of D.C. because that's where they'll find the space. And they'll
5 shuttle people across the river to the construction site. And that is our
6 plan, and that will be in the specs, in the specifications, with all of the
7 bidders who bid this construction.

8 MR. HOOD: Madam Chair, I want to make sure I'm
9 clear on something. Are you saying that the people who are going to
10 be coming in to do -- the contractors coming in to do the work will be
11 parking somewhere else and being shuttled in to --

12 DR. INGLE: The workers will be shuttled in. Of
13 course, there will be deliveries of material and the people driving.
14 Those kinds of trucks will come in. But there will be --

15 MR. HOOD: Is that going to be a signed -- that's
16 going to be a signed agreement, too?

17 DR. INGLE: That will be part of the contract with the
18 contractors.

19 MR. HOOD: So part of the contract will be that the
20 people who are going to be working on the facility, who is going to get
21 the contract, will be shuttled in.

22 DR. INGLE: That's correct.

23 MR. HOOD: Okay.

24 MS. MILLER: Mr. Ingle, are you aware that
25 contractors in the District don't have just one chief contractor? They're
26 each contracted individually, creates their own contract?

27 DR. INGLE: We will sign a contract with a general
28 contractor. They have subs, and their contracts with the subs will
29 include the same language.

1 MS. MILLER: Okay.

2 CHAIRPERSON REID: Okay.

3 MS. MILLER: One other thing.

4 CHAIRPERSON REID: One more question?

5 MS. MILLER: One more question.

6 CHAIRPERSON REID: Okay.

7 MS. MILLER: Of Mr. Slade, who is the only person in
8 the United States --

9 CHAIRPERSON REID: No testimony.

10 MS. MILLER: -- that has not seen the traffic
11 congestion in Washington.

12 MS. KING: Has not seen what?

13 MS. MILLER: And with all of these guests and these
14 people in this 300 auditorium that you're going to have in this place, in
15 the media center, I find it difficult that you can accommodate that
16 many cars when you're eliminating so many parking lots. How do you
17 plan to do that?

18 CHAIRPERSON REID: Okay.

19 MR. SLADE: It's a 400-seat --

20 MS. MILLER: Oh, I'm a hundred off. Sorry.

21 MR. SLADE: It's a 400-seat teaching facility, and the
22 predominant use of it will be by George Washington University
23 students who would --

24 MS. MILLER: But there's an auditorium.

25 MR. SLADE: The auditorium is a teaching facility.
26 And the predominant use will be by George Washington University
27 students.

28 MS. MILLER: My impression of what I've heard you
29 say in your presentations was that they would also be used for guests

1 coming for shows, like Mr. Ingle said, these very famous people that
2 would be coming to this media center.

3 MR. SLADE: The facility will be used, from time to
4 time, for events which will draw from outside the student body. Those
5 events will occur evenings and weekends when there is abundant
6 parking on the campus available.

7 MS. MILLER: Like the one you're having tonight at
8 the Marvin Center.

9 DR. INGLE: I would offer as testimony an example of
10 the event that's taking place tonight where we have mostly students
11 who are participating in a forum with the two candidates for Mayor that
12 is being held in one of our -- in our facility. And that is the kind of thing
13 that we're talking about doing at the media and public affairs
14 auditorium, and that will happen sporadically, a few times a year.

15 But it is in the best interest of our students to provide
16 that kind of a program where they can ask questions and to
17 participate. And most of that will -- those students and the people
18 participating will be on campus and will not add vehicles to the road or
19 add additional population.

20 MS. MILLER: What I am referring to are the people,
21 the guests, who are coming in and their support staff. These are not
22 on-campus students.

23 DR. INGLE: I don't get a question.

24 MS. MILLER: That is a question.

25 CHAIRPERSON REID: She's referring to the guests
26 and their support staff that she is -- she is indicating that those
27 persons will be attending this affair, and she is asking how -- what will
28 be the parking accommodations for those people.

29 DR. INGLE: We have an 1,100-car parking ramp that

1 is not used to capacity in the evening at any time, and that's where
2 most of them park. We also have catecorner, as Mr. Florance said,
3 the Marvin Center, where we have 183 self-park. And when we go
4 valet, add another 120. That is where we will park those people. We
5 have not experienced to date difficulties with overflow parking at any
6 time of the evening.

7 CHAIRPERSON REID: Thank you.

8 MS. MILLER: May I ask that he also submit, at this
9 time -- because you're going to need it for what's coming up -- an up-
10 to-date diagram of all of your parking places, the exact number of
11 parking spaces in them, and which of those are going to be
12 eliminated, and where you're going to put these -- where you're going
13 to find a supply of the additional spaces. Because of the four cases
14 coming up, I think that would be handy to have.

15 MS. GIORDANO: I think -- if I could just interject, I
16 think we already indicated that we will be submitting that as part of
17 those cases that it's directly relevant to.

18 CHAIRPERSON REID: Thank you.

19 All right. Now -- yes, Ms. Giordano?

20 MS. GIORDANO: I'm sorry. Go ahead. I didn't mean
21 to --

22 CHAIRPERSON REID: Well, we move now to the
23 government reports. So now, Mr. Bastida, may I ask your indulgence?
24 I'd like to get the -- there's some information from counsel that --

25 MR. BERGSTEIN: My name is Alan Bergstein. I'm
26 assistant corporation counsel. Did you want me to address the issues
27 that were raised in the petition as might relate to this proceeding? Or
28 do you want the ANC party to indicate whether or not that is, in fact,
29 an issue that you have before you.

