Holland+Knight

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Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
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RECEIVED
D.C. OFFICE OF ZONING
2005 JAN 18 PM 12

January 18, 2005

NORMAN M. GLASGOW, JR.
202-419-2460
Internet Address:
norman.glasgowjr @hklaw.com

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Application No. 17232 – Responses to Motions Filed By Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (the "Parties in Opposition")

Honorable Members of the Board:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of each of the following responses to the motions filed on January 4, 2005 and January 7, 2005 by the Parties in Opposition:

- Applicant's Response To Motion To Challenge RLA Misrepresentations About DC USA Mall Off-Street Parking Requirements And To Deny RLA Application For Variance And Exception;
- Applicant's Response To Motion To Dismiss RLA Application Because Of Ex Parte Communications In Violation of Law;
- Applicant's Response To Opposition To Motion To Amend Application; and

BZA
Case No. 17232
Exhibit No. 55

Board of Zoning Adjustment
District of Columbia
CASE NO. 17232
EXHIBIT NO. 55

- Applicant's Response To Motion To Strike From Application # 17232 Case File The Confidential Settlement Proposal Letter Filed By Jennifer Budoff And Any Testimony From Jennifer Budoff.

Sincerely,

Norman M. Glasgow, Jr.

Enclosures

cc: Thomas Ruffin, Jr., Esq. (w/enclos. - via Hand Delivery and UPS)
ANC 1A (w/enclos. - via Hand Delivery)
Ellen McCarthy, Steven Cochran, Office of Planning (w/enclos. - via Hand Delivery)
Kenneth Laden, Douglas Noble, DDOT (w/enclos. – via Hand Delivery)
Drew Greenwald, Jim Tuman, Grid Properties (w/enclos. - via UPS)
Michael Hentrel, Jennifer Budoff , NCRC (w/enclos. – via UPS)
Michael L. Prifti, David Smallets, Bower Lewis Thrower Arch. (w/enclos. - via UPS)
Lou Slade, Dan VanPelt, Gorove/Slade Associates, Inc. (w/enclos. - via UPS)
Steven E. Sher, Kyrus L. Freeman, Holland & Knight LLP (w/enclos.)

 # 2534662_v1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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APPLICATION OF RLA REVITALIZATION CORPORATION

BZA APPLICATION NO. 17232

HEARING DATE: NOVEMBER 16, 2004
ANC 1A

APPLICANT'S RESPONSE TO MOTION TO CHALLENGE RLA MISREPRESENTATIONS ABOUT DC USA MALL OFF-STREET PARKING REQUIREMENTS AND TO DENY RLA APPLICATION FOR VARIANCE AND EXCEPTION

This statement is submitted on behalf of RLA Revitalization Corporation in response to the motion filed by Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (collectively referred to herein as "Parties in Opposition"), arguing that Application No. 17232 should be denied because the application incorrectly states the number of required parking spaces for the proposed project. Specifically, the Parties in Opposition argue that the square footage attributable to the underground parking garage, and the area identified as the "closed court" should not be excluded from the parking space calculation, and thus 3,011 parking spaces are required for the project. This argument, however, ignores the clear provisions of the Zoning Regulations.

Section 2118.4 of the Zoning Regulations provides:

> In computing the number of parking spaces required, that portion of the gross floor area or cellar area devoted to parking spaces, loading berths, loading platforms, service/delivery loading spaces, and vehicular access to parking spaces, may be excluded.

11 DCMR § 2118.4.

Accordingly, the square footage attributable to the underground parking garage, and the area identified as the "closed court" (which is comprised of covered loading berths, service/delivery loading spaces, and vehicular access to parking spaces and loading areas) are properly excluded from the calculation of the number of parking spaces required for the project.

Therefore, based upon the plain language of Section 2118.4 of the Zoning Regulations, the Parties' in Opposition Motion must be denied.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Kyrus L. Freeman*

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Suite 100
Washington, D.C. 20006
(202) 955-3000

*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

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BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
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2005 JAN 18 PM 3:14

APPLICATION OF RLA REVITALIZATION CORPORATION

BZA APPLICATION NO. 17232

HEARING DATE: NOVEMBER 16, 2004
ANC 1A

APPLICANT'S RESPONSE TO MOTION TO DISMISS RLA APPLICATION BECAUSE OF EX PARTE COMMUNICATIONS IN VIOLATION OF LAW

This statement is submitted on behalf of RLA Revitalization Corporation (RLA) and Grid Properties, Inc. ("Grid") in response to the motion filed by Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (collectively referred to herein as "Parties in Opposition"), arguing that Application No. 17232 should be denied because Grid, acting on behalf of RLA, has had several *ex parte* conversations with Geoff Griffis, Chair of the Board of Zoning Adjustment (the "Board"), and with Douglas Noble, Associate Director of the District of Columbia Department of Transportation ("DDOT"), concerning the subject application.

As counsel for both Grid and RLA for the purposes of this proceeding, we affirmatively state that neither representatives for Grid nor RLA have ever discussed the subject application with Chairman Griffis. Representatives of Grid have met with Associate Director Douglas Noble and staff members at DDOT to discuss the traffic plan and proposed sidewalk design for the proposed project. However, these conversations with DDOT are not *ex parte* and do not violate any applicable rules.

The Parties' in Opposition very serious accusations are based upon a misunderstanding of the facts. The letter from Douglas Noble attached as Exhibit 1 to the Parties' in Opposition motion summarizes conversations between Grid and DDOT. Chairman Griffis never participated in any of these conversations.

Therefore, since there is no factual basis to support the motion, the Parties' in Opposition *MOTION TO DISMISS RLA APPLICATION BECAUSE OF EX PARTE COMMUNICATIONS IN VIOLATION OF LAW* must be denied.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Kyrus L. Freeman*

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
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BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF RLA REVITALIZATION CORPORATION	**BZA APPLICATION NO. 17232** **HEARING DATE: NOVEMBER 16, 2004** **ANC 1A**

APPLICANT'S RESPONSE TO OPPOSITION TO MOTION TO AMEND APPLICATION

This statement is submitted on behalf of RLA Revitalization Corporation (the "Applicant") in response to the opposition filed by Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (collectively referred to herein as "Parties in Opposition"), requesting that the Board of Zoning Adjustment (the "Board"): 1) deny the Applicant's motion to amend its original application[1]; 2) issue an order determining that the Applicant withdrew its application; and 3) prohibit the Applicant from filing a new application until ninety days from December 22, 2004. The Applicant's responses to the issues raised in the Parties' in Opposition pleading follow.

A. The Original Application Was Never Withdrawn

The Applicant has not withdrawn its original application. As indicated in both the letter to the Board seeking to amend the application to add *alternative* parking relief, and the *Applicant's Supplemental Statement Of The Applicant For Alternative Relief*, the requested special exception pursuant to section 2108 to

[1] The Applicant notes that it has not filed a motion to amend its original application. The Applicant filed a letter, dated December 22, 2004, amending its application and requesting that the Board consider alternative parking relief. This response is therefore based upon the assumption that the Parties in Opposition are incorrectly referring to the Applicant's December 22nd letter as a motion.

reduce the amount of required parking spaces and the variance from section 2115.9 to permit attendant assisted parking in the C-3-A District is set forth as an *alternative* to the originally requested variance from section 2101.1 of the Zoning Regulations.

Thus, since the Applicant has presented both the original application and the alternative basis for relief, the Board can evaluate each of these options to determine whether the Applicant has met its burden of proof with respect to either of the requests for relief, and can take appropriate action to dispose of either of the Applicant's requests, including the imposition of any relevant conditions upon the application. For example, the Board could grant the original variance application and require as a condition that attendant-assisted parking be available as needed at the project in a configuration that would yield 1,244 parking spaces. Neither of these options requires the Applicant to withdraw the original application.

B. <u>The Parties in Opposition Misconstrue the Nature of the December 21, 2004 Hearing</u>

The Parties in Opposition argue that the Applicant somehow "closed out its opportunity to present any evidence besides 'rebuttal' evidence before its 'closing argument'" since the Applicant allegedly "closed its case-in-chief" on December 21, 2004. <u>See</u>, Opposition to Motion to Amend Revitalization Corporation Application at pages 4-5. This argument, however, misconstrues the nature of the proceedings on December 21st, and is not based upon nor cites any regulation or provision within the Rules of Practice and Procedure contained in the Zoning Regulations.

During the course of the public hearing on December 21st, the Chair of the Board exercised his discretion pursuant to section 3117.3 (a) to regulate the course of the hearing. At no point did the Chair close the hearing pursuant to section 3117.3 (i). At no point during the hearing did the Chair indicate that the Applicant could no longer present evidence in support of its application.

The Parties in Opposition inaccurately rely on sections 3117.11(b) (1)-(7) in reaching their conclusion. Sections 3117.11(b) (1)-(7) merely establish the general order of procedure for presenting evidence at a public hearing. These sections do not prohibit the Board from modifying the order of procedure, nor do these sections indicate that once a party has "closed its case-in-chief," such party has somehow "closed out its opportunity to present any evidence besides 'rebuttal' evidence before its 'closing argument.'" In short, the Parties in Opposition have set forth a construction of the Zoning Regulations that is neither supported by the language of the Zoning Regulations, nor have they cited any applicable case law which supports their construction of the rules.

