

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

Wednesday
January 31, 2018

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARLTON HART, Vice Chairperson
LESYLLEE M. WHITE, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
MATT JESICK
ANNE FOTHERGILL

The transcript constitutes the minutes from the Public Hearing held on January 31, 2018.

C-O-N-T-E-N-T-S

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

9:43 a.m.

1
2
3 CHAIRPERSON HILL: Hi. Good morning, everyone.
4 The hearing will please come to order. We're located in
5 the Jerrily R. Kress Memorial Hearing Room at 441 4th
6 Street Northwest. This is the January 31st, 2018 public
7 hearing of the Board of Zoning Adjustment of District of
8 Columbia. My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chairperson; Lesyllee White,
10 board member; and representing the Zoning Commission is
11 Peter May.

12 Copies of today's hearing agenda are available
13 to you and located on the wall bin near the door. Please
14 be advised that this proceeding is being recorded by a
15 court reporter and is also webcast live. Accordingly, we
16 must ask you to refrain from any disruptive noises or
17 actions in the hearing room. When presenting information
18 to the board, please turn on and speak into the microphone
19 first stating your name and home address. When you're
20 finished speaking, please turn your microphone off so the
21 microphone is no longer picking up sound or background
22 noise. All persons planning to testify either in favor or
23 in opposition must have raised their hand and been sworn
24 in by the secretary. Also, each witness must fill out two
25 witness cards; these cards are located on the table near

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1 the door as well as on the witness table. Upon coming
2 forward to the board, please give both cards to the
3 reporter sitting at the table to my right.

4 If you wish to file written testimony or
5 additional supporting documents today, please submit one
6 original and 12 copies to the secretary for distribution.
7 If you do not have the requisite number of copies, you can
8 reproduce copies on an office printer in the Office of
9 Zoning located across the hall.

10 The order of procedures for special exceptions
11 and variances, as well as appeals, is also listed in the
12 bin as you come through into the room here. The record
13 shall be closed in conclusion in each case, except for any
14 material specifically requested by the board. The board
15 and the staff will specify the end of the hearing exactly
16 what is expected and the date when the persons must submit
17 the evidence to the Office of Zoning. After the record is
18 closed, no other information shall be accepted by the
19 board. The District of Columbia Administrative Procedures
20 Act requires that the public hearing on each case be held
21 in the open before the public pursuant to Section 405B and
22 406 of that act.

23 The board may in consistent with its rules and
24 procedures and the act enter into a closed meeting upon a
25 case for the purpose of seeking legal counsel in a case

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1 pursuant to DC Official Code Section 2-575B4 and/or
2 deliberating on a case pursuant to DC Official Code
3 Section 2-575B13, but only after providing the necessary
4 notice, and in the case of an emergency closed meeting,
5 after taking a roll call vote. The decision of the board
6 in cases must be based exclusively on the public record;
7 to avoid any appearance on the contrary, the board
8 requests the persons present not engage the members of the
9 board in conversation. Please turn off all beepers and
10 cell phones at this time so as to not disrupt the
11 proceeding.

12 Preliminary matters of those which relate to
13 whether a case will or should be heard today such as
14 requests for postponement, continuance or withdraw, or
15 whether proper and adequate notice of the hearing has been
16 given. If you're not prepared to go forward with the case
17 today or if you believe that the board should not proceed,
18 now's the time to raise such a matter.

19 Mr. Secretary, do we have any preliminary
20 matters?

21 MR. MOY: Good morning, Mr. Chairman and
22 members of the board. I do have a quick announcement for
23 the record, for the transcript related to today's docket.
24 First off, there are two applications that have been
25 postponed and rescheduled; these are Case No.'s 19680 of

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1 Quentin Ventures, LLC postponed/rescheduled to February
2 21st, 2018; as well as Case Application No. 195930, Edward
3 and Naomi Griffin, postponed and rescheduled to March 7th,
4 2018.

5 Finally, Mr. Chairman, there are other
6 preliminary matters but those are case specific and staff
7 would suggest that you address those when I call the case.
8 Other than that, there is one preliminary matter; there's
9 a motion to postpone and reschedule, and that is to Case
10 No. 19677 of Plant the Seed Youth Treatment Services.

11 CHAIRPERSON HILL: All right, great. Thank
12 you, Mr. Moy. Anyone who's here wishing to testify, if
13 you could please stand and take the oath administered by
14 the secretary to my left.

15 MR. MOY: Good morning. Do you solemnly swear
16 or affirm that the testimony you're above to present in
17 this proceeding is the truth, the whole truth and nothing
18 but the truth?

19 Ladies and gentlemen, you may consider
20 yourselves under oath.

21 CHAIRPERSON HILL: All right, Mr. Moy; before
22 we get to that preliminary matter, I just want to let
23 everybody know the schedule today and things that are
24 going on. Let's see -- there was a decision case for
25 Application No. 19635; however, I was interested in

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1 hearing more of a deliberation or a discussion, I suppose,
2 from the Zoning Commissioner, member from the Zoning
3 Commissioner, which in this case was Chairman Anthony
4 Hood, but unfortunately there was some issues and he was
5 unable to make it today. And so I have thought about
6 possibly postponing it to next week and Chairman Hood
7 would have to come in the morning, but then it turns out
8 that he is back here with us on the 14th of February. And
9 so if it's all right with the board, I would suggest we
10 just postpone this decision until the 14th of February
11 when he's here.

12 MEMBER WHITE: I agree.

13 CHAIRPERSON HILL: All right. So Mr. Moy, if
14 that sounds good to you --

15 MR. MOY: It's done.

16 CHAIRPERSON HILL: Let's see -- then the other
17 in terms of the order for the hearing docket, we're
18 basically going to follow the order that we have, except
19 for Case No. 19659 of the Federation of State Medical
20 Boards. I think that it's going to end up being a fairly
21 lengthy hearing, and so we're going to go ahead and put
22 that to the end of the day so that we can get through the
23 rest of our agenda. And then have an opportunity to
24 really be able to focus for that. There's a possibility
25 we might even have lunch before that case depending on how

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1 long it goes, so if you're here for that application,
2 it'll be fairly later on. So I just wanted to let
3 everyone know.

4 And so then after that, Mr. Moy, I suppose, do
5 you want to call that preliminary matter again?

6 MR. MOY: Yes. Thank you, Mr. Chairman. So
7 that would be -- if I can have the applicant to the table,
8 the Application No. 19677 of Plant the Seed Youth
9 Treatment Services. This application was originally
10 scheduled and captioned for a special exception under the
11 use provisions of Subtitle U, Section 203.1E to increase
12 the occupant load on the existing community-based
13 institutional facility, 6 to 15 persons in a R2 zone.
14 This at premises 5212 Astor Place Southeast, Square 5308,
15 Lot 25. I'd just like to remind the board, there is a
16 filing from the ANC7E in the case of record stating that
17 they're opposed to the request for postponement.

18 CHAIRPERSON HILL: All right, sir, if you could
19 just please state your name for the record.

20 You need to press the button there until the
21 light comes on.

22 MR. DAVIS: My name is Michael Davis.

23 CHAIRPERSON HILL: All right, Mr. Davis, if you
24 could just -- I mean, we have your filing in the record;
25 but if you could just articulate again why you need the

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1 postponement.

2 MR. DAVIS: We need the postponement -- we are
3 being represented as a community-based institutional
4 facility, which we are not. DCRA, Consumer Regulatory
5 Affairs, has not at this point made a determination as to
6 what category our residential facility falls under, but
7 they informed us that we are not an institutional facility
8 that takes on a defined category with more, in the penal
9 system in terms of incarceration and people who are
10 detained by the government and then being released for
11 treatment. We're a youth treatment residential facility
12 to provide inpatient substance abuse treatment for youth
13 between the ages of 13 and 20.

14 CHAIRPERSON HILL: Okay, Mr. Davis. So we
15 don't have a report from the Office of Planning, and then
16 also you're waiting for some stuff from DCRA.

17 MR. DAVIS: Correct.

18 CHAIRPERSON HILL: Is the ANC here?

19 PARTICIPANT: The ANC --

20 CHAIRPERSON HILL: The ANC is here?

21 PARTICIPANT: No.

22 CHAIRPERSON HILL: Oh, that's okay. I don't
23 know who you are, but that's okay. So you're not the ANC?

24 PARTICIPANT: No.

25 CHAIRPERSON HILL: That's okay. All right. So

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1 okay then, if it's all right with the board; Mr. Davis,
2 when would you like this postponed till?

3 MR. DAVIS: We'd like to postpone it till
4 February the 21st.

5 CHAIRPERSON HILL: Okay. Why the 21st?

6 MR. DAVIS: That gives us approximately about
7 three weeks for DCRA to clear up and also I guess for the
8 Office of Planning to submit whatever reports they need
9 to.

10 CHAIRPERSON HILL: Okay. The Office of
11 Planning is here, so do you think that's enough time?

12 MS. BROWN-ROBERTS: Maxine Brown-Roberts from
13 the Office of Planning. I'm a little bit skeptical about
14 that because we're not sure whether it's going to be a
15 special exception or a variance. And if it's a variance,
16 then they will have to go back to ANC and post-dating on
17 all of that is going to push it back. So I think it may
18 be a little wiser to wait until we have the determination
19 from DCRA.

20 CHAIRPERSON HILL: Okay.

21 MS. BROWN-ROBERTS: And then I think the
22 applicant can call in and arrange with Mr. Moy.

23 CHAIRPERSON HILL: Okay. Mr. Moy, do you have
24 any thoughts?

25 MR. MOY: Well, considering not having a

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1 timeline for a determination from DCRA, my best guess,
2 sir, would be early to mid-March. That date could be
3 adjusted once we have more information.

4 CHAIRPERSON HILL: Okay. Well, let's go ahead
5 and put you on for mid-March and we'll see what happens.
6 We don't like having postponements, but hopefully
7 everything will be worked out so we can move forward. And
8 if not, then we might have to postpone again, but that
9 would probably not be due to your issues.

10 All right --

11 MR. MOY: So the tentative date I'd like to
12 set, which again it can be readjusted, the earliest would
13 be March the 21st. All right?

14 CHAIRPERSON HILL: Okay, great. All right, Mr.
15 Davis.

16 MR. DAVIS: Thank you.

17 CHAIRPERSON HILL: Thank you.

18 Are we at the top of the order for our hearing
19 cases?

20 MR. MOY: I believe so.

21 CHAIRPERSON HILL: Wow, this is just moving
22 along.

23 MR. MOY: All right. So with that then, Mr.
24 Chair, then we have parties to the table to Case
25 Application No. 19646 of Claude and Kira Vol, V-O-L;

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1 caption advertised for special exceptions under Subtitle
2 D, Section 5201 from the side yard requirements of
3 Subtitle D, Section 307.1, and from the non-conforming
4 structure requirement Subtitle C, Section 202.2. This
5 would construct a third-story rear addition to an existing
6 one-family dwelling, our 1B Zone 1729 Upshur Street
7 Northwest, Square 2644, Lot 67.

8 CHAIRPERSON HILL: Hi, would the parties come
9 forward please?

10 All right. So no one's here right now for Case
11 19646 of Claude and Kira Vol. Just making sure?

12 All right. Mr. Moy, why don't we go ahead and
13 put this to almost the end, because whoever -- we're going
14 to put that last one -- we're going to do the last one
15 last, so we'll do this one before the last one.

16 MR. MOY: Yes. Okay, very good. So next up
17 then is Case Application No. 19655 of Benjamin Flowers, as
18 amended for special exceptions under Subtitle G, Section
19 1200 from the lot occupancy requirements, Subtitle G,
20 Section 404.1 from the side yard requirements, Subtitle G,
21 Section 406.2, and under Subtitle G, Section 1201 from the
22 rear yard requirements of Subtitle G 405.2, and pursuant
23 to 11DC Subtitle X, Chapter 10 for a variance for the non-
24 conforming structure requirements, Subtitle C Section
25 202.2. This would construct a two-story rear addition to

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1 an existing one-family dwelling, MU-4 Zone at 508 7th
2 Street Southeast, Square 903, Lot 23.

3 CHAIRPERSON HILL: Okay, great. If you could
4 please introduce yourselves from my right to left.

5 MR. FOWLER: Mike Fowler from Fowler
6 Architects.

7 MR. FLOWERS: Benjamin Flowers.

8 CHAIRPERSON HILL: All right. Mr. Fowler, you
9 going to be presenting with us or to us?

10 MR. FOWLER: Yes.

11 CHAIRPERSON HILL: Okay, so there were some
12 things that needed clarity the last time, from when you
13 were here the last time; if you can just walk us through
14 what happened, and then start there.

15 MR. FOWLER: Okay, we were informed that the
16 relief requested for 202.2 the non-conforming structure
17 was actually a variance non-special exception, so we
18 modified our certification, self-certification and burden
19 of proof to reflect that. Would you like me to run
20 through our arguments for the variance?

21 CHAIRPERSON HILL: Yes, give me a second.
22 Right, so that's what I was just trying to catch up with.
23 And we didn't hear any of the -- we didn't get to the
24 merits. And so if you could just kind of go through for
25 us the project, what you're trying to do and why you're

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1 meeting the standard for us to grant the variance. And I
2 don't know if the board has any other questions for that?

3 Mr. Fowler, I'm going to put ten minutes on the
4 clock. Or no, what's your last name again?

5 MR. FOWLER: Fowler.

6 CHAIRPERSON HILL: Fowler. We're going to put
7 ten minutes on the clock just so I know where we are and
8 you can start whenever you like.

9 MR. FOWLER: Okay, thank you. This is a
10 single-family residence in the MU-4 district, it's
11 currently just over 70 percent on its lot coverage. Our
12 clients would like to add a third bedroom and a second
13 bathroom, so we're proposing an addition basically over --
14 there's a one-story, existing one-story rear addition that
15 we're proposing to demolish and rebuild slightly smaller
16 to reduce the lot coverage to 70 percent, but rebuild it
17 as a two-story addition instead of a one-story addition in
18 order to gain extra space for the bedroom and the
19 bathroom.

20 The side yard, rear yard and the lot occupancy
21 requirements under special exception, we have support from
22 ANC, from the neighbors and the impact from the light, air
23 and privacy would be minimal in our opinion. The non-
24 conforming structures part as a variance, and we feel this
25 is met because the existing rear portion of the house on

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1 the second floor has a ceiling height of 6 foot 10 which
2 doesn't meet the building code requirements for habitable
3 space, so any interior modifications we do, we'd still end
4 up with basically a large section of the second floor that
5 doesn't meet the building code requirements for ceiling
6 height. So we feel that raising the roof and then
7 extending the second floor portion of the second floor
8 would allow the client to achieve everything they're
9 looking for as far as the space requirements inside with a
10 very minimal, very modest addition to the existing
11 structure.

12 If you have any specific questions, I'll try to
13 answer them.

14 CHAIRPERSON HILL: Okay. Does the board have
15 any questions for the applicant?

16 MEMBER WHITE: Just the one question just so I
17 can check off the criteria. What is the exceptional
18 situation in this particular case where you need the
19 variance just so I can -- because the standard is much
20 higher, so the exceptional situation resulting in a
21 practical difficulty.

22 MR. FOWLER: We feel that there's a few
23 situations that qualify for that, and one is the ceiling
24 height. In order to achieve a code required ceiling
25 height we would have to do an addition. There's already a

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1 step down into the part of the second floor from the rest
2 of the second floor, so there's really no way to achieve a
3 7-foot ceiling height minimum in the back half of the
4 second floor of the house without building up a little
5 bit. Because this is a historic district; we're limiting
6 that height to match the existing height of the front part
7 of the house, so we're staying within the existing height.
8 So it's a very modest addition, but it's going to allow
9 the client to actually use the second half of the second
10 floor as habitable space. At this point it doesn't even
11 meet the minimum code requirement, so we feel that is --
12 that and along with the fact it's an extremely small
13 house, it's had a few modifications done to it over the
14 time that it's been there, and the existing layout just
15 isn't efficient for the use that the family that's
16 currently occupying it needs.

17 MEMBER WHITE: Thank you.

18 CHAIRPERSON HILL: Okay, anyone else? All
19 right, I'm going to turn to the Office of Planning.

20 MS. THOMAS: Good morning, Mr. Chair and
21 members of the board. Karen Thomas with the Office of
22 Planning. We stand on the record of our report with
23 respect to this case. We see that the exceptional
24 situation here with respect to the variances being
25 requested as being the fact that this is a real structure

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1 within a commercial district that has not quite afforded
2 the ease of a special exception with respect to if they
3 have to do renovations apart from the fact as well that
4 they -- apart from the -- notwithstanding the bulk non-
5 conformities -- you also have structural non-conformity
6 where, as the applicant explained, he couldn't do an
7 interior renovation without creating impractical living
8 spaces. So to that end, any type of renovation would be
9 not useful. And so they would have to do what they're
10 proposing to do. That said, the proposal also doesn't
11 extend any non-conformity with respect to the lot
12 occupancy and what they're asking for, rear yard and side
13 yard.

14 And so they would actually be reducing it to
15 some extent, so with that we would support the variance
16 request and the special exception as written in the
17 report. Thank you.

18 CHAIRPERSON HILL: Does anyone have any
19 questions for the Office of Planning?

20 Does the applicant have any questions for the
21 Office of Planning?

22 MR. FOWLER: No.

23 CHAIRPERSON HILL: Okay. Is there anyone here
24 from the ANC?

25 Is there anyone here wishing to speak in

1 support?

2 Is there anyone here wishing to speak in
3 opposition?

4 Okay. Is there anything else you'd like to
5 add?

6 MR. FOWLER: No, unless our client would like
7 to --

8 CHAIRPERSON HILL: It's Fowler?

9 MR. FOWLER: Sorry. Mike Fowler and Benjamin
10 Flowers.

11 CHAIRPERSON HILL: Are you related to Jennifer
12 --?

13 MR. FOWLER: Jennifer Fowler, yes. She's my
14 wife.

15 CHAIRPERSON HILL: I see; you're both
16 architects.

17 MR. FOWLER: Yes, we are.

18 CHAIRPERSON HILL: I see. And so do you -- you
19 don't come here that often?

20 MR. FOWLER: Not as often as she does, no.

21 CHAIRPERSON HILL: I see, but when you came
22 first, it was a little messed up, so you had to come back
23 again?

24 MR. FOWLER: Yes.

25 CHAIRPERSON HILL: When your wife comes it's

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1 really clean every time.

2 (Laughter.)

3 MR. FOWLER: Yes, it is.

4 CHAIRPERSON HILL: Okay, just to let you know.

5 MR. FOWLER: Thanks.

6 CHAIRPERSON HILL: All right, anybody else?

7 No?

8 All right, we're going to go ahead and close
9 the hearing. Or is the board ready to deliberate?

10 Okay. I didn't really have any -- I'm just
11 enjoying for a moment before it's not enjoyable. And so I
12 didn't have any issues with the application; I thought the
13 Office of Planning did a very good job in explaining how
14 they're meeting the standard and I would be in favor of
15 approving the application. Does the board have anything
16 else they'd like to add?

17 VICE CHAIRPERSON HART: Just that Mr. Fowler,
18 this is a fine application and I would also support it.
19 And I didn't have any other concerns with it, so I think
20 you met the criteria and the regulations. And that was
21 it.

22 CHAIRPERSON HILL: Okay. No?

23 MEMBER WHITE: No, I'm comfortable as well. I
24 did have one question, but you've already closed the
25 record, so I could probably just make a determination

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1 based upon what I see in the record.

2 CHAIRPERSON HILL: Okay, sounds good to me.

3 MEMBER WHITE: Okay.

4 CHAIRPERSON HILL: All right, then I'm going to
5 make a motion to approve Application No. 19655 as
6 captioned and read by the secretary and ask for a second?

7 VICE CHAIRPERSON HART: Second.

8 CHAIRPERSON HILL: Motion made and seconded.
9 All those in favor?

10 (Chorus of aye.)

11 Aye. All those opposed?

12 The motion passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 4 to 0
14 to 1. This is on the motion of Chairman Hill to approve
15 the application for the amended relief requested. Second
16 on the motion, Vice Chair Hart. Also in support Mr. Peter
17 May, Ms. White, we have a board seat vacant, the motion
18 carries, sir.

19 CHAIRPERSON HILL: Thank you, summary order?

20 MR. MOY: Yes, sir.

21 CHAIRPERSON HILL: Thank you. Thank you,
22 gentlemen.

23 MR. FOWLER: All right, thank you.

24 MR. MOY: I believe the next case application
25 before the board is Application No. 19664 of the Carnegie

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1 Institution for Science, caption advertised for special
2 exception under Subtitle C, Section 1504 from the
3 penthouse screening requirements of Subtitle C, Section
4 1500.6. This would permit renovations to the existing
5 office building in the MU-15 and RA-8 Zone. This is at
6 1530 P Street Northwest, Square 195, Lot 848.

7 CHAIRPERSON HILL: Okay, great. Good morning.
8 If you'd please introduce yourselves from my right to
9 left.

10 MR. RIPPETEAU: Hi, good morning. My name is
11 Darryl Rippeteau; I'm the architect. And with me is
12 Alexis Fleming, Chief Operations at the Carnegie
13 Institution.

14 CHAIRPERSON HILL: Okay, great. So Mr.
15 Rippeteau, are you going to be presenting to us?

16 MR. RIPPETEAU: Yes, I'd like to make a
17 summary.

18 CHAIRPERSON HILL: Sure.

19 MR. RIPPETEAU: It's essentially based on --

20 CHAIRPERSON HILL: Okay, just give me one
21 second. I just wanted to know if you were the one that's
22 going to be presenting or not.

23 So let's see -- I don't have a lot of specific
24 questions from your application, other than I guess I was
25 still trying to -- I didn't know if the ANC report came

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1 in, or maybe I missed it.

2 Oh, it did come in. Okay, then I can -- so if
3 you could just go ahead, Mr. Rippeteau and go through what
4 you're planning on doing and how you're meeting the
5 criteria for us to grant the request for the relief. I'm
6 going to put ten minutes on the clock just so I know where
7 I am and you can go ahead and start whenever you'd like.

8 MR. RIPPETEAU: Yes, briefly; we initially
9 designed a screening enclosure for the roof of the
10 Carnegie Institution. The project has proceeded in phases
11 so that the institution could put some of their staff in
12 temporary quarters, renovate parts of the building, move
13 staff back in and so forth. So we had a three-phase
14 process, and in Phase 1 during the preparation of permit
15 documents we did design a roof enclosure and the Office of
16 Zoning actually helped us because we could not comply with
17 the zoning regulations exactly on account of the
18 configuration of the existing roof. We learned in the
19 process of trying to design an enclosure that we -- in
20 order to meet all regulations we had to make it an
21 irregular shape, we had to make it in two parts that were
22 separated from each other, and it had to leap frog the
23 existing stair that was designed in the early part of the
24 last century. The stair giving access to the roof.

25 And it had to snuggle up to some existing roof

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1 houses made of copper, ventilated copper roof houses, and
2 it quite frankly was awkward. In addition to being
3 awkward, it's unattractive. The architect and owner
4 discussed the state of affairs as we moved forward with
5 the project and determined that we would try to gain
6 relief and not build the roof enclosure. The building is
7 not compromised by the new mechanical equipment; the new
8 mechanical equipment is provided to give outside air to
9 the interior spaces, something which was not accomplished
10 previously. The windows in the building, when the
11 building was built before air conditioning existed, the
12 building had windows for ventilation. But as a practical
13 matter the windows cannot be used for ventilation
14 throughout the air; it's impractical to open the windows
15 when it's hot and wet out and it's impractical when it's
16 cold.

17 So the building functions as a modern office
18 building and a modern assembly space in its auditorium and
19 a modern educational facility with a program for children,
20 all science-based. In other words, the introduction of
21 outside air was a major goal; it's been accomplished and
22 is necessary to the function of the Carnegie Institution.
23 That brought on the zoning requirement to enclose a large
24 area of the roof. Architecturally the original building
25 is characterized by small structures on the roof. It is

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1 populated with stone, copper and glass structures all
2 over. It has a series of vents, skylights and it has a
3 chimney, it has a pair of ventilators, it has a gooseneck.
4 And so the building as it exists, as it existed as a
5 historic structure had a roof that was populated with
6 stuff and it did not have a large, blank wall. And I may
7 not be doing as good an explanation as possible --

8 CHAIRPERSON HILL: You're doing fine, thank
9 you.

10 MR. RIPPETEAU: I have pictures that show with
11 and without and I brought them on a thumb drive if you
12 prefer that. And of course, we submitted pictures --

13 CHAIRPERSON HILL: I think we have all the
14 pictures that are in here, unless the board -- I don't
15 think we need anything else from you, so I think we're
16 okay.

17 You can keep going.

18 MR. RIPPETEAU: Well, that's the whole story in
19 a way, except I'll sum up; we as architects are trying to
20 adhere to the Vitruvius ancient suggestion to provide
21 firmness, commodity and delight. And in the case of this
22 enclosure, the Carnegie Institution, it is not firm. Our
23 structural engineer analyzed the design and recommended
24 against building it on account of the existing concrete
25 deck, and wind load and snow load. This roof enclosure

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1 would not provide commodity, it would not be commodious;
2 it would impede mechanics/activities on the roof. In
3 order to permit foot traffic to the new machines, we had
4 to put five doors in this enclosure because of the
5 irregular shape of the roof. And even putting this
6 enclosure we could not enclose everything, so there was
7 still historic parts that were visible.

8 CHAIRPERSON HILL: Okay.

9 MR. RIPPETEAU: Finally, from the standpoint of
10 delight, it was not delightful.

11 CHAIRPERSON HILL: Okay. I'm learning new
12 things. All right, let's see -- does the board have any
13 questions?

14 COMMISSIONER MAY: I just have a comment;
15 hearing zoning cases of various sorts for 13 years, I
16 don't recall anybody quoting Vitruvius before.

17 (Laughter.)

18 Although, I've mentioned firmness, commodity
19 and delight on occasion, but I appreciate going back to
20 architecture school for a minute.

21 CHAIRPERSON HILL: They're two architects. You
22 don't need to make a comment, that's okay. They seemed to
23 be amused.

24 All right, I'm going to turn to the Office of
25 Planning.

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1 MR. JESSICK: Thank you, Mr. Chairman and
2 members of the board. My name is Matt Jessick. The
3 Office of Planning is happy to rest on the record in
4 support of the application, but I'd be happy to take any
5 questions.

6 CHAIRPERSON HILL: Okay, does the board have
7 any questions for the Office of Planning?

8 MEMBER WHITE: Well, just for clarification;
9 what does the roof require in order to meet the parameters
10 of the relief that they're seeking? Are there any
11 conditions, or could you kind of explain in detail, or are
12 there no conditions associated with this application?

13 MR. JESSICK: The Office of Planning is not
14 recommending any conditions of approval, if that's what your
15 question was.

16 MEMBER WHITE: Yes, that's my question.

17 MR. JESSICK: Okay.

18 CHAIRPERSON HILL: Okay. Does the applicant have
19 any questions for the Office of Planning?

20 MR. RIPPETEAU: No, they've -- that was very
21 helpful.

22 CHAIRPERSON HILL: Okay, great. Thank you. Is
23 anyone here from the ANC?

24 Is there anyone here wishing to speak in support?

25 Is there anyone here wishing to speak in

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1 opposition?

2 All right. Mr. Rippeteau, you want to add
3 anything at the end?

4 MR. RIPPETEAU: I saw late yesterday that the ANC
5 posted a supportive note.

6 CHAIRPERSON HILL: Thank you, we do have that.
7 Thank you.

8 Okay, I'm going to go ahead and close the hearing.
9 Is the board ready to deliberate?

10 Okay, I didn't have any issues with this -- or
11 questions I should say really with the application. I
12 thought that their meeting the criteria for us to grant the
13 request and also I believe that the Office of Planning, his
14 analysis is very thorough. Does the board have anything else
15 they'd like to add?

16 Okay, then I'll go ahead and make a motion to
17 approve Application No. 19664 as captioned and read by the
18 secretary and ask for a second.

19 VICE CHAIRPERSON HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All
21 those in favor?

22 (Chorus of aye.)

23 Aye. All those opposed?

24 The motion passes, Mr. Moy.

25 MR. MOY: Thank you. I'm sorry, Mr. Chair; before

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1 I go over the vote count, who seconded? I'm sorry.

2 CHAIRPERSON HILL: Mr. Hart.

3 MR. MOY: Mr. Hart, thank you. Okay, staff would
4 record the vote as 4-0-1 and this was the motion for Chairman
5 Hill to approve the application for the relief being
6 requested, seconded the motion Vice Chair Hart. Also in
7 support Mr. Peter May and Ms. White, we have a board seat
8 vacant, the motion carries.

9 CHAIRPERSON HILL: Can we get a summary order, Mr.
10 Moy?

11 MR. MOY: Yes, sir.

12 CHAIRPERSON HILL: Okay, great. Thank you, guys.

13 MR. MOY: All right, next up before the board is
14 Case Application No. 19678 of Saint Patrick's Episcopal Day
15 School, captioned advertised for a special exception under
16 the use regulations, Subtitle U Section 2003.11 and under
17 Subtitle C Section 58 -- or actually that would have been L
18 -- Subtitle C Section 1504 from the penthouse requirements,
19 Subtitle C Section 1502.1. This would construct a new play
20 area, sports deck on the campus of an existing private
21 school, R1-B Zone at premises 4701 Whitehaven Parkway
22 Northwest, Square 1374, Lot 857.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
24 Good morning; if you could please introduce yourselves from
25 my right to left, or either way.

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1 MR. BARRETT: Peter Barrett, head of school St.
2 Patrick's Episcopal Day School.

3 MS. PRINCE: Allison Prince, Goulston and Storrs
4 here on behalf of St. Patrick's.

5 MR. HARRELL: Mike Harrell from Harrell and
6 Company Architects, architect for the project.

7 CHAIRPERSON HILL: All right. Ms. Prince, I see
8 some materials getting handed out, but I don't really have
9 a lot of specific questions. There's a lot of information
10 that's in the record, I think the record is thorough;
11 however, we would like to hear about -- there are some, or
12 there had been some back and forth in terms of some of the
13 conditions and I was trying to clarify. I think I understand
14 where we are with the conditions in terms of what has been
15 proposed, but perhaps you could go over the conditions a
16 little bit for us. And then I know that one of the
17 conditions the Office of Planning had was, I think it was --
18 the screening and so but it looks like there was a new design
19 put or update architectural plans that I think resolves that
20 issue. But still, if you want to go ahead and tell us about
21 what the applicant is trying to propose and do, and then how
22 they're meeting the standard to grant the relief requested.

23 I'm going to put ten minutes on the clock just so
24 I know where I am, and then you can begin whenever you like.

25 MS. PRINCE: Great, that's all we need, ten

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1 minutes. This is a simple application; we seek a special
2 exception approval to simply cover an existing surface
3 parking area with a sport court that will have a height of
4 11 feet, and then the top of the sport court there will be
5 a fence at the perimeter of the sport court that's an
6 additional 12 feet. So we're here for two areas of relief;
7 one is the standard special exception that applies to
8 independent schools when they add any GFA, and we fully meet
9 that standard; there are no objectionable conditions related
10 to noise, traffic, number of students. There's no change in
11 the number of students, there's no change in parking, and the
12 sport court is well buffered from surrounding properties.

13 Then the fence issue; I should note that we looked
14 at this issue very carefully under the new regulations.
15 Fences need to be set back similar to the rest of the
16 penthouse mechanical equipment, a distance equal to their
17 height. In this case if we were to set back the fence there
18 wouldn't be any useable area for the sport court. So we've
19 looked at ways with input from the Office of Planning to make
20 sure that we meet the standard for failure to set back the
21 fence by making sure that it is not visually intrusive. And
22 to do that we looked at the green screen concept which was
23 raised by the Office of Planning. In addition, we removed
24 the lower part of the fencing, the fencing that was below the
25 sport court that essentially enclosed the stairwell. That

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1 was a suggestion of the Office of Planning as well. So the
2 plans that were just downloaded into the record yesterday,
3 and that you have before you, have that green screen shown
4 as well as the removal of the lower portion of the fence.

5 I should note that the full height of this
6 structure, even with the fence, is only 23 feet, so we could
7 have building area within this entire volume and then we
8 wouldn't need fence setbacks. So it's sort of a technical
9 area of relief that we do agree with Ms. Brown-Robert's
10 comments that the fence was too visually intrusive when it
11 was not a green fence, one that will have vegetation. We
12 have the support of the Office of Planning; we agreed to all
13 of the Office of Planning conditions that are laid out in the
14 first page of the report. We have no objection from DDOT,
15 we have the full support of the ANC. So I can have Mike
16 Harrell, the architect, walk through the plans. I don't
17 think we need any information from Peter, unless you want to
18 hear why they need the sport court.

19 So Mike, if you could just walk through the plans.

20 VICE CHAIRPERSON HART: And if you could also
21 specifically talk about the green screen itself and how
22 you're looking for that to work.

23 MR. HARRELL: Yes, I will do that. There's a
24 cover sheet, of course, that has the information on it that
25 you have. There's also a site plan of the entire campus,

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1 both north, south. 4701 is the north portion which contains
2 the gymnasium and lots of sports areas, so that the -- any
3 side yard or rear yard intrusion is gone because they're
4 hundreds of feet away from any area. This is currently an
5 open parking lot that is somewhat an eyesore to Whitehaven
6 Parkway because you just see cars parked and a fence that
7 encloses some mechanical equipment that's an actual wood
8 fence that's been there quite some time.

9 What we weren't tasked to do was, if you follow
10 the next three pages, is the master plan that was prepared
11 for the school about outdoor play areas, we were tasked to
12 deal with, on the second page of this master plan option No.
13 3, was to create something over top to screen the parking,
14 as well as create probably the only flat area within the
15 school confines whatsoever. There are really no flat play
16 areas, except upon the hill and that has to be groomed in
17 order to do that.

18 Then the last page of the master plan enlargement
19 shows how that sports court was to be dealt with in a
20 preliminary design phase. What we tried to do is adhere to
21 that plan so that when they do this pollinator passage for
22 Option B for the outdoor play areas, it joins indirectly with
23 all this without creating any new retaining walls, without
24 creating any new passageways from the buildings.

25 So turn the page to the one that has the area

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1 looking north; that is the area from the previous --

2 VICE CHAIRPERSON HART: What page are you on?

3 MR. HARRELL: Well, let's see, I'll count them.
4 I didn't mark them.

5 VICE CHAIRPERSON HART: There's small numbers on
6 some of them; that's why I was asking.

7 MR. HARRELL: Oh, Page 5. And it looks like that,
8 which is an aerial view taken from the south. That is
9 superimposing the sports deck into the existing building
10 program as to how it would look.

11 CHAIRPERSON HILL: And Mr. Harold --?

12 MR. HARRELL: Harrell, yes.

13 CHAIRPERSON HILL: Harrell. I just wanted to also
14 know the, in one of the conditions from the Office of
15 Planning, again, the portion of the screen which extends to
16 the ground on the western most portion of the structure
17 should be eliminated. Can you point that out also when you
18 get to it?

19 You can go ahead and continue what you're talking
20 about.

21 MR. HARRELL: Yes, I will do that. It won't take
22 me but a minute to get there.

23 CHAIRPERSON HILL: Okay, thank you.

24 MR. HARRELL: In the aerial image it shows that
25 the adjacencies and the deep wood areas that are there. The

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1 next page shows existing site views in various areas, what
2 the parking lot looks like in the upper right from the yard
3 back to that, from the front of the gym across to the west,
4 and of the gym fact itself where the ramp of the bus takes
5 place, or the buses come out.

6 Now, the plans, when you go to the next page
7 you'll see plans. This is a plan of the existing as well as
8 the proposed open parking area so that we are not eliminating
9 any parking spaces. There are 19 currently there; the only
10 thing we're doing is imposing some columns to hold up the
11 sport deck, so that the 19 spaces that are there remain.

12 The next plan over, the next page, essentially is
13 the way the sports deck would relate to the property, the
14 topo, the existing stair that goes up to the upper field
15 would be taken down in order to modify a bit, but then
16 replaced. A ramp up to the sports deck and then a trail
17 leading out could be imposed from the upper left-hand side
18 of the sports deck where the double doors are going out into
19 the field. The area you just asked about, Mr. Hart, about
20 the screening, the screening did enclose the stair at one
21 point and come all the way out to the building setback line
22 which is the curve, the arc line you see in front of the
23 building; we've removed that and kept that all flush so that
24 the green screen and the fence combination only extends the
25 actual deck about 2 inches. The green screen essentially is

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1 a mesh screen, different from a -- it's a panelized, modular
2 screening so that the fence is a regular fence, so this is
3 to grown green. So the bottom of it will have troughs, and
4 then the school will maintain green growing up through that
5 screen.

6 The next page shows the elevation along Whitehaven
7 Parkway. So we had the screen going all the way down
8 covering the left opening into the parking area, and it also
9 enclosed the stair. We had essentially done that for
10 security purposes for people not just climbing the stair from
11 the street. There was an objection to that screen going all
12 the way to the ground, so we stopped it just below the deck
13 and left the stair as an open area with a security gate at
14 the top. So it's pretty much the same idea except everything
15 is flush.

16 The western elevation on the next page also
17 illustrates how the screen is stopping at the deck. So the
18 fence is behind the screen, but the screen is in place to
19 modulate the image, kind of keep the image faded away from
20 the front.

21 The next page is a section showing how this
22 project relates to the existing building with the parking
23 below and the ramp area and the mechanical equipment spaced
24 below it.

25 Now, the images probably on the next page tell the

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1 best story. The existing look from Whitehaven Parkway you
2 can see in the middle of the page, the photograph, the
3 existing cars. You can also see in the middle a wooden fence
4 that encloses the mechanical equipment. The same view a
5 little bit further down the street essentially would do the
6 idea of screening that entire addition completely, including
7 the parking. So the parking would be done to match the
8 building face with face block of the same color, the stair
9 will be concrete, and the green screen will use various types
10 of ivy growing up to keep a light texture, to keep the canopy
11 in place so that the trees in front and the green screen in
12 the front have a different texture.

13 The next page shows the way it looks currently
14 from up on the hill behind the open parking area. And then
15 following that, shows the view looking south.

16 The next pages show a compilation of those
17 existing versus new photographs and there on the last drawing
18 is a setback diagram showing how many feet are set back.

19 VICE CHAIRPERSON HART: And so you're saying
20 there's kind of a trough underneath the screen itself that
21 provides the --?

22 MR. HARRELL: There's a screen which is using 4x4
23 posts and then there's a rod that attaches the screen. The
24 screen is separately attached, panelized screen using finer
25 mesh as a screen.

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1 VICE CHAIRPERSON HART: Sure.

2 MR. HARRELL: And it's in light gray so that when
3 against the sky it would just disappear, hopefully would
4 disappear with the exception of the green area.

5 VICE CHAIRPERSON HART: And the way it hits the
6 ground it is --?

7 MR. HARRELL: It stops at the deck; it does not
8 go to the ground.

9 VICE CHAIRPERSON HART: And so the plant material
10 is planted in --?

11 MR. HARRELL: There's a border. Let me take you
12 to the elevation and I will try to -- if I can remember which
13 page it's on.

