

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 7, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
ARTHUR JACKSON
STEPHEN GYOR
BRANDICE ELLIOTT
PAUL GOLDSTEIN

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

ANNA CHAMBERLIN

The transcript constitutes the
minutes from the Public Hearing held on
November 7, 2012.

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

10:00 a.m.

CHAIRMAN JORDAN: Let's move into
the public hearing.

Oh, Mr. Moy, did you make the
announcement regarding those cases that were
rescheduled?

MR. MOY: Yes. Yes, I did.

CHAIRMAN JORDAN: Okay.

MR. MOY: The first application
for the public hearing session is application
No. 18433. This is the application of
Victoria Manley, pursuant to 11 DCMR 3104.1.
This is for a special exception for a child
development center, 30 children and 6 staff
persons, under section 205, in the R-2
District at premises 4628 H Street, S.E. This
is the basement, first and second floors.
Property in Square 5359, Lot 328.

CHAIRMAN JORDAN: Thank you. For
the record I want to indicate that Robert
Miller, a member of the Zoning Commission, has

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1 joined the Board for the public meetings.

2 It's the first time you sat with
3 us.

4 COMMISSIONER MILLER: Yes, it is.

5 CHAIRMAN JORDAN: Good to have
6 you.

7 Okay. Take a look at this case.
8 Anybody have any problems with 18433?

9 (No audible response.)

10 CHAIRMAN JORDAN: Okay. Then
11 would you please identify yourself for us?
12 Let's make sure that your microphone is turned
13 on. You'll see a bright green light. Bright
14 green. Say something, if you would. No, push
15 the button that says "push."

16 MS. MANLEY: Okay.

17 CHAIRMAN JORDAN: Okay. And also,
18 did you complete two witness cards and give
19 them to the court reporter?

20 MS. MANLEY: You said could I
21 complete --

22 CHAIRMAN JORDAN: Did you complete

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1 two witness cards?

2 MS. MANLEY: No, I did not.

3 CHAIRMAN JORDAN: Okay. Let's
4 proceed, but I want you to do that prior to
5 exiting, please.

6 MS. MANLEY: Okay.

7 CHAIRMAN JORDAN: All right. Give
8 us your name, please.

9 MS. MANLEY: My name is Victoria
10 Manley.

11 CHAIRMAN JORDAN: And you are,
12 regarding this application?

13 MS. MANLEY: Oh, okay. I'm sorry.
14 In 2009 I has asked for --

15 CHAIRMAN JORDAN: No, you are --
16 regarding this application are you the
17 applicant?

18 MS. MANLEY: Oh, I'm the owner of
19 the business.

20 CHAIRMAN JORDAN: Okay. All
21 right. We have reviewed and examined the file
22 and we believe that everything that's

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1 necessary to grant the relief is provided.
2 You have the right to do a presentation, but
3 it's not necessary for you to do it. We may
4 have some questions for you, however.

5 MS. MANLEY: Okay.

6 CHAIRMAN JORDAN: There's a couple
7 things that we want to make sure are clear.
8 Especially, there are some recommendations for
9 some conditions that we want to be certain are
10 -- that we're comfortable with and that you're
11 comfortable with and that they can be met.

12 MS. MANLEY: Okay.

13 CHAIRMAN JORDAN: So if we can do
14 that first and then if you have something else
15 you want to say after that, then we can do so.

16 MS. MANLEY: Okay.

17 CHAIRMAN JORDAN: Ms. Sorg, you
18 want to go ahead?

19 VICE CHAIR SORG: Actually,
20 there's one thing that I think we want to look
21 at first. Usually with these cases we receive
22 a letter from OSSE, the Office of the State

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1 Superintendent of Education, and I don't
2 believe that we have that in our file. Did
3 you receive a letter indicating their support
4 for the change in your business?

5 MS. MANLEY: No, I did not.

6 CHAIRMAN JORDAN: But the record
7 does show that a request was sent from this
8 office to the State Superintendent of Schools.

9 VICE CHAIR SORG: But did --

10 CHAIRMAN JORDAN: Of Education;
11 excuse me.

12 VICE CHAIR SORG: -- we receive
13 that in our record?

14 CHAIRMAN JORDAN: No, we did not.
15 We didn't receive it. I don't think we have
16 it. Mr. Moy?

17 MR. MOY: No, they did not make a
18 filing in the record, Mr. Chairman.

19 CHAIRMAN JORDAN: And if I'm not
20 mistaken; I'm going to turn to counsel, I
21 thought that the rule requires us to make a
22 request, but it's not mandatory that we get a

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1 letter back? Or is it?

2 MS. NAGELHOUT: That is correct,
3 but the Board does need to make a finding that
4 the facility is capable of being licensed.

5 CHAIRMAN JORDAN: Okay. Do you
6 presently have a license?

7 MS. MANLEY: Yes, I do.

8 CHAIRMAN JORDAN: You've been
9 operating for awhile under a certification
10 from the Office of the State Superintendent of
11 Education, is that correct?

12 MS. MANLEY: Yes, sir.

13 CHAIRMAN JORDAN: Okay. And
14 you're just going from 15 children to 30, is
15 that correct?

16 MS. MANLEY: Yes, sir.

17 CHAIRMAN JORDAN: Okay. Ms. Sorg,
18 you had some additional questions?

19 VICE CHAIR SORG: In addition to
20 the question relating to 205.2, you had some
21 conditions in your first approval, and we're
22 looking at those again. One of the conditions

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1 indicates that the staff should not park on
2 the street in front of the center. I wanted
3 to ask you a little bit about what's the
4 parking situation there? Is there a lot? Is
5 it busy?

6 MS. MANLEY: No, we only have two
7 staff members, which is myself and another
8 lead teacher that has vehicles. Most of our
9 parents and children catch the bus, which is
10 directly across the street from the day care
11 facility.

12 CHAIRMAN JORDAN: But have you
13 made provisions for any parking spaces for the
14 location?

15 MS. MANLEY: No, I have not. For
16 staff you mean, or for parents?

17 CHAIRMAN JORDAN: She --

18 MS. MANLEY: I have two.

19 CHAIRMAN JORDAN: You do have two?

20 MS. MANLEY: Yes, I do have two.

21 CHAIRMAN JORDAN: Right. That's
22 what I was saying. You do have two parking

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1 spaces.

2 VICE CHAIR SORG: Two parking
3 spaces on site, correct?

4 MS. MANLEY: Right.

5 VICE CHAIR SORG: Okay.

6 MS. MANLEY: Yes.

7 CHAIRMAN JORDAN:

8 CHAIRMAN JORDAN: And do you use a
9 commercial carrier to pick up your trash and
10 rubbish? Is that correct?

11 MS. MANLEY: Yes.

12 CHAIRMAN JORDAN: Any additional
13 questions? Yes, Mr. Miller?

14 COMMISSIONER MILLER: Just one
15 question. In the record I was confused
16 whether the hours of operation of the child
17 care center -- there's conflicting
18 information. Is it 8:00 a.m. to 7:00 p.m., or
19 is it actually 8:00 a.m. to 7:00 --

20 MS. MANLEY: A.M.

21 COMMISSIONER MILLER: -- a.m.
22 Twenty-three hours a day?

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1 MS. MANLEY: Twenty-three hours.

2 COMMISSIONER MILLER: It is 23
3 hours?

4 MS. MANLEY: Yes, sir.

5 COMMISSIONER MILLER: Okay.

6 CHAIRMAN JORDAN: What, you just
7 sleep for an hour and that's it? No.

8 MS. MANLEY: Well, yes, we have to
9 shut down for one hour. But you have staff.
10 You don't stay there all day. You know, you
11 have different shifts.

12 CHAIRMAN JORDAN: Are there any
13 other questions that we have of this
14 applicant?

15 (No audible response.)

16 CHAIRMAN JORDAN: Ms. Manley, as I
17 said, you have the opportunity to do a
18 presentation, but the Board believes that the
19 record is pretty clear for the relief that's
20 requested and we've asked you questions. Now
21 you have the right to do a presentation.
22 However, we have found that people sometimes

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1 talk themselves into trouble.

2 MS. MANLEY: Yes.

3 CHAIRMAN JORDAN: So if it's okay
4 with you, I'll just go to the Office of
5 Planning.

6 MS. MANLEY: Okay.

7 CHAIRMAN JORDAN: Okay?

8 MR. JACKSON: Good morning, Mr.
9 Chairman and Members of the Board. My name's
10 Arthur Jackson, D.C. Office of Planning. You
11 have the Office of Planning's report before
12 you. And we recommend approval because we
13 think the application for the increase in the
14 children and staff meets the standards for
15 approval, and we remain available to answer
16 questions.

17 VICE CHAIR SORG: Good morning,
18 Mr. Jackson.

19 MR. JACKSON: Good morning.

20 VICE CHAIR SORG: I have a
21 question for you on one of the conditions that
22 you altered and suggested for this

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1 application, which is proposed condition No.
2 4. You say most children shall be dropped off
3 between 8:00 a.m. and 10:00 a.m.

4 MR. JACKSON: Yes.

5 VICE CHAIR SORG: In your
6 discussions with the applicant did you get an
7 idea of how many that would be or a
8 percentage? The condition itself and the
9 language seems a little bit general.

10 MR. JACKSON: Yes.

11 VICE CHAIR SORG: And I think
12 we're trying very hard to clean up the
13 conditions that we're putting in so that
14 they're enforceable and, you know,
15 quantitative.

16 MR. JACKSON: Correct. Well, I
17 understand your concern, but in talking to the
18 applicant she indicated that at this time she
19 does not have any students who are -- she only
20 has a couple of student that are staying
21 outside of the general time frame that the
22 operation -- the pickup and drop off. So what

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1 we -- our attempt was to indicate that for the
2 majority of the students will come between
3 8:00 and 6:00, picked up between 8:00 and
4 6:00. But there are other students which will
5 be served by the 24-hour operation of this
6 facility that will come at other hours, but
7 they should be a minimum number. And right
8 now I don't think there are any at this time,
9 but she's anticipating the need. She's trying
10 to anticipate the needs of her clientele. And
11 so that's why the condition is phrased the way
12 it is.