C. Sufficient Notice of the Alternative Request For Relief Was Provided

In arguing that there has been in sufficient notice of the amended application, the Parties in Opposition rely solely upon the original notice issued in this case on September 2, 2004. However, the Parties in Opposition do not acknowledge the fact that the Applicant provided actual notice of its intent to ask the Board to consider alternative relief to counsel for the Parties in Opposition, Advisory Neighborhood Commission 1A, and property owners within 200 feet of the

Site pursuant to the letter to the Board, dated December 22, 2004, a copy of which is attached hereto as Exhibit A, and the notice memorandum dated December 22, 2004, a copy of which is attached hereto as Exhibit B. Moreover, the Parties in Opposition cannot argue that they did not receive notice of the Applicant's request for alternative relief since the Parties in Opposition cited the Applicant's request for alternative relief on page three, footnote ten of their *Motion To Challenge RLA Misrepresentation About DC USA Mall Off-Street Parking Requirements And To Deny RLA Application For Variance And Exception*, which was mailed to counsel for the Applicant on January 4, 2005.

In addition to mailing the above-referenced notices, the Applicant also posted several revised hearing notices on the Site. The hearing notices were posted on January 6, 2005, which is in accordance with section 3113.14 of the Zoning Regulations, which requires that the Applicant post notice of the hearing at least fifteen (15) days in advance of the hearing. The revised hearing notices specify the alternative requested relief, and state the following:

> **17232 - Application of RLA Revitalization Corporation**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, *or in the alternative*, for a special exception from the roof structure requirements under section 411, a special exception pursuant to 11 DCMR § 2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District to permit a multi-use commercial establishment in the C-3-A District at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871, and 872).

See Copy of Affidavit of Posting, attached hereto as Exhibit C.

A revised public hearing notice indicating the alternative relief was also published in the D.C. Register on December 31, 2004. See Revised Public Hearing Notice attached hereto as Exhibit D.

Finally, on January 11, 2005, the Applicant filed the *Applicant's Supplemental Statement Of The Applicant For Alternative Relief*, which describes in detail the basis for the requested alternative relief and establishes how the Applicant meets its burden of proof with respect to the requested relief. The statement was filed not less than fourteen days prior to the January 25, 2005 hearing, which affords the Parties in Opposition the same amount of time to analyze the Applicant's arguments as would otherwise be provided under the Zoning Regulations. In sum, all persons and parties who received notice of the Applicant's original request for relief also received actual notice of the Applicant's request for alternative parking relief.

D. The Original Application and the Alternative Request for Relief Involve the Same Issues

The Applicant's original application requested a special exception from the roof structure requirements (§411) and a variance from the parking requirements (§2101.1) to reduce the number of required parking for the Project to 1,000 spaces. The Applicant's alternative request for relief (a special exception from the roof structure requirements (§411); a special exception to reduce the amount of required parking spaces by no more than twenty-five percent (25%); and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District will result in the provision of 1,244 parking spaces instead of 1,000 parking spaces.

Contrary to the conclusory statements made by the Parties in Opposition in their motion, the requested alternative form of relief is not a "drastic change" that is "totally at odds with RLA's original application," nor will it involve "entirely different evidence." As discussed fully in the *Applicant's Supplemental Statement Of The Applicant For Alternative Relief*, many of the facts and arguments raised by the Applicant in connection with its request for the variance from section 2101.1 are also applicable to the Applicant's alternative request for a variance from section 2115.9. Further, as discussed in the *Applicant's Supplemental Statement Of The Applicant For Alternative Relief* and the *Statement of the Applicant*, either the original application or the request for alternative relief can be granted without harming the public good since the Project's location will result in a significant amount of transit and pedestrian access to the Site, and the Project will not cause a detrimental impact to the transportation network in the neighborhood. In sum, both the Applicant's original application and the Applicant's request for alternative relief are intend to ensure that a sufficient amount of parking is provided for the Project, and resolving this issue involves an analysis of the same general set of facts.

Therefore, based upon the Applicant's arguments set forth above, the Applicant respectfully requests that the Board deny each of the Parties' in Opposition requests.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Kyrus L. Freeman*

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*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

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A

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Norman M. Glasgow, Jr.
202 419 2460
norman.glasgowjr@hklaw.com

December 22, 2004

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington D.C. 20001

Re: Application No. 17232
14th Street between Park Road and Irving Street, N.W.
Amendment to the Application to add Alternative Parking Relief

Dear Members of the Board:

At the public hearing held on December 21, 2004, substantial discussion occurred between the Applicant's team and members of the Board concerning the adequacy of the number of spaces proposed to be provided in the underground garage (1,000 spaces on two levels). The Board's concern related to the operational issue of whether the parking spaces would be used to serve other demand in the neighborhood, thereby reducing the number of spaces available to serve the proposed development since the parking garage would be owned by NCRC and would be open to the public.

In order to respond to that concern and to provide more parking spaces on-site within the two parking levels which can feasibly be provided, the Applicant hereby amends its application and requests that the Board consider alternative parking relief. The potential of utilizing attendant parking was raised by a Board member during the course of the hearing, which lead the Applicant to focus on the relief necessary for the Board to approve such a parking program at the subject site. That relief would be as a special exception pursuant to 11 DCMR § 2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District. Using attendants, the Applicant can park approximately 1,250 cars on the two levels, which is a reduction of approximately twenty-two percent (22%) from the requirement of 1,599 spaces.

The Application has been continued for hearing on January 25, 2004, as the last case of the day following the regular afternoon agenda. The Applicant will submit a pre-hearing statement no less than fourteen days prior to the hearing, explaining in detail the relief sought and the manner in which the tests of the Regulations will be satisfied. The Applicant has mailed a copy of this request

to the parties to the application, to the Office of Planning and DDOT and to all owners of property within 200 feet of the subject property. The Applicant will also post notice of the hearing on the amended application on the subject property in the same manner as for a new application. These steps will provide notice of the amended application to all potentially interested persons.

We look forward to proceeding with consideration by the Board on January 25, 2004, of this amended application.

Sincerely,

Norman M. Glasgow, Jr.

Kyrus L. Freeman*

cc: Advisory Neighborhood Commission 1A
Thomas Ruffin
Stephen Cochran, D.C. Office of Planning
Douglas Nobel, District Department of Transportation
All owners of property within 200 feet

*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

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Holland+Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

Memorandum

Date: December 22, 2004

To: Property Owners within 200 feet of 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871, and 872).

From: Holland & Knight LLP

Re: Board of Zoning Adjustment ("BZA") of the District of Columbia Application No. 17232

Kyrus L. Freeman*
202 862 5978
kyrus.freeman@hklaw.com

This notice is to inform you that the Applicant in the above-referenced case has filed a letter with the BZA amending its application and requesting that the BZA consider alternative parking relief. A copy of the letter filed with the BZA is attached hereto.

The alternative relief would be as a special exception pursuant to 11 DCMR §2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District. Using attendants, the Applicant can park approximately 1,250 cars on the two levels, which is a reduction of approximately twenty-two percent (22%) from the requirement of 1,599 spaces.

Application No. 17232 has been continued for hearing on January 25, 2004, as the last case of the day following the regular afternoon agenda. The Applicant will submit a pre-hearing statement no less than fourteen days prior to the hearing, explaining in detail the relief sought and the manner in which the tests of the Zoning Regulations will be satisfied. The Applicant will also post notice of the hearing on the amended application on the subject property in the same manner as for a new application.

Attachment

*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

2486602_v1

Holland+Knight

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Fax 202 955 5564

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Norman M. Glasgow, Jr.
202 419 2460
norman.glasgowjr@hklaw.com

December 22, 2004

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington D.C. 20001

Re: Application No. 17232
14th Street between Park Road and Irving Street, N.W.
Amendment to the Application to add Alternative Parking Relief

Dear Members of the Board:

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In order to respond to that concern and to provide more parking spaces on-site within the two parking levels which can feasibly be provided, the Applicant hereby amends its application and requests that the Board consider alternative parking relief. The potential of utilizing attendant parking was raised by a Board member during the course of the hearing, which lead the Applicant to focus on the relief necessary for the Board to approve such a parking program at the subject site. That relief would be as a special exception pursuant to 11 DCMR § 2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District. Using attendants, the Applicant can park approximately 1,250 cars on the two levels, which is a reduction of approximately twenty-two percent (22%) from the requirement of 1,599 spaces.

The Application has been continued for hearing on January 25, 2004, as the last case of the day following the regular afternoon agenda. The Applicant will submit a pre-hearing statement no less than fourteen days prior to the hearing, explaining in detail the relief sought and the manner in which the tests of the Regulations will be satisfied. The Applicant has mailed a copy of this request

to the parties to the application, to the Office of Planning and DDOT and to all owners of property within 200 feet of the subject property. The Applicant will also post notice of the hearing on the amended application on the subject property in the same manner as for a new application. These steps will provide notice of the amended application to all potentially interested persons.

We look forward to proceeding with consideration by the Board on January 25, 2004, of this amended application.

Sincerely,

Norman M. Glasgow, Jr.

Kyrus L. Freeman*

cc: Advisory Neighborhood Commission 1A
Thomas Ruffin
Stephen Cochran, D.C. Office of Planning
Douglas Nobel, District Department of Transportation
All owners of property within 200 feet

*Admitted only in Pennsylvania;
supervision by principals of the firm
who are members of the D.C. Bar

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C

Form 145
(Revised 04/29/02)

Case No. 17232

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

AFFIDAVIT OF POSTING

Notice: See other side of affidavit form for instructions.

DISTRICT OF COLUMBIA, ss:

(name of person posting the property) FREDA HOBAR + Beverly Berning, being first duly sworn, do hereby depose and say that:

I, (name of person posting the property) Freda Hobar + Beverly Berning, posted (no. of posters) 13 zoning poster(s)

("Notice of Public Hearing") furnished by the Director of the Office of Zoning on private property known as

1400-1420 Park Rd 3100-3200 14th St. NW (address or premises) 1419-1437 Irving St. NW on (date of posting) 1-6-05 at (time of posting) 9:35 AM

The zoning posters were placed in plain view of the public on the street frontages as listed on this affidavit below. I have maintained the posting notice by checking the signs every five days, and by posting new notices as necessary.