1 MS. KING: No. I don't think -- I think the answer to all
2 of the above is no.

3 MR. BERGSTEIN: Okay.

4 MS. KING: I mean, we've deferred that other decision
5 until the 4th of November.

6 CHAIRPERSON REID: Mr. Bergstein, what is the
7 purpose of your being here?

8 MR. BERGSTEIN: Are you referring to me?

9 CHAIRPERSON REID: Yes.

10 MR. BERGSTEIN: I was here --

11 CHAIRPERSON REID: Observing.

12 MR. BERGSTEIN: I was here at your request, if my
13 assistance was necessary.

14 CHAIRPERSON REID: Okay. So we will not delve
15 into the other issues that we spoke about, and we'll refer it over until
16 the November 4th meeting.

17 MR. BERGSTEIN: All right.

18 CHAIRPERSON REID: Okay.

19 MR. BERGSTEIN: So my presence may be excused
20 or --

21 CHAIRPERSON REID: Well, I don't think that that --
22 given what you've just said, yes, you may.

23 MR. BERGSTEIN: All right.

24 CHAIRPERSON REID: You're not going to be really
25 addressing that today.

26 MR. BERGSTEIN: All right. Very well.

27 CHAIRPERSON REID: Thank you.

28 MR. BERGSTEIN: Thank you.

29 MS. KING: Thank you for coming.

1 CHAIRPERSON REID: Mr. Bastida?

2 MR. BASTIDA: Good afternoon, Madam

3 Chairperson, members of the Board. For the record, my name is
4 Alberto Bastida with the Office of Planning.

5 As I previously pointed out to the Board, we submitted
6 our report on October 9th. I think that the Board has been provided
7 with copies of the Office of Planning's report, and I think that the
8 applicant and the ANC has also been provided with a copy of that
9 report.

10 The Office of Planning's report repeats part of the
11 project description and existing zoning and relief requested. So I am
12 going to skip over that, since that has been part of the presentation
13 already. And I will go to the body of the report regarding the special
14 exception request, adverse impacts.

15 The applicant has indicated that the entrance to the
16 underground parking and the service delivery spaces located on H
17 Street would be designed so as not to be disruptive to pedestrian and
18 vehicular movement. The applicant further indicated that, except for
19 temporary closing of the parking lot during the construction of the
20 building, there will be no permanent displacement of any university
21 use as a result of the construction of the building.

22 The applicant's traffic consultant has indicated that
23 there would be no disruption to traffic flow or any other surrounding
24 streets resulting from the proposed project. Upon completion of the
25 project, the total number of parking spaces on campus will remain
26 within the range of 2,700 to 3,000 currently required in the approved
27 campus plan.

28 The proposed facility will provide 65 parking spaces,
29 which constitutes 13 more parking spaces than the existing 53 parking

1 spaces presently on the site. The proposed project will not result in an
2 increase in student enrollment. The university's faculty and the staff
3 population will not change as a result of the construction of the
4 proposed project.

5 The proposed building will house the existing
6 programs that are currently located on campus in the -- what the
7 applicant has stated to be cramped and technologically inadequate
8 spaces. Upon completion of the proposed project, other existing
9 programs that are in need of additional space, will occupy those
10 spaces.

11 In the opinion of the Office of Planning, the proposed
12 construction and its intended use will not cause substantial adverse
13 impacts in terms of noise, number of students, traffic, or other
14 objectionable conditions.

15 Regarding this, I had an extensive discussion with the
16 university because I wanted to understand why the space was
17 cramped and where those facilities were presently located and what
18 we're going to do with that space. And they provided me with an
19 elaborate verbal explanation regarding the different facilities that are
20 located throughout the campus and what appears to be inappropriate
21 spaces from the technical point of view and the distance among them.
22 Because I wanted to make sure that, in fact, they were not adding
23 students to the population, nor the space was going to be housing
24 another type of facility that, in fact, will increase either the student
25 population, the staff, or the faculty.

26 CHAIRPERSON REID: Okay.

27 MR. BASTIDA: Maximum bulk requirement. The
28 proposal shows it will add 88,112 square feet of gross floor area to the
29 campus. Upon the completion of the facility, the campus will be -- will

1 have an aggregate floor ratio of 2.47. This figure is within the three-
2 point FAR permitted by the zoning regulations.

3 If I may expand here regarding Ms. King's
4 questioning, the proposed building meets all the requirements of the
5 zoning regulations for this site, regarding bulk height --

6 MS. KING: I don't know where -- I just had a note to
7 myself that --

8 MR. BASTIDA: You might have --

9 MS. KING: -- that 90 feet was permitted, and that
10 they were going to be 98-1/2. I don't know where I got it.

11 MR. BASTIDA: But probably what happened was that
12 the mechanical space was added to it, which is not considered part of
13 the 80 feet. So your figure makes sense because it's usually 18.5,
14 which brings it to 98.5.

15 MS. KING: I see.

16 MR. BASTIDA: And probably that's what happened.
17 So that is -- it's a building height, but it's not -- those additional 18.5
18 feet are not part of the maximum height of 80 feet that's permitted.

19 MS. KING: Okay.

20 MR. BASTIDA: Based on the analysis, the Office of
21 Planning believes that the applicant has met the burden of proof and
22 recommends approval of this application. If you have any other
23 questions, I will try to answer them. Thank you.