14 Just after the plans there is the final elevation.
15 Yes, south elevation showing part of the building. Along the
16 band, right above the split-face block, there is a band that
17 matches the --

18 CHAIRPERSON HILL: I'm sorry; you need to speak
19 into the microphone.

20 MR. HARRELL: Sorry about that, thank you. The
21 screen runs down to the area just above the opening to the
22 garage from the outside. Along that area would be fastened
23 the planting feeders just at the bottom. They would also run
24 back, all the way back to the back of the sports deck. So
25 they're from the west and from the south, all you see is

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1 planting material and screening. And obviously get a vague
2 sense of kids playing behind a fence. But the fence, the
3 whole idea of the screens to make the fence pretty much
4 invisible as much as possible, but still give the management
5 of the school the ability to see what's going on, if
6 something is going on there.

7 VICE CHAIRPERSON HART: Yes, I apologize for that.
8 I was just trying to make sure that there was some planted
9 area, and it was hard for me to see that on the actual
10 drawings themselves.

11 MR. HARRELL: Yes, I got it.

12 VICE CHAIRPERSON HART: That's what I was trying
13 to get to, because the main idea is to make sure that they
14 actually stay green. And so if you have very little area for
15 it to grown from, then that likelihood is less likely. And
16 so I'm just making sure that, that is something that is, will
17 be allowed.

18 MR. HARRELL: That's where we're in discussions
19 with the landscape architects for the project now to try to
20 make sure we get the right border along the bottom for that
21 to grow. So that's -- we're preparing in construction
22 drawings at the moment.

23 MEMBER WHITE: So the parking lot is underneath
24 the sports deck?

25 MR. HARRELL: Underneath the sports deck.

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1 MEMBER WHITE: Yes.

2 MR. HARRELL: It's just the existing parking lot
3 with a few columns coming down, and then the deck is on top.

4 MEMBER WHITE: Right. So the ceiling is cement?

5 MR. HARRELL: Yes.

6 MEMBER WHITE: Right, and then you build the deck
7 on top of that?

8 MR. HARRELL: Yes. Actually, it's the same
9 concrete, so we're just basically using a tennis court
10 technique for putting latex images on there.

11 I'm sorry; I'm not in the microphone. Latex
12 images so you can actually have different play surfaces. We
13 chose not to use anything more than a concrete play surface
14 so that they can change the game striping as time goes on.

15 MEMBER WHITE: And there's lighting all around
16 that as well?

17 MR. HARRELL: No, there's not lighting, except for
18 security lighting on the existing, to be put on the existing
19 building that has a sharp cut-off right at the edge of the
20 sports deck. Just to illuminate it in case there's somebody
21 on it at an inappropriate time.

22 MEMBER WHITE: Mm-hmm.

23 CHAIRPERSON HILL: Okay. So just so I'm clear on
24 the conditions; the prior orders conditions from 18465 those
25 are still in effect and you all agree to those?

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1 MS. PRINCE: Correct.

2 CHAIRPERSON HILL: Okay. And then the only other
3 condition from the Office of Planning that I see are the
4 screens should be covered with material or vegetation
5 visually less than the starkness of the metal as viewed from
6 Whitehaven Parkway?

7 MS. PRINCE: Yes.

8 CHAIRPERSON HILL: No. 2 you've taken care of now.
9 No. 3, lighting for the parking and the play area sports deck
10 shall be downward focused and limited to that required for
11 security purposes?

12 MS. PRINCE: Yes.

13 CHAIRPERSON HILL: And No. 3, no light fixture
14 attached to the play area sports deck shall be visible from
15 any occupied level of a Berkeley Terrace residence and -- I'm
16 sorry; Berkeley Terrace residence?

17 MS. PRINCE: That's fine.

18 CHAIRPERSON HILL: Okay. So does anybody have any
19 more questions for the applicant?

20 Okay, again turn to the Office of Planning.

21 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
22 members of the BZA. For the record, Maxine Brown-Roberts.
23 I'm going to stand on the record, I think the applicant has
24 gone through all of the issues that I had, that I highlighted
25 in the report, and that they did meet all the requirements

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1 for the school, the playground and the setback requirements.

2 Thank you, Mr. Chairman.

3 CHAIRPERSON HILL: Does anyone have any questions
4 for the Office of Planning?

5 MS. PRINCE: No questions.

6 CHAIRPERSON HILL: All right, is there anyone here
7 from the ANC?

8 Is there anyone here wishing to speak in support?

9 Is there anyone here wishing to speak in
10 opposition?

11 All right. Ms. Prince, anything else?

12 MS. PRINCE: No further comments.

13 CHAIRPERSON HILL: All right, great. I'm going
14 to go ahead and close the record. Is the board ready to
15 deliberate?

16 Okay, I thought that the applicant made a very
17 good presentation. I didn't have any questions with the
18 application. I thought that the Office of Planning also went
19 through very carefully and described how the standards were
20 being met for us to grant the application, and I would be in
21 favor of it with the conditions that I had mentioned before,
22 as well as the prior order conditions. Does the board have
23 any comments?

24 MEMBER WHITE: My only comment is that it appears
25 that they've also met the conditions for special exception

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1 under the private school use sections as well as setback, and
2 just special exception in general. It also is clear to me
3 that these other conditions from the prior order have been
4 in place for some time and I imagine because the school has
5 been a good neighbor and there seems to be a lot of support
6 for this project, so I would be in support of it as well.

7 CHAIRPERSON HILL: Thank you. Anyone else?

8 Okay. All right, then I will go ahead and make
9 a motion to approve Application No. 19678 as captioned and
10 read by the secretary, including the prior conditions from
11 Order No. 19465, as well as the agreed conditions we read
12 into the record that the applicant agreed to, and ask for a
13 second?

14 VICE CHAIRPERSON HART: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All
16 those in favor?

17 (Chorus of aye.)

18 Aye. All those opposed?

19 The motion passes, Mr. Moy.

20 MS. PRINCE: Thank you.

21 MR. MOY: The staff will record the vote as 4 to
22 0 to 1, this on the motion for Chairman Hill to approve the
23 application for the relief being requested, along with the
24 conditions as cited by the board, second by Vice Chair Hart,
25 also in support Mr. Peter May, Ms. White, we have a board

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1 seat vacant. The motion carries.

2 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
3 And we're going to do a summary order of that, please.

4 MR. MOY: Thank you.

5 CHAIRPERSON HILL: Okay. Thank you, guys. We're
6 going to take a break, a quick break, and then we're -- we're
7 moving through the day a lot faster than I thought we were
8 going to move, so if you're here for Application No. 19655
9 we're going to hear it probably even before lunch and see how
10 that goes. So just to let everyone know.

11 Thanks, we'll be back in a few minutes.

12 (Whereupon, the above-entitled matter went off the
13 record at 10:41 a.m. and resumed at 10:50 a.m.)

14 CHAIRPERSON HILL: All right Mr. Moy you can start
15 whenever you like.

16 MR. MOY: Thank you, Mr. Chairman.

17 Before I call the next case on the docket, I just
18 want to announce for the record that staff has been in
19 communication with the Applicant to Case Number 19646 of
20 Claude and Kira, K-I-R-A, Vol. And apparently there was some
21 misunderstanding as to the hearing date and the circumstances
22 of her application.

23 So during that conversation, the Applicant made
24 a request to reschedule the hearing to next week, which would
25 be February the 7th. So, if that's agreeable with the Board,

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1 then that's what it would be.

2 CHAIRPERSON HILL: Okay, that's fine, Mr. Moy.

3 MR. MOY: All right.

4 CHAIRPERSON HILL: Okay, very good.

5 MR. MOY: All right, so back to okay, the parties
6 are swift. This is Case Application Number 19681 of Rock
7 Creek - Takoma Theater, LLC. Caption advertised for a
8 special exception under Subtitle H, Section 1200 from the
9 designated use requirements of Subtitle H, Sections 1101.1,
10 1101.3. This would reuse an existing theater as a medical
11 office in the NC-2 and MU-4 zone. This is at premises 6833
12 4th Street NW, Square 3280, Lot 31.

13 CHAIRPERSON HILL: Great, thank you, Mr. Moy.
14 Will you please introduce yourselves from my right to left?

15 MS. CASARELLA: Maria Casarella, Cunningham|Quill
16 Architects.

17 MR. ANDRES: Good morning, Erwin Andres with
18 Gorove-Slade Associates.

19 MR. AVITABILE: David Avitabile with Goulston and
20 Storrs, land use counsel for the Applicant.

21 MS. JACOBSON: Good morning, Jenna Jacobson with
22 Rock Creek Property Group, owner and developer of the
23 property.

24 MR. QUIRK: Good morning, Bill Quirk with
25 Children's National Health System.

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1 CHAIRPERSON HILL: Okay great. Who is going to
2 be presenting to us?

3 MR. AVITABILE: That would be me.

4 CHAIRPERSON HILL: Okay, great. And how do you
5 say your name again, sorry.

6 MR. AVITABILE: Avitabile.

7 CHAIRPERSON HILL: Avitabile. Okay. All right,
8 Mr. Avitable, let's see. I don't have a lot of specifics
9 about the case, so I guess I'd like to hear again kind of
10 the, what you're proposing, or what your Applicant is
11 proposing? Your client that is, and also how they're meeting
12 the standards for which we can grant the relief requested?

13 I am a little curious, so you can go into it a
14 little bit so that like DDOT's concerns. And it seems as
15 though they aren't in denial or objection to your TDM plan.

16 MALE PARTICIPANT: Is it TDM?

17 CHAIRPERSON HILL: Yes, TDM plan. But maybe
18 provide a little bit more clarity as to their comments.
19 Other than that does anyone else have anything specific?

20 VICE CHAIRPERSON HART: Just one minor question
21 around how the historic nature of the building makes it
22 difficult to market it? You've mentioned it and I just
23 wanted to kind of, I'm assuming you'd talk about it but --

24 MR. AVITABILE: Certainly. So I'll do a brief
25 overview and then I think --

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1 CHAIRPERSON HILL: Mr. Avitabile, I'm just going
2 to put 10 minutes on the clock, just so you know.

3 MR. AVITABILE: Perfect.

4 CHAIRPERSON HILL: Okay.

5 MR. AVITABILE: All right, so I'll do a brief
6 overview and then I'll make sure we address both of those
7 concerns.

8 So, we're here today to present an application for
9 a special exception. It's from the designated use
10 requirements of the neighborhood commercial zone up in
11 Takoma. This is for the Takoma Theater, which is an existing
12 building. It's a contributing resource in the historic
13 district.

14 The building was actually renovated, pursuant to
15 plans approved by HPRB. And the renovations have nearly
16 completed, if not fully completed at this time.

17 It was renovated on spec, and during that two year
18 period, Rock Creek, the Applicant, went out and was
19 attempting to lease the building. Consistent with the
20 requirements of the zoning which would require that 50
21 percent of the ground floor be set aside for designated uses.

22 And designated uses include not only restaurant,
23 retail, general service uses, they also include uses like
24 residential use and animal boarding. It's a relatively wide
25 range of uses, but it still, it prescribes, you know, certain

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1 limitations and what you can have within that space.

2 And here the challenge is, it's a confluence of
3 factors, it's a combination of the fact that the theater
4 itself is a relatively large building. The ground floor
5 plate is over 10,000 square feet, which means our requirement
6 for our designated use space would be over 5,000 square feet.

7 At the same time, the theater, it's a relatively
8 long and narrow building. It fronts on 4th Street, which is
9 the designated street, with the bulk of the length of the
10 building is on Butternut, which is not a designated use.

11 And because it's an historic structure, there's
12 a limited ability to make openings in the building,
13 particularly along Butternut which is historically the side
14 of a theater. And you know is largely masonry.

15 So, our challenge was trying to go out and market
16 the space for a large user. There wasn't really an ability
17 to carve that 5,000 square foot space up for multiple
18 tenants.

19 And so we had to try out and go find a large user
20 and the applicant spent over two years. We provided evidence
21 in our prehearing submission of the extensive efforts they
22 made to reach out through various means and try to identify
23 potential tenants. They followed up with many initially
24 interested parties.

25 But what we learned was because of the size of the

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1 space and its location, it was hard to find a good match.
2 That someone that wanted to come into the space given its
3 size. And so we continued marketing. And we did identify
4 Children's as an interesting tenant for the whole building,
5 if they could have taken it.

6 And they as a medical care use are permitted in
7 the zone. But do not fit within the list of uses that fit
8 within the designated use category. And so we realized we'd
9 need to go and ask for some flexibility from the regulations,
10 which is contemplated and allowed within the neighborhood
11 commercial zones to allow Children's to be in there.

12 And so what we did is we worked very carefully
13 with ANC, and the Office of Planning, to come up with a
14 framework that would meet the intent of the overlay. And so
15 that's the plan that's submitted before you. Where we've got
16 two spaces on 4th Street that will be set aside as
17 neighborhood commercial designated use spaces, like the
18 retail or restaurant space.

19 We prepared test fits, and they were included in
20 our submission, and included as work. And then the rest of
21 the building would be used by Children's. We think bringing
22 Children's, they will bring the outpatient facility here to
23 the site, actually will help the overlay.

24 Or I should say the neighborhood commercial zone.
25 Because they will generate daytime activating use that will

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1 help populate and patronize the rest of the retail and other
2 uses within the neighborhood commercial zone.

3 So, I think on balance we meet the tests. You've
4 got an exceptional condition here where you've got this
5 confluence of an existing structure that's not only
6 relatively large, requiring a large user within the space.
7 But it's also historic which limits your ability to carve it
8 up into smaller uses and maybe lease it more effectively that
9 way.

10 We've got an architectural design that was not
11 only supported by the Historic Preservation Review Board,
12 which one of the specific requirements of the regulations.
13 But also will generally enhance the urban design. It places
14 the activity on 4th Street, which is the designated space.
15 And will bring some activity.

16 The proposed uses here will advance the purposes
17 of the neighborhood commercial zone. Not only will the
18 designated use spaces that we've provided in the building do
19 that of course, but Children's use will help support it as
20 well.

21 One of the problems that we do often have in a lot
22 of these neighborhood commercial zones is these types of
23 daytime uses. And this is something that the old Takoma
24 Business Association actually specifically observed in a
25 recent study, was something that was necessary in this area

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1 to help support these uses.

2 So we think we're very complimentary to the goals
3 of the zoning regulations. And then finally the proposed
4 uses won't have adverse impacts on surrounding properties.
5 And in fact that was really one of the key issues here.
6 Because the theater is located right at the end of the
7 commercial district, right where it's abutting and adjacent
8 to the residential neighborhood.

9 And a number of those residential neighbors did
10 not want us to bring in a large 5,000 square foot bar or
11 restaurant, or nightclub, or you know, other type of use that
12 might have not insignificant noise or other impacts. They
13 were supportive of the idea of bringing Children's in as a
14 daytime use that would be complimentary to their residential
15 uses right next door.

16 So on balance, we think we meet all those aspects
17 of the task. To the specific questions that were raised.
18 As you note, there were also conditions in the ANC report.
19 We have agreed to all the conditions in the DDOT report as
20 well the conditions in the ANC report.

21 We submitted draft conditions this morning, and
22 just distributed them earlier for your review. Those would
23 fully, you know, memorialize what we've committed to ANC and
24 to DDOT.

25 To DDOT's concerns in particular, they're

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1 interested in us having some bike parking at the building.
2 We've agreed to do that. I don't think it's actually legally
3 required under the zoning regulation because all we're doing
4 here is changing the use of the historic building, which by
5 itself does not require provision of bike parking. That
6 said, we've agreed to provide it.

7 And we've also agreed to adhere to our TDM
8 package. And I think we've also as I understand it, Erwin
9 can speak to this in detail, Children's does also participate
10 in some other TDM package measures that go above and beyond
11 certain arrangements.

12 MR. ANDRES: Yes, so the Children's Hospital as
13 an organization does subscribe to Transportation Demand
14 Management, that includes subsidies for their employees.

15 MR. AVITABILE: So I think not only have we done
16 everything that DDOT asked us to do, and conditions there are
17 no objections on, we're also doing, you know, the things that
18 they've suggested we do even though they didn't condition
19 their approval on that.

20 And then regarding the historic nature of the
21 building. Maria, if you want to speak to that briefly?

22 MS. CASARELLA: I think Mr. Avitabile summed it
23 up correctly, in that the major defining features, historic
24 defining features are on 4th Street. And when the HPRB
25 reviewed the project that's built today, particular attention

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1 had to be given to the restoration of the canopy, and the
2 marquis, and the store fronts on 4th Street.

3 And that Butternut Street is really a secondary
4 architectural feature of the building. But they paid careful
5 attention to not having any projections for windows, or any
6 change in the street relationship of that elevation to
7 Butternut Street. And that you could always perceive the
8 major volume of the theater. So, to introduce new entryways,
9 new canopies would go against its historic character.

10 VICE CHAIRPERSON HART: Thank you.

11 MR. ANDRES: So with that we're happy to stand on
12 the rest of the record, and answer any further questions.

13 MEMBER WHITE: So you are in agreement with all
14 the conditions in the TDM plan?

15 MR. ANDRES: Yes.

16 MEMBER WHITE: And all the comments from DDOT?

17 MR. ANDRES: Yes.

18 MEMBER WHITE: You've incorporated all of the ANC,
19 what is it 4C or 4E?

20 MR. ANDRES: 4B.

21 MEMBER WHITE: 4E, all of their --

22 MR. ANDRES: B

23 MEMBER WHITE: -- rather B, conditions as well?

24 MR. ANDRES: Yes we have. On that I did want to
25 note, one of the conditions, the first condition that the ANC

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1 asked for was that we would limit the special exception to
2 Children's National Medical Center as the user of the space.
3 And that at such time that Children's is no longer the user
4 of the space, the special exception would go away. And we
5 would have to come back, or the property owner at that time
6 would have to come back, and ask for relief again. We agreed
7 to that condition.

8 We did that with full knowledge, and the ANC's
9 full knowledge that the Board has historically not adopted
10 conditions that are tied to a specific user of property.
11 There's a case law that goes back decades on that point. We
12 talked with ANC about an alternative that would be acceptable
13 based on past precedent, which is to limit the condition to
14 a specific use. And in this case we offer pediatric medical
15 care use.

16 However, it was important to the ANC that we ask
17 the Board to consider limiting the use to Children's. We've
18 agreed as the Applicant, to bind ourselves. And so at this
19 point, we'd, you know, we'd ask the Board to consider
20 adopting the condition as we proposed it.

21 CHAIRPERSON HILL: Okay, Ms. Nagelhout. Can I ask
22 a question about that? I mean, I thought that the condition
23 was, can we do that? We can put the condition to the tenant?

24 MS. NAGELHOUT: No, as the Applicant says, the
25 Court of Appeals has said that the relief you grant runs with

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1 the land. You cannot restrict it to any particular user.
2 On the other hand if that's what the Applicant is proposing
3 to you that they want to do, I think you could adopt this
4 condition. It's sort of a term, but instead of a term for
5 a special kind of time, it's for this particular tenant.

6 CHAIRPERSON HILL: Okay. All right. Does the
7 Board have any questions for the Applicant?

8 MEMBER WHITE: And there's no opposition that you
9 face from the neighbors?

10 MR. ANDRES: No, I think there was extensive
11 discussion with the ANC through their Design Review
12 Committee, we appeared two different times. The discussion
13 the first time was 90 minutes, and the second time was an
14 hour. I think it was the spirited discussion about the pros
15 and cons of reserving the space purely for retail or other
16 designated uses.

17 First is opening it up to this other use, and
18 perhaps ameliorating concerns about impacts on the
19 residential neighbors as well as perhaps generating some
20 daytime activity. And on balance with all the conditions
21 that we agreed to, the ANC ultimately concluded this was the
22 right balance.

23 MEMBER WHITE: Okay, thank you.

24 CHAIRPERSON HILL: Okay. I'm going to turn to the
25 Office of Planning.

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1 MS. THOMAS: Good morning again, Mr. Chair,
2 Members of the Board. I think the Applicant has explained
3 its case thoroughly before the Board. The Office of Planning
4 will stand on the record of our report. And I'd be happy to
5 take any questions. Thank you.

6 CHAIRPERSON HILL: All right. Does anyone have
7 any questions for the Office of Planning?

8 Does the Applicant have any questions for the
9 Office of Planning?

10 MR. ANDRES: No, we do not.

11 CHAIRPERSON HILL: All right. Is there anyone
12 here from the ANC?

13 (No audible response)

14 CHAIRPERSON HILL: Is there anyone here wishing
15 to speak in support? Oh, great, come on forward.

16 Okay, have you all been sworn in today?

17 (Off microphone comment)

18 CHAIRPERSON HILL: Okay, that's fine. Well let
19 me, Mr. Moy, if you wouldn't mind just administering the
20 oath? If you wouldn't mind. And if we missed anybody who's
21 going to testify later, if you want to stand and take the
22 oath please, administered by the Secretary to my left.

23 MR. MOY: Good morning. I think it's still good
24 morning. Do you solemnly swear or affirm that the testimony
25 you are about to present in this proceeding is the truth, the

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1 whole truth, and nothing but the truth?

2 MULTIPLE PARTICIPANTS: I do.

3 MR. MOY: Thank you, you may be seated.

4 CHAIRPERSON HILL: Okay, if you could introduce
5 yourselves from my right to left? Yes, please.

6 MS. NEUMANN: Hi, I'm Loretta Neumann. I'm
7 President of the Takoma Theater Conservancy.

8 MR. SCHWARTZ: My name is Paul Schwartz. And I'm
9 the closest living person to the front door of Takoma Theater
10 at 6827 4th Street NW in Takoma Village Cohousing.

11 CHAIRPERSON HILL: Okay.

12 MR. SCHWARTZ: A resident.

13 MS. GREEN: And I'm Sara Green. I've lived in the
14 community for 40 years on 7106 Piney Branch Road. And I'm
15 someone who's just spent a lot of her physical and emotional
16 life in support of that theater.

17 CHAIRPERSON HILL: Okay, all right, great. Let's
18 see. So, Ms. Neumann, I'm going to start with you. And I'm
19 going to put three minutes on the clock for you.

20 (Off microphone comment)

21 CHAIRPERSON HILL: You need to push the button,
22 and you are correct. You can go ahead and say it out loud.

23 MS. NEUMANN: I thought I'd get five as an
24 organization?

25 CHAIRPERSON HILL: Okay, that's good. So, just

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1 to let everybody know here. Ms. Neumann is here as an
2 organization. So, she will get five minutes to testify.
3 Other citizens will get three minutes to testify. So, Ms.
4 Neumann you can go ahead and give your five minutes of
5 testimony whenever you like.

6 MS. NEUMANN: Thank you, and I might not use it
7 all.

8 CHAIRPERSON HILL: That's all right.

9 MS. NEUMANN: I have been working to save the
10 Takoma Theater since 1978. And in fact, Sara Green and I,
11 and her husband, and my then husband ran a neighborhood
12 film's association and rented it, leased it from the then
13 owner. Time went by. The owners changed. The new owner
14 turned it into, actually a performing arts theater. And then
15 time went by and that didn't work for him.

16 And then he put in, in 2000, about 2002 or '03 he
17 put in a -- or was it 2005? But anyway in the mid-2000s he
18 put in an application to demolish the theater. At that time,
19 well of course we've resurrected, we had run the theater also
20 under another organizational name, the Takoma Theater Arts
21 Project for two years, which showed that it could work as a
22 theater.

23 But the owner was so upset with the community
24 because his plays weren't successful. That was why he
25 decided he would just tear it down. He wanted to build

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1 apartments or an office building or something else.

2 So, in 2007 we formed the Takoma Theater
3 Conservancy. And we had two goals. One, was to save the
4 theater from being torn down. And the second, was to revive
5 it as a community cultural arts and education center. And
6 we worked very hard. We gathered support. We raised money.
7 We did everything we could.

8 At one point, it looked like we would be able to
9 buy it. We certainly had at least pledges of money that
10 could have purchased it at the time, but the owner refused
11 to sell to us. And kept pursuing through the HPRB, and then
12 the Mayor's Agent on historic preservation, applications to
13 tear it down.

14 Fortunately, a new owner has come along, purchased
15 the theater from the previous owner's daughter. And they
16 proposed to do a commercial building. And at that point, we
17 had worked hard to locate an organization, a theater group,
18 or whatever, educational group who'd be interested in using
19 the whole theater. And that would be our preference even
20 today, if that could have been done.

21 But we were unsuccessful, and then the new owners
22 they reached out. We gave them the list of the people we had
23 contacted earlier, and they contacted them too. The problem
24 is most of the theaters in the city are nonprofit. And
25 they're nonprofit for a reason. You don't make a profit on

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1 a theater.

2 So, it's really hard to market something like
3 that. So, time goes by, and we watched carefully what
4 they're doing with the theater. We've testified at HPRB on
5 the plans. They were certainly better than what had been
6 planned before. So, we generally supported that.

7 And then today with the provision of the, and the
8 opportunity in fact to have the Children's Medical Center
9 there, that is a use that we find beneficial to the community
10 and to frankly, as on a morale issue, for society as a whole.

11 But we also know that, we want to hold the feet
12 to the fire on some of the zoning provisions having to do
13 with some uses there for the neighborhood retail. We had
14 worked hard on an overlay zone for that building, that whole
15 stretch, so that we would have that. And hopefully one day
16 brighten that corner in some fashion.

17 I do feel that this proposal that they have now
18 before you, would do that. And so we support it. And in
19 addition, although if at some point it ever changed again,
20 and there was an opportunity to come back and maybe get that
21 5,000 square feet used for a black box theater in it, we'd
22 support that too. But we're not pushing that at the moment.

23 We also have noted that many people have asked for
24 that corner at Butternut and 4th, be made into a small
25 restaurant. And if it is, they're going to need to have a

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1 liquor license, at least wine and beer to have an evening
2 constituency. I myself would like a glass of beer or wine
3 when I go out to dinner. So, we would support that.

4 I know that the ANC recommendation calls for
5 something like no bar. I think the intent there was just not
6 to have it be a bar. There is no such term in the alcoholic
7 beverage regulations, but I know what they mean. They mean
8 a standalone bar, I'm assuming. At any rate, we would not
9 support a bar in that term. But we do support a restaurant
10 with alcohol.

11 And I guess that's all I have to say. I don't
12 know if I took up my whole five minutes. I didn't take up
13 the whole five minutes though.

14 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
15 Neumann. Mr. Schwartz.

16 MR. SCHWARTZ: Yes, thank you for the privilege
17 of being able to give oral testimony to the BZA on this case.
18 I've live 17 years with the Takoma Theater in my back yard,
19 literally. So I have propinquity with the parking lot and
20 the theater.

21 And as Ms. Neumann testified, there's quite a
22 history there. But since we've lived there, we've seen the
23 theater start to be demolished by neglect, with all sorts of
24 physical dangers, and other problems. And we are impacted
25 by the theater's storm water runoff. And by whatever use is

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1 there in terms of lighting, and the parking lot next to us
2 et cetera, et cetera. So, we have an obvious stake in what
3 the use is, or uses are of that theater.

4 I come here in support of the exception, with the
5 modification and changes that were made by the ANC 4B Design
6 Committee that had been stipulated by Rock Creek Management
7 Properties that they accept. And I just wanted to make two
8 notes that are specific.

9 One is that if there is going to be a restaurant,
10 we would support a wine and beer -- I would support. I can't
11 speak for Takoma Village Cohousing, because I'm not a
12 spokesperson for the condo association, but would support
13 that.

14 In addition to that though, we're concerned that
15 the condition that the ANC 4B put in there about the parking
16 lot being available for general community parking until 11
17 o'clock. Just we're a little worried about the noise and
18 the, you know, sort of in and out not being controlled in
19 that parking lot, which is right in our back yard. And just
20 want to make sure that there's some type of controls that
21 makes sure that it doesn't become a nuisance to the families.

22 My next door neighbor has three children including
23 a newborn yesterday. And we have a number of frail elderly
24 who go to bed early, who have the theater as their back yard.
25 So, we're generally in support.

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1 And we just name those two concerns in addition
2 to things like obtrusive lighting, and where the trash dumps,
3 or gets -- we look forward to a good relationship with Rock
4 Creek, continued good relationship with Rock Creek and
5 National Children's Hospital and their use. Thank you.

6 CHAIRPERSON HILL: Thank you. Ms. Green.

7 MS. GREEN: Hi, I've already identified myself and
8 my address. And to say again I'm speaking for myself only
9 and not for anybody else or any group.

10 I'm also in support of the ANC recommendations and
11 the statement made by Loretta Neumann. And I just wanted to
12 say, without Loretta Neumann, without the Conservancy, that
13 building would be in tatters on the ground. They saved it
14 over 20 plus years from demolition by neglect.

15 Not with a lot of support from the city or anybody
16 else in many cases. Yes, in some. But this is heroic work
17 and I'm so grateful that they were able to do that. I also
18 am grateful to Rock Creek. I think they did a wonderful job
19 in restoring that building, and in retaining its spirit.

20 So, I want to thank the architect and the owner,
21 and everybody else. Because I think they did a wonderful
22 job. And it may not have come out that way. I mean it's
23 good work.

24 The last thing I wanted to say is that I think the
25 term in the conditions that say no bar is allowed. I'm going

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1 to restate that as well. Because we know there is no such
2 thing as a bar license in D.C. You have a restaurant
3 license. You have a tavern license.

4 And I think this way, and I think a lot of my
5 neighbors think this way. That it needs, you could serve
6 alcohol. I'm not going to go on the record about beer or
7 wine or cocktails or anything else. I think alcohol is fine
8 there, as long as it's a restaurant.

9 With those conditions that the current ABC law
10 requires, it's 45 percent food, and there's some other stuff.
11 But it needs to be a restaurant, I think. And it needs to
12 be made very clear so there is no ambiguity 10 years from now
13 when somebody wants to run a tavern there as per ABC law.
14 I think everybody needs to be clear about it.

15 And I thank you very much for the opportunity to
16 testify. And for helping to make this theater into something
17 I hope that will be an asset to the community.

18 CHAIRPERSON HILL: Great, thank you. Does the
19 Board have any questions for the witnesses?

20 (No audible response)

21 CHAIRPERSON HILL: Okay, I'll let you make comment
22 Ms. Neumann, just one question. Did you all go to the ANC
23 meeting? All of you did?

24 MR. SCHWARTZ: Yes.

25 MS. GREEN: Yes.

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1 CHAIRPERSON HILL: I was just curious.

2 MS. NEUMANN: I did not.

3 CHAIRPERSON HILL: Okay, Ms. Neumann. You had a
4 comment also, you were wanting to make.

5 MS. NEUMANN: Okay, well I was at the design
6 review meeting, both of them. And so, I didn't feel the need
7 to go to the actual ANC when they voted. But they --

8 CHAIRPERSON HILL: I was just curious, you had a
9 comment you were about to make?

10 MS. NEUMANN: Yes, I do. Well, I forgot to
11 mention that we're -- included in the stipulations from the
12 ANC that came through the work that we had done with Rock
13 Creek in discussions about having some elements of what, you
14 know, like a museum quality in there of artifacts and
15 photographs, and such of the theater. And the Takoma Theater
16 Conservancy is willing to do that, and to take on that
17 responsibility. I think that would help a lot. So, to kind
18 of keep that spirit as Sara mentioned, of the theater alive.

19 CHAIRPERSON HILL: Okay, great. All right.

20 MS. NEUMANN: But also not limited to the theater.
21 I would include the historic district, because we have to be
22 in context. And this is in the heart of our historic
23 district, so there's a broader issue too.

24 CHAIRPERSON HILL: Okay great. Okay, well thank
25 you all very much. All right. Is there anybody here who

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1 wishing to speak in opposition?

2 (No audible response)

3 CHAIRPERSON HILL: All right. If I could have the
4 Applicant back to the table?

5 Mr. Avitabile, in terms of speaking to the, just
6 from the testimony that we just took, in terms of speaking
7 for like the parking, or the noise, or being a nuisance.
8 What's you all's plan?

9 MR. AVITABILE: Sure, so we drafted the condition
10 to essentially deal with that issue. We had reservation
11 ourselves at first about offering up this parking lot to the
12 community for general use, because we were concerned that
13 people might leave their cars there. And then the doctors
14 and patients using the parking lot wouldn't be able to use
15 it.

16 So, what the condition essentially says is we'll
17 make it available. I'll have a sign that's posted and says
18 what the hours are. But if it becomes a nuisance, either
19 because of public safety, trash, noise, all of the concerns
20 that Mr. Schwartz identified, we'd --

21 CHAIRPERSON HILL: Where's that in the condition?
22 I'm sorry, I'm just trying to find you?

23 MR. AVITABILE: It's Condition 4B.

24 CHAIRPERSON HILL: Okay, thank you.

25 MR. AVITABILE: It essentially says, if there are

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1 issues we have the ability to terminate it, and stop
2 providing the parking. And we just have to let the ANC know
3 that we stopped doing it. And they understood. And they
4 agreed to this. This was in their resolution as well. This
5 understanding that we try it out. We'd see if it works. And
6 if it works and every one does what they're supposed to do,
7 that's great.

8 But if it becomes a problem, we stop doing it.
9 And it's largely because of the concerns that were expressed
10 by Mr. Schwartz and some of the other residents that are
11 immediately nearby. I mean I think you have to understand
12 the Takoma Cohousing Village. It's right up against this
13 parking lot on the other side. And so I think they're
14 particularly sensitive to that use.

15 CHAIRPERSON HILL: Okay. All right. The, and
16 I'll let my fellow Board Members comment in a minute, but I
17 just want to run through this. And then the offer from the
18 Takoma Theater Conservancy for, you know, help with the
19 museum and things like that. You'd be amenable to that?

20 MR. AVITABILE: Yes, that's Condition 3, which
21 allows for that. It would allow, it's on the front side of
22 the page. We'll allow them to incorporate --

23 CHAIRPERSON HILL: Okay.

24 MR. AVITABILE: -- their memorabilia --

25 CHAIRPERSON HILL: I got you.

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1 MR. AVITABILE: -- basically into the front of the
2 building.

3 CHAIRPERSON HILL: Okay. And then the last one
4 that I'm even going to maybe look for the Office of the
5 Attorney General to help with in terms of like this
6 discussion about bar, restaurant, tavern. Do you have any
7 thoughts?

8 MR. AVITABILE: Sure. So, Condition 2B, we've
9 done exactly what the ANC asked, which is a bar shall not be
10 permitted in either designated use space. We've said we
11 wouldn't, you know that, from a zoning perspective, a bar
12 wouldn't be allowed. And I think the concept of a bar is
13 mentioned in a couple of places in the zoning regulations.
14 And the Zoning Administrator knows what a bar is.

15 With respect to the distinction of a restaurant
16 versus a tavern for licensing purposes, that's all the ABC
17 laws, the ABRA will determine that. And I think through the
18 ABRA process there's an opportunity for -- if an applicant
19 comes in and they're asking for a restaurant license that
20 would serve beer, wine, cocktails. Well then the ANC through
21 that process will be able to work with all the constituents
22 and say okay, that's fine that's what we want.

23 And if someone tries to come in and ask for a
24 tavern license, then people will be able to opine there. I
25 just don't think that this is the appropriate place to be

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1 putting a condition in that says, it will be a space that
2 only has a restaurant license versus a tavern license,
3 because we'd really be encroaching in on ABC.

4 CHAIRPERSON HILL: Ms. Nagelhout, do you know if,
5 I can't remember, I do think that bar was in zoning in
6 different places, or?

7 MS. NAGELHOUT: Bar is one type of eating and
8 drinking establishment mentioned in the zoning regs, so I
9 would agree with what the Applicant just said.

10 CHAIRPERSON HILL: Okay, all right. Does anyone
11 else have any questions for the Applicant?

12 COMMISSIONER MAY: I'm having a little trouble
13 hitting the button. Just to clarify on that question of bar
14 versus restaurant. So, you're okay with not allowing a bar?

15 MR. AVITABILE: Correct.

16 COMMISSIONER MAY: And your contention is
17 essentially that a bar in the zoning regs is more or less the
18 equivalent of tavern under the ABRA regs?

19 MR. AVITABILE: I'm not sure and I wouldn't want
20 to go down, because we don't --

21 COMMISSIONER MAY: We don't have tavern defined
22 either.

23 MR. AVITABILE: Right, right, but I think a bar
24 is pretty easy for the Zoning Administrator to understand.
25 It's a use that's specifically mentioned. It's distinct from

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1 say, a restaurant.

2 COMMISSIONER MAY: Right.

3 MR. AVITABILE: And beyond that, you know, there
4 are probably gray areas where if it's a wine bar, but they
5 have a substantial food service, maybe it's considered to be
6 a restaurant for licensing purposes. And maybe that
7 convinces -- we said we won't have a bar. I think beyond
8 that it'll be up to an --

9 COMMISSIONER MAY: But I mean the intention is
10 that you wouldn't have just a tavern?

11 MR. AVITABILE: Correct.

12 COMMISSIONER MAY: Or nightclub?

13 MR. AVITABILE: Correct.

14 COMMISSIONER MAY: Okay.

15 MEMBER WHITE: Is that aspect in writing at all,
16 or is that just gentleman's handshake?

17 MR. AVITABILE: I mean it just says, well the
18 condition is there that says a bar shall not be permitted.

19 MEMBER WHITE: Okay.

20 MR. AVITABILE: That's what the ANC asked for.
21 That's what we put in.

22 CHAIRPERSON HILL: Okay, that's okay. I mean I
23 think that what I am agreeing with the Applicant in terms of
24 the bar being mentioned in zoning. And what the Applicant
25 is stating for the witnesses that came forward was that, you

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1 know, if this were again up for, and what seemed to be some
2 of the discussion -- it's not where we would be here
3 clarifying whether it had wine or beer, or whether it was a
4 restaurant.

5 The Applicant is stating that they are not going
6 to have a bar, nightclub. That's not their intent. But then
7 the ANC would have an opportunity through the ABRA process
8 to go through the licensing. And so that's when they'd have
9 that opportunity.

10 You can come on forward Ms. Green, if you like.
11 I mean I think, if you're going to restate just what you just
12 stated --

13 (Off microphone comment)

14 CHAIRPERSON HILL: Then okay, you can come on
15 forward, Ms. Green. Just give me a second. You have to just
16 state your name again in the microphone, I think.

17 MS. GREEN: Thank you for your indulgence. I
18 appreciate this.

19 CHAIRPERSON HILL: That's all right. We're just
20 trying to -- they seem to be on the same pages as with you.
21 So, I'm -- but go ahead.

22 MS. GREEN: Well, the reason I, I was a
23 commissioner for about twelve years. And I spent a lot of
24 time at ABC. All day, many days, there were days I was there
25 -- it was just a long time.

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1 CHAIRPERSON HILL: Okay.

2 MS. GREEN: And it was very frustrating because
3 in my experience, the ABC Board at this point will make
4 anything into a tavern, seriously. The community shows up
5 and it's --

6 CHAIRPERSON HILL: Well, Ms. Green I just have to
7 interrupt you for one second. We have your testimony. We've
8 listened to you. I'm not necessarily disagreeing with you.