13 VICE CHAIR SORG: Was there a
14 specific potential adverse impact that you
15 found from talking to the applicant or her
16 neighbors, or anybody in the community or --
17 that were -- because we did receive I believe
18 one letter in opposition to this application
19 which really only indicated -- well, whose
20 oppositions to my reading which were relevant
21 were really to parking only. So we can deal
22 with this at a later stage in the hearing, of

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1 course, but would you feel uncomfortable if
2 that condition were potentially removed?

3 MR. JACKSON: Well, to our
4 knowledge there hasn't been any indication
5 that there's been a problem on the property
6 and that, as she's testified, she has
7 sufficient parking on site now. She has a
8 very wide parking space that goes all the way
9 back to the rear of the house. There's a
10 structure on the parking space, but that
11 structure is set back far enough that she can
12 comfortably fit two vehicles on the driveway
13 and not interfere with the sidewalk that comes
14 across the front of her property. So she can
15 meet the parking requirements now. So that
16 based on the operations to date, there would
17 be no concern if the Board decided to remove
18 that condition.

19 VICE CHAIR SORG: Okay. Thank
20 you.

21 CHAIRMAN JORDAN: Yes, and that's
22 what I was going to ask, what was your purpose

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1 really, if it was something that you've got to
2 sink your teeth into.

3 MR. JACKSON: Well, part of the
4 goal in creating those conditions was to
5 establish how this use is currently operating
6 so that the community is aware of what's
7 happening and so that there's a baseline. The
8 community knows that she has got parking on
9 site. Most of the students will come between
10 these hours and so there won't be a continuous
11 turnover of 12 to 13 kids at all times. And
12 of course that there won't be a problem with
13 trash and so forth. We're trying to I guess
14 make sure that the community and the
15 applicant's on the same page so if there are
16 concerns in the future, we can adjust the
17 conditions accordingly.

18 CHAIRMAN JORDAN: Are there any
19 additional questions that anyone has for the
20 Office of Planning?

21 (No audible response.)

22 CHAIRMAN JORDAN: Does the

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1 applicant have any questions of the Office of
2 Planning?

3 MS. MANLEY: No, sir, I don't.

4 CHAIRMAN JORDAN: Do we have a
5 report or any -- is there any other
6 governmental agency here to provide us any
7 statements or testimony?

8 (No audible response.)

9 CHAIRMAN JORDAN: I think our
10 record shows that the Department of
11 Transportation has issued a letter of no
12 objection to your application, to your
13 request. I don't believe our file has any
14 other government agency, although they were
15 noticed and according to the statute,
16 according to the regulations, Department of
17 Transportation, Human Services, Education,
18 Office of Aging, all have been notified. We
19 have not received anything in the file. We
20 feel that they care not to weigh in on the
21 matter.

22 Is there anyone here from ANC 7E?

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1 (No audible response.)

2 CHAIRMAN JORDAN: We have a letter
3 that we will give great weight to from ANC 7E
4 that voted in support of your application.

5 Is there anyone in the audience in
6 support of this application that wishes to
7 speak?

8 (No audible response.)

9 CHAIRMAN JORDAN: Is there anyone
10 in opposition in the audience that wishes to
11 speak?

12 (No audible response.)

13 CHAIRMAN JORDAN: Then normally we
14 turn back to the applicant to see if there's
15 anything that they need to add in rebuttal or
16 a final statement to be made, but you have a
17 right to waive that, too.

18 MS. MANLEY: I'm okay.

19 CHAIRMAN JORDAN: Okay. Then we
20 will close this hearing based upon the record
21 that's before the Board and I'll turn to the
22 Board to see if they're ready to deliberate.

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1 Okay? You guys okay?

2 VICE CHAIR SORG: Yes.

3 CHAIRMAN JORDAN: Okay. All

4 right. Ms. Sorg?

5 VICE CHAIR SORG: Sure, thank you,
6 Mr. Chairman. I think that the applicant in
7 this case has, you know, not only demonstrated
8 three years of good operations at her current
9 level and business operations in the
10 neighborhood and relations with the community,
11 but also has shown in the application and in
12 testimony today her compliance with section
13 205 in terms of the request to increase the
14 operation of the child development center.

15 In addition to that, you know, we
16 see several letters in support, both relating
17 to the applicant herself and her skills, as
18 well as to the operation and value of the
19 center to the neighborhood.

20 And I have a slight concern with
21 regard to the fact that we did not receive a
22 letter from OSSE. This is in fact the first

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1 time I can remember that we haven't received
2 one for one of these child development center
3 cases. But I think the applicant has
4 demonstrated that she's capable of meeting as
5 far as is related to the zoning requirements
6 the requirements under 205.2, and obviously
7 will have to meet those requirements from OSSE
8 to be operational in any regard.

9 That being said, I would make a
10 motion to approve application No. 18433.

11 CHAIRMAN JORDAN: Say the
12 conditions.

13 VICE CHAIR SORG: Okay. And I
14 will read out the conditions that I would
15 suggest for this application.

16 Condition No. 1. The approval
17 shall be for a period of five years from the
18 date of issuance of this order. That
19 condition, just to show my reasoning for that
20 suggestion, that the CDC is in fact doubling
21 their operations, as well as changing the
22 hours and nature to a significant degree. So

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1 my opinion, a five-year term, longer than the
2 first term, you know, would be appropriate in
3 this case.

4 Condition No. 2. Enrollment shall
5 not exceed 30 children from 2 months to 6
6 years of age. Maximum number of teachers and
7 staff shall not exceed eight.

8 Condition No. 3. The center shall
9 operate for 23 hours a day, Monday through
10 Friday, from 8:00 a.m. to 7:00 a.m.

11 Condition No. 4. Staff shall help
12 children to and from the center during drop
13 off and pickup.

14 Condition No. 5. Two parking
15 spaces shall be provided on site for teachers
16 and staff and employees shall be prohibited
17 from parking on the street in front of or
18 adjacent to the property where the center is
19 located.

20 And condition No. 6. Trash from
21 the child development center shall be
22 collected at least once weekly by a commercial

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1 trash contractor.

2 That completes my motion. I'm
3 done now with my motion.

4 CHAIRMAN JORDAN: Anybody wants to
5 second? Second it. I'll second it.

6 Motion made and seconded that we
7 approve the application with the conditions as
8 been defined in the motion. Any unreadiness?

9 (No audible response.)

10 CHAIRMAN JORDAN: I just want to
11 add to the record that the applicant presently
12 does have a certification for a child
13 development center from the state office, just
14 so that we do have that in the record and so
15 if there was any other problems. And your
16 certification is current, so that it has not
17 been revoked or anything like that.

18 So with that, all those in favor
19 of the motion signify by saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN JORDAN: Those opposed,
22 nay.

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1 (No audible response.)

2 CHAIRMAN JORDAN: The motion
3 carries. Mr. Moy?

4 MR. MOY: Yes, sir. Staff would
5 record the vote as 4-0-1. This is on the
6 motion of Vice-Chairperson Sorg to approve the
7 application with seven conditions as she has
8 cited in the record. Second the motion,
9 Chairman Jordan. Also in support of the
10 motion, Mr. Robert Miller and Mr. Jeffery
11 Hinkle. We have no other Board Members
12 participating with us this morning, so again
13 the final vote is 4-0-1. The motion carries.

14 CHAIRMAN JORDAN: Thank you, Mr.
15 Moy, and may we have a summary order for this,
16 please?

17 MR. MOY: Yes, sir. Thank you.

18 MS. MANLEY: You want me to turn
19 this off?

20 CHAIRMAN JORDAN: No, you can
21 leave it.

22 MS. MANLEY: Okay.

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1 CHAIRMAN JORDAN: Thank you.

2 Thank you for coming.

3 MS. MANLEY: All right. Thank
4 you.

5 CHAIRMAN JORDAN: Good luck to
6 you.

7 MS. MANLEY: Thank you so much.

8 MR. MOY: The next application
9 before the Board for public hearing is
10 application No. 18431. This is the
11 application of The Field School, pursuant to
12 11 DCMR 3104.1. This is for a special
13 exception to increase the private school
14 enrollment cap from 320 to 400 students and to
15 increase the faculty and staff cap from 74 to
16 110 persons under section 206, in the R-1-A
17 District at premises 2301 Foxhall Road, N.W.
18 Property located in Square 1341, Lots 856,
19 861, 878 and 879.

20 CHAIRMAN JORDAN: Okay. Thank
21 you, Mr. Moy.

22 Okay. Could you please introduce

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1 yourselves? Just make sure that we have --
2 are the microphones turned on?

3 MR. FEOLA: Yes.

4 CHAIRMAN JORDAN: All right.
5 Thank you.

6 MR. FEOLA: I'll go first. Thank
7 you, Mr. Chairman. My name is Phil Feola with
8 the law firm of Goulston & Storrs. We're here
9 on behalf of The Field School, the applicant.
10 To my right is Tom Wheeler.

11 MR. WHEELER: Good morning.

12 MR. LAYMAN: And Good morning. My
13 name is William Layman on behalf of The Field
14 School. I work there on the staff.

15 MR. ANDRES: Good morning,
16 Chairman. My name is Erwin Andres with
17 Gorove/Slade Associates, the traffic --

18 CHAIRMAN JORDAN: What's your last
19 name again? I'm sorry.

20 MR. ANDRES: Andres.

21 CHAIRMAN JORDAN: Andres? Okay.

22 MR. ANDRES: We're the

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1 transportation consultants on the project.

2 CHAIRMAN JORDAN: Very good. We
3 have reviewed the record in this file and
4 believe that the record is sufficient to grant
5 the relief, even including -- you do have one
6 letter of opposition, but we believe that in
7 our deliberation we can deal with that issue.
8 We believe there's enough in the record that
9 establishes that the relief that you requested
10 can be granted. We don't have a DDoT report.
11 I don't know if you received a DDoT report.
12 You do have a DDoT report?

13 MR. FEOLA: Yes, we do. It's
14 dated November 2nd.

15 CHAIRMAN JORDAN: Okay. Do we
16 have it? Okay. All right. So it's
17 consistent to what we've already had by the
18 proposed conditions and etcetera.

