

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 3, 2009

+ + + + +

The Regular Public Hearing convened
in Room 220 South, 441 4th Street, N.W.,
Washington, D.C., 20001, pursuant to notice,
at 3:20 p.m., Ruthanne G. Miller, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

The transcript constitutes the minutes
from the Public Hearing held on March 3, 2009.

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

2 (3:20 p.m.)

3 CHAIRPERSON MILLER: This is the
4 March 3, 2009, public hearing of the Board of
5 Zoning Adjustment of the District of Columbia.

6 My name is Ruthanne Miller. I am
7 the chair of the BZA. To my left is Mary
8 Oates Walker and Shane Dettman, Board members.

9 I expect to be joining us briefly the Vice
10 Chair, Mr. Marc Loud, and Mr. Greg Jeffries
11 from the Zoning Commission.

12 And also on the dais with us is Mr.
13 Cliff Moy from the Office of Zoning, Ms. Mary
14 Nagelhout from the Office of Attorney General,
15 and Ms. Beverley Bailey from the Office of
16 Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door.

20 Please be aware that this
21 proceeding is being recorded by a Court
22 Reporter and is also webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please turn on and speak into the
6 microphone, first stating your name and home
7 address. When you are finished speaking,
8 please turn your microphone off, so that your
9 microphone is no longer picking up sound or
10 background noise.

11 All persons planning to testify,
12 either in favor or in opposition, are to fill
13 out two witness cards. These cards are
14 located to my left on the table near the door
15 and on the witness tables. Upon coming
16 forward to speak to the Board, please give
17 both cards to the Reporter sitting to my
18 right.

19 The order of procedure for special
20 exceptions and variances is as follows:
21 1) statement and witnesses of the applicant,
22 2) government reports, including Office of

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1 Planning, Department of Public Works, DDOT,
2 etcetera, 3) report of the Advisory
3 Neighborhood Commission, 4) parties or persons
4 in support, 5) parties or persons in
5 opposition, 6) closing remarks by the
6 applicant.

7 Pursuant to Sections 3117.4 and
8 3117.5, the following time constraints will be
9 maintained. The applicant, persons, and
10 parties, except an ANC, in support, including
11 witnesses, 60 minutes collectively. Persons
12 and parties, except an ANC, in opposition,
13 including witnesses, 60 minutes collectively.

14 Individuals, three minutes.

15 These time restraints do not
16 include cross examination and/or questions
17 from the Board. Cross examination of
18 witnesses is permitted by the applicant or
19 parties. The ANC within which the property is
20 located is automatically a party in a special
21 exception or variance case.

22 Nothing prohibits the Board from

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1 placing reasonable restrictions on cross
2 examination, including time limits and
3 limitations on the scope of cross examination.

4 The record will be closed at the
5 conclusion of each case, except for any
6 material specifically requested by the Board.

7 The Board and the staff will specify at the
8 end of the hearing exactly what is expected
9 and the date when the persons must submit the
10 evidence to the Office of Zoning. After the
11 record is closed, no other information will be
12 accepted by the Board.

13 The Sunshine Act requires that the
14 public hearing on each case be held in the
15 open before the public. The Board may,
16 consistent with its rules of procedure and the
17 Sunshine Act, enter executive session during
18 or after the public hearing on a case for
19 purposes of reviewing the record or
20 deliberating on the case.

21 The decision of the Board in these
22 contested cases must be based exclusively on

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1 the public record. To avoid any appearance to
2 the contrary, the Board requests that persons
3 present not engage the members of the Board in
4 conversation.

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

8 The Board will make every effort to
9 conclude the public hearing as near as
10 possible to 6:00 p.m. If the afternoon cases
11 are not completed by 6:00, the Board will
12 assess whether it can complete the pending
13 case or cases remaining on the agenda.

14 At this time, the Board will
15 consider any preliminary matters. Preliminary
16 matters are those that relate to whether a
17 case will or should be heard today, such as
18 requests for postponement, continuance, or
19 withdrawal, or whether proper and adequate
20 notice of the hearing has been given.

21 If you are not prepared to go
22 forward with the case today, or if you believe

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1 that the Board should not proceed, now is the
2 time to raise such a matter. Does the staff
3 have any preliminary matters?

4 MS. BAILEY: No, Madam Chair.

5 CHAIRPERSON MILLER: Okay. Then,
6 would all individuals wishing to testify today
7 please rise to take the oath, and Ms. Bailey
8 will administer it. Regardless of which case
9 you're in, if you're going to testify today.

10 MS. BAILEY: Would you please raise
11 your right hand?

12 (Whereupon, an oath was administered to those
13 persons planning to testify.)

14 Thank you.

15 CHAIRPERSON MILLER: Okay. We are
16 ready for the first case, Ms. Bailey.

17 MS. BAILEY: Madam Chair, members
18 of the Board, to everyone, Application Number
19 17883. This is The Vestry of Saint Patrick's
20 Parish, and it is pursuant to 11 DCMR 3104.1,
21 for a special exception to expand the existing
22 St. Patrick's Episcopal Day School campus by

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1 incorporating Lots 854 and 855, in Square
2 1374, and to use the property as outdoor
3 physical education and science program space.

4 This is with no new structures. The
5 application is under Section 206. It is
6 located at 4800 U Street, N.W., Square 1374,
7 again Lots 854 and 855. And the property is
8 zoned R-1-B.

9 CHAIRPERSON MILLER: Good
10 afternoon. Could you introduce yourselves for
11 the record, please?

12 MS. PRINCE: Allison Prince with
13 the law firm of Pillsbury Winthrop, here on
14 behalf of St. Patrick's School.

15 MR. BARRETT: Peter Barrett, Head
16 of School, at St. Patrick's Episcopal Day
17 School.

18 CHAIRPERSON MILLER: Okay. Now, I
19 think we indicated before we had our little
20 break that we thought that this case would go
21 very quickly. I don't -- is anybody here from
22 the ANC?

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1 (No response.)

2 Okay. And let me just doublecheck,
3 is anybody here who wishes to testify in
4 support or opposition to this case? Oh, okay.
5 Sir, could you -- do you?

6 PARTICIPANT: In support.

7 CHAIRPERSON MILLER: In support,
8 okay. All right. Because we -- I think this
9 is a case where the Board has read the file,
10 which is quite full, and I think you could
11 almost stand on the record. There just does
12 not seem to be a concern that the special
13 exception requirements are not met in this
14 case.

15 I mean, there's no building. You
16 know, there's just land, and you are using it
17 in a very natural way that does not give rise
18 to any adverse impacts on neighboring property
19 that we can discern.

20 I see that Office of Planning isn't
21 here even, though we have a full report from
22 them.

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1 So I am going to ask you, Ms.
2 Prince, I guess, if there is more evidence
3 that you would like to put on the record at
4 this point.

5 MS. PRINCE: We'd be pleased to
6 stand on the record. The record is complete.
7 The ANC letter of support should be in the
8 file. There is no known opposition, and we
9 have one neighbor who is here to testify in
10 support, should you like to hear from him.

11 CHAIRPERSON MILLER: Other
12 questions from Board members?

13 (No response.)

14 I mean, is this neighbor going to
15 be disappointed if he doesn't testify?

16 (Laughter.)

17 PARTICIPANT: No.

18 CHAIRPERSON MILLER: Okay. I mean,
19 and I understand you've brought witnesses, but
20 -- all right. I think the Board is prepared
21 to go forward and rule on this application.

22 I would move approval of

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1 Application Number 17883, The Vestry of Saint
2 Patrick's Parish, pursuant to 11 DCMR 3104.1,
3 for a special exception to expand the existing
4 St. Patrick's Episcopal Day School campus by
5 incorporating Lots 854 and 855, in Square
6 1374, and to use the property as outdoor
7 physical education and science program space,
8 with no new structures, under Section 206, at
9 premises 4800 U Street, N.W. Do I have a
10 second?

11 MEMBER DETTMAN: Second.

12 CHAIRPERSON MILLER: Given the
13 time, and the straightforwardness of this
14 application, and that there are no structures
15 being built on this property, there is no
16 adverse impacts identified, I think we can
17 incorporate the findings -- or adopt the
18 findings of the Office of Planning and grant
19 the exception.

20 Are there further comments on this?

21 (No response.)

22 They are not increasing faculty and

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1 staff to affect parking spaces. That is
2 addressed in 206.3. And there is no evidence
3 that there will be any adverse impacts on
4 neighboring property because of noise,
5 traffic, number of students, or otherwise
6 objectionable conditions.

7 Okay. There has been a motion.
8 Has it been seconded? Do I have a second to
9 the motion? You seconded.

10 Okay. Further comment?
11 Deliberation?

12 (No response.)

13 All those in favor say aye.

14 (Chorus of ayes.)

15 All those opposed?

16 (No response.)

17 All those abstaining?

18 (No response.)

19 And would you call the vote,
20 please?

21 MS. BAILEY: Mr. Loud is not in the
22 room. Madam Chair, the vote is four-zero-one

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1 to grant the application. Mrs. Miller made
2 the motion, Mr. Dettman seconded, Mr. Jeffries
3 and Mrs. Walker support. Mr. Loud isn't on
4 the dais at this time.

5 CHAIRPERSON MILLER: And this can
6 be a summary order as there is no party in
7 opposition.

8 MS. BAILEY: Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. We thought that would be quick.

11 Okay. We have one more case that
12 is on the agenda for this afternoon. We are
13 going to take a break until 4:00, and you all
14 can as well. So we'll see you back here at
15 4:00.

16 (Whereupon, at 3:30 p.m., the proceedings in
17 the foregoing matter were
18 concluded.)

19
20 CHAIRPERSON MILLER: Ms. Bailey, I
21 think you can call the next case when you are
22 ready.

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1 MS. BAILEY: That's Application,
2 Madam Chair, of the Walgreens Eastern Company,
3 Inc., and others. The number is 17789, and
4 this is an amended application, and it is
5 continued from last week, February 24th, and
6 it is amended to state that this is pursuant
7 to 11 DCMR 3103.2, for a variance from the
8 offstreet parking requirements under
9 Subsection 2101.1 and Section 2115.2, size of
10 parking space requirements, for a new drug
11 store at premises 4225 Connecticut Avenue,
12 N.W. The property is zoned C-3-A, and it is
13 located in Square 2051 on Lot 7.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. I think when we left off was before the
16 ANC was going to present its case.

17 It's 4:14 in the afternoon. I just
18 want to doublecheck whether there is anybody
19 in the audience who would like to testify and
20 is under a time constraint, so that we don't
21 lose your testimony if we don't need to.

22 Okay. I don't see anybody coming

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1 forward. If that becomes the situation later
2 in the afternoon, if you want to just raise
3 your hand, and then I would call on you.

4 Okay. So, then, we are ready for
5 the ANC then. And I also want to note that on
6 the dais are some documents, and I don't know
7 whether they are -- they have been filed by
8 the ANC or whom. We have a petition, we have
9 some photographs, and we have a drawing.

10 MS. BAILEY: Madam Chair, maybe I
11 can assist, because --

12 CHAIRPERSON MILLER: Okay.

13 MS. BAILEY: -- I passed the
14 information out.

15 CHAIRPERSON MILLER: Okay.

16 MS. BAILEY: The map was provided
17 by the ANC. The photographs, and in addition
18 to the petition, was provided by the lady who
19 has her -- who had her hand raised, and I
20 don't remember her name.

21 CHAIRPERSON MILLER: To get on the
22 record, you need to come to the microphone,

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1 actually.

2 MS. BUCK: Sharon Buck, and I gave
3 you four photographs. And I will be showing
4 larger versions during my testimony. And I
5 gave you copies of petitions from 3003 Van
6 Ness Street.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 We're ready when you are.

10 MS. PERRY: Sorry about that.

11 First, I want to thank you for my
12 special exception to leave early last week, as
13 I did have a unique opportunity, but not
14 unique enough to get the variance.

15 But before we begin our testimony
16 today, we must correct a serious -- oh, I'm
17 Karen Perry from ANC 3F, and with me is Jane
18 Solomon, our chair.

19 Before we begin our testimony, we
20 must correct a serious misrepresentation in
21 the applicant's filing. We do this because
22 the applicant is making the argument at the

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1 bottom of page 5 and the top of page 6 that
2 the history of the site should be considered
3 as a factor in making the property unique and
4 --

5 CHAIRPERSON MILLER: What document
6 is -- are you referring to? Page 5 and 6 of
7 --

8 MS. PERRY: Their application.
9 Their filing that is -- the application of
10 Walgreens.

11 CHAIRPERSON MILLER: Oh, okay.
12 Okay. Thank you.

13 MS. PERRY: And they cite Monaco v.
14 The D.C. Board of Zoning Adjustment, where the
15 court held that the history of the site, as
16 well as an agreement pertaining to the use of
17 the site, should be considered in making the
18 determination as to whether the property can
19 be considered unique.

20 On page 3 under Background, the
21 applicant states that "The owners made
22 attempts to operate an automobile service

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1 center on the property, but their efforts were
2 problematic and that the gas station received
3 numerous citations for these operations, and
4 that the property never possessed a valid
5 certificate of occupancy to create an
6 automobile service center, despite the owners'
7 many efforts to secure one." And that is a
8 quote.

9 ANC-3F strongly feels that this
10 Board should not rule that the history of this
11 site should be considered as making this
12 property unique. First, the repair business
13 that was the subject of those cases was not on
14 this site, and, second, the business was
15 illegal. The automobile repair garages in
16 question were at 4221 Connecticut Avenue on an
17 entirely different lot in a building under
18 different ownership.

19 Second, the owner and the lessees
20 of this repair garage never filed for special
21 exception relief to operate a repair garage,
22 instead choosing to flaunt the zoning

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1 regulations. And I think you are very well
2 aware of that case, Mrs. Miller.

3 The one minor case that the gas
4 station site did not result in any loss of
5 business, as the station had a legitimate C of
6 O as a motor vehicle fueling station that
7 permitted repairs incidental to a gas station.

8 It occurred in 2002 when the lessee, having
9 lost the BZA decisions at 4221 Connecticut
10 Avenue, tried to divide the gas station site,
11 and falsified a DCRA application claiming new
12 ownership for an automobile service center on
13 the gas station property.

14 You have a copy of our ANC
15 resolution. As you can see, we felt it was
16 the size and design of the proposed drug store
17 and not the property itself that caused any
18 unique situation requiring the need for area
19 variances. It is our understanding that
20 financial hardship for the owner of a property
21 to design a building consistent with the
22 zoning regulations would require a use

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1 variance.

2 The ANC also found that the pros of
3 -- well, I think we have already addressed the
4 fact, the need for public space, so I'm going
5 to skip over that.

6 In its application -- and I'm also
7 referring to what they filed -- the applicant
8 cited six reasons why this property was
9 unique, and why the variances should be
10 granted. Webster's defines "unique" as being
11 the only one, being without a like or equal.
12 Using that definition, the ANC reviewed the
13 applicant's justifications.

14 First, the property's lot is
15 triangular in shape with two street frontages.

16 That is in the applicant's submission. ANC-
17 3F found this property not to be a triangle
18 but a trapezoid, as are all -- and all corner
19 lots do have two street frontages, so it's not
20 unique.

21 We found that designing a larger
22 drug store than initially proposed was self-

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1 created and resulted in the need for the
2 variances, because originally they did design
3 a smaller drug store, so it's not the
4 property, it's the design itself.

5 The applicant also stated that the
6 SMD representative and the Office of Planning
7 further imposed design restraints on the
8 applicant, and that the request to provide an
9 urban design that minimized surface parking
10 along Connecticut Avenue was an unusual
11 request, further making the site unique.

12 As the SMD member they are
13 referring to, I wish I had that power. I did
14 meet with Randall Clarke at the site and
15 expressed concern about the 24-hour drive-thru
16 pharmacy 25 feet from the windows of Van Ness.

17 No one I knew wanted to hear "Prozac" through
18 loudspeakers all night.

19 I also expressed concern, as the
20 initial drawing had cars entering on Veazey
21 Terrace, driving parallel to the sidewalk,
22 with no barrier, and either parking facing

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1 Connecticut Avenue or continuing into a queue
2 line for the drive-thru pharmacy. But at no
3 time did I impose design or parking placement
4 restrictions on moving the drug -- on the
5 property owner.

6 The second reason they cited for
7 the property being unique was that the
8 building has a -- the property has a building
9 restriction line along Veazey Terrace. Veazey
10 Terrace is a residential street, and like all
11 lots in Ward 3 have building restriction lines
12 on residential streets, so we didn't find that
13 unique. It's not unusual.

14 Third, because the property is
15 located in close proximity to varying uses,
16 including large apartment buildings and the
17 University of District of Columbia, there will
18 be significant pedestrian use.

19 There are many properties in the
20 city that have these varying uses and built-in
21 pedestrian bases, including Tenleytown,
22 Columbia Heights, the U Street corridor. So

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1 it doesn't make this property unique.

2 And it should also be noted that
3 UDC and Howard Law are commuter schools with
4 no dormitory housing. Students drive in, take
5 their classes, and leave the area, so the
6 pedestrian base will not be as large as the
7 applicant states, unlike Tenleytown where
8 American University does have dormitory
9 housing.

10 That the property sits immediately
11 -- four, that the property sits immediately
12 across the street from the Van Ness UDC Metro
13 Station. We found this to be a benefit to the
14 applicant, but not a condition that made the
15 property unique. There are many areas of the
16 city developed near Metro stations, including
17 the applicant's drug store in Cleveland Park,
18 across from the Cleveland Park Metro Station,
19 a few blocks away.

20 The fifth reason the applicant
21 stated was the negative impacts and negative
22 consequences for the neighborhood. And I

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1 think we addressed -- and they addressed the
2 gas station, except that I think they have the
3 wrong site. It was the service bays in the
4 alley.

5 There has been a gas station on the
6 corner of Connecticut Avenue and Veazey
7 Terrace from 1939. The station is currently
8 leased to Mid-Atlantic Petroleum. They would
9 like to stay. However, their lease is
10 contingent on whether the BZA grants the
11 variance to Walgreens, the contract purchaser
12 of the site.

13 The applicant also states in their
14 number five that the history of the
15 applicant's initial proposal created the
16 unique situation where the District agencies
17 and the community imposed design constraints
18 on the site not delineated in the zoning
19 regulations. And the need of their support
20 for the project, the applicant redesigned its
21 project. The applicant did redesign its
22 project.

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1 But as this Board knows, many
2 projects are redesigned in response to
3 concerns by the Office of Planning, Fine Arts
4 Commissioner, Historic Preservation, and none
5 of that makes a project unique enough to
6 justify a variance.

7 The applicant would have -- could
8 have come to the BZA, even without community
9 support, as the applicant still does not have
10 the ANC or community support. And, as we all
11 know, the BZA does not always agree with the
12 ANC.

13 Six, the applicant suggests that
14 the lot's grade change created a unique
15 challenge in designing a building to suit the
16 property, as the grade rises two to three feet
17 from the west to the east of the property. We
18 did not find this to be a unique challenge.
19 Other buildings on the same street were also
20 faced with this grade change, and successfully
21 constructed buildings without requiring --
22 without variances.

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1 Parking lots were placed off the
2 alley or off of Connecticut Avenue. The
3 Office of Planning has changed its mind many
4 times with reference to properties in our
5 area. In the Burke School case one block
6 away, the Office of Planning wanted to take
7 the parking off of the residential street. In
8 this case, they want to put the parking on the
9 residential street and off of Connecticut
10 Avenue, the arterial.

11 Further, if Walgreens is granted
12 the gas station -- further, if Walgreens is
13 granted the variances, the gas station will be
14 raised. So the applicant can regrade the
15 property, including the use of a berm or a
16 wall or whatever.

17 Ken Laden, the former Associate
18 Director for Transportation Policy, in a memo
19 to this Board in the Burke School case,
20 described this area as follows. "Surrounding
21 land use and background traffic patterns add
22 to the traffic congestion problems in this

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1 neighborhood. The high-density housing north
2 of the site, commercial properties on
3 Connecticut Avenue, the Howard University Law
4 School, and the Levine School of Music all add
5 traffic to this area, which does not have a
6 complete grid system of streets due to
7 geography and land use patterns." And that is
8 why I gave you the map.

9 Veazey Terrace and Van Ness Street,
10 where the site is, they are both dead-end
11 streets. There is about 5,000 people living
12 on these two streets. All of their garages,
13 all of everything -- their driveways, their --
14 all go on to these two streets. So there --
15 and there is nowhere out of them, and no way
16 to build another street.

17 The result is when there is
18 congestion on Connecticut Avenue, through
19 traffic, local residents, and those businesses
20 in the community use adjacent alleys and
21 residential streets to travel through the
22 area. These alleys and streets are not

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1 designed to handle this level of traffic,
2 compounding congestion and traffic safety
3 problems.

4 It should be noted that Clarissa
5 Byrd from DDOT conducted an alley count, and
6 the counts conducted that day showed 1,000
7 cars using the 16-foot wide two-way alley
8 between Van Ness Street and Veazey Terrace in
9 a 10-hour period -- more traffic than most
10 residential streets.

11 In a further report to the Board,
12 Mr. Laden listed the institutional uses and
13 concluded that the land use generates traffic
14 that competes for scarce curbside parking
15 space and clogged residential streets during
16 the peak times.

17 The Van Ness buildings, including
18 the office building that contains Giant Food
19 and CVS, was built as a planned unit
20 development more than 40 years ago. All of
21 the buildings are connected by underground
22 garages, and residents can walk into the Giant

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1 from the garage without ever seeing the light
2 of day.

3 I raise this, because Veazey
4 Terrace, after it intersects with the alley,
5 is private and part of the planned unit
6 development, so that when you hear the
7 residents talk a little bit later on about U-
8 turns and parking you should note that this is
9 on private and not public road.

10 Van Ness South is even responsible
11 for painting the crosswalk on our -- from --
12 that goes from our side of the street to the
13 other -- to the side of Giant.

14 Living in this area, the ANC
15 already knew of the existing congestion,
16 something that cannot be shown with traffic
17 counts done on only one day. And even though
18 the variance for the loading dock is no longer
19 on the table, the project, as designed on this
20 site, leaves absolutely no room for error.

21 There will be large trucks on this
22 residential street, there will be cars looking

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1 for parking, as the parking lot is not
2 designed for ease of use, and you will see
3 that when the neighbors present their case.

4 Many of the residents feel this
5 neighborhood would be far better off if the
6 applicant did not have any garage, and,
7 rather, worked out a deal with the Van Ness
8 Center Office Building, where Mr. Jennings
9 testified there was ample parking, and just
10 have the -- just validate their, you know,
11 parking for the Walgreens customers.

12 There is a public perception that
13 if there is a garage there will be sufficient
14 parking for cars of all sizes. So if you
15 really want to get rid of cars, then, you
16 know, we need to get rid of the garages.

17 The ANC and the residents of the
18 Van Ness buildings knew they have an uphill
19 fight in opposing these variances. After all,
20 Walgreens can build, as a matter of right, on
21 this site, but they would have to build a
22 smaller building to fit the site. The current

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1 design, while it might look pretty on paper,
2 uses a great deal of public space. The
3 architect has worked the 35-foot public space
4 setback on Connecticut Avenue into his design,
5 including the landscaping.

6 Walgreens currently has two stores
7 in the District, one on 22nd Street and the
8 Cleveland Park store under construction. Both
9 stores in this neighborhood are about -- are
10 in the range of 8,000 square feet. So even if
11 the architect designs a 15,000 square foot
12 store for this site --

13 MS. RODDY: I would object. I'm
14 sorry. I would object to any testimony
15 regarding the other stores, because there is
16 unique circumstances for the size of the
17 stores, and I think that this site is entirely
18 different than those two sites.

19 MS. PERRY: You can object. I
20 mean, I have only got one --

21 CHAIRPERSON MILLER: Well, what's
22 the point of the comparison, Ms. Perry?

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1 MS. PERRY: Just that they could
2 still design a store for this site that would
3 be double the size of what they have in other
4 areas of the city.

5 Anyway, I can -- we can forget
6 that.

7 CHAIRPERSON MILLER: Okay.

8 MS. PERRY: I only have one more
9 paragraph.

10 In evaluating this project, the ANC
11 looked at the Board's tests for an area
12 variance and translated them to the following
13 questions -- whether an undesirable change
14 will be produced in the character of the
15 neighborhood or a detriment to nearby
16 properties will be created by granting the
17 area variance; two, whether the benefits
18 sought by the applicant can be achieved by
19 some method feasible for the applicant to
20 pursue other than an area variance; whether
21 the proposed variance will have an adverse
22 affect or impact on the physical or

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1 environmental conditions of the neighborhood;
2 and, four, whether the alleged difficulty was
3 self-created.

4 We answered yes to these questions,
5 and found that Walgreens should not be granted
6 the variances. We felt that the public good
7 and the congestion in these neighborhoods did
8 not warrant the granting of the variances, and
9 that the property wasn't unique. It was just
10 the design of the store that made the site
11 unusable with the variances.

12 MS. SOLOMON: If I could just add,
13 I think Commissioner Perry's point about the
14 size of the other stores has to do with -- we
15 all know there are certain chain stores -- I
16 mean, we are talking much larger space, but if
17 you look at something like Home Depot -- well,
18 you know, Home Depot may not locate in an
19 urban area, because they know that to make a
20 store viable they need, you know, X number of
21 square feet.

22 So I think the point that

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1 Commissioner Perry was making was just to show
2 that Walgreens has seen fit to build smaller
3 stores in other locations, so that doesn't
4 seem --

5 MS. PERRY: For operations.

6 MS. SOLOMON: Right. So there
7 doesn't seem to be sort of a critical level of
8 square footage that makes it worth their
9 while. So I don't know if that is an
10 objectionable point, but I think that's what
11 that was.

12 And also, I couldn't help noticing
13 when Commissioner Perry was testifying that,
14 as she started to point out the dead-end
15 streets, I saw a look come over everybody's
16 faces. And so I'd like to just stress this
17 point, and I think looking at the map is
18 really helpful, because if you are not
19 familiar with what goes on up here, it is
20 pretty surprising.

21 I mean, I have lived in this
22 neighborhood now for about 15 years, but I

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1 remember when I first moved there -- and like
2 anyone who drives up and down Connecticut
3 Avenue, I always wondered, you know, the
4 lights are pretty well timed, traffic moves
5 along pretty well. It doesn't matter what
6 time of day or night, you get to Van Ness and
7 traffic comes to a stop.

8 Similarly, southbound. You are
9 coming down, you hit Veazey Terrace and Van
10 Ness, traffic just stops. What the
11 combination is, there are -- there are left
12 turn arrows, these little dead-end streets,
13 traffic trying to come and go, a lot of
14 parking lots. There is a lot of trouble with
15 these two streets.

16 And if you look at this little nub
17 on the map, that is Veazey Terrace, and it --
18 I mean, the public street literally is, what,
19 couple hundred feet long?

20 MS. PERRY: Not even that.

21 MS. SOLOMON: Not even that.

22 MS. PERRY: It ends at the alley.

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1 MS. SOLOMON: Because it ends at
2 the alley. So off this little tiny nub you
3 have a two-way alley that comes in, the
4 parking lot that goes in -- or the entrance to
5 the parking lot for the Giant and that office
6 building, and then, if you go straight on,
7 then it is the entrance to the parking lot for
8 one of the Van Ness apartment buildings, where
9 I don't know how many thousand people live.

10 So you've got this very tiny street
11 with three things already coming off of it.
12 And one of the worst things that happens -- I
13 mean, there is obviously a benefit -- there is
14 a huge benefit, obviously, to having a Metro
15 stop right there.

16 However, if you're in a car and
17 you're exiting from one of these places, which
18 obviously many people do -- and I understand
19 particularly during morning rushhour as those
20 residents are trying to get out -- the nature
21 of this T intersection is -- there is a
22 double-whammy on that intersection.

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1 One thing is, anyone who is coming
2 out is turning. And so when you're turning,
3 if there's people walking across the
4 crosswalk, you have to wait. Well, you're on
5 top of the Metro station. There's people
6 crossing the street all the time.

7 So, as a result, when you come out
8 of Veazey Terrace, maybe three cars get
9 through on any given light cycle. And the
10 light cycles, as they all are for streets that
11 cross major arterials like Connecticut,
12 they're about 18 seconds long. So the lights
13 are very short.

14 So every morning, as it is now, you
15 get this terrible backlog of residents trying
16 to get out onto Connecticut Avenue, and then
17 at various points during the day out of the
18 Giant parking lot, and so forth. So the
19 configuration of this proposed parking lot is
20 cutting in to this little tiny street, and
21 creating a fourth source to merge into this
22 little street and get out.

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1 So it is -- the potential for -- I
2 mean, the congestion is already terrible, and,
3 you know, adding delivery trucks, as they come
4 and go, it is very bad. It is very bad
5 indeed.

6 And that is all I'd like to say.

7 CHAIRPERSON MILLER: Did you prefer
8 the previous plan?

9 MS. SOLOMON: With an entrance on
10 Connecticut Avenue? Yes, actually, I think
11 so.

12 CHAIRPERSON MILLER: And did they
13 need a variance from parking under the
14 previous plan?

15 MS. PERRY: They needed much less
16 of a variance. And they didn't have a parking
17 -- their parking lot of -- I forgot where it
18 was. It wasn't on Connecticut either. I
19 think it was always on Veazey.

20 CHAIRPERSON MILLER: I guess my
21 question is: is it the variance you are
22 opposed to, or is it the fact that the

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1 entrance to the parking lot is on Veazey
2 Terrace?

3 MS. PERRY: It's the parking lot --
4 well, you will -- it is two things. One, the
5 parking lot design itself; two, the fact that
6 it is on Veazey Terrace creates a very bad
7 situation for the residents that live there,
8 and that will not be able to get out of their
9 homes and their driveways. We think it
10 creates a very dangerous situation.

11 MEMBER JEFFRIES: But the size of
12 the store is not a problem.

13 MS. PERRY: If they can -- if it
14 can be redesigned to accommodate -- you know,
15 with the -- with a parking lot somewhere else,
16 or a better parking lot design even, because
17 when you see the neighborhood case, and you
18 see the design of this parking lot, it won't
19 be very useful to the -- anybody who tries to
20 drive into it.

21 So, I mean, people are going to --
22 when something isn't -- when it's not easy to

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1 get in and out of something, people tend not
2 to use it. And, you know, we have seen that
3 with other variances and parking lots in our
4 neighborhood, where they have gotten
5 variances.

6 Just for the record also, the
7 parking lot, we believe, needs another special
8 exception because of the way it's designed.
9 And you'll hear that in the neighborhood case.

10 MEMBER DETTMAN: Ms. Perry, just a
11 couple of questions. I think you both raise
12 really good points in terms of the existing
13 congestion and the additional congestion that
14 could be caused by this use, as well as the
15 location of the entrance to the parking
16 garage. There could be a better design --

17 MS. PERRY: Yes.

18 MEMBER DETTMAN: -- in terms of
19 accessing the underground parking garage. But
20 those two issues, how do they go to the
21 reduction in the number of required parking
22 spaces? So --

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1 MS. PERRY: I think if you -- if
2 you build a smaller store, you could put --
3 right now there is parking behind the gas
4 station, and they moved the store closer to
5 Connecticut Avenue. We are used to having
6 parking in the back of the store. I think
7 there is probably 20 or 25 spaces back there
8 now behind the gas station, which access off
9 the alley, so cars could go in either
10 direction.

11 I think with a better design the
12 parking -- with a smaller store, I think that
13 the parking lot could be better designed.
14 There could be more parking on the property
15 itself. I think it is more the -- and plus
16 the fact that we would like to see something
17 not off of, you know, Veazey Terrace.

18 MEMBER DETTMAN: Okay. So the
19 congestion, would you say it doesn't really go
20 to the reduction in parking? Meaning if the
21 Walgreens could meet their parking
22 requirement, the congestion is still going to

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1 be there.