9 MS. GREEN: Okay.

10 CHAIRPERSON HILL: But you've heard what we're
11 going through with the Applicant, and now this is what the
12 ANC had agreed to in terms of, your ANC agreed to this.

13 MS. GREEN: I understand.

14 CHAIRPERSON HILL: And so, I'm kind of, we as the
15 Board are putting ourselves in place of where -- they went
16 through the ANC process.

17 MS. GREEN: I understand.

18 CHAIRPERSON HILL: So, I feel comfortable, but the
19 Board will have an opportunity to also speak as well. But
20 please continue.

21 MS. GREEN: Well, no I don't mean to belabor this
22 point, except I know how difficult it is for communities to
23 deal with the ABC Board. And this is a moment of clarity
24 that can prevent a lot of future discussions that can prevent
25 people from having to spend all day in the ABC Board, again

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1 and again. And it can be easier for Rock Creek because
2 they'll know how to rent. And for the future tenants who
3 might want to rent the place, they'll know what they can do.

4 CHAIRPERSON HILL: Okay.

5 MS. GREEN: Without a lot of, you know, time and
6 energy and legal fees.

7 CHAIRPERSON HILL: Okay, all right. Okay, thank
8 you.

9 MR. AVITABILE: We would be amenable to adding
10 nightclub to that provision as well, if that provides some
11 assurance. We want to be helpful.

12 CHAIRPERSON HILL: Okay, all right. Okay does the
13 Board have any other questions or comments?

14 MALE PARTICIPANT: No.

15 CHAIRPERSON HILL: Okay, let's see. All right,
16 then we'll go ahead and add nightclub to this condition
17 unless the Board has any other thoughts.

18 (Off microphone comment)

19 CHAIRPERSON HILL: Bar/nightclub. Okay. Let's
20 see. Is there anything else the Applicant would like to add
21 at the end?

22 MR. AVITABILE: Nothing other than we thank you
23 for your time.

24 CHAIRPERSON HILL: Okay, great. All right, I move
25 ahead and close the hearing. Is the Board ready to

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1 deliberate?

2 (No audible response)

3 CHAIRPERSON HILL: Okay, would someone else like
4 to start? I've been talking all day.

5 MEMBER WHITE: Yes, I can start. So, you know,
6 this is a request, you know, for a special exception
7 designated use requirement under Subtitle H 1101.1 and
8 1101.3. You know, just in summary, I'm comfortable that the
9 standards have been met for the special exception for the
10 designated use requirement. As well as meeting the criteria,
11 the general special exception criteria as well.

12 We've got support and recommendation from Office
13 Planning. ANC 4B seems to be support as well. And there are
14 a number of conditions that DDOT has recommended in terms of
15 incorporating the TDM plan.

16 And then we just spoke about a couple of other
17 conditions, including provisions about no bar or nightclub.
18 They seem to be addressing some of concerns from the
19 residents regarding the safety of the parking lot. And just
20 keeping good controls over that, as well as setting up some
21 type of historical museum type theme that displays the
22 history of the Takoma Theater that has been a major part of
23 that area for a long time.

24 So, I would be in support. I think they did meet
25 the criteria.

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1 CHAIRPERSON HILL: Okay. Anyone else?

2 (No audible response)

3 CHAIRPERSON HILL: Okay, I also do think that the
4 Applicant has met its burden in terms of meeting the
5 standards for the special exception. I do want to again
6 mention the conditions that are in Exhibit Number 44, as well
7 as now changing the one condition to add a bar/nightclub
8 shall not be permitted in either designated use space.

9 I also want to clarify for, you know, the
10 witnesses again, I understand where you're coming from in
11 terms of what you're trying to do. And I guess where I, and
12 again the Board can kind of jump in if they have -- it kind
13 of just takes me all the way back to the ANC meeting.

14 And kind of discussions and where I feel a
15 little uncomfortable as to changing things that have gone
16 through the process. So, that's why I get to where, you
17 know, the tavern, restaurant and things.

18 But so, I'm also comfortable with why the
19 Application should be approved. I also agree that the Office
20 of Planning has done a good job in providing their analysis.
21 It is nice to hear that, you know, the community is in
22 support. However just as with any new development, kind of
23 weary about certain things that might be coming into their
24 neighborhood.

25 But with that, I'd go ahead and make a motion to

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1 approve Application Number 19681 as captioned and read by the
2 Secretary, including the conditions in Exhibit Number 44, and
3 changes I mentioned to be, to include bar/nightclub shall not
4 be permitted in either designated use space. And ask for a
5 second.

6 COMMISSIONER MAY: Second.

7 CHAIRPERSON HILL: Motion is made and seconded.

8 All those in favor, aye?

9 (No audible response)

10 CHAIRPERSON HILL: All those opposed?

11 (No audible response)

12 CHAIRPERSON HILL: Motion passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as four to
14 zero, to one. This is on the motion of Chairman Hill to
15 approve the Application for the relief being requested, along
16 with the conditions as he has just cited in his motion.
17 Second of the motion Vice Chair Hart. Also in support Mr.
18 Peter May, Ms. White, a Board seat vacant. The motion
19 carries.

20 CHAIRPERSON HILL: Mr. May seconded.

21 MR. MOY: Oh, it was Mr. May, oh. My apology.

22 CHAIRPERSON HILL: And a summary order, Mr. Moy?

23 MR. MOY: Yes.

24 CHAIRPERSON HILL: Okay, thank you all very much.

25 Okay, so just for everyone else that's here, we

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1 only have one case left. So, I'm just going to assume
2 everyone's here for that. We are going to take a lunch break
3 because I think the case is going to go fairly long. So,
4 we're probably going to get back here, you know, we might
5 take 20 minutes, 25 minutes.

6 We should be back by -- I would get back here by
7 11:50, just to be safe. But we probably won't get back here
8 until noon. So, let's -- yes, there you go. Thank you.

9 (Whereupon, the above-entitled matter went off the
10 record at 11:33 a.m. and resumed at 12:08 p.m.)

11 CHAIRPERSON HILL: All right, Mr. Moy, you ready?

12 MR. MOY: Yes, sir, thank you. Okay, by my clock
13 we have 12:08. We're convening the public hearing. And I
14 believe this is the last case for the day on today's docket,
15 Mr. Chair. That would be Application Number 19659.

16 This is the Federation of State Medical Boards as
17 amended for special exception from the use provisions under
18 Subtitle U, Section 203.1N. This is what has been captured
19 and advertised, to use the existing residential building as
20 an office for a nonprofit organization in an R-3 zone. They
21 have premises at 2118 Leroy Place, NW, Square 2531, Lot 49.

22 To get you started, Mr. Chair, on December 6th,
23 2017, the Board granted party status to the Sheridan-Kalorama
24 Neighborhood Council and the Sheridan-Kalorama Historical
25 Association. And I believe they're represented by Counsel.

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1 Recently filed on January 15th of this year, 2018, there was
2 a filing for a request for party status by a Frederick
3 Guinee, G-U-I-N-E-E. And that's under Exhibit 104.

4 Also before the Board are preliminary matters on
5 motions. There is a SKNC motion to consolidate and, I
6 believe, also to postpone pending an appeal, upcoming appeal
7 which has not been scheduled. This is under Exhibit 111,
8 111. And you know what, I think I'll stop there, because
9 there were some other filings addressing this potential
10 appeal.

11 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
12 Moy. If you could please introduce yourselves from my right
13 to left?

14 MR. SULLIVAN: Thank you, Mr. Chairman and members
15 of the Board, my name is Martin Sullivan from Sullivan and
16 Barros on behalf of the Applicant.

17 MS. WILSON: Alexandra Wilson from Sullivan and
18 Barros on behalf of the Applicant.

19 MR. FISH: Eric Fish, senior vice president of
20 Legal Services for the Federation of State Medical Boards,
21 that is the Applicant.

22 CHAIRPERSON HILL: Was it Fish? Is that what --

23 MR. FISH: Fish, F-I-S-H, sir.

24 CHAIRPERSON HILL: Okay, thank you. All right.
25 Is Mr. Guinee here? Would you mind stepping forward please?

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1 And you can just take any seat, it's fine. Let's see, so has
2 everyone here been sworn in?

3 (No audible response)

4 CHAIRPERSON HILL: Okay. So Mr. Guinee, is it
5 Guinee?

6 MR. GUINEE: It's Guinee, Guinee.

7 CHAIRPERSON HILL: And I'm sorry, if you could
8 introduce yourself for the record and where you live.

9 MR. GUINEE: My name is Frederick W. Guinee. I
10 live at 2121 Leroy Place, NW, in Washington, D.C.

11 CHAIRPERSON HILL: All right, Mr. Guinee. So you
12 have an application in for party status. We already have
13 granted two applications for party status, both from
14 different associations, well, one from a council, one from
15 an association, that is represented by Counsel. And in
16 addition to that, your application is late in terms of your
17 request for party status. However, could you clarify for us
18 why you think you need to be granted party status?

19 MR. GUINEE: Sure. I didn't realize my
20 application was late. Well, unlike anyone else here today,
21 I am a direct neighbor. I live directly across the street
22 from the property. I actually relied on the zoning maps when
23 I bought my property. I actually have viewed the comings and
24 goings and all the activities at the former Colombian
25 Chancery building for four years.

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1 And I am in a position to dispute most of the
2 assumptions, many of the assumptions and the
3 misrepresentations that have been made by the Applicant. And
4 I understand a great deal about the street, the neighborhood,
5 and the character of both of those places. I also believe
6 that my testimony would exceed the three minutes that would
7 be otherwise allowed for a neighbor.

8 CHAIRPERSON HILL: Okay. Mr. Guinee, normally,
9 well, I shouldn't say normally. Oftentimes in your request,
10 I think that it's something that the Board might take up a
11 little bit more. Let's see, we have two party status people
12 right now that I think would adequately serve the purpose of
13 representing your opinions.

14 However, unless the Board has any different
15 thoughts, I would be --- and that you were late to apply ---
16 I would be leaning towards denying the application for party
17 status, however, taking into consideration when testimony
18 comes up, to allow you a little bit more time for testimony
19 and the Board will also have further questions for you given
20 we do have your application in the record that we had read,
21 in terms of your party status request. But that would be my
22 leaning. Does the Board have any difference of opinion?

23 (No audible response)

24 CHAIRPERSON HILL: Okay. So, Mr. Guinee, then
25 we're going to go ahead and deny your party status request.

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1 However, when we get to the public testimony, we'll remember.

2 MR. GUINEE: Great. I appreciate that. Thank
3 you.

4 CHAIRPERSON HILL: Thank you very much.

5 MR. MOY: Okay, so now there was a couple of
6 motions put forward by the party in opposition and if that
7 party or representative could come forward, please.

8 MS. MAZO: Good afternoon. Samantha Mazo of the
9 law firm of Cozen O'Connor. I'm here on behalf of both the
10 Sheridan-Kalorama Neighborhood Council, which is the
11 Appellant in the pending appeal, 19719. But then I'm also
12 here on behalf of Sheridan-Kalorama Historic Association.

13 CHAIRPERSON HILL: So, Ms. Mazo, you're not here
14 -- so you're not representing the Council for this case?

15 MS. MAZO: Oh, for this case, for the pending BZA
16 application, I am representing ---

17 CHAIRPERSON HILL: Both parties?

18 MS. MAZO: -- both parties.

19 CHAIRPERSON HILL: Okay.

20 MS. MAZO: Both the Sheridan-Kalorama Neighborhood
21 Council and the Sheridan-Kalorama Historic Association.

22 CHAIRPERSON HILL: Okay. So could you go ahead
23 and please explain your motion again?

24 MS. MAZO: Just so I'm clear, the motion regarding
25 the ---

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1 CHAIRPERSON HILL: The combination, I believe it
2 was.

3 MS. MAZO: Oh, sure. So in sum, there is a
4 factual issue that has to be determined. And it pertains to
5 the applicability of this particular association, the
6 Federation of State Medical Boards, and its compliance with
7 the zoning regulations' definition of a nonprofit
8 organization. There's also another threshold issue in
9 regards to the ability for the zoning requirement that this
10 be an existing residential building for the special exception
11 to apply.

12 There was some back and forth with the zoning
13 administrator as to this question. And Mr. Tandro's here
14 from DCRA, but my understanding is that there was the
15 question about this issue, in terms of an interpretation of
16 the zoning regulations, was posed to the zoning administrator
17 by the Office of Planning on or about January 12th.

18 At that point, the zoning administrator responded
19 in one email to that request. Subsequent to that, there was
20 some additional information provided by the Applicant. Then
21 the zoning administrator, through Mr. Tandro, responded to
22 that information. And that second response, which we have
23 called the January 18th decision, was, in our opinion, an
24 appealable decision by the zoning administrator that was a
25 final decision.

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1 However, so the Board is aware, SKNC's position
2 on this appeal, as well as on this particular application,
3 is that the most important thing is for the Board to hear and
4 to address these specific threshold issues as to whether or
5 not this particular Applicant is even eligible for the
6 special exception that they are seeking.

7 And so whether the Board takes that issue up
8 through an appeal or takes the issue up as part of evidence
9 that's heard in this hearing, which we are prepared to go
10 forward today, and to present that evidence, quite frankly,
11 SKNC, my client is agnostic to that.

12 The most important thing is, from our position as
13 well as from the Office of Planning, and indeed from DCRA,
14 is that the Board hear and consider all the facts in regards
15 to FSMB's ability to satisfy the zoning regulation's
16 definition of a nonprofit organization and that whether that
17 decision, again, is made through an appeal --- sorry.

18 CHAIRPERSON HILL: That's okay. I'm just trying,
19 to Mazo, I agree with some of the threshold question issues
20 that you're speaking to, and I was just trying to understand,
21 again, the reason for us to consolidate. I think you did
22 explain that. And then the other motion was that, if we
23 didn't consolidate, to postpone. Was that correct?

24 MS. MAZO: Well, actually the motion to postpone
25 actually came from DCRA. It didn't come from us. We filed

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1 an appeal, I'm sorry, SKNC filed an appeal of the January
2 18th decision. After that, DCRA filed a motion to dismiss
3 that appeal or, in the alternative, to postpone the appeal.

4 CHAIRPERSON HILL: Okay, that's okay. All right.

5 MS. MAZO: It was a kind of back and forth.

6 CHAIRPERSON HILL: That's good, that's good. And
7 by the way, I love this, because I'm just trying to get
8 through you guys until we get to all the people back there.

9 MS. MAZO: I hear you.

10 CHAIRPERSON HILL: So your motion was to
11 consolidate. Okay, and I understand the reasoning why. Mr.
12 Sullivan, do you have any response to that motion?

13 MR. SULLIVAN: I don't see how you can consolidate
14 two different procedures. One's an appeal, one's a special
15 exception, two different parties.

16 So I think the real issue is whether or not those
17 threshold issues are the province of the BZA or are they the
18 province of the zoning administrator reviewable by the BZA?
19 So they're either part of the special exception case or
20 they're a pre-certification issue that's appealable and
21 reviewable by the Board. Either way, there can't be an
22 appeal for this reason, in my opinion.

23 CHAIRPERSON HILL: Okay.

24 MR. SULLIVAN: That's the province of the BZA.
25 And then you hear it as part of the special exception. If

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1 it's reviewable, I don't know that the zoning administrator
2 made a decision that's appealable at this time.

3 CHAIRPERSON HILL: Okay, okay.

4 MR. SULLIVAN: Because we're kind of ambivalent.

5 CHAIRPERSON HILL: Okay, that's all right.

6 MR. SULLIVAN: We don't ---

7 CHAIRPERSON HILL: Okay, that's all right.

8 (Simultaneous speaking)

9 CHAIRPERSON HILL: I was just curious if you had
10 a comment. All right.

11 COMMISSIONER MAY: May I just --

12 CHAIRPERSON HILL: Yes, please.

13 COMMISSIONER MAY: I just wanted to ask Mr.
14 Sullivan, I mean, effectively, by taking up the case that's
15 before us today, wouldn't it render any kind of appeal moot?

16 MR. SULLIVAN: I think it would.

17 COMMISSIONER MAY: Not that I'm a lawyer and
18 really know the legal meaning of moot but, you know, I watch
19 TV.

20 (Laughter)

21 MR. SULLIVAN: Yes.

22 COMMISSIONER MAY: It's just no longer relevant,
23 right?

24 MR. SULLIVAN: I think so, because I think the
25 Board is implying or ruling that, because we're considering

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1 this now, we think it's within the province of the special
2 exception. And I certainly wouldn't want to do it twice.
3 I wouldn't want to have the Board do it and then, when the
4 zoning administrator issues a building permit a year from
5 now, that then they appeal it and say, oh, it wasn't really
6 a Board issue after all.

7 COMMISSIONER MAY: Yes, I agree with you.

8 CHAIRPERSON HILL: Yes, okay. Okay, so --- no,
9 that's okay -- I know where I am. And I don't think that,
10 well, first of all, I don't think we have an appeal before
11 us. And so I don't think that it's something that I would
12 be comfortable consolidating. Does the Board have any other
13 thoughts?

14 MEMBER WHITE: I don't think the appeal is right
15 to be heard. From what I understand, it's still kind of in
16 the processing phase of things. And regardless of that, I
17 don't see how we can consolidate those two issues.

18 CHAIRPERSON HILL: Okay.

19 MEMBER WHITE: Those two cases.

20 CHAIRPERSON HILL: Okay. Then I would move we
21 deny the motion to consolidate. Because then, does anyone
22 have any ---

23 (Off the record comments)

24 CHAIRPERSON HILL: Okay, is everyone fine? Okay.
25 So we've done that. So now we're going to hear the case.

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1 And I understand you're, I mean, all these people are here,
2 I assume we're ready to go.

3 MS. MAZO: Our side is absolutely ready.

4 CHAIRPERSON HILL: Okay. All right, great. So --
5 (Off the record comments)

6 CHAIRPERSON HILL: Hold on one second. Give me
7 one second. Mr. Moy?

8 MR. MOY: I'm assuming, from the staff side, that
9 was a consensus of the Board to deny the ---

10 CHAIRPERSON HILL: Yes. Sometimes, Mr. Moy, I'm
11 sorry, I'm not sure --

12 (Simultaneous speaking)

13 CHAIRPERSON HILL: -- what I get to do on
14 consensus and what I get to do by a motion.

15 MR. MOY: It's your choice.

16 CHAIRPERSON HILL: We denied the party status.
17 That much I recall. And so I could make a motion to deny.
18 And I'll go ahead and make it now. I'll make a motion to
19 deny the motion to consolidate the appeal and this
20 application and ask for a second.

21 MEMBER WHITE: I second.

22 CHAIRPERSON HILL: Motion's been made and
23 seconded. All those in favor, aye?

24 (Chorus of ayes)

25 CHAIRPERSON HILL: All those opposed?

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1 (No audible response)

2 CHAIRPERSON HILL: Motion passes, Mr. Moy.

3 MR. MOY: Staff will record that as four to zero
4 to one, your motion, seconded by Ms. White.

5 CHAIRPERSON HILL: Okay, great. All right. So
6 are we finished with everything preliminary, Mr. Moy?

7 MS. MAZO: Chairman Hill, can I ---

8 CHAIRPERSON HILL: Sure, certainly.

9 MS. MAZO: -- just make one more not really
10 preliminary issue but just to raise it to you? You had
11 indicated, I think, twice that Mr. Guinee's party status
12 request was untimely. But I actually don't believe that to
13 be correct. And pursuant to Subtitle Y, 404.3, a request for
14 party status only has to be filed 14 days before a hearing.
15 And that would have been January 18th. So he filed that in
16 advance of the party status request.

17 CHAIRPERSON HILL: Okay. I was just given the
18 information that it was untimely. I don't know if --- Mr.
19 Moy, would you agree with Ms. Mazo?

20 MR. MOY: Just a second, Mr. Chair. I'll come
21 back to that. I just want to double check the original
22 schedule.

23 CHAIRPERSON HILL: Okay. So we'll come back and
24 address that issue. But I do think that, even if it were
25 timely, I believe we would have denied it. But I appreciate

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1 that clarification.

2 MS. MAZO: Yes. I have no problem with that. I
3 just wanted to make sure the record was ---

4 CHAIRPERSON HILL: No, that's great.

5 MS. MAZO: Thanks.

6 CHAIRPERSON HILL: Okay. So we're going to go
7 ahead and move forward with the hearing. And so what that
8 means is that the Applicant will have time to make their
9 case. And just so everyone here understands, and I also
10 remember the order of things, so the Applicant's going to
11 present their case. The party in opposition will have an
12 opportunity, as well as if the ANC is here, because the ANC
13 is a party to the application. Is the ANC here by any
14 chance?

15 (No audible response)

16 CHAIRPERSON HILL: Okay. So then the party in
17 opposition, the party status in opposition will have an
18 opportunity to cross the testimony that was provided from the
19 Applicant. Then we will go to the Office of Planning and,
20 if there were the ANC here, the ANC or any other parties, the
21 Applicant and the party in opposition will have an
22 opportunity to cross the Office of Planning.

23 We will then hear from the party in opposition.
24 And the Applicant will have an opportunity to cross the party
25 in opposition. And then we hear witnesses and all of that

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1 from the party in opposition. And then also we'll open this
2 up to public testimony. And public testimony, again, means
3 that if you're in support or in opposition, you'll have three
4 minutes to testify.

5 And then we will go back to --- normally there's
6 not necessarily conclusions for the --- oh, no, I'm sorry ---
7 then we will go to rebuttal. So the rebuttal will come from
8 the Applicant again, and then there will be cross to the
9 rebuttal. And then we will, I think, I'm trying to think
10 where we're going to go when the public testimony comes.

11 And then there will be a conclusion from the ---
12 normally you don't give a conclusion to the party in
13 opposition but I, and usually the Board, I'd like to hear it.
14 So I'm going to give the Board an opportunity for a little
15 bit of a conclusion from the party in opposition. And then
16 the Applicant will have the last word and provide conclusion.
17 So that is at least my intent of this roadmap.

18 So that being said, Mr. Sullivan, we're going to
19 go ahead and start with you. And I'm going to go ahead and
20 ask you how much time you think you might need.

21 MR. SULLIVAN: Thank you, Mr. Chair. And I have
22 a question about that. Would the Board be interested in
23 considering and hearing discussion on the two threshold
24 issues separate from the case in general, so as to not have
25 those issues being weaved throughout the whole?

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1 I think it will be easier to do it that way, in
2 which case we have a certain presentation for that. And then
3 I imagine we might have some discussion back and forth, and
4 then we would get into the substantive case.

5 CHAIRPERSON HILL: I don't know. I mean, --

6 MR. SULLIVAN: Or do we just go?

7 CHAIRPERSON HILL: -- I would just hear it all
8 together.

9 MR. SULLIVAN: Okay.

10 CHAIRPERSON HILL: You know, and go ahead. I
11 mean, I think your threshold issues are --- it's good that
12 you clarify those, and you can go do that first and then go
13 right into your case. So I don't want to jump around from
14 back and forth, and back and forth in different aspects.

15 MR. SULLIVAN: Okay.

16 CHAIRPERSON HILL: So go ahead and do the
17 threshold issues first, then present your case. So I assume
18 that means you're going to need more time. And so I'm going
19 to say 40 minutes?

20 MR. SULLIVAN: Well, we might need the whole ---

21 CHAIRPERSON HILL: The whole hour.

22 MR. SULLIVAN: -- hour that's allowed. But we ---

23 CHAIRPERSON HILL: That's fine.

24 MR. SULLIVAN: -- we won't take any unnecessary
25 time --

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1 CHAIRPERSON HILL: It's okay. I had a bet as to
2 how long this was going to go. And so, you know, okay, so
3 we'll go ahead and give you the hour, okay.

4 MR. SULLIVAN: Thank you.

5 CHAIRPERSON HILL: And we'll just take the hour,
6 and then obviously the party in opposition will also have an
7 hour. But, you know, and I say all this because we want to
8 hear, as clearly as we can, the arguments both in favor and
9 on the other side. So I was just trying to get a clock
10 going. So, Mr. Moy, you want to put 60 minutes on the clock?

11 And as far as the regulations go, Mr. Sullivan,
12 and Ms. Mazo, because you're here as well, the hour I always
13 get a little confused with it. Because there's, like, it's
14 an hour plus different aspects. It's not that your
15 presentation is an hour. But we'll put an hour on the clock.
16 Okay, so you can start whenever you like.

17 MR. MOY: Mr. Chair, before I start the clock ---

18 CHAIRPERSON HILL: Sure, of course.

19 MR. MOY: -- while you were talking I checked the
20 original schedule date for this application. And it was
21 December 20th, 2017. So that would have been the threshold
22 date. This is regarding the party status --

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: -- date. So in other words, it's
25 untimely.

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1 CHAIRPERSON HILL: It's untimely. Okay, all
2 right. So that's at least that clarification. All right.
3 All right, Mr. Sullivan.

4 MR. SULLIVAN: Thank you, Mr. Chair. We would
5 like to start with the two preliminary issues that were
6 raised by the opponent, the first one being whether or not
7 the subject building at 2118 Leroy Place qualifies as an
8 existing residential building for purposes of the zoning
9 regulations and for purposes of Section 203.1 of Subtitle U.

10 As you can see from our PowerPoint, the
11 requirement of 203.1 says that the following usage shall be
12 permitted as a special exception. And that includes use of
13 existing residential buildings and the land on which they are
14 located by a nonprofit organization for the purposes of the
15 nonprofit organization.

16 The opponent's claim is that the subject building
17 located at 2118 Leroy Place is not an existing residential
18 building, as such term is defined and interpreted by the
19 zoning regulations, and the DC Court of Appeals, and the
20 Board of Zoning Adjustment. So the issue is what exactly is
21 meant by the phrase existing residential building.

22 The law, as affirmed by the Court of Appeals in
23 language that could not be clearer, is that the phrase
24 existing residential buildings requires only that a structure
25 be residentially zoned, not that it be in actual use as a

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1 residence, in order to qualify for use by a nonprofit
2 organization.

3 And as they affirmed that, the Court of Appeals
4 noted that no less than four previous BZA cases before the
5 subject case in that case held the exact same position that
6 the requirement was that the building be in a residential
7 zone, not that it currently housed an existing residential
8 use.

9 I don't think I should have to go on any further.
10 I'm kind of incredulous that they're challenging this.
11 Because it's actually the same Appellant that was in the
12 Court of Appeals case.

13 Their argument seems to be that this Board should
14 discard the Court of Appeals opinion, discard previous BZA
15 decisions, and make a different decision based on I'm not
16 sure what. Because they don't really give an alternative to
17 that.

18 It's quite understandable that existing
19 residential building would refer to the building being in a
20 residential zone. I don't think it's that ambiguous, but to
21 the extent it is, you have a Court of Appeals opinion that
22 could not be more clear in defining what this is for us.

23 And in fact, it makes no difference to the Zoning
24 Commission's objective, in adopting these regulations, that
25 preserving large residential buildings is that purpose. In

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1 fact, I think the opponents would agree that a property
2 containing an existing residential use would be a less
3 desired candidate for this relief. So the evidence on that
4 point is the zoning map. We are located in the R3 zone, we
5 are residentially zoned. We therefore are a resident --
6 existing residential building.

7 On the issue of nonprofit organization, I'd like
8 to turn it over to Mr. Fish to discuss that topic.

9 MR. FISH: Thank you, Mr. Chairman and members of
10 the Board. The FSMB is a 501(c)(6) organization. As a
11 501(c)(6) organization, we carry out a charitable purpose in
12 support of our members. Our members are the 70 state medical
13 and osteopathic boards that carry out the duties of state
14 government in the regulation of medicine. Our members are
15 therefore members of government.

16 Nothing in the definition related to the zoning
17 regulations clarifies that we must be a 501(c)(3). And I
18 would argue that we would meet the test for a 501(c)(3) if
19 we so choose to be a 501(c)(3). However, at the time of
20 filing and registration in the 1960s, in 1966, we were a
21 501(c)(6). And there is some history of why the FSMB would
22 be filed that way. We are organized as a nonprofit, and we
23 operate as a nonprofit.

24 This Board has approved other non-501(c)(3)s to
25 get this sort of special exemption relief in a case involving

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1 the Delta Sigma Sorority, it's a 501(c)(7), as well as the
2 National Indian Gaming Association which, like the FSMB, is
3 a 501(c)(6).

4 This is not to say that there is a precedent. But
5 it is not to say that we are automatically disqualified, as
6 I believe our opponents have suggested. This Board's
7 provenance is to decide whether the subject organization's
8 operations qualify as a nonprofit under the use of the zoning
9 regulations.

10 It could not be any clearer than in our Articles
11 of Incorporations which state that the FSMB is organized
12 exclusively for the scientific and educational purposes and
13 its activities meet the following aims. We study and
14 advocate policies, we aid our members in their functions,
15 which are governmental functions, we develop licensing exams
16 that are related to medical education and the ability of
17 medical students to be licensed for full unrestricted
18 practice of medicine, and we advocate with legislatures and
19 other policy makers on these topics.

20 Again, our nonprofit status is clear in both our
21 Articles of Incorporation, and in the purposes, and for our
22 filing with the State of Nebraska. And we are a nonprofit
23 under the State of Nebraska. There are questions about
24 whether the FSMB is a 501(c)(3), a 501(c)(6), if we have a
25 charitable purpose, if we are educational, all of these have

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1 been raised by the opponents.

2 Again, I will point out that 501(c)(3)
3 designations state that an organization must be organized for
4 charitable purposes. Now, an individual organization may
5 choose to be a 501(c)(3) for several threshold issues
6 including the acceptance of public monies or individual
7 monies that would be used, that would be tax-deductible or
8 tax exempt for that individual. The FSMB does not raise
9 funds from the general public. Therefore, getting the
10 501(c)(3) designation is not that important to our
11 organization.

12 Again, our common business interests for our
13 member Boards is the functioning of government. Our
14 charitable interest is to help our members fulfill that goal.
15 And it is the assistance of the functions of government that
16 constitutes the charitable function under 501(c)(3) as well.

17 As again I stated, we could be a 501(c)(3) if we
18 choose to, we are a 501(c)(6) that would meet these tests.
19 We would also meet the tests that are in the DC regulations
20 that we are an educational and scientific organization.

21 On the purposes of the education, the FSMB is
22 involved in both individual instruction and the instruction
23 of the public. We are accredited by the Accreditation
24 Council on Continuing Medical Education as a continuing
25 medical education provider. We are currently partnering with

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1 the DEA to host multiple live conferences in 2018 throughout
2 the United States to educate individual practitioners on
3 opioid abuse. The FSMB also hosts in-person and other
4 educational activities.

5 On the matter of the instruction of the public,
6 the FSMB hosts meetings, our annual meeting, and our meeting
7 for Board attorneys that are meant for the education of these
8 individuals. And they are also open to the public. We host
9 webinars and round tables that are done via teleconference,
10 again, open to the public in many cases.

11 We also publish a journal, a Journal of Medical
12 Regulation, which discusses in an academic setting -- it's
13 a peer-reviewed journal -- the issues related to medical
14 education and medical regulation. Our staff members have had
15 articles published in the New England Journal of Medicine,
16 the Journal of the American Medical Association, and other
17 scholarly journals. Again, these point to the fact that we
18 both meet the tests of scientific and educational purposes.

19 It was also raised by the opponent that the FSMB
20 is not a 501(c)(3) or 501(c)(6), because we lobby. Now,
21 lobbying is a very specific term under Senate disclosure
22 rules. We are engaged in advocacy for which we must file
23 lobbying disclosures, the same as 501(c)(6)s and 501(c)(3)s.

24 There is a question if we operate exclusively for
25 this non-exempt purpose. I would say organized and operated

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1 exclusively means that the issue of lobbying must be
2 substantial in nature. The FSMB's activities related to
3 advocacy, which qualify as lobbying under Senate disclosure
4 rules, would meet the test of the IRC 501(h) which says that
5 advocacy is not substantial in nature.

6 Our yearly expenditures under Senate disclosure
7 rules are \$400,000. And that's out of a budget of around \$30
8 million. That's one percent of our budget. Under IRS
9 regulations, that does not constitute a substantial part of
10 our organization's activities, therefore we are still a
11 charitable organization.

12 I also note there that numerous organizations who
13 are 501(c)(3)s engage in legislative advocacy including the
14 American Association of Medical Colleges and our sister
15 organization, the National Council of State Nursing Boards.
16 So 501(c)(3)s file lobbying disclosures, 501(c)(6)s do as
17 well, because that is a Senate term that we use. But our
18 activities, if you look at what we are organized and purposed
19 for, are the advocacy around our educational and charitable
20 purposes.

21 There was also a question about the issue of
22 private inurement. The FSMB does not inure private
23 individuals. That is prohibited for both 501(c)(3)s and
24 501(c)(6)s. No member board receives private inurement. The
25 FSMB does provide reasonable compensation to its board of

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1 directors, but that is allowable under both the Nebraska
2 Nonprofit Corporation Act and under Treasury regulations.
3 On a regular basis ---

4 CHAIRPERSON HILL: Mr. Fish?

5 MR. FISH: Yes, sir?

6 CHAIRPERSON HILL: I'm just going to ask, what's
7 inurement?

8 MR. FISH: That would be that we take some of our
9 revenue and give it to a private individual or to a member
10 organization.

11 CHAIRPERSON HILL: Okay, thanks.

12 MR. FISH: It would be sort of a payment, or a
13 wage, or something to that effect.

14 CHAIRPERSON HILL: Okay, thank you.

15 MR. FISH: As I was stating, Mr. Chair and members
16 of the Board, we do allow for Board compensation. Members
17 of our Board, our chair, chair elect, and past chair, receive
18 compensation, because they take time out of their private
19 practice schedules. But that is allowable under Treasury
20 regulations, and it is reviewed annually by myself, and our
21 Finance Committee, and our Compensation Committee to ensure
22 that we qualify with the IRS code.

23 MR. SULLIVAN: Mr. Fish, I just have a couple of
24 questions to ask. So are you saying that the mission or
25 primary activities of FSMB are included in the term

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1 charitable?

2 MR. FISH: They are. What you see on your screen
3 right here is taken from the IRS where they talk about
4 charitable as the advancement of education or science. But
5 it also includes the lessening of the burdens of government
6 as it relates vis a vis our membership, who are members of
7 government and agencies of government, working with them for
8 best practices and to provide for better policies. And, for
9 example, taking away some of the regulatory burdens they face
10 would be lessening the burdens of government.

11 MR. SULLIVAN: Thank you. And regarding your
12 comments about lobbying, just to be clear, so what you're
13 saying is the amount of lobbying that is done by FSMB falls
14 below the threshold that would take it out of that
15 exclusively --

16 MR. FISH: Out of the IRS codes, the amount of
17 lobbying that we do do makes us have to file with the Senate
18 and House about a disclosure.

19 MR. SULLIVAN: And you're saying you could qualify
20 as a 501(c)(3). And why don't you?

21 MR. FISH: That is a choice ---

22 MR. SULLIVAN: Why don't you?

23 MR. FISH: -- again, that is a choice that
24 organizations must make. The 501(c)(3) designation carries
25 with it, as I talked to, some advantages if you are taking

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1 in private donations. But the FSMB, because it does not do
2 so, falls without -- does not need that exemption.

3 MR. SULLIVAN: Thank you.

4 VICE CHAIRPERSON HART: And Mr. Sullivan, and I
5 don't know actually, Mr. Fish, if it's you, are you required
6 to register with a local DC government, and say, as a tax
7 exempt ---

8 MR. FISH: We are a Nebraska nonprofit
9 corporation. And our headquarters is in Texas, in Euless,
10 Texas. So for things such as sales tax, our headquarters is
11 our filing. It would be filed with the state of Texas.

12 VICE CHAIRPERSON HART: And so there is no
13 requirement, I'm also asking Mr. Sullivan, there is no
14 requirement for you to file any of that here? And I'm just
15 making sure that that's ---

16 MR. FISH: It's my understanding we do not need
17 to file that, sir.

18 VICE CHAIRPERSON HART: And that you have not?

19 MR. FISH: Correct.

20 COMMISSIONER MAY: Can I ask a follow-up to that?
21 Is there a --- I don't know if you own property now in the
22 District of Columbia, but if you, well, you purchased this
23 building, right?

24 MR. FISH: We purchased that.

25 COMMISSIONER MAY: But are you subject to property

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1 taxes?

2 MR. FISH: We are. Apparently we are subject to
3 property taxes. If we move forward, we would look at the
4 various state and district rules related to property taxes
5 and a nonprofit.

6 COMMISSIONER MAY: So if you were a 501(c)(3),
7 would you not be subject to property taxes?

8 MR. FISH: The IRS definition, vis a vis state
9 regulations, vary. There are 501(c)(3)s that would not
10 receive a property tax exemption.

11 COMMISSIONER MAY: In the District?

12 MR. FISH: In the District. And there are
13 501(c)(6)s that would. It's a local determination based on
14 the standards set forth under District law. But under IRS
15 rules, they're treated the same.

16 COMMISSIONER MAY: Right. So under the District
17 rules though, you currently would have to pay taxes on it or
18 do have to pay taxes on it. Do you, I mean, is that because
19 you haven't attempted to get the exemption from the District?

20 MR. FISH: That is correct, we have not yet
21 attempted that exemption.

22 COMMISSIONER MAY: Okay. And have you, I mean,
23 do you intend to do that?

24 MR. FISH: It would be worth considering, given
25 the property. And we would look to comply with the rules and

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1 regulations of the District.

2 COMMISSIONER MAY: Right. Do you think that you
3 would comply?

4 MR. FISH: Mr. May, I haven't ---

5 COMMISSIONER MAY: I know I'm asking you ---

6 MR. FISH: -- looked clearly at those rules and
7 regulations. But I would think that, as our organization,
8 our uses of the property and the type of organization that
9 we are, we would probably comply, given my knowledge of other
10 localities.

11 COMMISSIONER MAY: I would think. Are you or Mr.
12 Sullivan aware of other similarly --- organizations with
13 similar purpose gaining such exemptions?

14 MR. SULLIVAN: Mr. May, it's not my area. My
15 recollection of that requirement is that the charitable
16 purpose or use be primarily focused on local targets. So
17 there are a multitude of 501(c)(3)s that could not qualify
18 for exemption from local property tax if they are national
19 charities and not -- it's my recollection. It could have
20 changed. I mean, I dealt with it ten years ago on an issue.

21 COMMISSIONER MAY: Sure.

22 MR. SULLIVAN: So that -- it's a very different
23 test. And it's very likely that the large majority of the
24 national 501(c)(3)s or (c)(6)s that are based in DC or have
25 offices in DC probably don't comply and actually do have to

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1 pay property taxes.

2 COMMISSIONER MAY: All right. Thank you.

3 MR. SULLIVAN: I want to summarize the property
4 tax issue briefly. What you heard was that the Applicant
5 qualifies. Under the articles of incorporation, they are
6 organized for the purpose of educational and scientific
7 purposes. And their primary missions are educational and,
8 in fact, are also charitable under the IRS interpretation
9 that one of the charitable purposes is lessening the burden
10 of government.

