GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 13, 2000

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

KWASI HOLMAN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress	Director
Sheri Pruitt	Secretary, BZA
Beverly Bailey	Zoning Specialist
Paul Hart	Zoning Specialist
John Nyarku	Zoning Specialist

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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

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APPEAL OF FAIRVIEW HEIGHTS NEIGHBORHOOD ASSOCIATION CASE NO 16604 ANC-3C

WITNESSES:

RICHARD BOOTE 31
THOMAS MANN 37
KIRK WHITE 40
THOMAS HOSKEY 45

VENITA RAY 71
TOYA BELLO 72

SATWANT BELL 95
SHAMSER SINGH 99

RUTHANNEE MILLER 110

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PRELIMINARY MATTERS 138

APPLICATION OF THE GEORGE WASHINGTON UNIVERSITY
CASE NO. 16553 ANC-2A

MAUREEN DWYER, ESQ 142
Shaw, Pittman, Potts and Trowbridge
2300 N Street, N.W.
Washington, D.C.
(202) 663-8000

WITNESSES

CHARLES BARBER 142
CHARLOTTE COSMELA 185
LOU SLADE 196

DOROTHY MILLER 291
BARBARA SPILLINGER 311
STEVEN MANDELBAUM 327
RICHARD SHEEHEY 345

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

(9:40 a.m.)

CHAIRPERSON REID: Good morning. The meeting will please come to order. Ladies and gentlemen, this is the September 13th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert N. Sockwell; Ann Renshaw, who will be coming out in just a moment; Rodney Moulden, representing the National Capital Planning Commission; and representing the Zoning Commission is Quasi Hohman.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. On coming forward to speak to the Board, please give both cards to the Reporter, who is sitting to my right.

Order of procedure for appeal cases, those cases on appeal, is: 1) statement of witnesses of the appellant; 2) the Zoning Administrator or other government official; 3) the owner, lessee, or operator of the property involved, if not the appellant; the ANC within which the property is located; the intervenor's case; and, finally, rebuttal and the closing remarks by the appellant.

Order of procedure for a special exception in variance cases is: 1) statement of witnesses of the applicant; 2) government reports, including Office of Planning, Department of Public Works, etcetera; 3) report of the ANC; 4) parties or persons in support; 5) parties or persons in opposition; and 6) closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board, and staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation.

Please turn off all beepers and cell phones at this time, so as not to disrupt these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case really should be heard today, such as request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with the case

today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters?

MS. BAILEY: Madam Chair, staff does have two preliminary matters concerning the first case, and it's application 16604, appeal of the Fairview Heights Neighborhood Association.

Are you the representative, sir, of the first case?

MR. BOOTE: Yes, my name is --

MS. BAILEY: -- the Fairview Heights Neighborhood Association?

MR. BOOTE: That's correct. My name is Richard Boote.

MS. BAILEY: Madam Chair, the files contain very little information about the Fairview Heights Association. The files do not contain any information about the organization; specifically, how the issues which are before the Board aggrieve the members of the organization. That's the first issue.

The second issue is Mr. Brian Vogel signed the appeal on behalf of the Fairview Heights Neighborhood Association. The files do not have any documentation that Mr. Vogel has the authorization of the other members of the association to represent them, and these two issues need to be clarified, Madam Chair, prior to proceeding.

CHAIRPERSON REID: Okay.

MR. BOOTE: I can clarify that by stating that the other two directors of the association are here as well, Tom Mann and myself, and we, under the rules of the organization, have -- Brian Vogel had authority to file the appeal, and we jointly affirm that authority. Tom Mann is here to speak as well, if that's necessary. He's the other director.

CHAIRPERSON REID: Ms. Bailey, is this what you're referring to as being the verification? That would be sufficient?

MS. BAILEY: Written verification was not in the file, Madam Chair, and that's something at the Board's discretion -- if you choose to have something submitted in writing from the members of the organization giving Mr. Vogel the authority to represent them.

CHAIRPERSON REID: We have no problem with that, if you could just, subsequent to this particular hearing today, make sure that there's something submitted to the record to so designate you to represent them in writing.

MR. BOOTE: We will do that right after the hearing.

CHAIRPERSON REID: Thank you.

Okay. And what was the other?

MS. BAILEY: I think corporation counsel has a preliminary matter.

MR. BERGSTEIN: No, I don't, actually.

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: Oh, that corporation counsel. I'm sorry.

(Laughter.)

Ms. Ray, I apologize.

MS. RAY: Good morning, Madam Chair, and members of the Board. My name is Venita Ray. I'm here on behalf of the Zoning Administrator from the Office of the Corporation Counsel, and have one matter.

I would like, I guess, to request at this point that this appeal is predicated, I guess, on a stop work order or the revocation or withdrawal of a stop work order, to which we don't have a copy of. This appeal is of a decision that was issued -- I mean, a building permit that was issued on July 16, 1999, which is -- and it was filed, I guess, June 12, 2000, which would raise a timeliness issue, if -- unless we could see something about some kind of act that occurred in between then.

And what's indicated in the letter of appeal, I guess, is saying that this appeal is predicated on a stop work order issued on May 26, 2000. And we just haven't seen a copy of notice of a stop work order and would request it at this time.

MR. BOOTE: We would be happy to submit that. Is it not included as part of the --

SECRETARY PRUITT: Madam Chair, we have an extra copy right here if you'd like it.

CHAIRPERSON REID: We have a copy of it in our

records.

MS. RAY: Thank you.

CHAIRPERSON REID: Okay.

SECRETARY PRUITT: Madam Chair, staff -- if you please, staff would like to go over the time limits, just so we can set out procedurally what's going to happen.

CHAIRPERSON REID: All right.

SECRETARY PRUITT: In the appeal, we have three interested parties -- the appellant, DCRA, and then the Sikh Temple themselves. We are allotting 15 minutes per party to put on your case, and we will go in the order of the appellant, DCRA, and then the Sikh Temple. That's all the preliminary matters that staff has.

CHAIRPERSON REID: Okay. There is another preliminary matter, in regard to some of the issues that are raised in the case. And they pertain specifically to -- the Board notes that the appellant has raised issues concerning the constitutionality of the zoning regulations with respect to the religious uses; specifically, that certain sections of the zoning regulations are constitutionally invalid as they favor the establishment of religion; and, two, DCRA's alleged failure to notify the affected ANC of the issuance of the building permit for the Sikh Temple.

The Board questions whether these two issues raised by the appellant are within its jurisdiction. The sole authority

for any amendment of the zoning regulations is the Zoning Commission and not the BZA. The Board must give priority to the zoning regulations that are currently in place, and so it's not the proper forum to consider arguments concerning whether regulations are unconstitutional.

The zoning regulations provide for appeals to the Board of Zoning Adjustment by any person aggrieved by any order or decision made in the administration or enforcement of the zoning regulations, 11 DCMR 3112.2. Alleged failure by DCRA to notify an affected ANC of a building permit does not appear to be a decision made in the administration of the zoning regulations, such that the notice given -- such a notice issue should be decided by the Board.

Before hearing testimony on these two issues, the Board asks the parties to address whether the Board has jurisdiction to hear and decide -- and your opinion, of course -- to hear and decide either, 1) whether the specified sections of the zoning regulations are constitutionally invalid because they favor the establishment of religion; or 2) DCRA's failure to notify the affected ANC of the issuance of the building permit for the Sikh Temple.

The parties each have five minutes to speak on those two issues.

MR. BOOTE: The Fairview Heights Neighborhood Association would acknowledge that the Board does not have

jurisdiction over the constitutional issue. We have a strong case, but we won't address that issue this morning.

With respect to the ANC issue, I will defer to the ANC on that issue. The Fairview Heights Neighborhood Association doesn't take a position on that.

CHAIRPERSON REID: Okay.

MR. BOOTE: And I believe there is someone from the ANC here as well.

CHAIRPERSON REID: All right. Is the ANC -- excuse me one second, please.

Okay. Is there a representative from the ANC who wishes to speak on this particular issue?

MS. MILLER: Good morning.

MEMBER MOULDEN: Good morning.

MS. MILLER: My name is Ruthanne Miller, and I'm Chair of ANC-3C, and I'm here with Mr. Lon Ramseur, who is the single member district --

SECRETARY PRUITT: Excuse me. Ma'am, could you turn your mike on, please. Just push the button. Thank you.

MS. MILLER: Do you need me to repeat that, or do you have that? I think Mr. Blanchard is going to address this issue first.

MR. BLANCHARD: Good morning, Chairperson Reid, and members of the BZA. My name is Lyle Blanchard, and I'm appearing this morning as the ANC Commissioner for ANC-3C, not as a

representative of the firm I recently joined, just to clarify for the record.

The ANC has voted several times with regard to the issue of notice. D.C. Code 1-261(b) requires that each Advisory Neighborhood Commission receive 30 days' notice of actions or proposed actions by the District of Columbia government. And in this particular case, what had occurred was that the Sikh Cultural Society, who obtained the building permit, had applied for this building permit. And I don't have those dates before me, but I believe it was in November of 1996 that they applied for the building permit.

The Department of Consumer and Regulatory Affairs actually issued the building permit I believe in July of 1999. Now, during that entire period -- and this predates both Chairperson Miller and my own time on ANC-3C; we both started the beginning of 1999. But it predates the period they applied for the permit, and then the issuance of the permit.

We were succeeded as ANC Commissioners. We did not receive notice from the Department of DCRA. We became aware of it actually from a printout, but the Department is starting to get a little better. And they've put things online, and we had gotten a printout -- I believe we became aware of it in February -- of a list of permits that had already been issued.

And our contention was that since this -- and there aren't really any standards for, you know, is a project

significant, such that it requires more notice than others. Our opinion is that anything that has a major impact on the neighborhood, such as this particular matter, the ANC should be notified, not only when the permit is applied for but then when the permit is issued.

So that we would have an opportunity to hold a hearing and do our -- perform our role as neighborhood representatives, hold a hearing, get comments from the neighborhood and comments from the applicant. So that's our contention, and we've raised it several times. I think we actually wrote to Chairman Reid back in June, and then more recently in September, trying to make the Board aware of this issue.

CHAIRPERSON REID: Thank you.

MS. MILLER: I would also like to add that, had the ANC had notice years ago, then the Sikh Temple would never have invested all that they've invested so far to come this far and then have a hearing. That the process should work -- would work better if the neighborhood has its input right from the start.

CHAIRPERSON REID: Thank you.

MS. MILLER: We also have copies -- I don't know if you want them -- copies of our resolution and letters to the Board now. I have 10 copies.

MR. BERGSTEIN: The issue is whether or not any of that information is relevant to the Board's consideration. For

the purposes of this discussion, the issue is -- it's not the factual issue -- the Board knows it was give or not give them -- but whether or not, in terms of the Board's jurisdiction, if the failure -- if the alleged failure of DCRA to give notice under the ANC Act related to the administration of the zoning regulations, which is the only jurisdiction the BZA has with respect to this appeal.

CHAIRPERSON REID: Mr. Bergstein, I think that the position of the Board was to allow each entity to speak, and it was incumbent upon them to address the issues.

MR. BERGSTEIN: The matter I was referring to is they were going to submit to you materials that related to the factual issue, and the issue before you is whether or not you are going to receive any testimony, any evidence, any materials at all.

CHAIRPERSON REID: I see. So --

MR. BERGSTEIN: With respect to the factual issues. So before you accept anything that relates to the factual issues --

CHAIRPERSON REID: Oh. I see what you're saying.

MR. BERGSTEIN: -- you need to resolve the question of whether or not you're going to receive anything.

CHAIRPERSON REID: I see. Okay.

Has staff received it yet?

SECRETARY PRUITT: We have it. We haven't given it

out.

CHAIRPERSON REID: Okay. We're on hold until such time that we have had an opportunity to act upon the motion. Thank you.

All right. Ms. Ray?

MS. RAY: On behalf of the government, I would just like to concur with the Board in its interpretation that it doesn't have jurisdiction to consider DCRA's failure to notify the ANC and the issue of constitutionality. And we would refer to I guess the Board's organic statute, D.C. Code 5-426, I believe, which we will reattach here -- 5-424, excuse me -- which gives authority to this Board to interpret the zoning regulations as you stated. So we would concur with that.

And also, the fact that this Board doesn't have jurisdiction to hear a challenge of the constitutionality of the zoning regs is more properly before you than the Zoning Commission or in the courts.

Lastly, we would also say that the issue of whether or not the issuance of this building permit violates the comprehensive plan is also an issue that this Board does not have jurisdiction to hear or to receive testimony of, because it is also a matter for the Zoning Commission and not this Board.

It is the Zoning Commission that interprets or can amend the regulations and decide, and then promulgates regulations that are consistent with the comprehensive plan. And this Board's

charge is only to interpret those regulations, and I would refer the Board to a case, in addition to the Zoning Commission's statute, of 534-23, I believe -- 5-413, excuse me -- of Tenley and Creedon Park Emergency Committee v. D.C. BZA, which we'll attach as a part of our exhibits.

CHAIRPERSON REID: Thank you, Ms. Ray.

MR. BOOTE: May I respond briefly to the comprehensive plan issue?

MS. BAILEY: Sir, can you please turn on your microphone?

MR. BOOTE: With respect to corporation counsel's position, the comprehensive plan is not an issue.

CHAIRPERSON REID: Can you speak into your mike? We're having trouble hearing you. The people didn't hear you in the back of the room.

MR. BOOTE: With respect to the issue that the comprehensive plan is not something that the Board can decide, or with regard to the implementation of the comprehensive plan, the association would represent that the zoning regulations themselves and the D.C. Code, because they insist that those provisions of statutes and regulations that are more restrictive in terms of the -- of providing less height and greater open space and greater air, are, in fact, part of the zoning regulations and part of that aspect of the -- those issues that the Board -- that this Board can consider.

Under D.C. Code 5-428, there is a provision which says that the -- that any law or regulation that is more restrictive than another law or regulation is the law which must be imposed. And we believe that the Board does have jurisdiction to look to that provision and to impose those more restrictive provisions. And the comprehensive plan is more restrictive than some of the other provisions in the D.C. zoning laws -- zoning regulations.

CHAIRPERSON REID: Okay. Thank you very much.

All right. In regard to the first two issues, I move that the Board decline to hear testimony on the issues raised by the appellant Fairview Heights Neighborhood Association concerning the constitutionality of the zoning regulations with respect to religious issues, and the effect of DCRA's failure to notify the affected ANC about the building permit, because those issues are outside the scope of the Board's jurisdiction.

So I'd like to move accordingly. Could I get a second? Board members?

COMMISSIONER HOLMAN: Second.

CHAIRPERSON REID: Okay. All right. Any discussion? All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MEMBER RENSHAW: Madam Chair, are we in the midst

of a vote here? Because this is not clear to me. Are we in the midst of a -- did we have a second to the motion?

CHAIRPERSON REID: Yes.

COMMISSIONER HOLMAN: Yes, I seconded it.

MEMBER RENSHAW: All right. I think that these issues should be taken separately, voted on separately.

CHAIRPERSON REID: Which issues?

MEMBER RENSHAW: You have moved, in respect to -- concerning the constitutionality of the zoning regs, and also the failure to notify the affected ANC.

CHAIRPERSON REID: Okay. All right. Let's take issue number one in regards to the constitutionality of the zoning regulations, with respect to religious uses. May I have a second?

COMMISSIONER HOLMAN: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

All right. In regard to the DCRA's failure to notify the affected ANC about the building permit being outside the scope of the Board's jurisdiction. May I hear a second on that?

VICE CHAIRPERSON SOCKWELL: Second.

CHAIRPERSON REID: Discussion?

MEMBER RENSHAW: Yes. I have asked to see the text

of D.C. Code 1-261(b). That was part of Ruthanne Miller's June 26, 2000, letter to the Mayor, and it's in our file. And I would like to read the text of that, please, before voting.

CHAIRPERSON REID: You'd like to read it to who?

MEMBER RENSHAW: Myself. I would like to --

CHAIRPERSON REID: In other words, you don't want to vote right now?

MEMBER RENSHAW: I do not want to vote right now on that issue.

CHAIRPERSON REID: So will you abstain?

MEMBER RENSHAW: I will abstain.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

All right. You want it recorded as an abstention?

MEMBER RENSHAW: Yes, I'll record the abstention. I'll record it as no, because I believe that we haven't examined this -- the text and should not be voting on this motion right at this minute.

CHAIRPERSON REID: Okay. All right. Staff?

SECRETARY PRUITT: I'd like to read back the votes. On the first motion, to decline testimony on the constitutionality, the motion was made by Ms. Reid, seconded by Mr. Holman, five to zero, to decline testimony.

On the second motion, in reference to DCRA and a building permit, motion made by Ms. Reid, seconded by Mr. Holman, four -- oh, I'm sorry, by Mr. Sockwell, four to one, with Ms. Renshaw in opposition.

CHAIRPERSON REID: All right. The other issue that was raised by the counsel for DCRA, Ms. Ray, is with regard to the comprehensive plan. And that's -- if we could have some discussion on that before taking the issue up.

MR. BERGSTEIN: Madam Chair, could I just give some guidance --

CHAIRPERSON REID: Yes.

MR. BERGSTEIN: -- with respect to one of the issues that counsel brought up? He's correct in saying that there is a provision, and it's actually in the original 1938 Zoning Act, which says that nothing in the Zoning Act precludes another district agency from promulgating stricter standards.

But those stricter standards would not be a zoning regulation, because only the Zoning Commission can promulgate the zoning regulations. And the best example I can give is that the Zoning Commission has a 300-foot setback for salvage facilities. The Council established a 500-foot setback for the salvage facility, for salvage facility permits.

If a salvage facility met the 300-foot setback in the zoning regulations, the Zoning Administrator could properly issue a C of O for that facility. But DCRA could not issue a

salvage license for that facility, because there was a stricter setback with respect to the permitting scheme.

So even if there is a law, which I don't believe the comprehensive plan represents, but even if there is a law which is passed by the Council which is part of a permitting scheme that establishes a stricter standard, the Zoning Administrator, with respect to the issuance of a C of O, would not be bound by that or of a building permit.

It would have to be a separately stated licensing requirement that relates to that type of setback or area, but could not be a zoning regulation, because the Council cannot promulgate zoning regulations under the charter.

And, again, with respect to an appeal, it goes to the administration of the Zoning Act, with respect to the building permit, not separate licensing issues, only those zoning regulations that pertain to the building permit.

MR. BOOTE: Madam Chair, may I respond?

CHAIRPERSON REID: Yes. Thank you.

MR. BOOTE: The zoning regulations themselves, 101.4, incorporate a reference to other municipal regulations and statutes that require that those more restricted statutes or regulations be imposed in order to provide greater space, more air, and lower heights.

The regulations themselves, therefore, incorporate the comprehensive plan and the other statute; and, therefore, we

believe that the Board has authority to make decisions that incorporate other statutes and regulations.

And if -- depending on how the Board proceeds, we would note our objection to any decision to not consider the comprehensive plan.

VICE CHAIRPERSON SOCKWELL: One thing I want to state is, although 101.4 does state that the provisions of any statute or other municipal regulations shall govern, it doesn't say that this Board, despite even zoning law, would be the one to apply to standard. And I think you are misrepresenting what that provision really means, not that you're trying to, but I believe that your interpretation is somewhat obtuse to the reality.

MR. BOOTE: Our objection is noted for the record.

CHAIRPERSON REID: Thank you.

Mr. Holman, do you have any comments?

COMMISSIONER HOLMAN: No.

CHAIRPERSON REID: Ms. Renshaw?

MEMBER RENSHAW: No.

CHAIRPERSON REID: Mr. Moulden?

MEMBER MOULDEN: No.

CHAIRPERSON REID: Okay. All right. May I have a motion with regard to this particular issue? Go ahead, Mr. Holman. Want me to do it? Okay. All right. Then, I'll do it.

In regard to consideration of the comprehensive plan in this particular case, I would move that, due to the fact

that the Board is governed by the zoning regulations, and the fact that, as such, the comprehensive plan is not self-executing, we would not, then, consider that aspect of this case as it pertains to the comprehensive plan.

COMMISSIONER HOLMAN: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

MEMBER RENSHAW: Aye.

CHAIRPERSON REID: Now, which way are you going? You oppose the motion? Okay.

SECRETARY PRUITT: Do you want to record the vote, please, Beverly?

MS. BAILEY: Sure. Staff will record the vote as four to one. Motion is passed. Motion by Ms. Reid, seconded by Mr. Holman, and favored by Mr. Moulden and Mr. Sockwell, and opposed by Ms. Renshaw.

Madam Chair, does that end preliminary matters? And are you ready now for the case to be called?

CHAIRPERSON REID: Yes, we are. Thank you very much.

MS. BAILEY: This is an appeal number 16604 of Fairview Heights Neighborhood Association, pursuant to 11 DCMR 3105 and 3106, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, in

the issuance of a building permit, Number B425220, that was issued on July 16, 1999, to the Sikh Cultural Society to permit the construction of a temple in an R-1-B District at premises 3801 Massachusetts Avenue, N.W. That's Square 1816, Lot 45.

All those wishing to testify, would you please stand to take the oath. All those wishing to testify, please stand to take the oath.

(Whereupon, an oath was administered to those persons and/or parties wishing to testify.)

You may proceed.

MR. BOOTE: Madam Chair, before we proceed, may I ask one or two procedural questions? One is, is the association allotted 15 minutes total for --

CHAIRPERSON REID: The timeline will be further discussed with my staff. The staff is basically setting that up. And also -- I'm sorry, I was somewhat distracted -- but the particulars of the case should pertain specifically to the zoning -- as it pertains to zoning, and as it pertains to whether or not you feel that the Zoning Administrator erred in regard to its interpretation as far as the building permits is concerned. And all of the other things are not going to be brought into this particular case. I hope that everyone is on the same page with that.

Ms. Bailey, just for the clarification of everyone, would you please reiterate timelines, specifically, so that

everyone is clear as to what, in fact -- how, in fact, the case will proceed.

MS. BAILEY: I think, Madam Chair, the 15 minutes were for the issues that we first began with, the preliminary issues. I think each party, at that point --

SECRETARY PRUITT: No, no. I'm sorry. You have that wrong. The initial issues were five minutes each. Those have been taken care of. What we had said was is that, for the presentation of the case, the appellant, the intervenor, and DCRA would each be given 15 minutes.

MS. BAILEY: Okay.

SECRETARY PRUITT: And Paul Hart will be handling the timer.

MR. BOOTE: That clarifies it. I would request the opportunity perhaps for five more minutes. I think that we can wrap it up in 20 minutes; 15 may be a little short. I would like to, in order to speed things up, provide to the clerk and to the Board copies of the exhibits that we will use at the beginning of the discussion, so that we don't waste time rustling papers, and things like that. If that would be acceptable to the Chair, I'd like to do that.

CHAIRPERSON REID: Board members, is that --

COMMISSIONER HOLMAN: I have no problem with five extra minutes.

CHAIRPERSON REID: All right. Twenty minutes will

be afforded to you to make your presentation.

MR. BOOTE: Thank you.

CHAIRPERSON REID: And then, that will have to be afforded to everybody. So your time limited is increased by five minutes each, to 20 minutes, rather than the initial timeline that we allocated.

MR. BOOTE: May I provide the Board members and the clerk with copies of the -- I have an official set of individual exhibits, Exhibits 1 through 11. They're pre-marked, and I have copies for -- and then I have copies for -- here's the second set.

I'm ready to proceed, if the Board is ready.

CHAIRPERSON REID: Please proceed.

MR. BOOTE: My name is Richard Boote. I live on 38th Street, which is near where the proposed temple is going to be built.

CHAIRPERSON REID: You need to give your address, sir.

MR. BOOTE: I live at 3125 38th Street.

CHAIRPERSON REID: Okay.

MR. BOOTE: Okay. I represent the Fairview Heights Neighborhood Association.

Just a general description of the neighborhood, it's completely residential. There are two churches within a block or so of the residential neighborhood at 38th and Massachusetts Avenue.

Our basic objections to the law are laid out in the memorandum. We expect to call three witnesses: Tom Mann, Tom Hosky, and our expert, Kirk White, who is an expert in the field of zoning and has been so for -- worked in that area for about 30 years.

Most of the neighborhood found out about the proposed construction of the temple in approximately April or May of this year. We formed a neighborhood association. We started asking for assistance from the City Council members, from the ANC, and from the DCRA. Many letters and calls were exchanged. There was a stop work order issued at one point, and it was rescinded sometime, I believe, in June.

The permit was after that recision. We filed our appeal on June 12, 2000. The Sikh Cultural Society did not break ground until sometime towards the end of June. Although this appeal is based on the law, I want to make clear that there is a strong motivation underlying this appeal, which is, simply put, neighborhood outrage that such a building could be built in our neighborhood that so directly destroys the character of the neighborhood.

By illustration, I might add that this wall, which is about 30 feet long and about seven or eight feet high, the wall next to the sidewalk when it's built will be at least twice as long as this and three times as high. You will walk by it and bump your elbows on the wall.

All of the other houses in the neighborhood are set back at least 25 to 30 feet, and I refer you to Exhibit Number 7 -- excuse me, 6, and you will see the footprint of the building. On the right side of Exhibit Number 6, you'll see that there is no setback for the side of the temple from 38th Street. There is a 10-foot area where the city plans to install a sidewalk. You all have Exhibit 6 in front of you.

On the west side of the footprint, you'll see a 10-foot setback from the temple to the property line of Mr. Hosky's house at 3811 Mass Avenue. You'll see on the front of the building the steps that are -- of the temple which are about three to four feet back from the lot line.

It's obvious, because of the height of the temple, including this cupola, which rises to 73 feet above 38th Street, and 83 feet above Massachusetts Avenue, that the mass of the structure and the height of the structure will dramatically affect our neighborhood. The setback -- we insist, as the law requires, that a setback be imposed.

With this emotional backdrop, let me turn to the legal arguments. There are a few zoning regulations that apply, and now let me enumerate them briefly -- the definition of the structure; the authorized height of the buildings within District R-1-B; the authorized height of churches under Section 400.6, which is 60 feet; Section 400.3 dealing with architectural embellishment; the setback requirements of Section 400.9; the

applicability of the corner lot exception that DCRA has relied on, apparently, of 405.5; D.C. Code Titles 414 and 428; and the comprehensive plan, which I believe I'm not permitted to address in this proceeding.

First, our argument is, in part, premised on the definition of "structure." Under the D.C. zoning regulations, the structure includes anything constructed. It includes flagpoles. It includes chimneys. The use of the phrase "anything constructed" means anything attached to the building or on the ground attached to the building. That means the steps in the front, the cupola at the top, and the walls of the building on the side.

If you refer to Exhibit 7 of the exhibits that I handed out, you'll see that Exhibit 7 is the front view of the proposed temple. From point DM to point F rises approximately 83 feet.

Now, I was not able to find in the architectural plans the actual height of the temple, including this cupola, from Massachusetts Avenue. However, on the next page, which is Exhibit 8, you'll see from point A on the right to point C, that is approximately 73 feet. And if you refer back to Exhibit 7, you'll also see from D to F is -- there's handwritten notations that I did not put on there. I believe they came from the zoning office -- that indicate the height of the cupola.

Now, moving on to the other -- the next provision

that relates to the structure, keeping in mind the definition of "structure," Section 400.9 of the regulations require that an institutional building or structure -- and structure is explicitly stated in 400.9 -- must be removed from all lot lines one foot for each foot in excess of the authorized height in that district. And we believe that the authorized height for churches is 60 feet.

From Massachusetts Avenue, the height of the building, including the cupola, is 83 feet. We believe that the temple must be set back from all lot lines 23 feet. Under 400 -- excuse me. I'm trying to skip through this quickly, since I don't have much time.

Our expert, Kirk White, has looked at the site. We visited the site yesterday, and he has advised us that, indeed, the measurements for the height of the temple should be from the vantage point of Massachusetts Avenue, and that would be 83 feet. This is footnoted in our memorandum, but we speak about 73 feet from 38th Street, as opposed to 83 feet from Massachusetts Avenue.

The reason for that was that the architectural plans -- we didn't have measurements for Massachusetts Avenue, but we looked at the building excavation yesterday.

Now, the DCRA says -- and when we met with them, they said, "Well, Section 405.5 of the zoning regulations, which allows a side yard exemption when a building is on a corner lot, allows the temple to be built right up to its lot line on 38th Street." We disagree.

A side yard is not the same as a set back. 400.9 is the provision that applies when a building exceeds the authorized height. Once it exceeds its authorized height, Section 400.9 comes into play, and you have to have a setback equal to one foot for each foot in excess of the authorized height.

Finally, I would like to add that the zoning regulations, under 101 and under D.C. Code 5-428, say that whenever lower heights and greater space are provided in any of the provisions of the regulations or statutes, that those regulations or statutes must apply.

Therefore, the provision of 405.5 that says that there is a side yard exemption and the temple can be built to the lot line is ineffective if there's ambiguity, with respect to the temple, because it exceeds its authorized height.

At this point, I'd first like to ask if there are any questions on the regulatory side of our legal argument, if any of the Board members have questions.

At this time, I'd like to call Thomas Mann as a witness.

Mr. Mann, could you please state your name and address for the record?

MR. MANN: My name is Thomas O. Mann, and I live at 3108 38th Street, N.W.

MR. BOOTE: I'm going to move pretty quickly because we don't have too much time. Where is your house in

relation to the proposed temple site?

MR. MANN: My house is located on 38th Street right on the opposite side of the alley from the proposed temple.

MR. BOOTE: And if you'll -- if the Board members would refer to Exhibit 1 of the photographs.

And, Mr. Mann, could you tell us where your house is in A-1 of Exhibit 1?

MR. MANN: In Exhibit A-1, my house is the sort of tan brick with the red tile roof.

MR. BOOTE: And how far is your house set back from the street?

MR. MANN: It's approximately 25 to 30 feet.

MR. BOOTE: And how far back are the rest of the houses in the neighborhood set back?

MR. MANN: All of the houses on the street, on both sides, are set back approximately the same distance; that is, about roughly 30 feet.

MR. BOOTE: Okay. When did you first learn of the Sikh Cultural Society's plans to build a temple on this site?

MR. MANN: I first learned about it in the winter of 2000. I think that it was in February or March we saw people on the site looking at plans.

And then, through the intercession of our ANC Commissioner, Lyle Blanchard, and Cathy Patterson's office, we eventually obtained copies of the plans, which you have as the

appellant's Exhibit 5 and subsequent numbers before you. We got those in -- I think in April of 2000.

MR. BOOTE: And could you please tell the Board how you believe that the temple would affect your property and your life on 38th Street?

MR. MANN: Yes. Well, I think the temple is going to be a lot taller than my house. At the top, the cupola will be approximately -- more than twice as high as my house, and I think the roof line of the temple will be quite a bit higher than my house.

And also, since it will -- it will not be set back more than 10 feet from the curb line, it will blot out the light, and it will blot out air, and it also represents the loss of green space.

I'm also concerned that people coming to the temple will be parking in the neighborhood, and parking in the neighborhood is already very tight.

I'm also concerned with noise, trash, etcetera, and other types of disruptions.

MR. BOOTE: And how would this affect the property value of your home?

MR. MANN: Well, I asked a real estate appraiser how this would affect the value of my house, and she told me that by looking at other houses in the neighborhood that were next to churches, they were worth approximately -- their appraised value

was approximately 10 percent to 15 percent less than the houses that were not next to a church.

So I believe that the impact on the market value of my house would be comparable or perhaps greater because it would take longer for me to sell the house if I chose to do so. So I think the impact would be from about 15 to 20 percent of its value, and the value of the house I would estimate in today's market as being approximately $400,000. So if you do the math, the impact to me is going to be a loss of approximately $60,000 in the value of my house.

MR. BOOTE: Okay. No further questions of Mr. Mann.

I'd like to call Kirk White at this point.

Mr. White, would you please state your name and address for the record?

MR. WHITE: Yes. My name is Kirk White, and I live at 935 O Street, N.W., Washington, D.C. 20001.

MR. BOOTE: And, Mr. White, would you please provide the Board with a brief summary of your experience in zoning?

MR. WHITE: Yes, I will be brief. In approximately 1970, I joined the D.C. Government and took on the role shortly after that of the supervisor of the zoning staff. And, of course, it was just in the home rule base when the charter was just about to be passed. So I supervised the staff of the zoning office.

That meant reports and recommendations, including those to the BZA. After 1978, I practiced law with zoning firms until I retired on disability in 1995.

MR. BOOTE: With respect to Section 400.9 of the zoning regulations, how does 400.9 apply to the proposed temple structure?

MR. WHITE: I believe it does apply. Apparently, the staff that issues the building permits either overlooked it or got fixed on the -- this corner lot issue. The provision is not written out. It applies equally to these building plans.

In fact, 400.9 is basically the setback we're looking for on 39th Street, 38th Street, and you can see it -- where that's needed. Otherwise, the design is excellent. The Sikh community will be welcome. But it's just too big a building.

MR. BOOTE: And how high would the temple structure be up on Massachusetts Avenue?

MR. WHITE: I believe it will be 78 feet, which is substantially taller than any of the buildings surrounding it.

MR. BOOTE: And you did make a site visit, is that correct?

MR. WHITE: Yes, I did, and also looked at churches, temples, etcetera, in the community. I'd just like to point out, without taking too much time, in the appellant's Exhibit 1 are photographs of several churches and temples -- the Washington Hebrew congregation, the Church of the Annunciation --

and you can see, if you'll page through there, that all of them have setbacks, from the street, from the sides, and even from the rear in the case of Saint Sophia and the Temple Mosha.

The area has a lot of churches, a lot of temples, and this one will be an important addition to the Mass Avenue corridor. However, it makes no attempt to meet the requirement of Section 400.9.

MR. BOOTE: You mentioned -- I think that you were referring to one of the churches in -- it's Christ Church, which is Exhibit 6, and then Saint Sophia's, and Annunciation is Exhibit 4. I think you had mentioned one other church that's not in the photographs.

MR. WHITE: Right.

MR. BOOTE: Okay.

MR. WHITE: Annunciation, I mentioned.

MR. BOOTE: And when we made a site visit of these churches, did we confirm that the approximate distances set forth in these exhibits are accurate?

MR. WHITE: Yes, we did, and we looked at them carefully and paced them off to determine the degree of setback.

MR. BOOTE: Do you believe that Section -- D.C. Code, Title 5, Section 428 has applicability, if there's ambiguity, and Section 101 of the D.C. zoning regulations? Do they have applicability?

MR. WHITE: Yes, they do. And that's the question

of using the more restrictive of two provisions, let's say; that the more restrictive governs. In this case, 400.9 is more restrictive, because it says setback. And the corner lot provision, however, is more permissive and is overruled by the other requirements for 400.9, which applies here.

MR. BOOTE: Do you have an opinion as to whether the definition of the term "structure" in the regulations applies to the proposed Sikh Temple and its people?

MR. WHITE: Yes, it does.

MR. BOOTE: Would you like to add anything else before I call the next witness?

MR. WHITE: No. Basically, just one point, and that is, of course, the zoning regulations permit churches in R-1-A, B, C, and so forth, and that has been a positive provision for many years, that places of worship have been allowed to come in. But it is only with respect to proper observance of the zoning regulations, particularly setbacks.

MR. BOOTE: Madam Chair, I don't believe that -- I think we need an additional five minutes so we can complete things. Would that be permissible?

CHAIRPERSON REID: Well, what else --

MR. BOOTE: Well, I'd like to call Mr. Hosky and Mr. Katania to testify. I believe they will be brief. I believe that Mr. Hosky will take about two minutes at the most, and that Mr. Katania would take no more than five.

CHAIRPERSON REID: What did you say?

MR. BOOTE: I believe that Mr. Katania would take no more than five and Mr. --

CHAIRPERSON REID: That sounds like eight.

MR. BOOTE: Well, I have -- I still have a little time left.

CHAIRPERSON REID: You had two.

MR. BOOTE: I had two when I started talking.

CHAIRPERSON REID: Board members, do you have any objection?

COMMISSIONER HOLMAN: That's fine.

CHAIRPERSON REID: Okay. That's fine.

MR. BOOTE: Mr. Hosky, please state your name and address for the record.

MR. HOSKY: My name is Thomas S. Hosky, and I live at 3811 Massachusetts Avenue.

MR. BOOTE: And could you please refer to Exhibit 1, the second page? And that would be photos A-4 and A-5. And please tell us where your property is located in this picture.

MR. HOSKY: Yes. My property is the one immediately to the left of where the building is going on, adjacent to the construction.

MR. BOOTE: And would you please tell the Board how you believe that the proposed temple would affect your house, your home, and your livelihood there?

MR. HOSKY: Well, this is going to change the neighborhood; no question about it. I live in a very special house. It's actually Norman. It's got a rounded turret in the front. It's going to loom well over what's there now.

In the past, this has been a very special place. Tourists come and take pictures, literally, of the place. We see it on the television because they use it to screen shots in between programs, just because it has been so beautiful. All of that is going to go instantaneously.

It's been one of the truly picturesque areas along Massachusetts Avenue, and I certainly wouldn't have bought the property had I known anything like this could happen. I can't believe it's happening.

MR. BOOTE: Do you feel that this proposed temple will affect your property values?

MR. HOSKY: Well, I think that, because of the curb appeal of my house going out the window, I think I'll lose a third of the value on it, I would judge.

MR. BOOTE: At this time, I'd like to call Mr. Katania, Council Member Katania.

CHAIRPERSON REID: Thank you.

COUNCIL MEMBER KATANIA: Thank you, Madam Chair.

CHAIRPERSON REID: Good morning.

COUNCIL MEMBER KATANIA: I appreciate this opportunity to speak, and I know you're beyond your schedule, so

let me be very brief and start by, you know, saying how much we would welcome to have the Sikh Temple located in Washington, D.C., but there are caveats here.

I had the good fortune when I was an undergraduate at Georgetown to have my next-door neighbor for two years be a Sikh, and to have fulfilled all of my theology requirements at Georgetown studying Hindu, the Bagavadgeeta, 16th century Valibachyad, the great regard for your religion and for you as a people.

There is, however, a problem with locating this temple in this neighborhood. And if I could, by illustration, I want to point out that there is another large religious institution on Massachusetts Avenue. It's the Islamic Center that's on the corner of Belmont and Massachusetts. And the similarities are just so unbelievable here. And, in the end, I think should the Sikhs prevail and move there, it will be a decision you will regret.

At this point, there are -- for the Islamic Temple, in a residential neighborhood, you have 1,200 worshippers and no parking spaces. It presents many problems, not the least of which is a safety issue.

