

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 26, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

This transcript constitutes the minutes from the public hearing held on October 26, 2004.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
JOEL LAWSON
STEPHEN MORDFIN
TRAVIS PARKER
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

LORI MONROE, ESQ.

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P R O C E E D I N G S

Time: 9:43 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I am going to call to order the 26 October 2004 Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair, Ms. Miller; representing the National Capital Planning Commission is Mr. Mann, and we are going to have our third and esteemed member, Mr. Etherly, shortly. He has been delayed temporarily this morning.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room there on the wall. Please pick it up, and you can see where you are in the chronology of this morning's cases.

Several very important things I need to go through in our opening statements. First, all proceedings before the Board of Zoning Adjustment are recorded. Therefore, there are several things attendant to that.

First of all, we are recorded in two fashions. One is the court reporter, sitting to my right on the floor, which is creating the official

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1 transcript. Secondly, we are being broadcast live on
2 the Office of Zoning's website.

3 So attendant to both of those, we ask
4 several things. First of all, we ask that everyone
5 please refrain from making any disruptive noises or
6 conducting any disruptive actions in the hearing room
7 while we proceed with our case so that you don't
8 interrupt the flow of information to the Board.

9 Secondly, I would ask that everyone turn
10 off cellphones and beepers at this time, so we also
11 don't have that type of disruption.

12 When coming forward to speak to the Board,
13 you will need to have filled out two witness cards.
14 Witness cards are available at the table where you
15 entered into and also the table where you will give
16 testimony in front of us. Those two cards go to the
17 recorder prior to coming forward to speak to the
18 Board.

19 When you do address the Board, I am going
20 to ask that you just state your name and your address
21 once so that, obviously, we can give credit to all the
22 important things you are going to say on the
23 transcript.

24 The order of procedure for a special
25 exception and variances is: First, we hear the case

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1 presentation of the applicant. Second, we will hear
2 any government reports attendant to the application,
3 such as the Office of Planning or Department of
4 Transportation.

5 Third, we will hear from the Advisory
6 Neighborhood Commission. Fourth, we will hear from
7 parties or persons in support of the application.
8 Fifth would be parties or persons in opposition to the
9 application. Sixth, finally, we will give an
10 opportunity to the applicant to make any closing or
11 summation statements or to call any sort of rebuttal
12 witnesses, if required.

13 Pursuant to our regulations, 3117, we are
14 able to limit times of presentation of each case. I
15 will not set up times generally for the morning
16 session. We will get into that, if required, for each
17 specific case. So I will skip the litany on all of
18 that. However, an important aspect to all our case
19 proceedings is cross-examination.

20 Cross-examination is permitted by the
21 applicant and parties in the case. The ANC within
22 which the property is located is automatically a party
23 in the case and, therefore, will be able to conduct
24 cross-examination.

25 The record will be closed at the

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1 conclusion of each hearing on a case except for any
2 material that is specifically requested by the Board,
3 and we will make it very clear what material is to be
4 submitted and when it is to be submitted into the
5 Office of Zoning.

6 After that material is received, it should
7 be very clear that the record would then be finally
8 closed, and no other information would be taken into
9 the record.

10 The Sunshine Act requires that this Board,
11 as I have stated, conduct all its proceedings in the
12 open and before the public. This Board may enter into
13 executive session, which would be in accordance with
14 the Sunshine Act and also our rules of procedure and
15 regulations.

16 We would enter executive sessions for the
17 purposes of several things. Most importantly would be
18 to review records or deliberate on a specific case.

19 The decision of the Board in contested
20 cases must be based exclusively on the record that is
21 created before us. Therefore, we ask that people
22 present today not engage Board members in any
23 conversation today while the hearing is taking place.

24 The Board will now consider any
25 preliminary matters. Preliminary matters are those

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1 which relate to whether a case will or should be heard
2 today, such as requests for postponements,
3 withdrawals, or whether proper and adequate notice has
4 been provided.

5 If you are not prepared to go forward with
6 a case today or you believe the Board should not
7 continue or proceed with a case this morning, I would
8 ask that you come forward and have a seat at the table
9 right now as an indication of having a preliminary
10 matter.

11 Let me say a very good morning to Ms.
12 Bailey from the Office of Zoning, who is sitting on my
13 far right, and Mr. Moy, also with the Office of
14 Zoning. They are responsible for keeping us out of
15 trouble.

16 Ms. Bailey, do you have any preliminary
17 matters for the Board?

18 MS. BAILEY: Mr. Chairman and to everyone,
19 good morning. Yes, Mr. Chairman. It has to do with
20 Application Number 17182. It was continued from last
21 week. The office did receive a letter withdrawing
22 that case, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Excellent. So no
24 action from the Board is required at this time.

25 MS. BAILEY: None is required, Mr.

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1 Chairman.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much.

4 Not seeing anyone else having an
5 indication of a preliminary matter, let me ask those
6 who are going to testify or thinking of testifying, if
7 you could please stand and give your attention to Ms.
8 Bailey. She is going to swear you in. Anyone going
9 to testify, everybody, no matter what case. Ms.
10 Bailey.

11 MS. BAILEY: Please raise your right hand.

12 (Witnesses sworn.)

13 CHAIRPERSON GRIFFIS: Very well. Let's
14 proceed, and we can call the first case.

15 MS. BAILEY: Thank you, sir. That is
16 Application Number 17225 of Lelia Joyner Smith,
17 pursuant to 11 DCMR 3104.1, for a special exception to
18 allow a rear deck and bay window addition to an
19 existing single-family row dwelling under Section 223,
20 not meeting the lot occupancy requirements -- that is
21 Section 403 -- and nonconforming structure
22 requirements. That is Section 2001.3. The property
23 is located in the R-4 District at premises 2214
24 Cathedral Avenue, N.W., also known as Square 2206,
25 Lot 81.

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1 CHAIRPERSON GRIFFIS: All set? Excellent.
2 I would just have you turn your microphone on. There
3 is a little button on the base of it, and the light
4 will turn on. Perfect, and if you would just state
5 your name and address for the record, please.

6 MS. SMITH: My name is Leila Smith. I
7 live at 2214 Cathedral Avenue, N.W.

8 CHAIRPERSON GRIFFIS: Excellent, and you
9 have brought an application for us for a 223, a
10 special exception, because your bay window somehow
11 impedes your lot occupancy. Is that correct?

12 MS. SMITH: That is now my understanding
13 of the case, yes.

14 CHAIRPERSON GRIFFIS: Good. It is ours
15 also. We have quite a bit of letters of support. The
16 record is fairly full. Is there anything that you
17 would like to summarize for the Board at this time?

18 MS. SMITH: I don't think so, at the risk
19 of taking more time. It is an issue simply of adding
20 on a deck, and the fact that the original house and
21 garage exceed the lot occupancy by a small percentage.

22 CHAIRPERSON GRIFFIS: Indeed, and Section
23 223 was created just for this type of circumstance
24 where we have an existing nonconforming structure, but
25 additions need to be made to it to accommodate

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1 contemporary living.

2 The fact that you indicated, of course, it
3 shows on the plan, doesn't go toward anything that is
4 in requirement for relief. What we are talking about
5 is a bay window projects out an extreme amount of 1.5
6 feet. Is that correct?

7 MS. SMITH: Yes.

8 CHAIRPERSON GRIFFIS: Excellent. Anything
9 else you would like us to understand?

10 MS. SMITH: No.

11 CHAIRPERSON GRIFFIS: The record is very
12 full in terms of the requirements of the 223 from your
13 end of which we may end up running through or perhaps
14 not.

15 Let's move on then to any government
16 reports. Office of Planning did put in a report. It
17 is Exhibit Number 29. I'll say a very good morning to
18 the Office of Planning and see if they would like to
19 summarize, stand on the record or go through their
20 full report.

21 MR. MORDFIN: Good morning. I am Stephen
22 Mordfin with the Office of Planning. This application
23 is in conformance to all the provisions of Section 223
24 and, therefore, the Office of Planning recommends
25 approval of the application as submitted by the

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1 applicant.

2 CHAIRPERSON GRIFFIS: Thank you, sir.
3 Thank you very much. And the record is completely
4 full. So I think it is an excellent summary. Does
5 the applicant have a copy of the Office of Planning's
6 memo?

7 MS. SMITH: Yes, sir, I do.

8 CHAIRPERSON GRIFFIS: Very well. One of
9 the interesting pieces, of course, is that the bay
10 window would increase the lot occupancy, because it is
11 four feet above ground, which is fairly clear to the
12 Board.

13 Any questions from the Board of the Office
14 of Planning? If not, does the applicant have any
15 cross-examination of the Office of Planning? Any
16 questions of the Office?

17 MS. SMITH: No, sir.

18 CHAIRPERSON GRIFFIS: Excellent. We will
19 just take a note, of course, that the Woodley Park
20 Historic District, Commission of Fine Arts, reviewed
21 this, Exhibit Number 28, and they also have it for
22 approval.

23 Let's go to ANC-3C. Is the ANC
24 representative here? ANC-3C did submit a letter into
25 the record. It is Exhibit Number 20. I would note

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1 and ask the Board members to look at that and see
2 whether it actually conforms with our requirements of
3 3115.

4 It seems to be lacking, first of all, in
5 indicating whether proper notice was provided, and
6 also what was equal to a number of the quorum. It is
7 stated that the quorum was present but not what
8 constitutes a quorum. I think we can take it in as,
9 obviously, their position. Ms. Miller?

10 VICE CHAIRPERSON MILLER: I would just
11 note that I would agree with you on the notice issue.

12 They do list the Commissioners. So we can see that
13 there are nine and figure out what constitutes a
14 quorum in light of that.

15 CHAIRPERSON GRIFFIS: I don't see in 3115
16 where we are required to do math. However, let's move
17 ahead. Noting that, we do have numerous letters of
18 support, Exhibit 22, 23, 24, 25, and 26. It is
19 always nice to have the U.S. House of Representatives
20 letterhead on a supportive letter. I don't imagine
21 that is actually from a Rep, but there that is. We
22 will move ahead.

23 Any other information that you are aware
24 of? Is anyone here present to give testimony in
25 support or in opposition to this application? This is

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1 Application 17225. Persons? Very well. Any
2 conclusionary remarks?

3 MS. SMITH: No, sir.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much, and also welcome to Mr. Etherly who has
6 joined us.

7 I would move approval of Application 17225
8 for a special exception which would permit the
9 installation of a box bay window on 2214 Cathedral
10 Avenue, N.W., and ask for a second.

11 VICE CHAIRPERSON MILLER: Second.

12 CHAIRPERSON GRIFFIS: Thank you very much.
13 I won't belabor the point. It is straightforward in
14 terms of the 223 requirements. The Board is well
15 aware of them. There is great reliance on the
16 applicant's persuasive argument in addressing the 223
17 and also, I would add, the Office of Planning's
18 absolutely complete report outlining this. I think we
19 can move ahead with this unless anyone else has any
20 deliberation.

21 Not noting any comments from the Board, I
22 would ask for all those in favor of the motion,
23 signify by saying Aye. And opposed?

24 MS. BAILEY: The vote is recorded as 4-0-1
25 to approve the application. Mr. Griffis made the

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1 motion, Ms. Miller second. Mr. Mann and Mr. Etherly
2 are in agreement. There was not a Zoning Commission
3 member present with us today.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you, Ms. Bailey. I think we can waive our regulations
6 and issue a summary order on this.

7 MS. BAILEY: Thank you, sir.

8 CHAIRPERSON GRIFFIS: Good. Thank you very
9 much. Appreciate you coming down this morning.

10 MS. SMITH: That is a bench decision?

11 CHAIRPERSON GRIFFIS: Pardon me?

12 MS. SMITH: That is the bench decision?

13 CHAIRPERSON GRIFFIS: That was it. Went
14 fast.

15 MS. SMITH: Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very much.
17 Let's call the next case.

18 MS. BAILEY: Application Number 17220 of
19 St. Paul's Parish, pursuant to 11 DCMR 3103.2, for a
20 variance from the lot occupancy requirements under
21 Section 403, a variance from the side yard
22 requirements under Section 405, a variance from the
23 court requirements under Section 406, a variance from
24 the expansion provisions of the Foggy Bottom Overlay
25 District under subsection 1523.1, and a variance from

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1 the nonconforming structure provisions under
2 subsection 2001.3, to allow the alteration and
3 expansion of an existing church in the Foggy Bottom/R-
4 3 District. The property is located at 2422, 2424,
5 and 2430 K Street, N.W. It is also known as Square
6 28, Lots 169 and 828.

7 Mr. Chairman, there is a request for party
8 status in this case.

9 CHAIRPERSON GRIFFIS: Good. Let's take up
10 the request for party status at this time. Is Ms.
11 Miller here? Ms. Miller, request for party status,
12 Anna Gowans Miller of 5 Snows Court, N.W.? Okay. Ms.
13 Prince, why don't you introduce yourself for the
14 record?

15 MS. PRINCE: Good morning, Chairman
16 Griffis and members of the Board. I am Allison Prince
17 with Shaw Pittman, and I am pleased to be here today
18 on behalf of St. Patrick's Vestry.

19 CHAIRPERSON GRIFFIS: Before you get too
20 far into it, can I have your -- any statement or
21 support or opposition to the request for party status?

22 MS. PRINCE: Oh, no opposition to the
23 request for party status, but since the individual did
24 not attend, she will have a hard time cross-examining.

25 CHAIRPERSON GRIFFIS: That's always true,

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1 but let's take that up and dispense with this. Board
2 members, comments? It seems to me -- I'm sorry, let
3 me just make a quick comment. First of all, there is
4 concern in terms of the issues of how they might be
5 distinctly or uniquely affected regarding the
6 construction, and also the parking aspect.

7 There's two opinions I have on that.
8 First of all, I think these are worth looking at. I
9 think the ANC has brought up both of these. So I
10 think that they will be covered as we get to the
11 hearing, and the other piece is that I think they may
12 well step outside of what we are actually reviewing
13 and is before us for approval.

14 So I would not support the granting of
15 party status at this time. Others? Ms. Miller?

16 VICE CHAIRPERSON MILLER: I would concur.
17 It wasn't clear to me from the party status
18 application exactly how the loss of parking spaces was
19 going to affect this individual, and I thought we
20 might hear it today. Since she is not here, she can't
21 really address that.

22 I think the construction issues are
23 outside of our purview. Also, since she is not here,
24 she can't participate fully as what party status
25 means. So, therefore, I would be in favor of denying

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1 party status.

2 CHAIRPERSON GRIFFIS: Very well. Anyone
3 else? Then we can move denial of the party status for
4 Ms. Miller. Is there a second?

5 BOARD MEMBER MANN: Second.

6 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
7 Any discussion, deliberation? All those in favor of
8 the motion, signify by saying Aye. Any opposed?
9 Very well. Yes?

10 MS. PRINCE: I am pleased to be here today
11 on behalf of St. Paul's Vestry. The church is
12 requesting minor variance relief to allow for the
13 renovation and expansion of its facilities in the 2400
14 block of K Street. The facilities consist of 2422,
15 2424, and then the church at 2430 K. Those are two
16 rowhouses and the church itself.

17 The church was constructed in the Forties.

18 The two adjacent rowhouses predate the church. St.
19 Paul's plans to renovate the rowhouses and construct
20 two modest additions, and then to join the rowhouses
21 with the church into a single unified structure.

22 The additions will allow the church to
23 better serve its existing programs, and will also
24 provide much needed building code and handicapped
25 accessibility.

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1 The project involves no loss in parking
2 whatsoever. In fact, three handicapped accessible
3 spaces will be added at the rear of one of the
4 townhouses.

5 The requested variance relief is minor.
6 Our prehearing statement discusses in detail how the
7 project satisfies the three prongs of the variance
8 test, and our only witness today, George Alexander,
9 the architect, will go into those in detail.

10 St. Paul's has worked with the community
11 throughout the design process. The application has
12 received the report of the ANC, and the Office of
13 Planning has recommended its approval.

14 We would like to note that the plans that
15 we filed with our prehearing statement show a canopy
16 covering the handicapped accessible entrance at the
17 rear of the 2422 rowhouse. At the request of the ANC,
18 the applicant has agreed to remove the canopy from the
19 project. For that reason, we resubmitted drawings
20 today. The only difference between those drawings and
21 the ones that you had previously is the removal of the
22 canopy.

23 CHAIRPERSON GRIFFIS: Did the canopy go to
24 lot occupancy?

25 MS. PRINCE: It did.

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1 CHAIRPERSON GRIFFIS: So then it is just a
2 reduction of the percentage of --

3 MS. PRINCE: Very tiny, not enough to
4 change the 65 percent.

5 CHAIRPERSON GRIFFIS: Oh, I see. Okay.

6 MS. PRINCE: Although we requested that
7 the Board grant the applicant flexibility to make
8 adjustments to the plans, if required by the HPRB, we
9 can refine that request pursuant to OP's concern by
10 noting that we only need flexibility as to design and
11 aesthetics.

12 We don't need flexibility that would
13 result in any new areas of relief. If we wanted to
14 change the design in a way that resulted in new area
15 of relief, we would be back before you, but everybody
16 knows the HPRB process is such that there could be
17 some design refinements, and we wouldn't want those to
18 send us back here.

19 If the Board has no questions -- Oh, one
20 more item. There is a lengthy and detailed agreement
21 with Advisory Neighborhood Commission 2A. That
22 agreement, I think you will find, does cover a lot of
23 the issues that were raised in the request for party
24 status that you just denied. It covers construction
25 and parking and landscaping.

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1 I would ask that you attach that agreement
2 or reference the conditions in that agreement to the
3 BZA order. To the extent that you deem any of those
4 conditions inappropriate for inclusion in the BZA
5 order, I would like you to be aware that it is a
6 separate, freestanding agreement that has been
7 executed by the parties, and the parties will honor.

8 CHAIRPERSON GRIFFIS: So if it is a
9 separate and freestanding agreement, why are we asked
10 to put it into our order?

11 MS. PRINCE: That is included in the ANC's
12 report. They asked that the agreement be incorporated
13 into the order.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. PRINCE: I believe you may find
16 relevant some of the conditions in the agreement. I
17 will leave that to your judgment. There are some
18 construction related conditions, and I understand that
19 of late you have not been including construction
20 related conditions in the order. Nonetheless, they
21 would be binding on St. Paul's, because St. Paul's has
22 signed the agreement.

23 The parking conditions perhaps could be
24 put in the order, if you find that relevant and,
25 certainly, the landscaping. Ms. Tyler is here from

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1 the ANC, and she can explain that request, but we just
2 want to be fully cooperative in that regard.

3 CHAIRPERSON GRIFFIS: Ms. Prince, what is
4 your understanding of the precedent of conditioning
5 area variances?

6 MS. PRINCE: We often condition area
7 variances. I have seen many instances in which area
8 variances have been conditioned.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. PRINCE: If the Board has no
11 questions, I would like to proceed with the testimony
12 of our first witness, George Alexander.

13 VICE CHAIRPERSON MILLER: I just have a
14 quick question. How is the agreement enforceable?

15 MS. PRINCE: It would have to be legally
16 enforceable through law suit by the ANC. There is no
17 provision for arbitration or mediation. So they would
18 have to enforce it in a court of law.

19 This agreement is really a successor
20 agreement to an earlier one that was negotiated with
21 the ANC years ago when the project was anticipated and
22 didn't go forward. So the church, through literally a
23 decade, has had every intention of honoring the
24 provisions of this agreement.

25 CHAIRPERSON GRIFFIS: But on the flip

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1 side, to talk about this a little bit, if we
2 incorporated the whole thing and take the jurisdiction
3 for compliance for the whole thing, then what would be
4 the remedy if something was not in compliance?
5 Someone would have to --

6 MS. PRINCE: Notice of noncompliance, file
7 a form with this office.

8 CHAIRPERSON GRIFFIS: So DCRA essentially
9 would become the enforcement mechanism of the
10 agreement between the ANC and the church?

11 MS. PRINCE: True.

12 CHAIRPERSON GRIFFIS: Efficient? You
13 don't have to answer that. Okay.

14 MS. PRINCE: We are just going to honor
15 the agreement and keep it simple.

16 CHAIRPERSON GRIFFIS: Indeed.

17 MS. PRINCE: George Alexander, who is our
18 only witness today, has not been qualified as an
19 expert by this Board. So I did bring his resume. I
20 will note, he has 35 years of experience and quite an
21 impressive resume, and I am happy to share it with
22 you.

23 CHAIRPERSON GRIFFIS: So you are
24 proffering Mr. Alexander as an expert in architecture?

25 MS. PRINCE: Yes.

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1 CHAIRPERSON GRIFFIS: Well, good, because
2 that is what his resume goes to. Any questions from
3 the Board? Does the ANC have any objection? No
4 objection from the ANC? Excellent. Any concerns,
5 questions from the Board? How about from the left
6 side of the Board?

7 BOARD MEMBER ETHERLY: How did I end up
8 ion the right?

9 CHAIRPERSON GRIFFIS: And holding up the
10 right side --

11 BOARD MEMBER MANN: We were just actually
12 flipping through the resume, trying to see where he
13 received his education, and I didn't see that offhand.

14 MR. ALEXANDER: Education? Case Western
15 Reserve, 1969.

16 CHAIRPERSON GRIFFIS: Mr. Alexander has
17 indicated Case Western. Is that correct? Any other
18 questions? Is there any objection from the Board that
19 needs to be spoken of against establishing Mr.
20 Alexander as an expert witness in architecture? Not
21 noting any, let's move on. Mr. Alexander can present
22 as an expert witness.

23 MS. PRINCE: I would like to proceed then
24 with the testimony of Mr. Alexander. I would also
25 like to note that Father Andrew Sloane, the Rector of

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1 St. Paul's, is here to answer any questions the Board
2 may have, if there are questions that really relate to
3 the operation of the church.

4 CHAIRPERSON GRIFFIS: Excellent. While he
5 gets ready and gets up here, let me just summarize the
6 submissions and make sure I am correct in this. First
7 of all, the church established in essentially 1948 in
8 this location. Is that correct? And the point of
9 which that we are now looking at, this application is
10 only to expand, one, to accommodate the programs and
11 also to accommodate the code and AVA requirements. Is
12 that correct?

13 MS. PRINCE: Correct.

14 CHAIRPERSON GRIFFIS: Okay. And they
15 haven't expanded or done anything, really, to
16 incorporate the programs and their growing needs in
17 the last 65 years. Is that about right?

18 MS. PRINCE: Father Sloane?

19 CHAIRPERSON GRIFFIS: We are going to have
20 to have you up. If you talk, you have to be on a
21 microphone, and we need you to introduce yourself.
22 Maybe I'm a little dyslexic. Maybe it's 56 years.

23 FATHER SLOANE: There was a -- In about
24 1954 there was a construction of something called
25 Pillsbury House which was added to the church. That's

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1 the only addition there has been since 1947-'48,
2 whenever it was.

3 CHAIRPERSON GRIFFIS: I see. Okay.
4 Excellent.

5 FATHER SLOANE: That is 50 years.

6 CHAIRPERSON GRIFFIS: Good. IF you
7 wouldn't mind just stating your name and address for
8 the record.

9 FATHER SLOANE: Father Andrew Sloane, S-l-
10 o-a-n-e, 957 25th Street, N.W.

11 CHAIRPERSON GRIFFIS: Thank you. Any
12 other questions? Good, let's move ahead. What is
13 next? Yes.

14 WHEREUPON,

15 GEORGE ALEXANDER

16 was called as a witness by counsel for the applicant
17 and, having previously been duly sworn, testified as
18 follows:

19 DIRECT TESTIMONY

20 BY MR. ALEXANDER: I am George Alexander.
21 I thank Board for allowing me to present and include
22 us.

23 Again, as Allison has pointed out --

24 CHAIRPERSON GRIFFIS: Can you hear him?
25 I'm sorry. You have to be on a microphone. It's not

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1 that we hear you, but to get on the transcript. So
2 let's see if that hand-held works.

3 THE WITNESS: How is that?

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you.

6 THE WITNESS: Okay. As you can see by
7 this board, this is the existing conditions as we see
8 them today. You have the church, which is basically
9 2430. There is this courtyard which is part of the
10 property now. This is the open lot to the west of the
11 church, and we have the two rowhouses here which are
12 2424 and 2426, and then the newly acquired property
13 right here, which is more of a mansion house or a
14 townhouse, which is the 2422.

15 What he project started out primarily as
16 trying to accomplish -- These are just some existing
17 photographs which I can get you later on. This is
18 really the crux of the project. Really, it is
19 consisting of three -- What it really is doing here is
20 it consists of primarily enclosing the courtyard, the
21 existing courtyard, which is an extension of the
22 facade of the church in the field of the original
23 church as it was designed.

24 By the way, the church was designed by the
25 same architect that did -- Frohman, who also did the

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1 National Cathedral. The original design has these two
2 areas that were creating a cloistered effect on the
3 other side. So what we really did is we went back to
4 some of the historical drawings that he had done, and
5 we are primarily reinstating this facade on the
6 church.

7 Then enclosing behind that was the
8 courtyard to create a narthex, which is a badly needed
9 area for the church as far as breakout once the
10 service is over and for public functions that they
11 need to have.

12 The other aspect was, of course, with the
13 addition of this property, 2422, into their -- under
14 their auspices, there was a need to make a connection
15 there. Unfortunately, this building has a
16 considerable differential in floor heights to the
17 existing rowhouses, which are somewhat a little more
18 in keeping, and that demanded -- it required an
19 additional reworking of this back section, which is of
20 that townhouse, and this is a picture of it right
21 here.

22 Again, we looked at these, and so did
23 HPRB. We realize these were secondary structures
24 added onto the historical building during some course
25 in time, having no real significance and kind of a

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1 shanty effect.

2 So the point was to remove these, keep the
3 integrity of the main house, and add on a section that
4 would allow us to, in essence, accommodate a stairwell
5 as well as an elevator which could be used for
6 handicapped. And that was another major aspect of the
7 whole thing, is the entire property with all these
8 different pieces of property are now all handicapped
9 accessible with the addition of two elevators,
10 basically, but allow people to get and from all the
11 spaces within the building.

12 CHAIRPERSON GRIFFIS: And you are adding
13 two elevators because of access and also different
14 floor levels?

15 THE WITNESS: I beg your pardon?

16 CHAIRPERSON GRIFFIS: Two elevators are
17 needed because of what?

18 THE WITNESS: Because of the differential
19 in floor levels. There's considerable amount of floor
20 levels. Some are only two feet out, and without
21 trying to take away most of the usable space with
22 ramps, the elevators were introduced, also to connect
23 to -- As Father Sloane mentioned, the Pillsbury House
24 has a large function room up on the second floor. So
25 this helps egress and, of course, helps for

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1 handicapped to get up there.

2 CHAIRPERSON GRIFFIS: Excellent. Now the
3 lot occupancy is calculated. This is a single record
4 lot. is that correct?

5 THE WITNESS: I'm sorry ?

6 CHAIRPERSON GRIFFIS: The lot occupancy is
7 calculated as if this is a single record lot?

8 THE WITNESS: Well, again getting to the
9 first issue, with these two additions, basically, the
10 property -- the existing property, even with the
11 addition of the rowhouse, which does not take up all
12 of the area, still exceeded -- is around 58 percent,
13 something like that, 56 percent.

14 CHAIRPERSON GRIFFIS: Right. Okay.

15 THE WITNESS: So these additions are
16 basically taking it to about 65 percent.

17 CHAIRPERSON GRIFFIS: Excellent. And
18 where is the side yard that we are focusing on? The
19 side yard?

20 THE WITNESS: I'm sorry?

21 CHAIRPERSON GRIFFIS: Where is the side
22 yard?

23 THE WITNESS: The side yard issue deals
24 with the alleyway, an existing alleyway, that is
25 there.

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1 CHAIRPERSON GRIFFIS: It is a public
2 alleyway?

3 MS. PRINCE; It is not. There is an
4 existing 4 1/2 foot side yard located on the eastern
5 side of the townhouse.

6 CHAIRPERSON GRIFFIS: Right, which is in
7 the photographs. It has that little cover thing on
8 it. Okay, but that is part of the property, and
9 that's what is indicated as side yard?

10 MS. PRINCE: Right. By bringing the
11 addition straight back, we have run afoul of the rule
12 that says the existing side yard has to be at least
13 five feet.

14 CHAIRPERSON GRIFFIS: Correct. Okay.

15 THE WITNESS: So what's happening is that
16 this actually is 4 1/2 feet, and then actually the
17 next down presently, it's for these smaller structures
18 that I said that were added a long time ago.

19 CHAIRPERSON GRIFFIS: So you are taking
20 off part of the existing structure that actually
21 reduces the side yard, and then you are lining up the
22 addition with the main portion of the building. Okay.
23 And on the drawings you've shown, we also see the new
24 addition to the three handicapped parking. Is that
25 correct? On C-04?

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1 THE WITNESS: Exactly. We are providing
2 handicapped parking.

3 CHAIRPERSON GRIFFIS: Is there any other
4 parking on the site currently?

5 THE WITNESS: And that's really all the
6 parking that is provided there, allowing Snow Court to
7 provide the rest of the regular parking. There are
8 three handicapped spots then.

9 CHAIRPERSON GRIFFIS: Okay. This is very
10 straightforward. I think we'll just go to quick
11 questions and get to this. Is there any existing
12 parking on the site now?

13 FATHER SLOANE: There is existing parking
14 to the south of Pillsbury House and the church.

15 CHAIRPERSON GRIFFIS: And is that going to
16 remain?

17 FATHER SLOANE: Yes.

18 CHAIRPERSON GRIFFIS: Okay. So the
19 existing condition isn't changing, as Ms. Prince has
20 laid out. In fact, three additional handicapped or,
21 rather, accessible parking spots would be added.

22 FATHER SLOANE: Yes.

23 CHAIRPERSON GRIFFIS: Okay. Anything
24 else?

25 THE WITNESS: There is just the issue

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1 about the courtyard. Because of the extension, we
2 wanted to create the stairwell and everything else to
3 where it could work, but the existing doorway here,
4 which is going to be used as a back entrance to the
5 church -- this is creating a three-sided condition
6 with walls on three sides and open to the sky.

7 So as a result, we are asking for that
8 variance as a courtyard provision.

9 CHAIRPERSON GRIFFIS: Where is this
10 courtyard?

11 THE WITNESS: -- usually 350 square feet.
12 This thing is only 16 square feet.

13 CHAIRPERSON GRIFFIS: Can you put your
14 finger on where the courtyard is?

15 THE WITNESS: I beg your pardon?

16 CHAIRPERSON GRIFFIS: Can you put your
17 finger on the courtyard?

18 THE WITNESS: Yes, exactly. It's that
19 small. How to do this -- Okay. This is the 2422, and
20 when we remove the old --

21 CHAIRPERSON GRIFFIS: That's all right.
22 Just point to where the courtyard is. Point to where
23 the courtyard is.

24 THE WITNESS: It's right here. It's
25 basically an alcove with a door.

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1 CHAIRPERSON GRIFFIS: It is the setback
2 for your door?

3 THE WITNESS: Yes. This --

4 CHAIRPERSON GRIFFIS: Everybody understand
5 that? That's a court?

6 MS. PRINCE: I believe it is a court. It
7 is open to the sky, and it doesn't meet the minimum
8 court area requirement. So we were very conservative
9 in citing ourselves for variance relief, and I believe
10 that is a nonconforming --

11 CHAIRPERSON GRIFFIS: It's not a court
12 niche of some architectural --

13 MS. PRINCE: I'd like to argue it is a
14 court niche, but it's not really associated with the
15 design of the building.

16 CHAIRPERSON GRIFFIS: Well, you are the
17 excellent land use attorney. So we will believe you.
18 Okay. Can you speak very quickly or -- I don't know
19 who is going to talk to this -- about just very
20 briefly summarize how this property is unique?

21 THE WITNESS: How the property is --

22 CHAIRPERSON GRIFFIS: Yes, what is the
23 unique circumstances?

24 THE WITNESS: Well, again this is the
25 church, how it sits within Foggy Bottom. The open

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1 area that is around it and surrounding it is very
2 visible from the street, from the whole -- as you
3 approach or drive by Foggy Bottom, and we are keeping
4 it very much in the historical context that is there.

5 It has a very nice scale to it, very
6 unique in Washington, and we believe that this
7 renovation again is going to create a kind of an
8 incitement of the public spaces and use in very nice
9 ways.

10 CHAIRPERSON GRIFFIS: Okay. So you find
11 that the properties that are, in short, buildings is a
12 unique circumstance to this property?

13 THE WITNESS: I'm sorry?

14 CHAIRPERSON GRIFFIS: The historic nature
15 is a unique aspect?

16 THE WITNESS: It is. IT is. Both of the
17 buildings, the buildings that we had originally --

18 CHAIRPERSON GRIFFIS: Great. Is the fact
19 that they are nonconforming also a unique aspect?

20 THE WITNESS: Yes, and we try to keep the
21 historical context.

22 CHAIRPERSON GRIFFIS: Okay, good. I don't
23 have any other questions. Does the Board have any
24 other questions, clarifications?

25 Oh, where was this canopy?

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1 THE WITNESS; It's not even -- This is the
2 floor plan. So you can't see it. It is actually
3 above the door.

4 CHAIRPERSON GRIFFIS: The canopy?

5 THE WITNESS: Oh, that? I'm sorry. I
6 don't even know if they have those drawings.

7 CHAIRPERSON GRIFFIS: They were on ours,
8 though. Is that correct?

9 THE WITNESS: The canopy that we removed--

10 CHAIRPERSON GRIFFIS: It's on the first
11 submission in the hard copy. Is that correct?

12 THE WITNESS: The canopy that we removed
13 was literally cutting across here, and it was cutting
14 across the first elevation, in essence covering the
15 ramp access down.

16 CHAIRPERSON GRIFFIS: Oh, I see. No,
17 that's okay. You can set it back.

18 THE WITNESS: This is now a replacement.

19 CHAIRPERSON GRIFFIS: Okay. So it is a
20 covering on the pedestrian ramp up to the structure.
21 Okay. Excellent. So how are you going to keep that
22 clean, clear of snow and all of that?

23 THE WITNESS: This is what it basically --
24 This is the artist's rendering of what it would look
25 like.

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1 CHAIRPERSON GRIFFIS: More of a
2 programming -- Do you think it would create any sort
3 of difficulty in keeping that clear in terms of snow
4 or ice or anything of that nature?

5 THE WITNESS: That is a major issue that
6 we will be taking forward, yes. We are going to have
7 heating, everything else, but it will be --

8 CHAIRPERSON GRIFFIS: Oh, you are putting
9 heating in?

10 THE WITNESS: Yes, definitely.

11 CHAIRPERSON GRIFFIS: Interesting.

12 THE WITNESS: It will be a conditioned
13 space, the enclosure.

14 CHAIRPERSON GRIFFIS: And what was the
15 comment that you got back that moved you to remove
16 that?

17 THE WITNESS: Oh, it was, I think,
18 something that had not really been resolved well. It
19 was not really designed that well, and I think that is
20 something that needed to go forward, plus the
21 elevation in the rear --

22 CHAIRPERSON GRIFFIS: I mean, who asked to
23 have it removed? Was it HPRB?

24 THE WITNESS: The canopy is shown on the
25 documents. Well, it was something -- It was just to

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1 provide cover for the ramp.

2 CHAIRPERSON GRIFFIS: NO, I understand
3 that.

4 THE WITNESS: To try to create some sort
5 of a main entrance.

6 CHAIRPERSON GRIFFIS: But the Historic
7 Preservation staff asked you to remove that? Was it
8 the community that asked you to remove it?

9 MS. PRINCE: To clarify, Advisory
10 Neighborhood Commission 2A specifically requested the
11 removal of the canopy over the ramp.

12 CHAIRPERSON GRIFFIS: Okay. Why?

13 MS. PRINCE; It had not shown in the
14 initial drawings that were shared with the ANC, and
15 the addition of the ramp came as a surprise to the
16 ANC, and the -- Ms. Tyler can speak for herself, but
17 she specifically requested concern about the canopy,
18 and to avoid any conflict over the matter, we opted to
19 remove it.

20 CHAIRPERSON GRIFFIS: I see. Now what is
21 the proposed material of the canopy? Is it a cloth?
22 Is it a frame?

23 MS. PRINCE: It was not fully designed.
24 It was not fully designed at the time it was shown.

25 CHAIRPERSON GRIFFIS: Okay. So does that

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1 mean for the lot occupancy?

2 MS. PRINCE: A canopy counts toward lot
3 occupancy?

4 CHAIRPERSON GRIFFIS: No, I understand
5 that, but what are we talking, like .0005 ?

6 MS. PRINCE: Oh, absolutely de minimis. I
7 think it may have been simply the appearance of the
8 rear elevation that troubled Ms. Tyler, but again I'll
9 let her speak for herself.

10 CHAIRPERSON GRIFFIS: Oh, I understand.
11 Believe me, I will hear from her. But I want to
12 understand the entire universe here of this canopy,
13 which is now become monumental.

14 MS. PRINCE: It is 140 square feet of area
15 that was covered. I think it was --

16 CHAIRPERSON GRIFFIS: How much does it
17 project out? About four feet? Five feet?

18 THE WITNESS: I think it was about, yes,
19 four feet.

20 CHAIRPERSON GRIFFIS: All right. So it is
21 four or five feet. It is obviously covering the --

22 THE WITNESS; It is eight feet long or
23 something like that.

24 CHAIRPERSON GRIFFIS: 140 square feet.

25 THE WITNESS: What material hasn't really

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1 been decided yet.

2 CHAIRPERSON GRIFFIS: Okay. Well, what is
3 the budget allowed? Is it going to be steel and
4 glass?

5 THE WITNESS: I'm sorry?

6 CHAIRPERSON GRIFFIS: Is it going to be
7 steel and glass?

8 THE WITNESS: Oh, no, no, no. Well, first
9 of all, we -- No, I think we were going to be looking
10 at some sort of cloth.

11 CHAIRPERSON GRIFFIS: Okay. So it is
12 going to be a framed piece, you know. Color would be
13 decided.

14 THE WITNESS: That would not be in keeping
15 with the rest of this.

16 CHAIRPERSON GRIFFIS: We don't want to get
17 into a lot of opinions but, nonetheless --

18 THE WITNESS: Smaller scale.

19 CHAIRPERSON GRIFFIS: Right. Okay.
20 Understood. Any other questions by the Board,
21 clarifications? Does everyone understand exactly the
22 areas which we are being asked to search for relief?
23 Yes? Excellent. Let's move along. Ms. Prince?

24 MS. PRINCE: One further area of relief is
25 requested. In the Foggy Bottom Historic Overlay

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1 District, one cannot expand a building without
2 variance relief. That was our fourth variance.

3 CHAIRPERSON GRIFFIS: Right. And that's
4 excellent. Actually, let's take questions of the
5 Board, if they want further clarification. I think it
6 is spelled out very well and substantively in your
7 written submission, and also I know the Office of
8 Planning is going to address it. So anything else?

9 VICE CHAIRPERSON MILLER: I just have a
10 general question. In your written submission, you
11 talk about how the church has expanded its mission and
12 is serving more people in the neighborhood. I was
13 just wondering if its congregation has expanded as
14 well?

15 MS. PRINCE: Father Sloane can address
16 that.

17 FATHER SLOANE: Not as much as I would
18 have liked, but the answer is yes, somewhat; and our
19 programs have expanded in terms of community outreach
20 in the last, certainly, seven years. But our
21 membership has risen gently.

22 VICE CHAIRPERSON MILLER: Where is your
23 membership generally come from?

24 FATHER SLOANE: All over. We have some
25 who actually live in the neighborhood, and then we

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1 have people who come from as far away as Warrenton,
2 Virginia, and Annapolis, Maryland.

3 VICE CHAIRPERSON MILLER: And I'm just
4 wondering, is there an issue here with respect to
5 parking?

6 FATHER SLOANE: Parking -- yes, there is
7 an issue, and it is currently very well handled. We
8 have a designated person in the parish who lives right
9 next to the church who negotiates parking and controls
10 parking on Sunday mornings, which is when there is a
11 crunch, in consultation with neighborhood apartment
12 buildings and GWU and residents.

13 So if there is a problem, there is a
14 specific person who can address that, and generally,
15 the parking is very amenable to all people. Once in a
16 while, there is a hiccup, but there is a way to
17 handle it if there is.

18 VICE CHAIRPERSON MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: And would you
20 characterize your organization as a public service
21 organization?

22 FATHER SLOANE: Yes.

23 CHAIRPERSON GRIFFIS: Very well. Okay,
24 any other questions? Good. I think we will get into
25 some more substantive questions at the conclusion, if

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1 needed. I think we can rely, as I have indicated, on
2 the written submission in terms of the test. The
3 uniqueness, obviously, has been addressed here in the
4 testimony today. The practical difficulty, I think,
5 arises out of that, which is also in the written
6 submission. So as we thought, the rest of the
7 hearing, if we have additional questions, we can get
8 to that.

9 With that then, if there is nothing
10 further, Ms. Prince -- anything else?

11 MS. PRINCE: Nothing further.

12 CHAIRPERSON GRIFFIS: Let's go on to the
13 Office of Planning then and have them go through their
14 report. Good morning.

15 MS. BROWN-ROBERTS: Good morning, Mr.
16 Chairman, and members of the Board. I am Maxine
17 Brown-Roberts representing the Office of Planning.

18 The subject application is for a number of
19 variances for property in the R-3 and the Foggy Bottom
20 Overlay Districts and also within the Foggy Bottom
21 Historic District and was reviewed by HPRB and given
22 concept approval, with final approval delegated to the
23 Historic Preservation Office.

24 The subject property is unique based on a
25 number of exceptional situations, as the buildings are

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1 designated as Historic and only allows for limited
2 alterations and allows upgrades that are necessary to
3 meet current building code requirements and make it
4 necessary to expand the building.

5 The buildings predate the current zoning
6 regulations, are nonconforming as to side and rear
7 yard apartments, and house legitimate permitted uses,
8 and the existing facilities do not allow the church to
9 adequately meet the needs of the church or the people
10 they serve.

11 Regarding the side yard, the 4.5 feet side
12 yard of the 2422 building will be maintained on the
13 rear addition in order to maintain the historic facade
14 and outside wall of the buildings, and also to provide
15 pedestrian access to the rear of the property.

16 The existing building has functioned
17 without any impact on the community for many years
18 and, therefore, will not be detrimental to the
19 community. The lot occupancy is requesting a five
20 percent increase over the allowed 60 percent.

21 Practical difficulties presented as to the
22 historic nature of the building and the limited
23 permitted demolition that could take place and the lot
24 occupancy is compliant with zoning regulations. The
25 five percent increase will not result in an

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1 overcrowding of the site or block light and air from
2 the property.

3 The court area was not enclosed in order
4 to maintain the window on the side of the Pillsbury
5 House that provides light and air and, if not
6 provided, could affect light and air into the existing
7 building.

8 The building on the properties are
9 currently nonconforming structures due to not meeting
10 the required side and rear yards. The proposed
11 addition will increase the lot occupancy due to the
12 limitation of the demolition and the need to preserve
13 the historic nature of the buildings.

14 Prohibition by the expansion by the Foggy
15 Bottom Overlay District could preclude the ability of
16 the church to meet the needs of the neighborhood.
17 Granting of the requested variances would still allow
18 the building to be consistent with the historic facade
19 and nature of the area and be consistent with the
20 purposes of the Overlay District.

21 In summary, the proposed variances will
22 allow necessary improvements to the building and allow
23 for improvements to accommodate the church programs.
24 Proposed improvements will not impair the intent of
25 the zone plan and, in particular, the Foggy Bottom

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1 Overlay District.

2 The Office of Planning recommends approval
3 of the variances to allow the proposed addition to the
4 church and adjacent rowhouses. The applicant has
5 requested that they be granted latitude to make any
6 adjustment that HPRB may require prior to granting
7 final approval of the project.

8 The Office of Planning supports the
9 flexibility requested, but recommends that the BZA be
10 specific as to the areas and limits of the
11 flexibility. OP also recommends that the flexibility
12 not be given to expand on any of the variances
13 requested, and any new variances created should be
14 reviewed by the BZA.

15 Thank you, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much. Excellent report, and I think your
18 recommendation in terms of flexibility was addressed
19 by the applicant, and I think it was exactly in line
20 with what the Board was also thinking in terms of an
21 area variance.

22 Obviously, it is a very definitive aspect.
23 Relief is granted for a certain percentage of
24 dimension. How do we let that kind of be a blanket
25 approval, which we have not done in the past, although

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1 we have allowed for flexibility. I think it has been
2 addressed clearly by the applicant that any changes
3 would not impact the relief sought, but obviously
4 would need to have some latitude in developing the
5 materials or any other sort of design aspects to it.

6 I noted that you had indicated that it was
7 going through Historic Preservation. It did get
8 conceptual approval, which is in the record, and then
9 it was delegated to work with staff. Is that correct?

10 MS. BROWN-ROBERTS: That's correct.

11 CHAIRPERSON GRIFFIS: So it is your
12 understanding that it is not going back before the
13 Board for final approval?

14 MS. BROWN-ROBERTS: Right. That is
15 correct.

16 CHAIRPERSON GRIFFIS: Excellent. Okay.
17 Good. Any other questions from the Board? Does the
18 applicant have any cross-examination of the Office of
19 Planning? No cross? Does the ANC have any questions
20 of the Office of Planning? Questions? Yes, do you
21 have any cross? Okay. Excellent. Nothing further.
22 Thank you very much.

23 MS. BROWN-ROBERTS: You're welcome.

24 CHAIRPERSON GRIFFIS: As usual, a very
25 comprehensive report.

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1 Let's go on to -- Well, there it is.
2 Let's move ahead. We have indicted the historic -- I
3 don't have any other government reports attendant to
4 the application that haven't already been noted.
5 Unless anyone else is aware of any, we can move on to
6 the ANC then and have them present their case. Good
7 morning, Ms. Tyler.

8 MS. TYLER: Good morning.

9 CHAIRPERSON GRIFFIS: Just touch the base
10 there somewhere. It's toward the center. Try it in
11 the center. Oh, there it is.

12 MS. TYLER: Thank you, Mr. Chairman.
13 Actually, we don't have a prepared statement, but our
14 ANC resolution, I hope, has been received by all of
15 you, including the agreement with the church attached
16 to it.

17 CHAIRPERSON GRIFFIS: Absolutely has.

18 MS. TYLER: I will only like to say that
19 we consider -- just to repeat one of the paragraphs in
20 the resolution, that we consider that the variances
21 required, while there are four, there are actually
22 moderate in scale, and the overall church compound --
23 We are under the impression, based on our discussions
24 -- we had extensive discussions and friendly
25 discussions with the church, and very responsive

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1 reactions from Father Sloane and his co-workers -- we
2 had the impression that this would enhance our
3 historic corner in Snow's Court, the improvements.

4 Already the church has bought the building
5 at 2422 on K Street, which was quite dilapidated and
6 very badly used in the back where an extension is
7 planned. It was really an eyesore. Now it is clean,
8 and we hope that all of that is going to be -- you
9 know, the church will continue with that effort.

10 In the front, it has already been nicely
11 repainted. It is a beautiful historically
12 contributing building and, really, it was the
13 acquisition of that building that triggered this new
14 approach. The old approach you never received, but
15 the HPRB had received it and had approved the old
16 approach. But the old approach did not include the
17 2422 building and all the elements that Mr. Alexander
18 outlined.

19 Now in our resolution we -- well, we
20 support the application of the church, and we also ask
21 the BZA to please kindly include the agreement, which
22 is an important part of our exercise.

23 May I, Mr. Chairman and members of the
24 Board, just briefly say why this is so important.
25 First of all, the overlay mentions the open spaces,

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1 and there is a beautiful open space to the west of the
2 church which the church has always worked on in terms
3 of landscaping. The church now agreed to enhance this
4 landscaping.

5 It is wonderful to have that lovely space
6 in our small little historic jewel, as we call it,
7 because we are surrounded by these humongous
8 highrises, and the overlay was specifically, as stated
9 in the chapter on the overlay, was specifically
10 established and the efforts toward the overlay
11 specifically established in order to stem this
12 onslaught of the highrises, and to keep our little
13 neighborhood, unique neighborhood.

14 I have even met somebody from North
15 Dakota, a doctor who was here on assignment for the
16 Federal government, and he said how does the
17 neighborhood maintain this wonderful -- and he used
18 the word unique neighborhood. He looked at these --

19 CHAIRPERSON GRIFFIS: So there it is.
20 Bang the gavel. South Dakota has ruled. So you are
21 talking about the open space that they have now done
22 that you have now kind of described as this little
23 jewel among this canyon of buildings.

24 MS. TYLER: We know the whole thing is a
25 little jewel.

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1 CHAIRPERSON GRIFFIS: But let's talk
2 specifically about the open space, because you brought
3 that up, and you have indicated that they have
4 landscaped it. They use that space, do they not?

5 MS. TYLER: To the west. They were going
6 under the old proposal to have an addition to the
7 church on the west. That is not happening. But the
8 open space -- Excuse me, Mr. Chairman. The open space
9 that you refer to existed there, has existed there,
10 continuously existed.

11 CHAIRPERSON GRIFFIS: All right. Does the
12 church use it?

13 MS. TYLER: Previously?

14 CHAIRPERSON GRIFFIS: Do they use it now,
15 the open space?

16 MS. TYLER: No. Right now it is kind of
17 in a no-man's land. It is left -- You know, the
18 landscaping has been -- The limited but beautiful
19 landscaping has been discontinued at the moment, and
20 it was really done by a neighbor of the church. But
21 now the church undertook to do an enhanced landscaping
22 on that area. So that's the answer to that.

23 CHAIRPERSON GRIFFIS: Hold on a minute,
24 because I don't think I know what you are talking
25 about. Orient me here. The church faces K Street.

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1 Correct?

2 MS. TYLER: Yes.

3 CHAIRPERSON GRIFFIS: So if you are
4 standing on K facing the church --

5 MS. TYLER: Then it is to the right.

6 CHAIRPERSON GRIFFIS: To the right? And
7 you are saying that that is kind of no-man's land.

8 MS. TYLER: Well, at the present time,
9 because the landscaping has been discontinued. But it
10 is an open space, green, and it has a public path
11 throughway, pedestrian throughway, and it is just an
12 open space which our overlay specifically mandates the
13 open spaces to be preserved.

14 So we are very conscious of that, since
15 there is so much overbuilding in our city.

16 CHAIRPERSON GRIFFIS: Applicant's Exhibit
17 G -- can you see this, Ms. Tyler?

18 MS. TYLER: I think that is it. No,
19 that's it.

20 CHAIRPERSON GRIFFIS: I'm sorry, you can't
21 see it ?

22 MS. TYLER: Well, it's because of my eyes.

23 CHAIRPERSON GRIFFIS: No, I understand
24 that. It's a small photograph. I can hardly see it.

25 However, I just wanted to make clear what -- Oh,

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1 there it is.

2 MS. TYLER: Oh, yes, that's it.

3 CHAIRPERSON GRIFFIS: That's it?

4 MS. TYLER: Yes.

5 CHAIRPERSON GRIFFIS: Okay. So this is,
6 in your opinion, the ANC's opinion, not properly
7 landscaped. Is that correct?

8 MS. TYLER: At the present time, it is --

9 CHAIRPERSON GRIFFIS: That's okay. I just
10 need quick answers to this. It's a fairly simple
11 question. Does the church use it? Do people spill
12 out over there? Do they have anything, baseball
13 games, rugby?

14 MS. TYLER: No. Well, sometimes --

15 CHAIRPERSON GRIFFIS: Cricket -- now
16 there's something. Croquet?

17 MS. TYLER: -- the little boys --

18 CHAIRPERSON GRIFFIS: Have you ever seen -
19 - It's just your opinion. Just your kind of knowledge
20 of things, have you ever seen people out there on
21 Sundays or whenever they have services?

22 MS. TYLER: Very infrequently.

23 CHAIRPERSON GRIFFIS: Very infrequently.
24 Okay. Now what is your concern, and what is this new
25 landscaping going to look like?

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1 MS. TYLER: Well, that has not been
2 specified, but --

3 CHAIRPERSON GRIFFIS: But what are you
4 trying to get? Somehow you have an agreement. They
5 are going to do re-landscaping.

6 MS. TYLER: We are trying to get perhaps
7 evergreens, perhaps flowers.

8 CHAIRPERSON GRIFFIS: So you want more
9 border of green?

10 MS. TYLER: Absolutely.

11 CHAIRPERSON GRIFFIS: Do you want to do
12 away with the grass? Put gravel?

13 MS. TYLER: Well, to a limited extent.

14 CHAIRPERSON GRIFFIS: Do you want open
15 space?

16 MS. TYLER: To the extent that there will
17 be flowers or there will be bushes or there will be --
18 To that extent, that it will be useful landscaping,
19 yes.

20 CHAIRPERSON GRIFFIS: Let me try and
21 understand. If you can answer this, and maybe not,
22 your picture of what this is -- is this an open lawn
23 open space or is it --

24 MS. TYLER: At the moment.

25 CHAIRPERSON GRIFFIS: No, no, no. What do

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1 you want is what I'm asking. So is it open lawn,
2 green, or is it rose gardens with small paths?

3 MS. TYLER: For example, a rose garden
4 would be lovely, but we have not got -- We have
5 actually worked with the church rather well since the
6 arrival of Father Sloane.

7 CHAIRPERSON GRIFFIS: NO, no, I know, but
8 I'm just trying -- Ms. Tyler, I'm just trying to
9 understand. If we are going to get into this
10 agreement and all the negotiations, I'm trying to
11 understand the big picture, the principles.

12 When you get in there and you sit down and
13 you say that open space is no-man's land, this is what
14 we want, you want to see what? You want to see
15 ornamental gardens? You want to see lots of flowers
16 and lots of shrubbery?

17 MS. TYLER: Absolutely. Mr. Chairman, our
18 area has many ornamental gardens in front of these
19 little houses.

20 CHAIRPERSON GRIFFIS: Right. So that's
21 what you want. More of that?

22 MS. TYLER: And more of this. Some of
23 them are English gardens. One of them is an English
24 garden. Some of them are just, you know, local
25 plantings, whatever, annuals and perennials.

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1 CHAIRPERSON GRIFFIS: So why don't all the
2 people that have those in their front yards that want
3 more space join the church and volunteer, do the --

4 MS. TYLER: Yes, with a lot of imagination
5 for beauty.

6 CHAIRPERSON GRIFFIS: You should never
7 invite me to these agreement negotiations. I'd be a
8 mess. Okay. I think I understand. You want
9 something a little bit more upgraded, let's say.

10 MS. TYLER; Yes, something that catches
11 your eye in terms of beauty.

12 CHAIRPERSON GRIFFIS: Yes. I do like
13 roses, actually. Okay. Excellent. What else can you
14 tell us?

15 MS. TYLER: Yes. The other thing is that
16 I want to make sure that -- I'm not entirely positive
17 that I saw it on the drawings -- that the back of the
18 newly acquired 2422 historically contributing building
19 on the south side, the important old residential
20 Snow's Court alley dwelling, which is very important
21 to us to maintain, because it is one of the oldest in
22 the -- is probably the oldest in the city.

23 CHAIRPERSON GRIFFIS: To maintain what?
24 What do you want to maintain?

25 MS. TYLER: From that building we would

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1 like to make sure that the design of the addition is
2 this one here, because I don't know --

3 CHAIRPERSON GRIFFIS: Have a seat. Just
4 hold it up. Just give me the sheet that you are
5 looking at.

6 MS. TYLER: Father Sloane gave this to me.

7 CHAIRPERSON GRIFFIS: I know. And the
8 bottom on the right side on the bottom, is that an A-
9 200?

10 MS. TYLER: A-200.

11 CHAIRPERSON GRIFFIS: Excellent. And that
12 is the current sheets that was given to you by the
13 applicant?

14 MS. TYLER: That was the one we agreed in
15 our discussions.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. ALEXANDER: That's what I'm talking
18 about. This is my canopy.

19 CHAIRPERSON GRIFFIS: I understand that.
20 But your concern is that they maintain that areaway,
21 that -- what do you call it, an alley? Is that --

22 MS. TYLER: No. Well, whether that is my
23 concern? No. We had no problems with it.

24 CHAIRPERSON GRIFFIS: Okay. Your concern
25 is that they just build it like it's shown?

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1 MS. TYLER: Exactly.

2 CHAIRPERSON GRIFFIS: Excellent. It looks
3 like, if it's approved, that is what it will be.

4 MR. ALEXANDER: It gives it a certain
5 texture. That shows a certain detail.

6 CHAIRPERSON GRIFFIS: Okay, excellent. We
7 will leave that to the preservationists to deal with.

8 MS. TYLER: And the second point is pages
9 3 and 8 of Shaw Pittman's submission referred to the
10 fact that -- you know, did not really specifically
11 refer to the overlay. That is our big, big positive
12 aspect of our -- and our defense against any kind of
13 intrusion, but it referred to the big buildings that
14 are surrounding and, therefore, the variances are not
15 so important.