19 All right. So I don't know, you
20 can do a presentation if you wish to. We
21 don't believe a presentation is necessary. We
22 might have just a few questions for you, if

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1 any. I think if any, questions are going
2 toward the conditions to see if they're
3 workable conditions, if anything. So you can
4 do a presentation if you feel you need to, but
5 otherwise the Board can just ask its questions
6 and we can move on.

7 MR. FEOLA: Thank you, Mr.
8 Chairman. You know, I'm one of those lawyers
9 that get in trouble when they talk too much,
10 so I appreciate the Chair and the Board's
11 indulgence. And so we will stand on the
12 record.

13 I would like to point out just a
14 couple of things in the next two or three
15 minutes. We are seeking a special exception
16 under 206 and we believe the materials show
17 that we meet those conditions.

18 I just want to highlight that the
19 school is a middle and high school, grades 6
20 through 12, 327 kids. It's been in existence
21 for about 40 years in the District of
22 Columbia, about 10 years on this site pursuant

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1 to a BZA order that was issued in December
2 2000.

3 And the one thing I want to
4 highlight, you know, which because I do a lot
5 of schools before this Board, is that it has
6 a very robust transportation demand management
7 plan. Over half those kids come to this
8 school by shuttle bus that the school provides
9 and the rest either walk or come in carpools,
10 so literally 100 percent of the kids arrive
11 here by some combination that's not a single
12 occupancy vehicle.

13 And we're happy to say that we
14 have the conditional support of the ANC, the
15 Office of Planning and Department of
16 Transportation. And so now we will stand
17 ready for your questions.

18 CHAIRMAN JORDAN: Okay. Thank
19 you. Does the Board have any questions they
20 need to ask the applicant? Ms. Sorg?

21 VICE CHAIR SORG: Thank you, Mr.
22 Chairman. I wanted to ask you a question to

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1 reconcile the conditions that you the
2 applicant proposed in your prehearing filing
3 and those that are contained within the DDoT
4 report. I was just looking at those two
5 things and they're not in the same order, so
6 I may be missing something. But I see that
7 DDoT is requesting six conditions --

8 MR. FEOLA: Yes.

9 VICE CHAIR SORG: -- in their
10 report. And I think that you have included
11 only one of those in your proposed conditions.
12 Am I wrong?

13 MR. FEOLA: Well, I'll let Mr.
14 Andres speak to that, because we are not
15 opposed to the DDoT conditions if they don't
16 exactly marry up, because you're right, they
17 don't quite track. But I'll let Mr. Andres
18 speak to those.

19 MR. ANDRES: Great. For the
20 record my name is Erwin Andres, principal of
21 Gorove/Slade Associates.

22 Tom, can we get the PowerPoint up?

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1 No? Okay.

2 VICE CHAIR SORG: If you would
3 indicate exhibit numbers to us --

4 CHAIRMAN JORDAN: If you'd just --

5 VICE CHAIR SORG: I'm sure that --
6 applicant

7 CHAIRMAN JORDAN: Yes, and if you
8 just talk us through those conditions as they
9 relate to the other conditions proposed for
10 DDoT would be sufficient.

11 MR. ANDRES: Absolutely. In your
12 slide package there is sort of the -- actually
13 it is the last slide, or next to last slide in
14 your slide package that Mr. Moy's handing out.
15 It's a matrix of the DDoT conditions.

16 CHAIRMAN JORDAN: Which page are
17 you -- second to last page?

18 MR. ANDRES: Yes, second to last
19 page. It's a table matrix that's entitled,
20 "DDoT Conditions." And on the left side is a
21 summary of the conditions laid out in the
22 November 2nd DDoT report, and the right column

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1 is basically the response that The Field
2 School has. And for all intents and purposes,
3 there are three of them that the school agrees
4 to outright; two of them that we at the school
5 agree to with some modifications to and one
6 which doesn't give the school the flexibility
7 to run its program.

8 So I'd like to highlight the first
9 one, which is a limit of 106 inbound trips
10 during the intersection peak hour. When we,
11 as traffic engineers, typically do our traffic
12 analysis, we look at a whole corridor of
13 intersections. And in essence in order to
14 identify the peak impact of a project, what
15 you do is you take all of the volumes in those
16 intersections and see when you add them all up
17 which hour is the highest traffic hour. So
18 some intersections might be a little bit
19 lower, some might be a little bit higher, but
20 essentially in that whole corridor you pick
21 the hour where it basically averages out to
22 the highest volume. So we did that, and which

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1 is consistent with traffic engineering
2 industry standards for not only schools, but
3 for a whole slew of land uses.

4 What DDoT is proposing is limiting
5 the cap not on sort of the corridor hour, but
6 the hour that the school is busiest. And we
7 as traffic engineers -- I don't -- it's my
8 opinion that the appropriate measure isn't for
9 sort of the school's impact, but the
10 appropriate measure should be using this peak
11 hour that the whole corridor is experiencing.
12 And again, that's the standard transportation
13 engineering industry methodology.

14 So we as the school agree that the
15 106 inbound trips is a good cap. And the
16 reason why it's a good cap is because it's an
17 existing cap. That cap number, 106, is
18 actually taken from the previous BZA order.
19 The school has done a wonderful job
20 implementing many of their transportation
21 demand management measures that when we did
22 our traffic study they didn't even reach that

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1 cap of 106.

2 So moving forward we wanted -- we
3 believe that 106 is an appropriate cap given
4 that it was a cap established in the previous
5 BZA order. So we're willing to in essence not
6 change that condition in the BZA order and
7 just carry it through.

8 VICE CHAIR SORG: You mean despite
9 additional students and staff, yes.

10 MR. ANDRES: Despite additional
11 student and staff. Now it's important to
12 identify that in the previous BZA order the
13 time frame that we used as a baseline for that
14 condition was the system peak hour. So it was
15 consistent with our traffic engineering
16 methodology. So that's our first comment in
17 that, yes, we do accept the 106 inbound trip
18 cap, however, we think it's appropriate that
19 the system peak hours used, not the garage
20 peak our -- excuse me, the driveway peak hour.

21 VICE CHAIR SORG: Before you move
22 on to the next condition, just what's the

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1 difference between the system peak hour --
2 like which hour is that and which hour is the
3 intersection or the school peak hour?

4 MR. ANDRES: It's off by 15
5 minutes.

6 VICE CHAIR SORG: Okay.

7 MR. ANDRES: So instead of -- the
8 system peak hour is between 7:30 and 8:30,
9 which is consistent in our previous BZA order.
10 And that's why in the BZA order it's written
11 as 7:30 to 8:30. The intersection peak which
12 DDoT wants us to use as a baseline is 7:45 to
13 8:45.

14 VICE CHAIR SORG: Yes.

15 MR. ANDRES: So there's a shift in
16 15 minutes. If you look at the actual traffic
17 counts up and down the Foxhall Road corridor,
18 that difference in traffic that the school
19 generates is less than actually the difference
20 in the traffic on Foxhall Road. So in essence
21 you might be analyzing more of the school
22 traffic, but the traffic on Foxhall Road is

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1 lower. So in essence you're not necessarily
2 getting the whole impact on the project during
3 the peak time. So that's why we believe that
4 this first line here where we agree to the 106
5 inbound trips -- it should be applied to the
6 system peak hour, not the intersection peak
7 hour.

8 MR. FEOLA: And if I may add,
9 Board Member Sorg, the part of the
10 transportation demand management plan, which
11 actually was suggested by DDoT 12 years ago,
12 was to stagger the start times of the school
13 so that the middle school and high school
14 start at different times, and part of that was
15 to minimize the amount of traffic that's
16 coming into the school during that peak hour
17 time. And so we still are maintaining that
18 20-minute gap. And if we don't meet that 106,
19 we may have to move that start time further
20 into the day. So it gives us flexibility in
21 the transportation demand management to shift
22 if we can stay on the peak hour.

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1 MR. ANDRES: So that brings us to
2 the second line: As part of DDoT's letter
3 they conditioned that the faculty and staff
4 should arrive before the intersection peak
5 hour. I guess our concern is that since
6 you're identifying a cap in the previous
7 condition -- the school has done a wonderful
8 job over the past 10-12 years and in
9 implementing their program that they have
10 shown, they've established a track record of
11 being able to reduce their trips, and that
12 includes faculty and staff not arriving during
13 peak hour. So, you know, if you're
14 identifying a cap, that's fine, and the school
15 obviously has no issues with it.

16 I guess our concern is that we
17 want to have the flexibility to figure out
18 what's the best way to achieve the cap. In
19 some instances, yes, you know, but it might be
20 good for the faculty and staff to arrive
21 earlier. In some instances it might be good
22 for maybe the seniors that drive to arrive

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1 earlier. But we need that flexibility because
2 year over year the student population changes,
3 some of the driver laws change. So we want to
4 be able to have that flexibility. And since
5 we've proved over the past 10 years that the
6 school is able to live within that cap with
7 that flexibility, we just want to be able to
8 maintain that flexibility moving forward.

9 MR. FEOLA: And if I may add
10 again, it's not terribly practical to enforce
11 this condition. And just so you know, the 110
12 faculty/staff cap that we're asking for are
13 total bodies. They're not FTEs. They're not
14 any kind of configuration. So there are going
15 to be 110 faculty and staff employed by the
16 school. We don't want the music teacher that
17 teaches a two-class block in the middle of the
18 day at 11:00 to have to come at 7:30. First
19 of all, it would be hard to enforce. But it
20 just doesn't make any sense. So to us, when
21 we already have the 106 cap, who we use to get
22 under that 106 cap should be left to the

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1 school. Thank you.

2 MR. ANDRES: Moving forward, the
3 next three conditions, which includes submit
4 and install an approved school warning signage
5 plan, adopt a robust TDM, install four bicycle
6 spaces in front of the main entrance, you
7 know, those are amenable to the way the school
8 operates.

9 The last condition is submit the
10 annual traffic performance monitoring program.
11 We believe that it's appropriate that that
12 every three years is a good benchmark. The
13 school over the past 10 years, as part of
14 their BZA order, were required to meet with
15 the community liaison group I believe twice
16 a year. And in the past 10 years it's been
17 our understanding that in that time frame that
18 the school was in operation there were no
19 traffic issues that were brought up, and those
20 were basically biannual meetings.