During Ramadan, for instance, you cannot get emergency vehicles in and out. Last year, during Ramadan, the day before, there was a fire next to Chris Wallace's house. Had it happened the day of Ramadan, the entire neighborhood would have

gone up in flames.

You have issues of trash, because the Islamic Temple, they feed their worshippers. You have just a general issue of noise, and a deconstruction of the whole residential character of the neighborhood.

There are ample opportunities to locate this temple in the city, and I, for one, would be the first to help find an alternative site.

But in the end, I cannot tell you how my office is consumed with constituent issues. I mean, I can literally name the individuals. I know that on Friday I'll receive a call from Edie Darlington because the police officer, which we have to assign at the corner of Mass and Belmont, at 12:00 isn't there, because without the officer we can't direct the traffic, and all of Mass Ave comes to a stop.

I know this is going to happen. When you provide no parking spaces, you put up a facility that, while we very much want, is not appropriate for a location, you present undue burdens on the community. You are going to create, should this process move forward, such a burden on the community.

I encourage you before you make your decision to go to Belmont and Massachusetts on Friday afternoons at noon, and see what happens when you put a large institution with no parking, with very concise time periods of use, in a residential neighborhood. I mean, the number of -- I can count on -- for

instance, on both hands, the number of times Mario Castille has called me to tell me he can't make a business meeting because he can't get his car out of the garage because there is a car parked in his garage.

That isn't to suggest that our Muslim worshippers, or that our Sikh worshippers, are any different from our Jewish worshippers and our Christian worshippers in terms of sensitivity. The idea is, though, when it's time to pray, it's time to pray. You do the best you can. And when there are no available spaces, which there are not in this neighborhood -- when St. Albans Towers goes into effect, there will be no empty spaces in this neighborhood. Worshippers do what they have to do.

And you are just going to create such a catastrophe for future council members to deal with, and I would urge this Commission to postpone this application and let the city, through its Office of Economic Development and through the Office of Planning, to help the Sikhs find an alternative site and to work out an arrangement with the neighborhood to make them whole. We don't want them out any money financially, but this just is not something that bodes well for the community.

And, again, this is absolutely nothing against the Sikhs or your temple. As I said, I spent two years of the journey with someone I still consider my friend today. It's a matter of -- if you had to talk with Mr. Durai at the Islamic Temple, I encourage you to do that before you move there.

He has on his lists of things not the -- the spiritual well being of his worshippers, but he has to worry about whether or not David Hutchison or, again, you know, any number of the constituents calling him complaining about the noise, traffic, trash, and it is -- it creates such a tension. It is not conducive to spirituality.

And with that, I -- again, I very much appreciate the Chair's indulgence, and thank you for giving me some of your time. Thank you.

CHAIRPERSON REID: Thank you very much, Mr. Katania, for coming in.

MR. BOOTE: Madam Chair, I'd just like to add two points very quickly. Please look at the exhibits of the churches in your deliberations. Note every church has a substantial setback. The massive wall on 38th Street is completely inconsistent with the neighborhood and with requirements of Section 400.9.

CHAIRPERSON REID: What was that exhibit again of the churches?

MR. BOOTE: The churches? The photographs are Exhibits 1 through 4, and then there are multiple photographs on each of those specifically.

And if the Board has any questions before I --

CHAIRPERSON REID: Please stay there one moment. We may have some questions.

MEMBER RENSHAW: Madam Chair, I'd just like to verify the distance from the temple to Mr. Mann's property across the alley. Is that a 15-foot alley?

MR. BOOTE: That's a 15-foot alley. And, in fact, the temple will be set back. There would be no exception for the setback on the rear, so that's approximately 15 feet on the alley and 26 feet to the temple proper.

MEMBER RENSHAW: Okay.

MR. BOOTE: And it will be -- there will be parking there, however.

MEMBER RENSHAW: Parking off the alley.

MR. BOOTE: No. Parking on their 26 feet that is -- abuts the alley. I think it's six parking spaces.

MEMBER RENSHAW: And would you address the parking situation that has been raised by Council Member Katania in regard to this design? Is there underground parking?

MR. BOOTE: There is underground parking. There are 21 spaces. There are six spaces outside. I believe there's a total of 27.

I would like to note for the record, however, that under 2115 there is a -- the parking structure, the architectural plans, are inconsistent with Section 2115. There is inadequate width for six of the spaces, and that's in the memorandum.

MEMBER RENSHAW: The capacity of the temple is 270?

MR. BOOTE: That's what we've been told.

MEMBER RENSHAW: All right.

MR. BOOTE: As the temple grows, however, we would -- you know, I don't know much about the Sikh Cultural Society, but I would expect it to grow.

VICE CHAIRPERSON SOCKWELL: Mr. --

MR. BOOTE: Boote.

VICE CHAIRPERSON SOCKWELL: -- Boote, I have just a few questions. One, you chose examples of churches that have setbacks. There are many examples of churches that don't have setbacks.

MR. BOOTE: I don't believe that's true.

VICE CHAIRPERSON SOCKWELL: I could suggest that Unitarian All Souls Church has no setback.

MR. BOOTE: But that's --

VICE CHAIRPERSON SOCKWELL: National Memorial Baptist Church has no setback.

MR. BOOTE: But those aren't in residential --

VICE CHAIRPERSON SOCKWELL: They are in residential neighborhoods. They are not in commercial neighborhoods.

MR. BOOTE: But All Souls is on 16th Street.

VICE CHAIRPERSON SOCKWELL: It certainly is. It also fronts off 15th Street and on Harvard Street.

MR. BOOTE: Right. Well, that may --

VICE CHAIRPERSON SOCKWELL: And what I'm trying to say is that there are instances where -- you cannot just show

instances of churches that have setbacks and say that is the norm. I believe that it helps to show only churches with setbacks, but you've also presented witnesses who state that any church, no matter what, is going to cost 10, 15 percent in lost property value. So there could be a prejudice against religious institutions amongst some of your witnesses.

MR. BOOTE: No, that's absolutely false.

VICE CHAIRPERSON SOCKWELL: Well, that's what he said.

MR. BOOTE: Prejudice among the --

VICE CHAIRPERSON SOCKWELL: Prejudice. That is, a church is considered to be a negative influence on the residential community, because of its mass, because of the type of use that it brings as an assembly use, and that could be considered, if it is a principal issue, as one of not wanting churches in the residential neighborhood. I mean, I'm just trying to present what has been testified to as a question.

MR. BOOTE: Well, I would say that we welcome the Sikh Cultural Society in the neighborhood, but just comply with the setback requirements.

VICE CHAIRPERSON SOCKWELL: And one other thing that I -- your interpretation of regulation is that -- and Mr. White's interpretation of the regulation -- is that churches are bound into the loose category of institutional buildings, while churches are generally defined independently in the ordinance as a

building type.

MR. BOOTE: If that is correct, then Section 400.5 applies, and the setback is equal to one foot for each foot of height. There are only two categories of buildings and structures, 400.5 and 400.9.

VICE CHAIRPERSON SOCKWELL: Yes. And there is a difference between buildings and structures. Do you know what that is?

MR. BOOTE: Yes. A structure includes anything constructed.

VICE CHAIRPERSON SOCKWELL: What does a building include?

MR. BOOTE: A building is -- typically goes up to its roof.

VICE CHAIRPERSON SOCKWELL: No, that's not what the definition says at all. I will read it to you, so that it is clarified. I think that you should have that clarification.

In the zoning ordinance, "building" is defined as a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. That is a building as opposed to a structure.

And, therefore, many of the definitions which refer to a type of structure refer specifically to the building type of structure, which affects how height is measured, especially in an R-1-A and B District. And those types of definition specificities

make the loose definition of structure less applicable and the more specific definition of "building" as a type of structure very applicable.

MR. BOOTE: Well, let me point out that in the definition on "building," a building is a structure.

VICE CHAIRPERSON SOCKWELL: Yes, it is, and a human is an animal. But there is a difference.

MR. BOOTE: Correct. But you have to cross-reference the --

VICE CHAIRPERSON SOCKWELL: You had to think about that for a minute, though, didn't you?

(Laughter.)

MR. BOOTE: It went right past me.

You then have to cross-reference the definition of "structure." And the definition of "structure" includes anything constructed, including flagpoles.

Now, perhaps the temple proper, meaning the roof and below, is the building, but that cupola is part of the structure, and there's no question about it --

VICE CHAIRPERSON SOCKWELL: It is, yes.

MR. BOOTE: -- 400.9 is --

VICE CHAIRPERSON SOCKWELL: You are quite right, Mr. Boote, that it's part of the structure, but it is part of the building, which is the more specific structural type, under which embellishments are defined, not structure as an antenna rising

from the ground, as a fireman's hose tower separated but not included in the fire station.

Things like this have to be more specifically defined by the ordinance in order for the ordinance to be able to regulate them. That is why the cupola could not be built from the ground up as a non-occupiable element of structure at 150 feet.

However, if one goes to, for example, Franklin Square, one finds 130-foot towers rising above the roofs of office buildings. Those towers are not occupiable and are not allowed under the zoning ordinance to contain any facilities used within or for the support of the building. They are strictly embellishments.

The cupola, in this case -- this, for example, does not have access -- these are additional non-occupiable or unoccupiable aspects of the building, which is defined more tightly than a structure. I'm just trying to bring these definitions into clarity for you, because your interpretation of them is somewhat different from the one that I am used to.

MR. BOOTE: Well, we believe that the definition of "structure" is crystal clear and --

VICE CHAIRPERSON SOCKWELL: It is very clear what a structure is.

MR. BOOTE: Right.

VICE CHAIRPERSON SOCKWELL: It is also very clear what a building is as different from a generic structure.

MR. BOOTE: Well, the definition of a structure is anything constructed, including a building.

VICE CHAIRPERSON SOCKWELL: Yes.

MR. BOOTE: A building is a structure.

VICE CHAIRPERSON SOCKWELL: Exactly. And including a building means that the structure is the general, and building is the specific. Would you not agree?

MR. BOOTE: Yes, that's correct.

VICE CHAIRPERSON SOCKWELL: Okay, then.

MR. BOOTE: But that doesn't mean that the cupola is not part of the structure of the temple.

VICE CHAIRPERSON SOCKWELL: Oh, no. I wouldn't say that it is not part of the structure of the temple. But the temple is a building, not a structure, in general terms. Because it is a building, those aspects of the building are defined as they relate to a building, which has a roof, is supported by columns, and is occupiable by humans, animals, or chattel.

MR. BOOTE: But 400 foot high, whoever drafted it doesn't just refer to building; they refer to structures as well. So we would disagree. We believe that the temple -- the building and the structures that are connected to it -- are -- come within 400.9, regardless of the definition of "building."

Therefore, the steps in front are constructed and part of the building, part of the structure. Therefore, the setback of those steps has to be 23 feet. Similarly --

VICE CHAIRPERSON SOCKWELL: Did you know that steps can protrude into public space? And have no setback at all when they are part of a building or structure?

MR. BOOTE: But not when the structure exceeds a certain height in a residential district.

VICE CHAIRPERSON SOCKWELL: Well, do you know how height is defined?

MR. BOOTE: I do.

VICE CHAIRPERSON SOCKWELL: How is height defined in your residential district?

MR. BOOTE: Well, you have to look at the definitions, because they are --

VICE CHAIRPERSON SOCKWELL: No. What I define as to the roof or ceiling, under side of the ceiling at the top story.

MR. BOOTE: Roof or parapet.

VICE CHAIRPERSON SOCKWELL: Well, no, under side of the ceiling at the top story.

MR. BOOTE: Correct.

VICE CHAIRPERSON SOCKWELL: You are not -- it has nothing to do with roof or parapet. Has to do with --

MR. BOOTE: You're right.

VICE CHAIRPERSON SOCKWELL: -- the ceiling.

MR. BOOTE: I'm familiar with that, yes.

VICE CHAIRPERSON SOCKWELL: Okay. So that means

that if there is a roof rising above the ceiling, and that roof is a pitched roof, that roof could rise 50 feet in the air.

MR. BOOTE: But once it's --

VICE CHAIRPERSON SOCKWELL: And it would still not contribute to the height as defined in the ordinance.

MR. BOOTE: Not the height of the building, but the height of the structure.

VICE CHAIRPERSON SOCKWELL: Here again, we're separating -- I'm trying to separate building from structure, and you're trying to combine the two, and they don't work.

MR. BOOTE: Okay. Well, let's take building out of the equation.

VICE CHAIRPERSON SOCKWELL: And the interpretations of the ordinance from 1958 to today support what I'm talking about.

MR. BOOTE: Well, the determination --

VICE CHAIRPERSON SOCKWELL: The buildings that exist in the city are the result of those interpretations. Good, bad, or indifferent, they have been there for that long.

MR. BOOTE: Well, there's no difference to interpretation if the statute is crystal clear. These regulations, under 400.9, are clear, as is the definition of "structure."

VICE CHAIRPERSON SOCKWELL: Thank you. I'm just giving you my feelings on that.

MR. BOOTE: Thank you.

CHAIRPERSON REID: Thank you, Mr. Sockwell, for that very -- rather well -- well studied and well -- very specific take on everything as to the correct interpretation of height and building and structure, and also height, which, unfortunately, is the reason why we're here, because of the various ways in which the same regulation can be interpreted by various persons, be they experts or otherwise. And this is what we have to try to ascertain as to who is correct, or how is it best interpreted.

MR. BOOTE: Well, the one last point is that, under Section 101, the more restrictive provision has to be applied.

CHAIRPERSON REID: Then go back to the comprehensive plan.

MR. BOOTE: No, not the comprehensive plan. If you're choosing between two different regulations within the zoning regulations, you have to choose the most restrictive. And the most restrictive is 400.9.

CHAIRPERSON REID: Okay. I do remember that being raised as the issue for the use of the comprehensive plan as well in your -- in the preliminary matters.

Okay. Now, that concludes your --

MR. BOOTE: Yes, I sped up quite a bit, and I think that --

CHAIRPERSON REID: Any other questions?

MR. BOOTE: -- I have -- if no one has other

questions --

CHAIRPERSON REID: Are there any other questions?

MR. BOOTE: Okay. Mr. Holman, do you have any questions?

COMMISSIONER HOLMAN: No. No questions.

CHAIRPERSON REID: You were saying, Ms. Pruitt?

SECRETARY PRUITT: Do the parties have any questions on cross examination?

CHAIRPERSON REID: Okay. Now, cross examination? Do the parties have questions for -- okay. Ms. Ray?

MS. RAY: Venita Ray again, representing DCRA, from the Office of Corporation Counsel. I have a couple of questions for Mr. White.

Mr. White, I read your statement and where you indicated that the building is 73 foot high. And today I guess you indicated that it's 78 foot high.

MR. WHITE: It's 78.

MS. RAY: It's 78? And can you tell us how you measured -- how you reached 78 foot?

MR. WHITE: By scaling the drawings.

MS. RAY: Okay. Are you familiar with the definition for measuring building height? I know you are.

MR. WHITE: Yes. The principal entrance, the grade in front of the principal entrance, to the roof or parapet.

MS. RAY: Can I show you -- to the roof or parapet,

not to the ceiling?

MR. WHITE: It depends on what's on that --

MS. RAY: Okay. Let me show you -- I hate to do this. Just a moment. Can I pass this -- I know the government is presenting next, and we -- I would like to refer Mr. White to the building definitions, and I want the Board to be able to follow along. So I'm passing what I was going to have our government witness discuss, which has the definitions, up for you, Mr. --

MS. KRESS: This is not the time to present the case, only to do cross.

MS. RAY: Right. But I just want you to be able to see what I'm referring to.

Can I refer you to what the government will show later as Government's Exhibit 1, on page 112, under "Building Height," and ask you what -- first of all, which -- is this the District -- the building height limit is 40 feet, correct?

MR. WHITE: Yes, ma'am.

MS. RAY: Okay. Could you read, then, under "Building Height," how building height is measured?

MR. WHITE: The vertical distance measured from the level of the curb, opposite the middle of the front of the building, to the highest point of the roof or parapet.

MS. RAY: And can you follow down to the next paragraph?

MR. WHITE: In those districts in which the height

of the building is limited to 40 feet, the height of the building may be measured from the finished grade at the middle of the front of the building to the ceiling of the top story.

MS. RAY: Okay.

MR. WHITE: Of course --

MS. RAY: And so, when you -- when you measured, then, to the parapet, is it -- based on the definition, the building height could be measured, based on this, to the ceiling and not to the parapet?

MR. WHITE: Well, it could. But the difference would be wider.

MS. RAY: So if you -- this building you measured to just the ceiling, based on the definition for a district in which the building heights are limited to 40 feet, do you know what the height of this building would be?

MR. WHITE: The building would be 78 feet in its entirety.

MS. RAY: So you wouldn't -- the definition, the change in the way that the building is measured, the building height is measured in a district where the building heights are limited to 40 feet, would not change your testimony as to how high the building is?

MR. WHITE: No, it wouldn't.

MS. RAY: Okay. Next question, are you familiar with architectural embellishments?

MR. WHITE: Yes, I am.

MS. RAY: And is there a limit on the height in architectural embellishments?

MR. WHITE: No, there is not.

MS. RAY: That's all. Thank you.

MR. WHITE: Thank you.

CHAIRPERSON REID: Okay. Any other cross examination? All right. Thank you very much.

MR. SINGH: I have only one question.

CHAIRPERSON REID: I'm sorry?

MR. SINGH: I have only one question on cross.

CHAIRPERSON REID: Oh, you do? Okay. Sure. Please come forward and identify yourself and give your address, please.

MR. SINGH: My name is Juri Singh, and I'd just like to ask a few questions to the homeowner association.

CHAIRPERSON REID: Address, please, Mr. Singh?

MR. SINGH: Pardon?

CHAIRPERSON REID: Address, please.

MR. SINGH: 87167 Locks Road, Bethesda, Maryland.

And Mr. Thomas Mann and Mr. Schneiderman, which lived on the -- next to the alley -- they mentioned they do not know the property that is temple property. But for the last 20 years, everybody has been parking on our site. We did not say anything, and everybody knew it --

CHAIRPERSON REID: No, no, no. No. This is not -- this is not the time for you to testify. This is the time for cross examination.

MR. SINGH: Yes.

CHAIRPERSON REID: So you must use this as an opportunity to just ask questions to Mr. Boote, and then you will be given an opportunity to testify.

MR. SINGH: Because I don't know so many legal point of views, I am layman at this.

CHAIRPERSON REID: Okay.

MR. SINGH: So I'd just like to ask Mr. Mann, didn't he know the property belonged to Sikh Cultural Society?

MR. MANN: Yes, I did know that the property was owned by the -- not by the Sikh Cultural Society. I knew it was owned -- part of it was owned by Dr. Shamsher Singh. And then, that's -- eventually, I did know that it was owned by the Sikh Cultural Society, yes, when I learned about the permit. But I thought it was owned by Mr. Singh before, Dr. Singh.

MR. SINGH: But you did not know it's temple property?

MR. MANN: I did not know that you were going to build a temple on that site until you ordered the permit.

MR. SINGH: But you knew it was temple property. What you are thinking they are going to do with this property?

MR. MANN: Well, I understand that Dr. Singh tried

to sell one of the lots before the property was subdivided. So I didn't really know what was going to happen, but it was certainly a surprise to me to see such a large building planned for such a small piece of land.

MR. SINGH: We did hear about the large on a small property. We are not asking large or small. We are simply asking that --

CHAIRPERSON REID: You're testifying again.

MR. SINGH: Yes. No, but I'm saying that the large -- well, if it was too large, and it would combine one lot, correct?

MR. MANN: Well, that's what I -- that's what I have learned about it. I knew that members of the Sikh community owned the land. Yes, sir, I'm not --

MR. SINGH: Thank you very much.

MR. MANN: -- I'm not denying that.

MR. SINGH: That was only my question was.

And Mr. Councilman did mention something. Can I ask just --

CHAIRPERSON REID: He's not here.

MR. SINGH: Oh, he's gone.

CHAIRPERSON REID: Yes. You would have to ask questions specifically to him, and no one else can really answer those questions.

MR. SINGH: Thank you, Madam Chairperson.

CHAIRPERSON REID: Thank you.

Okay. Government? DCRA? Ms. Ray?

MS. RAY: Sure.

CHAIRPERSON REID: Ms. Ray, do you need 20 minutes, or 15?

MS. RAY: Twenty at the most. We only have one witness.

CHAIRPERSON REID: Okay.

MS. RAY: Good morning, Madam Chairperson, and Board members. Again, I'm Venita Ray, representing DCRA on behalf of Office of Corporation Counsel.

I'd like to call your attention to what I handed out already. It's a government's exhibit that we'd like entered into the record, and which our only witness, Mr. Bello, will use in his testimony, and so we wanted you to be able to follow along.

It is the District's position that the building permit in question was properly issued, and the key aspect here -- and even though the appellant put on evidence or provided testimony that had to do with property values and things like that, the key aspect in this building is -- solely has to do with the setback requirements, and if the zoning regulations were properly complied with, and, therefore, the building permit properly issued.

It's not whether -- the property values and all

these other things that have been presented here today. So we want to call your attention to the documents and the exhibits that we submitted for you.

The setback requirements, as Mr. Bello was testify, that are referenced at 11 DCMR 400.9, or 400.5, either one, do not apply because the building in this instance, as measured by the building height in the zoning regulations, is well under the height limit. They have complied with all of the zoning requirements in this instance, and DCRA properly issued the building permit.

Okay. Mr. Bello, I guess for the Board and for the people present, can you give your name and your title?

MR. BELLO: My name is Toya Bello. I'm with the Zoning Review Branch of DCRA. I'm the zoning technician.

MS. RAY: What do you do?

MR. BELLO: I interpret the zoning regulations as they apply to the building permit process.

MS. RAY: And are you familiar with the building permit in question?

MR. BELLO: Yes, I am.

MS. RAY: Okay. And are you also familiar with the zoning regulations that are being challenged here; specifically, 11 DCMR -- I believe it's 400.1 through 400.9?

MR. BELLO: Fairly well, yes.

MS. RAY: Okay. And let's start off, is it the

position of DCRA that the building permit was properly issued in this instance?

MR. BELLO: Yes, ma'am.

MS. RAY: Okay. Then, first, can we go to the exhibits. And can you explain for the Board, then, how the building height is implicated in this case, and why the building permit was properly issued in relation to the setbacks?

MR. BELLO: In the underlying zone that this property lies in, which is R-1-B, the height limit is 40 feet.

MS. RAY: Can you refer to the zoning regs that you're referring to, Mr. Bello?

MR. BELLO: The height limitation I refer to is in accordance with the table under 400.1. And in those districts where the height limitation is 40 feet, the definition clearly allows you to take the measurement to the ceiling of the top story. And the plans presented only has a height of barely over 30 feet to the ceiling on the top story.

MS. RAY: And how did you -- what did you base your decision on -- the method that you used to measure the building height in this instance?

MR. BELLO: On the definition that allows you to measure to the ceiling of the top story for districts in which the height limitation is 40 feet.

MS. RAY: And was that 11 DCRM 199, the section I had Mr. White read?

MR. BELLO: That's correct.

MS. RAY: Okay. Can you continue?

MR. BELLO: Section 400.3 specifically allows architectural embellishments to exceed that height, without any limitation on such.

MS. RAY: Okay. Just a second. So in the building permit in question, are they in violation of any setback requirements?

MR. BELLO: Not according to the setback sections of -- for side yards. 405.5 allows for a building that's a corner lot not to provide a side yard on either side of the side property lines that abut a major street.

MS. RAY: So the side yard is not required on the corner.

MR. BELLO: Neither on 38th or Mass Avenue.

MS. RAY: Okay. Does the property in question have a side yard?

MR. BELLO: Yes. I believe west of the property, where it's required to be eight feet, they provide 10 feet.

MS. RAY: So can you state that? Do they meet the requirements for the side yard requirement?

MR. BELLO: They do meet the requirements for the side yard setback requirements under 405.9, and comply under 405.5 with the exemption for corner lots.

MS. RAY: And do you know the measurement for the

side yard that they do have? I mean, what does it require?

MR. BELLO: Eight feet.

MS. RAY: And what does the applicant have?

MR. BELLO: Ten feet.

MS. RAY: Okay. And I think we're kind of way past the building height definition. What is the limitation -- you mentioned, and I don't know if everyone heard you -- what the building height for this building is.

MR. BELLO: The building height, as measured to the ceiling of the top story, is about 31 feet.

MS. RAY: Okay. Are you aware how tall the spires or the architectural embellishments are?

MR. BELLO: I believe they would be approximately 40 feet above that.

MS. RAY: Okay. And is it your testimony that there's no limit on the height of architectural embellishments, or the cupola of a temple, the spires?

MR. BELLO: As dictated by 400.3, yes.

MS. RAY: Okay. Secondly, do churches have special a height requirement? Did you testify to that?

MR. BELLO: Under Section 400.6, a church may erect a structure to 60 feet in height.

MS. RAY: Okay. And can you explain for the Board, then, why, as brought out by the appellants, that 400.9 does not apply in this instance?

MR. BELLO: Well, because, obviously, the Code does not treat the church as an institution. Institutions that choose to go up to 90 feet are then required to set back one foot for every height above the height limit of the zone.

MS. RAY: Okay. And then, so church -- a church is not considered an institutional building, is that correct?

MR. BELLO: That is correct.

MS. RAY: Okay. And, therefore, 400.9 would only apply, in this instance, where an institutional building exceeded the height limitation of 40 feet in this district?

MR. BELLO: That's correct.

MS. RAY: Could you also testify -- provide an explanation of why 400.5 does not apply in this instance?

MR. BELLO: Well, 400.5 does not apply in this instance because the church is not seeking to exceed the municipal height that's allowed under 400.6. 400.5 applies to any building, single family, any type of building, that chooses to go up to 90 feet, provided they can set back a distance of a one to one ratio from all property lines.

MS. RAY: So based on the regulations you've just described, the height limitation in this area is 40 feet, churches have 60 feet, the building in question -- the proposed building in question has only an anticipated height of 30 feet.

MR. BELLO: That's correct.

MS. RAY: And that the extended architectural

embellishments above 30 feet, that are approximately 43 feet, have no limitations?

MR. BELLO: That's correct.

MS. RAY: Okay. Do they meet the backyard requirements for a set back?

MR. BELLO: Yes. Yes, they do. Twenty-five feet is what's required; they provide 26 feet.

MS. RAY: Can you refer the Board to what section of the regulations you're referring to?

MR. BELLO: That will be 404.1.

MS. RAY: And the regs require 25 feet. Do you know what the proposed building -- what type of a setback for the backyard that the proposed applicant has?

MR. BELLO: I believe it's 26 feet.

MS. RAY: Okay. And just on another note, the lot occupancy for a church of this zoned district, can you also clarify for the Board, because there has been testimony that the building is just too large, and what the lot occupancy for this building would be?

MR. BELLO: 403.2 allows churches or public schools to build up to 60 percent of its lot size. I believe that the proposed percentage here is 48 percent.

MS. RAY: Thank you. Now, are you aware of issues of non-compliance with respect to parking spaces?

MR. BELLO: No, I'm not. The parking requirement

under 2101 is one for every 10 seats of sanctuary capacity, and at a capacity of 270, I believe, they are required to provide 27 parking spaces, which they do in combination with the garage and outside parking that they have.

MS. RAY: So, then, are there any issues of non-compliance that you're aware of with respect to parking spaces?

MR. BELLO: No, ma'am.

MS. RAY: Thank you. The last question is about the -- and it's mentioned in the statement of the applicant -- the placement of the front steps. Are you aware of other requirements or any issues of non-compliance with respect to the placement of the front steps?

MR. BELLO: No, I'm not. Section 2503.5 -- .4, pardon me, allows stairs to occupy area required. In this instance, they only occupy the side properties. There isn't any requirement on that.

MS. RAY: Is there any additional information you would like to give to the Board with respect to this application and the appeal?

MR. BELLO: No, ma'am.

MS. RAY: Okay. That would conclude the government's presentation. Again, we would just remind the Board that the issues that we're here today have to do with the setback requirements, which relate specifically to the actual building height in question.

And if measured in compliance with the definition section of the zoning regulations, what we measure -- and measured properly, it would be 30 feet, not 43 feet. And in this instance, an R-1-B District, the height of the building is allowed to go up to 40 feet, or churches up to 60 feet.

And it's only if they exceed the height limitations would the setback requirements of 400.5 come into play. Since a church is not an institutional building, as Mr. Bello testified, 400.9 does not apply in this instance.

The applicant has complied with the zoning regulations. DCRA's other position is it has properly issued the building permits in question and would ask for you to deny the appeal. The applicant has -- oh, we don't have to go there. I'm sorry.

Okay. We'd ask for you to deny the appeal and affirm DCRA's decision to issue the building permit. Thank you.

CHAIRPERSON REID: Thank you, Ms. Ray.

Board members, do you have questions? Do you have questions for Mr. Bello? All right. Cross examination?

MR. BOOTE: Yes, I'd like to question him.

CHAIRPERSON REID: All right. Mr. Boote? Of whom? Mr. Bello?

MR. BOOTE: I beg your pardon?

CHAIRPERSON REID: Who do you want to cross examine?

MR. BOOTE: Mr. Bello.

CHAIRPERSON REID: Okay.

MR. BOOTE: Good morning, Mr. Bello.

MR. BELLO: Good morning, sir.

MR. BOOTE: Mr. Bello, how long have you been in the zoning office?

MR. BELLO: Ten years.

MR. BOOTE: Ten years. I'd like to refer you to Section 400.9 of the zoning regulations, and ask you, what types of institutional building structures come within that provision?

MR. BELLO: I would surmise hospitals, schools.

MR. BOOTE: And have you ever utilized 400.9 in any of your reviews in the zoning office?

MR. BELLO: Personally, no, I do not know of any institutional buildings that have requested to seek refuge under that section.

MR. BOOTE: And are you aware of whether the zoning office has used this particular provision, even if you haven't dealt with it yourself?

MR. BELLO: Not to my personal knowledge.

MR. BOOTE: Okay. And does 400.9 apply to buildings that are, say, 85 feet tall, institutional buildings?

MR. BELLO: Yes.

MR. BOOTE: Okay. And why do you say that it applies to buildings that are 85 feet tall? Where is the language

in 400.9 that suggests that it applies?

MR. BELLO: That what applies?

MR. BOOTE: That the institutional building 85 feet tall would come within the provisions of 400.9.

MR. BELLO: Because it would be exceeding the height limitation under the zone.

MR. BOOTE: I see. Now, 400.9, the first clause reads, "An institutional building or structure may be erected to a height not exceeding 90 feet," correct?

MR. BELLO: Correct.

MR. BOOTE: Okay. Please refer to Section 400.5. It says, "A building or other structure may be erected to a height not exceeding 90 feet." Is there any difference between those two, the application of those two clauses to the building?

MR. BELLO: Yes, sir. One applies to an institutional building specifically, and 400.5 applies to any building.

MR. BOOTE: Okay. Any building.

MR. BELLO: Or structure.

MR. BOOTE: Any building or structure. And does 400.5 apply to building -- would 400.5 apply to a building that's 85 feet tall?

MR. BELLO: That's going to apply.

MR. BOOTE: And would it apply to a building in a residential district that is 65 feet tall?

MR. BELLO: If it's exceeding the height limitation on a building, on a --

MR. BOOTE: Would it apply to a structure that exceeds the authorized limit in that area, in the R-1-B District?

MR. BELLO: Yes, it would.

MR. BOOTE: So if a structure is, say, 80 feet tall, that provision would apply, correct?

MR. BELLO: That's correct.

MR. BOOTE: And what does that 400.5 provide if the building exceeds its authorized height?

MR. BELLO: Whether it be removed from all lot lines an equal distance to its height.

MR. BOOTE: Now, is the proposed Sikh Temple -- if you could refer to our Exhibit 7, do you see the -- what is the height between D on the left and F on the right? Approximately.

MR. BELLO: It's 70.

MR. BOOTE: It's approximately 70 feet. So, now, is the temple a -- the proposed temple, is that a structure?

MR. BELLO: The proposed temple is a building.

MR. BOOTE: It's a building.

MR. BELLO: Correct.

MR. BOOTE: A building is not a structure?

CHAIRPERSON REID: I thought we already went through that.

MR. BOOTE: We did go through it, but I haven't

done it with him.

CHAIRPERSON REID: We don't need that. I think that the definition is at it is in the regulations, which have been completely gone over, read, earlier. I don't think we need to have that -- revisit that same issue.

MR. BELLO: Well, with deference, Madam Chairwoman, if the government is saying that they believe that the temple structure does not come within 400.9, but they're saying that a building or a structure does come within 400.5, we will now argue that 400.5 applies, and the setback for the building or the structure must equal the height of the entire building.

CHAIRPERSON REID: Okay. All right. You can answer, Mr. Bello.

MR. BOOTE: Is a building a structure?

MR. BELLO: A building is a structure that says a specific purpose, as defined under the zoning codes.

MR. BOOTE: Okay. And is a structure a building?

MR. BELLO: A structure is a building.

VICE CHAIRPERSON SOCKWELL: Let me clarify that. Mr. Boote, I know you are rambling, but a structure --

MR. BOOTE: I'm not rambling. I am --

VICE CHAIRPERSON SOCKWELL: A structure is a building or a structure is not a building, depending upon what the structure is used for. Would you not agree, sir?

MR. BOOTE: No, I would not.

VICE CHAIRPERSON SOCKWELL: So you would say that any structure is a building?

MR. BOOTE: Absolutely.

VICE CHAIRPERSON SOCKWELL: So let's say that if I build an antenna vertically 500 feet in the air, it's a building.

MR. BOOTE: No, I would not --

VICE CHAIRPERSON SOCKWELL: That's not what you just said. You just any structure is a building.

MR. BOOTE: That's not what I just said. I would --

VICE CHAIRPERSON SOCKWELL: Mr. Boote, either it is, or it isn't. You can't bend it to meet your specifications.

MR. BOOTE: I'm not trying to bend it.

VICE CHAIRPERSON SOCKWELL: Well, then, answer my question, please. Is an antenna a building?

MR. BOOTE: No, of course it's not a building.

VICE CHAIRPERSON SOCKWELL: Is an antenna a structure?

MR. BOOTE: Of course it is.

VICE CHAIRPERSON SOCKWELL: All right. So is a structure a building in all cases?

MR. BOOTE: Apparently not.

VICE CHAIRPERSON SOCKWELL: Obviously. Thank you.

MR. BOOTE: But there are structures -- there are buildings and there are embellishments to buildings that are part

of the building structure. That's our position.

VICE CHAIRPERSON SOCKWELL: This is a position that is semantics, strictly semantics. Mr. Boote --

MR. BOOTE: Yes.

VICE CHAIRPERSON SOCKWELL: -- you are very persistent with this. But you can twist it any way you want, reality says you can go to the dictionary. Reality says you can go to the body of law. Reality says you can go to this ordinance. And you will get definitions which specify what is what.

Now, this ordinance is not the most well-written document that either of us have read in our lives. And there are times when it is very ambiguous. There are times when it doesn't say much at all. But the point is that, in this case, structure and building seem to have been fairly well defined.

MR. BOOTE: But we both agree, do we not, that a building is a structure, is that right?

VICE CHAIRPERSON SOCKWELL: We have made that statement perfectly clear to one another and to everyone in the room.

MR. BOOTE: Okay.

VICE CHAIRPERSON SOCKWELL: That buildings and structures can occupy the same space at the same time.

MR. BOOTE: No, that's not my question. My question is --

VICE CHAIRPERSON SOCKWELL: It's a matter and

energy kind of thing, but you wouldn't understand that.

MR. BOOTE: Well, my question to the witness, and to you, Mr. Sockwell, is: is a building a structure? And if that's the case, then we would argue that, under 400.5, if any building is a structure, and we would argue that it is, that the church -- excuse me, the temple and the cupola are a part of the entire structure of the building, and that that structure exceeds the height that is permitted -- excuse me, is permitted in the district, but it must be set back either under 400.9 or 400.5. And you may think that I'm rambling, but I don't.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Let me ask you one more question.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: What does 400.2 say, specifically?

MR. BOOTE: Except as provided in Section 2510, the height of buildings or structures, as specified in Section 400.1, may be exceeded in the instances provided in Sections 400.3 through 400.13.

VICE CHAIRPERSON SOCKWELL: Right. It does not say cumulatively, does it?

MR. BOOTE: Each one -- each section --

VICE CHAIRPERSON SOCKWELL: Each section--

MR. BOOTE: -- stands on its own.

VICE CHAIRPERSON SOCKWELL: -- stands on its own.

MR. BOOTE: Correct.

VICE CHAIRPERSON SOCKWELL: So 400.6, which says a church may be erected to a height of 60 feet, says specifically that and only that. It doesn't say that a church is defined under the general term of building or the specific term of industrial -- of institutional building. It defines "church" and says just one thing: the church can be 60 feet, as long as it doesn't exceed the number of stories required in the underlying district. Period.

MR. BOOTE: But the church is also a structure under the definition of "structure." 400.5, which I haven't focused on, requires a much more substantial setback than 400.9. If your argument is that 400.5 applies, we accept that.

CHAIRPERSON REID: All right. I think that we get the gist of it. A building is a structure, but not all structures are buildings. And I think that that is the premise from which we can continue.

MR. BOOTE: That's right. So I'll just finish up very quickly.

Is a church a structure?

MR. BELLO: It is a specific type of structure, yes.

MR. BOOTE: Okay. So if a church is a structure, does 400.5 apply to churches?

MR. BELLO: Well, it would apply if the church was seeking to exceed the permitted height limit under the underlying zone. But that's not the case here.

CHAIRPERSON REID: Okay. Mr. Boote, you've already asked that question, and he has already answered that question. So it makes no sense for any of us to sit here and have you two repeat. I mean, are you asking the same question expecting a different answer?

MR. BOOTE: No, I believe that was a different question. And I believe he is --

CHAIRPERSON REID: No, no, no.

MR. BOOTE: Okay. I don't want to repeat myself. Absolutely. And I think that the -- I have no more questions of the witness.

CHAIRPERSON REID: Okay. Thank you.

No more cross examination?

VICE CHAIRPERSON SOCKWELL: May I ask Mr. Boote one quick question, based on his submission of evidence?

Mr. Boote, in your submission of churches that show setbacks, you've shown some churches with setbacks of 19 feet, some churches with setbacks of more than that. In most of these cases, the setback to the wall of the church is not equivalent to the height of the church.

Therefore, if the church is not -- if the church is 70 or 80 feet tall, and it's not setback 70 or 80 feet from the

property line, then it is virtually a statement of fact that the application that you're attempting to use for 400.5 does not wash with even your submission of evidence.