I have taken, or authorized to be taken, (no. of photos) 13 photograph(s) of the zoning posters where they have been placed.

The photographs (not to exceed 8 ½? X 11?), attached hereto, clearly show each zoning poster as seen by the public.

The photographs, are numbered and correspond to the following street frontages:

Photograph No.	Street Frontage
1.	Hiatt NW
2.	Irving St NW - see Attachments -
3.	14th St. NW
4.	Park Rd NW

Freda Hobar Beverly Berning
Signature

Subscribed and sworn to before me this (date) 4th day of (month) January (year) 2005

(seal)

(signature) Jerilyn A. Spach
Notary Public, D.C.

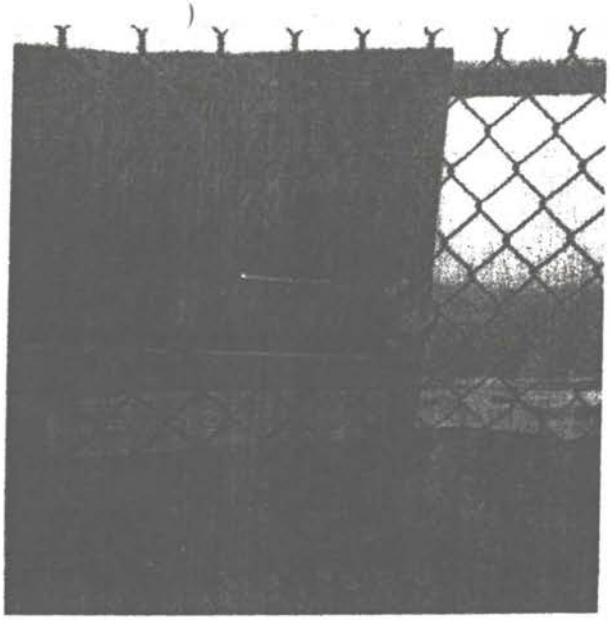
JERILYN A. SPACH
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
My Commission Expires May 31, 2008

My commission expires on:

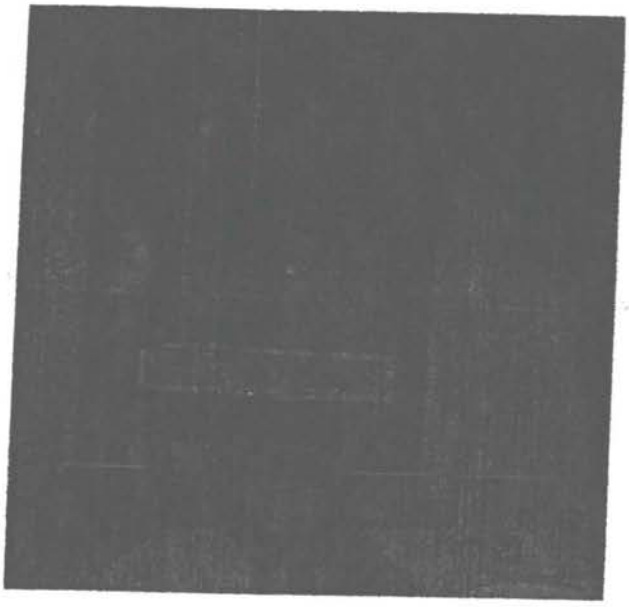
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D.C. OFFICE OF ZONING

Jerrily R. Kress, FAIA - Director
District of Columbia Office of Zoning

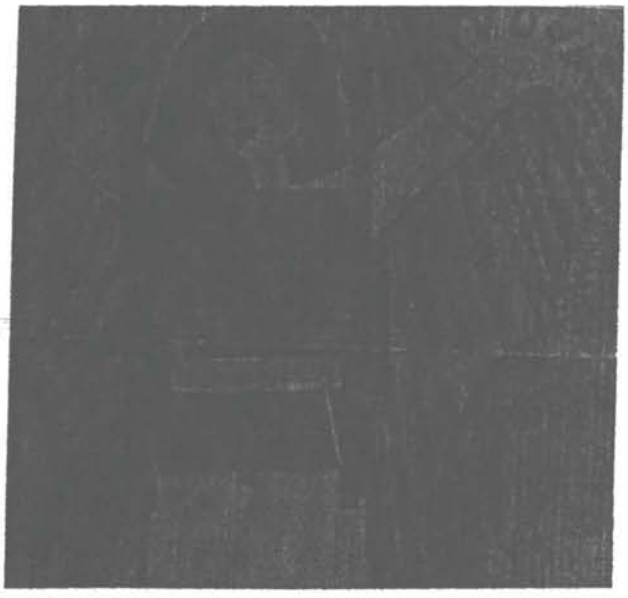
441 4th Street, N.W. Ste. 210-S, Washington, D.C. 20001
(202) 727-6311 * (202) 727-6072 fax * www.dcoz.dc.gov



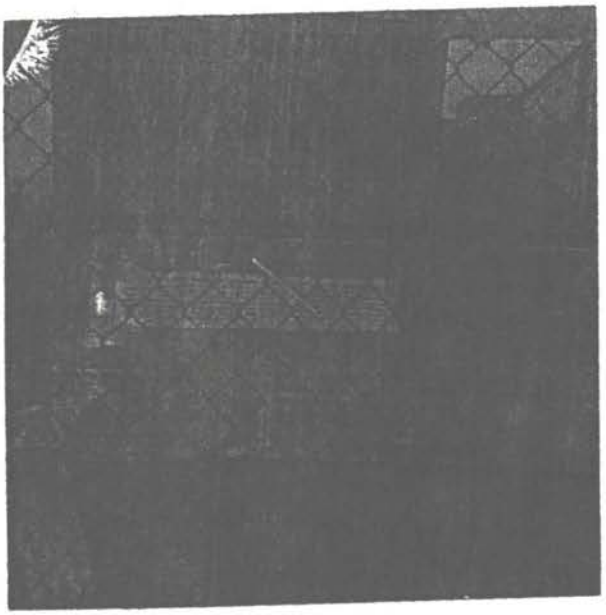
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2. Irving St



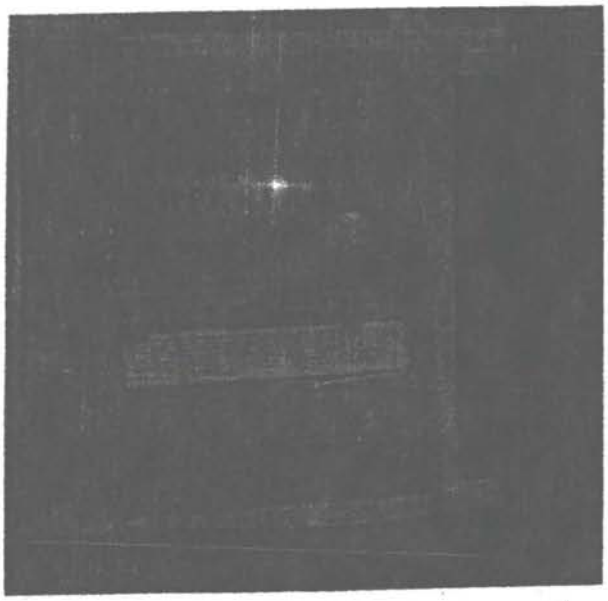
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14th st NW 3.

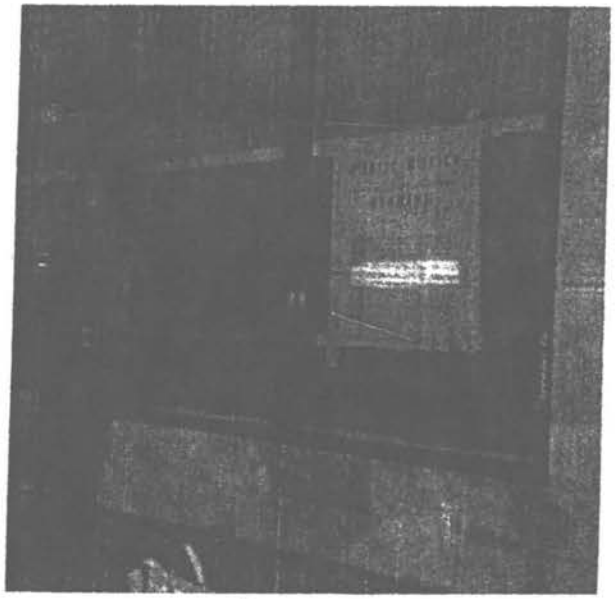


14th st NW 3.