2 MS. PERRY: Not necessarily.

3 MEMBER DETTMAN: Because meeting
4 the parking requirement is going to equate to
5 less cars going to the site.

6 MS. PERRY: Well, currently --
7 currently the site has five entrances and
8 exits, so the traffic is dispersed. With a
9 smaller store, you know, possibly -- or no
10 parking, you know, right now it's -- the
11 design of that garage where it exits and
12 entrance, yes.

13 And I think, you know, with a
14 smaller store and a better design they could
15 put more parking in. I mean, we do have
16 parking lots on that street that go down more
17 than one level, too. And Walgreens could even
18 go up higher. I mean, it's --

19 MS. SOLOMON: I also think there is
20 potentially a different scenario, and you
21 simply can't know until something is built to
22 see how the public reacts to it. Certainly,

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1 one reaction is, if parking is difficult,
2 people don't drive. And we all know that that
3 is the --

4 MS. PERRY: That would be a
5 benefit.

6 MS. SOLOMON: That would be a
7 benefit, and that is certainly the viewpoint
8 of DDOT these days, you know, and I can
9 understand it. If you build it, people will
10 drive to it.

11 But on the other hand, where it
12 would lead to congestion with the reduction of
13 spaces, and where the dead-end aspect of this
14 street becomes a problem, is if you don't have
15 sufficient parking. You have cars entering
16 Veazey Terrace, potentially going down in the
17 parking lot, not finding a space, coming back
18 up onto this little street, and looking for
19 parking. I think that's where you are going
20 to have increased congestion.

21 And while I know that the loading
22 dock, and so forth, I understand that has been

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1 taken out of the application, whether -- you
2 know, even though that is not being -- that is
3 no longer being applied for, it has to be
4 understood that a backdrop of the building of
5 this store will be the fact that you will have
6 regular deliveries coming and going, and they
7 all have to come in and out.

8 And so there simply will be the
9 presence of trucks that don't currently go
10 back there clogging up this tight area as it
11 is. So, yes, I do believe that the reduction
12 in spaces or whether they are the full-size
13 spaces will lead to greater congestion.

14 MS. PERRY: You know, I think if
15 you build a parking lot, people do think that
16 they can drive and park. And when you drive
17 down there, even though they said some of the
18 compact spaces were wider, you know, to
19 accommodate cars, it doesn't address the
20 length of a car. You know, just because a
21 full-size space is larger, it's longer. It's
22 not necessarily the width, it's the length.

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1 And I think when you see the
2 neighborhood case, you will understand that
3 the reduction of parking is a big concern to
4 us. It is better not to have a lot than one
5 that you can't use at all, or that won't be
6 useful to the residents or to the customers of
7 Walgreens.

8 You know, and it is the land use,
9 because if a car pulls out of there then they
10 are going to be making a U turn or a left turn
11 or they are going to drive onto Van Ness North
12 property to make that turn, because you --
13 it's difficult to make a U turn on that
14 street, because you've got the cars coming out
15 of the Giant lot, you're going to have cars
16 coming out of Walgreens' lot, you've got the
17 entrance and exit to the Van Ness North garage
18 of their building, all on Veazey Terrace.
19 Plus, you have the Van Ness South back door,
20 which is really more like our front door,
21 where all of the pedestrians cross.

22 And, you know, we don't feel that

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1 this site is that unique that it causes a
2 design problem for the applicant to change the
3 design a little bit.

4 CHAIRPERSON MILLER: I want the
5 record to reflect that Mr. Jeffries had to
6 leave, but he did indicate to the Board that
7 he is going to read the record on this case.

8 MS. PERRY: Okay.

9 CHAIRPERSON MILLER: If I might, I
10 wanted to ask you where this Van Ness office
11 building is that you made reference to in your
12 testimony.

13 MS. PERRY: Well, let me -- if
14 you're -- if you're on Veazey Terrace, on this
15 little map, the whole side of Veazey Terrace
16 over here is the office building, and it's the
17 -- it is the office building. Well, it's the
18 office building itself, yes, and it's got a
19 circle drive off of Veazey Terrace.

20 CHAIRPERSON MILLER: So cars would
21 still be going on Veazey Terrace.

22 MS. PERRY: Well, they go on Veazey

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1 Terrace, yes, but the entrance to the Giant
2 parking lot, or the parking lot that we're
3 talking about, is really on part of the
4 planned unit development property. It is not
5 -- it is on Veazey Terrace already, so it's --
6 it's the addition of another garage on Veazey
7 Terrace that really poses a problem and
8 creates more --

9 CHAIRPERSON MILLER: My question
10 is, I mean, first of all, you are suggesting
11 that they park there instead.

12 MS. PERRY: Yes. It is right
13 across the street.

14 CHAIRPERSON MILLER: It is right
15 across the street, but I guess I'm wondering
16 -- well, they are still going to be going down
17 Veazey Terrace. Instead of turning right they
18 will turn left or something, so why does
19 that --

20 MS. PERRY: Because --

21 CHAIRPERSON MILLER: -- affect the
22 traffic on Veazey Terrace?

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1 MS. PERRY: Because --

2 MS. SOLOMON: If I can answer that,
3 it is because it is one less entrance/exit
4 point. So where you already have four, this
5 would create a fifth. I think that's -- I
6 think it's that simple.

7 CHAIRPERSON MILLER: And have you
8 had conversations with this office building to
9 determine how many spaces they would have to
10 provide Walgreens?

11 MS. PERRY: I think that Mr.
12 Jennings indicate that he was going to do a
13 parking study last week of that parking lot,
14 but -- and he said whenever he has been down
15 there there have been spaces. I do know they
16 not only -- they do have spaces available,
17 because people don't want to pay the rates in
18 Van Ness -- my building -- for monthly
19 parking, so they are renting spaces over
20 there, plus Fannie Mae is renting spaces in
21 that garage, and some other organizations are
22 using spaces in that garage. There are

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1 spaces. It is three or four levels.

2 MS. SOLOMON: I just parked there
3 before I came here. There is always spaces,
4 so --

5 (Laughter.)

6 CHAIRPERSON MILLER: I mean, it
7 sounds like you are not really opposed to the
8 variance to the extent that they are seeking a
9 reduction in parking spaces on their property.
10 You are just opposed to --

11 MS. PERRY: No.

12 CHAIRPERSON MILLER: -- the
13 provision of parking spaces on their property
14 almost with the entrance on Veazey, because of
15 the congestion there?

16 MS. PERRY: No. I think the
17 problem comes -- you don't want people to
18 drive into a lot and not be able to find a
19 space, if they have a full-size car. Then,
20 they have to go back out onto Veazey and look
21 for somewhere else to park. So they might
22 just drive across into the Giant Building, or

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1 they might drive through a congested alley, or
2 they have to make a U turn to get out of
3 Veazey, or another turn to get out of Veazey.

4 It is all just the traffic
5 congestion on that street. I mean, it's the
6 reduction in spaces, too, because if you --
7 and it's not only the reduction in spaces,
8 it's the size of the spaces. Most of them are
9 for compact cars. And when you look around,
10 people are driving SUVs and big cars. I mean,
11 I don't see that many compact cars to -- and
12 there is no --

13 CHAIRPERSON MILLER: What is the
14 size of the spaces in the Van Ness Office
15 Building?

16 MS. PERRY: Oh. They are all full
17 size for the most part.

18 CHAIRPERSON MILLER: Okay. But in
19 order for your position to, I don't know,
20 carry weight, it would -- we would have to
21 know that there was sufficient parking in Van
22 Ness, because your concern is the parking that

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1 they are -- that the applicant is planning on
2 providing is not sufficient, so, therefore,
3 that is going to put cars on little Veazey
4 Terrace looking for spaces.

5 MS. PERRY: Well, I was hoping that
6 Mr. Jennings would have the results of what he
7 was going to do by, you know, this week,
8 because he said he was going to do that kind
9 of study. I mean, we can do it, but we do
10 know there are parking spaces available.

11 MS. SOLOMON: I mean, I think it's
12 our -- I mean, it is our position that
13 adequate parking per the regulations be
14 provided onsite. Failing that, we believe it
15 is better to have no parking at all. So it's
16 either sufficient parking or no parking.

17 And what we fear is the in between.

18 I mean, if you think of any -- you know, we
19 all have our favorite little lots around the
20 city that have those 10 spaces, and we all
21 cruise through them when we go to our favorite
22 restaurant, or wherever it is we are going,

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1 and sometimes you get lucky and sometimes you
2 don't. But we all know how that creates added
3 trips in search of those spaces, and I think
4 that is what we are trying to avoid.

5 CHAIRPERSON MILLER: Okay. So let
6 me ask you this.

7 MS. PERRY: It is not only the
8 reduction, it is also the size of most of
9 these spaces and the layout of this garage, so
10 --

11 CHAIRPERSON MILLER: Okay. But, I
12 mean, your point is that -- your concern is
13 that it is -- the applicant's lot will not
14 provide sufficient parking, and that is going
15 to cause the problem.

16 MS. PERRY: It is.

17 CHAIRPERSON MILLER: Now, on what
18 grounds are you saying that there -- the
19 number of spaces they are providing is
20 insufficient?

21 MS. SOLOMON: We are going by the
22 regulations --

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1 MS. PERRY: Well, I think --

2 MS. SOLOMON: -- in terms of --

3 MS. PERRY: Well, I think when you
4 hear the neighborhood case, you will
5 understand why we are saying that. And we
6 will be happy to come up and answer questions
7 again after you hear from the residents,
8 because they have done some surveys and some
9 parking lot analysis. And we did hear some of
10 this at our ANC meeting when we considered
11 this application. I don't want to take away
12 their thunder.

13 CHAIRPERSON MILLER: Okay. No, you
14 don't want to take away their thunder, but
15 this is your time for your testimony.

16 MS. PERRY: I know.

17 CHAIRPERSON MILLER: Okay.
18 Anything else you want to add at this point?

19 MS. PERRY: No.

20 CHAIRPERSON MILLER: Any other
21 Board questions?

22 MEMBER DETTMAN: Maybe a couple,

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1 Madam Chair.

2 Just so I'm clear on your position,
3 you are saying that adequate parking is not
4 being provided because of the proposed number
5 of spaces, correct?

6 MS. PERRY: And size of spaces.

7 MEMBER DETTMAN: And the size. So
8 it's both, okay.

9 MS. PERRY: Both.

10 MEMBER DETTMAN: But then I also
11 heard either provide adequate parking or none
12 at all.

13 MS. PERRY: Yes.

14 MEMBER DETTMAN: If the applicant
15 was requesting a complete relief from
16 everything, and the make the case that we
17 can't provide any onsite, would you be here?

18 MS. PERRY: Probably not. Well, we
19 might have been here for the loading dock, but
20 not --

21 MEMBER DETTMAN: Okay. And just to
22 the entrance of the -- the proposed entrance

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1 to the garage, I guess in your opinion what
2 would be the greater evil, the proposed
3 location of the entrance or moving the
4 entrance to the alley that uses a thousand
5 cars a day?

6 MS. PERRY: Ooh.

7 MEMBER DETTMAN: Because to me
8 those are the only two options, looking at
9 this site.

10 MS. PERRY: Connecticut Avenue is
11 the best option in our mind, because it is a
12 major arterial. And it's supposed to be
13 designed to accommodate that kind of traffic.
14 So, I mean, our first, you know,
15 recommendation would be for Connecticut Avenue
16 to be used.

17 MEMBER DETTMAN: Okay. Thank you.

18 VICE CHAIRMAN LOUD: Thank you,
19 Madam Chair. These questions are also in the
20 spirit of Mr. Dettman's questions regarding
21 clarifying the ANC's position with respect to
22 the variance.

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1 It sounds like the -- what you are
2 concerned about is substantial detriment to
3 the public interest, that prong of the
4 variance test.

5 MS. PERRY: Yes.

6 VICE CHAIRMAN LOUD: And then,
7 specifically, under that a concern about
8 congestion on Veazey Street, Veazey Terrace I
9 believe, because there are an insufficient
10 number of parking spaces. But with respect to
11 that same prong of the test, are there other
12 things that you are concerned about in terms
13 of a substantial detriment to the --
14 substantial detriment to the public, or is
15 that it, the congestion on Veazey? From an
16 ANC standpoint. I realize that the party
17 status -- parties will come forward later.

18 MS. PERRY: I think it is not just
19 the congestion on Veazey. I think -- or, you
20 know, it is not only the cars that are going
21 to be on Veazey. It is also the trucks and
22 the delivery trucks that are going to be on

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1 Van Ness and Veazey, even though, you know,
2 the cars are going to be -- trucks are going
3 to be entering Veazey -- Van Ness supposedly
4 or Veazey.

5 VICE CHAIRMAN LOUD: Unless the
6 trucks are parking in the underground or the
7 four surface spaces, I don't know if it's --
8 if it comes within the scope of the variance.

9 MS. PERRY: It doesn't, but
10 unfortunately we would have been better off
11 had the Board -- had they not changed the part
12 -- the loading dock requirements, because then
13 we would -- could have had a BZA order on size
14 of trucks, times they could come, so --

15 VICE CHAIRMAN LOUD: I think that
16 is a worthy perhaps outside discussion, but I
17 am really trying to crystalize your --

18 MS. PERRY: Well, we think --

19 VICE CHAIRMAN LOUD: -- case.

20 MS. PERRY: -- the trucks are also
21 going to be on Veazey Terrace, and we believe
22 that some of them will be parked to make

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1 deliveries on Veazey Terrace.

2 VICE CHAIRMAN LOUD: But primarily
3 it's the congestion on Veazey Terrace.

4 MS. PERRY: Primarily, it's the
5 public good on that whole neighborhood,
6 because of the size of the street and the --
7 you know, the number of people that utilize it
8 already.

9 VICE CHAIRMAN LOUD: Okay.

10 MS. SOLOMON: As I said earlier,
11 even though the loading dock is no longer a
12 part of the application, we do know that with
13 the store comes --

14 MS. PERRY: Trucks.

15 MS. SOLOMON: -- delivery trucks.
16 And so the fact that they will be present I
17 think is relevant, just knowing that they will
18 be part of the picture coming and going. The
19 alley that is behind is a single lane, two-way
20 alley. And that is part of I believe -- they
21 have to pass through the alley, right,
22 according to their --

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1 MS. PERRY: According to their
2 plan. But, no, a truck could also come and
3 make a left turn onto Veazey Terrace. You
4 can't control the route of a truck.

5 MS. SOLOMON: Right. So they are
6 there, and will provide a backdrop for a lot
7 of this congestion.

8 VICE CHAIRMAN LOUD: Okay.

9 MS. SOLOMON: There is just only so
10 much space.

11 VICE CHAIRMAN LOUD: Point well
12 taken. Point well taken. Let me move on. In
13 terms of the uniqueness part of the variance
14 test, as I understand part of what applicants
15 are saying, and certainly OP, the property has
16 an irregular shape. It is trapezoidal. The
17 greatest width on the property is along
18 Connecticut Avenue, which is where -- which is
19 the part of the property that would yield the
20 greatest number of parking spaces.

21 The rear of the property is where
22 it narrows, and so it would yield -- tend to

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1 yield the fewest spaces, which is that they
2 have to go underground. With respect to their
3 uniqueness argument, what is the position of
4 the ANC?

5 MS. PERRY: We don't feel --

6 VICE CHAIRMAN LOUD: Why is it not
7 unique?

8 MS. PERRY: We don't -- well, I
9 think we detailed that, that it wasn't unique.

10 The property is a trapezoid. It is over
11 15,000 square feet. It is large enough to --
12 right now on that site is a gas station,
13 another building that serves for where you
14 bring your cars in for repairs. There is a
15 food mart. There is a trailer in the back
16 alley that serves as a used car lot, so there
17 is a trailer and about 20 or 30 cars that park
18 back there.

19 VICE CHAIRMAN LOUD: Has the ANC --
20 I'm sorry, I didn't mean to interrupt.

21 MS. PERRY: Four gas pumps, and the
22 islands that go with the gas pumps. So, I

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1 mean, it looks -- it looks like a small site,
2 but it's actually bigger than it -- a store
3 could be designed to accommodate is.

4 VICE CHAIRMAN LOUD: Is the ANC
5 aware that the Office of Planning and DDOT
6 have requested the applicant to move under
7 this urban design concept, to move the
8 property to the -- essentially to Connecticut
9 Avenue to the sidewalk?

10 MS. PERRY: They asked -- from what
11 I understand, the Office of Planning did ask
12 them to move the property up. But in --

13 VICE CHAIRMAN LOUD: Is that --

14 MS. PERRY: -- they moved the store
15 up, but in doing so they didn't have -- if
16 they hadn't designed as big a property -- a
17 site, they could have designed -- you know,
18 built the same size of 15,000 square foot
19 store closer up. It didn't have to be a
20 20,000 square foot store, just by moving it
21 up.

22 VICE CHAIRMAN LOUD: All right. I

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1 think I got that argument. So if they had
2 designed a 10,000 square foot store --

3 MS. PERRY: There would be plenty
4 of room for parking.

5 VICE CHAIRMAN LOUD: -- still
6 brought it up to Connecticut Avenue, they
7 would have had a lot more spaces in the rear
8 --

9 MS. PERRY: Right, yes.

10 VICE CHAIRMAN LOUD: -- to park.
11 Okay. Has your ANC ever taken a position on
12 this whole urban design approach to planning
13 and to redevelopment? And is it something
14 that your ANC has supported?

15 MS. PERRY: I think we have had
16 mixed signals on it. We do support smart
17 growth, and, you know, getting rid of cars and
18 designing that way, but this is an existing
19 neighborhood. It is easier to remove all of
20 the pedestrian obstructions in a new area that
21 you are going to be designing from scratch,
22 but this is an area that is already built.

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1 So, I mean, do we -- would I
2 support moving parking off of a major arterial
3 and putting it on residential streets? I
4 wouldn't. I can't speak for other ANCs. But
5 I think -- you know, I think there's parts of
6 urban planning that we support, part we don't.

7 And also, I think, you know, you
8 don't have to move a store so far up, because
9 if you look at that street there are other
10 stores, there is handicapped sidewalks, there
11 is other things, or handicap ramps in front of
12 stores. You don't have to move it so far up
13 that you've got to put your landscaping and
14 your bicycle racks on the public space
15 setaside, and not on your own property. You
16 can move it up but not necessarily, you know,
17 right to the property line.

18 And they could have built higher.
19 I mean, it could, you know -- the offices
20 could be a third floor versus on the second
21 floor. I mean, there is other ways.

22 VICE CHAIRMAN LOUD: Okay. Well,

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1 again, I'm not --

2 MS. PERRY: No, I know.

3 VICE CHAIRMAN LOUD: -- taking a --
4 taking sides with your position. I just want
5 to be real clear as we begin to deliberate
6 what the position is.

7 MS. PERRY: You know, I think we
8 believe in urban design. I mean, I don't --

9 VICE CHAIRMAN LOUD: Has the ANC
10 ever formally taken a position on that?

11 MS. SOLOMON: No, we have never.

12 VICE CHAIRMAN LOUD: Okay. And in
13 this specific case, did any individual members
14 of the ANC, any individual members of the ANC
15 weigh in when OP recommended that the property
16 be brought to Connecticut Avenue --

17 MS. PERRY: No.

18 VICE CHAIRMAN LOUD: -- to your --
19 okay.

20 MS. PERRY: There were never any
21 meetings between the ANC and DDOT or the
22 Office of Planning, nor were there any

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1 meetings between the neighborhood and Office
2 of Planning or DDOT.

3 VICE CHAIRMAN LOUD: Okay. Thank
4 you, Madam Chair. No additional questions at
5 this time.

6 MS. PERRY: As I said, we will be
7 here after the neighborhood case, so if you
8 need us we'll be here.

9 CHAIRPERSON MILLER: I've got a
10 couple more questions.

11 MS. PERRY: Oh, okay.

12 CHAIRPERSON MILLER: Why would you
13 -- why are you opposed to the store being
14 moved closer to Connecticut Avenue if it will
15 make more space in the back for parking?

16 MS. PERRY: Why are we opposed to
17 the store being more -- closer to Connecticut
18 Avenue? I am not opposed to it. I think --
19 but it doesn't have to go right up to the
20 property line where everything else is on
21 public space.

22 And I don't think it -- just moving

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1 the store more forward necessitated building a
2 bigger store. It could have been the same
3 size store or a little bit bigger and still
4 had room in the back for parking or more
5 onsite parking.

6 CHAIRPERSON MILLER: And my other
7 question is, I -- you made reference to the
8 UDC students driving in and driving out, not
9 having a dormitory. And I'm not sure what the
10 point of that was.

11 MS. PERRY: I think the point was
12 that the applicant has said that 50 percent --
13 they estimated 50 percent of their customers
14 would be pedestrian, and I think when you hear
15 from the neighborhoods you will see why we do
16 not believe that to be the case.

17 First of all, you know, a lot of
18 the office building -- the UDC, they site in
19 their own application the -- Howard, UDC.
20 When the students come normally for their
21 classes and go home and shop in their own
22 stores is what we see -- I live right in that

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1 neighborhood. You very rarely see the
2 students in the stores or on the streets, even
3 at lunch time. So I don't think they are
4 going to get the pedestrian base from there.

5 As far as the neighborhood goes,
6 you know, it's -- whether they will get 50
7 percent of the residents, I can't answer. You
8 know, we do have -- as I said, we are
9 connected underground to CVS and the Giant, so
10 we don't even have to wear a coat in this kind
11 of weather. So whether Walgreens will be able
12 to draw a lot of that traffic off, I can't
13 answer that.

14 CHAIRPERSON MILLER: Okay. I just
15 wanted -- so you don't know --

16 MS. PERRY: It's the 50 percent --

17 CHAIRPERSON MILLER: -- that they
18 drive in, though. That wasn't your point.
19 Your point was that they don't sleep over.

20 MS. PERRY: Well, yes, we do know
21 that they drive. Howard has --

22 CHAIRPERSON MILLER: You do know

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1 that --

2 MS. PERRY: -- over -- about close
3 to 300 parking places, and the students --
4 they are all full with just their senior
5 class. They can't even accommodate most of
6 their junior class, so they are parking on the
7 streets. And we see that with UDC students
8 driving in in the morning and parking.

9 CHAIRPERSON MILLER: But we don't
10 have a study that shows --

11 MS. PERRY: No, we don't have any
12 specific studies.

13 CHAIRPERSON MILLER: -- how many
14 come by mass transportation.

15 MS. PERRY: No, no.

16 CHAIRPERSON MILLER: Okay. Okay.
17 Okay. Anybody else?

18 MEMBER WALKER: How do you know
19 that those students don't patronize the stores
20 on Connecticut Avenue?

21 MS. PERRY: It's not that they
22 don't patronize them. You know, I'm out there

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1 almost every day, and we see, you know -- we
2 see it. Most of the UDC students go into the
3 Giant for their lunch, and then they go back
4 to class. We do see that. And a lot of them
5 really just come for classes and then leave at
6 night. You know, they go home. It's not like
7 you have people actually living there.

8 MEMBER WALKER: And the Howard --

9 MS. PERRY: You know, you see it.

10 MEMBER WALKER: And the Howard
11 students?

12 MS. PERRY: Most of the Howard
13 students you never even see in the restaurants
14 at lunch time.

15 MEMBER WALKER: How do you know?

16 MS. PERRY: I'm there. I mean, I
17 live right in that complex. I'm there every
18 day.

19 MEMBER WALKER: How do you know who
20 is a student and who is not?

21 MS. PERRY: Well, I think you can
22 pretty much tell the students. I see them

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1 walking down my street. The students have to
2 leave -- come down Van Ness Street to get out
3 of their campus pretty much or go -- so, I
4 mean, I do see them. And we -- you know, we
5 see whether they are walking down the streets
6 or not. You see very few of them. I mean, I
7 can't say whether 25 percent or 50 percent.
8 We have no studies. It is just an observation
9 that I see on a daily basis.

10 MS. SOLOMON: The other thing I
11 would just say about this neighborhood and the
12 potential for pedestrian traffic, I mean, I
13 think one of the -- the commuters are
14 obviously going to benefit, because they come
15 out of the Van Ness Metro. And I think most
16 people typically shop on their way home. So
17 you duck into the Giant, you duck into the
18 CVS, and they would certainly duck into the
19 Walgreens as they walk up Connecticut Avenue.

20 And all of the Van Ness apartment
21 buildings that are right there, obviously
22 there is a huge chunk of population that is

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1 virtually on top of this store. So they would
2 obviously walk, I would hope.

3 However, the --

4 MS. PERRY: We have residents that
5 actually drive to the Giant.

6 MS. SOLOMON: And I won't go there.

7 But elsewhere once you kind of get away from
8 that cluster, I mean, I live a short distance
9 away, but once you get away onto the
10 residential streets, it is a reasonably long
11 walk. I mean, Forrest Hills, North Cleveland
12 Park, it is largely single-family homes.

13 And even once you kind of get up
14 to, say, north of Albemarle Street where a lot
15 of the apartment buildings are, you are
16 already surprisingly -- you know, you are a
17 good 10-minute walk all the way down to the
18 Van Ness Metro. So, and there is a
19 significant older population in those
20 apartment buildings.

21 So there is not -- it is not the
22 easy walk. I mean, we are not New York City.

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1 It is not, you know, like everybody is right
2 on top. So I think they may overestimate,
3 although obviously they will have a lot of
4 pedestrian traffic, because there is a lot of
5 population right there. But for those who
6 live elsewhere in the community, very close
7 by, I would say the majority of those people
8 shop, whether their closest place is Tenley,
9 whether it's up to kind of Nebraska and
10 Connecticut --

11 MS. PERRY: Cleveland Park.

12 MS. SOLOMON: -- Cleveland Park.
13 Not so many folks are really within what we
14 would call walking distance, or they may be in
15 walking -- within walking distance, but,
16 realistically, they drive because of time
17 constraints, things like that. You know, they
18 are just not going to take the half an hour
19 that it takes to walk there and walk back.

20 So while I am -- you know, I am
21 fully in favor of smart growth, and I would
22 like to see more people out there walking, the

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1 reality is that they don't. And I think the
2 city is moving more and more in a direction
3 where that is becoming more of a reality.

4 I think we have seen that happen
5 downtown. Downtown in recent years has
6 boomed, and all of a sudden there is people
7 living down there. And it's difficult to park
8 downtown, unlike it was 10 years ago. We all
9 used to drive downtown, because it was sort of
10 a ghost town downtown. We don't do that
11 anymore. but we haven't reached that stage up
12 in these neighborhoods, so it's --

13 MS. PERRY: You know, I was just
14 going to say our ANC -- it is even dangerous
15 in some cases for pedestrians to walk around
16 our ANC. We have had three deaths in the last
17 year right in our little ANC, so -- from
18 pedestrian fatalities with cars crossing
19 Connecticut Avenue. So --

20 CHAIRPERSON MILLER: I just want to
21 ask you also, the Burke School, it's in this
22 area as well, isn't it?

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1 MS. PERRY: It is one block away
2 from -- it is a block from Van Ness Street.
3 It's on the corner of Upton Street and
4 Connecticut Avenue.

5 CHAIRPERSON MILLER: And what is
6 the student traffic like there as far as their
7 walking to Giant or whatever?

8 MS. PERRY: They do walk down the
9 alley. They do come out at lunch time. They
10 eat in the -- I think they have parameters as
11 to how far they are allowed to walk. They are
12 -- yes, some of them are younger, some are
13 high school. We do see them in the Jerry's
14 Subs and Pizza.

15 We see them -- the Burke students
16 we do see around, not the Howard students or
17 the UDC students, but the Burke students
18 definitely eat in our area. They're at Giant,
19 they're at Jerry's, they go to the Taco Bell,
20 and I think they are allowed to go as far as
21 where the Schlotzky's Deli used to be that is
22 not there anymore.

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1 CHAIRPERSON MILLER: Okay. Thank
2 you.

3 Anybody else, questions?

4 (No response.)

5 Cross examination by the applicant?

6 (No response.)

7 None. Okay.

8 Do the other opposing parties have
9 any cross examination for the ANC? No?

10 (No response.)

11 Okay. Thank you.

12 MS. PERRY: Thank you.

13 CHAIRPERSON MILLER: I think at
14 this point we are at whether there are any
15 parties or persons in support of the
16 application who would like to testify in this
17 case.

18 (No response.)

19 Okay. Not hearing any, then we
20 would take the parties in opposition, if there
21 is nobody here who wishes to testify in
22 support.

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1 Okay. Let me see. We have two
2 parties in opposition, right? Okay. So are
3 you going first, or are you just the only one?
4 Your microphone -- I don't know if your
5 microphone is on. I'm sorry. Why don't you
6 identify yourself for the record first.

7 MR. OCCHIALINO: Yes. My name is
8 Ted Occhialino, O-C-C-H-I-A-L-I-N-O, and I
9 represent the Concerned Citizens of Van Ness.
10 And we are in opposition, and we are prepared
11 to make a presentation.

12 CHAIRPERSON MILLER: Okay. Before
13 you start, I just want to know what is coming.
14 The other party in opposition, are they going
15 to be testifying after you? Are they here?

16 MR. OCCHIALINO: I believe that I
17 may be carrying the entire burden today.

18 CHAIRPERSON MILLER: Okay.

19 MS. PERRY: I was just going to say
20 Mr. Lederer is not here. I understand he is
21 en route, but the case is -- we -- the groups
22 merged to form one presentation.

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1 CHAIRPERSON MILLER: Thank you.
2 Okay.

3 MR. OCCHIALINO: I'd like to start
4 by making an opening statement, and then I
5 will present five witnesses for your
6 consideration. First, I want to state that
7 neither I, nor our organization, are opposed
8 to development in the neighborhood.

9 We have no objection to the fact
10 that there might be other places -- other
11 stores that are going -- a store that might
12 replace the gas station. The gas station is
13 perfectly fine. We have no reason to oppose
14 its elimination, as long as we have full
15 compliance with existing laws.

16 And, as you know, there are three
17 requirements for a variance. The most
18 important of those, from our perspective, and
19 the one that we will be speaking about, is the
20 detriment to the public good. Last week we
21 learned a lesson, and the lesson is that we
22 must tie that detriment to parking spaces.

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1 And we are going to do that through five
2 witnesses, whom I will introduce briefly their
3 testimony and then allow them to speak in
4 turn.

5 Before they do, however, I would
6 like to -- before they speak, I would like to
7 address a preliminary matter, and that is the
8 second of the three requirements, which is
9 that the owner would have peculiar and
10 exceptional practical difficulties in
11 complying with the existing law. And I have
12 quoted from 3103.2 that it is the owner that
13 would have peculiar and exceptional practical
14 difficulties.

15 I have some difficulty with the
16 application of Walgreens. It is somewhat
17 confusing. But what is clear is that
18 Walgreens is not the owner of the premises.
19 They identify themselves as a contract
20 purchaser, but they don't tell us what it is
21 that they have purchased. They said last week
22 that they had a commitment for as many as 75

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1 years. Well, then, they don't have a fee
2 simple purchase; they must have a lease.

3 And if they are a lessee, then --
4 and not an owner then we have a simple
5 problem, and that is that the owner has no
6 difficulty at all in the current situation.
7 The owner is running a gas station. It is
8 apparently successful. It is apparently in
9 compliance with everything that is required.

10 At page 3 of the application, in
11 fact, the applicant -- Walgreens -- says that
12 the owners do run a gas station, so they have
13 conceded that they are not the owner.

14 Now, if I were prepared to overlook
15 that, and I don't think that it should be
16 overlooked, it nonetheless leads to a second
17 point and a point that I think you folks have
18 already attempted to make and have made very
19 well. The applicant must demonstrate
20 compliance is burdensome, and that there is no
21 feasible alternative that would have complied
22 with the regulations.

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1 We have heard the applicant say
2 that they are opposed to any discussion or
3 even mention of the fact that the Cleveland
4 Park site is going to be much smaller, or that
5 their original design was going to be only
6 15,000 square feet. However, parking spaces
7 are a function of square footage. And as a
8 result, if they were to build it smaller, they
9 would be able to build it without any
10 variances.

11 It is, in fact, the fact that they
12 are trying to squeeze this very large building
13 into a very small space, and they knew in
14 advance that the space was as small as it was,
15 and they knew in advance that they wanted to
16 build a big building.