16 CHAIRPERSON GRIFFIS: And you got the
17 correction. We had a correction that was put into the
18 file --

19 MS. TYLER: You did?

20 CHAIRPERSON GRIFFIS: -- of the
21 characterization of the neighborhood.

22 MS. TYLER: But it still should make it
23 specific, and so many -- It's called Foggy Bottom
24 Overlay District. It is not FB/R3. It is the
25 Overlay, because the Overlay is more than R3. It has

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1 such a beautiful -- I mean, Office of Zoning did a
2 wonderful job on that text and the provisions, because
3 it is --

4 CHAIRPERSON GRIFFIS: Okay. We understand
5 that. Just so you know, obviously --

6 MS. TYLER: For future also, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Indeed. Okay.
8 Let's move on. Tell me very briefly what the concern
9 was with this canopy that covers the ramp.

10 MS. TYLER: Oh, well, only that it was
11 just -- When we addressed the facade of the building,
12 only that this canopy is -- it would be -- As I
13 already mentioned, Snow's Court is an old -- the
14 oldest historic --

15 CHAIRPERSON GRIFFIS: It doesn't fit into
16 the neighborhood?

17 MS. TYLER: It just doesn't. It is an
18 addition to --

19 CHAIRPERSON GRIFFIS: Do you think there
20 is a way that it might fit in? Have you ever seen
21 anything that --

22 MS. TYLER: Why do we need this thing?

23 CHAIRPERSON GRIFFIS: So people don't fall
24 and break their necks in the rain and snow.

25 MS. TYLER: Oh, well. I mean, we can have

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1 an umbrella. I can't walk in the rain.

2 CHAIRPERSON GRIFFIS: I like that
3 fortitude, absolutely. Actually, we don't even need a
4 ramp. They could kind of jump up four feet.

5 MS. TYLER: Yes, but that is required by
6 the ADA, but you know, we can't change that.

7 CHAIRPERSON GRIFFIS: Indeed. Building
8 codes require that.

9 MS. TYLER: But we have failed to advance
10 a lot. We have failed it in the context of 7/11. You
11 remember the 7/11 that we have, and we know how to
12 camouflage them.

13 CHAIRPERSON GRIFFIS: Let me ask you this.
14 Do you have any sort of confidence that the Historic
15 Preservation staff would be able to work with
16 designing the canopy?

17 MS. TYLER: Your questions are wonderful.

18 CHAIRPERSON GRIFFIS: Pardon me?

19 MS. TYLER: Your questions are wonderful.

20 CHAIRPERSON GRIFFIS: Oh, thank you.

21 MS. TYLER: Any confidence that it will
22 really -- they could really involve us more, but at
23 the same time --

24 CHAIRPERSON GRIFFIS: But the specific
25 question is: Historic Preservation staff has to

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1 approve the design.

2 MS. TYLER: I know.

3 CHAIRPERSON GRIFFIS: You don't have
4 confidence as to that process that a design would come
5 up that would be as pleasing?

6 MS. TYLER: Well, I don't want really to
7 incriminate myself.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. TYLER: But at the same time, we
10 didn't have that much difficult, but we had
11 difficulties previously. I can tell you that. I
12 mean, we had some pretty horrible things come up
13 through this exercise. But --

14 CHAIRPERSON GRIFFIS: Okay. And the other
15 concerns, obviously, were parking and construction
16 issues.

17 MS. TYLER: Well, it is the parking and
18 the traffic, because we did not want these humongous
19 construction trucks that everybody knows, D.C. is full
20 of them now, to go through our very narrow --

21 CHAIRPERSON GRIFFIS: I can listen, both
22 ears.

23 MS. TYLER: -- very narrow, historic
24 streets and, importantly, through our very narrow
25 alleyway. The alleyway is 15 feet wide, and it

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1 blocks, and it is the only exit and entrance for all
2 the houses that have to get in, in order to go to
3 their homes.

4 So that's what we wanted to avoid, and it
5 would have been extremely disruptive. So that is why
6 we -- it was the most difficult part, because it was
7 the contractor or whatever he was, the project
8 manager. It was not Father Sloane. With Father
9 Sloane, everything else went fine. But in any case,
10 we --

11 CHAIRPERSON GRIFFIS: We don't mind
12 blaming it on the contractors.

13 MS. TYLER: Oh, God, please don't mention
14 that.

15 CHAIRPERSON GRIFFIS: Indeed. Okay. I
16 think it is fairly clear, all the other aspects, this
17 first thing in your agreement. Let me make -- Well,
18 are there any other questions from the Board? Yes?

19 VICE CHAIRPERSON MILLER: I just have a
20 couple of questions. One is I just want to clarify.
21 The open space that you were talking about that is
22 going to be beautified -- that's open to the public?

23 MS. TYLER: Yes. That is a passageway.
24 The one that you see on this photograph that the
25 Chairman found -- that passageway is public, and it is

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1 really very nice when you see these flowers. I mean,
2 people do admire it.

3 Also these little houses here -- Well, one
4 of them is the rectory, and then there are little
5 townhouses where residents live, not students. I
6 mean, they are beautiful little gems, these houses,
7 and it's just -- It will complement it so well if we
8 have beautiful landscaping.

9 VICE CHAIRPERSON MILLER: Okay. My other
10 question is: It sounds like you have worked out a
11 great agreement with the applicant, and you have a
12 wonderful relationship. My question is to what
13 extent--

14 MS. TYLER: And with Father Sloane.
15 Before that, it was terrible.

16 VICE CHAIRPERSON MILLER: Okay. Whether
17 you think it is necessary to have any of the
18 conditions in a BZA order, since you have this
19 agreement.

20 MS. TYLER: Well, we had references to
21 neighborhood agreements with builders before, and I
22 think you never know. I hope that Father Sloane lives
23 forever, but you never know whether he will not be
24 sent someplace else. In addition, it is just
25 professionally a better way to go, to have that

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1 mentioned, at least mentioned, but it could be
2 attached, you know.

3 It is so much a part of the whole thing,
4 especially because of the mutual effort, the church
5 and ourselves, the residents, of trying to improve the
6 Snow's Court residential alley system, which DOT is
7 still dragging their feet, but we will get them.

8 CHAIRPERSON GRIFFIS: Anything else? Any
9 other questions? Excellent. Ms. Tyler, thank you
10 very much. You are very comprehensive.

11 MS. TYLER: Thank you.

12 CHAIRPERSON GRIFFIS: And we appreciate
13 you taking the time to present it to us.

14 Well, Ms. Tyler, make yourself comfortable
15 again. We can move on, but I want to just -- please
16 have a seat. I want to just make a quick statement
17 that I know is more of a refreshing to the Board, but
18 I think it is important to say in this case, as Ms.
19 Miller has kind of started walking into in looking at
20 this agreement.

21 One of the difficulties the Board has had
22 in the past has been incorporating aspects that go
23 well beyond their jurisdiction and authority, and what
24 makes it cumbersome is that there seems to be a
25 certain reliance, a public reliance, on the fact,

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1 because it is in a zoning order, that it is somehow
2 enforceable either by this Board or by the DCRA or
3 other aspects to it.

4 I think the current Board has taken great
5 pains to go through and make sure that anything that
6 is attached as enforceable conditions be that, be
7 measurable, understandable within our jurisdiction and
8 authority and, therefore, enforceable.

9 Conditions that relate to construction
10 have been found not to relate directly to the aspects
11 of certain pieces of variance tests or the zoning
12 relief. In terms of parking, we can go into it more
13 specifically with this case, if required, but it has
14 obviously been given -- the point being that this,
15 being in a historic district, historic structures,
16 that the parking would not be required and, therefore,
17 we are not actually even being asked for relief for
18 parking.

19 Now more importantly, I must say, is that
20 the Board absolutely supports these types of
21 agreements, and certainly the communication that comes
22 out of them. If we condition something, you know,
23 more like a special exception but let's say in a
24 variance, it has to arise out of something that we are
25 offsetting, so that it might ensure that there

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1 wouldn't be any sort of undue burden, be it light or
2 loss of air or anything of that nature.

3 So that the condition actually goes to
4 mitigate any potential for adverse effect. A lot of
5 these -- and I'm making very general statements, but I
6 think they relate somewhat to this. The landscape,
7 although we applaud it and I think everyone here would
8 support it, in fact, we would probably start picking
9 the landscaping elements this afternoon if we had
10 time. But the point being, what is it actually
11 addressing? What is it actually mitigating?

12 So the fact that there is this agreement
13 is absolutely excellent, because we can have insurance
14 and you can have insurance.

15 Then lastly, so not to belabor this and we
16 can move on, if it was something that was adopted by
17 this Board -- and I speak for myself as my opinion on
18 this case now -- I would not support adopting this in
19 whole into the order; because if it was, I think it
20 then again creates a false reliance from the public or
21 a false insurance that somehow it would be more
22 enforceable.

23 I think that you will run into much more
24 cumbersome and much more inefficient process if one
25 was to rely on the land use process to enforce certain

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1 aspects of construction or even the landscaping
2 aspects. And actually, if we were going to do it --
3 To get specific with this, if we were going to put
4 something into this order in terms of the landscaping,
5 I need to see a landscape plan. I need to see every
6 single plant that is going to go in there, where it is
7 going to go in. Otherwise, what are we actually
8 looking at?

9 Now in an agreement, it is absolutely
10 appropriate to do that, because you folks have an
11 understanding and have the communication and can have
12 the day to day back and forth. For us, it would have
13 to fit within our procedures, and most of the aspects
14 of this do not.

15 Okay. With that, that is -- Well, okay,
16 very quickly, Ms. Tyler. You are going to have to
17 come back up then and sit down and talk into the
18 microphone.

19 MS. TYLER: Mr. Chairman, thank you. I do
20 understand your reasonings. The one thing is we
21 probably misstated the paragraph conditions relating
22 to construction. It is true in the broad sense, but
23 really it was relating to traffic.

24 We were afraid that these small houses --
25 they are truly 15 feet and tiny houses -- that they

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1 would be damaged by this. Don't you think --

2 CHAIRPERSON GRIFFIS: I do. I absolutely
3 agree with you, and you are absolutely right. If
4 there's any sort of damage that happens to the
5 adjacent properties, it ought to be alleviated. There
6 are regulations, codes, and an entire agency that
7 deals with that.

8 It's like -- It is beyond our
9 jurisdiction. There is nothing we could do about it.

10 MS. TYLER: Yes.

11 CHAIRPERSON GRIFFIS: Even if we said we
12 are going to do it.

13 MS. TYLER: Mr. Chairman, I understand.
14 Now there was a precedent in our case, at least one
15 that I remember, but there probably have been many,
16 that the BZA referenced in their order in the case of
17 the Seven-Eleven an agreement and just said that --

18 CHAIRPERSON GRIFFIS: I don't see any
19 difficulty in possibly referencing things.

20 MS. TYLER: Yes. In the text. Thank you.

21 CHAIRPERSON GRIFFIS: Fully
22 understandable. Excellent. Thank you.

23 MS. TYLER: Thank you very much.

24 CHAIRPERSON GRIFFIS: Ms. Miller?

25 VICE CHAIRPERSON MILLER: I was just going

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1 to add that I would think it would be appropriate to
2 reference it. It is in the record.

3 CHAIRPERSON GRIFFIS: Right.

4 VICE CHAIRPERSON MILLER: And, clearly, we
5 can cite that.

6 CHAIRPERSON GRIFFIS: Excellent. Okay,
7 anything further? Very well. We have heard from
8 government reports, also the ANC. Let me ask for
9 anyone here present today to give testimony either in
10 support or opposition of application 17220 of St.
11 Paul's Parish. Any persons present? Indeed. Very
12 well.

13 Let's move to any closing remarks.

14 MS. PRINCE: Briefly, this application
15 satisfies the three parts of the variance test. The
16 property really is unusual, not only because of its
17 historic status but because of the interrelationship
18 among the buildings and the need for variances created
19 as a result of that relationship, and the
20 nonconformity of all the buildings, because they are
21 all pre-'58, and conditions such as the nonconforming
22 side yard on the easternmost townhouse are
23 specifically what give rise to the need for the
24 variance in just being able to extend that townhouse
25 to the rear, as we have.

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1 So I believe that the test has been met.
2 There are clearly practical difficulties, and I just
3 want to note, as Chairman Griffis alluded to earlier,
4 the church really is a public service entity and is
5 entitled to a slightly lesser standard in cases of
6 this nature.

7 CHAIRPERSON GRIFFIS: And that arises out
8 of Gilmartin. Is that right?

9 MS. PRINCE: Correct. The Gilmartin case.

10 CHAIRPERSON GRIFFIS: I'm learning my
11 cases, Ms. Miller.

12 MS. PRINCE: I thought it was an excellent
13 point that was raised with respect to the reference to
14 the ANC agreement. We have every intent to honor it.
15 If it were memorialized somehow in the order, I think
16 that would heighten everyone's awareness of the
17 agreement, and we would be pleased to see a reference
18 to it in the order.

19 We would also appreciate your expedited
20 processing of this application. It has been a long
21 time coming. These plans have been on the books for
22 many years, and the church at this point is anxious to
23 proceed.

24 Thank you for your time this morning.

25 CHAIRPERSON GRIFFIS: Well, let me ask

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1 you. I mean, the most expedited process for this, if
2 it was to move ahead for the approval, would be a
3 summary order.

4 MS. PRINCE: Yes.

5 CHAIRPERSON GRIFFIS: Well, then there is
6 no reference to any sort of agreement.

7 MS. PRINCE: A summary order could simply
8 reference the ANC's support and the existence of the
9 agreement. That could be done in the context of a
10 summary order.

11 CHAIRPERSON GRIFFIS: Okay. Good.
12 Questions? Follow-ups? Board members?

13 VICE CHAIRPERSON MILLER: I just wonder if
14 you could just elaborate a little bit more on the
15 uniqueness part with respect to the fact that it is
16 nonconforming, why that makes it unique.

17 MS. PRINCE: Well, all of the buildings
18 are pre-'58. So they were constructed at a time where
19 many of the requirements that we are now faced with
20 simply didn't exist. The existing church building
21 occupies a substantial percentage of its lot, and even
22 when combined with the other two rowhouses which don't
23 occupy a substantial percentage of their lot, we have
24 a net lot occupancy of 60 percent.

25 Well, that condition results in a

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1 situation where we can't even add a covered walkway to
2 the property without necessitating variance relief.
3 So it is really the combination of the nonconformity
4 of the church, but also the manner in which the church
5 has grown over the years through the acquisition of
6 the adjacent properties and the interrelationship
7 among the three that results in a fairly unique
8 condition when you look at the rear lot line, the lot
9 occupancy, the side yards, the quirky little court
10 created. It really is one of those cases where I
11 believe the property is unusual above and beyond
12 historic reasons.

13 CHAIRPERSON GRIFFIS: Anything else?

14 VICE CHAIRPERSON MILLER: I guess I also
15 just want to clarify. Is it true that the building as
16 expanded with the other properties couldn't comply
17 with the building code today without the variances?

18 MS. PRINCE: Correct. The variances are
19 absolutely required to allow the building to comply
20 with the code.

21 CHAIRPERSON GRIFFIS: Okay. If there are
22 no other questions from the Board, then I think it is
23 appropriate -- the record is full on this -- that we
24 move forward under a motion and go directly to
25 deliberation.

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1 I would move approval of application
2 17220, St. Paul's Parish, for the lot occupancy
3 variance, the side yard variance, the variance under
4 2001.3, and also under the Foggy Bottom Overlay
5 section, which is under Chapter 15, 1523.1, I believe,
6 and ask for a second.

7 BOARD MEMBER ETHERLY: Seconded.

8 CHAIRPERSON GRIFFIS: Thank you, Mr.
9 Etherly, very much. I think the record is entirely
10 full, but let me summarize. First of all, we were
11 provided in terms of the area variance for the
12 uniqueness, and there are several aspects to the
13 uniqueness.

14 First of all, as Ms. Prince has just
15 restated, the fact that they are existing
16 nonconforming buildings makes them unique in that
17 standing, in addition to the aspect of being in a
18 historic district.

19 I will note the court cases that were
20 actually given to us in their written submissions.
21 Gilmartin has been mentioned. There was another one
22 that I can't put my finger on that talked about the de
23 minimis nature of the requested relief that should be
24 taken into account.

25 One of the aspects that uniqueness

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1 establishes, especially in Gilmartin and the Public
2 Service, is to look at, not even in a historic
3 district, not even in nonconforming structures, but
4 independently on its own, the aspect of, if programs
5 change, requirements change or grow, how that can be
6 accommodated. There is, as the court has said in that
7 case, which may not be totally correct but we will
8 look at it today, the fact that we can take into
9 account a lesser burden in terms of the requirement
10 establishing the uniqueness aspect. It was certainly
11 there.

12 As we go into the practical difficulty
13 that arises out of all of those unique aspects, I
14 think it is very clear, on that really sets home in
15 terms of this being a public facility and looking at
16 accommodating and upgrading building code requirements
17 and accessibility, the Board is not unfamiliar with
18 this aspect, and this one certainly is very
19 straightforward.

20 The historic nature of the smaller size of
21 the structure, one can only -- and has been shown
22 actually in the architectural drawings -- see how
23 cumbersome it is to create the circulation.

24 Having two elevators in such a small
25 floorplan must tell you that there is something

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1 unique, and there must be some great practical
2 difficulty. It is money spent that wouldn't
3 necessarily need to be spent but, obviously, we have
4 differing floor levels. We have differing access
5 points. We have differing uses in the building, all
6 arising out of essentially the public service nature,
7 but also the unique aspects of the land and the siting
8 of the property and the fact of the differing massings
9 of the structure.

10 I would go to -- because I think that we
11 can have great reliance on the applicant's submission,
12 also the Office of Planning's report that lays it out
13 even more completely, but let's go to the 1523.1,
14 which is, of course, the purposes of the Foggy Bottom
15 Overlay District, noting that FB is also the acronym
16 that is used on the zoning text map, so it doesn't get
17 covered with writing. You can actually see it.

18 So if you look at the Foggy Bottom
19 requirements, it is to protect the integrity of the
20 historic district. That is very important. It is
21 obvious, the character of this area. I think it has
22 been sufficiently, graphically represented today that
23 it would, in fact, not only protect the integrity, but
24 might even enhance, as actually the ANC's own
25 testimony said that they had purchased a structure

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1 that was falling into disrepair and needing more
2 attention. It looks as though this project will
3 encompass that, preserving areas that are planned as
4 open areas and backyards and such as that nature.

5 We haven't seen anything here in this
6 application that reduces any of those open spaces.
7 That seems to be the intent of the overlay district.
8 In fact, there has been good testimony of the open
9 yard, which is probably a side yard or whatever it is
10 specifically, but the open area that I can imagine
11 might well accommodate a nice wedding reception on a
12 beautiful summer day with the new rose bushes that
13 will be growing.

14 Then, of course, the enhancing of the
15 human scale of the area, which again is a major
16 concern of the ANC. Perhaps you were involved in
17 writing this. But certainly, nothing has, in fact,
18 moved it out of -- or has not created an aspect that
19 would move it out of any sort of human scale.

20 Obviously, with the historic district or
21 the historic nature of these buildings, it is not able
22 to -- or it is not being proposed to increase height
23 or increase the serious mass of it. The human scale
24 is well kept within the reality of what the intent of
25 the overlay is, and the reality of the buildings are

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1 themselves enhancing -- in the same aspect, enhancing
2 the landscape.

3 I think that it has not been evidenced, as
4 far as my understanding, that there has been a total
5 disregard to landscaping, but rather that there might
6 be even more attention to the landscaping that is
7 provided, which is part of the overlay district
8 requirements. I think that the agreement that the ANC
9 and the applicant have struck up will help them to
10 keep that to a higher level, and also keep the
11 communication open on what is appropriate and what is
12 best for the overall area and the specific applicant.

13 That is my summary, as I know it. Anybody
14 else? Ms. Miller?

15 VICE CHAIRPERSON MILLER: I concur with
16 what you said, and I just want to add a few things. I
17 think the case you were looking for might have been
18 Clerics of St. Beator, which is also cited in
19 applicant's written submission at 7, which talks about
20 variances for changing program needs of an
21 organization, that that might contribute to
22 uniqueness.

23 I think this case is also one of those
24 confluence of factors mentioned in Gilmartin. We've
25 got historic buildings and buildings that predate the

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1 zoning code, and I thought it was pretty compelling
2 where Office of Planning said that the prohibition of
3 expansion by the regulation would preclude the ability
4 of the church to meet the needs of the neighborhood.

5 I would also like to make sure that we
6 specifically reference that ANC-2A supports the
7 application in light of the agreement, which is
8 entitled "Agreement Between St. Paul's Episcopal
9 Church and ANC-2A Regarding Conditions Covering
10 Traffic, Parking, Landscaping, and Other Conditions to
11 Beautify the Church and Its Surroundings." It is in
12 the record attached to Exhibit Number 29, which is the
13 ANC report.

14 Then the only other issue I have, I just
15 want to make sure we don't forget, is the question of
16 flexibility.

17 CHAIRPERSON GRIFFIS: Good. I'm glad you
18 bring that up. In terms of the motion that is before
19 us, if so approved, I would ask if it was a consensus
20 of the Board to allow flexibility. What the applicant
21 -- There's two aspects to this that I want to propose.

22 One is from the applicant that is
23 indicating that anything that changed within the
24 requested relief, obviously, would have to come back,
25 but the flexibility in terms of the final designs and

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1 materials -- I think none of that impacts any of the
2 areas of relief granted.

3 So I think that is an easy flexibility.
4 I'm not even sure we need to grant it. But,
5 nonetheless, I would move a little bit further and
6 just grant -- or ask the Board's opinion of allowing
7 flexibility for the canopy structure in the back, not
8 that they would do it, not that we are saying they
9 have to do it, but if it was needed any sort of cover,
10 maybe it's not the full extent, maybe it is a part of
11 it, maybe it is just at the top or something of that
12 nature that would allow what looks like at 140 square
13 feet anywhere from five to ten feet in length or 15
14 feet in length. It looks to be very de minimis in
15 terms of the percentage of lot occupancy which it
16 would involve, but I would hear from opinions on that.

17 One thing I don't want to see is having
18 some sort of code requirement that is running amok
19 with the historic preservation and, all of a sudden,
20 someone needs to make a decision. So they are either
21 back here or they are getting a building code waiver
22 or they are spending 100 grant to heat the darn thing,
23 you know, whatever it is. Mr. Mann?

24 BOARD MEMBER MANN: Mr. Chairman, did you
25 have a time limit in mind on this canopy? Would it

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1 have to be part of the construction drawings that were
2 submitted to get building permits or would you allow
3 the flexibility to do this two years from now after
4 construction is done?

5 CHAIRPERSON GRIFFIS: No, I think that
6 this would run with -- Well, that's an interesting
7 point. I don't know if there would be a time limit.
8 I mean, I thought it would run, obviously, with the
9 order, and the order would have to have a permit
10 pulled, and then so they would have to build it.

11 So I imagine it would be a permitted --
12 Maybe it wouldn't be. I don't know. Is that a
13 concern? Would you like an end date?

14 BOARD MEMBER MANN: I don't know if it is
15 a concern or not. I am just wondering how flexible we
16 can be with allowing them to do something that they
17 are not currently requesting.

18 CHAIRPERSON GRIFFIS: I see. Go ahead.

19 VICE CHAIRPERSON MILLER: I have a little
20 reservation as well, just because the ANC testified
21 about their being concerned about it, and I'm
22 wondering, is this something they can come back as a
23 request for minor modification?

24 CHAIRPERSON GRIFFIS: Absolutely, because
25 those are fast and easy and don't take much time.

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1 Okay. Well, I note that there isn't 100 percent
2 support on that, and so I won't continue on that
3 pursuit.

4 I think then it is standing in terms of
5 the flexibility, as we have talked about in terms of
6 the applicant and materials, any sort of slight design
7 changes that would be appropriate. Okay. Anything
8 else? Any other comments, deliberations?

9 Very well. We have a motion before us.
10 It has been seconded. Deliberation being complete, I
11 would ask for all those in favor to signify by saying
12 Aye. And opposed? Abstaining? Ms. Bailey?

13 MS. BAILEY: The Board has voted 4-0-1 to
14 approve the application. Mr. Griffis made the motion.

15 Mr. Etherly seconded. Ms. Miller and Mr. Mann are in
16 agreement. There is not a Zoning Commission member
17 present today, and the Board has voted to allow
18 flexibility to the applicant as long as the changes do
19 not alter the requested relief.

20 Secondly, Mr. Chairman, we are also making
21 reference in the order to the agreement between the
22 applicant and ANC-2A. Is that correct?

23 CHAIRPERSON GRIFFIS: Indeed. Unless
24 there is anything additional from the applicant or
25 Board members, we can waive our requirements and issue

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1 a summary order on this.

2 MS. BAILEY: Thank you, sir.

3 CHAIRPERSON GRIFFIS: Good. Now before we
4 go, in terms of, Ms. Miller, your comment in terms of
5 the applicant wasn't asking for the canopy -- Oh, I'm
6 sorry, Mr. Mann indicated. They actually were. The
7 original application was that. They decided to take
8 it out because of a community comment is more my
9 concern than anything else, and that is, look, the
10 Board can make its own judgment. We want to hear from
11 everybody else, but there is no reason why decisions
12 should be made before they get to us. They can be,
13 but they don't have to be, which is the only reason
14 why I thought it important to bring up.

15 Very well. Let's move ahead. Anything
16 else, procedural questions I can answer? Thank you
17 all very much. Ms. Tyler, thank you. It's always
18 good to see you.

19 Let's call the next case then.

20 MS. BAILEY: Application Number 17224 of
21 JPI Apartments Development LP on behalf of Father
22 Flanagan's Boys Home and others, pursuant to 11 DCMR
23 3103.2, for a variance from the lot occupancy
24 requirements under section 772, and a variance from
25 the residential recreation space requirements under

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1 section 773, to construct a five-story mixed-use
2 residential development, including residential units,
3 grocery store, and additional retail in the C-2-B
4 District at premises Pennsylvania and Potomac Avenues,
5 S.E.

6 The property is located in Square 1045,
7 Lots 132, 133, 134, 135, 136, 137, 834, 835, 838, and
8 839.

9 CHAIRPERSON GRIFFIS: Ready? Excellent.

10 MR. GLASGOW: Good morning, Mr. Chairman.

11 For the record, my name is Norman M. Glasgow, Jr. of
12 the law firm of Holland & Knight, appearing on behalf
13 of the applicant, JPI, for the property known as the
14 Boys Town site on Capitol Hill, Pennsylvania and
15 Potomac Avenues, S.E. in Square 1045.

16 Here with me today are Mr. Aaron Liebert
17 of JPI, developers of the project. Mr. Sami Kirkdil
18 is sitting at the end of the table. Mr. Abend Bezina,
19 Hageska Architects, is also in the audience in the
20 front row, and then Mr. Steven Sher, expert land
21 planning witness of Holland & Knight is also here
22 today.

23 Mr. Sher and Mr. Kirkdil are submitted as
24 expert witnesses. Mr. Kirkdil has been accepted
25 previously as a resident -- expert residential

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1 architecture before the BZA, but I do have copies of
2 his resume with me, if they are desired. I can go
3 ahead and submit one for the record.

4 CHAIRPERSON GRIFFIS: Yes, if you would.
5 Thank you.

6 BOARD MEMBER ETHERLY: Mr. Chair, as we
7 are pulling together some of the documents, I will
8 just note for the record that the subject property is
9 in my ANC, I believe ANC-6B, but I have not had any
10 discussions, nor have I attended any meetings of the
11 ANC relevant to this particular parcel. But I just
12 thought it would be important to note for the record
13 that I do live in the ANC which is affected here.
14 Thank you.

15 CHAIRPERSON GRIFFIS: Good. Thank you,
16 Mr. Etherly. Do Board members have any questions of
17 Mr. Etherly? Does the applicant have any objection to
18 Mr. Etherly taking part in this case?

19 MR. GLASGOW: No, sir.

20 CHAIRPERSON GRIFFIS: Is the ANC
21 represented today? Anyone here from the ANC-6B? Do
22 you want to put that into the record? It looked to me
23 that that was a request for party status? If you
24 wouldn't mind, don't go too far. Can you come up for
25 two seconds? Have a seat right at the table, right

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1 next to Mr. Glasgow. Can you state your name and
2 address for the record?

3 MS. HUMPHREY: Yes. My name is Sarah
4 Humphrey. My address is 1379 Potomac Avenue, S.E.

5 CHAIRPERSON GRIFFIS: Thank you. And you
6 just put in an application for party status?

7 MS. HUMPHREY: Yes.

8 CHAIRPERSON GRIFFIS: Let me ask you a
9 direct question. Do you understand the difference
10 between being a person giving testimony and acquiring
11 party status?

12 MS. HUMPHREY: No, I do not.

13 CHAIRPERSON GRIFFIS: Okay. Party status
14 is a full participant in a case. You see how all
15 these gentlemen are up here. They are about to
16 present their case and witnesses. If you are granted
17 party status, you present a case. You call witnesses.
18 You also cross-examine their witnesses, and they
19 cross-examine your witnesses.

20 As a person to give testimony, this is a
21 public forum. Anyone can come forward and give
22 testimony. Which level are you interested in
23 pursuing?

24 MS. HUMPHREY: Just giving testimony.

25 CHAIRPERSON GRIFFIS: Indeed. I thought

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1 so. Very well. We are going to call you up. What we
2 will do is we will go through the applicant's case
3 presentation. Then we will go through government
4 reports, ANC, and then I am going to call you up. So
5 we should get you out of here in time for lunch.
6 Thank you. I didn't say what time for lunch, but we
7 will have lunch. Okay. Where were we? Oh, yes.

8 We have two requests for expert witnesses.

9 Is that right?

10 MR. GLASGOW: Yes, Mr. Sher and Mr. Sami
11 Kirkdil.

12 CHAIRPERSON GRIFFIS: Okay. Any questions
13 of Mr. Kirkdil? Any objections? I think we take them
14 both, an expert witness in architecture and also in
15 land use planning.

16 MR. GLASGOW: Thank you. I wanted to
17 confirm with the Board members before proceeding with
18 a brief opening statement that the Board has received
19 the statement of the applicant in support, the letters
20 in support from ANC-6B, from the Capitol Hill
21 Restoration Society, and the letter in support from
22 Council Member Ambrose.

23 CHAIRPERSON GRIFFIS: Yes. We received
24 Ambrose this morning, and all the others were in the
25 record and have been read.

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1 MR. GLASGOW: Thank you. In proceeding
2 with this case, the applicant and its representatives
3 have been to several meetings with the community and
4 with the Council member, and has received wholehearted
5 support from the Capitol Hill community and the ANC on
6 this project.

7 The applicant is proceeding before you
8 today to request variances from the percentage of lot
9 occupancy and the residential recreation space
10 requirements of the C-2-B District.

11 This case represents an opportunity to
12 develop -- redevelop a long under-utilized site at a
13 critical location near a Metro station with a
14 significant residential project containing 247
15 dwelling units and a grocery store for an underserved
16 community.

17 The subject lot has a very large size,
18 over 95,000 square feet, and is almost triangular in
19 shape.

20 With respect to the percentage of lot
21 occupancy variance, the applicant notes that this is a
22 very technical area of relief, and is caused by the
23 mixing of residential and commercial uses on the
24 ground floor.

25 The ground floor has a lot occupancy of

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1 approximately 96 percent, whereas 100 percent lot
2 occupancy would be permitted if only the grocery store
3 and retail uses were located on the ground floor. The
4 upper floors where residential dwelling units are
5 located has a 72 percent lot occupancy, which is well
6 within the regulation.

7 Mixing the two uses and maintaining the
8 ability and flexibility to potentially convert the two
9 existing townhouses along Pennsylvania Avenue to
10 residential use and the location of residential
11 recreation space on the ground floor are what
12 necessitate the variance relief.

13 The applicant submits that the Statement
14 of Applicant at pages 3 to 5 and the report of the
15 Office of Planning adequately state the rationale for
16 the granting of the variance relief and how the three-
17 prong test is met.

18 With respect to the residential recreation
19 space requirement, the applicant is providing over
20 22,000 square feet of residential recreation space out
21 of a requirement of approximately 40,000 square feet.

22 A review of the site plan will show the
23 extensive outdoor residential recreation space
24 provided in the interior courtyard which is
25 approximately 17,000 square feet. There are also roof

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1 terraces located at various locations, as will be
2 explained by the architect.

3 The project also provides approximately
4 5,000 square feet of residential recreation space
5 within the building, composed of passive recreation
6 areas in the expansive lobby and a community room, and
7 amenity spaces for the residents.

8 Once again, the applicant's statement and
9 the Office of Planning report provide the
10 documentation as to how the granting of the relief is
11 in compliance with the test under the regulations.

12 Lastly, we did note the condition that was
13 suggested by the Office of Planning, which has to do
14 with the use of the loading berths. Consistent with
15 the Chairman's statement in the last case, that
16 condition really didn't go to mitigating any of the
17 relief requested under the regulations in this
18 application.

19 We are in the large tract review process,
20 and we have no objection to having a rush hour
21 limitation, the PM rush hour, which is 3:30 to 6:30
22 P.M. But we can discuss that with DDOT and with the
23 Office of Planning as we continue with the processing
24 of our large tract application, but we don't
25 necessarily agree with Office of Planning that it is

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1 an appropriate condition for this application.

2 Then there was also a comment concerning
3 the access to the Metro station, and we are not aware
4 of any particular problem as there are crosswalks
5 between this site and the Metro station, and the
6 intersection at Pennsylvania is a signalized
7 intersection, and the block of 19th Street between
8 Pennsylvania Avenue and G Street travels one way south
9 and does not appear to be heavily trafficked. But
10 that -- I'm sorry, 14th Street.

11 So we are -- and we are not sure, once
12 again, what that has to do with the application here,
13 but we will be talking with DDOT and OP about that
14 during the large tract process.

15 If there are no preliminary questions, I
16 would like to proceed with the testimony of the
17 witnesses.

18 CHAIRPERSON GRIFFIS: Some preliminary
19 questions. First of all, for the Board's
20 understanding what is large tract very succinctly?

21 MR. GLASGOW: All right. The large tract
22 review applies in this particular case. There are
23 several ways that you can go under the large tract
24 review process, but in this particular case it is
25 because we are going to have over 50,000 square feet

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1 of commercial use in a commercial zone, which is not
2 exempted as being C-3-C, C-4, C-5.

3 CHAIRPERSON GRIFFIS: It is another review
4 by the Office of Planning?

5 MR. GLASGOW: Yes. The Office of Planning
6 is the lead agency. They sent it through the Fire
7 Department, through DDOT, and there are several other
8 agencies.

9 CHAIRPERSON GRIFFIS: So there are tract
10 studies that have to be submitted with that. Turning
11 radiuses that have to be submitted with that?

12 MR. GLASGOW: Yes.

13 CHAIRPERSON GRIFFIS: And then is there
14 community involvement in that?

15 MR. GLASGOW: Yes. There is a community
16 meeting that is required.

17 CHAIRPERSON GRIFFIS: Okay. That is a
18 whole other kind of review and approval process?

19 MR. GLASGOW: Yes. It is a whole other
20 process.

21 CHAIRPERSON GRIFFIS: I see. And they are
22 looking at these issues. Now what happens if you
23 don't go through large tract or don't get approved in
24 large tract?

25 MR. GLASGOW: If we don't get approved in

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1 large tract, I guess the applicant has two choices.
2 One, I have never had a case not get approved in large
3 tract, because it is a comment s--

4 CHAIRPERSON GRIFFIS: But they change as
5 they go through large tract. Is that right?

6 MR. GLASGOW: Yes. A project can change
7 or be modified through large tract, and the other
8 option is to cut 5,000 square feet of retail out of
9 the project.

10 CHAIRPERSON GRIFFIS: I see. And that
11 would take it out of the requirements for large tract
12 review. But the point, I guess, for my understanding,
13 if I understand it correctly, the large tract gives
14 you a whole other review onto a lot of these types of
15 issues, if not even design issues conceivably. No, I
16 won't go there.

17 MR. GLASGOW: Conceivably.

18 CHAIRPERSON GRIFFIS: Massing settings and
19 things like that that might happen. Okay. So when
20 you are throwing around and saying that's something
21 that is going through large tract, then I think I
22 understand what that is.

23 Let's go to very specific things. First
24 of all, number of units. You stated in your written
25 submission, also in your opening, that there's 247

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1 units. Is that correct?

2 MR. GLASGOW: Yes.

3 CHAIRPERSON GRIFFIS: So the Office of
4 Planning listing the 256 was another number. It may
5 have changed. But that 247 is what we are looking at
6 now.

7 MR. GLASGOW: Yes.

8 CHAIRPERSON GRIFFIS: Mr. Glasgow, there
9 is no 411 relief required here?

10 MR. GLASGOW: No.

11 CHAIRPERSON GRIFFIS: Okay. And also then
12 what I'd like to get into very quickly before we do a
13 full blown case -- You touched on it limitedly, and
14 that is the aspect of mixed use projects and lot
15 occupancy.

16 Reading this, I can tell you that it
17 doesn't make sense to me that the portions of the
18 building that are devoted to residential on the first
19 level would not be able to go beyond 80 percent lot
20 occupancy. But in the zone district that this is, the
21 C-2-B, that the commercial is allowed 100 percent lot
22 occupancy.

23 Well, it seems to me that we have a bit of
24 zero sum game on the first floor. Right? Or the
25 first level. It's 100 percent. Isn't it that the

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1 residential cannot occupy more than 80 percent of that
2 first level, but the first level can be occupied 100
3 percent?

4 MR. GLASGOW: That has not been the way it
5 has been interpreted in the past.

6 CHAIRPERSON GRIFFIS: When? Now? Always?

7 MR. GLASGOW: Since I've been practicing,
8 which is 27 years.

9 CHAIRPERSON GRIFFIS: Is that right? How
10 do you do a mixed use building? So you could never
11 have a mixed use building?

12 MR. GLASGOW: What they have done is they
13 recognize that you can have a residential lobby.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. GLASGOW: But if you have anything
16 more than the lobby, then you now are having
17 residential use, and where -- There were two things
18 that brought us into this. One is we want to maintain
19 the flexibility with respect to the townhouses to have
20 a residential unit on the ground floor.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. GLASGOW: Okay? So that, under any of
23 the interpretations, would necessitate a variance
24 relief.

25 CHAIRPERSON GRIFFIS: Why?

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1 MR. GLASGOW: Because the ground floor is
2 96 percent lot occupancy.

3 CHAIRPERSON GRIFFIS: But not
4 residentially occupied at 96 percent.

5 MR. GLASGOW: Right. Well, what they did
6 is --

7 CHAIRPERSON GRIFFIS: Kind of funny to be
8 arguing this direction, isn't it?

9 MR. GLASGOW: Okay. It's 772.1.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GLASGOW: Okay. And it says no
12 portion -- I'm sorry. In a commercial district, no
13 building or portion of a building devoted to a
14 residential use, including residential -- including
15 accessory buildings but excluding hotels, shall occupy
16 the lot upon which it is located in excess of the
17 percentage of lot occupancy in the following table.

18 What they have said is, if you have
19 dwelling units -- and I have had cases on this in the
20 past that, if you have -- I think Billy Martin's
21 Tavern, we had percentage of lot occupancy issue, and
22 there were some others that, as soon as you put a
23 residential unit on the ground floor, if you are over
24 the 80 percent, you went to the Board.

25 CHAIRPERSON GRIFFIS: I see. I see the

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1 logic in reading it that way, but I also see the logic
2 in reading it -- The fact that they say no building or
3 portion of a building devoted to residential makes me
4 fairly persuaded that we would then calculate the
5 percentage of lot occupancy for that portion of the
6 building devoted to residential.

7 MR. GLASGOW: That hasn't been the way
8 that it's been read. It says no building or portion
9 of a building devoted to residential use. They are
10 saying, if you have a portion of a building devoted to
11 residential use and it is on a floor where you are
12 over 80 percent lot occupancy, you go to the Board.

13 CHAIRPERSON GRIFFIS: Doesn't that
14 somewhat fly in the face of doing a truly mixed use
15 building?

16 MR. GLASGOW: Well, I think when a lot of
17 this was put in, we didn't do a whole lot of --

18 CHAIRPERSON GRIFFIS: We didn't know what
19 mixed use was.

20 MR. GLASGOW: -- truly mixed use
21 buildings.

22 CHAIRPERSON GRIFFIS: Exactly.

23 MR. GLASGOW: It is part of that reason, I
24 guess, why we have the second area of relief, because
25 when we were looking at residential recreation space,

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1 we weren't doing any mixed use buildings, and when
2 those regs went into place, on behalf of the clients
3 that I had we just let it go.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. GLASGOW: Because that's just not what
6 we were doing back then.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. GLASGOW: Then also we have
9 residential recreation space on the ground floor,
10 which we want to have included in our residential.

11 CHAIRPERSON GRIFFIS: So what would
12 approximately be your total residential use on the
13 first level? I mean, certainly, you've got -- Well,
14 but I need a percentage.

15 MR. GLASGOW: Less than 10 percent.

16 CHAIRPERSON GRIFFIS: Less than 10
17 percent? With the residential rec, two townhouses,
18 lobby.

19 MR. LIEBERT: The townhouses on the first
20 floor would be less than five percent of the total
21 lot.

22 MR. GLASGOW: And then if you add in the
23 other, it could be no more than 10. It is de minimis.

24 CHAIRPERSON GRIFFIS: Okay. We are not
25 going to belabor this very long. We have two

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1 directions, and we have other questions that are
2 going, but I will put this to you.

3 Mr. Glasgow, I understand that -- Well,
4 the previous way that this section has been read puts
5 you here for a variance.

6 MR. GLASGOW: Right.

7 CHAIRPERSON GRIFFIS: I would think -- I
8 would support moving ahead and amending the
9 application indicating that no relief would be
10 required under the lot occupancy, based on the
11 submissions that we have seen so far. That may change
12 as we go on, but I doubt it. Ms. Miller, a question?

13 VICE CHAIRPERSON MILLER: When you say
14 that it has been interpreted for all these years, has
15 it been interpreted by DCRA? Is that who you are
16 referring to?

17 MR. GLASGOW: DCRA, and I have been to
18 Board cases.

19 VICE CHAIRPERSON MILLER: The BZA has
20 interpreted it that way that you are suggesting in the
21 past?

22 MR. GLASGOW: We have had BZA cases on
23 this before.

24 VICE CHAIRPERSON MILLER: And are they
25 summary orders or are they -- have they actually

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1 addressed this issue?

2 MR. GLASGOW: The older ones would
3 probably not be summary orders. I'm consulting with
4 Mr. Sher here. We would have to look at our archives.

5 CHAIRPERSON GRIFFIS: Let's be clear,
6 though. Applications were brought for this type of
7 relief?

8 MR. GLASGOW: right.

9 CHAIRPERSON GRIFFIS: Are you aware of
10 anything that the Board ever did when an application
11 came in and they required -- they added to the relief
12 that was necessary?

13 MR. GLASGOW: I'm not aware of any.

14 CHAIRPERSON GRIFFIS: So they never did an
15 interpretative process saying you've got a mixed use
16 building, but you didn't come in for lot occupancy; we
17 are going to add lot occupancy?

18 MR. GLASGOW: The way the process was back
19 then, that if you did not like the letter that you got
20 from the Zoning Administrator, you essentially had a
21 two-part process. You appealed the decision of the
22 Zoning Administrator as a separate action, and then
23 you went on with your BZA case.

24 CHAIRPERSON GRIFFIS: I see.

25 MR. GLASGOW: So unless you had some huge

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1 issue or problem with what the Zoning Administrator
2 did, you took your letter and you went to the Board.
3 Now in the days of self-certification, if we think we
4 may have an area of relief, we are going to ask for
5 it, because we can't be in a position where we go
6 through the Board, we hopefully are successful in our
7 case, go back and then someone says you need a
8 percentage of lot occupancy variance, and we are in
9 there with our working drawings ready to get a permit.

10 CHAIRPERSON GRIFFIS: Right. And that I
11 understand. Does everybody understand that? Okay.

12 VICE CHAIRPERSON MILLER: I just also want
13 to know, is there any legislative history on this
14 provision as to how it should be interpreted?

15 MR. GLASGOW: Mr. Sher, do you want to
16 respond to that?

17 MR. SHER: For the record, my name is
18 Steven E. Sher, the Director of Zoning and Land Use
19 Services with the law firm of Holland & Knight.

20 The only legislative history I know of
21 that relates to this is when a CR District was created
22 in 1974, they wrote a different provision in the
23 regulations as it relates to lot occupancy for a
24 specifically designed mixed use zone.

25 That provision basically says you can

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1 compute lot occupancy at the lowest plane at which
2 residential uses begin. In other words, this doesn't
3 say that. This just says, you know, lot occupancy is
4 basically calculated at the ground.

5 In the CR District, it was written in that
6 lot occupancy was calculated at the lowest plane where
7 residential uses begin, and that was clearly taken to
8 mean excluding the lobby or, in this case, residential
9 recreation space. It was you go down to where people
10 live, and that is the horizontal level at which you
11 compute lot occupancy.

12 We thought we were enrolling in the code
13 the practice that had been done before, but the
14 regulations don't ever say that explicitly. So when
15 the regs for commercial zones were changed in 1978,
16 that provision was not updated.

17 So you got two somewhat different
18 provisions in the regulations, and if Mr. Quinn were
19 here, he would quote the Latin phrase about what is
20 different and, I don't know -- You know the one. I
21 don't know that one, but whatever. It's got to mean
22 something different, if it says something different.

23 So whatever. As Mr. Glasgow says, we have
24 always operated on the assumption that a building or a
25 portion of a building could mean a horizontal

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1 separation, a vertical separation, but in this case
2 you wind up with that piece of the -- and I guess I'm
3 getting into what I would be saying later, but I'll
4 say it now anyhow -- that piece of the building, which
5 is just that little bit of residential recreation
6 space, which is surrounded by other parts of the
7 building that are commercial and nonresidential in
8 use.

9 You can't sort of define a portion of the
10 building around that residential recreation space and
11 say, oh, that portion of the building complies with
12 the 80 percent lot occupancy, because we are counting
13 that residential recreation space against our
14 residential gross floor area.

15 So we have residential use, even though it
16 is not dwelling units, on the first floor where the
17 rec space is, and we may even -- Though right now we
18 have calculated the two existing townhouse structures
19 in our commercial FAR, we want to be able to possibly
20 convert those to residential, and they would be at
21 that level now on those, and you can see them on the
22 upper point of the triangle there.

23 There actually is some rear yard space
24 around those and, if you took a portion of those two
25 buildings, you might be able to come up with the right

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1 lot occupancy. But as Chip said earlier, we can't
2 find ourselves in a position where we didn't ask for
3 the relief and then someone said, oh, we've been
4 interpreting it this way for the last 30 years, back
5 to BZA.

6 CHAIRPERSON GRIFFIS: Excellent. OP makes
7 an excellent statement that -- I don't want preempt
8 them. They should state it themselves, but it is
9 timely here -- that the zoning definitions for lot
10 occupancy, obviously for the mixed use and the
11 waterfront, are calculated, as you stated, at the
12 first floor where the residential begins.

13 Is the C-2-B zone a mixed use zone?

14 MR. SHER: It is in the sense that both
15 residential and non -- or commercial uses are
16 permitted as a matter of right.

17 CHAIRPERSON GRIFFIS: And how could it not
18 be a mixed use?

19 MR. SHER: Well, again in 1958 the concept
20 of mixed use was allowed but not encouraged or,
21 frankly, in vogue. From 1958 until 1978, most of the
22 commercial districts allowed a higher FAR for
23 commercial uses than they did for residential uses.
24 In 1978 that was flipped around, so that C-2-A, for
25 example, up to 1978 the maximum FAR was two of which

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1 no more than 1.8 could be residential. No the maximum
2 FAR is 2.5 of which no more than 1.5 can be
3 commercial.

4 So they flipped it around so that there is
5 a higher FAR for residential than for commercial to
6 perhaps give some incentive to build residential uses
7 in commercial zones.

8 When C-2 was divided in C-2-A and C-2-B in
9 around 1967, the point of that was to give a higher
10 density for residential in C-2-B than was permitted in
11 C-2-A. So that was probably the first time that mixed
12 use came into commercial zones when the C-2 was
13 divided into A and B and then ultimately into A, B and
14 C. That was basically done to accommodate ROAs, urban
15 renewal plans, where they were trying to get apartment
16 houses with ground floor retail in commercial zones
17 along strips like Georgia Avenue and other places.

18 A lot has happened since 1967, and lot and
19 zoning has happened, and particularly starting in '74
20 with the notion of dedicated mixed use zones and then
21 expanding the reach of commercial in 1978, and then in
22 1991 with the DD requiring residential in certain
23 commercial zones, which before was just optional. So
24 we've sort of gone from, I won't say one extreme, but
25 from one position to another. That's been very

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1 different over 35 years.

2 CHAIRPERSON GRIFFIS: Right. But even in
3 the 35 years and the changing of the emphasis of the
4 commercial/residential, the aspect of this zoning
5 district and, frankly, most -- well, in the C-2-B has
6 always been accommodating, if not pushing for, mixed
7 use. I mean, it certainly allows it.

8 MR. SHER: And, clearly, it allows it at a
9 higher FAR than commercial, 1.5 to 3.5.

10 CHAIRPERSON GRIFFIS: Okay. Anything else
11 from the Board? Questions? Very well. Let me just
12 hear from you then, because I think I would be
13 prepared to amend the application. Do you see any
14 difficulty in that?

15 MS. MONROE: Mr. Chairman, can I weigh in
16 on this for a second?

17 CHAIRPERSON GRIFFIS: Now we got the
18 attorneys involved.

19 MS. MONROE: I actually don't think it
20 would be wise for them or to you to amend the
21 application, because if the applicant is correct under
22 the traditional interpretation, he may well need this
23 relief. If you --

24 CHAIRPERSON GRIFFIS: But not if we
25 interpret he doesn't.

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1 MS. MONROE: But if you as a Board decide
2 otherwise, that's correct. You can reverse that
3 traditional interpretation, but you would have to do
4 that definitively. I mean, the whole Board would have
5 to decide that. You would have to discuss it. You
6 would probably have to have it in a written order.

7 You could make it apply to this
8 application, and you could make it prospective. But
9 at this point, it doesn't yet apply, because that
10 interpretation has not yet been made. So he needs to
11 request the relief, because traditionally he would
12 need it.

13 CHAIRPERSON GRIFFIS: But in the same
14 fact, to argue briefly with you, is that we don't have
15 the interpretation in writing before us. We have the
16 applicant says in an undue caution, a self-certified
17 application, we think we need relief.

18 MS. MONROE: Well, then maybe -- I hate to
19 say this, but then maybe it should be briefed, and it
20 should be put forth to you to look at in the whole
21 picture whether or not it is a good interpretation,
22 whether it should be changed, and I think the Board
23 needs to think about that instead of just amending
24 this one application to change all of that old
25 interpretation overnight.

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1 CHAIRPERSON GRIFFIS: I've thought a lot
2 about it.

3 MS. MONROE: You have. Yes, I believe
4 that. I just don't think it would be wise. It's kind
5 of an off the cuff decision, and I think it could put
6 them at risk. Yet if you want to change it, ask them
7 to brief it. We can argue it. You can decide.

8 CHAIRPERSON GRIFFIS: You want to see my
9 briefing? This is not off the cuff whatsoever. Okay.
10 Very well. Some wisdom from the OAG. Comments? Let
11 me ask Mr. Glasgow first.

12 MR. GLASGOW: Obviously, we have a project
13 that we need to get built.

14 CHAIRPERSON GRIFFIS: Right. Exactly. I
15 knew that was going to be your comment in terms of not
16 making this cumbersome for you to brief the issue that
17 is of great concern for us. We can just deny it
18 outright. Ms. Miller? Oh, wait, did I say that out
19 loud?

20 VICE CHAIRPERSON MILLER: I was just going
21 to say, I'm not quite ready to proceed on that issue.
22 But we haven't heard from Office of Planning yet
23 either. So I want to hold it in abeyance, if we
24 could.

25 CHAIRPERSON GRIFFIS: Yes. Okay. We are

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1 going to move ahead.

2 MR. GLASGOW: Thank you. I'd like to call
3 the first witness, Mr. Aaron Liebert.

4 WHEREUPON,

5 AARON LIEBERT

6 was called as a witness by counsel for the applicant
7 and, having previously been duly sworn, testified as
8 follows:

9 MR. LIEBERT: My name is Aaron Liebert, a
10 representative with JPI. I live at 1346 Irving
11 Street, N.W. I have been working on this project
12 since approximately December, at which time JPI
13 contracted to purchase the property from Father
14 Flanagan's Boys Home.

15 At that time, we looked at the C-2-B
16 zoning as a primarily residential zone for the
17 purposes of our development and came forward with a
18 residential project. I met with several community
19 groups. I met with the Council, Councilwoman Ambrose,
20 and received a lot of support for our initial
21 presentation, which at the time was a 280 unit
22 residential project with approximately 3500 square
23 feet of retail.

24 Through those conversations, very positive
25 conversations and supportive, there were requests by

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1 the community for an increased push toward more of a
2 mixed use project and, specifically, to try to bring a
3 grocery store to Capitol Hill. They haven't seen a
4 grocery store in quite a while. The grocery store
5 located very close to the site, the Safeway, is not
6 highly regarded.

7 So we thought we had enough time to give
8 that a shot. We actually received a lot of interest
9 from grocery stores once we started going in that
10 direction, and actually just over the past weekend we
11 have signed a lease with a grocery store, with Harris-
12 Teeter, which you may have heard about.

13 So we have a very high quality grocery
14 store interested in the project, and the inclusion of
15 that grocery store has brought about a lot of changes
16 to the project, and some of those changes brought us
17 here.

18 It has reduced the number of units. We
19 have had to meet with DDOT on several occasions to
20 discuss access points, loading docks, both pedestrian
21 and vehicular access to the site, access to the Metro.

22 But those things, we think, have been resolved.

23 The existing use of the site, as you are
24 probably aware, is there was the construction of four
25 foster homes. Those buildings will not remain in the

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1 future development, as we are proposing a two-story
2 underground parking garage with five stories above it.

3 As part of our change --

4 CHAIRPERSON GRIFFIS: What are you doing
5 with the old ones? What are you doing with the other
6 ones?

7 MR. LIEBERT: Well, the two that we are
8 saving are actually not part of the Boys Town. They
9 are existing townhouses located on Pennsylvania
10 Avenue.

11 CHAIRPERSON GRIFFIS: So what is happening
12 with all that? Can you gut them and ship them off to
13 my neighborhood?

14 MR. LIEBERT: They salvaged -- They
15 actually went through and took out all of the
16 appliances, HVAC, tile, door trim, doors, windows.

17 CHAIRPERSON GRIFFIS: They are all going
18 away?

19 MR. LIEBERT: They are pretty much chopped
20 out now. When we did bring forward the grocery store,
21 we realized we needed a little bit more land, and that
22 is what drove us to buy the other two townhouses that
23 are up there, which allowed for some increased parking
24 for the grocery space.

25 CHAIRPERSON GRIFFIS: I see.

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1 MR. LIEBERT: That was what we thought was
2 the biggest challenge, is making sure we had enough
3 parking so we didn't disrupt the community in that.

4 CHAIRPERSON GRIFFIS: The grocery stores
5 at grade entrance level parking. Is that correct?

6 MR. LIEBERT: They want some. So
7 generally speaking, they want all.

8 CHAIRPERSON GRIFFIS: Generally speaking,
9 grocery stores want, you know, a sea of parking around
10 the front of the box in the middle.

11 MR. LIEBERT: Correct.

12 CHAIRPERSON GRIFFIS: And you are finding
13 in this specific case with who you signed a lease with
14 that they also would like to maximize the parking
15 adjacent to the entrance or on the same level?

16 MR. LIEBERT: Correct.

17 CHAIRPERSON GRIFFIS: I see. Okay. What
18 else?

19 MR. LIEBERT: So we have here, if I can
20 get up and point to the project here -- Does this
21 work? Is this on?

22 CHAIRPERSON GRIFFIS: I think it was on.

23 MR. LIEBERT: It was on. All right. We
24 have Potomac Avenue on this side of the board,
25 Pennsylvania Avenue. These are the two townhouses.

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1 We acquired the townhouses. We are going to keep the
2 existing townhouses and expand the parking underneath
3 the building in the rear, underneath the grocery
4 store.

5 The grocery store is located at the
6 intersection of Potomac and Pennsylvania. It is
7 accessed off of Potomac Avenue, as we have a very
8 large expanse of right of way that we can take
9 advantage of versus a very limited amount on
10 Pennsylvania Avenue.

11 We have retail at the corner which will be
12 separate from the grocery space. We have additional
13 retail located further down on Potomac Avenue, and
14 this is where our residential amenities will be
15 located, as he has shown there.

16 We have access to the retail parking in
17 the middle of the site in which they can park directly
18 underneath this building and walk across, and then the
19 access to the residential parking is located here.
20 And then they dive down underneath the retail parking
21 so that it is segregated and private.

22 Our access again for residential for the
23 condominiums is going to be at this location. Where
24 you come in, we will have a lobby, business center,
25 fitness center, community amenities, and that opens up

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1 into our courtyard, which is an almost 18,000 square
2 foot courtyard which is a two-level courtyard because
3 of the difference in floor height of a grocery store
4 space and our parking spaces.