24 CHAIRPERSON REID: Are there any questions from
25 Board members of Mr. Bastida?

26 MR. HOOD: Madam Chair, I just wanted to ask a
27 question about the report about the ANCs. I read here where you said
28 they weren't going to meet on this matter, so they didn't take a position
29 one way or the other.

1 MR. BASTIDA: They were supposed -- I submitted
2 this report early. They were going to meet on this matter on the 15th.
3 The ANC, I'm sure, is represented here and will provide for the record
4 what their position was adopted -- what position was adopted at that
5 meeting.

6 MR. HOOD: I guess my confusion stands where it
7 says, "The Office of Planning has been advised that the ANC will not
8 meet on this matter on October 15, 1998."

9 MR. BASTIDA: Perhaps it's -- I phrased it wrong. It
10 will meet on this matter on that date.

11 MR. HOOD: Will meet on this matter. Okay. Thank
12 you.

13 MR. BASTIDA: Thank you. Sorry about my --

14 MR. HOOD: No problem. Thank you.

15 MR. BASTIDA: -- misstatement of the fact.

16 CHAIRPERSON REID: Thank you.

17 Any cross examination for Mr. Bastida? Ms. Miller?

18 MS. MILLER: I could set the record straight or --

19 CHAIRPERSON REID: Did you have a question for
20 cross examination?

21 MS. MILLER: I understand that, and I'm trying to
22 think.

23 (Laughter.)

24 One against so many.

25 Mr. Bastida says that it will not become objectionable
26 to the surrounding area. But I would like to know what you consider
27 the limits of the surrounding area. Does it go into the Foggy Bottom
28 residential neighborhood? Or do you all just ignore that? You figure
29 it's going to stay in one spot inside the campus?

1 MR. BASTIDA: No. We look at the campus plan.
2 We look at the fact of where those students are coming from, the
3 campus, and that basically that the student population is already on
4 campus and is moving to that facility. That, in fact, is there. It doesn't
5 appear to adversely impact the residential component further to the
6 east and to the south -- I mean, to the west and south. I'm sorry.

7 And accordingly, we figure -- we determined that
8 there will not be deleterious impact because of the construction of the
9 new building.

10 MS. MILLER: Have they updated you on the
11 integration of the Mount Vernon campus into the Foggy Bottom
12 campus, and that they now have bus service between the two? And
13 that the students are required to take certain courses down at the
14 Foggy Bottom campus? And I'm certainly sure they're going to use
15 the media center. And at one time --

16 MR. BASTIDA: Did they first --

17 MS. MILLER: -- that was 800.

18 MR. BASTIDA: Okay. You are asking three
19 questions, so let me answer one at a time. The update -- no, it was
20 not updated. I was advised that the present school population that is
21 coming to this campus is already on campus in different locations, and
22 they will be gathering here to be taught what they already were -- and
23 they are already gathering on the vicinity there. They are not
24 elsewhere.

25 Does that answer your question?

26 MS. MILLER: Not really because it's not quite correct.

27 CHAIRPERSON REID: Okay. But he answered the
28 question.

29 MS. MILLER: You answered the question, but you

1 haven't been updated. That was my question. Were you updated
2 about the influx of the Mount Vernon students? And obviously, you
3 have not been.

4 MR. BASTIDA: I answered the question in the
5 positive, and then I went to express regarding the specifics of this
6 building and the population of this building, where it would be coming
7 from.

8 CHAIRPERSON REID: Okay?

9 MS. MILLER: Not really. But okay.

10 CHAIRPERSON REID: Thank you. There was one
11 other report from the DPW, where they stated, in part, that from a
12 transportation standpoint the proposed project will have no
13 measurable adverse impact on this system.

14 All right. Now, persons or parties in support?

15 MR. BASTIDA: No, the ANC first.

16 CHAIRPERSON REID: Oh.

17 MR. BASTIDA: Sorry.

18 CHAIRPERSON REID: I'm sorry. The ANC?

19 A thousand apologies, Ms. Miller.

20 MS. MILLER: Oh, that's okay. We're used to being
21 abused.

22 CHAIRPERSON REID: Oh, come on, Dorothy.

23 MS. MILLER: I'm kidding. I'm kidding. I'm trying to
24 get you to laugh.

25 (Laughter.)

26 It's a little late in the day.

27 CHAIRPERSON REID: Ms. Miller, proceed with your
28 report, please.

29 MS. MILLER: First, I would like to ask if you received

1 a copy of our resolution.

2 CHAIRPERSON REID: No, I have not received it. So
3 you need a waiver.

4 MS. MILLER: Because I brought it -- no, I brought a
5 resolution in here on Monday and clocked it in. If the staff could make
6 you a copy --

7 CHAIRPERSON REID: Well, we needed to have it in
8 seven days prior to the hearing, Ms. Miller. So you still have to get a
9 waiver.

10 MS. MILLER: Unfortunately, you all took our regular
11 meeting date, so we couldn't meet on that date.

12 CHAIRPERSON REID: Who did?

13 MS. MILLER: The Board of Zoning. I mean, the BZA
14 took it. We normally meet on the third Wednesday, and we couldn't
15 meet tonight so we had to meet in a special meeting.

16 CHAIRPERSON REID: Okay. So --

17 MS. MILLER: And we had to --

18 CHAIRPERSON REID: -- request a waiver, so that
19 we can --

20 MS. MILLER: We would like a waiver to be able to
21 have you accept -- and it was clocked in, and I brought it as soon as I
22 could get it ready, and a covering letter ready.