17 They have, in effect, prior
18 knowledge or self-imposed a problem on
19 themselves by deciding to build a 20,000
20 square foot lot that requires 57 parking
21 spaces, and are asking you to cut it in half
22 and to almost double the size -- the number of

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1 the spaces that are compact spaces.

2 I think that Walgreens is like a
3 person with a size 12 foot who buys size 6
4 shoes, and then complains that they are too
5 small. The difference is that unlike a person
6 who cannot chop off his own toes to fit in
7 small shoes, Walgreens has two viable options
8 in this case. Walgreens can reduce its square
9 footage so that it fits within the shoe, or it
10 can return the size 6 shoe and buy a size 12
11 lot.

12 And that, we think, is the critical
13 proposition. They are trying to build it
14 large, and they know, just as the person in
15 the movie Once Upon A Time said, "If you build
16 it, they will come." They want a large store
17 for a large reason. They want a large number
18 of customers. They want to compete
19 advantageously against a set of stores -- CVS
20 stores now -- that are much smaller in size.

21 And that is the problem. They want
22 to put up a 40-foot -- 45-foot sign. That is

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1 not going to attract pedestrians. That is
2 going to attract driveby traffic on
3 Connecticut Avenue. It can't be designed to
4 attract pedestrians.

5 So we know that they are trying to
6 maximize the number of customers that are
7 going to come. We know that the existing law
8 requires 57 parking spaces, and we know that
9 they want to cut it almost in half.

10 Now, I am going to present five
11 witnesses today. None of them are experts, as
12 were the Walgreens experts, at least in terms
13 of technical qualifications. But these five
14 persons are uniquely qualified to testify
15 about the critical issue in this case, which
16 is, would the grant of the three variances be
17 a substantial detriment to the public good,
18 because of parking problems?

19 There will be very little or no
20 duplication in their testimony, and each has
21 agreed to focus on a different aspect of
22 Walgreens' application and the reasons why

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1 they oppose it and think it's weak.

2 The first person to speak will be
3 Ms. Sharon Buck. She will provide a
4 description of the immediate area surrounding
5 the site and the physical characteristics of
6 the area, and will demonstrate that these will
7 be impacted detrimentally by parking problems
8 caused by the absence of sufficient parking
9 spaces.

10 The second speaker will be Ms. Beth
11 Whiteley, and she will do two very important
12 things. First, she is going to provide an
13 analysis of the deficiencies of the severely
14 undersized parking garage that Walgreens
15 proposes in place of the 57 spaces that are
16 currently required.

17 Second, Ms. Whiteley will share
18 with you a survey and an analysis of the
19 parking situation at a comparable drug store,
20 not one in some suburban mythical land as we
21 heard about last week, or even an urban
22 mythical land, but the one at the Tenley Metro

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1 stop.

2 And she will demonstrate through
3 this analysis that Walgreens' data is
4 unrealistic, as a result of which the negative
5 impact on the public good will be much greater
6 than you have heard so far in this hearing.
7 She is going to be focusing on parking and
8 parking spaces.

9 The next speaker, Ms. Lori
10 Milstein, will not focus on parking spaces.
11 She will focus on people. And the reason that
12 she will focus on people is that you have
13 heard last week, and in the application
14 itself, that Walgreens expects that 50 percent
15 of its traffic will not be motor traffic, but
16 will be pedestrian.

17 That means that the number of
18 customers that they expect is very important
19 to the analysis, because half of the customers
20 that they will get are going to be customers
21 who are going to be coming by car. You have
22 got their data on how many cars they expect,

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1 how many trips, as they call it, they expect.

2 We will present data through Ms. Milstein
3 that demonstrates that the opposite is true.

4 Ms. Barbara Varick will then speak.

5 She is the property manager for our building
6 -- Van Ness North -- and she will testify to
7 the impact of these insufficient parking
8 spaces on the basis of three concerns that she
9 has.

10 The first is that emergency vehicle
11 access to Van Ness North will be impeded by a
12 significant number of illegal parkers that
13 will inevitably result from the absence of
14 sufficient parking. Second, she is going to
15 testify that the intrusion of vehicles into
16 her private land -- it's not hers of course,
17 but Van Ness North private land -- and the
18 opportunity to make illegal turns is going to
19 increase trespass on private property.

20 And she will also testify, directly
21 with regard to parking, that there are parking
22 spaces that are privately available and

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1 private property in front of Van Ness North
2 that are for guests, and that those parking
3 spaces she believes inevitably will be used
4 illegally by people who cannot park in the
5 existing -- what would be existing parking
6 space at Walgreens because of the inadequate
7 numbers.

8 The final person whom I will call
9 is Bob Deyling. Bob is a resident of Van Ness
10 North, and he has what I think is also very
11 important testimony. He is going to talk
12 about parking and its impact when there aren't
13 enough parking spaces at Walgreens by
14 demonstrating that there is an existing
15 limited -- very limited -- number of legal
16 parking spaces that immediately are adjacent
17 to the area that Walgreens wants to build on.

18 He has done an informal -- and we
19 concede it is informal -- we don't have
20 traffic experts -- study of the number of the
21 parking spaces that are immediately adjacent,
22 and at various times on various days the

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1 number of legal parking spaces that are empty,
2 and, therefore, would be available for the
3 inevitable overflow that would result if in
4 fact Walgreens were permitted to go from 51 --
5 57 to 31 parking spaces.

6 So he will describe the legal
7 parking spaces and the fact that there simply
8 is no room for the overflow that will
9 inevitably occur as you will see through our
10 testimony today.

11 With that introduction, I would be
12 happy to start with Ms. Sharon Buck, who is
13 the first person who will speak on our behalf.

14 CHAIRPERSON MILLER: Okay. And I
15 just want to alert you, in case you are not
16 aware, there is a clock up there, and 60
17 minutes was allocated to those in support,
18 which is the applicant's case. Nobody else
19 came forward. And 60 minutes to those in
20 opposition. So just -- you might want to all
21 keep that in mind, since you have several
22 witnesses.

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1 MR. OCCHIALINO: I thank you very
2 much, and I would just ask your indulgence, if
3 we happen to go a little bit over, because we
4 are covering for two actual parties to the
5 case. But I promise that it will be kept as
6 close to one hour as conceivably possible.

7 CHAIRPERSON MILLER: Okay. Okay.
8 Yes, that is a judgment we'll make. And it
9 was for the consolidation of all of the
10 parties anyway in opposition.

11 MR. OCCHIALINO: I see.

12 CHAIRPERSON MILLER: And I also do
13 want to put out one other point, which I
14 raised with the ANC, and they said you would
15 address it. You know, you talk about the
16 inevitability of there not being enough parking,
17 and you tie it to the fact that they are not
18 providing the number of spaces required by the
19 regulations.

20 We have heard from the -- from DDOT
21 that in DDOT's assessment that the regulations
22 don't accurately reflect what is adequate for

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1 this location. And, as I understand it, it's
2 their testimony that they would be providing
3 an adequate number of spaces. So for whatever
4 testimony that might address the adequacy of
5 that, I certainly would be interested in.

6 MR. OCCHIALINO: I think that we
7 should start with the proposition, as you are
8 well aware, Madam Chair, that it is not a
9 question of what DDOT thinks might be
10 appropriate or even adequate. It is a
11 question first of what the law requires, and
12 whether or not the diminished number are going
13 to be adequate.

14 It is our position that they will
15 not be, and I think that we can demonstrate
16 that, despite Mr. Jennings' testimony, in
17 fact, there will not be adequate parking
18 because there will not be sufficient legal
19 parking by cutting in half from 57 to 31
20 spaces when the current law would require 57.

21 CHAIRPERSON MILLER: Okay. Just --
22 and I don't know if other Board members feel

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1 this way, but I am saying that I don't --
2 based on DDOT's testimony primarily I don't
3 believe the fact that they have less than what
4 is required under the regulations per se means
5 that they won't have adequate parking.

6 And I would be looking to the
7 neighborhood to show, based on the conditions
8 in the neighborhood or whatever it is, that
9 the number of spaces they are acquiring
10 wouldn't be adequate, regardless of what the
11 regulations call for, if you have that.

12 MR. OCCHIALINO: I hope that we
13 will be able to address that question, and I
14 thank you very much for focusing me on it.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 VICE CHAIRMAN LOUD: Madam Chair,
18 can I ask a quick question before you get
19 started? It's related to what you just said.

20 And, first, let me commend you, Mr.
21 Occhiano --

22 MR. OCCHIALINO: Occhialino.

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1 VICE CHAIRMAN LOUD: --

2 Occhialino --

3 MR. OCCHIALINO: That's okay.

4 VICE CHAIRMAN LOUD: -- on your
5 very well organized sort of way that you laid
6 out your case. But here is my question. Of
7 these five witnesses, which one or ones are
8 going to speak to Madam Chair's last point
9 about establishing the adequacy or lack -- or
10 inadequacy of the parking? I just want to
11 know as we go into this.

12 MR. OCCHIALINO: I think that the
13 critical testimony, from my perspective, will
14 be two witnesses, and then a third who will be
15 very useful. Ms. Whiteley is going to be
16 addressing the question of the adequacy of
17 parking spaces, given comparable eyewitness
18 testimony and studies of a comparable CVS
19 store next to a Metro at Tenley.

20 The second person is Ms. Milstein,
21 and she is going to focus not on parking
22 spaces but on the number of people that might

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1 be customers each day. And that is very
2 relevant to the number of parking spaces that
3 will be adequate, because Walgreens'
4 application itself says that only half of
5 those will be pedestrian traffic, which means
6 that half will come by car.

7 Therefore, she is going to
8 demonstrate also by doing comparability
9 studies that we can expect that there will be
10 a significantly higher number of customers per
11 day than so far has been suggested by
12 Walgreens' testimony.

13 Mr. Deyling, then, will show that
14 there -- that the overflow that these two
15 witnesses will demonstrate exists will find
16 that there is no adequate legal parking to
17 substitute for what would be the adequate
18 parking. And, as a result, there will
19 inevitably be illegal parking in various
20 places that Ms. Varick will demonstrate could
21 lead to emergency vehicle problems and
22 certainly to trespassing on Van Ness North

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1 private spaces.

2 VICE CHAIRMAN LOUD: Give me the
3 name of the manager of the Van Ness North.

4 MR. OCCHIALINO: Barbara Varick, V-
5 A-R-I-C-K. She is the General Manager of Van
6 Ness North, and she is here and will testify.

7 VICE CHAIRMAN LOUD: Thank you,
8 sir.

9 MR. OCCHIALINO: You're welcome.
10 Now, I told Ms. Buck that she can speak for 10
11 minutes maximum, and then I will cut her off.
12 So --

13 (Laughter.)

14 MS. BUCK: I've been watching the
15 clock. It's not moving. This is great.

16 (Laughter.)

17 Okay. So --

18 CHAIRPERSON MILLER: Let me just
19 say, just -- it doesn't move when you are
20 responding to our questions, because that is
21 really not fair to you all.

22 MS. BUCK: Okay. So someone is

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1 going to push a button in a minute, or in a
2 second. Okay.

3 Sharon Buck. I live at 3003 Van
4 Ness Street, N.W. I am an urban pioneer,
5 having come from a small town and lived in the
6 suburbs on Long Island. So the urban
7 experience of Washington is very different to
8 me, and has become a most enjoyable part of my
9 life.

10 This is my neighborhood. This is
11 Van Ness. Unfortunately, the map person is
12 not as astute as some of us. The Metro
13 station is not here, as pictured on this map,
14 but, rather, is right here, with a
15 corresponding station right across the street
16 at UDC.

17 Wyndham Place is one of the borders
18 of the neighborhood. Wyndham Place is a one-
19 way street that ends in loading docks for the
20 Giant and CVS, and I believe also for the
21 North Building. So it has a little bit of
22 metered parking here, and there is a very

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1 popular liquor store right here.

2 So this is a heavily traveled tiny
3 little one-way street that ends in oblivion.
4 Connecticut Avenue is the hub street, with
5 truck traffic permitted, and it is an
6 emergency exit from town, and it is a snow
7 emergency route. So this -- Connecticut
8 Avenue is big.

9 Van Ness Street is the other area
10 of our neighborhood. Right here is a bank
11 with offices right on the corner of
12 Connecticut and Van Ness. And there is an ATM
13 right around the corner here.

14 And although this is marked no
15 parking, no standing, no nothing, cars park
16 there because they are just going to run
17 around the corner for a minute to the ATM.
18 Even if there is a line, it will just take a
19 minute. Or they are going to run into the
20 bank. It will just take a minute. But they
21 park there. On the other side of the street
22 is Ward 3 sticker parking, and it is always

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1 full on that part.

2 I can speak from experience that
3 when I have come up this way after work, and I
4 want to make a right to get to my garage
5 entrance, which is up here in the Van Ness
6 South Building, if there is any traffic coming
7 this direction on Van Ness, I cannot go in
8 there because there is parking on one side and
9 there is parking on the other side. So I
10 can't make -- I can't get my single car into
11 this street if someone is coming in the other
12 direction.

13 If a truck is anywhere on here, no
14 other traffic can get or move along here
15 unless the truck moves, because we don't have
16 a really good two-lane street here.

17 Van Ness Street itself has
18 thousands of residents. There are 260 units
19 in the consulate, which is right here, and
20 their garage comes out right here. There are
21 625 apartments in Van Ness South, and their
22 parking exits here. There are 433 apartments

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1 in Van Ness East, and their parking comes out
2 here.

3 There are 433 students at the
4 Howard Law School as of Friday a week ago,
5 and, in addition, Howard School -- Law School
6 shuttles use Van Ness. So all of these cars
7 have to use Van Ness, plus the shuttle goes
8 back and forth using Van Ness to Connecticut.

9 That is the challenge of Van Ness
10 Street. And between Van Ness Street and
11 Veazey Terrace there is an alley. Neighbors
12 in the area know that if they want to miss
13 this light or miss this light, they can cut
14 through the alley sometimes. It's sort of a
15 trick whether you are going to get caught or
16 not.

17 In your packet, you have a picture
18 that looks like this. And here you see a
19 garbage truck at the cleaners in the middle of
20 the block. In front of that is a delivery van
21 who is dropping stuff off at one of the
22 restaurants that is closer to here. Here are

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1 two people waiting patiently for them to get
2 finished, and another car probably waiting to
3 turn in the alley, although I am not sure. He
4 might be going straight.

5 But the point of this picture is
6 this little guy here, he is a walker. He is
7 walking north through the alley probably from
8 the Metro, and he may be going either up to
9 Howard or he may be going to the consulate or
10 he may be going to the Burke School, but he is
11 walking in that congested alley.

12 On Veazey Terrace there is no
13 stopping or standing, nothing, all along here.

14 Signs clearly prevent any kind of parking
15 along there, but that is pretty much of a
16 laugh.

17 Right in here -- let's see, right
18 about in here is a turning area for which
19 there is an entrance to the Giant, an entrance
20 and exit from the Van Ness North garage, the
21 back door of Van Ness South, which every
22 morning -- weekday morning streams hundreds of

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1 people to the Metro station. They have to
2 cross Veazey Terrace, and there is also -- the
3 Giant garage also is the garage for all of
4 these offices here.

5 So there is an enormous amount of
6 traffic on this little street during the day,
7 and usually coming only this far, except if
8 they are not paying attention they go all the
9 way up and use this turnaround to turn around,
10 into the apartment complex, which is on
11 private property.

12 Veazey Terrace leads to Van Ness
13 North, which has 461 units. So you can see
14 that on Van Ness Street alone there are 1,326
15 living units with all of their cars coming
16 onto Van Ness Street.

17 The guy at the CVS, which is half
18 the size of the proposed building --

19 MR. OCCHIALINO: Three minutes.

20 MS. BUCK: Okay. Has suggested
21 that his store, which -- whose loading dock is
22 back here, gets six to seven deliveries a day.

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1 The CVS does not allow non-CVS trucks to use
2 their loading dock, so they park here and they
3 park here, because they are just going to run
4 in for a minute. It is not going to take them
5 long to fill up their handcart and just run
6 into the CVS.

7 When the big fire truck comes,
8 because they want to get their groceries, they
9 come through the alley if they can. And if
10 you've ever seen a hook and ladder go through
11 a 16-foot alley, it is indeed an enjoyment.
12 Fortunately, they don't do their bronking
13 horn. And then, they make a turn here so that
14 they can park here, go in the Giant, and then
15 make an easy escape back down Connecticut.

16 This picture in your packet shows
17 that turnaround area that I just mentioned.
18 And I live right here. I'm the closest person
19 to the proposed Walgreens. I have lived there
20 for 10 years.

21 One morning -- I will just explain
22 to you the traffic over the alley. One

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1 morning there was a garbage truck that was
2 emptying out one of the six dumpsters that
3 line the backs of these restaurants and
4 stores, totally blocking the alley.

5 Then, across the alley on our
6 loading dock, Van Ness South's loading dock,
7 which is right opposite this building, there
8 was a truck unloading supplies for the
9 restaurant. They were dumping their onion
10 bags and their eggs on the street, making lots
11 of joyous noise, joyous urban noise. and
12 after they drove away, then the garbage
13 pickups -- Centurion -- came to empty out the
14 -- this office building's dumpsters.

15 Okay. So that was in about --
16 okay, that was about in an hour that we had
17 those three trucks there. The store has
18 planned three parking spots back here and a
19 handicapped spot. And I am afraid that if
20 people come to here and don't find a parking
21 spot in a hurry, because they just want to run
22 in for a minute, they are going to park either

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1 back here in the alley or they are going to
2 park on Veazey Terrace, because they are only
3 going to be a minute in the store.

4 I fear that delivery trucks are
5 going to do the same thing. If they can't get
6 in here, for whatever reason, they are going
7 to park here or they will park up here. They
8 will park on Veazey Terrace. They are just
9 going to load the truck, it will only take one
10 minute to dump off their stuff.

11 I believe that because of the
12 number of pedestrians using this walkway and
13 the alley walkway that allowing -- we won't
14 know if there is going to be adequate parking
15 until this is a done deal, and that is hardly
16 fair to the neighborhood, and it also is a
17 scary thing for the safety of the people who
18 have to walk, who enjoy walking in their
19 neighborhood.

20 MR. OCCHIALINO: I am going to ask
21 you to sum up, if you could now.

22 MS. BUCK: Okay. I think I am just

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1 going to say thank you for listening.

2 MR. OCCHIALINO: Thank you very
3 much. And you sit here, because they might
4 have some questions for you.

5 MS. BUCK: Okay. Also, I want to
6 give you these petitions.

7 CHAIRPERSON MILLER: We have
8 petitions. We have them.

9 MS. BUCK: That is the original.
10 Someone should get an original.

11 CHAIRPERSON MILLER: Ms. Bailey,
12 then.

13 MR. OCCHIALINO: Our testimony is
14 finished with regard to this witness.

15 MS. BUCK: Any questions from
16 anyone?

17 CHAIRPERSON MILLER: I do. I just
18 --

19 MR. OCCHIALINO: I notice that our
20 time is still running. Okay. It has stopped.

21 CHAIRPERSON MILLER: Okay. The Van
22 Ness Office Building, where is that located?

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1 MS. BUCK: The Van Ness Office
2 Building is this office building. This is all
3 one -- all of this was built at the same time,
4 roughly the same time, over several years in
5 the early '40s.

6 CHAIRPERSON MILLER: Okay. I don't
7 need the whole history. I just want to know
8 where the building is and then where the
9 proposed Walgreens is in relation to that
10 building.

11 MS. BUCK: That's right here.

12 CHAIRPERSON MILLER: Okay. So
13 they're on different sides of Veazey Terrace?

14 MS. BUCK: Yes.

15 CHAIRPERSON MILLER: Okay, right.
16 Okay. Thank you.

17 Any other Board questions?

18 MEMBER DETTMAN: Ms. Buck, one
19 question. I heard you say numerous times
20 about the "just one minute" mentality.

21 MS. BUCK: Well, don't you do that?

22 MEMBER DETTMAN: Well, certainly.

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1 (Laughter.)

2 Actually, I don't own a car.

3 (Laughter.)

4 But I am wondering why -- in your
5 opinion, why do these people do the "just one
6 minute" thing? Is it because they are
7 literally just going to be in there 30
8 seconds? Or because there is no parking, or
9 if -- if the Walgreens had enough parking, if
10 they met their requirement, would that
11 alleviate all of the "just one minutes"?

12 MS. BUCK: Would you rather drive
13 down into a garage for going up and running --
14 for what you think might be five minutes? Or
15 would you rather just stop on Veazey Terrace
16 right outside the door? It's just going to be
17 five minutes.

18 MEMBER DETTMAN: Let me rephrase
19 my --

20 MS. BUCK: From experience I know
21 that because of the ATM use.

22 MEMBER DETTMAN: Okay.

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1 MS. BUCK: Where it clearly says no
2 parking or standing.

3 MEMBER DETTMAN: Let me rephrase my
4 question slightly. Would you say that the
5 likelihood of people running in just one
6 minute, parking on Veazey, parking in the
7 alley, is caused by the reduction of the
8 parking? Or is that just a natural spinoff
9 effect of having a Walgreens in this site?

10 MS. BUCK: No, I don't think it's a
11 spinoff of the Walgreens. To be perfectly
12 frank, I think it's a spinoff of having a
13 garage. I think the idea of having a garage
14 that you have to go down into, and then park,
15 and then somehow get up to the store, already
16 makes your couple of minutes longer. So I
17 think it is that function.

18 Thank you.

19 CHAIRPERSON MILLER: Any other
20 questions?

21 (No response.)

22 Does the applicant have any

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1 questions at this point?

2 MS. RODDY: I don't have any
3 questions, but I would just ask that in future
4 testimony if we can limit it to how it
5 pertains to the variance request for parking
6 that we have requested.

7 MS. BUCK: I understand that. Yes,
8 I understand that completely. But I -- I --
9 not being an expert, but I have not seen in
10 the application proof that my neighborhood is
11 not going to have overparking because of your
12 store. Do you see what I mean? It might
13 work, but if it doesn't work it's the
14 neighborhood that loses.

15 CHAIRPERSON MILLER: I think that
16 the relevance of the testimony, if I
17 understood it, went to -- goes to the adverse
18 impact as a result of -- from what you just --
19 your dialogue with Mr. Dettman was as a result
20 of the garage parking.

21 MS. RODDY: And, for the record, my
22 name is Christine Roddy. I'm with Pillsbury

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1 Winthrop on behalf of the applicant.

2 MR. OCCHIALINO: I would now call
3 Ms. Beth Whiteley. I'm sorry.

4 CHAIRPERSON MILLER: Ms. Perry?
5 Yes, I'm sorry I didn't call on you. Thank
6 you very much. The ANC has some cross.

7 MS. PERRY: I just have one
8 question for Ms. Buck. Isn't it true that the
9 Giant or the Giant building office -- it's
10 called the Van Ness complex, Van Ness Office
11 Building. Isn't it true that they also have
12 an entrance and exit to their parking lot on
13 Wyndham Place?

14 MS. BUCK: I don't know that by --
15 I don't have that experience. I don't know.

16 MS. PERRY: And so by having --
17 isn't it true, then, that by having that other
18 entrance and exit that will -- many people
19 using the office building also use the Wyndham
20 Place to enter and exit that building?

21 CHAIRPERSON MILLER: She said she
22 didn't know about it.

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1 MS. PERRY: Okay.

2 MS. SOLOMON: If I may, given that
3 you covered illegal parking and there's no
4 standing in areas on Veazey and Wyndham and
5 around the surrounding area, I'd just like to
6 ask if in your experience you have ever seen
7 any enforcement. Do you ever see the police
8 coming out ticketing?

9 MS. BUCK: No. I have never seen
10 any enforcement. And there is a cop who lives
11 in our building who drives down the alley. So
12 he knows that all those people who stop in
13 back of the Chinese restaurant are not
14 permitted to be parking, and especially not on
15 our loading dock, to go in the back door.

16 MS. SOLOMON: Okay.

17 MS. BUCK: So, but I have never
18 seen anyone get a ticket or for standing by
19 the ATM or wherever.

20 MS. SOLOMON: Okay. Because I know
21 very often that the backup is to say, "Let
22 Enforcement take care of these things." But

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1 you have never seen any enforcement?

2 MS. BUCK: I have never seen any,
3 no.

4 MS. SOLOMON: And the other thing I
5 would like to just elaborate -- or like you to
6 elaborate on is how often --

7 MS. BUCK: This isn't cross,
8 though.

9 MS. SOLOMON: Well, I mean, how
10 often -- it's a question. How often does the
11 big hook and ladder come and get parked on
12 Veazey Terrace illegally to get lunch?

13 MS. BUCK: Well, you know, I'm not
14 sure if they are getting lunch or if they are
15 buying stuff, because they come out with bags
16 and bags, and they all go together. But
17 that's -- it's probably twice a week. And
18 it's during the day.

19 MS. SOLOMON: Thanks.

20 MEMBER DETTMAN: Ms. Buck, in your
21 10 years in the neighborhood, have you ever
22 contacted any kind of enforcement agency?

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1 MS. BUCK: About cars parked in the
2 alley?

3 MEMBER DETTMAN: Cars, fire trucks.

4 MS. BUCK: Fire trucks? Never. It
5 would be different, I think, if I saw cops
6 around. And to the ANC meeting has come our
7 new lieutenant who is saying, "Call us any
8 time, if something bothers you," so perhaps I
9 will start calling him about the things that
10 go on in the alley.

11 MS. SOLOMON: And if I may, and
12 certainly Commissioner Perry who has been on
13 the ANC far longer than I have, the police
14 come regularly to our meetings. And these
15 kind of discussions are a regular feature
16 about enforcement of illegally parked and
17 standing cars, to no avail.

18 MR. OCCHIALINO: I now call Beth
19 Whiteley as a witness.

20 MS. WHITELEY: My name is Beth
21 Whiteley, and I live in the Van Ness North
22 Building. I have lived in the District since

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1 1983, and I moved into the Van Ness North
2 Building in 1991.

3 CHAIRPERSON MILLER: Go right
4 ahead.

5 MS. WHITELEY: Okay. The title for
6 my talk is "Walgreens Parking Spaces:
7 Analysis of a Comparable Urban Drug Store in
8 Northwest D.C." For my overview, I want to
9 emphasize two points. My first major point is
10 that we use the actual data from a comparable
11 drug store in upper northwest D.C.

12 The second point I will demonstrate
13 is that the actual data shows that the number
14 of Walgreens proposed parking spaces are
15 clearly inadequate.

16 The D.C. regulations require 57
17 parking spaces at the proposed Walgreens
18 store. We also have learned that Walgreens is
19 requesting a variance and proposes to provide
20 only 31 parking spaces.

21 As a result of the inadequate
22 parking proposed by Walgreens, customers will

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1 probably park illegally on Van Ness North
2 property, which means we will not be able to
3 enjoy the use of our property, which means we
4 won't have guest spaces. They will probably
5 doublepark on Connecticut Avenue or park there
6 illegally during restricted parking hours.
7 Possibly, too, they will park illegally on
8 Veazey Terrace itself.

9 I believe that granting Walgreens'
10 request for a variance from D.C. regulations
11 will increase congestion in an already
12 congested area, restrict the ability of Van
13 Ness North residents to use their own
14 property, and create a safety hazard. To
15 illustrate that, I will first look at a small
16 magnetic board.

17 Last week there were two drawings
18 that were -- am I on mic? Okay. Last week
19 there were two drawings that were shown that
20 were done by an architectural firm, and they
21 were quite spacious. They showed the
22 underground parking lot that is proposed.

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1 They also showed what would happen on the
2 ground level.

3 Although my drawings are smaller
4 because that is the size of the magnetic board
5 that I have to use, I do want you to see what
6 happens if you actually put cars there.

7 Thank you.

8 On this we see the street level.
9 So here we have the shape of the building, we
10 have Veazey Terrace coming up along here,
11 Connecticut Avenue is along the bottom, and
12 then on this area we have the alley, which we
13 have discussed.

14 If you continue further in a car,
15 this is the entrance to the parking lot that
16 the Giant and the CVS share. Should you come
17 straight in a car, you would come to Van Ness
18 North parking lot. It is also the way that
19 people exit from Van Ness North in the
20 morning, in the evening, and during the day.
21 They come out of the parking lot, and then go
22 down Veazey, or they may turn onto the alley.

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1 What I have done is create small
2 scale model cars, vehicles, that are
3 consistent with the scale of the drawing. The
4 little black shapes that have the yellow dot
5 on it are SUVs, and I chose a Honda Odyssey
6 for that. I measured it, and then I scaled it
7 down.

8 For the green dot, that's a compact
9 car. I chose a VW Jetta for that, measured it
10 and scaled it down. And then, for the mid-
11 size car, which is blue, I chose a Toyota
12 Camry. All three vehicles were in the parking
13 garage at the Van Ness North Building, so
14 those would be typical vehicles for that
15 neighborhood.

16 What we have here is a situation
17 where the four parking spaces on the ground
18 level may be filled. One of these spaces is a
19 handicapped space. It is further complicated,
20 however, because there is an aisle next to the
21 handicapped space which is a feature of
22 handicapped spaces. That aisle has a column

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1 in it.

2 So it may be difficult for someone
3 in a wheelchair to exit from the vehicle and
4 manipulate the space so that they can get into
5 that aisle if there is a column there. It all
6 depends, though, of course on how that vehicle
7 parked.

8 In any case, the vehicle has got to
9 come in the space and come out of the space.
10 If it heads in, that is one situation. If it
11 backs in, then it has got to make a turn and
12 then back in there. The same goes for the
13 other cars.

14 This gets complicated, however, by
15 the fact that there may be trucks there. For
16 example, here is the loading dock for the
17 building. This is a truck positioned in the
18 loading dock. Right across from that is the
19 Van Ness South Building, and there may be a
20 vehicle there.

21 For example, this photograph shows
22 last Friday morning there was a Mayflower

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1 truck there with, you know -- with the
2 contents of an apartment. And the truck was
3 too tall to fit into the loading dock of the
4 Van Ness South, so it parked parallel to the
5 building as I demonstrate here.

6 If there is another moving van
7 parked parallel to the building, and if there
8 is a Walgreens truck in that space, it will be
9 difficult for anything to move, let alone the
10 four cars, which as we heard last week are
11 expected only to be there at 15-minute
12 turnaround periods.

13 So this is one picture of what
14 could happen on that ground-level space if all
15 of those four spaces are used, and if there
16 are delivery trucks coming and going. There
17 can also be a lot of congestion out on Veazey
18 Terrace, as we have heard.

19 Oftentimes vehicles are parked
20 there, people doublepark. One time, in fact,
21 I took a picture of a dumpster that was parked
22 on Veazey Terrace. So it is kind of hard for

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1 a policeman to give a ticket to a dumpster.

2 (Laughter.)

3 It is not even motorized. But this
4 does show the type of thing that happens on
5 Veazey Terrace, and where this dumpster was
6 located is precisely across from where the
7 proposed entrance to the garage would have
8 been or would be for Walgreens.

9 CHAIRPERSON MILLER: Let me just
10 ask you this.

11 MS. WHITELEY: Sure.

12 CHAIRPERSON MILLER: I'm going to
13 stop the clock for a second.

14 MS. WHITELEY: Sure.

15 CHAIRPERSON MILLER: Are you going
16 to the design of the parking? Are you going
17 to the reduction in the number of spaces and
18 the size of the spaces?

19 MS. WHITELEY: I will comment on
20 both.

21 CHAIRPERSON MILLER: Okay. Because
22 that's what the variance is for.

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1 MS. WHITELEY: Correct.

2 CHAIRPERSON MILLER: Yes, okay.

3 MS. BAILEY: Madam Chair, will we
4 be able to get a copy of that exhibit for the
5 record? Or how will that work?

6 MR. OCCHIALINO: We would be happy
7 to leave the original with you on the belief
8 that it will not be necessary for us ever to
9 use it again.

10 (Laughter.)