5 What it has allowed us to do, as you can
6 see in the color photos down here, is to create a
7 waterfall element with a circular stair that takes you
8 down to a seating area. It will create some pretty --

9 CHAIRPERSON GRIFFIS: Excuse me just a
10 second. Let me interrupt you. Can you see these
11 boards? If anyone is in the audience and wants to see
12 them, just pull a chair up around the side, so make
13 sure you can look at these while he is going through
14 this. Okay.

15 MR. LIEBERT: Access: Residents will have
16 access, obviously these, but access up to the
17 courtyard, up this circular stair with the waterfall
18 element to a small pool, a terrace-lawn area, more
19 seating, and then a long panel here with a covered
20 pavilion.

21 CHAIRPERSON GRIFFIS: Putting green?

22 MR. LIEBERT: We didn't go with the
23 putting green.

24 CHAIRPERSON GRIFFIS: Okay. Good enough.

25 MR. LIEBERT: We also have located on the

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1 roof a public terrace here, public terrace here, a
2 public terrace here, and then a private terrace
3 located here.

4 CHAIRPERSON GRIFFIS: I see. Is that all
5 the terraces on the roof?

6 MR. LIEBERT: Correct. I'm sorry, they
7 are not on the roof. They are on the fourth floor.
8 so we have actually carved out where there were units.
9 We removed the unit in order to put a terrace.

10 CHAIRPERSON GRIFFIS: They are covered?

11 MR. LIEBERT: They are not covered.

12 CHAIRPERSON GRIFFIS: Okay. I don't
13 understand that.

14 MR. LIEBERT: The architect can explain
15 how they work and the elevation a little bit easier.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. LIEBERT: I think Steve will address
18 some of the legal tests as it relates to our relief,
19 but that gives you a general overview, and I'm here
20 for questions.

21 CHAIRPERSON GRIFFIS: Good. Thank you.
22 Any other questions? The main entrance -- or there is
23 a cafe shown on the drawings that we were submitted.
24 It's on the corner. The main entrance to the
25 supermarket or the other retail tenant is on that

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1 side. What is the square footage of the residential
2 lobby, roughly?

3 MR. KIRKDIL: There's two residential
4 lobbies. One is along Pennsylvania Avenue, and then
5 the other one is --

6 CHAIRPERSON GRIFFIS: How about the big
7 one that's being counted toward residential rec space?

8 MR. KIRKDIL: Over 1,000 square feet.

9 CHAIRPERSON GRIFFIS: So it's like a unit?

10 MR. KIRKDIL: Yes.

11 CHAIRPERSON GRIFFIS: I see. Okay. Any
12 other questions? Okay, let's move ahead.

13 WHEREUPON,

14 SAMI KIRKDIL

15 was called as a witness by counsel for the applicant
16 and, having previously been duly sworn, testified as
17 follows:

18 DIRECT TESTIMONY

19 MR. KIRKDIL: My name is Sami Kirkdil. I
20 am one of the principals of SKN Architects. Let me, I
21 guess, briefly, explain the project.

22 As Aaron was talking about, we have 95,000
23 square feet of land area, and that includes an
24 additional two townhouses along Pennsylvania Avenue.
25 Existing current zoning is C-2-B and allows a 65 feet

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1 building height and mixed use.

2 What we are proposing, basically, 247 unit
3 apartment project with approximately 52,000 square
4 feet of retail. It is a five-story building, and I
5 think one of the basically architectural challenges
6 was fitting into the neighborhood, you know, how we
7 deal with the massing issues and so forth.

8 Our solution was, you know, breaking the
9 building mass to several buildings.

10 CHAIRPERSON GRIFFIS: Okay. I'm sorry,
11 but to expedite this a little bit, because not being
12 an architectural review board, although it is
13 fascinating, I don't think we really need to spend a
14 lot of time going through all that. But now that that
15 is up there, why don't you put the elevations back up.
16 A quick question --

17 MR. KIRKDIL: We explained basically the
18 terraces.

19 CHAIRPERSON GRIFFIS: Two quick questions
20 from the Board that have come to me. That is: The
21 supermarket is going to -- does it have retail windows
22 on Pennsylvania Avenue?

23 MR. KIRKDIL: Yes, they do.

24 CHAIRPERSON GRIFFIS: So it actually does
25 -- It has two street frontages, which is a part of

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1 what your submission is saying also in terms of the
2 unique aspect of this, is that, you know, it is
3 strangely odd-shaped, but it also has such a line of
4 elevation at street frontage.

5 The other question was: What is the
6 ceiling height then on the retail level?

7 MR. KIRKDIL: I believe it is 18 feet.

8 CHAIRPERSON GRIFFIS: So it is an actual
9 retail --

10 MR. KIRKDIL: Floor. I want to add
11 another point. Basically, along Potomac Avenue there
12 is a very big site setback, almost 50 feet. So what
13 we wanted to do was put all the retail along Potomac
14 Avenue to activate the streetscape.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. KIRKDIL: And we are going to
17 landscape. We will have probably outdoor seating or
18 restaurants and so forth.

19 CHAIRPERSON GRIFFIS: So the property line
20 sets back roughly 50 feet from the curb?

21 MR. KIRKDIL: Yes.

22 CHAIRPERSON GRIFFIS: I see. Okay.

23 BOARD MEMBER ETHERLY: Mr. Chair, just
24 very quickly so I can understand, just for
25 perspective's sake, what would you say the setback is

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1 now for the existing properties on this parcel, the
2 ones that are going to go away, those townhouses?

3 MR. KIRKDIL: Fifty feet.

4 BOARD MEMBER ETHERLY: About 50 now?

5 MR. KIRKDIL: Yes.

6 BOARD MEMBER ETHERLY: Okay. Thank you.

7 MR. KIRKDIL: We have located four, I
8 guess, fourth floor terraces along the -- two along
9 Potomac Avenue and two along Pennsylvania Avenue. The
10 way we used them to basically vary the roof height
11 along the streetscape to break the massing of the
12 buildings. There is one located here, and there is
13 another one located there. Basically, the building
14 sets back 30 feet. So it breaks the buildings to
15 smaller increments.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. KIRKDIL: And the building gets more
18 contemporary along the corner, and it gets more kind
19 of rowhouses along the residential neighborhood.

20 CHAIRPERSON GRIFFIS: So you don't have
21 any sort of mechanical penthouses at all?

22 MR. KIRKDIL: No. What we are using,
23 basically, is that system, and we would like to
24 provide condensers up in the room.

25 CHAIRPERSON GRIFFIS: So you have little

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1 condensers all over the roof. Obviously, they are
2 showing in bunches, and none of them rise above four
3 feet.

4 MR. KIRKDIL: Yes.

5 CHAIRPERSON GRIFFIS: Indeed. Okay. Any
6 questions? The white townhouses, the unrendered,
7 those are the ones you purchased that are --

8 MR. KIRKDIL: Yes.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. KIRKDIL: And then loading will be on,
11 obviously -- Loading for the grocery store will be on
12 Pennsylvania Avenue.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. KIRKDIL: And I think you are
15 requesting, according to this, two items. One is
16 being the lot coverage, and then the other is being
17 the rec space. In our experience on all the other
18 projects we have done, I mean, I think in this case we
19 are providing almost 60 -- or 56 percent of the
20 required rec space, basically, you know, and actually
21 what is requested is 40,000 square feet, almost half
22 of the site to provide the 50 percent.

23 CHAIRPERSON GRIFFIS: Right. Is it
24 correct in my understanding in the submissions that
25 one of the aspects of -- First of all, you need the

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1 shape, but one of the practical difficulties that
2 arise out of that is the large footprint for the
3 retail, which is an allowable aspect of the
4 regulations and how it has to fill the site, being so
5 oddly shaped it doesn't rise to the practical
6 difficulty of increasing the residential recreation
7 space at that level?

8 MR. KIRKDIL: Absolutely.

9 CHAIRPERSON GRIFFIS: I see. Okay. Any
10 other questions, clarifications? Mr. Mann?

11 BOARD MEMBER MANN: Is that water feature
12 an ornamental pool or a swimming pool?

13 MR. KIRKDIL: Ornamental pool.

14 CHAIRPERSON GRIFFIS: Put it on the roof,
15 you can add a bathroom. Okay. Anything else?

16 VICE CHAIRPERSON MILLER: The cafe --
17 that's not just for the building residents, right?
18 It's for the public?

19 MR. KIRKDIL: Public.

20 VICE CHAIRPERSON MILLER: Both?

21 MR. KIRKDIL: Public, yes, basically. It
22 is going to be probably Starbuck's or something like
23 that.

24 CHAIRPERSON GRIFFIS: Never heard of it.

25 BOARD MEMBER ETHERLY: Mr. Chair, just

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1 very quickly again, I want to make sure. What I'm
2 curious about is just making certain I understand kind
3 of the streetscape along Potomac Avenue. Pennsylvania
4 Avenue, I think I am fairly comfortable with in terms
5 of how that frontage is articulated.

6 CHAIRPERSON GRIFFIS: In terms of the
7 elevation?

8 BOARD MEMBER ETHERLY: Well, actually,
9 let's go to the elevations first. Thank you, Mr.
10 Chair. If you could, just very briefly walk back
11 from, I believe, what is the corner of --

12 MR. KIRKDIL: Along Potomac Avenue?

13 BOARD MEMBER ETHERLY: -- Potomac Avenue
14 and 13th Street, if you could. Just walk back from
15 the corner of Potomac Avenue and 13th back toward
16 Pennsylvania Avenue. I just want to get a sense for
17 it.

18 MR. KIRKDIL: I think in terms of massing,
19 basically, residential -- along the residential
20 entrance to the building as well as the smaller
21 retail, we are creating four-story rowhouses with
22 mansard roofs, and they are like repetitive in a way,
23 and there will be some retail entrances as well as
24 residential entrances.

25 In the far left you have a residential

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1 parking entrance for the whole project, which is, you
2 know, separated from the grocery parking entrance.
3 Basically, the main building for the grocery is kind
4 of modeled against, you know, all the warehouse
5 building, basically, that kind of claims as a
6 building, and the main entrance to the grocery store
7 will be there. And then there is a parking entrance
8 for that, and then along further toward the
9 Pennsylvania Avenue the building gets a little more
10 modern in design, and there we will have a series of
11 storefronts and a grocery store will occupy some of
12 these storefronts. On the corner there will be cafe
13 space, basically, with outdoor seating along this edge
14 as well as along -- in front of the grocery store as
15 well as there.

16 BOARD MEMBER ETHERLY: Okay. And in terms
17 of the retail entrance points, you are envisioning at
18 this particular juncture what appear to -- inclusive
19 of the grocery store, probably four entrance points
20 for the various retail along that ground level,
21 essentially?

22 MR. LIEBERT: There is going to be one
23 entrance for the cafe at the corner. The grocery
24 actually has two entrances, just to try to make it a
25 little more lively, rather than just one. Then we are

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1 thinking probably two retailers, two small 1500 square
2 foot kind of boutique restaurants. That may at the
3 end of the day become one restaurant.

4 BOARD MEMBER ETHERLY: Okay. And both of
5 the entrances for the grocery tenant will be on the
6 Potomac Avenue side?

7 MR. LIEBERT: That is correct.

8 BOARD MEMBER ETHERLY: Okay. Thank you.
9 Excellent. Thank you, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Good. Anything
11 else? Good, let's move ahead.

12 MR. GLASGOW: I would like to call the
13 last witness, Mr. Steven Sher.

14 WHEREUPON,

15 STEVEN SHER

16 was called as a witness by counsel for the applicant
17 and, having previously been duly sworn, testified as
18 follows:

19 DIRECT TESTIMONY

20 MR. SHER: Good afternoon, Mr. Chairman,
21 members of the Board.

22 We have two areas of relief, the lot
23 occupancy and residential recreation space. I will
24 incorporate what I said before and not say it again
25 about lot occupancy. The issue there is what happens

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1 on the ground floor as opposed to what happens on the
2 floors where there actually are dwelling units where
3 we actually are in compliance with the regulations.

4 Then on the residential recreation space,
5 we have a requirement of somewhat over 40,000 square
6 feet. We are providing 22,000 square feet. The
7 spaces that might otherwise get used for residential
8 recreation space are not available in this project
9 because of the mix of the uses and the size and design
10 of the site.

11 We do not have any access to the roof over
12 the -- I guess it's the fourth residential floor, but
13 it is really the fifth floor of the building if you
14 count the retail as the ground floor. As Mr. Kirkdil
15 described and as the Chairman understood, we have
16 residential condensing units on the top of the
17 building, but there is no flat roofed space up there
18 that could be used for residential recreation space.

19 The ground floor is taken up by the
20 grocery store, the parking for the grocery store, the
21 other small retail spaces, the loading docks, the
22 garage entrances, the lobby entrance to the apartment
23 house.

24 We have taken every space that we can and
25 put it one use or another. What happens if you decide

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1 that you need more residential recreation space is you
2 start sacrificing something else in the building. It
3 is not an excess. You either take away from the
4 retail, you take away from the residential, all of
5 which are desired aspects of the program here. There
6 is just no other place to put it.

7 So we believe that we have provided a
8 sufficient amount of residential recreation space to
9 serve the needs of the residents of the building.
10 While on the roof of the first floor this is one of
11 the larger amounts of residential recreation space in
12 one bite that I think the Board has seen in a lot of
13 the cases that have been down here lately, it is a
14 very nicely designed space, and I think it will serve
15 the residents of the building well.

16 I think, when you go through all of the
17 various aspects of that, we have met our burden under
18 the regulations, and the two variances should be
19 approved.

20 CHAIRPERSON GRIFFIS: Thank you.
21 Questions from the Board? Ms. Miller?

22 VICE CHAIRPERSON MILLER: Are you counting
23 the cafe in your residential recreation space?

24 MR. SHER: No.

25 VICE CHAIRPERSON MILLER: No? Okay. And

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1 what is going to be on the terraces? What are they
2 going to be like?

3 MR. SHER: There are four terraces. Three
4 of them are open to all the residents of the building.
5 We have counted those. The fourth one is private for
6 the units adjacent to that. They will be open to the
7 sky and terraced in the sense of tiling or paving or
8 material --

9 MR. LIEBERT: They will be furnished. We
10 will have planters. We look at them like you look at
11 a Smith-Hawking catalog with nice furniture or maybe,
12 you know, nice mood lighting and then planters on the
13 edge. We see them as being you would reserve a
14 terrace for an evening event for a resident for a
15 couple of the small ones.

16 The large one on the corner is going to
17 have fantastic views of the Capitol. So that one is
18 going to remain open.

19 CHAIRPERSON GRIFFIS: What is the width
20 dimension of the courtyard in the center?

21 MR. KIRKDIL: I think 60 feet.

22 CHAIRPERSON GRIFFIS: And it's probably 30
23 feet deep?

24 MR. KIRKDIL: More like 280 feet deep or
25 something, 200 feet deep.

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1 CHAIRPERSON GRIFFIS: Oh, I'm sorry. How
2 far does the building rise above it?

3 MR. KIRKDIL: It's just only, you know, 40
4 feet, basically four stories, you know, plus or minus.

5 CHAIRPERSON GRIFFIS: So you think there
6 is enough sun to get plantings in there, of course.
7 Okay. Anything else? Yes, Mr. Mann?

8 BOARD MEMBER MANN: The service entrance
9 commercial loading area in the upper righthand corner
10 -- is that just for use by the grocery store?

11 MR. KIRKDIL: Yes.

12 BOARD MEMBER MANN: And then there is an
13 additional loading dock for the residential area?

14 MR. KIRKDIL: Well, right along the alley,
15 basically.

16 BOARD MEMBER MANN: I see. And what size
17 trucks is that sized for?

18 MR. KIRKDIL: Around 55 feet basically, so
19 long trucks, big ones.

20 CHAIRPERSON GRIFFIS: Yes, which is the
21 requirement for the loading berth in the regs.
22 Correct?

23 MR. KIRKDIL: Yes.

24 CHAIRPERSON GRIFFIS: For units above 50.
25 Okay.

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1 BOARD MEMBER MANN; How many loading bays
2 are there at the service entrance, commercial loading?

3 MR. KIRKDIL: Three.

4 BOARD MEMBER MANN: And how do you go
5 about determining the number of appropriate bays? Is
6 that because of building codes or zoning?

7 MR. KIRKDIL: Three, I think the grocery
8 requested, you know --

9 BOARD MEMBER MANN: It's driven by the
10 requirements of the grocery store?

11 MR. KIRKDIL: Yes.

12 BOARD MEMBER MANN; I see. And the
13 grocery store is how many square feet?

14 MR. KIRKDIL: 40,000 square feet, plus or
15 minus.

16 BOARD MEMBER MANN: And this is probably
17 of no consequence, but just so I can get kind of a
18 sense of the scale in my mind, do you know what a
19 typical suburban grocery store might be?

20 MR. KIRKDIL: Somewhere around 40 to 60.

21 BOARD MEMBER MANN: So this is comparable?

22 MR. KIRKDIL: Yes.

23 BOARD MEMBER MANN: I see. Thank you.

24 CHAIRPERSON GRIFFIS: I thought they were
25 doing like minimum 65,000 square feet in the suburbs.

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1 Doesn't really matter. We don't need those suburban
2 supermarkets. Okay.

3 BOARD MEMBER ETHERLY: One quick question,
4 Mr. Chair, and this probably really has no import to
5 the relevant zoning test, but I'm just absolutely
6 positively curious.

7 Was it difficult getting buy-in on the
8 placement of the loading dock for the grocery store on
9 Pennsylvania Avenue?

10 MR. GLASGOW: No. We met with DDOT on it.
11 In fact, we met with Dan Tanglorini.

12 BOARD MEMBER ETHERLY: Okay, and there
13 were no concerns. And as far as -- you know, once
14 again of no import. So I'll cut it short. But in
15 terms of turning radiuses and just entry and exit from
16 that particular loading dock, because I do recognize
17 that there is a median that runs along Pennsylvania
18 Avenue, is that presenting any issue?

19 MR. GLASGOW: No. What was discussed was
20 that, other than in the P.M. peak hour, the traffic on
21 outbound Pennsylvania Avenue was not really
22 problematic and that we would be able to load there
23 and be able to do that with a minimal disruption.

24 BOARD MEMBER ETHERLY: Okay. I appreciate
25 it. I have some -- not only living in that ANC but

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1 fairly in fairly close proximity to the subject
2 property, so there is some familiarity there.

3 With regard to --

4 MR. GLASGOW: I have one other thing. I'm
5 sorry. With respect to Potomac Avenue, there is a
6 school across the street, and I think everyone
7 determined that we didn't want to have the trucks on
8 Potomac Avenue, and that is really the only other
9 place to have any loading other than have it be off
10 the alley in the back where those trucks cannot
11 maneuver.

12 BOARD MEMBER ETHERLY: Got you. Got you.

13 So the placement of the dock itself is driven not
14 only by the location of the school across the street
15 from the subject property on Potomac Avenue, but also
16 limitations of the existing alley?

17 MR. GLASGOW: Correct.

18 BOARD MEMBER ETHERLY: Okay. With regard
19 to your conversations with DDOT, were there
20 discussions regarding -- and we may talk a little bit
21 about this when we get to the Office of Planning
22 report -- concerning that Metro access issue.

23 Were there discussions with DDOT around
24 plans for the Pennsylvania Avenue/14th Street area in
25 terms of that? I don't want to call it a triangle,

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1 so to speak, but it is a very weird type of median in
2 that little intersection where cars are queuing up to
3 make a turn onto Potomac Avenue or onto Eye Street off
4 of Pennsylvania Avenue. Were there any discussions
5 with DDOT about plans for how this project would fit
6 with that?

7 MR. GLASGOW: They made us aware of
8 potential plans that they have for -- for lack of a
9 better term, I will call it their circle out in the
10 front. So we were aware of it. They were aware of
11 it.

12 BOARD MEMBER ETHERLY: Okay. Thanks.
13 That's really what I was getting to, just to make sure
14 that there is some appropriate collaboration or
15 interplay.

16 MR. GLASGOW: Yes, and we did this well
17 before we even thought we were going to have large
18 tract. We had the discussion with them as soon as the
19 grocery store came on the scene, because the grocery
20 store itself doesn't -- It's the grocery store plus
21 the, I'll call it the more local retail, is what puts
22 us over the 50,000 square feet.

23 So we went and met with DDOT as soon as
24 there was very serious discussion with the grocery
25 store operator as to how that would fit on the site.

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1 BOARD MEMBER ETHERLY: Okay. Thank you.
2 Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Good. Ms. Miller?

4 VICE CHAIRPERSON MILLER: Could you just
5 clarify for me about the rowhouses? There are
6 rowhouses that you are not sure whether you are going
7 to use them residentially or commercially?

8 MR. GLASGOW: We want to have the option.
9 They are presently commercially used. We want to
10 have the option to either put back residential use or
11 to continue to use them commercially.

12 VICE CHAIRPERSON MILLER: Okay. And the
13 large tract review process: Is the ultimate approval
14 by Office of Planning or is it by another entity?

15 MR. GLASGOW: Well, in the large tract
16 regulations, the Office of Planning is called the lead
17 agency for the review, and so they coordinate the --
18 They disseminate information, get information back,
19 and then ultimately what you get is a letter from the
20 Director of the Office of Planning upon the completion
21 of the large tract review process.

22 VICE CHAIRPERSON MILLER: Okay. thank
23 you.

24 CHAIRPERSON GRIFFIS: Anything else?
25 Good. Let's move on. Anything else, Mr. Glasgow?

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1 MR. GLASGOW: That concludes the
2 applicant's direct presentation.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you. Let's move on to the Office of Planning. Mr.
5 Lawson is with us, and a very good afternoon to you,
6 sir.

7 MR. LAWSON: Good afternoon. Thank you,
8 Mr. Chair, members of the Board. My name is Joel
9 Lawson. I am with the D.C. Office of Planning.

10 Very briefly, this 2.2 acres subject site
11 is located at the intersection of Pennsylvania and
12 Potomac Avenues. The property is zoned C-2-B. I
13 would like to point out a small correction in my
14 report. I think the report noted that the entire
15 square is zoned C-2-B. Actually, portions of the
16 square are zoned R-4 and -- sorry, R-4 and C-2-A, but
17 the subject property is entirely zoned C-2-B.

18 Most the existing development on the site
19 other than the two rowhouses on Pennsylvania Avenue
20 would be removed. The applicant is proposing to
21 construct a new five-story building with two levels of
22 underground parking.

23 There would be predominantly retail uses
24 on the ground floor, including the new grocery store,
25 parking and loading facilities. On the upper floors

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1 would be 247 residential units facing out at the
2 streets or an internal landscaped courtyard.

3 The rowhouses, according to the applicant,
4 would be retained as either commercial or residential
5 use.

6 As has been noted, variances to lot
7 occupancy and residential recreation space
8 requirements are requested.

9 With regard to lot occupancy, the zone
10 permits a maximum of 80 percent for a building or
11 portions of the building devoted to a residential use
12 and 100 percent for a commercial building.

13 The predominantly commercial ground floor
14 would have a lot occupancy of 96 percent, whereas the
15 residential upper floors have a lot occupancy of 72
16 percent, mainly due to the large internal courtyard.

17 The zoning regulations state that lot
18 occupancy is calculated on a horizontal plane located
19 at the lowest level where residential uses begin.
20 Although the ground floor is almost entirely
21 commercial, it does include the two existing rowhouses
22 on Pennsylvania Avenue that are to be retained and
23 which may be residential.

24 Technically then, a variance is required
25 as the development includes a very small amount of

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1 potential residential on the ground floor, and the
2 ground floor has a lot occupancy of 96 percent, which
3 is greater than the maximum permitted.

4 With regard to residential recreation
5 space, the zone requires that an area equivalent to 15
6 percent of total residential area be devoted to
7 residential recreation space. The applicant is
8 proposing just over half this required amount, again
9 most of it in a large landscaped courtyard.

10 OP feels that the application meets the
11 variance test for both lot occupancy and for
12 residential recreation space. The proposal further
13 has overall goals and objectives for this area in
14 accordance to zoning regulations in terms of use and
15 building bulk.

16 Retention of the two rowhouses will help
17 the new development fit in with the streetscape along
18 Pennsylvania and minimize the potential direct impacts
19 of the new development on other existing rowhouse
20 owners and occupants further up the street.

21 The proposed recreation space is easily
22 accessible and of a configuration which should appeal
23 to new residents, and there are remaining
24 opportunities for other forms of recreation in the
25 general area.

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1 The applicant notes that the ANC has
2 unanimously voted to support this application at its
3 meeting of September 14, 2004. No other District
4 agency has noted opposition to the proposal. DDOT had
5 discussions with the applicant leading to an
6 acceptable design from their standpoint for both
7 parking and loading.

8 The Fire Department and WASA raised issues
9 of a technical nature that will be dealt with at the
10 permit stage as a standard practice, and as the
11 applicant has noted, there will be another opportunity
12 to address issues with both DDOT and these other
13 departments through the large tract review process,
14 which is underway even as we speak.

15 The proposal represents the provision of
16 new housing and significant retail, particularly a new
17 grocery store, to this part of the Capitol Hill
18 neighborhood. OP believes that the proposal conforms
19 to our planning initiatives. As such OP recommends
20 approval of the application, subject to -- We
21 originally recommended subject to satisfaction of the
22 DDOT concerns regarding loading timing. OP would have
23 no concerns, as suggested by the applicant, that those
24 would be more appropriately dealt with through the
25 large tract review process.

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1 This concludes my presentation, and I am
2 available for questions. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much,
4 Mr. Lawson. Excellent report. Let's go into
5 questions from the Board.

6 VICE CHAIRPERSON MILLER: Mr. Lawson, I'd
7 be interested in your view on 772.1. Like some other
8 of our regulations, just reading the plain words of
9 the regulation, sometimes they can be read in
10 different ways. I want to know if you think that --
11 if you have an opinion about reading it in this way,
12 that the Chairman was getting at earlier: In a
13 commercial district that no portion of a building
14 devoted to a residential use shall occupy the lot upon
15 which it is located in excess of the percentage of lot
16 occupancy in the following table, meaning you would
17 look at the percentage that is devoted to residential
18 use, and that that percentage not exceed what is in
19 the table?

20 MR. LAWSON: Well, first I would note that
21 the Zoning Administrator makes interpretations, not
22 the Office of Planning, but I would state that we
23 support the variance. We think that the variance that
24 is being requested meets the test.

25 We felt that, for example, without the two

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1 rowhouses that the application would meet the lot
2 occupancy requirements and that the ground floor would
3 just include sort of nonliving residential space.

4 We also think that the definition of lot
5 occupancy in Section 199 also relates to this issue
6 where it talks about how lot occupancy may be measured
7 at the lowest level where residential begins, and that
8 is what kind of -- we felt kind of kicks the ground
9 floor into counting as residential space. Rightly or
10 wrongly, that has been the interpretation up until
11 now.

12 I'm not sure that we would object to a
13 different interpretation, but that would come from the
14 Zoning Administrator.

15 CHAIRPERSON GRIFFIS: It's an interesting
16 interpretation, looking at the waterfront and the
17 mixed use, that it is from the first floor that the
18 residential begins. But wouldn't you think that that
19 is where the residential units begin?

20 MR. LAWSON; I wouldn't disagree with that
21 interpretation and, as I said, you know, the reason
22 that we feel that this application -- that the lot
23 occupancy regulations kick in in this case is because
24 of the potential residential on the ground floor.

25 CHAIRPERSON GRIFFIS: Right. Okay, and

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1 it's understood.

2 MR. LAWSON: Okay.

3 CHAIRPERSON GRIFFIS: Ms. Miller, back to
4 you. Nothing off the top of your head?

5 VICE CHAIRPERSON MILLER: No.

6 CHAIRPERSON GRIFFIS: Okay. Mr. Lawson,
7 we absolutely appreciate the very comprehensive
8 report, and also in terms of coordinating and
9 accumulating all the other agency reports as you went
10 through, of which we have also noted for the record.
11 We do have the Fire Department that had issued, the
12 Department of Employment which was also interesting to
13 get, and water.

14 There is an aspect of the DOE talking
15 about the 51 percent of the employment, which you, I
16 think, adequately noticed is a PUD -- often a PUD
17 requirement, but not something germane to the variance
18 request approval before this Board.

19 That being said, does the applicant have
20 any cross-examination of the Office of Planning?

21 MR. GLASGOW: No cross-examination.

22 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
23 were you looking for questions on the OP's
24 recommendation of condition?

25 VICE CHAIRPERSON MILLER: I wasn't, but I

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1 guess to clarify, I thought I heard Mr. Lawson say
2 that -- but you should clarify whether that condition
3 -- you were happy to deal with that in the large tract
4 review instead of in this proceeding.

5 MR. LAWSON: Actually, I'm going to agree
6 with the applicant, that it is more appropriately
7 dealt with through the large tract review.

8 CHAIRPERSON GRIFFIS: Good question, Ms.
9 Miller. Anything else? Okay. Well, we have time.
10 We can always call him back. Let's move ahead,
11 though, because we do need to get out of our morning
12 session here and prepare for the afternoon.

13 ANC-6B -- Is ANC-6B present today, a
14 representative from ANC? We do have the submission of
15 ANC, Exhibit Number 26. Mr. Glasgow, I don't know if
16 you have seen it. I imagine you have. I don't know
17 what the vote was.

18 MR. GLASGOW: The vote was unanimous in
19 support. The closest I can figure out, since Mr.
20 Liebert and I were both there, I think they had all
21 the Commission members in attendance but one, and
22 there are 11 Commission members. So I took it as the
23 Roman numeral.

24 CHAIRPERSON GRIFFIS: So that may well
25 make sense. The X-0-0 vote is perhaps 10. Okay.

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1 We'll look at that for any clarification.

2 We also have submitted -- Is there a
3 representative from Council Member Ambrose's office
4 here with us today? Not noting any, but we do have
5 the submission, Exhibit Number 30, from the Council
6 Member Ambrose giving her pleasure in writing
7 supportive letter for this applicant, which Mr.
8 Glasgow also mentioned in his opening statement, and
9 it has now been further evidenced.

10 Let's go ahead to persons present that
11 would like to provide testimony. If you wouldn't
12 mind, would you just state your name and address for
13 the record, and then if you would, just make a quick
14 statement that you are in support or in opposition to
15 the application.

16 MS. HUMPHREY: Yes. My name is Sarah
17 Humphrey. My address is 1379 Potomac Avenue, S.E.,
18 and I am in support --

19 CHAIRPERSON GRIFFIS: Excellent.

20 MS. HUMPHREY: -- of the planned grocery
21 store and condo development. I only have one concern.

22 I noticed that the entrances to the
23 grocery store as well as the parking is located on
24 Potomac Avenue, which is where -- I am right directly
25 across the street, and living there -- and if anyone

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1 has been there, it is a two-lane, very small street.
2 My only concern would be congestion and traffic,
3 because with the elementary school it is very
4 congested around three o'clock when school lets out.

5 So, naturally, I would think a concern
6 would be what would happen during peak hours when
7 people are coming to the grocery store and also rush
8 hour traffic. Like I said, right now there's some
9 parking on the sides which further narrow the street,
10 and it's a two-way street. It is not a one-way
11 street.

12 So that would be my only concern that I
13 want to present today.

14 CHAIRPERSON GRIFFIS: Excellent. Now was
15 it clear to you where the actual loading for the
16 grocery store would be?

17 MS. HUMPHREY: Well, the loading, I
18 believe, is going to be on Pennsylvania.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. HUMPHREY; My only thought would be
21 why wouldn't most of the entrances be on Pennsylvania,
22 because that is a much bigger -- I think it's three
23 lanes, and it is three lanes on each side.

24 CHAIRPERSON GRIFFIS: The entrances to the
25 parking, you mean?

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1 MS. HUMPHREY: For the parking and/or the
2 grocery store on Pennsylvania. There is already some
3 light like retailers like, I think, a sandwich shop.
4 So it just seemed natural that most of the retail be
5 facing Pennsylvania as opposed to Potomac, which is a
6 residential street whereas Pennsylvania is a main
7 street, which would allow for more traffic.

8 CHAIRPERSON GRIFFIS: Well, it sounds like
9 there is an entrance on Pennsylvania and Potomac for
10 the retail.

11 MS. HUMPHREY: It seems to me, most of the
12 entrances are on Potomac, although there may be an
13 entrance on --

14 CHAIRPERSON GRIFFIS: So there is one main
15 entrance for the only retailer that faces that, unless
16 the townhouses -- but the supermarket will have an
17 entrance on Pennsylvania.

18 MS. HUMPHREY: Okay. My understanding was
19 that there are two entrances to the grocery store on
20 Potomac.

21 CHAIRPERSON GRIFFIS: Let's just get these
22 answered right away. The entrance to the grocery
23 store is on Pennsylvania Avenue?

24 MR. LIEBERT: The entrance to the grocery
25 store for vehicles is the center driveway on Potomac

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1 Avenue.

2 CHAIRPERSON GRIFFIS: Oh, you were talking
3 about vehicle?

4 MS. HUMPHREY: Right. And that's my
5 concern, parking, because parking is already tight on
6 Potomac, and as you all know, it will get even tighter
7 with the grocery store being there, people wanting to
8 kind of like just park and run in. And like I said,
9 right now with the elementary school it gets to be
10 really a problem around three o'clock, people picking
11 up their kids and, like I said, it's very narrow.

12 CHAIRPERSON GRIFFIS: What do think is the
13 peak shopping time for a supermarket?

14 MS. HUMPHREY: I have no idea, not in
15 that. I have no idea.

16 MR. LIEBERT: In the suburbs it is five
17 o'clock, and in downtown areas they say it is between
18 six and seven.

19 CHAIRPERSON GRIFFIS: Right. So it would
20 be after work.

21 MR. LIEBERT: Right.

22 CHAIRPERSON GRIFFIS: Which would be after
23 three o'clock school hour.

24 MS. HUMPHREY: But then after work, then
25 there's just normal traffic.

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1 CHAIRPERSON GRIFFIS: No, I understand.
2 I'm just trying to think of the worst case scenario.
3 You got the school dumping out.

4 MS. HUMPHREY: Right.

5 CHAIRPERSON GRIFFIS: Okay. What else?
6 Anything else?

7 MS. HUMPHREY: I think that's my only
8 concern.

9 CHAIRPERSON GRIFFIS: Okay. You don't
10 have any other questions on any of the other
11 elevations or anything?

12 MS. HUMPHREY: No, I don't.

13 CHAIRPERSON GRIFFIS: Very well. Mr.
14 Etherly?

15 BOARD MEMBER ETHERLY: Ms. Humphrey, real
16 quickly -- I should know the answer to this myself,
17 but do you know if there is parking on the opposite
18 side of Potomac Avenue from your residence?

19 MS. HUMPHREY: When you say opposite side?

20 BOARD MEMBER ETHERLY: Across the street
21 on Potomac Avenue.

22 MS. HUMPHREY: On Potomac, like I said, I
23 live right on Potomac, and there's parking on the side
24 where my house is, but I don't think there is parking
25 on the other side. People park there. I'm not sure

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1 it's legal, because there's a lot of construction
2 still from the Boy's Town development. So I'm not
3 even sure what the signs really say. I don't believe
4 there is -- I don't see a lot of people doing it. So
5 I don't think it is legal parking.

6 BOARD MEMBER ETHERLY: Okay. Thank you.

7 CHAIRPERSON GRIFFIS: Anything else?

8 VICE CHAIRPERSON MILLER: I would just
9 like to follow up with the applicant this entrance
10 issue. There are entrances both on Pennsylvania and
11 on Potomac? Is that the case?

12 CHAIRPERSON GRIFFIS: Vehicular or
13 pedestrian?

14 VICE CHAIRPERSON MILLER: Vehicular.

15 CHAIRPERSON GRIFFIS: No.

16 VICE CHAIRPERSON MILLER: Only -- Okay.

17 MR. LIEBERT: This is the loading berth
18 which is on Pennsylvania Avenue. For vehicles parking
19 for retail use, they will drive down Potomac, enter
20 here, park here, or they can go below the entire
21 building and park for one level. There are escalators
22 and elevators that take them upstairs.

23 For the residential units, they enter
24 here, and they go down to the second level below and
25 take elevators up. For pedestrians, a pedestrian

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1 entering the residential building can come in a door
2 located here, take the elevators up, or they can come
3 in a door here and take the elevators up. There is
4 also some small emergency egress stairs that aren't
5 necessarily important.

6 The retail for this coffee shop will be
7 located with an entrance here. There is an entrance
8 located here for the grocery store.

9 VICE CHAIRPERSON MILLER: But I'm
10 interested in the vehicular entrances.

11 MR. LIEBERT: Okay. It's just those two.

12 VICE CHAIRPERSON MILLER: Just on Potomac?
13 Why is it on Potomac, which is residential, as
14 opposed to on Pennsylvania?

15 MR. LIEBERT: I think there is just more
16 room to get -- There is more room to spread these
17 entrances out. You can only have curb cuts of such
18 width with DOT, and so to put three loading berths,
19 two lanes of traffic for retail and two lanes of
20 traffic for residential, this wouldn't be a safe
21 walking pedestrian environment. You would have to
22 cross like six or seven driveways from this point to
23 this point.

24 Also, there is a bus stop here. It's
25 close to the intersection. So the theory was to

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1 spread them out so that at any one point you aren't
2 compromising the character of the building or the
3 circulation around the project.

4 CHAIRPERSON GRIFFIS: And also, Ms.
5 Miller, we have spent an extensive amount of time at
6 the highest levels of DDOT working out our ingress and
7 egress for vehicles and how that all operates.

8 CHAIRPERSON GRIFFIS: Right. Good. Any
9 other clarification questions? Excellent. Thank you
10 very much.

11 Before you go, we appreciate you being
12 down here, and I think you brought up an excellent
13 concern. Obviously, it is a concern that has touched
14 some of the Board. I'm not sure if you understood all
15 this dialogue about what large tract review is and
16 such, but I think it is very important for you to have
17 stated your comments, especially with the Office of
18 Planning here, because that is exactly what they are
19 going to be working on with DDOT. As Mr. Glasgow has
20 indicated, they have been working on it for a long
21 time.

22 So I think they would probably be very
23 open answering any questions for clarification,
24 questions of why certain decisions were made that you
25 might have. But I think you ought to have some

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1 confidence to the fact that there are experts looking
2 at this with the community's perspective in mind, not
3 just how we make a development work. Of course,
4 that's maybe my hope.

5 Nonetheless, I think it is true in all
6 sincerity, and I think it would be very hard. In
7 fact, I can't imagine looking at the elevation on
8 Pennsylvania Avenue with a loading berth opening which
9 would be, let's say, 25 feet with a residential garage
10 opening of 14 feet and with a parking/loading for the
11 grocery store, let's say, at 14 also.

12 You're looking at almost 60 feet of run on
13 Pennsylvania Avenue that would all be 14 foot high
14 garage doors. It seems spreading them out, from a
15 design perspective, I guess, but it seems spreading
16 them out makes it work a lot easier, not to mention it
17 also moves different points of traffic away from each
18 other.

19 If you had all of them all at once,
20 imagine a 55 foot Mack truck backing in, but you got
21 grocery store shoppers trying to get in, and then you
22 got these people coming home that just want to go make
23 dinner. They don't need to shop, and they all trying
24 to get into the same area, not to mention having to
25 come around and go in the one direction.

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1 As you separate those, you also separate
2 the impact of the different traffic patterns that are
3 happening within the building.

4 MS. HUMPHREY: One suggestion: In talking
5 about the entrances, I was only suggesting that it's
6 flipped where the loading would be on our side as
7 opposed to the entrances for the vehicles, because --

8 CHAIRPERSON GRIFFIS: I see. But did you
9 understand -- and I think that's a great comment. I
10 think probably everyone thought that also. Obviously,
11 it was thought of. I heard the applicant indicate
12 that they had worked on that, and they thought it
13 better not to have those large vehicles next to the
14 more residential and the school area, because those
15 would probably be more problematic in terms of the
16 loading and unloading and backing and all of that.

17 I don't know if you --

18 MS. HUMPHREY: I did, but I just thought
19 that those would be at less frequent periods where it
20 would not be as, I guess, adverse as having the
21 constant traffic of the entrances being on Potomac.

22 CHAIRPERSON GRIFFIS: I see.

23 MS. HUMPHREY: I don't know how often they
24 would load and unload, but I definitely would imagine
25 that it would be less than the common everyday coming

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1 and goings of people parking. So that was my thought.

2 CHAIRPERSON GRIFFIS: Okay. Excellent.
3 Thank you very much.

4 Very well. Is anyone else here present to
5 give testimony either in support or opposition to the
6 application? Not noting any, we are now giving
7 indication, we can go to any sort of closing remarks
8 you might have, Mr. Glasgow.

9 MR. GLASGOW: Yes, sir, just very briefly.

10 I think with respect to the two variances that have
11 been requested, I think we have met our burden of
12 proof, and there hasn't been any testimony or
13 questioning in opposition to those areas of relief
14 that have been requested.

15 We appreciate the Office of Planning's
16 clarification as to how to handle it with respect to
17 the loading during the large tract review process. So
18 we would like to finish up with BZA today here, if we
19 could, with a bench decision and summary order and
20 proceed with the rest of our processes.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 Does the Board have any questions or direction or
23 action?

24 BOARD MEMBER ETHERLY: Mr. Chair, I would
25 be very comfortable moving forward, if you feel we are

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1 at that appropriate juncture in the proceedings.

2 CHAIRPERSON GRIFFIS: Absolutely.

3 BOARD MEMBER ETHERLY: It would be my
4 motion to approve application Number 17224, JPI
5 Apartments Development LP for a variance from the lot
6 occupancy requirements under Section 772 and a
7 variance from the residential rec space requirements
8 under Section 773 to construct a five-story mixed use
9 residential development, including grocery store and
10 additional retail, at Pennsylvania Avenue and Potomac
11 Avenue, S.E. in the C-2-B District, and would invite a
12 second.

13 BOARD MEMBER MANN: Second.

14 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

15 BOARD MEMBER ETHERLY: Thank you, Mr.
16 Mann. Mr. Chair, I think the case has been very, very
17 adequately made with respect to the need for the need
18 for the relevant variances, as we have discussed, with
19 regard to the layout topographically and, to an
20 extent, geographically of the subject property.

21 It is indeed irregularly shaped with
22 frontage on two major thoroughfares. Office of
23 Planning perhaps punts a little bit on calling Potomac
24 Avenue a major thoroughfare, but I side with saying
25 that, being on two major thoroughfares, that there are

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1 some very unique challenges presented to this
2 particular parcel when taken in context with the need
3 for the retail, the introduction of additional retail,
4 much needed retail along Pennsylvania Avenue and in
5 this overall community.

6 I think, with regard to our discussion
7 regarding the alley portions of the property, clearly
8 as we look at the placement of vehicular access points
9 and pedestrian access points, granted we have had, I
10 think, some very excellent testimony from the public
11 as well as just general discussion at the Board level
12 about the decision and about the thinking behind each
13 of those access points.

14 I think the rationale for their placement
15 has been laid out and, given some of the constraints
16 on behalf of the major tenant here, which would be a
17 grocery store, I think the justification for the
18 placement of the loading dock and the access points
19 has been very strongly laid out.

20 I think, with regard to the extraordinary
21 situations that lead to the practical difficulty, I
22 think similarly, as you once again look at the alley,
23 look at the interplay of Pennsylvania Avenue, S.E. and
24 Potomac Avenue, the layout of this particular subject
25 property, proposed project, I think, is very much in

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1 keeping with the constraints that are presented by the
2 building, and I note, of course, that the retention of
3 the existing townhouses toward one corner of the
4 project also represents an effort, I think, to keep
5 the project within the context of the existing Potomac
6 Avenue and Pennsylvania Avenue streetscape, if you
7 will.

8 With regard to substantial detriment to
9 the public here, I think once again the case has been
10 very adequately made that in the overall context of
11 the plans for development for this particular part of
12 Capitol Hill, we are looking at a very strong project.

13 Clearly, all of the discussions have taken
14 place and will continue across other D.C. agencies, be
15 it DDOT, Fire, EMS, because I know that there was some
16 discussion in the Office of Planning report about fire
17 hydrant placement and, as OP noted, those decisions
18 and those deliberations will all be taken care of in
19 other parts of the permitting process here. But I
20 think, clearly, all of the I's have been dotted and
21 T's crossed, if you will,¹ with the appropriate
22 agencies around pulling this project together, which
23 is no easy feat, considering the constraints that you
24 do have for this parcel.

25 That is a very long-winded way of saying,

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1 Mr. Chair, that I think the case has been very, very
2 strongly made, and I am happy to support the project.

3 CHAIRPERSON GRIFFIS: Good. Thank you very
4 much. Mr. Mann? Anything to add? Very well. In
5 addition to a lot of what you are saying, going to the
6 residential, certainly the uniqueness and the
7 practical difficulty, while the uniqueness is similar
8 and the project difficulty arises also with the
9 requirement for residential units to have light and
10 air, which dictates a certain dimension of a building
11 and also dictates a certain placement of the building
12 with the retail on the first floor, as has been
13 stated, it became very practically difficult to
14 maximize that space utilizing the first level or any
15 other levels.

16 It was also interesting to see, although
17 in the written statement it was stated that the roof
18 was not accessible, it made clear in the graphic
19 representation that there actually was not additional
20 space that could be captured in order to create, but
21 rather to carve out the areas that would lend itself
22 to outdoor recreation space. Ms. Miller?

23 VICE CHAIRPERSON MILLER: I want to concur
24 that they certainly have met the variance test, but
25 also just to add a couple of things. I thought the

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1 ANC's report in support of the application was
2 excellent in that they pointed out a couple of things,
3 one being that the need for the lot occupancy was
4 because they were doing something that is going to
5 revitalize the neighborhood, that they could have done
6 just a residential building as a matter of right, but
7 the fact that they were adding a grocery store and
8 retail and doing a mixed use is what led the developer
9 to have to seek a variance.

10 I think that this is, again, another case
11 with the residential recreation requirement that there
12 is limited amount of space, and they are doing so many
13 things in this area that positively affect the
14 neighborhood with a grocery store and the residential
15 that they did max out on the amount of space that
16 could be devoted to residential recreation.

17 Finally, I think the Office of Planning
18 also made an excellent point about this case, that
19 they say in the last page, page 6, that OP believes
20 that the proposal conforms to broader planning
21 initiatives to a greater degree than would a solution
22 that fully conformed to zoning regulations.

23 CHAIRPERSON GRIFFIS: Excellent. Good
24 points, all. Anything else in addition? Very well.
25 We have a motion before us. It has been seconded. I

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1 ask for all those in favor, signify by saying Aye.
2 Any opposed? Abstaining?

3 MS. BAILEY: The Board has voted to
4 approve the application. Mr. Etherly made the motion.
5 Mr. Mann seconded. Mr. Griffis and Ms. Miller are in
6 support, and the Zoning Commission member is not
7 present today. The vote is recorded as 4-0-1. And
8 this is a summary order, Mr. Chairman?

9 CHAIRPERSON GRIFFIS: I see no reason not
10 to issue a summary order, unless anyone objects. Not
11 noting any, let's do it.

12 MS. BAILEY: There are renderings that
13 were presented today, Mr. Chairman. I don't believe
14 we have the color version of those. Is it possible
15 for us to keep the copies?

16 MR. GLASGOW: We can get you colored
17 copies.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON GRIFFIS: Excellent. Okay,
20 anything else? Very well.

21 Ms. Bailey, any other business for us this
22 morning?

23 MS. BAILEY: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Fantastic. In which
25 case, let's adjourn the morning session of the Board

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1 of Zoning Adjustment, and we will be recessing for
2 lunch for -- Well, we will be back at 1:30.

3 (Whereupon, the foregoing matter went off
4 the record at 12:36 p.m.)

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

Time: 1:49 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. I would call to order the afternoon session of the 26th of October 2004. This is the Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also our member, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann, and representing the Zoning Commission with us this afternoon is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room.

Several important aspects: First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions. One is the court reporter that is sitting on the floor to my right who is creating the official transcript. Secondly, we are being broadcast live on the Office of Zoning's website.

Attendant to both of those and to our rules and procedures, I would ask that people refrain from making any disruptive noises or actions in the

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1 hearing room while the proceedings are going forward.

2 I would also ask that people turn off cellphones and
3 beepers so that you don't disrupt our transmissions
4 and also anybody giving testimony before us.

5 The order of procedure for special
6 exceptions and variances is as follows. First, we
7 hear the applicant, their presentation of the case and
8 any witnesses that they will call. Second, we will
9 hear any government reports attendant to the
10 application, such as the Office of Planning and the
11 Department of Transportation and others that may
12 report to the application.

13 Third, we will hear from the Advisory
14 Neighborhood Commission within which the property is
15 located. Fourth, we will hear testimony from persons
16 or parties in support of the application. Fifth would
17 be parties or persons in opposition. Sixth would be
18 closing remarks, rebuttal witnesses and conclusions
19 from the applicant.

20 We will take, of course -- Under 3117
21 Section in our regulations allows us to set times for
22 each presentation of cases. I am going to take that
23 up as a case by case basis as is required. However,
24 in all cases, cross-examination is permitted by the
25 applicant and parties in the case. The ANC within

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1 which the property is located is automatically a party
2 in the case, and therefore, will be able to conduct
3 cross-examination.

4 Nothing prohibits this Board from placing
5 reasonable restrictions on the direction of cross-
6 examination and the substance of cross-examination,
7 and I will be directive in terms of limiting any sort
8 of time or substance as we get into the specifics of
9 the cross-examination of each case.

10 The record will be closed at the
11 conclusion of the hearing on each case except for any
12 material that is specifically requested by the Board,
13 and we are very specific on what is to be submitted
14 and when it is to be submitted into the record and
15 into the Office of Zoning.

16 That is an important aspect to understand,
17 because what you need us to deliberate on must be
18 based exclusively on what is created today, meaning
19 all the information you give us will be the record.
20 Anything that you do not tell us today or has already
21 been submitted will not be deliberated on.

22 The Sunshine Act requires that this Board
23 conduct hearing in the open and before the public.
24 According to the Sunshine Act and our rules,
25 regulations and procedures, this Board may enter into

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1 executive session. Executive session is a very
2 important aspect of the functioning of this Board, and
3 it is utilized for reviewing cases and deliberating on
4 cases.

5 The decision of this Board in contested
6 cases, as I said, must be based exclusively on the
7 record that is created before us in the public and in
8 the open. Therefore, we ask people present today not
9 engage Board members in private conversations today,
10 so that we do not give the appearance of receiving
11 information that is outside of the record.

12 We will make every effort to conclude our
13 afternoon session at around six o'clock this evening.

14 I will update people on the schedule if we get close
15 to the six o'clock hour, and I appreciate everyone's
16 patience. We had a very busy morning schedule, and we
17 ran over a little bit, but we are going to get quickly
18 into our schedule for this afternoon.

19 Let me ask first that all those people
20 wishing to testify this afternoon in any of the cases
21 or thinking about testifying, if you would please
22 stand and give your attention to Ms. Bailey. A very
23 good afternoon to Ms. Bailey from the Office of Zoning
24 and also Mr. Moy, and she is going to administer the
25 oath.

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1 MS. BAILEY: Please raise your right hand.

2 (Witnesses sworn.)

3 CHAIRPERSON GRIFFIS: Good. Thank you
4 very much. At this time, the Board will entertain any
5 preliminary matters that need its attention.
6 Preliminary matters are elements that relate to
7 whether a case will or should be heard today, such as
8 requests for a postponement, continuance or withdrawal
9 or whether proper and adequate notice has been
10 provided.

11 First, can I ask Ms. Bailey if she is
12 aware of any preliminary matters for us at this time.

13 MS. BAILEY: Mr. Chairman and to everyone,
14 good afternoon. At this time, we have none, sir.

15 CHAIRPERSON GRIFFIS: Very well.
16 Preliminary matter? Let me also, because I skipped
17 over it to save some time, but I will need people to
18 come forward when they speak to the Board and address
19 it, to be on the record and the microphone will need
20 to be on. You need to speak into a microphone. Even
21 though we can hear you across the room, you are not on
22 the record.

23 Secondly, when coming forward the first
24 time you address the Board, I am going to ask you to
25 state your name and address for the record so that we

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1 can, obviously, give you credit for that statement
2 that is made. Yes, sir? Can you just turn that on?

3 MR. KESSLER: I am Carl Kessler from ANC-
4 3F. I am making a request. We have a couple of my
5 constituents who are here that have to leave because
6 of a medical issue, and they would like to be able to
7 be heard first rather than last, as per the regular
8 procedure.

9 CHAIRPERSON GRIFFIS: I'm aware of Ms.
10 Benesh. Is that correct? How many others do you
11 have?

12 MR. KESSLER: The only one is Ms. Benesh,
13 right.

14 CHAIRPERSON GRIFFIS: Very well.

15 MR. KESSLER: And so, if the Board will
16 allow that, I would really appreciate that. Thank
17 you.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much for bringing that to our attention. Very
20 well. Let me have the applicant introduce themselves,
21 and we will deal with this issue.

22 MR. AGUGLIA: Hi. My name is Richard
23 Aguglia representing the applicant. I am with the law
24 firm of Hunton & Williams. To my far right is Shannon
25 Mohan who will be assisting in our PowerPoint

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1 presentation. To my immediate right is Brett Vago who
2 is one of the owners of ZIPS Dry Cleaners. Mr. Kio
3 Kim is in the audience. He is another -- He is also
4 another owner, and Mr. Joseph Mehra will testify as
5 our expert traffic witness.

6 If the woman would like to testify out of
7 order because of a doctor's appointment, we have no
8 problem with that.

9 CHAIRPERSON GRIFFIS: Excellent. Do you
10 mind taking her first, and then you can do your
11 openings? Excellent. Why don't we do that then. Ms.
12 Benesh.

13 MS. BENESH: Thank you. I appreciate it.

14 CHAIRPERSON GRIFFIS: Oh, certainly.

15 MS. BAILEY: Mr. Chairman, excuse me. If
16 I could just say that this is Application Number 17226
17 of John R. Klein. Tenant is ZIPS Dry Cleaners.

18 CHAIRPERSON GRIFFIS: Thank you, Ms.
19 Bailey, for keeping us on our toes and legal.

20 WHEREUPON,

21 JOAN S. BENESH

22 was called as a witness on behalf of the ANC and,
23 having previously been duly sworn, testified as
24 follows:

25 DIRECT TESTIMONY

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1 MS. BENESH: Thank you very much. I
2 really appreciate this. My husband had surgery, and I
3 have to take him for his post-op exam today, and I
4 appreciate this.

5 My name is Joan Benesh, and I have lived
6 at 4444 Linnean Avenue, N.W. off of Albemarle for just
7 about 40 years. I am here today to oppose the
8 requested application by the John R. Klein for tenant
9 ZIPS wholesale dry cleaning processing plant to expand
10 the dry cleaning establishment from 4,907 square feet
11 to 6,066 square feet under Subsection 729.1 and 743.2
12 at 4418 Connecticut Avenue to include the former
13 beauty parlor which had been located at 4420
14 Connecticut Avenue for well over 30 years.

15 The ZIPS wholesale dry cleaning process
16 plant has and continues to have serious traffic
17 problems, because many customers going into the ZIPS
18 double park, park in unauthorized spaces, and do not
19 put money into the metered spaces.

20 This concern was voiced by the ANC-3F
21 Commission and citizens who testified at the October
22 10 ANC meeting. The owners and their lawyer conceded
23 that there was a problem re traffic.

24 Their response was that they would hire a
25 part-time parking attendant, but only during peak

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1 hours of business, and further stated that, if the
2 clerks behind the counter inside the store were
3 observing any illegal parking, they would refuse to
4 serve that person when -- they would refuse to serve
5 the person unless that particular customer became very
6 agitated. That is hardly an effective solution to a
7 serious traffic problem.

8 There are currently three cleaning
9 establishments on Connecticut Avenue within a one-
10 block radius. I suggest that an expansion of this
11 plant will not prove to be an asset to our
12 neighborhood or will it alleviate existing parking
13 problems with the increase in customers, nor will it
14 provide the diversity that the neighborhood, we feel,
15 is already over-cleaned.

16 As you can see from my very unprofessional
17 photos which I am going to submit in this little album
18 -- lots of room left for your grandchildren and your
19 children's pictures in here -- the establishment's
20 appearance is quite unsightly.

21 The large fluorescent ads -- quote, "Any
22 garment, 1.75" in bright red -- in the front window
23 suggests a strip mall establishment and not upper
24 Connecticut Avenue.

25 The signs are unpleasing and a definite

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1 eyesore to diners in the open cafe across the street
2 and into the dining room of the Shanghai Garden
3 restaurant. I have a letter here from the owner of
4 the Shanghai Garden restaurant which states, among
5 other things, that certainly they agree that the
6 cleaners have a right to advertise, but they said the
7 lights are very disturbing and, when they come into
8 the restaurant, often the customers complain, and they
9 have to change their seats around. But I am going to
10 submit that in there.