23 CHAIRPERSON REID: Thank you. Board
24 members? So waived. Granted.

25 MS. MILLER: Thank you very much. And they have
26 a copy in the office.

27 CHAIRPERSON REID: We need a copy.

28 MS. MILLER: All right. Let me give you the one that's
29 not clipped. Oh, that's my letter. I thought I had one that wasn't

1 clipped together. It's a bit of a problem trying to get six people that
2 can meet on the same night, and that was the problem we had
3 because they couldn't all meet on the night that I would have chosen,
4 which would have been a bit sooner.

5 And for the record, it is the position of the
6 Commission that the Board defer consideration of this application until
7 a decision is made, which is now scheduled for November 4th, on the
8 petition of ANC-2A to open up a case to consider a new campus plan
9 to take effect January 1, 2000. And that's the reason no questions
10 were asked at the meeting, and nobody volunteered. They knew we
11 had a petition before you waiting for an answer.

12 And my one comment on the objectionable conditions
13 is that -- and I would like to have permission to file this with my report,
14 too. And this is a copy of the apartment houses that GW has taken
15 over while they build these other buildings on the lots within the
16 campus. And that the students, in the time since the campus plan
17 was approved in '93, has gone up almost 8,000 full-time students, and
18 they are now in Foggy Bottom. And they have only added the one
19 building with 445 accommodations for students.

20 So the Foggy Bottom is feeling the objectionable
21 conditions, not just from individual projects but from the collective
22 things, which is why we wanted the campus plan reopened.

23 CHAIRPERSON REID: Now, are you going to submit
24 that to staff for --

25 MS. MILLER: I'll put that with my testimony.

26 CHAIRPERSON REID: Okay.

27 MS. MILLER: And I would like to make -- I can read
28 the resolution for you, if you would like. And then I would like to make
29 an additional statement because I felt there would be some confusion.

1 The GW hatchet called me last night after I went to bed to know what I
2 was going to do today.

3 And the only thing I was going to submit was our
4 resolution. And I figured if the only thing I was going to submit was
5 our resolution, it might not make the point. So I have written an
6 additional statement to go with our resolution.

7 On August 6, 1998, ANC-2A, through its attorney,
8 Matthew Watson, filed a petition to the BZA setting up a suggested
9 schedule to begin the process for a new campus plan for year 2000.
10 Because this issue has not been resolved, ANC-2A voted to present
11 its resolution 9810A in the hearing today of George Washington
12 University's application of media and public affairs.

13 When the petition was heard on September 2nd, Ms.
14 Williams, the interim director, stated there were no requests before the
15 BZA from GWU. This was not quite a correct statement. There were
16 two that had been logged in.

17 So as Chair of ANC-2A, I wish to make a
18 supplemental statement. On Monday, October 19th, the City
19 Council's confirmation hearing of your Chair, Ms. Reid, asked her
20 about the question of great weight given to ANCs. He asked two
21 questions. The first one was: how many times has the Board of
22 Zoning given "great weight" to the recommendations made by
23 ANCs? And his second question, the followup question: what
24 does "great weight" mean to you?

25 And I went home and I dreamed about that, and I
26 thought about that, so I got up this morning and typed this statement.
27 I wish to follow this up because recently the D.C. Department of
28 Health and State Health Planning and Development Agency, SHPDA,
29 currently being asked by GW to evaluate its request for a certificate of

1 need, appeared not to be aware of the D.C. Code, Section 1-261(d),
2 which gives "great weight" to the issues that are raised by ANCs.

3 Since 1994 when the BZA approved GW's request to
4 expand the Marvin Center, case number 15837, ANC-2A has
5 consistently requested that the BZA reopen the campus plan. BZA
6 case number 14455. That was six years ago, and the current campus
7 plan expires December 31, 1999.

8 Since then, the BZA has heard at least five GW
9 application requests, plus with one before you today. Three more
10 applications have been filed, and one is now before the Historic
11 Preservation Review Board, which will come to you later. So I am
12 thinking it is fitting to repeat what is required of the BZA and all district
13 agencies in this code.

14 The decision taken must reflect, in writing, rationale
15 for the issues raised by the ANC, were or were not discussed, did not
16 prevail, or were not considered in the agency's decision. And the
17 great weight requirement -- and I quote -- "The issues and concerns
18 raised in the recommendations of the Commission shall be given great
19 weight during the deliberation by governmental agency, and those
20 issues shall be discussed, in writing, rationale for the government
21 decision taken."

22 Let the record reflect that the concerns and issues
23 raised by the Commission in its petition and its resolution today be
24 fully discussed and order a written rationale be given for decisions that
25 do not reflect the concerns and issues that we have raised.

26 And that's my statement to go with the resolution.
27 And if you want me to read our covering letter and the resolution, I'd
28 be happy to.

29 CHAIRPERSON REID: That's okay. You can submit

1 it to the staff.

2 MS. MILLER: Okay. And you know that you're
3 meeting on our meeting date next month as well, so we have to
4 change our meeting dates.