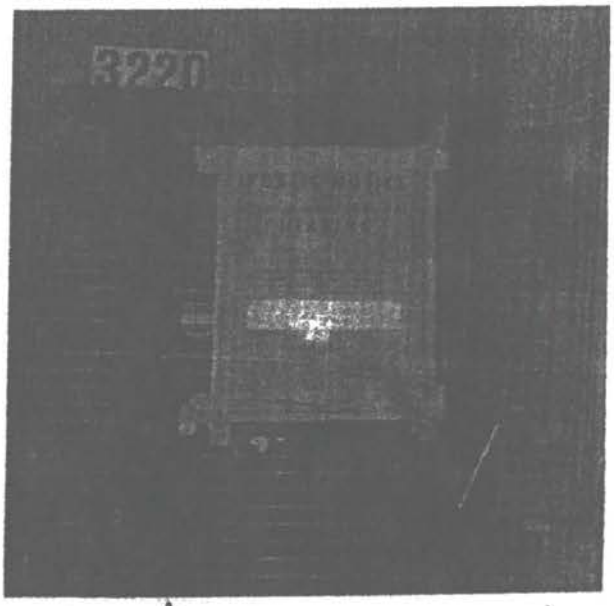


14th st NW 3

14th st NW



3. 14th st NW



14th st NW

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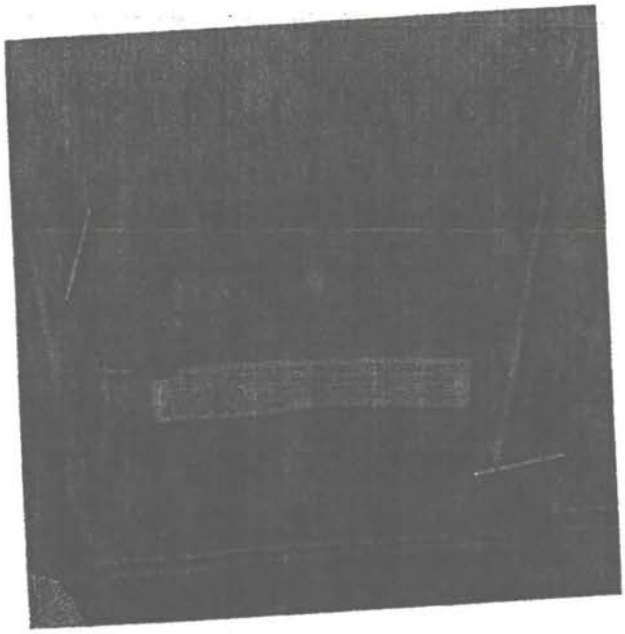


3. 14th st

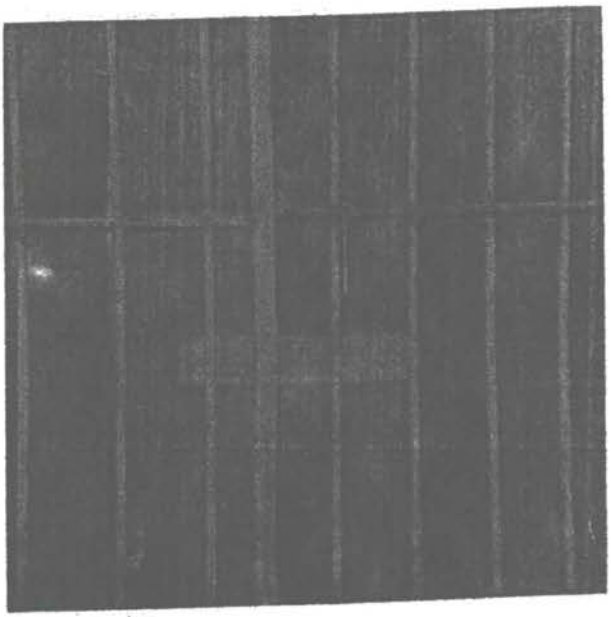
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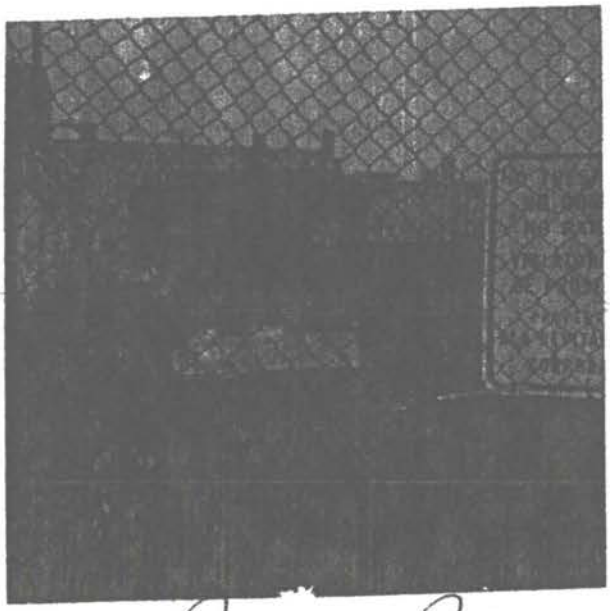
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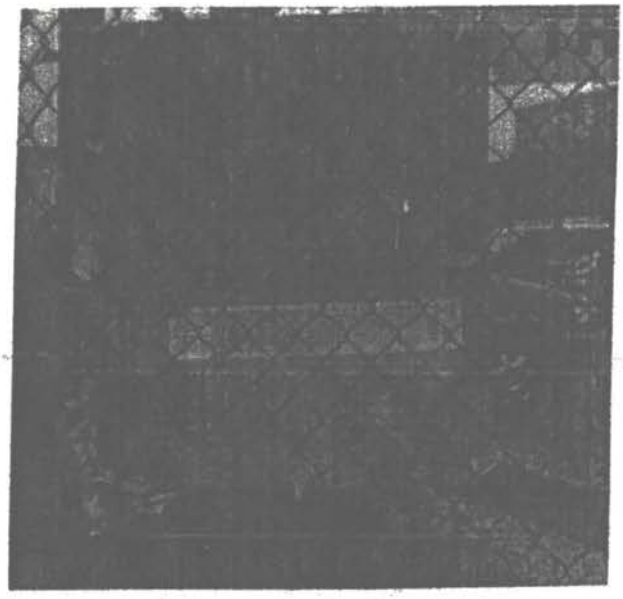
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VOL. 51 - NO. 53 FRIDAY, DECEMBER 31, 2004

District of Columbia REGISTER

HIGHLIGHTS

* DEPT. OF INSURANCE, SECURITIES AND BANKING ADOPTS FINAL RULES TO REPEAL AND TO AMEND THE D.C. AUTOMOBILE INSURANCE PLAN

* DEPT. OF HEALTH PROPOSES RULES TO UPDATE FEES AND ESTABLISH NEW FEES TO THE OCCUPATIONAL AND PROFESSIONAL LICENSE FEE SCHEDULE

* DEPT. OF MENTAL HEALTH PROPOSES RULES REGARDING THE USE OF RESTRAINTS AND SECLUSION

* D.C. ENERGY OFFICE GIVES NOTICE OF FUNDING AVAILABILITY

* OFFICE OF PARTNERSHIPS AND GRANTS DEVELOPMENT PUBLISHES FOURTH QUARTER REPORT FOR FY 2004 ON DONATIONS APPROVED

"HAPPY NEW YEAR "

BOARD OF ZONING ADJUSTMENT
REVISED PUBLIC HEARING NOTICE
TUESDAY, JANUARY 25, 2005
SECOND FLOOR HEARING ROOM, SUITE 220-S
441 4TH STREET, N.W.
WASHINGTON, D.C. 20001

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

9:30 A.M. TO 12:00 P.M. MORNING SESSION
1:00 P.M. TO 6:00 P.M. AFTERNOON SESSION

A.M.

WARD EIGHT

17273
ANC-8A

Application of The Darrell Green Youth Life Foundation, pursuant to 11 DCMR § 3104.1, for a special exception to establish a private school (Youth Learning Center and ancillary office - 40 students and 3 staff) under section 206, or in the alternative a special exception for a child development center under section 205, in the R-5-A District at premises 2629 Douglas Road, S.E. (Square 5871, Lot 147).

WARD FOUR

17274
ANC-4B

Application of Mario Alas and Haydee Vanegas, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 771, a variance from the rear yard requirements under section 774, and a variance from the off-street parking requirements under subsection 2101.1, to allow a two story addition to an existing one-story restaurant (office space proposed on the top floor) in the C-2-A District at premises 6303 Georgia Avenue, N.W. (Square 2978, Lot 41).

P.M.

WARD ONE

17275 ANC-1C **Application of Republic of Lithuania**, pursuant to 11 DCMR § 1002, to permit the expansion of a chancery for the Embassy of Lithuania in the D/R-5-B and R-5-D Districts at premises 2622 16th Street, N.W. (Square 2575, Lot 32).

WARD THREE

THIS APPLICATION WAS CONTINUED FROM THE NOVEMBER 9, 2004, PUBLIC HEARING SESSION:

17229 ANC-3F **Application of Hillwood Museum and Gardens**, pursuant to 11 DCMR § 3103.2, for a variance to allow modification of certain previous conditions of BZA Orders (including BZA Order No. 16019), Governing the operation of an approved museum under section 201, in the R-1-A District at premises 4155 Linnean Avenue, N.W. (Square 2245, Lot 1).

WARD ONE

THIS APPLICATION, AMENDED BY THE APPLICANT, WAS CONTINUED FROM THE NOVEMBER 16, 2004, AND DECEMBER 21, 2004, PUBLIC HEARING SESSIONS:

17232 ANC-1A **Application of RLA Revitalization Corporation**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, *or in the alternative*, for a special exception from the roof structure requirements under section 411, a special exception pursuant to 11 DCMR § 2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District to permit a multi-use commercial establishment in the C-3-A District at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871, and 872).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial.

The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4 of the Regulations, the Board will impose time limits on the testimony of all individuals.

Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board. Individuals and organizations wishing party status in any case before the Board must request that status and should do so in writing not less than fourteen (14) days prior to the date set for the public hearing on the particular application in accordance with Subsection 3106.2. All requests and comments should be submitted to the Board

through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

GEOFFREY H. GRIFFIS, CHAIRPERSON, RUTHANNE G. MILLER, VICE CHAIRPERSON, CURTIS L. ETHERLY, JR., JOHN A. MANN II, AND A MEMBER OF THE ZONING COMMISSION ---------- BOARD OF ZONING ADJUSTMENT, BY JERRILY R. KRESS, FAIA, DIRECTOR.