11 CHAIRPERSON GRIFFIS: Not the signage on
12 the restaurant?

13 THE WITNESS: The sign is on this and
14 shines into the restaurant.

15 CHAIRPERSON GRIFFIS: I know.

16 THE WITNESS: The restaurant is across the
17 street. And when you sit in the restaurant, the
18 fluorescent lights shine.

19 CHAIRPERSON GRIFFIS: I understand your
20 point.

21 THE WITNESS: Oh, got you. Okay.
22 Obviously, an extension will have a negative impact if
23 the zoning variance exception is granted.

24 At the recent ANC meeting, this was
25 discussed. One of the Commissioners suggested that

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1 the ZIPS cleaning process plant should remove the
2 offensive fluorescent ads. This suggestion was met
3 with a resounding no by the owner and their lawyer.

4 As you can see from my pictures and the
5 picture submitted at that meeting by the owners, the
6 yellow canopy is not only less than attractive, it is
7 illegal, because the ZIPS cleaning processing plant
8 does not have a proper permit for this overhang that
9 extends into public space.

10 CHAIRPERSON GRIFFIS: Good. May I just
11 have you conclude?

12 THE WITNESS: Pardon me?

13 CHAIRPERSON GRIFFIS: If I can just have
14 you conclude.

15 THE WITNESS: Want me to conclude, did you
16 say?

17 CHAIRPERSON GRIFFIS: Yes. Go ahead.
18 Just wrap it up.

19 THE WITNESS: Okay. I have one more.
20 ZIPS processing plant has done nothing to enhance the
21 area in front of their business, not a flower and not
22 a bush and not a plant. When this was brought up at
23 the ANC, by one of the Commissioners and the neighbors
24 who testified, the owner said that they would do that
25 if the ANC told them to do that.

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1 We feel that other merchants really
2 realize that and beautified their property, and that
3 is also in my pictures.

4 In conclusion, I will urge the BZA to deny
5 the ZIPS wholesale cleaning process plant a zoning
6 variance that will allow them to expand their
7 business. Thank you very much, and I certainly
8 appreciate the opportunity.

9 CHAIRPERSON GRIFFIS: Indeed. Thank you
10 very much. A couple of quick questions.

11 If the expansion was denied, would the
12 parking condition change?

13 THE WITNESS: Well, I think they just
14 wouldn't increase. That's what I think. One thing I
15 had in my testimony that I was there at four o'clock
16 yesterday kind of checking the traffic, and an Isuzu
17 came by at four o'clock and, blinking lights, ran into
18 the store, ran out the store, and the police were just
19 coming down the street, and she was very lucky because
20 they missed her, and she was parked there at four
21 o'clock yesterday, and her car was from California.
22 So it is not exactly -- It wasn't somebody from the
23 area.

24 CHAIRPERSON GRIFFIS: Right. Those
25 Californians are fairly un-law abiding anyway.

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1 The other aspect is: You indicated that
2 this is not an asset to the community, and actually
3 characterized your neighborhood as over-cleaned, which
4 I have written and we will look at every other case in
5 the neighborhood. First time I ever heard of a
6 neighborhood over-cleaned. We usually get the dirty
7 neighborhoods. But nonetheless, if it is not an
8 asset, if it is not expanded, it's still there. Is
9 that correct?

10 THE WITNESS: I assume it's still there.
11 I mean, if they -- Yes.

12 CHAIRPERSON GRIFFIS: And the signage --
13 if it is not expanded, the signage could still remain.
14 I guess my question is, of all the elements that you
15 are bringing up on one level, how is it really tied to
16 the expansion or not?

17 THE WITNESS: Well, it seems to me that
18 there are a lot of things that I've brought up, but I
19 thought that the traffic was the most important, and I
20 felt that, obviously, if you increase, you increase
21 your number of customers. Otherwise, you don't
22 usually increase.

23 CHAIRPERSON GRIFFIS: Indeed, and I think
24 that is an excellent point.

25 THE WITNESS: And if you increase your

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1 number of customers, you increase the number of people
2 who are coming in cars, and then you have an increased
3 parking problem.

4 CHAIRPERSON GRIFFIS: Okay, good. Let me
5 go and address all of these issues perhaps in a
6 bundle.

7 First of all, with what we have is a
8 special exception and, as you well indicated, under
9 729.1 and 743.2(c) we need to look specifically at our
10 zoning regulations at what kind of jurisdiction we
11 have, one, and what we are actually approving.

12 So to that, you brought up an issue of the
13 canopy that projects out probably over the property
14 line onto public space, and indicated that it didn't
15 have a proper permit. I think that should be a great
16 concern to you.

17 What I will tell you directly is we would
18 have no jurisdiction over dealing with that, as it
19 would be projecting over the property line. That goes
20 to public space permitting. It goes to a whole
21 different agency. So it is not something that we
22 could address or would address unless it is shown that
23 it ties directly to the regulations on the property
24 itself.

25 Again, some of these other issues: In

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1 terms of illegal parking -- I mean, what will happen
2 as we look at this, I think that is an impact that we
3 need to look at, how much traffic this generates and
4 what kind of negative impact or how a negative impact
5 might be mitigated. But I can also tell you that it
6 goes directly to the tying of what is required that
7 they have to provide. That's the regulations.

8 Now in some aspects this is a special
9 exception, so that we can look at if there were things
10 that were created that would go well beyond and create
11 an adverse impact, but to think that we would remedy
12 any sort of traffic problems would give you false hope
13 in terms of, first of all, we don't enforce those, and
14 there is an awful lot -- As I understand, there is a
15 no parking zone in front of the establishment. Is
16 that your knowledge also?

17 THE WITNESS: Yes, there is.

18 CHAIRPERSON GRIFFIS: So if someone
19 decided to break the law and park there -- Well, I
20 won't go too far into it.

21 Let's take up other questions from the
22 Board, if there are any. Any other questions? Good.
23 Does the applicant have any cross-examination of the
24 witness?

25 MR. AGUGLIA: No, sir.

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1 CHAIRPERSON GRIFFIS: No cross? Well
2 done. Thank you very much. We appreciate you being
3 patient with us and staying down here, and we wish
4 well for you and your husband this afternoon.

5 THE WITNESS: Thank you so much.

6 CHAIRPERSON GRIFFIS: Okay. Let's get
7 back into our normal process then. We will have the
8 openings from the applicant. And I think it is not
9 unsuited that we took that first, as there has been,
10 seems to me, all of the hot items that have now been
11 identified that you can address in your case.

12 MR. AGUGLIA: Yes.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. AGUGLIA: All right. I will briefly
15 summarize what we will present, and then we will
16 present it.

17 As Ms. Bailey stated, we are seeking a
18 special exception to expand beyond 5,000 square feet
19 in the C-3-A zone. We have to show that there is no
20 noise or odor which adversely affects the
21 neighborhood, and I would state that there has never
22 been any objection of any kind from anyone about that
23 particular issue; that there are no dangerous or
24 otherwise objectional traffic conditions. Mr. Mehra
25 will speak to that, and I would also say that the

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1 Department of Transportation has no objection, has
2 found no adverse impact and that is in the record.

3 Then, of course, the Board may, as it
4 choose, impose any additional requirements that it
5 deems in order to protect adjacent properties.

6 CHAIRPERSON GRIFFIS: You know, 729.5
7 seems to give us more jurisdiction than I have ever
8 seen in any other section except for 411. Just a side
9 note.

10 MR. AGUGLIA: Well, thank you.

11 CHAIRPERSON GRIFFIS: Let's go ahead.

12 MR. AGUGLIA: That's comforting. Thank
13 you.

14 Now the property is located at 4418
15 Connecticut Avenue, and it wishes to expand into 4420
16 Connecticut Avenue. Mr. Vago will go through the
17 PowerPoint presentation and explain very briefly what
18 each picture represents. Mr. Vago?

19 WHEREUPON,

20 BRETT VAGO

21 was called as a witness by counsel for the applicant
22 and, having previously been duly sworn, testified as
23 follows:

24 DIRECT TESTIMONY

25 THE WITNESS: The first picture we are

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1 looking at here is just the front of our location.
2 Adjacent is the Day's Inn hotel.

3 MR. AGUGLIA: Is it possible to dim the
4 lights a little bit or can you see the screen?

5 CHAIRPERSON GRIFFIS: We could turn the
6 lights out. Would you mind, Mr. Parker? Excellent.

7 THE WITNESS: This is a picture taken
8 exactly in front of our location showing our entrance
9 and exit doors for our front entrance as well as our
10 canopy and our signage.

11 MR. AGUGLIA: Before you go on to the next
12 picture, I would add that all permits for the canopy,
13 even though it is not before the Board, just as a
14 matter of comfort to the Board -- all permits over a
15 long time period were obtained in order to get that
16 awning and --

17 CHAIRPERSON GRIFFIS: So you have public
18 space permits for the ramp and also the awning.

19 MR. AGUGLIA: We have all proper permits.
20 The public space begins -- you see where it's sort of
21 a light blue versus the gray? That's where the public
22 space begins.

23 CHAIRPERSON GRIFFIS: I see. Okay.

24 MR. AGUGLIA: Thank you.

25 CHAIRPERSON GRIFFIS: Clarification: The

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1 hair salon that is showing in that photograph to the
2 right, that's the area to which you are expanding?

3 MR. AGUGLIA: That is correct.

4 VICE CHAIRPERSON MILLER: Could I just ask
5 if you might point out the signs that were offensive
6 to the individual that just testified before us?

7 CHAIRPERSON GRIFFIS: How would they know
8 which ones were offensive?

9 VICE CHAIRPERSON MILLER: Well, she
10 described them. Do you know which ones?

11 THE WITNESS: She was referring to our
12 neon sign. So I would believe that she is referring
13 to any of the neon signs that are inside the windows.

14 Those are our only neon signs: "Any garment, \$1.75,"
15 "Free Parking in Rear," "Shirts, \$1.09."

16 VICE CHAIRPERSON MILLER: Thank you.

17 MR. AGUGLIA: I would state for the record
18 that there are only three interior neon signs, and I
19 don't believe the Board's jurisdiction extends to
20 interior signs, but there are no plans to put any
21 additional neon signs at this time.

22 THE WITNESS: This is actually the
23 location, 4420 connecticut Avenue, that is currently
24 housed by Uni Hair Salon that we are looking to expand
25 into, 1159 square feet. To the right, the canopy that

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1 actually has 4420 is a stairwell actually to offices
2 upstairs that occupies the second floor.

3 This is the back of the entire building.
4 We have a rear entrance. You are looking at part of
5 our parking lot. The rear entrance is directly
6 underneath the ZIPS Dry Cleaner sign. The entrance on
7 the left is to another stairwell that takes people
8 once again up to the second floor for the offices.

9 This is a sign on north -- looking north
10 in the alley. Burger King is directly to the right,
11 and the building to the right -- that is the carwash.

12 CHAIRPERSON GRIFFIS: Have you ever had
13 customers complain about access in and out of your
14 parking lot?

15 THE WITNESS: It is sometimes difficult
16 during lunch hours with Burger King and the carwash
17 and ours, with people trying to get in and out of the
18 alley.

19 CHAIRPERSON GRIFFIS: Meaning the alley is
20 blocked?

21 THE WITNESS: I wouldn't say that the
22 alley is blocked, but it is a two-way alley and, when
23 you have cars trying to pull in and out of either the
24 Burger King parking lot or our parking lot, you
25 generally take up either one of the directions of

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1 traffic. So it generally does prevent people from
2 momentarily being able to get in or out of the alley.

3 CHAIRPERSON GRIFFIS: And the access for
4 your free parking, as it has been signed on the front
5 of your structure, is from the adjacent street, not
6 directly off of Connecticut Avenue, or is there a
7 direct link from Connecticut Avenue?

8 THE WITNESS: You can get a direct link
9 right -- If you are looking at that building right
10 there, there is a driveway right there between that
11 and Burger King that you can actually take a left on
12 Connecticut Avenue and come up. We actually recommend
13 to our customers to either come in from Yuma or
14 Albemarle which are adjacent streets to come in,
15 rather than stopping traffic on Connecticut trying to
16 make a left turn.

17 CHAIRPERSON GRIFFIS: What if they were
18 coming south on Connecticut? It would be a right.

19 THE WITNESS: Oh, I'm sorry. Yes, if you
20 were coming south, you could make a right turn.
21 Absolutely, yes.

22 CHAIRPERSON GRIFFIS: Conceivably, on
23 Connecticut it is a double yellow line, isn't it?
24 Doesn't matter.

25 THE WITNESS: Yes, I'm not sure.

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1 CHAIRPERSON GRIFFIS: All right, let's
2 move ahead.

3 THE WITNESS: This is a photo of our
4 entire parking lot. We acquire -- We have 11 parking
5 spaces. Two parking spaces we would acquire from the
6 hair salon, 4420 Connecticut Avenue, and there are six
7 parking spaces all the way at the top of the parking
8 lot for the offices upstairs.

9 MR. AGUGLIA: Before you go to the next
10 slide, as a point of information to the Board, the
11 parking lot is actually covered by a separate special
12 exception. It is application Number 16659. It was an
13 application by the owner, Klein.

14 CHAIRPERSON GRIFFIS: Are there any
15 conditions on that order?

16 MR. AGUGLIA: There were some landscaping
17 conditions. I have a copy of the order, if the Board
18 would like to see it.

19 CHAIRPERSON GRIFFIS: How is the
20 compliance of those conditions?

21 MR. AGUGLIA: It is in compliance with
22 those conditions. To the best of my knowledge, the
23 landscaping is in the back. The basic is they keep 19
24 spaces.

25 CHAIRPERSON GRIFFIS: In the way-back?

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1 MR. AGUGLIA: They go way back.

2 CHAIRPERSON GRIFFIS: How about the
3 painting of the guard rails and such? How often do
4 you maintain that?

5 THE WITNESS: The painting of the guard
6 rail is actually on the right side for Burger King.
7 There is actually no guard rail on our side, if that's
8 what you are asking me.

9 CHAIRPERSON GRIFFIS: Okay. Let's move
10 ahead.

11 MR. AGUGLIA: And that application was
12 approved in 2001, and it is good through 2006.

13 CHAIRPERSON GRIFFIS: Excellent.

14 THE WITNESS: These are the signs that we
15 post on front of each of our parking spaces, basically
16 saying ZIPS Dry Cleaning Parking Only, 15 Minute
17 Parking Only While at ZIPS Dry Cleaners.

18 This is just a sign of our zoning hearing
19 that we posted on the front and back of our windows.

20 This is our call office. This is where we
21 take in the clothes, and we actually pick up the
22 clothes. You are looking at five counters.

23 This is just another picture. This is
24 directly in front of our front entrance and exit
25 doors. In the front you are looking at four out of

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1 our five counters right now. Those are our garment
2 racks in the back there, if you can see them, where
3 the clothes are hanging.

4 Most of our counters are manned by two
5 employees. Because of our limitation of counters, we
6 try to help get the customers through.

7 CHAIRPERSON GRIFFIS: Do you do cleaning
8 on-site?

9 THE WITNESS: All cleaning is done on-
10 site. Nothing is done off-site.

11 This is just another picture of where we
12 mark in our clothes. It is kind of a packed area. So
13 generally, our counters and our marking areas are just
14 about four or five feet apart from each other.

15 This is a photo of our walkway that we
16 have from our rear entrance. That would bring you
17 back up to the pictures we just saw which was the call
18 office to take in the clothes.

19 This is a picture of our dry cleaning
20 machines, fourth generation. We have two of them,
21 self-contained units, dry to dry.

22 CHAIRPERSON GRIFFIS: Fourth generation?
23 Are they having offspring or something? What does
24 that mean?

25 THE WITNESS: Four-generation machines are

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1 a dry to dry machine which means nothing is released
2 into the air.

3 CHAIRPERSON GRIFFIS: Oh, I see. Self-
4 contained: You throw them in there, and you --

5 THE WITNESS: That's right. You know, the
6 washing and drying is done in the same machine, and
7 from chain from third to fourth generation prevents
8 the door from opening until it reaches certain amount
9 of PPMs.

10 CHAIRPERSON GRIFFIS: Great. I don't want
11 to ask what that is.

12 THE WITNESS: This is a picture of our
13 production area. You are looking at somebody who is
14 pressing a garment right now, and you have pressing
15 machines in a row going down in our back.

16 This is another picture of our area where
17 we keep storage of supplies and where our pressers are
18 pressing. It is a compact area that, with the
19 expansion, we would be able to loosen up a little bit
20 to give the employees more room.

21 Once again, we are looking at just another
22 picture, just from a different angle, of the pressing
23 machines.

24 This is a photo of our laundry machines.
25 This was the last thing that we installed many years

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1 ago. We kind of ran out of room. So the machines are
2 actually perfectly lined up together rather than
3 giving them any room. So we would also be able to free
4 this area up.

5 This is our assembly area after the
6 clothes are pressed and brought out. We run three
7 assembly lines. You are not seeing the middle line.
8 If the middle line was there, you probably wouldn't
9 have been able to see anything. You would have seen
10 nothing but garments, and the people would have been
11 lost in the photograph.

12 This is another photo of our garment
13 racks. All those are just actually packaged clothes
14 ready for people to pick up, no spaces pretty much on
15 those conveyors right now.

16 This is just once again another photo of
17 our conveyors. The top conveyor is pretty tight. You
18 can see where some of the clothes are starting to
19 actually lean out. That's just a sign of actually
20 where you have a lot of clothes on there. So
21 actually, they can't sit in there flush. So they
22 actually start to bend themselves back out a little
23 bit.

24 This is a photograph of -- The white area
25 is our current operation, 4418 Connecticut Avenue.

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1 The gray area is 4420 Connecticut Avenue, our place we
2 would like to get a special exception to move into and
3 expand.

4 In the front there, basically what you are
5 seeing -- I know nothing is unfortunately labeled, but
6 you are basically seeing that we would expand our call
7 office to add three additional counters, and those
8 circular tubes are actually supposed to resemble
9 conveyor space.

10 So the expansion is really to add
11 additional conveyor space to minimize the amount of
12 scrunching on our existing conveyors, and the
13 additional counters would allow us to take, instead of
14 doubling up on our current counters of employees, to
15 each give them their own counter, at the same time
16 being able to help more -- three additional customers
17 for every eight counters we have.

18 CHAIRPERSON GRIFFIS: You indicated in the
19 submission that you weren't anticipating an increase
20 in any of your employee numbers. Is that correct?

21 THE WITNESS: That is correct.

22 CHAIRPERSON GRIFFIS: So with the staff
23 that you have now, with a larger facility you can --
24 you won't need additional employees?

25 THE WITNESS: That is correct. The

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1 expansion is not really to bring in additional
2 business. It is more for actually storage facility,
3 which we do not have in our current establishment, and
4 an ability for us to get customers in and out faster.

5 CHAIRPERSON GRIFFIS: Okay.

6 THE WITNESS: That is true. Generally, in
7 our larger operations -- there's 12 ZIPS locations.
8 This is just my individual store. A lot of stores
9 that have more square footage generally have one or
10 two counters that are pick-up only. so when people
11 come in at night, you know, the in by 9/out by 5
12 guaranty, you don't have to wait in a big line to drop
13 off clothes. You can actually just go to a counter
14 that is specifically for pick-up. The expansion would
15 allow us to do that.

16 That's the end of our PowerPoint
17 presentation.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you. All those photographs are already in the record.
20 Is that correct?

21 MR. AGUGLIA: That is correct.

22 CHAIRPERSON GRIFFIS: Questions from the
23 Board?

24 BOARD MEMBER ETHERLY: Very briefly, Mr.
25 Chairman. If we could, the very last photo that had

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1 the set-up, including the proposed space -- could you
2 come back to that one for a moment. It was a diagram.

3 While we are heading there, what I am interested in
4 is where the two new additional lines would go? Would
5 those be pick-up only lines or would those be -- I'm
6 just trying to get a sense of kind of a traffic
7 pattern standpoint -- as customers are coming into the
8 main space there where you have the four lines, would
9 those continue to be for dropoff or would you propose
10 to kind of break it up some way so you have a certain
11 set of customers going in one space, a certain set of
12 customers going in another space?

13 THE WITNESS: The circular tubes that are
14 basically seen there, those are actually conveyor
15 storages. The actual customer dropoff counters are
16 those little square rectangles that you are seeing in
17 the front.

18 BOARD MEMBER ETHERLY: Right. All down
19 here?

20 THE WITNESS: That's correct. Thank you.
21 We originally have five. We would be adding three
22 additional in the expansion. The last two would
23 probably be for pick-up only. So what would happen is
24 customers who are dropping off would come into a
25 separate line and deal with one of the original six

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1 counters, and people who are picking up would just
2 come all the way down and stand at a separate line
3 just for doing pick-ups.

4 BOARD MEMBER ETHERLY: Okay. So you are
5 probably anticipating those two stations here as pick-
6 up?

7 THE WITNESS: That is correct.

8 BOARD MEMBER ETHERLY: Can you
9 characterize -- We'll get into some further discussion
10 on traffic. So I don't want to get too premature with
11 that conversation. But just from the standpoint of,
12 if you will, the average trip time for a customer who
13 is dropping off versus a customer who is picking up,
14 how would you -- Let's just say for the moment,
15 because once again we'll get into traffic, does a
16 customer who is picking up take longer to get through
17 your operation as opposed to a customer who is
18 dropping off?

19 THE WITNESS: For a customer, I'm sure,
20 that is picking up, actually, they would go through a
21 lot faster than a customer that's dropping off.
22 Actually, through a dropoff there is money exchanged.
23 There is actually a counting of the garments that
24 would come in.

25 BOARD MEMBER ETHERLY: Okay. Thank you.

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1 Thank you, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Any other questions
3 right now? Let's move ahead then.

4 MR. AGUGLIA: We are now prepared for Mr.
5 Mehra, our expert witness, to testify on the traffic
6 conditions. I would add as a quick prelude that none
7 of the employees, managers or owners, park at the site
8 in any of the parking spots that are available. There
9 are 16 parking spaces in the rear. They either Metro
10 -- Many of the workers Metro or they park in the pay
11 park in the Days Inn or across the street at the Park
12 Connecticut. So again --

13 CHAIRPERSON GRIFFIS: So you don't let
14 your employees park in the surface parking in the
15 rear. Is that correct?

16 THE WITNESS: None of our employees
17 actually park, that we actually buy parking.

18 CHAIRPERSON GRIFFIS: Do you preclude them
19 from parking there?

20 THE WITNESS: We don't preclude them from
21 parking there, but if we did hire somebody who did
22 drive, we would put them in and actually either buy
23 parking at Day's Inn or Park Connecticut. So we don't
24 -- We don't not hire somebody just because they
25 actually drive a car. Is that your question?

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1 CHAIRPERSON GRIFFIS: No. Do you prohibit
2 them from parking in your customer parking?

3 THE WITNESS: Well, yes, because we buy
4 parking for them either --

5 CHAIRPERSON GRIFFIS: So you make
6 provisions elsewhere?

7 THE WITNESS: That's correct.

8 VICE CHAIRPERSON MILLER: I just want to
9 follow up on that, if we are talking about parking
10 spaces. You have 16 parking spaces dedicated to
11 customers of dry cleaning?

12 MR. AGUGLIA: Yes, in this sense. There
13 are 11 what I will call full time spaces dedicated to
14 ZIPS customers, 15 minutes maximum. With the
15 extension, they would get an additional two from the
16 tenant who is leaving -- who has left, I believe, an
17 additional two. So the 13 "full time."

18 In the evenings after close of business
19 and all day Saturday, they pick up the six parking
20 spots from the offices above.

21 VICE CHAIRPERSON MILLER: In the evenings,
22 how late are they open?

23 THE WITNESS: Five o'clock.

24 VICE CHAIRPERSON MILLER: So what happens
25 to the spaces after five o'clock?

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1 THE WITNESS: For the office floor spaces?

2 VICE CHAIRPERSON MILLER: No, the spaces
3 that are dedicated for the -- to the 11 spaces. Do
4 they remain vacant?

5 THE WITNESS: Yes, they remain just in
6 use. Our 11 spaces are permanently assigned to us all
7 the time, and they are used --

8 CHAIRPERSON GRIFFIS: You pick up five
9 spaces when the office closes at five o'clock.

10 THE WITNESS: We pick up six spaces, yes.

11 CHAIRPERSON GRIFFIS: Six now. Okay.

12 THE WITNESS: Six.

13 CHAIRPERSON GRIFFIS: Does that make
14 sense? After five, they get six extra.

15 VICE CHAIRPERSON MILLER: I get that. But
16 my question is -- I was just curious, though, what
17 happens to the 11 spaces after your business is
18 closed? Are they used by somebody else?

19 THE WITNESS: Oh, I'm sorry. After our
20 business is closed at eight o'clock, yes, every once
21 in a while people will park in our parking spaces to
22 either go to a restaurant or some people do park
23 overnight. We have left on occasion and there will be
24 people in the parking lot. They are never there in
25 the morning when we come back in.

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1 VICE CHAIRPERSON MILLER: So it's not
2 chained or anything like that?

3 THE WITNESS: It is not chained.

4 VICE CHAIRPERSON MILLER: And are all 11
5 spaces used? I mean, is it ever full so that somebody
6 can't find a space who wants to drop off or pick up
7 their cleaning?

8 THE WITNESS: Yes, on occasion it is full.

9 VICE CHAIRPERSON MILLER: And is that
10 usually on a Saturday or is that usually on a --

11 THE WITNESS: Generally, on a Saturday
12 and, generally, our next two busiest times which would
13 be Monday and Fridays between seven and nine o'clock
14 in the morning.

15 VICE CHAIRPERSON MILLER: Okay. Thank
16 you.

17 MR. AGUGLIA: I would state for the record
18 that Mr. Vago has already employed a traffic
19 coordinator in order to control the traffic in the
20 rear Mondays and Friday mornings, peak rush, and all
21 day Saturday. So he has already gone that extra mile
22 to make this a better place to park within the time
23 limits provided for customers. Is that correct, Mr.
24 Vago?

25 THE WITNESS: That is correct.

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1 VICE CHAIRPERSON MILLER: Since when has
2 that been happening?

3 THE WITNESS: That actually started
4 yesterday after the ANC meeting.

5 CHAIRPERSON GRIFFIS: How's it going?

6 THE WITNESS: It's going very well.

7 MR. AGUGLIA: But the suggestion was from
8 the applicant before we met with the neighbors, and
9 the neighbors asked that to be a condition. It was
10 substantially before.

11 CHAIRPERSON GRIFFIS: Okay. We are going
12 to move on. But, okay, so you hired this person that
13 goes out in the alley. What his or her instruction?
14 What did you tell them to do?

15 THE WITNESS: Primarily, our problem with
16 the parking lot that we hope that the traffic
17 coordinator will solve is basically two things: One,
18 preventing people from parking there and leaving and
19 going either to UDC or Burger King or to Office Depot.

20 So by having somebody out there controlling the
21 parking lot, that takes care of a considerable amount
22 of the problems, because a lot of people do park and
23 they just go elsewhere. Day's Inn has that problem as
24 well as does Burger King parking lot.

25 The second objective is to help people get

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1 in and out of the parking lot faster. So when people
2 are trying to either get through the alley or get out
3 of the parking lot, they can be there to assist them.

4 If we make that a smoother process, then people
5 actually can get in and out faster, and it will allow
6 the parking spaces to come available quicker.

7 CHAIRPERSON GRIFFIS: Do you have a rear
8 entrance to your place?

9 THE WITNESS: We do have a rear entrance
10 to our place.

11 VICE CHAIRPERSON MILLER: Okay. It's 15-
12 minute parking for your customers, right?

13 THE WITNESS; That is correct.

14 VICE CHAIRPERSON MILLER: So what happens
15 is somebody is your customer, and then they go
16 somewhere else, and they ended up parking there longer
17 than 15 minutes? What happens?

18 THE WITNESS: What we would do, and what
19 we have informed our traffic coordinator to do, is
20 what I have done over the years and what my co-owner,
21 my business partner, Kio Kim, has done over the years.

22 IF we do find somebody, we do try to catch them and
23 tell them, you know, this is only for parking while
24 you are at ZIPS and, if you do want to park, you need
25 to move or park into one of the metered spaces.

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1 We also do carry and have used before
2 violation stickers, and we have on occasion called
3 police and actually had cars towed out that have
4 actually parked there for a long period of time.

5 MR. AGUGLIA: And I also believe the
6 applicant would have no problem with -- in addition to
7 the sign, the interior neon sign saying "free parking
8 in the back, 15 minutes," along with the sign to the
9 back, to also having a notice on each counter saying,
10 you know, you must please limit your parking to 15
11 minutes for other customers.

12 With that and your permission, I will
13 introduce Mr. Mehra. We have his resume. He has been
14 qualified as an expert in traffic analysis before this
15 Board again. Mr. Mehra, do you want to quickly
16 summarize your qualifications.

17 MR. MEHRA: Thank you. I am a licensed
18 professional engineer, and I have done several
19 studies, traffic studies, in the District, and I have
20 done some studies for the District Department of
21 Transportation also. I have over 30 years of
22 experience in traffic engineering and transportation
23 planning.

24 CHAIRPERSON GRIFFIS: Any questions from
25 the Board? Is there a representative from ANC-3F here

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1 today on this case? Do you have any objection to the
2 request for expert witness status?

3 MR. KESSLER: No, I have no objection.

4 CHAIRPERSON GRIFFIS: Okay. Not noting
5 any objection from the Board, we will accept you as an
6 expert witness in traffic engineering. Is that
7 correct?

8 MR. AGUGLIA: Thank you. For the record,
9 I will submit his resume.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. AGUGLIA: Mr. Mehra.

12 WHEREUPON,

13 JOE MEHRA

14 was called as a witness by counsel for the applicant
15 and, having previously been duly sworn, testified as
16 follows:

17 DIRECT TESTIMONY

18 THE WITNESS: Thank you. I conducted the
19 traffic analysis for the ZIPS Dry Cleaner expansion.
20 As has been mentioned earlier on, ZIPS Dry Cleaners
21 has a parking lot for its customers which is located
22 directly behind the cleaners. Access to this parking
23 lot is off an alley that connects Albemarle and Yuma
24 Streets.

25 Further, there is direct access to the

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1 parking lot from Connecticut Avenue via a driveway
2 that also serves the Burger King.

3 ZIPS has 11 parking spaces available at
4 all times for their customers. The parking lot has a
5 total of 19 spaces, and includes 11 spaces for ZIPS,
6 two for the hair salon and six for the offices located
7 above the ZIPS.

8 The six parking spaces that are reserved
9 for the offices during the weekday office hours are
10 also available for use by ZIPS customers during the
11 evening and weekend hours, resulting in a total of 17
12 parking spaces.

13 The majority of the employees use Metro to
14 come to work. All employees who drive to work and
15 owners of ZIPS park at leased spaces at the Day's Inn
16 which is located right next to the ZIPS or park across
17 the street at the Park Connecticut Avenue apartments.

18 Employees are not permitted to park in the ZIPS
19 customer parking lot.

20 The regular traffic to and from the ZIPS
21 was observed and recorded during the hours of 5:00
22 p.m. to 7:00 p.m. on Friday, September 10, and between
23 the hours of 11:00 a.m. to 3:00 p.m. on Saturday,
24 September 11.

25 In addition, the number of vehicles that

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1 travel the alley near the ZIPS parking lot was also
2 observed. Friday's data showed that the peak one hour
3 for the alley traffic and the ZIPS traffic was between
4 5:00 p.m. to 6:00 p.m., and 50 vehicles entered the
5 ZIPS parking lot.

6 The maximum number of vehicles parked in
7 the lot was 11 vehicles and recorded between 5:15 and
8 5:30 p.m. There was parking space available for every
9 customer that came into the parking lot. A total of
10 38 vehicles travel in the alley during that one hour.

11 The peak one hour for the ZIPS traffic on
12 Saturday occurred between 1:30 and 2:30 p.m. A total
13 of 58 customer vehicles entered the parking lot during
14 this period. The maximum number of vehicles for ZIPS
15 parked in the lot were 16, and occurred between two
16 o'clock and 2:30 in the afternoon. There was parking
17 space again available for every customer that came
18 into the parking lot. In the alley itself, there were
19 34 vehicles that traveled during that peak one hour.

20 I think one of the things that we should
21 note is that the majority of the traffic that's going
22 to and from the ZIPS is either a pass-by trip or a
23 diverted link trip, and by that what I mean is that
24 these are not destination oriented trips.

25 A pass-by trip is an intermediate stop on

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1 the way from an origin such as work to a primary trip
2 destination such as home without a route diversion,
3 which means you are going from home to work, and you
4 stop at the dry cleaner to drop off or pick up the
5 clothes.

6 VICE CHAIRPERSON MILLER: Excuse me. How
7 do you know that?

8 THE WITNESS: This is -- I don't have
9 actual statistics data, but the Institute of
10 Transportation Engineers has done several surveys of
11 different land uses, and they have come up to this
12 conclusion that there is a pass-by trip, and the other
13 thing is called a route diverted trip, in the sense
14 that if you are going from work to home and you are
15 traveling on some adjacent street but you divert onto
16 Connecticut Avenue to stop at the dry cleaners and
17 then proceed on to work or home.

18 VICE CHAIRPERSON MILLER: I understand
19 what you are saying, but how do you know about what
20 these specific customers? I mean, do you know how
21 many customers are going from one location to another
22 location?

23 THE WITNESS: No. We have not done any
24 specific surveys to come up with that conclusion.

25 CHAIRPERSON GRIFFIS: Go ahead.

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1 THE WITNESS: Okay. In terms of the main
2 arterial that is serving ZIPS is Connecticut Avenue.
3 The Department of Transportation actually recently
4 conducted a Connecticut Avenue transportation study
5 that extended from north of Albemarle Street to south
6 of Tilden Street and to Reno Road on the west.

7 The study showed that the intersections of
8 Albemarle Street and Connecticut Avenue and also the
9 intersection of Connecticut Avenue and Yuma Street is
10 operating at level of service C or better during the
11 A.M. peak period, the P.M. peak period or the evening
12 peak period, and on Saturdays peak period operates at
13 level of service D or better, and general level of
14 service E or F are considered as failing or
15 unacceptable.

16 In terms of the proposed expansion by
17 1,159 feet, square feet, it should be noted that the
18 expansion is to serve the existing customers. No new
19 employees will be added, and because of this, there
20 will be no increase in traffic to and from ZIPS.

21 As a matter of fact, if you really look at
22 it, there will be a reduction of a couple of trips,
23 which is the trips that are currently going to the
24 hair salon won't be there in the future.

25 In terms of parking, there will be two

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1 more parking spaces available on a regular basis with
2 the proposed expansion, resulting in a total of 13
3 spaces. The parking spaces required by zoning is 11
4 at the proposed expansion.

5 So there will be enough parking to serve
6 the zoning requirements as well as the actual demand.

7 The safety of pedestrians and motorists
8 will not be affected by the proposed expansion. Thank
9 you.

10 CHAIRPERSON GRIFFIS: Good. Thank you
11 very much. Questions?

12 VICE CHAIRPERSON MILLER: Do you know how
13 many customers ZIPS cleaners has?

14 THE WITNESS: What I have presented is
15 basically what we observed ourselves in the sense
16 that, when we were out there -- As a matter of fact, I
17 said that there were 58 vehicles who parked in the
18 parking lot during the one hour on Saturday that we
19 were there, which was the highest that we observed.

20 VICE CHAIRPERSON MILLER: And there is no
21 increase in employees, but you don't know whether
22 there might be an increase in customers.

23 THE WITNESS: I think ZIPS can answer that
24 in a better fashion, but I am looking at it from a
25 traffic perspective, that as many customers who can go

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1 there today will go there, and whether the size of the
2 dry cleaners is 5,000 square feet or 6,000 square
3 feet, unless they put up a sign that we have enough
4 business for today, so we are not going to take
5 anymore or --

6 CHAIRPERSON GRIFFIS: No new customers,
7 please. All right.

8 VICE CHAIRPERSON MILLER: Okay, thank you.

9 CHAIRPERSON GRIFFIS: Mr. Mann?

10 BOARD MEMBER MANN: Do you have any idea
11 how many customers drive versus how many don't drive?
12 Do you know what the percentage of the breakdown is?

13 MR. VAGO: We don't know exactly what the
14 breakdown is, but I believe it is more like 60-40.

15 BOARD MEMBER MANN: Sixty drive, 40 are
16 walking.

17 MR. VAGO: That's correct. Give or take.
18 I mean, it could be 50-50. We have never really run
19 the numbers, but watching actually what comes into the
20 front and the back, we do almost a pretty even mark,
21 but I'm sure it's not 50-50.

22 CHAIRPERSON GRIFFIS: Do you do any
23 delivery service?

24 MR. VAGO: No, we do not.

25 CHAIRPERSON GRIFFIS: Any other questions

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1 at this time?

2 BOARD MEMBER ETHERLY: Very briefly, Mr.
3 Chair. This might be a combination for Mr. Vago and
4 Mr. Mehra. With respect to the alley trips, I want to
5 be very clear that we are talking simply about the
6 alley that runs between Yuma and Albemarle. Correct?

7 THE WITNESS: That is correct.

8 BOARD MEMBER ETHERLY: >From your
9 standpoint, can you characterize what your sense is of
10 the amount of customers that might actually use the
11 alley access between the proposed expansion location
12 and Burger King to access your operation?

13 What I'm trying to get at is -- and this
14 is going to be very empirical. Clearly, I don't get
15 the sense that the traffic expert took a look at it,
16 but do you have a sense of how many customers, shall
17 we say, make that illegal movement off of Connecticut,
18 either lefthand or righthand, depending on how they
19 are coming, and take that small alley that's used by
20 the Burger King operation to access your parking area?

21 MR. VAGO: I would say very little,
22 because the carwash is open almost the same hours as
23 we are. I don't think anybody very rarely turns up
24 that street. So I would say less than 10 percent.

25 BOARD MEMBER ETHERLY: Okay. And I'm

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1 trying to view the traffic component in, to an extent,
2 something of a vacuum, because I know it is a rather
3 complicated situation back there. But I want to
4 understand -- Well, I need to understand. It is part
5 of a larger context, and I'm sure we will probably
6 hear quite a bit about that.

7 Let me turn back to Mr. Mehra. From a
8 traffic standpoint, as you looked at the traffic in
9 the alley between Yuma and Albemarle, if you -- Let me
10 come at it this way. On page -- I believe it was page
11 5 in the second paragraph -- you noted that a total of
12 34 vehicles traveled in the alley during the peak one-
13 hour period, which was 1:30 p.m. to 2:30 p.m.

14 That number was all vehicles traveling
15 through the alley, not just vehicles that were
16 identified as going to the ZIPS parking area.

17 THE WITNESS: No. These will be in
18 addition to the ones going to ZIPS.

19 BOARD MEMBER ETHERLY: Okay.

20 THE WITNESS: These were sort of passing
21 the ZIPS entrance to the parking lot.

22 BOARD MEMBER ETHERLY: Okay. That covers
23 it for me now, Mr. Chair. Thank you.

24 MR. AGUGLIA: Mr. Chair, one point of
25 clarification. There is one delivery a day to the

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1 World Bank, and return. Mr. Vago?

2 MR. VAGO: That's correct. Sorry. I
3 thought you meant residential deliveries.

4 CHAIRPERSON GRIFFIS: Hopefully, you
5 haven't divulged any security secrets. Okay. Let's
6 move on. What else do you have? Anything else?

7 MR. AGUGLIA: No. We believe we have met
8 the test and ask for your approval.

9 CHAIRPERSON GRIFFIS: Okay. Mr. Parsons?

10 COMMISSIONER PARSONS: Mr. Chairman, I
11 want to explore this sign issue on the front of the
12 building. There seems to be some concern in the ANC
13 and your neighbors, and I'm looking at what I believe
14 is your Exhibit 4, but they are photographs that you
15 either submitted or somebody else did.

16 It seems to be a sign on the building that
17 says ZIPS Cleaners, and right next to it is \$1.75 up
18 above the window, and then one in the window that says
19 "Any Garment, \$1.75," and there seems to be some
20 complaint about the amount of signage you've got and
21 the neon in the street and so forth.

22 Do you have any knowledge of this
23 complaint from your neighbors?

24 MR. VAGO: Since the ANC meeting, yes, but
25 before that, no. The only previous complaints have

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1 been about the illegal parking out front.

2 COMMISSIONER PARSONS: Did you come to any
3 resolution with the ANC, as you did with the parking
4 attendant?

5 MR. VAGO: No, unfortunately not. They
6 would like us to remove the signs, and we were not
7 able to agree with that.

8 COMMISSIONER PARSONS: I see. So the ANC
9 says that you should remove all signs except for the
10 one that says Free Parking, but I do not see a sign on
11 the front of the building that says Free Parking.

12 MR. VAGO: If we are looking at this
13 picture right here, it's to the left of the canopy
14 above the actual notice for the zoning, Free Parking
15 in Rear. It's right next to our doors. We tried to
16 put it in the most prominent location we could find.

17 COMMISSIONER PARSONS: No wonder I
18 couldn't see it. There were too many other signs. So
19 you feel that what we see is what we get, and in the
20 new establishment you will also put more signage, do
21 you think?

22 MR. VAGO: No, no new signage. Currently
23 right now, we have no addition -- we have no need for
24 any additional signage. We think we have plenty of
25 coverage right now in our existing space.

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1 COMMISSIONER PARSONS: So you don't plan
2 to move the ZIPS Cleaners sign over farther and
3 "Entrance/Exit." I mean, what we see is what we get?

4 MR. VAGO: Once again, it's just to
5 service our existing customers. So we are satisfied
6 with how our front looks right now.

7 CHAIRPERSON GRIFFIS: What is the changes
8 that's going to happen in the front? It's not going
9 to have Uni Hair Salon anymore.

10 MR. VAGO: Right, that is correct. It
11 won't have a Uni-Hair sign canopy anymore. It
12 probably won't have any canopy at all, if the landlord
13 will allow us to take it down. But you know, what it
14 would just have is just it would have that entrance
15 door right there. The only thing that might remain
16 would just be the Open sign, because we believe there
17 should be an Open sign by each entrance or exit door.

18 CHAIRPERSON GRIFFIS: So you maintain your
19 current entrance as the main entrance, and you will
20 have an exit door where the hair salon is?

21 MR. VAGO: Both would be entrances and
22 exits. We wouldn't prevent somebody from, you know,
23 having to go, especially if we put the pick-up
24 stations at the end.

25 CHAIRPERSON GRIFFIS: Okay.

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1 VICE CHAIRPERSON MILLER: I just want to
2 follow up on the sign issue, because that is something
3 that is being requested of us to consider making it a
4 condition that you remove those signs.

5 So I'd like to know why you feel you need
6 to have all three signs where they are, and why they
7 have to be on the evening when they might be
8 reflecting in a restaurant, which is the testimony we
9 heard.

10 MR. VAGO: Well, I believe the only thing
11 I could state to that would be the fact that, I mean,
12 we have been there since 1998. Those have been the
13 identical signs from Day One. We have not added any
14 additional signs. We have actually removed a sign
15 when we had to replace some glass. It has not been
16 replaced to this day.

17 The signage is part of our complement of
18 what ZIPS is. If you go to any ZIPS location, you
19 will find the identical signage, the identical channel
20 letter signs, the identical neon signs. It is part of
21 our ZIPS package that we put in there. I think it
22 might be a little bit different in size or something,
23 but you will find the identical signage to fit into
24 the windows.

25 CHAIRPERSON GRIFFIS: So it's part of your

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1 brand name, part of your imaging?

2 MR. VAGO: That is correct. Every one of
3 our 12 locations has the identical signs that you see
4 there, with the exception of the Free Parking in Rear,
5 because not all stores have parking in rear. It might
6 be in the front. And I have not received any
7 complaint prior to the ANC meeting last week of
8 anything about the neon signs. That was very new to
9 me.

10 CHAIRPERSON GRIFFIS: That's right. You
11 know, chronology is one thing.

12 VICE CHAIRPERSON MILLER: I guess my other
13 questions, though, was: They are on all night? Do
14 they have to be? Is that part of your branding also?

15 MR. VAGO: Do they have to be on all
16 night? I mean, obviously not. They are left on all
17 night, because they are neon signs. They last longer,
18 last better if you just leave them on rather than
19 turning them off and on. They have pretty big
20 ballasts on them, and they don't work very well when
21 you turn them off and on. So it's always recommended
22 just to leave them on full time.

23 CHAIRPERSON GRIFFIS: Anything else?

24 COMMISSIONER PARSONS: Well, I wanted to
25 pursue the parking issue. There is no parking in

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1 front of the store? What is the situation at the
2 curb?

3 MR. VAGO: Directly in front of our store
4 there is no parking. If you go down in front of Day's
5 Inn, there is metered parking, which I believe starts
6 at 9:30 to four o'clock -- Yes, one hour parking, 9:39
7 to four o'clock. That starts primarily in front of
8 Day's Inn. I think there's six meters that go down to
9 the Yuma Street, but directly in front of our store
10 and the Uni Hair Salon, there is no parking at all,
11 all day.

12 COMMISSIONER PARSONS: So this canopy that
13 comes out to the curb to shelter your patrons
14 encourages people to stop, park their car, and get
15 out, I guess. What is the effect of that yellow
16 canopy? I mean, it is really encouraging people to do
17 something that isn't legal, as opposed to parking in
18 the rear.

19 MR. VAGO: I don't know.

20 COMMISSIONER PARSONS: Is this part of
21 ZIPS signature?

22 MR. VAGO: Yes. A lot of our stores do
23 have canopies. I would believe -- I don't think it
24 would encourage them. I think most people, even
25 including myself, knows that on most part of main

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1 thoroughfares like Connecticut Avenue, generally
2 unless there is a meter, it shouldn't encourage
3 parking, because --

4 COMMISSIONER PARSONS: This is for people
5 that come up in a cab, and the cab goes away?

6 MR. VAGO: Well, not at all. I mean, yes,
7 there is no parking at all. I'm sure there are people
8 that get dropped off by cabs all the time up and down
9 every street.

10 COMMISSIONER PARSONS: Thank you.

11 CHAIRPERSON GRIFFIS: Anything else?

12 VICE CHAIRPERSON MILLER: I just want you
13 to respond one more time. I am just looking at this
14 letter. I don't know if you have seen it. It's from
15 Shanghai Garden restaurant, and it is talking about
16 the neon lights bothering their customers.

17 CHAIRPERSON GRIFFIS: Have you seen the
18 letter?

19 MR. VAGO: I have not. He has been a
20 customer of ours since '98. So I have never heard any
21 complaints from him. This is actually the first time
22 I heard about it, when she testified to it today.

23 CHAIRPERSON GRIFFIS: Is he a customer
24 today?

25 MR. VAGO: No, I hope he continues on

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1 being a customer, and I'm sure he will. But I have no
2 heard of anything up until today.

3 VICE CHAIRPERSON MILLER: Okay. Well, you
4 should see this letter, but that's what has prompted
5 certainly my questions, and they say, "We have
6 received complaints from our customers regarding to
7 their bright neon lights, and on many occasion
8 actually had to move customers to a different table."

9 Okay. So you haven't had a chance to try
10 to work this out with your neighbor?

11 MR. VAGO: Today was the first I heard
12 about it.

13 VICE CHAIRPERSON MILLER: Can the lights
14 be regulated to be less bright and still be on or is
15 it just one setting?

16 MR. VAGO: It is only one setting. I
17 guess, as an additional point was, when we changed the
18 canopy about six months ago, to get the approval from
19 the landlord we agreed that any additional neon
20 changes would match the color of the canopy -- red is
21 our old color, as you can see from our existing
22 channel letters on our canopy -- to a gold color, more
23 yellowish color, which is a lot lighter. It is not as
24 bright, and we agreed with him that, as the neons
25 needed to be replaced, they would be replaced with the

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1 yellow lettering.

2 I don't know if it helps, but I mean,
3 actually, it will be a much -- It's not as bright
4 color as red. Obviously, red is one of the brightest
5 colors out there, and it is much softer. We have it
6 in some of our newer stores, and it's just not as
7 bright. But it would still light all day.

8 VICE CHAIRPERSON MILLER: So you are going
9 to replace the letters when?

10 MR. VAGO: As they wear out. The neon is
11 very --

12 VICE CHAIRPERSON MILLER: As they wear
13 out?

14 MR. VAGO: Well, neon is very expensive,
15 unfortunately. I mean, you know, that middle sign
16 right there is about \$4500. So as they burn out --
17 Eventually, the gas inside the neon sign will just
18 evaporate, and then it will have to be replaced, and
19 once that's the case, obviously, you would either put
20 back in red gas or you put back in yellow gas, and we
21 have already agreed with the landlord when he gave us
22 permission on that, that we would -- to appease -- you
23 know, because he wanted also it to be one color, too,
24 and we agreed, too. We don't think it should be two
25 colors.

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1 VICE CHAIRPERSON MILLER: And the yellow
2 is more muted than the red?

3 MR. VAGO: The yellow is a lot more muted
4 than the red.

5 VICE CHAIRPERSON MILLER: Okay. Thank
6 you.

7 MR. AGUGLIA: I have driven by the
8 facility at night. It is, in my humble opinion,
9 pleasing. It is not glaring. We did not hit any
10 notice of --

11 CHAIRPERSON GRIFFIS: Are you testifying?

12 MR. AGUGLIA: I'm just making a point, and
13 we will follow up with the restaurant.

14 CHAIRPERSON GRIFFIS: Good point. Why
15 don't we get to the legal point. The zoning in which
16 this property is located is C-3-A, is it not ?

17 MR. AGUGLIA: That is correct.

18 CHAIRPERSON GRIFFIS: IN your legal
19 opinion, is that a commercial zone?

20 MR. AGUGLIA: It allows up to 2.5 of
21 retail FAR, yes.

22 CHAIRPERSON GRIFFIS: Okay. Let's move
23 on. Does the ANC have any cross-examination of any of
24 the witnesses?

25 MR. KESSLER: Yes, I do.

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1 CHAIRPERSON GRIFFIS: Excellent. Let's
2 get him a chair and make him comfortable up here. You
3 have cross of all the witnesses?

4 MR. KESSLER: Actually, a number of
5 witnesses, yes.

6 CHAIRPERSON GRIFFIS: Okay.

7 CROSS-EXAMINATION OF WITNESSES BY ANC

8 MR. KESSLER: My name is Carl Kessler with
9 the ANC. My first question is: Mr. Aguglia made the
10 statement about the number of permits in the public
11 space. I was just wondering, has he checked the files
12 recently on that?

13 CHAIRPERSON GRIFFIS: You are crossing the
14 attorney?

15 MR. KESSLER: Well, he made the statement
16 that -- Yes, I am, because he made the statement that
17 they have the permits, and I just wanted to ask him if
18 he had checked the file recently.

19 CHAIRPERSON GRIFFIS: We are going to ask
20 the ZIPS owner if he adopts that statement from the
21 attorney. Is that correct? Do you have all the
22 permits, correct permits for the canopy?

23 MR. VAGO: That is correct. He was the
24 attorney that actually got them for us.

25 CHAIRPERSON GRIFFIS: Good.

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1 MR. KESSLER: Okay. Again, did you check
2 the file recently? That was my question, or have you-
3 - The reason I am asking a question, somebody in our
4 ANC checked the file, and they did not --

5 CHAIRPERSON GRIFFIS: I'm lost. What
6 file?

7 MR. KESSLER: The file, the public -- The
8 file with the permits for the signs are located --

9 CHAIRPERSON GRIFFIS: Why don't you ask a
10 direct question: Do you have a permit for whatever
11 you think they don't?

12 MR. KESSLER: Well, I did not check it
13 myself, but I was told that it was checked, and I
14 don't have a list of what signs don't have permits.

15 CHAIRPERSON GRIFFIS: What signs do you
16 think they are talking about?

17 MR. KESSLER: One thing was the -- One
18 thing that I was told was the canopy, that there was
19 no permit for the canopy. Like I say, I did not see
20 it myself. That's why I'm asking. I just want to
21 verify the information.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. AGUGLIA: We will provide the ANC with
24 a permit of the application -- of the awning.

25 MR. KESSLER: Well, I would like copies of

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1 all the permits for all the signs that you have
2 permits for.

3 CHAIRPERSON GRIFFIS: Any signs that would
4 require permits, you want to see the permits?

5 MR. KESSLER: Right. Well, I guess I'm
6 just verifying what --

7 CHAIRPERSON GRIFFIS: I understand. I'm
8 trying to get you what you want.

9 MR. KESSLER: I'm sorry. I didn't check -
10 - You know, I don't have the information.

11 CHAIRPERSON GRIFFIS: They are going to
12 provide you permits.

13 MR KESSLER: The Commissioner that did do
14 it would be here, but she's not.

15 CHAIRPERSON GRIFFIS: You are going to
16 provide permits for all the signs that are required to
17 have permits?

18 MR. AGUGLIA: Yes.

19 MR. KESSLER: All right. Also, the
20 discussion about the traffic coordinator -- The way
21 you have the traffic coordinator position set up, they
22 are essentially in the back of your facility at the
23 Park Mart? Is that correct?

24 MR. VAGO: He will primarily be in the
25 back, but he has also been in -- As I said, since he

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1 just started yesterday, he was also in training,
2 including again today, and we were walking him back
3 and forth to the front and the back to control the
4 front as well, because that was one of the ANC
5 comments, that they would like to see us try better to
6 control the illegal parking in front. We have no
7 problem giving it a shot.

8 MR. KESSLER: Yes. Another question is
9 for the individual that did the traffic study. Did he
10 try to observe traffic in front of the building during
11 the rush hour, in the mornings or in the evenings, to
12 see whether there might be all this illegal parking
13 that is being spoken about?

14 MR. MEHRA: Well, we observed in the
15 afternoon, the peak hour, and during the day or during
16 the times we were there, we did not see any illegal
17 parking.

18 MR. KESSLER: But not in the morning?

19 MR. MEHRA: No. We did not observe in the
20 morning, no.

21 MR. KESSLER: Which would -- Okay, when it
22 would more likely be a problem with illegal problem is
23 people going into work, going south on Connecticut
24 Avenue.

25 MR. AGUGLIA: I am going to ask the

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1 gentleman from the ANC to keep it to questions rather
2 than testifying, please.

3 CHAIRPERSON GRIFFIS: Agreed. Go ahead.

4 MR. KESSLER: All right. Another question
5 is about the lighted signs. Are we just talking about
6 the signs, the neon signs, or all the signs, including
7 the ZIPS sign on top of the canopy in 175?

8 MR. AGUGLIA: Well, what is the question?

9 CHAIRPERSON GRIFFIS: What do you mean?

10 MR. KESSLER: Well, it seemed the
11 discussion is about the neon signs in the windows.

12 CHAIRPERSON GRIFFIS: What is your
13 question?

14 MR. KESSLER: My question is was whether,
15 when they say these signs are not annoying to people
16 on the Connecticut Avenue, are they speaking about all
17 the signs or just the signs -- the neon signs in the
18 windows?

19 CHAIRPERSON GRIFFIS: Do you find any of
20 these signs annoying?

21 MR. VAGO: Do I find? No.

22 CHAIRPERSON GRIFFIS: Right. Have you
23 heard complaints of different signs that are annoying?

24 I mean, we have talked about the neons. What about
25 the ones up above, the backlit, ZIPS Dry Cleaner.

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1 MR. VAGO: I have not heard any
2 complaints.

3 CHAIRPERSON GRIFFIS: This is the most
4 free publicity ever gotten. We are being broadcast
5 around the world.

6 MR. VAGO: I have not heard of any neon
7 signs -- or any complaints about any of my signs
8 whatsoever, and just to clarify that the channel
9 letter signs in the canopy do turn off at night.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. VAGO: Those are signs that turn off
12 after we close.

13 CHAIRPERSON GRIFFIS: So the backlit signs
14 in the canopy turn off. So is that your question?

15 MR. KESSLER: Yes. I'm trying, because of
16 a concern about --

17 CHAIRPERSON GRIFFIS: I understand. This
18 is just question time. You are going to tell us all
19 your concerns in a minute. Anything else?

20 MR. KESSLER: No, that is all.

21 CHAIRPERSON GRIFFIS: Good, thank you.
22 What else have we got here? Any redirect?

23 MR. AGUGLIA: No.

24 CHAIRPERSON GRIFFIS: Good. Thank you. I
25 notice, because I am aware of everything that goes on,

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1 that there may have been a comment in the audience
2 about public space and a concern about public space.
3 I just want to reiterate from my understanding that
4 the line in that picture actually that is up, which is
5 the front photograph that shows the sidewalk -- there
6 is a differing color in sidewalks. One is a light
7 gray, and one is more of a warm gray.

8 That is the dividing line of public and
9 private property?

10 MR. AGUGLIA: That is what we were advised
11 when we applied. I did the application for the
12 permit.

13 CHAIRPERSON GRIFFIS: Okay. So it is your
14 understanding, and as far as the processing to put
15 that on, that that entire canopy and those posts are
16 on -- not on public property?

17 MR. AGUGLIA: Correct.

18 CHAIRPERSON GRIFFIS: Okay. Let's go
19 ahead. Let's go to the Office of Planning's report.

20 MR. PARKER: Good afternoon, Mr. Chairman,
21 members of the Board. My name is Travis Parker with
22 the Office of Planning.