5 CHAIRPERSON REID: We always meet on the third
6 Wednesday.

7 MS. MILLER: Well, I know. But you don't always
8 have something for GW. But practically now every time you do.

9 CHAIRPERSON REID: Well, that's just inadvertently
10 we --

11 MS. MILLER: By the way, I have copies of my
12 statement I forgot to give you.

13 CHAIRPERSON REID: Okay. Ms. Miller, one
14 second.

15 Ms. Giordano, do you have any cross?

16 MS. GIORDANO: No, I do not.

17 CHAIRPERSON REID: Okay.

18 MS. MILLER: And I wanted to tell you that I have
19 been -- I have taken the parking case that was returned -- I mean, you
20 know, it's going to come back before you because it needs to have a
21 quorum to be able to be signed. And I have taken the list of parking
22 spaces they had, and I have been marking the places that are being
23 replaced with buildings.

24 So when that comes up -- and I don't know when
25 you're planning to schedule that -- and we will be sending a request,
26 which we have until November 3rd to say whether or not we will make
27 a statement or have additional information, which we plan to do.

28 CHAIRPERSON REID: And you will submit that as
29 well?

1 MS. MILLER: I can give you a copy of this, too.

2 CHAIRPERSON REID: Thank you.

3 MR. HOOD: Excuse me. Ms. Miller, who is the SMD
4 Commissioner?

5 MS. MILLER: I beg your pardon?

6 MR. HOOD: Who is the SMD Commissioner in which
7 this project is -- who is the Commissioner? And which SMD is it in?

8 MS. MILLER: Jean Swift, and she only comes to
9 about -- well, we checked last year. She came to six of the 12
10 meetings.

11 MR. HOOD: Okay.

12 MS. MILLER: And we sent her --

13 MR. HOOD: I see in your vote that was taken she
14 was absent.

15 MS. MILLER: Quite frequently.

16 MR. HOOD: And you're the chairperson?

17 MS. MILLER: Yes.

18 CHAIRPERSON REID: Okay? All right. Thank you,
19 Ms. Miller.

20 Now, persons or parties in support of this application?

21 MS. MILLER: I beg your pardon?

22 CHAIRPERSON REID: I called for persons and
23 parties in support of the application to come forward.

24 MS. BAILEY: Ms. Miller, those items, did you want to
25 submit those?

26 MS. MILLER: I will.

27 MS. BAILEY: And do the members of the Board need
28 copies of them?

29 CHAIRPERSON REID: Please. Please.

1 MS. BAILEY: Okay. Did you have a copy of your
2 testimony as well?

3 Madam Chair, do we have party status for anyone
4 other than --

5 CHAIRPERSON REID: No.

6 MS. BAILEY: Okay.

7 CHAIRPERSON REID: Not that I know of. None of
8 you have requested party status, correct? Okay.

9 Now, my staff -- the secretary has to leave in about 15
10 minutes, so I'd ask that you not be redundant. If the synopsis of your
11 particular testimony can be encapsulated by one or two people, or, you
12 know, you could be -- your position can be given by one individual or
13 two individuals, I'd appreciate it. And there not be any redundancy or
14 reiteration of things that have already been said.

15 MS. POTTER: Good afternoon. My name is Carrie
16 Potter. I am a student at George Washington University. I reside at
17 2031 F Street, and I'm the president of the student association there.
18 And I just briefly wanted to share with you three main reasons why
19 GW students are in support and in great need of this new building for
20 the School of Media and Public Affairs.

21 The first one is that GW prides itself on being a
22 program in all aspects of experiential learning, which means outside of
23 the classroom. We have the opportunity here in Washington to have
24 speakers, to have different types of programs, internships, and all of
25 this experiential learning is the stuff that we benefit from being at the
26 school.

27 Right now, we have the opportunities for these, but
28 this new building would present a lot more opportunities because the
29 technology would allow more video conferencing, to bring in speakers

1 from all across the country, across the world. We would have
2 opportunities to bring more speakers in for GW students, so we could
3 benefit straight from campus and really take advantage of the
4 opportunity and the environment of Washington, D.C., which we are
5 in.

6 The second point I touch a little bit is definitely on the
7 technology. The technology advancements that this building would
8 provide would greatly improve the aspects of the communications
9 program, the electronic media, and just, in general, the aspects of
10 students' learning across the country, sharing and learning in those
11 sorts of environments. And that would also attract more faculty to be
12 able to do more advanced research and bring more recognized faculty
13 to the campus and improve the quality of services we can provide
14 students and faculty to commit these programs.

15 And the final point I'd like to raise is the idea that this
16 new building would allow more classroom space to give more
17 individual attention to students. So we would be able to reduce some
18 of the class sizes, so professors would have more opportunities to
19 meet. And it also centralizes a lot of the departments that are spread
20 throughout our campus. So students would be able to access all of
21 these resources in one main area.

22 This integration of students and classrooms and
23 professors and research will give a great benefit to GW students that
24 will better -- we will be able to better learn from that and better benefit
25 the community in D.C. and the country as a whole. Thank you.

26 CHAIRPERSON REID: Thank you.

27 MS. MARSHALL: I guess I'll piggyback on her points
28 and not be redundant at all.

29 CHAIRPERSON REID: Speak directly in the mike

1 and give your name and address, please.

2 MS. MARSHALL: Okay. My name is Tiffany
3 Marshall. I'm a graduate student at GW. My address is 3000 South
4 Randolph Street, Apartment 174. That's in Arlington. Zip code 22206.
5 Again, speaking to demonstrate my support for the building, for the
6 School of Media and Public Affairs.

7 Among other things, the building would adhere to the
8 needs of the students who, like myself, currently find themselves
9 shuffling between two or three buildings to locate, meet, or have class
10 with professors of the program. Additionally, the building would
11 enable students to take advantage of having amenities such as
12 studios, labs, recording and viewing rooms, contained in one building.