21 So in order to allow the school to
22 use its resources better than paying traffic

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1 engineers to do traffic counts every year, you
2 know, they'd want to be able to have that
3 flexibility to use those resources for other
4 measures that have been successful. Like for
5 example, they are probably the only school I'm
6 aware of that send shuttles to six Metro
7 stations and one retail parking lot in McLean,
8 Virginia to shuttle their students. In the
9 event that they needed more shuttle service,
10 you know, I believe that the resources to
11 instead of monitoring every year can be
12 shifted to apply for maybe better shuttle
13 service. And again, that's conjecture, but it
14 does provide them the flexibility that they
15 need to institute programs that are effective.

16 CHAIRMAN JORDAN: All right.

17 Thank you. Any other questions of the
18 applicant?

19 (No audible response.)

20 CHAIRMAN JORDAN: No? Then let's
21 turn now to the Office of Planning and see if
22 there's anything in addition to their report

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1 that they want to add.

2 MS. BROWN-ROBERTS: Good morning,
3 Mr. Chairman and Members of the BZA. I'm
4 Maxine Brown-Roberts representing the Office
5 of Planning.

6 The Office of Planning recommends
7 approval of the requested special exception
8 relief. And we had also asked for -- on the
9 condition -- with any conditions recommended
10 by DDoT. In our report we also outlined a
11 number of conditions. Most of them were carry
12 over from the former BZA approval. There are
13 a few that -- new conditions that we
14 recommended. Most of them were some of the
15 issues that was brought up by the ANC and we
16 thought it appropriate to also include those.

17 We had also asked -- we're still
18 concerned about the noise issue that was
19 brought up by the ANC. And also we had asked
20 for a landscaping plan along Foxhall Road to
21 screen the parking lot. That was something
22 the applicant had said they would submit at

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1 the public hearing. I'm available for any
2 questions.

3 CHAIRMAN JORDAN: Are there any
4 questions for the Office of Planning from the
5 Board?

6 (No audible response.)

7 CHAIRMAN JORDAN: No? Does the
8 applicant have any questions for Office of
9 Planning?

10 MR. FEOLA: No. Should we do a
11 comment about the Office of Planning
12 conditions now, or shall we wait until
13 rebuttal?

14 CHAIRMAN JORDAN: Let's step
15 through all of this and then we'll come
16 back --

17 MR. FEOLA: Okay.

18 CHAIRMAN JORDAN: -- on rebuttal
19 and deal with the conditions, because we're
20 going to turn now to the Department of
21 Transportation and see if there's anything
22 additional they would like to add. Yes?

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1 MS. CHAMBERLIN: Good morning.
2 I'm Anna Chamberlin with DDoT. DDoT concluded
3 that the increase in the student and faculty
4 would have a negative impact on the existing
5 transportation network unless it's
6 appropriately mitigated. We found that over
7 106 vehicles are entering the site during the
8 6:45 to 7:45 peak hour. In the 2000 Zoning
9 order the applicant had stated that their cap
10 was actually 106 during the 6:45 to 7:45 peak
11 hour, but the condition was placed on 6:30 to
12 7:30, which I assume was due to it being the
13 system peak.

14 But we disagree with the applicant
15 stating that the system peak would be the
16 worst case scenario because the traffic
17 volumes in Foxhall between the 6:45 and 7:45
18 and the 6:30 and 7:30 peak hours is minimal.
19 Yes, there's more vehicles going up and down
20 Foxhall 15 minute later, but it's not by a
21 great amount. The difference isn't that big.

22 What the real impact is are the

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1 turning vehicles, especially the left turning
2 vehicles going into the site cause to the
3 traffic on Foxhall. And that's actually going
4 to have the most impact on commuters during
5 the 6:45 to 7:45 hour. So we would like to
6 see the trips actually limited for the
7 intersection peak, not the system peak,
8 because the intersection peak will have the
9 greatest impact on commuters during that time.

10 What we had found in their counts
11 was, yes, they've been able to stay under the
12 106 cap during the 7:30 to 8:30 time period,
13 but during 7:45 to 8:45 they're actually --
14 their turning counts are 114 and 111 existing.
15 We project that with the existing proposed
16 increase in student and staff that these
17 inbound trips are going to go up to at least
18 143 vehicle trips, which would have a much
19 greater impact on Foxhall and on the commuter
20 traffic.

21 And as part of -- the other
22 condition that we had requested was in 2000,

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1 as part of the transportation management plan,
2 the applicant had stated that they would
3 require staff to arrive prior to 7:30. We're
4 not asking that all staff arrive prior to
5 7:30, that all FTE staff -- what we're asking
6 is any staff that's needed at the start of
7 class. So if the middle school starts at 8:00
8 a.m. and students, faculty and staff need to
9 be there at 8:00 a.m., that those particular
10 staff members arrive prior to the intersection
11 peak.

12 So we're not asking that all, but
13 a music teacher that has to be in at 10:30 or
14 a janitor or someone else that needs to arrive
15 at noon, 1:00, arrives before 7:30. But any
16 staff that needs to be there before the 8:00
17 a.m. bell should arrive there before 7:30.
18 Their existing counts only show a handful of
19 vehicles arriving before 7:30, which is
20 inconsistent with the transportation
21 management plan that they had proposed in
22 2000.

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1 In addition, we asked for a review
2 of the school warning signage at the school
3 that currently don't meet DDoT and MUTCD
4 standards. And I'm glad to hear the applicant
5 has agreed to submit and upgrade all the
6 needed signage.

7 In addition, they had proposed
8 four bicycle spaces and an existing bike rack.
9 We want to see those in the main entrance to
10 facilitate drop offs, pickups or students
11 arriving, or staff arriving to the school.

12 And in addition, that they adopt a
13 robust TDM plan. We don't believe that their
14 existing TDM plan is robust enough. We have
15 in our report some specified recommendations.
16 We're not asking that those be conditions, but
17 that they do need to increase their existing
18 TDM plan. And we're not in -- we have no
19 objection to the monitoring plan be every
20 three years. We just want to see some kind of
21 performance monitoring plan submitted to us
22 and the ANC. So, thank you.

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1 CHAIRMAN JORDAN: Let me ask you:
2 Would you define again what is the
3 intersection peak time?

4 MS. CHAMBERLIN: So the
5 intersection peak is the time when there are
6 more turning movements at that particular
7 intersection and volume. So it's volume and
8 turning movements combined.

9 CHAIRMAN JORDAN: And the time
10 though -- the time frame is what?

11 MS. CHAMBERLIN: It's the 6:45 to
12 -- I mean, 7:45 to 8:45.

13 CHAIRMAN JORDAN: Yes, that's what
14 confused me. You said 6:45 before.

15 MS. CHAMBERLIN: Sorry.

16 CHAIRMAN JORDAN: Okay.

17 MS. CHAMBERLIN: 7:45 to 8:45.

18 CHAIRMAN JORDAN: And then the
19 system peak is 7:30 to 8:30?

20 MS. CHAMBERLIN: Correct.

21 CHAIRMAN JORDAN: And when you use
22 the term "robust," what do you mean by

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1 "robust?"

2 MS. CHAMBERLIN: Well, we listed
3 here -- we had a couple bullet points on page
4 6.

5 CHAIRMAN JORDAN: No, I'm just
6 asking what does that word mean? I mean, how
7 do you --

8 MS. CHAMBERLIN: Well, it's
9 flexible. We just don't believe that what
10 they have now is sufficient to ensure that
11 they're going to maintain 106 during the
12 intersection peak hour. So we would just like
13 some additional TDM measures adopted by the
14 applicant.

15 CHAIRMAN JORDAN: Yes, but I'm
16 just dealing with the words. I'm not looking
17 at the example. But that's why it's important
18 that the words are something that we can
19 enforce, and that's not necessarily subject to
20 -- being it's very subjective. That's why I'm
21 asking the question so I can determine.

22 So the basic -- the bottom line of

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1 that is that you want to see a plan that's
2 going to reduce that 106 number?

3 MS. CHAMBERLIN: Right.

4 CHAIRMAN JORDAN: That's the --

5 MS. CHAMBERLIN; Correct.

6 CHAIRMAN JORDAN: Okay. Any
7 questions of Transportation, anyone? Ms.
8 Sorg?

9 VICE CHAIR SORG: Thank you, Mr.
10 Chairman. I'll ask one follow-up question.
11 You heard the applicant's sort of reasoning
12 with regard to your requested condition on the
13 staff arrival times. And sort of my
14 understanding of their point is that if we say
15 we're going to be at 106 turns, then whether
16 that's like, you know, students or staff or
17 visitors or the marching band, it's 106. So
18 how do you react to that portion of the
19 testimony?

20 MS. CHAMBERLIN: Well, I think
21 what we found here is that they haven't met
22 the 106 during the intersection peak time and

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1 that they had put in their transportation
2 management plan that they would require staff
3 to arrive, and that's not happening. So which
4 is why we then want it to be a condition to
5 ensure that the intersection peak hour isn't
6 exceeded.

7 CHAIRMAN JORDAN: Any other
8 questions of Office of Transportation from
9 anyone?

10 (No audible response.)

11 CHAIRMAN JORDAN: Does the
12 applicant have questions of the Office of
13 Transportation?

14 MR. FEOLA: It does not.

15 CHAIRMAN JORDAN: Do we have any
16 other government agency that's here?

17 (No audible response.)

18 CHAIRMAN JORDAN: Then let's turn
19 to the audience and see if there's any persons
20 in the audience wishing to testify in support
21 of this application.

22 Oh, I'm sorry, the ANC. Let me --

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1 I'm sorry. Would the ANC please provide
2 testimony? Kind of got ahead of myself here.
3 ANC 3D. Yes, thank you. Sorry about that.

4 MR. ROSS: Good morning, Mr.
5 Chairman. Good morning. First of all, I
6 would like to apologize, and I would like to
7 apologize for dropping your last name in the
8 first sentence of this, and I have to say that
9 I actually did proof it.

10 CHAIRMAN JORDAN: Hey, he works
11 for me.

12 MR. ROSS: I did not mean to
13 assume that kind of familiarity with you, sir.

14 CHAIRMAN JORDAN: No, that's all
15 right. It works for me.

16 MR. ROSS: We will try to be very
17 short and succinct. As you know, we are here
18 in support of this, but I will read my
19 testimony. And we have also attached our
20 letter which we sent to you requesting --
21 setting forth our support and also requesting
22 that it be given great weight.