11 MS. WHITELEY: Actually, I was
12 going to ask, does someone have a cell phone
13 with a camera on it? We could take a
14 photograph of it immediately if that's
15 possible.

16 MR. OCCHIALINO: Let's proceed
17 first.

18 MS. WHITELEY: Okay. Now --

19 MR. OCCHIALINO: You are just
20 running a little behind.

21 MS. WHITELEY: Okay, fine.

22 CHAIRPERSON MILLER: Yes. So we'll

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1 deal with that later.

2 MS. WHITELEY: So what happens is
3 over here I have shown what happens actually
4 inside the garage. As we have commented, the
5 garage is very congested. It is a dead-end
6 garage. All space is taken up by vehicles.
7 Again, we have the color coding for the green
8 for the compact, the blue is mid-size, and
9 SUVs are yellow.

10 We expect that that garage would be
11 continuously full. If a car is entering,
12 comes off of Veazey, comes down the ramp,
13 comes in here and it's full, what is that car
14 to do? It has got to figure out a way to get
15 out of there.

16 So somehow or another it is going
17 to have to make a turn, and, as you can see by
18 the scale, it is not going to be easy in the
19 amount of feet allowed to that aisle.

20 Another thing we noted when looking
21 at this is the way the compact cars are
22 arranged. According to Title XI of the D.C.

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1 Municipal Regulations, and this is Section
2 2115, and I will quote, "Parking spaces shall
3 be visibly marked as compact car or small car
4 parking spaces, and shall be placed in groups
5 of at least five contiguous spaces, with
6 access from the same aisle." By counting the
7 green dots, it is very clear that along one
8 aisle there are only three compact spaces that
9 are contiguous.

10 We have also learned that Walgreens
11 has not applied for a special exception from
12 2115.

13 Now, we have also commented that
14 there will be overflow, and the question might
15 be: how do we know there is going to be
16 overflow? Well, we wanted to take into
17 account some of the numbers, and I would like
18 to also comment that the variance is asking
19 for 31, and that last week the traffic experts
20 from Wells said that 18 would be adequate.

21 The gentleman from Walgreens, from
22 Northbrook whom I don't believe is here today,

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1 said that 30 would be adequate, and neither 18
2 nor 30 had any data to support them.

3 We have chosen to use the CVS store
4 at Tenleytown, and I would like to read a list
5 of what we believe are the similarities
6 between the comparable existing store, that is
7 CVS Tenleytown, and the proposed Walgreens.
8 Here are the similarities.

9 Both are on principal arterials in
10 upper northwest D.C. designated as emergency
11 event evacuation corridors. Both are within a
12 block of a Metro. Both are on bus routes.
13 They are similar neighborhoods. They have
14 similar average daily traffic.

15 Both have dedicated parking lots
16 for their customers. And I do want to note,
17 as opposed to the CVS at Van Ness, there they
18 share their parking lot with Giant. So it is
19 really impossible to know whether a car is in
20 that lot for Giant or for CVS or for some
21 other purpose in that office building.
22 Another similarity is that both locations have

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1 a large amount of pedestrian traffic.

2 There is differences, too. And
3 here are some differences. CVS Tenleytown is
4 smaller at 11,000 square feet. The Walgreens
5 is proposed as 20,000 square feet. CVS
6 Tenleytown has more street and surround
7 parking. Walgreens has a tight underground
8 parking lot with a dead end.

9 There are more high-rise apartment
10 buildings at Van Ness, and 11,000 college
11 students are within walking distance or free
12 shuttle bus of CVS Tenleytown. Here I am
13 referring to American University, and we
14 actually saw American University students,
15 because I have seen them wear their
16 sweatshirts that say American University.

17 Okay. For the next section, I
18 would like to discuss more about the CVS
19 Tenleytown parking and describe it to you. It
20 has 53 regulation spaces. In other words,
21 none of these are divided into compact or
22 regulation. They are all regulation spaces.

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1 Of those 53 spaces, three are
2 accessible. And, again, this is for an 11,000
3 square foot store. All of the spaces can be
4 used by SUVs, mid-size, and compact cars. It
5 is easy to enter and exit both of the lots at
6 that CVS, and it is easy to back out of a
7 space owing to the wide aisle width.

8 These two photographs show the
9 parking on the ground level. That is, if
10 you're on Wisconsin Avenue northbound, and
11 take a right into the CVS Tenleytown lot,
12 there are parking spaces. If you go into that
13 lot, and it's full, you just keep driving
14 straight through, go to the alley where Whole
15 Foods is, take another right, come back out
16 onto Wisconsin, and go up the ramp to a lot
17 that is on top of the building.

18 So it's extremely easy to access
19 either of their two lots, and both lots are
20 very generous with the aisle width and the
21 size of the parking spaces.

22 For our data collection, we made 14

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1 onsite visits at peak and non-peak hours on
2 various weekdays. I would like to show you an
3 exhibit that gives our numbers.

4 Can you all see this? Is this
5 visible? Okay.

6 The exhibit is titled "Data
7 Collection from CVS Tenleytown." In the
8 column on the left we have the day and the
9 date, so the data collection went from
10 February 10th, which was a Tuesday, up until
11 Friday, the 27th. You will also note that we
12 have the time of day on there.

13 These range from 12:45 p.m. to
14 6:00 p.m. And this is the number of vehicles
15 that were in the spaces during those hours --
16 37, 47, 41, 42, 39, 41, 42, 40, 48, 39, 44,
17 45, 43, 48. That gives an average of 43 at a
18 store which is 11,000 square feet in upper
19 northwest D.C.

20 For analysis, we say since an
21 average of 43 spaces are utilized for an
22 11,000 square foot drug store, 31 spaces are

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1 clearly inadequate for a drug store
2 approximately twice as large. The required
3 number of spaces could be as small as 43,
4 which would be the average at CVS Tenleytown,
5 and as large as 78 if we adjust proportionally
6 for a 20,000 square foot store.

7 So the number 57 is really quite
8 reasonable.

9 For a summary, four points. We
10 have looked at the design for the parking lot.
11 We have looked at a model to show congestion
12 and overflow. We have looked at the
13 regulation for compact cars, and we have
14 looked at parking data from a comparable
15 existing drug store.

16 These are our conclusions. Based
17 on data for a comparable urban drug store in
18 northwest D.C., 31 spaces will be inadequate.

19 They will create significantly more
20 congestion in an already congested area,
21 queuing or doubleparking on Veazey Terrace and
22 Connecticut Avenue, overflows and illegal

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1 parking.

2 The design for compact cars does
3 not comply with the D.C. Regulations.
4 Walgreens' request for a parking variance
5 should be denied.

6 Thank you.

7 CHAIRPERSON MILLER: I'd like to
8 ask you a question about the comparability of
9 the two sites.

10 MS. WHITELEY: Sure.

11 CHAIRPERSON MILLER: Would you
12 contest that the Van Ness site where the
13 Walgreens proposes to locate has a much higher
14 concentration of people who would walk to the
15 Walgreens, in that we have seen that there is
16 UDC, there is the apartment buildings, there
17 is Howard, there is Burke, there is the Intel
18 Sat Building, I guess that the CVS site on
19 Wisconsin is near a Metro, but would -- I
20 don't believe -- and you correct me if I'm
21 wrong -- that it has the same concentration of
22 population there that would walk to the store.

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1 MS. WHITELEY: Okay. I think that
2 if you look at the population of the major
3 high-rise apartment buildings, and the
4 population of UDC, which I believe is about --
5 a little over 5,000 students, that that
6 doesn't come anywhere near the population
7 from, for example, American University.
8 Eleven thousand students, plus employees, plus
9 faculty.

10 CHAIRPERSON MILLER: How far away
11 is American University?

12 MS. WHITELEY: It is a free shuttle
13 bus, and it's walking distance.

14 CHAIRPERSON MILLER: Is it as close
15 as UDC is to the Walgreens?

16 MS. WHITELEY: It is not as close.
17 But, as I said, they have free shuttle bus
18 that's there.

19 CHAIRPERSON MILLER: I just think
20 that's a factor that might affect the number
21 of vehicles and drivers to the site.

22 Others?

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1 MEMBER DETTMAN: Ms. Whiteley,
2 thank you for your testimony. The numbers
3 that we are looking at here, that is just a
4 tally of the surface parking spaces that you
5 described, and then the ones on the roof, is
6 that right?

7 MS. WHITELEY: Yes.

8 MEMBER DETTMAN: And was there a
9 way for you to determine whether or not some
10 of those cars -- all of those cars were, you
11 know, patrons of CVS?

12 MS. WHITELEY: No, we didn't -- I
13 didn't track license plates and drivers, and
14 so forth. But just an observation, without
15 tracking it, it did appear that those drivers
16 were parking there and coming into the CVS
17 store, exiting the CVS store, and going to
18 those vehicles.

19 But I didn't actually, you know,
20 track that that vehicle -- you know, so, in
21 other words, I have no idea whether that car
22 had been there before I started my count and

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1 was going to be there after the count, because
2 the patron was waiting for a prescription, for
3 example.

4 MEMBER DETTMAN: But were you at
5 least able to observe that there was, you
6 know, adequate turnover? It wasn't that cars
7 were staying there for an excessive amount of
8 time or it could have been AU students using
9 these spaces?

10 MS. WHITELEY: It seemed to me that
11 the turnover was constant.

12 MEMBER DETTMAN: Okay.

13 CHAIRPERSON MILLER: And how long
14 did you -- and how often did you make this
15 observation? Was it one time, or was it over
16 several days, or what?

17 MS. WHITELEY: Okay. The first
18 observation was made on --

19 CHAIRPERSON MILLER: Oh, I see, you
20 have dates on it.

21 MS. WHITELEY: Yes. That's okay.
22 Tuesday. And then, just to see what would

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1 happen at 15-minute increments, because,
2 again, that was the number we kept hearing,
3 and that may help with your question about the
4 turnover. So, on a Wednesday, you will see
5 the numbers there.

6 Let's see, 2/25, there were
7 readings that were done, or counts that were
8 done, at 1:27 p.m. and 4:40 p.m. Then, I
9 started a 15-minute count and went at 5:00,
10 5:15, 5:30, 5:45, 6:00. So those are 15-
11 minute increments. And, as you can see,
12 during that time period, the numbers went --
13 varied from 42, 40, 48, 39, 44, 45, 43. So
14 there was a lot of movement. Yes, yes.

15 CHAIRPERSON MILLER: So we should
16 get a copy of that into the record as well.
17 Okay.

18 Any other questions from Board
19 members?

20 (No response.)

21 Okay.

22 MS. WHITELEY: American University

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1 has classroom buildings and a dorm right at
2 Yuma off of Wisconsin. So there are -- they
3 are very, very close to that intersection.
4 There are AU students living there that, you
5 know, are the same distance as they -- as UDC
6 would be.

7 CHAIRPERSON MILLER: Okay. Cross?

8 (No response.)

9 Okay. Does the ANC have any cross?

10 MS. SOLOMON: Two quick questions.

11 Just for clarification, the CVS parking lot,
12 is that marked as exclusive -- for exclusive
13 use by the CVS patrons?

14 MS. WHITELEY: Yes. It is marked
15 that way, and on the ground lot it indicates
16 that there is parking on the ramp.

17 MS. SOLOMON: Okay. So if, in
18 fact, there are -- any other cars happen to be
19 there, then they are parked illegally, which
20 --

21 MS. WHITELEY: Yes.

22 MS. SOLOMON: -- I'm sure that

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1 happens occasionally, but --

2 MS. WHITELEY: Right.

3 MS. SOLOMON: -- there is good
4 reason to assume that the cars that are parked
5 there are in fact CVS patrons.

6 MS. WHITELEY: I would say that,
7 because although there is a Whole Foods right
8 there, Whole Foods has an extremely large
9 parking lot that is available for their
10 patrons as well as anybody who is working in
11 the buildings in that area. So given that
12 Whole Foods has a dedicated parking lot, I
13 would say that that's CVS customers.

14 MS. SOLOMON: Okay. And a more
15 general question, this may be a somewhat
16 rhetorical question, but as we -- as we look
17 at the number of visits to the store, to any
18 store, whether it's the CVS or the Walgreens,
19 I am not sure. Do you believe there is a
20 correlation between the number of pedestrian
21 -- I guess my question is: how did the number
22 of pedestrian visits impact the number of

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1 drive-in visits, or do they?

2 Or, I mean, it seems to me that
3 perhaps pedestrian density -- how do I want to
4 say this? I'm sorry. I apologize for this.
5 But whether or not there are a lot of people
6 that walk to the store doesn't necessarily
7 impact the number of people who live nearby
8 that will also drive to the store. To me, it
9 suggests perhaps that there are just more
10 visits overall, just more patrons overall.

11 As I say, it was a rhetorical
12 question, so I apologize for that.

13 Thank you.

14 MEMBER WALKER: I think it's a good
15 question. I'm not sure if this witness can
16 answer it or not.

17 MS. WHITELEY: My only comment
18 would be that, based upon the Walgreens
19 information, where in their tables they have a
20 designation of non-auto mode split, and that
21 would be those people that don't come by an
22 auto. That's my only comment.

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1 MS. SOLOMON: Okay. Thank you.

2 MS. PERRY: Ms. Whiteley, can you
3 go back to your board for a second, your
4 drawing, your board. First of all, can you
5 tell the Board a little bit about your
6 background, so that they know how you were
7 able to draw this and whatever? Just so they
8 don't think -- you know, you might not be an
9 expert, but --

10 MS. WHITELEY: Oh, okay. My total
11 education is I have a Bachelor of Arts degree
12 from Carnegie Mellon University. I hold a
13 Master of Science degree from Case Western
14 Reserve University. And I have also earned a
15 Bachelor of Fine Arts degree from the School
16 of the Art Institute of Chicago. And I also
17 -- I have had a dual career as an artist, and
18 then I did retire from the government as a
19 Budget Analyst with the Department of the
20 Treasury.

21 MS. PERRY: Do you have any
22 background in transportation analysis?

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1 MS. WHITELEY: No.

2 MS. PERRY: Okay.

3 MS. WHITELEY: Just common sense.

4 MS. PERRY: In looking at your
5 board, if you were an -- pretend you are an
6 SUV, and you drive in this parking lot. What
7 happens if you get in there and there is no
8 space available? What kind of -- how are the
9 -- are the aisles narrow? How do you get out,
10 if there's -- all the spaces are full?

11 MS. WHITELEY: Well, I think, first
12 of all, there would be that moment of "oh no,"
13 and then it would require a lot of driving
14 skills to either --

15 MS. PERRY: Would you demonstrate
16 that on the board?

17 MS. WHITELEY: Yes, okay.

18 MS. PERRY: Would you move one of
19 your little magnets?

20 MS. WHITELEY: Okay. So the SUV
21 would come in, and realizing that there isn't
22 any space it -- that vehicle can't back out,

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1 so it is going to have to figure out a way to
2 turn around or wait until someone gets out of
3 another space, so that they can take that
4 space.

5 So if another vehicle is leaving,
6 then they have to squeak by each other. And,
7 as you can see, it's pretty tight, so that
8 this car can come into this space. And, of
9 course, since we have talked about, you know,
10 if 15-minute or greater turnaround, there is
11 going to be this kind of activity constantly
12 in that space with, again, an insignificant
13 number of spaces available for the cars that
14 are probably going to be coming.

15 MS. PERRY: Yes. Now, you're in
16 the garage. You've made like a three- or
17 four-point turn I guess.

18 MS. WHITELEY: Right. Or more.

19 MS. PERRY: Or more to get out of
20 the garage. Where do you go?

21 MS. WHITELEY: Well, then, that
22 means coming out onto Veazey Terrace. If, of

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1 course, you haven't changed your mind and
2 said, "Oh, forget it," coming out onto Veazey
3 Terrace, and, of course, there is going to be
4 cars that are entering at the same time.
5 There may be a queue line. And coming out to
6 Veazey Terrace and then thinking, okay, it is
7 very hard to make a left turn out of here, so
8 I will try a right turn. So you are trying to
9 make that right turn.

10 But then, that means coming to the
11 outside to the alley. And, again, there may
12 be trucks, vehicles. There -- certainly in
13 these four spaces there are going to be cars
14 that are moving back and forth.

15 So coming out to here and then
16 trying again to negotiate the alley, hoping
17 that maybe one of these spaces would open up.

18 And if it doesn't, then it requires going the
19 length of the alley to Van Ness Street looking
20 for a space, swinging around Connecticut
21 Avenue looking for a space, etcetera.

22 MS. PERRY: Now, should Walgreens

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1 -- say Walgreens puts up something at the side
2 of the parking lot saying it's full, what do
3 you do? Do you just sit on Veazey Terrace and
4 doublepark illegally? Or do you just start
5 making this circle waiting for a space?

6 MS. WHITELEY: Yes. So the options
7 would be to sit illegally, to come to the Van
8 Ness North parking area plaza, to go into the
9 Giant garage, but that requires payment. It's
10 \$3 for the first hour. There is a fee there.

11 Or turning on the alley. Yes, so there are
12 options, but they are not really viable for
13 someone who has got a lot of errands to run.

14 MS. PERRY: So if you are an SUV,
15 even if there is -- say there is a space
16 available, it could be a space that's
17 available, though, for a compact car where you
18 can't get your SUV.

19 MS. WHITELEY: That's possible.

20 MS. PERRY: So that is another
21 possibility, since these aren't all regulation
22 spaces. But isn't it also true that when DDOT

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1 -- you were here when DDOT testified last
2 week, weren't you, Mr. Jennings?

3 MS. WHITELEY: Yes.

4 MS. PERRY: Isn't it true that Mr.
5 Jennings testified that overflow parking could
6 just park in the Giant lot because Giant
7 validates parking? Did you hear him say that?

8 MS. WHITELEY: I heard him say
9 that.

10 MS. PERRY: Okay. That's all the
11 questions I have.

12 MS. WHITELEY: Okay. Thanks.

13 CHAIRPERSON MILLER: I just want to
14 ask a followup question. I think that you
15 allege that the applicant's parking lot would
16 be in violation of 2115, because there aren't
17 five contiguous compact spaces, is that right?

18 MS. WHITELEY: Visually, yes.

19 CHAIRPERSON MILLER: Okay. So, but
20 the issue about the SUV not having space to
21 turn around, that is in the context of a
22 parking lot that otherwise meets the

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1 regulations?

2 MS. WHITELEY: Yes, it does.

3 CHAIRPERSON MILLER: Then, how do
4 you know there wouldn't be enough space for it
5 to turn around?

6 MS. WHITELEY: It can turn around,
7 but it is not going to be easy.

8 CHAIRPERSON MILLER: Oh, okay.
9 Okay. Thank you.

10 MS. WHITELEY: Sure.

11 CHAIRPERSON MILLER: Other
12 questions?

13 (No response.)

14 Okay. Thank you.

15 MR. OCCHIALINO: Next witness, Ms.
16 Lori Milstein. Ms. Milstein will speak for 10
17 minutes, and she will address not so much
18 parking spaces but customer counts. And the
19 reason that this will be relevant is because
20 we have learned that 50 percent of all
21 customers are expected to drive according to
22 Walgreens' own analysis.

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1 CHAIRPERSON MILLER: I think your
2 mic isn't on.

3 MS. MILSTEIN: Oh, sorry. I'm Lori
4 Milstein. I live in Van Ness North. I
5 believe Beth Whiteley just demonstrated that
6 the number of parking spaces proposed by the
7 applicant for the Veazey Terrace Walgreens is
8 insufficient when compared to the number of
9 spaces provided and used at the comparable but
10 smaller Tenleytown CVS pharmacy.

11 I would like to demonstrate that
12 the parking space requirements of the
13 Walgreens' Veazey Project are based on flawed
14 generic data from an ITE program used to
15 generate expected customer trip counts to and
16 from the store. And that the customer counts
17 at actual comparable stores in D.C. make clear
18 that the customer counts at the applicant's
19 Veazey store will be substantially larger than
20 Walgreens suggests.

21 The importance of this discrepancy
22 is critical to an understanding of the flaws,

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1 and Walgreens' attempt to justify an almost 50
2 percent reduction in parking, because
3 Walgreens states that it expects 50 percent of
4 its customers to arrive by foot, bike, or
5 public transportation, but the other 50
6 percent will drive.

7 Therefore, to determine how many
8 customers will drive to the Veazey store, we
9 must get an accurate count of the total number
10 of customers who will use the store daily, and
11 then divide this number by half.

12 If the trip data presented by
13 Walgreens underestimates the number of
14 customers using the store, it will understate
15 the amount of parking required to accommodate
16 customers that drive to this proposed project.

17 Walgreens' website states that, as of January
18 31, 2009, Walgreens operated 7,154 locations
19 in 49 states, the District of Columbia, Puerto
20 Rico, and Guam, yet Walgreens chose not to
21 present data from even one of these more than
22 7,000 operations.

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1 Rather, Walgreens presented only
2 data generated from an ITE model that, as
3 written on page 20 of the Walgreens study, is
4 based on data almost entirely from suburban
5 sites. Suburban pharmacies do not enjoy the
6 volume of traffic that will drive by this
7 store daily, which, as documented on page 5 of
8 their study, is up to 43,900 vehicles a day,
9 growing at one percent growth rate, compounded
10 annually. Page 17 of their study.

11 And there is another more than
12 11,000 vehicles driving by daily on the very
13 nearby Van Ness and Connecticut Avenue, which
14 is the other access point to the four
15 Walgreens alley parking places, and the
16 possible walkup prescription window, and this
17 Walgreens' Veazey Terrace parking lot.

18 That is about 55,000 vehicles
19 driving by every day, and that number is
20 larger than the population of the average U.S.
21 city or suburban area. To put it into
22 perspective, there is only 262 cities in the

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1 whole U.S. with populations greater of 100,000
2 people. So you have to wonder how many of
3 those suburban pharmacies can claim a daily
4 passby rate of 55,000 vehicles.

5 On February 9, 2009, I spoke with
6 Thomas Brahms. He is the Executive Director
7 of ITE. I read to him all of the passages
8 from the Walgreens traffic study, with the
9 specific ITE citations. He shared the
10 following. He said, "The ITE models used were
11 based almost entirely on suburban models from
12 across the country."

13 And, interestingly, he added the
14 largest store in that database for this model
15 is just 14,000 square feet. He stated that
16 data calculations beyond the 14,000 square
17 feet are unknown. One would have to
18 extrapolate. No data exists.

19 He recommended collecting some
20 actual data from a comparable pharmacy, and
21 Beth Whiteley just presented you with actual
22 parking usage data from a comparable local

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1 pharmacy. He also shared that ITE is
2 currently working on collecting data to create
3 models for different types of areas, including
4 ours.

5 If you go to the ITE website, it
6 would define our area that they are collecting
7 data for as a central city, not downtown.
8 That is with a population of greater than
9 \$250,000. And there are only 72 areas that --
10 cities that were qualified, based on that
11 population.

12 And D.C. now ranks 24th in the
13 country in terms of population, but if you
14 include our daytime population that increase
15 on the workday, based on our just normal
16 population, we are larger than the State of
17 Wyoming, but you include our workday
18 population count and we are larger than seven
19 states. So you need to consider that. So,
20 clearly, D.C. is very large, even by urban
21 standards.

22 The granting of these variances

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1 will pose severe parking and traffic problems,
2 and I have been very concerned that this
3 extremely important decision is being based
4 solely on the provided Walgreens theoretical
5 data, data generated by an inappropriate
6 traffic model, based on smaller suburban
7 pharmacies.

8 To allow for consideration of real
9 data, I collected trip data from a comparable
10 -- the comparable Tenleytown store. I focus
11 on trip data, because that is what is used in
12 the Walgreens study, and you can look at page
13 20 of their study.

14 If we go to Exhibit 1, this is
15 directly out of their study, Table 5-1, this
16 is the site trip generation expected from
17 their store in a 24-hour period. And a trip
18 is not necessarily something that is
19 intuitive, so I want to ensure that everyone
20 understands how it is being used and defined.

21 A "trip" is defined as a customer
22 either entering the store -- that is a trip in

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1 -- or leaving the store -- that is a trip
2 out. And, therefore, if a customer enters the
3 store and leaves the store, Walgreens will
4 record that as two trips.

5 So, as you can see looking at this,
6 in a 24-hour period they are expecting 1,765
7 trips to the store. And you can also see that
8 they expect 441 customers will make a trip to
9 and from that store by vehicle, by car,
10 generating 882 vehicle trips in a day. Are
11 you following? Okay.

12 So I have used the same definition
13 of "trip" in collecting data. I collected
14 people walking in. That is a trip in. And
15 for everyone walking in, trip in, there was a
16 trip out. And I collected data on two
17 different dates, and Beth Whiteley collected
18 data also on another date for two time
19 periods, and I met her for that second time
20 period.

21 I had also talked to the manager of
22 the store, who told me that their top -- their

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1 busiest time of day is in the morning commuter
2 hours. We were never able -- I also help with
3 the parking, and we were never able to get
4 there in the morning to actually collect data
5 at that time. So we don't have the actual
6 peak site trip generation data, but we have
7 data to compare nonetheless.

8 I collected data, and I took an
9 average that we'll compare with the Walgreens
10 data, but, here, can you pull up Exhibit 2 of
11 our -- which shows our collection. These are
12 the times we collected, and it shows the trips
13 in, trips out, total, and we followed the same
14 assumption -- 50 percent by car. And I did
15 make some of those observations about the cars
16 and locks and stuff we can talk about later.

17 And, anyway, you can see there is a
18 steady flow of people at the different times,
19 and these are not the busiest times of the
20 store. And I took the average. I could have
21 taken the highest period, or I could have
22 taken that one hour, which either one would

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1 have brought the numbers up to 532 or 48, but
2 I took the average, which brings the total to
3 453. And if you bring it to the next page,
4 and taking it to the 50 percent car mode,
5 that's the assumption made by Walgreens.

6 We compare it to their numbers.
7 And these are what they say their top peak
8 hours will generate in terms of trips to the
9 store. And you can compare the numbers.
10 Their a.m. peak they are going to generate 62
11 vehicle trips, p.m. 84, and I gave you an
12 average of 73 between the two of them, so you
13 can just compare to my average of 227.

14 So you can see that this Tenleytown
15 CVS store, which is 11,000 square feet, on a
16 street that does not have the driveby traffic
17 that this store will have, is doing -- is --
18 has trips three times what Walgreens is
19 telling you they are going to have at this
20 store. This is real data.

21 So based on this, we must conclude
22 that the Walgreens figures are inaccurate, and

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1 they seriously understate vehicle trips, you
2 know, as they are telling you. But I can also
3 provide you another piece of information to
4 support my contention that the Walgreens data
5 is erroneous. It is not a direct light
6 comparison, but it is real data nonetheless.

7 I have been provided the sales data
8 from the local Van Ness CVS. And if you
9 consider a sale as a trip in and a trip out,
10 because to transact a sale you have to make
11 essentially what they would call two trips,
12 you have to go in and go out, that is how I
13 would translate that.

14 However, if you think about it,
15 sales figures will always be lower than site
16 trip generation for two reasons. There will
17 always be people who will go into a store and
18 not make a purchase. I do this a lot. I go
19 in, and I don't find what I want, or I decide
20 something is too expensive and I leave.

21 Also, you will have people who go
22 in to drop off a prescription and then come

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1 back later to pick one up. So that is four
2 trips for one sale. So when I translate the
3 sales figures into trips, that number is
4 necessarily going to be lower than actual site
5 trip generation for a store.

6 This store is 8,000 square feet,
7 and they are open 16 hours a day on a weekday,
8 and the pharmacy is open for 14 hours. So I
9 would like to present the data in comparison
10 to the local -- to what Walgreens is telling
11 you they are going to do in 24 hours.

12 They do, on average on the weekday,
13 1,500 sales, which would be more than 3,000
14 trips. And Walgreens is telling you they are
15 going to do 1,765 trips in a 24-hour day.
16 That just can't be correct.

17 And while this -- while this isn't
18 a hard number, I just took that -- the vehicle
19 trips and divided per operational hour to just
20 give me a sense of another number to look at.

21 And, again, that number is going to be low,
22 because it is based on sales.

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1 But you can see that the local Van
2 Ness pharmacy is more than two and a half
3 times the number that Walgreens is telling you
4 they are going to have for vehicle trips per
5 hour. That just cannot be correct. Those
6 numbers have to be off.

7 So I have now presented you data
8 from two local pharmacies, much smaller
9 pharmacies, but they are operating pharmacies.

10 And I hope I have convinced you that these
11 Walgreens figures are not accurate. At a
12 minimum, I believe that, you know, that the
13 Walgreens can expect traffic generation at
14 least three times higher, and probably much
15 more than that.

16 And as I stated at the beginning,
17 if the trip data presented by Walgreens
18 underestimates the number of customers using
19 the store, it will understate the amount of
20 parking required to accommodate customers that
21 drive to this proposed project. Decisions
22 need to be made on concrete data, and you have

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1 now been presented with some actual site
2 pharmacy parking utilization numbers from
3 Beth, and site trip generation data from
4 comparable stores.

5 This is real data from real
6 pharmacies operating in our area, and not
7 figures generated from a suburban traffic
8 model that maxes out at 14,000 square feet.

9 I believe that I have demonstrated
10 that the Walgreens data is wholly inaccurate.

11 It seriously understates the automobile
12 traffic to the store. Therefore, all
13 conclusions from the Walgreens report,
14 including the site's impact and the parking
15 requirements, are inaccurate and misleading.
16 And I believe that 31 parking spaces, even if
17 they were appropriately laid out and usable,
18 are clearly inadequate for a store of this
19 size.

20 Thank you.

21 CHAIRPERSON MILLER: Thank you very
22 much. Could I ask you, is the premise of your

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1 testimony that you made counts of customers,
2 right, not vehicles driving?

3 MS. MILSTEIN: Right. We did just
4 what they are doing, yes.

5 CHAIRPERSON MILLER: Customers.
6 Then, you said, okay, and then we divide that
7 by 50 percent and --

8 MS. MILSTEIN: We took their
9 assumption, and we stuck to it.

10 CHAIRPERSON MILLER: Okay.

11 MS. MILSTEIN: There is no proof
12 that this is, you know --

13 CHAIRPERSON MILLER: Okay. Now, we
14 have here a drug store. It is somewhat
15 comparable to what is coming in. There are
16 differences. Walgreens is bigger, Walgreens
17 may offer different things than CVS, and CVS
18 is also near Giant I gather. But why didn't
19 anybody do a study, actually a survey, of
20 everybody coming into CVS and saying, "Did you
21 drive here? Did you walk here?"

22 MS. MILSTEIN: Well, first of all,

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1 have you tried to ask people that?

2 (Laughter.)

3 But I actually did make an
4 observation. I didn't count, but there is
5 vigorous turnover in that lot. And I actually
6 was watching people who pulled in -- did they
7 go into the CVS? And if I saw them go into
8 the lot, were they coming from the store? And
9 I will tell you that all but three cases that
10 I saw for the time I was observing it was yes,
11 but one of those three people were carrying a
12 CVS bag.

13 So, you know, I am not going to
14 vouch for them 100 percent of the time. And,
15 my guess, in our area if you have an open lot
16 people would use it more for parking, because
17 parking is a lot tighter. There is a lot more
18 parking available there.

19 But the turnover was amazing, and
20 there are queues all the time in those lots.
21 So it is -- they get a lot of business. I
22 mean, you --

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1 CHAIRPERSON MILLER: I thought we
2 --

3 MS. MILSTEIN: It's rare you don't
4 see a queue of people waiting, especially in
5 the lower lot, even though there is plenty of
6 parking.

7 CHAIRPERSON MILLER: I guess Mr.
8 Jennings was saying there was an overabundance
9 of parking in the Giant parking lot.

10 MS. MILSTEIN: On a Sunday. On a
11 Sunday. It is an office building. It is a
12 huge office -- did you see it? It takes up a
13 city block. He said on a Sunday.

14 CHAIRPERSON MILLER: That's not --

15 MS. MILSTEIN: Well, do you work
16 Sundays? I think most people are home with
17 their families. I don't think that is a fair
18 assessment.