13 In short, students of the School of Media and Public
14 Affairs would be able to enjoy the benefits of claiming a building for
15 themselves, to socialize, interact, network with one another,
16 professors, and guests of the program. Thank you.

17 CHAIRPERSON REID: Thank you.

18 MS. DREWS: Hello. My name is Catherine Drews. I
19 currently reside at 3000 South Randolph Street, Apartment 174,
20 Arlington, Virginia 22206. And one of the things I'm excited about this
21 building is that it would bring students and faculty together. I think this
22 would lend itself to a natural sort of cohesiveness and a camaraderie
23 that we could build our intellectual community on.

24 And I'm also excited about the ability to work so
25 closely with the professors. For example, presently, it's difficult to
26 perform extensive research for one of my own professors as her
27 building closes early. These types of conflicts would be eliminated
28 with this building.

29 I am greatly excited about it, and I'm pleased to be

1 here to support this.

2 CHAIRPERSON REID: Thank you.

3 MS. FOLKERTS: My name is Jean Folkerts. I am
4 Director of the School of Media and Public Affairs, and I live at 7625
5 Kingsbury Road in Alexandria, Virginia 22315.

6 This building is for us an opportunity to enhance the
7 program of the School of Media and Public Affairs and programs of
8 similar interest. This academic building will allow our faculty and
9 students who are now in separate facilities, as these students have all
10 emphasized, to engage in a more regular and productive intellectual
11 exchange.

12 Programs in public policy, public affairs, and media
13 are GW programs that attract high-quality students who want a unique
14 intellectual experience in the District of Columbia. We believe that
15 bringing these programs together will give students the opportunity to
16 discuss ideas about media and politics with faculty in less formal ways
17 than in a structured classroom.

18 Our programs emphasize the central role of media
19 and politics in a democratic society, and we teach our students to
20 maintain high ethical standards. In this new classroom building, we
21 will be able to work with students in formal and informal ways, in
22 pleasant spaces that are technologically well-equipped.

23 This is a wonderful opportunity for us to leave an
24 overly crowded and inadequate renovated church space that was
25 never designed for student and faculty interaction and to convert a
26 surface parking lot of no aesthetic value to a challenging, educational
27 environment for our students.

28 These programs showcase Washington, D.C. as a
29 living laboratory of media, politics, and public policy. They are of and

1 about the city. We hope that you will endorse this new building as a
2 site for intellectual discussion that is vital to the richness of the
3 university experience. Thank you.

4 CHAIRPERSON REID: Thanks very much.

5 Persons or parties in opposition? There was one.
6 Ms. Miller, you indicated that -- you voiced your opposition during the
7 ANC presentation, correct?

8 MS. MILLER: I have one more that -- the district,
9 ANC-2A-05.

10 CHAIRPERSON REID: You have something else?

11 MS. MILLER: Just one thing.

12 CHAIRPERSON REID: Okay.

13 MS. MILLER: And --

14 CHAIRPERSON REID: Quickly.

15 MS. MILLER: -- I asked her to make you a copy of it.

16 CHAIRPERSON REID: Quickly.

17 MS. MILLER: It's not only the residents who are
18 complaining about the lack of living space for their students; it's the
19 students themselves. They're sleeping in hallways and study halls
20 while my apartment building has been taken over by 75 percent
21 students because they are not building dormitories.

22 Now, that's the objectionable condition that I was
23 trying to refer to outside of the radius of where this building is going to
24 be. Because the multitude of projects that they're bringing before you
25 leaves no room for accommodating the large increased number in
26 students that have enrolled since -- you know, in the last eight years.
27 And that was my main objection, and I've given you a copy of what the
28 students themselves wrote.

29 CHAIRPERSON REID: Thank you.

1 MS. MILLER: Because it's best coming from the
2 horse's mouth.

3 CHAIRPERSON REID: Thank you very much.

4 All right. Ms. Giordano, do you have any cross
5 examination of Ms. Miller?

6 MS. GIORDANO: No.

7 CHAIRPERSON REID: Okay. We'll move now to the
8 final remarks by the applicant.

9 MS. GIORDANO: Madam Chair, members of the
10 Board --

11 MS. ROSE: Could you address the correction in the
12 advertisement? I think we had instruction and alteration, and I think
13 one of those was --

14 MS. GIORDANO: Right. The notice that was sent
15 out by the staff, and also published in the D.C. Register, mentioned
16 alteration of a building in addition to new construction. And there is no
17 alteration here. This is an existing parking lot. And we did -- the signs
18 had the correct -- just said "new construction." I think the ANC was
19 well aware that we weren't altering any existing buildings, that it was a
20 parking lot.

21 In closing, I don't have any specific rebuttal. I just
22 want to note that I think we have laid out all of the evidence which
23 supports our assertion that the building will not adversely impact any
24 adjacent residential areas.

25 The report of the ANC, the testimony of the ANC,
26 talks about the campus plan process, the overall parking plan for the
27 campus. That will be properly before you in a short timeframe. But
28 still, there have been no specific concerns raised with regard to this
29 particular project. And we think it's a very good project, and we urge

1 the Board to support it and approve it. Thank you very much.