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1 Dear Chairperson Jordan and
2 Members of the Board, my name is Stu Ross and
3 I am the chair of ANC 3D. I appear this
4 morning with my colleague, Commissioner Kent
5 Slowinski, in whose SMD The Field School is
6 located, single member district.

7 On October 25th, 2012, ANC 3D
8 transmitted to the BZA its unanimous approval
9 of The Field School's request to increase its
10 school enrollment cap for students from 340 to
11 400 and to increase the faculty and staff cap
12 from 74 to 110. Prior to approval we had four
13 meetings with Field School on their plans and
14 our approval letter to you all is attached to
15 this testimony. That approval came with six
16 conditions which are contained in our letter
17 to you of October 25th, 2012, which as noted,
18 is attached to this testimony. Mr. Slowinski
19 and I will address them now and take your
20 questions should you have any.

21 Condition 1. As noted, as all of
22 these conditions were unanimously approved.

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1 The drainage issue was a lingering problem
2 which Field readily agreed to fix.

3 Condition 2. This condition is
4 not dissimilar from the above condition and
5 requires the installation of a 12-foot lattice
6 fence to screen from the residents on 44th
7 Street the view of the blue Field School
8 buses. Field also embraced this condition.

9 Condition 3. Again at the request
10 of immediate neighbors Field has agreed to
11 replace prior to occupancy of the new addition
12 a cooling unit by the gymnasium with a unit
13 that is 20 percent quieter. I would pause
14 there to add that there is a statement that we
15 have received on this issue from the
16 consultants that they are going to use and I'm
17 sure that the school may wish to address that.

18 Condition 4. This is a sensitive
19 issue relating to requests of The Field School
20 to make their outdoor and indoor facilities
21 available to third parties. The previous
22 approval of The Field School's relocation and

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1 construction contained provisions requested by
2 close neighbors of limitations on any use of
3 the fields and faculties -- and facilities;
4 excuse me. The pressure of sports leagues and
5 event sponsors was debated at our meetings and
6 we have tried, recognizing that it is Field's
7 property and taking into consideration the
8 neighbors in close proximity who bear the
9 burden of such events, to have a report back
10 dialogue to ANC 3D between Field and potential
11 users so as to have all parties talking.

12 Condition 5. It was the strong
13 view of ANC 3D that non-expired conditions of
14 the present BZA order will carry forward.

15 This, condition 6, involves
16 morning and evening trips to and from the
17 school as a part of its expansion. Foxhall
18 Road is a busy school-laden road in this
19 immediate Field School area. ANC 3D has had
20 good results with other schools in
21 implementing a transportation demand
22 management plan which is part of our record in

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1 the consideration of Field's expansion. Field
2 has agreed to this condition of employing the
3 TDM and reporting to DDoT and ANC 3D as set
4 forth in our letter to you of October 25th,
5 2012.

6 Compliance with the TDM will be
7 measured by whether Field School maintains the
8 trip caps, which I have as 107, in the morning
9 peak and 42 in the afternoon peak. And that
10 information came from the hearings that we had
11 with The Field School. So there's a
12 difference of one right there, and I don't
13 know which is correct, but I assume The Field
14 School is.

15 We look forward to discussing any
16 and all of these conditions with you and are
17 prepared to submit this on the record in this
18 matter.

19 CHAIRMAN JORDAN: Thank you.
20 Thank you. Does the Board have any questions
21 for the ANC?

22 (No audible response.)

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1 CHAIRMAN JORDAN: No? Does the
2 applicant have any questions?

3 MR. FEOLA: No, thanks.

4 CHAIRMAN JORDAN: Thank you for
5 coming. Thank you very much.

6 MR. ROSS: Thank you very much,
7 Mr. Chairman.

8 CHAIRMAN JORDAN: Now is there
9 anyone in the audience who wishes to testify
10 in support of this application? Good. Yes,
11 please come forward. Yes, please. Yes,
12 please give the cards and --

13 MR. SCOTT: Good morning.

14 CHAIRMAN JORDAN: Good morning.
15 Would you identify yourself, please?

16 MR. SCOTT: Yes, Mark Scott. I'm
17 a neighbor of The Field School.

18 CHAIRMAN JORDAN: Thank you. Mr.
19 Scott, were you here to take the oath this
20 morning?

21 MR. SCOTT: I was, yes.

22 CHAIRMAN JORDAN: Okay. Thank

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1 you. You can proceed.

2 MR. SCOTT: Okay.

3 CHAIRMAN JORDAN: Yes. You have
4 three minutes.

5 MR. SCOTT: Only have three
6 minutes?

7 CHAIRMAN JORDAN: Yes.

8 MR. SCOTT: Okay.

9 CHAIRMAN JORDAN: There is the
10 countdown clock for you.

11 MR. SCOTT: Well, I have a -- I
12 submitted a written testimony that's obviously
13 going to take longer than three minutes, but
14 there are four conditions that were proposed
15 by the ANC that we believe are absolutely
16 necessary because of the impact to The Field
17 School.

18 I'll cut to the chase. If you
19 look at the back of the application, I have
20 pictures of the impact of what The Field
21 School did to us. Basically The Field School,
22 when it was built, had -- was supposed to have

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1 a green space between property lines. That
2 did not occur for myself or our -- my closest
3 neighbors.

4 They also installed this chiller
5 which has been very noisy. They've taken some
6 steps to reduce the noise, but it is still
7 very noisy.

8 We've had this drainage issue
9 which has been for nine years. It was
10 flooding our property on a regular basis.
11 There was a lot of denial by The Field School
12 that they weren't the cause of the drainage
13 issue. They did finally put in a silt fence,
14 a temporary silt fence about a year ago, which
15 alleviated the problem, but as a temporary
16 solution. It needs to be fixed on a permanent
17 basis.

18 The gymnasium, as you can see from
19 the picture is directly behind our house.
20 We're very concerned about the impact of
21 renting out this gymnasium too long or late in
22 the evening.

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1 This parking that they built right
2 behind our house is 10 feet above grade level.
3 On top of that, they park these buses. Part
4 of their application is to put more parking on
5 this parking lot back here that's right behind
6 our house, more -- you know, doubling up these
7 buses. And so we've asked them for many, many
8 years to put some sort of a lattice of some
9 sort up there to try to block this. And now
10 they apparently have decided that they will
11 work with us on that.

12 The bottom picture by the way on
13 the last page, that is looking down from their
14 parking lot to my pool. And it shows you
15 there is no green space in between. And so
16 when their application indicates on page 7
17 that they have in fact a green buffer zone
18 throughout the perimeter of their property,
19 that just simply isn't true.

20 So, you know, they are working
21 with us. Well, and I should say, because I
22 know I only have three minutes --

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1 CHAIRMAN JORDAN: It's 23 seconds
2 now.

3 MR. SCOTT: Okay. After this
4 construction was done I went to the tax office
5 and disputed by valuation. They reduced my
6 valuation just because of The Field School
7 from a 1,079,000 to 850,000. That's a
8 \$229,000 reduction in the value of my
9 residence because of the way this Field School
10 is built behind my house. Now they want to
11 basically double down on these problems by
12 increasing the noise from the children, by
13 increasing the use, by increasing the parking
14 back there, by, you know, using the gym more.
15 Basically all of these things that cause
16 reduction in the value of my property, they're
17 basically proposing to double down on. And I
18 just don't think that that application should
19 be approved without each of those conditions
20 that was recommended by the ANC being put in
21 place.

22 And we were happy to work with The

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1 Field School to the extent that there is any
2 particular problems with one of those
3 conditions, but we would hope and recommend
4 that you actually apply each of those
5 conditions to the final.

6 CHAIRMAN JORDAN: Now you're
7 testifying in support, but --

8 MR. SCOTT: Right. We're not
9 going to hold them back on their progress, but
10 we only supported if the conditions are
11 included. If the conditions are not included,
12 we would strongly oppose --

13 CHAIRMAN JORDAN: Yes.

14 MR. SCOTT: -- the application.

15 CHAIRMAN JORDAN: Are there any
16 questions for Mr. Scott? Yes?

17 VICE CHAIR SORG: Yes, thank you,
18 Mr. Chairman.

19 Just for the record, do you feel
20 that the conditions that are proposed by the
21 ANC adequately address the concerns that you
22 have?

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1 MR. SCOTT: I think it's the best
2 we could do for it at this point.

3 VICE CHAIR SORG: Okay.

4 CHAIRMAN JORDAN: Any other
5 questions of Mr. Scott?

6 (No audible response.)

7 CHAIRMAN JORDAN: Does the
8 applicant have any questions of Mr. Scott?

9 MR. FEOLA: No, sir.

10 CHAIRMAN JORDAN: Well, thank you
11 very much.

12 MR. SCOTT: Thank you.

13 CHAIRMAN JORDAN: Yes? Is the
14 microphone on? Do you want to make sure?

15 MS. RIGINOS: Yes, I have the
16 green light on.

17 CHAIRMAN JORDAN: All right. Very
18 good. Thank you.

19 MS. RIGINOS: Yes. I have also
20 three minutes?

21 CHAIRMAN JORDAN: Yes, three
22 minutes.

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1 MS. RIGINOS: Yes. Well, good
2 morning. My name is Alice Riginos. I am the
3 neighbor of Mr. Scott from whom you have just
4 heard. I reside at 2400 44th Street; the
5 Scotts at 2006, and I'm speaking also for Dr.
6 and Mrs. Vincent Desiderio, who are on the
7 other side of the Scotts at 2420 44th Street.
8 And we are three properties that are impacted
9 as outlined by Mr. Scott's testimony by the
10 construction 10 years ago The Field School.

11 And I wish to say from the outset
12 that I had no opposition to the construction
13 on the former Cafritz Estate that lay to the
14 west of the property that my husband and I
15 purchased in 1986. And we've been continuous
16 residents of that property. We had no
17 objection to the construction of the school.
18 We have no objection really to the expansion
19 at this time, but with the conditions outlined
20 this morning by the ANC and then further
21 amplified by Mr. Scott.

22 I must say that professionally I

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1 have spent my life in education. I'm a
2 retired professor of Howard University. I
3 support education.