19 CHAIRPERSON MILLER: Okay. But
20 thank you for correcting my understanding,
21 because I just thought I heard that there was
22 an overabundance of parking there. And you're

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1 saying no, that's only on Sundays.

2 MS. MILSTEIN: Right. Otherwise,
3 most of the time it is pretty tight in there.

4 CHAIRPERSON MILLER: How many
5 spaces do they have in the Giant parking lot,
6 do you know?

7 MS. MILSTEIN: I don't know. But
8 it's not Giant's parking lot. They have to
9 lease it, and they only get so much of the
10 space.

11 CHAIRPERSON MILLER: Other
12 questions?

13 MS. MILSTEIN: Those other spaces,
14 by the way, are leased by people, so it is not
15 like they can have access to them. People are
16 paying for them. They are private, and so I
17 -- you know, you'd have to talk to the people
18 that own that lot.

19 VICE CHAIRMAN LOUD: Thank you,
20 Madam Chair.

21 Ms. Milstein, just a couple of
22 quick followup questions to make sure I

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1 understand some of your names and numbers.
2 First, in terms of the calculations being
3 based on suburban stores, did you say that the
4 suburban stores average 14,000 square feet?

5 MS. MILSTEIN: No.

6 VICE CHAIRMAN LOUD: Okay.

7 MS. MILSTEIN: I said the model
8 maxes out at that. That is the largest store
9 in the model itself. It is based on, you
10 know, real data.

11 VICE CHAIRMAN LOUD: Okay.

12 MS. MILSTEIN: From stores,
13 pharmacies around the country that are
14 primarily suburban. So you have to think
15 about -- they come --

16 VICE CHAIRMAN LOUD: What was the
17 range?

18 MS. MILSTEIN: Hmm?

19 VICE CHAIRMAN LOUD: What was the
20 range? That was the top end of it?

21 MS. MILSTEIN: Don't know.

22 VICE CHAIRMAN LOUD: Okay.

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1 MS. MILSTEIN: You just really need
2 to think about the fact that most cities are
3 not -- and suburban areas are not our size.
4 They are much, much smaller.

5 VICE CHAIRMAN LOUD: Okay. And
6 when you talked about the 54,000 daily vehicle
7 passby, just -- can you briefly just go
8 through that again? Is that the traffic count
9 on Connecticut Avenue?

10 MS. MILSTEIN: If you look at the
11 --

12 VICE CHAIRMAN LOUD: Okay.

13 MS. MILSTEIN: Right. They cite it
14 in their report.

15 VICE CHAIRMAN LOUD: Okay. So you
16 got that number from the --

17 MS. MILSTEIN: I got that number --

18 VICE CHAIRMAN LOUD: -- expert's
19 report.

20 MS. MILSTEIN: -- out of the
21 report, yes.

22 VICE CHAIRMAN LOUD: Okay. And

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1 then, you mentioned that there was a gentleman
2 who is an Executive Director of the ITE
3 organization that you spoke with.

4 MS. MILSTEIN: Right.

5 VICE CHAIRMAN LOUD: Can you just

6 --

7 MS. MILSTEIN: The report --

8 VICE CHAIRMAN LOUD: Hold on one
9 second.

10 MS. MILSTEIN: I'm sorry.

11 VICE CHAIRMAN LOUD: Can you just
12 tell me that person's name, and the date that
13 you spoke to him again.

14 MS. MILSTEIN: Yes. Thomas Brahms.
15 Thomas Brahms.

16 VICE CHAIRMAN LOUD: Okay. And you
17 spoke to Mr. Brawn on what date?

18 MS. MILSTEIN: February 9th.

19 VICE CHAIRMAN LOUD: Okay.

20 CHAIRPERSON MILLER: I'm sorry to
21 interrupt you, but could you -- who is he
22 again?

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1 MS. MILSTEIN: He is the Executive
2 Director of ITE.

3 VICE CHAIRMAN LOUD: Explain what
4 ITE --

5 MS. MILSTEIN: Oh, I'm sorry.

6 VICE CHAIRMAN LOUD: Yes.

7 MS. MILSTEIN: Yes. ITE is the
8 source of the data used for this -- and it
9 stands for -- that's a good question --
10 Institute of Transportation Engineers. And it
11 is cited many times in their report, in the
12 Walgreens -- yes, the Walgreens study.

13 VICE CHAIRMAN LOUD: And one of the
14 things you said that sort of interested me was
15 that Mr. Brawn said --

16 MS. MILSTEIN: Brahms.

17 VICE CHAIRMAN LOUD: How do you
18 spell it?

19 MS. MILSTEIN: I believe it's B-R-
20 A-H-M-S.

21 VICE CHAIRMAN LOUD: Okay. Gotcha.
22 That he suggested the data collection be

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1 done, as Ms. Whiteley did, at the comparable
2 CVS in Tenleytown.

3 MS. MILSTEIN: Yes.

4 VICE CHAIRMAN LOUD: Is that
5 correct? So the methodology that she used,
6 was that suggested by him, or simply the idea?

7 MS. MILSTEIN: The idea.

8 VICE CHAIRMAN LOUD: Okay.

9 MS. MILSTEIN: Yes.

10 VICE CHAIRMAN LOUD: Did he suggest
11 a methodology?

12 MS. MILSTEIN: No.

13 VICE CHAIRMAN LOUD: Okay.

14 MS. MILSTEIN: But he did say that
15 that would be the way to go, because there --
16 yes.

17 VICE CHAIRMAN LOUD: Okay. Thank
18 you.

19 No more questions, Madam Chair.

20 CHAIRPERSON MILLER: Other Board
21 questions?

22 (No response.)

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1 Does the applicant have any cross
2 examination? No?

3 (No response.)

4 Okay. Does the ANC?

5 MS. PERRY: Actually, I just would
6 like to clarify something. The parking lot in
7 the Van Ness -- well, we'll call it the Giant
8 office building, even though that's not its
9 name. It is a three-level lot, am I correct?

10 MS. MILSTEIN: You know, I am not
11 an expert on the lot.

12 MS. PERRY: Okay. Because I just
13 wanted to clarify what you said, because there
14 is three levels to the Giant, and I believe I
15 heard you say there is always a queue and
16 waiting.

17 MS. MILSTEIN: No. I was talking
18 about the CVS parking lot on Tenleytown.

19 MS. PERRY: Okay. I was confused.

20 CHAIRPERSON MILLER: Thank you.
21 That wasn't clear to me either. I thought you
22 were talking about the "Giant parking lot."

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1 MS. MILSTEIN: Oh, I'm so sorry.
2 No, I was making observations of what I saw
3 when I was at the Tenleytown store walking --
4 watching those people and counting them. I
5 was answering the question -- I thought I was
6 answering your question about were those
7 people actually going to their cars or not.

8 Were the people that came from the
9 parking lot going into the store, or were they
10 -- and were the people going to the lot coming
11 from the CVS? That was what -- in Tenleytown,
12 because they do have two dedicated lots just
13 for that store. And I thought that's the
14 question I was answering. I apologize if I
15 confused you.

16 MS. PERRY: Confused me, too.

17 (Laughter.)

18 MS. MILSTEIN: I apologize. You
19 know, you could really -- the reason why we
20 selected that is because the way the other CVS
21 is locally, you really couldn't tell because
22 it's a shared lot. And there is also like

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1 four entrances to the parking structure.

2 CHAIRPERSON MILLER: So when you
3 were talking -- I'm sorry, but just to clarify
4 her answers -- when you were talking about an
5 overabundance of parking only on Sunday, which
6 lot were you referring to?

7 MS. MILSTEIN: That is our local
8 lot, the one --

9 CHAIRPERSON MILLER: Your local,
10 the Giant one.

11 MS. MILSTEIN: -- that DDOT was
12 talking, yes.

13 CHAIRPERSON MILLER: Okay, good.

14 MS. PERRY: Okay. So DDOT was
15 saying there is a lot of spaces, and because
16 it was a Sunday --

17 MS. MILSTEIN: Right.

18 MS. PERRY: -- that they were out
19 there. Okay. Although I was under the
20 impression that -- okay. Never mind.

21 You indicated that the Giant -- let
22 me go to the Giant Building lot. Are you

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1 aware that they have an entrance and exit also
2 off of Wyndham Place to service that --

3 MS. MILSTEIN: No, I really don't
4 know.

5 MS. PERRY: -- block-long building?

6 MS. MILSTEIN: I don't.

7 MS. PERRY: Okay. Forget it then.

8 I guess I'm the only one who knows about it.

9 I don't have any more questions.

10 CHAIRPERSON MILLER: Okay. Thank
11 you.

12 Ms. Roddy?

13 MS. RODDY: Can I just ask for a
14 clarification? When you had testified
15 regarding the 3,000 trips to the CVS, was that
16 the Tenleytown CVS, or was that the --

17 MS. MILSTEIN: No.

18 MS. RODDY: -- Giant?

19 MS. MILSTEIN: That's -- the Giant?

20 Sorry.

21 MS. RODDY: The CVS near the Giant.

22 MS. MILSTEIN: Oh, the 3,000, that

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1 is the local CVS store, which is the one right
2 by us, the one that is going to be across the
3 street from this project that is only 8,000
4 square feet. And it is based on sales, so I
5 was translating sales to trip data, so that is
6 actually necessarily low -- a low number, as I
7 was trying to explain.

8 CHAIRPERSON MILLER: Your sales
9 data -- maybe you have presented it -- but is
10 that based on --

11 MS. MILSTEIN: That is just sales,
12 transactions.

13 CHAIRPERSON MILLER: -- on one day
14 or --

15 MS. MILSTEIN: In a day.

16 CHAIRPERSON MILLER: In a day? How
17 many --

18 MS. MILSTEIN: Average weekday
19 sales.

20 CHAIRPERSON MILLER: Average
21 weekday? How do you -- how many days did you
22 look at to determine the average?

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1 MS. MILSTEIN: I was -- we were
2 provided this information. This is an average
3 weekday.

4 CHAIRPERSON MILLER: That's what
5 CVS presented to you --

6 MS. MILSTEIN: Yes.

7 CHAIRPERSON MILLER: -- as an
8 average weekday. Okay. So do you have that
9 in writing, with a representation by CVS as to
10 exactly what they think that represents?

11 MS. MILSTEIN: In terms of what? I
12 am not understanding what you mean by that.

13 CHAIRPERSON MILLER: Oh, okay.
14 Well, I can't say. My colleague is saying it
15 is represented on that chart, the figure.

16 MS. MILSTEIN: Yes.

17 CHAIRPERSON MILLER: Did you
18 prepare that chart?

19 MS. MILSTEIN: Yes.

20 CHAIRPERSON MILLER: Okay. So CVS
21 didn't prepare that chart.

22 MS. MILSTEIN: No.

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1 CHAIRPERSON MILLER: So I guess my
2 question is: what underlying data did CVS
3 give you that you used to prepare that chart?

4 MS. MILSTEIN: The numbers.

5 CHAIRPERSON MILLER: Just numbers.
6 They told you verbally 3,000 a day, or they
7 put it --

8 MS. MILSTEIN: I saw some of the
9 figures in writing, and then I was also given,
10 you know --

11 CHAIRPERSON MILLER: I just --

12 MS. MILSTEIN: I can't hand it in,
13 because, you know --

14 CHAIRPERSON MILLER: It's
15 confidential?

16 MS. MILSTEIN: It is absolutely
17 confidential.

18 CHAIRPERSON MILLER: Okay. Is it
19 -- is it data that they normally keep anyway,
20 and so they are just telling this to you? Or
21 is it data they prepared in --

22 MS. MILSTEIN: Well, all stores

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1 obviously have this. I mean, Walgreens should
2 be able to provide this to you from their
3 other stores, you know.

4 CHAIRPERSON MILLER: Okay. This is
5 what they represented to you as their --

6 MS. MILSTEIN: Yes.

7 CHAIRPERSON MILLER: -- daily
8 sales, average daily sales.

9 MS. MILSTEIN: Average. Average.

10 CHAIRPERSON MILLER: Average daily
11 sales.

12 MS. MILSTEIN: Average. Weekday,
13 weekday.

14 CHAIRPERSON MILLER: Weekday, okay.

15 Did they limit it at all by saying this is
16 the average daily sales for 2008, or the
17 average -- or just in general, "This is our
18 average daily weekday sales"?

19 MS. MILSTEIN: I didn't think to
20 ask that, but it -- this is current figures,
21 and I did see some actual -- I did see some
22 things from the actual -- like, for instance,

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1 the peak hour thing, I saw a register tape
2 that was pulled off to present to me. So, you
3 know, I can back that up and, you know, as
4 being current -- a current figure.

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 MS. MILSTEIN: Yes.

8 CHAIRPERSON MILLER: Thank you very
9 much. Unless there are no other Board
10 questions, we can go on to your next witness.

11 MR. OCCHIALINO: Yes. I would just
12 state -- I just want to say that we have two
13 witnesses, and they will both be relatively
14 short. I see that we have almost eight
15 minutes. I might ask for another two minutes,
16 but I promise to make it 10 minutes at the
17 max.

18 The next witness is Ms. Barbara
19 Varick. She is the Manager, the Building
20 Manager, of Van Ness North. And she will
21 testify from the perspective of a Building
22 Manager in Van Ness North.

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1 MS. VARICK: Good evening. I am
2 Barbara Varick, General Manager for Van Ness
3 North, which is known as VNNC Inc. I have
4 been there four years. In 2005, I used to
5 commute to this property. At that time, there
6 was no indication that you could -- you can
7 park on either side of the street, and there
8 was always parking.

9 So it was very difficult to get in
10 and out of that -- onto and off of that street
11 without waiting, which backed up Connecticut
12 Avenue.

13 What I see happening here, and it's
14 just the nature of people, okay, that they
15 will see this store and they will -- they will
16 park, they will double, they will stand on
17 Veazey Terrace. They will then cause us that
18 difficulty of getting in and getting out.

19 Our garage is underground. We have
20 three levels. There are approximately 499
21 spaces that are almost filled at all times.
22 So there are cars coming in and out of that

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1 garage all the time. They have to pass down
2 past where this project is being built.

3 Now, across -- before our garage,
4 there is also the entrance to the Giant area.

5 And those cars are coming in and out. We
6 also have on the plaza parking, which we have
7 14 of those. Now, those are for our guests
8 only. However, people do come in and try to
9 park illegally, and we have a doorman who is
10 constantly coming in and out trying to get
11 people off of our plaza.

12 We see that this is going to
13 happen. It's just the nature of it. People
14 are not always going to want to go down into a
15 garage to park their car. So they will park
16 it on the street, or they will seek other
17 parking availability, which leads me to feel
18 that it is going to happen on our plaza.

19 We have a turnaround to come in and
20 go out. And we have people coming in all the
21 time doing that as well. Talbot Woodley
22 customers, CVS customers, Giant customers,

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1 what -- this leads me to believe will also be
2 contending with Walgreens customers.

3 So all of that, combined with the
4 demographics of our building also being
5 elderly -- we have a lot of emergency
6 equipment always coming to our property. Our
7 garage is under our plaza, so the emergency
8 equipment, if it's fire department, they
9 cannot come onto our plaza. They have to sit
10 at the entrance, which blocks any traffic
11 going in and out.

12 So all of these things combined
13 causes me a lot of concern, and my concern is
14 that there won't be enough traffic, that
15 traffic will overload onto our plaza, and
16 there will be a lot of deterioration of our
17 parking lot as well. So these are things that
18 are of concern to me, and I hope that you will
19 understand what we are all concerned about.

20 Do you have any questions?

21 CHAIRPERSON MILLER: I do. I do,
22 over here. Over here.

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1 MS. VARICK: Oh, I'm sorry.

2 CHAIRPERSON MILLER: That's okay.
3 That's okay. Are you familiar with the Van
4 Ness office building that someone suggested?

5 MS. VARICK: Yes, ma'am.

6 CHAIRPERSON MILLER: Okay. Now,
7 some have suggested that that building could
8 accommodate the Walgreens parking. Do you
9 have any knowledge about that?

10 MS. VARICK: They have three levels
11 of parking in their garage area. They also
12 can access their parking on the Wyndham Place
13 Street, as well as the Veazey Terrace street.

14 Now, if they are going to utilize
15 that, they would probably use the Veazey
16 Terrace, but, there again, they have a kiosk.

17 So it is monitored very well. And the only
18 disadvantage to that is that they do close I
19 believe at 10:00.

20 Now, I live on the property, so I
21 see a lot of this now after traveling a year.

22 CHAIRPERSON MILLER: But do you

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1 have any personal knowledge with respect to
2 their having a good amount of spaces that
3 could be accommodated for Walgreens?

4 MS. VARICK: I know for a fact that
5 they have a lot of spaces in that parking lot,
6 because when we were doing our renovation we
7 rented spaces in there to accommodate our
8 population when we were doing our garage. And
9 we -- I believe we rented -- it was at least
10 50 some-odd spaces.

11 CHAIRPERSON MILLER: And would you
12 be in favor of the Walgreens using that
13 parking lot instead of their proposed
14 underground parking lot?

15 MS. VARICK: I would think it would
16 eliminate a lot of the congestion. And my
17 other concern is that it is not going to be
18 monitored. When it's not a monitored
19 situation, you have more people trying to park
20 in there. So I would see people who are
21 renting spaces in the Giant using that as an
22 alternative without having to pay. They are

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1 not monitoring it; how can they be sure that's
2 not going to happen?

3 CHAIRPERSON MILLER: Thank you.

4 Others?

5 VICE CHAIRMAN LOUD: Just two quick
6 questions. First -- I'm sorry, did you -- I'm
7 sorry. Two very brief questions. The first
8 is: what year did Giant -- I'm sorry -- did
9 your organization rent these Giant parking
10 spaces?

11 MS. VARICK: We rented 2004 and
12 2005 and 2006 as well. Three years.

13 VICE CHAIRMAN LOUD: Okay. Thank
14 you. You answered the second question.

15 MEMBER WALKER: Ms. Varick, you
16 stated that there used to be parking on either
17 side of Veazey Terrace?

18 MS. VARICK: Yes.

19 MEMBER WALKER: And that that
20 parking was eliminated because it caused
21 backups on Connecticut Avenue. Do you know
22 specifically what prompted the elimination of

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1 the parking on Veazey?

2 MS. VARICK: Actually, one of my
3 residents came to my office and told me that
4 there used to be no parking, no standing signs
5 on Veazey Terrace. I knew for a fact that
6 there wasn't, because I had -- I was traveling
7 every day and having to face that awkwardness
8 of trying to get in and out.

9 So I started making calls to
10 Parking Enforcement to find out if that was
11 actually true, and, if it was, why were they
12 removed. I made numerous calls, and finally I
13 -- I don't remember the gentleman's name, but
14 he took care of the situation.

15 He called me back and said he
16 didn't know who removed the signs, there were
17 signs there, and they would be replaced that
18 day. And they were. He had come out and saw
19 everything that I had told him, you know, that
20 there was congestion and backup on Connecticut
21 Avenue, and he agreed and said, "Yes, we will
22 put them back."

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1 MEMBER WALKER: And when was this?

2 MS. VARICK: This was in 2005.

3 Roughly, I would say, October/November.

4 MEMBER WALKER: Thank you.

5 CHAIRPERSON MILLER: Any other
6 Board questions?

7 (No response.)

8 Does applicant have any? No.

9 ANC?

10 MS. PERRY: Ms. Varick, isn't it
11 true that Van Ness North has a designation as
12 a NARC?

13 MS. VARICK: Yes.

14 MS. PERRY: And do you want to tell
15 the Board what that is?

16 MS. VARICK: It's just -- it means
17 that it is more or less -- the demographics of
18 it are for older people. They come there and
19 they live and they stay and they stay and they
20 stay until they get older.

21 MS. PERRY: In other words, they
22 age in place.

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1 MS. VARICK: Right.

2 CHAIRPERSON MILLER: But what is it
3 an abbreviation for?

4 MS. PERRY: It's NORC. It's NORC,
5 I made a mistake. It's Naturally-Occurring --

6 MS. VARICK: Retirement Community.

7 MS. PERRY: -- Retirement
8 Community.

9 MS. VARICK: We have residents
10 there that are 95 years old that have been
11 there from the time of its conception.

12 MS. PERRY: Do you have a concern
13 for pedestrian safety with the traffic that
14 you see on the street already?

15 MS. VARICK: Absolutely. Residents
16 from both Van Ness North, Van Ness South, Van
17 Ness East, all exit their buildings through
18 that area. Their crosswalk is there. I take
19 my granddaughter to school in the morning, so
20 I have to stop and make sure that those
21 pedestrians can cross easily and without any
22 problems.

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1 We have some people who are legally
2 blind that -- that cross that area, and there
3 is no one or traffic signs, you know, as such,
4 so they -- they depend on everyone having the
5 courtesy of a safe driver here in D.C. But we
6 do have a lot of traffic coming in and out
7 during the rushhour, especially from the
8 garages and the alleyways.

9 MS. PERRY: Since you also live in
10 the neighborhood, what is like right now to
11 exit Veazey Terrace onto Connecticut Avenue
12 from your garage, from your vantage point?

13 MS. VARICK: Depending on what time
14 of day, you have to be cautious regardless.
15 Specifically, because people enter and exit
16 out of the alley a lot, if you are going down
17 straight from our garage into the traffic
18 point where the light is at, you would want to
19 use a lot of caution, because people do just
20 cross everywhere, and the cars are coming from
21 both the garage, the -- our garage, our plaza,
22 the north building, and the south building

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1 alleyway. So you have to be very cautious.

2 MS. PERRY: I'm assuming -- I'm
3 making an assumption here, so I might be
4 wrong. But are -- I would assume that the
5 different property managers from the three Van
6 Ness buildings communicate.

7 MS. VARICK: Absolutely. We are
8 all friends.

9 MS. PERRY: Okay. So are you aware
10 that Van Ness East, when they were redoing
11 their garage and plaza, also rented spaces in
12 the Giant garage?

13 MS. VARICK: Yes. They contacted
14 me to find out where we rented.

15 MS. PERRY: And when were those
16 spaces rented? Weren't they after your garage
17 was completed?

18 MS. VARICK: Yes. We completed
19 ours and turned back our spaces in 2006, and
20 they picked up in 2006.

21 CHAIRPERSON MILLER: What is the
22 significance of the renting of the Giant

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1 spaces?

2 MS. PERRY: Just to make that --
3 whether there are spaces available in that
4 lot, which was a question I believe you had
5 asked earlier.

6 CHAIRPERSON MILLER: Thank you.

7 MS. PERRY: That was my last
8 question.

9 CHAIRPERSON MILLER: Okay. One
10 more witness?

11 MR. OCCHIALINO: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. OCCHIALINO: I now call Bob
14 Deyling. Mr. Deyling is going to speak about
15 the number of legal parking spaces that are
16 immediately adjacent to the proposed Walgreens
17 store. And he will tell you, based on his own
18 observation, the number of legal spaces that
19 are empty periodically at times that he
20 looked.

21 I think that the tenor of his
22 conversation will be that there aren't many

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1 legal parking spaces that are not already
2 filled all the time. And, as a result, he is
3 going to be able to tie directly the
4 inadequate number of parking spaces -- 31
5 instead of 57 -- to the fact that there simply
6 is not enough legal parking outside the area,
7 and, therefore, there will be illegal parking
8 constantly occurring.

9 Mr. Deyling?

10 MR. DEYLING: Thank you. My name
11 is Robert Deyling. I have been a resident of
12 the Van Ness complex, either South or North,
13 for the last 18 years, since 1991.

14 Before I go to what Mr. Occhialino
15 said, let me just clarify one thing. Since I
16 have lived in this neighborhood since 1991,
17 there has never been parking on either side of
18 Veazey Terrace, never any legal parking there
19 that I know of.

20 I am going to show you or describe
21 to you, there is four sides of this site --
22 Veazey Terrace, where there is no legal

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1 parking; the alley, where of course there is
2 no parking; Connecticut Avenue between Veazey
3 Terrace and Van Ness Street, where there is
4 some legal parking, but it is rushhour only, I
5 mean non-rush only; and Van Ness Street
6 between Howard Law School and Connecticut
7 Avenue, where there is Ward 3 stickered
8 parking.

9 I counted the number of total
10 spaces on the two streets where there is any
11 legal parking -- Van Ness Street and
12 Connecticut Avenue. And depending on how you
13 count, which side of Connecticut Avenue you
14 wish to count, there is a grand total of about
15 54 spaces, or as few as 40 spaces. Let's go
16 for the time being with the 54.

17 I have done some observations, as
18 have other members of our group, over the last
19 several days. We couldn't do much yesterday.

20 It was a snow day; there was no parking
21 allowed on Connecticut Avenue of course.

22 But we checked eight times in a

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1 two-day period -- one was a Sunday, one was
2 today -- so we've got a weekday and a Sunday.

3 Six of the seven times we checked there were
4 -- there was one space, one legal space
5 available on Van Ness Street. Six of the
6 seven times we checked, or five of the seven
7 times we checked, there was at least one space
8 available -- I mean, I'm sorry, no spaces
9 available on Connecticut, except for one time.

10 So, basically, of the seven times
11 we checked, we only found a legal space on Van
12 Ness Street once and on Connecticut Avenue
13 once.

14 You asked about scarcity of -- and
15 adequacy of street parking. We are providing
16 you with some information that goes to that
17 issue.

18 So I have one other point to make
19 in the two minutes I have, and it should only
20 take a moment. This goes to a different issue
21 that was raised last week by our DDOT
22 testimony. I also have personal knowledge of

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1 this. Your DDOT staff testified that he had
2 no knowledge of the Connecticut Avenue
3 transportation study, and this is relevant
4 concerning the variance.

5 I was involved in the Connecticut
6 Avenue transportation study, and I am here to
7 tell you that the recommendations are being
8 implemented as you sit here. And several of
9 the recommendations in the Connecticut Avenue
10 transportation study go to pedestrian and
11 traffic issues on Veazey Terrace and in that
12 alley. And I would urge you not to make your
13 decision in the absence of considering the
14 ongoing implementation of a study that another
15 agency of the D.C. government is committed to
16 implementing.

17 I have been to meetings with
18 Councilwoman Che in the last several months
19 concerning pedestrian issues and
20 transportation issues, and I believe she is
21 also committed to implementing the Connecticut
22 Avenue transportation study.

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1 I want to submit my testimony,
2 which has some excerpts from that study, with
3 your permission.

4 And that is all I have to say.
5 Thank you.

6 CHAIRPERSON MILLER: You should
7 also serve the applicant and the ANC with
8 that.

9 MR. DEYLING: I will.

10 CHAIRPERSON MILLER: Okay.

11 MR. DEYLING: I have several
12 copies, so I'll be glad to do that.

13 CHAIRPERSON MILLER: But what do
14 you mean another agency is implementing that?
15 Wouldn't DDOT be the agency that is
16 implementing?

17 MR. DEYLING: DDOT is implementing
18 the transportation study, yes.

19 CHAIRPERSON MILLER: As in that --
20 Mr. Jennings is with DDOT, is he not?

21 MR. DEYLING: That's what I mean.
22 DDOT. I was distinguishing DDOT from you.

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1 CHAIRPERSON MILLER: Oh, DDOT from
2 us. Okay. I thought you were distinguishing
3 Mr. Jennings.

4 MR. DEYLING: Your decision on the
5 variance as opposed to the relevance of the
6 fact that DDOT is implementing a study. And I
7 don't think your decision should be made in
8 the absence of that fact.

9 Thank you.

10 CHAIRPERSON MILLER: Thank you.

11 MR. DEYLING: Any other questions I
12 would be glad to take.

13 CHAIRPERSON MILLER: Board members?

14 Yes.

15 MEMBER WALKER: Just to be clear,
16 so the one legal space that you identified on
17 Van Ness Street was a space where a Ward 3
18 residential parking permit is required?

19 MR. DEYLING: Yes. And I think
20 it's fairly clear that the reason there often
21 are no spaces on Van Ness Street is it is Ward
22 3 resident parking. Now it does turn over now

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1 and then, but for the most part those cars are
2 there for hours and hours on end.

3 On Connecticut Avenue, of course,
4 those spaces do turn over. The five spaces on
5 the side of Connecticut that the Walgreens
6 would be on, there is five metered spaces on
7 one side, and I believe there are 14 metered
8 spaces on the other side. So those will --
9 those are not Ward 3. Those would turn over.

10 But they are metered, and there is also --
11 there is no parking in rushhour times.

12 MEMBER WALKER: Thank you.

13 MR. DEYLING: I also observed, by
14 the way, numerous illegally parked cars on
15 both streets all seven times we checked,
16 including spaces -- cars parked at fire
17 hydrants on Van Ness Street, as well as near
18 the Howard U Law School where there is some
19 space on Van Ness Street that is beyond the no
20 parking zone.

21 CHAIRPERSON MILLER: What you're
22 submitting, is that excerpts from the

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1 Connecticut Avenue transportation study?

2 MR. DEYLING: Yes.

3 CHAIRPERSON MILLER: By DDOT?

4 MR. DEYLING: Yes.

5 CHAIRPERSON MILLER: Okay. And is
6 it your position that those excerpts will be
7 in contradiction to Mr. Jennings' testimony?

8 MR. DEYLING: Well, he testified
9 that he had no knowledge of the transportation
10 study whatsoever. So that is what -- that is
11 what his testimony was.

12 CHAIRPERSON MILLER: Okay. But he
13 was also, as I understand it, talking about
14 DDOT policy, about not having curb cuts on
15 major roads like Connecticut Avenue where
16 there is pedestrian traffic, and instead
17 putting the curb cut on the residential
18 streets, which is at issue in this case.

19 MR. DEYLING: Right.

20 CHAIRPERSON MILLER: But do those
21 excerpts address that issue?

22 MR. DEYLING: I would have to look

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1 back at the study. It is a big study. I only
2 included excerpts of the recommendations that
3 cover this area, but, yes, I think some of the
4 recommendations do deal with curb cuts in that
5 area, on corners anyway. I don't know about
6 driveway curb cuts. I'd have to look again.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 Any other questions?

10 (No response.)

11 Applicant? No?

12 (No response.)

13 ANC?

14 MS. PERRY: Mr. Deyling, isn't it
15 true that it's not just the number of spaces
16 in the garage -- oh, let me change --

17 CHAIRPERSON MILLER: Are you on?

18 MS. PERRY: It's on. The parking
19 places, when you analyzed them, you did
20 Connecticut Avenue, Van Ness, and Veazey.
21 Isn't it true that there are no spaces on the
22 street? Next to that, also, Wyndham Place has

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1 no legal -- there is only maybe one space on
2 that street that is a valid space?

3 MR. DEYLING: Yes, you're right. I
4 did not count any spaces on Wyndham Place.
5 There might be three or four spaces in front
6 of the UPS store.

7 MS. PERRY: They are metered,
8 though.

9 MR. DEYLING: They are metered
10 spaces, yes.

11 MS. PERRY: Regarding the
12 Connecticut Avenue traffic study, isn't it
13 true that that study was commissioned in
14 response to an ANC recommendation to get --
15 because of all of the congestion in this
16 particular area?

17 MR. DEYLING: Yes. I know that for
18 a fact, because I testified at some of the
19 public meetings involving the development of
20 the transportation study, yes.

21 MS. PERRY: You were here when Mr.
22 Jennings testified, were you not?

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1 MR. DEYLING: Yes. Yes, I was.

2 MS. PERRY: Was it his testimony
3 that talked about not putting a curb cut on a
4 major arterial, or was that just a policy of
5 the Office of Planning? Or wasn't that the
6 Office of Planning testimony?

7 MR. DEYLING: I honestly don't
8 remember.

9 MS. PERRY: It was.

10 (Laughter.)

11 CHAIRPERSON MILLER: The Office of
12 Planning is here. I'm sure they would be
13 happy to respond.

14 MS. PERRY: Okay.

15 MR. DEYLING: Thank you.

16 MS. PERRY: I guess I would have to
17 ask, if I can, because I'm not sure I can
18 testify, but there is no change in policy at
19 DDOT regarding -- I can't. Okay.