11 And as you will hear later in the presentation on
12 the special exception, that is the primary critical mission
13 of the FSMB. So if there's any questions, I'll be happy to
14 answer them. But that's what we have for that argument. And
15 we reserve the right to have some rebuttal testimony or
16 evidence in response to anything that we hear from the
17 opponent.

18 CHAIRPERSON HILL: Okay. I guess, in this area,
19 does the Board have any questions that they're like further
20 clarification upon?

21 (No audible response)

22 CHAIRPERSON HILL: Okay, Mr. Fish, again, what's
23 your role there at the organization?

24 MR. FISH: I'm the Senior Vice President of Legal
25 Services, basically the General Counsel.

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1 CHAIRPERSON HILL: Okay. And again, and there's
2 a lot of slides that we're going to be going through and
3 probably a lot of things we're going to be looking at again.
4 But again, you know, you all do file as a nonprofit.

5 MR. FISH: Yes.

6 CHAIRPERSON HILL: Under the 501 (c)(6), right,
7 okay. All right. Mr. Sullivan, you can continue.

8 MR. SULLIVAN: Thank you, Mr. Chairman. I'd like
9 to get into, excuse me, once we're beyond the threshold
10 issues, into the issues of the special exception relief
11 itself.

12 We're here today on behalf of the Federation of
13 State Medical Boards, the Applicant, to request the Board's
14 approval to use the property located at 2118 Leroy Place for
15 use by FSMB, a nonprofit organization, as office space for
16 15 to 20 staff. We have been looking forward to this
17 opportunity. There's a sense of a need to set the record
18 straight, if you will, or to explain to the Board and to
19 everyone here what FSMB is all about and what this proposed
20 use really involves.

21 I think when you remove all of the excess passion
22 or fear caused by this proposal, in the end you'll see a
23 rather simple, and straightforward, and uncomplicated
24 application. I will, of course, have more detail on that
25 part, including how we meet the special exception test, but

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1 I'd like to start with Dr. Chaudhry, the CEO of FSMB, and
2 have him introduce the Board to the FSMB. Thank you.

3 MR. CHAUDHRY: Thank you, Mr. Sullivan. Good
4 morning, Chairman Hill. My name is Dr. Humayun Chaudhry.
5 I am the president and CEO of the Federation of State Medical
6 Boards. I'm delighted to speak to you for a few minutes to
7 give you a little background and history on our organization
8 and then to continue with the discussion.

9 As you heard from Mr. Fish, our senior vice
10 president, about our status as a nonprofit, I won't go into
11 that too much, although to emphasize the point that while the
12 nation's state medical licensing boards that license and
13 discipline doctors and physician assistants, for the most
14 part, have been around since before the nation was founded,
15 when they were Colonial licensing boards.

16 In 1912 the state boards decided to get together
17 to create the Federation for a variety of reasons, chiefly
18 to share best practices, to educate each other, and to
19 streamline the process by which state governments license and
20 discipline doctors under the tenth amendment of the
21 Constitution.

22 We have 70 boards. This is an abbreviated
23 organizational chart. Each of the licensing boards in the
24 US territories and the US states has a delegate. They elect
25 our board of directors, we have about 15 board of directors.

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1 They select the CEO.

2 I have been the CEO for nine years now at the
3 FSMB. And under me are 168 employees, full time employees,
4 the bulk of them, 160 of them, are in our Euless, Texas,
5 office which is right near Dallas, Texas. And over the last
6 nine years, we have had now, a total of eight full time
7 employees is how many we have right now. Our units, our
8 areas of interest are education, advocacy, assessment
9 services, as you've heard, finance, and operations, and
10 legal.

11 In brief, our vision and mission is to support our
12 state licensing boards. So our members, we don't have
13 individual members, as such, of the FSMB. Our members are
14 the member boards which are the state agencies set up by the
15 states and the territories.

16 Typically, board members of each state and
17 territory are appointed by the governor or the authority of
18 the territory. Our role, and our mission, and vision is to
19 support the state boards so they can effectively do two
20 things, promote quality healthcare and protect the public.
21 And so we provide whatever means we can to do that.

22 This is a complicated chart, and you don't have
23 to read every word, but just to give you an idea of some of
24 our strategic goals for the next five years, which were
25 adopted by our board of directors and ultimately adopted by

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1 our House of Delegates, chief among them, right in the middle
2 at the top, is support of our state medical boards.

3 But other areas going around are advocacy and
4 policy leadership, collaboration with relevant partners. As
5 appropriate, we'll partner with the American Medical
6 Association and other organizations that do similar things
7 as appropriate. Education is a big part of what we do, as
8 you heard, organizational strength and excellence as well as
9 data and research services.

10 We have a nationwide physician shortage, as you
11 know. We provide pretty specific information to our nation
12 and our states about how many physicians there are that are
13 licensed. There are exactly 953,000 who are licensed, I can
14 tell you. And we also provide some demographic data and
15 diversity data that helps states move forward in that regard.

16 Just to give you a flavor for some of our policy
17 initiatives and what kinds of areas we're looking at this
18 year, they include best practices. We have a work group
19 looking at best practices to make sure the state boards are
20 streamlining their services. Many states and territories are
21 struggling with financial resources. And so whatever they
22 can do to streamline their services, we are happy to promote
23 and support.

24 We're also educating medical students, residents,
25 and physicians as well as the public about medical

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1 regulation. If you hadn't heard of the FSMB before, you
2 would not be alone. A lot of people don't even know that
3 state boards exist. But they know they exist when there's
4 a problem, when there's a problem with the care that they've
5 received, and they need some recourse, and a complaint is
6 filed.

7 But we're doing what we can to educate doctors,
8 not only about what happens when you get a complaint, but
9 also how do you avoid getting a complaint in the first place
10 and how you promote quality healthcare.

11 Other areas are physician wellness and burnout,
12 prescription drug monitoring programs. You all know we have
13 a nationwide epidemic with prescription opioids and with
14 heroin. And we're providing counsel, working with our
15 partners at the CDC, and the FDA, and others.

16 We also have a work group which was --
17 specifically we were asked to put this one together, the work
18 group on regenerative and stem-cell therapies at the request
19 of Tennessee Senator Lamar Alexander, an example of our
20 support, not only to the state boards but to Congress as
21 appropriate.

22 This is a picture of our annual meeting. It is
23 held once a year, typically at the end of April. It's a
24 four-day meeting, 450 attendees, not only from all of the
25 states and the territories, but also from medical regulators

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1 around the world who come to learn, who come to share their
2 best practices, open to the public, held in a large hotel and
3 conference center.

4 We also have board attorney workshops, two-day
5 meetings for the attorneys who serve on these state boards
6 to make sure they're sharing best practices as well. And
7 then there are other types of educational seminars and
8 teleconferences as appropriate.

9 Mr. Fish mentioned some of our publications.
10 These are peer reviewed journals. And we've been doing this
11 since going back to 1915, again, part of our education
12 mission. We also publish in other journals, as you've heard.

13 Our advocacy office, we've always been involved
14 in testifying in the nation's capital on Capitol Hill. But
15 in 2009, the Federation's board of directors felt it was
16 important to have a full time presence. We began with one
17 full time employee and, as you heard, nine years later we
18 have eight full time employees. We play an important role.
19 There's a lot of discussion in the nation's capital about
20 state-based regulation, licensure. And so we serve an
21 important purpose for our member boards.

22 There's a picture of me, I'm the one with the
23 green tie testifying before a House Committee on Veterans'
24 Affairs. The Veterans' Affairs Administration is one of the
25 agencies at the federal level we're working with to make sure

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1 that our veterans get the best of healthcare.

2 But the purpose of the Advocacy Office in DC is
3 to allow for regular meetings with members of Congress and
4 the administration, serve as the national home for member
5 boards, and to facilitate meetings, as well as to support
6 FSMB committees and work groups from time to time.

7 That's me testifying at the DC Council
8 which had a joint meeting with the DC Health Committee on
9 matters local to the state and the District as well. I
10 showed this slide to point out that we're not just focused
11 on national issues, we're also focused on local issues. I
12 travel a lot to the nation's state boards. I've been to
13 almost every state in the nation, as well as to other
14 countries around the world where they do medical regulation.

15 Our board of directors, as I said, are elected by
16 the nation's state licensing board delegates. They meet four
17 times a year. These are mostly physicians who are busy in
18 their practices, but have volunteered their time to support
19 this endeavor. We typically have one of those meetings in
20 the nation's capital. We've had that for a number of years,
21 typically mid-February. In fact, we're preparing now for our
22 board meeting next week.

23 This coincides with a day of visits to Capitol
24 Hill to allow the board members to meet with their
25 Congressmen and Senators. It's a four-day meeting, typically

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1 have about 25 attendees for this meeting, 15 board members,
2 and about ten support staff, again, once a year for this
3 particular meeting in the nation's capital. But they meet
4 four times a year to provide some guidance to how we at the
5 staff level should operate and function.

6 Just a couple of quick slides of what our
7 committees and work groups look like. We don't have that
8 many, maybe a dozen or so committees or work groups every
9 year, but they typically meet at least once a year in person.
10 The committees range in size from ten to 15 individuals,
11 members of state boards as well as some of our staff.
12 Meetings are typically held on business hours and, again,
13 about two to three per quarter on average.

14 For every committee, we like to have at least one
15 meeting in person, not always but at least once in person.
16 Although we are recognizing the fact, because the state
17 boards keep telling us, that it's really hard to travel with
18 the work loads. So we try to make teleconferences and
19 technology available as often as possible. This past year,
20 we really spent a lot of time with that, and that's been
21 appreciated, not just audio conferences but video conferences
22 as well.

23 So I'm going to stop there and say, from the
24 Federation's Board of Directors, we value having a presence
25 in DC. We are excited about having a permanent presence

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1 through this property. We think it serves the needs of our
2 member boards and the nation. And we think that it will do
3 so in a way that will not adversely impact our adjoining our
4 neighboring properties.

5 With that, let me turn it back to Mr. Fish who can
6 talk a little bit more about the property and our purchase
7 of it.

8 CHAIRPERSON HILL: Okay, Dr. Chaudhry?

9 MR. CHAUDHRY: Yes?

10 CHAIRPERSON HILL: Just before, does anybody have
11 any questions for Dr. Chaudhry?

12 (No audible response)

13 CHAIRPERSON HILL: Okay. Mr. Sullivan, I
14 appreciate your framing the argument as it's a very simple,
15 straightforward argument. This is a very thick presentation.
16 So I'm guessing it might be not as simple or straightforward.
17 I'm just kind of pointing out ---

18 MR. SULLIVAN: I think from here on out it's
19 completely substantive.

20 CHAIRPERSON HILL: Okay. I'm not saying it's not.
21 I just --- I'm just providing a little bit of feedback and
22 pushback on it.

23 MR. SULLIVAN: Appreciate it, yes.

24 CHAIRPERSON HILL: But I understand the framing
25 of the discussion. And it will also get framed, I'm sure,

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1 on the other side.

2 MR. SULLIVAN: No. Most of the thickness now is
3 probably a function of responding to a lot of this.

4 CHAIRPERSON HILL: Okay.

5 MR. SULLIVAN: So that should be official.

6 CHAIRPERSON HILL: That's okay. Thank you.

7 COMMISSIONER MAY: Mr. Chairman?

8 CHAIRPERSON HILL: Yes?

9 COMMISSIONER MAY: I had one question for Dr.
10 Chaudhry. So you stated you have eight people working full
11 time in advocacy. And we saw a slide before that said
12 something like \$300,000 spent on advocacy, or \$400,000,
13 \$400,000.

14 MR. CHAUDHRY: Yes.

15 COMMISSIONER MAY: So does that include the
16 employees, and if so, how do you get people so cheap?

17 MR. CHAUDHRY: Ha, ha, ha, ha. I'll let Mr. Fish

18 ---

19 MR. FISH: Mr. May, if I can respond to that,
20 because it is my duty to file those disclosures with the
21 Senate. Under Senate rules on lobbying that includes the
22 rent that we pay, some of the space involved there, as well
23 as salaries for the individuals that are registered
24 lobbyists. We have two individuals who are technically
25 registered as lobbyists. Myself, I am in the DC Office, but

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1 I'm not a lobbyist. I do not go to Capitol Hill.

2 COMMISSIONER MAY: Okay, so it's really just two
3 lobbyists and some office space for that amount of money?

4 MR. FISH: Yes, sir.

5 COMMISSIONER MAY: Which sounds more like it. But
6 clearly, there's a bigger a portion of your budget that's
7 actually devoted to that cause, if not what you have to
8 report --

9 MR. FISH: Yes. The advocacy, in a general sense,
10 would be education and working with these member boards on
11 work groups and things. But for lobbying disclosure rules,
12 we follow those terms.

13 COMMISSIONER MAY: Got it. All right, thank you.

14 CHAIRPERSON HILL: All right, Mr. Fish, please
15 continue.

16 MR. FISH: Thank you. And, Mr. Chair, I
17 understand that we do have a lot here, and I will go through.
18 My discussion really is to discuss the purchase of the
19 property, what the FSMB intends to use the property for, and
20 also respond to some of the critiques of the FSMB's outreach
21 to the neighborhood.

22 I think you will see that the FSMB has been, since
23 the purchase of this property, a neighbor who engaged the
24 community, who listened to some of the concerns, responded
25 immediately to the concerns. And also we are accepting of

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1 the conditions or the use of this property with conditions.

2 And I think after seeing, also, how Dr. Chaudhry
3 framed our organization, we are an organization that is a
4 benign use to a neighborhood. A few staff members, a few
5 meetings would not be a detrimental use to the individuals.

6 Approximately 18 months ago, the FSMB Board of
7 Directors directed staff and our Finance Committee to search
8 for a permanent home for the FSMB. As Dr. Chaudhry pointed
9 out, we started with one employee. We were successful in
10 serving our member boards. We grew in staff. We outgrew the
11 space that we are currently in. It is a 2,000 square foot
12 place. We have a copy room that serves as a kitchen and a
13 break room. We have a small conference room that we cannot
14 use to host these individual work groups that come in.

15 We looked at over 30 properties. And as with any
16 residential search, we looked all over the city, and we
17 looked at all the different types of properties. There were
18 brownstones that were basically a vertical representation of
19 our current space that did not have the flexibility that we
20 would like. There were condos that were under development,
21 and there were also large properties, much like the 2118
22 Leroy property, and others that we considered. Some of these
23 were in residential zones, but we believe that we fit the
24 description and the requirements that are a part of that
25 exception.

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1 In July, the FSMB put in a bid for the property
2 which was listed at \$3.5 million. Three bids were received
3 on that property. And you see on this slide a letter of
4 attestation from our listing agent who, in direct
5 communication with the agent who was the seller's agent,
6 stated that there were three bids received, the FSMB's, a
7 foreign government, and a real estate developer. Knowing
8 that the DC market is competitive, we put in an offer with
9 escalation clauses. And the final sale price was \$4.15
10 million.

11 You'll note that the real estate developer
12 continues to contact the FSMB about buying the property from
13 us. The real estate developer, if you go to his website,
14 services commercial properties and non-profit organizations.
15 I think it's been alluded that there were other residential
16 buyers. I have shown now that our listing agent and the
17 communication have been from a real estate developer, and the
18 other bid was from a foreign government.

19 The property itself was built in 1902. It was
20 originally a residence, but for nearly 70 years, it's been
21 an embassy or chancery building, first the Hungarian
22 government, and then the Columbian government who had, up to
23 2015 when they started to condense all their operations, 25
24 to 40 employees at that location.

25 The street itself, Leroy, is a microcosm of DC.

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1 You have cultural institutions, you have non-profits, you
2 have embassies, you have residences, and you have a hotel.
3 This is a street that is unlike other parts of the Kalorama
4 district. And you see that the surrounding area is very
5 different than just a purely residential zone. It is 75
6 percent residential, but it is 25 percent non-residential.

7 The existing space was listed as --- and this is
8 from the listing agent's page --- as it could have been an
9 embassy. It was showcased that it was an embassy, embassy-
10 size rooms. It was listed at 27 bedrooms, three full baths,
11 three half baths. I don't know any family that would want
12 that many bedrooms for that few bathrooms. And it was
13 marketed with the embassy potential. Two of those full baths
14 are in the basement. Throughout the property, there are no
15 full baths that are really above ground except for one.

16 The conditions at the time of closing showcased
17 the office use. There are 18 offices and four conference
18 rooms. There are open cubicle spaces. This would be
19 consistent with a staff of 25 to 40 individuals. And the
20 Columbians have attested to us that that was the number of
21 individuals who served in that property. It was used, it has
22 to be renovated. It is in very poor shape as both an office
23 or as a residence.

24 Here's just a quick layout of that property
25 showing all of the office spaces and sort of our proposed use

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1 of the subject property. This is a preliminary layout and
2 design. We would build out a few larger conference spaces
3 by condensing some of those offices and then also use the
4 second and third floor for our staff offices.

5 We understand that a nonprofit use in a
6 residential zone often comes with operational conditions, and
7 these are the conditions that, I think, we have been
8 comfortable with. We would like a permanent home with 15 to
9 20 employees. How this board would feel and how they would
10 word that condition is up to you. But we would like interns
11 to assist with some of our policy and, especially, would help
12 with some of the legal side of this.

13 Normal business hours, occasional meetings and
14 visitors, currently our DC Advocacy Office receives one or
15 two visitors a week, some of those may be individual state
16 medical board members who are in DC meeting with Congressmen
17 for other reasons, or members of our own staff who are coming
18 in from Texas.

19 We do not hold fundraisers. We do not have a PAC,
20 and we would not hold that at that location. We would like
21 to have the ability to have a four-day board of directors
22 meeting at that property, not using a hotel space, and also
23 host some of the work groups in that space, some of those
24 smaller work groups where we could sit around a conference
25 table and discuss the issues at hand.

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1 When we purchased the property and conducted a
2 feasibility study, this was about the same time in August,
3 September that there was a lot of news about some of the
4 vacant embassies in the Kalorama district and the opposition
5 that the neighbors had to these properties. You see here,
6 this is from the Washington Post article talking about the
7 embassy as a neighbor. And then it was showcased that the
8 FSMB was the purchaser of the Columbian Embassy.

9 Because of the interest in both being a good
10 neighbor and some of the charges levied against vacant
11 properties, I reached out to the ANC Commissioner, Ellen
12 Goldstein, who covers our district, and wanted to introduce
13 ourselves and also state to her that if there are issues that
14 come up while we're pending with this application to please
15 contact me. And that was in mid-September.

16 On October 4th, I met with both ANC commissioners
17 for that district, and members of the Sheridan-Kalorama
18 Historical Association, and the neighborhood council. In
19 that introductory meeting, which was about 90 minutes long,
20 I provided a tour of the property and answered all questions
21 related to our use.

22 There was concern about the upkeep of the property
23 up to that point, some of the concerns that it looked vacant.
24 There was direct opposition to us being in that neighborhood.
25 I would say that from the get-go. It was a question of why

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1 the FSMB purchased a property that large for a staff of eight
2 to ten people.

3 And I was also told that conditions do exist for
4 non-profits, and that it might behoove me to look at the
5 property down the street. At which time, I looked at the
6 2110 Leroy property which is that Cullen case that Mr.
7 Sullivan referenced earlier.

8 We also have been in contact with our neighbors
9 to the left and to the right who are directly abutting our
10 property. I met with Dr. David Figan (phonetic), who met
11 with us in our DC office, again, discussing what our uses are
12 for the property, introducing ourselves. And also we've been
13 in contact with Mr. Melman who lives on the other side.

14 I will state that when we have received complaints
15 about things that we've done, such as putting lights on
16 timers, as you see from Mr. Melman, we immediately rectified
17 the situation. The issue was that the neighbors said that
18 the property looked vacant. We put on lights. They didn't
19 like the lights. We changed how the lights were operated.
20 I think that goes to show the FSMB's intent on being a good
21 and responsive neighbor.

22 We also presented to the ANC, in a lengthy meeting
23 on November 20th, the ANC did vote to oppose us. There were
24 -- but I would say that the ANC was fair in providing us the
25 opportunity to present, much like this setting, but also let

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1 the neighbors speak about their concerns as well.

2 MR. SULLIVAN: Thank you, Mr. Fish. Mr. Chair,
3 members of the Board, I will now address the special
4 exception requirements. I would just like to note,
5 generally, just an overview of some of the aspects of the
6 use.

7 CHAIRPERSON HILL: Mr. Sullivan?

8 MR. SULLIVAN: Yes?

9 CHAIRPERSON HILL: Can I ask you a quick question
10 of Mr. Fish?

11 MR. SULLIVAN: Sure.

12 CHAIRPERSON HILL: So you guys purchased the
13 property, correct.

14 MR. FISH: We did purchase the property.

15 CHAIRPERSON HILL: And so you purchased the
16 property knowing that you had to go through this process?

17 MR. FISH: Yes, sir. After consulting with Mr.
18 Sullivan, but also looking at the regulations and some of the
19 previous decisions that have been issued for special
20 exemptions, we felt that we fit the conditions that would
21 bring us here today.

22 CHAIRPERSON HILL: Okay. But you did know that
23 you had to come through us first?

24 MR. FISH: Yes, sir.

25 CHAIRPERSON HILL: Okay, okay. Thank you.

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1 MR. SULLIVAN: Thank you, Mr. Chair. Excuse me.
2 So this use, this special exception opportunity was adopted
3 in the early 1970s. And in adopting it, the Zoning
4 Commission specifically noted that the purpose was that it
5 was in the public interest to provide for the continued use
6 and maintenance of large residential buildings within
7 historic sites and districts. And it is in the public
8 interest to maintain and preserve large residential buildings
9 of historical and architectural significance which are not
10 within historic sites and districts.

11 I cite this up front, because I think this is a
12 good example. And I would note that we are not required to
13 prove that this could not possibly have been used for a
14 residential use, as seems to be implied by the opponents, but
15 merely that we are responding to something that has been
16 encouraged by the Zoning Commission and also noting that,
17 because I think 90 percent of the discussion from the
18 opponents is that, hey, this is a residential zone. It's
19 really residential.

20 And my response to that would be, well, that's
21 actually a prerequisite. We would not be here if it was not
22 a residential zone. And in adopting this language, we think
23 the Zoning Commission noted that there is some level of a
24 nonprofit organization use that is compatible in a
25 residential district, provided you meet certain conditions,

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1 and as the Board has provided over the 40 years that this
2 type of relief has been approved. So going through the
3 conditions itself, the building is, of course, in the
4 historic district. And it is in a residential zone.

5 On gross floor area, we initially applied for
6 variance relief thinking it was under 10,000 and, mea culpa,
7 that was basically a lack of due diligence on my part. When
8 I got into the building I realized that the first floor was
9 higher than it looks from the front. And also the elevation
10 in the back is significantly lower than it is in the front.

11 So we engaged CAS Engineering to provide a
12 topographic survey that would verify that the lower level
13 gross floor area was a certain amount that took the gross
14 floor area of the building well over the 10,000 square foot
15 required minimum.

16 So we do have a letter from the current architect
17 explaining that. And we don't have it in the PowerPoint, but
18 we do have a copy of the topographic survey too turn in as
19 well. And I would also add it's a self-certification issue.
20 If we told you that we were over 10,000, regardless of what
21 you found, DCRA would have to verify that when we applied for
22 a building permit, either way. So there's a gatekeeper on
23 the back end with the expertise to determine exactly what the
24 gross floor area is.

25 And in fact, one of the things that noted me to

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1 the gross floor area was the case for 2110 Leroy. The Cullen
2 case said, in its order, that the only other building on the
3 street that had over 10,000 was 2118.

4 So Condition Number 3, which is --- that's the big
5 condition, right, use of existing residential buildings and
6 land by a nonprofit organization shall not adversely affect
7 the use of neighboring properties. As I stated before, when
8 the Zoning Commission adopted this, it clearly expected that
9 there would be some level of use. So how does the Board ---
10 what does the Board compare this use with? How does it
11 determine what is or is not likely to adversely affect the
12 use of neighboring properties. And I think there's a couple
13 of different things.

14 One, you can look at other approvals, and you can
15 see what past boards have interpreted to be a level of use
16 that they would say was too much for a specific residential
17 neighborhood or likely to be too impactful. You can look at,
18 and the Board has looked at the current or past use that's
19 being replaced. And in this case, we have information from
20 the Columbian Embassy that, up until October 2015, they had
21 25 to 40 staff there.

22 And I will note too, in one of the opposition
23 letters just filed last night, the neighbor across the street
24 stated that he's observed that use throughout 2014, when
25 there were 25 to 40 employees, and found that that use did

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1 not substantially detract from the residential character of
2 the neighborhood.

3 So these are some of the things that the Board ---
4 also, I think you could compare it with a typical large
5 residential use. And I think there has to be a baseline of
6 some kind. And there're several baselines. You're not
7 comparing it against the property as if it were vacant or as
8 if it were a park.

9 So by these standards, some of the things to
10 compare it to, we're asking for 15 to 20 employees. We would
11 accept the condition of 15, but we're asking for the
12 flexibility to have five temporary positions in addition to
13 the 15 full time for our summer intern, for somebody that
14 visits from Texas for a week. And so we'd like to have that
15 condition modified somewhat.

16 Compared to the approval at 2110 Leroy three doors
17 down, which was against essentially the same opposition, and
18 they actually received variance relief for their case, it was
19 35 employees were approved in that building. And the
20 building was a little smaller than this building. Compared
21 to the previously existing use of 25 to 40 employees, we're
22 about half of that as well. So we're about half or less than
23 half than a use approved a couple doors down and the previous
24 use to this.

25 And opposition letters imply, for the most part,

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1 that any use that is not residential will inherently
2 adversely affect the use of neighboring properties. But as
3 I noted, the Zoning Commission rejects that notion and
4 provides that the BZA decide, under the conditions adopted
5 then, that this use is compatible with a residential
6 neighborhood and not likely to adversely affect the use of
7 neighboring properties.

8 So the FSMB's proposed operations are quite
9 limited when you compare it to some of the other approvals
10 that this board has adopted, no parties, no fundraisers,
11 essentially no nighttime events. What we're asking for is
12 two to three meetings a quarter. And they're meetings.
13 They're meetings, they're not parties, they're not weddings.
14 And they're not likely to adversely affect the use of
15 neighboring properties.

16 One thing I'll note about this too is -- I'll talk
17 about this more when we get into the parking -- there's
18 parking garages nearby, very close, two, three minutes away.
19 And there's a couple of hotels nearby as well, one right on
20 this block and one right across Connecticut Avenue.

21 For these meetings, those attendees will stay at
22 those hotels so they won't even have to be transported by cab
23 to Leroy. So it really sets up well for not having an
24 adverse impact. And I'll talk more about transportation in
25 the next section.

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1 Office of Planning has proposed what we thought
2 were very strict conditions, and we're okay with almost all
3 of them. I will get into, after I go through the
4 requirements, where we think we'd like to modify them a
5 little bit.

6 So Condition Number 4 is that the amount and
7 arrangement of parking spaces shall be adequate and located
8 to minimize traffic impact on the adjacent neighborhood.
9 There is one or two parking spaces in the garage in the back
10 which will be used by Dr. Chaudhry. All other employees will
11 be required to use one of the three parking garages that is
12 within a two-two three minute walk of this building. The
13 location of the garages are shown on the next two slides.
14 You see they're very close. The property itself is only
15 about less than 200 feet away from Connecticut Avenue.

16 Condition 5 is obviously met, no goods, chattel,
17 wares, or merchandise created, exchanged, or sold in the
18 building.

19 Condition 6, any additions to the building or
20 modifications to the exterior shall require approval of the
21 BZA after review and recommendation by HPRB with comments.
22 The Applicant's not planning to modify the exterior of their
23 building site unless that was required under the permit
24 process to comply with ADA requirements or if there were
25 other structural issues that required something be replaced.

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1 I'd like to address opponents' comments, a few of
2 them. One claim was that the use will adversely affect use
3 through bus and vehicular traffic. We don't have any buses.
4 We won't have and buses. We will have virtually no cars.
5 The only way there would be a car is if a visitor wasn't
6 informed of the policy or ignored the policy. And you've
7 heard from Mr. Fish that they've had one to two visitors a
8 week in their time in DC. So guests are very infrequent.

9 Another thing I saw in a letter was the employees
10 will be coming and going. And, of course, the employees
11 don't come and go. Employees will show up in the morning.
12 They'll work their eight to ten hour day, and then they'll
13 go home. We've agreed not to have any evening or weekend
14 activity.

15 Another claim is that the percentage of
16 residential, 75 percent, somehow precludes approval or erodes
17 the features inherent to residential uses. This use was not
18 residential for the last 70 years. This is, in that sense,
19 this is status quo. We're not removing, as has been stated
20 in multiple letters, we are not permanently removing, we are
21 not removing an existing residential use from circulation on
22 this block.

23 And neighbors have commented on the record that
24 during 2014, when the Columbian Chancery still had 25 to 40
25 staff, that the use appeared to be extremely limited. We're

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1 going to have about half of that. And we would submit that
2 our use will be hardly noticeable as well.

3 Employees will walk from the parking garage, walk
4 into the building, will work, and walk home. I haven't seen
5 anything in the record explaining how exactly that activity
6 adversely affects the use of neighboring properties, other
7 than just the general discussion that it affects the
8 residential character of the neighborhood.

9 They have claimed, I saw in -- I don't know if it
10 was in the filings or in a letter that the Colombian Embassy
11 was essentially abandoned in 2007. Now, we have a letter
12 from the Ambassador that says that's not true. It was 25 to
13 40 up until October 2015. However, exactly when that ended
14 isn't really at issue anyway.

15 The reason it was reduced in October 2015 is
16 because they were moving, and preparing to move, and
17 preparing it for somebody else to purchase the property, and
18 replace it with another use which could have been an embassy,
19 as a matter of right. It could have been another chancery
20 by special exception approval.

21 Okay, you have this letter in the record. It's
22 a letter from the Columbian Ambassador noting that the
23 property was used as office space from 1951 until October
24 2015, 25 to 40 full time diplomats, administrative
25 assistants, and military personnel.

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1 This next slide talks about a visit from the vice
2 president of Columbia and a press conference held in 2014 as
3 well, supposedly after the property was left vacant in 2007.

4 So I'd like to respond to OP's proposed
5 conditions. Office hours of operation, 8:00 to 6:00,
6 Applicant agrees to that. Staff and visitor parking in
7 nearby parking garages and on-street will not be allowed,
8 Applicant agrees to that.

9 All deliveries will be restricted to weekday
10 office hours. I would say Applicant agrees to take best
11 efforts to do that. I'm sure you understand the way things
12 are delivered today. And the Applicant mostly orders -- its
13 deliveries come from Amazon. They order office supplies from
14 Amazon, and they come once every couple of weeks. So myself,
15 I haven't figured out how to regulate the delivery times of
16 Amazon, so I don't want to promise anything that might not
17 happen. But they'll use their best efforts for that.

18 Neighborhood liaison, of course, the Applicant
19 agrees to that condition and looks forward to building a
20 strong and lasting relationship with the Kalorama community.

21 Regarding external alterations, as I mentioned
22 before, beyond those necessary, and also as approved by HPRB,
23 of course.

24 Loading will be restricted to the alley. On this
25 point, I would like more discussion. We would, of course,

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1 agree to whatever the Board decides. We have seen at least
2 one letter in the file saying that they would be opposed to
3 loading in the alley. There isn't really going to be a
4 loading function. Once the construction is done, and the
5 building is furnished, there's not a continuing loading
6 function.

7 Regarding delivery, and it wasn't clear whether
8 delivery should also go in the back or not, we kind of think
9 today, the way that works, that that might be
10 counterproductive. There are deliveries that come very
11 infrequently, come from Amazon. Unlikely that Amazon is
12 delivering to just one place on the block. So if they're
13 parking somewhere to deliver to several locations on that
14 block, having them go back to the alley would just sort of
15 exacerbate that situation.

16 So the Applicant can try to do that, can try to
17 meet that condition, but suggests that maybe that's not the
18 best condition and that the number of deliveries is so
19 infrequent that they really don't think it's going to make
20 a difference.

21 Regarding the number of employees, maximum of 15
22 employees may work onsite. We would like to make that clear
23 that there's 15 full time staff with a flexibility for five
24 for summer interns or visitors from the main office.

25 Regarding the annual meetings and events, the

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1 Office of Planning has proposed that none of these meetings
2 be able to be held at the property. This is one of the main
3 reasons that they liked this property. They thought they
4 could have these twice a quarter meetings with --- Mr. Fish,
5 how many people attend those meetings?

6 MR. FISH: On average, 8 to 15. The largest would
7 be about 15. But these could be work groups of four
8 individuals.

9 MR. SULLIVAN: And those would be limited to two
10 or three a quarter as well. And we don't see how that would
11 adversely affect the use of neighboring properties,
12 especially when considering some of the other types of
13 events, parties, weddings, that other nonprofit uses have
14 approved under this relief.

15 Time limits, I think the five-year time limit is
16 excessive. I think it's quite unprecedented. It was told
17 that the five-year time limit was picked from the Tudor Place
18 application which is famous for its potential impact and the
19 battles that it's had before this board. As a comparison,
20 Tudor Place Foundation, they have six events a year with up
21 to 500 attendees per event, ten events with 200 attendees,
22 15 events with 99 attendees, and weddings, and wedding
23 receptions with up to 75 people. And we will have none of
24 that.

25 Besides that Tudor Place case, I have not found

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1 another case proving this that had a five-year or any time
2 limit, for that matter. Also, the ---

3 COMMISSIONER MAY: Wait, I'm sorry, are you
4 talking about any cases?

5 MR. SULLIVAN: No, no.

6 COMMISSIONER MAY: Any BZA cases at all?

7 MR. SULLIVAN: Oh, no, of course not. No.

8 COMMISSIONER MAY: Right, so what kind of cases
9 are you talking about where ---

10 MR. SULLIVAN: This special exception approval for
11 --

12 COMMISSIONER MAY: This particular special ---

13 MR. SULLIVAN: -- for nonprofit. Yes.

14 COMMISSIONER MAY: Okay.

15 MR. SULLIVAN: Yes. Also, in order to affect the
16 purpose that the Zoning Commission cited in adopting this
17 special exception relief, requires an Applicant to invest a
18 significant amount of money into restoration, preservation,
19 and maintenance of a property. And granting them a five-year
20 approval, and then expecting them to invest significantly in
21 restoring a property that has been somewhat neglected, is not
22 exactly fair in our opinion.

23 The FSMB's position is that it would accept the
24 five-year time limit. But it would ask that the Board either
25 extend that significantly to ten or 15 or, if it was in line

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1 with previous approvals, to not have a time limit. And I
2 would suggest that this is a rather benign use compared to
3 most of these nonprofit approvals, heavily conditioned. And
4 those conditions are meant to address the potential for
5 adversely affecting the use of neighboring properties.

6 The time limit traditionally, in my opinion, has
7 been adopted for cases where there is more of a likelihood
8 of having an adverse effect and that the Board then wants to
9 revisit that and make changes to those conditions. But I
10 think these conditions are pretty strong to begin with. But
11 the Applicant would accept whatever the Board thinks on that
12 point.

13 CHAIRPERSON HILL: Okay. All right. Thanks, Mr.
14 Sullivan, I'm watching too.

15 So, let's see, I think I know that the Board
16 members need a quick break, actually. So we're going to take
17 a quick break before we do cross. But just a quick question
18 for you, Mr. Sullivan, again, as far as, like, Number 1 goes,
19 can you tell me again how Number 1, the building must be
20 listed in the DC Inventory of Historic Sites, et cetera, et
21 cetera?

22 MR. SULLIVAN: Oh, Condition 1 is that it be
23 residential, and it be historic, and it be --- it's listed
24 in the historic district.

25 CHAIRPERSON HILL: Okay. Okay, all right.

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1 MR. SULLIVAN: Or it's in the historic district.

2 CHAIRPERSON HILL: Right, that's what I ---

3 (Simultaneous speaking)

4 CHAIRPERSON HILL: That's what I just wanted to
5 clarify. All right. Okay, does the Board have any quick
6 questions before we take a break?

7 (No audible response)

8 CHAIRPERSON HILL: All right. So we'll just take
9 a break and then come back with cross.

10 (Whereupon, the above-entitled matter went off the
11 record at 1:28 p.m. and resumed at 1:39 p.m.)

12 CHAIRPERSON HILL: Okay, all right. We're going
13 to get started again. Let's see, so just wanted to try to
14 set a little bit of parameters here.

15 There are a couple of Board Members that have some
16 time limitations. So I'm hopeful that we kind of can move
17 through this as quickly as possible. Again, there still is
18 an hour for your presentation, Ms. Mazo.

19 And so in terms of the cross if we could, you
20 know, be as, I guess as specific as possible. I mean a lot
21 of the things if you think you're going to address them in
22 your presentation then maybe we can wait for it then. But
23 please go ahead and have it, Mr. Sullivan as --

24 MS. MAZO: Thank you very much. And from a timing
25 perspective I don't anticipate more than ten minutes on

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1 cross.

2 CHAIRPERSON HILL: Okay, great.

3 MS. MAZO: You know, understanding everyone's
4 limitations.

5 CHAIRPERSON HILL: Yes, I mean I just want to make
6 sure, I'm trying to get this out because there's people that
7 are going to have to leave.

8 MS. MAZO: As are we and we have many, many
9 residents including both adjacent property owners who are
10 here. One of them, Dr. Feigin actually had cataract surgery
11 today and came directly from the hospital to testify on this
12 matter.

13 So there are many individuals who feel very
14 strongly and --

15 CHAIRPERSON HILL: We're going to hear them all.
16 I want to make sure they get heard. So go ahead, please.

17 MS. MAZO: I appreciate that. First of all, Mr.
18 Sullivan, you have presented us today with some documents
19 that you believe attest to prove that the building satisfies
20 the 10,000 square feet, the requirement.

21 Just by way of background, have those documents
22 been entered into the record before today?

23 MR. SULLIVAN: No, I don't believe so. They were
24 submitted as rebuttal evidence.

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1 MS. MAZO: They are submitted as rebuttal. But
2 just so I'm clear, it does say, one of the documents that you
3 provided to us is dated November 27, 2017. So have you been
4 holding onto this document for any particular purpose?

5 MR. SULLIVAN: No, no particular purpose. It
6 wasn't necessary. This is a self-certified aspect of the
7 application, in my opinion.

8 I don't think you would find any application on
9 the 10,000 square foot where the Applicant didn't just say
10 we meet the 10,000 square feet. In this case we are
11 providing additional information because you're challenging
12 that.

13 MS. MAZO: Just to set the record straight, quite
14 frankly, Mr. Sullivan, you initially applied saying that you
15 didn't meet the 10,000 square feet. So we didn't challenge
16 it. You raised it.

17 But that's neither here nor there. But on that
18 matter I would like to, granted we've been given this
19 document, you know, about 20 minutes ago. So we've taken a
20 few minutes to look at it.

21 One thing I'd like to note are some
22 inconsistencies I believe with documents that you have
23 submitted into the record, namely in the Wingate Hughes,
24 sorry, everything, there's no staples and everything was kind
25 of thrown at me in such a way.