4 But it was a very difficult period
5 when the construction of the school first
6 produced flooding of a sort that I had never
7 seen in the years from 1986 to 2002 when the
8 construction began, and coincidentally the
9 year that the Scotts moved in next door. The
10 flooding takes primarily on the Scotts'
11 property. It must be a little lower lying
12 than ours. And indeed it pools, puddles and
13 then exceeds the doorsill often and actually
14 enters the lower level. So that has been a
15 continuous problem.

16 The other problem is the chiller.
17 In my statement; and I hope that you will have
18 the leisure to read it, I have outlined the
19 rather peculiar conditions of the piece of
20 real estate that was developed to The Field
21 School. There is a natural sharp incline
22 coming down from Foxhall Road and that incline

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1 had to be filled in and leveled in order that
2 the construction go forward for the campus of
3 The Field School. And the result was -- well,
4 let me say that the result was the realization
5 of a lovely school campus.

6 But immediately above our
7 properties, the three houses I have referenced
8 previously, was the construction of the
9 gymnasium and the large classroom building to
10 the north of the gymnasium which are serviced
11 by this very large chiller. And it was the
12 chiller -- the noise from that which goes up
13 against the wall of the gymnasium three
14 stories high is deflected down into what has,
15 as I describe, a sort of canyon that was
16 created by first the 10-foot artificial
17 elevation accomplished in order to construct
18 these buildings, the addition of the gymnasium
19 on top and the result is that the chiller's
20 noise reverberates down towards our back
21 areas. It has been intrusive and difficult to
22 live with for 10 years.

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1 And at this time when expansion
2 would increase the internal volume of the
3 school that will be serviced by this chiller,
4 we would certainly find this an appropriate
5 time to further ameliorate. As Mr. Scott
6 says, the school has taken steps; we are
7 grateful for that, to abate the noise
8 somewhat, but it continues even today. So
9 thank you for these considerations and I hope
10 that you have time to read my statement.

11 CHAIRMAN JORDAN: Yes, thank you.
12 We appreciate your testimony.

13 Before you go, is there any
14 questions from the Board?

15 (No audible response.)

16 CHAIRMAN JORDAN: No? Does the
17 applicant have any questions?

18 MR. FEOLA: No, sir.

19 CHAIRMAN JORDAN: Thank you. We
20 appreciate it.

21 MS. RIGINOS: Thank you.

22 CHAIRMAN JORDAN: Ms. Sorg, did

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1 you have something?

2 VICE CHAIR SORG: Well, I was --

3 CHAIRMAN JORDAN: Just a second,
4 please. Just one moment.

5 VICE CHAIR SORG: Before you go,
6 Ms. Riginos, I would just --

7 CHAIRMAN JORDAN: Just a question,
8 yes.

9 VICE CHAIR SORG: I would just ask
10 you the same question that I asked Mr.
11 Scott --

12 MS. RIGINOS: Yes?

13 VICE CHAIR SORG: -- which is just
14 for the record do you feel that the conditions
15 proposed by the ANC adequately address the
16 concerns that you feel there are?

17 MS. RIGINOS: Yes, they do.

18 VICE CHAIR SORG: Okay. Thank
19 you.

20 MS. RIGINOS: Yes, they do.

21 VICE CHAIR SORG: Yes.

22 CHAIRMAN JORDAN: Thank you.

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1 Those are two persons in support. Now let me
2 ask for anyone in the audience in opposition
3 who wishes to testify.

4 (No audible response.)

5 CHAIRMAN JORDAN: Okay. Good.

6 Then let's turn back to the applicant for a
7 brief rebuttal or closing statement in five
8 minutes, please.

9 MR. FEOLA: Thank you, Mr. Chair.
10 Just a couple of pieces of rebuttal. And I
11 guess just for the record I would like to
12 point out that -- well, first, let me ask Mr.
13 Andres to address the concerns that DDoT
14 raised about the peak versus driveway peak
15 versus Foxhall Road peak.

16 Mr. Andres?

17 MR. ANDRES: Right. Thanks, Mr.
18 Feola. Well, some of the -- initially just
19 back up, I think it's important that the BZA
20 order was written with a specific time frame
21 where the 106 cap was linked to a time of
22 7:30-8:30, and that was linked to a system

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1 peak. If for some reason the system peak was
2 7:45-8:45, then -- and the school was
3 generating higher volumes, well then at that
4 point the school over the past 10 years would
5 have done something to mitigate it. But
6 because the order said 7:30 to 8:30, you know,
7 that mitigation over 10 years was never
8 addressed.

9 So moving forward, what we wanted
10 to point out in DDoT's analysis on page 2 was
11 that if you look at the peak hour of 7:30 to
12 8:30, which is what we think the appropriate
13 peak hour is, it's been identified that we
14 would generate 107 trips. If you shift that
15 by 15 minutes, that peak hour would generate
16 approximately 36 more, to 143.

17 Now if you take that 36 number,
18 that's saying that if you look at Foxhall
19 Road, in order for the analysis -- for DDoT's
20 analysis to be valid, that's saying that the
21 traffic volumes on Foxhall Road have to be
22 less than 36 additional vehicles in that 7:30-

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1 8:45 period, and it's not. If you look at our
2 traffic counts at all of the intersections
3 along there, that delta of 36 vehicles is not
4 achieved when you go from 7:30 to 7:45. In
5 essence there's more than a jump of 36
6 vehicles between 7:30 and 7:45. Does that --
7 Chairwoman Sorg, you look a little confused.
8 I just want to make sure I'm clear.

9 VICE CHAIR SORG: Yes. No, I'm
10 not confused by what you're saying.

11 MR. ANDRES: Okay.

12 VICE CHAIR SORG: I do think
13 though that you are not addressing what I
14 think DDoT is really saying, which is that the
15 school has not kept to the condition, whatever
16 the time. That's if the time is there now.
17 And so I think if there's something to address
18 in your rebuttal, perhaps it's that. I mean
19 what I heard from our DDoT representative is
20 that they don't think that the school has
21 adhered to the condition as they are now and
22 that they're rewriting of the conditions,

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1 whether or not you agree with them, seemed to
2 me to be an effort to ameliorate the ability
3 or the probability that the school would
4 adhere to the conditions. That's what I heard
5 from her.

6 MR. FEOLA: Can I address that?

7 VICE CHAIR SORG: Please.

8 MR. FEOLA: Condition No. 18, BZA
9 application 16559, and I quote: "The
10 applicant may not permit more than 106
11 vehicles to enter the school property during
12 the 7:30 a.m. to 8:30 a.m. morning peak hour,"
13 period. That's what it says. That's what
14 we've done. That's what the school has
15 adhered to. And by the way, Ms. Chamberlin's
16 right, our original traffic management plan
17 suggested the hours that she suggested. DDoT
18 made this change. This was a recommendation
19 in the BZA order that was made by DDoT, not by
20 us. So now DDoT's changing the game, and I
21 don't necessarily think that's fair. And
22 you've heard the arguments why we think we

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1 have the better argument. We are not
2 violating any of the conditions of the BZA
3 order with regard to traffic management.

4 VICE CHAIR SORG: Just for the
5 record I'm not indicating that I have an
6 opinion on whether or not. I'm indicating
7 that that's what I think that the
8 representative is saying. And, you know, it's
9 actually good information to know that in the
10 previous order that that was actually the
11 narrative behind how that hour was arrived at
12 actually.

13 MR. FEOLA: I'd only like to ask
14 Mr. Layman then to address the ANC conditions
15 with regard to the school's position.

16 CHAIRMAN JORDAN: Sure.

17 MR. LAYMAN: There are six
18 conditions that the ANC put into their letter
19 of October 25th. I'm just going to go through
20 them really quickly.

21 CHAIRMAN JORDAN: Yes.

22 MR. LAYMAN: The first was for us

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1 to permanently fix the drainage issues
2 mentioned by Mr. Scott and Ms. Riginos, and
3 we're happy to do that.

4 Second is that we would provide
5 further screening for that bus parking along
6 44th Street by the construction of a 12-foot
7 lattice fence. And we're happy to do that.
8 Both of those things -- all of the things I'm
9 about to talk about essentially were things
10 that I discussed with Mr. Scott prior to our
11 last appearance before the ANC and most of
12 this language came before the ANC as a result
13 of our discussions and cooperation.

14 The third has to do with our
15 agreement to install a new cooling unit, known
16 as the chiller, next to the gymnasium.
17 There's some specific language there that says
18 that we would install a unit that is at least
19 20 percent quieter. That's some specific
20 language. That language is in the ANC letter
21 in that condition No. 3. We hadn't actually
22 discussed that specific number, and we have

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1 done a little bit of work with regard to
2 seeing how close we can get to that since that
3 October ANC meeting. We'll come back to that.
4 But we are committed to replacing the air-
5 handling unit known as the chiller.

6 The fourth condition has to do
7 with the use of our athletic fields by outside
8 groups. This is something that we have not
9 sought. We did not come before the BZA
10 seeking permission to rent our outdoor
11 athletic fields to outside groups. And in
12 fact the language that's in the Office of
13 Planning letter states that we would not be
14 doing that. This is something that came up
15 when we went before the ANC as a result of
16 outside groups wishing to rent our outdoor
17 athletic fields, not something that we've
18 sought. We aren't here to advocate for that.

19 And the only addition I would say
20 is that the way the ANC order is written; and
21 it's quite lengthy, I'm not going to read
22 every bit of it, but the first lengthy

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1 sentence of that condition No. 4 sort of
2 requires us to go out into the community and
3 to seek consensus with our various neighbors
4 about outside groups using our field. We've
5 heard from quite a few of our abutting
6 neighbors that they are unalterably opposed to
7 this kind of use. So the prospect of having
8 to go out and seek consensus on this matter is
9 not something that we seek.

10 The next couple of sentences in
11 that order regarding the frequency with which
12 non-sporting events of more than 100 people
13 would occur on the campus and some time frame
14 are amenable to The Field School. But the
15 first portion of that we would not -- we're
16 not advocating for or asking for.

17 The fifth is with regard to the
18 non-expired conditions from the present order
19 carrying forward, and we would agree. We
20 think that the Office of Planning's inventory
21 of those is something that we agree with and
22 we think covers it.