20 CHAIRPERSON MILLER: Can I just ask
21 what this Connecticut Avenue traffic study,
22 what is the context for this? I mean, what is

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1 this study? I mean, is it a final study now?

2 MS. PERRY: Yes.

3 CHAIRPERSON MILLER: Who is
4 supposed to implement it? I mean --

5 MR. DEYLING: Yes. It was done I
6 believe in '03 or '04. All of the
7 recommendations -- it is on the DDOT website.
8 You can find it. All of the recommendations
9 were approved and are supposedly being
10 implemented. Some of them have been
11 implemented. I have been watching in the
12 neighborhood as traffic lights have been
13 upgraded, as curb cuts at certain corners have
14 been fixed.

15 Some of those recommendations are
16 recommendations in the Connecticut Avenue
17 transportation study, so I am fairly certain
18 that is why they are being -- those -- that is
19 why those projects are being done, so -- yes.

20 MS. PERRY: Isn't it true that some
21 of those recommendations were short term, some
22 long term, and some involved budget

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1 considerations?

2 MR. DEYLING: Yes. You can read
3 that in the study and -- that's all.

4 MS. PERRY: Okay. No other
5 questions.

6 CHAIRPERSON MILLER: I just want to
7 doublecheck with Office of Planning and make
8 sure -- is there anything you want to add?
9 And maybe you should introduce yourself for
10 the record. I don't think you've done that
11 today.

12 MS. BROWN-ROBERTS: Maxine Brown-
13 Roberts from the Office of Planning. It has
14 been some time since I have read the report.
15 It is an old one, and I wouldn't want to
16 testify about it right now.

17 One of the things I would also like
18 to clarify is that Mr. Jennings, if I remember
19 correctly, stated that he was not involved
20 with that study, but he has reviewed the
21 study. So I just wanted to clarify that.

22 MR. DEYLING: I'm sorry. I might

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1 have mischaracterized what he said. I thought
2 he said he didn't know anything about it, but
3 I --

4 MS. BROWN-ROBERTS: No.

5 MR. DEYLING: -- maybe he said he
6 just wasn't aware of it, or involved in it.

7 MS. BROWN-ROBERTS: Right.

8 MR. DEYLING: Correction. Thank
9 you.

10 MS. BROWN-ROBERTS: Thank you.

11 CHAIRPERSON MILLER: I mean, I
12 heard him say he was aware of it.

13 MR. DEYLING: Okay.

14 CHAIRPERSON MILLER: But he was not
15 involved in creating it.

16 MS. BROWN-ROBERTS: In creating it,
17 that is correct.

18 CHAIRPERSON MILLER: Okay. That is
19 it for your case, is that right?

20 MR. OCCHIALINO: That completes our
21 presentation. I thank you very much for the
22 respect that you have shown to me and to my

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1 witnesses. I very much appreciate this
2 opportunity to be with you and to speak to
3 you, and we look forward to hearing from you
4 eventually.

5 I just want to say that I -- you
6 asked me last week to get authorization for my
7 role, and I have a signed authorization for my
8 role. And I will present it -- after the
9 presentations are over, I will give it to the
10 appropriate person.

11 Again, thank you very much on
12 behalf of the Concerned Citizens of Van Ness.

13 CHAIRPERSON MILLER: Thank you very
14 much. And as we stated before, we will need
15 to get either the original or copies of the
16 exhibits you referred to, and then the other
17 parties will need copies.

18 MR. OCCHIALINO: We have those, and
19 we will present them.

20 CHAIRPERSON MILLER: Terrific.
21 Okay.

22 Now, is there anybody else here who

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1 wishes to testify in opposition to this
2 application? Come forward. Just one person?

3 Anybody else here wants to testify?

4 You might as well come to the table now.
5 There is room at the table. Come on forward.

6 There is room for -- I see three now. You
7 can sit at either table is fine. Is that it?

8 Anybody else wish to testify in opposition to
9 this application?

10 Okay. Whoever is ready to go
11 forward? I think you were first at the table.

12 MS. GREEN: I'm ready.

13 CHAIRPERSON MILLER: Okay. If you
14 could introduce yourself.

15 MS. GREEN: My name is Barbara
16 Green. I am a resident of the Van Ness North
17 Building, where I have resided for 18-1/2
18 years. I am also co-chair of the Concerned
19 Citizens of Van Ness, and it is in that
20 capacity that I am submitting 10 copies, if
21 you need 10, of a petition signed by 146
22 residents of the Van Ness North Building who

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1 quote -- I am quoting now from the language of
2 the petition itself -- "Wish to express our
3 opposition to the proposed construction of
4 Walgreens drug store on the corner of
5 Connecticut Avenue and Veazey Terrace, N.W.

6 "Specifically, we are concerned
7 about the increased traffic on this already
8 overcrowded one-block street, about the
9 inadequate number of offstreet parking spaces
10 that Walgreens intends to make available, and
11 about the number of large delivery trucks
12 arriving in the alley behind 4225 Connecticut
13 Avenue, potentially blocking a well-used
14 vehicular and pedestrian thoroughfare." End
15 of quote.

16 There is a great deal of
17 consternation among the residents of Van Ness
18 North, some of whom are here today and want to
19 talk. We believe that the proposed
20 development will create undesirable change in
21 our neighborhood and will have an adverse
22 impact on our heavily populated area.

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1 We ask that you deny the variances
2 requested by applicant Walgreens.

3 And now I have one other comment to
4 make. One of you asked about enforcement. I
5 think you asked Sharon Buck. I'm sorry, I've
6 forgotten who it was. Somebody asked Sharon
7 Buck if she had ever complained to
8 Enforcement. Was it you?

9 I have complained. About eight
10 years ago, I began to notice that the hook and
11 ladder truck from Engine Company 28, which is
12 based on Connecticut Avenue near Porter
13 Street, was frequently parked on Veazey
14 Terrace, on the north side of the street
15 facing west, facing toward Connecticut Avenue.

16 And it was always at the same time of day --
17 11:30, quarter to 12:00. It wasn't every day,
18 but it was more than twice a week, maybe three
19 times a week on a fairly regular basis.

20 So I called the Mayor's Office --
21 it was Mayor Williams at the time -- and I
22 asked somebody whether that -- I wasn't so

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1 concerned with traffic, but I didn't think it
2 was a good use of taxpayers' money for the
3 fire truck to be sending its people into Giant
4 for grocery shopping.

5 So I asked somebody whom I knew in
6 the Mayor's Office to look into it. And I
7 found out that Engine Company 28 does not have
8 a kitchen, and so those firemen are allowed to
9 leave the fire station to go and buy their
10 groceries.

11 Well, I pointed out there is a
12 MacGruder's grocery store directly across the
13 street from them, and I was told, no, this is
14 -- this is a provision in their union
15 contract, which allows them to use the fire
16 truck and go wherever they want to buy food to
17 be made or eaten at the firehouse.

18 So I am afraid that we are stuck
19 permanently with a fire truck parked on Veazey
20 Terrace. It is not a matter of calling the
21 police and getting them out of there. This is
22 a condition that is written into their

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1 contract, and we are stuck with it.

2 So that's my contribution.

3 CHAIRPERSON MILLER: Thank you.

4 Any questions from Board members?

5 (No response.)

6 Does the applicant have any?

7 (No response.)

8 ANC?

9 (No response.)

10 Okay, good.

11 Next?

12 MS. FEEHERRY: Okay. I'm Mary
13 Feeherry. I live at Van Ness North also. I
14 have lived there for nine years, and I
15 constantly use the alley to walk out to
16 Connecticut Avenue from my apartment onto --
17 to get down to Cleveland Park.

18 And I always have to dodge trucks
19 that are there now, and, as well as that, when
20 you are coming into that alley from the Van
21 Ness -- from Van Ness Street, it is not a
22 straightforward alley. It bends at the

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1 middle, so I don't even attempt to drive my
2 car down there, because I absolutely never
3 know what is going to be coming towards me as
4 I go around that corner.

5 It is very -- there is a lot of
6 traffic congestion there now, and there is --
7 as people have mentioned, there really is no
8 convenient place to park. And it will
9 definitely be a problem if there is even more
10 -- if there is even more parking that is
11 needed and not available. So I really would
12 like not to see this variance granted.

13 Thank you.

14 CHAIRPERSON MILLER: Thank you.

15 Any questions? Questions out here?

16 Ms. Perry?

17 (No response.)

18 Okay. Thank you.

19 Wait. Is your mic on?

20 MS. JONES: Is it on now? My name
21 is Evelyn Jones. I live in the Van Ness
22 North, and I am also a part of the concerned

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1 members' group.

2 My comment is similar to the one
3 that was just made regarding the alley and
4 something I witnessed just a few days ago,
5 just prior to the snow. The dumpster was
6 being emptied at the Van Ness South Building,
7 which is quite a process, because they have to
8 remove the old, bring in the new, and to get
9 it on the conveyor belt.

10 While that car -- truck was there,
11 the regular trash truck, contractors coming to
12 collect from the dumpsters for the stores on
13 the front of Connecticut Avenue, pulled into
14 the alley. But somehow they have a way of
15 maneuvering.

16 In addition to that, down come --
17 down Veazey Terrace comes a storage truck,
18 that is furniture storage, coming with a
19 delivery. It swung or attempted to swing into
20 the alley, realizing it was blocked, no place
21 to go. It backed out and parked on Veazey
22 facing the alley and just stood waiting for

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1 space to become available to go in.

2 My concern is: what would happen
3 now if we had that type of thing at this
4 point, and then we would get Walgreens'
5 delivery trucks, Pepsi delivery trucks, and
6 any other trucks that would be coming to
7 deliver to the store? It would be an
8 impossible mission.

9 So, for that reason, I would also
10 like to speak to denial of the variance.

11 Thank you.

12 CHAIRPERSON MILLER: Thank you.

13 Any questions, Board members?
14 Applicant, no? ANC, no?

15 (No response.)

16 Okay. Okay. That -- Ms. Roddy,
17 that brings us to any rebuttal by the
18 applicant and closing remarks. It is 7:15,
19 and, first of all, I am wondering if you have
20 an idea how much longer -- how long you will
21 take. And then, also, I just want to make
22 sure that people don't have to make phone

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1 calls or anything like that, and that the case
2 is running, you know, over the normal business
3 hours.

4 MS. RODDY: We do have some
5 rebuttal. We would like to bring three
6 witnesses back to testify. I don't anticipate
7 it taking very long; I would say 15 minutes.
8 And our closing remarks are very short; I
9 would say two to three minutes.

10 CHAIRPERSON MILLER: Okay. I don't
11 see anybody saying they can't stay to finish
12 like last week, so I think that we can plan on
13 finishing today. But I would like to have us
14 take a five-minute break, so that, you know,
15 people can have a break, and if they need to
16 make phone calls home or whatever that you
17 have that opportunity.

18 (Whereupon, the proceedings in the foregoing
19 matter went off the record at 7:17
20 p.m. and went back on the record at
21 7:39 p.m.)

22 CHAIRPERSON MILLER: Okay. We're

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1 back on the record.

2 And I just want to confirm
3 something. I think it's our recollection that
4 you have about 25 minutes left for your case,
5 and the rebuttal is included in that. And you
6 have indicated that you anticipate about 20
7 minutes maximum, not including questions from
8 Board members or cross, is that correct?

9 MS. RODDY: That's right.

10 CHAIRPERSON MILLER: Okay.

11 MS. RODDY: We did actually -- we
12 only used I believe it was 24 minutes or 26
13 minutes on our direct. I don't anticipate we
14 would need the 34 minutes, but --

15 CHAIRPERSON MILLER: Oh, okay.

16 MS. RODDY: -- in the event --

17 CHAIRPERSON MILLER: Maybe Mr.
18 Moore was talking about what you used is 24 as
19 opposed to what you had left. All right. But
20 I just --

21 MS. RODDY: My hope is we don't get
22 there, so --

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1 CHAIRPERSON MILLER: Okay, good.
2 All right. We are ready when you are.

3 MS. RODDY: Well, before presenting
4 the witnesses, I did want to address two
5 issues that came up in the ANC, as well as the
6 community's testimony. There was a reference
7 to the fact that we are not the property
8 owners.

9 And, again, I would just like to
10 direct the Board's attention to -- it's on --
11 to Exhibit J of our initial submission of last
12 February where we do have an agent
13 authorization letter allowing us to act as
14 their representative in all of these
15 proceedings.

16 I would also like to address the
17 thought that we needed relief, additional
18 relief for the compact spaces. And we have
19 requested relief under Section 2115 for the
20 compact spaces, and, really, that is part and
21 parcel with the relief that we have requested.

22 Nevertheless, the ANC and the community have

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1 had the plans that we are presenting here
2 since October.

3 These are the plans that we have
4 always discussed with the community and the
5 ANC. So even if you took the position that
6 this was not part and parcel with what we have
7 requested, there can be no detriment to them,
8 because they have been fully aware of the
9 plans and the location of the proposed compact
10 spaces.

11 In the testimony tonight, we
12 haven't heard anything really that indicated
13 that there was an issue with the compact --
14 the contiguity of the compact spaces.

15 So I would actually like to
16 reintroduce Mark Orling, the project
17 architect. Mr. Orling, you had heard
18 testimony earlier this evening regarding the
19 proposed size of the store, and I just wanted
20 to ask you a few questions about that. What
21 is the proposed lot occupancy of the store
22 that you have designed?

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1 MR. ORLING: The occupancy is
2 mercantile, and the square footage that we are
3 proposing is 20,000 square feet.

4 MS. RODDY: And what is that -- is
5 the percentage of how much of the lot does
6 that occupy?

7 MR. ORLING: That's an FAR of about
8 1.4. The allowable FAR under the Zoning Code
9 is 2.5.

10 MS. RODDY: And in the plans that
11 you have in front of you, is not the lot
12 occupancy listed as 69 percent?

13 MR. ORLING: Yes, it is.

14 MS. RODDY: Okay. And what is the
15 permissible lot occupancy in this zone?

16 MR. ORLING: In this zone, we can
17 have 100 percent --

18 MS. RODDY: Okay.

19 MR. ORLING: -- lot occupancy.

20 MS. RODDY: And you had already
21 discussed the FAR. If it were so easy as to
22 move a 15,000 square foot store up to

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1 Connecticut, as we are asked to do by the
2 community and by OP and by DDOT, would that
3 yield any additional spaces in the back, in
4 the rear of the store?

5 MR. ORLING: Really, we looked at
6 quite a number of parking schemes in terms of
7 how you orient the parking. And, really, the
8 only way to get any type of efficiency in the
9 parking is to double load a parking aisle.
10 Because of the dimensions of double loading
11 the parking aisle, we are just not able to
12 achieve that in the back of the lot where
13 things start to constrict, where we have the
14 issue of trying to integrate a loading dock,
15 and where we also have the issue of trying to
16 integrate our ramp down to the garage.

17 MS. RODDY: And if you had moved
18 the store up, would that create any security
19 concerns, then, of having open space in the
20 rear?

21 MR. ORLING: I think that was part
22 of the problem is we didn't want to have

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1 covered space in the back that was, you know,
2 possibly deep, dark space, or even lit space,
3 which was away from public view.

4 MS. RODDY: And we also heard
5 testimony in questioning whether the grade at
6 the site is unique, and also whether that
7 wouldn't be rectified once we graded the site
8 ourselves.

9 MR. ORLING: We have talked about
10 the grade being about three feet, but that is
11 not exactly true. We looked at three feet as
12 what we are hoping for in terms of what
13 happens when we do regrade the site. The site
14 actually has just a little bit more than six
15 feet in terms of total grade between the
16 highest point and the lowest point. And that
17 does create a problem for us.

18 MS. RODDY: And what kind of
19 problem does that create in providing parking?

20 MR. ORLING: The major problem that
21 it has is not necessarily in parking, although
22 it does affect the efficiency of our garage a

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1 little bit. It is the fact that, because of
2 the criteria from DDOT, we were asked to take
3 our entry to the ramp down to the garage and
4 push it as far away from Connecticut Avenue as
5 possible.

6 So we are pushing it up to the high
7 part of the site. We are increasing the
8 travel -- not the travel distance but the
9 percentage and the slope of the ramp getting
10 into the garage. And we are also creating a
11 little bit more difficulty in terms of the
12 actual maneuvering of getting into the garage.

13 MS. RODDY: And why can you not
14 eliminate that six-foot grade difference when
15 the site -- you grade the site for this
16 project?

17 MR. ORLING: Well, you can't just
18 eliminate -- you can eliminate grade issues on
19 your own site, but you have to tie it to
20 public grades. So you have to work with
21 public grades on public property at our
22 property lines.

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1 MS. RODDY: And one of those public
2 grades would be the existing alley at the rear
3 of the property?

4 MR. ORLING: Exactly.

5 MS. RODDY: Okay. And another
6 issue -- thing that we heard testimony about
7 this evening was the cost of going to a second
8 floor of the garage. Are there any other
9 issues in doing another floor below the one
10 that is proposed?

11 MR. ORLING: I mean, not only are
12 we looking at probably close to a million
13 dollars for each level of below-grade parking,
14 but we also have an issue in terms of our
15 proximity to Metro. We don't know for a fact
16 that going down a second level would be
17 feasible.

18 MS. RODDY: And, finally, could you
19 tell me -- we had heard that there were being
20 proposed -- it sounded like a majority of
21 compact spaces, but how many compact spaces
22 are being proposed out of the total number of

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1 spaces?

2 MR. ORLING: 11 out of 31.

3 MS. RODDY: Thank you.

4 I would also like to introduce Jami
5 Milanovkh for some questions regarding the
6 traffic and transportation testimony that we
7 had heard.

8 Jami, you had heard testimony
9 regarding the possibility of providing a curb
10 cut on Connecticut Avenue. Did you -- have
11 you had any conversations with DDOT about
12 their policy in curb cuts from Connecticut
13 Avenue?

14 MS. MILANOVKH: Yes. Actually,
15 based on our recent experience in doing not
16 only this project but other projects in the
17 District, and in dealing with DDOT,
18 specifically with regard to access on those
19 projects, it is our understanding that DDOT's
20 policy with regard to curb cuts is that,
21 whenever possible, curb cuts be located on
22 lower classifications of roadways such as

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1 local streets, not on higher classification of
2 roadways, such as arterials.

3 The reason being is that the
4 primary function of arterials is to move
5 through traffic. The purpose of local streets
6 is to provide access to various developments.

7 MS. RODDY: And can you tell us how
8 you calculated the modal split that you
9 provided in your report?

10 MS. MILANOVKH: I'm sorry. How I
11 calculated what?

12 MS. RODDY: The modal split.

13 MS. MILANOVKH: Oh, yes. The mode
14 split that we used was based largely on data
15 that is contained in WMATA's ridership survey.

16 That data suggests that for a retail site
17 proximate to Metro, as ours is, that
18 approximately 35 percent of the trips would be
19 made by Metro.

20 Knowing that this store also has a
21 very small radius for a customer base, and
22 that there is also prevalent public

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1 transportation as well as residential areas in
2 proximity to the site, we also estimate that a
3 percentage of traffic would be made, trips
4 would be made by foot. And so we estimated
5 the modal split to be the 50 percent that was
6 used in our study.

7 MS. RODDY: Did you look at other
8 Walgreens stores regarding that?

9 MS. MILANOVKH: No, we didn't. And
10 the reason that we did not is because the ITE
11 data is really the industry-wide accepted
12 standard, not just in the District of Columbia
13 but across the United States. Frankly, if we
14 would have used something other than ITE, I
15 suspect that DDOT would not have approved it.

16 And, certainly, if we would have
17 proposed to use Walgreens' data, we would have
18 had to provide substantial data and proof to
19 DDOT that it was actually good data that could
20 be used in lieu of the industry-wide accepted
21 standard.

22 I would also note that ITE

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1 recommends that if you are not going to use
2 their data, and you are going to use local
3 data instead, that a minimum of three sites
4 should be studied, and desirably they would
5 like five local sites to be studied. Again,
6 if you are going to use that data in lieu of
7 the standard rates that are included in their
8 trip generation manual.

9 The reason being is that not all
10 sites have the same characteristics. For
11 example, the CVS at Tenleytown that we heard
12 about this evening may in fact be an anomaly,
13 because there are no other pharmacies in the
14 vicinity of the site, so the customer base for
15 pharmacies are going to just one store as
16 opposed to being split between competing
17 stores.

18 And so what ITE recommends is
19 really to have multiple sites, so that those
20 anomalies can be averaged out.

21 MS. RODDY: And from the testimony
22 that you heard today, how many sites have been

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1 analyzed?

2 MS. MILANOVKH: I believe one was
3 analyzed in terms of actual traffic count data
4 that was collected, and then I heard some
5 testimony about some sales receipts that were
6 collected at another site.

7 MS. RODDY: And can you tell me how
8 you calculated the trip generation data that
9 you had provided at the hearing last week?

10 MS. MILANOVKH: Yes. The trip
11 generation data that we used, again, was based
12 on the industry-wide accepted standard, which
13 is ITE. The data was extrapolated to use a
14 20,000 square foot store, so we didn't -- you
15 know, we didn't limit it to the 14,000 square
16 foot maximum that was testified to earlier.
17 The data was actually extrapolated.

18 And then, that data, again in
19 accordance with standard traffic engineering
20 practice, was adjusted to account for the
21 anticipated non-auto mode split that we expect
22 at this site.

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1 MS. RODDY: And did you -- did DDOT
2 review the report that you submitted?

3 MS. MILANOVKH: Yes, they did.
4 They issued a report dated February 17th,
5 which indicated their support of the
6 application. And I would also like to note
7 that I think that in DDOT's review I don't
8 think they would have provided their support
9 without due consideration of their own traffic
10 study that was done in the Connecticut Avenue
11 corridor study.

12 MS. RODDY: Thank you. I believe
13 those are all of the questions I have for you.

14 And, finally, I would like to
15 present Randall Clarke. He is testifying as a
16 representative of Walgreens.

17 Mr. Clarke, you had heard testimony
18 earlier this evening comparing the proposed
19 Walgreens site with the Tenleytown CVS. Can
20 you describe any differences that were
21 overlooked in that comparison?

22 MR. CLARKE: Sure. There are a few

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1 differences. First, we are talking here about
2 a new construction of a building specifically
3 built to be used as a drug store. And I think
4 there are people here who have a much longer
5 history in the District than I do who know
6 that the CVS in Tenleytown was not built as a
7 drug store.

8 If memory serves, I believe it was
9 built as a hardware store. It was a
10 Hechinger. What was it? I could be wrong,
11 but if -- my memory was that Hechinger was
12 where -- in the building -- well, Sears, then
13 -- it wasn't built for them. I could be
14 completely wrong. I don't believe the
15 building was built for CVS, but I could be
16 wrong. Am I right about that? Okay. I could
17 be wrong. I'll get away from the building
18 itself.

19 I'll talk about some market issues
20 that weren't considered, I don't think, in the
21 comparison. The first -- we have heard a lot
22 of testimony here today about how many people

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1 live in the apartment buildings, in the
2 buildings near this -- near out site at Van
3 Ness. There is a lot of high-density
4 residential. That is not the case in
5 Tenleytown, which may speak to the more
6 vehicular use at that store.

7 I think people know, other than the
8 City Line Condominium, which was built above
9 the former Sears, Hechinger, whatever
10 building, there is not the same kind of
11 density of residential use right -- of high-
12 density residential right there. You get off
13 of Wisconsin; you get the single family.

14 The other thing, and I think it was
15 a comment that Jami just made, about
16 competition. Although there are ancillary
17 pharmacies, the pharmacies in other types of
18 uses, like grocery, I think Robbins has a
19 pharmacy on Wisconsin Avenue, and that sort of
20 thing -- in terms of a freestanding drug store
21 on Wisconsin Avenue, beyond that -- that CVS
22 in Tenleytown I don't believe there is one

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1 until you -- outside of the -- until you get
2 outside of the District, as opposed to out
3 site, where if you -- I could be wrong. Is
4 there another one on Wisconsin?

5 CHAIRPERSON MILLER: There is.

6 MR. CLARKE: Okay.

7 CHAIRPERSON MILLER: In Cleveland
8 Park there is Giant pharmacy.

9 MR. CLARKE: That is south of
10 Tenleytown.

11 CHAIRPERSON MILLER: Oh, you said
12 north?

13 MR. CLARKE: I said north of --

14 CHAIRPERSON MILLER: Oh, okay.

15 MR. CLARKE: -- north of the site.

16 And that is because we look at a lot of
17 evening traffic at the drug stores.

18 As opposed to our site, where if
19 you stop the line at Veazey, if you count the
20 CVS that is also on Van Ness, there are three
21 CVS stores between our site and the D.C. line.

22 CVS -- I am not talking about other things

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1 that may have a pharmacy in them.

2 So I think there is a competition
3 factor in here, too, that may call on that
4 store drawing from a larger area, and,
5 therefore, having more vehicular traffic.

6 And then, you know, there are other
7 things. They were able -- that store has the
8 big parking it has because it has parking on
9 the roof. Again, something that actually DDOT
10 brought up with us in one of our early
11 meetings, but something we didn't think was
12 appropriate in this site where there are
13 taller high-density residential buildings
14 behind us that would be looking down on that
15 parking lot.

16 So that is kind of what I have to
17 say about that, from a market standpoint.

18 MS. RODDY: Finally, we had heard
19 some testimony, and we have the chart that was
20 presented previously, that goes toward 3,000
21 trips being provided -- or walk-up -- I'm
22 sorry, 3,000 trips, that is based on the sales

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1 of the CVS, of the Giant. And I was wondering
2 if you could comment on the assumption that
3 was made.

4 MR. CLARKE: Sure, sure. I -- and
5 just let me interject here, I was -- I really
6 appreciated all of the work that the community
7 put in. It looks like they put a lot of work
8 into this.

9 The one thing we thought that Ms.
10 Milstein didn't consider there is the -- it
11 failed to consider the cannibalism, the fact
12 that we are putting another drug store there.

13 Apparently, the anticipation was that we are
14 going to generate an additional 3,000 drug
15 store users in the community. Part of the
16 reason Walgreens wants to be there is because
17 there are people already there, and there is
18 already a market there.

19 And, you know, we -- if we are able
20 to pull 50 percent of the users out of that
21 CVS, I think -- which is I think a very
22 reasonable assumption, I think we are back

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1 into the numbers that we talked about. They
2 are talking about their I think 1,700 trips.
3 If we pulled half their users, that would be
4 1,500 trips, based on what was talked about
5 today.

6 MS. RODDY: So you're saying it's
7 not a cumulative, our 1,700 trips plus their
8 3,000?

9 MR. CLARKE: We don't think we are
10 adding another 1,700 trips to their 3,000.
11 And it would be different if we were building,
12 you know, something that is a destination
13 retailer, a restaurant, a target, you know,
14 something that is a big destination retailer.

15 These are neighborhood community
16 retailers. If it wasn't, we wouldn't be
17 building a store a mile south. This is
18 something that is supposed to pull from the
19 immediate area, and we don't think we will be
20 generating an additional set of trips.

21 MS. RODDY: Thank you. That is all
22 that we have for rebuttal.

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1 I have closing comments when --

2 CHAIRPERSON MILLER: Right. Why
3 don't we take questions first.

4 Board members have questions?

5 (No response.)

6 Well, I have a question right now
7 with respect to traffic. I think we heard a
8 figure from the neighbors that Connecticut
9 Avenue has 55,000 vehicles per day traveling
10 on that road. How does that factor into, if
11 at all, a determination of how many parking
12 spaces might be appropriate -- adequate for
13 the Walgreens?

14 MS. MILANOVKH: Well, I think the
15 argument was that there is a large volume of
16 traffic on Connecticut Avenue, and so you
17 would anticipate that a fair amount of the
18 traffic going to the Walgreens would be
19 traffic that is already on the road, on their
20 way to another destination and stops at the
21 Walgreens on -- say on their way home from
22 work, for example.

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1 I think we kind of broached this
2 subject last week, and my response to that is
3 -- it was and still is -- we acknowledge that
4 there is a portion of traffic that would be
5 passby traffic. We actually did not take that
6 into consideration, because it would actually
7 -- what we did was assume there would be no
8 passby traffic, because that was a worst-case
9 scenario. And our analysis actually assumed
10 that all of the trips would be added to the
11 Connecticut Avenue roadway and the Veazey
12 Terrace intersection.

13 In terms of parking, though, I
14 mean, those trips that we assumed would be
15 coming in and out of the driveway, be they
16 passby trips or be they new trips to the
17 roadway, those -- we assumed those were going
18 into the garage. So the fact that, you know,
19 Connecticut Avenue is a high traveled roadway
20 actually doesn't -- doesn't alter our
21 analysis. That was taken into consideration
22 in the parking analysis that we did.

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1 CHAIRPERSON MILLER: Okay. Maybe I
2 missed it because it's late, but let me just
3 ask you again. I mean, in your analysis, does
4 it matter that a road has 55,000 per day
5 versus 25,000 per day, in factoring in the
6 adequacy of the number of parking spaces?

7 MS. MILANOVKH: I mean, I think
8 that, you know, there could be an argument
9 made that the higher the volume of traffic on
10 a particular roadway you may think that, you
11 know, the higher that percentage of passby
12 traffic would be.

13 I think characteristics of the
14 store and the size of the store have more to
15 do with it than the actual volume of traffic
16 on the roadway. But, again, you know, we took
17 the 50 percent non-auto mode split off, but we
18 did not evaluate passby traffic per se. So,
19 you know, whether the passby percentage is 30
20 percent or 40 percent, that has already been
21 taken into account in our analysis, in our
22 parking analysis.

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1 CHAIRPERSON MILLER: Another
2 question came up about the density of this
3 area, you know, in the context that, well,
4 there are all of these buildings that have
5 uses with people in them that will walk to
6 Walgreens -- you know, UDC, Howard, the
7 apartment buildings. It is very dense there.

8 Is there a correlation between that and a
9 decrease in vehicles who will drive there?

10 MS. MILANOVKH: Well, I think there
11 is. You know, if you have a site that is not
12 surrounded by residential uses, for example,
13 within walking distance, then people are going
14 to get in their car and drive to those sites.

15 I think the fact that there are
16 these residential buildings adjacent to the
17 site, and there is, you know, the Metro
18 station, where you have a lot of pedestrian
19 traffic to and from, and then there is UDC
20 across the street, I think the fact that all
21 of those uses are within walking distance of
22 this site, you know, that is going to -- that

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1 is going to keep people out of their cars.
2 They are not going to drive, you know, to go
3 across the street to the Walgreens. It would
4 be easier to walk.

5 CHAIRPERSON MILLER: I have one
6 other question, and that is there was mention
7 of another Walgreens that will be coming on
8 board on Connecticut Avenue in Cleveland Park.

9 Does the fact that there will be another
10 Walgreens on Connecticut Avenue there impact
11 at all the number of cars expected to go to
12 the Walgreens at this site?

13 MS. MILANOVKH: Yes. As we talked
14 about last week, the market area for this
15 Walgreens is actually reduced because of the
16 proximity of the Walgreens, the other
17 Walgreens. And I think we talked about a
18 market area of about a half a mile.

19 And so when you are looking at
20 whether people were going to choose to walk or
21 drive to a store, obviously, if there is
22 another store, you know, adjacent to this one,

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1 that is going to limit the distance from which
2 people are going to travel, which would make
3 it more likely that people would travel by
4 foot.

5 CHAIRPERSON MILLER: Thank you.
6 Any other questions?

7 MEMBER DETTMAN: Thank you. One
8 question.

9 Something I have been curious about
10 is, when the building was brought closer to
11 Constitution Avenue -- or Connecticut Avenue,
12 why did that translate into an expansion of
13 your building program?

14 MR. ORLING: Well, part of that was
15 not just bringing the building closer to
16 Connecticut Avenue. It was also losing our
17 drive-thru. And I think there was a thought
18 there that that might require a little bit
19 more space, since everything is going to be
20 happening in the store rather than cars
21 driving through. I mean, beyond that, it was
22 really achieving what we felt we could

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1 reasonably achieve on the site.