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1 So I'm going to have to look through my documents.
2 But, okay, in the Wingate Hughes letter that you have dated
3 January 30th, yesterday, you indicate or I guess Wingate
4 Hughes, who is Wingate Hughes, by the way?

5 MR. SULLIVAN: Wingate Hughes, for the record, is
6 the architectural firm that we used for the architectural
7 feasibility study after the purchase to assess the condition
8 of the building and whether we would move forward with this
9 application.

10 MS. MAZO: Okay. And Wingate Hughes also
11 submitted the exhibit that's at Exhibit 9 to your
12 application. Is that correct? I see Wingate Hughes at the
13 top of that document.

14 Okay, so I am looking at again Exhibit 9 to your
15 document that's dated October 10, 2017. And it indicates the
16 basement square footage as 3,131.91 square feet. But yet I
17 am now looking at this January 30, 2018, letter and that has
18 a different total floor area or total area, I believe of the
19 basement as 3,258.2 square feet.

20 So I guess I'm just wondering where the extra 120
21 square feet came from between what Wingate Hughes looked at
22 on October 10th and what apparently they looked at, at some
23 point between October 10th and January 30th.

24 CHAIRPERSON HILL: So, Ms. Mazo, I'm just trying
25 to get to your question. It's again, you discount what has

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1 been presented in terms of the number on the second --

2 MS. MAZO: Whether I, quite frankly this
3 information was just provided to us. And so I'm just trying
4 to understand the inconsistency between a number of the
5 square footage that was provided back in October of 2017.

6 CHAIRPERSON HILL: Okay. And I'll let them answer
7 that question. I guess as far as the square footage as what
8 I understood, and the Board can also help elaborate with me
9 on this, is that would be something that is self-certified
10 so that if it weren't over the 10,000 square feet then that
11 would be something that the zoning administrator would
12 determine.

13 MS. MAZO: All of that is true except for the fact
14 that the relief that's required for this application at all
15 is dependent on this discussion and indeed OP's
16 recommendations themselves are dependent on documentation of,
17 that the Applicant satisfies the 10,000 square feet, gross,
18 sorry, the 10,000 gross floor, square feet of gross floor
19 area requirement of the special exception.

20 So my point is that this is an important issue.
21 We understand it was self-certified. There's been much and
22 back and forth on that self-certification. Indeed I don't
23 believe the Applicant has ever filed a revised self-
24 certification application to say that they no longer need
25 that relief.

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1 So I just want to raise all of that to the Board
2 and to ask the question of FSMB certainly in light of the
3 fact that we have not seen any documentation neither, I don't
4 know whether Office of Planning has seen documentation in
5 advance. SKNC certainly has not seen any documentation in
6 advance of about 20 minutes ago documenting that they, that
7 FSMB satisfies this requirement.

8 CHAIRPERSON HILL: Okay. So your question is --

9 MS. MAZO: My question, my preliminary question
10 here is that the numbers don't match.

11 CHAIRPERSON HILL: Don't match and why don't they
12 match?

13 MS. MAZO: The numbers don't match up and why not?

14 CHAIRPERSON HILL: So, Mr. Sullivan, do you have
15 a reason?

16 MR. SULLIVAN: Sure, we can answer that. And
17 again, and because the 20 minutes ago thing keeps coming up,
18 this is rebuttal evidence submitted because in their
19 statement they are saying that our representation that we're
20 over 10,000 square foot of gross floor area cannot be
21 believed without evidence to document it.

22 So we're presenting that evidence exactly as they
23 wanted. So, Mr. Fish, can you answer her question?

24 MR. FISH: The original document which Ms. Mazo
25 is referring to was the November feasibility study which

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1 included possible build out of areas underneath what is a
2 raised concrete porch and how that would affect the square
3 footage.

4 The document filed yesterday is the, that was
5 provided yesterday is the square footage as it exists now in
6 current condition.

7 CHAIRPERSON HILL: Okay, so, Mr. Sullivan, I don't
8 know if we're going to get to this or not. But just one
9 thing I might be interested in is seeing both of those
10 documents again in one place that we can look at together
11 later. Okay, Ms. Mazo.

12 MS. MAZO: So, yes, just and to follow up I
13 believe maybe on your request I guess my recommendation or
14 question would be to have this basement site plan that is
15 identified in their Exhibit 9 to be provided with what they
16 are saying are the correct numbers because I, again am not
17 seeing an apples to apples here. But I may be missing it.

18 MR. SULLIVAN: We're happy to do that. And just
19 remember this Board of course is not equipped to calculate
20 the gross floor area. And that will be caught.

21 CHAIRPERSON HILL: Okay, okay, all right.

22 MR. SULLIVAN: Even if you said, even if we prove
23 to you DCRA could say.

24 CHAIRPERSON HILL: Okay.

25 MS. MAZO: As long as the issue is raised. Okay

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1 --

2 CHAIRPERSON HILL: Mr. Moy, could you set a clock
3 for me? Just run the clock, thanks.

4 MS. MAZO: Next I think just a question of
5 clarification which is that and Mr. Guinee is here. He was
6 not granted party status. But he is here to testify.

7 But, you know, Mr. Sullivan, you seem to imply
8 that Mr. Guinee testified or I'm sorry has submitted an
9 affidavit saying that in 2014 there were 25 to 40 Columbians
10 in the building and that it was interwoven with some of his
11 observations. Is that, I mean is that a correct assertion
12 based his affidavit, do you know?

13 MR. SULLIVAN: Mr. Chairman, I'm not a witness.
14 So I'm not sure how I'm being cross examined. I'm happy to
15 answer any questions that the Board has. But I just want to
16 --

17 CHAIRPERSON HILL: Well that's okay. I'm just
18 trying to and I shouldn't have been, okay, so Ms. Mazo, again
19 just what's your question again?

20 MS. MAZO: My question is that it appears that
21 there was a mis -- that Mr. Guinee's affidavit has been
22 misconstrued --

23 CHAIRPERSON HILL: By the --

24 MS. MAZO: -- by FSMB.

25 CHAIRPERSON HILL: Okay. And how did they

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1 misconstrue the --

2 MS. MAZO: They appear to have read into his
3 affidavit some assertion as to the number of employees at the
4 consulate in 2014 --

5 MR. SULLIVAN: Certainly not intended.

6 MS. MAZO: -- that number was not in there in his
7 affidavit.

8 CHAIRPERSON HILL: Okay, I understand. I think
9 that the Board heard the numbers that were presented to us.
10 But I understand now you're saying that they are, anyway I
11 understand what you're mentioning in terms of, and you
12 brought it up now in terms of that they seem to be saying
13 something that Mr., sorry, Guinee is being misrepresented.

14 And I guess we'll have an opportunity to hear from
15 him when we hear from him.

16 MS. MAZO: Okay. You know, next questions I
17 believe are for Mr. Fish. Mr. Fish, what is the membership
18 revenue for the FSMB?

19 MR. FISH: We charge our members about \$2,200 per
20 member.

21 MS. MAZO: Okay, I guess --

22 MR. FISH: Per member board, so that would 70
23 times \$2,200.

24 MS. MAZO: Right, so is that, would you agree that
25 your 2015, 990 indicates that that membership revenue is

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1 approximately \$170,000?

2 MR. FISH: I do not have that 990 in front of me.
3 But if that was on the 990, yes.

4 CHAIRPERSON HILL: Why are you asking the
5 question?

6 MS. MAZO: Because it goes to an issue that we'll
7 be raising on our testimony.

8 CHAIRPERSON HILL: Okay.

9 MR. SULLIVAN: And I would object just because we
10 haven't testified to any information on a 990. So I don't
11 know what she's cross examining on. We haven't submitted
12 any.

13 MS. MAZO: Okay, well --

14 CHAIRPERSON HILL: Mr. Vice Chair, you have a
15 comment on that?

16 VICE CHAIRPERSON HART: No.

17 CHAIRPERSON HILL: No, okay, all right.

18 MS. MAZO: So you're aware the 990 has been filed
19 and it was filed as part of SKNC's pre-hearings. So it's in
20 the record?

21 CHAIRPERSON HILL: Yes, okay.

22 MS. MAZO: And we'll be happy to point you to that
23 document. Going back to the operations of the FSMB, you
24 indicate that there are educational purposes. But isn't it
25 also correct to say that the operations are for the purposes

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1 of the members themselves and for advancing the members'
2 interests?

3 MR. FISH: The members' interests are in the state
4 regulation of medicine that is under attack in Washington
5 D.C. It is also related to the members' duty to serve their
6 state government and carry out the functions of the state
7 government in the regulation of medicine.

8 MS. MAZO: But it is for the members' interests,
9 is that correct?

10 MR. FISH: It is for the members and in the
11 general public, yes.

12 MS. MAZO: Okay. Sorry, I'm not sure who
13 testified to this, maybe Mr. Fish. But following up, I
14 believe, on Commissioner May's question in regards to,
15 whether FSMB is filed as a foreign corporation in the
16 District, has that occurred or is it filed as a non-profit
17 in the District?

18 MR. FISH: To my knowledge right now we have not
19 filed. We do pay District employee taxes and other things.
20 I would be happy to supplement the record if so with that
21 information. I do not have the tax filings in front of me
22 at this point.

23 MS. MAZO: Again, if I cannot ask this question
24 of Mr. Sullivan I'm not sure whom else I can ask. But, Mr.
25 Sullivan or whomever, you know, to be clear FSMB has not

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1 provided expert witnesses in the area of transportation
2 consultants to satisfy or to substantiate their claims that
3 there would be no transportation impacts?

4 MR. SULLIVAN: That's correct. We didn't think
5 it was necessary to provide an analysis when we knew that
6 there would be no cars traveling on Leroy.

7 CHAIRPERSON HILL: Okay, okay.

8 MS. MAZO: Okay. Mr., again, this is potentially
9 a question. But, Mr. Sullivan, you testified to the, I guess
10 similarities with the case, the Cullen case down the street.

11 But you're aware, as I'm sure you are that, in
12 that case that there were traffic experts that were hired and
13 that the evidence, the strong evidence provided on behalf of
14 that Applicant was indeed the basis for the Board's decision
15 in that case as well as the basis for the court's upholding
16 of the Board's decision?

17 MR. SULLIVAN: I wouldn't be prepared to answer
18 such a detailed question about the Cullen case unless I had
19 the opportunity to read it over again.

20 CHAIRPERSON HILL: All right. So they don't have
21 the transportation expert.

22 MS. MAZO: Okay. Just hold on for one second.
23 Okay. In the interest of time I think we're done with cross.

24 CHAIRPERSON HILL: Okay, all right. Okay, then
25 we're going to go ahead and put an hour on the clock for you.

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1 And, Mr. Moy, if you could do that. And you can begin
2 whenever you like, Ms. Mazo.

3 MS. MAZO: So just to be clear are you going to
4 hear from, what so you're going to hear from Office of
5 Planning after you hear from us?

6 CHAIRPERSON HILL: Yes, sorry, thanks, sorry. I
7 got messed up with my own.

8 MS. MAZO: I mean I'm fine either way, but --

9 CHAIRPERSON HILL: No, no, that's all right. I
10 got a little confused myself. Thank you so much. So right,
11 this is the time for either the ANCs or the Office of
12 Planning. So the Office of Planning.

13 MS. FOTHERGILL: Good afternoon. I'm Anne
14 Fothergill with the Office of Planning. The Office of
15 Planning does recommend approval of the request for the
16 special exception relief and we recommended a number of
17 conditions that I will go into in detail.

18 The review went through the required criteria for
19 this special exception in detail and I can go through it or
20 I'm happy to answer questions. But we did find that they met
21 the required criteria and we went into more detail on
22 Criteria Number 3 and 4.

23 But in terms of Criteria Number 1 it is located
24 within the Sheridan-Kalorama Historic District. Criteria 2
25 the Applicant has withdrawn their variance request for the

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1 10,000 square feet which was a part of the initial
2 application and has now provided documentation into the
3 record that the building has a GFA of 10,825 square feet
4 which would meet that criteria.

5 And one of our conditions was that documentation
6 be entered into the record. In terms of the criteria that
7 the use of existing residential buildings and land by non-
8 profit organizations shall not adversely affect the use of
9 the neighboring properties, this is obviously the crux of
10 this discussion and the neighbors' concern.

11 And so, you know, with adequate operational
12 controls and mitigation the proposed use of a non-profit in
13 this building shouldn't adversely affect the use of
14 neighboring properties and we have recommended certain
15 conditions to try to mitigate those concerns.

16 This is a special exception that, you know,
17 contemplates this use, permits this use with these criteria
18 in this zone. And the property has been used as diplomatic
19 offices for decades and there are other buildings on the
20 block that are used for offices.

21 And the building as you saw into these
22 presentation and in the record has been set up currently with
23 27 offices and cubicles in recent past. I'm not sure how
24 many are there today.

25 So the Applicant proffered a number of conditions

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1 related to their office use. And one of them was a proposed
2 staffing cap of 25. And OP was a little unclear when we were
3 analyzing this since they had eight staff members currently
4 in the D.C. office and their application said they expected
5 to grow to ten.

6 And so without additional justification OP didn't
7 support a cap of 25 and recommended a staff limit of 15
8 employees working on the site at any one time. And OP has
9 recommended a condition that the office use be limited to day
10 time office hours.

11 The Applicant also, as you heard today and in the
12 record, discussed their annual conference and their smaller
13 annual meetings. And again, in the interest of mitigating
14 impacts OP has recommended a condition that those be held off
15 site.

16 The BZA has recommended that condition for this
17 special exception previously and OP recommended that for this
18 application. And OP also recommended that if the Board
19 approves the proposed use that there be a condition that it
20 be for five years.

21 And the, that was a Board condition in another
22 case as was mentioned earlier. And again, this is an attempt
23 to sort of assess the potential adverse effects to the use
24 of the neighboring properties and to provide these
25 operational conditions that could minimize those impacts.

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1 In terms of Criteria Number 4, the amount and
2 arrangement of parking spaces shall be adequate and located
3 to minimize traffic impact. You saw in the record and I'm
4 sure you'll see today that this block is narrow and one-way
5 and has numerous curb cuts on the north side.

6 And it is a difficult street for circulation. And
7 so we consulted with DDOT and discussed possible mitigation
8 and possible conditions. DDOT, as you'll see in the record,
9 has no objection to the special exception request.

10 They did note that it's a 15 foot wide alley and
11 that loading, and they specifically referenced furniture
12 deliveries should be from the alley. So when the OP
13 conditions talked about loading it was meant for larger
14 deliveries because an Amazon delivery would come to a
15 residence in the front as well.

16 So the, any visitors to the building would be
17 subject to any on street parking restrictions like RPP. And
18 they, you know, they're not diplomatic vehicles which might
19 have a certain spaces they're allotted.

20 And the Applicant has stated that employees would
21 park in nearby parking garages or take transit and wouldn't
22 park on the street. The building has one to two parking
23 spaces.

24 OP recommended that it be a condition of approval
25 that the visitors and staff park in the garages and that the

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1 Applicant should provide information of public parking sites
2 into the record which they have done today. The, so with
3 those conditions and with those requirements it would limit
4 the visitors and staff to foot traffic from Connecticut
5 Avenue which is, you know, less than a block away and
6 shouldn't, and therefore that should minimize traffic impact
7 to the adjacent neighborhood which is the criteria.

8 The other criteria, the no goods will be sold in
9 the building. The additions to the building, as the
10 Applicant has noted this is within the historic district and
11 if they were to do additions there they are aware that it
12 might be, they would be subject to review and approval from
13 the Historic Preservation Review Board.

14 And then in terms of the Subtitle X, Chapter 9
15 criteria for special exceptions the, in terms of the purpose
16 and intent of the zoning regulations, the zoning regulations
17 allow for non-profit use in this zone, the R3 zone by special
18 exception if it meets the criteria as detailed above which
19 we have found that it does.

20 And then in terms of the, adversely affecting the
21 use of neighboring properties, again we have found that with
22 restricted employee numbers, parking, loading, hours of
23 operation and events that with these conditions to lessen or
24 mitigate any impacts that this use should not adversely
25 affect the use of the neighboring properties.

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1 The, you will see that there is, in the record and
2 here today there's a lot of opposition in the record and we
3 noted that in our staff report. I mentioned that DDOT filed
4 a report and I think that is the extent of our record, I mean
5 of our report and our, and the conditions are noted on Page
6 1.

7 I think I covered all of them. The, yes, I think
8 I covered all of them. And I'm happy to take any questions.

9 CHAIRPERSON HILL: All right. I've got a couple
10 questions. I'll let the Board ask. Real quick and I don't
11 know, Ms. Fothergill, if this is for you or not. But as far
12 as like the existing residential building the definition that
13 if it's a residential building it need only be in a
14 residential zone, is that accurate?

15 MS. FOTHERGILL: Well this is the zoning
16 administrator question that we posed. And that is our
17 understanding. But OP doesn't interpret the regulations.

18 CHAIRPERSON HILL: Okay, I understanding. All
19 right, then I guess that's something. Okay, does anyone else
20 have some questions?

21 MEMBER WHITE: Just one question. Because there's
22 just so much significant opposition in the record I wondered
23 whether or not that aspect of the opposition that was voiced
24 in those, as part of the record whether or not it's still
25 OP's position that there's no adverse impact to the

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1 neighbors?

2 MS. FOTHERGILL: So we certainly took that
3 opposition into consideration and took it very seriously.
4 And we met with neighbors.

5 MEMBER WHITE: There's quite a number of letters.

6 MS. FOTHERGILL: Yes, there are a lot. I mean the
7 idea is that we, and the Applicant even stated that our
8 conditions are quite strict. I mean we tried to address the
9 potential impacts by restricting the, any possible night time
10 use, visitors, circulation issues with these conditions to
11 address the neighbors' concerns.

12 CHAIRPERSON HILL: And, Ms. Fothergill, you can't
13 speak to when it was an embassy even when it was, when the
14 Columbians were working there that there were like 40 people
15 or so. You don't have any --

16 MS. FOTHERGILL: There was a letter entered into
17 the record from the Columbian ambassador or, yes. But I mean
18 other than what's in the record --

19 CHAIRPERSON HILL: Other than that, right.

20 MS. FOTHERGILL: -- no.

21 CHAIRPERSON HILL: Okay, okay. All right.

22 COMMISSIONER MAY: Ms. Fothergill, with regard to
23 the conditions themselves I was a little bit trying to figure
24 out about the time frame. I mean it's a five year. Can you
25 talk about that a little bit more?

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1 What was the other case that you're using with
2 this, using trying to determine what that time frame is? I
3 mean is it five years, possibly ten years? Is it less than
4 that? What are we supposed to be, because they would have
5 to come back then and say well we've done this. And I'm just
6 not sure what they would --

7 MS. FOTHERGILL: So these conditions primarily
8 were taken from other BZA orders for this relief. I
9 recognize as the Applicant stated that this condition was
10 taken from a use that has a much more significant impact on
11 neighboring properties.

12 But it was an attempt to provide some checks and
13 balances for the Applicant and the neighbors to sort of
14 reassess. And it was in response to the neighbors' concerns
15 in an attempt to mitigate those to allow an opportunity to
16 reassess in five years.

17 COMMISSIONER MAY: And the, you've also stated
18 that the, you thought the maximum of 15 was because the
19 Applicant hadn't provided sufficient information to describe
20 why they couldn't get to 20? I mean --

21 MS. FOTHERGILL: Their application initially, I
22 believe their request was a staff cap of 25. But their
23 application, yes, so their proffered conditions was 25 but
24 their application stated that they had eight employees in the
25 D.C. office currently and they were going to expand to ten.

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1 And so we, it was a big leap to 25. And since we
2 were trying very hard to provide these restrictions that
3 would lessen adverse impacts to the use of neighboring
4 properties it was hard to get to 25 from 10.

5 But we recognized that there are times when you
6 have an intern, a fellow, visiting staff. And so that's
7 where we extended to 15.

8 COMMISSIONER MAY: I think that's it. Thanks.

9 CHAIRPERSON HILL: Okay, anyone else? Okay, does
10 the Applicant have any questions for the Office of Planning?

11 MR. SULLIVAN: Just one, thank you. In saying
12 that you wouldn't support the 25 was it, was there an
13 analysis of whether 25 would have been adversely affecting
14 as opposed to 15 or was it just that the Applicant didn't
15 have a vision or a set plan to reach that 25?

16 MS. FOTHERGILL: It was specifically that we
17 didn't see in the application anything where the number 25
18 was coming from, what the 25, where that number was coming
19 from.

20 MR. SULLIVAN: Thank you.

21 COMMISSIONER MAY: Mr. Chairman, can I ask a
22 follow up question of OP?

23 CHAIRPERSON HILL: Sure.

24 COMMISSIONER MAY: On that, the issue and maybe
25 you hit this in your presentation and I just missed it, but

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1 they are proposing 15, is that right 15 plus five temporary?

2 MS. FOTHERGILL: That was introduced today.

3 COMMISSIONER MAY: Yes, and do you have an opinion
4 on that?

5 MS. FOTHERGILL: Again, I guess I'm not clear, so,
6 you know, they have eight they were going to go to ten. I'm
7 not clear are they adding five more staff. I guess I'm just
8 not sure what their plan is for staffing.

9 COMMISSIONER MAY: Well I mean what they're
10 requesting now is 15 permanent and five temporary, right?
11 So how do you --

12 MS. FOTHERGILL: So they're going to double.

13 COMMISSIONER MAY: That's what they are requesting
14 regardless of, you know, we're diving into what they actually
15 have or need. I mean do you feel that would be an acceptable
16 condition, 15 plus five temporary?

17 MS. FOTHERGILL: I guess I would need some time
18 to think about it since it was just presented.

19 COMMISSIONER MAY: Sure.

20 MS. FOTHERGILL: But again the, I'm not sure if
21 everything else holds that they all take, none of them drive,
22 they all take public transportation.

23 COMMISSIONER MAY: Right. They would have to live
24 up to the other conditions that they would not, they would
25 have to park in neighborhood garages or use public

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1 transportation or whatever or ride their bike. I bet they
2 could ride their bikes.

3 MS. FOTHERGILL: Yes. They can provide bike
4 parking on site. The, I would think that if the staffing is
5 justified and the impacts were mitigated then, yes, I think
6 we could support that.

7 COMMISSIONER MAY: Thank you.

8 VICE CHAIRPERSON HART: Just one other question,
9 Mr. Chairman. Ms. Fothergill, regarding the change in the
10 application to remove the variance, the Applicant is stating
11 that they are, you know, not, stated today in their, I guess
12 their pre-hearing statement that they were not going forward
13 with the, they didn't need the additional variance.

14 Did you receive anything from them? Was it, how
15 did you kind of understand that they were --

16 MS. FOTHERGILL: The Applicant did provide me
17 with, I can't say for certain, but I think what you have in
18 front of you.

19 VICE CHAIRPERSON HART: Okay, thanks.

20 CHAIRPERSON HILL: Okay. I do have one question
21 just for the Applicant in terms of this 15 plus the five.
22 I guess what I get a little lost in is the five temporary.

23 Like I mean if you have 15 plus five that's
24 temporary like, I don't understand what temporary really
25 means in terms of like is there a three month period, is

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1 there a summer break because then basically you've got 20
2 people again. And that could be like they're temporary but
3 they're there all the time.

4 MR. CHAUDHRY: Mr. Chairman Hill, it's a
5 legitimate question. I'm from New York where, you know, the
6 predictions about the future are difficult as Yogi Berra
7 said. But it was trying to anticipate the need for permanent
8 and temporary.

9 It took us nine years to get to eight. We could
10 not have anticipated we needed eight back in 2009. So moving
11 ahead we anticipated, it's hard to anticipate how much we
12 need for temporary workers.

13 Specific to your question, we do have workers from
14 Texas who come over for a week let's say or we have desired
15 to have interns, we've had interns before who have spent a
16 month typically in the summer. So we're looking really for
17 capacity.

18 It's a large space. We know it can accommodate
19 15 easily. But we'd like, we know it could also accommodate
20 up to five additional who would be temporary for small stints
21 either workers of our own or student interns or law school
22 interns or something like which we don't think would
23 adversely impact neighbors.

24 CHAIRPERSON HILL: Okay, and I guess and, Dr.
25 Chaudhry, you know, we might be, you know, we're going to

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1 have probably a bunch of questions afterwards anyway. But
2 it's the specifics they are finding a little bit confusing
3 from getting to 15 to five additional temporary people --

4 MR. CHAUDHRY: I understand.

5 CHAIRPERSON HILL: -- because then really, you
6 know, even if you have five temporary all year round you're
7 still then at 20 people. And so that's where, I think we're
8 all trying to kind of talk about it.

9 Okay, does, Ms. Mazo, do you have any questions
10 for the Office of Planning?

11 MS. MAZO: Sure I have maybe three questions. I
12 think the first question relates to the Office of Planning's,
13 I guess, statement that there was quite a mix of uses on the
14 street in terms of the residential nature.

15 And I guess my question is knowing know that there
16 are letters in the record from the Gold Star Mothers
17 indicating that it's not really an office use, that it's
18 really a use that's not used, that from the folks with the
19 mosque indicating there's a family that's been living there.

20 From the folks in the Lubavitch Center which was
21 actually the subject of the Cullen case that ultimately that
22 non-profit never went in there. It's the Lubavitch Center
23 now which is a Jewish learning center, that there's a rabbi
24 and his family had been living there.

25 Does that make you kind of reassess any of your

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1 thought process in terms of the fact that the uses on the
2 street may be tending more towards institutional as away from
3 the residential?

4 MS. FOTHERGILL: No, I don't think that it changes
5 what I wrote in the report. And since this building was
6 previously diplomatic offices I think that's sort of the most
7 relevant and then what else is on the block is. If those
8 numbers vary. You know, it's mainly about this property.

9 MS. MAZO: That's true. But the test is adverse,
10 will not tend to adversely affect the neighboring properties.
11 So it would mean that taking into account the uses of the
12 neighboring properties should be part of your calculation,
13 correct?

14 MS. FOTHERGILL: Yes, I mean I don't know exactly
15 what I wrote in my report. But there are other non-
16 residential uses on the block.

17 MS. MAZO: Next is you write that your OP
18 recommendation with its conditions is conditioned on the
19 BZA's concurrence with the determination the application
20 would qualify as a non-profit organization.

21 I guess, what does that mean if the BZA were to
22 make another decision, if they were to decide that FSMB did
23 not satisfy the zoning regulations definition of a non-profit
24 organization?

25 MS. FOTHERGILL: So for the Board's benefit, the

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1 OP when we start to review an application, you know, have to
2 sort of look at the relief that's requested and we sometimes
3 discuss whether or not it's the appropriate relief. And we
4 often ask the zoning administrator follow up questions about
5 the relief that is requested and in this case we did, the
6 question was raised by the opposition about those two
7 threshold criteria.

8 And so we did reach out to the zoning
9 administrator and there has been and there will be discussion
10 about that. But if they don't meet those criteria then they
11 wouldn't qualify to apply for a special exception.

12 And so we did put in our report that determination
13 needs to be made that they meet those criteria. I think
14 that's the question.

15 MS. MAZO: Can I ask a couple questions about your
16 conditions premised on the fact that as SKNC will put forward
17 we are not in a position to accept any conditions, but I
18 still have a few questions. Number one, would be loading
19 will be restricted to the alley.

20 However, what if the documentation in the record
21 were to indicate that the alley could not accommodate loading
22 of this sort. Where would the loading have to be then?

23 MS. FOTHERGILL: So we consulted with DDOT on this
24 who advised that the alley was wide enough for loading. And
25 so that is where that came from. I don't have, I mean I

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1 would think we would consult with DDOT if other issues came
2 up.

3 MS. MAZO: Okay. And just so I understand, was
4 that consultation with DDOT after FSMB filed their pre-
5 hearing statement indicating that they would have 25 full-
6 time employees?

7 The reason I ask is because DDOT's report was only
8 issued after FSMB had filed their application saying that
9 they only were going to have eight employees on the site.
10 So I wanted to know if DDOT's thinking on this alley
11 considered the larger number of employees on the site?

12 MS. FOTHERGILL: So we have been working with DDOT
13 throughout even after they wrote the report and the
14 discussion of the alley was quite recent. I can't say for
15 sure that we discussed the number of employees. But we
16 discussed the office use and the alley and loading.

17 CHAIRPERSON HILL: Ms. Fothergill, I'm just going
18 to follow on with Ms. Mazo for one second. So you can't
19 state and maybe we can hear from DDOT again, but you can't
20 state if their report would change if it's going to be 20
21 people let's say rather than whatever they had when they
22 looked at it?

23 MS. FOTHERGILL: They are aware that the
24 application changed, that the variance was withdrawn and
25 those details changed. I just wasn't sure to answer her

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1 question I wanted to be as specific as possible.

2 When we talked about loading I'm not sure we
3 talked specifically about the number of staff. But they are
4 aware of the application in its current state.

5 CHAIRPERSON HILL: Okay, but meaning, but you
6 don't know if they're aware of the number of staff?

7 MS. FOTHERGILL: No, they are.

8 CHAIRPERSON HILL: Okay, all right. Okay.

9 MS. MAZO: One, maybe two final questions. Going
10 back towards the documentation of the 10,000 square feet, do
11 you know around what time or when that information was
12 provided to you by FSMB?

13 MS. FOTHERGILL: I would say, I don't know what
14 day we met, a week before that perhaps. So two weeks ago.

15 MS. MAZO: Two weeks ago. Finally questions have
16 come up I think from everybody on the Board about the five
17 year requirement and I believe there's an assertion that
18 limitation on a special exception has only been adopted in
19 one other case.

20 But I just would like to wonder to OP, are you
21 also aware that the five year limitation was adopted by the
22 Board in the Halcyon Georgetown case, Case 18604 in 2013?

23 MS. FOTHERGILL: Well as I stated, the conditions
24 were taken from other orders for the same relief. But I
25 can't say that I saw that one.

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1 MS. MAZO: But that would be in addition to the
2 Tudor case that I guess was referenced to and by Mr.
3 Sullivan. Okay, no further questions.

4 CHAIRPERSON HILL: Okay, thank you. All right.
5 So, okay, so Ms. Mazo, we're going to give you an hour now
6 to present case and with your witnesses. And I guess what
7 I'm trying to figure out, and I'm going to lose somebody at
8 4 o'clock. And so the person can watch afterwards.

9 But if there's something that you think really,
10 anyway, we'll see how it goes. I'm going to lose somebody
11 at 4 o'clock.

12 MS. MAZO: Okay, before that I'm sorry, would it
13 be possible to call forward Dr. Feigin who is one of the
14 adjacent property owners who would speak in opposition just
15 because again, you know, he did have surgery today.

16 CHAIRPERSON HILL: Sure.

17 MS. MAZO: And if people are going to be leaving.
18 And I think he'll speak just very, very briefly. But I just,
19 you know, in terms of --

20 CHAIRPERSON HILL: Mr. Sullivan, do you have any
21 issue with that?

22 MR. SULLIVAN: No.

23 CHAIRPERSON HILL: Okay, all right. Please, that
24 would be great.

25 MS. MAZO: If he wants to come forward.

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1 CHAIRPERSON HILL: Sure, once again you said, Mr.
2 Feigin?

3 MS. MAZO: Dr. Feigin.

4 CHAIRPERSON HILL: Dr. Feigin, you're speaking in
5 opposition, correct? So you can please come on forward if
6 you like. Yes, be careful. You can go ahead and sit down
7 there. I think you did get sworn in, correct?

8 MR. FEIGIN: No.

9 CHAIRPERSON HILL: Okay, Mr. Moy, Dr. Feigin, I'm
10 sorry, if you could stand again or just raise your right
11 hand. Yes, there you go. And Mr. Moy right over there he's
12 going to administer the oath.

13 And if anyone else had missed the oath if you want
14 to stand if you plan on providing testimony and raise your
15 left hand, right hand. Right hand, sorry.

16 (Witnesses sworn)

17 CHAIRPERSON HILL: Okay, let's see. So, Dr.
18 Feigin, if you could introduce yourself and then give your
19 address and then as a member of the public you'll have three
20 minutes to provide testimony and so you can do so whenever
21 you like.

22 MR. FEIGIN: Thank you. My name is David Feigin.

23 CHAIRPERSON HILL: Dr. Feigin, I'm sorry. You
24 have to scoot all the way in there and then, yes, thank you.

25 MR. FEIGIN: All right. My name is David Feigin.

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1 I live at 2120 Leroy Place Northwest. No, I actually turned
2 out not to really be in a condition where I can substantively
3 talk.

4 I didn't anticipate this, but I'm actually under
5 sedation and I really, I think I was told not to, you know,
6 sign any contracts or drive any cars and things like that.

7 CHAIRPERSON HILL: You're okay. This might help
8 your testimony. Yes, go ahead.

9 MR. FEIGIN: I therefore really would feel much
10 more comfortable just reminding the Board, and thank you for
11 being so kind about it, reminding the Board that I've written
12 two letters and that I am, you know, most anxious to be
13 joining my neighbors in, you know, what I stated in the
14 letters, you know, specifically with regard to the, you know,
15 residential character of the neighborhood and the fact that
16 there are, you know, a lot of possibilities as I pointed out
17 in my letter that, you know, could occur when a non-
18 residential owner occupies a building like that, particularly
19 since I'm the next door neighbor of that building.

20 And that I am fearful about what, how that might
21 affect my family and, you know, as well as the rest of the
22 neighborhood. And, you know, I just direct your attention
23 to what I wrote in the two letters.

24 CHAIRPERSON HILL: Okay. You're the adjacent
25 neighbor. Is that correct, Dr. Feigin?

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1 MR. FEIGIN: Yes, sir, I am.

2 CHAIRPERSON HILL: Okay. So and I'm looking at
3 your letters again. And I just have a couple questions.
4 Like so what specifics were you worried about and how would
5 that possibly have differed from when it was the embassy?

6 MR. FEIGIN: Well to answer the second part it
7 wouldn't differ from the embassy. I mean based on what I
8 know and what I've heard today. I don't know, I can't speak
9 to whether the impact would be greater or less than the
10 embassy.

11 But certainly they would be in the same general
12 nature, yes.

13 CHAIRPERSON HILL: Okay. Does the Board have any
14 questions for the witness?

15 COMMISSIONER MAY: So what about the embassy's use
16 was problematic from your perspective? I mean they were
17 there for a long time. I assume you've been there for a long
18 time so you've lived with it for a long time.

19 MR. FEIGIN: Well the issue with the embassy was
20 occasional crowding, you know, particularly when they had
21 elections there would be very large groups there. And also
22 the, you know, general lack of maintenance that often went
23 on that was, you know, kind of much more difficult to deal
24 with than it would be with a residential neighbor because a
25 residential neighbor, you know, I would just go over there,

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1 you know, and but I, you know, I'm fearful that I couldn't
2 do that with, you know, the average office building occupant.

3 MS. MAZO: Sorry again, to take things out of
4 order. I understand that the other adjacent neighbor is also
5 here and he also may have to leave by 4 o'clock. So if you
6 want us --

7 CHAIRPERSON HILL: That's, okay. Hold on a
8 second. That's all right. No, that's a good idea. But,
9 Doctor, could you come back forward. I don't know if the
10 Applicant has any cross for you or not. Okay, well they're
11 nodding their head, no, so I assume that's good enough for
12 the record.

13 Okay, so, Doctor, I'm sorry. I thought maybe that
14 they were going to have some questions for you, the
15 Applicant. So you are actually okay. And now the other
16 person you are saying who is also an adjacent neighbor if you
17 could please step forward.

18 MS. MAZO: Thank you.

19 CHAIRPERSON HILL: Sure. Sir, if you could please
20 again state your name and then address. You have to push the
21 button.

22 MR. WATKINS: My name is Marcus Watkins. I'm the
23 adjacent neighbor to the east side of the building in
24 question. My address is 2114 Leroy Place Northwest.

25 CHAIRPERSON HILL: All right, Mr. Watkins, just

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1 like the doctor you'll get three minutes up there and you can
2 begin whenever you like.

3 MR. WATKINS: Okay, that's fine. So my concerns
4 with respect to this application are a couple fold. So when
5 I actually purchased 2114 clearly I knew that I had an
6 embassy on the left with respect to the Guineas.

7 I also knew about the Columbians. I spoke to both
8 of them before purchasing. One of the concerns, it's one
9 thing to be next to an embassy. It's another thing from my
10 viewpoint to be next to an office building and an office
11 structure.

12 I ultimately was able to form good relationships
13 with both entities, the Guinea embassy as well as the
14 Columbians. I've heard the numbers of 25 to 40. I will tell
15 you that in my 18 years of owning this building there was
16 nothing like 25 or 40 people.

17 I often went in there when we had issues and there
18 were issues tied to maintenance. There were issues tied to
19 trees. There were issues tied to rodents, raccoons, et
20 cetera. And I mean at no time did I ever see even more than
21 10 people there over the span of time that I've owned this
22 building.

23 So to hear that, you know, on one hand it may be
24 an office space with eight people and then I'm hearing it's
25 15. Now I'm hearing it may be 20, soon it will be 25, it's,

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1 those are big concerns. I think ultimately are going to have
2 a negative impact on our overall property values.

3 I think because currently I'm living in California
4 and have to lease my building, my residence from time to time
5 I think that could also have a negative impact being again
6 next to more like an office structure. Having to deal with
7 issues of water leakage which occurred with the embassy and
8 just all of the intricacies of how do you deal with a foreign
9 entity.

10 I would have to deal with obviously a, you know,
11 a corporation because their drainage butts right up against
12 my house and with time it had overflowed and washed out and
13 penetrated the walls and things of that nature. So overall
14 opposition is, you know, I moved there originally because I
15 liked the residential neighbor relationship.

16 I know that, yes, there is busy Connecticut Avenue
17 there. But it's very peaceful. We have other embassy type
18 activities on the street. But we don't have, you know, a
19 business or corporation with 20 or 25 people.

20 And I think it's going to have a negative impact
21 with me being next door to them. I'm concerned about people
22 who smoke and where are they going to smoke.

23 If they go outside are they going to be smoking,
24 you know, are they going to be sitting, you know, if it's 25
25 people are they going to hang on, you know, my stoop, my

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1 walkway? It's, those are the concerns that I have,.

2 CHAIRPERSON HILL: Okay, any questions for Mr.
3 Watkins?

4 MEMBER WHITE: One question. Was there a huge
5 problem with smoking before?

6 MR. WATKINS: So, yes, I actually had to talk to
7 them about it.

8 MEMBER WHITE: So was that ever something that,
9 I don't know that it was ever incorporated as part of a
10 condition. I'm just curious.

11 MR. WATKINS: No, so again --

12 MEMBER WHITE: Because you see that in other
13 office buildings.

14 MR. WATKINS: Yes, from my viewpoint what we
15 worked out with them was that if they in fact and, you know,
16 if they were going to smoke that they wouldn't do it directly
17 in front of the buildings, that they would actually walk all
18 the way down to Connecticut.

19 They also would smoke in the back, you know, yard
20 further away from the place. So those were some of the
21 issues that we dealt with.