MR. BOOTE: Well, you're probably referring to Saint Sophia's, which has a tall spire. And the fact is is that I don't know the circumstances of the approval for the building of Saint Sophia's, because I don't know whether a variance was granted. But I do know that there is --

VICE CHAIRPERSON SOCKWELL: But you submitted them as evidence without knowing fully what the reference to their relationship is based upon, which means that you can't submit evidence that contradicts your premise without having factual backup to the evidence.

MR. BOOTE: It doesn't --

VICE CHAIRPERSON SOCKWELL: In this case, you don't have enough information to say anything except these churches have setbacks. But you haven't quantified them in any way that makes it valid to say that these churches are different from that church.

And in an R-1 District, where the church is initially defined, it is defined -- just for case in point -- as a place of worship and is not defined as certain other facilities, which could also be considered loosely under the term "church," though "church" is defined very tightly in the ordinance and always at the beginning of whichever section that it first

appears.

MR. BOOTE: Yes.

VICE CHAIRPERSON SOCKWELL: Which would be the residential section. That's all I have to say.

MR. BOOTE: Well, I have to respond that the representation of the pictures of the churches in the neighborhood demonstrate that, at a minimum, the zoning office or the Board that grants variances provided protection to the neighborhoods where the churches were built.

Saint Sophia's is surrounded by hundreds of feet of either road or property. The same is true -- the smaller churches are set back 70 -- Christ Church is set back 70 to 100 feet. The Annunciation Church is 60 feet on the front, 23 feet on the sides, which is a school, and they are very low.

VICE CHAIRPERSON SOCKWELL: Do you believe that in any of those cases the siting of those churches was a design?

MR. BOOTE: Was a design?

VICE CHAIRPERSON SOCKWELL: Was design, was by design rather than by requirement of the ordinance. When one has a campus-sized site, one is not necessarily going to stick the building up at the far corner. One is going to take advantage of view, of site locations for various reasons.

You're making assumptions, sir.

MR. BOOTE: I don't submit that I know the history of these buildings, nor could I.

VICE CHAIRPERSON SOCKWELL: You could have found out a bit.

MR. BOOTE: I have found out a bit. I did the measurements on these churches. I know that the height of the Annunciation Church is relatively low, as is the height of Christ Church. Saint Sophia's is taller, and there's a very substantial space around those churches.

The Christ Church I know historically dealt with the community and provided work for the community to provide a circumstance where they would not impose a burden by virtue of the size of their structure on the community. The Sikh Cultural Society has done none of that.

VICE CHAIRPERSON SOCKWELL: The Sikh Cultural Society has approached the project as a matter of right. When one approaches as a matter of right, one does not have to appeal to the community. I'm not saying that one should not.

MR. BOOTE: Correct.

VICE CHAIRPERSON SOCKWELL: But as a matter of right, one approaches a project in a much different manner than as one -- than one will if one's project requires a variance, a special exception, or some other instrument of government to approve it outside of the standard matter of right process.

MR. BOOTE: Well --

CHAIRPERSON REID: All right. Let's please move on, because this could go, you know, back and forth. I'd like to

try to get through this, if you don't mind, Mr. Boote and Mr. Sockwell.

We'll move now to the case for the owner/intervenor. Please come forward.

MS. BELL: Good morning. I'm kind of getting nervous. This is all very new.

CHAIRPERSON REID: Well, hopefully, we'll be able to speed along without too much problem.

MS. BELL: My name is Satwant Bell, and I live at 5906 Reservoir Heights Avenue, Alexandria, Virginia 22311. And I'm a member of the Sikh Cultural Society, Washington, D.C. I'm an American and very proud of it. We cherish the values and opportunities of this great country, and we come to you very humbly, as citizens dedicated to this public cause.

Sikhism is a pure and simple religion. The basic principles of service, humility, and equality are vital in Sikhism, as are doing charity work and community service. We live honest, truthful, hardworking lives, and believe in live and let live.

We strive to spread the message of peace, love, and understanding. Welcoming all, we believe in equality, and we do not discriminate against anyone.

Some of our neighbors are not familiar with Sikhism. We do ask that you get to know us, and you will be very pleasantly surprised.

The Sikh Cultural Society is a nonprofit organization incorporated in 1964. The Sikhs have been celebrating spiritual programs for over 40 years in Washington, D.C. During the past 30 years, services were held at 3911 Military Road in Northwest.

This was a busy thoroughfare, with no off-street parking facilities, yet there was never a problem with parking, nor were there any complaints about congestion in the neighborhood. The parking garage in the new temple will accommodate the regular Sunday attendees. We have a very small membership.

This is the very first temple that's being built in the nation's capital by the Indian-Americans and their contributors. We are saddened by the fact that the minority community, which has patronized us in the earlier years, now has a section of the community pitted against us.

We have attended and cooperated in the Advisory Neighborhood Commission meetings. We have voluntarily suspended construction for over 30 days, to allow time for the community to comment and hear our clarifications of issues.

The Sikh Cultural Society has owned this property that the neighborhood has enjoyed for over 20 years. They have used it for parking, walking their dogs, and various other uses, but we have never complained.

We have patiently attempted to work through the

system to make this temple a reality. We have met all requirements and building codes. The D.C. Government, Department of Consumer and Regulatory Affairs, took more than three years of thorough and extensive review before the plans were approved and the permit was issued on July 16, 1999.

This is an ethnicly rich and culturally diverse city. We are all asking for a level playing field and fair and equitable treatment. We have waited for more than 20 years to make this temple a reality.

We attended the meetings with the -- excuse me -- ANC, where some did not even know who Sikhs were. They wondered if the building was going to be a mosque, if prayers would be held several times a day, or call for prayers will be issued from the dome, or we would run a 24-hour soup kitchen.

We are happy to explain the basic tenants of the Sikh faith and clarify misunderstandings.

As is usually the case in citizens' meetings, facts are sometimes misrepresented, and truth is twisted to substantiate a particular point of view. This is natural, and we are happy to offer clarifications.

Our temple is open to any person of any faith, because human equality is our fundamental tenant. We are confident that the Sikh temple's traditional and beautiful architecture will enhance the neighborhood. Over a dozen churches, synagogues, Arabic house of worship, and mosque adorn

Massachusetts Avenue. Each has its own distinct architecture and enhances the rich diversity that is America.

We thank you for your fair and just considerations. We also have Mr. Gajinder Singh, who is registered in the District of Columbia, and Mr. Nanak Singh Manku, and also Dr. Shamsher Singh, if you have any further -- to further explain the plans and specifics of the design.

Thank you.

CHAIRPERSON REID: Thank you very much.

DR. SINGH: My name is Shamsher Singh. I have been a resident of the District of Columbia for the last 45 years, and I have lived for 30 years, and I continue to be living in D.C. for 30 years only 10 minutes walk from the proposed temple.

I just have one small comment, and I am sorry Mr. Katania is not here, because he made comparisons with the mosque which is two and a half miles away and did not make any comparisons with the churches nearby.

And there are churches three blocks away, which have no parking even, and no side yard. There is a Church of Saint Jesus Christ, and there is the Church of Nicholas Cathedral, which are only three blocks away.

Those who are some of the persons in the neighborhood have told us right from the beginning that they are going to oppose us at every step, whatever it takes, to stop us from building a temple there. And this is, again,

misrepresentation -- to malign my name, which Mr. Mann and Dr. Schneiderman have pursued from the beginning. He said, "I am the owner of the property." This is absolutely false statement being made before the BZA.

And the Sikh Cultural Society bought the lots, bought this lot, from the owner of the next-door -- 3811 -- property holder. And that property was subsequently bought by Mr. Hosky, who testified here before. So this is -- so even the seller of the property, who lived at 3811 Massachusetts Avenue, knew that we were buying the property for building a temple.

Thank you very much. And I am yielding time to our applicants, to address the relevant issues.

MR. SINGH: I will be very brief and short, and everybody already covered all the aspects, and we met all the requirements of D.C. Government and worked vigorously when D.C. Government was checking our plans, the reviewing of our plans. It took three years to approve it. And, finally, we got the approval.

And also, very -- were given very short notice for ANC meetings, just only a few hours' notice. We attended the meetings. We did our best. And I don't know what to say even, because I'm not an attorney; I'm simply an architect.

Thank you.

And Nonik Manku, which is our architect who worked with Mr. White, Kirk White, is a well-known architect. He did

work on Pennsylvania Avenue, the -- for the Art Commissions, and also the -- he was well known at Howard University, and so I want to introduce Nonik Singh Manku to present the drawings, which we just made some sketches.

Thank you very much.

CHAIRPERSON REID: Mr. Hassan, are you going to just strictly show us a few of the drawings? Because we have, with our package --

MR. SINGH: No. We'd just like to explain it.

CHAIRPERSON REID: Okay. Now --

MR. SINGH: Just for the benefit of the people that were --

SECRETARY PRUITT: Excuse me, sir. Can you either speak from the mike or take the portable mike with you? Which is on the podium.

MR. SINGH: Yes. We'd just like to explain it, the height and the relationship with the other buildings.

CHAIRPERSON REID: Okay. Bring it forward, so that we can see it better. But also, put it at such an angle that the other persons in the room will be able to see it.

Okay. You know that the exhibits will have to be left here.

MR. SINGH: Yes.

CHAIRPERSON REID: All right. Okay. Okay.

MR. SINGH: There are couple of points that we want

to make, especially the --

SECRETARY PRUITT: Excuse me. You're going to have to use one of the mikes.

CHAIRPERSON REID: You can put that in your pocket and turn it on. Flip it on.

MR. SINGH: This is just to benefit the people, those who don't know what are we doing.

As a matter of fact, Dr. Schneiderman mentioned that the temple which we are building is almost twice the height of that. I want to show you a section which is in relationship to the height of Dr. Schneiderman. This is the property which Dr. Schneiderman owns. This is his house, and this is where we are building the temple.

You will see this is a little bit smaller than Dr. Schneiderman's house. The height of his building is approximately 34 feet, plus or minus, whereas the temple height, the height of the wall is 29 feet. Plus, of course, our roof is tailored back, whereas Dr. Schneiderman's roof is straight. So it makes it approximately 34 feet high, whereas our wall is 29 feet. This is 29 feet.

And they are saying this is twice the height of their building. That doesn't make sense. I don't know where they get these figures.

And they have mentioned that we will lose light and air and everything. We have added 26 feet to the alley, making it

41 feet. That means it has given the proper light and ventilation.

Would you please look at the site plan. You will see that this is the existing alley, and we have a setback of 26 feet, which allows the total open space approximately 41 feet. And on this side, this is 38th Street, we have 50 feet plus 25 feet, which is on the other side. It is 75 feet, plus or minus, open on that side.

And on Massachusetts Avenue, from this building, we have green space approximately 130, plus or minus, feet. Our building is only 70 feet long over here.

MEMBER RENSHAW: Madam Chairman, I ask, what is the distance from the sidewalk on 38th Street to the wall of the building?

MR. SINGH: From this side, it's 10 feet.

MEMBER RENSHAW: Not from the curb, from the sidewalk, from the edge of the sidewalk.

MR. SINGH: There is no sidewalk. This is 10 feet of space which is available.

MEMBER RENSHAW: From the road to the wall is 10 feet.

MR. SINGH: This is 10 feet.

MEMBER RENSHAW: It shows a sidewalk.

MR. SINGH: Right.

MEMBER RENSHAW: Is there going to be a sidewalk?

MR. SINGH: Yes, there will be a sidewalk.

MEMBER RENSHAW: All right. From the edge of the sidewalk that is on your side, what is the dimension to the wall of the building?

MR. SINGH: Well, that -- this is -- from here to here is about three and a half feet. We have four feet sidewalk and remaining in the front. We are trying to maintain the existing line of trees. That is three feet.

VICE CHAIRPERSON SOCKWELL: Let me understand that correctly.

MR. SINGH: Yes, sir.

VICE CHAIRPERSON SOCKWELL: From the curb line to your property line is what distance?

MR. SINGH: Ten feet.

VICE CHAIRPERSON SOCKWELL: Ten feet.

MR. SINGH: Right.

VICE CHAIRPERSON SOCKWELL: Okay.

CHAIRPERSON REID: Okay. Go ahead.

MR. SINGH: Here is another thing. The wall on the 38th side is approximately 31, varying from which angle you see, because the road is sloping. It is not 60, 70 feet or something. It is only 31 feet.

VICE CHAIRPERSON SOCKWELL: Would you go back to the previous drawing, please?

MR. SINGH: Yes.

VICE CHAIRPERSON SOCKWELL: While your drawing does not show it, and this is just for my own benefit, if the setback of the adjacent house along 38th Street, that house, although you show the 26 and 15, that house is set back from its property line by what, about 25 feet?

MR. SINGH: It is just a guess. It's plus/minus 25 feet.

VICE CHAIRPERSON SOCKWELL: Right. Okay.

MR. SINGH: Maybe a little less. But for this purpose, we could say 25.

VICE CHAIRPERSON SOCKWELL: All right. Thank you.

MEMBER RENSHAW: Madam Chair, I'd like to ask, since the drawing is up there, you have six spaces along the alley. Now, how are they marked?

MR. SINGH: They are handicapped.

MEMBER RENSHAW: Those are handicapped parking?

MR. SINGH: Not all. One or two spaces will be handicapped; I don't remember. The remaining will be the regular spaces.

MEMBER RENSHAW: All right. And the entrance to your garage is off of what street?

MR. SINGH: Off of Massachusetts Avenue.

MEMBER RENSHAW: Off of Mass Avenue. Is there any entrance to the garage from the alley?

MR. SINGH: No, there is no entrance from the

alley.

MEMBER RENSHAW: How does that work?

MS. BELL: This entry is from 38th Street.

MS. KRESS: You need a microphone. I'm sorry.

MS. BELL: The garage entry is from Mass Avenue to the underground parking, and the handicapped and the other additional spaces are from 38th Street.

MR. SINGH: 38th.

MEMBER RENSHAW: Thank you.

MR. SINGH: We have left additional five feet, which is dedicated to the alley in order to make it 20 feet, so that the car could be maneuvered easily. So, in reality, all of this space will be part of the alley, so that the cars could be turned back. So this will be about 20 feet, which is why we are using the alley.

MEMBER RENSHAW: When are your services? When are you going to -- what is the impact of your activities going to be during the week?

MR. SINGH: Well, during the week, there won't be any activity. It is going to be only on Sunday.

MEMBER RENSHAW: Only on Sunday.

MR. SINGH: Only on Sunday.

MEMBER RENSHAW: At what times?

MR. SINGH: Usually it will be around about -- it will be varying, depending upon the congregation members, what

they want. It will be perhaps 9:00 'til 1:00. We have only about 50 or 60 people attending regularly. At the most, we have 100. But as it grows, it may be different.

MS. RAY: Excuse me. On behalf of the government, we would just kind of object to this line of questioning because the issue before us is whether they comply with the setback requirements as it relates to the height of the building. And so the issues for this Board to be determining are whether the building permit was properly issued, according to the regulations on height and setback.

So the hours of operation and all of that is not what's before this Board, and so we'd object to anything that pursues that line of questioning and testimony and to any evidence being considered by the Board. It's not relevant.

CHAIRPERSON REID: Continue. Does that conclude your presentation?

MR. SINGH: This is all we have to say. Otherwise, I think it has been discussed very well.

This question has been raised several times about -- the structure question. This is an independent structure by itself. For instance, this is a cupola. Just like this column going out 30 feet or 100 feet high, we won't discuss that any more. It has already been discussed.

And this was purely for the presentation for the Board, for the other members, to see the height and the other

things.

CHAIRPERSON REID: Thank you very much.

MR. SINGH: Thank you very much.

CHAIRPERSON REID: Thank you.

Is there any cross examination? Mr. Boote?

MR. BOOTE: No, I have no cross examination.

CHAIRPERSON REID: Questions by the ANC?

LC: No, the ANC is not a party.

CHAIRPERSON REID: Okay.

MS. MILLER: I'm sorry. Did you say the ANC is not a party?

CHAIRPERSON REID: No. I did say that -- I understand that you don't get to cross examine.

LC: You're not a party to this case. Mr. Boote is the person who has filed on behalf of the association.

MS. MILLER: For the record, we did file a resolution and a letter, and I believe we are a party to the case. I don't have any cross examination, but I did have some testimony that I thought I would be able to provide at the end, after the other parties have finished. I was told something different, then.

CHAIRPERSON REID: Just one moment. Let us --

Ms. Ruthanne Miller, can you please come forward? Did you come prepared to testify today?

MS. MILLER: Yes.

CHAIRPERSON REID: Is your testimony germane to the issue that we were addressing as it pertains to the regulations and --

MS. MILLER: Heights and setback, yes.

LC: Is that what your testimony is?

MS. MILLER: Yes.

CHAIRPERSON REID: Okay. All right. Thank you.

MS. MILLER: Good afternoon. I have a few brief comments on behalf of ANC-3C. First of all, I'd like to say that the ANC-3C and the community is not against the Sikh Temple, that we would welcome the Sikh Temple in an appropriate location, or within the appropriate size and setbacks.

What's of concern to the ANC is that this structure, as proposed, and this particular property, is not limited to the same setback as the houses on that street. And on its face, and if one just takes a site visit, it's clearly detrimental to the character of the neighborhood.

All of the other houses are set back about 25 feet, I believe the testimony was. And this building, whether it be a church or a school or a home, to come all the way almost to the sidewalk changes, drastically, the character of that neighborhood.

We held a few meetings for the record on this issue, where representatives of the Sikh Temple came and representatives of the neighborhood. And we attempted to see if we could forge some kind of compromise.

The primary issue of concern is that the structure comes so close to the sidewalk. And at that meeting, we did ask the representative of the Sikh Temple if they would consider scaling back or redesigning the building, so that they could preserve -- so we could preserve more of the character of the neighborhood. And they declined to do that at this stage.

I don't have authority to give you my legal opinion on how you should interpret the regulations. The ANC did not reach any legal conclusions, and that's reflected in our resolution.

However, we're of the consensus that where there's discretion to interpret regulations in different ways, as it appears that there is here, that they should be interpreted to preserve the character of the neighborhood and not allow a structure to be built that would be so detrimental to the character.

Again, I addressed this before, but we would say that we don't believe that the regulations should be interpreted inconsistently with the comprehensive plan, and that the comprehensive plan should not be ignored. It just appears, on its face, that something is wrong if a building is allowed to go this far to the sidewalk and change a neighborhood this drastically.

So we would ask that the regulations be interpreted in a way to preserve the character of this neighborhood. Thank you.

CHAIRPERSON REID: All right. Okay. I'm just trying to get clear here. Ms. Miller, I have a letter from ANC-3C, in which basically there was a quorum present and there was a vote taken in regard to the resolution. This is a September 5th letter.

MS. MILLER: Yes.

CHAIRPERSON REID: And this resolution relates specifically to the issue of the permits being improperly issued due to lack of proper notice.

Now, the one that you just referred to, is that another resolution? Is that the one that --

MS. MILLER: I believe both issues were addressed in that resolution and in my cover letter. In the first paragraph of the cover letter dated September 5th, it said, "The Commission is concerned that the Zoning Administrator's interpretation and" --

CHAIRPERSON REID: Where are you reading from? Where on that -- what line?

MS. MILLER: Okay. First paragraph, sixth line, in the middle, where it starts, "The Commission is concerned."

CHAIRPERSON REID: Yes.

MS. MILLER: Would you like me to read that?

CHAIRPERSON REID: Yes, please.

MS. MILLER: Okay. "The Commission is concerned that the Zoning Administrator's interpretation and application of

the zoning regulations governing height and setback limitations in an R-1 District will result in the construction of a building that is out of scale and character with the rest of the neighborhood immediately surrounding it, to the serious detriment of fundamental objectives of zoning policy in the District of Columbia, and the Ward 3 plan, and the comprehensive plan, i.e. preventing the overcrowding of land and preserving light and air."

CHAIRPERSON REID: Okay. I understand that. However, Ms. Miller, do you --

MS. MILLER: It's also in the resolution, if you want me to --

CHAIRPERSON REID: Okay. I do see it now.

MS. MILLER: Okay.

CHAIRPERSON REID: I see it in paragraph 3.

MS. MILLER: Yes.

CHAIRPERSON REID: 3 and 4, specifically. Okay.

MS. MILLER: Yes.

CHAIRPERSON REID: All right. Did that conclude your presentation?

MS. MILLER: Yes.

CHAIRPERSON REID: Okay. We'll certainly afford your testimony the weight to which it's entitled.

Board members, are there any questions for Ms. Miller? Okay.

Are there any questions from Mr. Hassan? Mr.

Hassan is, what, the spokesperson for Sikh Temple? Or anyone else who would like to ask Miller any questions.

MR. SINGH: I have just one question for Ms. Miller.

CHAIRPERSON REID: Okay.

MR. SINGH: Ms. Miller, constantly we've been called at the eleventh hour for the ANC meeting. Was it fair?

MS. MILLER: The ANC posted all notices with respect to meetings as required by statute, and I believe we operated in a fair manner, yes. And I'm sorry if --

MR. SINGH: Within a few-hour notice, the -- like a meeting --

CHAIRPERSON REID: You have to -- you cannot testify, Mr. Hassan. You have to pose your question in the form of a question -- pose your comment in the form of a question.

MR. SINGH: My simple question was that the -- is it substantial time you have given to the rest, and been given to us only a few hours' notice that you come to the meeting?

MS. MILLER: The notices are posted a week ahead of time and placed in the newspapers. And I'm not sure when you were called. I know Commissioner Blanchard made an attempt to call you. I didn't personally call you.

MR. SINGH: And would you tell --

MS. MILLER: However, I would like to say that, you know, the ANC is receptive at all times if you wanted to work out

a compromise or submit any information.

MR. SINGH: For your record, compromise -- one time the homeowner association, they'd like to buy the lot --

CHAIRPERSON REID: Is this a question?

MR. SINGH: -- and we offered them to buy it.

CHAIRPERSON REID: Is that a question?

MR. SINGH: This is a question, and I'm asking the homeowner, did they offer us to buy the property? Mr. Boote is one of them. Is it true or false?

MR. BOOTE: Should I respond?

CHAIRPERSON REID: You're asking the ANC a question that you --

MR. SINGH: Yes, because the ANC is representing right now --

CHAIRPERSON REID: Do you know the answer?

MS. MILLER: I do not. I am not representing a neighborhood association.

CHAIRPERSON REID: Okay. All right. She doesn't know.

MR. SINGH: All right. Thank you. That's it.

CHAIRPERSON REID: Okay. Thank you.

All right. Ms. Ray, do you have questions?

MS. RAY: No, no questions.

CHAIRPERSON REID: Okay. Thank you very much.

MS. MILLER: Okay. Thank you very much.

CHAIRPERSON REID: All right. Now we have closing remarks by the applicant, or by the intervenor -- I'm sorry, by the appellant. Closing remarks?

MR. BOOTE: Thank you. I'll be very brief.

I would encourage the Board to visit the site on 38th Street.

CHAIRPERSON REID: Can you speak up?

MR. BOOTE: All right.

CHAIRPERSON REID: Or is it that the mike is not picking you up?

MR. BOOTE: It's not picking me up.

I'd encourage the Board to visit the site, on 38th Street especially, in order before they -- prior to their deliberations and their decision, because it will demonstrate the impact that this structure would have on the neighborhood.

I would also amend our memorandum orally at this time to include reference to Section 400.5, which the D.C. Zoning Office, through Mr. Bello, acknowledged -- it appears to me -- to apply to this structure.

I would also ask the Board to take into consideration the regulations and the statute, to the extent that you're permitted to do so jurisdictionally, that require that the most conservative interpretation be applied to the zoning regulations. And one regulation restricts height and requires setback, imposes greater distances from the street, that those are

the regulations that should apply.

And, finally, I'd like to thank the Board for their time.

CHAIRPERSON REID: Thank you very much.

Board members, do you have any questions? All right.

Ms. Ray?

MS. RAY: Just one comment. I think the testimony has been presented here for the Board to consider, and that the issue before it is whether the applicant has complied with all of the requirements, and whether DCRA would have properly issued the building permit in question.

And, of course, we want the Board to support and affirm DCRA's issuance of the building permit, that it was proper, that the height requirements to which churches are required to comply with is 60 feet. This church does not reach the height. There is not a limitation on architectural embellishments, which this temple is, the structure on top of the building is; and that they have complied with all of the requirements pursuant to the zoning regulations.

In addition, one little side matter that I'm reluctant to bring up, but I want to bring up, is that the due process requires that any witnesses that come before you be subject to cross examination. And to the extent that this Board considers -- once it goes back to consider the evidence, that it

not consider any irrelevant testimony, which some was presented.

But also, Mr. Katania's testimony, although support of the appellant, he was not present for cross examination. And to the government, that would pose some due process problems, and you may want to consider that when you deliberate, and consider testimony that was relevant in making your decision.

Again, we'd ask the Board to support and affirm DCRA's issuance of the building permit, and that it complied with the zoning regs.

CHAIRPERSON REID: Okay. Thank you very much.

All right. I think, then, that will conclude this particular case. Are there any comments or questions by the Board members?

COMMISSIONER HOLMAN: Madam Chair, how are we going to decide this? Are we going to decide it now, or what's your pleasure?

CHAIRPERSON REID: I'm sorry. Did you want to say something before I answer? Excuse me. Just one moment.

Mr. Holman, in answer to your question, this is a case where there obviously is opposition, and perhaps in that instance, rather than moving forward today, we may want to consider doing it at our next regularly-scheduled meeting, so that we could have a full order and all of the findings of fact and all of the necessary information to be contained therein, unless there's comments from other Board members. And whether we could

have the findings of fact and conclusions of law spelled out specifically -- could you speak on the mike, please?

VICE CHAIRPERSON SOCKWELL: I believe that we should have the findings of fact and conclusions of law presented to us.

CHAIRPERSON REID: Full order.

VICE CHAIRPERSON SOCKWELL: Yes, full order.

CHAIRPERSON REID: Any disagreement with that? Do you --

COMMISSIONER HOLMAN: No, no. I mean, that's fine. I just wanted to know what the Chair's pleasure is. Since I come and go on these hearings, I was just trying to see, for scheduling purposes, and no other --

CHAIRPERSON REID: Any other comments? Mr. Moulden, did you have -- what's your feeling about this particular case?

MEMBER MOULDEN: I would like to make some general comments to clear up. There was a lot of discussion about what a comprehensive plan does versus the zoning regulations.

The District's comprehensive plan is an element of the National Capital Planning Commission's comprehensive plan. And those plans are policies that guide the District and the region in their planning efforts.

There are not regulatory or specific legal requirements per se in the plan; however, zoning regulations and

other regulations are derived from the comprehensive plan. I'd just like to clear that up and make that clear to the audience.

Another thing, this case here seems to be an issue of design and location. The church is permitted, as a right, and it's in the zone of this community, and I would like to have seen the folks in opposition and the applicant for the church to work out some issues to design this facility to appease the community.

The lot is an irregular lot, so it's probably very difficult to actually locate a facility on there. But it meets all of the regulations, according to the Code identified. I just wanted to point those things out.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Madam Chair, I just wanted to ask Mr. Bello, since he's here with us, are we correct in that you are here today to interpret the zoning regulations concerning this case, but that you did not take part in the review of this application when it was before the DCRA?

MR. BELLO: I was not the reviewer of the application. But the applicant went back, did some intensive preliminary information seeking with us, and I did have numerous contacts with them. So I have a certain degree of familiarity with the application.

MEMBER RENSHAW: Would you state for the record who did review this application?

MR. BELLO: Edgar Nunley.

MEMBER RENSHAW: Edgar Nunley. And his title is?

MR. BELLO: He is the Zoning Review Chief.

MEMBER RENSHAW: Zoning Review Chief. Thank you.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Mr. Bello, in your 10 years of involvement with the zoning ordinance, you have seen projects of a similar type reviewed and approved, both by you and by others, including Mr. Nunley and the other zoning technicians.

MR. BELLO: That is correct, yes.

VICE CHAIRPERSON SOCKWELL: In the interpretations of the ordinance that you have participated in, or have been particularly knowledgeable of, the issue of side yards and building height are generally a part of many of those decisions, is that not correct?

MR. BELLO: That is correct.

VICE CHAIRPERSON SOCKWELL: And to the best of your knowledge, facilities of a similar type that have been reviewed have met the test of zoning for the issues that were presented today?

MR. BELLO: Yes, sir.

VICE CHAIRPERSON SOCKWELL: Okay. Thank you.

CHAIRPERSON REID: All right. Thank you very much.

MS. RAY: Excuse me. One additional matter. Did the Board decide not to make the decision today? Is that the ruling?

CHAIRPERSON REID: Right.

MS. RAY: Okay.

CHAIRPERSON REID: We're going to make the decision at our next regularly-scheduled Board meeting, which will be October 3rd.

SECRETARY PRUITT: And, Madam Chair, I believe you did -- you said you were going to do that, so you could get -- so that the appellant, DCRA, and the intervenor can submit draft orders.

CHAIRPERSON REID: Yes, we would like to have draft orders.

SECRETARY PRUITT: Could we have them, then, by September 25th for a decision on October 3rd. If you need some help or understanding of what a draft order is, please see me after the meeting.

MS. RAY: One other thing we would need, though, is transcripts. So that --

SECRETARY PRUITT: They will be available.

MS. RAY: Will the transcripts be available in a timely manner, so that we can --

SECRETARY PRUITT: Typically, in two weeks.

MS. RAY: Okay. Well, today is the 13th. Two weeks would get us beyond the date that the proposed findings of fact are due. So if we've got to submit proposed findings of fact which -- you know, on behalf of the ZA, I've just been informed,

of course, we would -- we don't want to hold up the decision because, you know, this building permit has been issued and there are resources out there that -- but that if we can't get a transcript for two weeks, we have a slight problem, if the Board wants proposed findings of fact. That's all.

LC: You could pay for having it expedited. We'll have to look into that, but typically we have the -- whoever wants it expedited pay for the expediting of the transcript. But you're another government agency, so we'll have to look into that.

MS. RAY: Yes. So I just need the tapes, then. The government would need to get the tapes, then, and then we --

LC: We don't have tapes. We just have the transcript.

MS. RAY: Without the tape, I can't expedite it.

LC: The transcript.

MS. RAY: You would give me a transcript in an expedited manner?

LC: Yes. That's right.

MS. RAY: Thank you.

VICE CHAIRPERSON SOCKWELL: I want to say one thing very briefly. Regardless the direction that this Board may take on its decision with this case, the word "matter of right" or the term "matter of right" does not mean that development interest can invade a neighborhood with a project. It is not a license to invade.

It is a license to intrude, because anything that is built that changes the status quo is an intrusion upon those people who preexisted the proposed development. But an invasion, be it legal or not, is, nonetheless, an invasion and will permanently alter the character of portions of the neighborhood, will alter the perceptions of the residents and the relationship between those who are building and those who existed before the construction.

And it is something that any development interest should be aware of and should take note of, and there are certain building types which are uniquely different from what exists around them.

And, at times, those building types may wish to be modified, so that their presence within the context of the rest of a neighborhood environment is not such a great change to what has existed before. And I believe that that is a key to making the city what it is supposed to become, and to keeping the city, in many instances, in the character that it has grown accustomed to.

Thank you.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

Okay. Now, finally, I think we can conclude this morning's session. Thank you very much.

This is a good -- a great point. We're going to go ahead and break for lunch and return at 1:00, at which time we will pick up with the George Washington case, the continuation of

the George Washington University campus plan.

(Whereupon, at 12:20 p.m., the proceedings in the foregoing matter went off the record.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:10 p.m.)

CHAIRPERSON REID: Good afternoon. The Board of Zoning Adjustment will now come to order. Thank you, ladies and gentlemen.

Staff will call the case for George Washington Campus Plan.

MS. BAILEY: This is Application No. 16553 of the George Washington University, pursuant to 11 DCMR 3104.2, for a special exception for the review and approval of the University Foggy Bottom Campus Plan, Years 2000 through 2010 under Sections 210 and 507; the boundaries of the property are as follows: Pennsylvania Avenue on the north, 19th, H, 20th and G Streets on the east; F Street on the south and 23rd, G and 24th Streets on the west, and it also includes a port of Square 122 extending south of F Street along 19th Street, N.W.

Within the campus plan boundaries, the property owned by the University is devoted to a variety of University uses, including but not limited to classroom, dormitory, library, research, office, support, assembly, athletic and hospital purposes. These uses would be continued under the Campus Plan in a variety of existing and new buildings in the R-5-D, R-5-E, C-3-C and SP-2 Districts. The Squares and Lots for these boundaries of the George Washington University was advertised in a public hearing notice, was also placed in the D.C. Register and it was

placed on the placards that's posted by the Applicant. Therefore, Madam Chair, we won't read them all today.

Ms. Pruitt?

MS. PRUITT: Madam Chair, I just would like to talk to the audience, inform the audience. Due to the public interest in this, we've already had one hearing, so this is a little different, it's a continuation.

In the back of the room there is a little hand out that actually kind of gives you the procedures that we'll be going through today since we're not starting off from scratch. I'll read them off very quickly.

We'll do preliminary matters, followed by an update and summary by the Applicant. Cross examination by the Board Members and parties and ANC. Office of Planning Report and Recommendations, ANC Report, persons in support, parties and persons in opposition and closing remarks.

However, Madam Chair, we do have a request for change in the testimony sequencing and that is the ANC and parties in opposition would like to go together or one after the other because they have some interlocking information.

And OP has requested to go after the ANC, so that would change your sequencing around, but that's up to you to make a determination.

(Pause.)

CHAIRPERSON REID: Thank you very much. I'm sorry,

we had a little sidebar.

MS. DWYER: Madam Chair, if I could just respond to that. Maureen Dwyer with Shaw, Pittman and with me is Alison Friends, also of Shaw, Pittman, and we are appearing here on behalf of the Applicant, George Washington University.

With respect to the changes in the order of procedure, the Applicant would very much like to have the Office of Planning report in its regular order and that changed, coupled with the change to the ANC is going to influence the timing for those persons in support who are planning on coming down here at a certain time, so it does throw off a lot of the other pieces of hearing presentation.

We have no objection to the ANC combining its presentation with the other parties in opposition, but we would like to have the Office of Planning Report follow your cross examination of our case and precede the other parties.

CHAIRPERSON REID: Well, how does that impact upon the persons in support? Do you have them scheduled to come down at a certain time?

MS. DWYER: Yes, we do. And we also feel that the Office of Planning Report, there are actually two Office of Planning Reports in the record and this is our first opportunity to cross examine them on their report. Their report is supposed to, in part, set the stage for some of the issues that follow in the hearing and we think it makes much more sense in terms of an

ordering hearing to have the Office of Planning Report in its normal time period, followed then by the balance of the opposition and support parties.

CHAIRPERSON REID: Well, Ms. Dwyer, I think that the reason why this unusual request was made in the first place was because the Office of Planning Report is rather comprehensive. You have seen it, correct?

MS. DWYER: Yes, we have.

CHAIRPERSON REID: It's very detailed, very comprehensive. And some of the same issues are raised in the material segment and also by the ANC and by the opposition and the idea was that, if in fact, these issues had already been aired, then it would not be necessary for the Office of Planning to be redundant in its entirety with the report and basically to be able to give us the highlights and to truncate much of the report that they would have given earlier.

So is it possible that the persons that were supposed to come down, that they be told to come down earlier or what time did you have them scheduled to come down?

MS. DWYER: We had tentatively scheduled for them to be here at 4 o'clock.

CHAIRPERSON REID: 4? How many people?

MS. DWYER: There are three.

CHAIRPERSON REID: Just three people?

MS. DWYER: Just three. We can try reaching them,

and if we can't, then they would be taken out of turn.

CHAIRPERSON REID: We appreciate it if you could because what we're trying to do now is to be more -- as efficient as possible and we think that given the fact that the Office of Planning Report, as I said before, typically it's like a few pages. But for now, today the report is substantial, that that would help to cut down on some of the time that it would take and we would like to try to finish today, but --

MS. DWYER: Let me also say that while OP may be truncated in its oral presentation, we do have a lot of questions for the Office of Planning because they are two lengthy reports.

CHAIRPERSON REID: Yes.

MS. DWYER: And this is our first opportunity to cross examine them on their reports and we want to be very careful to have a very strong record. So we do have a fair amount of cross examination for the Office of Planning.

CHAIRPERSON REID: Well, that wouldn't have any bearing on whether it was later.

MS. DWYER: No, whenever they give their report.

CHAIRPERSON REID: Okay, yes.

MS. SPILLINGER: Madam Chair, if I may, I'm Barbara Spillinger, Chair of ANC-2A.

We have some persons who had planned to testify in opposition who frankly were not able to be here today at all and plan to come on the 26th, so I would just like to let you know

about that. They could submit their testimony in writing if this does end up today, but I just would like to add that comment.

CHAIRPERSON REID: You have people who will not be present?

MS. SPILLINGER: Who will not be present today, who wanted to testify in opposition.

CHAIRPERSON REID: Okay, but you have their written testimony?

MS. SPILLINGER: I have one with me. I do not have the other.

CHAIRPERSON REID: Okay.

(Pause.)

CHAIRPERSON REID: How many people do we have here in opposition, who will be testifying in opposition today?

Two?

(Pause.)

Are you going to be able to -- can you call your people -- those three people and see if they can come earlier?

MS. DWYER: Madam Chair, we're going to try and do that. We're getting their phone numbers and we'll try and do that. I can't guarantee it. I'm assuming the hearing will still be continuing at 4 o'clock and perhaps when they arrive at 4 we can take them at that time.

CHAIRPERSON REID: Yes, because staff just informed me within our publications it specifies that the order would be

changed at the Board's discretion, so that's something that typically we don't do, rarely, but nonetheless, if in fact we felt it would be in our best interest to do so, we do have that discretion, so I appreciate very much if you would call those persons and see if they can come earlier.

MS. DWYER: Yes, we will.

CHAIRPERSON REID: Do you have anything?

MS. DWYER: I would just state again for the record that we would object to the Office of Planning Report coming at the end of the hearing, rather than at its normal point in the hearing process. We think that the normal procedure again is for the Office of Planning to give its report and provide the framework for a lot of the issues that have been given in the testimony and we strongly believe that in this case that report should be given at the beginning of the hearing.

We also know that the report was filed late so there has to be a request for the late filing of the Office of Planing Report which the Board presumably would have to deal with at this time as well.

CHAIRPERSON REID: All right.

MS. PRUITT: Actually, if we go back to it, go back to the sequence, I think we will cover all of the issues that have been raised.

CHAIRPERSON REID: If we do what now?

MS. PRUITT: Go back to the sequence that we had

started, instead of dealing with the preliminary issue now, we have some more information to give you before getting into the preliminary matters.