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BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF RLA REVITALIZATION CORPORATION

BZA APPLICATION NO. 17232

HEARING DATE: NOVEMBER 16, 2004
ANC 1A

APPLICANT'S RESPONSE TO MOTION TO STRIKE FROM APPLICATION # 17232 CASE FILE THE CONFIDENTIAL SETTLEMENT PROPOSAL LETTER FILED BY JENNIFER BUDOFF AND ANY TESTIMONY FROM JENNIFER BUDOFF

This statement is submitted on behalf of RLA Revitalization Corporation (the "Applicant") in response to the motion filed by Kelsey Temple Church of God in Christ and the Temple Church Building & Economic Development Corporation (collectively referred to herein as "Parties in Opposition"), requesting that the Board of Zoning Adjustment (the "Board") strike from the record of this case a letter dated December 18, 2004 prepared by the Parties in Opposition (the "December 18th letter") and submitted by Ms. Jennifer Budoff during the public hearing on December 21, 2004, and also strike from the record Ms. Budoff's testimony concerning the December 18th letter. See Motion To Strike From Application # 17232 Case File The Confidential Settlement Proposal Letter Filed By jennifer Budoff and Any Testimony From Jennifer Budoff (the "Motion to Strike"). The Applicant responds to the Parties' in Opposition Motion to Strike as follows.

1) **Neither the Administrative Procedures Act ("APA") Nor the Zoning Regulations Prohibit the Admission of Relevant and Material Evidence and Testimony**

The Parties in Opposition contend that the December 18th letter should be stricken from the record since the Parties in Opposition allegedly delivered the

"confidential" letter solely for the purpose of attempting a resolution of this action. As an initial matter, the December 18th letter was not provided during the course of litigation, nor was it provided during any type of formal mediation process. The discussions that the December 18th letter relate to, and the provision of the letter, occurred in the context of a Board of Zoning Adjustment proceeding, which is not a "litigated" matter. Thus, the December 18th letter is not subject to the Federal Rules of Civil Procedure or the rules governing mediations. Moreover, the Parties in Opposition have not provided any evidence to support their claim that the letter is "confidential." Nothing in or on the letter indicates that it is intended to be confidential, and none of the information contained in the letter relates to private facts concerning the Parties in Opposition. Unilaterally placing a confidential stamp on the facsimile cover sheet transmitting the letter does not automatically render the letter confidential. Moreover, none of the recipients of the letter agreed to treat the letter as confidential. Thus, the Parties in Opposition repeated allegations that the letter is "confidential" are without merit.

The Parties in Opposition fail to cite any section of the APA or the Zoning Regulations that require the exclusion of information regarding settlement negotiations. The APA permits the admission of "any oral and any documentary evidence" and provides that "every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence." D.C. Code § 2-509(b). Moreover, the Zoning Regulations provides that the Board shall "receive relevant evidence." 11 DCMR § 3117.3(b). Although the APA calls for the exclusion

of "irrelevant, immaterial, and unduly repetitious evidence," and the Zoning Regulations provide that the Board shall "exclude unduly repetitious or irrelevant testimony," neither the December 18th letter nor Jennifer Budoff's testimony fit within any of these classifications since they are both material and relevant. Indeed, as discussed further below, the Board has recognized that this evidence is relevant.

A. <u>The Letter is Both Material and Relevant</u>

The Parties in Opposition state numerous times in their Motion to Strike that the purpose of submitting the letter was to prejudice the Board against the Parties in Opposition. The Applicant submitted the letter to establish that the Applicant has met with the Parties in Opposition in an effort to resolve any legitimate concerns raised by the Parties in Opposition and to show the Applicant's understanding of the Parties in Opposition demands. <u>See</u> Excerpt of Hearing Transcript, at page 129, attached hereto as <u>Exhibit A</u>. The Applicant also submitted the evidence to ensure that the Board has an accurate understanding of the Parties in Opposition view of what the issues are and how the Parties in Opposition propose to resolve these issues. Moreover, as discussed further below, the letter includes information regarding the Parties in Opposition view of the parking needs in the neighborhood.

The Parties in Opposition acknowledge the December 18th letter "examined case law" applicable to this application; however, they contradict themselves and surprisingly state the December 18th letter has "no probative value" and "makes no

statement relevant or material to the adjudication of this case." See Motion to Strike, at page 3. Although the December 18th letter makes a number of inappropriate demands that have absolutely no relation to the relief requested by the Applicant, the December 18th letter includes information that is both relevant and material in assessing the actual parking needs of the Parties in Opposition and others in the area. In the December 18th letter, the Parties in Opposition discuss a number of cases which the Parties in Opposition conclude support their position that the Applicant only "has about a 35% chance of winning a parking variance." See December 18th letter, at pages 2-6. Despite this slim chance of success, the Parties in Opposition "ask" for, among other things, "up to 350 parking spaces on the proposed parking lot, with an adjustment of 100 fewer parking spaces during the holiday period from Thanksgiving to the following December 30 of each year" in order for the Parties in Opposition to withdraw their objection. See Id. at page 7. The Parties in Opposition also "suggest" that the Applicant provide, among other things, a total of approximately 88 parking spaces to businesses and organizations in the area. See Id. at pages 7-8.

The Applicant believes the Parties' in Opposition arguments are flawed and that their demands are unreasonable. Nonetheless, the Parties' in Opposition arguments concerning the merits of the application, and the number of parking spaces needed are directly relevant to the requested parking variance. Furthermore, unreasonable economic requests by a party in opposition are not *per se* inadmissible as they shed light on the motives of the opposition. Indeed, as

shown in the following exchange between Chairman Griffis and Mr. Ruffin, counsel for the Parties in Opposition, the Board even recognized that the evidence is relevant:

> "CHAIRPERSON GRIFFIS: Right, but, Mr. Ruffin, aren't you going to bring up in your case presentation the fact that you don't have your client -- representation doesn't have the availability of parking on this site anymore?
>
> MR. RUFFIN: Exactly. In other words --
>
> CHAIRPERSON GRIFFIS: Okay. So there's some relevance --
>
> MR. RUFFIN: -- if we had the --
>
> CHAIRPERSON GRIFFIS: There's some relevance here for us to understand then. They're presenting their case first, and they're saying whatever the reality is in their case presentation of what this will be used for, and I think we are going into some of the difficulties of having programmed parking or not programmed parking.
>
> * * * *

See Exhibit A at page 132.

B. Jennifer Budoff's Testimony Was Material and Relevant, But It Was Not Repetitive

The Parties in Opposition state that:

> "In fact, after the Board chairperson questioned the relevance of the letter, Ms. Budoff continued to testify about the contents of the letter."; and
>
> "Moreover, when Ms. Budoff repeated again and again what the confidential settlement letter stated, her testimonial remarks became unnecessarily redundant."

See Motion to Strike, at pages 3-4.

A copy of the hearing transcript showing Ms. Budoff's direct testimony during the December 21st hearing is attached hereto as Exhibit A. As the transcript

indicates, the Parties' in Opposition allegations listed above are false. As shown on the transcript, the majority of Ms. Budoff's testimony focused on a description of the project and a discussion of the ownership and potential operation of the parking garage. See Exhibit A, at pages 119-126 and 133-154. When Ms Budoff began to testify about NCRC's meeting with the Parties in Opposition, counsel for the Parties in Opposition raised a number of objections, but Chairman Griffis stated the Board has "no jurisdiction over" settlement negotiations and thus permitted Ms. Budoff to continue with her line of testimony. See Id. at pages 127-128. However, when Ms. Budoff began to discuss the Parties' in Opposition demands and the Applicant's attempt to address them, counsel for the Parties in Opposition interrupted Ms. Budoff and objected again. See Id. at pages 129-130. In fact, out of 36 pages of testimony, there are only 14 lines about the contents of the December 18th letter. See Id. at pages 128-129. Thus, contrary to the Parties' in Opposition statements above, a review of the transcript clearly demonstrates that Ms. Budoff never "repeated again and again what the confidential settlement letter stated," and the Parties in Opposition allegations to the contrary are simply inaccurate.

Moreover, when the Chair questioned the relevance of Ms. Budoff's testimony, the Chair implicitly accepted Ms. Budoff's explanation that the evidence was relevant to show that the Applicant met with the Parties in Opposition and that the Applicant attempted to resolve the issues the Parties in Opposition have with the application. See Id. at page 129. Indeed, as demonstrated in the except of

the dialogue above, the Chair recognized that Ms. Budoff's testimony was relevant since parking is a major issue in this case.

Therefore, based upon the Applicant's arguments set forth above, the Applicants respectfully request that the Board deny the Parties' in Opposition Motion to Strike.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Kyrus L. Freeman*

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

*Admitted only in Pennsylvania; supervision by principals of the firm who are members of the D.C. Bar

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A

MS. BUDOFF: Good afternoon, members of the Board. I am Jennifer Budoff, a development manager at the National Capital Revitalization Corporation and its subsidiary, the RLA Revitalization Corporation.

I am here today to testify in strong support of the application for a special exception from the roof requirements and a variance from the parking requirements for the DC USA retail project. This relief is necessary for the construction of the project in Columbia Heights, which will be a major retail facility and anchored by the first Target store to be located in the District.

The project will create 700 construction jobs, 1,500 permanent jobs, and over $10 million per year in new tax revenue.

Both NCRC and RLARC are intimately involved in this project. RLARC owns the subject property and has a land disposition agreement with the developer to build a shopping center on the site.

NCRC will own and operate the attached underground public parking garage, and if I may divert from my testimony for a second, because, you

know, NCRC is a public private corporation, but we operate with government funds in large part, so the parking garage will be public and will be open to the public. It is being built for the benefit of the retail center, but we cannot exclude anyone from parking in the parking garage, and we cannot dedicate any parking spaces in the parking garage for a certain person or party, and I just want to make that clear.

RLARC --

MR. ETHERLY: Ms. Budoff, if I could interrupt for a quick moment.

MS. BUDOFF: Sure.

MR. ETHERLY: That's an excellent point to make. In your opinion, does that also impact what NCRC would be able to do in terms of requirements around how the parking is utilized or would it be your contention that you would just be very limited in what you can do?