2 CHAIRPERSON REID: Thank you, Ms. Giordano.

3 We would, then, make the determination at our next Board meeting,
4 which will be on --

5 MS. ROSE: November 4th.

6 CHAIRPERSON REID: -- November 4th.

7 MS. ROSE: Do you have documents that are to
8 come in that need responses, or --

9 MS. GIORDANO: There was a request for the
10 agreement with the Kennedy Center. And we'd be happy to submit
11 that. I don't know that it needs a response, but --

12 MR. HOOD: Also, I think there was a request for the
13 contractors that are going to be shuttled to work.

14 MS. GIORDANO: To confirm that in writing. That
15 contract is not in existence yet, but we can confirm that in writing. Is
16 that what you'd like?

17 CHAIRPERSON REID: Yes.

18 MR. HOOD: Right.

19 MS. GIORDANO: Okay.

20 MR. HOOD: It needs to be in writing.

21 CHAIRPERSON REID: And wasn't there a request
22 regarding the parking?

23 MR. HOOD: Proof of --

24 CHAIRPERSON REID: Proof of --

25 MS. GIORDANO: I think that was the Kennedy
26 Center agreement, that the --

27 MR. HOOD: The parking plan, I believe.

28 MS. GIORDANO: I think we had indicated that that
29 will be coming in.

1 CHAIRPERSON REID: It was in regard to how you're
2 going to address the needs of the population, given the fact that some
3 of the parking is going to be removed. That was my -- that was the
4 question from Ms. Miller.

5 MS. GIORDANO: I think that was the issue of the --

6 CHAIRPERSON REID: The ANC.

7 MS. GIORDANO: Okay.

8 CHAIRPERSON REID: From Ms. Miller.

9 MR. BASTIDA: No, no. This -- yeah, this is the -- if I
10 may, it might help you. Ms. Miller stated the overall parking
11 arrangements for the university, regarding the different parking areas
12 that are going to be divested of parking because there will be
13 construction of new facilities there -- that it was addressed by the
14 applicant that it would be addressed on the parking request that will be
15 in front of the Board in November.

16 CHAIRPERSON REID: Oh, okay. Okay.

17 MR. BASTIDA: This is not that -- Ms. Miller's request
18 is not really part of this case because it -- this case is specific to a site
19 with the number of parking spaces that, in fact, will be increased by
20 15.

21 MS. GIORDANO: Right. And we have committed, in
22 Dr. Ingle's testimony, that the implementation of this project would not
23 affect compliance with the range of parking spaces, the
24 minimum/maximum range of parking spaces that have to be provided
25 pursuant to the campus plan. We can reiterate that in writing, if you'd
26 like. It's also in our written statement.

27 MS. KING: Okay.

28 MS. GIORDANO: The building does not --

29 MS. KING: Ms. Giordano, you know, we've heard the

1 Kennedy Center, with regard to the Wellness Center, and how many
2 parking spaces are we losing during the construction of the Wellness
3 Center. Then you add another 56 that you're losing during the
4 construction of this site that you're applying for today, and I
5 understand that there's a major loss of parking spaces associated with
6 the project that you're bringing us vis-a-vis the hospital.

7 So, you know, the Kennedy Center is not going to
8 cover all of those. But in agreement for -- I mean, for one thing, the
9 Wellness Center, according to your own testimony, is supposed to be
10 used from, you know, 5:00 in the morning until 5:00 the next morning,
11 or something, or 1:00 the next morning, or something. So that it -- you
12 know, parking provided between 7:00 a.m. and 7:00 p.m. is not going
13 to do a lot of good.

14 But, you know, I think it would be very useful if you
15 could clarify for us exactly what this alternative parking consists of. I
16 mean, 170 spaces at the Kennedy Center, you can't keep bringing it
17 up every time you bring a project to us and say --

18 MS. GIORDANO: Okay.

19 MS. KING: -- "Oh, it's going to be adequately covered
20 by the 170 spaces at the Kennedy Center," because, you know, every
21 time you add a new project there is going to be a massive loss of
22 parking.

23 MR. BASTIDA: Madam Chairperson, if I may add, I
24 think that Ms. King is correct. If the parking spaces at the Kennedy
25 Center have been proffered in a previous case and is proffered in this
26 case, that correlation between the spaces that were proffered for the
27 Wellness Center and the spaces proffered for this project should be
28 analyzed and submitted by the applicant for the Board to take that into
29 account in case there is a future project in which those parking spaces

1 are proffered again, so you know if there is any parking spaces left or
2 there is need for more.

3 So I think that based on those two specific items, the
4 Board has the right to request that.

5 CHAIRPERSON REID: Okay.

6 MS. GIORDANO: We would be happy to provide
7 that, just to ensure, I think, that there is no double counting. We'd be
8 happy to provide an analysis of that.

9 CHAIRPERSON REID: Now, Ms. Miller, your second
10 is over. I think that we have addressed that issue.

11 MS. MILLER: Well, I just wanted to --

12 CHAIRPERSON REID: But -- let me finish -- we
13 cannot go back.

14 Thank you. I think that we have taken care of it.

15 Are you done with your presentation?

16 MS. GIORDANO: Yes, we are.

17 CHAIRPERSON REID: Okay. Board members, did
18 you have any --

19 MR. HOOD: Madam Chair, I just wanted to ask a
20 question. Is there going to be some conversations between the
21 applicant and the ANCs to try to resolve some of the issues?