CHAIRPERSON REID: From staff?

MS. PRUITT: Yes.

CHAIRPERSON REID: From staff?

MS. PRUITT: Yes.

CHAIRPERSON REID: All right.

MS. PRUITT: I just want to clarify then so the sequence will be an update by the Applicant followed by the ANC report --

CHAIRPERSON REID: Give time lines too.

MS. PRUITT: I will, but I just want to give the sequence first, please.

Update by the Applicant, followed by the ANC Report, followed by persons and parties in opposition, then the Office of Planning Report and persons in support and closing remarks.

And the time frame for those, the Applicant had an hour and 15 minutes on the previous day on the April 26 hearing. I believe they are requesting another 15 to 20 minutes which would put them to an hour and a half total time, which then would give parties in opposition an hour and a half total time to be dispersed among the identified parties. Ms. Bailey will go into a little more detail on that.

And organizations will be given 5 minutes and individual testimony will be given three minutes. Ms. Bailey is going to actually indicate, reiterate the parties that were defined at the April 26th meeting, submissions that were requested and whether or not they've got it and some additional information and then we can go to preliminary matters such as the waiver of the filing of the OP Report.

Ms. Bailey?

MS. BAILEY: Thank you. Madam Chair, a couple of housekeeping chores. Is there anyone in the audience who is going to testify today who has not been sworn in?

Will you please stand to take the oath? Please raise your right hand.

(Witnesses were sworn.)

Members of the Board, no new postings were required for this project. The parties of the case are ANC-2A, Barbara Spillinger, Dorothy Miller, Maria Tyler, Foggy Bottom Neighborhood Association, Steven Mandlebaum, Sarah Maddox and James McLeod. There were submissions that the Board had requested from its last hearing of April 26 as a letter of authorization from the Columbia Tenants Association, the final report of ANC-2A, a copy of the presentation by the Applicant, a report on the number of students. All of the submissions have been made.

To give a brief update as to where the hearing will start today, the Applicant has requested 15 minutes to update the

Board as to what has happened since the last hearing; cross examination by the Board of the Applicant's witnesses; limited cross examination and I emphasize the word limited, cross examine by Michael Thomas. Concerning the materials present, cross examination by other parties, including the community, of course; presentation by ANC-2A; presentation by the Office of Planning. I'm not sure if the Department of Public Works is here, but if so, they would be given an opportunity to testify or present their report. Presentation by opposition and that would include an hour and a half for the opposition to present its case and rebuttal and closing arguments by the Applicant.

That's the sequencing of this afternoon's agenda, Madam Chair.

And then the last matter is the ANC report and Office of Planning's report were submitted late. They were required to be submitted 7 days before the hearing. They were not and a waiver would be required for those reports to be accepted into the record.

CHAIRPERSON REID: Unless any Board Members have an objection, I will waive the record to allow those reports to come in.

MS. PRUITT: Madam Chair, there's one more preliminary matter. I believe Sarah Maddox is not able to be here today and she has sent in a letter authorizing someone else to represent her. She's a party. So that's really more for the

record.

MS. SPILLINGER: One more question, if I might. We had understood that parties to the case would be allowed 15 minutes each and that the ANC testimony was not specifically limited. I now understand, at least from what you've said that does not appear to be the case.

CHAIRPERSON REID: No. The ANC specifically not on time, but nonetheless we ask that the ANC act with some discretion and some reasonableness. They can't go on ad infinitum, so the time essentially is to make case, but the nonetheless just to make sure you use some discretion in that, that's all. She didn't give you a limitation, did she?

MS. PRUITT: No, Madam Chair, just reasonable time limit. So it's not a --

CHAIRPERSON REID: Yes.

MS. PRUITT: And the new regulations do require that parties, the time you give the Applicant, you give parties the same amount of time and typically the Board, if there are a number of parties, it's up to them to determine how they'll use that time as a whole.

CHAIRPERSON REID: Exactly, equal time.

MS. PRUITT: Equal time and that's up to you.

CHAIRPERSON REID: So we'll begin with the conclusion of the Applicant's case. I think you have 15 or 20 minutes, which one is it -- I mean, how much time do you need Ms.

Dwyer?

MS. DWYER: I'll try to do it in 15, but we may need 20, but what ever amount of time we take will be given to the opposition parties.

MS. PRUITT: They've used an hour and 15 minutes so far.

CHAIRPERSON REID: Try and wrap it up in 15 and if you run over a couple of minutes we're not going to quibble about that.

MS. DWYER: Where things ended on April 26th is that we completed our case. There was a second hearing day scheduled in May. We all agreed to postpone that in order to permit meetings over the summer between the Office of Planning and the community and what we'd like to do today is provide you with an update of the changes that have been made to the campus plan as a result of those meetings. And the witness to present that is Charles Barber.

MR. BARBER: Thank you, Madam Chairman and Members of the Board. My name is Charles Barber. I am senior counsel to the George Washington University. I was attempted to entitle this presentation "How We Spent Our Summer Vacation" because we were quite business meeting with Office of Planning, meeting with representatives of the ANC and Foggy Bottom Association and Office of Planning, playing a bit of shuttle diplomacy.

We think it was time well spent. There have been

substantive changes, substantial changes to our plan and we are very proud of the changes that we have made to address the specific concerns that were raised.

To refresh you, there were three principal items in contention as a result of the first hearing. One, the amount of housing on campus; two, what the University's plans are for Square 54. Square 54, you recall, is the Square where the current hospital is. A new hospital is being built, so that will free up in a couple of years and off campus purchases and development as a matter of right that the University has made.

On those three issues what we said on on campus housing is that we would commit to maintain housing for full-time undergraduates for at least 60 percent of full-time undergraduates for the life of the campus plan with a goal of 80 percent. Sixty percent was a relatively high figure for us historically. Square 54, we said we really didn't know what our plans were and had identified that square with four University uses, reserving the right to make that decision later. And off campus purchases we said this was an issue that was beyond the jurisdiction of the BZA.

We've made substantial progress on each of these issues. Let me talk about the new housing that we've identified on campus. We've identified three large residential developments totally 1,350 new beds to be built on the campus within five years. I would direct your attention to the board called

"Additional Housing." The three red circles, the northern circle with the star, that is the Square 54 site and what we said there is this is directly on Pennsylvania Avenue. We said with a zoning modification to increase the capacity of that site to a mixed use development. We could provide 500 new beds and we would provide those 500 new beds either directly on that site or an alternative site on campus which the University would identify and move ahead with at the same time. First, or at least simultaneously with any commercial development on Square 54. The idea of the increased commercial capacity would help finance and help support the new beds. We think that's a win-win for the University and the community and we urge your support of that.

The second large residential development would be on Square 80. Currently, this is University property, together with space occupied by the School Without Walls and owned by the District of Columbia. What we said we would do if the District would give us this property, we would develop this property, develop new space for the School Without Walls, better space than they have now, as well as develop 650 new beds for undergraduate students. We think that's an exciting project. There's precedent for that. The Oyster School Project on Connecticut Avenue is a similar project. We think that's a win for not only the community and University, but for the School Without Walls as well. The principal of the School Without Walls strongly supports this project and we'd like to go forward with that.

The third site would be Square 103. It was previously identified, but we've elaborated on that and there will be 200 beds on that site. With this housing, we could house by 2005, 70 percent of the full-time undergraduate population and this is a significant increase from what we had said last time. We had last time said we would maintain a minimum of 60 percent with a goal of 80 percent. Here, we're showing how we get halfway to our goal, halfway through the campus plan. This housing would be provided in the housing opportunity area and let me identify what that means.

The housing opportunity area would, of course, include all on campus sites. It would include all existing sites off campus as well as four squares immediately to the south. Square 43 is residentially zoned. They're all residentially zoned. We have a project already planned for that square, 350 new beds. Square 122, at the eastern end is the site of a PUD. We have just broken ground on a mixed use development which will yield 200 beds on that site. And it is those 350 and 200 beds added to the new sites we have on campus which will total 2200 beds within this five year time frame.

We've also added within the housing opportunity area, Squares 58 and 81. The reason we did that, these are areas contiguous to the University's campus. They're residentially zoned and they're areas where the University already owns much of the property. Square 58, we own about three quarters of the

property, the major piece we do not own is a boarding house. We do believe there is a displacement issue there, so we think going forward on a long-term basis that that makes sense as a site to do housing. We don't currently have a project identified for that square, but we think it makes sense to identify that now.

Square 81, similarly, that's a mixed use square. Of the residential uses in that square, we own about half of the residential uses in that square. Again, we don't have a specific project at this time for that square. We think it makes sense to include it in the housing opportunity area. We were asked where are you going to put your students and we have tried to respond to that by identifying clearly what our long range goals are.

We would propose that the BZA review where we have gone in five years. This would still be a 10-year plan, but there would be a five year review on our housing commitment. We think that's appropriate. It gives some check and some comfort that we are on our target that we will have met our commitment, our 70 percent commitment.

On the third area, the use and development of off-campus properties, recognizing that this is not an area where the BZA has jurisdiction, we have volunteered a moratorium on the University's purchase and use of residential areas, residential properties in Foggy Bottom for University uses. We view this as an act of good faith. It's a big step for the University because we are, in effect, for a period of time relinquishing our rights.

The period of time would be for the 5-year period, a 5-year moratorium or until we reach the 70 percent commitment, whichever comes first. The idea is when we house 70 percent of our full-time undergraduates, there's less of a need for this restriction. So this would be -- so that's an act of good faith. We think it makes sense with these kinds of conditions or proposals be put on the table and this is something we've been asked to do.

I would make it clear that we would reserve the right to make purchases for investment purposes. We always have the right to own property. It's a constitutional right the University has. What we're talking about is not purchasing residential properties in Foggy Bottom for University uses and so with University uses, of course, the properties come off the tax rolls, we change the rental policies to favor students and we turn it into a dormitory. That's what we would not do to convert it to University use.

We've also made some other advances which we think will address some concerns. Off-campus conduct by our students. In all of our discussions, this has not been a big issue. It has come up from time to time and of course, if there are a few instances of off-campus misconduct by students, then that's a few too many. What we have said is that we would extend our student code of conduct to off-campus behavior in the Foggy Bottom area. We have faced a practical problem in the past in doing that. Many of the buildings directly off campus are large apartment

buildings, who is to identify these G.W. students or not. We have no right to go into those buildings. We have tried to address the practical concerns by saying we will work with the landlords and the tenant associations of these buildings so that if they identify G.W. students who have engaged in misconduct, we will discipline them under the Student Code of Conduct. We'll give them the hearing they're entitled to and impose discipline up to and including suspension or expulsion if that's warranted and in effect, we will treat that misconduct as if it occurred on campus. That is a big step for us. That combined with the previous commitment to house freshmen and sophomores on campus we think will address misconduct even more. We have found that it is the younger students, not surprisingly, who are responsible for most of the misconduct, so bringing them in-house makes more sense.

There are several other proposals we put on the table. Let me touch upon them. In terms of parking and transportation, we have said that we will encourage the use of Metro by giving our students Metro check passes. We find that already a large number of our students use Metro. We have seen from our best data that of the full-time undergraduate students that we don't house, almost two-thirds of them live outside of Foggy Bottom area and they're coming to this area, to the campus via Metro and that's a good thing. We have a Metro station right on campus. We have another Metro station two blocks from campus. We want to encourage and promote that.

On parking, we have said that we will increase the minimum number of parking spaces that we will have for the life of the plan. We have proposed 2700. We have increased that to 2800.

We've also offered, in terms of parking, some of our facilities. Our parking facilities are used cyclically. I am they're in heavy use during the day, during the middle of the day, but during the evenings and nights, there is not much use. We have offered to make certain spaces available to the community on a rental basis where it makes sense and where there is a desire to do so.

Let me touch upon student enrollment. We have proposed not adjusting our cap at all of the total number of students. Since 1985 that cap has been 20,000. We are proposing no increase in that number. In point of fact, we have fewer total students today than we did in 1985. In 1985 we had approximately 17,900 students. Today, we have as of last count, approximately 16,500. We've been able to do that because we've expanded in other areas since 1985. We have a Virginia campus and various satellite campuses so that means there are thousands of students, approximately 3,000 who are not coming to the Foggy Bottom area. We have in the last two years opened a Mount Vernon campus and we plan to grow that campus within the boundaries of that campus plan to further relieve pressure.

So we're not proposing an increase in this cap. What has changed over the years is the make up of those students

in terms of undergraduates, graduates, part-time, full-time and that is a function of the market that George Washington University is in. We have found that when the economy is good, graduate student enrollment sends to level off and decrease. That is because graduate students are getting jobs. Conversely, the undergraduate population increases and given the population demographic shifts, we have seen some increase in our undergraduate population. We, as a University, need the flexibility to adjust our population within the 20,000 cap to meet those kind of market-driven forces. That is crucial for us. It is the underpinning of our economic viability. We are a tuition driven institution. Seventy percent of our operating budget comes from tuition. If there was an artificially imposed cap on one segment of this student population, that would severely undercut our ability to continue to provide a positive economic impact on the District of Columbia which we are doing. We are one of the foremost employers, private employers in the District of Columbia. More significant, it would undercut our ability to build these new beds. We are talking about a significant increase in student beds in five years. We're talking about tens of millions of dollars and that's a commitment the University is ready to make. But to hamstring us by not being able to adjust our student population within the 20,000 cap would undercut the financial viability of these proposals. There's been proposals that we house -- why not house all of your undergraduates on campus? That

makes no sense. Being on the subway we have substantial numbers of people who live in other parts of the District of Columbia, in Maryland and Virginia. They're doing quite well there. To require us to do 100 percent on campus brings those people into Foggy Bottom where they do not need to be. Commuters use our campus and we should encourage that use. We have some proposals in here to encourage that use. That is, as we transition to house freshmen and sophomores on campus and juniors and seniors who are moving off, we will advise them about places outside of Foggy Bottom where they might want to consider living, with the Metro check passes. And also, the University says that where we identify pockets of students that are outside of Foggy Bottom who are congregated, we will institute a shuttle service to make that transportation even easier. So that makes sense, but bringing those people on to campus does not make sense.

There's been a proposal that we provide one bed for every full-time undergraduate increase that we have in our population. We're going to do better than that. We're going to add more beds than we add students in five years. But we need the five years. It takes time to build beds, to freeze our population. And in effect, that would be a freeze, would undercut our ability to build the beds. We have an architectural solution here. We think it's an architectural solution that can work. We cannot do it by ourselves. The University is committed to doing its part, but we are looking for a partnership with the District

of Columbia, with the Office of Planning, with the ANC, with Foggy Bottom, with the citizens of this community around the issue that we all have a joint interest in, increasing our on-campus housing. We will prepare the plans. We will bring these plans forward. We will spend the money and the resources, but there will be approvals that the University will have to get. We need the support of the people in this room behind that plan.

I have no doubt that with that support these housing numbers can be achieved. We can build this housing with the support, but we need that support.

With any partnership, if we succeed, there's benefits to each of those parties. If we fail, there are risks to each of those parties. There's a risk to G.W., George Washington University, if we are not able to secure the approval to build this housing. The risk is the risk we always face is that this Board will deny us the right to build the other facilities we need. We have academic needs. We have medical education needs. We will be coming back to this Board for approval to build those projects. I fully expect if we have not made the progress that we should in meeting this 70 percent vote, that we won't get those projects built. That's the sanction, that's the stick that's hanging over our heads and it's driving our commitment.

George Washington University is proud of what it has been able to do. It's listened. It's identified the areas of concern and we've put forth a very aggressive plan to address

those concerns while preserving the flexibility and the financial feasibility of the operation of the University. And with that, I thank you.

CHAIRPERSON REID: Thank you very much. Do Members of the Board have questions?

COMMISSIONER MITTEN: I have a few questions. You were doing great, you were talking too fast for me.

MR. BARBER: Sorry, time was limited.

COMMISSIONER MITTEN: When you were enumerating and maybe I misheard you, but when you were enumerating where new beds could go I understood you to say that there were three different places and that that would total 1350.

MR. BARBER: That's correct.

COMMISSIONER MITTEN: And then there are two sites that have already been identified for beds and that would total another 550?

MR. BARBER: That's correct.

COMMISSIONER MITTEN: And -- but I understood you to say, give a total of 2200?

MR. BARBER: 1350 plus 550, I think -- to get up to 2200, I missed that point. There are some beds on campus that will transition to University use, apartments we have purchased in the last few years, some of those beds will transition to University over the time period.

There's also some beds in existing facilities that

we will provide more students in.

COMMISSIONER MITTEN: Could you be more specific on those -- where are you talking about exactly? Can you enumerate that or can you provide that to us as a follow up?

MR. BARBER: Yes. On the transitioning of beds, it's the west end and 2109 F Street, properties that we have purchased and of course, there's no requirement that people move out, but people do move out from time to time, so we have counted a certain number of beds and we've been fairly conservative in our estimate of the number of beds that will transition to University use and those facilities.

COMMISSIONER MITTEN: I'm just trying to get a sense -- and maybe you've given it to us and there's just a lot of material --

MS. DWYER: We can provide that for the record because we had a previous list and included -- it was 302 beds in existing facilities on campus and we will provide you with an updated list that shows you item by item where each of these new projects is.

COMMISSIONER MITTEN: Okay. The issue about Square 54 and if there were to be 500 new beds on Square 54 that you would need a zoning modification.

MR. BARBER: Yes.

COMMISSIONER MITTEN: You know that we can't direct the Zoning Commission to do anything. You're saying on that's

contingent on if you were to get what you request on Square 54, then you would provide 500 new beds on Square 54?

MR. BARBER: Yes, that's correct. And we believe that's doable, again, with the support of our parties, with Office of Planning support, with the ANC support. We recognize that is a Zoning Commission matter, but we think that it's imminently doable with the support.

COMMISSIONER MITTEN: Okay, when you talk about the District government giving you the site for the School Without Walls and then you would undertake to rebuild the School Without Walls, would that be in the same square or someplace else?

MR. BARBER: In the very same location.

COMMISSIONER MITTEN: I have a general question about these sort of contingency things that seem to me to happen about the zoning with Square 54 and the District giving you the site of the School Without Walls and I understand that that's not without an offsetting contribution on the part of the University.

In our materials there are -- there are two sites that you've specified where we will have to in the course of -- or you're requesting that we in the course of granting the campus plan grant a special exception for continued use of two parking lots in R-5-D and I can tell you where that is. That's your Appendix N to what you have filed on April 12th. And I'm leading up to my question. I also identified two other parking lots that

I don't know if they're in the same -- I know they're in the same zoning category, so I don't know if they're in the same category of meeting the special exception. But what I would like some clarification on is surface parking is a very inefficient use of land, so why is it that you need to have these -- why is it that you can't accomplish what you want to accomplish on site that you have surface parking on? Why do these other things have to happen?

MR. BARBER: We have converted some of our surface parking spaces, places to buildings. We are building two projects now that were formerly surface parking areas, the Health and Wellness Center and the Media and Public Affairs --

COMMISSIONER MITTEN: Could you -- I just want to be clear. Health and Wellness is on what square, please?

MR. BARBER: 42.

COMMISSIONER MITTEN: Okay.

MR. BARBER: Media and Public Affairs is on our central campus and I'm unsure of the square. I can get you the square of that.

COMMISSIONER MITTEN: Okay.

MR. BARBER: These are on-going projects. They should be finished within the year.

COMMISSIONER MITTEN: Okay.

MR. BARBER: Why we have asked for special exception approval for existing parking lots is -- surface parking

lots because we planned in the short run to continue to use them as surface parking lots. The question is have we considered -- are we willing to consider development on those sites? Yes. We are considering it and have considered some development on those sites.

It could be that some of these projects could be enlarged to include those surface parking lots.

COMMISSIONER MITTEN: I guess my main concern is here we have basically a five year window of time that we're at least -- the goal would be that you would accomplish all these things.

MR. BARBER: Right.

COMMISSIONER MITTEN: And yet several of them are contingent upon other things happening.

MR. BARBER: Yes.

COMMISSIONER MITTEN: And given that you have land that's being inefficiently used, why are you making this housing proposal contingent on these other things. Why don't you just use the land that you have that's being inefficiently used?

MR. BARBER: Okay, part of this is the location of the housing in the context of other uses, but I think an architecture would probably be the -- would be one better to address the location of this housing.

COMMISSIONER MITTEN: Okay, you raise another point which I would like to understand better too, the compatibility

issue, because Office of Planning raised it and it's obvious an issue for the community. From your perspective, what things go together and what things don't go together? Because I mean we don't want in the course of making our decision do something that you will find inherently unworkable so from your perspective, what things don't go together?

MR. BARBER: Again, those kinds of planning issues, I think the architect would probably be better, but let me just say this, in general. The more intense uses are in the central part of our campus. The less intense uses are more on the periphery of our campus. Housing is more of an intermittent use. You have people leaving in the morning and coming back in the afternoon, by and large, as opposed to academic buildings that are used constantly and so we have --

COMMISSIONER MITTEN: Is that what you mean when you say intense? You mean an academic use is an intense use?

MR. BARBER: Yes.

COMMISSIONER MITTEN: Okay.

MR. BARBER: The timing, the number of people, the amount of people coming and going during a period of a day.

COMMISSIONER MITTEN: Okay.

MR. BARBER: But in terms of other planning principles that have guided our campus plan and the selection of the housing, I'd like to have our architect take a crack at that.

COMMISSIONER MITTEN: Okay.

MR. BARBER: Do you want to do that now?

CHAIRPERSON REID: Let's finish with --

COMMISSIONER MITTEN: Okay. In the additional materials that you all had provided, you didn't specifically speak to this, but you gave us a numeration or a formula for how you calculate full-time equivalent students?

MR. BARBER: Yes.

COMMISSIONER MITTEN: And this is a general question, first of all, because we hear these campus plans from time to time and we want to be sure we're speaking the same language. It seemed very specific about okay, well, there is a certain category and then you divide by 12 and then another category you divide by 9 and another category you divide by 8 and so on. So is that your -- George Washington University's definition of full-time equivalent or is there actually some generic definition of full-time equivalent?

MR. BARBER: My understanding and Craig Linebaugh from Academic Affairs can speak to this more specifically, but my understanding is that it is a fairly standard definition for those groups of students. That is, for undergraduates the full course load is based on 12. For graduates, the full course load is based upon 9 and that is a fairly standard type of measurement. But I would also refer to Craig Linebaugh to answer that more fully.

COMMISSIONER MITTEN: Given that we're trying to do the best for everyone and it's important for us to understand how

your business works and how it's changed over time so we make sure if we're looking at things like the fact that your full-time equivalent student population has declined, is it possible for you to provide us with that -- the formulas -- you say this is generically how we calculate this number, but to put numbers to that so we can have a sense of well how does the proportion of students shift from actual full-time students. I guess numbers plugged into the formula, that should help us, but if we could have it, I don't know if you can break it down into those categories and then by undergraduate and graduate.

MR. BARBER: Okay.

COMMISSIONER MITTEN: Is that possible?

MR. BARBER: Yes, we can.

COMMISSIONER MITTEN: And then can you tell me what the definition of a commuter is? How do you put students in that category?

MR. BARBER: People who live at home in the sense of home when they apply.

COMMISSIONER MITTEN: Okay.

MR. BARBER: I may be exceeding my limited knowledge here.

COMMISSIONER MITTEN: If we start to look at and this is going to be down the road, but I'm going to anticipate something that the Office of Planning is going to say about counting, counting people and where they live and all of that.

When I was in school my parents bought a house and my sister and I lived in this house, but we effectively in the neighborhood of campus, but we could have been classified in any number of ways.

MR. BARBER: Right.

COMMISSIONER MITTEN: We should be captured for this exercise, in my mind, as not commuters, but students living in the community.

MR. BARBER: Okay.

COMMISSIONER MITTEN: So I want to be sure that we understand what commuter means since you guys are labeling and putting the numbers in those categories, I want to understand what you mean by that.

MR. BARBER: I appreciate that. I think I was using more broadly. We have looked at it. What number of students live outside the Foggy Bottom area. Because if they're not living within Foggy Bottom, then they're not causing a problem. They're not a problem for our neighbors and we've been told that. So we try to identify where our students live and where -- how many live outside of Foggy Bottom, how many live inside of Foggy Bottom.

We don't currently have precise data. We have some general ideas. In fact, one of our conditions that we proposed is that we collect that data as we will going forward in the spring prior to registration and have more precise data of exactly where they are and report that regularly to the ANC and to others.

But that is the idea of a commuter, that is somebody who lives outside the Foggy Bottom area who then would come here by Metro or some other way.

COMMISSIONER MITTEN: So nobody within Foggy Bottom would be captured in that category, regardless of whether they owned a condominium or rented a condominium or whatever.

MR. BARBER: Unless they start out there. I mean if their parents live there or that's -- they're on their own when they applied, then I think

--

COMMISSIONER MITTEN: You mean if by some strange coincidence they were residents of Foggy Bottom and then decided to go to G.W.

MR. BARBER: Right, and I think that's a very small percentage. By and large, you're right.

COMMISSIONER MITTEN: Okay. I just want to be sure that we understand, everybody is speaking the same language.

MR. BARBER: That's right.

COMMISSIONER MITTEN: You also, I'm not sure that I understood your meaning or if you said what I understood you to say. When you talk about the moratorium on off-campus purchases, then you got into talking about residential purchases. Are you -- I understand the distinction about investment properties, but is the moratorium exclusive to residential properties or is it properties for University use?

MR. BARBER: No, it's specific to residential properties because this has been the problem that's been raised to us repeatedly in our discussions. It is University's purchase of residential properties whether they be apartment buildings or hotels and then converting them to University use. That has been the problem that's been identified and that's what the moratorium is designed to address.

COMMISSIONER MITTEN: Residential only.

MR. BARBER: Yes.

COMMISSIONER MITTEN: Okay, great.

MR. BARBER: And if you think of matter of right uses as I think the term invasion came up in the previous case, this is a cease fire in that context within the term of the moratorium.

COMMISSIONER MITTEN: That's all I have right now.

MEMBER MOULDEN: I have a general question. You indicated earlier that the student enrollment decreased from approximately 17,000 to 16,000?

MR. BARBER: Yes, the total number of students is about that amount.

MEMBER MOULDEN: And that was a result of different locations of campus in the area?

MR. BARBER: Yes. I mean if you look our total student population in all areas, yes, we have more students, but they're not in Foggy Bottom. So we've been able to limit the

number of students in Foggy Bottom by expanding in other areas.

MEMBER MOULDEN: Why is there a need for additional beds there if the campus enrollment has decreased?

MR. BARBER: Our number of full-time students, full-time undergraduate students specifically which has been the issue which our community friends have asked us to address, that has varied over time and in the last few, five years or so, it has increased. So full-time undergraduate students as opposed to part-time have increased, and so we've tried to provide more beds to address that population. And if you look at total number of students, grads, part-time, etcetera, that number has decreased. The population within that number has shifted and so we do have more full-time undergraduates in the last few years who have housing needs. So we want to address those housing needs.

CHAIRPERSON REID: I have a question. Mr. Barber, you in your testimony refer to a recommendation for a proposal for a five year review of the campus plan?

MR. BARBER: Yes.

CHAIRPERSON REID: How do you propose that be accomplished?

MR. BARBER: It could be done in a number of ways, but what we have said in our proposed conditions that the ANC could choose to initiate a review and which we would agree to do if we were not in compliance with our -- if we had not met our 70 percent goal to address the housing issue. Or if they felt the

housing issue needed to be addressed, they could bring us back for a mid-term review and this Board would look at at that time where we were, the population, the numbers and by that time we would have more accurate data about exactly where our students live and we would have progress reports about the number of beds that we've been able to build and I would expect that we are at that 70 percent, but the Board could review that and if the Board were dissatisfied with our progress or felt additional action was warranted, the Board could take additional action at that time.

We don't think a five-year campus plan makes sense. It takes three years just to get these things together and get them before the Board, but we think a mid-term review particularly on the housing program makes some sense.

CHAIRPERSON REID: On the face of it that does sound good, however, I don't think that we have an apparatus where we could actually do that, do we? I'll talk with Corp. Counsel on this.

MS. CORPORATION COUNSEL: I know in the Georgetown campus plan it talked about adding it to their application for further processing, special exceptions, further processing of the plan over the lief of the plan?

COMMISSIONER MITTEN: We can't hear.

CHAIRPERSON REID: You can't hear who? Speak up, please.

MS. CORPORATION COUNSEL: I know in the Georgetown

campus plan they've talked about adding an update to the special exception, further processing of the plan over the life of the plan, adding a reporting component to that.

CHAIRPERSON REID: When a term is classified in the order, there's no mechanism by which we can bring them back for review, as the regulations stand right now, is it?

MS. CORPORATION COUNSEL: You are right.

CHAIRPERSON REID: On the face of it, like I said, with something as great rolling around the city like campus plans, in general, but how to facilitate that is a horse of a different color. What orders are written -- we can't bring you back unless there is some type of text amendment from the Zoning Commission that would allow that to be done.

Can you speak on that?

COMMISSIONER MITTEN: We don't have anything like that yet.

CHAIRPERSON REID: Yes.

COMMISSIONER MITTEN: One of the things is we could discuss whether or not, and I don't know if -- I don't know legally how it works, but just like this moratorium is, you know, Mr. Barber is correct, we don't have the authority -- we don't have the authority to impose a moratorium on them, but they will voluntarily do that as a condition of the plan so I don't know if by agreement if it becomes integrated into the plan that everybody agrees that there will be this five year

review if that sort of then makes it doable.

CHAIRPERSON REID: The thing about it, correctly, legally then suppose after five years they come back and they have a review and it's determined that it's not working. Then what? Do you revoke the campus plan?

COMMISSIONER MITTEN: All that needs to be discussed.

CHAIRPERSON REID: Yes. It would be rather involved as to the what if kinds of things?

MS. DWYER: If I could just in support of what Corporation Counsel has said, in the 1990 Georgetown University campus plan there was a condition that with each further processing, the University would update the Board on the progress of its housing program as well as the progress of its traffic, transportation management program and that allowed the Board to have periodic review since G.W. will have a number of projects coming before you including some of these housing projects, we would -- you could have as a condition that as part of that further processing, the University would provide the update and there's certainly precedent for that from the Georgetown University campus plan. And if at that time you felt that the University was not making sufficient progress, then you could impose additional conditions or restrictions on the University to try and accelerate the progress in the housing area.

CHAIRPERSON REID: Ms. Dwyer, I am not clear as to

how we can facilitate that and I think it warrants some additional scrutiny by Corp. Counsel or the Zoning Commission to determine how we could facilitate that because it appeared that given the current environment, as far as the community is concerned, and these campus plans are concerned, there is a feeling that some type of mechanism wherein there's a monitoring or a review that will take place prior to the expiration of the 10-year campus plan period would be something that would be very good. However, I think that while it's being talked about and perhaps we could look at how to best facilitate it --

MS. DWYER: I'd be happy to propose some language, drawing on other cases.

CHAIRPERSON REID: That would go a long way in giving the community, I think, some comfort and the ten years seems to be too long and at the same time to ensure that George Washington was not unduly harmed, try to set those time constraints and how to best do that we'd have to look into that.

COMMISSIONER MITTEN: Madam Chair?

CHAIRPERSON REID: Yes.

COMMISSIONER MITTEN: I just want to interject under the current regulations which, you know, may continue to be the regulations or we may end up making some changes, there's been a lot of creativity that's been brought to bear and Ms. Dwyer raises this idea that's been employed for the George Washington University campus plan.

So I think any creative ideas that everyone can agree to, we should welcome.

CHAIRPERSON REID: yes.

COMMISSIONER MITTEN: And so let's at least let things be percolating.

CHAIRPERSON REID: I agree. I agree.

VICE CHAIRPERSON SOCKWELL: Madam Chair, this might be possible for it to be looked at as the external process that would be bound into the campus plan approval for this particular University whereby the five year review would be between an established community-University relationship group at which time if the University was not meeting its goal and appeared not to be able to meet its goal over the 10 year campus plan period, that the group would come together and formulate a method of getting them back on track and if that didn't happen, when they came back around for the next campus plan approval, the lack of performance after a mid-term external review would be taken into consideration by the Board, but at this time our regulations don't allow us to do it as a Board action. It would be an external action that would have a set of reporting criteria which if used and then unsuccessful, would be the basis for our review of that portion of the campus plan the next time it came up.

CHAIRPERSON REID: I think that all of these things, all of these ideas are warranted for some consideration to come up with something that is workable for all concerned. I also

have to commend George Washington for its taking the initiative to even propose something of that nature.

Now the other question is with regard to Square 54 where the existing hospital is going to be old hospital is located at this time, you were saying in your written submissions that there has not been really anything definitive -- determined as to what is going to go there. Nonetheless, you are considering putting some housing there, you are or you are not?

MR. BARBER: Yes. Let me explain that. What we are proposing for Square 54 once it is vacated is that we, the University, seek a rezoning of the PUD to increase the capacity to do commercial and a mixed use development, commercial and housing, commercial and academic and this increased space would then facilitate, would support housing, 500 beds of housing and we would put that housing on Square 54 or on an alternative site. The idea is that maybe with the increased capacity some place on campus we've identified as academic would fit on Square 54 and we could switch the sites. Wherever we decide to put it, it would be on campus and we would go forward with the housing prior to or simultaneously of going forward with the commercial development. This proposal was trying to address, we have a mature, older campus and it's getting to be a zero sum kind of gain that if you do academic, you can't do housing. We're trying to get out of that box by increasing the buildable space and also this is prime real estate, the highest and best use, quite frankly, in this area

is all commercial, but we think if we get increased commercial, that will support housing and whether we do the housing right there or whether we find a vacant parking lot to do housing, it's going to be housing on campus and we would do it in a time frame that's consistent with development of Square 54. That was the point of that.

CHAIRPERSON REID: Okay. Thank you very much and the last question is about Square 80, this School Without Walls.

MR. BARBER: Yes.

CHAIRPERSON REID: Are you proposing to tear down the existing building and build a new school there, School Without Walls, a dormitory on the same site?

MR. BARBER: We haven't gotten to the design. I think we may end up keeping the existing structure, or at least the facade of the existing structure and integrating that into this development. We would, of course, have to separate somehow, the housing from the School Without Walls. There's enough space. We have done enough planning to identify -- and again, the architect can speak to that. There's enough space to accommodate both the School Without Walls and better and bigger facilities, quite frankly, as well as these 650 undergraduate beds.

CHAIRPERSON REID: I have one last question.

MR. BARBER: Okay.

CHAIRPERSON REID: In regards to bicycles --

MR. BARBER: Bicycles?

CHAIRPERSON REID: Yes.

MR. BARBER: Okay.

CHAIRPERSON REID: Transportation-wise is they do want to provide Metro passes to students who commute.

MR. BARBER: Yes.

CHAIRPERSON REID: And I think I read from the Commission that quite a few students use bicycles?

MR. BARBER: Yes.

CHAIRPERSON REID: What percentage of the students do you -- can you tell us actually use bicycles back and forth to school, rather than cars?

MR. BARBER: I'm sorry, I can't tell you that. I do know, I think we looked at that in the spring in terms of providing more bicycle racks, but I don't think we ever got a number as to the percentage of our students who --

CHAIRPERSON REID: Have you all ever done any kind of an encouragement of bicycles rather than cars?

MR. BARBER: In the sense of facilitating places to put the bicycles, the racks. We've increased that, right near the academic uses. Could the University do more? I suppose we could. I think we've done some. Certainly in the past year that I've aware of, but we could integrate that into our traffic management plan and that's not a bad idea.

CHAIRPERSON REID: One of the issues to addressing the parking problem, so --

MR. BARBER: yes.

CHAIRPERSON REID: Thank you very much. Member Renshaw?

MEMBER RENSHAW: Yes, thank you, Mr. Barber, for your presentation. Just a couple of questions for you. First of all, regarding the five year review period, I just want to recommend to the Board and to the University and to the community that the ANC be involved and give us input because I know that the ANC's time is increasingly being taken up by G.W. University's activities and so I would like to hear from the ANC as far as its opinions about a five year review period. I think that that would be very helpful to me, at least, and I assume to the Board also.

I'd also like to know if your summary of major conditions proposed by the University or the Foggy Bottom campus plan that we have received to date has been reviewed by the community and by the ANC? Has this paper been reviewed by them?

MR. BARBER: This paper is a summary of the more detailed conditions, dated September 11th, which I believe is also in your package, proposed Board of Zoning Adjustment conditions for the G.W. Foggy Bottom campus plan which has been provided to the Foggy Bottom Association as well as ANC-2A.

MEMBER RENSHAW: Have they, for instance, the ANC, has it in public session reviewed this document?

MR. BARBER: I cannot speak to that. The ANC would have to speak to that.

MEMBER RENSHAW: All right, so just in clarification because the chair brought it up and it was one of my questions, but you are planning on the School Without Walls to use that site and to build over that site, in other words, to put a dormitory on top of the site or adjoining the site? Is that the understanding? Because the way it is worded here, you want to transfer this site to you and my question was why? In other words, are you just going to move the school to another location within Square 80?

MR. BARBER: No.

MEMBER RENSHAW: Or you're going to keep the school where it is but you're using the air rights, so to speak?

MR. BARBER: No. Under this scenario, the land would be and the property would be transferred to G.W. Then G.W. would take this property and develop it and part of that development would be new, better space for the School Without Walls, pretty much right where they are now, as well as part of that development will be housing 650 units of housing for undergraduate students. Am I not making myself clear?

MEMBER RENSHAW: You are, but I'm just wondering why the city, for instance, cannot retain that site and just rent it out to you, rather than having to transfer it to the University.

MR. BARBER: This, is of course, contingent -- we have not negotiated any deal with the city.

MEMBER RENSHAW: Okay, so this is just your proposal?

MR. BARBER: This is just our proposal and we certainly would be willing to sit down with the city and work out what is appropriate. I mean my vantage point, the University would be extending a substantial amount of money and what the District gets out of that transfer is a new school, a new facility for one of its schools for which the District won't have to pay a dime for. That's a quid pro quo in my mind.

MEMBER RENSHAW: Not to be belabor that, I want to move on to the moratorium on the purchase of new residential facilities and just make the comment that this proposal is not a remedy, it's a stay of execution and you know that. In other words, you are going to be after five years resuming your activity of -- well, you have, during this period acquired property and you stated that you're just not going to convert it to University use during that five years?

MR. BARBER: We reserve the right to do that. We're not saying that we would necessarily do that.

Let me explain why we think it's more than that. The reason we purchased off campus property and convert it to University use is to meet the immediate short term needs to house our undergraduate student body.