MS. BUDOFF: Well, I think, you know, we all agree that it's being built for the benefit of the retail facility. So what we would like to do, you know, in conjunction with the developer and a third party parking operator, someone who is an

expert at this, is price the parking or perhaps do a validation program that will encourage shoppers to park at the facility and nonshoppers to park elsewhere.

However, we cannot tell anyone or we cannot prohibit anyone from parking.

MR. ETHERLY: So technically you would not be able to require employees of any of the resident businesses; you would not be able to prohibit them from parking in terms of your own policies, but conceivably --

MS. BUDOFF: Nor could we say you as the manager of Target get to park in Space A.

MR. ETHERLY: Okay.

CHAIRPERSON GRIFFIS: Nor could you say a commuter from Maryland coming in to take the Metro could not park there.

MS. BUDOFF: Correct. However, we are going to price --

CHAIRPERSON GRIFFIS: So what we're looking at is a public parking garage, and granted it's below grade. You know, out in the "burb" it's above grade. Down here we're building a public parking garage, publicly financed. It just happens

that a lot of retail is going on top of it.

MS. BUDOFF: Well, it wouldn't be built if there wasn't, you know, 465, 485,000 square feet of retail being built above it. We would not spend that kind of money on an underground parking garage.

MR. ETHERLY: But in terms of setting your pricing, you will take into account what other options might be available in the immediate vicinity such that the structure will be appropriately set to discourage those parking renegades out there who are going to look for a deal.

MS. BUDOFF: Right.

MR. ETHERLY: Because, you know, if you build it --

MS. BUDOFF: Sure.

MR. ETHERLY: -- they will come.

MS. BUDOFF: Sure, sure, sure, and something that we're also very committed to doing is, you know, once the center is up and operating, we really do want to work with other groups within the community to come up with a way to allow them to park at, you know, the non-peak periods. Like, for example, on Sunday mornings, there are a lot of churches in the area. You know, hopefully we can

some up with a way for churchgoers to be able to park in the parking garage when the stores aren't open, you know. It only makes sense.

But you know, we just all have to remember that it is being built for the benefit of the retail center and not for, you know, other needs, other parking needs.

MR. HOOD: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

MR. HOOD: Let me just ask Ms. Budoff this.

You mentioned on Sundays stores don't open. They usually open around 11, don't they?

MS. BUDOFF: I would think so. I don't know what time Target opens up on Sundays, but normal -- I think regular stores open up at noon, if I'm not mistaken.

MR. HOOD: On Sunday.

MS. BUDOFF: Yeah.

MR. HOOD: Well, most churches probably don't let out until one or two on Sunday. So we really want to watch that and manage that.

But my concern is and your comment is we mentioned about out pricing of the commuter, which

my colleague was speaking of. Give me an example. I'm not understanding that. I'm not understanding what out pricing the commuter. How do we out price the commuter?

MS. BUDOFF: Well, you know, we will partner with a third party, you know, a parking operator, but you know, it will -- my understanding right now, and you know, we're sort of at the stage where I don't exactly know what the pricing is going to be, but it will be priced at a certain level, like X dollars for the first hour, for the first two hours X amount above that. But you know, you're not going to shop at Target for nine hours. So --

MR. HOOD: For example, like the first two hours if you get it from a retailer, you get a little sticker and it's free or something of that nature, is that where you're going?

MS. BUDOFF: Well, we don't know if we're going to do validation or if it's just going to be priced in a certain way, but, yes, it will be that way, too. Okay.

MR. HOOD: I'm just hoping that what we don't do is out price the local people that want to come and utilize it, who are going to live two

blocks away and are going to have to drive to the facility because they have nine bags to take home.

So I'm just hoping that we --

MS. BUDOFF: Oh, no. The object is not to out price anyone. The object is for this to be a reasonably cost, reasonably priced was to pay.

MR. HOOD: Okay. Thank you.

Thank you, Mr. Chair.

MS. BUDOFF: RLARC, the city, and the developer worked together to reconfigure the project to include a two level, 1,000 space underground parking garage. As we've discussed before, this reduction was necessary because this is the largest garage that is financially feasible, given the availability of public and private financing and the lack of funding for the garage in the project.

As a result, a two level garage was designed, which we are confident can be financed and constructed and will allow the project to move forward.

The revised project, which NCRC, RLARC, the Office of Planning, the District Department of Transportation, and other District agencies involved in the discussions have found as feasible and can be

supported by the 1,000 space parking garage is a project which deserves your support.

The granting of the parking variance furthers the District's interest and is not detrimental to the public good or zone plan.

As you know, the Healthy Temple Church and its subordinate corporation, the Kelsey Church Building and Economic Development Corporation, has filed as an interested party to this BZA application. The Kelsey Temple currently has a month-to-month lease with RLARC to operate a parking lot at 1420 Park Road on the site where DC USA will be located.

The land was leased to them to be used for the benefit of their congregants, but is also used as a fee parking lot when there are not church activities.

NCRC met with the Kelsey Temple, represented by the gentleman on my right, our attorney, Thomas Ruffin, on December 14th, 2004, to discuss how NCRC can work with the temple to resolve their issues.

We understood that Temple's concerns relate to the impact of the project in the

community.

MR. RUFFIN: Objection. Just a second.

MS. BUDOFF: Oh.

MR. RUFFIN: If I may --

CHAIRPERSON GRIFFIS: What's your objection?

MR. RUFFIN: -- the witness is referring to negotiations to settle. That's not appropriate. I object. They were all confidential discussions.

CHAIRPERSON GRIFFIS: They're confidential discussions?

MR. RUFFIN: I don't know where the witness is going with this.

CHAIRPERSON GRIFFIS: So I had three objections in there. One objection is a reminder that they're confidential and shouldn't be saying them in public, which I have no jurisdiction over.

The second is that there's no bearing on this case? Am I understanding your objection?

MR. RUFFIN: The idea of the discussions were to try to resolve it. So each side was exchanging information. I didn't go to the meeting in order to draw out information that would bear -- that could be used for their testimony today, and so

--

CHAIRPERSON GRIFFIS: I'm in no position to --

MR. RUFFIN: Yeah, I was the only one present. I'm not a witness for my clients.

CHAIRPERSON GRIFFIS: Okay. Do you want to continue with that line of testimony then?

MS. BUDOFF: Yes, I would.

CHAIRPERSON GRIFFIS: Okay.

MS. BUDOFF: I would.

We requested that the temple provide their concerns to us in writing so that we could better address them.

On December 18th, we received a letter from the Kelsey Temple listing certain demands that must be met in order for them to lift their opposition to the DC USA project. Although Attorney Ruffin has not established that he is the authority to make demands on behalf of any parties other than Kelsey Temple and the Economic Development Corporation, he has demanded close to $4 million in payments, plus 438 dedicated parking spaces in the underground parking garage for the temple and surrounding businesses, and he --

MR. RUFFIN: I object. I object.

CHAIRPERSON GRIFFIS: What's your objection?

MR. RUFFIN: The negotiations and the demands or the negotiations from the other side by a lawyer are not at all bearing on the issues today, and it sounds like it's just designed to prejudice the Board against my clients.

CHAIRPERSON GRIFFIS: Okay. Good. What feasible need do we have in knowing this?

MS. BUDOFF: The feasible need is we got together with the Kelsey Temple. We wanted to resolve the issues that they have with the application. They --

CHAIRPERSON GRIFFIS: And did you?

MS. BUDOFF: We offered them a short-term solution to park at the other end of Parcel 27. We're putting a 100 space parking garage down there for Unity Health Care. It will be a short-term solution. We unfortunately do not have any long-term solutions.

They submitted this letter to us stating that they would lift their objections to the case if we provided them --

MR. RUFFIN: I object. I have never even heard this offer.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: And it's just like I've got to testify to restore or make my own credibility. I'm representing my clients. I never even heard this offer.

CHAIRPERSON GRIFFIS: Good, and I think --

MR. RUFFIN: And this just goes to show it just sounds like they're trying to prejudice my representation of my clients and also my clients. I find this offensive. I thought we were going to evidence that's laid out under the statute, that's material to the statute.

MS. BUDOFF: I did introduce a copy of the letter into the record with my testimony.

CHAIRPERSON GRIFFIS: Did you provide it to the party in opposition?

MS. BUDOFF: Well, it came from Mr. Ruffin.

CHAIRPERSON GRIFFIS: I know, but you just submitted this in as evidence in this case. He needs to be copied on that.

Do you have an additional copy of what you

just submitted in?

MS. BUDOFF: Sure.

MR. RUFFIN: Pardon me. If the witness is saying that she actually entered into the record my negotiation letter, I ask that it be stricken from the record. That was --

CHAIRPERSON GRIFFIS: On what basis?

MR. RUFFIN: It was a confidential letter, and it's only offered in the record to prejudice the Board against my clients, and actually it's rather odd since the National Capital Revitalization Corporation invited me to talk about settling.

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: And we can go back and forth about the settlement negotiations that went on for more than two hours, and that doesn't --

CHAIRPERSON GRIFFIS: And one thing I don't want to do --

MR. RUFFIN: -- deal with this.

CHAIRPERSON GRIFFIS: -- is be the mediator of any sort of settlement that's going on.

MR. RUFFIN: Exactly. It sounds solely like it's designed to prejudice you against my clients.

CHAIRPERSON GRIFFIS: Right, but, Mr. Ruffin, aren't you going to bring up in your case presentation the fact that you don't have your client -- representation doesn't have the availability of parking on this site anymore?

MR. RUFFIN: Exactly. In other words --

CHAIRPERSON GRIFFIS: Okay. So there's some relevance --

MR. RUFFIN: -- if we had the --

CHAIRPERSON GRIFFIS: There's some relevance here for us to understand then. They're presenting their case first, and they're saying whatever the reality is in their case presentation of what this will be used for, and I think we were going into some of the difficulties of having programmed parking or not programmed parking.