2 I mean, this is not atypical from
3 the standpoint of area for a Walgreens store,
4 but it is atypical from the standpoint of it
5 being a two-story store. So there is a
6 certain amount of inefficiency due to vertical
7 circulation.

8 MEMBER DETTMAN: But at one point
9 Walgreens felt that a slightly over 15,000
10 square foot store worked. And when DCOP, for
11 purely design purposes, asked you to move the
12 building forward, it increased by 5,000 square
13 feet, which increased your parking requirement
14 by maybe 17 spaces.

15 MR. ORLING: But it is also not
16 exactly apples to apples, because we have a
17 covered loading dock, we have some covered
18 parking in the back, partially covered. I
19 mean, it is -- we have increased square
20 footage a little bit, and I guess I would just
21 say that that is really how it worked out.

22 MR. CLARKE: If I could add just

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1 two things. One was there is a viability
2 issue in terms of the business model of the
3 store. That was a financial impact on the
4 project when we were asked to lose the drive-
5 thru, which was something that we believe we
6 had by right in this zone.

7 The second thing is that -- and
8 Mark can speak to this a little more -- but I
9 believe in one of those attempts to meet some
10 of the concerns that Planning had about the
11 store not being right up on Connecticut
12 Avenue, the second floor was larger than the
13 first floor, am I right, Mike? Mark? Because
14 we --

15 MR. ORLING: Yes.

16 MR. CLARKE: We brought the second
17 floor toward Connecticut Avenue, so there was
18 a presence on the street. And the surface
19 parking was then covered by that.

20 So once we were told that that was
21 not acceptable, you know, it -- this is a much
22 more efficient use of the footprint, since we

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1 couldn't have those parking spaces on the
2 street.

3 MEMBER DETTMAN: Okay. And did you
4 -- when you brought the lower floor up to
5 Connecticut Avenue, did you see if actually
6 the program, the 15,000 square foot program,
7 would work with that, basically by shrinking
8 the back of the building?

9 MR. ORLING: Yes. I mean, in terms
10 of the program the way that Walgreens works is
11 you give them a shell, and they start to lay
12 out the store in terms of fixtures and the
13 various functions. So, yes, it went through a
14 testing process.

15 MEMBER DETTMAN: And the result was
16 essentially that it wasn't economically
17 feasible for Walgreens.

18 MR. CLARKE: Right. I think Mark
19 said it best. It wasn't apples to apples to
20 make that change, and they needed the space.

21 MEMBER DETTMAN: Okay. Thank you.

22 CHAIRPERSON MILLER: Other

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1 questions?

2 (No response.)

3 I guess I have just one more with
4 respect to the parking spaces, the adequacy of
5 the parking spaces, the 31, it will be
6 adequate. Can you just summarize and just in
7 general terms, you know, why 31 spaces is
8 adequate for that site?

9 MS. MILANOVKH: Yes. In order to
10 evaluate that, we, again, relied on the
11 industry-wide accepted standard, which is ITE,
12 and we looked at the data, the actual data
13 that they publish, that gives parking rates
14 for pharmacies without drive-thru windows.

15 And what that data showed was that
16 for a store of this size, 37 spaces would be
17 required. But, you know, we didn't want to
18 look at that in just a vacuum. We recognize
19 that that data is based on suburban data, not
20 necessarily urban data. So it was appropriate
21 to adjust that number to account for the fact,
22 as we have talked about, that a lot of people

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1 will be coming to the store by some other
2 mode, mostly by foot, that they would not be
3 in their automobile.

4 So when we looked at, you know, ITE
5 data suggesting 37 spaces, knowing that that
6 would be conservative because this is an urban
7 location, and we saw that 31 spaces were
8 proposed, our conclusion was that 31 spaces
9 would be adequate to accommodate the demand.

10 CHAIRPERSON MILLER: Thank you.
11 Okay.

12 Any other Board questions?
13 (No response.)

14 Cross? Does the ANC have any cross
15 on what was just testified to in rebuttal?
16 Okay.

17 MS. PERRY: Mr. Orling, I believe
18 you mentioned that the store is going to be
19 20,000 square feet approximately?

20 MR. ORLING: Yes.

21 MS. PERRY: How many square feet
22 are on the first floor?

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1 MR. ORLING: I believe it's 9,600.

2 MS. PERRY: How many on the second
3 floor?

4 MR. ORLING: It's about 10,400.

5 MS. PERRY: You keep saying
6 "about." I mean --

7 MR. ORLING: Well, that's -- that's
8 exactly what we have right now. Those are
9 exact numbers.

10 MS. PERRY: Okay. And you just
11 said "right now." Is there a possibility that
12 this store is going to get larger?

13 MR. ORLING: No. If we got larger,
14 we'd have to have another loading dock.

15 MS. PERRY: Okay.

16 MR. ORLING: So we can't do that.

17 MS. PERRY: Okay. Why is none of
18 the garage area counted in the square footage?

19 MR. ORLING: Because a garage area
20 below grade is excluded from square footage in
21 terms of parking count and FAR.

22 MS. PERRY: Okay. I believe I

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1 heard you mention that you didn't want to put
2 parking places in the back, because it was
3 dark and you had safety concerns.

4 MR. ORLING: We have put some
5 parking places in the back, but we didn't want
6 to put it underneath the building and put it
7 into a recessed area or an enclosed area.

8 MS. PERRY: Okay. But you could
9 have put more parking places in the back. It
10 wasn't a security question.

11 MR. ORLING: We could have done it,
12 but we could not have done it economically,
13 again, because we don't have the ability to
14 double load a parking aisle there.

15 MS. PERRY: Okay.

16 MR. ORLING: It would be single
17 loaded, and we would be using a lot of space
18 for very few parking spaces.

19 MS. PERRY: Okay.

20 MR. CLARKE: And if I might, just
21 from working with Walgreens on their stores,
22 that is a concern for them in terms of

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1 security.

2 MS. PERRY: Isn't it true, though,
3 that there is more than 165 apartments facing
4 the back of your store, and that there are
5 lights facing the rear of the store?

6 MR. ORLING: I can't say how many
7 apartments there are, but we have taken our
8 building, and we have recessed it back from
9 the alley. The apartments are also recessed
10 back from the alley. All of our lighting is
11 full horizontal cutoff or in soffit, so it is
12 not going to be shining in anybody's face.

13 MS. PERRY: Okay. I'm looking here
14 at a sheet that is put out by the District of
15 Columbia Office of Zoning. In it it talks
16 about the tests that must be proved by the
17 applicant for a variance. And a financial
18 hardship for the owner in using the property
19 consistent with the zoning regulations --

20 MS. RODDY: I object. Is there a
21 question in this?

22 MS. PERRY: Yes. Isn't it true

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1 that that requires a use variance --

2 CHAIRPERSON MILLER: Okay. I
3 think --

4 MS. PERRY: -- for financial
5 difficulties --

6 CHAIRPERSON MILLER: Is that for
7 the --

8 MS. PERRY: -- for variance?

9 CHAIRPERSON MILLER: Is that for
10 the attorney? Because that's not what --

11 MS. PERRY: Well --

12 CHAIRPERSON MILLER: -- any of
13 these witnesses testified to, so I think that
14 is out of order.

15 MS. PERRY: Well, I believe I heard
16 two of the witnesses testify to financial
17 impacts.

18 CHAIRPERSON MILLER: But you are
19 asking for a legal conclusion, and I don't
20 think that is appropriate.

21 MS. PERRY: Okay.

22 CHAIRPERSON MILLER: You can argue

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1 that in your case.

2 MS. PERRY: Okay. Isn't it true
3 that when you look at the CVS pharmacy in
4 Tenleytown that there is a high-rise apartment
5 building right across the street, sitting on
6 top of the old Sears Building?

7 MR. CLARKE: I did mention the City
8 Line. That is the name of that building.

9 MS. PERRY: City Line. So there is
10 a residential base at that location also.

11 MR. CLARKE: There is one high-rise
12 residential building recently constructed,
13 constructed after the CVS, not --

14 MS. PERRY: And you heard -- and
15 isn't it true that American University also
16 has a dormitory within about two blocks of the
17 site, within walking distance?

18 MR. CLARKE: I heard that today. I
19 was not aware of that.

20 MS. PERRY: And isn't it true that
21 there are also homes across -- around the CVS
22 store, homes on Albemarle Street and other --

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1 MR. CLARKE: I think I did
2 reference townhomes and single-family homes.

3 MS. PERRY: Okay. So there is a
4 population there also that walks to the
5 stores, or could potentially walk.

6 MR. CLARKE: I think the issue
7 there was a matter of density, not that there
8 are -- I did mention that there are homes
9 there, single-family and some townhomes off of
10 Brandywine. The issue I was referring to was
11 density.

12 MS. PERRY: Okay. Ms. Milanovkh,
13 isn't it true that there -- where in the DDOT
14 report does it say that curb cuts should now
15 be taken off of the arterials and put onto
16 residential streets? Is that a published DDOT
17 policy, or is that just a draft?

18 CHAIRPERSON MILLER: Did you
19 testify to the DDOT --

20 MS. PERRY: Curb cuts. Yes, she
21 testified --

22 CHAIRPERSON MILLER: -- report?

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1 MR. ORLING: -- about DDOT's
2 report, that DDOT recommended --

3 CHAIRPERSON MILLER: Oh, in DDOT's
4 report in this case?

5 MS. PERRY: Yes.

6 MS. MILANOVKH: They actually do
7 not reference that policy in their report
8 regarding this case.

9 MS. PERRY: Okay. So that wasn't
10 in the DDOT report. Is it a published DDOT
11 policy to take the curb cuts off of arterials,
12 or is that currently just in draft form?

13 MS. MILANOVKH: It is in draft
14 form. I believe that it has actually been
15 finalized, but I would have to verify that
16 with --

17 MS. PERRY: And has it been
18 subjected yet to public comment?

19 MS. MILANOVKH: That I don't know.

20 MS. PERRY: Okay. You also mention
21 that -- aren't there -- isn't it true that
22 there are also different classifications of

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1 residential streets?

2 MS. MILANOVKH: Not to my
3 knowledge. The functional classifications
4 that I am aware of and that we talked with the
5 DDOT about on every project are arterials,
6 collectors, and local streets. There are --

7 MS. PERRY: Okay.

8 MS. MILANOVKH: -- different
9 classifications of arterials.

10 MS. PERRY: And collector streets
11 also.

12 MS. MILANOVKH: I don't believe
13 there --

14 MS. PERRY: Isn't it true that it's
15 a collector street that feeds into an arterial
16 and can handle more traffic than the
17 residential streets?

18 MS. MILANOVKH: Collector streets
19 typically handle higher volumes than local
20 streets. That is correct.

21 MS. PERRY: Okay. You referenced
22 the DDOT report. Isn't it true that in the

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1 DDOT report -- and I'm looking at it -- isn't
2 it true that DDOT originally recommended that
3 you have deliveries to this store, and that
4 you do them in the early -- before 6:00 or
5 after 10:00?

6 MS. MILANOVKH: I don't -- not
7 based on the testimony that we have presented.

8 MS. PERRY: It was testified in the
9 DDOT report.

10 CHAIRPERSON MILLER: No, she didn't
11 testify on that part of the DDOT report.

12 MS. PERRY: Okay.

13 CHAIRPERSON MILLER: That is beyond
14 the scope.

15 MS. PERRY: Okay. Mr. Orling,
16 aren't you building across a building
17 restriction line with your building? You
18 mentioned that --

19 MR. ORLING: No.

20 MS. PERRY: You are not building
21 across the building restriction line on Veazey
22 Terrace, your underground parking lot?

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1 MS. RODDY: I would object to this,
2 again, based on his testimony presented, and
3 the fact that the public space is not a zoning
4 issue that would go before the Public Space
5 Committee.

6 CHAIRPERSON MILLER: Okay. I don't
7 think he did testify to this. This is very
8 limited to what they testified to on rebuttal.

9 MS. PERRY: Well, he talked about
10 the lot and, you know, the parking lot and the
11 size of the store and why they -- when they
12 pushed it up, so he did testify on the
13 building, and that -- I mean, I can let it go
14 if you want me to. I'll let it go for now.

15 CHAIRPERSON MILLER: Thank you.

16 MS. SOLOMON: With reference to the
17 ITE traffic model, do you dispute the earlier
18 testimony, the conversation that took place
19 with the Executive Director of ITE, who stated
20 that the model you used is only good for up to
21 14,000 square foot -- feet stores? And how do
22 you justify it? And that it's not appropriate

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1 in this situation?

2 MS. MILANOVKH: Well, I wasn't part
3 of the conversation, so I don't know what all
4 was talked about, in what context it was
5 talked about. But it is not unusual or out of
6 the norm to extrapolate the data to a slightly
7 higher size use.

8 The 14,000 square feet that was
9 referenced earlier is the upper range of the
10 limits of the studies that were conducted to
11 publish the data in the ITE trip generation
12 manual. But, again, it is common practice to
13 extrapolate that data based on a slightly
14 higher square footage of use.

15 MS. SOLOMON: But how do you
16 respond when the Executive Director himself
17 says, "This is not an appropriate model"? I
18 would just like to know how you -- you know,
19 how you would respond to that?

20 CHAIRPERSON MILLER: Let me -- you
21 can answer this question if you want, but I --
22 I'm just wondering if this is appropriate

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1 rebuttal, because you didn't testify on
2 rebuttal to this.

3 MS. RODDY: I would also object
4 based on the fact that we don't have the
5 Executive Director here to substantiate the
6 fact that this was the conversation and those
7 were his comments.

8 CHAIRPERSON MILLER: Okay.

9 MS. SOLOMON: My other question has
10 to do with, in general, the rebuttal I've
11 heard focuses a lot on the earlier arguments
12 about uniqueness of the site and constraints
13 of the site.

14 And I would like to draw attention
15 back to earlier testimony about how -- you
16 know, whether or not these are -- these are
17 self-imposed constraints, no one is -- no one
18 is forcing Walgreens to build on this site.
19 You know, the property is under contract. No
20 one is -- there is choice involved here, and
21 it reminds me of the earlier testimony about
22 shoe size.

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1 And how would you respond to
2 whether or not this is really a size 6 shoe
3 and a 12 -- you know, size 12 foot?

4 MS. RODDY: I don't believe we
5 provided that testimony.

6 MS. SOLOMON: No, you didn't.

7 MS. RODDY: So I don't believe that
8 is in the scope of this cross examination.

9 CHAIRPERSON MILLER: I would agree,
10 because they didn't talk about constraints and
11 uniqueness in this rebuttal. This is only
12 about rebuttal. It's not a time to go revisit
13 earlier testimony.

14 MS. SOLOMON: Well, no, all of this
15 was talked about in their rebuttal, I mean, in
16 terms of the constraints about how -- you
17 know, the parking lot.

18 CHAIRPERSON MILLER: Okay. Why
19 don't you tie it to what he testified to as a
20 constraint? And refresh my memory, because I
21 -- I mean, I remember the grading, they talked
22 about the grading.

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1 MS. SOLOMON: They talked about the
2 grading. There was one before the grading.
3 Also, whether or not you could potentially go
4 down two floors to build sufficient parking
5 lot. It makes me ask the question: is this
6 really an appropriate site for the store's
7 needs, or are you trying to take a site that
8 is not appropriate and, you know, trying to
9 achieve this through variances? I guess
10 that's the argument -- question.

11 MR. ORLING: Well, when I testified
12 about FAR, the city allows you to build to 2.5
13 FAR. We are at 1.4. Seems like that is a
14 size 6 shoe in a size 12 envelope, and we
15 can't get up to a size 12, because of
16 constraints and uniqueness of the site.

17 MS. SOLOMON: Oh. And I would like
18 to ask one more question that has been asked
19 but I don't think sufficiently answered. It
20 has been asked a few times, and I still
21 haven't heard how the pedestrian density or
22 the near density of the population surrounding

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1 the store impacts or reduces driving visits,
2 and why it wouldn't -- why the assumption
3 wouldn't be that it is strictly additive?

4 MS. MILANOVKH: I'm not sure I
5 understand the question. Maybe there is two
6 questions in there.

7 The market area for a store such as
8 Walgreens, particularly with the proximity of
9 another Walgreens nearby, is -- I believe we
10 have indicated -- Randall, you can correct me
11 if I'm wrong, but I believe it is a half mile,
12 which lends itself to people walking to the
13 store.

14 The base data that we used to
15 estimate the trip generation is based on data
16 available across the United States, but in
17 areas where the walkability to the site is
18 reduced, and in areas where there is little or
19 no public transportation. So when we have
20 that baseline trip generation number, that is
21 overestimating the number of vehicles coming
22 to and from this particular site.

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1 So given the characteristics of the
2 site, it is appropriate to apply a non-auto
3 mode split to reduce the number of vehicles
4 that would be coming to and from the site.

5 MS. SOLOMON: And I guess my answer
6 to that would be it still doesn't --

7 CHAIRPERSON MILLER: Well, it's
8 not --

9 MS. SOLOMON: No, that's okay.

10 CHAIRPERSON MILLER: Okay. Is
11 there another question, or is that it?

12 MS. PERRY: I have one.

13 CHAIRPERSON MILLER: Okay.

14 MS. PERRY: Is there any way of
15 estimating how many compact cars will come
16 versus how many SUVs? Have you studied our
17 area, or the --

18 MS. MILANOVKH: I am not aware of
19 any studies that would address that issue.

20 MS. PERRY: Okay. So you don't
21 know whether the 11 compact spaces, whether
22 the 20 spaces would be enough?

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1 MS. RODDY: I think it is -- I
2 don't think we testified to that in our
3 rebuttal, but I would also -- I guess I would
4 defer to either Mark or to Jami regarding the
5 size of the compact spaces that are being
6 provided.

7 MS. PERRY: I will defer, then,
8 because I -- we have heard that, you know,
9 argument.

10 You mentioned in here that you
11 expect a 50-50 split, and you don't expect to
12 get people driving in, or, you know, get a lot
13 of those cars. Mr. Orling, isn't it true that
14 it is part of the design of the store -- since
15 you have talked about the design of the store,
16 I think I can go here, I'm not sure -- that
17 you have a tickertape sign that is going to
18 advertise the sales on the corner? It is one
19 of those things like the stock market has?

20 MR. ORLING: Yes. That was the
21 desire of Walgreens.

22 MS. PERRY: It was the desire of

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1 Walgreens. So isn't that going to attract
2 cars on Connecticut Avenue to make them stop?

3 MR. ORLING: I think, you know, the
4 --

5 MS. RODDY: I would object to this.
6 The signage really is not at issue in this
7 case.

8 MS. PERRY: No, but whether you --

9 CHAIRPERSON MILLER: It wasn't
10 testified to in rebuttal. That's for sure.

11 MS. PERRY: No. But, I mean, when
12 you say that you are not trying to attract
13 cars from Connecticut Avenue, I mean, that is
14 testified to.

15 CHAIRPERSON MILLER: Did you
16 testify you were going to try to attract cars?

17 MS. PERRY: No, but --

18 CHAIRPERSON MILLER: No. They
19 didn't testify to that.

20 MS. PERRY: -- Mr. Orling said
21 that --

22 CHAIRPERSON MILLER: Well, I'm

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1 getting mixed signals here then.

2 MS. PERRY: Ms. Milanovkh did.

3 CHAIRPERSON MILLER: Did you
4 testify you didn't want cars to come into
5 Walgreens?

6 MS. PERRY: No. They said that
7 they are going to -- you know, it is going to
8 be a base, mostly pedestrian, because, you
9 know, it is just going to be cars coming down
10 Connecticut Avenue. That they are not trying
11 to attract more cars to come into the -- they
12 don't anticipate more cars coming into the
13 site.

14 MR. CLARKE: I do think it is
15 probably questionable whether we brought this
16 up, but I think what I said was that we are
17 not trying to attract new cars to the area.
18 What we are trying to do is attract people who
19 are currently going to CVS or cars that are
20 currently on the road.

21 So I think if you look at even
22 their data, it shows a certain number of

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1 vehicular trips going to -- you know, that are
2 generated by the current CVS. I think we may
3 have said something about cannibalizing CVS.
4 I think we said something about getting people
5 who are already in the area.

6 I think it is probably also fair to
7 note that the -- the reader board signs --
8 that's what we call those -- that was
9 referenced is also something that would be
10 visible to pedestrians across the street,
11 across Connecticut Avenue. So I just -- I
12 would question whether it -- I would question
13 the premise that that sign means we are trying
14 to generate new traffic off of Connecticut
15 Avenue.

16 MS. PERRY: Okay.

17 CHAIRPERSON MILLER: Is that it?
18 Okay. Thank you.

19 And the opposition parties? Sir,
20 is your mic on?

21 MR. OCCHIALINO: Mr. Orling, you
22 testified with commendable concern for the

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1 safety of people who would otherwise be
2 parking in the back, because it would not be
3 particularly safe to park back there if there
4 was an overhead hang, is that correct?

5 MR. ORLING: From the standpoint of
6 crime, yes.

7 MR. OCCHIALINO: Could you tell me,
8 what would stop criminals from going down this
9 unattended 27-person parking lot and
10 committing the crimes that you fear might be
11 committed in the back?

12 MS. RODDY: I would object to this.
13 We didn't testify to the crime, the potential
14 crime in the garage.

15 MR. OCCHIALINO: He testified to
16 potential crime with regard to parking.

17 MS. RODDY: We testified --

18 CHAIRPERSON MILLER: No. He
19 testified to potential crime with regard to
20 why they weren't putting parking spaces in the
21 recessed area in the back. So that's what you
22 can challenge, but I don't think you can

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1 challenge where -- the other places that they
2 are having --

3 MR. OCCHIALINO: Very good. Thank
4 you.

5 CHAIRPERSON MILLER: -- parking.

6 MR. OCCHIALINO: You mentioned, Mr.
7 Orling, that you abandoned the drive-thru
8 parking -- the drive-thru prescription pickup.
9 Is that correct?

10 MR. ORLING: We were heavily
11 persuaded to, yes.

12 MR. OCCHIALINO: And does that mean
13 that there will be fewer or more likely more
14 people who will have to park, since there is
15 no drive-thru?

16 MR. ORLING: I am not a
17 transportation expert. I can't answer that.

18 MR. OCCHIALINO: Did you -- Ms.
19 Milanovkh, can you answer that as an expert?

20 CHAIRPERSON MILLER: Was that
21 testified to on rebuttal?

22 MS. RODDY: No, it was not.

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1 CHAIRPERSON MILLER: Okay. Let's
2 -- we need --

3 MR. OCCHIALINO: No, no, it was.

4 CHAIRPERSON MILLER: It's 8:23.
5 Did someone testify to not having a drive-thru
6 having some correlation with the number of
7 parking spaces?

8 MS. RODDY: No. We testified to
9 the drive-thru with regards to the size of the
10 store, and went into the economics of
11 Walgreens is what the testimony presented was
12 about.

13 CHAIRPERSON MILLER: Is this
14 related to the economics?

15 MR. OCCHIALINO: If you feel that
16 it's not appropriate, I'd be happy to drop it
17 at this point. I think I made my point.

18 CHAIRPERSON MILLER: Okay. Okay.
19 Thank you.

20 MR. OCCHIALINO: You also testified
21 that you had real concerns about going down to
22 a second level in order to make the required

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1 number of parking spaces. And you told us
2 that it would be economically infeasible to do
3 so. Do you have data that demonstrates the
4 infeasibility of that? Did you actually do
5 studies that you could produce?

6 MR. ORLING: We haven't done any
7 studies. We did estimates based on square
8 footage.

9 MR. OCCHIALINO: So you have no
10 studies as such?

11 MR. ORLING: We have -- other than
12 cost estimates, which give us an idea of,
13 really, what the additional costs would be.

14 MR. OCCHIALINO: Thank you. And
15 you testified that you "don't know if Metro
16 poses a problem with going down two levels."
17 In all of your work, you never found out
18 whether or not going down two levels would
19 require --

20 MR. ORLING: We found out that we
21 do not have a problem going down one level.
22 We never really anticipated going down two

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1 levels.

2 MR. OCCHIALINO: So you never
3 actually did a study about two levels?

4 MR. ORLING: No.

5 MR. OCCHIALINO: Thank you.

6 CHAIRPERSON MILLER: Could you
7 clarify that? You said you did an estimate.

8 MR. ORLING: We did a cost estimate
9 based on square footage to see what the cost
10 of a second level would be. But we didn't
11 contact Metro to find out what kind of
12 structural issues we might have in going down
13 a second level, because of our closeness to
14 the Metro tunnel.

15 MR. OCCHIALINO: In other words, it
16 is not relevant to the question of whether to
17 go down a second level, because you did not
18 take it into consideration. You don't know
19 the answer to the question.

20 MR. ORLING: That's correct. I
21 don't know the answer.

22 MR. OCCHIALINO: Thank you.

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1 Ms. Milanovkh, you testified at
2 some length about both the trip generation
3 handbook and the ITE trip generations
4 generally, and I would like to just refer you,
5 with regard to your testimony and rebuttal, to
6 two points that are at page 20 -- and I am
7 just going to refer to them, but they refer to
8 your testimony.

9 I just have a little bit of
10 difficulty when you say that the 55,000
11 persons who are going to be driving through
12 Connecticut, past Connecticut, down
13 Connecticut, and up Connecticut Avenue each
14 day, will not be a problem. And I'm beginning
15 to see how that came to be, because you said
16 in your testimony just now that you are not
17 counting any passby trips. Is that correct?

18 MS. MILANOVKH: Yes. I think you
19 are misinterpreting what I said. If we had
20 included passby trips, the table you see on
21 page 20, that's Table 5-1, would have included
22 another line that would have said "passby

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1 trips," and it would have shown yet another
2 reduction.

3 So when I say we did not include
4 passby trips, what I mean is that we were
5 actually conservative, because we did not take
6 another reduction on top of the 50 percent
7 reduction that we were taking for the non-auto
8 mode split.

9 MR. OCCHIALINO: But when you say
10 that you didn't take into account these passby
11 trips, you are saying -- and I am quoting now
12 -- "using adjacent roads to reach a different
13 destination, but stop at the site in passing."

14 You have assumed that no one on Connecticut
15 Avenue is going to stop at the site in passing
16 up and down Connecticut Avenue?

17 MS. MILANOVKH: No, that's not
18 true.

19 MR. OCCHIALINO: Just help me. I
20 would really appreciate it if you could
21 explain that, then.

22 MS. MILANOVKH: Okay. If you look

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1 at Table 5-1, the first line in the table is
2 total trips. Those are total trips including
3 new trips that are added to the roadway. That
4 is, people that leave their home, go to --
5 drive to CVS, and then -- or, I'm sorry, drive
6 to Walgreens and then go back home again.
7 Sorry.

8 And it also includes all modes of
9 travel. It includes pedestrians, it includes
10 vehicles, all modes. So if -- if we were to
11 take in -- if we were to take into account
12 passby trips, again, we would have another
13 line in that table that would be a percentage
14 reduction, say 30 percent.

15 And so the net vehicle trips in the
16 last row of that table would actually be less,
17 because we would be adding fewer trips to the
18 roadway network. But the number of trips
19 coming in and out of the driveway would not be
20 changed.

21 MR. OCCHIALINO: Well, perhaps that
22 makes sense to the Board.

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1 I do have a question about the ITE
2 trip generation. You would concede, and did
3 concede, that ITE has no data for over 14,000
4 square feet stores, is that correct?

5 MS. MILANOVKH: That is correct.

6 MR. OCCHIALINO: And you conceded
7 that all you do is to extrapolate, which I
8 presume means just to carry out a little more
9 math, and say if 14,000 square feet is this,
10 20,000 would be that. Is that correct?

11 MS. MILANOVKH: ITE publishes
12 average rates that are based on the square
13 footage of the store. We use those average
14 rates and applied a 20,000 square foot store.

15 MR. OCCHIALINO: So you actually
16 just extrapolate. You just take the figures
17 for 14,000, and you add 6,000 more, and you
18 assume that everything comes out the same?

19 MS. MILANOVKH: It is not the data
20 for 14,000. It is the average rate that is
21 provided.

22 MR. OCCHIALINO: Okay. So you

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1 don't have any actual ITE data on 20,000
2 square foot stores, do you?

3 MS. MILANOVKH: That is correct.

4 MR. OCCHIALINO: Okay. And yet you
5 complained that we should have three to five
6 pieces of actual data about actual stores here
7 in District of Columbia, is that correct?

8 MS. MILANOVKH: What I had said was
9 that ITE recommends that a minimum of three --
10 if you are going to use local studies in lieu
11 of the published data, ITE recommends that a
12 minimum of three sites be looked at, and
13 preferably five sites be looked at, to
14 establish those local rates.

15 MR. OCCHIALINO: ITE does not
16 require that. It just recommends that, is
17 that correct?

18 MS. MILANOVKH: Correct.

19 MR. OCCHIALINO: And your
20 assumption is consistently that 50 percent of
21 the people who go to the store will be
22 driving, that is a premise that you start with

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1 on page 20, an estimated 50 percent of --

2 MS. MILANOVKH: Absolutely.

3 MR. OCCHIALINO: -- the trips
4 generated are expected to be made by non-auto
5 modes of transportation. Therefore, of our
6 customer counts are in fact as high as we
7 suggest they are at Tenley, and, therefore, by
8 extrapolation might be equally high at
9 Walgreens, it would be true that your numbers
10 are low, is that correct?

11 MS. MILANOVKH: I do not believe
12 that is the case, no.

13 MR. OCCHIALINO: Can you explain
14 why?

15 MS. MILANOVKH: Again, we are using
16 the industry-wide accepted standards. And if
17 you look at our resulting trip generation, in
18 consideration of the fact that this store will
19 be in close proximity of a CVS nearby,
20 frankly, our numbers aren't that different
21 than the numbers you present up there.

22 MR. OCCHIALINO: Thank you very

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1 much for that explanation.

2 Mr. Park, you have said that Tenley
3 was perhaps not a good comparable area, and
4 you suggested that there weren't that many
5 people in that area. There certainly aren't
6 that many high rises. But did you take into
7 account the Wilson High School traffic, for
8 example, in trying to accommodate that number
9 at Tenley and whether it was comparable?

10 MR. CLARKE: I did not. I made a
11 reference to the high-density residential in
12 the immediate area.

13 MR. OCCHIALINO: I appreciate that.
14 And I just will ask you in one question: did
15 you take into account Georgetown Day School,
16 Sidwell Friends School, other schools that are
17 nearby? The churches that were within one or
18 two blocks, and the many buses that stop near
19 the CVS?

20 CHAIRPERSON MILLER: Can I just say
21 something? Your "nearby" is -- you know, my
22 knowledge of the city, I think your "nearby"

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1 is kind of broad.

2 MR. OCCHIALINO: Okay.

3 CHAIRPERSON MILLER: How far do you
4 mean "nearby"? For instance, Sidwell Friends,
5 how long a walk is it to Tenley? Is it a 10-
6 minute walk versus across the street, or is
7 it --

8 MR. OCCHIALINO: I am not in a
9 position to testify at this point, but I would
10 ask Mr. Park if he knows.

11 MR. CLARKE: It's Clarke, and just
12 to clarify --

13 MR. OCCHIALINO: I apologize.

14 MR. CLARKE: -- what I made a
15 reference to were things that are in -- when I
16 say "immediate area," all of the things I
17 refer to, almost visible from the site. There
18 is UDC across the street, there are all of the
19 -- sorry, Ms. -- one of the residents left
20 with the aerial that she had up there.

21 But all of the apartment buildings
22 that have been referred to in testimony

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1 earlier today are all in the -- that's what I
2 say when I mean "immediate area." I am
3 probably in a three-minute walk from the site
4 in the things I was referring to as "immediate
5 area" to this site, as opposed to Tenleytown.

6 CHAIRPERSON MILLER: So is that
7 what you -- did you use the same standard when
8 you were looking at Tenleytown, what was in
9 the immediate area?