I mean it's quicker, not necessarily cheaper, but quicker to purchase an existing housing facility and convert it to

residential use, University residential use than it is to start from scratch and build. So we have done that, particularly in the last few years, to address a short-term kind of need.

We would have less of that need. As we build -- yes?

MEMBER RENSHAW: What I want to know, the papers that we've received from the community talks about the impact of University acquisitions on the neighborhood.

MR. BARBER: Yes.

MEMBER RENSHAW: In other words, the neighborhood is shrinking, G.W. University is getting larger. And I want to know, even with these wonderful words about a moratorium, what is the relief for the community? Would you talk to that issue? Where is it?

MR. BARBER: We see the relief to the community in two areas. More on-campus beds, significantly more on-campus beds within a five year time frame.

Also, I think this moratorium does provide a relief. What, as I understand the issue, it is the conversion of off-campus properties, residential properties to University use which is a problem. I mean University can own property and people live there. We have the right to be a landlord or property owner just like anybody else and that doesn't hurt the community because the same people are living there prior to the University purchase as afterwards. So as an investment, I don't see that being a

problem.

We are putting a moratorium on the conversion to University use and I think that is very significant. It's a right we have and we're giving that up for a period of time.

MEMBER RENSHAW: For five years.

MR. BARBER: Yes.

MEMBER RENSHAW: And then you are going to convert?

MR. BARBER: Not necessarily. It's just the moratorium would go away, but after that time we will have less of a need to go off campus and purchase and convert.

MEMBER RENSHAW: We'll pick up on this, I am sure, later on in the hearing. And one last thing, based on what Ms. Mitten asked you about commuters and you said persons outside of the Foggy Bottom area would be classified as commuters?

MR. BARBER: I think that's correct.

MEMBER RENSHAW: So that if he lived one house outside of Foggy Bottom jurisdiction they'd be commuters? Perhaps when you define something you ought to give a distance that is not just within close proximity.

MR. BARBER: I appreciate that. What we tried to tie it to is the protection to Foggy Bottom as referenced in the comprehensive plan. If you have a line and to -- and a boundary -- you're always going to have a situation well, somebody right across the boundary is going to be treated differently, but that's the nature of a boundary. We tried to identify what's in close

proximity based on Foggy Bottom.

MEMBER RENSHAW: That's all for now.

CHAIRPERSON REID: All right, Ms. Dwyer, do you have anything?

MS. DWYER: We have other witnesses. I don't know if the Board has questions of the other witnesses? We have the architect here, the traffic consultant?

COMMISSIONER MITTEN: I had asked a couple of questions --

MS. DWYER: Yes, I'd like to call them up.

CHAIRPERSON REID: Thank you, Mr. Barber.

MR. BARBER: Thank you.

MS. COSMELA: Madam Chair, Members of the Board, I'm Charlotte Cosmela. I'm an architect with the Smith Group. And I'm representing the University as their --

AUDIENCE MEMBER: We can't hear you.

COMMISSIONER MITTEN: Could you speak into your mike?

MS. COSMELA: Madam Chair, Members of the Board, and members of the community that are present here, my name is Charlotte Cosmela. I'm an architect, an urban designer and I represent the University as their campus planner on this campus plan.

I wanted to just briefly address the question that came from Carol Mitten regarding compatible land uses and vacant

properties that seem to be prime redevelopment sites.

On the first issue of compatible land use, in the 1972 plan and 1985 plan, there was an organizational structure and framework for land uses and this plan follows that concept which is to have the concentration of academic uses which are high activity uses in the center of the campus and supporting uses which residential use is at the perimeter as a buffer to the community. That still seems to make a lot of sense.

In terms of the vacant lots, I am not sure which vacant lots. There are a number of parking lots and I think that the two that are the largest are on Square 57 which currently has two academic buildings on them. Square 57, the western edge of 57 is along 23rd Street and I believe the northern edge is H Street, is that correct? Or I Street? That would be H Street and 23rd Street. There are two major parking lots on that side and just in general I would just address the issue of redevelopment sites.

In the exhibits in the campus plan and those are exhibits M, N, O and P, we are showing alternative and preferred development sites. The two sites specifically on Square 56, I'm sorry, not 57, 56, have been --

COMMISSIONER MITTEN: Can you repeat the exhibit?

MS. COSMELA: M, Figure M, N, O and P. There are four drawings that speak to preferred and alternative development sites for the four land use categories, on campus, being academic, residential, medical and investment properties.

If you turn to Figure M which shows development sites for academic, you'll see that the two parking lots on 56 which I think might be the ones you're referring to since they are so obvious here, in fact, are preferred academic sites.

Another part of allocating buildings in the future not only has to do with sort of what's rational in terms of compatibility between land uses, but also what's the need of expansion for existing schools and for instance, for Square 56, currently there is the engineering building and there's the business school at Faver Hall, both of those need more space. So they're expanding and there are programs right now and studies being undertaken to expand those two schools.

The University has within the last couple of years done a number of studies and they, in fact, have a migration plan which is to co-locate academic functions in either buildings co-located within buildings or in very close proximity within one another to share resources and to make it doable for faculty and students to travel between buildings at the time of changing classrooms.

On Square 101 there's another parking lot, just to go through that and that also has been earmarked for academic use. Specifically, 101 is located on H and 21st. That parking lot is dedicated to expansion space for the law school. The law school is located and concentrated on Square 102. So those were just some examples of why those vacant parking lots are not deemed,

that while they are good development sites, they're not really good development sites for housing.

COMMISSIONER MITTEN: Okay. Let me just and I don't want to mix the campus plans up, but I remember from hearing the St. Mary's Hall for Georgetown was an interim compatibility with the community and so on is that there was -- the situation was a building that had been partially used as a dormitory and the proposal was to convert it all to offices and classroom space. And the community definitely -- in close proximity to the community that was in close community to this building definitely did not want a dormitory close to them. So I understand that each campus has its own evolution and its own nature, but what about that as a notion where if you put all the dormitories around the periphery that then places them right up against the community and that seems, at least from some people's perspective to be an incompatibility.

MS. DWYER: Before she answers that, let me just clarify that in the St. Mary's case, the dormitory was adjacent to a low rise, low density residential which is essential single family townhouse development.

In the G.W. situation the peripheral housing development, dormitories is adjacent to very high density residential, so it's apartment buildings as opposed to a low density residential, but I'll let you answer from a planning perspective.

MS. COSMELA: From a planning perspective, first of all, what Maureen is saying is definitely appropriate to consider the densities of those land uses, not only the use compatibility, but the height too and types of uses that occur there.

I would be all for mixed use developments. If you were starting from scratch, in fact, that is what you might want to consider doing. G.W. is a little bit different because they traditionally have centered their academic uses in the core of the campus and as new needs occur, it's just very logical for the University to colocate those next to the buildings that they're either expanding upon or consolidating.

MS. DWYER: Are there any other questions for the architects?

CHAIRPERSON REID: Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Actually, my question is based on the previous hearing. At that time the consulting architect made a statement that the perimeter of the campus would be built to the limits of matter of right development and at that time I thought that represented a lack of any indication of sensitivity to the adjacent community where the perimeter development would be most likely to cause problems. And I wanted someone to speak to the fact that it was no -- what appeared to be no interest in being in moderation in the development concept to the absolute limits of matter of right development.

MR. FLORANCE: Perhaps I could answer that.

VICE CHAIRPERSON SOCKWELL: Yes, I've been holding that question for months.

(Laughter.)

MR. FLORANCE: I am Colden Florance and I'm with the Smith Group.

In a sense, we're damned if we do and we're damned if we don't. The goal here is to maximize on campus housing. We also have a traditional diagram for this campus, if you will, which is academic uses which we describe as intense because of the back and forth and the to and for and the active sidewalk and use of the buildings during the course of the day, class time and also into the evening. Because as everyone knows, there's a good deal of evening use of classes.

So it's debatable, perhaps, as to whether or not dormitory use is more of an impact than classroom use. Some people think one is more of an impact on a community. Some people think the other is more of an impact. Having had a pre-existing topology with academic uses in the core and residential uses and what we call student life uses like the Smith Center around the perimeter, we felt that that was a pattern of use that we should continue to honor and have done so.

Insofar as your question about building to the maximum of the matter of right and the underlying zoning is concerned, we probably have very little choice. We need to add housing. We're struggling to find out how much housing we can and

the analysis of these sites and it also relates, of course, to the economics of the situation. Mr. Barber commented on the fact that we do need to be able to finance the construction of beds, dormitories with beds and so in the matter of the relationship of cost of land to the production of beds we've sort have pressed into doing what zoning would allow. So that is a long-winded answer to your question, I guess. I hope it's not -- I hope it's helpful.

VICE CHAIRPERSON SOCKWELL: I'll ask one more and that is with regard to the location of high density residential campus housing, high density campus housing adjacent to high density private development housing, would the intent of the campus planners and their architects be to orient such housing so that its public and common areas would be more projected to the interior of the campus, thus eliminating some of the obviously less desirable student interaction with the outer community, not like putting rusticated walls at the base of your campus buildings like Columbia University in New York, but attempting to make the orientation such that it is less intrusive.

MR. FLORANCE: That would be a real goal and almost a no brainer. It's a very sensible idea and considering the next step of design of these facilities. Yes.

VICE CHAIRPERSON SOCKWELL: Thank you.

MS. DWYER: Are there any other questions of the architects? If not, I'll call the traffic -- are there questions

of the traffic consultant that any Board Members have? No?

COMMISSIONER MITTEN: Can we just have one minute? I don't know. I just need one minute.

MS. DWYER: We also have Steve Sher, our land planner, if there are any questions on land planning or traffic issues?

(Pause.)

CHAIRPERSON REID: I think I have a quick question, something that comes to mind, it's something I had read in a letter of opposition, I think it was, with regard to metered spaces being taken.

MS. DWYER: I think Charles Barber could respond to that. It was a temporary situation. I think he can explain.

MR. BARBER: I didn't hear the question.

CHAIRPERSON REID: Can you address that, please? I had forgotten about it and since we had a little lull.

There were about a hundred metered spaces that have been taken away from --

MR. BARBER: Yes, yes, I'm sorry. Parking spaces. I didn't hear -- I'm sorry, I missed the question.

CHAIRPERSON REID: Yes.

MR. BARBER: They have not been permanently taken away. There was some accommodation given to the University in moving in HOVA students.

CHAIRPERSON REID: Moving in what?

MR. BARBER: I'm sorry, HOVA. HOVA is a term, the acronym we've used, Hall of Virginia Avenue, the former Howard Johnson, the motel that we purchased and made into a dormitory. It's on Virginia Avenue.

In order for the students not to block traffic as one of the few days that they were moving on, the Metropolitan Police Department cooperated with us and allowed us to use what were otherwise metered spaces during a temporary time period, just to move the students in. My understanding is that that is now over. We worked with the Police Department. They -- we worked that out and got that done as quickly as we could.

CHAIRPERSON REID: I'm glad you addressed that, Mr. Barber, because it didn't say that and the fact that this was -- my understanding is what you're saying it was done to alleviate another problem.

MR. BARBER: Yes.

CHAIRPERSON REID: The students moved in and get settled and the meters were returned to the street.

MR. BARBER: That's correct.

CHAIRPERSON REID: Are you ready, Commissioner Mitten?

COMMISSIONER MITTEN: Yes, I have one question for the parking or the traffic expert.

CHAIRPERSON REID: All right.

COMMISSIONER MITTEN: And this goes to the capacity

analysis that was done. I really tried to read this carefully because I'm trying to understand what it is that you guys do.

I think I understand all of the categories where you make adjustments for various things like grade and buses and right turns and left turns and all of that and in the capacity analysis, given that you're proposing these midblock crossings that are going to maybe this isn't the right word, but impede traffic or affect traffic in a different kind of way, that is typical, how has that been factored into the capacity analysis?

MR. SLADE: The midblock crossings are something --

MS. DWYER: Would you please identify yourself for the record?

MR. SLADE: I'm sorry, this is Lou Slade. At the present time, those crossings are taking place, the students are crossing the street at will, middle block and it's a very high number in the block that we've identified as the first priority. So first of all, the purpose of the midblock crossing is to try to manage that activity that's already going on in an unmanaged way by channeling the students to a safe location, hopefully, and then by warning motorists that this is occurring, so as you're driving down that particular block, you will see this crossing area in advance and it will be well lit and signed and you'll slow down and you'll see the students crossing in front of you.

COMMISSIONER MITTEN: And I understand that and I think that funneling them and making it safe and all of that is

good, but the capacity now leads to conclusions and so whether it's the midblock crossings that are organized or disorganized how is that factored in?

MR. SLADE: Here's the way we approached it and there is not a textbook way to do this because midblock crossings are not really addressed in our industry as something that we measure a lot.

What we were concerned about is as the motorists are moving down that block, does the movement of the crossing of students cause the cars to back up into the, what we call upstream intersection and mess up that intersection? It really doesn't happen today except very rarely, but when we were looking at alternatives for laying out these midblock crossings we wanted to locate the crossings far enough into the middle of the block so that any back up of cars that did occur waiting for pedestrians to cross would not back up into that intersection. That was what we focused on and we did it through an analytic method that we sort of had to invent for this purpose and Nicole can maybe add to this. I know that we timed gaps in the current stream of pedestrians to see that if there were enough gaps for the vehicles to get through so that there wouldn't be a backup and then tried to estimate what that queue would be.

Let me just summarize and I'll let Nicole add to it. If you have an intersection today that's operating okay, but you create something downstream from that intersection that backs

up into the intersection, you create a problem. We felt the midblock crossings would not cause that backup, so that our analysis of the intersection was still accurate. It did not -- the intersection was not going to be impeded in any way.

COMMISSIONER MITTEN: Let me just ask you another question because there's a midblock crossing that I'm supposed to use, it's by Judiciary Square, it's one of those striped crosswalks and my understanding is that when there's a striped crosswalk and maybe you could clarify for me whether this midblock crossing would be in this category, the cars are supposed to stop for the pedestrian as opposed to a midblock crossing that is more like what I do which is random, but I don't -- I'm not going to step in front of a car. So given that now pedestrians have new authority in a midblock crossing situation, what's that -- how's that been considered?

MR. SLADE: If you want to see the authority that's taken by the University students, I invite you over there. We'll show you how it works.

COMMISSIONER MITTEN: We're not supposed to go on visits.

(Laughter.)

MR. SLADE: You remember your college days and I remember a situation on my campus, I can still remember from a million years ago. I don't think that -- these midblock crossings are not going to change that situation. Students are crossing the

street and really have the first priority in their mind and when you drive, you as a motorist respect that because the students are -- they're not oblivious, don't get me wrong, they just -- this is around lunch time after classes, and lunch activities. The flow is very, very heavy. That's when this phenomenon is at its highest peak. And the students really are taking over the street.

COMMISSIONER MITTEN: Okay. And unless I'm misunderstanding what you said, you feel that the capacity analysis that you've done gives recognition to the existing situation although it's not articulated in any of these adjustments.

MR. SLADE: Right, because the software we all use doesn't accommodate this unusual situation. The software we use to analyze the intersection doesn't really accommodate the unusual situation we have here with --

COMMISSIONER MITTEN: So it's not specifically dealt with?

MR. SLADE: It's not specifically dealt with except that we were aware of it and we wanted to ensure that, as I said, that the occasion that cars will back up into the intersection would be very rare.

COMMISSIONER MITTEN: Okay.

MR. SLADE: Nicole, do you have anything you want to add to this? Okay.

COMMISSIONER MITTEN: Thank you.

VICE CHAIRPERSON SOCKWELL: Mr. Slade, the midblock crossings that you're speaking of would be strictly on H and I?

MR. SLADE: Our first priority location, how many? Help me. H between 21st and 22nd, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Per the diagram.

MR. SLADE: And I between 21st and 22nd as shown in the diagram. There would be no midblock crossings contemplated for streets like 21st or 22nd where one could die in the intersection as easily with the light green for them to cross as they could.

The north-south streets really carry a lot of much heavier traffic than the east-west streets. We see this as a demonstration project in that a midblock crossing would be installed and let's see how it works and then think about doing it elsewhere 10 years from now when we come back for a new campus plan.

VICE CHAIRPERSON SOCKWELL: And the suggestion of midblock crossings on the north-south streets would seem to be inconsistent with good logic based on the fact that at rush hour, the traffic is heavy and fast and I use some of those streets myself and jockeying for position when the light is changing people are darting across the intersection and one would not generally want to subject the offspring of good taxpaying Americans to such potential danger.

MR. SLADE: I agree.

CHAIRPERSON REID: Let's move on.

MEMBER RENSHAW: Just a quick question, has that been -- these midblock crossings, have those been endorsed by the Department of Transportation?

MS. DWYER: Ms. Renshaw, if I could address that? In the record is DPW's report and they have supported the concept and what they have stated is that the final approval rests with DPW and that design and the traffic studies to back it up will be reviewed and approved by them, but they definitely support the concept and that's in their report.

MEMBER RENSHAW: The concept of that is only a concept.

MS. DWYER: Only a concept and they have the final approval of any midblock crossings.

MEMBER RENSHAW: Thank you.

CHAIRPERSON REID: Thank you very much. Ms. Dwyer, does that conclude your --

MS. DWYER: Unless the Board has further questions, that concludes our presentation.

CHAIRPERSON REID: Now cross examination by parties or ANCs? All right. Who has party standing? How many people are going to cross examine? Two. All right.

MS. PRUITT: Madam Chair, is Michael Thomas here?

MR. THOMAS: Yes.

MS. PRUITT: Mr. Thomas, he was to go first.

CHAIRPERSON REID: What about the ANC.

MS. PRUITT: Nobody else got a chance -- Ms. Bailey should be able to finish this off. I believe everybody else starts from scratch on their cross examination. Is that correct?

CHAIRPERSON REID: Correct. All right.

MR. THOMAS: Hello again, Mr. Barber.

MR. BARBER: Good day, Mr. Thomas.

MR. THOMAS: Let me ask you some questions about some of the proposed locations for housing. First, perhaps the easiest ones, Square 103. I think the proposal in the last document that I saw was that there would be 200 beds in the southeast corner provided. Is that right?

MR. BARBER: That's correct.

MR. THOMAS: Does the University own all of the land necessary to do that project, as we speak?

MR. BARBER: No, we do not.

MR. THOMAS: Is there a closing about to occur that would accomplish that or do you have any way of projecting when that would occur?

MR. BARBER: There were two parcels as of last spring. We have closed on one. I cannot give you a time frame for the final remaining parcel.

MR. THOMAS: And so essentially as to Square 103, where we were in April which is that it's a commitment to build a building that would include 200 beds if and when you own the

property?

MR. BARBER: I say we're 50 percent there because we've acquired one of the two remaining parcels.

MR. THOMAS: Right, I understand. But as we speak it is not possible for you to commit to any specific date, even 2005, is that right?

MR. BARBER: I believe it will happen in 2005, but I can't guarantee it, no. But our 70 percent commitment I think can still be met.

MR. THOMAS: Even without Square 103, you say?

MR. BARBER: I believe so.

MR. THOMAS: By the way, let me ask you a preliminary question, the last document that I saw from the University was dated September 7th and I haven't had a chance to go through in detail to compare that with the document dated September 11th when I first saw today. Are there any differences you can point out to me so that I can -- for the sake of efficiency here?

MR. BARBER: Sure. I'm sorry if you did not get the September 11th. The only difference, the change that we made, it was in the definition on page 2 under 3, housing opportunity area. We made it clear, we were assuming this all along, but the housing opportunity area includes, of course, on campus. I think we originally defined it as simply existing facilities off campus and these additional properties. We've made it now clear it first

and foremost includes areas on campus.

So no substantive -- other than that, no. No changes.

MR. THOMAS: Well, since we're there at the housing opportunity area, let me ask you a question about that. When you say properties located at Squares 43, 58, 81 and 122 would be included within this term that you're defining, do you or do you not mean properties now owned by the University within those squares?

MR. BARBER: No.

MR. THOMAS: In other words, you are asking for the Board essentially to bless the University's continued practice of buying and converting to University use property outside the campus?

MR. BARBER: No. We are identifying areas that we would consider putting housing in. Of course, first and foremost on the campus existing areas, but also these four areas. 43 and 122, of course, have already been acquired and we're moving on those. I'm not asking the Board to bless this, I'm responding to the community's concern as to where are we going to do housing in the future. I think these are logical areas in which we would do housing for the reasons I articulated and our percentage of property ownership in those squares and it's zoned for residential.

MR. THOMAS: As I understand how you have proposed

the housing opportunity area to work as part of the combination of concepts here, the University would get credit against any ratio if we went with a ratio as opposed to some other approach, it would get credit putting beds in those areas, even if after acquired?

MR. BARBER: That's correct.

MR. THOMAS: Let's go back on campus to Square 80 and as I understand the proposal there is 650 beds on condition that the District transfers the property that now includes the School Without Walls. Is that right?

MR. BARBER: That's correct.

MR. THOMAS: And I really don't know the answer to this question, do you -- does the University own all the land aside from that that the School Without Walls was on that would be necessary for this project?

MR. BARBER: Yes, that we've identified for this project, that is correct.

MR. THOMAS: What would be built on Square 80?

MR. BARBER: A mixed use project. A facility for the School Without Walls and University housing.

CHAIRPERSON REID: Mr. Thomas, that has been - that question has already been asked and answered.

MR. THOMAS: Perhaps I simply wasn't clear as to what the scope of the possible things included within that project.

CHAIRPERSON REID: I asked the questions and Ms. Mitten asked the questions and we asked you not to be redundant.

MR. THOMAS: I certainly will try not to be.

CHAIRPERSON REID: Okay.

MR. RANFONE: You've testified that there aren't any plans in existence at this point. Assuming agreement with the District on the basic idea of an Oyster School-like proposal, have you estimated how long it would be before 650 beds would actually come on line?

MR. BARBER: It depends how quickly the -- we've identified this as a five year project. Some of that is within our control, some of it is not. If the District moves -- that's the District's way -- and this go back to the concept of a partnership. If we are all behind increasing housing on campus and we are all supportive of this as a particular site, I think the District can move expeditiously. That would allow us to then go forward with the -- for the processing and the building permit and the building to get this done within five years. It does require the cooperation of others though.

MR. THOMAS: You said that you think you can meet the 70 percent ratio even without the Square 103 project. Is the University willing to commit to that? In other words, drop 103 as a condition on your proposed 70 percent ratio?

MR. BARBER: No, I just think because 103 is doable. I think we will acquire that last piece and I think that

should be in the mix.

MR. THOMAS: But the answer is no, you're not willing to commit to the 70 percent ratio unless you are able to obtain the remaining land?

MR. BARBER: No, I wouldn't put it that way. The way we have articulated that, how we could get to the 70 percent, I think we have a good chance of getting there without the 103 and I don't see that as an impediment to our 70 percent commitment.

MR. THOMAS: Mr. Barber, is 103 a condition or is it not a condition on your proposal to have 70 percent of the full-time undergraduate students housed in qualified University housing by December 31, 2005?

MR. BARBER: It is an assumption. I think what the University will have to do by 2005 is move aggressively on these housing projects, monitor its student admissions and try to come in at 70 percent and one of those assumptions is that 103 is where one -- one of the areas we would move aggressively to build housing, but we would have to also monitor our student population.

MR. THOMAS: I'm sorry, I didn't understand the answer. Is that a yes or a no?

MR. BARBER: I answered it the best I could.

MR. THOMAS: I take it then that we should simply read the commitment of the University in the exact words that appear on page 2 of your September 11 submission?

MR. BARBER: That is what the University proposed.

MR. THOMAS: All right, and as to Square 80, if for reasons beyond the fault or control of any of the parties that would be involved in those negotiations, it simply doesn't come together to allow you to build these facilities by December of 2005. What is the housing commitment of the University under those circumstances?

MR. BARBER: We view this as a good faith attempt to get to the 70 percent. If, for reasons outside of our control that we're not able to build this housing, then we have to reevaluate that and I think we have to reevaluate that with the community and if appropriate with this Board.

What we can commit to is what we have control over.

MR. THOMAS: I simply want all of us here to understand clearly what the University's commitment is and I take it that your answer means and correct me if I'm wrong, that absent Square 80 having come together and the building having been completed by December 31, 2005, there is no commitment above 60 percent?

MR. BARBER: No. I'm saying we're going to increase our housing commitment when we think we can get to 70 percent through a variety of means. Is any one of these proposals critical? Some are more important than others, but through the combination of monitoring our enrollment and also moving aggressively on these plans and as I said, with the support of the community, I think it's a doable commitment.

That's why we asked for a five year update. If we're not able to do it for reasons outside of our control, then there's a remedy for that. The remedy is what we have proposed, even the further processing case or the five year term, that the Board can take another look at. Maybe the Board thinks it's our fault, then they block the further processing or they impose other conditions at the five year.

If the Board is convinced that we've made good faith efforts and they have an alternative plan to develop this site because we have talked about developing this site, even without the School Without Walls, then they would hear from us on that point. It's that type of flexibility and you want to kind of box me in on something that's going to take efforts outside of the University and which will take place over five years. But there's monitoring and there's reporting and there's an opportunity for the Board to step back in.

COMMISSIONER MITTEN: Mr. Thomas, if it would be helpful, I understand that you're seeking understanding for yourself, but I think that we've heard precisely what the University is committing to, so if we could go on from here, I'd really appreciate it.

MR. THOMAS: Turning to Square 54, when will that square be available for development?

MR. BARBER: The new hospital is due to be ready some time early 2002, let's call it spring 2002. That's what I

last heard.

MR. THOMAS: Are there any plans in existence now for that complex on Square 54?

MR. BARBER: No, there's not.

MR. THOMAS: If you know, what would be the maximum number of beds that could be fit into Square 54 if it were used for student housing?

MR. BARBER: I do not know.

MR. THOMAS: Is 500 beds about one third of what's possible?

MR. BARBER: I do not know.

MR. THOMAS: Do you know if 500 beds is the maximum number that could be fit into Square 54, consistent with the 900 square feet of high density commercial that you're asking for?

MR. BARBER: I think it's a reasonable number. I don't know if it's the maximum.

MR. THOMAS: Have you estimated any length of time for completion of this project, starting from the date of PUD is actually approved?

MR. BARBER: The answer is no. I think we've looked at the whole process within a 5 year time frame and we haven't broken it down in pieces.

MR. THOMAS: In my notes I had you saying in direct examination something to the effect that you were going to be adding more beds than students, is that right?

MR. BARBER: Yes.

MR. THOMAS: On what did you base that statement?

MR. BARBER: I projected enrollment, even using some numbers that others had simply extrapolated from and say well, if you're on this incline, then this is where you might be in 500 years as where it could be. Even with that kind of scenario, our goal is to add more beds than we would additional students.

MR. THOMAS: That's your goal, but is that your commitment?

MR. BARBER: Yes.

MR. THOMAS: Would the University agree to a condition on approval of its plan that guaranteed that more beds would be added than students?

MR. BARBER: I would prefer that our proposal would be as stated, that it's at 70 percent. It addresses the need for housing, adds additional housing, while allowing us to retain flexibility. I think that's important. That's how we phrase the proposal in that way.

MR. THOMAS: The last numbers I've seen were from fall 1999 and I think you and I talked about these, full time undergraduate enrollment was 6846?

MR. BARBER: That's correct.

MR. THOMAS: And the beds at that time and I guess presently were 4666? I'm sorry 4466?

MR. BARBER: They've adjusted some.

MR. THOMAS: But approximately what, 4500?

MR. BARBER: 4575, I believe.

MR. THOMAS: So there's something like 2300 students as of fall 1999 that were full-time undergraduates and were not offered housing or there was not housing available to them?

MR. BARBER: That's correct.

MR. THOMAS: Dr. Linebaugh testified in April that the expectation for this fall was 7,000 full-time undergraduates. If you know, what is the number?

MS. DWYER: Madam Chair, I'm going to object. I think this goes beyond the scope of his testimony.

CHAIRPERSON REID: I don't think that -- I think your questions should be directly to what he testified to today.

From the last hearing you were able to do cross examination?

So your particular line of questioning should be germane specifically to the testimony that we heard today and that would not be in keeping with that. So I would sustain that.

MR. THOMAS: With all respect, Madam Chair, what I'm trying to do is test the statements and the proposals that this witness has made today.

CHAIRPERSON REID: I didn't hear anything about agreeing to a calculation of full-time undergraduate --

MR. THOMAS: That wasn't my question. My question was how many full-time undergraduate students are housed and I need to have that foundation.

CHAIRPERSON REID: I'm sorry, but that goes to that calculation and again, still, there was no testimony to that.

MS. DWYER: Madam Chair, perhaps if Mr. Thomas could maybe cut to the end question and which is relevant to something here today and if he needs to ferret out some additional information, instead of leading up to it, why don't you get to it and then if we need to back off of it.

CHAIRPERSON REID: All right.

MR. THOMAS: Something that has happened since the spring was Mr. Chernoff, the Vice President saying that the plan is to get the 8,000 full-time undergraduates by 2005. Is that your understanding of University policy?

MS. DWYER: Again, Madam Chair, i think this goes beyond the scope of the testimony that Mr. Barber gave today. It is maybe a point that Mr. Thomas wants to bring out in his own presentation --

CHAIRPERSON REID: Right, right, I understand. Mr. Thomas, so as not to continue to disrupt you, understand your questioning should be germane to the testimony that you heard here today, not about what the President said in the summer or anything like that was prior to today's hearing. And if you want to bring out things as Ms. Dwyer said during your opportunity to testify

you can do so, but not at this time.

MR. THOMAS: Very well.

VICE CHAIRPERSON SOCKWELL: I think Mr. Thomas is trying to extrapolate. I think that in doing so he's covering territory that isn't really part of today's hearing.

MR. THOMAS: My problem -- and I will go on, but my problem is this is my only opportunity, frankly, to test whether the proposals will or will not result in more student renters in the Foggy Bottom area or more students renting some place, they could be in the Foggy Bottom area. And I don't know how to do that unless we step it through their enrollment estimates and what they're planning to house.

VICE CHAIRPERSON SOCKWELL: You might now have the witnesses available to answer the questions that you're proposing at this point since we're really dealing with the housing component and not with the enrollment component. The enrollment component is quite complex as we all are trying to understand.

MR. THOMAS: Yes, Mr. Sockwell, but the housing component that they are proposing is not a direct control on numbers of students renting in the Foggy Bottom area which is our sort of core issue in addition to the acquisition issue.

They intend to do it by ratio and the ratio is enrollment to housing, so there are two parts of that equation every time.

VICE CHAIRPERSON SOCKWELL: Well, you might want to

ask the question in context of what enrollment figures are used to base the 70 percent, etcetera, etcetera, etcetera and let him back into the numbers.

MR. THOMAS: That's fine. When you say that you expect, conditionally, at least, to house 70 percent of full-time undergraduates at the end of 2005, how many students does that mean that you commit to housing?

MR. BARBER: We are committing to the 70 percent. We think we can make the 70 percent. We have for planning purposes looked at a number of assumptions as to what the enrollment would be and we are comfortable with the beds that we have committed to that that 70 percent is an achievable commitment and we'll represent then an improvement over the current situation.

MR. THOMAS: Recent increases in enrollment have averaged, over the last couple of years, 5 percent. If they continue to do that could you meet the 70 percent in 2005?

MR. BARBER: I haven't done that calculation. I have seen some Office of Planning calculations which extrapolated that. I haven't gone over their numbers, but I think even with their numbers we could agree to 70 percent commitment, yes.

MR. THOMAS: Is there any commitment on the part of the University to go above 70 percent after 2005 if enrollment continues to increase?

MR. BARBER: Well, one, I can't assume -- I don't

accept your assumption that enrollment continues to increase.

Two, we do still have this long-range goal of 80 percent. We have not -- we want to take it five years at a time. We've gotten some specifics in the next five years. We have a goal of 80 percent in 10 years. We haven't done any planning beyond that.

CHAIRPERSON REID: Let me understand something, I'm kind of getting confused here. It was my understanding that Mr. Barber had stated there would no increase in students, there will be a cap on student enrollment.

MR. BARBER: We were talking -- the cap on student enrollment -- that you're correct is the cap that has existed since 1985, 20,000. We are not proposing any increase.

CHAIRPERSON REID: That's what I thought you said. What increase are you referring to?

MR. THOMAS: When I said what? I'm sorry, I didn't understand the question.

COMMISSIONER MITTEN: Maybe I could help clarify. There's this cap and the cap -- and correct me if I'm wrong -- but I think this is right, the cap is on full-time equivalent students and the conversation they're having at the moment and the housing issue and all that is driven by full-time students which is a component of full-time students.

MR. BARBER: Excuse me, that's partially correct. Good try.

(Laughter.)

There are two caps, really. There's a full-time equivalent cap and there's a head count cap. When I talk about 20,000, that is the head count cap. Bodies.

Now what Mr. Thomas, I think, is trying to get to and he can correct me if I'm wrong, is the number of full-time undergraduates and that number has varied over the years, the recent trend has gone up and that has triggered the University's response to provide more housing for that population. But no, our student population will not go over the cap. We are still adhering to the cap.

CHAIRPERSON REID: My understanding again was that the cap was 20,000 and that it was just not written in stone as to how many would be allocated to undergrads and how many would be allocated to graduates.

MR. BARBER: That's correct.

CHAIRPERSON REID: That it would fluctuate.

COMMISSIONER MITTEN: That's correct.

CHAIRPERSON REID: Depending on various circumstances or what have you. That was my understanding.

MR. BARBER: That's correct.

COMMISSIONER MITTEN: Could I just, since we're on this subject get a clarification. You said, Mr. Barber, you just said head count. It's 20,000 head count.

MR. BARBER: Right.

COMMISSIONER MITTEN: And is there a cap on full-time equivalent students?

MR. BARBER: Yes, there is.

COMMISSIONER MITTEN: And that's what?

MR. BARBER: As in Appendix C, 13,786. I'm sorry, no, no, that's current. I'm sorry, the head count cap is 16,553. That goes -- did I say that wrong? Let me say it again. The head count cap is 20,000. The FTE cap is 16,553 on Appendix C. That is still our cap.

COMMISSIONER MITTEN: And are there any more caps related to enrollment?

MR. BARBER: No.

COMMISSIONER MITTEN: So there's no full-time student cap?

MR. BARBER: No. There's no undergraduate cap, nor should there be. I'm stating the University's position on this. I think that should be clear.

MR. THOMAS: Mr. Barber, is George Washington willing, voluntarily, to assure that there will be no pertinent growth of student renters in Foggy Bottom West End as a condition on this plan?

MR. BARBER: No, we do not have the authority to do so.

MR. THOMAS: And why is it that you say you don't have the authority to do so?

MR. BARBER: Well, one of the reasons is that the D.C. Human Rights Act would be -- would prohibit that. It would be an act of discrimination based on matriculation of place of residence. We've had two legal opinions to that effect.

MR. THOMAS: So it is your understanding of the law and you are senior counsel at the University that it is a violation of the Human Rights Act to provide incentives to influence a student's choice of residence?

MS. DWYER: Madam Chairman, I would object. Number one, it's beyond the scope of the testimony that Mr. Barber presented this morning and the question does not accurately reflect the answer that Mr. Barber gave.

If you would repeat your question?

MR. THOMAS: All right, do you believe that consistent with the D.C. Human Rights Act, the University can provide incentives to influence a student's choice of residence?

MS. DWYER: And Madam Chair, I'm going to object on the basis that it goes beyond Mr. Barber's testimony.

MR. THOMAS: Madam Chair, I understand and I've heard several times that we're limited to the scope of the direct. As a practical matter, the proposals that are before this Board from OP and from us, represent negotiating concepts that have been on-going for some time and from which the University withdrew. We need to understand, since they are -- that baseline concept is the favored way of going at this by both OP and the community groups.

We need to understand from the University why they don't believe they can do it.

CHAIRPERSON REID: But Mr. Thomas, I think that the objection goes to the structure of the question when you asked would it be a violation of the Human Rights Act to -- for George Washington to offer incentives. There's been no testimony to that effect as far as George Washington offering incentives to their students for off-campus housing. So I think that's where the problem is. If you can just structure your question in such a way that it is germane to the testimony that's here today, that's not a problem. If you go outside that scope, that's when it becomes problematic.

VICE CHAIRPERSON SOCKWELL: Actually, Madam Chair, based on the way the question was phrased, I don't think that such a question would even fall under the context of a Human Rights Act statutory requirement because incentives are incentives. If I ask you not to move into my neighborhood and I pay you, there's nothing illegal about that. If you choose to take the money and run, that's fine. Am I not correct?

MR. THOMAS: Mr. Sockwell, I completely agree with you and what I was trying to get on the record is that the University does not agree with you. And therein is a very significant difference between it would be much preferable to measure directly the impacts that we're talking about in the nearby Foggy Bottom West End community and have the University

influence student choices in order to get those numbers where the Board determines they should be. And when they say no, we won't do that, we need to test why and your conclusion about a common sense reading of the law is the same as mine.

CHAIRPERSON REID: Well, Mr. Thomas, I think that that discussion should be reserved for when you testify and if, in fact, there are subsequent negotiations that may be something you want to raise, but I don't think that that's an appropriate question at this time.

Now talking about the incentives from the school to students as far as off-campus housing is concerned, there's no testimony to that effect. And that was a loaded question, so you have to ask questions specifically that are germane to the testimony that you heard here today and I think that's the fifth time I've cautioned you on it and again your cross examination has gone on now for almost 30 minutes. How many more questions do you have to ask?

MR. THOMAS: The list has gotten shorter and I don't mean to be facetious. I have very few questions left, Madam Chair.

CHAIRPERSON REID: How many?

MR. THOMAS: I never tell that because every time you write one down there could be three follow ups, but I have about five written down.

CHAIRPERSON REID: Possibly five more minutes?

MR. THOMAS: If we can go quickly.

CHAIRPERSON REID: Please. Because there are other people who want to ask questions.

MR. THOMAS: I would like to ask him, however, if I might and I don't want to get sideways with the chair of the Board, but what other incentive programs they already had in place for housing choices for students.

CHAIRPERSON REID: Did he say he had some?

MR. THOMAS: I believe they do.

CHAIRPERSON REID: Mr. Barber did you testify --

MR. BARBER: I didn't talk about incentives for housing.

CHAIRPERSON REID: Do you have any incentives, that will be the question.

MR. THOMAS: Are there incentives now available for students who choose to live, for example, and take part in the program at Mount Vernon College, for students --

CHAIRPERSON REID: You can't go to Mount Vernon. It has to be strictly to this particular site, Foggy Bottom campus only.

MR. THOMAS: The point would be if they choose to go there, they're not living at Foggy Bottom, that's the point.