22 MEMBER WHITE: Okay, thank you.

23 MR. WATKINS: Sure.

24 VICE CHAIRPERSON HART: Were there, and thank you
25 very much, Mr. Watkins, for coming.

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1 MR. WATKINS: Sure.

2 VICE CHAIRPERSON HART: Were there any issues with
3 traffic, I mean with --

4 MR. WATKINS: Yes, so that was the other issue is
5 and I've heard that people will be told to stay at one of the
6 hotels around the corner and to walk over. But, yes, I mean
7 it's a tight street period whether somebody is moving,
8 whether packages are being delivered.

9 With the embassy whenever there were visitors cars
10 would pull up, you know, I could imagine if they were having,
11 you know, meetings and whatnot that Ubers may be there,
12 taxis, et cetera. You can't pass. You just wait on that
13 street.

14 I mean there's not a whole lot of space to pull
15 over and to unload people. You know, even moving trucks.
16 I mean trying to get a moving truck down that back alley is
17 going to be sporty just to make the turn. And if they've got
18 to do it in the front then that's a problem because then you
19 can't easily get down the street.

20 CHAIRPERSON HILL: Okay. So I have a question.
21 So when it was again an embassy again there was only like,
22 you know, I think you were kind of saying about ten people
23 is the most you ever saw.

24 The, and I'm just, like I know your street and
25 it's a very beautiful street and it's a very narrow thing to

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1 go down and I know you're kind of stuck. So when FedEx shows
2 or whatever shows like that does come in the front though for
3 you yourself.

4 MR. WATKINS: It does.

5 CHAIRPERSON HILL: And then you just kind of wait,
6 right?

7 MR. WATKINS: Yes, they wait or they try to pull
8 over. Sometimes they block other people's driveways and hope
9 that they don't come in during that time period. Yes, I mean
10 it's a tight street.

11 CHAIRPERSON HILL: Right, but I mean the ten
12 people though, and again we struggle with adverse impact.
13 So when it was an embassy and I mean you're in opposition,
14 your neighbors are here all in opposition, was it that
15 difficult with the ten people?

16 MR. WATKINS: So not with package deliveries. It
17 was more when, you know, there would be cars that would come
18 there for meetings and whatnot. Now one of the things I
19 think that made it somewhat more tolerable is they at least
20 had a spot that they could slide into to try to get out of
21 the way and keep the street open.

22 My guess is that parking would not, there was
23 embassy parking space.

24 CHAIRPERSON HILL: Yes, the embassy parking space,
25 right. Good parking space. Okay, does Ms. Mazo, Mr.

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1 Sullivan, you got anything?

2 MR. SULLIVAN: Thank you, just one question. I
3 just wanted to clarify when you lived at 2114?

4 MR. WATKINS: Sure, I purchased the property in
5 March of 1999.

6 MR. SULLIVAN: And lived there until?

7 MR. WATKINS: And I started renting the property
8 in October roughly of 2011.

9 MR. SULLIVAN: Okay.

10 MR. WATKINS: And so currently Dan Melman, I think
11 you've heard from.

12 MR. SULLIVAN: Right, yes, we have a letter from
13 him. Thank you.

14 MR. WATKINS: Sure.

15 CHAIRPERSON HILL: Okay. And, Mr. Watkins, again

16 --

17 MS. MAZO: Sorry, can I --

18 CHAIRPERSON HILL: Sure.

19 MS. MAZO: -- just ask one question --

20 CHAIRPERSON HILL: Sure.

21 MS. MAZO: -- of Mr. Watkins? Sorry, Mr. Watkins,
22 just today we've been presented with what they're calling
23 unnamed. I'm not sure what that's supposed to mean dated
24 11/27/17 seems to be an elevation.

25 But the reason I'm raising this now is that it

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1 says potential underpinning of basement level for additional
2 ceiling heights. I mean are you aware of what underpinning
3 means?

4 MR. WATKINS: I am aware of what underpinning
5 means.

6 MS. MAZO: Right, and would you, I mean
7 underpinning is outside the purview of this Board, correct.
8 But that said, would you believe that underpinning on either
9 side could adversely affect your property?

10 MR. WATKINS: It depends on again where the
11 underpinning is occurring. I mean so I own other properties
12 and I've had to go through underpinning. And it's a concern
13 for anybody who is adjacent to that property because damage
14 can occur.

15 And now I think even DCRA has turned it over to
16 third party inspectors due to lawsuits tied to underpinning.
17 So, yes, that would be a concern.

18 CHAIRPERSON HILL: Okay, okay. Mr. Sullivan,
19 you've got a question about the underpinning? Okay, all
20 right. So, Mr. Watkins, you know, thanks for coming down,
21 for your testimony. Thanks for waiting.

22 And again, as one who lives in the city to people
23 that move a lot and everything it sucks every single time
24 somebody comes in. You have to go over there and make
25 friends and just the same thing over and over and over again.

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1 MR. WATKINS: Yes.

2 CHAIRPERSON HILL: So whether this goes one way
3 or the other, but thank you.

4 MR. WATKINS: Thanks.

5 CHAIRPERSON HILL: Okay, all right. Okay,
6 whenever you're ready we are.

7 MS. MAZO: Good afternoon, everybody.

8 CHAIRPERSON HILL: Good afternoon. Before you
9 start, Ms. Mazo, please --

10 MS. MAZO: Sure, please.

11 CHAIRPERSON HILL: -- let me get everybody to
12 introduce themselves and then, yes, please if you would, sir,
13 just start down the line here from my right to left. You
14 need to push the button into the microphone. No, that one
15 there.

16 MR. CHAPIN: Christopher Chapin, President of the
17 Sheridan-Kalorama Neighborhood Council.

18 MS. MCCARTHY: Ellen McCarthy, expert witness.

19 MR. SUKENIK: John Sukenik, past president of the
20 Sheridan-Kalorama Neighborhood Council.

21 CHAIRPERSON HILL: I'm sorry, sir, could you say
22 your name again?

23 MR. SUKENIK: John Sukenik.

24 CHAIRPERSON HILL: Sukenik, could you spell that
25 for me?

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1 MR. SUKENIK: S-U-K-E-N-I-K.

2 CHAIRPERSON HILL: Thank you.

3 MS. KUHN: Nancy Ortmeyer Kuhn. I'm here as an
4 expert witness.

5 CHAIRPERSON HILL: Okay, there you go. All right,
6 so, Ms. Mazo, again we have an hour on the clock for you and
7 you can begin whenever you like.

8 MS. MAZO: All right. Good afternoon. I will
9 keep my preliminary remarks to be very brief. We're here on
10 behalf of the Sheridan-Kalorama Neighborhood Council, which
11 as you will hear is a council created of residents that's
12 been in existence for more than 60 years.

13 It has been very active in this neighborhood in
14 terms of all aspects of zoning and the regulation of and
15 really the protection of the residential district. With me
16 today, as you indicate, are John Sukenik and Chris Chapin who
17 are both here on behalf of the Council as well as our experts
18 in non-profit organization, Nancy Kuhn and her resume is in
19 the record at Exhibit 117.

20 Nancy can speak very briefly to her
21 qualifications. But she is a non-profit organization expert.
22 She's worked at the IRS. She currently practices this type
23 of law in her practice. And so she'll be able to provide,
24 I believe, a lot of clarification information here.

25 And then we also, to my left is Ellen McCarthy who

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1 is a former director of the Office of Planning and is here
2 as our land use expert. So as stated profusely I think in
3 our pre-hearing statement and in other statements Sheridan-
4 Kalorama Neighborhood Commission, Council strongly opposed
5 this application.

6 We oppose it for many reasons. The first is of
7 course that we don't believe that the threshold requirements
8 of the special exception under Subtitle U, 203.n are
9 satisfied here and we'll testify to that.

10 But then also that we do not believe the special
11 exception requirements have been satisfied because this use
12 even as conditioned by the Office of Planning will tend to
13 cause adverse effects or adversely affect the neighboring
14 properties as well as the zone plan.

15 And so with that I will turn it over to Ms. Kuhn
16 who will testify again on some of the intricacies of the tax
17 exempt law that has been raised here. And she's also
18 available for your questions.

19 MS. KUHN: Good afternoon. I apologize in
20 advance. I'm battling laryngitis. So if you can't hear me
21 just let me know and I'll try a little harder. I don't know
22 how much you want to hear about my background.

23 I have an LLM, a Master of Laws in Taxation from
24 University of Denver. Then I clerked at the United States
25 Tax Court for two years and then I worked at the Internal

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1 Revenue Service in Chief Counsel's Office for ten years, five
2 of which were in the Exempt Organizations Division.

3 Now I am in private practice at Jackson and
4 Campbell and I represent a variety of non-profits as well as
5 other taxpayers. But I practice exclusively in the tax law
6 area.

7 CHAIRPERSON HILL: Okay, I mean does the Board
8 have any issues with her being, with Ms. Kuhn as an expert
9 witness? No, okay, Ms. Kuhn.

10 MS. KUHN: As I think has been brought up in all
11 of the filings the District zoning regulations define a non-
12 profit organization as "an organization organized, registered
13 with the appropriate authority of government and operated
14 exclusively for religious, charitable, literary, scientific
15 community or educational purposes, et cetera and provided
16 that no part of its net income inures to the benefit of any
17 private shareholder or individual."

18 And that language directly tracks the definition
19 used in the Internal Revenue Code Section 501(c)(3). And the
20 language is identical and so I'm not going to read it again.
21 But it provides and requires both the organization and the
22 operation for these purposes.

23 So an organization that is, that follows the
24 organizational language is only organized for exempt
25 purposes. It has to also be operated. And in my review of

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1 FSMB it operates for the purposes of promoting its members'
2 lines of business and not operates for the purpose of
3 providing benefits to the public.

4 And just for an overview, I'd like to go over the
5 differences organizationally and operationally between a
6 Section 501(c)(3) organization and a Section 501(c)(6). As
7 I said, a 501(c)(3) is operated for the benefit of the
8 public.

9 The donations are deducted as charitable donations
10 under Section 170 of the Internal Revenue Code. The lobbying
11 activities are very limited under Section 501(h) of the
12 Internal Revenue Code which I'll speak about in a little bit.

13 There is a complete prohibition on political
14 activities. It has to be publicly supported and organized
15 and operated to further very specific charitable purposes.
16 And the inurement prohibition is absolute.

17 In other words, there can be absolutely no private
18 benefit to insiders, including members. And examples of
19 other 501(c)(3)s are the American Red Cross, Doctors Without
20 Borders and charities that generally operate to benefit the
21 public.

22 On the other hand a 501(c)(6) which is what FSMB
23 is qualified as, as indicated in their Form 990 which is
24 filed with the Internal Revenue Service every year, they are
25 as a 501(c)(6) operated for the benefit of their members and

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1 they are required to be at least partially supported by
2 membership dues.

3 Their purpose and their operation is to promote
4 one specific line of business which they do by promoting the
5 business of physicians. There can be no inurement similar
6 to 501(c)(3) but it's much broader because benefits to
7 members are allowed.

8 And although membership dues are not deductible
9 as charitable they may be deductible as a business expense.
10 Example of 501(c)(6)s include the National Football League,
11 the American Bar Association, the American Hospital
12 Association. Generally any large organization with an
13 association at the end is a 501(c)(6).

14 When determining whether FSMB satisfied the zoning
15 regulations definition of a non-profit organization I looked
16 at how they were operating. I agree that the language in
17 their Articles of Incorporation track the 501(c)(3) language.
18 And so I agree with them that they probably could meet the
19 organizational test under 501(c)(3).

20 But I do not agree that they could meet the
21 operational test under 501(c)(3) because they operate for the
22 benefit of their members to promote the medical profession
23 which is appropriate for a 501(c)(6). They do not operate
24 for the benefit of the public.

25 The revenue that FSMB receives from the

1 administration of the testing services and examination fees
2 which is approximately \$40 million dwarfs the membership fees
3 of approximately \$170,000. Those figures are contained in
4 the most recently available, publicly available Form 990.

5 These examination fees of \$40 million are reported
6 on a Form 990 as a related business since the fees presumably
7 further the interests of their members and further the
8 promotion of their members' common business interests which
9 we do not challenge, which I do not challenge.

10 But arguably this same business activity would not
11 qualify as a related business for an entity that is described
12 in the D.C. Zoning Regulations which mirrors the language of
13 Section 501(c)(3). If not, then FSMB would be deemed to be
14 operating a for-profit business under the standards set forth
15 in the D.C. Zoning Regulations.

16 The Articles of Incorporation list the activities
17 that FSMB will engage in, excuse me. And some of those
18 activities are to keep itself and its members informed.
19 That's in Article 3, Section A.

20 Section B is to study, determine, advocate and/or
21 advance the adoption of adequate standards for licensure.
22 That also benefits their members.

23 Article 3, Section C is to develop and improve the
24 quality of licensing given to members, also benefitting their
25 members and not the public. Article 3, Section D is to

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1 obtain and disseminate information regarding the proposed
2 legislation and administrative actions affecting the healing
3 arts. That is also for their members, excuse me.

4 Also in Article 4, Section A of the Articles of
5 Incorporation they state that no substantial part of the
6 activities or funds of the corporation shall be devoted to
7 carrying on propaganda or otherwise attempting to influence
8 legislation, which also mirrors the language, the statutory
9 language found in Section 501(c)(3).

10 However, these standards are not required for
11 Section 501(c)(6) organizations. And it does not appear that
12 FSMB is complying with the language in their Articles of
13 Incorporation as the Form 990 and its website report fairly
14 extensive lobbying and political activity which is
15 appropriate for a Section 501(c)(6) organization.

16 In the testimony earlier today they stated that
17 they would, they thought they would qualify as a Section
18 501(c)(3) and they cited Section 501(h) and the lobbying
19 restrictions under Section 501(h). But they're comparing
20 apples and oranges.

21 Section 501(h) only applies to Section 501(c)(3)
22 organizations. And the expenditure limits under Section
23 501(h) would not include, arguably their testing revenue, the
24 revenue that they receive in \$40 million worth of revenue for
25 the testing services but would rather only be measured

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1 against the membership fees.

2 And if they spend \$400,000 on lobbying that would
3 actually dwarf the \$170,000 of membership fees. So they
4 would in fact not meet the 501(h) restrictions assuming they
5 were a 501(c)(3).

6 But I challenge that premise that they would in
7 fact meet the 501(c)(3) requirements. There's a revenue
8 ruling issued by the Treasury, the Department of Treasury
9 directly on point, Revenue Ruling 73-567. It describes a
10 medical specialty board which was formed by members of the
11 medical profession to improve the quality of medical care
12 available to the public and to establish and maintain high
13 standards of excellence in a particular medical specialty.

14 This Board's activity is described in Revenue
15 Ruling 73-567 consisted of devising and administering written
16 examinations and issuing certificates to successful
17 candidates in this medical specialty. And then the Board
18 determined whether the candidates met the established
19 criteria to qualify for the examination.

20 If so, the certified physicians were authorized
21 by this Board to hold themselves out to the public as
22 specialists. The IRS and Department of Treasury examined
23 this Board and concluded that the Board does promote high
24 professional standards and that although there was some
25 public benefit derived from promoting high professional

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1 standards in a particular medical specialty, the activities
2 of the Board were directed primarily to serving the interests
3 of the medical profession.

4 And so under those circumstances the Board was not
5 organized and operated exclusively for charitable purposes.
6 Therefore, under this revenue ruling that Board was not
7 exempt under Section 501(c)(3) but was exempt under Section
8 501(c)(6) since its purpose was to promote the common
9 business interests of the physicians.

10 So to summarize, in my opinion FSMB is not
11 operated as a non-profit organization as that term is defined
12 in D.C. Zoning Regulations. Accordingly, they would not
13 satisfy the zoning regulations definition of a non-profit
14 organization.

15 MS. MAZO: And can I ask two questions? First,
16 Ms. Kuhn, you were in the audience today and you heard FSMB's
17 counsel's testimony as to their activities and I believe
18 trying to make a point that their activities were, that they
19 were operated in the public good. Is that correct, and you
20 heard that testimony?

21 MS. KUHN: I did hear that testimony. But I would
22 differ in that their activities are really to promote their
23 members' interests and to promote the state medical board's
24 interests and to run this program of testing, these testing
25 services.

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1 Similar to the revenue ruling they were, in which
2 their activities were to establish and maintain the high
3 standards of excellence in the medical specialty. That is
4 to promote their members, not to promote the public's
5 interests.

6 CHAIRPERSON HILL: Okay. I mean there's, let me
7 see how we can do this. Now does the Board have any
8 questions for this witness right now? Yes, please go ahead.

9 COMMISSIONER MAY: Okay. So we conveniently on
10 the screen have the definition of organization, non-profit.
11 So I've read through this many, many times. Can you tell me
12 where you are seeing in that there is a requirement that it
13 benefit the public?

14 MS. KUHN: It's, has to be operated exclusively
15 for religious, charitable, literary, scientific community or
16 educational purposes. That exclusively means that it has to
17 be operated that way for the public, not for a limited number
18 of members.

19 COMMISSIONER MAY: I'm still not seeing that. I
20 mean educating their members, making sure that they are
21 providing excellent medical service, isn't that a, I mean
22 ultimately that's a benefit to the public.

23 But I'm not even seeing for the benefit of the
24 public in the definition. I understand how it weighs in, in
25 the IRS code and the classification of organizations. But

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1 here I'm not seeing it.

2 MS. KUHN: Well the last part of that sentence
3 that no part of its net income inures to the benefit of any
4 private shareholder or individual. A member is a private
5 shareholder or individual.

6 COMMISSIONER MAY: That's a separate question
7 though. That just says that nobody is making a big profit
8 off of this.

9 MS. KUHN: No, I mean that's part of the
10 definition of a 501(c) in Section 501(c)(3) that there not
11 be any --

12 COMMISSIONER MAY: Right, inurement, yes.

13 MS. KUHN: -- inurement to a private shareholder.

14 COMMISSIONER MAY: Right. And I think they
15 testified that's, there is no inurement to private
16 individuals.

17 MS. KUHN: Well members are private individuals.

18 COMMISSIONER MAY: But that's not what this is
19 about. This is about people who are, I mean the members who
20 are, they pay a membership fee or they pay fees for whatever
21 testing services or training, whatever they're paying for,
22 right.

23 It's income as opposed to a membership fee. They
24 are gaining education out of it, right. I mean that's like
25 saying that people who take classes at a university are

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1 private individuals who are gaining some sort of inurement.

2 MS. KUHN: But only, but their services are only
3 available to members. As a member of the public I could not
4 use, take advantage of any of their services because I am not
5 a member. And so that's why they do not meet this
6 definition.

7 COMMISSIONER MAY: No, but again, you're, I'm
8 trying to understand where it says it has to benefit the
9 public. There's nothing in the words here that says that it
10 has to benefit the public directly or indirectly. The words
11 aren't there.

12 MS. KUHN: I mean I guess I would challenge that
13 just because of the vast amount of, because this is the
14 language taken directly from the 501(c)(3) statute.

15 COMMISSIONER MAY: Well some of the phrases.

16 MS. KUHN: The case law that interprets that
17 language has interpreted it to mean that it has to benefit
18 the public. Better Business Bureau, a Supreme Court case has
19 analyzed that extensively.

20 COMMISSIONER MAY: And if this were a tax case
21 that might be relevant. But this really just has to do with
22 whether in the words that are in our regulations whether they
23 qualify as a non-profit.

24 And I'm not seeing the same things in it that you
25 are because, I mean you're thinking about it from a tax law

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1 perspective which is, you know, I understand completely. But
2 I'm not seeing the same things here.

3 The fact that there is some commonality between
4 this definition and what's in the IRS Code is, I think, you
5 know, it's understandable and it's helpful. But this is not
6 the IRS definition.

7 If it were the IRS definition the zoning
8 regulations probably would have said a 501(c)(3) organization
9 rather than try to lift certain language from it. I mean
10 Washington as a city is filled with non-profit organizations
11 who do a wide range of work and not all of them benefit the
12 public and not all of them are under 501(c)(3)s.

13 So I'm still struggling to make that connection
14 that you are seeing.

15 MS. KUHN: I guess I would point you to that last
16 inurement prohibition because it's much more --

17 COMMISSIONER MAY: But that goes to the payments
18 to people who run the organization. I mean that's the way
19 I read it.

20 MS. KUHN: But it's to any private shareholder or
21 individual which is very narrow.

22 COMMISSIONER MAY: Right, so what, okay, no part
23 of its net income inures to the benefit of private, I mean
24 basically they're saying that it's not going to make a
25 profit. I mean the way I read that.

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1 MS. KUHN: No, it's broader than that. It means,
2 inurement doesn't just mean profit. It means that a benefit,
3 a private benefit doesn't go to an insider, doesn't go to a
4 member, doesn't go to anybody. But all the benefits are to
5 the general public.

6 COMMISSIONER MAY: So a membership organization
7 like the one that I belong to, the American Institute of
8 Architects, right, I pay a fee to them. And I get benefits
9 from them.

10 MS. KUHN: Right.

11 COMMISSIONER MAY: And I'm a private individual.

12 MS. KUHN: Right.

13 COMMISSIONER MAY: So that means they're not a
14 non-profit?

15 MS. KUHN: They're not a 501(c)(3) non-profit.
16 They're probably a 501(c)(6) non-profit.

17 COMMISSIONER MAY: But this doesn't say 501(c)(3),
18 it says non-profit.

19 MS. KUHN: But what I'm saying is that the
20 inurement prohibition under Section 501(c)(6) is much more
21 lenient. This is a very precise and absolute inurement
22 prohibition to any private shareholder or individual.

23 COMMISSIONER MAY: So it can't go to any member
24 of the organization whatsoever?

25 MS. KUHN: Public charities do not have members

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1 generally. Public charities meaning 501(c)(3).

2 COMMISSIONER MAY: Right, I belong to my local
3 public radio station. I belong to my local public tv
4 station. I get, I got beer glasses when I made my last
5 donation to the radio station.

6 MS. KUHN: Those are incidental. I mean I don't
7 know that's considered a benefit.

8 COMMISSIONER MAY: Well I mean you just said it's
9 absolute and then it's not an absolute. I mean there are
10 benefits. We get a magazine.

11 MS. KUHN: I think a beer glass is a little
12 different than --

13 COMMISSIONER MAY: Yes, but we get a magazine
14 from, you know, from other ones. There are other things that
15 we get from the membership organization.

16 MS. KUHN: I would have to analyze that
17 organization and determine what benefits you're getting.
18 Maybe they're not within the law. I don't know what you're
19 talking about. So I would need to analyze the facts.

20 COMMISSIONER MAY: I'm just, it's hard for me to
21 understand how a membership organization, you're essentially
22 saying that any membership organization that allows any
23 benefits to accrue to the members cannot be considered --

24 MS. KUHN: I think you're taking my words out of
25 context and to the extreme.

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1 COMMISSIONER MAY: Well, okay. Maybe I am. But
2 I'm only going by what I'm hearing from you. So I'm having
3 trouble tying what you're saying to our definition in the
4 regulations.

5 MS. KUHN: I would just point you to the language.
6 No part of a net income inures to the benefit of any private
7 shareholder or individual. Those are the words.

8 COMMISSIONER MAY: Net income. We're talking
9 about money. Net income is money, isn't it?

10 MS. KUHN: That's true.

11 COMMISSIONER MAY: So the, if they were paying out
12 money from what they collected on the fees for testing or
13 something like that to the members or if they were paying
14 people beyond what staff salaries they are paid. I mean
15 again, it's, I'm having trouble seeing how they have net
16 income that's inuring to the benefit of private shareholders.

17 I mean I'm sure that they can answer that more
18 directly. I'll let them do that on rebuttal. But that's one
19 of the things that I'm having trouble with. All right. I
20 think I've asked enough. Thank you.

21 CHAIRPERSON HILL: Okay. Anyone else for this
22 witness, okay. Ms. Mazo.

23 MS. MAZO: I'm now going to turn it over to Chris
24 Chapin who is the President of the Sheridan-Kalorama
25 Neighborhood Council.

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1 MR. CHAPIN: Good afternoon.

2 CHAIRPERSON HILL: Good afternoon.

3 MR. CHAPIN: My name is Christopher Chapin. I'm
4 President of the Sheridan-Kalorama Neighborhood Council. For
5 more than 60 years the SKNC has been the citizen's
6 association of Sheridan-Kalorama.

7 It's funded by resident dues and seeks to preserve
8 the residential character of our neighborhood. We've
9 testified before many times before the BZA often on issues
10 related to foreign chancellories. For 40 years I've lived
11 on Leroy Place at 2136. My house is just up the street and
12 just a few feet outside the 200 foot radius of 2118 Leroy.

13 I'm not an attorney. But here's how I look at the
14 case. The special exception was designed to protect
15 residential areas like ours which is zoned R3. It seeks to
16 prevent exceptionally large houses from becoming abandoned
17 and derelict, hence the 10,000 square foot criteria.

18 To use these houses for non-profit offices was
19 thought to be better than to let them become a blight on the
20 neighborhood. This does not apply to 2118 Leroy.

21 The property is not in danger of being abandoned.
22 When it was for sale there were two other bidders. John
23 Sukenik, who will testify after me, was told by the realtor
24 at the time that at least one was a residential bidder.

25 The FSMB told an immediate Leroy Place neighbor

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1 that it had looked at commercial property space around the
2 city including on Connecticut and Massachusetts Avenues and
3 it picked Leroy Place because it was a better deal. On
4 Connecticut Avenue within 200 feet of 2118 Leroy there are
5 two office buildings for sale or lease.

6 See the exhibit. 1832 and 1834 Connecticut Avenue
7 have been renovated as offices. Both have commercial office
8 certificates of occupancy and off street parking in the alley
9 behind and it's a much wider alley than the one that runs
10 between Bancroft and Leroy.

11 Each is 5,000 to 6,000 square feet. And they can
12 be merged into a combined office of 11,000 square feet. The
13 buildings are connected on the basement and third floors and
14 they can be connected on the first and second floors as well
15 to make it an integrated office.

16 This is a perfect location and size for FSMB. So
17 why did FSMB buy Leroy Place? As they told the neighbor it
18 was cheaper. The buildings on Connecticut are for sale for
19 an asking price of \$740 per square foot.

20 FSMB paid \$383 per square foot for Leroy Place.
21 Add \$1 million for renovation and the cost is still only \$475
22 per square foot. This is a 35 percent discount off the cost
23 of equivalent office space less than 200 feet away.

24 With \$43 million in annual revenues FSMB is not
25 some cash-strapped charity that can't afford to pay

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1 commercial rates. FSMB bid up the price of 2118 Leroy from
2 \$3.5 to \$4.15 million, an increase of \$650,000.

3 FSMB could have bid up the price another \$2
4 million and still gotten a lower cost space than the nearby
5 commercial office building. How can any resident bidder ever
6 hope to compete?

7 The special exception regulation should not be
8 used as a loophole for office users looking for cheap office
9 space. This is a case pure and simple of an office user
10 wanting to pay residential prices for commercial office space
11 when that space is available and is still available less than
12 200 feet away.

13 We're aware that both FSMB and the D.C. Office of
14 Planning have offered conditions to reduce the adverse
15 impacts of an office in the middle of a residential block.
16 The conditions are not sufficient to protect the
17 neighborhood.

18 For example, the 2100 block of Leroy has dual Zone
19 1 and Zone 2 parking. In Sheridan-Kalorama the dual zone
20 applies just to the first blocks west of Connecticut Avenue.
21 This means any FSMB employee who lives in Ward 1 or Ward 2
22 and has a sticker could park all day on Leroy.

23 They say they won't. How do we enforce that? We
24 can't. The same applies to many of the other conditions.
25 This is another reason why the neighbors and the ANC are

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1 opposed to the special exception. John Sukenik will address
2 adverse impacts in greater detail.

3 The Sheridan-Kalorama Neighborhood Council has
4 been fighting for decades to limit foreign chancellories.
5 We recognize we are a residential neighborhood close to the
6 center of the city.

7 When we had the diplomatic overlay it was cheaper
8 for a chancellory to buy a house than to buy or rent
9 commercial space. The new zoning regulations have removed
10 the diplomatic overlay and raised the institutional criteria
11 to 50 percent from 33 percent.

12 Just when we are getting more protection from one
13 non-residential threat we now have this new one. Sheridan-
14 Kalorama has 50 residences or chancellories with more than
15 8,500 square feet. There are only 195 countries with
16 chancellories but there are thousands of trade associations
17 in Washington.

18 Just when we had a chance to recover a chancellory
19 as a residence and a number of other institutional buildings
20 have been recovered as residences that were used previously
21 as schools or chancellories, a commercial office user comes
22 into this interior block and outbids any potential
23 residential user.

24 The zoning regulations are being abused so
25 commercial office users can get cheap office space. This is

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1 what R3 zoning is designed to prevent. The Sheridan-Kalorama
2 Neighborhood asks the Board of Zoning Adjustment to uphold
3 the integrity of the R3 zoning, protect the residential
4 character of Sheridan-Kalorama and deny the special
5 exception. Thank you.

6 MR. SUKENIK: Thank you. Cozy up to my lawyer
7 here so I can see the screen. Okay. My name is John
8 Sukenik. As I said, I'm a long term resident of Sheridan-
9 Kalorama and a veteran of quite a few cases involving
10 embassies.

11 And I'm going to talk about three things in this
12 presentation. The titles might not seem like right on the
13 subject but I hope you'll find that the content is. The
14 first one is this alleged argument that approving an office
15 use in this building will address a problem of vacant and
16 abandoned embassies in Sheridan-Kalorama.

17 Well I submit there is no problem of vacant and
18 abandoned embassies. There's a problem of, there's no
19 problem of abandoned embassies. It's only the vacant
20 properties that are a problem and we can't do a thing about
21 that.

22 The fact is that these governments for whatever
23 reason, as in the case of 2118 Leroy, will hang on to them
24 for several years even for decades without using them. And,
25 but when they do finally sort of wake up and decide to

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1 release them to the marketplace they go.

2 They don't always go very quickly. But almost
3 nothing in Kalorama does because when you get into these
4 multi-million dollar prices the pool of buyers simply isn't
5 that large.

6 And to provide some examples this slide that you
7 see now, these are all properties in Sheridan-Kalorama that
8 have been converted back to residential. Some of them go
9 back like a good ten plus years, but not a lot more than
10 that.

11 But a good example, a very good one is this 2310
12 Leroy, the first, Tracy, sorry, the top one. The property
13 belonged to the government of Portugal. They didn't use it
14 for 20 years. There were literally holes in the roof, I mean
15 open to the sky.

16 And as soon as they put it on the market it sold
17 and it was restored as a single-family residence, more like
18 a 6,000 square footer as opposed to a 10,000. But
19 regardless, you know, it's a good example of what can happen
20 once these properties come back to the market.

21 Here's another one you see on the screen. That's
22 2126 Wyoming Avenue. That's over 10,000 square feet. That
23 is a single-family residence. It was a building that
24 belonged to the Field School. So you can imagine what, how
25 much rehab it needed.

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1 This one, this is the one that I really want to
2 call to your attention because it is over 10,000 square feet.
3 And what was done here is it was divided, the lot was divided
4 into two townhouses, so to speak, two attached townhouses
5 with, sharing a common entrance which made it possible to
6 comply with the historic preservation requirements.

7 And this property is huge. If you go by there and
8 look and you look at the back and everything it's just a
9 monster. And then this is almost, I almost present this as
10 a joke because it's such an outlier.

11 But this is the property that Bezos is renovating
12 as a residence, 2320 S Street, 22,000 square feet is the size
13 of that. It sort of falls into the category of well, you
14 know, anything can happen.

15 Moving along, Leroy is a perfect example of my
16 statements above. You've heard in the Applicant's materials
17 that the condition of the building makes it unsuitable for
18 a residential rehab.

19 That is, well we don't agree. Go ahead.
20 Guillermo Rueda who some of you may know, we asked him to
21 look at the building. He is directly experienced with
22 reconversions in Sheridan-Kalorama.

23 In fact, he did the one the school that was
24 converted to the two buildings with a common entrance. He
25 reviewed the plans and photos and he thinks that it has

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1 considerable potential for residential use especially given
2 its many remaining visible elements, right. Go back there.

3 You look at that staircase that's still on the
4 building and that beautiful room on the ground floor. And
5 you can see that the condition of the walls and so forth
6 really isn't bad.

7 And moreover, if you look at the photos what you
8 see more than anything is the ceiling tiles with florescent
9 lights and the 27 offices that are talked about. They're
10 just going to be cheap partitions. Those ceiling tiles and
11 walls could be out of there in two days.

12 And then going along to the sale of the property,
13 Sylvia Bergstrom who was the listing agent and is someone who
14 is quite the specialist in Sheridan-Kalorama property chose
15 to advertise it as follows. Previously used as an embassy,
16 currently set up as offices.

17 This property could be a spectacular residence.
18 The huge foyer boasts a beautiful staircase leading to light
19 filled upper levels. But now here's where, you know, we get
20 into some real factual issues.

21 And, you know, I don't know it's almost, there was
22 once a TV show called Who Do You Trust. And the Applicant
23 said that their attorney told them that the bidders on the
24 property were a developer, a foreign government and FSMB.

25 Now of course competition like that would incline

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1 you to pay more. But what I got from Sylvia Bergstrom, the
2 listing agent personally after she had gone and talked with
3 her daughter too and they put their heads together to make
4 sure they had their information right she said that the three
5 bidders were one, a couple seeking to use it as a residence.

6 A private individual from San Francisco who never
7 revealed anything but he was interested in the property and
8 FSMB. So, you know, since there was a totally different
9 story I mean you have to decide what to believe, so to speak.

10 But, you know, this property definitely has and
11 would have had residential demand, if not immediately
12 eventually. And the fact that FSMB bid up the price by
13 \$650,000 is really almost startling to me.

14 I mean, how can a large association be allowed to
15 buy their way to eligibility for special exceptions in
16 residential neighborhoods by paying preemptively high prices?
17 Get going, all right.

18 She says, get going. All right. On the facts of
19 the residential nature of Tracy Place I just want to mention
20 a couple of things. Regarding the hotel, this is more into
21 the range of adverse effects.

22 The hotel which is on the upper right, the Marriot
23 Courtyard you have to understand how that works to see why
24 that literally does not interact with the neighborhood.
25 Arrivals all take place from Connecticut Avenue.

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1 The driveway goes up the side of their property
2 to the garage. Anything not going into the garage leaves to
3 the immediate left of the garage door getting on the one-way
4 street on Leroy and going right back out to Connecticut.
5 It's entirely self-contained on that whole property.

6 As far as the other diplomatic properties go,
7 those are very small countries, those three and they, you
8 know, it's amazing if they have ten employees. There is
9 Guinea, not to be confused with Mr. Guinee, Nepal and
10 Mauritania.

11 Those are all, you know, they have very small
12 presences here in D.C. And compare that with the Federation
13 of State Medical Boards. Now they say they have only eight
14 people at this time and they don't want more than 20.

15 But I find it almost hard to believe that there,
16 people are going to hardly come and go from that place. I
17 mean it just doesn't really make a lot of sense. The scale
18 of their operation, the \$42 million we've already talked
19 about that.

20 But also just to give you another example when
21 they opened their D.C. offices on Massachusetts Avenue, I
22 can't quite read that. Can you read it?

23 MS. MAZO: It says FSMB members are encouraged to
24 visit the new offices whenever they are in Washington.

25 MR. SUKENIK: Yes, even if they're not there on

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1 FSMB business. Just like stop by, open door. And it's also
2 hard for me to believe that these committee and work group
3 meetings are not going to be more frequent than Mr. Chaudhry
4 has suggested.

5 He said they have, I believe, 12 to 14 committees
6 and work groups. I checked my phone while not testifying and
7 I counted 22. Beyond that to think that staff's coming and
8 goings with be virtually non-existent is also another one
9 that strains credibility.

10 FSMB D.C. doesn't want to be called a lobbying
11 organization. So let's just call them a policy and advocacy
12 operation. The job titles, as I found on their website were
13 chief advocacy officer, director of federal government
14 relations, director of state policy and legal services, state
15 legislative and policy coordinator.

16 If those are up to date that just gives you a
17 sense of out of eight you have four leadership positions in
18 policy and advocacy. And what do such people do in every
19 other organization?

20 They host, they entertain, they visit, they meet.
21 They go back and forth from the Hill. If FSMB's activity is
22 going to be that low they must be unique. The transportation
23 impacts. Street blockages on Leroy and in the alley behind
24 FSMB.

25 We've already talked some about this so I won't

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1 hit it too hard. But one-way, one lane street, all right.
2 Similarly only one vehicle can pass in the alley. The bottom
3 line is that they have no off street or off alley parking.

4 Their use is going to cause backups on Leroy Place
5 no matter how you look at it. And the enforceability aspect
6 that Chris mentioned was important too because Ubers, black
7 cars, taxis, all these pick up and drop off, this just will
8 make it very difficult for Leroy residents to attain their
9 homes.

10 Then the services issue, trash how is that going
11 to be? We already talked about deliveries. Other service
12 providers offices require much more services than a
13 residence.

14 They need telecommunications, maintenance repair,
15 general building maintenance and repair, messengers, you
16 know, what it's, we all know what it's like. Then parking,
17 don't talk about parking she said, okay. All right, I'll
18 skip parking.

19 But other vehicular impacts that I think really
20 are important. Leroy Place is a one-way street going east,
21 as we know, right. A vehicle cannot arrive at the property
22 without driving through the neighborhood.

23 Car, truck, taxi, van, whatever, to arrive at 2018
24 the vehicle has to take other residential streets. And
25 finally, adverse economic impacts. This hugely inflated

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1 price that FSMB paid is likely, if it hasn't already to
2 affect the assessments of the other buildings on the street.

3 But that is, you know, the damage has probably
4 been done there. But also going in the other direction the
5 values of attached and nearby properties will be reduced by
6 their proximity to what I claim will be an active and
7 disruptive office use and the entire block will be less
8 attractive to purchasers of single-family residences.

9 MS. MCCARTHY: Good afternoon. Let me get right
10 down to the point. I want to talk about the site context,
11 the application for the special exception and why it is
12 inconsistent with the intent and provisions of the zoning
13 regulations and the harm that would be caused to the
14 integrity of the zone plan and the residential character of
15 Sheridan-Kalorama.

16 First of all, the site context. As you've seen
17 from the slides and heard from the witnesses Sheridan-
18 Kalorama is a stable, low-density, single-family
19 neighborhood. The, if you have my testimony before you I
20 will save time and not read through the various provisions
21 of the comprehensive plan other than to say that as we know
22 zoning may not be inconsistent with the comprehensive plan.

23 And it's the plan that provides assistance to the
24 Board in interpreting the provisions of the zoning
25 regulations. So when you see in the comprehensive plan, for

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1 example, policy near northwest element 1.1.7 that the plan
2 strongly discourages conversion of housing units to non-
3 residential uses such as medical offices, hotels and
4 institutions and that zoning regulations must maintain, be
5 maintained to limit the encroachment of non-residential uses
6 into near northwest neighborhoods.