Let me lay it out here very directly. Just like I did to them on all their witnesses, I want straight answers. Tell me exactly what you really mean, and then let's move on.

One thing we're not going to do is be a mediator here in any of these issues, and if we're not getting answers, we're going to move on because they're probably not there.

So the point being let's stick to it as you continue in your testimony. Lay it down in terms of what you need to tell us in the reality of you building this parking and in the concerns, one, in the opposition that's coming up and to the other concerns that the Board has actually brought up: the impact to the surrounding area, what you've seen. Can this actually park all of those that are going to utilize on this site?

You brought up a great point that this is a public parking facility. So not only is it accommodating this, but conceivably anything else around the area, and on a temporary basis. Let's go with that.

And you brought up the fact that there are numerous churches in the area.

MS. BUDOFF: Yes.

CHAIRPERSON GRIFFIS: So how are you going to accommodate that or what is your assessment of how that's going to be dealt with?

And let's move off of this.

MS. BUDOFF: Okay. So I guess in terms of the congestion in the area, I think a better person to address that would be the traffic consultants.

CHAIRPERSON GRIFFIS: No, I understand that. I mean, you were talking about more programming.

MS. BUDOFF: Sure.

CHAIRPERSON GRIFFIS: And that's how you got onto churches, churches in the area.

MS. BUDOFF: Right.

CHAIRPERSON GRIFFIS: That's how we got onto your negotiations. So when you're looking at this, you're looking at -- you're essentially building this thing. You're making some of the decisions of whether you're going ten decks or two decks and all of that.

What are the factors that are accommodating? You have surrounding churches that have utilized this before. How are you anticipating dealing with that?

MS. BUDOFF: The one church that did use the parking was the Kelsey Temple. They lease 40,000 square feet, which accommodate -- it's about 100 parking spaces.

Unfortunately, the reality of Columbia Heights is that it's pretty parked up, and we went back and we talked with our asset management staff

to try and figure out if we have any other sites available within the area that can accommodate the temple, other people, and there just isn't. All of the land that we have in Columbia Heights is either being constructed on right now or we'll be breaking ground within the next few months.

So if you look around the DC USA site, you know, the two parcels that are adjacent to the Metro, what we call Parcel 15 and 26, they're going to be breaking ground within a couple of months. So that wasn't an option.

There is a triangular piece of land that's right across from DC USA. We've giving that piece of land back to the city to be developed into a park.

CHAIRPERSON GRIFFIS: An interesting point, you know, as you're looking at it, and all of these RLA sites and NCRC sites are being developed. You talk about there isn't the need for the additional deck and now you say that, well, actually we can't accommodate these parking demands anywhere else.

MS. BUDOFF: Each project has parking in it.

CHAIRPERSON GRIFFIS: I understand that. We're assuming there are.

MS. BUDOFF: Right.

CHAIRPERSON GRIFFIS: And actually we've seen most of them come across this board.

MS. BUDOFF: Sure.

CHAIRPERSON GRIFFIS: So we assume that they park, their requirement, right?

MS. BUDOFF: Yes.

CHAIRPERSON GRIFFIS: Okay. So whether it's more retail, whether it's residential, whether commercial, office, their parking requirement or they have come before us and gotten relief if needed.

But what I'm hearing you say, the application came in saying, you know, not only is it expensive to build a third deck, but we don't even need it. But you've just taken us down a road saying, "But we can't find anywhere else to park this church that's right across where it's at least 100 spaces from us."

MS. BUDOFF: Sure. I think that the argument -- and perhaps Mr. Glasgow can jump in if I'm mistaken -- is that the argument is for the

parking for the retail center, and this is being constructed for the retail center.

CHAIRPERSON GRIFFIS: No, but you told us it's a public parking.

MS. BUDOFF: It is a public parking facility that is being built specifically for the benefit of the retail center. We cannot prohibit anyone from parking there, but it is being built because of the 485,000 square feet that's going on top.

MR. GLASGOW: Mr. Chairman, legally they have a lot of flexibility with respect to how they can do pricing as is done in other venues like at airports and other things to encourage a certain type of behavior with respect to parking demands and issues.

You price the parking high enough for a long enough period of time, people won't use it for all day commuter parking.

CHAIRPERSON GRIFFIS: Well, where does that get us?

MR. GLASGOW: Well, what it does is it assures the Board that if someone has to park, and we'll use an example who wants to be a commuter and

who wants to park there, and I think that --

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: -- everybody wants to discourage the commuter. You park there eight hours and you pay $100 a day.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: People are not going to do that.

CHAIRPERSON GRIFFIS: So for the Board's question, and Mr. Hood kept asking it, so for the first hour it may be 50 cents. The second hour may be a dollar, but above five hours it's going to be $1,000. Obviously you're going to park for one or two hours. Okay. I understand that.

But I'm still back on the bigger issue, and maybe it's just me confused because I'm simple of mind, but here we have this whole application that's coming in saying, "We only need two decks. It's expensive, and we don't need any of the additional parking."

MR. GLASGOW: For this project, Mr. Chairman. That's what this case is about.

CHAIRPERSON GRIFFIS: I know for this project, but now we've just been told that this is

actually a public parking facility, and we have huge demands or a demand around the area.

How do we balance that? How do we balance it? We have a public parking facility. Yeah, interestingly enough, there's, you know, 550,000 square feet of retail going on top of it.

Mr. Slade is going to answer all of our questions.

MR. SLADE: By the way, I am a civil engineer.

CHAIRPERSON GRIFFIS: I know.

MR. SLADE: But I specialize in traffic.

CHAIRPERSON GRIFFIS: I was waiting for you to pick up on that. Go ahead.

MR. SLADE: I was rethinking about becoming a groundwater engineer because that got too arcane in the arguments.

We're often working in the District of Columbia for uses like the church here, looking for places for them to park. For example, good old 4500 Wisconsin Avenue. Right next door is the Iona Senior Services facility.

CHAIRPERSON GRIFFIS: Yeah.

MR. SLADE: They have the right to park or

I don't know if they still do, but they had the right to park when the prior tenant was in the Sears store because their parking demands didn't conflict with these peak days of the shopping center.

CHAIRPERSON GRIFFIS: Right. So you've got a twin parking situation.

MR. SLADE: Exactly, exactly.

CHAIRPERSON GRIFFIS: So those are two different times, the same space.

MR. SLADE: Yes.

CHAIRPERSON GRIFFIS: So what?

MR. SLADE: I just think there's an opportunity here that's being --

CHAIRPERSON GRIFFIS: Me, too.

MR. SLADE: -- sought by the parties at the table.

CHAIRPERSON GRIFFIS: I'm waiting to be told. Look. You want me to create it? I think the five of us will go in the back room and we'll come out with the answer. We're not to write it.

So tell me. What is that? Is that what's being proposed? Are you actually proposing on Sundays to program this that you're going to have

the capability of parking surrounding uses and it won't be used for retail or is there going to be some, you know, red rope that gets people in? You have to show some ID. Look. I'm a church member. Let me in.

What? What is it?

MS. BUDOFF: No, I think that your first scenario was the accurate one.

CHAIRPERSON GRIFFIS: Oh, God, I can't remember it. What is it? What are you proposing?

MS. BUDOFF: That we will work with the community. We cannot limit it to Church A over Church B, Use C over Use D, but we will work with the community to find ways for them to park during the non-peak periods, and that is something that we have said at community meeting.

One of the partners of the developer is --

CHAIRPERSON GRIFFIS: Okay. If that's where you are, look. That's where you are. It doesn't tell me a lot. I mean, I don't know. What's the hardest thing we hear up here? Parking. How many hundreds of times have we gone through every single scenario?

This isn't new to us. All we're asking

for is just the straightforward. If the answer is we're going to work on making sure it works for everybody, that's great, but that doesn't do much for us or it doesn't do much for me.

MR. ETHERLY: No. I jean, I think you're hitting a good question, Mr. Chair, but I think there's -- you know, I've been playing devil's advocate on one side. Let me step into the other shoes.

I think there's a balancing that's a part of the argument of the applicant here in that there's part of this which won't get worked out until we really finalize that tenant mix and sit down and talk with those tenants about how to best structure this.

I think one of the things that was helpful as part of Ms. Budoff's testimony, but it actually was raised by counsel, was perhaps using the airport example just in terms of giving us a sense for what something could look like.

Take National Airport, for example. You have a facility that's immediately adjacent, how a metro stop on the facility, not too far from the District of Columbia. So it would make very good

sense perhaps if I'm a commuter looking for some low cost pricing to potentially use National Airport property as a place to park my car and then just get on the Metro stop.

How does, for example, based on your experience, Mr. Glasgow perhaps, how does that kind of thing get addressed in that kind of situation?

MR. GLASGOW: Well, if you want to use one of the daily lots, the daily lots are approximately I think it's about 30 dollars a day.

MR. ETHERLY: And that's priced at a higher point than, say, -- first of all, you have a daily lot and then you have what is referred to as --

MR. GLASGOW: You have satellite lots.

MR. ETHERLY: Which would be for perhaps long term parking.

MR. GLASGOW: That's correct.

MR. ETHERLY: Okay, and then do you have another category like an hourly lot?

MR. GLASGOW: Oh, yes. The hourly lot is very expensive. It's either seven or $10 an hour.

MR. ETHERLY: Okay, and those different levels are meant to insure that the appropriate

category of parker goes to the appropriate spot.

MR. GLASGOW: That's right. We can't stop someone that wants to park all day in the hourly lot from doing it. But if they want to pay 80, $90 a day, you know, we will not reject their money.