CHAIRPERSON REID: Or anywhere else.

MR. THOMAS: Are there incentive programs in place that affect students' choices as to where to live?

MR. BARBER: Not that I'm aware of.

MR. THOMAS: In your proposal you said that you will undertake to identify students in a census beginning in the spring of 2001. Is there any reason that you can think of either mechanically or legally that the census data could not be gathered on all full-time students, not just undergraduates?

MR. BARBER: It's more work. And quite frankly our efforts have been focused at the request of the community in any joint discussions on full-time undergraduates. Is it possible? Yes, it's possible. Is it possible in that time frame, I'm not certain because it involves substantially more work. But it is possible, yes.

MR. THOMAS: And if it was done, is there any reason that the data couldn't be shared with OP and the Advisory Committee assuming that it was set up under this plan?

MR. BARBER: No, there's no reason.

MR. THOMAS: All right, and as to the Advisory Committee, you've set out the willingness of the University to get involved in that and you and I talked about the desirability of that. Does G.W. have any objection to providing that the BZA will determine the composition and structure of the Advisory Committee or some other outside body? It could be Director of Planning, it could be anybody, as far as I'm concerned, I think, if the parties cannot agree with the composition of the Advisory Committee?

MR. BARBER: I don't think it's necessary for the

BZA. I think they should give some general guidance and leave it through us adults to go work that out.

MR. THOMAS: And if one or more of the adults don't agree with the position of the other adult, then there is no Advisory Committee that --

MR. BARBER: Well, quite frankly, it's the University that has the obligation. No one else. No one in the community has an obligation to participate in the Advisory Committee. So I think there's a willingness to do so, and that's what I've heard. I'm hoping that there's that willingness and with that willingness I'm sure we can work that out. But I can speak for the University, the University's commitment to participate with the Advisory Committee under some broad parameters set forth by the BZA. I just don't think I need to get into the details.

MR. THOMAS: Well, you can understand that my question was intended to make sure there was an Advisory Committee, because it's so important. Would you agree?

MR. BARBER: It is important.

MR. THOMAS: Thank you. That's all I have.

CHAIRPERSON REID: Thank you, Mr. Thomas. All right.

MS. PRUITT: Next is cross examination of ANC. I just wanted to reiterate because we went out of sequence and then we --

CHAIRPERSON REID: Right. Mr. Thomas was finishing up. And on the part of everyone else who is cross examining, they can cross examine on the entire testimony, including that which occurred at the last hearing.

MS. PRUITT: Correct. Madam Chair, if I can just ask whether any of the opposition parties will have questions for Steve Sher? He has a time commitment and needs to leave. If there are any questions of him could they be done first.

CHAIRPERSON REID: Do you have questions of Steve Sher? Mr. Thomas? Mrs. Miller?

MS. MILLER: Can you give me one minute because I was concentrating on what they've been saying and he's saying it very fast.

(Pause.)

MR. THOMAS: I'll have some a few architectural land use questions --

CHAIRPERSON REID: The architect is here.

MR. THOMAS: I don't know if they'll be answered or someone who does. What is Mr. Sher's capacity or role?

MS. PRUITT: Mr. Sher presented testimony as a land planner on copies of the plan and general zoning and land use issues.

MR. THOMAS: So if I'm going to ask a question in the nature of why this site other than site that goes to the architect?

MS. PRUITT: That's correct.

COMMISSIONER MITTEN: Very well, I think we're still trying to find out if Ms. Miller had any questions for Steve Sher, Mr. Sher.

MS. MILLER: Just one. One of the things that bothered us was that the current campus that was presented -- I'm Dorothy Miller, ANC 2A05 and a party to the case.

CHAIRPERSON REID: Your address, please.

MS. MILLER: 2440 Virginia Avenue, N.W., Washington, D.C. 20037. The campus plan as it was presented stops at the current borders and I think you know that's only on the paper and I would appreciate if Mr. Sher could give us the additional information

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CHAIRPERSON REID: You're talking to Mr. Sher, right?

MS. MILLER: Yes. I'll talk to him. That we have some information on all of the properties that are being used by G.W. that are not within the current approved campus borders because that's far more excessive than what you have within the campus borders. We need some information on that which the campus plan did not provide. It only provided on the material inside of the campus borders and it only provided on the traffic inside the campus borders. The cars just disappear when they reach the border.

MR. SHER: There has been -- for the record, my name is Steven E. Sher. I'm the Director of Zoning and Land Use Services for the law firm of Holland & Knight, LLP.

MS. MILLER: That's a change.

(Laughter.)

MR. SHER: It is, but I don't know whether that impacts my ability to sit up here and say anything or not. There has been a considerable amount of discussion about what uses happen outside the boundaries of the campus and this Board has had at least one appeal which it decided in favor of the University in which is pending in the Court of Appeals on the question of those uses. It is my position in reading the zoning regulations that those uses which are permitted as a matter of right are permitted as a matter of right. That's a very good statement. If an apartment house as a use permitted is a matter of right in an R-5 district, then it is not subject to the requirements of Section 210 of the zoning regulations. The same is true of a dormitory or an office building in a C-3-C zone or something similar to that.

Other people have different views about that issue, but that's my view and I think that's the view that the Board has up to this point agreed with. I do not have specific information in my capacity as to the number of square feet, the number of students living in those or people living in those buildings. I don't necessarily think it's germane to what the Board has to decide in approving a campus plan for the property that is

included within the boundaries of the campus.

MS. MILLER: The law requires, the regulations require, as it's written now, that the BZA take up the total part of the campus plan, not the whole campus plan, not just what's inside, but the whole campus area which you all certainly consider Foggy Bottom your campus.

CHAIRPERSON REID: That's a question?

MS. MILLER: That's a question. You're saying it doesn't belong here. I'm saying that the regulations require that the questions that I ask be before the Board because the Board is suppose to consider the campus as a whole, the plan as a whole.

CHAIRPERSON REID: But you're testifying, Mrs. Miller.

Mr. Sher, I gave you an answer to your question. It may not have been -- it was his answer, so do you have another quick question?

MS. MILLER: One more.

CHAIRPERSON REID: Okay.

MS. MILLER: This deals with Square 54. I don't know whether you're the one who's supposed to answer this or not, but the EIS scanning that was done put definite limitations on what you could do with that building and what I'm hearing today is that you're asking to do almost unlimited things with that building and I think that you should tell the Board what the restrictions are as to what that area can be used for, because it

is spelled out by the scanning process of what you can use it, and it's very limited.

MS. DWYER: Madam Chair, this is not the witness to answer that question and I'm not sure whether any of the witnesses would be able to answer that question.

MS. MILLER: Well, it's land use one thing and another thing that's dealt with it covers your housing area. You're asking to change that block to commercial and they're asking you to rezone it.

CHAIRPERSON REID: This is getting a little bit overboard. Mr. Sher can't answer that question. What she wants to know is -- well, Mr. Barber said earlier they weren't sure yet what they were going to use that particular square for.

MS. MILLER: Yes, but they had limits placed on them. That's what I want them to understand that they're misleading you.

MS. PRUITT: Madam Chair, if I can just say I think Ms. Miller is testifying that if there are limits on the site any limit, any restraints or restrictions would be considered as part of the further processing second stage application.

MS. MILLER: Right.

MS. PRUITT: And the specific design and construction of that building is before you.

CHAIRPERSON REID: Is that the question that you're asking, that they know their limitations on the site or are you --

MS. MILLER: No, he's saying that he is giving you land use. What I'm talking about is the land use --

MS. DWYER: Madam Chair, it may be probably easier if Mrs. Miller brings up this issue in her testimony because then you can give testimony on what you believe is and isn't true.

MS. MILLER: I want them to tell you all. I want them to tell you all. I want them to tell you all.

MS. DWYER: I believe Mr. Sher answer it to the best of his ability.

MS. MILLER: No, he didn't because if he's land use, he knows he can't use it for what they're recommending it to be used.

MS. DWYER: Ms. Miller, you're testifying. Put that please in your testimony part.

MS. MILLER: All right.

CHAIRPERSON REID: But you did ask if, in fact, the use that they're proposing, no matter what it is, is within Office of Land Use Regulations. Is that what you're asking?

MS. MILLER: Well, they stated they wanted a zoning change. They stated they wanted commercial.

CHAIRPERSON REID: Just ask the question that you want to ask.

MS. MILLER: I want to know how they can even think of that, or proposing it when they know the limitations.

MS. DWYER: And Madam Chair, I would object again.

The scope of Mr. Sher's testimony at the last hearing was on the compliance of this campus plan in terms of the zoning regulations, the materials that were filed and the comprehensive plan goals.

CHAIRPERSON REID: Okay, but I asked Mr. Barber to come back.

MS. DWYER: If we can finish with Mr. Sher and I can let him leave.

CHAIRPERSON REID: She's finished with Mr. Sher.

MS. SPILLINGER: Perhaps it might help if I identify the limitation that Commissioner Miller is referring to.

MS. DWYER: You can't do that.

CHAIRPERSON REID: You can't do that right now.

MS. SPILLINGER: Okay.

MS. MILLER: See, they know it and they're not being honest with you.

CHAIRPERSON REID: Don't testify because that might prejudice your particular segment.

Mr. Barber, will you please respond to that question.

MS. PRUITT: Excuse me, Madam Chair, before Mr. Sher leaves I just want to verify that there's nobody else who wants to cross examine? I thought Mr. McLeod -- would you please come forward?

CHAIRPERSON REID: Are you Mr. McLeod?

MS. PRUITT: He wants to cross examine Mr. Sher.

MR. McLEOD: Yes, I'm James McLeod, a party in the matter.

Mr. Sher, I just have one question regarding the commercial property on campus. What function does that serve if the purpose of the commercial property is to generate money for the University, can't that be anywhere, either in the city or elsewhere? Why does it have to be on campus?

And I've only identified Squares -- I think it's 75, 101 and 119. There may be other squares. It's kind of hard to tell from that border, the red kind of blends with the administrative and academic colors as well.

MR. SHER: There are four different zoning categories that apply to the property that are within the boundaries of the campus, R-5-D, R-5-E, SP-2 and C-3-C. They are as shown on the zoning map and that map that you're looking at, I believe is a depiction of the existing zoning categories as they apply to property.

Those properties that are in the R-5-D and E and SP districts may be used for a college or university use only with the approval of the Board of Zoning Adjustment as a special exception. Those properties that are in a C-3-C district, a college or university use as well as office, retail, residential, hospital, hotel are all matter of right uses. The University owns those properties and has owned them for some time. They are within the area that has traditionally be delimited as the

boundary of the campus, but the uses that are on-going on those properties are permitted as a matter of right.

MR. McLEOD: So they could have alternative uses, but you're just saying the University has a right to use them as commercial property.

MR. SHER: And has traditionally used them that way.

MR. McLEOD: Okay, that's the only question I had.

COMMISSIONER MITTEN: Could I follow up because this little exchange has brought something to mind and it's for Mr. Sher since the issue was raised about the boundary of the campus and then Mr. McLeod's question is well, you've drawn the boundary of the campus to include these commercial properties which you just testified that are being used by right and they're not subject to the special exception that the campus plan is meant to address and yet, they're within the boundaries of the campus.

So how is it that you decided to draw the line to include certain properties that are not subject to this special exception control and then there are other properties that would be in the same sort of status, but they're outside the boundary?

MR. SHER: I believe that in this application as in the 1985 application, the University did not propose to change the boundaries. The boundaries are as they have been.

The effect of that as to those two office buildings, the one at 2100 Pennsylvania Avenue and the one at 1900

Pennsylvania Avenue and there are a couple of other buildings, that's not the only ones, basically along Pennsylvania Avenue. The development that has occurred there has all been a matter of right, further processing before this Board was not and is not now required.

COMMISSIONER MITTEN: And I understand that. I guess what I'm getting at is basically when you all, the University draws the line that's a boundary, that's what you're proposing to us be the boundary effectively.

Well, within that you've included properties that you otherwise would not have to include and the community says to you well, how come you don't include all the properties so we understand that some are subject to special exception and some are not, but how is it that you can argue what you're recommending to us that we include some properties that are not subject to special exception control within the boundaries of the campus? How do you respond to the community when they say draw the boundaries bigger because you have an inconsistency then? How do you respond to that?

MR. SHER: I don't know that I heard anybody say draw the boundaries bigger. One of the --

COMMISSIONER MITTEN: They might not have said those exact words, but that is the sense --

MR. SHER: Okay. There are a couple of things that happened versus properties inside the boundaries and outside the

boundaries particularly as they relate to residential properties. Under that Section 210 of the regulations, the aggregation of FAR is permitted for properties included within the boundaries. What that means is whereas the normal boundary, normal FAR is either 3.5 or 6 FAR on each -- calculated on each individual site. When you put that within the campus as a whole you aggregate that FAR and it may be higher over here and lower over there.

If the property is not in the boundaries of the campus, you don't aggregate the FAR. It's not included within that total area. Each site has to satisfy the zoning requirements on its own individual property. That's point number one.

Point number two, expanding the boundaries of the campus in theory would allow University uses other than the matter of right uses which are allowed in those R-5 districts to come before the Board for whatever purpose the Board were to determine was appropriate within the campus boundary, classroom student center, administrative offices, convocation center, whatever. The University has taken the position that it will use those properties only for use or can use those properties only for uses which are permitted in those districts as a matter of right. So if it's a residential usage permit, if it's other than residential use, you are beginning to open that process up beyond the boundaries that are delineated at the moment.

Third thing is that as to the parking requirements, again, those are satisfied on a campus-wide basis if it's property

within the campus. If it's outside the campus as with all the other requirements of the zone, it's got to be satisfied on the site.

I don't believe that the University is seeking to gain any of those extra added attractions, if you will, by expanding the boundaries of the campus. If it would somehow make people feel better to take the commercial properties out of the campus, we don't get any benefit from that either. That FAR isn't aggregated. It isn't zoned residential. Only the properties zoned residential can aggregate the FAR. And if someone wanted to take that line and draw it around the backs of those properties, I don't think that hurts or helps anything at all, frankly, but we can do it if it's desired.

COMMISSIONER MITTEN: The hurts or the helps is not my -- that's not my question. My question is how do you respond, given that you have recommend where the line be drawn. The University has recommended where the line be drawn and they've included properties that they -- I have to use the word status, have the same status as properties outside the campus boundary that the community is urging be included and you're saying well, they don't have to. There's an inconsistency there.

Do you see the inconsistency?

MR. SHER: I see a distinction between adding residential properties on the south and either adding or not adding the commercial properties on the north and I tried to tell

you what I felt the difference was with a piece of property that's zones R-5-D or E, putting it in the campus versus not putting it in the campus.

The commercial property, I don't think it makes any difference whether it's in the campus or outside the campus. You can't aggregate the FAR, you can't aggregate the parking. The uses are already permitted. So in my mind, whether you took those properties in or took them out or left them in, it doesn't make any difference to the substance of the campus plan or what happens on those properties. Adding the properties on the south and west that are now zoned residential would make a difference and that's why I don't think that we suggested changing those boundaries as they were approved in 1985.

COMMISSIONER MITTEN: I'm done.

MS. MILLER: I would like to ask him one more question. Wasn't it the University's idea on the Potomac Electric building to originally been to have it paid for to start using that for use for the University and wasn't it just recently sold?

MS. DWYER: Madam Chair, I would object. I don't think that's a question for this witness.

MS. MILLER: Well, it's land use. And --

CHAIRPERSON REID: Who would you recommend?

MS. DWYER: If any, it would be Charles Barber.

(Pause.)

MS. MILLER: His position is land use, right?

CHAIRPERSON REID: Yes.

MS. MILLER: That's what I thought I was asking.

CHAIRPERSON REID: Now Mr. Sher, thank you very much.

MS. MILLER: Mr. Barber is not land use. He's the legal guy.

MS. PRUITT: Madam Chair, are you going to maybe go back to the normal sequence?

CHAIRPERSON REID: Normal sequence --

MS. PRUITT: Which would be the ANC.

CHAIRPERSON REID: The ANC. However, Ms. Miller had a question on the floor. And I told her earlier that I would allow Mr. Barber would answer the question since Mr. Sher couldn't.

MS. MILLER: Mr. Barber, what I'd like to know is what is your understanding of the limitations on Square 54 that were put into place by the University to be allowed a screening instead of a EIS?

MR. BARBER: There are none, Ms. Miller. There are no limitations to Square 54. You're talking about environmental?

MS. MILLER: Yes.

MR. BARBER: The environmental review of the new hospital site on the adjacent square, there was an environmental review on that site. There has not been an environmental review on Square 54.

MS. MILLER: But the problem is the report stated, as I understand it --

MS. DWYER: Madam Chair, I believe she's testifying as opposed to asking questions.

MS. MILLER: I'm trying to find out from him something I know to be a fact. I want him to state it.

CHAIRPERSON REID: You can't testify. He answered the question. This particular site has had no EIS.

MS. MILLER: I said Square 54, not the new hospital, the old hospital.

CHAIRPERSON REID: That's what he said, that the new hospital did have an EIS study. This one has not.

MS. MILLER: But they acquiesced in the screening rather than an EIS.

MS. DWYER: Objection, it's testimony.

CHAIRPERSON REID: All right, Ms. Miller, thank you.

Okay, now we'll go to the ANC. Thank you very much, Mr. Barber.

MS. SPILLINGER: Mr. Barber, good afternoon.

MR. BARBER: Good afternoon.

MS. SPILLINGER: I'm Barbara Spillinger, 2500 Virginia Avenue, N.W.

I just have a few brief questions and I'm trying to clarify a couple of things. In your testimony today, one more

time we go back to this --

CHAIRPERSON REID: Did you give your address?

MS. SPILLINGER: 2500 Virginia Avenue. We go back to the 70 percent in 2005. You have a cap of 20,000 head count. Your current head count as listed in Appendix C is 16,657 which gives a theoretical increase of 3,343 students.

If, theoretically, all of those were undergraduates, and were added within the next five years, by the time you hit 70 percent in 2005, there would be even an increase of those students living off-campus instead of the other way around. Am I missing something there? Is that possible?

MR. BARBER: Is it possible? I don't think it's possible. I understand your math. But no, I'm sorry, you're assuming -- your question -- I want to get your question straight. As we go up to the max --

MS. SPILLINGER: If you went up to the cap.

MR. BARBER: Are we talking about all students?

MS. SPILLINGER: Yes.

MR. BARBER: And the question is what now?

MS. SPILLINGER: And then if you had 70 percent on campus you would still have more off campus than you have off campus now.

MR. BARBER: Well, we're kind of mixing apples and oranges. The 70 percent is a percent of full-time undergraduates. The head count cap is all students.

Our best evidence shows that graduate students by and large don't live in this area because they can't afford it. That's not true for everyone, but that is the general rule.

So if you said by some miraculous occurrence we went up in five years and added 3,000 students, could we still meet the 70 percent cap? Well, it depends on what those students are. That's certainly not something that the University is geared towards doing.

MS. SPILLINGER: I'm not so much concerned with whether you meet the cap, I'm concerned with additional students that would be forced to live off campus.

MR. BARBER: Well, the question is where would those additional students live if we brought on 3,000 additional students and that's not our plan in the next five years. We may never get there. But if we do, we are certainly adding beds in the five years. Where the additional students live, we have a program to encourage them to -- if they're not going to live in University housing, to live outside of Foggy Bottom. The Metro check program, the encouragement of students and information about off-campus areas, the willingness to provide a shuttle service. So even if were by some miraculous occurrence to add 3,000 students in five years, I would not expect the bulk of them to end up to end up in Foggy Bottom.

MS. SPILLINGER: Thank you. I'll go on to the next question. And again, I'm skipping around here, but would you

interpret the hospital as -- the new hospital as high density use?

MR. BARBER: The new hospital? I suppose, yes, I think I would. I'm not sure -- I think the architects can better answer that, but it has a lot of use and it's relatively frequent during the day.

MS. SPILLINGER: And obviously, the hole is there, but it is on the periphery of the campus rather than on the inside as has been in the BZA order.

MR. BARBER: Yes, we dealt with that on a special exception process for that hospital and the reasons why it was placed there and I think the Board accepted the University's reasons in that case.

MS. SPILLINGER: And why the voting documents in the space in the community?

MR. BARBER: That was in that case as well.

MS. SPILLINGER: Very well. On these new beds that you are proposing, are they -- do you see those for new students or for -- I mean new enrollment or for current enrollment?

MR. BARBER: I think I understand your question. The current numbers because our current students will be moving. I see it as a mixture.

As I said, we will add more beds than we're projecting adding more students in this five year time frame, so that means that it will be for the new students plus a portion of this existing number that we have.

MS. SPILLINGER: All right, and just one other point I want to make, in your testimony that you gave in April you submitted a list of community meetings. In checking through those, we don't agree with all the dates, but to me it's not important, really, whether it was February 10th or February 14th. There were a number of community meetings. What is important is that we, the community felt that it did not get the information it needed or required and therefore the meetings ended at that time.

MS. DWYER: Is there a question?

MS. SPILLINGER: No, not really. Thank you.

MR. MANDLEBAUM: Steven Mandlebaum. I have a couple of questions for Mr. Barber.

MR. BARBER: Yes.

MR. MANDLEBAUM: Address, 231 E Street. You mentioned incentive programs, two different types of incentive programs.

MR. BARBER: No, I did not.

MR. MANDLEBAUM: You did say that there were --

MR. BARBER: I'm sorry, I'm sorry. I apologize for interrupting you. Please ask your question.

MR. MANDLEBAUM: Did you say that there would be incentives or strategies to keep students on campus or retain sophomores who are thinking of leaving the system? I believe that's in your September 11th document.

MR. BARBER: i didn't mention that, but it is in

that document so I would be happy to -- it's in the document under --

MR. MANDLEBAUM: Well, we'll agree that it's in the document.

MR. BARBER: Yes.

MR. MANDLEBAUM: So my question is as a recent graduate of your fine institution, and trying to understand what would encourage me to continue to live on campus, what new incentives are you planning to offer?

MR. BARBER: As the document says, the University has an interest in maximizing utilization of its resident halls and we have a strong financial interest. We want to fill these beds. And what we said the University will identify strategies to increase retention rates of undergraduate students in its residence halls. The strategy will focus on at least initially our sophomores.

Of course, as we move to a mandatory requirement for freshmen and sophomores then we will begin to focus more on juniors. Now if you're asking me exactly what those strategies will be, I can't tell you that. We're going to identify and see what works. The point is, I think, it's in our own interest to fill these beds.

MR. MANDLEBAUM: Well, what if nothing works? What if you come up with programs and the students say you know, we don't care, we want to go party in the streets.

What happens --

MR. BARBER: Our students don't party in the streets.

(Laughter.)

CHAIRPERSON REID: Order, order, please.

MR. BARBER: Again, the point is --

MR. MANDLEBAUM: What is your commitment?

MR. BARBER: Our commitment is to make it work and to fill these beds as much as we can. If we find certain strategies don't work, we change the strategies. If we find certain amenities don't work, we have to consider lowering the price. We have to come up with a set of strategies to fill the beds. Again, it's in our interest to do so. I just can't identify what will work now, but that's what we're committed to doing.

MR. MANDLEBAUM: My second question is the strategies to encourage students to live outside of Foggy Bottom or on campus, do you have any of those strategies outlined?

MR. BARBER: What we have said in this submission, how you would sort of convince the students do that, we are not going to coerce. We said in number 5 of our September 11th submission that we want the encourage students to live outside of Foggy Bottom. We'll provide information on off-campus housing opportunities and we will -- as I say, we'll provide the Metro check program and we said where those -- where we identify a

concentration of G.W. students that is not Metro accessible, we'll consider instituting a shuttle bus service, where there's a critical mass.

Information, Metro check, shuttle, those are the efforts we've identified.

MR. MANDLEBAUM: Is it true at one point the University had an Office of Off-Campus Housing that provided assistance to students looking for

off-campus housing or listings?

MR. BARBER: I'm not aware of such an office existed. We certainly have talked about it going forward, but I'm not aware of one existing in the past.

MR. MANDLEBAUM: You're not aware of one existing and one possibly closing down at one point?

MR. BARBER: No, I'm not aware of that.

MR. MANDLEBAUM: Okay, and one other question. You said you're going to add more beds than students, so if you take your current enrollment and add to that number of beds you're going to build, would you be willing to meet that a cap?

MR. BARBER: No.

MR. MANDLEBAUM: Why not? If you're adding more beds than students, we're saying everyone you've got off campus, keep off of -- that's okay. Just for everyone you're going to plug in, build a bed. Why would that now not be okay?

MR. BARBER: I'm sorry. Will you repeat the

question?

MR. MANDLEBAUM: The question is let's say you've got 7,000 students and you're committing to build 1350 beds. If I took that 7,000 and made it 1350 which gave me 8350, why won't you make that the cap knowing that you said you won't increase by 1350, why can't that be the cap?

MR. BARBER: Because if we're able to build more beds, I mean we stated some minimums here. There are some of these development sites because we want to be conservative. There's some of these development sites that may be able to, when we get into the design stage, accommodate more beds. If we're able to provide more beds, we should be able to increase the number of students.

The 70 percent commitment acts as a kind of soft cap on full-time undergraduate students, in addition, of course, to the existing cap which we're not changing of the 20,000 head count and the 16,553 on FTE.

The 70,000 is an additional measure acting as a kind of soft cap on full-time undergraduates, but it's soft, it's flexible because it allows us some maneuvering room. As we add more beds, we can also adjust the student population. A hard fixed cap doesn't allow that flexibility and that flexibility is what the University needs.

MR. MANDLEBAUM: How's this? What if I say for every bed that you build, you can add one to your current

enrollment?

MR. BARBER: No, that is --

MR. MANDLEBAUM: That is the question. I'm asking is that okay?

MR. BARBER: No, it's not.

MR. MANDLEBAUM: But isn't that what you just said? If we end up building more than 1350, then we should be allowed to have more than 1350? Is that what you said?

MR. BARBER: I told you, in my testimony, I said we need time to build beds and we need resources to build beds. This one to one which comes up int eh OP report, in effect, freezes us now. It does not give us the resources, does not give us the time to build the beds.

MR. MANDLEBAUM: What if I give you a catch up zone of let's --

COMMISSIONER MITTEN: Mr. Mandlebaum, you guys get to negotiate all day long. Just because you can put it in the form of a question doesn't mean that that's worthwhile right now.

I think we understand where the University stands and you can put forward any creative ideas you have about how they can handle it and we'll go from there.

MR. MANDLEBAUM: Okay, I think the point is made.

COMMISSIONER MITTEN: Thanks.

CHAIRPERSON REID: Thank you, Mr. Mandlebaum. Ms. Miller, this is the last time to cross examine. How may other

people? Mr. McLeod, that's the last one?

Let's have a show of hands of how many more people we have. I think I see two. Two other people. Okay. And then we'll --

MS. PRUITT: Are you a party? Have you been granted party status at the last hearing? Okay, if I could get your name, and maybe I can help.

You can come to testify, but not ask questions. Okay.

CHAIRPERSON REID: Okay, so just one other person after Ms. Miller. Okay?

MS. MILLER: Mr. Barber?

MR. BARBER: Yes, Ms. Miller.

MS. MILLER: Do I recall your testimony on April 28th correctly that you were unable to estimate the number of full-time G.W. students and where they lived and what private rental in the District? Isn't that what you said?

MR. BARBER: We have some good gross numbers in terms of Foggy Bottom area as opposed to Maryland and Virginia and other parts of the District. We don't have specific data that's good on specific residences, no.

MS. MILLER: Are you familiar with --

MR. BARBER: I'm sorry, we are committed, of course, to doing that and gathering that data going forward.

MS. MILLER: Okay. Now page 10 of Dr. Fuller's

report, he states that it's established that 3,439 other full-time students at G.W. live in private housing within the District.

Do you dispute that estimate? Because it seems to me today you quoted a higher figure.

MR. BARBER: I'm sorry, you pulled out a figure and I'm not --

MS. MILLER: It's in Mr. Fuller's report.

MR. BARBER: I'd have to look at his report and see what context that was made and I can do that.

MS. MILLER: Okay. One of the requirements of 210 which are the support facilities, I'd like to know because they're not included in the report, the following services, the cafeteria and food services, you don't spell out how that's going to be handled in your report?

MR. BARBER: I really didn't think that was a campus plan issue.

We will continue to feed our students.

MS. MILLER: I know that, but how do you do it and how much support staff because I notice that the support staff has gone down.

MR. BARBER: Yes.

MS. MILLER: Since the last one by a considerable number. So is it that you're contracting these services out to make your figures look better?

MR. BARBER: No, we have contracted out, I think

there were three services, but where those employees perform these services on the University's campus we have included those numbers within our current count of staff. We were pretty meticulous about doing that. We thought that was the only fair thing to do.

MS. MILLER: Also, you mentioned building security that you're working on and yet there's been a number of occasions of buildings that you maintain and own that have students in them have been robbed and a considerable number.

MR. BARBER: I would not agree that it's a considerable number.

MS. MILLER: I can give you the clippings.

MR. BARBER: Clippings don't establish numbers, but what is your question.

MS. MILLER: My question is security in buildings when 35 apartments in one of your buildings, managed by you with students can be robbed in one weekend doesn't seem like very good security.

MR. BARBER: One, I didn't testify on that, but certainly we have a commitment to providing a safe environment for our University's residences and students. We'll do what we need to do to increase security where it is warranted. I'm not the security expert. I didn't testify on security and I don't really know what specific instances you're talking about.

MS. MILLER: Let's put it this way, you've been stating that you want to be kind and generous to the community and

help police the students in the community. But if that's the kind of policing they do, I don't think --

MS. DWYER: Madam Chair, I don't know that there's a question there as much as a statement.

MS. MILLER: Well --

MR. BARBER: It's not policing we're talking about. We're talking about bringing students that have been reported to us within our student code of conduct and disciplining them. Our officers are limited to their jurisdiction in terms of where they can go. They're limited to campus boundaries.

MS. MILLER: Don't you think the residents would find it objectionable that G.W. wants to police their residential community?

MR. BARBER: We don't.

MS. MILLER: That's what you're offering.

MR. BARBER: No, no. No ma'am.

MS. MILLER: You're offering to police the students and the police -- most of your students are living in our residential community, right?

MR. BARBER: Policing is the wrong term. What -- and it's not a term that I used. I do not think it's a good idea for University police officers to go into private buildings. They have no authority to do so. I know there was a problem about controlling off-campus student behavior, that very limitation. I agree with you. That's a limitation that should be a limitation.

What we have proposed to do is when it's been reported to us by a reputable figure in that building, the landlord, the tenant association, that (a) it's a G.W. student and (b) this G.W. student misbehaved in very specific ways and they can document that to us we will take action to discipline that student. That doesn't mean we're going to send UPD out there. We're going to call the student in to hold that student accountable for their actions. That's what we said.

MS. MILLER: Well, what's bothering me and I want to try to ask this in a question form, where you are part ownership of a building and the majority of the building is filled with your students, you can't go into that building or come into that building and do something about the students and you say the feeling is -- let's put it this way, you're suggesting that work with the management. That's what you're suggesting.

MS. DWYER: Madam Chair, I think this is testimony as opposed to a question for the witness.

MS. MILLER: Well, he has testified that they want to -- he wants to work with management, but it seems to me we got to this condition because they were working with management. That's been the problem in the community.

CHAIRPERSON REID: Okay, Ms. Miller, did you get the answer to the question that you were asking?

I think by this time we're all getting a little confused.

MR. BARBER: I'd be happy to try to answer it.

MS. MILLER: They bought --

CHAIRPERSON REID: No, no, what is the question.

MS. MILLER: The question is where they're an owner of a building and the building is almost totally occupied by their students, and they are supposed to give it protection and they're supposed to protect the neighborhood and he says he can't send the police down there, so I don't know how he plans to do it.

MR. BARBER: Let me address that --

MS. MILLER: How they plan to because it makes us nervous.

CHAIRPERSON REID: All right.

MR. BARBER: Let me try to make this clear. Where the University owns a building, regardless of its location and our students are in there, we police our students. UPD can go into that building because we own the building. We have resident advisors in that building. Hall of Virginia Avenue is a perfect example.

What you said was "part owner." And that's a little bit different. Where we are not the general partner and I think you have a very specific case in mind. I understand that case. Where we are not the general partner and we do not manage the building, but we are simply an investor, we do not have the authority to send people in there, send the University police in there. But the off-campus -- the extension of the code of conduct

would extend to that property since the property you and I are both thinking of is in Foggy Bottom and we will hold students accountable to the extent that those students are identified by the landlord, the general partner operating that building or the property manager of that general partner is hired, neither of which is George Washington University or the tenant association. If they can identify students and specifically what they have done, then we will hold those students accountable.

CHAIRPERSON REID: Thank you. Next question.

MS. MILLER: Can I ask one more question?

CHAIRPERSON REID: Sure.

MS. MILLER: Now in that same vein, how did you get into the building to be the owner and to put your students --

MR. BARBER: I never testified about that, Ms. Miller.

MS. MILLER: But you have.

CHAIRPERSON REID: Ms. Miller, he didn't testify to that extent.

MS. MILLER: He testified that he owned -- oh, wait a minute, I know the point I'm trying to make. Now wait a minute, he was saying that they want to work with the managers to control their students, but that's how they got in the building in the first place.

CHAIRPERSON REID: No, no, Ms. Miller, I think he said they'll work with the management, the tenants, the students,

the dorm advisors, whoever is involved there to try to come to some resolution of a problem, if in fact a problem emerges.

Do you have a next question?

MS. MILLER: The point I was trying to make with him --

CHAIRPERSON REID: You're testifying. Do you have a question right now?

MS. MILLER: Fine, thank you.

CHAIRPERSON REID: All right, thank you very much.

MEMBER RENSHAW: Madam Chair, could I ask a question please of Mr. Barber related to this policing of students?

MR. BARBER: Yes.

MEMBER RENSHAW: You said earlier to Ms. Miller that our offices are limited to the campus boundaries. So if a University building is outside of your campus buildings, are your campus police allowed to cover those buildings?

MR. BARBER: I misspoke. They can go to University properties that are off campus.

CHAIRPERSON REID: You said that.

MR. BARBER: But I also said it was limited to campus boundaries.

CHAIRPERSON REID: If the property is owned by the University, they do have the right to go into the property.

MEMBER RENSHAW: But they also said -- he also said

our officers are limited to the campus boundary.

MR. BARBER: Yes, I did say that.

MEMBER RENSHAW: I wanted it clarified.

MR. BARBER: I should clarify. The campus boundaries as well as properties owned, fully owned by the University.

CHAIRPERSON REID: Thank you, Mr. Barber.

James McLeod.

MR. McLEOD: James McLeod, a party. I live at 2424 Penn. Avenue, N.W., No. 407. Mr. Barber, you indicated that some beds will become available on campus and I believe from the reports some of those will be from the graduate students leaving those beds, is that correct?

MR. BARBER: No, not by a large -- existing tenants, non-University people as some beds become freed up, they'll be available for the University students and we will put undergraduates in there.

I think there wre some graduate students in our beds, but we converted them to undergraduate already.

MR. McLEOD: So the 3,519 beds you have currently, they're all occupied by undergraduates, sir?

MR. BARBER: Yes.

MR. McLEOD: And how many students -- you indicated that it wouldn't make sense --

MR. BARBER: 3,519, is that the number you've got?

MR. McLEOD: That's the number I got from the report, sir.

MR. BARBER: I think that's approximately right. I think it's 3,549, but that's the ballpark and yes, they're occupied by undergraduates.

MR. McLEOD: You indicated that a lot of students live outside of the immediate area and it wouldn't make sense to have all on-campus housing, but how many students do you currently house in G.W.-owned property off-campus in the immediate area?

MR. BARBER: Approximately, 947.

MR. McLEOD: Okay, and in your report the thing that I received today entitled "Commitment to Foggy Bottom Area" it blocks off a Foggy Bottom which includes the building where I live at 2424 Penn.

Now in the earlier submission there is a reference to being able to house students in your identified owned properties, plus any commercial district in the District of Columbia.

So am I to understand that the new version would exclude the block that I live on which is the 2400 block south of Pennsylvania Avenue?

MR. BARBER: It includes residential properties within the boundary that we've identified in that map as spelled out and the proposed conditions. The boundaries are Pennsylvania Avenue on the north, 19th Street on the west, Rock Creek Park on

the east and E Street on the south.

MR. McLEOD: If my area zone C-2-C, it is a residential apartment building, but it is in a commercial district, I think as defined by the DCMR.

From reading this, it sounds like you're not going to purchase my building except for purely investment purposes. Am I misinterpreting what this thing I received today is?

MR. BARBER: Just one second.

(Pause.)

It is residentially zoned properties within this area.

MR. McLEOD: So I guess my question then is that leaves open the possibility for you to purchase --

MR. BARBER: Yes, you have a residential property in the commercial zone, is that what you're saying?

MR. McLEOD: It's still in the C-2-C. From my understanding, I'm not an expert in this area, but from my understanding that is identified as a commercial district.

We have some experts here.

MR. BARBER: I will tell you that the way we were approaching this for the residentially zoned properties in that area, if there are specific properties, residential properties that are outside of the residential zone within this Foggy Bottom area we define, I think we'd be willing to take a look at that. It wasn't, I don't think we had that in mind, really, in coming up

with this definition. We thought we would include -- it would capture all of the residential properties within that area.

MR. McLEOD: In terms of --

MR. BARBER: I'm sorry, your address is?

MR. McLEOD: 2424 Pennsylvania Avenue. It's in this area that you've lined off here.

MR. BARBER: I understand.

MR. McLEOD: Now even assuming from what you've said I'm not sure that you're not going to buy the building to house your students, but even if you accept this statement that you made here that says you'd only purchase it for investment purposes, if you purchased the building, is there anything to prevent you from renting the units to students, either graduate or undergraduates from the University from your commitment here? I'm not sure what's your commitment.

MR. BARBER: The commitment is not to purchase residential properties in residential zones in Foggy Bottom for the University use.

What University use means is two aspects of that. It's a tax consequence. It doesn't come off the tax role. But for your purposes, more significantly it means we don't change the rental policies to favor, to discriminate against non-students as we would if we were buying for University use. We would not kick people out if we were buying for University use, but as a place became available we would put students in there.

That's what we will not do.

Now, I assume there may be students in there now. And you have students and non-students living in a building. That's not unusual. If we were to purchase and I'm not saying that we would, but our commitment is there wouldn't be a change in that. The same situation you have now, the same rental policies would be observed. The difference is you have somebody else as the landlord.

MR. McLEOD: And using the Aston as an example, does the University own that building now?

MR. BARBER: Yes.

MR. McLEOD: Did that use to be an apartment building?