7 Please keep that in mind as sort of an important
8 guidance in interpreting the special exception in this
9 situation. As we, as you also heard in the past years the
10 residential character of Sheridan-Kalorama was under threat
11 because the Foreign Missions Act the Congress had passed in
12 1982 really put the neighborhood in the cross hairs for
13 locations of chancellories and embassies.

14 And the diplomatic overlay as it was enacted at
15 the time helped foster that. The Sheridan-Kalorama, due to
16 the extraordinary vigilance of the SKNC with past support
17 from the Office of Planning, that residential character has
18 been preserved.

19 As you heard earlier, several large structures
20 have actually been converted back to housing from other uses
21 and that's partly because of the alteration of the zoning
22 formula which allowed residential uses to compete on better
23 footing with chancellories and embassies.

24 The zone plan, the site is zoned R3 which is, as
25 you know, low-density residential zone defined in the zoning

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1 regs as residential zones designed to provide for stable, low
2 to moderate density residential areas suitable for family
3 life and supporting uses.

4 And the regs also state the purpose of our zones
5 is to recognize and reinforce the importance of neighborhood
6 character, preservation of housing stock and we should note
7 no office space is permitted as a matter of right.

8 So to the subject special exception in particular,
9 as you know the Applicant is trying to take advantage of a
10 provision in the zoning regulations that allows the
11 conversion of a residential building to non-profit office
12 space. However, what is really important is to go back to
13 Order 83, the Zoning Commission order that established that
14 special exception and to understand the, going back to that
15 order gives us a context in which we should interpret the
16 provisions of the special exception.

17 Order 83 was issued in January of 1974 for a case
18 that was filed in 1973, 73-32, the year that Congress granted
19 home rule to the District. One of the most salient realities
20 in planning and land use in the District of Columbia at that
21 time was the long term trend of losing population.

22 Indeed, we went from a population of 802,000
23 people in the 1950 census which made us the ninth largest
24 city in America to a population of 572,000 in the 2000 census
25 when we dropped to the twenty-first largest city. Between

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1 1970 and 2000 the city lost 25 percent of its population.

2 However, the situation in the District is now
3 totally different. We have reversed a 50 year population
4 decline with the number of residents growing almost 20
5 percent between 2006 and 2016 to a figure of 681,170 as of
6 July 2016, a figure we haven't seen since the 1970s.

7 The District grew by more than 110 people just
8 since the comp plan was rewritten in 2006. How does this
9 apply to the special exception? The order makes it clear
10 that the exception was created to deal with the situations
11 related to this severe population decline.

12 The Commissioners were concerned that once
13 residents moved out of large historic homes there would be
14 insufficient demand to live there from new families or
15 individuals and because the zoning regulations required
16 residential use the buildings would sit there derelict and
17 vacant having a negative effect on the neighborhood.

18 I suggest if you could to go to Appendix A of my
19 testimony which has the full text of that order in all of its
20 xeroxed or mimeographed glory from 1973. And it specifically
21 says in the first whereas that it is in the public interest
22 to maintain these large historic houses and that there are
23 instances where continued use as residences of such large
24 buildings is no longer assured leading to their dilapidation
25 and destruction and that the current zoning regs will not

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1 accomplish the purposes of saving and maintaining those
2 historic buildings.

3 Therefore, it suggests buildings that are of that
4 historic nature that have gross floor areas in excess of
5 10,000 square feet and that you could, that those buildings
6 could then be used for non-profit organizations as an
7 appropriate means for providing not just for the preservation
8 of such buildings, but also by allowing non-profit
9 organizations to locate there it would promote the public
10 health and general welfare.

11 That context is really important, I think, in
12 interpreting whether a 501(c)(6) meets the aim that the
13 Zoning Commission had when it first adopted this special
14 exception. Notice, the Zoning Commission was concerned about
15 the potential vacancy of these large residential buildings.

16 It could have just said commercial, they could be
17 reused for commercial office space with a special exception.
18 It could have just any historic buildings, large historic
19 buildings.

20 But it specifically, because it was conscious of
21 the importance of retaining the residential character of the
22 District, limited it to buildings in excess of 10,000 square
23 feet and that the office had to be a non-profit organization
24 because that would not only preserve the building but promote
25 "the public health and general welfare."

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1 While the Commission didn't specifically use the
2 term 501(c)(3) organization the fact that a 501(c)(6)
3 organization such as FSMB is a business association organized
4 and operated to benefit the members of the association and
5 not to provide for the general welfare clearly puts it
6 outside the intent of the zoning regulations for this
7 specific special exception in this specific case.

8 We should also observe with respect to the
9 requirement that a special exception needs to be in harmony
10 with the general purposes and intent of the zoning regs and
11 maps that not only has Sheridan-Kalorama become highly
12 desirable and a desired neighborhood, but 2018 Leroy Place
13 specifically was in no danger of standing vacant and
14 deteriorating as a residence.

15 There were two other, at least two other bidders
16 at least one of whom expressed the intention to renovate the
17 structure and use it as the regulations intended as a single-
18 family property. And that information is in the record.

19 Now let me take a few minutes to deal with the
20 issue of the definition of non-profit in the regulations and
21 the points that Nancy was making earlier. The FSMB is a
22 (c)(6). It is designed to operate, the zoning definition,
23 let me step back.

24 The zoning definition of non-profit which we
25 didn't really dwell as much as I think we should have on this

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1 section, says that the organization has to be operated
2 exclusively for charitable, educational purposes, whatever.
3 The, whatever educational purposes or charitable purposes the
4 Applicant is referring to that inure to the broader public
5 are incidental.

6 The mission of this organization is to benefit
7 organizations which regulate medical practice in the states.
8 Their members are not even physicians. Their members are
9 state medical boards and the whole purpose of FSMB is to
10 allow those boards to do their job of regulating better.

11 No offense to the lawyers in the room, but every
12 state has a State Bar Association and it regulates lawyers.
13 And the American Bar Association has as its purpose to allow
14 the State Bars Association to operate better.

15 But I don't think we would look at having lawyers
16 be regulated better as something that inures to the broader
17 benefit or that has a cultural, social, educational purpose
18 or to look at it in another way. If you're an accounting
19 firm in the District one of your major jobs is to make sure
20 that your clients stay out of trouble, keep their accounts
21 correctly, file their taxes correctly, do their business on
22 the straight and narrow.

23 You could say that accounting firm therefore has
24 a duty or has a job to educate its clients to obey the law
25 and to operate within the sphere of that law. But that

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1 doesn't mean that it could operate as a non-profit.

2 An accounting firm is clearly a commercial office
3 use. It would have to locate in the commercially zoned
4 sections of the city. The FSMB serves the regulating boards.
5 It doesn't serve the physicians.

6 Its journal is the Journal of Medical Regulation.
7 It helps people do their jobs better as regulators. The NFL
8 is a 501(c)(6). Presumably it helps the owners of the teams
9 do their jobs better as owners. Get more money, learn what
10 to charge for beers in their stadiums, whatever.

11 But again, I don't think we would say that the NFL
12 is a non-profit organization if it looked to get a special
13 exception to locate in a residential area. So I think we
14 need to keep that context in mind.

15 The second threshold issue in addition to the fact
16 that this is not a non-profit as the zoning regulations
17 interpreted it, is this notion of the 10,000 square feet.
18 If you look at the architectural drawings that are in the
19 record, not the ones that we saw, well you could take a look
20 at the ones we saw today.

21 But looking at those adding up the numbers for the
22 various floors it adds up to 11,253.04 square feet. But if
23 you look more closely at the plans for the ground level 400
24 square feet of that are listed as garage which is not part
25 of the gross floor area of the building.

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1 Three hundred eighty-six square feet are listed
2 as patio, which is not part of the gross square footage. One
3 ninety-four square feet are crawl space. That adds up to 980
4 square feet. Then look at the two front rooms which if you
5 look at the drawing that you saw today is shown as clearly
6 below the grade.

7 Those two rooms add up to 1,529 square feet.
8 Maybe some of that is above grade as the ground slopes down.
9 Assuming for the moment it isn't, if you take those square
10 footages that are clearly not part of gross floor area and
11 you add it to those front rooms you come up with 2,509 square
12 feet.

13 Subtract that from what the Applicant's
14 architect listed as the total square footage and the building
15 is only 8,744 square feet. So it doesn't even meet the
16 threshold requirement of exceeding 10,000 square feet.

17 That in and of itself, I think is problematic for
18 any approval of this special exception. Now what about
19 adverse impacts? The major adverse impact which has been
20 hinted at by prior witnesses, is the destabilizing of the
21 residential real estate market.

22 As you know, zoning fills many important
23 functions. One is that by providing a framework with respect
24 to how land can be used and its density intensity it helps
25 provide for a stable market for land.

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1 Prospective purchasers know what they may build
2 and how they may use an existing building. And presumably
3 that knowledge constrains what they pay when they purchase
4 a property.

5 The Office of Planning evoked that knowledge or
6 that function of zoning when it proposed a text amendment
7 which was adopted by the Zoning Commission to limit pop-ups
8 or roof top additions to row houses in R4 zones. And part
9 of their rationale was to preserve the affordability of those
10 row houses for families who needed more space than was
11 typically available in new apartment construction in D.C.

12 So the research showed that developers were buying
13 those row houses and carving them up into two or three luxury
14 condominiums selling them for a great profit and pricing them
15 out of the class of single-family users. The rationale here
16 is similar.

17 While there are some well-heeled non-profits it's
18 safe to say that business associations, trade groups like
19 FSMB can outbid those who desire to use a large historic
20 building as a residence. In this case even with FSMB paying
21 more than \$600,000 more than the asking price for the
22 property, as has been pointed out, it's still getting a
23 bargain compared with what it would have had to pay to
24 purchase or rent commercially zoned property.

25 Granting this special exception would establish

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1 a precedent which would put a quick stop to the recent trend
2 in Sheridan-Kalorama buildings of formerly non-residential
3 uses being transformed back into homes. It would be directly
4 contrary to the established com plan policy to limit the
5 encroachment of commercial uses into near northwest
6 neighborhoods.

7 If I could have just a little bit more time from
8 the time that we lost in the cross examination on the non-
9 profit.

10 CHAIRPERSON HILL: I feel like a soccer match,
11 yes. I had the little stop watch going while the injury time
12 out was going on. So, but you still only got like maybe
13 three, four extra minutes in there for the Mr. May discussion
14 if that's what you're speaking of.

15 MS. MCCARTHY: I've only got a page, just slightly
16 more than a page. The second adverse effect is unnecessarily
17 expanding the Class B, office supply and restricting housing
18 supply.

19 As I indicated we're experiencing an increase in
20 population and we're experiencing a glut of commercial office
21 space in the last several years. According to the D.C.
22 economic partnership the current vacancy rate for commercial
23 office space stands at 11.7 percent with several major
24 projects such as Capital Crossing and the redevelopment of
25 the former Washington Post headquarters set to deliver

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1 thousands of square feet in the next one to seven years.

2 At the same time the demand for housing has been
3 outstripping supply creating upward price pressures which
4 exacerbate a serious housing affordability problem. The city
5 is even pursuing an incentive package to encourage owners of
6 Class B and C office space to convert them to housing.

7 Thus it would serve no public purpose to go in the
8 opposite direction and add to the supply of Class B office
9 space while missing an opportunity to provide a new
10 residential use. The last, the second to last adverse impact
11 traffic congestion, parking and loading.

12 As you've heard from the other witnesses the
13 narrowness of Leroy Place in the alley at the end of the, at
14 the rear of the property make it likely that the intense use
15 proposed for the site would have adverse impacts on
16 neighboring properties and it would represent a serious
17 increase in the intensity of these effects compared with the
18 prior use of the building by the Columbians who had only a
19 skeleton crew in the building from 2007 until the recent
20 sale.

21 SKNC has expressed concern that even with the
22 conditions proposed by the Applicant and the Office of
23 Planning the adverse effects will still occur and plus the
24 burden of policing adherence to the conditions will fall on
25 the neighbors. Are they the ones that are supposed to go out

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1 and check every employee that's walking in to see whether
2 they're an intern or not and to keep tabs on how many
3 employees are located in the building?

4 The conditions are just not enforceable. Lastly,
5 the erosion of residential character. Well FSMB as part of
6 its outreach to the neighbors assured them that there would
7 no night time or weekend activity in the building.

8 That's a negative not a positive. It's not
9 consistent with the desired character of a healthy
10 residential area to live next to or across the street from
11 a building which is lifeless during most of the time that the
12 neighbors will be home.

13 It also places a burden on the neighbors to keep
14 watch for vagrants or those who would use the lack of
15 occupancy in the building for negative purposes. Let me just
16 mention last the one point that I forgot to add about the
17 10,000 square feet.

18 Mr. Sullivan alleges that would be, that this will
19 be caught by DCRA when the building permit is submitted if
20 it's not 10,000 square feet. That's just not realistic.
21 DCRA has such a huge workload when you bring in your permit
22 and it's processed and the zoning staff looks at the
23 application they will look at what the architect has said is
24 the square footage of the building.

25 They have no time or resources to go out and

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1 measure the perimeter to determine exactly where the grade
2 is less than four feet or the ceiling is less than four feet
3 above the grade. So it is important for the Board to look
4 at the issue of whether this is 10,000 square feet and I
5 think it's pretty clear it is not.

6 So in other words, the building will not be in
7 harmony with the general intended purposes of the zoning
8 regulations, particularly as it reflected in Order 83. It
9 will tend to affect adversely the neighboring property and
10 it is, the special conditions that are being considered would
11 not protect the residential character of the neighborhood.

12 So for these reasons I would urge you to conclude
13 that the Applicant has not met its burden of proof and that
14 the Board should deny the application.

15 CHAIRPERSON HILL: Okay, great, thank you. Ms.
16 Mazo, you have anything in conclusion?

17 MS. MAZO: I have a closing but I think you
18 indicated that you would hear that later on.

19 CHAIRPERSON HILL: Yes, I will give you a little
20 bit of time.

21 MS. MAZO: Yes.

22 CHAIRPERSON HILL: Okay. Let's see, okay. Does
23 the Board have any questions for anybody right now?

24 VICE CHAIRPERSON HART: One quick question.

25 CHAIRPERSON HILL: Sure.

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1 VICE CHAIRPERSON HART: Ms. McCarthy, you were,
2 you brought up the ZC 83 which was from the 80s, 70s, excuse
3 me. And in that you said that at the time the regulation was
4 kind of put forward because there wasn't a, there were,
5 people were out-migrating and so there was a need to try to
6 use, utilize these buildings because they were seen as being
7 potentially unused for a period of time.

8 And I understood that part. What I can't quite
9 understand is the zoning regulations were recently redone.
10 And that piece, now maybe it was just missed, but that piece
11 was still maintained.

12 I mean right now the zoning allows a non-profit
13 to be able to go into this spot even with the change in
14 people kind of moving back into the city. And so do you
15 think there needs to be a zoning regulation change?

16 I mean is this an amendment that needs to be done
17 for this location because right now we have the 10,000 square
18 feet and above you can have this, a non-profit can move into
19 these buildings with a special exception. So are you saying
20 that you don't think that is appropriate and that should be
21 now amended in the zoning regulations?

22 MS. MCCARTHY: Well, two points and one I would
23 say based on what you've had to wrestle with today about what
24 is or is not a non-profit it probably would be a good idea
25 for the Zoning Commission to be, to do a text amendment and

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1 amend the definition so it is clear whether or not any 501©
2 qualifies or whether it's only 501(c)(3)s.

3 But my point was more whenever I am looking at the
4 zoning regulations and trying to understand the application
5 of the specific text in the regulations I try to go back to
6 the order that established them. Even this order has the
7 language that was incorporated in the zoning regs, didn't
8 include all of this history or all of, the whereas clauses.

9 It's kind of a different time in the Zoning
10 Commission. You don't do whereas clauses anymore. But the
11 whereas clauses were very instructive because it tells us how
12 to interpret that zoning regulation.

13 So I would say if you go back to why the Zoning
14 Commission ever allowed the notion of converting large,
15 historic residential buildings to non-profit office space
16 that was the context. And because that context is not
17 mirroring what we see today there should not be a presumption
18 that the application should be accepted on its merits.

19 They have not, to my way of thinking made,
20 satisfied a burden of proof that there is a need to approve
21 this non-profit office space because of the potential threat
22 for large, historic residential buildings going empty and
23 vacant and dilapidated.

24 VICE CHAIRPERSON HART: Thank you. And my second
25 question is around the threshold for 10,000 square feet means

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1 that any building that was less than that really wouldn't be
2 able to be converted without going through a variance.

3 MS. MCCARTHY: Right, which is why the Applicant
4 originally submitted a request for variance before changing
5 its mind.

6 VICE CHAIRPERSON HART: Yes, which I understand.
7 But what I'm kind of getting to is I don't know how many
8 other buildings on or residences on this block would be or
9 in this area, would be able to be converted if they were less
10 than 10,000 square feet because you would have to go through
11 a variance to do that.

12 MS. MCCARTHY: I believe that is going to be
13 addressed by the Sheridan-Kalorama Historical Association
14 which is a party to this case and is testifying later.

15 VICE CHAIRPERSON HART: I'm sorry, when is the --

16 MS. MAZO: There are two separate parties in
17 opposition. There is Sheridan-Kalorama Neighborhood Council
18 and Sheridan-Kalorama Historic Association. That one will
19 be quick.

20 CHAIRPERSON HILL: I'm sorry, no, no. Just give
21 me one second. This is a problem now in that and this was
22 clarified and the only reason why I'm, and I know that I'm
23 going to take a break here in a second.

24 It was clarified to me that all opposing parties
25 have the same amount of time as the Applicant. So the

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1 Applicant had an hour and then all the opposing parties had
2 to share that hour.

3 However they shared it, it's okay, don't worry.
4 I promise we're going to talk through it all. But that's
5 what I understood it to be. So now there's something else
6 happening, I guess.

7 But there's, anyway that's what I understand the
8 regulations say. And so that's where, and the Office of
9 Attorney General can clarify that with me, but that's what
10 I understood it to be, that everyone gets the hour.

11 And so I apologize if it wasn't clear to me moving
12 forward that when I said that you were representing both
13 parties I assumed that meant now. So I can get back to it.
14 I'm hearing all kinds of numbers thrown out back there that
15 are at least not making me go insane.

16 So, but nonetheless that's where I saw it. So,
17 okay, so now I'm back to this part, okay. So does the Board
18 have any questions for these people that are here right now?

19 MS. MCCARTHY: Well if I could just answer. Ms.
20 French gave me the number that there are 20 buildings that
21 are more than 10,000 square feet which are currently being
22 used for non-residential purposes that could become available
23 and would be subject to this, to the provisions.

24 CHAIRPERSON HILL: Okay, all right. So does the
25 Board have any questions for anyone that is before us right

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1 now because I do. But I'm going to see if the Board has
2 before we take a break.

3 VICE CHAIRPERSON HART: Actually I was looking for
4 how many buildings that are above 10,000 square feet that are
5 residential that can be converted into a non-profit because
6 that's the issue that I think you're, I mean there are
7 existing things that are there now and they are 10,000 square
8 feet and more.

9 So you kind of know that's the world in which the
10 neighborhood lives there now. But the concern, it sounded
11 to me as though there was a concern that there were going to
12 be an additional number of buildings that were going above
13 that 10,000 square feet.

14 And I'm just more just trying to figure out are
15 we looking at five buildings? Are we looking at, you know,
16 I don't know? So I was just wondering what that number was.

17 MS. MAZO: Just to address that question I think
18 if you use the broader definition of existing residential use
19 which is being encouraged by the Applicant here then, and to
20 indicate that any property that was ever built as a residence
21 could satisfy the requirement despite whatever its use has
22 been for many decades, many, many decades, then I believe our
23 number of, you know, 20, sorry, 38 structures stands.

24 That there are 38 structures in Sheridan-Kalorama
25 that are current, that were built as residential, large

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1 mansions in the turn of the twentieth century and that have
2 now been used as chancellories for a certain period of time
3 that all apparently exceed the 10,000 square foot requirement
4 that would become subject to this type of interpretation.

5 That's the understanding of the information that's
6 in front of me that will be submitted into the record.

7 VICE CHAIRPERSON HART: Okay, thank you.

8 CHAIRPERSON HILL: Okay, so I only have one
9 question really. It's more kind of to the two members here
10 from the community. So again, we've all been here for a
11 while going through the threshold questions in terms of the
12 square footage and the non-profit.

13 And then you, I'm just saying you understand that,
14 correct, and that you understand that we're eventually going
15 to get through to the criteria for the special exceptions and
16 you know the six things that are going on with that. And we
17 continue to kind of focus down in on the adverse impact,
18 right.

19 And so I understand that what the community would
20 prefer is for it to be a single-family home or I guess, and
21 this is where I kind of am confused. Like I guess there was
22 another option that got thrown out there earlier.

23 Somebody came in and turned it into two town homes
24 for that one particular property. So I guess my question is
25 when it was an embassy or if there were only ten people can

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1 you, you don't see, the adverse impact that the Office of
2 Planning is putting forth with a lot of these conditions is
3 to avoid there being a problem.

4 And so, you know, if, again this is just
5 completely hypothetical, if people were there and if there
6 was only ten people there and it didn't bother anybody and
7 everyone went along their way I would assume the community
8 wouldn't be in objection to that, right. You're concerned
9 with the adverse impact that this would provide onto the
10 community, correct?

11 MR. SUKENIK: I would say, you know, having lived
12 there for a long time and you said that you lived somewhere
13 in the city --

14 CHAIRPERSON HILL: Yes, I live somewhere in the
15 city, yes. I wish I lived in your part of the city but I
16 don't.

17 MR. SUKENIK: Well, but the, whenever it's a non-
18 residential use it's an adverse impact. I mean we've talked
19 about the various --

20 CHAIRPERSON HILL: So and embassies as well and
21 the chancellories, that's --

22 MR. SUKENIK: Embassies, chancellories, on Leroy
23 Place though in particular the non-residential buildings
24 there you have to understand they are very unique. I
25 mentioned the three embassies. Well the two religious

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1 facilities, as we said the rabbi lives in one building with
2 his seven children.

3 CHAIRPERSON HILL: Okay.

4 MR. SUKENIK: The other one is the same. They
5 live there. The services are elsewhere.

6 CHAIRPERSON HILL: No, I appreciate it. I was
7 just trying, the question that I had that I was trying to
8 understand was just again in terms of the adverse impact.
9 And the answer that I'm getting is that unless it was single-
10 family homes you believe it's going to adversely impact the
11 community.

12 MR. SUKENIK: At some level, yes. But I mean what
13 do we know --

14 CHAIRPERSON HILL: Okay, that's all right. That's
15 all I needed.

16 MR. SUKENIK: No, but I mean what do you know
17 about what there will be inside the FSMB building?

18 CHAIRPERSON HILL: No, I don't know. You answered
19 my question. So I'm okay with that and I assume that's
20 correct, okay. All right, so we're going to go ahead.

21 COMMISSIONER MAY: I'm sorry, I did have a --

22 CHAIRPERSON HILL: Sorry, sure, of course.

23 COMMISSIONER MAY: -- a question. So for Ms.
24 McCarthy back to the issue of the non-profit status. So do
25 you believe there's actually some benefit to, some public

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1 benefit to regulation?

2 MS. MCCARTHY: Regulation in general?

3 COMMISSIONER MAY: Yes.

4 MS. MCCARTHY: Yes. There's a public benefit from
5 regulation. If, but I guess my question is if the
6 regulation, if the zoning regulation says it has to be
7 operated exclusively for those purposes.

8 COMMISSIONER MAY: I understand that and that's
9 your question. That wasn't my question. My question was
10 whether you see there is some benefit to it because you seem
11 to be fairly dismissive of any public benefit that might come
12 from the work of the, I've forgotten the initial now.

13 CHAIRPERSON HILL: I've got to interrupt just one
14 second.

15 MS. MCCARTHY: But that's just it. It's not any
16 public benefit.

17 CHAIRPERSON HILL: Mr. May, I'm sorry. I'm just,
18 Commissioner, Board Member White is about to leave. And so
19 what I want to do is whoever is coming, so now just to be,
20 I need to be really clear so who is coming forward still?

21 MS. MAZO: The Sheridan-Kalorama Historical
22 Association.

23 CHAIRPERSON HILL: Okay, so.

24 MS. MAZO: They have a very brief discussion.

25 CHAIRPERSON HILL: Okay, so you guys, I mean I

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1 heard seven minutes thrown out there and everything. And so
2 if you want to come forward and I'm going to have to give
3 the, I'm going to give the Applicant another seven minutes.

4 And this is a little bit on me. I don't think
5 it's completely on me, but I think it's a little bit on me
6 which is that, you know, this was that the party in
7 opposition was supposed to have the same amount of time and
8 the whole time that is allowed is an hour.

9 And even the hour is broken up into all kinds of
10 different ways so it's not really an hour. I'm sharing all
11 this which is that we shouldn't even, we don't even need to
12 do this.

13 This is beyond what we are, you've used up your
14 time and so, and also I'm about to lose a Board Member. So
15 I want to make sure she hears. So go ahead. And I am going
16 to put seven minutes on the clock, Mr. Moy because she's
17 catching a flight. And so you have seven minutes and then
18 we're going to move forward.

19 MEMBER WHITE: But I will listen to the rest of
20 it.

21 CHAIRPERSON HILL: No, thanks.

22 MEMBER WHITE: On video, yes.

23 CHAIRPERSON HILL: So how many of them, how many
24 of them are you?

25 MS. MAZO: There's going to only be one person

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1 testifying I believe.

2 CHAIRPERSON HILL: Okay, all right.

3 MS. BERK: I'm ready to begin.

4 CHAIRPERSON HILL: Okay. Could you please state
5 your name, I'm sorry, and your address?

6 MS. BERK: Yes, I will.

7 CHAIRPERSON HILL: Okay.

8 MS. BERK: My name is Sally Berk. My address is
9 2214 Wyoming Avenue in the Sheridan-Kalorama Historic
10 District. I have an undergraduate degree in architecture
11 which is pertinent here and a graduate degree in historic
12 preservation and have been a preservation activist in
13 Washington for more than three decades testifying before this
14 Board and FM BZA, et cetera.

15 And today I am representing the Sheridan-Kalorama
16 Historic Association of which I am the secretary. With me
17 are, well we're missing one. With me are the other members
18 of the executive committee: Kindy French, President; Donna
19 Hays, Vice President and Holly Sukenik, Treasurer.

20 We were founded in 1987 to survey, research and
21 produce a nomination to create the historic district. And
22 since then, and we have always been a proponent for
23 preserving the residential character of the District for more
24 than 30 years now.

25 Research done in preparation for the nomination

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1 revealed what was always obvious, that the district is
2 significant as a residential one. And this fact was
3 certified by the National Register of Historic Sites in 1989
4 when we were designated.

5 We are comprised of residents who work closely
6 with the Historic Preservation Office to, among several
7 goals, maintain the residential character of the district.
8 In addition, we've testified before BZA and the FM BZA and
9 have been granted party status on many occasions.

10 We supported the Sheridan-Kalorama Foreign
11 Missions Task Force which succeeded in eliminating the
12 foreign missions overlay in our district thus increasing the
13 attraction of our neighborhood as a residential one. In
14 fact, the percentage of residential use has grown
15 significantly over the years.

16 When my family moved to Sheridan-Kalorama in 1980
17 there were four children residing on our street, two were in
18 my family. Now there are 30 children on our street and this
19 increase is representative of the entire district.

20 With these families come volunteers willing to
21 participate in the creation or continuance of more than a
22 half a dozen community-oriented organizations. Among them
23 are the, our organization, the Sheridan-Kalorama Neighborhood
24 Council from whom you just heard, the Call Box Project,
25 that's it.

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1 Restore Mass Ave, very active organization in
2 getting the trees back on Massachusetts Avenue. The Spanish
3 Steps preservation project which restored a terribly
4 neglected, beautiful site by the city. The Belmont Park Row
5 D.C. Association and the wildly successful Friends of
6 Mitchell Park which keeps that park beautiful and full of
7 people which that didn't happen before we became such an
8 overwhelmingly residential neighborhood.

9 If yet another house goes to a business instead
10 of residence we are denied the people who participate in
11 these organizations. And you have heard now that 28
12 buildings, at least, could take away the residents who
13 participate.

14 We acknowledge that the federation has proposed
15 no exterior changes and we appreciate that. But they have
16 proffered conditions and mitigations to the use of the
17 property which I think, Chairman Hill, addresses your
18 question just a moment ago.

19 The conditions that have been requested by the
20 Office of Planning are not all supportive of a residential
21 neighborhood. Having buildings vacant and partially dark
22 during all but business hours, in other words in the evenings
23 and on weekends, detracts from the residential character.

24 That doesn't help us at all. It detracts from the
25 safety of our streets. It removes a building that if

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1 inhabited would provide eyes on the street. So even if you
2 light the building at night it isn't the same as having the
3 building, can I have a drink of water, having the building
4 with people in it.

5 I'm going to leave out our two paragraphs about
6 zoning because Ellen McCarthy did a superb job of addressing
7 zoning and only say that arguments that only the residents
8 in proximity to the subject property would be affected are
9 simply not valid because we are a community and because other
10 houses in other buildings in our district, in our
11 neighborhood could be affected if this were to set a
12 precedent.

13 Kalorama Historical Association realizes that this
14 grand residential property hasn't been used as a residence
15 since the 1940s and that it could be argued that we're not,
16 it won't take a building out of residential stock. But as
17 you've heard more than a dozen houses that have been non-
18 residential have now become residential again.

19 And with the demand for housing in Washington we
20 feel sure that even the large buildings would have a market
21 if they were not for non-use. And we don't want to set the
22 precedent with this case of allowing this sort of thing.

23 Kalorama, Sheridan-Kalorama's proximity to
24 Connecticut Avenue and all that it has to offer has made it
25 a desirable but less expensive, as you have already heard,

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1 location for businesses. And while we admire the mission of
2 the Federation it can be achieved in a more appropriate
3 location.

4 So, let me see, and I want to remind the Board
5 that in 1929 the BZA was created to provide exceptions where
6 the Zoning Board would impose an unreasonable hardship on the
7 property owner. The Federation purchased a property knowing
8 that their use is not matter of right.

9 That constitutes a gamble. It does not constitute
10 an unreasonable hardship on them. And if you don't mind I'd
11 like to tell you that the ANC unanimously opposed the
12 application.

13 They were unable to send somebody to testify to
14 that affect. But the ANC is in fact opposed. And thank you
15 for the opportunity to comment briefly.

16 CHAIRPERSON HILL: Okay, great, thanks. Ms.
17 White.

18 MEMBER WHITE: Before I skedaddle. You mentioned
19 that the ANC opposed it. Did they state any specific issues
20 or concerns that we could potentially give any weight to
21 that's in writing?

22 MS. BERK: It would be what you have heard from
23 our two organizations.

24 MS. MAZO: Sorry. Board Member White, the ANC
25 report is at Exhibit 93 in the record and we have a very full

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1 record here.

2 COMMISSIONER MAY: But the issue is it doesn't
3 really say anything about the concerns. It just says that
4 they're opposed.

5 MS. MAZO: Right. And we will say as FSMB
6 identified that there was a very thorough and boisterous
7 discussion at the ANC in which all parties were given a
8 significant amount of time and the ANC's decision was, I
9 think well-reasoned and took into account both evidence on
10 all sides.

11 MEMBER WHITE: Okay, thank you.

12 CHAIRPERSON HILL: Just to be clear, there are
13 only two members on that ANC?

14 MS. MAZO: There are. It's a small ANC.

15 CHAIRPERSON HILL: How do you guys have just two
16 members on your ANC? Okay, all right. Sure, go ahead. Will
17 you state your name please?

18 MS. FRENCH: Kindy French. We're a very small
19 neighborhood. Basically we have 500 houses or 500 buildings.
20 If all 38 converted to businesses or trade organizations that
21 would be eight percent of our neighborhood. That's a huge
22 amount. But, yes, we only have two members.

23 CHAIRPERSON HILL: Right, no, thanks. The
24 information you submitted into the record, has all this been
25 put in the record?

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1 MS. MAZO: It is being put in the record.

2 CHAIRPERSON HILL: The highlighted thing with the
3 buildings, okay. Does anyone have anything else for the
4 witnesses? Okay, the Applicant will have an opportunity to
5 cross anything and any witness that came forward.

6 And I know that again, Board Member White has to
7 go catch a flight. And so we're going to continue. She'll
8 watch it afterwards. And as far as the Sheridan-Kalorama
9 Historical Association again I didn't mean to cut you guys
10 off. It's just that you all were supposed to get an hour
11 together. And so I just wanted, that's how it happened.

12 MS. BERK: It was only seven minutes.

13 CHAIRPERSON HILL: Okay, that's good, all right.
14 We thank you. We're going to take seven minutes right now
15 or five minutes. Five minutes, yes, okay, all right. Thank
16 you.

17 (Whereupon, the above-entitled matter went off the
18 record at 4:09 p.m. and resumed at 4:21 p.m.)

19 CHAIRPERSON HILL: Okay, let's get started again.
20 Okay, so let me just let everybody know how this is going to
21 work now from here on forward.

22 So, the Applicant is going to have an opportunity
23 to cross the testimony that was just presented, and then
24 we're going to have anyone here, again, who hasn't spoken in
25 support or opposition.

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1 Can I just get by a show of hands how many people
2 still haven't spoken in opposition? Okay, so two, three
3 people. And I remember that Mr. Guinee was also going to try
4 to get a little bit more time.

5 But I do need to kind of let you guys know that
6 we're again under another time constraint. I might lose
7 another person in an hour, and if I do that, then I don't
8 have a quorum, and then I have to stop.

9 So, it's not on me, I'm just kind of letting
10 everybody know where we are. So, my hope is that we get all
11 through it in an hour and then we might have conclusion
12 submitted in writing.

13 So, that might save a little bit of time at the
14 end if we get really stuck, but we'll see how that goes. I'd
15 rather have them here now, I mean, that's what I would
16 prefer, but if I lose another Board Member, then I'm done.
17 I can't even do anything.

18 So, Mr. Sullivan, I know that a lot of things were
19 put forward. I hope that, and I know I was a little bit more
20 -- I was being a little flippant earlier when I said have at
21 each other.

22 Let's not have at each other, let's try to be as
23 quick and as judicious as possible, and as succinct in our
24 questions, and then yes or no answers is also fine with me.

25 So, you can start whenever you'd like, Mr.

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1 Sullivan.

2 MR. SULLIVAN: Thank you, Mr. Chair. I have a
3 question for -- I'm sorry, I don't remember your name.

4 Your opinion in the end was that FSMB does not
5 meet the definition of nonprofit organization under the
6 zoning regulations, under the D.C. zoning regulations, for
7 purposes of Section 203.1N.

8 Is that correct?

9 MS. KUHN: Yes, that's correct.

10 MR. SULLIVAN: Are you an expert in D.C. zoning
11 law?

12 MS. KUHN: I am not, I am an expert in tax law.

13 MR. SULLIVAN: do you have any specific training
14 or expertise in D.C. zoning law?

15 MS. KUHN: I do not.

16 MR. SULLIVAN: Have you ever testified before this
17 Board?

18 MS. KUHN: I have not.

19 MR. SULLIVAN: Are you familiar with the previous
20 cases where this Board has determined that non-501C3s were,
21 in fact, eligible for this relief?

22 MS. KUHN: I am a tax expert, not a zoning expert,
23 so no.

24 MR. SULLIVAN: Thank you. Do you agree with the
25 IRS that the activity of lessening the burdens of Government

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1 is a charitable purpose?

2 MS. KUHN: Yes, that's one of the charitable
3 purposes under Section 501C3.

4 MR. SULLIVAN: Thank you. Who do you believe are
5 the Members of FSMB?

6 MS. KUHN: The Members of FSMB, I believe Ms.
7 McCarthy testified to that, that they are the State Boards.

8 MR. SULLIVAN: Okay, and you had testified that
9 it was the physicians that were the Members?

10 MS. KUHN: If I said that, that was my mistake.

11 MR. SULLIVAN: Okay, I just wanted to clear that
12 up because there was a little difference there.

13 Do you think regulation of medical doctors is good
14 for the public?

15 MS. KUHN: That is a non-tax question so I will
16 not weigh in on that issue.

17 MR. SULLIVAN: Thank you. So, just a question
18 then -- that's all I have, thank you -- for Ms. McCarthy, are
19 you an expert in tax law?

20 CHAIRPERSON HILL: You need to just push the
21 button there. And I'm sorry, Ms. McCarthy, I didn't hear
22 your answer.

23 MS. MCCARTHY: No, I am not an expert in tax law.

24 CHAIRPERSON HILL: Thank you.

25 MR. SULLIVAN: Are you clear on what Condition

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1 Number 3 of the special exception relief is?

2 MS. MCCARTHY: I'm sorry, my testimony's a little
3 bit out of order here. Condition Number 3 being?

4 MR. SULLIVAN: I'll find the language exactly
5 here...Use of existing residential buildings and land by a
6 nonprofit organization shall not adversely affect the use of
7 the neighboring properties?

8 MS. MCCARTHY: Yes, I am familiar with that
9 phrase.

10 MR. SULLIVAN: So, the phrase is used a lot, and
11 what I've heard from your testimony and others is that
12 whether or not it adversely affects neighboring properties,
13 as opposed to adversely affecting the use of neighboring
14 properties.

15 MS. MCCARTHY: I think that's a distinction
16 without a difference.

17 MR. SULLIVAN: Okay, so maybe you could explain
18 why you made an argument about office-space supply and
19 residential supply. And now we have a lot of people here,
20 of course, who are claiming the use of their property is
21 adversely affected.

22 Could you explain how the destabilization of the
23 real-estate market, if in fact that were true, or the
24 restriction of office space or the residential space affects
25 somebody's use of their own particular property?

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1 MS. MCCARTHY: I think that issue goes more to the
2 test in harmony with the zoning regulations and the zone
3 plan, which as you recall, I related in my testimony to the
4 basis for all zoning in the District which is the
5 comprehensive plan.

6 And that talked about the importance of conserving
7 residential neighborhoods.

8 MR. SULLIVAN: And you're aware that this, for the
9 last seven years, has not been a residential use --

10 MS. MCCARTHY: I am aware of that.

11 MR. SULLIVAN: -- this particular property.

12 MS. MCCARTHY: Although, actually, I understand
13 that for some period of time, there was a person living there
14 but it wasn't a residential use in a broader sense.

15 MR. SULLIVAN: I'm not aware of that but, okay,
16 so your destabilization of the real-estate market and office
17 space, residential supply, those arguments are really macro
18 arguments that would affect any application before this
19 Board, correct?

20 MS. MCCARTHY: Now, when you have an application
21 for an office use in a residential neighborhood, the fact
22 that it is a commercial use does affect the use of the
23 property.

24 Because people who are using their property as
25 residential, it's where they live, it's where they eat, it's

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1 where they've invested money with an expectation that there
2 will be a return.

3 So, anything that I think adversely affects the
4 character of the neighborhood gets to use and is a relevant
5 adverse impact.

6 MR. SULLIVAN: Okay, and you're saying that the
7 use of a building for office use as opposed to residential
8 is one of those things?