23 Just as a clarification to that last point
24 that was made, the surveyor's document that was
25 submitted to my office showed that the building goes

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1 up to the front property line, is built up to the
2 front property line, and that everything in front of
3 the building is public space.

4 CHAIRPERSON GRIFFIS: That might be a
5 difference of opinion or facts.

6 MR. PARKER: Just as a point of
7 clarification, that was what was submitted to our
8 office.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. PARKER: As to the special exception,
11 the three tests of 729, OP has found no evidence that
12 there is any noise or odor as a result of this
13 business, and has heard no complaints therein.

14 In regard to the objectionable traffic
15 conditions, we have already heard about the situation
16 out front and the parking situation in the rear. The
17 applicant has offered and, it sounds like, has begun
18 to hire a traffic coordinator to look into these
19 problems. OP refers to the DDOT approval of the
20 applicant's traffic study in concluding that there
21 probably is not an objectionable traffic situation.

22 In regard to the third test, we didn't
23 feel that there are any additional requirements
24 applicable to this project. OP has no objections if
25 the Board chooses to put some additional requirements

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1 in reference to the parking or the traffic situation.

2 We did not see the nexus between the existing signs
3 and the requested relief.

4 If you have any questions, any further
5 questions, I'm happy to answer them. We recommend
6 approval of the special exception, as submitted.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you. I appreciate the summary of a very substantive
9 and full report. Is there any question from the Board
10 at this time? Ms. Miller?

11 VICE CHAIRPERSON MILLER: I just want to
12 know if you see a nexus between any of the conditions
13 requested by the ANC and any adverse impacts that
14 might result from the expansion, and if you have an
15 opinion in general on the conditions?

16 MR. PARKER: Well, let me look over them
17 carefully before I answer your question. The first
18 one does go into the traffic and the parking
19 situation, and I believe that that is addressed under
20 Section 2 of 729 and would be relevant.

21 The next two -- Well, the second
22 condition--

23 VICE CHAIRPERSON MILLER: I'm sorry. What
24 are you referring to at Section 2?

25 MR. PARKER: I'm sorry. Part 2 of Section

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1 729, which are the tests for this special exception
2 that we are referring to.

3 VICE CHAIRPERSON MILLER: You mean 729.3,
4 .4 and .5?

5 MR. PARKER: I'm sorry. Is it .3, .4 and
6 .5 or am I referring to the wrong section? We have
7 three tests, and I don't --

8 VICE CHAIRPERSON MILLER: You mean 729.3
9 on dangerous or otherwise objectionable traffic?

10 MR. PARKER: -- I believe it is addressed
11 by the first two conditions proposed by the ANC. I
12 don't believe that the third condition is addressed by
13 -- addresses any of the requirements of the zoning
14 ordinance. The fourth condition could fall under
15 729.5.

16 VICE CHAIRPERSON MILLER: Do you think
17 either one or two are necessary? I can understand
18 that they could -- that we have jurisdiction to impose
19 them. Do you think that they are needed? I think
20 Number 1 has already been agreed to by the parties
21 anyway, but --

22 MR. PARKER: And I believe, actually,
23 Number 2 has been agreed to by the parties as well.

24 CHAIRPERSON GRIFFIS: Anything else? Any
25 other questions by the Board? Does the applicant have

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1 any cross-examination of the Office of Planning?

2 MR. AGUGLIA: No.

3 CHAIRPERSON GRIFFIS: Does the ANC have
4 any cross?

5 MR. KESSLER: No, we do not.

6 CHAIRPERSON GRIFFIS: No question by the
7 ANC. Okay. Thank you.

8 We don't have a DDOT representative here
9 today, not that is noted. Exhibit Number 23, we'll
10 take note. Does the applicant have the report from
11 DDOT?

12 MR. AGUGLIA: Yes. DDOT had no --

13 CHAIRPERSON GRIFFIS: Right. That's okay.
14 I don't need you to reiterate. Does the ANC have a
15 copy of the report?

16 MR. KESSLER: No, I don't.

17 CHAIRPERSON GRIFFIS: Okay. Let's get you
18 a copy of the report right away. It does indicate
19 that they looked that the applicant had conducted a
20 traffic survey. They looked at the provision of the
21 parking spaces, and in their judgment, the last
22 sentence reads: "The proposed expansion will have no
23 adverse traffic impact in the neighborhood nor will it
24 create parking problems adjacent to the site." It is
25 dated October 18, 2004.

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1 Do we have -- I don't know if we have a
2 clean copy to the give the ANC right now.

3 MR. MOY: Mr. Chair, is that Exhibit
4 Number 23?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. MOY: I have a copy here I can give
7 you.

8 CHAIRPERSON GRIFFIS: Excellent. We got a
9 copy right here for you. There it is. If there is
10 nothing else from the agency reporting, if the
11 applicant is aware of any others that I haven't
12 mentioned, let's move ahead to the ANC presentation of
13 their case.

14 MR. KESSLER: Thank you.

15 CHAIRPERSON GRIFFIS: Is the ANC ready?

16 MR. KESSLER: I guess so. Hi. My name is
17 Carl Kessler. I am with ANC-3F. I am the single
18 member district representative for the ZIPS Cleaning
19 establishment area.

20 I have been authorized by my fellow
21 commissioners to speak on behalf of the Commission
22 during this hearing.

23 I would like to give you a little
24 background on how we came up with the resolution to
25 say this was not something that we just did. We

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1 basically -- Before we began the writing and review
2 process in the ANC, we had a local district meeting at
3 which the ZIPS representatives came to and spoke.

4 During their -- After that there was a
5 number of comments from the community, basically about
6 the parking and double parking and illegal parking in
7 front of the building. In response to that, the
8 manager of ZIPS indicted that they set up a special
9 policy because of that, which to me indicates there
10 was -- there is a problem with double parking and
11 illegal parking. Otherwise, they would not have a
12 firm policy to deal with the issue.

13 So after the ANC -- After the single
14 member district meeting, we posted the ZIPS
15 application on our website so our constituents could
16 read it, and also I e-mailed a number of -- I e-mailed
17 residents around the ZIPS cleaners to see if they had
18 any comments.

19 The only comments that I received were
20 essentially about parking, not directly with ZIPS but
21 about parking on Connecticut Avenue.

22 So from that, I drafted a resolution which
23 essentially would try to address the parking problem
24 in front of ZIPS, about the solution that -- I had
25 written a proposal different than what was finally

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1 determined passed by the ANC.

2 I had a solution where they would post a
3 sign on Connecticut Avenue for drivers moving south,
4 with directions to the parking lot, because I felt the
5 present parking lot sign is kind of difficult, and it
6 is already -- Where it is located -- In fact, there is
7 a canopy that makes it very -- It encourages people to
8 park there.

9 So what I tried to do was encourage people
10 to park -- to see the sign as they are driving south,
11 to know there is a parking lot in the parking, which
12 there isn't any.

13 At the meeting, the ZIPS representative
14 spoke, shared with us for the first time the idea that
15 they were going to set up a coordinator, a traffic
16 coordinator on Monday and Friday mornings and all day
17 Saturday. However, my understanding -- and I'll have
18 to go back and listen to our audio tapes, but my
19 understanding is that the coordinator would be
20 essentially in the front of the building to deal with
21 the illegal conditions.

22 From the report of the traffic engineer,
23 it seems that there really is not a problem in the
24 back. The problem really is in the front. So to have
25 a coordinator in the back seems to me superfluous.

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1 At this meeting a number of other
2 conditions were also passed, the one about taking the
3 signs out of the window, and also the one about adding
4 additional plants around it and putting signs on the
5 counters indicating about illegal parking. But again,
6 that is trying to close the barn door after the horse
7 has run away.

8 Also, I will reiterate what I said during
9 my questions, that we have a different view of what
10 permits the ZIPS has, and I think that -- I mean, we
11 need to resolve that.

12 Also, one of the statements by the manager
13 of the ZIPS or the owner -- he says the ZIPS signs
14 have not changed since it became a dry cleaners. That
15 is not so, because at one time, it was called Dry
16 Cleaning Depot. So, therefore, up until a few years
17 ago, there were different signs up there.

18 CHAIRPERSON GRIFFIS: So they lost three
19 letters?

20 MR. KESSLER: Well, Dry Cleaning Depot is
21 more than three letters, to me. But the point is, the
22 signs have been changed over the years.

23 CHAIRPERSON GRIFFIS: I see.

24 MR. KESSLER: So -- Okay. I do applaud
25 their idea about reducing the brightness of their

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1 signs. What I think the ANC would like to see is
2 that, if you look at that part of Connecticut Avenue,
3 you know, most of the other businesses don't have very
4 intrusive signs, where ZIPS stands out to be very
5 intrusive.

6 The letter from Shanghai Gardens is a
7 result of they have an outdoor cafe, and this is
8 extremely annoying for people eating in the outdoor
9 cafe to have those bright, almost carnival-like signs
10 across the street and, therefore -- which is the type
11 of thing we want to encourage, because we want people
12 to use Connecticut Avenue. If people feel annoyed by
13 the signage and things like that, they will not
14 frequent, you know, restaurants in our area.

15 CHAIRPERSON GRIFFIS: Indeed. The
16 restaurant you are talking about -- is it across
17 Connecticut Avenue?

18 MR. KESSLER: Yes, right across the street
19 from ZIPS. Its windows and the outdoor garden are
20 right across the street.

21 CHAIRPERSON GRIFFIS: Do you have an
22 understanding, a first hand understanding of that
23 complaint?

24 MR. KESSLER: Actually, I'm sorry I don't,
25 because I was not -- I never heard about it until it

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1 was brought up today.

2 CHAIRPERSON GRIFFIS: Have you ever eaten
3 in the outside part?

4 MR. KESSLER: I have eaten in the outside,
5 and I can understand why that would be intrusive. We
6 have voluntary --

7 CHAIRPERSON GRIFFIS: I'm just trying to
8 get an understanding.

9 MR. KESSLER: Yes. We have voluntary --

10 CHAIRPERSON GRIFFIS: These lights are so
11 bright that you can see it across Connecticut Avenue,
12 and it impacts you sitting outside?

13 MR. KESSLER: Well, the reason you can see
14 it across Connecticut Avenue, it is so much brighter--
15 I was thinking. Don't forget, the signs around it
16 are not bright, and you know, this is very bright. If
17 you look at most --

18 CHAIRPERSON GRIFFIS: So there is a glow?
19 There is a red glow?

20 MR. KESSLER: Well, there's glow, yes, red
21 or yellow. Yes, there are glows, which -- because if
22 you look at the rest of -- the signs on the rest of
23 Connecticut Avenue in that area, they are not as
24 bright, and they don't stand out like that.

25 CHAIRPERSON GRIFFIS: Burger King doesn't

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1 have big --

2 MR. KESSLER: Not like that, no. Well,
3 they have a sign, but it doesn't seem to be as
4 intrusive.

5 CHAIRPERSON GRIFFIS: Okay. What else is
6 on that block, to put it into context? We have had
7 all this.

8 MR. KESSLER: We have a carwash, and we
9 have the Day's Inn which has a very small sign. They
10 wanted to put a bigger sign up, but the neighborhood
11 objected, and they backed off.

12 CHAIRPERSON GRIFFIS: In the letter from
13 the opposition, the woman that testified very quickly,
14 she said that it doesn't fit into the neighborhood
15 signage -- what? -- something, the neighborhood
16 signage environment or something like that.

17 MR. KESSLER: That's right. That's right.

18 CHAIRPERSON GRIFFIS: Well, what is the
19 neighborhood signage environment? Day's Inn -- Is
20 there a standardization of signage?

21 MR. KESSLER: Well, the Day's Inn sign --
22 I'm trying to do this from memory, because I didn't
23 expect the question, but the Day's Inn sign is, like I
24 say, they wanted to put large, very bright signs on
25 their building, and the neighborhood objected.

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1 CHAIRPERSON GRIFFIS: Is there any
2 standard for signage? Are they all the same height?
3 Are they all the same color?

4 MR. KESSLER: No. Not that I'm aware of,
5 no. You mean --

6 CHAIRPERSON GRIFFIS: Kind of all neon,
7 backlit, kind of whatever you want to do, you do?

8 MR. KESSLER: Well, I think there is a
9 requirement that you get a permit for an exterior sign
10 from the --

11 CHAIRPERSON GRIFFIS: I'm just talking
12 about what it looks like from a pedestrian's
13 perspective. There is some connection between the
14 signage at Burger King and Day's Inn? Is there any
15 sort of --

16 MR. KESSLER: Well, the Day's Inn sign is
17 not as bright. Like I say, you know, doing this from
18 memory -- It does not seem to impact as like the ZIPS
19 signs do, because it looks almost like a carnival.

20 CHAIRPERSON GRIFFIS: It sounds like, the
21 way you describe it -- and frankly, we've seen, I
22 don't know, two, maybe three applications on this
23 side. So the Board is somewhat familiar with it. It
24 sounds like a pretty eclectic block along Connecticut
25 Avenue. There is no real consistency.

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1 The second statement I would make is I
2 would be the first one to 100 percent support any sort
3 of signage guideline that, if this was stepping out
4 of. But I have a concern if we are going to start
5 defining what the signage consistency is around one
6 small retailer. Frankly, I'm not getting anything
7 that even helps or assists me to move in that
8 direction except that somehow people are upset with a
9 neon sign across -- How many lanes is Connecticut
10 Avenue at that point?

11 MR. KESSLER: Six total.

12 CHAIRPERSON GRIFFIS: Six lanes. So
13 conceivably, they are 10 feet apiece.

14 MR. KESSLER: Right. Well, yes.

15 CHAIRPERSON GRIFFIS: So that's 60 feet,
16 and we have large sidewalks, one with a cafe.

17 MR. KESSLER: We also have --

18 CHAIRPERSON GRIFFIS: So you are about 75,
19 you are about 80 feet away from these signs, and yet--

20 MR. KESSLER: Well, I mean, the thing at
21 night when it's dark, you know, most of these
22 businesses are not lit. So this -- So it really is --
23 The ambient lighting, as you could say, is much less
24 than it would be. It would be a lot more intrusive.

25 CHAIRPERSON GRIFFIS: Understood.

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1 MR. KESSLER: So I hope that the BZA will
2 be able to support our conditions. As Ms. Miller said
3 and as you said, there is a lot of authority under
4 this particular provision to allow you to have a lot
5 of flexibility.

6 CHAIRPERSON GRIFFIS: That's absolutely
7 right. We have unleashed authority on this one, I
8 must say. However, as the lawyers and my other Board
9 members will usually tell me as they kick me under the
10 table here, we do have to keep within the realm of
11 reality.

12 I would note that regulation 2506.1 -- I
13 think, if we went into the signage -- and believe me,
14 I am struggling to get there, but I have to be
15 delivered to a point of which I think we actually have
16 any sort of ability to look at it at all, and we've
17 spent quite a lot of time on this. But 2506.1 reads:
18 "Any outdoor sign or other form of exterior
19 advertising erected in the District shall comply with
20 the sign regulation of the D.C. Building Code 12
21 DCMR."

22 That governed the erection, hanging,
23 placing, painting, display and maintenance of outdoor
24 display signs and other forms throughout the District
25 of Columbia. What that does for me, just very

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1 quickly, is to say, okay, we may have carte blanche in
2 control and jurisdiction on one section, but we need
3 to go to the more limiting aspects of where it is
4 focusing, and this is clearly telling us, hey, look,
5 there is signage, and the signage is regulated by the
6 Building Code, 12 DCMR.

7 MR. KESSLER: May I point out to you that
8 the Building Code right now is under review and
9 revision.

10 CHAIRPERSON GRIFFIS: Why does that
11 matter?

12 MR. KESSLER: Well, I'm just saying that -
13 - Well, it matters because there is -- You know, the
14 concern about having signage standards would be one of
15 the issues that will probably address.

16 CHAIRPERSON GRIFFIS: Excellent point, but
17 it doesn't help me with my point of whether we have
18 jurisdiction to get into this or not. Look, the
19 entire zoning regulations are being looked at.

20 MR. KESSLER: I know that.

21 CHAIRPERSON GRIFFIS: We've still got to
22 go with what we have in front of us. Right?

23 MR. KESSLER: Well, I guess. Well, no,
24 what -- It's a question. You define your own
25 jurisdiction, more or less. So you defined it as

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1 being very broad on this issue.

2 CHAIRPERSON GRIFFIS: That's a
3 misconception. It's actually incorrect. I would love
4 to agree with you there. I'd love to define my own
5 jurisdiction, but that is why the OAG sits down there.
6 Today they put two out here, because they are so
7 concerned.

8 MR. KESSLER: Wow.

9 CHAIRPERSON GRIFFIS: Okay. Let's move
10 on. any other questions from the Board?

11 VICE CHAIRPERSON MILLER: I don't want to
12 belabor this, but I just want one follow-up question.
13 That is: Do you have any knowledge whether these
14 signs are in violation of the Building Code?

15 MR. KESSLER: Like I said, I did not
16 investigate this. A fellow commissioner, Ms. Karen
17 Perry, just told me over the phone in a brief
18 conversation that she did some research, and I don't
19 know exactly. The only thing she said was the canopy
20 is the only thing she told me specifically.

21 CHAIRPERSON GRIFFIS: And I think they are
22 very legitimate concerns, and I think you ought to
23 work with the applicant and look at what they have
24 done and see how it complies or doesn't comply.

25 MR. KESSLER: Well, I certainly will,

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1 because we have a lot of concern of residents in that
2 area.

3 CHAIRPERSON GRIFFIS: Yes, and I think it
4 is a legitimate concern. Okay. What else? Anything
5 else? Cross of the ANC? Applicant, any cross?

6 MR. AGUGLIA: No, sir.

7 CHAIRPERSON GRIFFIS: No cross? Any other
8 question of the Board then? Very well. Thank you
9 very much. Very complete.

10 Let's move on then to persons to give
11 testimony. How many people here are present to give
12 testimony today? One, two, three we have? Okay,
13 let's get you all up here right now. Sir, you wanted
14 to give testimony also? Why don't you come up and get
15 ready. I think they have video games going on the
16 laptop there.

17 Okay. Let's proceed with persons giving
18 testimony. I am going to ask two things of you.
19 First of all, give your name and address for the
20 record, and then state right immediately whether you
21 support of are in opposition to the case, and lastly
22 as an instruction, persons are afforded three minutes
23 to give testimony. There is a clock behind you that I
24 see, and I will just actually give an indication. If
25 you would, start to conclude when you get a little bit

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1 close to that or maybe a little over.

2 Why don't you -- Have you already deferred
3 to him? So you are going to be first.

4 WHEREUPON,

5 BARBARA M. SIMONS

6 was called as a witness and, having previously been
7 duly sworn, testified as follows:

8 DIRECT TESTIMONY

9 MS. SIMONS: Good afternoon,
10 commissioners. I am Barbara Simons, and I live at
11 5025 Linnean Avenue, N.W.

12 Although I am not in Commissioner
13 Kessler's single member district, I do live fairly
14 close to Connecticut Avenue, and I do patronize the
15 shops along Connecticut Avenue, and I am very
16 interested in what goes on on Connecticut Avenue.

17 That is part of the reason I -- The fact
18 that I am not in Commissioner Kessler's district is
19 the reason I was not at the single member district
20 meeting he had, which I was not aware of because it
21 was only sent to people in his district.

22 In any event, I would like to reiterate
23 about the signs. I know it is giving you a lot of
24 problems, as it has given us a lot of problems, but
25 maybe for different reasons. It really looks like a

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1 shooting gallery or a carnival.

2 I know it seems hard for you to believe
3 that signs 80 feet away or 60 feet away or whatever
4 figure you are using -- it seems to you that you would
5 not be seeing them. But believe me, you do see them,
6 not only at Shanghai Delight but also at Liliana,
7 which is another restaurant right across the street
8 from ZIPS across Connecticut Avenue, and they also
9 have an outdoor seating area. If you sit there, you
10 see those neon signs.

11 Now you had ask, Chair Griffis, about
12 signage in the entire area. Yes, they do vary, but I
13 believe ZIPS is the only one that has neon signs, and
14 that makes a big difference. Those neon signs just
15 coming out at you and, as I say, it really makes the
16 area look like a shooting gallery.

17 The fact that, as Ms. Benesh testified, we
18 have three cleaners in the area and, while this may
19 not be your jurisdiction over how many establishments
20 there are, it does seem a little out of the ordinary.

21 Just as Tenleytown complained about a number of
22 mattress stores, we have the cleaners. All the
23 cleaners come to Connecticut Avenue.

24 About the traffic, though, I would like to
25 emphasize that, as I understood the traffic study,

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1 they did not do it in the morning rush hour from 7:00
2 to 9:00 a.m. They did it at 11:00 o'clock, I believe
3 I heard him testify to.

4 I haven't got a copy of the study, but I
5 was listening very carefully, and I thought he said
6 that in the daytime it was done from 11:00 to 3:00.
7 He did a Friday night, but the Friday night would not
8 be crucial, because that is when cars are going north,
9 and the establishment is on the other side of the
10 street.

11 In other words, if you are coming north,
12 the establishment is over here. So it would mean you
13 would have to go all the way that way, which you
14 really couldn't do because of the one-way traffic.
15 But the traffic problem that is -- Double parking is
16 in the morning from 7:00 to 9:00, and people will
17 double park and run in real fast, drop off their
18 clothes, and come back out and get back in their car.

19 The reason it is going south is because
20 they are going to work downtown. So that is where the
21 problem is. But the traffic study was not done in the
22 morning from 7:00 to 9:00 a.m. or 7:00 to 9:30 in the
23 peak hours. That is the real problem.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. SIMON: And the fact that they are

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1 willing to have a traffic coordinator -- It's on
2 Monday and Friday and Saturday. I think the
3 coordinator should be on every single morning, Monday,
4 Tuesday, Wednesday, Thursday, and Friday, not just
5 Monday and Friday, if they are going to have a
6 coordinator.

7 CHAIRPERSON GRIFFIS: Morning? Any other
8 time? You're saying in the evening.

9 MS. SIMON: The evening is not the
10 problem, because people are going north.

11 CHAIRPERSON GRIFFIS: I take that as being
12 in the front of the building also. Is that correct?

13 MS. SIMON: Yes. It's definitely the
14 front of the building where there is all this double
15 parking, and I'm really surprised that DDOT did not
16 find a problem there. I haven't seen the study, and
17 from you said, you don't think it said when they did
18 their traffic count.

19 CHAIRPERSON GRIFFIS: Good. Why don't you
20 summarize, and I'll address that.

21 MS. SIMON: Okay. The only other thing I
22 wanted to point out is that the fact that the
23 regulations or the zoning regulations call for 5,000
24 as a matter of right -- There must have been a reason
25 for it. I don't think it was just accidental. They

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1 felt, whoever made it the 5,000, that that should be
2 sufficient for a cleaner, because it is for cleaners
3 and laundries. That's about it.

4 CHAIRPERSON GRIFFIS: Excellent point.
5 Thank you very much. I don't want to set out any
6 false anticipation of what it is. DDOT reviewed the
7 application, and then wrote a recommendation, and they
8 did not find anything in the application. They did
9 not do a study. They didn't come out and do any sort
10 of traffic impact statement. There is nothing of
11 that. It is two paragraphs.

12 MS. SIMONS: Oh, I'm sorry. I
13 misunderstood.

14 CHAIRPERSON GRIFFIS: Hopefully, a copy
15 went out to the ANC. We can have another copy that
16 you can take a look at, and we will go with that.

17 Okay. Any other questions from the Board?
18 Any cross?

19 MR. AGUGLIA: No, sir.

20 CHAIRPERSON GRIFFIS: ANC?

21 MR. KESSLER: No, sir.

22 CHAIRPERSON GRIFFIS: Thank you very much.
23 Appreciate your being here. Let me ask you one last
24 thing. Are you aware of any police presence at rush
25 hour enforcing any sort of No Parking?

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1 MS. SIMONS: It's very sporadic, very
2 sporadic.

3 CHAIRPERSON GRIFFIS: Okay. Or traffic
4 enforcement cars or anything?

5 MS. SIMONS: As I say, once in a while I
6 might see it, but it is not on a regular basis.

7 CHAIRPERSON GRIFFIS: Okay. Good. Thank
8 you very much. Go ahead.

9 WHEREUPON,

10 LINDSLEY WILLIAMS
11 was called as a witness and, having previously been
12 duly sworn, testified as follows:

13 DIRECT TESTIMONY

14 MR. WILLIAMS: Thank you, Mr. Griffis.
15 Good afternoon, members of the Board. My name is
16 Lindsley Williams. I live with my wife at 3307
17 Highland Place, N.W. in Washington, D.C., and I am
18 here today on behalf of myself, and I am independent
19 of the applicant, and I am certainly not representing
20 them.

21 My reasons for appearing here and
22 recommending your approval are as follows. I am
23 satisfied customer of the establishment, and I am
24 aware of its needs. I am holding up my little ZIPS
25 card which helps me get in and out more quickly when I

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1 do my laundry there and dry cleaning.

2 I am familiar with the land where the
3 establishment is located and its zoning history back
4 to the Forties, its status under the current
5 comprehensive plan, and I am familiar with the
6 conditions adopted by the ANC, some of which I find a
7 combination of well intentioned and ill advised.

8 The lot on which the building sits
9 contains 7,000 square feet. The building was built in
10 1947. The lot is 50 x 140. The building has two
11 stories and occupies, as best as I understand it, 100
12 percent of its lot. This goes to the question of
13 where is the frontage and the awning and the like, but
14 as far as I know, and this was from inspection of the
15 property in the Sanborn Atlas Series but not from a
16 legal survey that I did as a professional matter, that
17 is the situation. It occupies 100 percent of the lot.

18 The existing dry cleaner is just under
19 5,000 square feet. Applicant is seeking to go over
20 that, and that triggers the application that is before
21 you.

22 As a professional planner and one who is
23 familiar with the applicable zoning standards, and
24 having reviewed the application as filed, I conclude
25 that the application can be granted without

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1 conditions, given that the plant expansion will not,
2 in and of itself -- in other words, the expansion
3 increment will not, in and of itself, cause dangerous
4 or otherwise objectionable traffic conditions.

5 Moreover, since the building in which the
6 cleaner is located already occupies 100 percent of the
7 lot, there is no opportunity to change that location,
8 and the cleaning equipment is fully contained within
9 the building. So there would be no need to move that
10 around under the broad authorities of 729.5.

11 I attended the meeting of the ANC-3F and
12 became familiar with its four recommendations. As I
13 said, I found them to be, some of them, a combination
14 of unwise but perhaps well intentioned.

15 Skipping down to the details here, as to
16 the parking situation, my reading of it is that there
17 is a crunch in the morning, that that crunch, however,
18 is also exacerbated by the fact that this particular
19 situation abuts one the Board is already familiar
20 with, having to do with the adjacent nearby carwash
21 and Burger King.

22 The lot itself, which was used -- which is
23 used for parking and which was taken up in your case
24 Number 16659, is also 50 feet wide. It is not wide
25 enough to really handle two lanes of parking in a

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1 herringbone pattern with a driveway and function
2 smoothly. You just can't get in the geometry to make
3 it all work. So that is an issue, but it has to be
4 taken up at a parking lot case and not in this one.

5 The cleaner commits to provide same-day
6 service provided clothes are in by 9:00 a.m. This
7 leads to a crush of business prior to that cutoff, and
8 I offer you some suggestions in my other text there.

9 The cleaner does enjoy a large base of
10 repeat customers. I cannot imagine they do not know
11 of the availability of parking to the rear of the
12 property.

13 As to posting signs and limiting
14 businesses to persons that park legally, this could
15 lead to an absurd violation of a BZA imposed
16 condition. Were you to do so, their failure to not
17 provide service would trigger a zoning violation. I
18 think that is just something we don't want to have
19 this Board be getting into.

20 As to the other signs -- I say this in
21 bold face -- although the Board has clear authority to
22 limit signs placed on the exterior of a building, the
23 Board's authority to regulate signs placed or hanging
24 within a building is certainly not explicit in the
25 regulations, by my reading, and it has no authority,

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1 as you yourself said, Mr. Chairman, to regulate signs
2 placed within public space.

3 Thus, the Board may want to establish a
4 fact about all these signs based on the testimony from
5 the applicant, but should only try to establish limits
6 if it feels there is both a need to do so and that it
7 can find the authority to do so.

8 I have no particular professional feelings
9 about the condition of requiring plantings along the
10 front.

11 As to the degree of expansion, I suggest
12 that the Board look at something that is simpler than
13 the specific square footage that it cited in the
14 application, such as the entirety of the first floor;
15 because I believe there may be some measurement issues
16 having to do with all that square footage, but it is
17 not a whole big difference.

18 C of O's are mostly issued, if you can do
19 so, on a first floor/second floor basis. Why not
20 simply declare this to be approved for the entire
21 first floor, which is essentially what the applicant
22 is looking for, other than the small stairway that
23 leads up to the second floor from Connecticut Avenue.

24 Ladies and gentlemen, that is my
25 testimony. I hope I didn't exceed three minutes.

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1 CHAIRPERSON GRIFFIS: Thank you.
2 Questions?

3 VICE CHAIRPERSON MILLER: Are you familiar
4 with where interior signs are regulated? Where in
5 anybody's regulations?

6 MR. WILLIAMS: I don't believe they are.

7 VICE CHAIRPERSON MILLER: You don't
8 believe they are regulated at all?

9 MR. WILLIAMS: I believe that they could
10 come up for some degree of scrutiny in, for example, a
11 commission on fine arts, but interior signs -- I
12 believe that once you go behind the window, that is
13 not something that is appropriately regulated -- that
14 isn't regulated by zoning or anybody else.

15 VICE CHAIRPERSON MILLER: And the plants,
16 they have said, are being discussed -- is that on
17 public space?

18 MR. WILLIAMS: As I understand the
19 recommendation, it would be on public space. However,
20 if the plantings involve something that would be put
21 up next to the front of the building -- you know,
22 right outside the windows that have the, to some,
23 offensive neon lights in them -- then that might be
24 private property, depending upon where that
25 private/public line ends.

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1 It is common along Connecticut Avenue for
2 the curbside tree box area to be boosted up from the
3 sort of city standard of something to something that
4 is more gardened and fenced off and treated, and it
5 becomes a more inviting thing. Just what would be
6 contemplated by the applicant here, I do not know, or
7 what was meant by the ANC.

8 VICE CHAIRPERSON MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Anything else from
10 the Board? Any questions by the applicant?

11 MR. AGUGLIA: No, sir.

12 CHAIRPERSON GRIFFIS: Any cross from the
13 ANC?

14 MR. KESSLER: No, sir.

15 CHAIRPERSON GRIFFIS: Thank you very much.
16 I note that you did put in your written testimony.
17 You can provide it to the ANC and also the applicant
18 when we go off the record. A very good afternoon,
19 sir.

20 WHEREUPON,

21 CHARLES FELDMAN

22 was called as a witness and, having previously been
23 duly sworn, testified as follows:

24 DIRECT TESTIMONY

25 MR. FELDMAN: My name is Charles Feldman.

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1 I live at 2855 Davenport Street, and I have been
2 living there for about 36 years.

3 The closest shopping center to this area
4 and all of Forest Hills happens to be the one where
5 this ZIPS is located.

6 I want to talk about the situation in the
7 back of the ZIPS alley, which is not quite the picture
8 that I am getting here. The picture that you saw
9 happens to be taken with no cars around, but I also
10 want to mention a couple of things that might help.

11 One, I a physicist, and I see no problem
12 with turning a neon light off at night, if that would
13 solve the problem. It is a gas discharge situation,
14 and one can certainly handle turning it on and off
15 with no problem. They have been around for years and
16 years.

17 Second, I wanted to say that the situation
18 on Connecticut Avenue is a little complicated, because
19 there is a lane change in the morning and a lane
20 change at night. It's three lanes in the morning with
21 no parking at all allowed in the curb lane except for
22 some buses that come back there.

23 Therefore, it is far more difficult to
24 stop there and dropping traffic off in the morning
25 than one would think of in a normal street, because

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1 they absolutely clear that lane. So you really can't
2 stop there.

3 Now let me get to the rear of this
4 establishment. There is a carwash, a Burger King, a
5 Day's Inn and an Avis car rental place in that alley,
6 and that alley isn't hardly as long as this room.
7 Everybody uses that alley.

8 They are all drive-through. The Day's Inn
9 drives through. There is an Avis behind the Day's
10 Inn. There is -- The Burger King is a drive-through
11 Burger King that can also go out into the alley. The
12 carwash is lined up in the morning, I mean sometimes
13 blocking Albemarle and that whole lane after 9:00
14 o'clock and 9:30, and they are lined up, carwash, to
15 go right out into the alley, where on the other side
16 of the alley there is five or six people that are
17 drying the cars and do a wonderful job, but they crowd
18 the alley going in and out.

19 In addition, some cars tend to cut through
20 that alley and cutting to the next block to avoid the
21 traffic that is already building up on Connecticut
22 Avenue.

23 So this really is more of a major problem
24 than the pictures might make you think that were taken
25 in the middle of the night without any cars there.

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1 CHAIRPERSON GRIFFIS: So the entire alley
2 and all the parking and all the retail are creating --

3 MR. FELDMAN: Exactly. There's more cars
4 there at certain times of the day than one would
5 expect.

6 The last point I would like to make is
7 that there's a lot of unhappy people, handicapped
8 people, that are bemoaning the fact that the beauty
9 shop is going to disappear. The beauty shop has been
10 there 30 years. I just found out about this problem
11 when my wife came home crying -- or the beauty people
12 were crying because they are being kicked out of this
13 location, and they have no other place to go. There
14 is no other beauty shop at all.

15 Now it's not in the area of this Board,
16 I'm sure, to discuss that, but there is a total loss
17 of shopping in this area, because the large stores
18 that are being disappeared. We now have to drive
19 about three or four miles to go to a hardware store,
20 because there is not a hardware store to get a screw.

21 That's all I want to say. Thank you.

22 CHAIRPERSON GRIFFIS: Thank you very much.

23 I note the Office of Planning was taking great notes
24 of the services that you are interested in on
25 Connecticut Avenue and the disappearance of the

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1 smaller retailers. And it is, in all sincerity,
2 something, I think, that is a great issue in a lot of
3 neighbors that are changing, as yours is, and those
4 that are just coming up in retailing certain quarters.

5 But it is a difficult thing, and I think we
6 understand the balance.

7 Any questions from the Board? Any
8 question from the Applicant? Anything from the ANC?
9 I thank you all very much for being here this
10 afternoon.

11 Let's go to any closing summations.

12 MR. AGUGLIA: We have roughly one minute
13 of rebuttal. We will be very brief. Mr. Vago?

14 WHEREUPON,

15 BRETT VAGO

16 was recalled as a witness by counsel for the applicant
17 and, having previously been duly sworn, testified as
18 follows:

19 DIRECT TESTIMONY

20 MR. VAGO: Just to make a couple of
21 clarification points from testimony that we heard.

22 When we changed from Dry Clean Depot to
23 ZIPS in 2002, the notation that I made the statement
24 that we didn't change any signage was referring to the
25 neon. We have not changed any neon signs since 1998.

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1 We actually reduced our channel letter signs from,
2 you know, Dry Clean Depot down to four letters, ZIPS,
3 circles.

4 The ANC commented on the fact that we were
5 denying customers who illegally parked in the front.
6 That actually came from a meeting that we went to
7 prior to opening in 1998 with the ANC, who actually
8 informed us of that problem. We never agreed that
9 there was an illegal problem.

10 We were a matter of right at that time in
11 '98. We went to the ANC, because we heard, you know,
12 the ANC was unhappy that we were coming in or whatever
13 the reason was. So we tried to go and try to make a
14 good peace with them.

15 One of the things that they stated was
16 illegal parking, I think, from previously PETCO that
17 was there, in the front. At that time we offered that
18 we would not serve anybody who illegally parked in the
19 front of the building, but we never agreed that there
20 was illegal parking.

21 There are occasional parking problems, but
22 I don't think it is as extreme as it is made out to
23 be.

24 The traffic coordinator will handle both
25 front and back. I do not believe a traffic

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1 coordinator will be literally be controlling the
2 front, because I don't think the problem is as big as
3 it is actually being made out to be.

4 People illegally park all the time,
5 unfortunately. We would like to do our very best to
6 stop that, if we can. I don't know if somebody needs
7 to literally sit in front of those 14 feet and, you
8 know, watch if any cars pull up and stop all the time.

9 You know, we do have a camera that actually looks
10 outside and a person at the back. He is on walkie-
11 talkies, and the front can inform him if somebody is
12 parking in the front, and he can run to the front.
13 So he will be through the front and the back.

14 We have no objections to the planting
15 requirement that the ANC made. Those are things that
16 actually -- they are good gestures. You know, they
17 are good for us. That only makes our place look
18 better, something that the neighborhood association
19 wants. It is something that we are happy to comply
20 with.

21 We are not the only ones that have neons
22 on the neighborhood. There's two other cleaners. I
23 think that has been mentioned in testimony. Both of
24 them do have neon signs in their windows. One of the
25 cleaners has not as much maybe as us, but pretty close

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1 to the amount of neon that we have, in multiple
2 colors. Same on Connecticut Avenue in the block. I
3 believe that is 44 or 4300 Connecticut Avenue.

4 In regard to the different type of
5 operations, we are expanding to serve our existing
6 customers. I know it might be hard to believe. Why
7 would somebody expand not to get additional business,
8 but it is storage situation. I have the employees,
9 you know, better utilize them.

10 CHAIRPERSON GRIFFIS: You can handle new
11 customers, can't you?

12 MR. VAGO: I'll handle new customers and
13 the existing business as well. Yes. And there's
14 always been three cleaners on Connecticut Avenue, even
15 years before we have been there. So the number of
16 cleaners has always been three. There's actually been
17 four. Now there's only three. Thank you.

18 MR. AGUGLIA: In summary, I believe we
19 have met the special exception test. I think the
20 applicant has gone above and beyond the call of duty
21 with hiring a traffic coordinator.

22 So, thank you.

23 CHAIRPERSON GRIFFIS: Thank you all very
24 much. Mr. Aguglia, do you want to submit a draft
25 order on this?

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1 MR. AGUGLIA: I would be pleased to submit
2 a proposed order.

3 CHAIRPERSON GRIFFIS: I want -- Right,
4 proposed order. I am going to set this for a decision
5 on the 2nd, which is a week, next Tuesday.

6 Ms. Bailey, are you aware of any other
7 additional information that I don't have noted that we
8 were requesting?

9 MS. BAILEY: No, Mr. Chairman. There was
10 some discussion concerning the applicant giving the
11 ANC copies of permits related to signage, but that
12 should not come to the Board. The Board did not
13 request that, rather.

14 CHAIRPERSON GRIFFIS: Excellent. In which
15 case I don't have any notes of anything else. We will
16 set this for the 2nd. Does that give you ample time?
17 Do you want to? Do you want to respond?

18 MR. AGUGLIA: I will prepare a proposed
19 order for the Board by the end of this week.

20 CHAIRPERSON GRIFFIS: Excellent. Oh, how
21 about by three o'clock Thursday?

22 MR. AGUGLIA: Three o'clock Thursday. Not
23 a problem.

24 CHAIRPERSON GRIFFIS: I think you have
25 seen what the issues are that are pertinent and

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1 jurisdictional before the Board. This should be a
2 fairly succinct order, not to give you total
3 direction.

4 ANC, of course, is available also to
5 submit a proposed order, findings of facts,
6 conclusions of law. We will keep the record open for
7 both of those. It will need to get to the Office of
8 Zoning before three o'clock on Thursday. Otherwise,
9 the Board won't see it. It won't be very fruitful of
10 your endeavors, if you decide to put that in.

11 That being said, any other procedural
12 questions I can answer at this time?

13 MR. AGUGLIA: No.

14 CHAIRPERSON GRIFFIS: ANC, are you all
15 set?

16 MR. KESSLER: No statement.

17 CHAIRPERSON GRIFFIS: I don't want
18 statements. I want procedural questions?

19 MR. KESSLER: No, I have no procedural
20 questions.

21 CHAIRPERSON GRIFFIS: Okay. Good. No
22 other testimony to be required or accepted, the record
23 is open for those two items.

24 The Board is going to take five minutes.
25 Appreciate you all being down here this afternoon.

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1 The next applicant, get ready, and we will go forward
2 immediately when we return. Thank you.

3 (Whereupon, the foregoing matter went off
4 the record at 3:41 p.m. for short break.)

5 CHAIRPERSON GRIFFIS: Very well, let's
6 reconvene and call our next case of the afternoon.

7 MS. BAILEY: Application No. 17211 of the
8 National Broadcasting Corporation, pursuant to 11 DCMR
9 3104.1, for a special exception to permit the
10 continued operation of a commercial broadcasting
11 station and two commercial broadcasting towers under
12 section 211. The property is located in the R-1-B
13 District at premises 4001 Nebraska Avenue, N.W.,
14 Square 1722, Lot 1.

15 CHAIRPERSON GRIFFIS: Is there a
16 preliminary matter in this case, is that correct,
17 request for party status from ANC-3C?

18 MS. BAILEY: Yes, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Is there a
20 representative from 3C here? If you wouldn't mind
21 coming forward?

22 I note in your request for party status
23 that you just requested party status. Of course, we
24 do have the application that establishes the criteria
25 which we assess whether party status would be granted

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1 or not, so I would suggest that we just run quickly
2 through that and get some brief answers to it and take
3 questions from the Board.

4 The first, of course, is how you would
5 uniquely or distinctly as impacted other than those in
6 the general public and being that you are actually
7 applying as the entire ANC-3C how is that different
8 than the current ANC and their representation? And
9 then also do we have in the record any sort of
10 resolution from the ANC that there's representation as
11 party status in this case or a request for party
12 status?

13 MS. MacWOOD: Let me try to answer all of
14 your questions, Mr. Chairman. The answer to the first
15 question is that ANC-3C borders the Applicant's party
16 to the east. ANC-3C has been a party to I think at
17 least the previous two BZA hearings on this matter.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. MacWOOD: The first question I believe
20 you asked was whether you have an ANC resolution. You
21 should have that. It was sent at the same time as the
22 request for party status. Our regularly scheduled ANC
23 meeting was a week ago Monday and that's when we
24 considered this matter and the following morning the
25 resolution and the request for party status were I

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1 believe both faxed and e-mailed as well as a hard
2 copy.

3 CHAIRPERSON GRIFFIS: I have both and
4 they're right in front of me. The resolution,
5 therefore be resolved that ANC-3C does not support
6 this special exception application for the two towers,
7 etcetera and it goes down -- I don't see anything in
8 the resolution that to -- or any sort of action by the
9 ANC as a whole that is requesting the party status and
10 therefore setting up who is representing the ANC, if
11 granted party status.

12 Was there any affirmative or formal action
13 in requesting party status?

14 MS. MacWOOD: No, there was not. We had
15 an informal discussion about it, but I have to admit
16 that none of the members of the ANC were aware that we
17 had to pass a resolution requesting party status.

18 CHAIRPERSON GRIFFIS: But don't you have
19 to have some formal action to take any action as a
20 whole ANC? Or do you just informally get together and
21 then decide what you're going to do?

22 MS. MacWOOD: I'm sorry, I don't
23 understand your question.

24 CHAIRPERSON GRIFFIS: To take an official
25 position on something, don't you have to have a formal

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1 action by the ANC, a vote?

2 MS. MacWOOD: We did take a vote. There
3 was a vote on the resolution.

4 CHAIRPERSON GRIFFIS: A vote on party
5 status.

6 MS. MacWOOD: Not for party status. As I
7 said, we were not aware that we needed to have a
8 separate vote for party status. I don't think in the
9 four years that I've been on the ANC, we have ever
10 requested party status.

11 CHAIRPERSON GRIFFIS: How often have you
12 come in to request party status outside of your
13 geographic area?

14 MS. MacWOOD: I have never done it and I'm
15 not aware that our ANC has done it in the last four
16 years.

17 CHAIRPERSON GRIFFIS: So you would never
18 have to ever apply for party status?

19 MS. MacWOOD: That's right. So we didn't
20 have any experience doing it and obviously we made a
21 mistake.

22 CHAIRPERSON GRIFFIS: So who is your
23 informal group that decided that you wanted to go for
24 party status?

25 MS. MacWOOD: We were under -- we

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1 understood that ANC-3E has jurisdiction over NBC, that
2 NBC resides within their boundaries, but we also
3 understood that ANC-3C has received party status for
4 the previous cases and we had an interest in this
5 case.

6 CHAIRPERSON GRIFFIS: Your statement was
7 that there was an informal group that decided you'd
8 come in for party status?

9 MS. MacWOOD: No, no, I'm sorry, you must
10 have misunderstood me. There was no informal group.
11 The ANC met as a body at our regularly scheduled
12 public hearing. There was a quorum. That's when we
13 considered this matter.

14 CHAIRPERSON GRIFFIS: There's some impetus
15 for this letter, the letter, October 19, Exhibit 26,
16 that requests party status.

17 MS. MacWOOD: We were under the -- we
18 understood we had to request party status, although
19 several Commissioners, I have to tell you, thought
20 there wasn't any need to request it because we had
21 been given party status previously, but in order to
22 protect our interest, I felt as the chair that it was
23 necessary to make a formal request which is why I sent
24 the letter.

25 CHAIRPERSON GRIFFIS: Okay, so you decided

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1 to request party status?

2 MS. MacWOOD: I supposed you could put it
3 that way, yes.

4 CHAIRPERSON GRIFFIS: That's what I'm
5 asking you, how would I put it if not that way?

6 Let's move on and go then, just to briefly
7 help the Board understand how you are distinctly or
8 uniquely affected if this was to be approved.

9 MS. MacWOOD: As I mentioned, the NBC
10 borders ANC-3C to the east. It is -- the tower is
11 visible within in our ANC. In some locations it's
12 extremely visible.

13 CHAIRPERSON GRIFFIS: Is it visible in 3E?

14 MS. MacWOOD: I believe it is.

15 CHAIRPERSON GRIFFIS: Okay. Go on.

16 MS. MacWOOD: The position that the ANC
17 has taken on this is that the provisions of the
18 special exception, a number of the provisions of the
19 special exception have not been met and one of them
20 being the visibility issue. We also considered the
21 Ward 3 plan of the Comprehensive Plan which directly
22 discusses antennas located in Ward 3 and cautions that
23 they should only under extreme situations be located
24 in residential districts. They surround us to the
25 east.

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1 CHAIRPERSON GRIFFIS: I understand that to
2 be your case in the resolution, but what I'm trying to
3 do is grant you party status. So the most important
4 that I find is the answer to how the Applicant for
5 party status is more significantly, distinctly -- and
6 I'm reading the regulations here -- or uniquely
7 affected in character or kind by the proposed zoning
8 relief than those of other persons in the general
9 public.

10 So you've evidenced the sight line of the
11 tower, the visibility of it, what else?

12 MS. MacWOOD: If there are emissions from
13 the towers, those would directly impact people who
14 live in our ANC area.

15 CHAIRPERSON GRIFFIS: Differently than
16 those that live in ANC-3E?

17 MS. MacWOOD: Potentially. We have
18 residential area -- I can't speak for ANC-3E and I
19 haven't examined this from their perspective, but
20 McLean Gardens is very close to the location of the
21 tower.

22 VICE CHAIRMAN MILLER: How close is McLean
23 Gardens to the tower?

24 MS. MacWOOD: I can't give you a footage.
25 I believe it's more than 200 feet because they

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1 weren't noticed on -- no one in McLean Gardens was
2 noticed about the hearing, so I am assuming that they
3 are beyond 200 feet.

4 CHAIRPERSON GRIFFIS: Actually, for the
5 record, no one was noticed because no one is within
6 200 feet.

7 Okay, do we have any sort of graphic
8 representation that would show us? Do you recall
9 anything in the record, aerial photographs or
10 anything? Actually, if we go to Exhibit 4 of the
11 Applicant. McLean Gardens is across the park, is that
12 correct?

13 MS. MacWOOD: That's right.

14 CHAIRPERSON GRIFFIS: And the boundary of
15 your ANC is that boundary which is essentially the
16 eastern boundary if I'm reading this correctly?

17 MS. MacWOOD: The western boundary goes
18 through the middle of Glover-Archibald Park.

19 CHAIRPERSON GRIFFIS: Your western
20 boundary.

21 MS. MacWOOD: Right.

22 CHAIRPERSON GRIFFIS: Sorry.

23 MS. MacWOOD: That's all right.

24 CHAIRPERSON GRIFFIS: Would be on the east
25 of the property?

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1 MS. MacWOOD: That's right.

2 CHAIRPERSON GRIFFIS: Okay. Okay. So
3 that's where you abut it on that side.

4 MS. MacWOOD: And to the north, we go to
5 Van Ness Street.

6 CHAIRPERSON GRIFFIS: Stop at Van Ness.

7 MS. MacWOOD: Stop at Van Ness on the west
8 side of Wisconsin Avenue. We have a different
9 boundary on the east side of Wisconsin Avenue.

10 CHAIRPERSON GRIFFIS: Okay. So we have
11 visibility. We have impact of the Ward 3 plan and we
12 have sort of health problems, I believe you said,
13 exposure? How did you characterize that?

14 MS. MacWOOD: The emissions, the radio
15 frequency emissions which are mentioned in the Ward 3
16 plan.

17 CHAIRPERSON GRIFFIS: Questions of the
18 Board?

19 VICE CHAIRMAN MILLER: Did McLean Gardens
20 ask ANC-3C to represent its interest in this
21 proceeding?

22 MS. MacWOOD: Yes, we did hear from McLean
23 Gardens at our meeting.

24 VICE CHAIRMAN MILLER: Do you have
25 anything in writing showing that McLean Gardens -- it

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1 sounds like you're saying that McLean Gardens is the
2 entity that's most affected and that McLean Gardens is
3 in ANC-3C, so if we're talking about McLean Gardens,
4 I'm interested in seeing did they write a letter to
5 the ANC asking you to represent their interest?

6 MS. MacWOOD: I did not receive a letter
7 asking us to do this. The Commissioner that
8 represents McLean Gardens, Commissioner Trudy Reeves
9 did express to the Commission and I don't know whether
10 she had correspondence from them or not. She may
11 have, but I didn't see it. We didn't ask to see it,
12 if there was any. She did represent that there were
13 concerns within McLean Gardens.

14 VICE CHAIRMAN MILLER: How many people
15 from McLean Gardens participated in the ANC meeting at
16 which this application was discussed?

17 MS. MacWOOD: I think there were
18 approximately five.

19 VICE CHAIRMAN MILLER: And how many
20 residents are there in McLean Gardens?

21 MS. MacWOOD: I don't know.

22 VICE CHAIRMAN MILLER: How many people, in
23 general, participated in the meeting?

24 MS. MacWOOD: This would be a very rough
25 estimate. I think we probably had that particular

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1 night maybe 20 participants. But that's a very rough
2 estimate. I really didn't do any sort of count.

3 VICE CHAIRMAN MILLER: Okay, so five may
4 have been from McLean Gardens and the rest from other
5 parts of ANC-3C.

6 Are you representing that there are parts
7 of ANC-3C that are also uniquely impacted by this
8 application?

9 MS. MacWOOD: I suppose they potentially
10 could be, but I really am primarily concerned, I think
11 the ANC was primarily concerned with McLean Gardens.

12 VICE CHAIRMAN MILLER: And did the
13 residents in McLean Gardens express concerns about
14 both health effects and visibility?

15 MS. MacWOOD: Yes.

16 VICE CHAIRMAN MILLER: And did they say
17 whether or not their association was going to take a
18 vote on this issue?

19 MS. MacWOOD: I don't know. I don't
20 believe I recall hearing that.

21 VICE CHAIRMAN MILLER: And what is it
22 about the visibility that has a unique impact on them?

23 MS. MacWOOD: The towers really loom over
24 McLean Gardens. You would think they were -- if you
25 were in a -- I'm sorry I didn't -- I have some

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1 pictures on my digital camera, but I wasn't able to
2 print them out in time for the hearing and in effect,
3 if you grant the ANC party status, I'd like to request
4 that the record remain open just so long as I can get
5 those photographs to you.

6 They're quite visible. Given the
7 distances that the Applicant has stated they are
8 located from any residential area in their
9 application, one would think that they would be quite
10 insignificant. But McLean Gardens is a low-rise
11 housing development. There are trees in that area
12 that are certainly larger than some of the buildings,
13 but the skyline is completely clear. There are no
14 tall buildings in that area at all, so the existence
15 of these very tall towers has quite a presence.

16 VICE CHAIRMAN MILLER: Okay, I just want
17 to pursue a little further where this would go because
18 often an abutting ANC is granted party status because
19 they're impacted differently such as in traffic
20 patterns would be different on their side of an
21 application or noise would be different or whatever
22 and so we're just trying to figure out how is this so
23 different? Everybody can see the towers to different
24 degrees and where is it that the ANC-3C would go
25 different than 3E? Would it be oh, we're closer so

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1 take them down? Where would your case go, because of
2 the difference in visibility?

3 MS. MacWOOD: We evaluated the provisions
4 of the special exception the same as I think ANC-3E
5 did and we did it from the perspective of what we
6 understood to be the impact in our ANC area and
7 specifically in the McLean Gardens area.

8 I'm not -- I can't really speak for ANC-3E
9 or how they would evaluate it and how we might it
10 evaluate it differently than they did. I can only
11 tell you that we took it very seriously. We actually,
12 the Applicant came to us originally. The Applicant, I
13 think, expected that we would be parties to the case.

14 They asked to meet with us. They came to both a
15 Planning and Zoning Committee meeting. They also met
16 with us at a public meeting in September. And then we
17 asked them to return so that we could consider it a
18 bit further and we asked them to return in October
19 which they did.

20 So I think certainly from NBC's
21 perspective as well as our ANC's perspective, we
22 didn't think there would really be much question that
23 we would be parties in this case, also given our past
24 history with this Applicant. And also the Applicant's
25 actions coming to us.

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1 MR. PARSONS: Mr. Chairman, I think
2 they've made an adequate case for party status here.
3 I'd like to move on.

4 CHAIRPERSON GRIFFIS: Indeed, thank you,
5 Mr. Parsons.

6 There's one technical aspect and of course
7 that's where we are with the regulation of 3106.2.
8 Your filing is late also. Is there a reason for that?

9 MS. MacWOOD: Were there not seven days in
10 advance?

11 CHAIRPERSON GRIFFIS: Fourteen days in
12 advance for request for party status.

13 MS. MacWOOD: Oh, I'm sorry. I thought it
14 was the same as the ANC, the ANC requirements, seven
15 days in advance. We only met last -- a week ago
16 Monday.

17 MR. ETHERLY: Mr. Chair, I would be
18 inclined also to perhaps agree with Mr. Parsons on
19 this. It is a somewhat close matter, but I would say
20 given the history of the ANC-3C's participation in
21 these proceedings and in particular the continued
22 collaboration with the Applicant, that it probably
23 would be appropriate, I would tend to perhaps lean
24 with Mrs. Miller in that as we begin to parse out the
25 issues here. There will perhaps be a substantial need

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1 to be very focused in terms of the level of inquiry
2 that we get into and my posture on that issue might
3 not necessarily be consistent with where ANC-3C would
4 like to go, but I think for the purposes of party
5 representation I would be more than happy to make a
6 motion to waive our rules to allow for the late filing
7 in this particular case, especially considering that
8 the ANC's action with regard to their overall
9 resolution did not take place until the 18th, if I
10 recall, in terms of their action.

11 CHAIRPERSON GRIFFIS: Okay, we're going to
12 need two motions. We have a motion before us that
13 needs to be seconded to waive our regulations and
14 accept the request for party status application. Is
15 there a second?

16 MR. PARSONS:

17 COMMISSIONER PARSONS:

18 MR. PARSONS: Second.

19 CHAIRPERSON GRIFFIS: Thank you. Any
20 discussion?

21 What's before us and has been seconded is
22 to accept -- to waive our regulation. All those in
23 favor of the motion signify by saying aye.

24 (Ayes.)

25 Opposed?

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1 (No response.)

2 VICE CHAIRMAN MILLER: I'm going to
3 abstain, I have some problems with this.

4 CHAIRPERSON GRIFFIS: We're talking about
5 waiving our regulations to accept --

6 VICE CHAIRMAN MILLER: My problem is --
7 part of my problem is this wasn't discussed at an ANC
8 meeting, but I'll abstain.

9 CHAIRPERSON GRIFFIS: Okay, before us to
10 grant party status. Is there a motion before the
11 Board?

12 MR. ETHERLY: Mr. Chairman, I would move
13 to grant party status to ANC-3C on the basis of their
14 submission.

15 CHAIRPERSON GRIFFIS: Is there a second?

16 MR. PARSONS: Second.

17 CHAIRPERSON GRIFFIS: The motion before us
18 is to grant party status to the abutting ANC. Is
19 there discussion? Deliberation? I think it's a close
20 call on this one. Clearly, the Board doesn't look at
21 all party applications, certainly of a joined group,
22 neighbors, specific individual parties or large
23 associations. We look at how and what would be
24 represented. Clearly what the Board does is look for
25 distinctly full representation of those interests and

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1 I think that's why -- in fact, 3106.2 lays out very
2 clearly the requirement to be granted party status as
3 it is an elevated status within the hearing.