MR. BARBER: It was a short-term use -- not quite an apartment building. It was more short-term. But yes, that's a good example. We've converted that and are in the process of -- to University use in terms of as the units become available, we're putting students in there.

MEMBER RENSHAW: What's the name of that place?

MR. BARBER: The Aston.

MR. McLEOD: It's on New Hampshire Avenue. It's far north of the campus boundary. I'm not even sure it shows up on -- it shows up, actually, on this --

MR. BARBER: We've listed our off-campus housing uses in our campus plan document and that is one of them. We list

them by address and we can identify that for you. It's in the campus plan.

MR. McLEOD: Do you know how many students live in that building and how many units there are in the building?

MR. BARBER: Not offhand. I can get you that information.

MR. McLEOD: I'd appreciate that. My last question, Square 39 --

MR. BARBER: I'm sorry, on page 25, I believe, we talk about the location of our student residences off campus.

MR. McLEOD: Square 33 is designated for medical health purposes and that's right on the corner of 24th and K and right next to Washington Circle, bordering the residential neighborhood. There is St. Paul's, I believe is across the street from this.

Wouldn't it be better to use that as a dorm area since that would be bordering the residential community than to -- why does it need to be designated for that purpose, I guess is my question?

MR. BARBER: The site is adjacent to the hospital and we've looked at that quadrant of the campus as a kind of medical quadrant. You recall there's a new hospital directly south of that. There's Ross Hall, a medical school building. I mean, you talk to some of your neighbors and they'll say, look it's adjacent to the community and should not be residences and

we've had that discussion earlier. That particular quadrant, we believe is more appropriate for medical because it goes with the hospital. I don't think that's a change from the previous campus plan. It's always been designated medical. That whole quadrant.

MR. McLEOD: Thank you.

CHAIRPERSON REID: Now --

MS. MILLER: Can I ask him one more question?

CHAIRPERSON REID: Uh-uh.

MS. DWYER: Does that complete the cross examination of all of our witnesses including the architect and traffic?

CHAIRPERSON REID: That completes the cross examination. The architect. All right. And that's the -- final -- oh.

MR. MANDLEBAUM: Two quick questions. We were identifying sites with parking lots, surface lots and I believe we identified Square 101 and 56.

Did you say that the one surface left on 101 was for a law school extension?

MS. COSMELA: That is one of the considerations for that site, yes.

MR. MANDLEBAUM: Is it true that the University just broke ground on a new International Affairs School just south of the campus?

MS. COSMELA: The Elliott School?

MR. MANDLEBAUM: Yes, the Elliott School.

MS. COSMELA: Yes, that's true.

MR. MANDLEBAUM: And is it true that the University is now -- I hesitate to say the word renovating, but working with the President's house that's adjacent to the law school and the current International Affairs School to make additional room for the law school?

MS. COSMELA: That's correct, too.

MR. MANDLEBAUM: So that Service Item 101 would be in addition to the current expansion plans of the law school, so that's in addition to it expanding into Stuart Hall. That's yet another site.

MS. COSMELA: Just briefly, I'm somewhat aware of what's going on with the law school. They do have some significant, they do have plans for expansion. They are currently renovating the building that Mr. Mandlebaum is referring to. It may not meet all their needs, future needs and requirements for renovation, and additional classroom space. The University has not committed to anything yet, but the site on 101 is a site that has the potential to become law school expansion. I think at this point it's probably speculative. It's what I know.

MR. MANDLEBAUM: Okay.

CHAIRPERSON REID: Your last question?

MR. MANDLEBAUM: I think that's it.

CHAIRPERSON REID: Thank you very much. There was

another person who wanted to question the architect. No? Okay. Then that would conclude your presentation and cross examination.

I think that Ms. Pruitt, refresh us now because we did have a change in the sequence and we want to keep everybody on the same page. Where are we?

MS. PRUITT: Next we go to the ANC's presentation.

MS. SPILLINGER: Excuse me, but there has been no cross examination of the traffic report or of Dr. Linebaugh.

MS. PRUITT: Is he here?

MS. SPILLINGER: Yes.

CHAIRPERSON REID: Based on the questions I asked, was there any other cross examination, okay. All right.

MS. DWYER: We're going to call Craig Linebaugh to answer any questions.

MS. SPILLINGER: I just have one question, thank you. In 1999, it's my understanding that G.W. found itself with 400 additional students that it had not anticipated and as a result, it purchased the Howard Johnson and moved the 400 students there. And then in 2000 it found itself with 200 additional students it had not anticipated and it is putting them in various study halls and what have you around town as well as in the State Plaza Hotel.

Can you tell me how you anticipate or how you draw up your figures, on what basis do you -- in other words, future

figures from here, how can we depend on them or should we just automatically add 10 percent to each one? Where are we?

MR. LINEBAUGH: Well, I think what you're asking me is about the art of enrollment management.

MS. SPILLINGER: Thank you.

MR. LINEBAUGH: And I use the word "art" specifically. We do what I think any other organization attempts to do to make predictions. We use the history we have. We may look back three years. We may look back five years, trend lines. The trend lines we're looking at, the factors we look at, one is referred to as yield. Yield is the percentage of students whom you admit to your University who actually matriculate. That number inevitably changes over the course of the summer. Under certain circumstances it may be higher than the historical figure. In other years, it will be lower. There are factors that we try and anticipate to adjust those figures on an annual basis.

You may recall a number of years ago and I can't recall if it was the magazine Time or Newsweek did a feature called the "Tale of Two Cities" in which they published a map that put a red dot where every murder had occurred in the District Columbia for each preceding calendar year. That year our yield plummeted.

This past year in the face of the IMF demonstrations we anticipated that we could face a similar problem. However, we balanced that against the fact that it's an

election year when our yields tend to peak. So it is, in fact, an arch and it's one that is very difficult to get within a very precise number.

The other factor that plays into the total number of students is the retention of current students who don't graduate. I mentioned back in April, I allow myself a certain amount of personal pride in that our retention rate hit an all time high last year because I was one of the co-authors of the plan that achieved that. It appears that we have done very well with retention again next year, this coming year. We don't have those figures. We will not have them until our census.

But we couldn't plot a trend line based on one point of that. No one would be presumptuous enough to do that.

If in fact our retention has topped out our historical number or equivalent to the peak of 1999, then we will be able to make adjustments in the number of students we admit, predicting yield and have a reasonable estimate of what the number of students will be in the fall of 2001.

MS. SPILLINGER: Thank you very much. And one quick question I had forgotten, but Commissioner Miller had referred to Dr. Fuller's report and the fact that he had said 3,439 other full-time G.W. students live in private housing within the District. Do you have any idea where that figure came from?

MR. LINEBAUGH: I did not write the Fuller report.

MS. SPILLINGER: You did not give him that figure?

MR. LINEBAUGH: I -- what he didn't say was full-time undergraduate students.

MS. SPILLINGER: Full-time G.W. students. He doesn't say undergraduate.

MR. LINEBAUGH: He does not. He could be talking about residents of the District of Columbia who are full-time graduate --

MS. SPILLINGER: We don't know where he got it. Thank you very much.

CHAIRPERSON REID: I think that this the course we would ask any questions of Mr. Slade?

MS. DWYER: No, that was Craig Linebaugh answering enrollment academic questions. We do have the traffic consultants to call back.

CHAIRPERSON REID: I'm sorry. Who has questions of Mr. Slade? Ms. Miller? Okay.

Please, Ms. Miller.

MS. MILLER: The first question I'd like to ask you, wouldn't you agree that Pennsylvania Avenue is a major east-west traffic route?

MR. SLADE: Yes.

MS. MILLER: And wouldn't you agree that Pennsylvania Avenue and Washington Circle comprise the northern border of the Foggy Bottom campus?

MR. SLADE: Yes.

MS. MILLER: But your report, your traffic report did not include an analysis of traffic on either Pennsylvania Avenue or Washington Circle. Is that correct?

MR. SLADE: Correct.

MS. MILLER: Do you contend that the impact of G.W. generated traffic is limited to the portions of the streets that are completely within the campus boundaries?

MR. SLADE: No, we don't contend it's limited to only those streets.

MS. MILLER: Would you also agree that Virginia Avenue is a major east-west traffic route?

MR. SLADE: Yes.

MS. MILLER: And you earlier today said that crossing streets was just fun and easy and safe. Have you tried going down E Street recently?

MR. SLADE: I don't recall the last time I went down E Street.

MS. MILLER: Well, I suggest you try it. The problem there is that cars --

COMMISSIONER MITTEN: You want to be sure to be asking a question.

MS. MILLER: I'm sorry. I'm doing that again. I'll try to stick to my script.

But when you said that today -- okay, I can't testify. All right.

Would you agree that Virginia Avenue runs within one or two blocks of the most southern border of Foggy Bottom campus?

MR. SLADE: Yes, I do.

MS. MILLER: However, your traffic report did not include an analysis of traffic on Virginia Avenue, either?

MR. SLADE: That's correct.

MS. MILLER: Who conducted the transportation mode choice survey referred to on page 10 of your traffic study?

MR. SLADE: I affirmed it.

MS. MILLER: Your report indicates that the survey was conducted over a three-day period in April of 1999, correct?

MR. SLADE: Correct.

MS. MILLER: Your report indicates that the survey was conducted at only two locations, namely, the Marvin Center and the Law Library, correct?

MR. SLADE: I don't remember that. I know we selected locations where we could randomly interview a variety of people, employees, students and visitors and those certainly would have been two locations.

MS. MILLER: Did the construction going on for the Law School factor in at all into the traffic?

MR. SLADE: These were interview surveys of people who were walking, either had parked or arrived by Metro rail.

MS. MILLER: And you didn't talk to anybody in

cars?

MR. SLADE: We talked to people who were walking who would have left their cars in parking locations.

MS. MILLER: Okay. Your report also indicates that the survey was conducted during time periods throughout the day, is that correct?

MR. SLADE: Yes.

MS. MILLER: What time periods throughout the day was the survey conducted for each location?

MR. SLADE: I'll ask Nicole to answer that if she can.

MS. WHITE: I don't recall exactly, but I think they were like between 7:30 and 9, 9 and 11 and 3 to 5, 5:30, around those times.

MS. MILLER: Okay. Your report indicates that over 1,000 people were surveyed, is that correct?

MR. SLADE: Yes.

MS. MILLER: How do you choose the people to do the survey?

MR. SLADE: To be surveyed?

MS. MILLER: In other words, the people you're going to survey, are they trained to do that type of thing and they're given the questions to ask?

MR. SLADE: Yes.

MS. MILLER: How many students participated in the

survey?

MR. SLADE: As persons who we interviewed?

MS. MILLER: Right.

MR. SLADE: I don't remember the exact figure, but it was a pretty significant proportion of that 1,000.

Nicole, do you have those numbers?

(Pause.)

MS. MILLER: And the report didn't ascertain the status of the student, full-time, part-time or what year?

MR. SLADE: Right. I don't think we asked that question. We just determined whether they were a student or not.

We did ask them whether they were undergrad or grad.

MS. MILLER: Okay, and was that included in your report?

MR. SLADE: I don't recall if it was in the report, but we do have that data and if the Board would like and you would like, we could give you more detail, backup information.

MS. MILLER: The traffic concerns us very much, you know.

If the majority of students who participated in this survey were full-time graduates, undergraduates, living at G.W. housing on or near the campus, would that not sort of screw the results of the survey making it appear that most students --

skew, excuse me, I didn't say it right. Vowels are a problem for me. Isn't it clear that most students walk to and from the campus than actually did?

MR. SLADE: Well, we -- the sampling was random and what we were trying to do was take snapshots of different times of the day by capturing a random sample of the people on campus, so we were trying to find out, of those students who were on campus, how many got there by walking, driving and other modes as an estimate of the way people got to campus. If they happened to live on or near campus and were walking because of that, that was a valid conclusion we wanted to discover.

So it didn't really skew it, it really gave, we thought an accurate picture of how students were getting to campus.

CHAIRPERSON REID: Ms. Miller, how many more questions?

MS. MILLER: Just a few more. Maybe five. I'm making them short and quick and fast.

CHAIRPERSON REID: All right.

MS. MILLER: How many visitors were included?

MR. SLADE: I don't think we have that in front of us, do we Nicole?

MS. MILLER: You didn't check whether or not they were visitors?

MR. SLADE: We asked if they were visitors and we

can enumerate that.

MS. MILLER: I'd like to know that, too, because that makes a difference.

Was the G.W. transportation survey designed and conducted to support G.W.'s application for approval of the campus plan? In other words, given special areas of --

MR. SLADE: The intent of the survey was to determine how the people who were on campus at different times of the day got to the campus because we thought that was valid information that was useful to the Board. So that was the purpose of conducting the survey and that's how we designed it.

MS. MILLER: If G.W. constructs the planned mid-base pedestrian crossings, to some extent would that not in effect create additional de facto intersanctions of those locations? That's what I was trying to say.

MR. SLADE: We don't think so because, as I said earlier, these crossings are currently taking place and our objective is to manage the way that happens rather than let it happen in an unmanaged way.

MS. MILLER: Isn't that illegal?

MR. SLADE: No, I don't believe so.

MS. MILLER: My impression is it is. There I go again, all right.

One other thing, let me see, are you aware that in 1997 on 22nd Street that six of the students were hit by cars in

less than 6 months crossing randomly at the street, walking in the street?

MR. SLADE: I wasn't aware of that.

CHAIRPERSON REID: This will be your last question, right?

MS. MILLER: Let me choose the best one. Based on the 2010 projection, the parking space ratio for the Foggy Bottom campus will be reduced even further, isn't that correct?

I mean the plan mentions only 100 being added.

CHAIRPERSON REID: I don't understand the question.

MS. MILLER: The question is you're increasing the students. You're increasing the staff and you're staying within the campus quotas, but you're only going to add 100 cars.

MS. DWYER: Is the question whether the parking under the plan is sufficient?

MS. MILLER: Right.

MS. DWYER: Nicole, can you answer the question as to whether the parking under the plan is sufficient?

MS. WHITE: Yes, the parking is adequate to accommodate the future population projections.

MS. MILLER: And you don't get any complaints from the residents about students parking in the local area?

MS. WHITE: I have not gotten any complaints.

MS. MILLER: Thank you.

CHAIRPERSON REID: Thank you. We're going to take

a 10 minute recess at this time and when we return we'll commence with the ANC report --

MS. DWYER: Madam Chair, if I could just -- we have called our supporters and they are here, so could we when we get back, have our supporters testify and then they can leave?

CHAIRPERSON REID: If the Board Members have no objection to persons in support, then the ANC, persons in opposition and then we'll have the report from OP and closing remarks.

I don't think -- obviously we will have reserved the 25th to finish up. So hopefully, by today we can at least get to the ANC portion and persons in support and then we'll take an assessment then as to where we are.

Thank you.

(Off the record.)

CHAIRPERSON REID: The meeting will please come to order. Thank you.

MS. DWYER: Madam Chair, our supporters have told us that they are willing to come back for the next hearing so that we can stay with the order of proceeding and in talking with the ANC, they would like to be able to go forward at this time and present their case. So if you're in agreement, we're going to go back to the original order.

CHAIRPERSON REID: I have no problem with it as

long as the other Board Members -- okay, that's fine. Thank you.

MS. DWYER: Thank you. Ms. Spillinger, are you ready?

MS. SPILLINGER: I thought I was and apparently not. If I could just have one moment, please.

(Pause.)

CHAIRPERSON REID: Are you ready now?

MS. SPILLINGER: Madam Chair, I am Barbara Spillinger, chair of ANC-2A and I'm here to testify as the authorized representative of the ANC. However, we would like to reverse the order of today and ask Commissioner Miller to speak first for her single member district.

MS. MILLER: Good afternoon, I'm Dorothy Miller, Chair of ANC-2A and I have copies of my statement and I'd like to call your attention to the good reading material attached to the back, the questions I wanted to ask, but was testifying.

I live at 2440 Virginia Avenue and I've lived in Washington since 1940 and in the Columbia Plaza Project for the last 25 years. This testimony is made in my elected capacity because my President asked to speak.

I oppose the above application as found for many reasons, mainly because it fails miserably to meet the requirements of 11 DCR 210 and the provisions of the comprehensive plan covering this University.

I would like to express my appreciation to the

Office of Planning, to its new Director, Mr. Altman, to staff for comprehending that this application governed a college campus and not at all with the basic intent, does not. The D.C. Act 12-609, the Comprehensive Plan Act of 1998.

OP's report shows an understanding of the enormity of the destruction of this once beautiful and once desirable neighborhood caused by G.W.'s violation of the last campus plan and the District government's lack of enforcement of the current zoning regulations and District laws.

As stated in my request for party status that I would be speaking as the Vice President of CPGA, but that has changed, their President asked and was granted the right to speak.

However, because of the many grievous violations of the D.C. laws, D.C. rent control regulations taking place at Columbia Plaza since G.W.'s purchase of 28.55 percent and an occupancy of almost 85 percent now, they have an ownership of this real estate apartment complex, the Association decided the President would better speak.

Marilyn Ruben is the President and she will be speaking to you later.

In my statement I would like to cover some of the violations by GWU inside and outside of the approved campus boundaries since the approval of the last campus plan and some issues that need to be addressed before the Board gives approval to this application for a new campus plan.

These areas should be clearly spelled out in the approval of this application with penalties for enforcement to correct and prevent a repeat of the present situation. I'm in agreement with most of what ANC-2A and Foggy Bottom Association recommends. G.W. stated in 1985 campus plan that the student increase over the next 15 years, the life of the plan, were expected to be 1 percent a year. However, in the early 1990s, even before the BZA issued the order, G.W. started an intense and very successful campaign to increase the student enrollment without increasing on-campus housing. To house this increased student enrollment, the University began placing the overflow in off-campus residential properties, decreasing affordable housing and forcing long-term residents to leave the District.

In 1992, ANC-2A formed a committee to try to find a solution to cope with this increased enrollment and G.W.'s adverse impact on the Foggy Bottom West End residential neighborhood. A resolution formulated by this committee resulted in G.W.'s agreeing to build New Hall, the first dormitory built by the University on campus since 1935 to house only 455 students. And I'd like to add, 59 parking spaces and none of them for the people living there.

The 1990 census count setting the boundaries for my single member district places 2,000 persons in my single member district mainly in Columbia Plaza apartment complex which has approximately 800 rental units, housing over 1,000 students and

Thurstin Hall located at 1900 F Street, a G.W. dormitory built to house 800 students and staff. This dormitory, however, in the fall semester of 1999 was stuffed with 1200 students. This year G.W.'s freshmen enrollment is 2400 said The Hatchet, the school paper. And they have again stuck Thurstin Hall with 1200 students with as many as 4 students housed in each study hall and an overflow of 60 students being housed in the State Plaza Hotel. And those articles verifying this are attached and that you go in the class, you sit on the floor.

My opposition to this is the omission in the current application to request special exceptions by GWU for its new campus plan that is before you and because of the violations committed in the last plan as follows: the plan before you is inconsistent, inaccurate, misleading, and is an incomplete presentation of information necessary for you, the Board Members of the BZA to take action in making a decision regarding as the regulations state, the campus plan as a whole, inside, outside in its presently approved boundaries and its effects on the surrounding residential neighborhood. And both of these need to be included to know the effect.

GWU's excessive enrollment has resulted in the eroding of residential housing and the loss of community by transit renters such as students and the University's failure to address the measures to correct its housing shortage as suggested in the previous campus plan, BZA application 14455.

Under the plans, modified condition number 7 shows one site -- they were to choose one site for residential use and one alternative site. The second site designated in that plan was Square 44, the Health and Wellness Center is now being built on this site and violates all of the conditions suggested in the previous plan for whatever the University wanted to build on it.

The BZA number 14455 condition 17F having athletics negates condition number 32 which states "that all athletic activities would be confined to the Smith Center with all other athletic and recreational program in public areas off campus." Of course, that changed with the Health and Wellness Center.

GWU's continued acquisition and destruction of properties that give Foggy Bottom its character and charm making it a desirable community in which to live, reference BZA application No. 14455 Section G4, covering Square 43 which states "the townhouses were to maintained and to be a buffer between the institution and the residential area." The Board's conditions were completely violated since that order was written GWU has purchased and demolished 33 of the 36 townhouses. This was done by the University with a notice to ANC-2A and before it was published in the D.C. Register by DCRA.

The draft of the campus plan as before the Board fails to address the community's concerns with respect to the violations of the present campus plan. These violations should be addressed in the hearing of this request. The previous plan

omitted penalties for violations of the BZA order to help enforce compliance and prevent violations of the conditions the Board had put in the order in an effort to prohibit the University from expanding into the residential neighborhood as suggested by the comprehensive plan.

A greater Washington consumer survey showed that after the 1990 census that in the District's eight wards the greatest decrease in residency was in Ward 2 with a loss of 6,052 residents. It is estimated that the 2000 census will about double or triple the aforementioned loss, in part, because the University's violation to stay within its approved campus boundaries and its estimated student enrollment of 1 percent per year are 12 percent for the life of the plan, the 15-year plan, the current one, the enrollment increased over the estimate without adequate campus housing, and forced students to find housing in the residential area displacing local, permanent residents.

GW did this by entering into a partnership agreement with owners and managers of residential properties, acting as a lessor, landlord and using questionable tactics to get rid of senior citizens to vacate apartments replacing permanent residents with nontaxpaying students. This large influx of students decreased the available moderate income housing and increased the rents which is allowed under the District's rent control law that accelerated the exit of permanent taxpaying

citizens, a practice that erodes the financial stability of the District. And note my attachments. This will give you some more information.

The previous campus plan was outdated before it was approved and the many violations in the plan have created the current, unacceptable situation. These violations need to be addressed by the Board before approving the current application.

The following violations have occurred:

1. Condition 13F, the BZA order of 14455 states, "buildings requiring the greatest level of access will be given the most central location with good access and interior circulation." The violation of this provision was most injurious of all the violations of the current campus. The new hospital was approved for Square 40, Lot 36 with no on site parking, open 24 hours a day with a loading dock next to the residential community. GWU eliminated 265 parking spaces when they put that up. GWU's list of current projects submitted to the Department of Health regarding ANC-2A's request for the need for an environmental impact study, the EIS, omitted the doubling of the size of its law school. DOH denied ANC-2A's request. Had that been included, by the way, we would have gotten it, but placed a limit on what GWU could use -- use could make of the old hospital site and I'm getting a copy of that and I would like to have permission to attach it to my statement.

Regarding 11 DCMR 210.2, the basis of the Board's

uses for approval of University special exceptions, the Board needs to set a standard of judgment for questions that the Board Members should ask themselves before making a decision. Define what is an acceptable level of disruption to residential neighborhoods. Provide a shorter period of time for campus implementation in order to be able to measure impacts and take necessary corrective action.

What is a positive impact? What is a negative impact? What is a more negative impact? In other words, what is unacceptable?

Provide sufficient time for BZA to make decisions on facts that can be verified because a lot cannot in this current presentation.

ANC-2A and DCRA did a parking count of GW's current on-campus off-street parking spaces. Another copy of that is attached. GW's six new projects currently under construction eliminated six parking lots, the parking included in the new construction for the off-campus, off street parking does not seem to be adequate to place the lots removed. The suggested increase of 100 parking spaces is woefully inadequate for its current student faculty and staff.

GWU's appendix C, the population summary for the Foggy Bottom campus states that the current student head count is 16,657; faculty, 1,934; staff, 7,799 for a total of 26,389 and a projection count is for 20,000 students to 2,237 faculty and a

staff of 10,293 for a total of 32,529. It's not believable that 3,000 spaces with 100 more added, parking, are adequate for 32,529 people.

Let me give you an example from my personal experiences encountered at a precinct polling place yesterday. Over 100 students tried to park in the 700 block of 24th Street in an area reserved for polling people primarily or at least trying to be kept open. When it was mentioned that GW had stated that it had more than enough parking spaces to accommodate its current total, one person said, "they lied."

Another student who had received a parking ticket told me he would rather pay the parking ticket than the price of parking on campus and I want you to know that I have attached copies of their parking rates and the information on that statement.

Moreover, there must be stronger historic preservation aerology so that the University will take care to preserve all structure of historic significance, not just the ones that can't have historic protection to help maintain the residential neighborhood of the community. The recent violations of the current plan by the demolition of the President's house, that's the area where the law school is going in, without approval of the Mayor's agent, as required, has us very upset.

Campus boundaries must be set that are meaningful with severe, enforceable penalties for violations. All purchases

of property outside of the approved campus boundary must have BZA zoning permission whichever approval is covering the campus plan. No matter of right purchases should be allowed by large tax exempt institutions. This makes planning by OP to prevent destruction of residential neighborhoods meaningless. The purchase by tax exempt institutions that do not clear the zoning system puts an undue strain on the city's services and finances and an increased burden on taxpaying citizens. The burden of the District's financial health and stability should be of concern to all who live and work here.

Provide for and reinforce severe penalties for violations including immediate withdrawal of a certificate of occupancy for willful perpetrated violations and the right of individual residents of the District to petition to DCRA to enforce the conditions of the approved campus plan and I thank you for the opportunity.

CHAIRPERSON REID: Thank you very much, Ms. Miller. Are there any questions to Ms. Miller from Board Members? All right. Cross examination, Ms. Dwyer?

MS. DWYER: I just have a couple of questions.

MS. MILLER: Which page?

MS. DWYER: Ms. Miller, on page 3 of your testimony, you discuss the construction of the Health and Wellness Center and suggest that that was a violation of the prior campus plan. Was not that project reviewed and approved by the Board of

Zoning Adjustment?

MS. MILLER: It was --

MS. DWYER: Thank you.

MS. MILLER: May I continue on that for just a minute? The big question was it was zoned in the last campus plan or marked to be residential, mixed use and it was the alternative for residential housing which went out the window when they brought it before you to put something else there.

MS. DWYER: But one of the findings of the Board would have to make in any further processing application is that he project was in accordance with the campus plan, would it not?

MS. MILLER: Well, that argument was with the word "'with" -- no, I'm sorry, should be yes.

MS. DWYER: On page 4 in the second paragraph you reference a partnership agreement between George Washington University and owners and mangers of residential properties in which the University acted as a shadow landlord.

Do you have any documentation to support this statement?

MS. MILLER: Yes, the court rulings in the West End apartments and what's going on right now because we filed a case too. They took over 28.55 percent of Columbia Plaza. They are refusing to rent to the residents and if you are a student and only when you go through G.W. can you get in. Eighty-five percent now is occupied. There was a building totally occupied by

residents. It's now occupied 85 percent by students and that was some of the cross examination I was trying to do today.

MS. DWYER: The court record that you referred to, that includes a copy of this partnership agreement?

MS. MILLER: It includes the lessor type of agreement that they worked out with the West End because the citizens had first right of refusal. G.W. took over the leasing of the apartment, started getting the students in, moving the other people out and after 10 years they finally bought it.

MS. DWYER: All right, thank you. At the bottom of that page you reference and make some statements about the new hospital building. Was that not also a project that was reviewed and approved by this Board?

MS. MILLER: Unfortunately.

MS. DWYER: Thank you, thank you, thank you.

On page 5 you make reference to six new projects under construction and suggest that these projects eliminated six parking lots. Can you identify what projects and what parking lots you're referring to?

MS. MILLER: The law school had a little. The hospital had 265. The media center had about 65. Your health and wellness center, we counted I think 110 and -- I had a list, but I didn't put them in my statement. I can attest to that. I had a list of all the projects and I can refer you to 16309 which I

questioned the judgment of the BZA and asked for a sua sponte and of course the Zoning Commission did not respond and I had it reopened and reconsidered because those campus parking lots, by the way, were never fully approved and they knew those lots were going to be disappearing, yet they put them in their request to be continued. And that was one of the things Mrs. King wrote the very strong report in opposition and I highly recommend that the Board take a look at 16309.

MS. DWYER: Ms. Miller, with respect to the law school building, isn't it true that there was not a parking lot that was displaced by construction of that project?

MS. MILLER: I think there was a little.

MS. DWYER: And with respect to the media and health and wellness buildings --

MS. MILLER: Sixty-five spaces.

MS. DWYER: -- aren't those projects replacing the parking with a --

MS. MILLER: It's not as many spaces because what you all did you said 59 spaces for the New Hall. We counted 110 there. When you park on a flat lot you can get a lot more cars there and it takes a quicker time than to go down into a building.

MS. DWYER: Let me just ask you a couple of final questions --

MS. MILLER: You eliminated almost 600 spaces by the way with the lots I'm referring to.

MS. DWYER: Can you go through those numbers again on this?

MS. MILLER: Which ones?

MS. DWYER: The law school, you said a couple of spaces.

MS. MILLER: I'd like to bring you the paper from my studies and my testimonies concerning all of the six applications that are going on, the parking spaces that were available at that time and the amount that's being replaced and it does not total the number that has been removed.

CHAIRPERSON REID: Ms. Miller, that report needs to be submitted for the record so that we can all see it.

MS. MILLER: I'd be happy to, along with the report on the EIS scam.

CHAIRPERSON REID: The EIS what?

MS. MILLER: It's a scamming. We couldn't get an EIS because G.W. didn't tell the truth. They didn't mention they were doubling the size of the hospital. I'm sorry, but that's what happened. That's what the man told me.

CHAIRPERSON REID: Okay.

MS. DWYER: Ms. Miller, one final question. Do you support the University's proposal to add 1350 new beds on campus?

MS. MILLER: I would suggest 16,000 and some.

MS. DWYER: Do you support at least 1350?

MS. MILLER: That's a start, but barely a start.

MS. DWYER: Thank you.

MS. MILLER: It's a start. It's a beginning because keep in mind we have more than that in our apartment building.

CHAIRPERSON REID: Right, but the question was do you support it?

MS. DWYER: Well, I would support it if they would do what you all are asking Georgetown to

do.

CHAIRPERSON REID: Qualified.

MS. MILLER: Qualified and the qualification is as you've asked Georgetown within two weeks after the semester registration closes, that they have the students select their current residential addresses or their IDs are revoked and then we would finally know how many students they have, where they're living and how many live in Columbia Plaza.

MS. DWYER: Thank you.

VICE CHAIRPERSON SOCKWELL: Ms. Miller, the parking lots that you spoke of, were those lots lots that would have carried a certificate of occupancy from the District?

MS. MILLER: For parking?

VICE CHAIRPERSON SOCKWELL: Yes.

MS. MILLER: In fact, that's how they got the Presbyterian Church. They would have had to have more parking spaces for the church, but they explained how wonderful George

Washington was to let them park on that lot knowing they were going to build a dormitory. So now we have the church's cars all over the place too.

VICE CHAIRPERSON SOCKWELL: The reason I raise the question was if those lots have certificates of occupancy, the certificates of occupancy would have specified the number of spaces, legally, to be provided if they are self-park lots and those would be the numbers that one would want to use as opposed to the overfilling of lots less the lots that were designated as attendant parking and then parking would have been determined on a square footage basis.

MS. MILLER: Mr. Sockwell, I am sure GWU used the fees that were allowed, but when we counted them we came up with a lot higher number. And the number they're giving for what's replacing them is a lot smaller.

VICE CHAIRPERSON SOCKWELL: Unfortunately, the zoning issue and the real realities don't ever add up.

MS. MILLER: I know.

VICE CHAIRPERSON SOCKWELL: So --

MS. MILLER: But we have to live with that.

CHAIRPERSON REID: Ms. Dwyer, once Ms. Miller submits the information that she referred to and I'd like to see a response from George Washington, an explanation as to what their contention, their allegation is, I'd like to see a response from George Washington.

MS. DWYER: We would be happy to.

MS. MILLER: We've been trying to get that We asked them at the time they told us, they brought it the 4th of December, by the way --

CHAIRPERSON REID: Okay, but you said --

MS. MILLER: And we asked for that.

CHAIRPERSON REID: But you testified -- you will submit for our --

MS. MILLER: We'd love to see it. Thank you.

CHAIRPERSON REID: And Ms. Dwyer, on behalf of George Washington, will submit also their response to the report. Thank you.

MS. MILLER: Thank you.

VICE CHAIRPERSON SOCKWELL: Quick question on the EIS.

MS. MILLER: Sure.

VICE CHAIRPERSON SOCKWELL: Ms. Miller, the building in question with regard to the EIS, is it located outside of the central employment area as designated in the report?

MS. MILLER: Yes, it is.

CHAIRPERSON REID: All right.

MS. SPILLINGER: Madam Chair, Members of the Board, I am Barbara Spillinger again, chair of ANC-2A. And members of ANC-2A, the boundaries of which totally encompass George Washington University's campus appreciate the opportunity to

appear before you today and to plead our case.

As was pointed out in our filing of September 8th, ANC-2A held a special public meeting on Wednesday, August 30th in which it confirmed its support of its previously filed resolutions. The specifics of our case are spelled out in the report of the Advisory Neighborhood Commission 2A to the BZA dated April 17th prepared by James Draude and filed with the BZA with my letter of April 18th. The report, as will be the case with so many who testify today fortifies its opposition to the campus plan by citing 11 DCMR 210 and the city's comprehensive plan which includes new specific provisions regarding the University and its impact on the Foggy Bottom West End residential neighborhood.

The comprehensive plan recognizes the deleterious effects of housing large numbers of G.W. students in residential areas outside G.W.'s campus plan boundaries. For example, Section 1325.3, loss of housing stock is also a critical problem in Foggy Bottom West End aggravated by the lack of dormitory construction in the George Washington University campus. Conversions of housing units, particularly apartments to transient use, hotels, de facto hotels and corporate apartments to University dormitories and offices and to medical offices and clinics is a major cause of depletion of the housing stock. And most telling of all is Section 1358.1 which I quote only in part, "intense student pressure on Foggy Bottom's housing stock outside the campus combined with the impact of University generated traffic has had a

negative effect on residential Foggy Bottom." The University must continue to construct student dormitories to alleviate the pressure on the housing stock outside the boundaries of the campus plan. The University must be sensitive to the surrounding residential neighborhood."

In addition to these statutory requirements, one of the primary goals addressed in the Mayor's Neighborhood Initiative Program is the stabilization and preservation of neighborhoods with special emphasis and an emphasis upon enhancing and protecting established residential neighborhoods in the ring around the central employment district. As cited and footnoted in our April 17 report, the District of Columbia Court of Appeals has stated that the thrust of the zoning regulations is to keep the Universities from expanding into residential neighborhoods without control. The purpose of the Board's review of the campus plan is to evaluate the effect of the campus plan as a whole on the surrounding neighborhoods.

The community's major concerns are three. First, the unregulated and uncontrolled use of land by the University in the surrounding area outside the currently approved campus plan boundaries; second, the failure of the University to build sufficient dormitories to house its students without the campus plan boundaries, thus forcing large segments of the student population to find housing elsewhere; and three, the failure of the University to provide sufficient on-campus, off-street parking

or to even attempt to address traffic and parking impacts on neighboring residential areas outside the campus plan boundaries.

I might add here that in the traffic report that was given by G.W. it restricted the overview to what was within the campus boundaries while obviously traffic and parking affect areas outside.

At this time I'd like to give particular recognition to the supplemental recommendations on the G.W. campus plan filed September 8th by the Office of Planning which give a thorough analysis of the impacts that threaten the continued viability of the University's adjacent neighborhoods. The incremental steps that have brought us to the current impasse and recommendations for change that would alleviate current negative conditions. It is a thoroughly professional, thoughtful and constructive document.

I would also call your attention to the September 8th filing of the Foggy Bottom Association. This statement is especially relevant in that its author, Michael Thomas, was the lead spokesman for the community in the recent negotiations held by the Office of Planning, the community and the University. He gives a detailed, cogent critique of the

community- G.W. campus plan controversy including its history, current status and options available.

Both of these documents addressed in some detail, the September draft of the University titled "Proposed Conditions

for G.W. Foggy Bottom Campus Plan." And of course, the September 11th document which was just distributed today, we had not seen before.

The ANC obviously has been unable to address G.W.'s latest submission in a public meeting. However, at its August 30th special meeting, the ANC approved in concept the Office of Planning location based recommendation. I venture to say that we are in concert with the conclusions reached by both the Office of Planning and Mr. Thomas.

ANC-2A does, however, stand by its April 12 resolution passed with all six Commissioners present which concludes "ANC-2A finds G.W.'s campus plan as submitted unacceptable and asks particularly that student enrollment be curtailed until adequate on campus housing, parking and other facilities are made available and result in a quantifiable decrease in the number of students forced to live in the surrounding off-campus residential neighborhood."

In commenting on ANC actions I should also point out in its April 17 report, ANC included the following conditions: the full-time undergraduate student population be capped at the current level; no further nonresidential development be approved within the campus plan boundaries until GWU constructs sufficient dormitories to house full-time undergraduate students under conditions that will assure that no full-time undergraduate students reside in the areas of Foggy Bottom West End by the end

of the academic year being the fall of 2000 and every year thereafter. As a condition of approval of the campus plan G.W. will not acquire any further property directly or indirectly in residentially zoned areas within the boundaries of the ANC.

In a footnote at page 20, the Office of Planning report referred to this proposal but does not offer support "because of the virtual impossibility of compliance."

I personally am in agreement with OP's assessment, but these stipulations were adopted at a time when the community could see little progress in negotiation or offers to compromise on the part of G.W. A hard line on our side seem the best way to address what we perceive as equally imperious demands by G.W. in its campus plan. For example, page 23, G.W. "will continue as it has historically done to use property outside the campus plan boundary. A student cap of 20,000 with no reference to graduate-undergraduate ratios, along with respect to the future use of hospital Square 54, etcetera."

Granted, in its September 7th statement, some of these conditions had been ameliorated and as a result in the negotiation effort, it was generally agreed that over a two-year period freshmen and sophomores would be required to live on campus. The code of student conduct will apply to students living off campus. The verifiable census of undergraduate students in Foggy Bottom West End will be conducted and a transportation management program will encourage Metro use by G.W. students,

faculty and staff and an advisory counsel of community G.W. representatives will be established.

However, on the substantive issues that divide us, we did not reach accord. Our concerns and recommendations are recounted in some detail in our filing of September 8th and we continue to ask that the Board deny this application.

Rather than go through the items listed in our filing of September 8th which put forth what we want, I'm just not going to repeat them at this point. You have been given copies of that, but I would like to refer to two particular points. In response to Ms. Renshaw's request on how the ANC would feel about a 10-year campus plan, item 13 reads, "With the recent excessive growth of enrollment, support staff and faculty and the proposed increases cited above" a

10-year plan does not allow adequate flexibility in dealing with issues such as enrollment, student behavior, parking and enforcement. A five-year time period would serve far better to reassess compliance with this order and with the comprehensive plan and to readdress the University impact upon the surrounding residential neighborhood."