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1 And then finally the sixth
2 condition of the ANC has to do with fully
3 implementing and complying with the traffic
4 demand management plan, and we would -- rather
5 than going through the details of exactly how
6 that's laid out in the ANC, we would sort of
7 defer to the elements of the DDoT program that
8 were addressed by Mr. Andres.

9 And just on the chiller, I'll turn
10 to Mr. Wheeler, the architect, to explain our
11 position with regard to the new chiller that
12 we propose to put in.

13 MR. WHEELER: Good morning. My
14 name is Tom Wheeler. I'm with Cox Graae +
15 Spack Architects. And as Mr. Feola said, we
16 engaged an acoustical engineer to come out and
17 evaluate the condition at the site, and he's
18 prepared a letter, which I believe we've given
19 you all.

20 And I think that the thing that we
21 want to discuss is the prescription that we
22 make the chiller 20 percent quieter. The

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1 sound level is measured on a logarithmic
2 scale. And so to -- and that's in decibels.
3 And so to reduce that sound level by 20
4 percent is not really attainable. What we
5 would propose is that we reduce the perceived
6 loudness of the chiller by 20 percent and/or
7 thereabouts. And so what we've done is
8 gone out -- the engineer has gone out and
9 evaluated the currently available state-of-
10 the-art chillers, and there's a variety of
11 units from different manufacturers that will
12 meet this. Now there's another aspect to the
13 sound that frankly we think is probably more
14 of the issue than the actual perceived
15 loudness of it. The compressors associated
16 with the chiller have a particular tone that
17 they give off when they're ramping up.

18 And the acoustical engineer has
19 checked the sound level of the chiller at the
20 property line and found it to be 48 decibels,
21 which is below the District's requirement of
22 55 night time. So the unit's already

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1 reasonably quiet. We can replace it with a new
2 unit and bring that level down. But more
3 importantly the new state-of-the-art units
4 have addressed this tonal component and that
5 can be greatly reduced.

6 So what we've committed to do is
7 -- as Mr. Layman said, is replace the existing
8 unit. And we've evaluated a range of units
9 that will meet our needs. In fact, we've gone
10 one step further and gone out and made a site
11 visit to one of the state-of-the-art units
12 that's installed at a local facility and
13 measured the sound, measured this tonal
14 component and in fact it's quieter. Its tonal
15 component is much more suppressed.

16 And then finally, when we get to
17 the point of selecting a unit for the
18 facility, we're going to require a factory
19 sound test that certifies, that demonstrates
20 that in fact the unit is quieter and this
21 tonal component has been adequately
22 suppressed. So that's the way we're going to

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1 approach this.

2 And then I guess one last comment:
3 In fact, this existing unit, there's not going
4 to be any more load on it. The new facility
5 has separate equipment. So this unit will
6 have the same load on it and we're going to
7 make it quieter by replacing it with a state-
8 of-the-art unit.

9 CHAIRMAN JORDAN: All right.
10 Thank you.

11 MR. FEOLA: One last thing, Mr.
12 Chair, and that's just to address for the
13 record the OP conditions, which we haven't
14 spent any time on. As Mr. --

15 CHAIRMAN JORDAN: Let me hold you
16 on that --

17 MR. FEOLA: Sure.

18 CHAIRMAN JORDAN: -- because we're
19 beyond your rebuttal time. So let's do that,
20 unless the Board has any questions, because
21 let me tell you what I'm thinking we're going
22 to do: We'll close the record and close this

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1 hearing. And I'm going to then ask the Board
2 to withhold deliberation. We'll set a date
3 for deliberation and decision on this matter,
4 However, that the applicant, the Department of
5 Transportation, and even the ANC if necessary
6 come back with another set of conditions that
7 are something that we can truly enforce and
8 one that would include all the concerns that
9 we talked about here today. I'd rather for
10 you to do it as opposed to we do it, but,
11 folks, sit down and make sure we have
12 something that everybody's going to be close
13 to happy as we can get and something that's
14 enforceable, that we can put in an order to go
15 forward.

16 One thing that we don't enforce
17 here is the construction management-kind of
18 things, however, we can -- if you want to keep
19 it there, we can accept that, but that's just
20 there for conversation. But in regards to the
21 zoning aspect, in regards to the
22 transportation, get together and come back

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1 before us with a set of conditions that are
2 enforceable and one that takes in
3 consideration the concerns of Department of
4 Transportation, the ANC, and Office of
5 Planning and the neighbors as you've heard us
6 sit here today, if we can do that. If that's
7 okay with the Board.

8 Does anybody else have anything to
9 add to that?

10 VICE CHAIR SORG: Thank you, Mr.
11 Chairman. I'm wondering if you might also --
12 we might also like the applicant to take
13 another pass at their TDM plan as requested by
14 DDoT, specifically looking at the requests on
15 page 6 of that and whether they want to
16 include those things as conditions to the
17 order or as revisions to their TDM plan, or to
18 demonstrate how those things are already being
19 met, if that's their opinion.

20 CHAIRMAN JORDAN: Initially I was
21 going to ask that they present a TDM that's
22 going to reduce to 106 entries, but I thought

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1 that's part of what DDoT's going to talk about
2 for a subsequent aspect of it. That's it. If
3 you want to just have -- you want them to
4 change their TDM and present that to us? Is
5 that what you're asking?

6 VICE CHAIR SORG: Well, I think,
7 yes, because I mean the TDM plan is going to
8 be something that is also contained within
9 potential approval here. It's something that
10 the applicant would have to adhere to and it
11 does sound like it's something that DDoT has
12 questions or believes there are potential
13 unsatisfactory elements to. And so if they're
14 getting together on the conditions, I think
15 this is sort of part and parcel with having
16 those things dovetail.

17 CHAIRMAN JORDAN: Or we can add it
18 as one of the conditions that would affect the
19 TDM. Either way. But you understand what
20 we're trying to get here? If they come back
21 with a whole new TDM plan, I'm just concerned
22 that they're going to -- I guess the

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1 conditions to reduce -- to take in Department
2 of Transportation's concern -- I think that's
3 what you're looking for. Is that right?

4 VICE CHAIR SORG: Well I think
5 it's kind of, you know, six of one, half dozen
6 of another, because the concerns or
7 deficiencies that are listed in various parts
8 of the DDoT report, some are listed as sort of
9 requested conditions and some are listed as
10 requests to update the TDM plan. But they
11 really are in service of the same issues. And
12 so, whether -- you know, if the applicant and
13 DDoT are going to get together and try to come
14 to an agreement on those things, whether it
15 has to do with updating the conditions only,
16 or whether it has to do with updating the
17 conditions as well as revising, you know,
18 their proposed TDM plan, I would think is kind
19 of up to them. But just in terms of your
20 putting it on the record, to allow for that
21 document to potentially be resubmitted if
22 required.

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1 CHAIRMAN JORDAN: Yes, and I
2 follow you.

3 VICE CHAIR SORG: And comment
4 upon.

5 CHAIRMAN JORDAN: I was thinking
6 more so that that was something in the future,
7 but yes, they should take a look at improving
8 what's been submitted in the TDM.

9 Mr. Miller?

10 COMMISSIONER MILLER: Yes, Mr.
11 Chairman. I would like the applicant to
12 address some of the conditions that the Office
13 of Planning recommended; you were about to go
14 through that, particularly the parking lot
15 conditions, because I think some of those
16 address I think the concerns we heard from the
17 adjacent neighbor and the ANC. If you could
18 just go through each of those, or to say if
19 you have any objection to the Office of
20 Planning conditions.

21 MR. FEOLA: The good news is that
22 we accept all but one, so -- and how about if

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1 I let Mr. Layman talk about the one condition
2 that gives us a little pause?

3 MR. LAYMAN: There's only one.
4 It's condition 12, and it's a very minor
5 change. Condition 12 says, "The applicant may
6 not rent its outdoor facilities to outside
7 groups or persons." And we would just ask to
8 modify that by adding one word, the word
9 "athletic" before "facilities." So it would
10 read, "The applicant may not rent its outdoor
11 athletic facilities to outside groups or
12 persons," and that would simply allow us to
13 allow some of the local -- some of the folks
14 in the local neighborhoods such as the
15 embassies to use our parking lots or possibly
16 to us some of our indoor facilities to host
17 events, things that we haven't heard any
18 objections to at all in the last 10 years or
19 in discussions with our neighbors recently.

20 And all the controversies,
21 particularly with our abutting neighbors, have
22 been all related to the possibility of the

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1 outdoor athletic fields being used on
2 Saturdays or in the evenings. And we're happy
3 to continue with that restriction, but hope
4 that we might be able to use our non-athletic
5 facilities and indoor facilities for other
6 folks.

7 CHAIRMAN JORDAN: And in light of
8 what I said initially, I would like an updated
9 set of conditions and in that with that TMD as
10 we discussed here today. And I think you
11 ought to be working hand in hand again with
12 the Department of Planning, Transportation and
13 the ANC, and as much as you can with the
14 neighbors, and then present that back. And
15 that's what we'll keep the record open.

16 Mr. Moy, can I have a date? We
17 have the record open for that only.

18 MR. MOY: Yes, Mr. Chair. Is the
19 Board desiring a continued hearing or a
20 decision date?

21 CHAIRMAN JORDAN: Looking for the
22 decision date.

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1 MR. MOY: Depending on --

2 VICE CHAIR SORG: Just be
3 conscious of the schedule that day.

4 MR. MOY: I'm looking at it very
5 closely, Mr. Chairman. Naturally the next
6 public hearing is November 27th, which I think
7 might be too soon, but I'll leave it up to
8 the --

9 CHAIRMAN JORDAN: Twenty-seventh?

10 MR. MOY: Today's the 7th. If
11 everyone is in agreement, then the 27th, which
12 is a Tuesday --

13 CHAIRMAN JORDAN: That means
14 you'll have 20 days -- you'll have about --
15 well, we need to get it in so we can review
16 it. So the 27th is what date? Is that --

17 MR. MOY: The 27th is a Tuesday.

18 CHAIRMAN JORDAN: It's a Tuesday.
19 So you need to have it, Mr. Moy, by that
20 Wednesday, no later than that Wednesday?