10 MR. CLARKE: Right. I can talk --
11 speak to that area somewhat. I know that
12 there is City Line there. I know there are
13 some small -- when I say "small," probably
14 three- or four-story, maybe one as tall as
15 five-story, AU office building that the radio
16 station is in on -- is that Chesapeake there?
17 Brandywine? Thank you. I'm off a little.

18 There are some office buildings
19 right there, but if -- if I was making an
20 equal comparison to what I was referring to
21 when I made the comparison earlier, I would
22 still say there is more density, in particular

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1 residential density, in Van Ness than
2 Tenleytown.

3 MR. OCCHIALINO: Those are all the
4 questions that I have.

5 CHAIRPERSON MILLER: Thank you.
6 Are there any others -- any other questions
7 from you?

8 (No response.)

9 MR. LEDERER: You testified about
10 using the WMATA's ridership survey in your
11 analysis, did you not? I'm talking to the
12 parking -- the traffic --

13 MS. MILANOVKH: I did.

14 MR. LEDERER: Is it attached to
15 your testimony, that survey?

16 MS. MILANOVKH: It is not part of
17 our study.

18 MR. LEDERER: Oh, it isn't. Well
19 --

20 MS. MILANOVKH: I mean, we haven't
21 included it in our study, you know, an actual
22 copy of it.

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1 CHAIRPERSON MILLER: It is publicly
2 available, though.

3 MS. MILANOVKH: I mean, it --

4 MR. LEDERER: Well, Your Honor,
5 what is that supposed to mean? I am asking
6 her about her testimony. Now, she is basing
7 her conclusion on a study that she didn't
8 attach that I can't examine.

9 CHAIRPERSON MILLER: Okay. You
10 don't have to call me "Your Honor," but --

11 MR. LEDERER: Well, I am happy to
12 call --

13 (Laughter.)

14 CHAIRPERSON MILLER: But we talked
15 about this last week, I thought. I thought --
16 did we not, that this was a public document?
17 I don't remember whether you said you were
18 going to provide it or not. It's not -- you
19 know, you weren't required to attach it. But
20 did you not mention something about providing
21 it, or how they could get it?

22 MS. MILANOVKH: We would be happy

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1 to provide it.

2 CHAIRPERSON MILLER: Okay.

3 MR. LEDERER: I mean, it's a
4 problem of proof. I mean, this is a big --

5 MEMBER WALKER: Sir, before you --

6 MR. LEDERER: No, I'm just -- I'm
7 making -- I'm just --

8 MEMBER WALKER: Before you go
9 further, the Court Reporter just needs you to
10 identify yourself for the record, please.

11 MR. LEDERER: Oh, yes. Brian
12 Lederer, L-E-D-E-R-E-R.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Lederer, she said they would provide it to
15 you.

16 MR. LEDERER: So will we have an
17 opportunity to --

18 CHAIRPERSON MILLER: That is what
19 we are going to discuss when we are finished
20 with the evidence tonight, whether there is a
21 need for additional filings. And if you --

22 MR. LEDERER: Okay.

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1 CHAIRPERSON MILLER: -- want to
2 address that need then, we will entertain
3 that.

4 MR. LEDERER: Now, you testified
5 that this document, the WMATA ridership
6 survey, said, what, 35 percent of traffic to a
7 spot comes by, what, Metro or pedestrian? Or
8 what exactly were you saying?

9 MS. MILANOVKH: Thirty-five percent
10 comes by rail for a retail site this close to
11 Metro.

12 MR. LEDERER: Now, was this true
13 for every single one of Metro's stations?

14 MS. MILANOVKH: No. This -- I
15 mean, the data, the 35 percent that we used is
16 based on a select number of sites that were
17 included in the WMATA study.

18 MR. LEDERER: And what sites are
19 they?

20 MS. MILANOVKH: You know, I don't
21 know off the top of my head. I'd have to pull
22 the study.

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1 MR. LEDERER: Do they have a survey
2 for Van Ness?

3 MS. MILANOVKH: No. Van Ness was
4 not included in their study.

5 MR. LEDERER: Oh, it wasn't. So
6 you -- how did you draw a conclusion for Van
7 Ness?

8 MS. MILANOVKH: Again, you know,
9 the rates that we use, there is data that
10 suggests percentage reductions that can be
11 achieved based on the distance from the site
12 to the Metro station.

13 Again, you know, this is something
14 that DDOT asks us to look at in helping us
15 estimate the trip generation for urban sites.

16 MR. LEDERER: So let me be clear.
17 You are testifying that you can reduce the
18 number of parking because the number of
19 automobile trips are going to be reduced
20 because this conclusion of yours is that 50
21 percent of the traffic going to Walgreens will
22 come by foot based on this survey, and then

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1 your extrapolation.

2 MS. MILANOVKH: Just to be clear,
3 the 50 percent was applied to the trip
4 generation for the site, and not to the
5 parking analysis we did. The parking analysis
6 that we did suggested that, based on suburban
7 data, with little or no transit availability,
8 37 spaces would be required. So to get to 31
9 spaces it is nothing close to a 50 percent
10 reduction for parking.

11 MR. LEDERER: So are you saying you
12 actually have no site-specific analysis
13 whatsoever?

14 MS. MILANOVKH: For?

15 MR. LEDERER: For traffic, for
16 parking spaces, or any of your conclusions.

17 MS. MILANOVKH: As I --

18 MR. LEDERER: It is all
19 extrapolation from studies from elsewhere,
20 isn't that correct?

21 MS. MILANOVKH: As I have
22 indicated, the analysis and methodology we

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1 utilized was approved by DDOT and is the
2 industry-wide standard.

3 MR. LEDERER: But as a matter of
4 proof in this case, you actually have no site-
5 specific analysis that --

6 CHAIRPERSON MILLER: I think she
7 answered -- that was asked and answered.

8 MR. LEDERER: No, I don't --

9 CHAIRPERSON MILLER: Yes. She said
10 -- yes, it was. You just asked that question.

11 MR. LEDERER: So was her answer yes
12 or no?

13 CHAIRPERSON MILLER: It was --

14 MR. LEDERER: I didn't hear it.

15 CHAIRPERSON MILLER: Go ahead. Do
16 you want to repeat it one more time? But it
17 is now 8:37, and I think --

18 MR. LEDERER: I know, but --

19 CHAIRPERSON MILLER: -- we really
20 need to be very focused at this point. And
21 I'm not trying to cut off your cross, but she
22 has said -- I have heard her say it a million

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1 times. You can say it one more time
2 succinctly, so we don't argue --

3 MR. LEDERER: No. The answer is
4 no.

5 CHAIRPERSON MILLER: -- about it.
6 The answer is no. Yes, the answer is that she
7 used the WMATA technique.

8 MR. LEDERER: Okay.

9 CHAIRPERSON MILLER: Is that
10 correct, used the WMATA --

11 MS. MILANOVKH: We use ITE data,
12 and I used WMATA data.

13 MR. LEDERER: Excuse me, Your
14 Honor. See if I heard correctly, on -- with
15 regard to the CVS drug store on Wisconsin
16 Avenue that was used by one of the witnesses
17 in opposition in their analysis, see if I
18 heard correctly. I believe it was testified
19 that there were no other drug stores nearby,
20 so that would not be a good comparison, is
21 that -- did I hear that correctly?

22 MR. CLARKE: I made a reference to

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1 stand-alone drug stores north of the site.

2 MR. LEDERER: What, Rodman's?

3 MR. CLARKE: It's in a grocery
4 store. I have bought groceries in Rodman's.
5 I would call it a grocery store. And I think
6 I did mention it. I think I also made a
7 reference to Rodman's.

8 MR. LEDERER: What about the
9 Safeway that is --

10 MR. CLARKE: Just looking at my
11 notes in front of me, the two things I
12 mentioned were Rodman's and Safeway, both of
13 which --

14 MR. LEDERER: What about --

15 MR. CLARKE: -- are grocery stores
16 with pharmacies as ancillary uses.

17 MR. LEDERER: And Giant at Chevy
18 Chase?

19 CHAIRPERSON MILLER: Sir?

20 MR. LEDERER: I am just asking, is
21 there a third one?

22 CHAIRPERSON MILLER: Is Giant at

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1 Chevy Chase a stand-alone pharmacy, or is it
2 in the Giant supermarket? Because he has made
3 a distinction --

4 MR. LEDERER: Okay.

5 CHAIRPERSON MILLER: -- about
6 stand-alones.

7 MR. LEDERER: That's fine.

8 CHAIRPERSON MILLER: Okay.

9 MR. LEDERER: No other questions.

10 CHAIRPERSON MILLER: Okay. I think
11 that's it for cross, and now we are at
12 closing.

13 MR. LEDERER: Your Honor, I just
14 have a question, and I don't know how you --
15 or when. The issue had come up before as to
16 what their legal capacity is, whether they
17 have a lease, or whether they are a contract
18 purchaser. And we have gotten answers saying
19 one or the other, and I wish they would -- I
20 am asking through the Board if they could
21 clarify exactly what their legal relationship
22 to the site is. Is it by lease or by -- are

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1 they going to buy the property? Or what is
2 it? So that it's clear.

3 CHAIRPERSON MILLER: So you changed
4 your mind? You have one more question on
5 rebuttal, is that it?

6 MR. LEDERER: Well, I don't know
7 who -- they didn't discuss this, but this is a
8 legal matter that pertains to --

9 CHAIRPERSON MILLER: I understand.
10 Ms. Roddy did address it. Did you not?

11 MS. RODDY: I did. I would say
12 that, to be perfectly honest, the only reason
13 why that would be at issue is to see if we had
14 standing to be here today to represent this
15 case. And as I testified previously, in
16 Exhibit J of our initial submission, the owner
17 of the property signs an agent authorization
18 letter allowing us to present this case in its
19 application to the Board. And so we have been
20 authorized by the owners of the property.

21 CHAIRPERSON MILLER: I did hear Ms.
22 Perry, though, I think allude to the issue

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1 that the variance test goes to the owner of
2 the property, and whether there is a practical
3 difficulty to the owner. That's why I said
4 that was a legal conclusion that was being
5 talked about. You're the lawyer, if you
6 wanted to address that. I just wanted to flag
7 it as what I also understood as the context
8 for the issue about ownership.

9 MS. RODDY: Right. And as the
10 owners of the property are trying to lease
11 this property, and it is creating a practical
12 difficulty and hardship for the interested
13 party -- Walgreens -- and we have been
14 authorized to represent those issues to the
15 Board, so I think that we are fully within --
16 have standing to be here today and to present
17 this case. I don't --

18 CHAIRPERSON MILLER: This is not a
19 use variance, is it?

20 MS. RODDY: No.

21 CHAIRPERSON MILLER: So we are not
22 talking about hardship in using the property.

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1 We are talking about practical difficulty in
2 providing the number of parking spaces and the
3 size of the compact spaces, and perhaps the
4 configuration of the spaces, correct?

5 MS. RODDY: That is correct.

6 CHAIRPERSON MILLER: Okay. Okay.
7 So I think that we are ready for closing at
8 this point.

9 MS. PERRY: If I may, Ms. Miller.
10 But they did make -- reference financial, and
11 financial is a use variance. They have
12 referenced it, that they had -- they built the
13 store to this size because of financial.

14 CHAIRPERSON MILLER: All right. I
15 am going to just say this -- I don't want to
16 get into a debate, but --

17 MS. PERRY: Okay.

18 CHAIRPERSON MILLER: -- practical
19 difficulty in an area variance test can be --
20 you can consider economic factors. And that
21 is what they are -- I believe that is the
22 context in which they raise the economics

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1 here.

2 MS. PERRY: Okay.

3 CHAIRPERSON MILLER: Am I correct,
4 Ms. Roddy?

5 MS. RODDY: That is correct. And I
6 would just say, again, that that has only been
7 minor support for why we satisfy the variance
8 test.

9 MR. OCCHIALINO: It was I who
10 brought up the question of ownership versus
11 leasehold. And I just would like to say once
12 again that it is crystal clear that the owner
13 must demonstrate that there is a difficulty.
14 And I do not believe that Walgreens has ever
15 stated that they are the owner, and the owner
16 currently has an economically feasible gas
17 station on the premises.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 MR. OCCHIALINO: Thank you.

21 CHAIRPERSON MILLER: All right.
22 Closing?

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1 MEMBER DETTMAN: Madam Chair, one
2 question for Ms. Roddy.

3 CHAIRPERSON MILLER: Oh, sorry.

4 MEMBER DETTMAN: I am looking at
5 Exhibit J, signed by Jennifer Molcram.

6 MS. RODDY: I think if you turn the
7 page -- if you turn the page, there is two.

8 MEMBER DETTMAN: There is two.

9 MS. RODDY: It's Exhibit J. Mr.
10 Dettman?

11 MEMBER DETTMAN: I have a letter on
12 Walgreens letterhead. That's it.

13 MS. RODDY: What exhibit number?

14 CHAIRPERSON MILLER: I'll provide
15 you a copy. I have it in mine.

16 MS. RODDY: Mr. Dettman, Exhibit J
17 to what?

18 CHAIRPERSON MILLER: The February
19 2008 submission.

20 MEMBER DETTMAN: Yes, I only have
21 one.

22 MEMBER WALKER: And this is

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1 handwritten. It is not really on letterhead.

2 Who is the -- who signed this letter?

3 MS. RODDY: I'm sorry. It's the
4 property owner. It's --

5 MEMBER WALKER: But can you state
6 for the record, since this is written in -- by
7 hand?

8 MS. RODDY: Koo Yuin.

9 MEMBER WALKER: So it says -- I'm
10 sorry -- K-O-O, L, period, L-U-I-N. And then,
11 what follows that, please?

12 MS. RODDY: Y-U-I-N, General
13 Partner, President.

14 MEMBER WALKER: Of?

15 MS. RODDY: Of 4225 Connecticut
16 Avenue, N.W., Limited Partnership.

17 CHAIRPERSON MILLER: Do Board
18 members have any other questions?

19 (No response.)

20 Okay. Then, I think we are now
21 ready for closing.

22 MR. LEDERER: Your Honor, please,

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1 just -- I just -- if they're the agent of the
2 owner of the property, and you grant what they
3 want, in what legal capacity will they run
4 this store? Will they be leasing it from
5 Yuin, 4225, or will they be buying it from
6 him? That's really what my question --

7 CHAIRPERSON MILLER: I don't think
8 it's time for questions and answers. I think
9 that --

10 MR. LEDERER: Yes.

11 CHAIRPERSON MILLER: -- we are
12 going to hear closing, and then we'll --

13 MR. LEDERER: Okay.

14 CHAIRPERSON MILLER: -- see if
15 there are additional filings that people want
16 to make, or additional arguments about that,
17 because that is what I think -- that we are
18 hearing arguments about ownership and what
19 that means.

20 MR. LEDERER: Thank you.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

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1 MS. RODDY: Thank you. We
2 appreciate the Board's consideration of this
3 application, and we believe that our written
4 submissions, coupled with our testimony today
5 and last week, clearly demonstrates our
6 satisfaction of the variance test.

7 The variance test requires us to
8 justify why we are reducing spaces, not to
9 justify why we are providing spaces at all.
10 The test is whether the property faces a
11 practical difficulty in complying with the
12 zoning regulations, which arise from the
13 uniqueness of the property.

14 There is a confluence of factors
15 that demonstrate the uniqueness of the
16 property. the Board and the court held in the
17 Monaco case that factors other than the land
18 itself can be considered when determining
19 uniqueness. Here the land itself is unique,
20 in that it is an unusual shape, it poses
21 topographical challenges, and has a building
22 restriction line.

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1 There are additional
2 characteristics extraneous to the land itself
3 that lend to establishing the property's
4 uniqueness -- many that we listed in our
5 submissions, but one that I will point out
6 today, most notably the comments that we
7 received from the Office of Planning, from
8 DDOT, and from the single-member district
9 representative very early in the process,
10 which greatly restricted the possible
11 locations of the proposed -- of the parking
12 spaces.

13 We also demonstrated that these
14 factors create a practical difficulty for the
15 applicant in complying with the zoning
16 regulations. The Gilmarten case defined
17 practical difficulty as an increased expense
18 or inconvenience. Palmer defined it as
19 unnecessarily burdensome, and the Association
20 for the Preservation of the 1700 Block of N
21 Street found a practical difficulty where
22 there was no feasible alternative that would

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1 have complied with the regulations.

2 We have demonstrated through our
3 testimony and written submissions that the
4 proposed garage is the most spatially
5 efficient, particularly given the placement
6 and slope of the garage ramp that is being
7 proposed.

8 Finally, our parking study has
9 confirmed that a reduction in parking would
10 not have a detrimental effect on the
11 community. This is bolstered by the fact that
12 the site is adjacent to Metro and within
13 walking distance of thousands of potential
14 customers, as we have heard today.

15 We have heard concerns from the
16 community about exacerbating congestion and
17 fear that there is not enough parking provided
18 at the site. However, these two concerns are
19 directly at odds with each other. Providing
20 the full requirement of 57 spaces would invite
21 57 cars to the site. However, providing only
22 31 spaces will limit the number of cars onsite

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1 and any potential congestion.

2 So the variance really is a means
3 to the end that the community is seeking. We
4 are limiting the number of cars that would be
5 encouraged to drive to the site, and,
6 therefore, limiting congestion. Both DDOT and
7 OP have concluded that this application will
8 not have a detrimental effect on the
9 community, and that the number of spaces being
10 provided is sufficient.

11 Both agencies support this variance
12 request. And I should also note that they
13 support parking maximums rather than minimums.

14 DDOT has recommended that, should
15 the Board approve the application -- their
16 submission, I believe they filed it yesterday
17 -- that a condition be provided. We didn't
18 really get into this, so I don't know if it is
19 necessary to discuss any of the conditions
20 that have been proposed at this point. I
21 don't know if you had a chance to review.

22 CHAIRPERSON MILLER: I have got to

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1 say for the record I -- I haven't seen that
2 report.

3 MS. RODDY: Okay. Well --

4 CHAIRPERSON MILLER: Neither has
5 the ANC. This is all news to everybody.
6 Okay.

7 MS. RODDY: Okay.

8 CHAIRPERSON MILLER: We will see
9 it.

10 MS. RODDY: Well, I would like to
11 --

12 CHAIRPERSON MILLER: What else does
13 it say?

14 MS. RODDY: -- testimony that we
15 have heard today from the community, from the
16 ANC, they don't oppose this number and the
17 size of the spaces, and I think that they made
18 that clear in their testimony. And that is
19 what we are here for today.

20 So I would ask that the Board
21 approve the application that we have submitted
22 for this parking variance relief.

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1 CHAIRPERSON MILLER: Thank you. I
2 just thought of another question that I forgot
3 to ask you, and that is, there was reference
4 to the Van Ness Office Building as being a
5 site for Walgreens parking. Are you aware of
6 that as a possibility at all? Have you heard
7 that from the community? Have you explored it
8 at all?

9 MS. RODDY: To my knowledge,
10 Walgreens has not explored that as an option.
11 I mean, it is on the other side of Veazey
12 Terrace. Again, I just -- it would require --
13 if there is a concern about pedestrians
14 crossing Veazey, then that would exacerbate
15 that concern.

16 I would also just go back to the
17 point that we have to justify the reduction in
18 spaces rather than justify why we are
19 providing spaces onsite at all, because there
20 is a requirement to provide the onsite spaces.

21 CHAIRPERSON MILLER: Thank you.

22 Okay. Any other questions from

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1 Board members?

2 (No response.)

3 Okay. Now, that concludes the
4 hearing for today. That concludes the hearing
5 period.

6 I think what I now want to ask the
7 parties is if they would request any
8 opportunity to file any additional papers that
9 they think the Board would need to consider.
10 Ms. Roddy?

11 MS. RODDY: I don't believe any
12 post-hearing submissions are necessary.

13 CHAIRPERSON MILLER: Ms. Perry?
14 Oh, I'm sorry.

15 MS. PERRY: I think we do have a
16 concern now that we just heard that a document
17 was filed with a condition that we haven't
18 seen, been able to even review. So I do think
19 we would need to look at this document and
20 even see what it is or what the condition is
21 that DDOT has imposed.

22 MS. RODDY: The condition -- I

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1 would be happy to submit it now.

2 CHAIRPERSON MILLER: Oh, I'm sorry.

3 And I wasn't on the mic. Yes, we are still
4 on the record. Oh, I'm sorry. What I meant
5 was when we were ending the hearing that we
6 have heard all of the testimony, but now we
7 are just going to talk about schedule and the
8 possible filings, leaving the record open for
9 additional filings.

10 MS. RODDY: The condition that DDOT
11 had proposed was that the applicant cannot
12 lease their parking spaces to a third party.
13 And Walgreens has no -- right, they have no
14 interest in leasing those spaces. So that
15 would not be a problem for the applicant.

16 CHAIRPERSON MILLER: Okay. Ms.
17 Perry, are you asking for an opportunity to
18 respond to the DDOT report?

19 MS. PERRY: Well, I would like to
20 see what they put in there. I mean, I just
21 heard one line of it, but that doesn't mean --
22 I doubt they just submitted something that

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1 said, "We recommend this." But the other
2 thing is we would like to put in findings of
3 fact and conclusions of law. We would like to
4 put in a document regarding ownership and the
5 legal standard. So there are some documents
6 we would like to --

7 MS. RODDY: The document for
8 ownership is already in the record.

9 CHAIRPERSON MILLER: Ms. Perry, do
10 you mean that you would like to address the
11 ownership question in writing?

12 MS. PERRY: Yes, we would.

13 CHAIRPERSON MILLER: Okay. I'm
14 sorry, I forgot how to pronounce your name.
15 It's late. Occhialino, okay. And what is
16 your view with respect to additional filings?

17 MR. OCCHIALINO: We have two
18 documents that we will -- we will submit.
19 They are Ms. Milstein's testimony outline that
20 she used today, with the charts that she used
21 in 8-1/2 by 11 size shape, and also Ms.
22 Whiteley's testimony.

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1 I do not have paper copies of Mr.
2 Deyling's statistics with regard to the number
3 of legal parking spaces that are actually
4 available. He testified as the fifth witness,
5 but I could get those and supplement the
6 record once I get them from him. He testified
7 orally about the number of spaces on the
8 number of occasions that he could see legal
9 parking spaces that were empty.

10 I would like to be able to just put
11 that into the record. It is in -- he already
12 spoke about it, but I would like to give you a
13 document from him.

14 Other than that, I know of no other
15 document that we would like to use to
16 supplement the record. We will, of course,
17 submit proposed findings and conclusions.

18 CHAIRPERSON MILLER: So you also
19 would like to submit proposed findings and
20 conclusions of law?

21 MR. OCCHIALINO: Absolutely, yes.

22 CHAIRPERSON MILLER: Okay. Yes?

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1 MS. PERRY: I would also like to
2 put my testimony in, the written testimony.

3 CHAIRPERSON MILLER: Okay. The
4 transcript will be in the record, so it will
5 be redundant. But if you would like to, I
6 think we --

7 MS. PERRY: Well, I think there's
8 -- yes, I think it helps to have it in.

9 CHAIRPERSON MILLER: Okay.

10 MR. OCCHIALINO: Can I just say,
11 then, if that -- and I'm sorry, but there is
12 no need to get Mr. Deyling's data on paper if
13 you are willing to say it has been -- it has
14 been transcribed and it is in the record.
15 Then, that is fine with me. I won't submit
16 any data, then.

17 CHAIRPERSON MILLER: Okay. I mean,
18 the Board looks at the transcript, so, I mean,
19 it's -- it's written material.

20 MR. OCCHIALINO: Yes.

21 CHAIRPERSON MILLER: So it's in the
22 record, yes.

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1 MR. OCCHIALINO: That's fine.
2 Thank you very much.

3 CHAIRPERSON MILLER: Okay. All
4 right. So we have had requests for proposed
5 findings and conclusions of law.

6 MS. PERRY: And ownership.

7 CHAIRPERSON MILLER: Well, you can
8 put that in.

9 MS. PERRY: Okay.

10 CHAIRPERSON MILLER: As a
11 conclusion of law.

12 MR. LEDERER: And the survey, they
13 will supply that.

14 CHAIRPERSON MILLER: Oh, that's
15 right. Okay. The WMATA survey. Is that a
16 problem?

17 MS. RODDY: We're happy to provide
18 it. I don't think it's necessary to keep the
19 record open for it. It's a publicly available
20 document. If you Google it, it is one of the
21 first things that comes up. So we are happy
22 to provide it. But, again, I don't think it

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1 requires any additional commentary.

2 CHAIRPERSON MILLER: I think that
3 you can provide it to the ANC and the
4 opposition parties. And if you all think you
5 want to submit it for the record, if you want
6 to submit it in the record, you know, for your
7 case you can. Okay? We're not -- I'm not
8 going to -- I don't think that we need to
9 require the applicant to submit it into the
10 record, just submit it to them. Okay?

11 So, schedule. My understanding is
12 that a transcript takes two weeks before it
13 becomes --

14 MS. PERRY: Or longer.

15 CHAIRPERSON MILLER: Or longer?

16 MS. PERRY: Well, I -- it was
17 longer in the Burger King case.

18 CHAIRPERSON MILLER: Really?

19 MS. PERRY: Yes. It wasn't on the
20 website. I looked.

21 CHAIRPERSON MILLER: Okay. Because
22 I'm trying to figure out, you know, by -- the

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1 date that these proposed findings and
2 conclusions of law would be due.

3 Mr. Moy, maybe you can help me with
4 this?

5 SECRETARY MOY: Certainly. Madam
6 Chair, let's see, today is the 3rd. I would
7 say that the transcript would be provided to
8 the office certainly by Wednesday, the 18th,
9 but for sure the 20th, which is that Friday.

10 CHAIRPERSON MILLER: Does that mean
11 it is posted on the website then?

12 SECRETARY MOY: That takes a little
13 longer. The written copy is in the office,
14 would be in the office.

15 MS. PERRY: On the 20th?

16 SECRETARY MOY: By -- certainly by
17 the 20th of March it will be in the office.

18 MS. PERRY: Okay. So we would have
19 to come here to look at it versus just
20 downloading it.

21 SECRETARY MOY: What I will do is
22 -- I'll write a note to myself, and I'll be

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1 sure that will be on the web.

2 MS. PERRY: Thank you.

3 SECRETARY MOY: You're welcome.

4 CHAIRPERSON MILLER: Okay. So
5 you're saying the transcript will be on the
6 website March 20th. So, then, it is just how
7 long the parties need to do proposed findings
8 and conclusions of law.

9 Okay. Is two weeks sufficient, or
10 what is -- what is a good amount of time?

11 MS. PERRY: Two weeks after the
12 20th?

13 CHAIRPERSON MILLER: Yes.

14 MS. PERRY: What date is that?

15 SECRETARY MOY: That would be
16 April 3rd, Friday.

17 MR. OCCHIALINO: I'm confident that
18 that would be sufficient for me.

19 MS. PERRY: We'll work with it.

20 CHAIRPERSON MILLER: Okay. Is that
21 all right with the applicant?

22 MS. RODDY: If that -- would that

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1 allow us to be on the April 9th calendar for a
2 decision meeting?

3 SECRETARY MOY: It would be
4 April 7th. Tuesday would be April 7th. Oh,
5 that's fine with the staff. I mean, but I
6 will leave that to the discretion of the
7 Board.

8 CHAIRPERSON MILLER: Well, is that
9 fine with the staff? Because I -- the
10 packages are usually delivered on Thursday.
11 But if it comes in on Friday, would the
12 documents be delivered to the Board Friday, so
13 they would have it over the weekend? Okay.

14 All right. Then, yes, okay. So
15 proposed findings and conclusions of law would
16 be filed March 20th, and --

17 MS. PERRY: No, April 3rd.

18 CHAIRPERSON MILLER: I'm sorry.
19 The transcript will be on the website March
20 20th. Proposed findings and conclusions of
21 law will be due April 3rd, and the Board will
22 deliberate April 9th -- April 7th. April 7th.

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1 I am going to let Ms. Bailey repeat this.
2 Okay.

3 Four days, it's for the Board's
4 consideration. The Board will get it on
5 Friday and deliberate the following Tuesday.

6 MR. LEDERER: Including two weekend
7 days. That just strikes me as a little short,
8 but I guess --

9 CHAIRPERSON MILLER: Well, that is
10 the Board's business, but I will tell you that
11 that is the norm for the Board, to get their
12 package -- we usually get our packages on
13 Thursday, and some supplemental documents on
14 Friday, and that is enough time usually for us
15 to study and come to a decision. So --

16 MS. PERRY: And I have to
17 compliment the Board, because they have gotten
18 stuff later than that and deliberated and
19 turned it over. So --

20 CHAIRPERSON MILLER: And if we are
21 not ready, then the Board will delay it. But
22 that will -- that should work.

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1 So, Ms. Bailey, would you like to
2 repeat the dates, since I kind of messed them
3 up?

4 MS. BAILEY: The dates that I have,
5 Madam Chair, the date that I have for the
6 transcript to be available is March 20th. The
7 submissions are due April 3rd. The parties
8 are to file findings of fact by April -- that
9 is April 3rd, sorry. And the decision is due
10 April 7th.

11 But I just want to quickly run
12 through the submissions. It will only take a
13 second. The WMATA ridership survey, the
14 applicant is to provide it to the ANC and the
15 opposition parties. ANC may respond to the
16 DDOT report that was filed yesterday in the
17 record. ANC is to address the ownership
18 question.

19 Written testimony -- the written
20 testimony of Ms. Milstein, Ms. Whiteley, and
21 Ms. Perry. And, of course, the findings of
22 fact. Those are the documents that I have are

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1 outstanding.

2 MS. PERRY: Ms. Bailey, it might
3 not be the ANC. It might just be the
4 neighborhood in general that does the
5 ownership one. I am not sure who is going to
6 do it yet or whether we will have --

7 CHAIRPERSON MILLER: And what I had
8 stated was that -- I mean, I wouldn't say that
9 they are to do it. That they can address it
10 in their proposed findings and conclusions of
11 law. So the record is closed for any
12 additional filings, and I think we are leaving
13 it open in the event that the ANC and the
14 opposition party believes they need to submit
15 that WMATA survey they can. But it is not
16 required.

17 So, okay, then the record is closed
18 for all other evidence. Any questions? Yes,
19 sir.

20 MR. LEDERER: Your Honor?

21 CHAIRPERSON MILLER: You need to
22 come to the microphone.

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1 MR. LEDERER: Shouldn't something
2 be reserved on the ownership issue? Because
3 if it becomes a matter of concern to the
4 Board, and we don't actually know in what
5 legal capacity, other -- you know, they are
6 going to be an agent for the owner of the gas
7 station, but they are going to run a drug
8 store there.

9 And so are they going to run it
10 with a lease, or are they going to run it by
11 title? So if that issue needs to be
12 addressed, shouldn't there be some reservation
13 with some documents, which --

14 CHAIRPERSON MILLER: Are you asking
15 that the record be left open for any
16 additional --

17 MR. LEDERER: Yes.

18 CHAIRPERSON MILLER: -- documents
19 that would establish ownership?

20 MR. LEDERER: Yes.

21 CHAIRPERSON MILLER: By the
22 applicant?

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1 MS. RODDY: If I could just point
2 everyone's attention to Section 3113.4 that
3 says, "An authorized agent may file an
4 application on behalf of the owner." And that
5 is precisely what we have done in this
6 situation.

7 MR. LEDERER: Yes, but the owner
8 isn't going to operate --

9 CHAIRPERSON MILLER: Let me ask the
10 applicant -- do you -- do you have any request
11 for the Board to leave the record open for any
12 additional information regarding ownership?

13 MS. RODDY: No.

14 CHAIRPERSON MILLER: Okay. Then,
15 that's it. And you can make an argument, you
16 know, if it's not adequate, or if -- you
17 know --

18 MR. LEDERER: Oh, okay.

19 CHAIRPERSON MILLER: -- or you
20 don't meet the variance test, whatever. That
21 is up to you, based on the evidence in the
22 record.

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1 Okay. Okay. I think that does it.

2 Thank you very much.

3 (Whereupon, at 9:05 p.m., the proceedings in
4 the foregoing matter were
5 concluded.)
6

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