I might also refer to item 12, the future use of Square 54, since that also came up this afternoon. The question there is that the Department of Health in performing an environmental impact screening approved the construction of the new hospital, but said that there was only a very narrow window of

air quality before the threshold would be reached and they would take a very careful look at any future construction in that area and that is one of our concerns.

In closing, I would like to quote a part from a letter written by Council Member Phil Mendelsohn to President Trachtenberg. "I wrote November 11 that the plan should define the neighborhood and then state how it will be protected. Zoning is not just about the geometric aspects or architecture. It is also about use. Use is about relationship and campus planning is especially about the relationship of a University with other uses, that is, residence around the campus. The campus plan can start from the premise what does the University want to be in 2010 or it can start from the premise how will the University relate to Foggy Bottom in 2010. Instead, the plan is still focused on bricks and mortar and G.W.'s programs. Meanwhile, since last fall the neighborhood has gotten all the more agitated over G.W.'s acquisition of Columbia Plaza and the razing of townhouses. Whether these actions are right has nothing to do with the need for the University to improve its relations as Foggy Bottom residents. A campus plan is about much more than just facilities planning."

Thank you for your attention and the opportunity to appear before you.

CHAIRPERSON REID: Thank you very much, Ms. Spillinger.

Cross examination, Ms. Dwyer?

MS. DWYER: Just a couple of questions. I just want to make clear you mention at the top of page 4 that as a result of negotiations that have taken place over the summer, some of the conditions mentioned earlier by the ANC have been ameliorated and that as a result of a negotiation effort I just want to confirm with you it's your understanding that the University has agreed to house freshmen and sophomores on campus and the ANC supports that.

MS. SPILLINGER: The ANC has not taken a position on this formally in an open meeting, so I cannot say that officially we support it. But there was general agreement in discussions that that was desirable.

MS. DWYER: All right, was there general agreement that the ANC would support the extension of the student code of conduct to students living off campus?

MS. SPILLINGER: It's the same answer. There's no formal acceptance on any of this at this point, but we -- I would say we would lean favorably towards it at this point and I hope we will be able to consider that as things fall into place.

MS. DWYER: And just to list the other things that you mention there, things that the University has agreed to do, the census of students, the transportation management program and the creation of the advisory council.

MS. SPILLINGER: Yes.

MS. DWYER: All right, turning back to page 3, one of the conditions that the ANC is recommending, condition number C, that as a condition of approval the University will not acquire any further property in residentially zoned areas within the boundaries of ANC-2A. Do you recall whether a similar condition was proposed by the ANC at the time of the 1985 campus plan?

MS. SPILLINGER: No. I was not involved at that point.

MS. DWYER: All right, so you don't know whether the ANC at that time made the suggestion and the Board didn't include it. You have no knowledge of that?

MS. SPILLINGER: I suspect it was in there, but I do not know that.

MS. DWYER: All right, and just a couple more questions. Does the ANC and again I know there's no formal vote, but is there a general agreement that the ANC supports the relaxation of FAR on campus in order to promote more on campus housing?

MS. SPILLINGER: We have discussed that and I would say there has -- the concept has been favorably received.

MS. DWYER: And finally, does -- is there general agreement again that the ANC would support the rezoning of Square 54 in order to promote student housing on that site?

MS. SPILLINGER: We would certainly take a careful look at that. One of the things we have asked for is that 500

units be placed, residential units be placed in Square 54 instead of just 500 beds, units means rooms which could mean two students to a room, so we would prefer 500 units to 500 beds, but we would consider the proposal.

MS. DWYER: Great. Thank you. Can I ask one final question? There was also a lot of discussion earlier about the School Without Walls site and the University's plans. Is there general agreement that the University would work with the -- that the community would work with the University in putting together the redevelopment of that site for student housing?

MS. SPILLINGER: Frankly, we haven't discussed that at all. It just is something that was not brought up.

MS. DWYER: Thank you.

MS. SPILLINGER: Thank you. As part of our presentation, I would now like to call on Commissioner Mandlebaum who has another presentation.

CHAIRPERSON REID: Ms. Spillinger, how many persons do you have for your presentation, how many witnesses?

MS. SPILLINGER: Mr. Thomas and I don't -- Commissioner Tyler is not here. Excuse me, I don't know who is replacing Sarah Maddox. There are other members of the community who want to speak.

CHAIRPERSON REID: No, no. This is the ANC. This is the portion for the ANC and then members of the community will have an opportunity to speak either in opposition to or in support

of the application.

Mr. Mendelsohn, you're speaking as part of the ANC?

MR. MANDLEBAUM: That's correct. I won't do anything except that.

CHAIRPERSON REID: Okay.

MS. SPILLINGER: Madam Chair, the question has come up when the agenda, today's agenda was reworked that the ANC and the people who are in opposition would speak together.

CHAIRPERSON REID: This is very true, however, we had said earlier that we would try and conclude it around 6 o'clock because we do have the 26th. A good break point would probably be after the ANC, then the persons in opposition -- no, the persons in support -- the persons in opposition, then the persons in support in that order and then the Office of Planning Report and then final remarks.

MS. SPILLINGER: Yes.

CHAIRPERSON REID: So when this portion is concluded would be a good break point.

MS. PRUITT: Because, well, ANC has no time limit, parties will have some time limit and that's when we need to break it.

CHAIRPERSON REID: Yes.

MS. SPILLINGER: Now we'll now have the power point presentation and then Michael Thomas.

CHAIRPERSON REID: These two then concludes your --

MS. SPILLINGER: Then Richard Sheehey.

CHAIRPERSON REID: Okay, three people. All right now, how long is your presentation, Mr. Mandlebaum?

MR. MANDLEBAUM: Hopefully no more than five minutes. I'll go directly.

CHAIRPERSON REID: The presentation is going to be things that are entirely new and different from what we've already heard?

MR. MANDLEBAUM: Hopefully, it will be visualized a little differently.

CHAIRPERSON REID: All right, and then how long do you need? Three minutes? And then Mr. Thomas?

MS. PRUITT: I have a question. Mr. Thomas are you speaking for the ANC or for the Foggy Bottom Association?

MR. THOMAS: Uh --

MS. PRUITT: We have you down for Foggy Bottom.

MR. THOMAS: That's right. And the question I thought that was raised earlier --

MS. PRUITT: You need to come to the mike.

MR. THOMAS: There were discussions because of the fact that the community was represented by two ANC Commissioners and myself for the Foggy Bottom Association in negotiations that we were going to put it on seriatim. I mean the Commissioners and myself.

Why don't we see where we are, but --

MS. PRUITT: I would suggest that after Mr. Mandlebaum, we break and then we can allow cross examination, whether you want to do it today or not and then we go directly after the cross examination, go directly into -- or the Board may choose not to cross examine Mr. Mandlebaum and then go directly into the parties' case.

CHAIRPERSON REID: Not today.

MS. PRUITT: I'm not saying today, but the sequencing.

CHAIRPERSON REID: Yes.

MS. PRUITT: Whenever you choose to do it.

CHAIRPERSON REID: Yes. I think that the logical progression would be to conclude after the ANC report today and then pick up with the parties in opposition on the 26th if that's okay with everyone.

MR. THOMAS: May I inquire and by that you mean pick up with me on the 26th?

CHAIRPERSON REID: Exactly.

MS. PRUITT: Correct.

MR. THOMAS: That's fine.

CHAIRPERSON REID: Thank you.

MR. MANDLEBAUM: I have copies of the presentation, but it's changed since -- slightly changed since we printed them.

CHAIRPERSON REID: I think you need to give us what exactly you present to us so you may want to --

MR. MANDLEBAUM: I'll submit that to you at a later date.

CHAIRPERSON REID: Is that okay, Ms. Pruitt?

MS. PRUITT: Yes.

CHAIRPERSON REID: Whatever it is you present is what you should submit.

MR. MANDLEBAUM: Okay, and this is the response of the ANC to the George Washington University campus plan.

I guess our problem is summed up best by this photo. And this is from last week, this is President Trachtenberg of George Washington University in his academic regalia with a shovel in his hand breaking ground on an academic building which is off campus and this building did not come before the ANC because it doesn't have to. It's outside the boundaries and they are able to do that as a matter of right.

G.W. has never been responsive to ANC or community concerns. We've had a lot of meetings. They've listened to us, but they've never actually responded to it or come up with any helpful solutions. They avoid presenting their plans to the ANC or community groups as seen by what their doing in the new International Affairs School, that's seen by their razing of townhouses on Square 43 to put up new housing, any place outside of the boundary, that's why they went outside the boundary because they don't have to come to us.

And they don't recognize a true campus boundary. I

know the University highlighted some of their points of the dialogue process. We'll give you our version. As one of the negotiators, we spent over 50 hours in negotiations with the University considering a number of options and in the end G.W. failed to address what we would consider to be the community's major concerns. We reached agreement on some minor issues, but major issues, particularly campus boundaries, enrollment, housing, those were not addressed.

That being said, we're still willing to talk. We have come to the table. We're willing to come to the table again and I'm going to say this here in front of the Board, we want to peacefully coexist with the University for the next 10 years and we just want the University to realize some of their business plans to work with the community for the next 10 years.

As you can see, there is an increasing enrollment from 1993, the last time the plan was presented and the University has pretty much not exactly told us but through different methods of communications, student newspaper, said they want to increase about 3 percent a year. And if you project that out to 2010 that's 9500 undergraduate students. I'm going to concentrate mainly on the undergraduate full-time students because I think that's a major concern here.

Between 1993 and 1999, the number of undergraduate students increased by 1800 and that's 5 percent more than the 12 percent they projected and they account for nearly 84 percent of

the growth over the last 7 years.

But don't just listen to us. The student newspaper has repeatedly went over all the increases, housing, overstuffed University, G.W. faces overflow on freshman housing, G.W. ranks in second tier for two years in a roll, this relating directly or at least the student newspaper feels that it's directly related to their increase in enrollment, packing them in, law school expansion, G.W. looking to crowd classrooms, westward ho in relation to the acquisition of the Howard Johnson's, I believe, students say they're dissatisfied with G.W., and housing x files. And all of these were found by going into the student newspaper's on-line website and typing in the word "overcrowded" and letting the search come up. And this is just in the past three years.

(Laughter.)

So the question is asked what is a campus boundary? To the community, a campus boundary is defined as an area which contains the core academic, residential and other institutional uses of the University will operate in its entirety. However, to the University, it is an area which is subject to review and regulation. Outside the area is where we can build and change as a matter of right.

So we'll take a look at what the campus is. G.W. defines the campus boundary as this red -- everything that's in red. They don't own PEPCO any more or they don't consider it and they don't have the World Bank, but pretty much everything else is

what they consider the campus. However, if you add on what they actually own and use for institutional use, you'd find the National Association of Life Underwriters, the offices, the Elliot School they're building, the CODA, the townhouses, Riverside Towers, Square 43 where they took out the townhouses. This is the G.W. Inn, Hall on Virginia Avenue and way up north the Aston. But that's not it.

You take it one step further and you capture all the apartment buildings with 50 percent or more students as we've been able to determine and I'm not going to assert that this is perfect data because obviously a census haven't been done. But from the data that we've been able to compile you have all of these apartments and it gets even larger.

Then you add on the townhomes which are in yellow in the Foggy Bottom community. Bigger yet again. And then you add on what they've tried to buy which is particularly One Washington Circle and this is based upon news articles and the Atterly down on the south. Add on Columbia Plaza on the south which is the blue and this is George Washington University's campus. It is essentially the Foggy Bottom community.

And the result is that G.W. and the students are essentially taking over the Foggy Bottom and West End community and while G.W. claims that they spend a lot of time and money on the campus plan, they really don't pay attention to its boundaries or what it says.

And so we're going to do a little lesson here and this lesson is how to take over a complex and essentially when you run out of space in your own area, you need to move to others, so the first thing that you want to do is identify your target. In this cases, the target, Columbia Plaza. There's five distinct building, about 800 units in there and it's approximately already 50 percent students.

First, you want to find an owner who is willing to sell, but you don't need to own 50 percent of it. You only need to own a portion enough to control who goes in and out of it. So even if you own, let's say 20.55 percent, you could make a deal with the management that you control when these units turn over who gets to go in them. Then you have to figure out how you're going to sell it. So the neighborhood comes running over and you tell the neighborhood this is fantastic. We can finally control our students, by owning a piece of this and controlling who goes in and who goes out of it we'll finally be able to extend our code of conduct, whereas before we weren't able to.

Then they set up a deal with the management that allows you one week to fill any unit before it goes on the market and there's actually been a vice president's quote in the student newspaper saying that's the way it works. You set yourself up as the master lessor of these units and you sublet it, essentially sublet whenever you want in this case, students. Increase the rent so that those who are living there will get out and finally,

put the units in your spring on campus housing lottery which they intend to do this year. The long term strategy is they want to -- essentially gain those 800 units or what could be 2500 beds and they will increase their housing capacity by more than 50 percent overnight. They'll displace a thousand residents and they'll use this newly found increase in housing as a basis for why the enrollment can go up again. So they're not actually solving a problem. They're just increasing their capacity to churn out more students.

Let's face it. They're out of room. They have more students than they would ever hope. Every classroom and every time spot is filled. Classes have been held in the student union and even in dorms and classes don't have enough seats. Some students are sitting on the floor. And with all that, they want to increase their enrollment.

You've heard a lot about the ANC's position. G.W. should build more housing within the campus boundaries. I won't bore you with all this. And decrease the number of students in the Foggy Bottom area. Enrollment should be frozen until they can provide a sufficient level of housing for its students. You should not allow them to increase their enrollment until there's a decrease in the number of students living in the Foggy Bottom community. The community feels that it's unacceptable the number they have already. They're not looking for an increase. They're actually looking for a decrease and once that's achieved, that's

when the University should be able to go up. And they should have a meaningful cap on what that enrollment is, not what they know will never be attainable.

I guess in 1993 they thought 20,000 would give them enough room. I truly believe that's what they're doing again. It's not a true cap of what they actually can hold or where they want it to go.

G.W. should be barred from purchasing property of outside the campus and converting it to matter of right, specifically Columbia Plaza. And G.W.'s strategy is not only detrimental to the neighborhood, but it's been detrimental to students. Students have not been able to get into classes, sitting on the floors, this is not helpful to anyone but G.W.'s bottom line.

G.W. -- sorry, the ANC supports the Office of Planning's recommendation, specifically, we support the counting with a baseline of students. Currently, they house about 50 percent of students, so if you take the 7200 as quoted in the newspaper, that's about 2880 that live off campus. We think at least 75 percent of those undergraduates live in the community and even if they were to house a high percentage, like 70 percent as they're proposing, although we don't think that's high enough, if they had 15,000 undergrads, they would still be able to put more into the community. Nothing stops them from getting up to that number.

We're asking now for meaningful campus boundaries which will prevent the University from expanding into our community and ordering a moratorium of controlling properties outside of the campus and that includes returning Columbia Plaza back to its normal rental status instead of where it's essentially a dorm in transition.

Our conclusion, obviously, we oppose the plan and this plan is bound to demonstrate how it will not have a general concern of the neighborhood and allows G.W. essentially to just continue what they've been doing and controlling the entire neighborhood.

(Applause.)

CHAIRPERSON REID: Order. Cross examination.

MR. MANDLEBAUM: Hi.

MS. DWYER: Hi. I just have a couple of questions.

Mr. Mandlebaum, in the -- one of the first slides that you showed this evening, you had -- you reference a groundbreaking ceremony for a project off campus. Isn't the site that was the subject of that groundbreaking an approved plan unit development by the Zoning Commission?

MR. MANDLEBAUM: According to the University, yes. According to the community, not necessarily. It was a PUD under a different set of circumstances and so whether that actually transferred to the University is debatable.

That's -- the point that I was making is that you didn't come to the community at all. Whether it was approved before or not, you avoided coming to the community with what would be a major development.

MS. DWYER: Does that project also include a provision of housing for students as part of the project?

MR. MANDLEBAUM: It may. It maya not. We've heard rumors, yes; but it's never been presented to us.

MS. DWYER: Have you reviewed the Zoning Commission as to what kind of development cna take place on that site?

MR. MANDLEBAUM: Yes.

MS. DWYER: And doesn't that order require that a certain portion of that project be devoted to residential use?

MR. MANDLEBAUM: Yes, it does.

MS. DWYER: Thank you. You mention in your slides or make a large statement to the effect that the University in all these negotiations has failed to address the major issues.

Do you consider the provision of 1350 beds on campus a minor issue?

MR. MANDLEBAUM: Yes. In comparison to the overall number. If you had -- I don't want to foul this with other hypotheticals, but if you had a University with 16,000 students and you were adding just 1300 which would give I don't know, still less than a third for your total enrollment, then yes, it's minor.

MS. DWYER: And your hypothetical is based on an undergraduate enrollment of 13,000?

MR. MANDLEBAUM: I'm giving you -- giving your total enrollment around 16,000.

MS. DWYER: For graduate and undergraduate?

MR. MANDLEBAUM: Correct. I guess the answer to your question is no. I don't necessary consider 1300 to be a remarkable improvement.

MS. DWYER: All right, you had another slide that seemed to show what the University views as the campus boundary. Have you reviewed the zoning regulations to know what properties ar required to be included within the campus boundary?

MR. MANDLEBAUM: I'm aware of what types of properties should be included in the campus boundary, yes.

MS. DWYER: And is it your understanding that the University makes that decision or that Section 210 of the regulations tells the Board what properties must come before it?

MR. MANDLEBAUM: I'm not a zoning attorney. I do not exactly know what goes in it. The point that my slide is making is that G.W. actually uses more than the land that they claim, not only uses, but they also build for co-academic purposes outside of the land that they claim.

MS. DWYER: Are you familiar at all with the 1985 BZA order approving the last campus plan?

MR. MANDLEBAUM: No, I would have been 7.

(Laughter.)

MS. DWYER: I didn't realize that. Did you review that in preparation for today's hearing in order to understand some of the background of the University and community?

MR. MANDLEBAUM: I studied some of the background, but I can't speak to extensive specifics of that. This has been a major undertaking in itself and to do two campus plans would be insurmountable, I would think.

MS. DWYER: I'm just wondering whether you had the opportunity to even review the 1985 order?

MR. MANDLEBAUM: Yes, I've read portions of it.

MS. DWYER: And do you know whether the whole issue of de facto expansion and off-campus uses was brought up in that case and decided by the Board?

MR. MANDLEBAUM: I believe those issues were brought up. I believe the Board did take a position on that, but that was 15 years ago and the circumstances were different.

MS. DWYER: And at that time did the Board say that it had no jurisdiction to control what happened off campus?

MR. MANDLEBAUM: I'm not sure.

MS. DWYER: Do you know whether the regulations have changed since 1985 to the present?

MR. MANDLEBAUM: Unfortunately, I believe not.

MS. DWYER: So the same regulations applied today as in 1985?

MR. MANDLEBAUM: Not necessarily, because now we have a comprehensive plan which outlines certain things and G.W. in the Foggy Bottom area is one of those areas.

MS. DWYER: And have those regulations been changed as a result of the comprehensive plan? Are you aware of any campus plan regulation that has changed in response to any amendments of the comprehensive plan?

MR. MANDLEBAUM: I don't know. I would have to guess no, but I really don't know.

MS. DWYER: You also make the statement that you think at least 75 percent of the undergraduates live in the Foggy Bottom neighborhood. Do you have any data to support that statement?

MR. MANDLEBAUM: No, that is my statement I'm making from observations, from being a student, from talking to friends. If you have better data, we'd love to see it. I mean I'd love for you to prove me wrong.

Actually, people, when I said to them I'm going to use 75 percent, what do you think? They said easy, probably 80, 85.

MS. DWYER: And thee individuals you were talking to were other students?

MR. MANDLEBAUM: That's correct.

MS. DWYER: Thank you. One other question. You mentioned the number of students you believe live in Columbia

Plaza and what was that?

MR. MANDLEBAUM: I don't have an actual number. I believe it's easily 50 percent, but I'm not going to assert 85 or something like that. I would just say it's greater than 50 percent from units occupied by students.

MS. DWYER: And do you base this on your personal knowledge as a resident of Columbia Plaza?

MR. MANDLEBAUM: I based it on my personal knowledge of friends and other residents in the building.

MS. DWYER: But have you asked the building management for an actual list of the number of students who live there compared to other residents?

MR. MANDLEBAUM: No. And it is my impression and I don't know this for a fact, that there is no list compiled of who are students and who are not.

MS. DWYER: So again, it's just based on conversations you have with other students who may live in Columbia Plaza?

MR. MANDLEBAUM: Correct. I'd love to have better data. We're hoping the University will be able to assist us with that.

MS. DWYER: And is it your understanding the University has agreed to collect that data beginning in the spring of next year?

MR. MANDLEBAUM: Yes, I am aware of that, but you

also are proposing to collect it and have the plan at the same time. We would like to use that data as the formulation for a plan and that is the core difference.

MS. DWYER: And under your proposal what you would like to do is count the number of students who live in Foggy Bottom and then require the University to reduce that number over time?

MR. MANDLEBAUM: Correct.

MS. DWYER: And if those students have long-term leases for properties in Foggy Bottom would the University be required to buy out the remaining term on those leases in order to get the students out?

MR. MANDLEBAUM: I think that's unlikely. I think most students are renters in the area. I mean if that turns out to be the case that we do a study and they all live in Foggy Bottom and they all own these houses, then I guess that's something that would have to be dealt with, but I find that it's very hard for that to be the case.

MS. DWYER: And you don't see any legal issues or other impediments to the University forcing students out of one neighborhood and requiring them to live in another?

MR. MANDLEBAUM: I don't think the University would be forcing. They would merely be giving incentives for it.

And so -- I mean, they're not forcing. They're not saying to their students you can't live in this area. You're just

facilitating the process and encouraging them to go elsewhere.

MS. DWYER: But if the number of students living in that area reaches a certain number, whatever number you on the ANC feel is the number and then additional students move in, what would be the effect on the University? Would it have to freeze its enrollment until it was able to get those students out of the neighborhood?

MR. MANDLEBAUM: Sure. It would have to manage what it has before it can increase its base, its capacity.

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MS. DWYER: And suppose one of the students that cause that number to go above this magic number, whatever it is, happened to be a family living in Foggy Bottom where the student decided to attend G.W. Would that student then be required to move out of the neighborhood or live on campus?

MR. MANDLEBAUM: I believe we've somewhat addressed that earlier when Ms. Mitten asked the question of who is a commuter and who is not and I believe we would sort of carve out those types of students.

MS. DWYER: Thank you.

MR. MANDLEBAUM: But the concept is still something we support.

(Pause.)

MS. DWYER: I have one more question for Mr. Mandlebaum.

As a member of the ANC, were you provided a copy of the legal opinion that the University gave the ANC on the D.C. Human Rights Act issue?

MR. MANDLEBAUM: Yes, I was.

MS. DWYER: All right, thank you.

MR. MANDLEBAUM: But we don't necessarily subscribe to it, an opinion which was rendered by one of your attorneys.

MS. DWYER: One of my attorneys?

MR. MANDLEBAUM: Well, one of the University's, I guess, legal counsel, but we have reason to believe that it may apply otherwise.

MS. DWYER: Have you obtained an independent legal opinion as to the legality?

MR. MANDLEBAUM: Not yet, but we intend to.

MS. DWYER: Thank you.

CHAIRPERSON REID: Okay, thank you.

MR. SHEEHEY: I will be brief.

Madam Chairman Cross Reid and Members of the Board, I thank you for allowing me to speak. I donot have a written testimony at this time. I will provide it for you. The reason I do not have that is because in reading the campus plan application --

MS. PRUITT: You need to identify yourself.

MR. SHEEHEY: I'm sorry, I am Richard Sheehey. I'm Advisory Neighborhood Commissioner in 2-A01. I live at 2000 F Street, N.W.

In reading the application for their campus plan, if you read the very page, they list their goals, strategies and principles. Their number one goal is to move George Washington University solidly into the ranks of the first tier educational institutions. Well, what does that mean?

U.S. News and World Report ranks universities in this country. They have four tiers. The first tier consists of

50 universities. Last week, they came out with their new report. I have it here. It's very interesting. It provides information which is why the U.S. News and World Report put these 50 schools into the top 50. Thirty-five of these schools are private universities. They do list the undergraduate population which includes full-time and part-time undergraduate populations. At the 35 schools there are 219,740 students. If you divide that by 35 schools you get a population according to the U.S. News and World Report is 8,691. I'm not here to argue the statistics with the University. I'm here to tell you that the vehicle that the University states as their number reason for this application lists that and that give this report credence if George Washington University is going to state that the U.S. News and World Report is their number vehicle for achieving their number one goal.

There's another statistic in here that's very interesting. The U.S. News and World Report also lists the percentage of students living off campus. Of the 35 schools, 32 reported percentages. The average percentage is 27 percent. G.W.'s off campus total population off campus is 43 percent.

Finally, if you look at the top six schools in the report, five of them list the percentage of students, the undergraduate students that live off campus. The number one school is Princeton, 3 percent. The number two school is Harvard, 3 percent. The number three school is Yale, 17 percent, a whopping number. The number five school is Massachusetts

Institute of Technology, 4 percent. And then Stanford University comes at number 6, 1 percent.

The reason I've read you these statistics is because I believe G.W. in able to achieve its number one goal is moving in the wrong direction. It is obvious that to become a top tier school, it must reduce its undergraduate population. It must concentrate on its student-teacher ratios. It must concentrate on the housing opportunities it gives its students. It must concentrate, basically, on providing the academics that the students demand and need. Having students sit on the floor, not being able to find housing, having to move every year, having rents go up in the neighborhood is not what a top 50 school should be about.

I thank you for your time.

CHAIRPERSON REID: Thank you very much. Ms. Dwyer, do you wish to cross examine?

Cross examine from Board Members?

VICE CHAIRPERSON SOCKWELL: Mr. Sheehey?

MR. SHEEHEY: Yes.

VICE CHAIRPERSON SOCKWELL: G.W. falls on the second tier?

MR. SHEEHEY: It does fall on the second tier. They do not list in order a number when you are on the second tier, just that you're not in the first tier.

(Laughter.)

VICE CHAIRPERSON SOCKWELL: In comparing the first tier off campus/on campus numbers what not, there are a couple of things that are not quite clear, would not be clear in those general descriptions of numbers and one would be whether or not the universities are similar in urban character or whether they are inclusive of suburban or large single land tract campus environment, etcetera, etcetera.

Some of those things are very important in determining how a university can be compared to another. I just wanted to make that statement.

MR. SHEEHEY: May I address that?

VICE CHAIRPERSON SOCKWELL: Yes.

MR. SHEEHEY: There are four schools which I have listed that are within the District of Columbia that I have their statistics for. That would be George Washington, American University, Georgetown University and Catholic University. Georgetown, much to my chagrin, since I'm a G.W. graduate from 1995, and knew very well with the life of a student at the University, is ranked number 23 and we are not ranked in the top 50. At American University, 39 percent of the students live off campus. At Catholic University, 36 percent of their students live off campus. At Georgetown University, 33 percent live off campus. I do believe that I remember the BZA was very clear to Georgetown University in their current campus application that they are not allowed or that they should not be increasing their enrollment

because they are building a dormitory of that size. That dormitory should be used to house the students who are currently living in primarily Burleaf and other areas surrounding the campus.

So it appears that Georgetown's statistic, their number should the BZA rule on that application with the way the residents and the ANC of Georgetown wish, their number will be dropping dramatically. I believe that is something that you should be dealing with on this application as well.

VICE CHAIRPERSON SOCKWELL: It does show that the three universities which you compared all have a true campus environment as opposed to -- a true campus, in other words, they have a piece of land that is a tract assigned to the campus.

CHAIRPERSON REID: Right, right, right.

VICE CHAIRPERSON SOCKWELL: George Washington is an anomaly which is really not a campus, typical campus proportions and that's one of th e issues that makes the University and the way that it has actually acquired the land that is its physical campus block by block, property by property, they have an unusual character in that particular family of universities.

MR. SHEEHEY: That's true. And yes, we do recognize that. But for some reason Zoning and BZA assigned a campus boundary and since there is a campus boundary, we believe on the ANC that the campus boundary should be a campus boundary.

There is also one other thing. There is a well-

defined Foggy Bottom and West End community. And if the University expands, then one of the oldest neighborhoods in our District goes away.

VICE CHAIRPERSON SOCKWELL: If we could use imminent domain, close all the streets between all the buildings and make that the campus, then there might be more land available because the cars wouldn't be there any more.

MR. SHEEHEY: Or, you can follow what the U.S. News and World Report says that if you do not grow so aggressively, and maintain the student population which is smaller and easier to control, you do not need to expand.

VICE CHAIRPERSON SOCKWELL: But do you feel that the University itself can be hamstrung, regardless of their policies, but just in general concept, should a university be hamstrung because of the character of its campus in ways that are in some respects out of its control and in other ways can be managed more effectively?

MR. SHEEHEY: Well, that's why the BZA exists is to examine an application like this and that's why the campus plan process does exist. The answer to your question is yes, and with proper

long-term goals for expansion which includes the residential neighborhood, the University can achieve its goals. What we have presented today is the fact that, in our opinion, the University has not included the residential component, the residential

neighborhood. And it appears at times that the student population is not even included in the discussion. And so why does the University have to expand so greatly to achieve the goal of being a top tier school when most of the schools in the top tier fall below that. I understand that a lot of schools are not in the -- in such a dense, urban area, but the University knew where it was going.

I graduated from G.W. I can use my personal experience. The number one reason I came to G.W., the number one reason is because it was in Washington, D.C., in Washington, D.C. If it was to move outside of the city, which it sometimes claims and I kind of think that's economic blackmail, I don't think it will because you will lose a number of the students who want to come to Washington, D.C. Some other school, in my opinion, would fill that void. Georgetown would probably buy up a lot of Foggy Bottom and expand their campus that much closer to the State Department and the White House. So I donot believe that their argument that our hands are tied and that we need to expand is really an argument that is in the benefit of the academic environment at G.W. I just don't see that.

The second reason why people go to G.W. is because they couldn't get into Georgetown. And Georgetown is a smaller school. So you have a higher ranked school with a smaller population which is working with, in my opinion, better with their neighborhood because their neighbors have been that much more

focused in drawing the attention to University expansion a little bit better than we have in Foggy Bottom have been, you have a better academic environment.

And G.W. is almost 180 years old. It's been around for quite a time. It knows how to educate people. It should know how with its own business school how to expand its campus. And I believe that it is expanding too quickly. We are losing our residential components and with the downtown housing requirement in the comprehensive plan, I just don't see why it has to expand south and west.

VICE CHAIRPERSON SOCKWELL: We understand that George Washington was a colonist before he was President and George Washington University is colonizing.

(Laughter.)

CHAIRPERSON REID: Moving on. Thank you very much.

MR. SHEEHEY: Thank you very much.

MEMBER RENSHAW: I just got some material that a representative just gave us. Are you presenting that to the Board?

CHAIRPERSON REID: Who was the representative?

MEMBER RENSHAW: The ANC representative.

MR. SHEEHEY: Yes, like I said, I will be writing this information and providing it to the Board. I apologize. I downloaded it today while I was work. And it came on Monday.

MEMBER RENSHAW: What is the date of the U.S. News and World Report?

MR. SHEEHEY: I got it off their internet website. And their website is usnews.com.

CHAIRPERSON REID: But you're going to submit that --

MR. SHEEHEY: I will be submitting it.

MS. DWYER: Madam Chair, I have one follow up question after the discussion on this whole U.S. New and World Report issue and in looking at other universities, even in the District of Columbia, you mentioned Georgetown and American University, do either of those have a Metro stop in the middle of their campus?

CHAIRPERSON REID: Have a what?

MS. DWYER: A Metro stop.

MR. SHEEHEY: Catholic University does. American University has a shuttle bus service from their Metro stop. And Georgetown University provides a shuttle service from the Foggy Bottom and Roslyn Metros.

MS. DWYER: Right.

MR. SHEEHEY: The Metro to Georgetown is about one mile directly across Key Bridge and when you're 17 and 18 and 19 years old, a mile is not that hard to travel.

MS. DWYER: But does the U.S. News and World Report take into account those issues in reaching its rankings?

MR. SHEEHEY: Well, I don't work for U.S. News and World Report and I don't see it as a statistic here, but I do see that George Washington University as its number one goal wants to be a top tier school and the U.S. News and World Report is the organization that provides that statistic and therefore, since the University wants to be a top tier school, I would say that you have validated their survey by having it -- by saying that's your number one reason for presenting this application.

MS. DWYER: And do you think the components of this campus plan which called for the creation of these new academic buildings as well as residential buildings on campus is in furtherance of that goal?

MR. SHEEHEY: No, I do not, because I believe the fact that you are not putting any type of enrollment cap, you are not even stating how high your undergraduate population will increase, does not provide any benefit to the residential community. If you can increase your -- if you go 1400 beds, I think it's a good idea if they don't increase enrollment. But increase your enrollment by 3,000, you're putting 1600 more people in the community.

You're not providing the check for the balance.

MS. DWYER: You don't think that the University's commitment to house 70 percent of its undergraduates operates as the check?

MR. SHEEHEY: No, because you do not say what --

you don't say what the population of the undergraduates is. So if I tell you, if I'm applying for a job and you offer me a salary of $5,000 and I say I say no, I want more. And you say I'll double it to $10,000, that's still below the poverty line. So I just don't see how saying 60 percent, 70 percent, 80 percent of what? The University has not said of what, what is. And unless you ask the question, Commission, please ask that question. Seventy percent of what?

MS. DWYER: Hasn't the University committed to provide and doesn't it provide and include in this campus plan information on its enrollment and if 70 percent -- if it's committed to provide beds for 70 percent of that enrollment, doesn't that operate as a cap?

MR. SHEEHEY: No, because you do not provide what percentage of 20,000 will be undergraduate. So theoretically, if we want to use that 20 percent or your -- or 20,000 students become undergraduates, you have no graduate programs. That's not going to happen. What if it did? Seventy percent of that is 14,000 beds. That's still 6,000 people who live in the community. That is an extreme example of what happens, but unless the University states 70 percent of what then we can come up with these hypotheticals because you've not given us any numbers.

MS. DWYER: One final question and you've referenced Georgetown University and American University. Do you have any information on the number of the off-campus students for

those universities that live in Maryland and Virginia as compared with G.W.?

MR. SHEEHEY: No.

MS. DWYER: All right, thank you.

CHAIRPERSON REID: All right, now on the 26th we will reconvene this particular case and hopefully we'll be able to conclude it at that time. We'll begin with the opposition and then have the persons and parties in support -- no the opposition first, persons and parties in opposition, then persons and parties in support and the Office of Planning Report and closing remarks.

In the interim I would strongly suggest that over the summer I understand there was quite a bit of meeting to try to come to some type of resolution of the problems. I think that you've come a very long way and I don't think that the issues that you have raised are insurmountable, on the one hand from the community, on the other hand from George Washington, it appears to me that the University is trying to reach out and to make concession and I think that that being the case if we're to have a win-win situation on both sides, then there has to be some concessions or compromises made both ways and I don't think you're that far apart. So hopefully by that time when we come back on the 26th you'll at least to have been able to mitigate more of the areas in which there is still some discord and come to some type of meeting of the minds that would bring us closer to us not

having to make all the decisions, but tell us what you feel would be appropriate for both entities. I don't think that that's too hard to do. I do see the community and the University, both putting forth the effort and that to me, as the Chairman is very important to see.

Any comments by any of the Board Members prior to closing?

MS. PRUITT: Excuse me, Madam Chair, Ms. Bailey would like to go over what was requested for the next hearing just so that everybody is on the same page.

MS. BAILEY: The first thing I have is that the applicant is to provide an updated listing of where the new beds would be located within the campus plan boundaries.

The University is to plug numbers into the formula used for full-time equivalent students and identify -- okay, let's start over.

The applicant is to provide an updated listing of where new beds would be located within the campus plan boundaries.

The second thing, the University is to plug numbers into the formula for full-time equivalent students and identify how the numbers have changed over the past several years.

Thirdly, the applicant is to provide written language discussing an interim review period for the Board's consideration of its campus plan; a five year review period. The mechanism for such a proposal and the mechanism for how such a

proposal would work, the ANC is also to comment on this proposal.

The University is to provide information on the Aston apartment building, how many students live in that building.

Submissions from Mr. Lou Slade, I think he has left, concerning the survey that was done in preparation for the University's traffic study.

Report from Ms. Miller, two reports on the EIS scamming and parking space count. And that information is to be submitted to the applicant as well with the applicant's response.

And then there was a last thing, by Mr. Richard Sheehey, what were you supposed to provide?

MR. SHEEHEY: I will provide the figures that I quoted today from the U.S. News and World Report.

MS. BAILEY: Okay. Madam Chair, the last thing is did we want these submissions prior to the next hearing or before the record is closed on this case?

CHAIRPERSON REID: We want what?

MS. BAILEY: The submissions that I have just mentioned --

CHAIRPERSON REID: They have to be prior to the record being closed.

MS. PRUITT: Right, but the question is do you want to have them so that you can discuss them at the next hearing or just at the end of the hearing so before your decision?

CHAIRPERSON REID: All right, now would that allow

time enough?

MS. PRUITT: The question would be we would need to have them in-house by September 20th. I know that's a very short turnaround, but that will allow us to -- that would allow us to provide you all with copies.

CHAIRPERSON REID: Right. Can they do that?

MS. PRUITT: That's what --

MS. DWYER: Yes, we can.

MS. PRUITT: I wanted to add one other thing to the list, a copy of the power point presentation by Mr. Mandlebaum.

CHAIRPERSON REID: Right, we would like to have them prior to the next hearing so that if we have any questions or further discussion, Mr. Bailey, please.

MS. BAILEY: Yes, Madam Chair. September 20th all items are due and then September 26th at 9:30 the hearing will continue.

Madam Chair, I guess the very, very last thing is you have not mentioned that the applicant was going to present three witnesses in support when the hearing starts on the 26th. That was my understanding.

CHAIRPERSON REID: Well, Ms. Dwyer changed that and requested that we go back to the original sequence since the witnesses were not testifying today and then at the conclusion when I went over the sequence, maybe I should do that again so that we'll be sure to be on the same page.

Persons and parties in opposition, then persons and parties in support. Then the Office of Planning Report and then closing remarks by the applicant.

MS. DWYER: I'd like to clarify, we actually had five persons in support that were down here today, so if we could have those five on the 26th.

MEMBER RENSHAW: All right, thank you. That will conclude today's hearing.

(Whereupon, at 6:30 p.m., the hearing was recessed to reconvene Tuesday, September 26, 2000.)