9 MS. MCCARTHY: Yes, well, in particular for a
10 trade association, which is a vast number of people in the
11 District.

12 And I saw Order 83 as the Commission basically
13 saying we want to preserve these historic buildings, but
14 we've got to come up with some other uses because we're
15 losing demand for these historic buildings.

16 But let's only extend it to legit nonprofits
17 because they fulfil a broader social purpose and even though
18 they would be an office use, they'd be less objectionable
19 than if they just opened it to C1 commercial-type uses.

20 MR. SULLIVAN: But the definition of nonprofit
21 organizations in the zoning regulations do not identify
22 501C3s as the only organization that can qualify for this
23 relief.

24 Isn't that correct?

25 MS. MCCARTHY: Well, it didn't say 501C3, it just

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1 used the exact same language. So, I think they didn't make
2 it up out of whole cloth.

3 MR. SULLIVAN: Okay, are you aware of the other
4 cases where this Board has approved non-501C3 applications?

5 MS. MCCARTHY: I know that there are some
6 additional ones.

7 I don't know in those instances whether anybody
8 ever made the argument and illuminated for the Board that
9 C6s, C7s, C4s, and others, are not what the original Zoning
10 Commission had in mind when they identified nonprofit uses.

11 MR. SULLIVAN: And putting on your Office of
12 Planning hat, if you saw an issue like that, or in fact, if
13 you saw this problem with the conversion, would you suggest
14 a change to the Zoning Commission to clarify something like
15 that?

16 MS. MCCARTHY: One of the reasons that there's
17 always a Zoning Commission that rotates in as a Member of the
18 Board of Zoning adjustment is so that they can identify if
19 there are instances of lack of clarity or conflicts or
20 whatever.

21 MR. SULLIVAN: And this regulation, the special
22 exception regulations, we're dealing with today have not been
23 changed, effectively, in the last four years, correct?

24 MS. MCCARTHY: Right, the language is basically
25 the same.

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1 MR. SULLIVAN: Is the Board required or even
2 authorized or allowed to refer to the comprehensive plan to
3 overrule zoning regulations?

4 MS. MCCARTHY: I'm not asking the Board to
5 overrule a zoning regulation, I'm providing a comprehensive
6 plan and Order 83 as documents that provide guidance in how
7 to interpret the zoning regulations.

8 CHAIRPERSON HILL: It's like watching a cocktail-
9 party dinner, this kind of back and forth here.

10 MS. MCCARTHY: Without the cocktails,
11 unfortunately.

12 CHAIRPERSON HILL: This is true.

13 MS. MCCARTHY: So, if you would like to provide
14 them...

15 CHAIRPERSON HILL: This is true, touche. Thank
16 you, all right.

17 MR. SULLIVAN: You mentioned that the Board needs
18 to investigate the issue of the gross floor area on the
19 ground floor, and you had an opinion of whether or not we met
20 that condition.

21 And you said that DCRA doesn't have the time to
22 do such a calculation, is that right? Does this Board?

23 MS. MCCARTHY: It's not that they don't have time
24 to do such a calculation, it's that they don't have the
25 manpower to either independently investigate it in a site

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1 visit.

2 They will rely on what is submitted in the
3 building permit and the architecture plan, because they don't
4 have anything else to go by.

5 MR. SULLIVAN: So, if I filed a Matter of Right
6 application, I can just say whatever gross floor area I want
7 and they approve it?

8 MS. MCCARTHY: Basically.

9 MR. SULLIVAN: Okay, thanks. I have no further
10 questions.

11 CHAIRPERSON HILL: Okay, all right.

12 So, does the Board have any questions for any of
13 the witnesses before we ask anyone else if they want to come
14 forward and speak? No?

15 Okay, all right, then what we'll do now is if
16 there's anyone here that still hasn't had an opportunity to
17 speak in opposition, if you could please come forward? And
18 we'll free up some chairs here; just let them kind of move
19 out.

20 Thank you all very much.

21 Okay, all right, if you could please introduce
22 yourselves from my right to left here, and state your
23 address?

24 MR. LABOSSIÈRE: My name is Doug LaBossiere, I
25 live at 3321 California Street.

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1 CHAIRPERSON HILL: Can you spell your last name
2 for me?

3 MR. LABOSSIERE: Yes, sure, I'm used to it. It's
4 L-A-B-O-S-S-I-E-R-E.

5 COMMISSIONER MAY: I just have to say that's my
6 wife's maiden name.

7 (Laughter.)

8 CHAIRPERSON HILL: You should be able to say it
9 then, I would think. You can say it for the rest of the
10 night.

11 COMMISSIONER MAY: Just when you said it, I said
12 oh, my God, wow.

13 MR. LABOSSIERE: You're the first one I think I've
14 met in this country that can say that so I would love to --

15 (Laughter.)

16 COMMISSIONER MAY: I'd like to add, though, that
17 I often have to spell my name out as well.

18 CHAIRPERSON HILL: Yes, that's very good, okay.
19 We're getting at the end of the day here folks.

20 All right, if you could please go ahead and state
21 your name and address?

22 MS. DRISSEL: Marie Drissel, I live at 2135
23 Bancroft Place NW.

24 MR. GUINEE: Frederick Guinee, 2121 LeRoy Place
25 NW.

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1 CHAIRPERSON HILL: Okay, so we're going to go
2 ahead and give you three minutes on the clock, and I do
3 appreciate you guys staying all day.

4 We'll give you five minutes if you end up taking
5 it because you didn't get priority status. And so you can
6 start whenever you'd like. Thank you.

7 MR. LABOSSIÈRE: Thank you. I just wanted to make
8 a couple of quick points.

9 Number one is there was some testimony by the
10 Applicant that alluded to the idea and the equivalency of
11 sort of an office use and a foreign mission as an alternative
12 to a 501C organization.

13 And I just wanted to point out that with the
14 removal of the diplomatic overlay, which is part of the last
15 zoning rewrite, the properties revert back to residential.

16 And so on that square, that property could not
17 qualify as an embassy chancery, as an office use. It doesn't
18 meet the new higher 50 percent threshold.

19 The old threshold was 33 percent institutional use
20 on a square before you would be qualified. The new
21 requirement is that there is no de-identifying where, but
22 citywide, the application has a 50 percent threshold
23 institutional.

24 Now I think it's an important point that there was
25 a lot of questioning back and forth about how was it with the

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1 Colombians or how could it be with another use versus an
2 office use? No embassy could apply successfully to get in
3 there under the new rules, and I think that's an important
4 point.

5 The second thing is that in historic preservation,
6 there's no protections for the insides of the buildings.

7 And so Chris Chapin testified earlier with some
8 very good pictures of two properties that were next to each
9 other on Connecticut Avenue that were an alternative, a
10 higher-priced alternative, that were really made out as
11 commercial space.

12 So, imagine this Applicant going in. And the
13 threat that it poses to our neighborhood is if they do, and
14 this property is then converted into commercial use, you've
15 upped the cost of it and you've really permanently removed
16 it from the residential stock.

17 Nobody's going to pay \$5 million for a \$3 million
18 house and pay to revert it, if that makes sense to you.

19 It's problematic, it's very problematic, and if
20 you think of those two issues combined, the 38 properties in
21 the neighborhood, whatever their current occupation is,
22 originally designed as residences, have been modified.

23 And under the new D rules, because they're
24 removed, all of the those will revert and become residential
25 when the current owner sells it. And so every single one of

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1 those properties are subject to coming before you and asking
2 for the same process of approval.

3 So, when I heard some questions earlier about,
4 well, how many of those are residential or how many of those
5 are used alternatively?

6 For our purposes, every one of those 38 could be
7 occupied, if this is approved, by a similar occupant, by a
8 similar applicant in the 501C category, if you determine it
9 to be that broad.

10 Thank you.

11 CHAIRPERSON HILL: Okay, thank you.

12 MS. DRISSEL: Good evening, my name is Marie
13 Drissel. I've been involved in many cases before the BZA as
14 an ANC Commissioner in Dupont Circle and in Sheridan
15 Kalorama.

16 My relevant personal information to this case is
17 I've lived at 2135 Bancroft Place for 38 years, 215 feet from
18 the Federation.

19 I had a Colombian intern employed by the Chancery
20 live with us from 1996 to 2004, moving one block away for two
21 more years, and introducing us to the employees of the
22 Colombian Chancery.

23 I had four dogs for 30 years until 2014, and I
24 have my home office on the back of our house with complete
25 view of the alley.

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1 I am going to speak to the declining use of the
2 Chancery, the character of LeRoy Place, and the use of the
3 alley.

4 Our Colombian young friend required regular
5 official documents to continue his career and education. The
6 relatively small Chancery Staff declined the entire time he
7 lived with us.

8 The only time I saw any large attendance in the
9 Chancery was in 2002 and 2006 for the presidential elections.

10 And I will say that when President Santos came,
11 there was a large exodus, in about 2007. All visas were
12 processed off site. By 2014, there was a skeleton staff but
13 not vacant.

14 All evening weekend events were always held at the
15 exquisite Ambassador's home, five blocks south of the
16 Chancery at the Dupont Circle Metro Stop.

17 The implication that the Chancery was filled with
18 employees and events because there were so many offices is
19 just plain false, and demonstrates their lack of
20 understanding of the negative impact they will have on us.

21 My observations about LeRoy Place are due to three
22 trips a day for 30 years. It is more accurate to say that
23 the conformance with R-3 is 81 percent. The two religious
24 entities are there as a matter of right.

25 Further, both of the religious entities house the

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1 entire family of the Director, Rabbi on the top floors of the
2 mosque and synagogue. All three Chanceries are very small
3 with limited staff, visitors, deliveries.

4 I am also one of those who watch over the American
5 Gold Star Mother's Headquarters. The property is maintained
6 as a home with no employees, and one of the mothers lived
7 there full time.

8 There are 17 children and 4 dogs living on
9 Bancroft -- I mean, on LeRoy Place. That's a good slip,
10 there's a lot of dogs and children on Bancroft too.

11 I observed the entire alley from my office. Just
12 one recent observation made on December 9th, see the photo
13 attached, among hundreds, is the small events truck that had
14 to drive onto my property and the adjacent neighbors' to make
15 the turn.

16 Deliveries on LeRoy Place are very problematic
17 because it is a narrow one-way street. The north curb-cuts
18 make delivery at 2118 LeRoy a serious problem. The parking
19 has all changed since the Chancery sale.

20 The infrequent delivery trucks used to be able to
21 park on the right side and also pull into the diplomatic
22 parking spaces while unloading. That diplomatic parking is
23 no longer available and parking is now restricted to
24 residents on the south side.

25 Hence the problem with the Office of Planning

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1 Staff, faced immediately when trying to decide what
2 recommendations to make for deliveries on LeRoy or on the
3 alley.

4 I just walked around to the back of the properties
5 of 1832 and 34 Connecticut Avenue, combined adjacent,
6 renovated properties, 100 feet from the Federation. With
7 minimal expense, these properties could have a rear-loading
8 platform.

9 I do not believe that there is any proposed
10 limitation that would address the delivery problem because
11 of the narrowness of the block, curb-cuts, its one-way
12 direction, restricted residential parking, loss of diplomatic
13 parking, and the alley issues.

14 I am aware that your mission is to decide zoning
15 adjustment applications on a case-by-case basis. The
16 Federation wants you to decide this case in favor and not the
17 residents who are 100 percent opposed.

18 The Federation wants you to support their purchase
19 of an unimproved property at \$379 per square foot, when they
20 could have purchased a fully renovated, small, commercial
21 property offered at \$740 per square foot, with no adverse
22 impact on the residential atmosphere of LeRoy Place and in
23 harmony with the zoning plan.

24 Thank you for this opportunity to address the
25 adverse impact and negative change it will bring to the

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1 character of LeRoy and Bancroft Places.

2 CHAIRPERSON HILL: Thank you. Please?

3 MR. GUINEE: Hi, I'm Frederick Guinee, and I live
4 at 2121 LeRoy Place, which is directly opposite the former
5 Colombian Chancery building. So, I'm just opposite.

6 I really appreciate the time to address you
7 tonight and we've been here a long time. I have also
8 submitted an affidavit in this case.

9 I submitted it last night; it's probably the last
10 thing in the record maybe? So, I would refer you to that for
11 an elaboration of the points I want to make.

12 So, I'm going to just change it up a little bit,
13 given the lateness of the hour. First, I want to sort of say
14 what I did when I came to LeRoy Place, what I saw, and what
15 I've been seeing, and then what happens next.

16 So, what I did, I moved back to Washington D.C.,
17 after many years away, in 2013 and resided temporarily in
18 Spring Valley, and started looking for places to live to
19 raise my family.

20 At that point, I had a freshman in high school,
21 still going to high school in the District of Columbia. I
22 looked all over; I looked basically near Northwest, I looked
23 in Cleveland Park, I looked in Woodley Park, I looked in
24 Adams Morgan, I looked in Georgetown, I looked in Kalorama.

25 I had also looking at the maps and I saw that this

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1 was an R-3 property, okay? I relied on the fact that this
2 was in an R-3 Zone. I understand what R-3 means, I also
3 understand what special exceptions mean.

4 I probably looked online at 200 to 300 properties
5 and probably visited at least 30 properties. I ultimately
6 saw the house at 2121 LeRoy Place, which is a house, make no
7 mistake about it. It is a house and a residence.

8 If you look at the Applicant's photographic map
9 from a birds-eye view, it's the one that says something like
10 filming location for Top Chef D.C., okay?

11 So, maybe for a couple of weeks, someone who owned
12 that property a long time ago used it as the place where Top
13 Chef D.C. people lived during the filming of Top Chef D.C.,
14 which was filmed all around Washington and in all sorts of
15 commercial kitchens in Singapore, okay?

16 But make no mistake, it's a house, and that's the
17 one I looked at. When I looked at it, I looked at the maps,
18 okay? I looked at the Colombian Embassy, I saw how it was
19 being used. I looked at all of the properties up and down
20 the street and around the neighborhood, and I saw that this
21 was a really great residential neighborhood.

22 And it was a great residential neighborhood that
23 had a couple of additional great benefits for raising a
24 family. Those benefits included some small diplomatic
25 properties that were being very lightly used, including the

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1 Colombian Embassy.

2 It also had two houses of worship at either end
3 of it, it also has a Catholic church across the street, at
4 the top across Fox Place. And in the two properties on my
5 block live the clergy. I did my examination and I wanted to
6 live in this type of neighborhood.

7 I'll tell you what I didn't look at, I didn't look
8 at any properties that were across the street from an office
9 building.

10 I didn't look at any properties in the middle of
11 a block, which is where my property is, that had directly
12 across it, taking the biggest spot on the block, an office
13 building.

14 That's not how people look for houses when they're
15 looking for residences. They're not looking to live across
16 the street from an office building, and I wasn't either. I
17 would not have bought the house if I'd known that it was an
18 office building at the time.

19 I understand the law, I understand the rules, I
20 understand special exceptions, but that's not I was looking
21 for. And damage is done to a neighborhood when, in the
22 middle of a residential block, all of a sudden, the zoning
23 authority's permitted it to become an office building.

24 I am a retired person, I've been retired for many
25 years, I've been the primary caregiver for my children. All

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1 of the windows of the front of my house look directly onto
2 the Colombian Embassy property.

3 I maintain the garden in the front of the house
4 myself. I sweep the sidewalks, remove debris, get rid of the
5 snow. I'm always at my house, basically. I leave of
6 occasionally, but I observe what's going on at the Colombian
7 Embassy.

8 I observed what was going on at the Colombian
9 Embassy before I bought it. I looked at it in December 2013,
10 I closed on it in February 2014, I moved into it after doing
11 some work on it in May of 2014. I always was aware of what
12 was going on.

13 I'm sorry that the Colombian Ambassador isn't here
14 so we could cross-examine him about how many people were
15 working there from the period when they started there until
16 supposedly October 2015, where we've just seen a letter that
17 says there were 25 to 40 people.

18 There certainly were not 25 to 40 people at any
19 time when I was examining whether or not to live there or
20 when I lived there. I would say at most, and it did decline,
21 at most, there were five or six people there.

22 There was a chauffeur that parked out front, they
23 didn't block the streets with parking because they had their
24 own designated parking spaces, okay? I had an opportunity
25 to observe and I did observe.

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1 Between 2013 and 2017 when they vacated, I
2 personally observed the limited use by the Colombian
3 Government.

4 I never observed lines of people waiting to get
5 into the Chancery, I never observed large numbers of people
6 coming or going, I never observed people wandering down the
7 street seeming to be looking for the Colombian Embassy.

8 One of the embassies across the street is the
9 Guinean Embassy, one letter difference from my last name.
10 People do come to my house looking for the Guinean Embassy,
11 but never did they look like they were looking for the
12 Colombian Embassy.

13 All activity was very limited, diplomatic use
14 given the size of the presence at the time, and I never
15 observed activities consistent with business uses. They were
16 all consistent with a Chancery, a Consulate.

17 Again, I think there are only a handful of people,
18 there are five or six people.

19 CHAIRPERSON HILL: Mr. Guinee?

20 MR. GUINEE: Yes?

21 CHAIRPERSON HILL: I'm just going to ask you to
22 wrap it up just a little bit if you could? Sorry.

23 MR. GUINEE: Okay, fine. A lot of people have
24 already talked about the traffic congestion. You can't be
25 LeRoy Place if people are stopping on it.

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1 And an office building right across the street
2 mid-block is going to have increased Uber traffic, increased
3 Lyft traffic, increased delivery traffic.

4 I will refer you to an unfortunate anecdote at the
5 Colombian Embassy, where their delivery trucks just didn't
6 care about blocking the street, and when I went into the
7 Colombian Embassy, the Colombian diplomatic building, to see
8 if they could help me move him, the delivery person told me
9 to F off.

10 And that's what happens in these sorts of
11 situations when you increase traffic in these residential
12 zones. Life becomes unpleasant, use becomes much more
13 difficult.

14 So, I know I said I would only speak for a few
15 minutes and I know that I have an affidavit in the record,
16 so I would respectfully refer you to it in its entirety with
17 a lot more detail.

18 Thank you very much for your time.

19 CHAIRPERSON HILL: Thank you so much.

20 Now, we do have it here and I can see all the
21 points that you've been making. Does the Board have any
22 questions for the witnesses?

23 Okay, does the Applicant have any need for cross
24 of the witnesses? Okay, he's shaking his head. Okay, so,
25 Ms. Mazo?

1 MS. MAZO: Sorry, this question is directed at Ms.
2 Drissel.

3 Marie, there has recently been a letter that was
4 submitted I believe on behalf of the Ambassador of Colombia,
5 indicating that up until 2015, there were 25 to 40 employees
6 at the property.

7 What are your opinions? I don't know if you've
8 seen that letter, but you've probably heard. Did you hear
9 about that letter?

10 CHAIRPERSON HILL: You have to speak into the
11 microphone, sorry.

12 MS. DRISSEL: I just heard about the letter. This
13 intern lived with us for eight years and then he just moved
14 two blocks away.

15 He introduced me to everybody, he maintained his
16 friendships with those people. I went inside. I mean, I
17 just don't know how this -- maybe this present Ambassador is
18 new.

19 But I can tell you that this place, all the visa
20 work that he was required to get because he wasn't a national
21 until 2009, he never ever went to his own place where he
22 worked to get it processed.

23 It was processed off site at 20th and K Street.

24 CHAIRPERSON HILL: Okay.

25 MS. DRISSEL: So, I don't know where this number's

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1 coming from.

2 CHAIRPERSON HILL: All right, so you're disputing
3 that, okay. Is that it? Okay, all right, thank you all very
4 much.

5 If I can get the Applicants and the
6 (unintelligible) back up to the table? Maybe, Mr. Sullivan,
7 move back over down one left there or wherever you guys were
8 before.

9 Okay, so we still have rebuttal and then cross to
10 the rebuttal, and then we have conclusions. So, this is the
11 situation that we're faced with here.

12 I'm going to lose somebody in like 15 minutes and
13 so I don't really think rebuttal and cross is going to happen
14 in 15 minutes.

15 So, I haven't done this in -- I haven't been here
16 very long, but now it's starting to feel like in two and a
17 half years -- I'm just saying in two and a half years, I feel
18 like I can say I've never done this now, in two and a half
19 years. So, we're going to have to split this up now.

20 We'll go ahead and I don't know what to do because I
21 won't have a quorum. And so in 15 minutes -- and I'm kind
22 of putting it up here for the two counselors if you have any
23 other alternatives?

24 But you have rebuttal, you have closing -- sorry,
25 you have rebuttal and you have cross, so that will probably

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1 take more than 15 minutes. I could end up doing the
2 summaries, conclusions, that is, written, and then that would
3 at least kill that bit of time.

4 So, I guess I would suggest we come back here for
5 rebuttal and closing -- I'm sorry, rebuttal and cross,
6 because now everyone's spoken. So, the only people that need
7 to come back are the people that are getting paid. And so
8 that would be my suggestion.

9 Okay, so I don't know when to come back, though,
10 I guess that's the thing, unless Mr. May wants to come back
11 tomorrow -- not tomorrow, next week. I don't know what your
12 schedule's looking like. You would want to do it first or
13 you would want to do it last?

14 Okay, so now this is a question for the Applicants
15 I suppose. So, Commissioner May is back on the 21st and so
16 we could all come back here. I have a bunch of things that
17 we're going to need to ask from the Applicant anyway, and so
18 perhaps we can get to -- I don't know.

19 We'll be having a continued Hearing on the 21st;
20 at this point, this is what's going on. And we're going to
21 get a lot of information, or at least I have some information
22 I'd like to ask for.

23 So perhaps the Board would also like to ask for
24 different pieces of information that might help us get into
25 a decision faster? I somehow doubt, however, though, even

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1 on the 21st, that we'll get to a decision.

2 So, that's probably best case. Pushing you guys
3 one way or the other to the week after the 21st is where you
4 might get a decision.

5 And so I'm just kind of curious as to what that's
6 doing with your timeline, concerning any kind of finances or
7 things such as that.

8 What's your question?

9 MR. SULLIVAN: I'm sorry, I didn't know there was
10 a holiday in the middle of February affecting that schedule,
11 which possibly might be the 21st, I don't know. Okay, great.

12 CHAIRPERSON HILL: 21st is President's Day
13 apparently?

14 MR. SULLIVAN: No, the Board often takes off the
15 whole week.

16 CHAIRPERSON HILL: Did we do that? Because I'm
17 down with that.

18 COMMISSIONER MAY: That used to happen more often
19 when we met on Tuesdays. Now we meet on Wednesdays.

20 CHAIRPERSON HILL: Oh, really? Oh, we're going
21 to have a talk.

22 (Laughter.)

23 MR. MOY: So the holiday is on Monday the 19th but
24 we still are holding a Hearing on the 21st.

25 CHAIRPERSON HILL: So, if we had had Hearings on

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1 Tuesday, we would have taken off that Tuesday? Sorry, is my
2 mic on?

3 Okay, all right, so we're back here on the 21st,
4 which is Wednesday. So, as far as your finances and such,
5 you already bought the property.

6 VICE CHAIRPERSON HART: Mr. Chairman, that's
7 acceptable.

8 CHAIRPERSON HILL: Right, okay. So, again, to the
9 case that was spoken at the very beginning, or the question,
10 right, it is an interesting play.

11 So, okay, the 21st.

12 So, the things that I would be curious in from the
13 Applicant, and I did have even some questions, but I don't
14 know, a lot of different things were kind of thrown out.

15 First of all, as I mentioned at the very beginning, an
16 Exhibit that had the two documents about the square footage,
17 the original one and then the second one. And then if you
18 could give an explanation as to the discrepancies of the
19 numbers?

20 Again, whether or not I think it's our place to
21 deal with this, that's just what I'm curious of.

22 VICE CHAIRPERSON HART: Mr. Chairman?

23 CHAIRPERSON HILL: Sure?

24 VICE CHAIRPERSON HART: With regard to the square
25 footage, could you actually have a listing of not just the

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1 square footage, the overall square footage, for the floor,
2 but what you're including in that, how you're getting to
3 that?

4 So, that's what I'm looking for.

5 CHAIRPERSON HILL: Okay.

6 VICE CHAIRPERSON HART: And I think that's
7 included in the topo survey, but you know what? Maybe not,
8 maybe we just put the survey, because there was an analysis
9 that went with it.

10 CHAIRPERSON HILL: Okay, just give us an Exhibit.
11 You have two architects up here that should be able to figure
12 out square footage, okay? And so let's see --

13 COMMISSIONER MAY: I think one of the things we
14 struggle with is that they're little, tiny pieces of paper
15 with very tiny numbers on them.

16 But if we have the PDFs, we can see it better, but
17 I didn't have those yet electronically.

18 CHAIRPERSON HILL: So, whatever you think you can
19 give us to provide clarity, that would be great. I'd like
20 a little bit more clarification in the five temporary
21 employees.

22 So, you know, you're talking about 15 and you say
23 5 temporary employees, like what does that mean during the
24 summer? And I'm also struggling with whether or not you need
25 it still; that was one of the conditions that was spoken

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1 about.

2 One of the things that was mentioned, and I don't
3 know if you could just provide some kind of answer to it, was
4 like a rear loading platform, like there's a possibility of
5 it. I don't know whether there is or there isn't.

6 If you could provide some kind of thought as to
7 some kind of a rear loading platform?

8 In other words, any kind of policy that you might
9 be willing to implement in terms of smoking and where people
10 would smoke.

11 And again, I just had questions for you in terms
12 of a lot of the things that we had heard from and what your
13 thoughts were. I'd like to see if you could submit your
14 articles of incorporation?

15 Does anybody have anything else?

16 VICE CHAIRPERSON HART: I think this is from Ms.
17 Mazo. You brought up a case, the Halcyon case; what was that
18 again?

19 MS. MAZO: That is a case, 18604, and it is a case
20 where the Board approved special-exception use for a
21 nonprofit in a residentially-used property.

22 It was actually, to my understanding, a former
23 dorm for Georgetown University, and it's recent. It's from
24 2013; it's a recent case.

25 COMMISSIONER MAY: It wasn't a dorm.

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1 MS. MAZO: I believe it had --

2 COMMISSIONER MAY: It was an apartment house that
3 was used by many Georgetown students.

4 MS. MAZO: Okay, but it had been used
5 residentially.

6 COMMISSIONER MAY: I don't believe the University
7 actually ever owned it.

8 VICE CHAIRPERSON HART: I'd written it down, I
9 just couldn't figure out why I'd written it down.

10 MS. MAZO: Right, and the reason that I raised it
11 was to address the question about the five-year requirement,
12 the condition that OP recommended, and to clarify that there
13 are other special exceptions that have a time limitation on
14 the pendency of the specific special exception for nonprofit
15 uses.

16 COMMISSIONER MAY: Okay, thank you.

17 VICE CHAIRPERSON HART: Right.

18 And Mr. Chairman, from the Office of Planning, the
19 only thing that I wanted just to make sure that we got the
20 final answer on was whether or not DDOT knew how many people
21 were actually going to be in the -- just something written
22 that says they've understood that the project changed and
23 that a number of people have changed, and that they're either
24 still with the same recommendation that they made before, or
25 they may have changed that, or they may have added

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1 conditions.

2 That would be a helpful --

3 MS. FOTHERGILL: I can follow up with DDOT.

4 CHAIRPERSON HILL: And I guess, again, I mentioned
5 a lot of things that I'm kind of curious of from the
6 Applicant and as we go through this -- in other words, if you
7 could clarify again people staying the night?

8 I'm a little bit confused, or not confused, but
9 there were things that got brought up.

10 There was one comment about I can see how people
11 might be encouraged to come by, visit, if you're going to use
12 it as a place where your Members would stay there in order
13 to then do their activities. Just some clarity as to whether
14 or not that's the case.

15 We haven't gotten to all the different conditions
16 that the Office of Planning has recommended, and the
17 difference is between what you are saying in terms of whether
18 you are willing to live up to any of those.

19 So, we will get to all that discussion, but a
20 little bit more clarity again, and I know it's written in one
21 of the 370 odd documents that have been submitted, but how
22 many events you're actually having.

23 Again, I am focusing on -- the adverse impact is
24 the thing that I'm kind of really wanting to understand, one
25 of the things I want to understand.

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1 And then the other thing that was mentioned, and
2 I don't know, Ms. Mazo, I don't know if this is something who
3 -- there was a lot of talk, or some talk in terms of from the
4 community, about that at night, it is preferable to have
5 people there at night, it's preferable to have people there
6 on the weekends.

7 And then you have the other side, which is the
8 Office of Planning, which is that they didn't want people --
9 the adverse impact was that they were going to be gone by the
10 time everybody comes in.

11 So, I'm kind of now just speaking
12 extemporaneously, which is that in the daytime, also, you
13 have more eyes on the street as well, when there are people
14 there. So, I'm not really sure of the impact to the
15 community on that level.

16 But my question, I suppose, to the Applicant or
17 Ms. Mazo, if you have any thoughts on, or your client has any
18 thoughts on, the whole condition that OP had put forward in
19 terms of there not being people at night, there not being
20 people there on the weekends.

21 Would you rather have people there at night?
22 Would you rather have people there on the weekends?

23 MS. MAZO: I mean, we'll be happy to opine this
24 in writing but the answer to that is that they want a family
25 living there and they want a family being there at night.

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1 CHAIRPERSON HILL: Sure, that's fine.

2 MS. MAZO: And they don't want office workers or
3 they don't want events at night because that causes all this
4 litany of adverse impacts in terms of, in particular, traffic
5 and Uber traffic and all of that.

6 CHAIRPERSON HILL: I understand.

7 MS. MAZO: So, there is a distinction there, but
8 the idea is that they want a residence.

9 CHAIRPERSON HILL: No, I understand. I understand
10 what they want. Your client do not want this, you know,
11 right?

12 And so I'm just trying to get at -- what I was
13 confused about in the testimony was that some of the, again,
14 conditions put forward by the Office of Planning was that
15 there aren't people at night, there aren't people on the
16 weekends.

17 So, I just wanted to understand. I'm not saying
18 this is or isn't moving forward, I'm saying if you could
19 provide some clarity on that?

20 If this did move forward, would your Applicant
21 still want the conditions the way they were in terms of --
22 I'm sorry, your clients still want the conditions the way
23 they were, that there's nobody in the evening, there's nobody
24 on the weekends, from the office building.

25 You can just submit it.

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1 MS. MAZO: We can provide that information.

2 CHAIRPERSON HILL: Okay. And then I think we have
3 the buildings that -- there was the one Exhibit that had the
4 list of 10,000 square feet. Okay, great.

5 And all this, we're still going to have the record
6 open, meaning we're going to have a continued Hearing here,
7 but just in terms of what I'm thinking about, and I seem to
8 be the only one talking right now so I don't know what
9 they're thinking, but the 10,000 square feet, there has been
10 a list provided with a variety of homes, buildings that this
11 could possibly apply to.

12 And so if you all want to be prepared to talk
13 about that, again, that's another thing that I was just kind
14 of curious on.

15 So, do the other people have anything else because
16 they're coming back in a couple weeks? Okay.

17 COMMISSIONER MAY: No, but I just want to clarify,
18 the record is being left open for these submissions or just
19 wide open for everything? Because I don't see reasons to
20 just get more form letters.

21 CHAIRPERSON HILL: Right, thank you for providing
22 clarity.

23 The record is left open for everything we've just
24 asked about, and then, however, and this is where I get kind
25 of confused, the party status in opposition will have an

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1 opportunity to respond to anything that the Applicant puts
2 forward, and vice versa.

3 And then the ANC, as a party, can respond to
4 anything that's put forward as well, and there's a clock or
5 deadlines that are associated with that.

6 Correct, Mr. Moy?

7 MS. MAZO: I'm sorry, those responses would be in
8 writing or those responses would be orally at the Hearing?

9 MR. MOY: That's up to the Board.

10 COMMISSIONER MAY: Whatever you can put in writing
11 in advance is advantageous for us.

12 CHAIRPERSON HILL: So, what would have happened,
13 and now I'm just getting back to what would have happened,
14 what would have happened if I still would have been asking
15 for all these things, right, then we would have asked for
16 them in writing, the Applicant would have had an opportunity
17 to respond to everything in writing, as well as the ANC.

18 So, I don't think we will take testimony in all
19 this unless we're asking about it. What we have left still
20 to do is rebuttal and cross, and then closing.

21 And so that's what's left, and I'm just trying to
22 get further clarity on the information that I think I'm going
23 to need, and the Board I guess is offering up what they think
24 they're going to need to get to a decision.

25 And so where I stand, again, is it's as if the

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1 Hearing would have concluded, and so I'm just asking for
2 information, which if you can repeat the information that I
3 asked for, which will be helpful, and then the party status
4 would have an opportunity to respond to your information that
5 you submit, the Applicant.

6 And I also ask the opposition to submit clarity
7 to me on, and I think did you have anything else?

8 I have a question about asking to your client
9 about whether or not they had any thoughts on the condition
10 that the Office of Planning had for that you don't want any
11 of the office people there after 5:00 p.m. and on the
12 weekends.

13 That's the only thing I have from the opposition.

14 So, Mr. Sullivan, can you run down everything I
15 just asked from you guys?

16 MR. SULLIVAN: Yes, you want an explanation of the
17 discrepancy in the floor area on the Windgate-Hughes plan's
18 GFA analysis, particularly of the lower level, of course, or
19 overall; the plan or the idea behind having 5 temporary
20 employees beyond the 15 full-time; information on rear
21 loading and how that works; smoking policy --

22 CHAIRPERSON HILL: A rear loading dock? Or there
23 was a rear loading dock mentioned?

24 (Simultaneous speaking)

25 CHAIRPERSON HILL: A platform, or something that

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1 might make the rear loading more feasible, I don't know.

2 MR. SULLIVAN: Okay, articles of incorporation,
3 smoking policy. You asked them for information from Halcyon
4 House, DDOT, to find out whether or not they're aware of the
5 number of employees.

6 I'm not sure if that's OP or us.

7 And then on the question of inviting or
8 encouraging Members to visit, how many people actually take
9 them up on it, including the overnight guests.

10 CHAIRPERSON HILL: I want clarity on the overnight
11 guests.

12 MR. SULLIVAN: Well, there is no overnight --

13 CHAIRPERSON HILL: I'm just saying, just clarity
14 on it, the overnight guests. That's okay, I thought there
15 was something else too?

16 MR. SULLIVAN: Yes, a description of the meetings
17 that we would like to have on site. Because there are
18 meetings planned that will definitely be --

19 CHAIRPERSON HILL: Okay, just --

20 MR. SULLIVAN: And there are some that are on.

21 CHAIRPERSON HILL: That's fine, just let me know
22 the frequency, the numbers, anything that provides us with
23 more information.

24 So, Ms. Mazo, I guess I didn't realize the Halcyon
25 house stuff, so did you want something from that?

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1 VICE CHAIRPERSON HART: I was just wanting to make
2 sure that was the -- if you wanted to submit it, that's fine.
3 I can always go back and look through it.

4 MS. MAZO: I'm happy to submit it. We've
5 referenced it --

6 VICE CHAIRPERSON HART: I think what I'd just
7 rather than have, since I'm able to go on the BZA website to
8 get it, I could do that.

9 I just wanted to make sure what the number was;
10 I couldn't recall that, that's all.

11 MS. MAZO: No problem.

12 CHAIRPERSON HILL: Okay, and then I guess the only
13 thing that I want is, again, the question about the after-
14 hours and the weekends.

15 And now that I think about it actually, if you
16 could submit, and I don't know if you did or not, but
17 something about did you submit something in terms of your
18 thoughts on the conditions that OP put forward?

19 MS. MAZO: We have not submitted that.

20 CHAIRPERSON HILL: Okay, could you submit
21 something on that?

22 Okay, so then both of you are going to submit
23 something, and then both of you will have an opportunity to
24 respond to your submissions.

25 So, Mr. Moy?

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1 MR. MOY: Okay, what I have is a mixture of
2 things. So, working backwards, the continued Hearing would
3 be on February 21st.

4 Now, if I go one week, one week, and one week,
5 then the Applicant would submit within a week's time, which
6 would be February 7th, which is next week.

7 CHAIRPERSON HILL: Is that next Wednesday or next
8 Tuesday?

9 MR. MOY: Next Wednesday.

10 CHAIRPERSON HILL: But wouldn't you want to do
11 Tuesday, because then a week after that is Tuesday?

12 MR. MOY: If you want. We could make it --

13 CHAIRPERSON HILL: Okay, never mind, sorry. I
14 take it back.

15 MR. MOY: But, yes, I was going to do it really
16 simply.

17 CHAIRPERSON HILL: Go ahead.

18 MR. MOY: So, they submit Wednesday, February 7th,
19 response is February 14th, continued Hearing on the 21st.

20 Now, you just included the party in opposition to
21 give their positions on the OP's conditions.

22 Would you want that to be filed by February 7th?

23 CHAIRPERSON HILL: Yes, because the 7th, then you
24 can respond to each other's comments by the 14th, right?

25 MS. MAZO: That's fine.

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1 CHAIRPERSON HILL: Okay. Everybody's so nice.
2 It's the end of the day and everybody's tired so they're
3 like, yes, that's good, okay, sure.

4 MS. MAZO: As to the 21st, could I request that
5 this be heard later on in the day? I just have something
6 very important at my daughter's school that I cannot miss,
7 in the morning.

8 CHAIRPERSON HILL: Okay, Mr. May?

9 COMMISSIONER MAY: I'm here all day.

10 CHAIRPERSON HILL: Oh, Mr. May's here all day.
11 Sorry, we were trying to accommodate Mr. May. So, we'll hear
12 you last.

13 MS. MAZO: That's fine, thank you.

14 CHAIRPERSON HILL: Great, sure.

15 MR. MOY: Did the Board desire anything
16 supplemental from OP? I missed that part.

17 MS. FOTHERGILL: I'm going to follow up with DDOT
18 on that request.

19 MR. MOY: So, your deadline would be -- we could
20 make it the 14th?

21 CHAIRPERSON HILL: And if OP wants to submit
22 anything from the submissions on the 7th, feel free.

23 And then other than that, that's all we're going
24 to do.

25 Just to let everybody else know, we're not going

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1 to be taking testimony in support or opposition, but you're
2 welcome to come and you're also welcome to watch.

3 Mr. Sullivan?

4 MR. SULLIVAN: To clarify, we'll pick up the
5 Hearing at this point, right?

6 CHAIRPERSON HILL: Yes.

7 MR. SULLIVAN: Then when we come back, we'll
8 finish the redirect or rebuttal and closing?

9 CHAIRPERSON HILL: Yes.

10 MR. SULLIVAN: Okay, thank you.

11 CHAIRPERSON HILL: Yes. Okay, all right, great.
12 Well, I'm sorry we weren't able to get through it all but
13 some people have families.

14 Okay, all right, thank you all very much. Mr.
15 Moy, does the Board have anything else today?

16 MR. MOY: Nothing from the Staff, sir.

17 CHAIRPERSON HILL: Okay, then we stand adjourned.
18 Thank you.

19 (Whereupon, the above-entitled matter went off
20 the record at 5:14 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 01-31-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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