4 I think initially on this face there was
5 inadequate, if any, evidence of why party status
6 should be granted. The reliance on the previous
7 cases, I think, is somewhat persuasive, but it only
8 goes to a certain limit and that limit is we don't
9 know all and we're not deliberating on the past facts
10 and specifics of the application. We have before us
11 now a new application and therefore has to be renewed.

12 I think looking, however, at the aspect of
13 the proximity of the residential area, perhaps the
14 drop in slope and how that might somewhat be distinct
15 and may well be in our benefit to be cautious and
16 support the application to hear the full case
17 presentation and also expeditious so that we don't
18 belabor this argument much further.

19 So with all of that, let me open it up to
20 any for comments?

21 MR. ETHERLY: I agree entirely, Mr. Chair.

22 And also not to belabor the issue, I think perhaps
23 it's a close issue and if any one of those factors
24 were, shall we say, in a vacuum by itself, I might be
25 inclined to come out in a different direction, but I

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1 think taken as a whole the terms of the context of the
2 case it will be important to have as we sit here at
3 the table, so I'm prepared to move forward.

4 CHAIRPERSON GRIFFIS: Ms. Miller?

5 VICE CHAIRMAN MILLER: I just want to say
6 I think it's a close issue also and I think in this
7 case perhaps because it's the first time that ANC-3C
8 has had the opportunity to have to make a case for
9 party status that perhaps it hadn't been thought out
10 as fully as I hoped that it will be in the future.
11 And I think part of my concern is it sounds like this
12 may be mainly affecting McLean Gardens and no one is
13 here to represent McLean Gardens and there may be the
14 impression that their SMD gave that Commissioner that
15 the ANC would be representing their interest. So for
16 that reason I would vote in favor of it as well.

17 CHAIRPERSON GRIFFIS: We have a motion
18 before us and second. Is there further deliberation?

19 Very well, everyone in favor signify by
20 saying aye.

21 (Ayes.)

22 Opposed?

23 (No response.)

24 Any other preliminary matters for us, Ms.
25 Bailey?

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1 MS. BAILEY: No, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. PARSONS: Mr. Chairman, I wanted to
4 deal a bit with this issue of electromagnetic field
5 materials that are being submitted into the record and
6 whether the BZA has any jurisdiction, expertise or any
7 other business in this business of electromagnetic
8 fields.

9 I don't think we do. I think this is the
10 jurisdiction of the Federal Communications Commission.

11 They are the licensing agent and I think we would be
12 deceitful to our public, if you will, if we were to
13 start a dialogue going here today as to whether these
14 antennas are a threat to public health and I can't
15 stop people from testifying, but I think we should
16 discourage it.

17 CHAIRPERSON GRIFFIS: Good statement to
18 start the course of the afternoon.

19 Why don't we have the Applicant's
20 representative introduce himself and address that
21 right away.

22 MS. MONROE: Mr. Chairman, I apologize for
23 the interruption, but I don't recall the Board -- the
24 vote being recorded on the motion, or at least the
25 second motion and before the Board moves on to this

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1 issue, perhaps that should be done.

2 CHAIRPERSON GRIFFIS: Ms. Bailey takes
3 copious notes.

4 She's gone.

5 MS. MONROE: She stepped out and I wasn't
6 sure what the numbers were.

7 CHAIRPERSON GRIFFIS: 5-0-0.

8 MS. MONROE: Thank you.

9 CHAIRPERSON GRIFFIS: Thank you.

10 MR. DONAHUE: Mr. Chairman, my name is Ed
11 Donahue now with the law firm of Holland & Knight and
12 I'm pleased to be here on behalf of the Applicant in
13 Matter No. 17211, the shorter tower, if you will at
14 NBC.

15 Mr. Parsons points out something that's
16 clearly a focus point of attention in the community
17 and we thought it appropriate for us to prepare an
18 independent analysis of the RF levels. We did submit
19 that to the Board. We asked that the Board submit it
20 with the understanding that we're not waiving any of
21 our rights under federal law.

22 Simply put, I think Mr. Parsons is
23 correct. The issue of RF emissions and RF
24 interference is squarely within the purview of the
25 Federal Communications Commission. There's case law

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1 to that effect. There's FCC white papers to that
2 effect. And with respect to interference, there's a
3 recent decision out of Anne Arundel County, Maryland
4 that's before the full Commission for its approval.
5 It actually came out of the Wireless Bureau, but it's
6 pretty clear, in fact, it's very clear that with
7 respect to regulation of the airwaves that issue is
8 with the FCC and not with the BZA.

9 CHAIRPERSON GRIFFIS: You are talking
10 about the white papers in the case law, does that go
11 to cellular or is that also the broadcast?

12 MR. DONAHUE: With respect to preemption
13 it goes to both, both broadcast and cellular. There's
14 more in the cellular world.

15 CHAIRPERSON GRIFFIS: Right, indeed. And
16 you're prepared to submit that into the record?

17 MR. DONAHUE: What we have prepared to
18 submit and did submit was the report of Robert Denny.

19 CHAIRPERSON GRIFFIS: That we have and
20 that we've all read.

21 MR. DONAHUE: I have a memorandum that I
22 have not submitted. I'm glad you liked it. I have a
23 memorandum that I have prepared and have not
24 submitted, but that addresses the issue of preemption.

25 I'm prepared to do that now if you like.

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1 CHAIRPERSON GRIFFIS: Okay. Does ANC-3E
2 represented today?

3 MR. DONAHUE: Mr. Chairman, let me address
4 that because I did provide a copy to Ms. Bailey. I
5 don't know if she's coming back. We have a copy of a
6 letter from 3E essentially taking no position, not
7 essentially, they do take no position. I don't know
8 that they are here or plan to attend.

9 CHAIRPERSON GRIFFIS: No position?

10 MR. DONAHUE: We have the letter.

11 CHAIRPERSON GRIFFIS: Right, October 21,
12 2004. Properly noticed public meeting October 14, a
13 quorum of three being present at ANC-3E voted 3 to 0
14 not to oppose the NBC application.

15 MR. DONAHUE: I gave her my copies. I was
16 reading from memory, I apologize. That's the one I'm
17 speaking of.

18 CHAIRPERSON GRIFFIS: Okay. So they're
19 taking no position.

20 MR. DONAHUE: Yes.

21 CHAIRPERSON GRIFFIS: Excellent. Yes, we
22 do have that.

23 Ms. MacWood, do you have a statement on
24 this question?

25 None on the fact of jurisdiction of the

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1 BZA over emissions?

2 Do you disagree with the statement that we
3 do or we don't? Is there a position? I'm not going
4 to force you into on. I want to be clear that you
5 have the opportunity to address this.

6 MS. MacWOOD: I don't quarrel with what
7 the counsel has stated about the FCC's jurisdiction
8 over emissions. They're quite controversial as I'm
9 sure everybody on the Board knows. The area in which
10 emissions arise that I think it goes to the
11 jurisdiction of the Board is in the comprehensive plan
12 and I'll mention this in my testimony and I can grab
13 it, if you want. If you want me to refer directly to
14 it, but there is -- there may even be in the
15 Comprehensive Plan as such in the environmental
16 section, I'm not sure, but I know for a fact that in
17 the Ward 3 plan under the environmental elements there
18 is a paragraph which is cited in our resolution that
19 does speak to radio frequency emissions and indicates
20 that there's a great deal that we don't know about
21 this area and that it would be prudent for decision
22 makers in the District of Columbia to, to the extent
23 possible to avoid increasing radio emissions,
24 particularly in residential areas.

25 I don't think that conflicts with the FCC

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1 jurisdiction.

2 CHAIRPERSON GRIFFIS: Okay. It seems like
3 you're saying several things. The Comprehensive Plan
4 gives us jurisdiction, but the jurisdiction doesn't
5 conflict with the FCC?

6 MS. MacWOOD: That's right.

7 CHAIRPERSON GRIFFIS: Okay. And the
8 Comprehensive Plan gives us jurisdiction to the
9 statement to the greatest extent practicable,
10 involuntary exposure to public and adverse effects on
11 park land and private property and something or other,
12 should be obviously diminished. So should be located
13 in wards only where necessary based on local service
14 needs to the ward's property owners?

15 I'm not sure that's an accurate statement
16 there, jurisdiction arises directly from the text of
17 the Comprehensive Plan, but I take it our jurisdiction
18 is laid out -- an interpretation of the Comprehensive
19 Plan doesn't conflict with the FCC in which case we go
20 to the statement that the Applicant's representative
21 the radio frequency emissions are regulated by the
22 FCC.

23 Any other questions of the Board?
24 Clarification?

25 MR. ETHERLY: Mr. Chair, perhaps

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1 clarification. I'm inclined to agree with Mr.
2 Parsons' position, but perhaps counsel for the
3 Applicant could render -- I'm not necessarily asking
4 for an opinion, but perhaps with your exposure to the
5 case law, no pun intended, would you be able to give
6 some sense of would it be your interpretation that
7 then there would be no -- with regard to the relevant
8 language that's been decided in the Comprehensive
9 Plan, that this Board would not -- I don't want to say
10 would not be able to take notice of the language, but
11 that's essentially what I'm getting at, or would it be
12 your contention that this Board would not be able to
13 rely in part on that language in the Comprehensive
14 Plan in terms of whatever decision might reach in this
15 matter, based on the preemption issue?

16 MR. DONAHUE: Based on preemption and also
17 based on -- well, if I can, I'll give you an opinion
18 on the Comprehensive Plan as well. Based on
19 preemption, you can't have both. The U.S. Congress,
20 in a number of decisions, and U.S. Courts, in a number
21 of its decisions have directly said that the
22 authority, the preemptive authority lies with the FCC.
23 And in a number of cases found that you can't have
24 conflicting jurisdictions. In fact, you can't have
25 both, because if the District had, for example, a

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1 different standard, different level, as does
2 Montgomery County, as does Prince George's County,
3 imagine the nightmare. The airwaves are regulated and
4 deliberately regulated by one agency with a
5 coordinated look at things. So under the law
6 and also under common sense, really, you can't have
7 both.

8 I would, if I can, I would agree with Mr.
9 Griffis' statement that I don't think the quoted
10 language from the ward plan confers jurisdiction on
11 this Board. The stronger argument, frankly, is the
12 preemptive language. Preemption, I think, is very,
13 very clear. But I don't think, in addition, I don't
14 think you can take language from the ward plan and
15 somehow confer jurisdiction on this Board.

16 CHAIRPERSON GRIFFIS: Even when it says
17 District Government officials must incorporate prudent
18 avoidance in decisions regarding the approval,
19 location, routing and intensity of EMF generating
20 facilities such as generators, power lines and
21 antennas in Ward 3? That gives us a lot of power.

22 MR. DONAHUE: Yes, it does.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. PARSONS: Mr. Chairman, it would seem
25 to me that the Zoning Commission would have to pass

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1 regulations in order for this Board to have any
2 jurisdiction pursuant to that. The Comprehensive Plan
3 gives this Board the right to roam around in
4 electromagnetic fields and try to decide what's right
5 and what's wrong.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Mr. Parsons.

8 Ms. Miller?

9 VICE CHAIRMAN MILLER: It seems like it's
10 my understanding that we wouldn't have jurisdiction to
11 question the level of electromagnetic fields of which
12 an adverse effect would be -- what's the word --
13 determined. I mean if the FCC makes the determination
14 that a certain standard, that they're in compliance
15 with this standard, then it's not up to us to second
16 guess that those have an adverse effect.

17 On the other hand, in our zoning
18 decisions, we can make adjustments in certain ways
19 about location, whatever, but we're not second
20 guessing the scientific evidence, I guess the way I'm
21 understanding it.

22 MR. DONAHUE: I think you're right and I
23 think we're fully prepared to make affirmative proofs
24 of our level of compliance. In fact, we filed with
25 you the most recent filing with the FCC. It's dated

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1 June of this year which attests to compliance with the
2 FCC what are called the MPE, maximum permitted
3 exposure.

4 In addition, as I said, we did prepare and
5 submit the report to Mr. Dane to give you actual
6 numbers.

7 CHAIRPERSON GRIFFIS: Good, last question.

8 Were you prepared in your case presentation to talk
9 about the adverse impacts of the emissions? Is that
10 part of the nonsupport?

11 MS. MacWOOD: We touch very briefly on it
12 and the substance of our resolution really goes to the
13 special exception provision.

14 CHAIRPERSON GRIFFIS: Excellent, in which
15 case what I propose, first of all, we'll absolutely
16 take into the record any of the case law that you have
17 and we'll leave the record open for a very concise
18 briefing on the jurisdiction issue, the preemptive
19 aspect and we'll leave it open for both parties.

20 Is that in agreement with the Board?
21 Meaning, we're not going to hear testimony on it.
22 What we need to do is decide whether we have -- if the
23 Board was to then look at that information and to
24 actually find that it had jurisdiction, then we'd
25 obviously have to set up an initial time in order to

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1 hear testimony on that aspect. At this point I think
2 it's fairly clear and we do have the report that's in
3 already that can be touched on in terms of any sort of
4 cross examination or case presentation.

5 Mr. Parsons?

6 MR. PARSONS: I'm sorry to report that I
7 have an unavoidable conflict at 5:00 o'clock.

8 CHAIRPERSON GRIFFIS: That's why you
9 pushed the big issues early and we appreciate that.

10 MR. PARSONS: Well, I have a great deal of
11 interest in this case, having participated in it for
12 20 years, but I can't today and I look forward to
13 reading your record.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. PARSONS: Thanks.

16 CHAIRPERSON GRIFFIS: We'll make it long
17 and laborious.

18 Okay, that being said, we appreciate, Mr.
19 Parsons, and absolutely understand his schedule
20 requirements.

21 Let's move ahead and get right into the
22 case.

23 How long do you need to make case
24 presentation?

25 MR. DONAHUE: Mr. Chairman, what we

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1 thought we would do, we gave you a list of three
2 witnesses. What we thought we would do is give you
3 two and make one available for questions. So I will
4 introduce the two that I intend to speak and I'll tell
5 you who the third one is, if that's all right?

6 Again, my name is Ed Donahue with the law
7 firm of Holland & Knight. Joining me at the table is
8 Mr. Michael Jack who is the General Manager of WRC and
9 also Vice President for Corporate Diversity for NBC,
10 Inc. He's our lead witness on the merits of the
11 application. He'll explain the nature of the request,
12 discuss the prior approvals and in addition to
13 approval, will testify to the needs of the station
14 with regards to the tower, sometimes referred to as
15 the 1955 tower.

16 Chuck Lindner is also with NBC. He's the
17 witness that I suggest we hold for questions. Chuck
18 is the Chief Engineer at WRC and in that capacity has
19 full responsibility for both of the towers and the
20 relationship with the many users and uses of the
21 facilities.

22 Finally, Robert Denny, whose name has
23 already been introduced to you, who is our witness on
24 EMF or radio frequency matters. We did submit Mr.
25 Denny's bio to you and I would tell you that in many

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1 cases why I have asked Mr. Denny to appear. We have
2 sought and obtained qualification as expert status.
3 Mr. Denny has many, many years' experience and all
4 matters are both on an engineering standpoint and also
5 with respect to federal guidelines and PE maximum
6 community exposure.

7 CHAIRPERSON GRIFFIS: It is indeed an
8 impressive résumé. I just can't find it. What
9 exhibit was it?

10 I mean I read it, but --

11 MR. DONAHUE: I've got additional copies,
12 Mr. Chairman.

13 CHAIRPERSON GRIFFIS: It was in your
14 submission, was it not?

15 MR. DONAHUE: It was not in the pre-
16 hearing submission, no.

17 CHAIRPERSON GRIFFIS: What submission was
18 it in?

19 MR. DONAHUE: Submitted on the 28th.

20 CHAIRPERSON GRIFFIS: I'm sorry, we
21 received it in a fax. It's October 21.

22 MR. DONAHUE: That's correct.

23 CHAIRPERSON GRIFFIS: Submission which was
24 the supplemental submission. And let me just refresh
25 the Board's memory, but it is long and extensive. And

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1 I have no difficulty, unless there's any objection
2 from Board Members.

3 Okay. Let's move ahead then with Mr.
4 Denny, as an expert witness.

5 Let me just interrupt for a brief moment.

6 I have two questions, but I also want to just welcome
7 Council Member Mendelson is with us this afternoon. I
8 understand you're here to give testimony on this case,
9 is that correct?

10 MR. MENDELSON: That's correct.

11 CHAIRPERSON GRIFFIS: How is your time?
12 We have how much time for a case presentation?

13 MR. DONAHUE: Approximately 15 minutes.

14 CHAIRPERSON GRIFFIS: Fifteen minutes, and
15 then we can get right to Mr. Mendelson, if that's not
16 objectionable. I think we should proceed in that
17 fashion.

18 Very quick question then, the master plan
19 of this area, reading through all these past orders it
20 all of a sudden popped up and there's obviously some
21 discussion, just how did that happen?

22 MR. DONAHUE: As best I can tell and some
23 of this stuff predates certainly both of our
24 experiences.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. DONAHUE: The best I can tell there
2 were a series of variances, use variances, obtained by
3 the station.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. DONAHUE: And at some point a prior
6 Member of the Board got somewhat frustrated with the
7 piecemeal approach to development and insisted,
8 essentially, that the Applicant prepare and submit a
9 25-year master plan or master plan.

10 CHAIRPERSON GRIFFIS: Okay, and that was
11 my understanding also in looking at it, so it was
12 actually a direction from the Board that created this
13 master plan.

14 MR. DONAHUE: That's correct.

15 CHAIRPERSON GRIFFIS: Those were the days,
16 huh?

17 Okay, let's move ahead.

18 MR. DONAHUE: Before I ask Mr. Jack to
19 give his remarks, let me briefly give the Board our
20 understanding of what today's hearing is about and I
21 do mean briefly.

22 This is, in fact, a special exception, but
23 as just mentioned many of the prior approvals of the
24 Board including the master plan approval in 1981 were,
25 in fact, use variances. In fact, the initial

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1 application under which this instant tower was
2 approved and built in the 1955 matter was itself a use
3 variance. That established the broadcast facilities
4 and the tower way back in 1955.

5 Today, by virtue of Section 211, and the
6 Board's prior approval of January this year, we seek
7 renewal and in fact, permanent approval of the special
8 exception for the one tower, for the '55 tower.

9 As was just mentioned about the master
10 plan, Office of Planning has recommended approval and
11 we certainly appreciate and enjoy having OP support of
12 our application. However, we do believe there's some
13 confusion about the tolling, if you will, of the
14 application. And in fact, we have spoken with Ms.
15 Thomas of the Office of Planning and we believe the
16 understanding is that that condition will be removed
17 by OP when it makes its remarks. This has to do with
18 the term --

19 CHAIRPERSON GRIFFIS: The two year to tie
20 it back into the timing of the master plan.

21 MR. DONAHUE: Exactly.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. DONAHUE: Finally, as Mr. Jack will
24 testify, and is covered in quite detail in our
25 prehearing submissions, the campus is well over seven

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1 acres in size, land-locked, and surrounded on all
2 sides by institutional uses such as Homeland Security,
3 National Presbyterian Church and the nearby Glover-
4 Archibald Park.

5 While the property is zoned R-1-B, it has
6 been continually used by the station since 1955 in
7 largely its capacity, both in terms of size of the
8 campus and Mr. Jack is also going to speak to sort of
9 future development plans.

10 So without further delay --

11 CHAIRPERSON GRIFFIS: Why would we speak
12 about future development plans?

13 MR. DONAHUE: He's going to assure you
14 that there are none, Mr. Chair.

15 CHAIRPERSON GRIFFIS: Okay, that will be
16 brief.

17 MR. JACK: Good afternoon. My name is
18 Michael Jack. I am the present General Manager of
19 WRC-TV here in Washington, D.C. NBC-4 to many of you
20 and hopefully your number one news choice. I'm also
21 Vice President of Diversity for NBC, Inc.

22 I've been in this position for about two and a
23 half years now, having moved from Columbus, Ohio in a
24 similar capacity with the NBC station there.

25 I'm responsible for the overall operation

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1 of WRC Television, everything from news to community
2 affairs to programming to sales.

3 Co-located in this location at 401
4 Nebraska Avenue is the NBC Network News Bureau, headed
5 by Tim Russert. He and I combined have staffs of
6 approximately 350 people and we also employ a
7 significant amount of free lancers who participate as
8 daily hires.

9 At WRC-TV, we do 40 hours of news a week,
10 by far the most in this marketplace. We distribute,
11 obviously, information to the community through our
12 news product. In addition to that, we are the station
13 that does and I think many people know us as the
14 Wednesday's Child station which helps orphaned
15 children. We do many community affairs programs,
16 "Viewpoint" being one, a single topic, locally-
17 produced show; "Reporter's Notebook", which takes four
18 reporters and talks about local topics; "The George
19 Michael Sports Machine", "The Redskins Report", "The
20 Joe Gibbs Show", which I can assure you both those
21 previous shows did better when the Redskins were
22 winning; and "It's Academic" which is in its 40th year
23 in this community doing a college bowl type of show.
24 You may have grown up on this as I hear many people in
25 market has. Mack McGarrity is the host of that.

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1 To show we're nonpartisan, we also do,
2 produce at the station "Meet the Press" with obviously
3 Tim Russert, "The Chris Matthews Show" and "John
4 McLaughlin."

5 I'm here today to testify in support of
6 the special exception application, allowing WRC to
7 keep the 1955 tower which is vital to our business.
8 It's a tower that we have had in the same location for
9 almost 50 years. We're seeking the identical approval
10 from the Board as that was issued on January 21st of
11 this year.

12 Our prehearing statement describes how we
13 comply with the BZA previous order. We meet each
14 element for the special exception approval. As I say,
15 we've been in the same location for 50 years,
16 operating with the same tower with absolutely adverse
17 effect to neighboring properties.

18 By way of background, we touched on this
19 already, there was a master plan that we submitted in
20 1981 and that plan was approved with three key
21 elements. The first was an expansion of our facility
22 to almost double its size to 312,000 square feet with
23 a much larger tower to accommodate that area. And
24 also, the construction 332 parking spaces. That
25 obviously has not happened. We're currently in the

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1 same square footage that we've been in of 180,000
2 square feet, about 57 percent of the area that's been
3 approved. And we also are operating with about half
4 of the work staff that was approved in the master
5 plan.

6 We have, and let me reiterate, no present
7 plans to further build out or develop the existing
8 facility.

9 We did build a tower in 1988. The station
10 continued to use the 1955 tower. We applied for a
11 special exception to continue the usage in 1992 and it
12 was approved in December of 2004 with conditions that
13 we have absolutely complied with.

14 Number one, we've negotiated deed of
15 easement with the Park Service and as Mr. Parsons
16 mentioned earlier, he was involved with that. We've
17 granted a permanent scenic easement interest in a part
18 of our property. We've agreed to planting trees to
19 block views of the tower from Archibald Park. The
20 Park Service supports our application and has filed a
21 letter accordingly.

22 We have secondly repainted both the 1955
23 tower and the 1988 tower a muted gray tone which has
24 been approved not only by the Park Service, but by the
25 Federal Aviation Administration and the Federal

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1 Communications Commission. And we, finally, have
2 established a community liaison advisory council
3 composed of ANC Commissioners from both ANC-3E and 3C.

4 Our meeting is November 1st.

5 With respect to our current application,
6 we believe the special exception should be granted
7 since we meet all of the required elements of the
8 Board filings that was issued approximately 10 months
9 ago.

10 Paragraphs 20 and 21 of the BZA order
11 number 15708-A, the Board specifically found that
12 continuance of the 1955 tower, along with the new
13 tower is consistent with the intent of the original
14 master plan. The Board also found that the
15 continuance of the 1955 tower would result in less
16 impact on the surrounding neighborhood than if the
17 master plan itself were constructed. Nothing has
18 changed in the last 10 months.

19 The 1955 tower is still set back from the
20 lot lines of neighboring properties by substantial
21 different, far greater than what codes would
22 necessitate. It's still located the same site and
23 it's closer to the surrounding institutional neighbors
24 than the residential ones. It still is at least 120
25 feet from the nearest property line and exceeds, as I

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1 said, setbacks. Visibility is still minimized as a
2 result of generous setbacks, landscaping and existing
3 vegetation.

4 It still has an approximate height of 443
5 feet, almost 200 feet lower than the 1988 tower and
6 still much less than permitted under the Board's
7 previous master plan. The combined volume of the two
8 towers is only 52 percent of the volume approved for a
9 single tower in the master plan.

10 And it still will not result in any
11 increase in office space, number of employees,
12 vehicular or pedestrian traffic or the establishment
13 of any other commercial use on our property. The only
14 change that is visible since we've received approval
15 is the fact that we've painted both of the towers
16 which blend into a skyline, particularly a skyline
17 like today.

18 Furthermore, continued use of the 1955
19 tower as we will discuss, in no way pose any
20 electromagnetic risks. We will not adversely affect
21 the use of the neighboring property and the height of
22 the tower does not exceed that which is reasonably
23 necessary to render satisfactory service by us.

24 And we continue to need this tower. It's
25 critical to render important services, not only for

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1 ourselves, but also the folks who operate from those
2 towers as our tenant. Space on the 1955 tower is
3 occupied by a television station, in addition to ours,
4 a radio station and several public service agencies.
5 In addition to NBC News which has a news gathering
6 antenna on the tower that connects with Capitol Hill,
7 there's also the Federal Government has an antenna,
8 the D.C. Police, and Fire Emergency Response
9 Personnel.

10 We're also in conversations with ACTO to
11 have them also become a tenant.

12 WKYS-TV, a commercial radio station is a
13 tenant and as importantly WFDC, the Univision
14 television station in the marketplace has both an
15 analog and a digital antenna on our structure.

16 As you well know, the Latino population is
17 growing. It's the fastest growing population in this
18 marketplace. It is the only high powered Spanish
19 language television station that services this
20 marketplace. In some respects, it is difficult to say
21 that. We own Telemundo and Telemundo is a competitor
22 to this particular station. Be that as it may,
23 interruption of services would disadvantage not only
24 us, but tremendously disadvantage all of the tenants
25 on our tower.

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1 Some additional factors to consider,
2 technology is changing very, very rapidly in our
3 business and is likely that it will change even more
4 as we move forward. There are unexpected regulations
5 that have happened in the past and that may happen in
6 the future, specifically the FCC has mandated several
7 years ago that TV stations across America are required
8 to do the migration to digital television. It
9 necessitated us acquiring a digital antenna in
10 addition to the analog antenna. We were required at
11 least through the year 2009 to televise both in analog
12 and digital form as are other television stations,
13 hence, WFDC, the Spanish language station.

14 We need the flexibility as we move forward
15 to adapt to and provide space for ourselves and other
16 companies that are tenants of ours to do exactly the
17 same thing, to better serve our community.

18 We derive some revenues from this tower by
19 way of leasing activities, but much of what we do is
20 thrown back into what we think are important part of
21 our business and that is the creation of jobs for
22 people at our television station and the creation of
23 public service activities and community-interest
24 programming events and PSAs.

25 Specifically, I talked about some of the

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1 shows earlier that we do in the news area, but we also
2 do something that you may be aware of, something
3 called the Health and Fitness Expo where we have
4 72,000 people that come to the downtown Expo Center,
5 just came this past January to get free testing. In
6 each one of these Expos, we save lives. There are
7 people who can't afford it, will come to the Expo,
8 free of charge by the way, we incur a tremendous
9 amount of financial burden to make this Expo happen.
10 But we do save lives and we think it's a tremendous
11 service to the community.

12 The Digital Expo, which happens in
13 September of each year is another example of a way
14 that we take and impart some of these tower revenues
15 and put it back it back into the product which we
16 think serves the community. There were 35,000 people
17 at the Convention Center. It's an opportunity for the
18 population to touch and feel. It's our way, in part,
19 of bridging the digital divide.

20 We're involved with 35 other things, many
21 walks. You may have walked on some of them or
22 certainly seem them televised or parts of them: AIDS
23 walks, MS walks, walks for cancer, ALS, literacy,
24 diabetes, etcetera. And we also run over 3,000 public
25 service announcements every single year, that is free

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1 of charge, in an attempt to get out public service
2 information to our community.

3 We would have to cut back on some of this
4 if we did not have revenues associated with the tower,
5 not to mention in today's economy which is tough for
6 all of us broadcasters, there's always the possibility
7 of layoffs.

8 In summary, we meet each element for a
9 special exception approval. The Board has approved
10 the existing tower for almost 50 years and in doing so
11 has affirmed that we meet the requirements of Section
12 211 of the zoning requirements. There's no evidence
13 that the 1950 tower has been incompatible with the
14 surrounding neighborhood or has adversely affected the
15 use of neighboring properties. The Board's recent
16 order establishes that we meet the standards for
17 relief and nothing has changed at the site since the
18 issuance of such an order.

19 The Office of Planning has submitted a
20 report indicating that we met our burden of proof.
21 ANC-3E, as noted earlier, the ANC in which we are
22 located, does not object and supports our application.

23 While ANC-3C objects, we respectfully disagree. We
24 have asked Bob Denny to prepare a report for us which
25 we will address some of the issues -- are we

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1 submitting that report or are we --

2 MR. DONAHUE: It's been submitted.

3 MR. JACK: Okay. Is Mr. Denny not going
4 to --

5 MR. DONAHUE: Yes, he is.

6 MR. JACK: Okay. Thank you.

7 CHAIRPERSON GRIFFIS: Excellent, thank you
8 very much.

9 Let me add just for clarification, you
10 stated that according to the master plan and also the
11 permit that was pulled in 1988, that a tower that was
12 not built could have been built and the combination of
13 the two towers existing would be only 52 percent of
14 the total volume of approved and permitted new tower?

15 MR. JACK: Right.

16 CHAIRPERSON GRIFFIS: So it would be twice
17 as tall?

18 MR. JACK: Not only taller and wider.

19 CHAIRPERSON GRIFFIS: Right, it seems to
20 me in the written submission there was a 90-foot
21 separation or base of some sort. Okay, clearly, to
22 the whole process something of much larger magnitude
23 has been provided.

24 MR. JACK: Yes.

25 CHAIRPERSON GRIFFIS: And the tower at

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1 question in this application also the Fairfax Police
2 also have a broadcast or whatever it is that you
3 attach on these things? See how technically savvy I
4 am.

5 MR. JACK: You've already gone beyond our
6 capabilities. We need an engineer.

7 MR. LINDNER: Good afternoon, my name is
8 Chuck Lindner. I'm the Chief Engineer of WRC-TV.
9 Fairfax Police elected not to renew their contract. I
10 don't know the reason.

11 CHAIRPERSON GRIFFIS: Okay, and the only
12 reason that I know that is because on one of the
13 diagrams you set up it has that on there, but you
14 didn't make note of it, so you were correct in that
15 statement.

16 Okay, excellent. I think that's all the
17 questions I have at this time. Any other questions,
18 Ms. Miller?

19 VICE CHAIRMAN MILLER: Can you explain
20 further about the scenic easement I believe is being
21 issued to the park, National Park Service?

22 MR. DONAHUE: May I address that? The
23 National Park Service has asked in connection with the
24 adjacency of Glover-Archibald Park for scenic
25 easement. We have the terms in place. I don't have

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1 the square footage unfortunately because we haven't
2 actually surveyed it, but in addition to the easement
3 which park certainly appreciates and enjoys, we're
4 going to do a series of plantings and that's in effect
5 what's delayed some of the finalizing of the plans.
6 They're going to tell us where and what they want to
7 see planted on the scenic easement area.

8 VICE CHAIRMAN MILLER: This is your
9 property that abuts Glover-Archibald Park?

10 MR. DONAHUE: That's correct, it is.

11 VICE CHAIRMAN MILLER: Okay, and then I
12 just want to get the parks that are being referred to
13 straight. In the master plan there's a reference to
14 upgrading the quality of existing park with new
15 planting. What park is that? Is that Glover-
16 Archibald or is it some part of your own property?

17 MR. DONAHUE: I believe it's similar, it's
18 the adjacency of the Glover-Archibald, yes.

19 VICE CHAIRMAN MILLER: Okay. From what we
20 heard from ANC-3C just in the preliminary discussion,
21 the issue of the visibility of the towers is a
22 concern, at least with respect to McLean Gardens or
23 whatever and I'm wondering is there any way that can
24 be mitigated?

25 MR. JACK: I'm not sure I have a good

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1 answer for this. I think, as you well know, towers
2 are high, depending upon where you stand they are
3 visible at some point. What I can say is that we are
4 on a property that is a mature property when it comes
5 to vegetation as you possibly can get. We have been
6 there for over 50 years or almost 50 years and for the
7 extent that there's any ground level blockage that's
8 available, it is available as well as adjacent
9 properties that do eliminate some of the direct eye
10 contact of our property.

11 But towers are tall, so you'll be able to
12 see them from some place in the city.

13 VICE CHAIRMAN MILLER: If there's no other
14 camouflaging that you can do other than the painting
15 that's been done?

16 MR. JACK: No. Thank you for mentioning
17 the painting.

18 (Laughter.)

19 CHAIRPERSON GRIFFIS: Any other questions?

20 MR. MANN: Yes. Why didn't you go forward
21 with the plans to build the larger tower that you were
22 permitted to build?

23 MR. JACK: I think times have changed very
24 dramatically in our business. There was a time when I
25 began in 1977, the sales side and we had on a bad day

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1 maybe seven or eight competitors. Now we have -- any
2 time you pick up the newspaper, I'm frightened to pick
3 it up because there's one more cable channel that's
4 added. So today, we're in a world of 400 to 500
5 competitors. The expectation, the revenue
6 expectations behind what was a world where we could
7 grow in double digit has unfortunately not realized
8 over the years, so it's simply a matter of dealing
9 with the realities of today's business. It's a tough,
10 tough business and to expand would have been too
11 costly and certainly would have been way over
12 expansion for the workforce that we currently have.

13 MR. MANN: It sounds like it was mostly an
14 economic decision and not a technological one,
15 although it sounds like there was perhaps an element
16 of technology?

17 MR. JACK: No, I think -- first of all, it
18 would be hard for me to guess since I have only been
19 here a little over two years, almost two and a half
20 years, but I don't know that technology would have
21 changed tremendously during that period of time. The
22 only thing that really has changed is, as I mentioned
23 earlier, the FCC has mandated that TV stations would
24 have both analog and digital signals.

25 MR. MANN: I guess maybe one of things

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1 that I don't understand is when you receive the
2 permission to build a larger, taller and larger tower,
3 did you anticipate that you would need it because of
4 the extra added height or the extra added surface that
5 it provides for multiple antennas?

6 MR. JACK: Again, not being part of that
7 team back in 1981, I suspect it could have been a dual
8 purpose, one, to take on additional tenants and two,
9 the capacity to broadcast even more. I don't have an
10 answer to that, unfortunately.

11 MR. MANN: Okay, thank you.

12 CHAIRPERSON GRIFFIS: Anything else?

13 VICE CHAIRMAN MILLER: I have in my notes
14 and I'm not sure where it came from, but I'm just
15 going to throw it out here, what are earth stations?

16 MR. JACK: Earth stations?

17 VICE CHAIRMAN MILLER: Yes, does that
18 sound familiar to you?

19 MR. LINDNER: An earth station is a
20 satellite dish, typically it means an uplink dish,
21 sending signals up to the satellite. They receive
22 only earth stations which can only receive also. We
23 have some satellite dishes on the property, including
24 two which can send signals up.

25 VICE CHAIRMAN MILLER: Thank you.

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1 MR. JACK: Ms. Miller, I call them
2 satellite dishes.

3 CHAIRPERSON GRIFFIS: Okay, anything else?
4 Excellent.

5 Cross.

6 CROSS EXAMINATION

7 MS. MacWOOD: Good afternoon, Mr. Jack.

8 MR. JACK: Good afternoon.

9 MS. MacWOOD: I'm Nancy MacWood for ANC-3C
10 just for the record.

11 I just have a couple of questions.

12 MR. JACK: Yes ma'am.

13 MS. MacWOOD: Has the height of the tower
14 been permitted by the Mayor as is required under 211?

15 MR. JACK: Has the height of the tower
16 been permitted by the Mayor? I don't know at this
17 time. Does anybody with me know?

18 MR. DONAHUE: We submitted a statement in
19 the record and Office of Planning has also found that
20 the tower we're talking about, the 1955 tower, was, in
21 fact, approved. It predates zoning, but there is an
22 approval from way back when.

23 MS. MacWOOD: All right. I have a
24 question about the height of the tower you've talked
25 about that the combination of the two towers is less

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1 than what was approved in the master plan. I have
2 some confusion there because my understanding was that
3 the height of the tower that was approved in the
4 master plan was indeed 657 feet which is the height of
5 the current, larger tower. The difference perhaps is
6 that the master plan provided that that tower could be
7 built on top of a garage.

8 Can you clarify this for me? Is the
9 height, in fact, different than the height that was
10 approved to the master plan?

11 MR. JACK: I think the height that we're
12 referring to and what is double is the volume of the
13 tower as opposed to simply the height of the tower.
14 And the volume, I think is defined and Mr. Lindner can
15 help me with this, as height versus width, and hence
16 your capacity grows incrementally as you not only go
17 up, but as you also go sideways.

18 MS. MacWOOD: So if I understand
19 correctly, the base of the tower could have been
20 larger than it is? Is that correct?

21 MR. JACK: Correct.

22 MS. MacWOOD: But is the height, 657 feet,
23 is that what was approved in the master plan for
24 height?

25 MR. JACK: I think, correct me if I'm

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1 wrong, that that was the height that was approved in
2 the master plan.

3 MS. MacWOOD: All right. Have you asked
4 any of the tenants on the original tower if they could
5 relocate?

6 MR. JACK: No.

7 MS. MacWOOD: So you don't know if they
8 could or not?

9 MR. JACK: No, we've not asked them that
10 question.

11 MS. MacWOOD: All right, has the capacity
12 of the larger tower, the 657 foot tower, has that
13 capacity been maxed out?

14 MR. JACK: We don't know. We have not
15 formally investigated that. What we do know is that
16 towers, a tower's capability is based on not only the
17 height of the tower, but there are issues of
18 durability, the strength of the tower. You can't put
19 an unlimited amount of antennas on a tower for safety
20 reasons and certainly we, living in the area, we are
21 very concerned about anything that might relate to
22 over capacity of the tower by way of weight.

23 Also, it's a very complicated thing to
24 move antennas. There's height. There's frequency
25 relative to the antenna next to it. And there's also

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1 direction. So it's not one of those issues where you
2 simply pluck it from one and stick it on another one,
3 because there's a couple of feet of available tower
4 space. There is the coordination of all those things,
5 so we --

6 MR. DONAHUE: Mr. Chairman, just for the
7 record, Mr. Jack testified to the 1955 tower and he
8 made reference to some of the users that happen to
9 have facilities on both, but he neither testified --
10 in effect, he didn't testify on the larger tower at
11 all, nor did he testify on any structural issues
12 applicable to the larger tower.

13 CHAIRPERSON GRIFFIS: Right, but he did
14 talk about the percentage of volume and height, which
15 is what the question goes to.

16 MS. MacWOOD: Mr. Jack, at the ANC meeting
17 on October 18th, you were asked several questions
18 regarding the NBC news gathering antenna on the
19 smaller, the original tower that's the subject of the
20 special exception application. And I believe that
21 what you told us was that you could relocate that
22 antenna on to the larger tower, is that correct?

23 MR. JACK: I think what I said was, what I
24 just reiterated, that we really haven't done any kind
25 of analysis what could be moved and what couldn't be

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1 moved.

2 It was likely that we could do it, but I
3 really wouldn't know. I'm not an engineer, until we
4 tackle that project.

5 MS. MacWOOD: All right, so you don't
6 recall that you told us that you could do it? You
7 thought that it was possible, but not sure.

8 MR. JACK: Do you recall that I said
9 something different?

10 MS. MacWOOD: I thought that you told us,
11 because we asked several times, but I don't want to
12 testify for you, so I just --

13 MR. JACK: My recollection is that, as I
14 say, that we hadn't looked at it, and still haven't
15 looked at it and we don't really know.

16 MS. MacWOOD: No further questions. Thank
17 you.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you.

20 VICE CHAIRMAN MILLER: I just want to
21 clarify this because it's a basic point. I think that
22 she was going to the question of whether or not all
23 the antenna that are on the 1955 tower could be
24 relocated to the taller tower and therefore there
25 would be only one tower.

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1 And what was your answer? You haven't
2 thought about that yet?

3 MR. JACK: No, we have not looked at what
4 can be technically moved. I assure you not everything
5 can move. There is no way that we can move the
6 Univision antenna. There is no capacity on the tower
7 to move both the analog and the digital. So that
8 station would be very inconvenienced. And likely the
9 same thing may hold true for the radio station. The
10 question was I thought specifically about the NBC
11 antenna, the one that's linked to Capitol Hill, so to
12 that extent we really haven't investigated whether or
13 not we could move. Again, I'm not a tower expert, but
14 I would be pretty confident that we could not move all
15 that's up there.

16 VICE CHAIRMAN MILLER: I guess my basic
17 question is I thought that the reason the 1955 tower,
18 not the 1955 -- I thought it was in the record and
19 maybe it's not that you needed two towers because
20 everything couldn't fit on the 1988 tower. Is that
21 true or not true?

22 MR. JACK: That is true.

23 VICE CHAIRMAN MILLER: Thank you.

24 CHAIRPERSON GRIFFIS: Excellent
25 clarification because there is an awful lot in the

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1 preliminary submission regarding that. Also with the
2 attendant idea of going to HDTV, whatever that is. I
3 still have my little black and white. So what we're
4 talking about, the duplication of needs for and that
5 may be temporary but who knows and that was also
6 discussed and that's a condition that you're now
7 undergoing or anticipating?

8 MR. JACK: Yes. I'm referring to digital
9 television. It is HDTV where you're requiring two
10 antennas, an analog antenna and a high definition
11 antenna.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. JACK: We are broadcasting on both now
14 and we'll continue at least to the year 2009.

15 CHAIRPERSON GRIFFIS: Indeed. Okay.
16 Good. If there's no other question of the Board,
17 let's proceed. I'm going to ask you for your
18 indulgence in interrupting your flow of case
19 presentation to see if we can't get the Council Member
20 up here so that he might be able to move on with his
21 agenda if that's --

22 MR. DONAHUE: No objection.

23 MR. ETHERLY: Mr. Chair, while the Council
24 Member is moving forward, I would have a couple of
25 follow-up questions for Mr. Lindner, they're a little

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1 more technical in nature, so I'd love to come back to
2 that after the Council Member's testimony.

3 MR. DONAHUE: We'll make him stay.

4 MR. ETHERLY: Thank you, sir.

5 CHAIRPERSON GRIFFIS: Good afternoon.
6 It's been some time since we've seen you.

7 MR. MENDELSON: Good afternoon, a couple
8 days I think. Do I need to be sworn in?

9 CHAIRPERSON GRIFFIS: Yes, probably so.
10 Thank you for reminding.

11 (The witness was sworn.)

12 MR. MENDELSON: Thank you and good
13 afternoon. I'm Phil Mendelson. I'm here testifying
14 today as a resident who lives in McLean Gardens and
15 therefore near the antenna towers that is at issue.
16 Also, as a former ANC-3C Commissioner and officer of
17 ANC-3C who was active in the case 10 years ago for the
18 NBC tower that's before you today and also as an At-
19 Large Council Member of the District of Columbia.

20 In 1980, the BZA ordered that NBC prepare
21 a master plan for its R-1 zoned site and submit it to
22 the BZA for approval. That master plan was approved
23 by the Board in 1981. It called for a number of
24 improvements including replacement of the existing
25 antenna tower, in other words, the tower before you

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1 today, replacement of that tower.

2 In 1988, NBC built the replacement tower,
3 notwithstanding its own master plan and
4 representations to the BZA and to the public. NBC did
5 not remove the older tower. It continued to be used,
6 primarily, if not exclusively, rented out to other
7 companies, other companies for their use. News
8 accounts in 1991 reported that NBC was going to rent
9 the television antenna at the top of the 1955 tower to
10 the Urban Broadcasting Corporation for the Home
11 Shopping Network which has nothing to do with NBC.
12 This prompted ANC-3C to file a complaint with city
13 officials that NBC was violating the BZA's 1981 order.

14 Eventually, NBC filed for a special
15 exception which was granted by final order issued
16 earlier this year.

17 The thrust of NBC's argument 10 years ago
18 and that was the case that I was active in was that
19 the Federal Communications Commission was changing its
20 rules for television broadcasters. Under the FCC's
21 then-proposed regulations, as represented to the Board
22 by NRB, every station would have to build a new
23 transmitting facility for high definition television
24 or HDTV. The loss of the small, older tower would
25 create a difficulty for NBC because it would limit

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1 tower space availability at a time when the FCC was
2 purportedly requiring additional antenna for
3 television stations.

4 In the intervening 10 years, since that
5 argument was made, we have seen not one other
6 television station in the District has had to build a
7 second tower. Further, that no station including NRB
8 has had difficulty locating additional antennas for
9 HDTV on their primary tower. Fox-TV5 continues to
10 have one tower. WJLA-TV7 and WUSA-TV9 continue to co-
11 locate on a single tower. NBC has all its antennas,
12 except one unrelated to HDTV on one tower, the larger
13 tower.

14 This case is about NBC's greed for
15 commercial advantage for extra profits from being the
16 only station with an extra tower. There's nothing
17 wrong with the desire for corporate profit, but that's
18 what this case is about.

19 In order to grant a special exception for
20 antenna towers, the Board must find that there is a
21 need and yet Exhibit D to NBC's June 29th application
22 shows that of nine antenna users on the tower in
23 question, only one is NBC and that one is relatively
24 low on the tower and could relocate to the other
25 tower. Where is the need?

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1 It is clear from the marketplace that
2 television stations do not need two towers for their
3 TV operations. It is clear from NBC that it does not
4 need two towers for it to operate.

5 It is the public policy in the District of
6 Columbia to limit the intrusion of antenna towers into
7 the skyline. This policy is clearly articulated in
8 three binding documents: first, the 1910 Height Act;
9 second, the Comprehensive Plan; and third, the zoning
10 regulations. In its order number 587, The Zoning
11 Commission was clear that its concern with antennas
12 has been with their visual impact as they are viewed
13 from sites other than the property in which they are
14 located and that the thrust of the proposed rules,
15 that's the zoning regulations, is to prevent antennas
16 from having an adverse impact on the appearance of
17 Washington as the nation's capital.

18 So this is about aesthetics. The
19 regulations that are before you today that NBC has to
20 meet with are primarily about the aesthetics. There
21 has to be a showing of need in order for this
22 aesthetic intrusion into the skyline to take place.

23 NBC admits that it has failed in this
24 regard. Look at the three photos that are submitted
25 as Attachment G to its June 29th application,

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1 carefully sited to minimize or hide the visual impact
2 of the two towers. And these are the photos I'm
3 talking about.

4 If you can see them from here, but this is
5 Exhibit G to their June 29th application, you can
6 barely see the two towers from this perspective. And
7 in fact, from this perspective, it looks like the
8 National Presbyterian Church has the taller tower
9 which I assure you you cannot see from McLean Gardens
10 or elsewhere in the city. From this viewpoint which
11 is approximately Wisconsin and Van Ness, you can only
12 see one tower. They very carefully chose perspectives
13 to hide the fact that there is a visual impact.

14 And this picture here which is Nebraska
15 and Massachusetts, again, you see one tower. They
16 very carefully chose photos and perspectives to hide
17 the visual impact.

18 But look at the view from nearby McLean
19 Gardens. You clearly can see two towers. Now there's
20 no question and I know this from before that folks
21 will point out well the new tower is much taller, it
22 overwhelms. Well, that may be true, but it's also
23 true there are two towers in this picture. There
24 clearly are two towers and it is the public policy to
25 minimize this sort of visual impact.

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1 If you travel to Upshur Street, as far
2 east as 6th Street, you will see the same visual
3 impact. Clearly, there is an impact on the skyline of
4 the District.

5 It is false to say, as I heard in the
6 testimony earlier, that the master plan called for a
7 taller tower. It permitted a 659 foot tower, 200 feet
8 taller. It's also false to say that the master plan
9 would have a larger tower, bulkier tower. That was
10 discussed in some detail in the 1992 hearing. It's
11 conjecture to say what that design would be and there
12 are ways of designing a tower, the materials that are
13 used, the way that the load is designed to be handled
14 that can minimize the bulkiness of the tower. The
15 fact is though that the 659-foot tower permitted by
16 the master plan looks like this. That's how it was
17 designed. That is what the visual impact is of it.
18 And to talk about what might be bulkier, what might
19 have been is purely speculative and irrelevant.

20 But the point here is that the public
21 policy of the District, as embodied in the 1910 Height
22 Act and the Comprehensive Plan and in the zoning
23 regulations and in particular zoning order 587 is to
24 minimize this visual impact.

25 In BZA Case 14258, the Board denied a 38-

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1 foot antenna tower because "the proposal would be
2 visually intrusive on the residential character of the
3 neighborhood. The antenna would constitute an adverse
4 visual impact from all directions." That is your
5 precedence.

6 The zoning regulations meant to limit
7 antenna towers. There must be a need not just a
8 desire. Absent a need, there is no justification for
9 violating the public policy regarding height.

10 Also, working against approval of NBC
11 having two antenna towers at its R-1 site are two
12 provisions in the Comprehensive Plan. Sections 411 in
13 the environmental protection element which has city-
14 wide applicability and 1403.13(e) in the Ward 3 Plan
15 both require "prudent avoidance" and say, in part,
16 "that facilities should be located only when and where
17 necessary, based on the local service needs of
18 property owners."

19 Prudent avoidance is a term of art which
20 was taken from, I believe, regulations of the
21 Wisconsin Public Utility Commission, regulations
22 adopted to limit the proliferation of antennas. The
23 language referring to local service needs of property
24 owners was meant to restrict the construction of tower
25 space to serve rentals, rentals such as in this case

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unaffiliated television stations.

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (5:00 p.m.)

3 And I say this with the experience of
4 having drafted that language in both elements of the
5 Comprehensive Plan.

6 Interestingly, the Applicant ignored these
7 Comprehensive Plan provisions in its application. I
8 assume this is because they are one more reason why
9 having two towers is not justified.

10 The presence of two towers in the R-1
11 zoned district at NBC has occurred through slight of
12 hand. This Board should not perpetuate it. This
13 application is purely about commercial profits. The
14 Board should not support that. There is no need for
15 two towers and the public policy therefore mandates
16 that you deny the application.

17 CHAIRPERSON GRIFFIS: Good, thank you very
18 much. Going to need, you raise an interesting
19 question that arises, one that they could clearly fit
20 all of their use that attendant to the actual facility
21 and the employees that go there on one antenna.

22 What is the -- am I to take it that, in
23 fact, it would be appropriate, for instance, for D.C.
24 Police also to have a tower, the U.S. Government and
25 then the WKYS-FM and WFDC, so we would get five or six

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1 additional towers, so on the logic of the argument
2 that it shouldn't accommodate others, then you would
3 take it that everyone would have to have their own
4 tower if they were broadcasting.

5 MR. MENDELSON: I think there are two ways
6 of answering that. One is that we don't know what the
7 needs are of the D.C. Police, the U.S. Government or
8 WNN City-Wide Radio or WKYS-FM auxiliary or WFDC-TV.
9 We don't know. That's one way of answering the
10 question. We just don't know what their needs are.
11 And perhaps they could locate on the Channel 50 tower
12 on Georgia Avenue where there are some -- I know some
13 public safety communication. Perhaps they could
14 locate on one of the other towers that's in Northwest
15 Washington. Perhaps they could locate on some of the
16 taller buildings. We don't know what their needs are,
17 and so it's purely speculative to say well, they would
18 be preemptive.

19 But another way of answering the question
20 is that the zoning regulations don't speak to meeting
21 the needs of off-site, unaffiliated owners and in
22 fact, the way the Comprehensive Plan is written, the
23 plan adopted, as legislation by the City Council, is
24 to try to limit the construction of these towers
25 simply for rental purposes unrelated to the needs of

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1 the property owner, that is, in this case NBC. These
2 rentals are unrelated to that.

3 I had a third answer which at the moment
4 has slipped my mind.

5 CHAIRPERSON GRIFFIS: That's okay. Case
6 No. 14258 you cited as our precedent. What was that
7 case?

8 MR. MENDELSON: That was the Embassy of
9 Benin and it was also in ANC-3C and it was taken to
10 the Court of Appeals and the Board's decision was
11 upheld. It was a 38-foot tower and one of the
12 arguments by the Board in denying that tower was the
13 visual intrusiveness of a 38-foot tower, which I
14 believe is one tenth the size of this tower.

15 CHAIRPERSON GRIFFIS: I don't think the
16 Board would disagree that we have the jurisdiction to
17 do it. I'm not understanding why that would be
18 precedential. Not getting into the facts and I don't
19 think I sat on a 1400 case, but --

20 MR. MENDELSON: It was like 1982.

21 CHAIRPERSON GRIFFIS: Indeed. The mere
22 fact that in 1982, if the Board denied one, that's
23 precedent that we would therefore not be able to
24 approve one?

25 MR. MENDELSON: I think the argument is

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1 very simple. The public policy is to limit the
2 intrusion of antenna towers into the skyline. In
3 fact, it's really to maintain the horizontal skyline,
4 both in terms of buildings, as well as antenna
5 structures.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. MENDELSON: That's the public policy.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. MENDELSON: And the Board supported,
10 enabled that public policy, articulated that public
11 policy and in the Embassy of Benin case, it was a 38-
12 foot tower and the reason I emphasize 38 feet is
13 because by order of magnitude we're talking about
14 something that's 10 times taller.

15 CHAIRPERSON GRIFFIS: I understand that.

16 MR. MENDELSON: This 1955 tower --

17 CHAIRPERSON GRIFFIS: I'm having
18 difficulty understanding how that would give us great
19 direction. We've also approved towers, 38 feet; 155
20 feet.

21 MR. MENDELSON: Perhaps you found need.

22 CHAIRPERSON GRIFFIS: Fifteen feet.

23 MR. MENDELSON: Perhaps you found need. I
24 mean you also, the Board approved, not you, but the
25 Board approved for 10 years the NBC tower which was

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1 taken to Court.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. MENDELSON: And it was remanded at the
4 Board's request 10 years ago and the Board did nothing
5 on it until last December or January at which point
6 what was the point, except to move on to this case
7 today. But that was a mistaken, in my view, that
8 approval.

9 And the argument 10 years ago was that --
10 new technology, I heard it today, I heard the exact
11 same language 10 years ago, new technology, technology
12 is changing so quickly. Well HDTV was fairly new 10
13 years ago. I don't think anybody had plasma screen
14 TVs and nobody was broadcasting, double broadcasting
15 both analog and HDTV 10 years ago. Well, now they
16 have and we've seen -- the argument 10 years ago was
17 we need two towers. NBC never put HDTV, their digital
18 broadcasting on the second tower, even though that was
19 their primary justification. They continued to rent
20 it out and they co-located their HDTV, their digital
21 broadcasting on the 659-foot tower, just like every
22 other TV station has done in this area and that was my
23 third answer to your earlier question.

24 It is our public policy about limiting the
25 skyline and I wish the region would do that and we

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1 know that's been an issue for us in terms of Roslyn,
2 Virginia, but you know, if there is a need for some of
3 these TV stations, I don't know if that need to be met
4 here in the District, but if it can't be, it certainly
5 wouldn't be contrary to our public policy if they
6 located in one of the towers that's nearby in the
7 region.

8 So there are options. We don't know what
9 their needs are. There are towers outside the city
10 where they could locate which would not impact our
11 public policy or our skyline within the city.

12 MR. ETHERLY: Just to follow up on your
13 question, Mr. Chairman. I think I understand very
14 solidly the argument that Council Member is putting
15 forward. You asked a question regarding the
16 additional antennas that do not belong to the property
17 owner that are located on the tower.

18 Part of my questions, perhaps it's a
19 little hypothetical in nature, but -- and I think you
20 answered it towards the tail end of your response to
21 Mr. Griffis' question, but isn't there necessarily
22 going to have to be some rental tower space available
23 in the District because potentially without it, does
24 that suggest that you literally could have one small
25 tower for every operator out there as opposed to a

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1 handful of maybe one or two taller towers and a
2 handful of intermediate size towers for those other
3 providers such that we don't have to have one tower
4 for every -- and that's assuming that there's a need.

5 I understand your essential theme which is if there's
6 not a need demonstrated, then that tower should not go
7 up and antennas shouldn't be there.

8 But let's say for the sake of argument
9 that you do have a need demonstrated by each one of
10 the smaller shall we say smaller operators who are
11 placed on the tower at issue here. If that's the case
12 then conceivably you would have one tower up for every
13 one of those operators.

14 So in a sense I'm trying to play your
15 argument out where the Chair was going and trying to
16 anticipate well, does that suggest an even worse
17 scenario than perhaps where we are now?