MR. ETHERLY: Got you. And part of the testimony that was coming from Ms. Budoff is you're in between a rock and a hard place to an extent in that as a public entity, you can't constrain this parking in an arbitrary type of way.

There is, however, some flexibility on the part of NCRC as the owner and operator, so to speak, of the garage to work out some type of structure that may be similar to that, although we're only talking about 1,000 spaces. So you're not going to have satellite parking per se.

But you do have the flexibility within the context of this being a public lot to do certain things to help address the concern about insuring that those spots continue to turn over on a frequent enough basis to accommodate the retail business, first, and then based on the experience that you have perhaps after you're up and operating or base on any assumptions that you might make, as you look

at other projects, you might decide that during certain swing periods you might have flexibility to do some things to help assist in other needs throughout the community.

MS. BUDOFF: That's exactly correct.

MR. ETHERLY: Okay. I'm done for the moment.

MS. MILLER: Ms. Budoff, I want to be sure I have my facts right.

MS. BUDOFF: Sure.

MS. MILLER: And they may differ. You may have a different opinion than Mr. Ruffin, but how many spaces was the church using that would be displaced by this project?

MS. BUDOFF: Well, they had a lease for about 100 parking spaces, and when the congregation wasn't using it, they did charge people. They do charge people to park in that lot.

MS. MILLER: Okay. This is part of my confusion, which I think some of the other Board members seem to share.

When we heard about the need of parking, it sound like except for seasonal times there's way more supply than demand, and so separating the

seasons time, is it your opinion that there aren't going to be 100 spaces available for the church group just without designating any spaces for them?

MS. BUDOFF: Sure. Let me say a few things for that.

I think that the parking garage, you know, has to be operational for a certain period of time in order for us to be able to make that determination, you know, whether there are 50 extra spaces or 500 extra spaces. You know, we're not going to know until it's up and operating for a little bit of time.

MS. MILLER: We hear that, but on the other hand, we're also given this number that, oh, 1,000 is a solid number based on whatever kind of calculations you're doing. I know you don't know for sure till it has been operational for a while, but on the other hand, you're coming to us and saying, "This is a good number."

And you know, we anticipate based on some good reasons that we're going to have an excess during normal times.

MS. BUDOFF: Sure. I mean, it's base on the time of the day, and it's based on the time of

year.

MS. MILLER: Based on the time of the day you think there won't be an excess of spaces?

MR. GLASGOW: I think Mr. Slade can address that.

MR. SLADE: This is all intuitive to all of you. So I won't say anything here that's earthshaking.

The shopping patterns that ULI has observed in detail in the suburbs do really apply here, too. It's just that the amount of parking is different, and so Sunday mornings, for example, most shopping centers do have abundant vacant parking. Most week days shopping centers typically have at least 25 percent of their parking spaces available.

It's an industry standard to lease 25 percent of the spaces to nearby office tenants where they need parking or to build office and supply it with the available weekday parking at the shopping centers.

So there's plenty of times when that can be done, and often there are agreements made where, yes, you have our parking every Sunday morning, except the following six Sundays when we know we're

going to need it, and the church will have to find some alternative on those six Sundays, and those six Sundays are, you know, the shopping Sundays of the year, which typically there aren't that many shopping Sundays of the year.

MS. MILLER: Okay.

CHAIRPERSON GRIFFIS: Have you gotten down to that refinement of program?

MS. BUDOFF: No. No, we have not.

CHAIRPERSON GRIFFIS: And do you have hours of operation for this new public parking structure?

MS. BUDOFF: No, we do not. I mean -- oh, it does have to be -- yeah, because of the gym, right? Yeah, it will be 24 hours. I'm sorry.

CHAIRPERSON GRIFFIS: The whole thing is going to be 24 hours, seven days?

MS. BUDOFF: Yes, and if I can just answer the second part of your question, Ms. Miller, is about having, you know, 100 extra spaces for the church. Two things with that.

One is that we can't favor one community group over a different community group, and you know, so it's very difficult for us to say you can

use these spaces and somebody else can't.

And then the second thing is because, you know, this is going to be funded with TIF, and it is, you know, government money. We are going to have certain restrictions on church and state issues. So we won't be able to charge any sort of below market rates to a religious entity. That's, you know, another restriction.

MS. MILLER: Okay. I understand that. I really do. So --

CHAIRPERSON GRIFFIS: You do?

MS. MILLER: Yeah.

CHAIRPERSON GRIFFIS: All right. Tell me about it.

MS. MILLER: Okay. I mean, I don't know what you're charging now, but --

MS. BUDOFF: We don't -- oh, you mean for the --

MS. MILLER: I don't know what they're paying now. So I --

MS. BUDOFF: -- the lease.

MS. MILLER: For the lease. I don't know, but I understand you can't designate spaces in the new garage whereas now they have designated spaces.

My question was primarily aren't there going to be many spaces available on Sunday mornings or whatever, which it sounds like that's not a big shopping time. So there will be spaces available.

MS. BUDOFF: And we have every intention to work with the community to -- to come up with a way for them to be able to park.

MS. MILLER: Okay, and another question I have just based on your earlier testimony --

MS. BUDOFF: Sure.

MS. MILLER: -- I understand you cannot preclude people from parking in the spaces.

MS. BUDOFF: Right.

MS. MILLER: But can the tenants preclude their own employees if they wanted to? They're not precluded by your being precluded, are they?

MR. GREENWALD: As I explained earlier, the tenants can be precluded from other employees through the parking rules that all of the tenants would be subject to. I had mentioned that earlier.

MS. MILLER: I know, but Ms. Budoff said she can't preclude.

MR. GREENWALD: She can't, but we can in relationship to our leases with tenants.

MS. MILLER: Okay. That's what I thought. Thank you.

CHAIRPERSON GRIFFIS: Mr. Etherly.

MR. ETHERLY: Thank you, Mr. Chair.

Let me take a step back because I think what was going to be helpful with respect to the NCRC testimony is perhaps filling in a little bit of the picture around what the overall objectives were with respect to this parcel and how you feel or how NCRC feels that this project gets us there, keeping in mind that, you know, we're at about quarter to four because that could be a long dissertation.

But if you could, Ms. Budoff, could you just speak a little bit to, as you look at this property we're looking at one substantial anchor and perhaps even two, if you look at Bed & Bath as another anchor. What was NCRC's thinking around how you wanted to develop this piece?

And I think part of this speaks a little bit to that public good component of the variance test that we're talking about. It's not an explicit part of it, but I think it's helpful to get a sense from the NCRC's standpoint what you kind of envision for this parcel and how this particular application

helps you address that vision.

MS. BUDOFF: Sure. The RFP for this project was actually put out by the old RLA when it was still a part of the city, and it was put out maybe four or five years ago. But the point or the hope for this project was to build something that would be a community entity, a neighborhood entertainment center, a place where people can come, can congregate.

In addition, you know, I think a city-wide goal, and Mr. Jasso will further talk about this, but you know, the city really wants places for people to be able to shop, you know. We spend, those of us who live in the District, we spend a lot of our tax dollars out of the District. The District needs to find a way to recapture those tax dollars, building a Target, building a major shopping center in the middle of the city -- Ward 1 is in the middle of the city -- will be a fantastic way to recapture a lot of that tax revenue.

I testified that the city believes that it will be able to generate over $10 million a year in new tax revenue, and so public good.

MR. ETHERLY: So in one sense you wanted

to create a retain destination, but, two, you wanted to create a destination that also was going to be pedestrian friendly, as we've heard.

MS. BUDOFF: Sure.

MR. ETHERLY: And you feel that the application as it currently as put forward helps to satisfy or reach those objectives.

MS. BUDOFF: Correct.

MR. ETHERLY: Thank you.

Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you.

Anything else?

MR. MANN: I have.

CHAIRPERSON GRIFFIS: Mr. Mann.

MR. MANN: I have one very, very basic question.

MS. BUDOFF: Sure.

MR. MANN: The amount of parking that's proposed is limited only by the amount of money that's available to build that parking; is that correct?

MS. BUDOFF: Yes, but it's also limited by the reasons that were explained before with the water table and the Metro tunnels.

MR. MANN: Yes, but if money were not an object, then those are engineering considerations that money could buy a solution to.

MS. BUDOFF: If we had all the money in the world, then we could build whatever we wanted.

MR. MANN: Okay. The amount of money that's available to build this parking lot --

CHAIRPERSON GRIFFIS: Let's conjure that thought for a moment. I kind of like that.

Okay.

MS. BUDOFF: If we wanted to open up the District's general fund.

MR. MANN: But the amount of money that's being made available to build this certain number of parking spaces was determined by an action of the city, the City Council; is that correct?

MS. BUDOFF: Oh, yes.

MR. MANN: Okay, and so is that dollar amount that drove the number of parking spaces?

MS. BUDOFF: Yes.

MS. MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Okay. Any other question of the Board?

(No response.)

CHAIRPERSON GRIFFIS: Anything else, Mr. Glasgow?

MR. GLASGOW: I believe Mr. Jasso is going to be testifying.

CHAIRPERSON GRIFFIS: Right. Mr. Jasso, if you will come to our -- what I would like to od is call you up with government agencies. Mr. Glasgow, is that appropriate for you rather than calling him as your witness?

MR. GLASGOW: Yes, sir.

CHAIRPERSON GRIFFIS: We're going to do that, and actually we're going to get to that possibly today.

But at this time then, if there's nothing further, Mr. Glasgow?

MR. GLASGOW: We're completed.

CHAIRPERSON GRIFFIS: Okay. Excellent, and we appreciate that. I think that was a well utilization of your time. We probably didn't utilize ours best.

Mr. Ruffin, we're going to give you five minutes to get organized and we're going to go right into cross. Yes? Is that enough time, too much time? Absolutely appropriate?