22 CHAIRPERSON REID: If you would like to so
23 request, we certainly can.

24 MR. HOOD: Oh, I can request -- I will request that
25 that takes place and try to --

26 CHAIRPERSON REID: Or suggest.

27 MR. HOOD: Suggest. Okay.

28 CHAIRPERSON REID: Just recommend --

29 MR. HOOD: I would like to recommend that that

1 maybe takes place to try to resolve some of the issues and concerns,
2 kind of work with the ANC and the other civic groups. If I may --

3 CHAIRPERSON REID: Okay.

4 MR. HOOD: -- prior to coming back on --

5 CHAIRPERSON REID: Not coming back, but prior to
6 our making our decisions on the --

7 MR. HOOD: Right. Prior to the decisionmaking.

8 MR. BARBER: I appreciate that. We have already
9 planned meetings next week. I'm sorry. I haven't been introduced.
10 My name is Charles Barber. I'm senior counsel to George
11 Washington University.

12 And we have meetings scheduled next week to
13 discuss a parking project and parking more generally on the campus
14 plan. We have one with the ANC, and we have meetings with other
15 community groups next week as well. So this was already underway
16 for planning, and we will follow through with those plans, with the
17 ANC's cooperation.

18 MR. HOOD: Okay. Thank you.

19 CHAIRPERSON REID: Okay. Ms. King, do you have
20 any concluding --

21 MS. KING: No, I don't.

22 MR. GILREATH: Action on this will be taken on,
23 what, November --

24 CHAIRPERSON REID: November 4th. Is that
25 correct?

26 MS. ROSE: That's correct. But we need to discuss
27 the timelines for submissions and responses.

28 CHAIRPERSON REID: Sure.

29 MS. ROSE: We only have a couple of days left.

1 CHAIRPERSON REID: The question was the
2 decision date is November 4th, and whatever --

3 MS. KING: No. What Tracey is saying is that if the
4 Commission has to respond to any of this stuff, that we may not be
5 able to do it because of the -- November 4th is two weeks from today.

6 CHAIRPERSON REID: Oh. Are you referring to the
7 Zoning Commission?

8 MS. KING: GW has to provide -- no, I'm referring to
9 the ANC Commission. GW has to provide information. If the
10 information requires a comment from the ANC, we may not be able to
11 do it until December.

12 Is that not what you were saying, Tracey?

13 MS. ROSE: That's what I'm saying.

14 CHAIRPERSON REID: Okay. So it will be the
15 December what meeting?

16 MS. ROSE: Well, what I need to determine is how
17 much time is needed --

18 CHAIRPERSON REID: Right. We don't need much
19 time. We only need a few days, if that.

20 MS. KING: We're going to give the ANC an
21 opportunity to meet.

22 MS. ROSE: These are the dates that I was looking
23 at. If you want the material in your package from the university and
24 the Advisory Neighborhood Commission, the submissions would be
25 due on Friday, October 23rd. That's two days from now. And the
26 responses would be due October 30th. The documents to go into
27 your package.

28 CHAIRPERSON REID: Well, wait a minute, Ms.
29 Rose. You're saying in two days --

1 MS. ROSE: That GW --

2 CHAIRPERSON REID: Today is the 21st.

3 MS. ROSE: I understand that. GW's submission
4 would have to be due on Friday, and seven days later would be the
5 response period for the other parties.

6 CHAIRPERSON REID: Okay.

7 MS. GIORDANO: We can submit on Friday, and we
8 can hand deliver it to Ms. Miller.

9 CHAIRPERSON REID: Okay. And the following
10 Friday, which would be -- the date, what, the 29th?

11 MS. ROSE: The 30th.

12 CHAIRPERSON REID: The 30th?

13 MS. ROSE: Would be the response date.

14 CHAIRPERSON REID: And your report would be --
15 your response would be due at that time.

16 MS. MILLER: And we're waiting for a response from
17 you which you're supposed to give us on the 4th of November.

18 CHAIRPERSON REID: That's right.

19 MS. MILLER: That's our problem. That's the reason
20 why we didn't take any other action than the one we took.

21 CHAIRPERSON REID: Okay.

22 MS. ROSE: Well, do we need to --

23 CHAIRPERSON REID: Given that time, then we
24 need to, then, schedule it after the November 4th meeting, which
25 would have to go, then, to December. So then, based on that,
26 December the what? The 2nd of December?

27 MS. ROSE: Yes.

28 CHAIRPERSON REID: Okay. Then what would be
29 the timeline?

1 MS. ROSE: Submissions would be due on November
2 13th, and the responses on November 20th.

3 CHAIRPERSON REID: Okay. Is everyone in
4 agreement with that?

5 MS. GIORDANO: And the submissions are limited to
6 the ones that we've outlined, right?

7 CHAIRPERSON REID: Yes.

8 MR. GILREATH: What would we be dealing with at
9 the December meeting? Just the media and public affairs building, or
10 is it going to be within the context of the broader questions?

11 MS. KING: The broader question is going to be taken
12 up on the 4th of November.

13 MR. GILREATH: Okay. And that will be resolved.

14 MS. KING: The question about the campus plan.

15 MR. GILREATH: Okay.

16 MS. KING: The dates and all of that.

17 MR. GILREATH: So that all will be resolved, and then
18 we would be dealing with this media in --

19 MS. KING: Right.

20 MR. GILREATH: -- December.

21 MS. KING: Right.

22 MR. GILREATH: Okay. Good.

23 MS. KING: Okay?

24 CHAIRPERSON REID: All right. That concludes our
25 hearing for today. Thank you.

26 (Whereupon, at 4:46 p.m., the proceedings in the
27 foregoing matter went off the record.)