18 MR. MENDELSON: With all due respects and
19 let me see if I can remember my train of thought in
20 answering you, with all due respect that discussion,
21 this discussion is purely speculative and we don't
22 need to go there because the regulations speak to the
23 need of NBC for its operations and this is outside the
24 need. When you're talking about the need of one of
25 these other tenants, that's outside what the

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1 regulations speak to which is the need of the
2 Applicant for their operations, a tower to meet their
3 need. I have it in the footnote in my testimony.

4 So we don't need to go there and the Comprehensive
5 Plan reinforces that point.

6 But if you do want to go there, then the
7 Applicant should have submitted an antenna study
8 survey analysis of what the needs are of all these
9 tenants and where they could be met, but for them to
10 sit here and plant the seed that well, there are no
11 other towers in the city or there's inadequate tower
12 space except for ours and there's a very important
13 need which can't be met anywhere else in the city, or
14 nearby, I mean that's just pure, pure speculation and
15 if NBC wants to suggest that thought for you, which I
16 think is wrong for them to do. It's outside the
17 parameters of the regulations, then they should have,
18 because their burden was to meet the burden of proof
19 today, they should have submitted a detailed analysis
20 of what antennas, I don't mean towers, and what those
21 broadcast needs are for each antenna and why they
22 can't be located elsewhere in the city. That kind of
23 detailed analysis. That hasn't been done. So it's
24 pure speculative.

25 MR. ETHERLY: Thank you.

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1 CHAIRPERSON GRIFFIS: What you're telling
2 us goes right to the need and you've said it now
3 several times, specifically the NBC needs and that's
4 arising out of 211.10 is what you've footnoted.
5 211.10 says yeah, but you have the burden of
6 demonstrating the need for the proposed height and the
7 full compliance with a matter of right would be duly
8 restrictive, prohibitively costly or unreasonable.

9 MR. MENDELSON: Well, no. My footnote
10 also cites 211.5, the proposed height of the tower
11 shall not exceed that which is reasonable necessary to
12 render satisfactory service. 211.6, no transmission
13 equipment shall be located in a residential district
14 unless location in the District is necessary for
15 technically satisfactory -- well, transmission
16 equipment includes, I mean that gets to my point about
17 well, why can't WFDC-TV be located in one of the
18 Bethesda towers or the Channel 50 tower?

19 CHAIRPERSON GRIFFIS: There are two levels
20 of distinction of need that you're talking about and
21 you are decidedly going specifically -- NBC doesn't
22 need any of these.

23 MR. MENDELSON: Correct.

24 CHAIRPERSON GRIFFIS: NBC doesn't need
25 D.C. Police or anything like that.

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1 MR. MENDELSON: Correct.

2 CHAIRPERSON GRIFFIS: But you've said it
3 and tied it very directly to the regulations which I
4 don't see. I mean then going to the larger picture or
5 the larger point of your argument is that no need has
6 been evidence.

7 MR. MENDELSON: Correct.

8 CHAIRPERSON GRIFFIS: If I can understand
9 that.

10 MR. MENDELSON: Correct.

11 CHAIRPERSON GRIFFIS: But we wouldn't have
12 to separate straight out and say there's no way that
13 the Applicant could show us there was a necessity for
14 D.C. Police to be on one of these towers because it
15 has nothing to do with NBC.

16 MR. MENDELSON: Correct.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MENDELSON: And that may be a
19 difference of opinion, but to take the other point of
20 view with which I disagree, then Channel 9 could come
21 in here tomorrow, Channel 9 which co-locates with
22 Channel 7 on a single tower, I mean they don't even
23 have two towers for their two stations. But they
24 could come in here tomorrow and say we need a tower
25 for antennas for D.C. Fire, D.C. Police, ACTO and so

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1 forth. And that wouldn't -- the only reason why NBC
2 would be able to stand here and make the case is
3 because they didn't tear down the tower in 1988.

4 CHAIRPERSON GRIFFIS: Let me ask you that
5 because I think it's an excellent point and now I go
6 to the specific. How do you evidence that type of
7 need? To me, in my mind it's analogous to let's say
8 we have a dry cleaners and the neighbors come in and
9 they say there are so many dry cleaners in here,
10 there's no need for dry cleaners. How would we
11 evidence the fact that there were too many dry
12 cleaners unless, in fact, there was customers that
13 were servicing that cleaners? Isn't it a market
14 valuation that's really going on? If there's demand
15 for rentable space on towers, doesn't that mean
16 there's a need?

17 MR. MENDELSON: No.

18 CHAIRPERSON GRIFFIS: In the requirement?

19 MR. MENDELSON: And the reason why I say
20 no is because of the public policy limiting the
21 intrusion of antenna towers into our skyline.

22 CHAIRPERSON GRIFFIS: And I don't --

23 MR. MENDELSON: That's the reason why. We
24 don't have a public policy like that for dry cleaners.

25 CHAIRPERSON GRIFFIS: Well, we do. We

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1 have regulations that talk about the size of dry
2 cleaners.

3 MR. MENDELSON: Correct.

4 CHAIRPERSON GRIFFIS: And the location.

5 MR. MENDELSON: But Mr. Griffis, I can't
6 over emphasize the importance of the public policy.
7 We see it time and again. It's in the 1910 Height
8 Act. It's in the Comprehensive Plan. It's in the
9 antenna regulations. If you read Zoning Commission
10 Order 487, I believe it is --

11 CHAIRPERSON GRIFFIS: What was the date on
12 it?

13 MR. MENDELSON: Well, it is the basis of
14 the current antenna regulations in the zoning
15 regulations.

16 CHAIRPERSON GRIFFIS: So it's 1989.

17 MR. MENDELSON: 587, yes, 1989. Zoning
18 Order 587 and it begins with a couple of pages talking
19 about the public policy of limiting antenna towers
20 because they are contrary to our horizontal skyline
21 and you don't have that kind of public policy with I
22 think any other land use, certainly not with dry
23 cleaners. What you have there is location. But you
24 have the same thing with antenna towers. The zoning
25 regulations say that antenna towers can locate as a

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1 matter of right in certain places, special exception
2 in certain places.

3 CHAIRPERSON GRIFFIS: I don't think I
4 disagree on that.

5 MR. MENDELSON: But in terms of height,
6 there has to be a need.

7 CHAIRPERSON GRIFFIS: I understand that in
8 terms of the public policy and the requirements in the
9 antenna regulations that we've enacted and adopted. I
10 think they're excellent. So as a Board we have to get
11 through this application. And what you're saying is
12 that it's got to be a direct linkage with the taller
13 tower and the 1955 tower because holding the 1955
14 tower to the requirements of regulations that were
15 passed and adopted in 1989 seems to be an uphill
16 argument.

17 So what you're saying is because the
18 master plan was established and was allowed to be
19 built, this larger tower, how the 1955 is not
20 necessary. And in compliance with our now-adopted
21 public policy, it should be removed.

22 MR. MENDELSON: I think I got a little
23 lost there. Our now-adopted public policy has been a
24 long-standing policy.

25 CHAIRPERSON GRIFFIS: Well, if you invoke

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1 the 1910 Height Act, yes.

2 MR. MENDELSON: But even the 1989 zoning
3 regulation.

4 CHAIRPERSON GRIFFIS: But a 1955 tower
5 predates the 1989.

6 MR. MENDELSON: Correct, and NBC said in
7 1981 what they needed for their operations was one
8 659-foot tower.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. MENDELSON: And let me just note
11 because of some earlier discussion, 659 feet because -
12 - and I was surprised that the President of NBC had
13 not read the master plan or the order from 1980, but -
14 - or 1981. Every tower in the city, if I remember
15 correctly, 659 feet above sea level and that's what it
16 is actually, is above sea level. Everyone. And NBC
17 was 200 feet shorter. So they said we want an antenna
18 tower that's the same height.

19 CHAIRPERSON GRIFFIS: You're saying this
20 isn't actually 657 feet tall --

21 MR. MENDELSON: I believe it's above sea
22 level.

23 CHAIRPERSON GRIFFIS: Six hundred fifty-
24 nine feet above sea level.

25 MR. MENDELSON: Correct. I think it's 659

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1 feet. That's my understanding and my understanding is
2 it's the same height as every other television tower
3 that's in the city.

4 CHAIRPERSON GRIFFIS: Well, somebody is
5 totally off now.

6 MR. MENDELSON: That's what the proposal
7 was, was per the height and when Mr. Jack said earlier
8 he wasn't quite sure was it for tenants, absolutely
9 not. If he had read the master plan, he would know
10 there was no discussion of tenants. It was purely
11 about getting the height that was equal to the other
12 stations, I mean certainly is their right in a
13 competitive market.

14 CHAIRPERSON GRIFFIS: Okay.

15 VICE CHAIRMAN MILLER: I'm under the
16 impression and I think this is what maybe you're
17 saying that the master plan would have allowed them to
18 have a taller tower and a wider tower and instead they
19 just decided to do less than they could have and keep
20 the other tower.

21 MR. MENDELSON: That's not correct. The
22 master plan permitted them a 659-foot tower and that's
23 what they built. In the discussion about how it could
24 have been bulkier is purely speculative and I can read
25 to you a report from the 1992 hearing that discusses

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1 how speculative any discussion about it being bulkier
2 is.

3 VICE CHAIRMAN MILLER: And is it also your
4 testimony that they could have met their needs with
5 the one tower?

6 MR. MENDELSON: That's totally my
7 testimony. And it was their testimony in 1981 in the
8 master plan. And it actually was sort of their
9 testimony in 1992, except for HDTV. They said the
10 only reason we need the second tower, to keep the old
11 tower, is because of HDTV.

12 Again, this is about profit. There's
13 nothing wrong with a corporation, a subsidiary of
14 General Electric, seeking to maximize its profits, but
15 that's what this is about.

16 VICE CHAIRMAN MILLER: And then the other
17 angle that I know other Board Members have already
18 asked you about, but just -- the other angle that's
19 not profit is the emergency services and the police
20 and the fire --

21 MR. MENDELSON: We don't know. I'm sorry
22 to interrupt.

23 VICE CHAIRMAN MILLER: No, okay, but I
24 guess and you're a Council Member, what do we do with
25 that piece? It may not be their own economic

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1 interest. It may be a public service piece.

2 MR. MENDELSON: I think it's extremely
3 unfair for NBC to plant that seed in this hearing
4 because it is purely speculative. ACTO has not come
5 to me and said you know, we've got a problem with
6 finding an antenna tower. And a tower on which to
7 locate. The D.C. Police, I don't know what their
8 needs are. I don't know if they can be met at another
9 facility. We just don't know. And that kind of
10 analysis has not been done. For sure, I take very
11 important that the City meet its public safety needs,
12 but for the Board to assume that these are what the
13 needs are because NBC has kind of planted that seed,
14 it's just speculative. There's no basis for it.

15 CHAIRPERSON GRIFFIS: Okay, two points and
16 hopefully we're going to wrap this up, although
17 there's certainly going to be cross.

18 In terms of when you say the speculative
19 nature of the bulk, I don't want to get into the
20 height and I think that is correct. The bulk was
21 approved in application 15708, allowed the 90-foot
22 spread, 60 foot was built. So that's where the mass,
23 the volume is coming from, as I understand it. In
24 fact, it's written in the order that it would be
25 approximately 50 percent less.

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1 So it was very specific on what that mass
2 was going to be. The second, going back to what I
3 asked you previously, how would you see it evidenced,
4 the necessity?

5 MR. MENDELSON: The zoning regulations are
6 clear that the need has to be of the Applicant. The
7 Comprehensive Plan is clear. The language in the two
8 sections that I've cited, that the need has to be of
9 the Applicant.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. MENDELSON: Otherwise, as I said
12 before, Channel 9 or 5 could come in here and say
13 we've got these needs for these other -- for the Home
14 Shopping Network which we don't own, so we want you to
15 let us have a second tower.

16 If I may say something on the bulk, at the
17 1992 hearing, Dr. McGrath, Don McGrath who was
18 testifying on behalf of the Committee of 100, cited as
19 analogous two towers near the Gettysburg Civil War
20 battlefield, one tall and nearly invisible and the
21 other short, but ugly because of its heavy materials
22 and design. When asked whether a single tower for the
23 1981 master plan would be larger and bulkier, Dr.
24 McGrath answered "it is my understanding it would have
25 a broader base and would achieve the same height, but

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1 I don't know that it would be bulkier or not. It
2 would enclose a larger trapezoidal envelope within the
3 frame, but I don't know what the frame would look
4 like. You know, as an architect, Mr. Clarens, the
5 frame would be many different elements. We've seen
6 great innovation in the construction of tall towers.
7 Now in an age of new technology, better materials and
8 a greater appreciation for the effect of such towers
9 on their surroundings and the dignity of the city, we
10 might indeed come up with a better design that would
11 look less bulky, even if it had a wider base, but
12 we've seen nothing."

13 CHAIRPERSON GRIFFIS: Okay. That's
14 awfully speculative, don't you think?

15 MR. MENDELSON: The whole thing is
16 speculative and that's why I'm saying you shouldn't
17 accept that argument.

18 CHAIRPERSON GRIFFIS: But the dimensions -
19 - there's going to be some -- granted the frame may
20 become a little bit more open in a larger base, I
21 understand that, but I don't think anyone would argue
22 in a triangular antenna your corners are going to be
23 the most solid, so you're always going to read that
24 definition.

25 Anyway, I understand your point --

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1 MR. MENDELSON: You're right, but the
2 issue here is having a second tower, not the first
3 tower.

4 CHAIRPERSON GRIFFIS: Right, right. Okay.
5 Let's move on. Ms. Miller?

6 VICE CHAIRMAN MILLER: Are you familiar
7 with other locations in the District where there may
8 be more than one tower?

9 MR. MENDELSON: Tenleytown, there's more
10 than one tower.

11 VICE CHAIRMAN MILLER: That's what I
12 thought. The American Tower?

13 MR. MENDELSON: Are you talking about the
14 one that the city has ordered be taken down?

15 VICE CHAIRMAN MILLER: Is that the only
16 one? That's the one I'm familiar with.

17 MR. MENDELSON: That was the tower that
18 the city revoked the permit and was taken the Court
19 and has won and I expect that that tower is supposed
20 to come down.

21 There are other antenna towers up there,
22 that's where the Channel 9, Channel 7 combined tower
23 is.

24 And I think that when people talk about
25 the public policy, they talk about not recreating that

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1 kind of situation where you have multiple towers at
2 one site.

3 And offhand, I can't think of other sites.

4 VICE CHAIRMAN MILLER: Also, with respect
5 to the remedy here, if they were to take down the 1955
6 tower which sounds like what you would be seeking --

7 MR. MENDELSON: Correct.

8 VICE CHAIRMAN MILLER: Do you have any
9 idea whether or not the 1988 tower could be adapted at
10 this point such as what they didn't do apparently was
11 make the base wider, etcetera, when they erected it?

12 MR. MENDELSON: I have no idea. But you
13 know, when you used the word "remedy" I think to the
14 fact that in 1981, they said we need one tower and
15 they have profited for 15 years from having two
16 towers. They've done quite nicely.

17 VICE CHAIRMAN MILLER: And my last
18 question is with respect to the issue of need. I
19 think that you were interpreting need, it sounded like
20 need for their own broadcasting needs. And do you
21 think need could be interpreted any more broadly to
22 incorporate economic needs to facilitate their own
23 broadcasting needs?

24 MR. MENDELSON: Possibly, but if it is,
25 then NBC needs to come in here and give an economic

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1 analysis which they've not done. But I point out to
2 you that WRC is a subsidiary of NBC which is a
3 subsidiary of General Electric which is highly, highly
4 profitable. So I think they would have a tough
5 burden, showing that they have a hardship. And that's
6 basically what you're asking, Ms. Miller, is a
7 hardship.

8 But fine, yes. The short answer is yes.
9 It could be that, but they've not made that case
10 either.

11 VICE CHAIRMAN MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Of course, if this
13 little subsidiary of a subsidiary starts losing money,
14 what's the big conglomerate going to keep it open for?

15 MR. MENDELSON: Well, I don't know how to
16 answer that. My guess is that NBC -- this is one of
17 the few stations that NBC actually owns and my guess
18 is if NBC is losing money, then probably the whole
19 business is losing money as well.

20 CHAIRPERSON GRIFFIS: Okay, good. Let's
21 conclude the Board's questions and go to any cross
22 examination by the Applicant.

23 CROSS EXAMINATION

24 MR. DONAHUE: Thank you, Mr. Chairman
25 , and again, for the record, Ed Donahue on

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1 behalf of the Applicant.

2 Mr. Mendelson, I know that you've got a
3 lot familiarity about this site and this matter. But
4 I have some questions about your familiarity about
5 some of the other facilities that you were referring.

6 For example, the combined Channel 7 and Channel 9
7 tower, would you know what the overall height of that
8 tower is?

9 MR. MENDELSON: I believe that the height
10 above sea level is the same.

11 MR. DONAHUE: Would it surprise you to
12 learn that the tower is approximately 100 feet taller
13 to accommodate the two carriers, the two providers?

14 MR. MENDELSON: I haven't looked at that
15 information.

16 MR. DONAHUE: Do you know what happened to
17 the old tower owned by Channel 9?

18 MR. MENDELSON: No.

19 MR. DONAHUE: Would it surprise you to
20 learn that that tower is still up, existing and
21 occupied by other tenants? It's okay, if you don't
22 know, that's all right.

23 MR. MENDELSON: I mean are you submitting
24 evidence in the form a question?

25 MR. DONAHUE: You testified and you

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1 explained in response to questions from the Board that
2 you had familiarity with other stations where they
3 colocated facilities. And I asked you whether you
4 knew what happened to the old facility on one of the
5 ones that you testified, Channel 9?

6 MR. MENDELSON: I'm not aware of Channel 9
7 building a new tower in the last 10 years. I know
8 that 10 years ago when this case was argued and I was
9 the person representing ANC-3C in this case that there
10 was testimony about Channel 9 and 7 co-broadcasting
11 off of the same tower. That was not refuted by NBC at
12 the time.

13 MR. DONAHUE: Okay.

14 MR. MENDELSON: Since it was not refuted,
15 I assumed that that fact was true.

16 MR. DONAHUE: Mr. Chairman, I got my
17 answer.

18 CHAIRPERSON GRIFFIS: Let's move on, next
19 question.

20 MR. DONAHUE: Could you describe the
21 nature of the antenna or the tower proposed by the
22 Embassy of Benin?

23 MR. MENDELSON: It was 38-feet tall.

24 MR. DONAHUE: Was it a broadcast facility?

25 MR. MENDELSON: It was for

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1 telecommunications.

2 MR. DONAHUE: Was it a broadcast facility
3 as is the subject of this case?

4 MR. MENDELSON: Was it a TV tower, no.
5 Was it a radio tower, I don't know. It had radio
6 frequency transmission.

7 MR. DONAHUE: Was it, in fact, heard
8 before the BZA or the FMBZA?

9 MR. MENDELSON: I believe before the BZA.

10 MR. DONAHUE: But the nature of the
11 transmission or where that signal was going, you're
12 unfamiliar with?

13 MR. MENDELSON: Mr. Donahue, this is a
14 matter of record. The Board would have that decision
15 and I believe all of its decisions --

16 CHAIRPERSON GRIFFIS: I don't think
17 there's belligerence and I don't think it was meant to
18 be --

19 MR. MENDELSON: I apologize if I'm taking
20 it that way. No, my recollection was Benin argued
21 that they needed the tower was because they needed to
22 make diplomatic communications with home.

23 MR. DONAHUE: Okay.

24 CHAIRPERSON GRIFFIS: The question arises
25 that actually the Board is going to answer, whether it

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1 was the BZA or FMBZA case. That may inform us on
2 something. Okay, let's move on.

3 MR. DONAHUE: Let me ask you whether you
4 have -- I know you have a sense of familiarity with
5 both the Comprehensive Plan and the zoning
6 regulations, but do you have familiarity with
7 subsection 201.6 of the zoning regs?

8 MR. MENDELSON: Let me look at them.

9 CHAIRPERSON GRIFFIS: What are we looking
10 at?

11 MR. DONAHUE: It has to do with 201.6, it
12 has to do with the co-location of antennas on existing
13 broadcast facilities.

14 MR. MENDELSON: I'm not familiar with it,
15 but --

16 MR. DONAHUE: Let me ask you a question
17 and maybe this will help you frame your reference.

18 There was a good deal of testimony by you
19 about public policy. Are you aware of a public policy
20 in the District of Columbia for "co-location of
21 antenna facilities"?

22 MR. MENDELSON: I'm not familiar with it,
23 no, and that doesn't mean I don't believe it exists.

24 MR. DONAHUE: Section 201.6, would you
25 agree that Section 201.6 allows for co-location of

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1 antenna on existing broadcast facilities?

2 MR. MENDELSON: Let me look at it again.

3 It says subject to 201.7 an addition of an
4 antenna to an existing broadcast tower shall be
5 permitted as a matter of right in an R-1 District
6 provided and there's two provisos.

7 MR. DONAHUE: Do you know whether the
8 public policy of co-location is also embraced by the
9 Federal Communications Commission?

10 MR. MENDELSON: No, but it wouldn't
11 surprise me. I'm not sure what the relevance of that
12 is here. This is a zoning proceeding under special
13 exception criteria.

14 MR. DONAHUE: All right, let's talk about
15 the special exception approval for the instant tower,
16 the 1955 tower. Have you got a copy of the Board's
17 order of this year, January 2004 in application 15708?

18 MR. MENDELSON: No.

19 MR. DONAHUE: Do you have our hearing
20 book?

21 MR. MENDELSON: No.

22 MR. DONAHUE: All right.

23 MR. MENDELSON: And I hope you're not
24 going to ask me to familiarize myself with that.

25 MR. DONAHUE: I wouldn't do that.

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1 MR. MENDELSON: Thank you.

2 MR. DONAHUE: There was a fair amount of
3 testimony about the speculative nature of the -- I'll
4 call it the master plan tower. The finding of this
5 Board earlier this year specifically says that the
6 "master plan tower would have covered 3510 square
7 feet" and a volume of "771,030 cubic feet, thus the
8 master plan envelope for the tower is almost twice as
9 larger as the combined area and volume of the two
10 existing antenna towers."

11 Is that speculation on the Board's part?

12 MR. MENDELSON: I believe I went through
13 that in a colloquy with Mr. Griffis. And he pointed
14 out that the spread of the footings of the tower were
15 --

16 MR. DONAHUE: I'm asking you a different
17 question, if you'll permit me. I asked you whether
18 the Board's finding of fact, and that's number 20,
19 located on page 7, I asked you whether the Board's
20 finding of fact in this application, the prior
21 application, is speculative.

22 MR. MENDELSON: No, of course it's not
23 speculative. It's a finding of fact.

24 MR. DONAHUE: Wait a minute, so that the
25 assertion or the statements of Mr. McGrath about

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1 perhaps something could be done by way of aesthetics
2 or treatment of the tower, that would be speculative,
3 would you agree?

4 MR. MENDELSON: Well, I think that you're
5 trying to reconstruct the comments that I was making.

6 What the master plan permitted is different than what
7 was built or what could have been built. What was
8 built was different than what the master plan
9 permitted.

10 MR. DONAHUE: Well, I simply asked you
11 whether the Board's findings were speculative.

12 MR. MENDELSON: And something different
13 could have been built.

14 MR. DONAHUE: Was the master plan tower
15 proposed to be built on top of a structure?

16 MR. MENDELSON: I don't recall.

17 MR. DONAHUE: I have no further questions,
18 Mr. Chair.

19 CHAIRPERSON GRIFFIS: Okay, does ANC have
20 any cross?

21 MS. MacWOOD: No.

22 CHAIRPERSON GRIFFIS: Good. Thank you
23 very much.

24 MR. MENDELSON: Thank you very much.

25 VICE CHAIRMAN MILLER: I just want to ask,

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1 and this is just an opinion, but do you think it would
2 have been preferable for one antenna to be taller or
3 to have two antennas, one taller and -- the way it is.

4 MR. MENDELSON: When you look at the
5 picture of McLean Gardens, from McLean Gardens, I
6 think it's preferable to have one. And it would not
7 be any taller than this because this is the height
8 that was permitted in the master plan.

9 But I think one is preferable to two.
10 That's the public policy.

11 VICE CHAIRMAN MILLER: Regardless of what
12 was permitted in the master plan, I just am interested
13 in your opinion, if it were taller than it is, is that
14 preferable? Say 100 feet tall or -- is 100 feet
15 taller preferable than two antennas the way they are?

16 MR. MENDELSON: Well, that's a bit
17 hypothetical and I would probably say no, but as I say
18 my recollection is that the height in the master plan
19 was because this is the height of the other towers,
20 the other competitors. So if it were to be even
21 taller, what would be the reason for that? If the
22 reason for that would be for rentals, that probably
23 would be objectionable, but the case would have to be
24 made and the analysis would have to be made of what
25 those rentals would be and why they needed to be.

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1 VICE CHAIRMAN MILLER: My question just
2 goes to aesthetics.

3 MR. MENDELSON: The aesthetics.

4 VICE CHAIRMAN MILLER: Yes, regardless of
5 the reason which do you think would be preferable if
6 it came down to that?

7 MR. MENDELSON: To be honest with you, and
8 I think faithful to the Height Act and all of the
9 policies in the aesthetic policies in the District,
10 shorter is preferable, fewer is preferable.

11 So one is more preferable to two; 659 feet
12 is more preferable than 759 feet.

13 VICE CHAIRMAN MILLER: I know, but that's
14 not my question.

15 MR. MENDELSON: Your question is?

16 VICE CHAIRMAN MILLER: If you had a choice
17 between one taller or two shorter, which would you
18 pick? You don't have to answer.

19 MR. MENDELSON: I don't want to duck it,
20 but I don't know.

21 VICE CHAIRMAN MILLER: Okay. Thanks.

22 CHAIRPERSON GRIFFIS: Thank you again, and
23 appreciate your patience coming down here today.

24 MR. MENDELSON: If you want me -- I would
25 probably have to take a new picture because this is an

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1 old, I don't even know where the negative is, but if
2 you want I could do that.

3 CHAIRPERSON GRIFFIS: Is that hanging in
4 your den at home?

5 MR. MENDELSON: Well, I've had this for 10
6 years.

7 CHAIRPERSON GRIFFIS: Indeed.

8 MR. MENDELSON: This photo.

9 CHAIRPERSON GRIFFIS: Well, you know,
10 somehow we're going to get a copy of that.

11 MR. MENDELSON: So you would like me to --
12 I'll have to take a new picture and if I do that I
13 would ask that I be able to take a picture from 6th
14 and Upshur.

15 CHAIRPERSON GRIFFIS: Why don't you take a
16 digital of that and submit it in. We just need the
17 representation for the record. We all understand what
18 it is. Would that work?

19 MR. MENDELSON: If I could borrow
20 somebody's digital, yes.

21 CHAIRPERSON GRIFFIS: Or a Polaroid. I
22 mean I like Polaroids.

23 MR. MENDELSON: I'll have to go out and
24 buy a Polaroid camera.

25 VICE CHAIRMAN MILLER: And where was that

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1 taken from?

2 MR. MENDELSON: This picture was taken
3 from the top of Porter Street, one block west of
4 Glover-Archibald Park. Excuse me, one block east of
5 Glover-Archibald Park.

6 CHAIRPERSON GRIFFIS: Very well.

7 MR. MENDELSON: Thank you.

8 CHAIRPERSON GRIFFIS: We'll look for that.
9 We'll keep the record open and get submitted somehow
10 a copy of that that was utilized for an exhibit.

11 All right, how much time do you have for
12 your next witness?

13 MR. DONAHUE: Mr. Chair, I have two
14 concerns, the more pressing of which is the fact that
15 the special exception approval on the 1955 tower runs
16 December 1 of this year. That said, I feel it's
17 incumbent upon me to call the Chief Engineer from the
18 station up to rebut some things that were entered into
19 testimony here that frankly need to get addressed.

20 CHAIRPERSON GRIFFIS: Meaning?

21 MR. DONAHUE: Ten minutes for Mr. Lindner,
22 10 minutes for Mr. Denny, 20 minutes.

23 CHAIRPERSON GRIFFIS: Okay, so the first
24 one that was supposed to be 15 was 35. Indeed.

25 How much time do you need for the

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1 presentation of your case? Five minutes.

2 What I'd like to do with the Board's
3 concurrence is keep rolling this evening. Let's see
4 if we can't get this done. And then what we'll do is
5 set this for a decision.

6 With that though I need to take a five
7 minute break, call my office and get people back to
8 work while I'm away, but then let's get directly back
9 and we should conclude this by 7, I would hope, as I
10 have engagements.

11 (Off the record.)

12 CHAIRPERSON GRIFFIS: Let's go back on the
13 record.

14 MR. ETHERLY: If I remember, I wanted to
15 come back to the engineer, but perhaps we should not
16 wait for counsel. These might be a few questions
17 heading in the direction that counsel might take you
18 on rebuttal testimony. Just for benefit of counsel, I
19 wanted to kind of come back to a couple of the earlier
20 questions I had for the engineer, some of which I
21 think probably have been invoked by virtue of some of
22 the back and forth that we've had with testimony and
23 cross from the ANC.

24 Maybe the million dollar question, maybe
25 not. But let me come at it from the back way because

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1 there was a little bit an exchange between Mr.
2 Mendelson and Mr. Jack with regards to what can go on
3 the tower or what couldn't go.

4 Let me try to come at it from the back
5 way. And it's really basically the same question.
6 How much more can you put on the big tower? It sounds
7 like part of the suggestion and I think Ms. Miller's
8 questions were getting in this direction. Why can you
9 or what's preventing you from simply moving the
10 antennas that are on the 1955 tower over to the taller
11 tower and if you can move some over, what's the limit
12 on the taller tower?

13 MR. LINDNER: Each time we place an
14 antenna on the tower, another study is done and until
15 that study is done with -- we can't say for sure
16 whether a particular antenna at a particular location
17 for which the study is done can be placed there
18 structurally.

19 It's fair to say simply based on topology
20 that would not give the other broadcast tenants that
21 are on the short tower the equal footing. What they
22 enjoy now is a pretty good height and also central
23 location, unencumbered by surrounding steel. The best
24 we would be able to do and without going even taller
25 on this tower would be to side mount the antennas, the

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1 broadcast antennas which are the large heavy ones. We
2 could move some small ones, perhaps, probably, but the
3 big ones would have to be side mounted. And because
4 of the occupancy that's already at that elevation,
5 they would have to be lower and there's no substitute
6 for height when you're a broadcaster.

7 Secondly, when you're side-mounted, you
8 don't get the circular pattern of coverage to provide
9 service to your entire viewership and as the hispanic
10 station and WKYS which is a locally-owned FM station,
11 when using -- at any other location on that particular
12 tower could not enjoy the radiation pattern and
13 coverage area. I feel certain of that. Simply
14 because it's full and just because there are areas on
15 the tower which aren't marked with as many antennas as
16 now, doesn't mean that you could place an antenna
17 there. That tower does have an elevator with elevator
18 platforms which are spots that will go on the height
19 of the tower that we cannot put antennas.

20 MR. ETHERLY: So not to be flip or
21 dismissive of the arguments that were raised in Mr.
22 Mendelson's testimony or perhaps through the ANC's
23 remarks, but it's a fairly detailed inquiry in
24 determining whether to move an antenna from one tower
25 to another, it's not something that happens very

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1 quickly.

2 Typically, when you decide to move one
3 antenna, let's just say for the sake of discussion,
4 speculate, if we will, one antenna, how long does it
5 take you to make a determination that it's appropriate
6 and feasible to move, relocate one antenna?

7 MR. LINDNER: Well, there are several
8 factors. In terms of the structural factor, it would
9 be approximately 1 to 2 months in terms of the
10 structural study. Then, there's also the licensing
11 issues. You also have to reapply for different power
12 level, different elevation, center or radiation for
13 the FCC license, different coverage area for that.
14 You may have to do new interference studies. It's an
15 involved process.

16 MR. ETHERLY: Okay, I think that covers it
17 for now. Thank you very much, Mr. Chair. Thank you.

18 CHAIRPERSON GRIFFIS: Mr. Donahue.

19 MR. DONAHUE: Thank you, Mr. Chairman.
20 Let's start from the beginning, I guess. Chuck,
21 please state your name and your title?

22 MR. LINDNER: Hi, I'm Chuck Lindner and
23 I'm Chief Engineer at WRC. I've been with the company
24 for 23 years and I'm a member of the Institute of
25 Electrical and Electronics Engineers and the Society

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1 of Motion Picture and Television Engineers.

2 MR. DONAHUE: And in your capacity as
3 Chief Engineer, you're responsible for I'll call it
4 managing the tower facilities, is that true?

5 MR. LINDNER: That's correct, the day to
6 day operation of the towers, yes.

7 MR. DONAHUE: The questions from Mr.
8 Etherly with respect to migration of the antennas, if
9 you will, I think it would be useful for the Board to
10 have an appreciation for the different types of
11 facilities, not necessarily the tenants by name, if
12 you will, but the types of facilities on the '55
13 tower. There's a tower profile over there and this
14 was submitted with our application.

15 If you would, please walk the Board
16 through the types of users.

17 MR. LINDNER: Okay, well at the top,
18 beginning at the top we have WFTC which is both
19 broadcast analog and digital from one antenna. That's
20 a fairly newly installed antenna in about 2002 as part
21 of approximately \$1 million investment which the WFTC
22 made at that time. They're the only full-power
23 Spanish language station in the Washington market
24 serving that community. They are, of course, a
25 broadcaster and we've discussed the central location

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1 atop the tower.

2 Below that is WKYS' auxiliary antenna.
3 What this basically is is a spare antenna which allows
4 them to remain on the air should anything happen to or
5 whether if we need to turn off their primary antenna.

6 That happened about a month ago. We have to change
7 light bulbs in the tall tower and we asked that WKYS
8 use the antenna on the short tower.

9 We also have District Police radios.
10 These are fairly vulnerable dispatch radios. They're
11 renting space from us at various points on both
12 towers. WNN City-wide Radio is a two-way radio
13 service which is used by a volunteer auxiliary service
14 for the D.C. Fire Department. They are the -- I think
15 they're the folks who run the -- assist the Fire
16 Department, not the firemen themselves. There's also
17 the Federal Mobile Radio Services. They use their
18 antennas and are a very long-term customer that we've
19 had. District Government, U.S. Government and sort of
20 Defense Department-related. I'm not sure exactly who
21 says what on their radios. They won't tell me, but
22 these last two organizations I've mentioned were kind
23 enough to provide letters of support for us, which are
24 Exhibits in the pre-submission, in the pre-hearing
25 submission.

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1 Also, they're not there, but i think I'll
2 mention it. I've had some conversations with the
3 folks from the Office of Chief Technology Officer.
4 They have already installed some infrastructure at WRC
5 in the past year. They've replaced some equipment in
6 preparation for a new installation there. The actual
7 nature and location of that has not been determined
8 yet, but I've been talking to them and have further
9 talks planned and again, they've already made some of
10 the investment.

11 MR. DONAHUE: And that's on the 1955
12 tower?

13 MR. LINDNER: That's not determined yet,
14 but it could be.

15 MR. DONAHUE: Thanks, Chuck, that's very
16 helpful. With respect to the HDTV, there's been a
17 fair amount of testimony about the -- what was
18 occurring approximately 10 years ago and what is
19 occurring now. I believe you testified that WFTC has
20 a combination antenna, if you will, analog and HDTV on
21 the '55 tower. What's the state-of-the-art, if you
22 will, on the DTV transition?

23 MR. LINDNER: Well, it's ongoing, and it's
24 actually sort of confused in the industry because a
25 number of stations have to determine within the next

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1 few weeks how they're going to transition, which
2 channel of the two channels they have they're going to
3 retain when they go digital, completely digital.

4 As by way of background, every station in
5 the country was granted an extra channel to use for
6 digital broadcasting with a time, indefinite time in
7 the future at which time they would choose one channel
8 or the other to become their digital channel. That
9 time in the future has been pushed back. It was
10 originally 2006, not it's 2009. I've read industry
11 speculation that it could go well past 2010 before
12 stations no longer have to provide both analog and
13 digital service to their viewers.

14 In the meantime, we have both -- our
15 station and the Spanish station, WFDC have both analog
16 and digital antennas on this tower.

17 MR. DONAHUE: That's great and very
18 helpful. In response to a question from Mr. Etherly,
19 you were explaining that there were a number of
20 processes that had to be finished or migrating, if you
21 will, one of the antennas. Let's talk about Univision
22 for a minute. I believe you said that you thought the
23 investment Univision placed in the 1955 tower is
24 approximately \$1 million.

25 MR. LINDNER: That's based on what it cost

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1 us to do a similar thing. I'm not party to their
2 financial transactions with their vendors and their
3 contractors, but I know what it cost us.

4 MR. DONAHUE: And I believe you also
5 explained that you immediately foresee problems if,
6 for example, WFDC had to find space on the newer
7 tower?

8 MR. LINDNER: In the history of WFTC and
9 the station which had that channel beforehand, they
10 had difficulty finding another space and they came to
11 our station in I think it was the early 1990s and it
12 was one of the last opportunities they had to find a
13 place at the time.

14 MR. DONAHUE: This is probably a foolish
15 question, but they're there by virtue of a lease,
16 correct?

17 MR. LINDNER: Correct.

18 MR. DONAHUE: The other users of the
19 tower, in fact, all of the users of the tower are
20 federal licensees, correct?

21 MR. LINDNER: Yes.

22 MR. DONAHUE: So as you testified, moving,
23 finding another place as was suggested, find a place
24 on a building all would require at a minimum
25 relicensing, correct?

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1 MR. LINDNER: Correct.

2 MR. DONAHUE: This may be a question that
3 will lend itself more to Mr. Denny, but I'm going to
4 ask you to at least introduce the idea anyway. At the
5 outset, I stated that the Applicant is in full
6 compliance with the FCC standards. Do you know
7 whether that certification of compliance is current?

8 MR. LINDNER: Yes, it is.

9 MR. DONAHUE: And I think that's all I
10 have for this witness.

11 CHAIRPERSON GRIFFIS: Ms. Miller?

12 VICE CHAIRMAN MILLER: I think you
13 answered my question earlier that all the antennas or
14 all the tenants that are on the 1955 tower would not
15 fit on the 1988 tower.

16 After Council Member Mendelson's
17 testimony, I want to ask you would all of NBC's needs
18 be met on the 1988 tower?

19 MR. LINDNER: The answer is no -- the
20 technical answer is without an analysis, I can't say,
21 but it's -- probably, since there's just -- it's not a
22 big broadcast facility that would be moved.

23 VICE CHAIRMAN MILLER: Also, I'm
24 interested in where some of these other tenants may
25 have been before, if you know, for instance, the D.C.

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1 Police radio dispatches?

2 MR. LINDNER: They had an agreement with
3 WRC for many years. That's all I know.

4 VICE CHAIRMAN MILLER: I think the areas
5 that we were discussing with Council Member Mendelson
6 was the need of those tenants to be on that tower,
7 whether or not you have information as to whether they
8 could migrate elsewhere?

9 MR. LINDNER: I haven't talked to them
10 about other locations. I haven't suggested it.

11 VICE CHAIRMAN MILLER: And do the tenants
12 have different lease terms as far as number of years
13 that they've been given permission to be on the tower?

14 MR. LINDNER: I'm not familiar with each
15 and every lease. I know that -- I am familiar with
16 the most recent ones which are typically five years
17 with a five-year option to renew.

18 VICE CHAIRMAN MILLER: Thank you.

19 MR. ETHERLY: Mr. Chair, if I could come
20 back real quickly.

21 This may be appropriate for Mr. Lindner or
22 not, but we've had a lot of discussion around
23 migration. To the extent you can, can you help us
24 understand what is the market, if you will, and I'm
25 just using that term very loosely in towers? By that,

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1 is it literally the case that a tower could go up in
2 almost any location and you could fill it with antenna
3 up on it and you're good to go, if you will? Or is it
4 the case that there are only limited locations within
5 the greater Washington area where you can locate
6 antennas and/or equipment of this type?

7 MR. DONAHUE: Mr. Etherly, if I am
8 permitted, I'll frame it up because it's something
9 that I was trying to get to and frankly I haven't been
10 able to.

11 There's a terribly blending of
12 technologies here in the discussions. This Board is
13 more familiar with the cellular and PCS world, where
14 we're talking about grids and coverage objectives and
15 trying to achieve seamless coverage along Wisconsin
16 Avenue, for example. Put that to one side and then
17 think about the broadcast world.

18 The broadcast towers, both by size and by
19 the nature of the technology, by licensing, by
20 everything are totally dissimilar from the wireless
21 world. So that, for example, if the question is could
22 a 150 footer spring up in a neighborhood and perhaps
23 achieve coverage is an appropriate question for a
24 wireless operator. So I guess it's a long way of
25 saying, Chuck, when you think about it, think about

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1 the question of broadcast versus wireless versus our
2 first responders.

3 MR. LINDNER: Well, the answer to that is
4 going back to your question, as you can see from the
5 proceedings today, just getting a tower up in the
6 first place is a long, involved process, not to
7 mention the engineering expense, everything going from
8 soil analysis and how far you have to dig the
9 foundations, up to the analysis of how large and where
10 the tower should be sited, the zoning approval. And
11 you also have the FCC requirements. You have
12 allocations for channels for given markets and for
13 given cities and you can vary the transmitter location
14 within some limits for that particular market, but you
15 are sort of restricted to a particular city of
16 license, not necessarily to place an antenna there,
17 but to certainly be able to provide good coverage to
18 that region.

19 MR. ETHERLY: So with regard, and I guess
20 I was probing a little more of the technical side of
21 it. Clearly, there's a process that's around this
22 that's very involved, but from a technical standpoint,
23 are there limitations around placement and location of
24 equipment such that there's a limited marketplace for
25 where these types of structures can go, because I

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1 think part of what we were hearing was look, you can
2 plop it on top of a building in Roslyn. Or you can
3 plop it on top of one of the other jurisdictions
4 where, you know, the height limitations might not be
5 as severe, but you don't necessarily have to put it
6 here.

7 So I'm trying to get a little bit around
8 some of the technical constraints that suggest that
9 there's a finite location, number of locations for
10 this type of equipment.

11 MR. LINDNER: The lack in this market the
12 number of locations is altitude-based. And in
13 addition to just having a place to put a tower, you
14 want good power pico feeds. You want a place to put
15 an emergency generator. You'll need access, you'll
16 need a place for the transmitter. And all of those
17 things add up to, to make it a complicated process to
18 find a place, and that leads towards altitude being
19 scarce. If you look at a drawing, you'll notice that
20 most of the antennas with the exception of the
21 cellular service are way above a building height. So
22 you can't just plop it on top of a building and expect
23 to get the region-wide coverage, either transmit or
24 receive. What works for transmitting, works for
25 receive also if you want to be able to reliably pick

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1 up a signal that's far away such as we do for news
2 gathering or for emergency response personnel might
3 wish to do. You can do it better from up high.

4 MR. ETHERLY: Thank you. Thank you, Mr.
5 Chair. Thank you, Mr. Lindner.

6 CHAIRPERSON GRIFFIS: Mr. Mann.

7 MR. MANN: A couple of questions, just to
8 be clear on something and I thought I understood and
9 perhaps I do or don't. The number of feet given at
10 the top of each of those towers, is that above ground
11 level or above mean sea level?

12 MR. LINDNER: That is above ground level
13 at the base of the older tower which is about four
14 feet taller or higher up than the base of the newer
15 tower.

16 MR. MANN: Okay, so that's what, 657 feet?

17 MR. LINDNER: Yes.

18 MR. MANN: The taller one?

19 MR. LINDNER: Yes.

20 MR. MANN: So that taller tower is 657
21 feet above ground level. The 1981 master plan
22 proposed a 659 foot tower above ground level, is that
23 correct?

24 MR. LINDNER: I believe so. I've never
25 seen the master plan myself.

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1 MR. MANN: Well, if there's a figure of
2 659 feet in the master plan, then that would have been
3 above ground level?

4 MR. LINDNER: Yes.

5 MR. MANN: All right, and so that,
6 according to the master plan, the 659 foot tower is
7 approximately the same height as two other towers in
8 the general vicinity of NBC. These towers are the
9 primary transmission facilities for two other
10 broadcast networks. So that was -- so that statement,
11 when it was written in this master plan was at true at
12 that time then?

13 MR. LINDNER: Yes, it was, yes.

14 MR. MANN: It doesn't indicate which other
15 broadcast networks or towers those were, so we don't
16 necessarily know now whether or not those towers
17 exist.

18 MR. LINDNER: That would probably be the
19 other tower which is close by of a similar height is
20 the one that issued by channel 7 and 9 which is in
21 that height range.

22 MR. MANN: Okay, but we don't know what
23 the -- we don't necessarily know then whether or not
24 the elevation is the same on which spot those towers
25 are located?

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1 MR. LINDNER: Ground level.

2 MR. MANN: That's correct.

3 MR. LINDNER: No, I don't know that.

4 MR. MANN: Thank you.

5 VICE CHAIRMAN MILLER: I just want to
6 follow up on that because that was another point that
7 Council Member Mendelson made, I believe, that we were
8 under or I was under the false impression that you
9 could have built a taller tower and chose instead --

10 MR. LINDNER: No.

11 VICE CHAIRMAN MILLER: To leave the
12 smaller tower in addition? No. You went as tall as
13 you could have gone?

14 MR. LINDNER: The limit is above sea
15 level, yes.

16 VICE CHAIRMAN MILLER: Then what was the
17 rationale then for not getting rid of the first tower?

18 MR. LINDNER: I was not party to that in
19 those days. I was a junior technician in the basement
20 fixing TV sets. I'm really not sure what they decided
21 in 1990.

22 MR. DONAHUE: I can perhaps add to that a
23 little bit. The structure that was to support the
24 master plan tower, itself was not built. During the
25 master plan approval there was a large, multi-leveled

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1 parking deck approved and the tower, and as shown in
2 the master plan in all its glory, the antenna with
3 large spread footings and large members was to sit
4 atop the parking garage. So both the volume and in my
5 opinion, the perceived height of the tower would have
6 been greater, but its actual measurement above ground
7 level, original ground was tapped out at 659.

8 VICE CHAIRMAN MILLER: So would it have
9 been taller or not?

10 MR. DONAHUE: It would not have been
11 taller.

12 VICE CHAIRMAN MILLER: It would not have.

13 MR. DONAHUE: My opinion, it would have
14 been --

15 CHAIRPERSON GRIFFIS: If you measured it
16 up and measured the proposed one, it would be the same
17 elevation height.

18 VICE CHAIRMAN MILLER: If you looked at it
19 from McLean Gardens would it have appeared taller in
20 the skyline?

21 CHAIRPERSON GRIFFIS: That's the second
22 issue. He said it would perceived to be taller.

23 MR. DONAHUE: It's much wider, twice the
24 size, twice the volume as this Board found, twice the
25 volume was approved. But the effect height from the

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1 center of the earth to the tip of the lightning rod,
2 yes, it would have been 659 and no more.

3 VICE CHAIRMAN MILLER: Where was twice the
4 volume have been apparent?

5 MR. DONAHUE: It's width.

6 VICE CHAIRMAN MILLER: Now that would have
7 been lower down?

8 MR. DONAHUE: No, it would have been
9 throughout.

10 VICE CHAIRMAN MILLER: It would have been
11 throughout all through the skyline.

12 MR. DONAHUE: And don't forget the parking
13 garage.

14 VICE CHAIRMAN MILLER: So the same width
15 all the way up?

16 MR. LINDNER: It would have been
17 triangular, but it would have been triangular to a
18 higher point and it would have been wider.

19 VICE CHAIRMAN MILLER: So every part of
20 that would have been wider.

21 MR. LINDNER: Yes.

22 VICE CHAIRMAN MILLER: Not necessarily the
23 same width, okay, thanks.

24 CHAIRPERSON GRIFFIS: Any other questions?

25 MR. DONAHUE: Mr. Chairman, may I have a

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1 moment? I'm sorry.

2 MR. ETHERLY: Let me just flag it and
3 perhaps we can have some discussion further down the
4 line, but I was going to come back to a question for
5 Mr. Donahue in terms of some of the discussion that we
6 heard around the Council Member's testimony and in
7 particular, as it related to Section 211.5 and please
8 feel free to make the point that was coming to mind,
9 but I just wanted to flag for your comment whether or
10 not you read 211.5 to speak specifically to -- I mean
11 do you agree with the Council Member's assertion that
12 there has to be a showing of need or proof of need
13 with regard to location of equipment on a tower and
14 that need has to be specific to the owner of the
15 tower?

16 MR. DONAHUE: I don't think that's a fair
17 reading of the section. I think an element of need
18 certainly is a part of every special exception and I
19 think if we came in here without any evidence
20 demonstrating need, we get bounced out, but it doesn't
21 say -- plain reading of it doesn't say this Applicant
22 and only this Applicant and in fact, the following or
23 I guess the subsection that I asked Mr. Mendelson
24 about, 201.7 which in my opinion encourages co-
25 location, belies that fact, 201.6.

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1 What you literally have is a directive.
2 And the Office of Planning enforces this, a directive
3 to use existing structures wherever possible. So it's
4 counter intuitive to say prove your need for a new
5 tower, but in case you want to go by the rules, you
6 can use existing towers in any case. It really
7 doesn't make sense. In any event, a plain reading of
8 that does not support that.

9 MR. ETHERLY: Okay, one final question and
10 then I'm absolutely going to shut up because I think I
11 have exhausted all the questions that I have on this,
12 but hypothetically and I hate them to an extent, but
13 it's a little bit of the elephant in the corner, so to
14 speak. And perhaps this can come back to Mr. Lindner
15 or if anyone else chooses to respond.

16 If you literally just had to drop the 1955
17 tower off the grid and it's no longer there, where
18 would, based on your experience or familiarity with
19 the tower inventory or other locations, where would
20 that equipment go?

21 And I recognize that this is a huge
22 hypothetical because that's going to be comprised of a
23 lot of different factors on the part of each of those
24 lessees that you have on that tower, but where would
25 they go? If 1955 tower dropped off the table, where

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1 would a lot of that equipment end up?

2 Would it go on your 1988 dish? Would it
3 go to the two towers perhaps over -- that have JLA and
4 USA on them? Virginia?

5 MR. LINDNER: I don't know.

6 MR. ETHERLY: Okay, that's fair.
7 Appreciate it.

8 MR. DONAHUE: Pure speculation, Mr.
9 Etherly. You can see that some of the lower occupants
10 of the tower, perhaps, could find some building or
11 other structure, but I think it's very clear that
12 particularly the broadcast facilities on there are
13 going to have a real struggle and I think Mr. Lindner
14 explained that coming to this site they had a real
15 struggle in trying to secure a location.

16 I'd like, if I can just go back to your
17 earlier question and you asked about what's the
18 market, separate from antennas, what's the market for
19 antennas? It's extraordinarily tight in the District
20 of Columbia. There are a handful of antennas along
21 some portions of Wisconsin Avenue, one of which is
22 only a third built. I'm going to ask Mr. Lindner on
23 Redirect about the Channel 7 and Channel 9 situation,
24 but as I'm told in locating facilities on their newer
25 and taller tower, the other tower remained on site.

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1 It suggests that the market is extraordinarily tight
2 for these type of facilities.

3 You asked about processes and how
4 difficult it is to site, One of the things that Chuck
5 didn't get into was you need a site that's large
6 enough and screened, if you can, and remote enough to
7 not only achieve the setbacks here, but to even allow
8 you to come before a Board and say look, it's X
9 hundred square feet distance from a home. It's 2,000
10 feet distance from a visual impact, if you will. You
11 need a parcel that's minimum -- of some size to get
12 screening and setbacks and those kind of things. When
13 you begin taking out some of the difficulties of
14 siting, just the zoning part of it, it gets very, very
15 tight.

16 VICE CHAIRMAN MILLER: I have just two
17 questions. This is a technical question and I want to
18 know if there any wy that you can adapt the 1988 tower
19 at this point to provide more space for some of the
20 tenants on the 1955 tower?

21 MR. LINDNER: I don't think so. No, not
22 with that tower as it's constructed.

23 CHAIRPERSON GRIFFIS: Next question.

24 VICE CHAIRMAN MILLER: My last question is
25 -- I think I asked this before and I didn't get an

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1 answer. Maybe Mr. Donahue can answer this.
2 Basically, this was also Council Member Mendelson's
3 point that you said when 1988 tower was built you
4 would destroy the 1955, take down the 1955 tower and
5 I'm wondering again, if you could just clarify why
6 that didn't happen?

7 MR. DONAHUE: There are a couple of
8 things. I wasn't there. I wasn't there in 1955 and I
9 wasn't there in 1981, but I did read the record quite
10 carefully and there are a number of references to the
11 quote understanding that the 1955 tower would be
12 removed. The word in the order in approving the master
13 plan was "replace."

14 Mr. Bodtner, as the prior Zoning
15 Administrator, interpreted that to mean that the '55
16 tower either had to be removed or come back in for
17 special exception which the Applicant did. What was
18 in the hearts and minds when that was going on, I
19 don't know. I certainly don't know, but in reading
20 from the record, I know that there was an
21 understanding, quote understanding that the old tower
22 would be removed.

23 VICE CHAIRMAN MILLER: And who has the
24 understanding that that meant remove or come back for
25 special exception?

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1 MR. DONAHUE: The language that I read
2 that from, transcripts from the Board, from the
3 consideration of the special exception on the '55
4 tower.

5 But the language from the master plan,
6 strictly speaking, the language from the master plan
7 says the new tower at 659 feet would "replace" the old
8 tower.

9 VICE CHAIRMAN MILLER: Okay, thank you.

10 MR. DONAHUE: Mr. Denny is what I'll call
11 a stand alone witness. What I'd like Bob to do is to
12 explain a couple of things and hopefully quickly.

13 We did, I believe, qualify Mr. Denny as an
14 expert, Mr. Chairman, is that correct?

15 What Bob was asked to do by the Applicant,
16 Bob was asked to do was to check the bonafides of the
17 representation, the federal filing that the site is,
18 in fact, compliant with the federal guidelines. But
19 before I ask him to get to his results, what I'd like
20 him to do is explain for you what those guidelines are
21 and briefly what you're looking at in his report.

22 MR. DENNY: This will be the extremely
23 short version. Several years ago, the FCC adopted its
24 own guidelines for human exposure to RF and these
25 guidelines established the levels of exposure that

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1 people could encounter in the course of moving around.

2 And the standards were based on work done by the NCRP
3 which was an expert group appointed by Congress to
4 look into RF non-ionizing radiation, as well as ANSI
5 which is a standard-setting institute and the
6 Institute of Electrical and Electronics Engineers.

7 So this is the basis for the FCC standard.

8 They didn't make this up on their own. They went
9 back to these expert organizations that were and in
10 the case of NCRP, endorsed by the EPA and they adopted
11 the recommendations primarily of NCRP with some of the
12 aspects of the ANSI EEE standards. So the FCC
13 admitted that we're not an expert on this, on the
14 human effects of exposure, so they went to people who
15 were and they adopted the exposure guidelines that we
16 have.

17 The exposures are divided into two main
18 categories, occupational exposures and general public
19 exposures. The general rule of thumb is that the
20 general public exposure is one fifth that of the
21 occupational exposure and occupational exposure is the
22 kind of exposure that Chuck or I would get as we were
23 working around the site. We know what's going on.
24 We're aware of the presence of all the RF fields. So
25 because of that, because we're knowledgeable about

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1 exposures, we can be -- we're entitled to be exposed
2 to a level five times greater than a Member of the
3 Board would be or a member of the general public
4 because they're not familiar with how the site is laid
5 out and so forth and what the exposures are around the
6 site.

7 So and these guidelines, these maximum
8 permissible exposures are not based on the point at
9 which injury is done or any kind of damage is done to
10 the body or any kind of cellular disruption or all
11 these things that we hear about. They're based on the
12 very simple behavior modification of these laboratory
13 and other types of test subjects that were used. And
14 very simply, they noted that exposed to a certain
15 level of RF the behavior changed and up to that level
16 of exposure there was no change in behavior. So we
17 say that the RF exposure standards that we use are
18 behaviorally based, rather than based on something
19 that causes damage, cellular damage, for example. And
20 this is why we call it non-ionizing radiation. It's
21 not nearly as powerful as x-rays and gamma rays and
22 other forms of very damaging radiation. It's very
23 unfortunate that we use the same term and talk about
24 two completely different things, but we do.

25 The important thing to note is because

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1 it's a thermal-based, behavioral based standard, there
2 is no cumulative effect from exposure. It's just
3 simply a threshold effect. Below the maximum
4 permissible exposure level or threshold, there's no
5 noted effect and as we cross that threshold, that's
6 where we begin to see these behavioral changes. And
7 the best way to describe them, if I were exposed to
8 these levels I might feel, it's a little bit warm in
9 here. That would be my behavioral change. So I might
10 take off my jacket or I might loosen my tie. That's
11 what it's based on.

12 The energy levels of non-ionizing
13 radiation are not high enough to break chemical bonds.

14 Okay? They're not high enough, so the class of
15 emission from these towers is the same as these lights
16 that we're sitting under today. This is non-ionizing
17 radiation as well. If non-ionizing radiation caused
18 major problems at extremely low levels of exposure, we
19 would know it by now and we don't.

20 And so that's the basic story on our
21 standards. They're very conservative. The
22 occupational exposure is set 10 times below the level
23 of the onset of the behavior modification and then the
24 public exposure is set five times below that. So
25 there's effectively a safety factor of 10 built into

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1 the occupational exposure and a safety factor of 50
2 built into the general population exposures. So right
3 from the onset, there's a tremendous space between
4 actually crossing the threshold of what we would
5 consider a high level exposure.

6 I was asked to -- let me just change this
7 board here. And this again is also submitted. It's
8 in the record.

9 This is a schematic view of the WRC-TV
10 property. It shows the building to the left, the
11 loop. You can see the large tower, the large tower
12 and the small tower. Each one of these circles with a
13 number in it represents a location where outside we
14 went outside the building. We also made measurements
15 inside the building where we measured around the
16 perimeter to get an idea of what the exposure levels
17 were on the ground. And when we did this, we used
18 equipment that was designed specifically for this
19 purpose. It's manufactured by a company called Narda.

20 The equipment that we used had been calibrated prior
21 to these measurements having been made and it had not
22 been used in any other measurement activity between
23 the time it was calibrated and the time that we used
24 it. So we're very certain that both from the
25 representations from the manufacturer, as well as our

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1 own monitoring of the proper operation of the
2 equipment throughout the measurement protocol, that we
3 got a fairly good accurate representation of what the
4 exposure levels were and also what we found was also
5 consistent with what we would predict if we were to
6 calculate exposures at these points. And the -- and
7 going around the perimeter, the highest exposure level
8 and I say highest, it's kind of a misnomer because it
9 was .28 here which is on the western boundary. The
10 exposure level there was 1.58 percent of the maximum
11 permitted. So it's less than 2 percent of the maximum
12 permitted. As we move down toward .27 and around the
13 --

14 CHAIRPERSON GRIFFIS: I'm sorry, just to
15 understand all these facts and figures, what would be
16 zero percent, does that mean there's no transmission
17 or no --

18 MR. DENNY: Right. If you were in a
19 screenlined room, no radiowave could get in at all,
20 that would be zero.

21 CHAIRPERSON GRIFFIS: That would be zero.

22 MR. DENNY: And if you were at the maximum
23 permissible exposure level for the general population,
24 it would be 100 percent. So that's the scale we're
25 working on.

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1 CHAIRPERSON GRIFFIS: So the occupational
2 is 5 percent above 100.

3 MR. DENNY: It's five times that.

4 CHAIRPERSON GRIFFIS: Five times.

5 MR. DENNY: Five times the general
6 population. The levels here on this site at ground
7 level are so low that we just use the --

8 CHAIRPERSON GRIFFIS: And this is all on
9 the actual property?

10 MR. DENNY: Around the perimeter. We also
11 went up on the roof of the building.

12 CHAIRPERSON GRIFFIS: Indeed.

13 MR. DENNY: And we also went through the
14 building around --

15 CHAIRPERSON GRIFFIS: And in your report
16 you also talk about the diminishing effect, the most
17 distance it goes?

18 MR. DENNY: Exactly.

19 CHAIRPERSON GRIFFIS: And it's not
20 proportional, not directly proportional.

21 MR. DENNY: It's inversely.

22 CHAIRPERSON GRIFFIS: Inversely.

23 MR. DENNY: Proportional to the distance
24 squared.

25 CHAIRPERSON GRIFFIS: Indeed.

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1 MR. DENNY: So if I doubled the distance

2 --

3 CHAIRPERSON GRIFFIS: We have a little
4 map.

5 MR. DENNY: There will be a quiz when
6 we're done. If I double the distance, the exposure
7 decreases by a factor of four. If I move 10 times
8 further away, it goes down by 100. If I move a
9 thousand times away and so on, it just -- as you --
10 and we're starting off on the perimeter and a lot of
11 locations on the site using the most sensitive
12 equipment that's commercially available without really
13 going to a major science fair project, we couldn't
14 measure anything.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. DENNY: So the exposure level is on
17 the ground. I can't be firm enough when I tell you
18 that it's extremely low.

19 CHAIRPERSON GRIFFIS: What's the exposure
20 level at 22?

21 MR. DENNY: At 22 the exposure level is
22 0.99 percent.

23 CHAIRPERSON GRIFFIS: At 27?

24 MR. DENNY: And at 27 it was below the
25 sensitivity threshold of the instrument.

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1 CHAIRPERSON GRIFFIS: 33?

2 MR. DENNY: 33, it was .66 percent.

3 CHAIRPERSON GRIFFIS: Point 66?

4 MR. DENNY: Less than 1 percent.

5 CHAIRPERSON GRIFFIS: Okay. Good. I
6 think that gives us a firm understanding of the
7 report. I don't know if we need to go into it any
8 further as we're not really delving into this issue to
9 begin with.

10 MR. DONAHUE: That's all I wanted to do,
11 Mr. Chair, was to explain and hopefully answer
12 questions.

13 CHAIRPERSON GRIFFIS: Yes. I think that
14 was very helpful. Good any other quick questions?
15 Excellent. Let's move on. Anything else?

16 MR. DONAHUE: No, we have nothing further.

17 CHAIRPERSON GRIFFIS: Let's be patient and
18 move on to our next -- oh my. Yes?

19 Take your time.

20 MS. MacWOOD: Nancy MacWood for ANC-3C.
21 Mr. Lindner, do you know where all the towers,
22 broadcast towers and tenant towers are located in the
23 D.C. region that would include --

24 MR. LINDNER: I don't know where all of
25 them, but I know where many of them are. Probably

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1 most of them.

2 MS. MacWOOD: Right. Do you know how much
3 unused capacity there is on any of the towers in the
4 D.C. region?

5 MR. LINDNER: No, I don't, other than
6 ours.

7 Again, this -- at any given time, it's --
8 it requires a structural study to find out what else,
9 to do a study with a new antenna, theoretically placed
10 on a tower to find out what that is. I'm not familiar
11 with any of the non-NBC towers.

12 MS. MacWOOD: So you can't say with any
13 confidence that the antennas that are currently
14 located on the old original tower couldn't be
15 relocated? You don't know whether they could or they
16 couldn't?

17 MR. LINDNER: I don't know.

18 MS. MacWOOD: I only have one question for
19 Mr. Denny because I should have brought an expert
20 witness to tell me what questions to ask. I didn't
21 know we were going to get into this line, but I really
22 only have one question for you, Mr. Denny, not that
23 there aren't many that I probably should be asking,
24 but you said the FCC standards are quite conservative.
25 My understanding, and correct me if I'm wrong is that

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1 I guess it depends on how you might interpret
2 conservative, but my understanding is that in Europe
3 and Asia the RF emission standards are considerably
4 more restrictive than what the FCC allows. Is that
5 correct?

6 MR. DENNY: The general answer would be
7 no, that's not correct. Most of the European Union
8 follows a standard referred to as the ICNIRP standard
9 which is the International Commission on Non-Ionizing
10 Radiation Protection. And when you go through the --
11 and we use this in our practice when we evaluate sites
12 outside the territorial boundaries or outside of the
13 Continental United States actually. So you get close
14 to other countries that are using the standard. We
15 have to show both this standard, as well as the
16 pertinent U.S. standard if that's applicable.

17 So there are minor differences, but in
18 terms of the basis, the underpinning, the specific
19 absorption rates involved and so forth, they're
20 essentially the same.

21 There are countries like Italy, for
22 example, that have standards that nobody can
23 understand. We can't seem to -- we don't understand
24 what the underpinnings of the Italian standard is.
25 It's very low. But there's no technical basis

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1 explained for it. It seems to be more of a standard
2 imposed to slow or impede the development of wireless
3 communications in that country, more so than in an
4 exposure standard because even the experts who study
5 these things cannot explain the Italian standard.

6 This is similar to the case, the U.S.S.R.,
7 the former U.S.S.R. had extremely low exposure levels.

8 China has really low exposure levels. I don't
9 practice engineering there, so I can't say for sure,
10 but when you look at them, it is very difficult to
11 radiate any signal without exceeding those exposures.

12 And so I think it's more a government effort to keep
13 people from transmitting on the radio in the former
14 Soviet Bloc, for example, than there was a real issue
15 of human exposure.

16 So the standards that we can explain are
17 all fairly comparable to one another.

18 MS. MacWOOD: Well, let me ask you one
19 other question and then I'll be done. Is there any
20 interplay between the number of towers, the location
21 of towers in terms of their proximity to one another
22 and the number of antennas that are on those towers?
23 The testimony that I believe you gave is that the only
24 concern about emissions is on site, that once you
25 leave the property, there are no hot spots, there's no

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1 concern. Is there any interplay between towers and
2 the tenants on those towers?

3 MR. DENNY: First of all, let me just say
4 there is a contribution, for example, between the
5 facilities that are on the short tower and the tall
6 tower and you would be remiss to study one, without
7 including the other one in the study. And while it
8 may seem like other towers in the area, American
9 University, Channel 7 and Channel 9's tower, Channel
10 5's tower, other towers in the area are close. By RF
11 exposure standards, they're not. And typically if the
12 towers are more than a few hundred yards apart, we
13 don't really count the exposures from one when we
14 evaluate the exposure from the other because as the
15 exposures coming down from this one and coming up from
16 this one, there's very little contribution from this
17 one that's further away as you move into the exposure
18 from the closer one because it dies off so quickly.
19 It doesn't go on forever like we'd like to sometimes
20 imagine it. It dies off very quickly.

21 So there are contributions. Certainly,
22 there are, but they are not significant. They don't -
23 - they can't be measured. It's like saying if I
24 turned on a light in my driveway in Southern Maryland,
25 I could drive home by it. The light is on, but I

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1 can't see it from here. And it's the same way with RF
2 exposure.

3 MS. MacWOOD: Thank you.

4 CHAIRPERSON GRIFFIS: Anything else?

5 MR. DONAHUE: Mr. Chair, may I be
6 permitted one redirect for Mr. Lindner?

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. DONAHUE: Chuck, there was some
9 testimony, some discussion of the combined facilities,
10 Channel 7 and Channel 9. Are you familiar with that
11 structure?

12 MR. LINDNER: I know something about it.

13 MR. DONAHUE: And do they, in fact, share
14 a tower structure?

15 MR. LINDNER: Yes, they do.

16 MR. DONAHUE: And is the tower structure
17 as tall as or taller than the towers at NBC?

18 MR. LINDNER: Not knowing the ground
19 elevation, the top elevation, the top level above sea
20 level is higher.

21 MR. DONAHUE: And the older tower, no
22 longer occupied by those two stations, do you know
23 what happened to it?

24 MR. LINDNER: It is still there beside the
25 taller tower that Channel 7 and Channel 9 still now

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1 use.

2 MR. DONAHUE: And appears to be occupied?

3 MR. LINDNER: I'm told that there are
4 tenants on it, but I don't know their names.

5 MR. DONAHUE: In any event, it's there?

6 MR. LINDNER: Yes.

7 MR. DONAHUE: Thank you. That's all I
8 have, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Thank you. Ms.
10 Miller.

11 VICE CHAIRMAN MILLER: Where is that tower
12 that you're talking about?

13 MR. LINDNER: It's just off Wisconsin,
14 there are actually four towers in a block radius,
15 including the one that was not finished.

16 VICE CHAIRMAN MILLER: Tenley, are those
17 the towers?

18 MR. LINDNER: Tenley Tower cluster.

19 VICE CHAIRMAN MILLER: Right, thank you.

20 MR. DONAHUE: It's near the Western Union,
21 that's kind of the most famous landmark there.

22 CHAIRPERSON GRIFFIS: Good, let's move on
23 then. Office of Planning report.

24 MS. THOMAS: I should say good night now.

25 Good evening, Mr. Chairman, Members of the

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1 Board. I'm Karen Thomas, presenting our
2 recommendation in NBC's application.

3 We reviewed the application according to
4 the current zoning regulations pertaining to tall
5 structures in residential zones which are set out in
6 Section 211 and as well as we reviewed past records
7 including previous Board orders.

8 In brief, records show that from 1965 to
9 1980 NBC was granted a number of variances to permit
10 expansion of its buildings. In 1980, the Board
11 required NBC to submit a master plan to reflect its
12 future development and parking needs before any
13 additional expansion applications were accepted.

14 Order 13554 issued in November 1981
15 approved NBC's submission incorporating the master
16 plan for a 25-year period which expires on November
17 25, 2006. That master plan also included a new 659-
18 foot tall tower that was eventually built in 1988.
19 While the master plan did not include the 1955 tower,
20 the Board subsequently approved the plan's
21 modification, BZA No. 15708-A to include the tower's
22 continuance, subject to conditions including grants to
23 the National Park Service of a permanent easement and
24 a repainting of the '55 tower, a color subject to the
25 approval of the National Park Service.

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1 The Applicant informed OP that indeed for
2 the scene easement will be issued to the Park Service
3 and the tower has recently been repainted a muted gray
4 with Park Service's approval.

5 We believe that the subject tower met the
6 criteria of Section 211 and I would briefly highlight
7 key points of OP's report.

8 The tower is located more than 600 feet
9 from the entrance at Nebraska Avenue and more than 200
10 feet from the nearest property lot line which abuts
11 NPS property. The tower is self-supporting and does
12 not require guy wires and it is removed from all lot
13 lines at a distance greater than the minimum
14 requirement of the regulations which in this case are
15 77 feet.

16 As such, the health and safety of the
17 immediate neighborhood including pedestrians are not
18 affected due to the potential of falling ice, antennas
19 or any other structures supported by the tower. The
20 tower is licensed by the FCC and the Applicant must
21 comply with those requirements regarding safety of
22 radio frequency broadcasts and RF emissions. And we
23 have no reason to believe that continuation of the
24 tower will result in adverse effects on neighboring
25 property due to EMF effects of the tower.

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1 We were persuaded by the Board's latest
2 decision in the most previous order which states in
3 part that "continuation of the 1955 tower would
4 actually result in less impact on the surrounding
5 neighborhood than if the tower approved in the 1981
6 master plan were constructed."

7 While the consolidation of two towers is
8 suggested, the height and structure of the larger
9 tower would have to be increased and altered
10 respectively to support the displaced equipment of the
11 subject tower in order to render satisfactory service
12 to all parts of the service areas for the tower's
13 users.

14 In the case, we concluded the combined use
15 of both 1955 and 1988 tower has less impact on the
16 skyline. The tower has existed in this neighborhood
17 for approximately half a century and the neighborhood
18 has expanded around the tower with no negative effects
19 under surrounding neighborhoods acclaimed character
20 and development. It does not detract from the
21 neighborhood's existing streetscape or the future
22 development of the residential neighborhood with abut
23 Glover Park or the immediate neighborhood along
24 Nebraska Avenue.

25 Submitted drawings show the older tower

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1 accommodates up to 10 different antennas including
2 those required for public safety communication. The
3 ability of public safety agencies to co-locate on
4 existing structures relieves these agencies of the
5 need to allocate public funds and find scarce
6 available locations in the District to construct
7 additional transmission towers.

8 Based on the above reasons and others
9 identified in our report, we do not believe the
10 continuation of the tower would harm the intent of the
11 zoning regulations and adversely affect the use of
12 neighboring property. Again, the tower has been in
13 continuous use since 1955 and at present there's no
14 increase in office space, number of employees,
15 vehicular and pedestrian traffic or other uses on the
16 site. There has been no indication on record that the
17 conditions and reasons for approval have substantially
18 changed to discontinue the subject tower's use by the
19 Applicant.

20 The continuation of the tower complies
21 with current and proposed zoning regulations which
22 encourage co-location and structures to diminish the
23 adverse visual impact of numerous antennas at various
24 locations within a given coverage area.

25 We conclude that the Applicant has

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1 sufficiently demonstrated the need for the tower's
2 continuance and that none of the reasons for the
3 Board's approval granted earlier this year in January
4 2004 has changed to deny the tower's continuance.

5 At the time of our report it was OP's
6 understanding that the master plan for the site
7 expires on November 25, 2006 and in order to
8 synchronize the 1955 tower with the overall master
9 plan, we recommended that the approval of the
10 continuance explore simultaneously with the master
11 plan. However, in further consultation with the
12 Office of the Attorney General, it was determined that
13 a master plan only involved development activity on
14 the site and it was not subject to renewal unless
15 there was development that was not completed or there
16 needed to be further development on the site.

17 The 1988 tower did not, in fact, have a timeline
18 attached to its approval.

19 So since the tower has been in existence
20 for nearly half a century without adverse impact on
21 the surrounding community, OP does not believe any
22 additional time limit is necessary for the tower's
23 continuance and amends the conditions of approval to
24 remove the time limits as suggested in our report.

25 We therefore recommend approval of the

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1 tower's continuance, based on the facts in meeting the
2 criteria of Section 211 and condition the approval to
3 include maintenance of the tower's color in a muted
4 gray to reduce visibility and continue communication
5 and cooperation with both ANC-3E and C. that
6 concludes our report. Thank you.

7 CHAIRPERSON GRIFFIS: Good. Thank you
8 very much.

9 Questions from the Board?

10 VICE CHAIRMAN MILLER: When Office of
11 Planning evaluated the application, it evaluated NBC's
12 need for the 1955 tower, is that correct?

13 MS. THOMAS: Well, we looked at what is
14 currently was on the tower. We didn't specifically
15 ask them if for some other reason that they needed the
16 tower. We looked at what existed on the tower and we
17 believed that that was the need for the tower. We had
18 specifically looked at public agencies. We know that
19 D.C. Fire and other emergency response personnel were
20 on those towers. So we thought that it was needed.

21 VICE CHAIRMAN MILLER: I think Council
22 Member Mendelson raised the point about how we should
23 be only considering NBC's broadcasting needs and not
24 be considering for zoning purposes emergency, radio,
25 police, etcetera. I'm wondering if Office of Planning

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1 has an opinion on that?

2 MS. THOMAS: Our policy and as stated in
3 the regs is to encourage co-location on existing
4 structures regardless. We don't encourage each and
5 every individual carrier to erect a tower. That's
6 more egregious on the skyline than co-location.

7 VICE CHAIRMAN MILLER: In encouraging co-
8 location Office of Planning doesn't look at whether
9 the tenants could have gone and co-located them
10 somewhere else?

11 MS. THOMAS: If it's egregious, we ask
12 them to do a study. The Applicant would have to
13 provide -- prove out other locations. If we
14 identified particular areas that it could have gone
15 on, we do this a lot with roof structures, if we think
16 it's egregious, the visual.

17 VICE CHAIRMAN MILLER: So if you thought
18 that the 1955 tower was -- had an egregious, was
19 egregious in the visual, then you would have asked the
20 Applicant to look at other locations for those
21 tenants?

22 MS. THOMAS: Well, the tower has been in
23 continuous -- and this is our main point, the tower
24 has been in continuous use. It wasn't as if the tower
25 was not being used. We won't ask somebody to remove

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1 structures from existing places, especially since it's
2 very -- we have limited opportunity for co-location on
3 towers in the District.

4 VICE CHAIRMAN MILLER: And I guess my last
5 question is in this particular case, it was envisioned
6 in the master plan that, in fact, the 1955 tower would
7 have been replaced. Did Office of Planning make some
8 kind of assessment that because there were all these
9 other tenants that needed some place to go that that
10 was a factor for not removing that tower?

11 MS. THOMAS: No, we didn't. We didn't
12 look behind as to why that was. Actually, we looked
13 to the previous order. We were more assured by the
14 most recent order that it did, in fact, was continued.

15 It was approved for continuance and we saw no change
16 in circumstance to allow otherwise.

17 VICE CHAIRMAN MILLER: And I was just
18 looking at your report on page 8, it sounds like
19 you're under the impression that the master plan would
20 have allowed them to build a tower that would have had
21 a worse impact than the two towers together?

22 MS. THOMAS: Absolutely, and we thought
23 so. It would have been much more egregious to locate
24 this structure on top of a parking garage way up in
25 the air.

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1 It was OP's opinion at that time as well,
2 from what I gather, from the records.

3 VICE CHAIRMAN MILLER: Thank you.

4 MR. ETHERLY: Very briefly, Mr. Chair,
5 just two quick questions for a very good report. One,
6 this may be a variation on what Ms. Miller asked, but
7 the Office of Planning has not conducted any type of
8 city-wide assessment of locations that would be
9 appropriate for new tower locations, has it?

10 MS. THOMAS: No.

11 MR. ETHERLY: Thank you. Second question,
12 you did note in your exchange with Ms. Miller that the
13 Office of Planning perceives there to be limited
14 opportunities for co-location here in the District.
15 Could you speak perhaps a little more towards why that
16 is or why Office of Planning feels that there are
17 limited opportunities for co-location?

18 MS. THOMAS: I think that was mentioned in
19 part by testimony with the engineer for NBC which is
20 true to say that these tower structures would require
21 a lot of space to meet the setback requirements. It'
22 s very difficult for towers, as you can attest to the
23 tower under -- concerned with you right now, it is
24 very limited space for additional tower.

25 MR. ETHERLY: So essentially with the

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1 exchange that I engaged in earlier with Mr. Lindner,
2 it would be the Office of Planning's concurrence that
3 those limitations are indeed extant here in the
4 District, that because of some of the practical
5 aspects of trying to assemble enough of a parcel to
6 accommodate a tower of any significant height, that
7 logically will reduce the number of candidate sites
8 for this type of structure?

9 MS. THOMAS: That's correct.

10 MR. ETHERLY: Thank you. Thank you, Mr.
11 Chair.

12 VICE CHAIRMAN MILLER: I just want to make
13 a comment on that. I mean it's not like if there is a
14 tower here we'd say well go build a tower somewhere
15 else. What would the point of that be almost, but I
16 would be interested in knowing if there were other
17 towers and I think that's what ANC-3C was getting at
18 where there are spaces where they could relocate so
19 that we'd have one less tower.

20 MR. ETHERLY: I agree with you entirely.
21 I think what I'm trying to understand between perhaps
22 where the ANC is, where Council Member Mendelson was
23 taking us and where the subject application before us
24 takes us is is there such a thing as a middle ground?

25 No pun intended, but to an extent is there a middle

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1 ground here? And if not, being certain that we
2 understand why there isn't so I'm trying to just
3 massage that out a little bit, but I agree with you
4 entirely, Ms. Miller.

5 VICE CHAIRMAN MILLER: And I would just
6 throw this out to Applicant or Office of Planning, it
7 seems to me, I mean does anybody know what the space
8 availability is for these types of tenants in the
9 city? It seems like there should be some kind of a
10 study that identifies that.

11 MS. THOMAS: We have no study on record.
12 We do not have a study on record. I can just go by
13 the number of applications that come in for co-
14 location in the District, based on roof tops. But
15 there's hardly any space.

16 We have -- we are starting to see now more
17 requests for stilts, because we don't want towers.
18 Stilting through flag poles and all this other stuff,
19 those are for single antennas.

20 CHAIRPERSON GRIFFIS: For those, you're
21 talking about cellular.

22 MS. THOMAS: Yes, that would be for
23 cellular.

24 CHAIRPERSON GRIFFIS: You can paint them
25 in brick and put them on a church and all of that.

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1 MS. THOMAS: Right.

2 CHAIRPERSON GRIFFIS: We're not talking
3 about that here.

4 MS. THOMAS: Which is different as pointed
5 out for commercial broadcast.

6 So we don't have a study for that.

7 VICE CHAIRMAN MILLER: Not to belabor
8 this, but if there was this type of tenant and they
9 wanted to locate somewhere, how would they know what
10 was available?

11 MS. THOMAS: They would do their own study
12 based on their requirements. We don't do that and
13 then they will come to us. We don't get involved in
14 that at all from that aspect.

15 MR. DONAHUE: Mr. Chair?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. DONAHUE: Very briefly, I think it's
18 important to remember that we really have -- blends a
19 lot of the technologies in here in our discussion and
20 that's all well and good because they're, in fact,
21 sharing infrastructure. The needs of the broadcast
22 community, the needs of the broadcasters, there's a
23 reason that that tower is 450 feet in the air as
24 opposed to 80 feet for a cellular or a PCS provider.
25 So it's important to understand that, for example,

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1 with respect to WFDC, a high spot and a top spot on a
2 tower is a premium. Now were they able to locate or
3 co-locate on another tower, they clearly would not get
4 the top spot unless they built their own. They
5 clearly would have to take, as Mr. Lindner was
6 explaining, there may be some ability to side mount on
7 perhaps some hypothetical infrastructure.

8 I guess what I'm trying to suggest is it's
9 important to remember the differences in technologies.

10 The ability of the cellular folks to occupy 15 and 70
11 foot structures will never occur on the broadcast
12 world.

13 CHAIRPERSON GRIFFIS: So to take that
14 example, specifically, by having two towers, you have
15 all the more opportunity and you can't just take the
16 top towers and join it into one and replicate the
17 broadcast system.

18 MR. DONAHUE: Correct. Nor can you take
19 the 450 feet and split into two 225 somewhere and hope
20 the signal meets in the middle.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. DONAHUE: Broadcast doesn't work that
23 way.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. DONAHUE: Cellular barely works that

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1 way, but broadcast does not.

2 CHAIRPERSON GRIFFIS: Okay. Very well,
3 anything else? Any other questions? Does the
4 Applicant have any cross at all for Office of
5 Planning?

6 MR. DONAHUE: No sir.

7 CHAIRPERSON GRIFFIS: I think we're ready
8 for the ANC's case presentation -- I'm sorry, I don't
9 mean to rush you.

10 MS. MacWOOD: Nancy MacWood for ANC-3C.
11 Forgive me if I repeat a question. It's late, but I
12 just want to make sure -- I don't have very many
13 questions -- that I got this right.

14 Did OP explore whether the tenants on the
15 old original tower could relocate to another tower?

16 MS. THOMAS: No, we did not.

17 MS. MacWOOD: Do you know where the towers
18 are in the D.C. region? Does OP know where the towers
19 are in the D.C. region, not just within D.C., but the
20 entire region?

21 MS. THOMAS: We have information based on
22 our records, but I can't tell you like I know it off
23 the top of my head.

24 MS. MacWOOD: Okay. Do you know if there
25 is any public policy that encourages the location of

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1 antennas on D.C. towers as opposed to towers in the
2 region that would be outside of D.C. boundaries? Is
3 there any incentive, any encouragement if there's some
4 reason why we would want to have all the antennas
5 here, if they could locate outside D.C. boundaries?

6 MS. THOMAS: Are we talking about what
7 type of antennas?

8 MS. MacWOOD: Broadcast. We're talking
9 about broadcast towers, antennas on broadcast towers.

10 MS. THOMAS: We have no policy encouraging
11 or discouraging tenants to go outside of the District,
12 no.

13 MS. MacWOOD: Okay. Do you have any
14 policy that encourages them to stay within the
15 District?

16 MS. THOMAS: We have a policy that
17 encourages co-location, if they have to locate into
18 the District.

19 MS. MacWOOD: But they could also co-
20 locate outside the District, couldn't they?

21 MS. THOMAS: If they meet their needs
22 outside, that's fine.

23 MS. MacWOOD: Have you seen, you said you
24 had seen applications for cellular towers coming
25 through OP. Have you seen any applications for

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1 broadcast tower space?

2 MS. THOMAS: Not in my time, no.

3 MS. MacWOOD: How long has that been, Mr.
4 Thomas?

5 MS. THOMAS: Three years.

6 MS. MacWOOD: Three years? So the need
7 that OP stated in your report that you found for
8 renewal of the special exception it is primarily based
9 on the fact that the tower is currently being used, is
10 that right?

11 MS. THOMAS: The tower is currently being
12 used and it has been in continuance and it has been
13 previously approved several times in the last 50
14 years.

15 MS. MacWOOD: Okay. I just have two more
16 questions, I think.

17 You stated in the report that existing
18 trees on the property and the abutting Glover-
19 Archibald shield immediate visibility of the subject
20 tower from the public right of way.

21 MS. THOMAS: At grade.

22 MS. MacWOOD: At grade level, okay.

23 MS. THOMAS: At grade.

24 MS. MacWOOD: Have you viewed the towers
25 from Wisconsin Avenue?

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1 MS. THOMAS: Yes. I've seen the towers.

2 MS. MacWOOD: You can see them from
3 Wisconsin Avenue?

4 MS. THOMAS: Yes.

5 MS. MacWOOD: I have one more question.
6 Again, in your report, you stated that the Applicant
7 has stated it would become technically inefficient for
8 NBC to accommodate advances and news gathering at its
9 current location without use of its transmission
10 towers on site.

11 Did OP investigate or explore what that
12 meant or is this simply -- are you simply stating here
13 what they told you?

14 Isn't this speculative is what I'm really
15 driving at, that they're saying that -- you seem to be
16 acknowledging that NBC needs these towers to
17 accommodate advances in news gathering and I'm
18 wondering what you're basing that on?

19 MS. THOMAS: Yes, based on their
20 submissions to us that they need the towers for -- and
21 they have been at that location and they have -- they
22 started out with that tower, that's how this started,
23 their own service and that's how the station was
24 started.

25 MS. MacWOOD: Thank you very much.

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1 CHAIRPERSON GRIFFIS: Don't go too far.

2 (Pause.)

3 MS. MacWOOD: Thank you, Mr. Chairman, for
4 the opportunity to testify today. I'm sure you know
5 by now I'm Nancy MacWood, the chair of ANC-3C.

6 At a regularly scheduled meeting of the
7 ANC on October 18, 2004, at which a quorum was
8 present, the Commission unanimously approved a
9 resolution opposing this special exception application
10 to continue the use of a broadcast tower.

11 As you know, ANC-3C did support the
12 building of a larger tower at the NBC site in 1981.
13 That tower was proposed to meet new FCC requirements
14 for HDTV and to complement a 25-year master building
15 plan for the site. It was stated by the Applicant at
16 that time that the new tower would replace the
17 original 459-foot tower. But the original tower was
18 never dismantled.

19 There has been considerable discussion and
20 testimony since that time about what replace means and
21 whether the community was hoodwinked, but the fact
22 remains that NBC eventually filed for a special
23 exception to use the original tower and they were
24 granted that zoning authority.

25 ANC-3C was aware of this background, but

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1 we evaluated this application based on the provisions
2 of 11 DCMR 211 which regulates commercial broadcast
3 antenna in residential zones. We came to the
4 conclusion that the use of the antenna would violate
5 several of these provisions.

6 First, does the location of the antenna
7 minimize its visibility from neighboring property and
8 from adjacent public space? The tower is completely
9 visible from every angle. It sits on higher ground
10 than McLean Gardens which is to the east of NBC. The
11 existence of two towers is an unexpected site in
12 residential area and draws more attention to the
13 towers than if there were one tower.

14 Second, is the height of the tower no more
15 than what is reasonably necessary for satisfactory
16 service in the service area? The height of the
17 original tower is more than what is necessary for
18 service. In fact, the tower isn't necessary at all.

19 The application shows only one NBC use
20 emanating from the tower. NBC representatives told
21 the ANC that this use could be accommodated on the
22 larger tower and I think you've heard testimony to
23 that this afternoon. Therefore, NBC has no current
24 broadcasting need for this tower.

25 Third, is the location necessary for

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1 technically satisfactory and reasonable economical
2 transmission? Because if it is not necessary, it
3 shouldn't be in a residential area. NBC stated to the
4 ANC that they don't need the original tower for their
5 transmission. As the Board is well aware, NBC has a
6 larger tower that they use for their transmissions and
7 they have antenna space on that tower for the minimal
8 NBC antenna use currently on the original tower.

9 They argue, however, that the revenue
10 generated from leasing space on the original tower
11 helps their profit margin. We don't believe that
12 reasonable economical transmission means every
13 broadcast station can have towers beyond their needs
14 so that they have an additional revenue source. We
15 think that phrase means that locations outside the
16 residential area have to be shown to be unreasonably
17 expensive before the BZA would approve locating a
18 tower in a residential area for the Applicant's
19 transmissions.

20 Fourth, has it been demonstrated that
21 there is a need for the height beyond matter of right
22 allowances?

23 The ANC found that there is no need for
24 this tower period. NBC is minimally using it for
25 their transmissions and they can move this use to the

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1 larger tower. They were allowed to build a larger
2 tower that was supposed to meet their needs within the
3 provisions of 11 DCMR 211 and it does meet their
4 needs. NBC is using the original tower to lease to a
5 large commercial tenant and the Fairfax Police, among
6 others. In our estimation, this is not the use that
7 211 authorizes.

8 Finally, the ANC looked at the
9 environmental element of the Ward 3 plan of the
10 District of Columbia Comprehensive Plan, as we knew
11 the Office of Planning would. Section 1403.13E is
12 quoted in its entirety in the ANC resolution, but it
13 includes the phrase "District government officials
14 must incorporate prudent avoidance in decisions
15 regarding the approval, location or routing and
16 intensity of EMF-generating facilities such as
17 generators, power lines and antennas in Ward 3."

18 Mr. Chairman and Members of the Board,
19 ANC-3C believes that NBC has not met the burden of
20 demonstrating a continuing need for the original
21 broadcast tower and we urge you to deny this
22 application.

23 Thank you for your time and attention and
24 giving the views of ANC-3C great weight.

25 CHAIRPERSON GRIFFIS: Good, thank you very

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1 much.

2 Questions from the Board?

3 (No response.)

4 Cross?

5 CROSS EXAMINATION

6 MR. DONAHUE: I'll be brief, Mr. Chair.

7 Ms. MacWood, the applicable sections that we're
8 looking at 201 and 211 of the zoning regulations,
9 right?

10 MS. MacWOOD: Yes. Well, 211 is what we
11 looked at. We did not actually look at -- 201 is the
12 co-locating?

13 MR. DONAHUE: Actually, 201 is what's
14 permitted by right in the R-1 District.

15 MS. MacWOOD: Oh.

16 MR. DONAHUE: So let's go there since 1
17 before 11.

18 MS. MacWOOD: Sure.

19 MR. DONAHUE: Accept this, if you will.
20 By right, the Applicant is allowed to install a 12-
21 foot antenna on the property. It says one ground-
22 mounted antenna not to exceed 12 feet shall be
23 permitted.

24 So the statements of the ANC that the
25 Applicant hasn't met its burden of proof to prove need

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1 beyond by right, we're starting at 12 feet. Let me
2 ask you this way, did you see any occupants on the
3 tower that are in the range of 12 feet above ground?

4 MS. MacWOOD: Let me answer it this way,
5 we interpreted Section 211 to refer to the Applicant.

6 There's no -- there's no question that the larger
7 tower is being used for NBC transmission.

8 MR. DONAHUE: Where in Section 211 does it
9 say the Applicant must prove need for its needs?

10 MS. MacWOOD: Well, a special exception
11 usually refers to the Applicant.

12 MR. DONAHUE: But you said you looked at
13 211 and you found or you determined that 211 meant
14 that NBC had to prove the need for the tower. So 211
15 is open there. Where does it say it's the need of the
16 core Applicant? For example, this application is
17 styled NBC. But the transmission comes from WRC for
18 the larger tower. Would you take the position that
19 WRC and WNBC have to be exactly the same in order to
20 meet your construction of Section 211?

21 MS. MacWOOD: What we look at is the
22 application. Whoever filed the application and
23 whosever name the application is in, that's the
24 entity.

25 MR. DONAHUE: But you testified that you

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1 found the basis for that analysis comes from Section
2 211, right? And I'm asking you if you can point it
3 out to us, because it hasn't been identified for me.

4 MS. MacWOOD: A special exception -- go
5 back to 3104, for a special exception, if you want to.

6 The basis for the special exception is
7 Section 3104.1 where the Board is authorized to grant
8 special exceptions and then it gives the sections in
9 which you need to refer to get the conditions for that
10 particular special exception, right?

11 MR. DONAHUE: Right.

12 MS. MacWOOD: There has to be an
13 applicant. The applicant files for the special
14 exception. I really don't quite understand your --
15 are you suggesting that someone other than the
16 Applicant demonstrates need?

17 MR. DONAHUE: I'm simply asking this.
18 We're talking about Section 211 which is the
19 applicable section for the broadcast facility. And
20 you said and Council Member Mendelson has said that in
21 your opinion, in both of your opinions that it must be
22 the needs of this said Applicant and I'm merely asking
23 you where in 211 or in 3104 that that's grounded?

24 MS. MacWOOD: Well, I think I just
25 answered it, but --

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1 MR. DONAHUE: That's all I have, Mr.
2 Chairman. Thank you.

3 CHAIRPERSON GRIFFIS: Good, thank you.
4 Are you prepared to do a closing tonight? Do you need
5 a few minutes or do you want to move right ahead?

6 MR. DONAHUE: I'm ready.

7 CHAIRPERSON GRIFFIS: How about a
8 question? Can you field a question?

9 MR. DONAHUE: Why not?

10 VICE CHAIRMAN MILLER: I was just looking
11 at 211 when you were having your dialogue with Ms.
12 MacWood and just looking at 211.5 it talks about that
13 which is reasonably necessary to render satisfactory
14 service to all parts of its service area and is it
15 your position that it doesn't relate back to the
16 Applicant?

17 MR. DONAHUE: I think there's a couple of
18 ways to answer it, but I believe that it certainly can
19 be read to include users of the tower. It doesn't, in
20 my mind, it's not tied directly to the Applicant.

21 VICE CHAIRMAN MILLER: I think this is a
22 really basic question to this hearing and I'm
23 wondering if that has been addressed in other cases.

24 MR. DONAHUE: 211 is different from the
25 non-broadcast? There hasn't been a 211 broadcast case

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1 in my memory as Ms. Thomas testified, so I'd have to
2 go back and check. I don't know.

3 VICE CHAIRMAN MILLER: Okay, I think, in
4 general, something that would support your
5 interpretation that this language should be
6 interpreted that way to apply to various tenants, not
7 just the Applicant.

8 MR. DONAHUE: I understand.

9 VICE CHAIRMAN MILLER: Okay.

10 MR. ETHERLY: Let me follow up on Ms.
11 Miller's question. I mean I think you probably could
12 read it the other way, but perhaps -- is it the nature
13 of the antenna world, if you would, that -- is it more
14 commonplace now that you're going to see commercial
15 antennas of the type that we're talking about in the
16 subject application pretty much always have outside or
17 rental -- other people's equipment on the antenna?
18 Say for high security or government or defense needs,
19 most antenna towers are going to have multiple users
20 on them which might not necessarily belong to the
21 owner of that particular tower. Is that a safe
22 statement to make?

23 MR. DONAHUE: It's more than safe. It's
24 almost universally the case, that tower structures
25 will have all sorts of occupants, antennas.

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1 MR. ETHERLY: Okay.

2 MR. DONAHUE: It's both federal policy.
3 It's local policy. It's frankly good public policy.

4 MR. ETHERLY: Let me back up a little bit,
5 federal policy. Are you suggesting that I'm in some
6 mythical world, hopefully not in the too distant
7 future, I buy G.E. and in turn now I'm the owner of
8 NBC-WRCTV. I cannot simply mandate that all the
9 equipment that goes on that tower is my equipment and
10 nobody else's? I'm required by federal law to open
11 that spectrum so to speak?

12 MR. DONAHUE: It's more of a guideline.
13 What it says is is that it's more environmentally
14 friendly to co-locate facilities than it is to build a
15 new structure. I'm paraphrasing, obviously.

16 MR. ETHERLY: Okay.

17 MR. DONAHUE: But separate from that, I
18 recently went to a large conference of tower owners in
19 Dallas and there were several thousand people there.
20 Towers are real estate. Towers are bought and sold.
21 They're traded on the floor of the Stock Exchange.
22 They are heavily leveraged with other users. There
23 are large companies that are trying to max out usage
24 of steel in the air. It is an industry, so it's more
25 than just a good idea. It's more than commonplace.

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1 It's universally the case. As you suggest, if it were
2 a federally protected property, probably not going to
3 work. But in any other case that I'm aware of, the
4 tower owner, be that owner a broadcaster or a wireless
5 provider, the owner will seek co-location
6 opportunities, to put additional tenants on his or her
7 tower.

8 MR. ETHERLY: But let me explore something
9 that was interesting -- I'm still working with the
10 interpretation that we're hearing from the ANC and
11 from Mr. Mendelson, but to an extent is it practice
12 that's encouraged by the FCC or some -- whether it's a
13 CRI site or something that generally says -- I can
14 generally understand how it could conceivably be an
15 interference with interstate commerce, conceivably, if
16 you as an owner of a tower of this type for broadcast
17 purposes takes, undertakes some action to restrict or
18 prohibit other users from using your infrastructure.
19 I mean to an extent I know we want to be careful about
20 drawing parallels to other types of mediums, be it
21 cell or landlines, but this issue regarding
22 infrastructure usage on the part of say an AT&T that
23 wants to come into a market that perhaps might have
24 another provider there, but would still want to make
25 use of that same infrastructure. Are we -- gosh, I'm

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1 trying to work the question, but essentially what I'm
2 trying to get at is is NBC or WRC-TV required to
3 extend or at least strongly encouraged by the federal
4 government along with other owners of this type of
5 infrastructure to make that tower available to other
6 users?

7 MR. DONAHUE: They are encouraged by the
8 FCC. You also will recall a long time ago, Mr. Jack
9 testified, but Univision is, in fact, a competitor of
10 its subsidiary, Telemundo. It is, in fact, a
11 competitor on the adjacent site.

12 MR. ETHERLY: So to an extent if you
13 didn't have to have them up there, you wouldn't?

14 MR. DONAHUE: Exactly.

15 MR. ETHERLY: Okay. But I want to be
16 clear about it. I don't think you're saying that you
17 have to make that tower available to other --

18 MR. DONAHUE: I'll go back to my statement
19 earlier. On the wireless world, it's more prevalent
20 and frankly, you'll see wireless towers with four and
21 five carriers stacked.

22 MR. ETHERLY: Because they have to.

23 MR. DONAHUE: Because it's a good idea.
24 It's good business.

25 MR. ETHERLY: Okay.

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1 MR. DONAHUE: The broadcasters have a
2 different need in many cases. They want a top spot.
3 They have heavy structural requirements and electrical
4 requirements. It's often the case that two
5 broadcasters can't co-located on a tower. So is a
6 broadcast tower a co-location opportunity? Sure.
7 Will you have two broadcasters on there? Not always.

8 It depends on how it was built. It depends how their
9 signals relate to each other. It's a more complicated
10 question.

11 MR. ETHERLY: Okay, but if you have the
12 ability, because see, if the argument on the other
13 side is that 211 requires you to demonstrate your need
14 and your need only, is the argument that well, the
15 minute somebody else's equipment is on that tower, it
16 stops being your tower and it becomes this property
17 that you're trying to rent out for profit. What I'm
18 trying to get at is is there some guideline or some
19 strong suggestion in terms of FCC parlance or practice
20 that you have to make that tower available, if it can
21 accommodate it, of course, but to an extent, you have
22 to make that tower available to other people's
23 equipment?

24 MR. DONAHUE: My understanding is it's not
25 so strong as that. It doesn't mandate that you allow

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1 co-location, but let me ask Bob Denny to respond.

2 MR. DENNY: The policy at the Commission,
3 as I understand it, with respect to co-location on
4 broadcast towers is that you either do it or you don't
5 do it. And so if you -- as soon as the second one
6 comes on, then the gate is open. I was personally in
7 a case where we deliberately didn't lease space on the
8 tower or make it available to any police, fire, EMS.
9 No other users. Because under the current FCC policy,
10 as long as it was just being used by this station,
11 okay, then no other users were to come on. But as
12 soon as we put on the first, you know, police radio,
13 then it was no longer exclusive.

14 Now, if you have a tower that's in a
15 location like in the District of Columbia and you
16 start moving people off of it, the FCC is going to
17 take a very dim view of that because these people are
18 licensed or operating, they're providing service to
19 the public and moving them is going to disrupt it.
20 It's not in the public interest to move them, as far
21 as the FCC is concerned.

22 And the FCC does have a concept in its
23 rules that's called categoric exclusion from
24 environmental processing. And basically, in a
25 footnote, this is 47 CFR 1.1306, and it's note 3 and

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1 what they're talking about is in general terms. These
2 rules were written back in the 1950s. "The
3 construction of an antenna tower supporting structure
4 in an established antenna farm," in other words, where
5 there's already towers is where you want to go. In an
6 area in which similar towers are clustered, whether or
7 not such an area has been officially designated",
8 okay, just the fact that it is, there doesn't have to
9 be any official proclamation, "will be categorically
10 excluded from environmental consideration under the
11 FCC's rules."

12 So what that means is that you've already
13 met, by virtue of the fact that you're locating on an
14 existing tower, you've met all these different burdens
15 of proof with respect to historic structures, Indian
16 burial grounds and all these other things that we have
17 to be concerned about when we build another new tower.

18 So what we've always said as consulting engineers is
19 that use of an existing tower is considered
20 environmentally desirable under the FCC rules and it
21 truly is.

22 MR. ETHERLY: To the extent there could be
23 some additional guidance provided by the Applicant,
24 and of course, with an opportunity on the part of the
25 ANC to review it, that might be helpful. The thing

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1 that concerns -- has always concerned me about this,
2 but it's not a very straight forward issue is kind of
3 that -- the impact that this conceivably has on the
4 ability of any broadcaster to operate and because of
5 the preemption conversation that we had around the
6 issue of the earlier issue, I'm not suggesting there's
7 a pre-emption issue here, but I'm trying to walk very
8 gingerly between where we are with 211 and of course,
9 the overall need and interest that considerably might
10 exist at the federal level around assuring access of
11 an appropriate open nature to this type of equipment.

12 So that's a little bit of what I'm
13 massaging around here, because I think I understand
14 very clearly the argument that's coming forth from the
15 ANC and from Mr. Mendelson, but my concern with the
16 argument is does it go too far towards restraining the
17 ability of operators to get access to this type of
18 equipment. That might be a little nuanced and maybe
19 too far afield, but it's enough of a worry that I'm
20 concerned.

21 And part of that is also because there are
22 limited opportunities for the placement of this type
23 of equipment. So does it stand to reason that from a
24 federal standpoint or at least from a regulatory
25 standpoint at the FCC level there might be something

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1 like the CFR cite that you just provided which while
2 it doesn't say explicitly you have to open up your
3 equipment to everybody else, as you've said before, a
4 strong hint or guideline that there has to be some
5 access made available.

6 MR. DENNY: Submitting an application to
7 the FCC that is environmentally and I've excluded from
8 environmental consideration simplifies the application
9 process dramatically and there are very, very few
10 applications done today that require these
11 environmental impact studies and so on and so forth
12 that need to be done.

13 So -- and I can tell you, I don't believe
14 that there's -- I can't give you a citation in here
15 that says you must give up your tower space, but if
16 you have tower space available and you withhold it,
17 the Commission takes a very dim view of that and I
18 think there would be meetings and there would be
19 discussions and you would eventually be compelled if
20 you could structurally and all the other ways, there
21 would be no other reason. Because it almost looks
22 anti-competitive when you have something and it's not
23 being used for any other purpose.

24 MR. ETHERLY: Thank you. Thank you, Mr.
25 Chair.

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1 CHAIRPERSON GRIFFIS: Good.

2 MR. DONAHUE: Mr. Chairman, I will be very
3 brief. Let's talk a little bit about needs, since
4 that's been a good part of our afternoon and our early
5 evening. I would submit to you that the needs of the
6 users on the 1955 tower are evidenced by their
7 presence, by their leases and by their federally-
8 granted license to operate there.

9 This tower was first approved by use
10 variance in 1955 by the Board. At that time the need
11 was not different. This was when NBC was first
12 establishing its broadcast studios there, but the
13 tower profile that we showed you earlier had a number
14 of users and their needs, I think, are self-evident.

15 We talked a little bit about the needs of
16 the top user, WFDC has broadcast facilities. We don't
17 have a lot to offer you on that. We did have some
18 testimony from Mr. Denny about their -- or I guess Mr.
19 Lindner about their attempt to locate in a number of
20 different facilities, one of which was in Virginia.
21 And they arrived at NBC and were able to secure
22 licensing there.

23 He also testified that he thought the
24 installation was in excess of \$1 million for that
25 location.

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1 Ms. Miller asked about the inventory. I
2 guess Mr. Etherly did as well, and the needs analysis
3 that the Office of Planning did on the needs analysis.

4 I'm hesitant to discuss this, but the most notable
5 case is Tenleytown. It was proposed to be a large, in
6 excess of 700-foot tower, to take the needs of the
7 other users, the other three towers that are on site.

8 It was litigated, it was stopped. Eventually, I
9 suppose it's going to come down. The tower world is a
10 very, very scare one. And the Office of Planning
11 doesn't have the inventory on it. And I don't know
12 that anyone does, but I can tell you by evidence. I
13 practice here and in Montgomery County. My colleagues
14 practice in Fairfax County. And it's extraordinarily
15 tight. Tenleytown is just one example. It's very,
16 very difficult. We talked about the distances
17 required. We talked about the zoning, soils and what
18 not. Costs are another one. Costs for erecting a
19 tower like this cost in excess of \$1 million for
20 steel.

21 Costs associated with relocation, you
22 know, I asked Mr. Lindner to give his opinion,
23 assuming that WFDC or Univision could find another
24 location, what would it cost in new FCC licensing, in
25 disruption of service, possibly, in new leases.

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1 Remember, they're on an existing lease with NBC.

2 So there are serious, significant costs
3 associated with simply -- we've used the term
4 migrating. Perhaps that's a little too simple.

5 And lastly, to the point of the assertion,
6 if you will, that the users could simply migrate to
7 the other tower. I believe that we've met, more than
8 met our burden in showing that that's not so simple,
9 both technically, both structurally, perhaps with
10 respect to interference, certainly with respect to the
11 broadcasters. Remember the discussion about the top
12 user on the tower and the difficulties associated with
13 that tower migrating over.

14 So finally, Mr. Chair, I would submit to
15 you that we have met the criteria as outlined in much
16 detail in our pre-hearing submissions and in testimony
17 here today. I will remind you about the discussion we
18 had about EMF. We're very happy to have Mr. Denny
19 here today. I certainly enjoyed his analysis. I
20 don't understand it all, but I will remind you that do
21 not waive whatever we have under preemptive, under
22 federal law.

23 And with that, I'll close. I'll certainly
24 thank you for all your time.

25 CHAIRPERSON GRIFFIS: Good, thank you very

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1 much. Are we going to set this for decision in
2 December 7th meeting?

3 And going back from that, let's get a list
4 of information that we would going to bring up.
5 First, in the freshest, there were regulations that
6 were just read. We just need those copied, just that
7 page, not the entire volume. Whatever you read, and
8 some context. And put in the record, obviously,
9 because it went into the oral record.

10 We were going to have white papers and
11 case law from you and also a very succinct briefing of
12 the preemptive issue.

13 MR. DONAHUE: I filed that with the Board.

14 CHAIRPERSON GRIFFIS: It's already in?
15 And it was served on the ANC?

16 MR. DONAHUE: Yes.

17 CHAIRPERSON GRIFFIS: Excellent. We'll
18 get it to them before this evening.

19 What else do I have?

20 VICE CHAIRMAN MILLER: Well, I think we
21 talked about the Applicant possibly addressing
22 further, certainly 211.5 and any of the other
23 regulations that we discussed with respect to the term
24 necessary that it could apply to other tenants, in
25 particular, broadcasters.

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1 I would be interested, and you started to
2 address this and I don't know if you have anything
3 further on it, but you started to go into the fact
4 that there are broadcast tenants on this 1955 tower
5 and that that's a category -- it's in the same
6 category as NBC and perhaps as to -- you were making a
7 case that is more difficult for that type of tenant to
8 relocate and perhaps if you can address that one just
9 a little bit more fully, it would be helpful.

10 CHAIRPERSON GRIFFIS: Ms. Bailey, do you
11 have anything additionally that you want to mention?

12 MS. BAILEY: Just the photograph from
13 Council Member Mendelson.

14 CHAIRPERSON GRIFFIS: Yes. Good.

15 MR. DONAHUE: Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. DONAHUE: One difficulty. The prior
18 approval of this Board, 15708-A --

19 CHAIRPERSON GRIFFIS: So the previous
20 special exception is expiring on the 1st of December.

21 It would be my understanding that this would -- well
22 --

23 (Pause.)

24 What do you see as ramifications of going
25 past the 1st? I mean basically it would be an

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1 enforcement of DCRA of an expired special exception of
2 which it wouldn't make logical sense to do, once the
3 appropriate procedure is being followed to renew the
4 special exception. It certainly came in timely. It
5 wasn't that any of the other procedures weren't
6 exactly followed.

7 We have, in fact, been in process of the
8 special exception that expired midstream and as far as
9 my knowledge is, there were no negative repercussions
10 to that.

11 The only other thing to do is to slip this
12 in on the 30th of November.

13 Here's the situation going back. We have
14 filings. We're going to need to have at least two
15 weeks for response to the stuff you get in, so the
16 faster you get it into the record, will set our
17 schedule for the two-week response. Unless the ANC is
18 willing to go to a one-week response and then it would
19 be a week before the hearing. So we're at three weeks
20 minimal as I see it, probably more like four.

21 There are no official attorneys here. I
22 can't give you an official opinion of what would
23 happen with the expired special exception.

24 MR. DONAHUE: Officially, I'm on
25 unchartered ground here. I don't know. I'm concerned

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1 about it. Does the Office of Planning have an
2 opinion?

3 MS. THOMAS: The faster the better, you're
4 in, you're out.

5 CHAIRPERSON GRIFFIS: That's true.

6 MS. MacWOOD: Mr. Chairman, I would prefer
7 to have the full time to respond, if at all possible.

8 What we're talking about here is DCRA initiating some
9 action during the one week between when the -- do any
10 of us really think that's even within the realm of
11 plausibility?

12 CHAIRPERSON GRIFFIS: You want us to say
13 something on the record?

14 MS. MacWOOD: Well, I just did.

15 CHAIRPERSON GRIFFIS: I don't think it's
16 in great jeopardy. I think what is in balance is the
17 special exception. I mean the current one expires on
18 the 1st of December. What is in balance now is the
19 new application and having that figured out before the
20 1st, I don't think it's going to create any other
21 additional issue involved with the function of the
22 tower itself.

23 Okay, so with that, let's set it up for
24 the 7th.

25 Is there any other objection for setting

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1 it off to the 7th?

2 MR. DONAHUE: No sir.

3 CHAIRPERSON GRIFFIS: Let's count back
4 then. If we have submissions, how much time do you
5 need to get all that information in, which is actually
6 not a whole lot?

7 MR. DONAHUE: It really isn't. We did
8 submit the brief. Obviously, we're going to address
9 the issues that Ms. Miller asked us to address.

10 I think a week will be fine, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Okay, so a week,
12 we'll set out clocks. By 3 o'clock on Wednesday,
13 because it's 8 o'clock on Tuesday. Does that make
14 sense?

15 MR. DONAHUE: Absolutely.

16 CHAIRPERSON GRIFFIS: Seven days. So
17 we'll do it Wednesday to Wednesday. Does that make
18 sense?

19 MS. BAILEY: No, Mr. Chairman. I'm not
20 quite with you. I'm sorry. I think it's the lateness
21 of the day. I do understand that we have the decision
22 scheduled for December 7th and when are we asking
23 about that the submissions come in, November?

24 CHAIRPERSON GRIFFIS: The Applicant will
25 provide their submissions in the 3rd, I believe, it's

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1 the following Wednesday.

2 MS. BAILEY: November 3rd?

3 CHAIRPERSON GRIFFIS: Correct.

4 MS. BAILEY: And the decision is scheduled
5 December 7th?

6 CHAIRPERSON GRIFFIS: That's right and
7 we'll have two weeks for the responses on that
8 submission.

9 And then we're going to have to put
10 findings, conclusions.

11 MS. BAILEY: And two weeks after the
12 November 3rd is November 17th. That's when the
13 responses are due and then the findings you want to
14 come in the following week?

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. BAILEY: November 24th.

17 CHAIRPERSON GRIFFIS: Okay. So
18 conceivably if we're at the 17th, the 24th therein, we
19 could do the 30th.

20 Which do you prefer? 30th of November,
21 first in the morning or December 7th?

22 MR. DONAHUE: I think I would prefer the
23 30th.

24 CHAIRPERSON GRIFFIS: Done. Ms. MacWood,
25 is that understood?

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1 MS. MacWOOD: Yes.

2 CHAIRPERSON GRIFFIS: Do you need us to
3 repeat the schedule gain?

4 MS. MacWOOD: No.

5 CHAIRPERSON GRIFFIS: And if there are,
6 obviously, procedures, technical, dates, questions,
7 Ms. Bailey can answer those.

8 Very well, we'll set this for special
9 public meeting. We'll call it at 9 o'clock. We're
10 slipping it into another busy day, but it's worth
11 getting this finished while it's still fresh.

12 Obviously, there won't be any time for
13 additional testimony and I don't need to go through
14 all the rest because I think you know it.

15 Anything else? Anything else I can answer
16 on this case? Procedural questions?

17 Ms. Bailey, any other business?

18 MS. BAILEY: No, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Very well, thank you
20 all very much for getting through this this evening
21 and we'll look for those submissions. We can adjourn
22 the afternoon session.

23 (Whereupon, at 7:50 p.m., the hearing was
24 concluded.)

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