21 MR. MOY: Well, don't forget the
22 Thursday of the 22nd is the Thanksgiving

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1 holiday. And I don't know if the Board's
2 desiring --

3 CHAIRMAN JORDAN: But that means
4 the 21st then.

5 MR. MOY: The 21st --

6 CHAIRMAN JORDAN: We need to have
7 the document filed by November 21st.

8 MR. MOY: Would the Board care for
9 any --

10 CHAIRMAN JORDAN: Let's do this
11 and give some comfort: Why don't we carry
12 this over to -- what's our decision date in
13 December?

14 MR. MOY: It would be December the
15 18th, which is not bad, in the afternoon.

16 CHAIRMAN JORDAN: That give you
17 enough time to work with --

18 MR. FEOLA: Yes, and that will
19 also give the ANC -- the ANC would meet.

20 CHAIRMAN JORDAN: Good. Thank
21 you. Thank you for that input. So let's do
22 that date, please.

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1 MR. MOY: Yes, I have a question,
2 Mr. Chairman. Would the Board care for any
3 responses to what's filed by the applicant?

4 CHAIRMAN JORDAN: Well, I really
5 want a consensus document.

6 MR. MOY: I understand. That's
7 signed by all parties?

8 CHAIRMAN JORDAN: I really want a
9 consensus document, yes. That's what I'm
10 envisioning, a consensus document. Because
11 it's better for it to be done with everybody
12 trying to be close to happy than us to do it
13 for you. And you've heard a lot of concerns
14 here. So if we get it in on -- so the date
15 would be the 18th?

16 MR. MOY: That's correct.

17 CHAIRMAN JORDAN: Then if we get
18 it filed by the --

19 MR. MOY: By the 10th or the 11th.

20 CHAIRMAN JORDAN: Yes.

21 MR. MOY: The 10th would be the
22 earlier Monday.

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1 CHAIRMAN JORDAN: Then let's --
2 and then if there is any letter of rebuttal or
3 comment to it, then the days before that.
4 Would that give you enough time, Mr. Moy, to
5 get it processed and get it out?

6 MR. MOY: Whatever the Board would
7 care for we'll take care of.

8 CHAIRMAN JORDAN: So if they
9 submitted it on that Monday -- December 18th
10 would be the date that we would --

11 MR. MOY: Decide it.

12 CHAIRMAN JORDAN: -- decision.
13 Then the filing should be in no later than
14 that Friday, 10 days before that. And then we
15 can have comments submitted by anyone of --
16 that participated in this by that Monday or
17 Tuesday. So then you can get it out that
18 Wednesday prior to the week before the
19 hearing. Right? You follow me? Ten days the
20 document -- the consensus document should be
21 submitted, as close as we can get to that.
22 The conditions, the updated conditions and TDM

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1 should be submitted to us 10 days before the
2 decision date. And thereafter three days for
3 any comment to it.

4 MR. MOY: All right. Let's do
5 that. The applicant file Friday, December
6 7th. And any comments three days after that
7 then would be December the 12th, which is a
8 Wednesday.

9 CHAIRMAN JORDAN: Okay.

10 MR. MOY: Should I repeat that?

11 CHAIRMAN JORDAN: Yes, that's
12 good. I'm good.

13 MR. MOY: Okay. So the applicant
14 would file by Friday, December the 7th. Any
15 responses from parties by Wednesday, December
16 the 12th. Decision, December 18th.

17 CHAIRMAN JORDAN: Mr. Miller?

18 COMMISSIONER MILLER: Yes, I'm new
19 here, so I realize we're not deliberating, but
20 I think we're trying to achieve consensus from
21 -- on a set of conditions. I just wanted to
22 at least signal a concern that I had that on

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1 that condition No. 4 from the ANC regarding
2 the use of outdoor facilities that you try to
3 get closer to the ANC position than the OP
4 position in terms use of the outdoor athletic
5 facilities. That's just a concern I have.

6 CHAIRMAN JORDAN: Okay. Well,
7 then we will conclude this hearing subject to
8 what we've already talked about for the order,
9 that you submit a -- the record will remain
10 open for two things -- well, three things; the
11 updated conditions, updated TDM and any
12 response thereto by the parties.

13 Okay? Thank you. Then we'll
14 conclude this hearing.

15 And let's take a five-minute
16 recess.

17 (Whereupon, at 11:26 a.m. off the
18 record until 11:35 a.m.)

19 CHAIRMAN JORDAN: Our next case,
20 please?

21 MR. MOY: Yes, sir. The next
22 application before the Board is application

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1 No, 18434. As originally advertised the title
2 read as application of First FSK LP. The
3 applicant has amended its title name, and it's
4 now application of the District of Columbia
5 CVS Pharmacy, LLC. This is pursuant to 11
6 DCMR 3104.1, for a special exception to
7 permit the continued use of the subject
8 property as a surface parking lot under
9 section 213, in the R-1-B District. This is
10 at premises 4817 U Street, N.W. Property
11 located in Square 1389, Lot 816.

12 CHAIRMAN JORDAN: Good morning.
13 It's almost afternoon, but good morning.
14 Would you please identify yourselves, please?

15 MR. FREEMAN: Good morning,
16 Chairman Jordan. For the record my name is
17 Kyrus Freeman. I'm an attorney on behalf of
18 the applicant.

19 MR. RIEDERER: Good morning. My
20 name is Timothy Riederer. I'm the district
21 manager with CVS Pharmacy.

22 MR. LARRABEE: Good morning. My

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1 name is Ian Larrabee, the general manager of
2 Central Parking.

3 CHAIRMAN JORDAN: Okay. Thank
4 you. Is there anything that the Board needs
5 in this application?

6 (No audible response.)

7 CHAIRMAN JORDAN: I think we -- if
8 you want to say, I would ask that you simply
9 waive your presentation, if you wish.

10 MR. FREEMAN: We are happy to
11 waive our presentation based on the DDoT
12 report, the OP report and the ANC report in
13 support of our application.

14 CHAIRMAN JORDAN: You did do a
15 presentation? Now, let me turn to the Office
16 of Planning. Is there anything in addition
17 that you would like to add?

18 MR. LAWSON: Thank you, Mr. Chair,
19 just very quickly. Joel Lawson with the
20 Office of Planning. I'm simply here to once
21 again introduce a new staff member to the
22 Board. I'll make this very quick. Brandice

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1 Elliott has been with the Office of Planning
2 for a few months now. Comes to us with a
3 wealth of experience from across the country.
4 So we'd like to welcome her to the Board of
5 Zoning Adjustment. Thanks. And she'll make
6 our quick presentation.

7 MS. ELLIOTT: Thank you. Good
8 morning, Mr. Chairman and Members of the
9 Board. For the record my name is Brandice
10 Elliott and I'm representing the Office of
11 Planning.

12 There is nothing additional that
13 we need to add to the staff report, so we'd
14 like to stand on the record. And I'd be happy
15 to answer any questions you have.

16 CHAIRMAN JORDAN: Thank you. Do
17 you have any questions of Office -- does the
18 applicant have any questions of Office of
19 Planning?

20 MR. FREEMAN: No, Mr. Chairman.

21 CHAIRMAN JORDAN: All right.
22 Department of Transportation, anyone?

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1 (No audible response.)

2 CHAIRMAN JORDAN: We do have a
3 letter in support, or no objection letter
4 submitted by the Department of Transportation.

5 Is there anyone here from ANC 3D
6 that wishes to speak?

7 (No audible response.)

8 CHAIRMAN JORDAN: We do have a
9 letter that we give great weight to from ANC
10 3D voting support approval.

11 Is there anyone in the audience
12 wishing to speak in support of this
13 application?

14 (No audible response.)

15 CHAIRMAN JORDAN: Anyone who
16 wishes to speak in opposition?

17 (No audible response.)

18 CHAIRMAN JORDAN: Then let's turn
19 back to the applicant. The only question I
20 have for the applicant, have you had the time
21 -- your view on the conditions that -- the
22 proposed conditions?

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1 MR. FREEMAN: We're happy to keep
2 the conditions since they're the same exact
3 conditions from five years ago.

4 CHAIRMAN JORDAN: I'm sorry? Are
5 they -- well the question was are they all
6 relevant?

7 MR. FREEMAN:

8 (No audible response.)

9 CHAIRMAN JORDAN: Okay. Then we
10 have those. Are there 15 conditions? Okay.
11 Then we will close this hearing.

12 And is the Board ready to
13 deliberate? Go ahead, Mr. Hinkle.

14 MEMBER HINKLE: Yes, thank you,
15 Mr. Chair. I do have a question about one of
16 the conditions, and that's 14. First of all;
17 and I'm reading the Office of Planning report
18 here, I think the second word should be
19 "applicant's" instead of "application."

20 But my other issue is should we
21 note that CVS is the responsible party for
22 maintenance, or should it read that the

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1 responsible party for the lot or something
2 else, the owner, because I have some concerns
3 about identifying the leasee of this property
4 as the responsible party within the condition.

5 CHAIRMAN JORDAN: Yes.

6 MEMBER HINKLE: I don't know if it
7 should read --

8 CHAIRMAN JORDAN: So it's your
9 belief --

10 MEMBER HINKLE: -- like "The
11 applicant shall maintain signage on the light
12 posts on the interior of the lot stating that
13 the responsible party for maintenance of the
14 lot."

15 VICE CHAIR SORG: Perhaps you can
16 say -- can I jump in?

17 CHAIRMAN JORDAN: Sure.

18 VICE CHAIR SORG: Okay. You might
19 say "The applicant shall maintain signage on
20 the light posts on the interior of the lot
21 indicating the responsible party for
22 maintenance and providing a telephone number

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1 to call if the lot needs cleaned." And we
2 don't have to say either of them.

3 CHAIRMAN JORDAN: Say that again,
4 Ms. Sorg?

5 MEMBER HINKLE: Sounds good to me.

6 VICE CHAIR SORG: Just instead of
7 the condition indicating the responsible
8 party, the signage should indicate the
9 responsible party, which means if CVS is
10 responsible now as the lessee, then they could
11 put that on their sign, but we don't put CVS
12 in the order. But then if CVS leaves and
13 there's a new tenant, then they got to change
14 their signs.

15 CHAIRMAN JORDAN: But, well, this
16 order would run with the land, so it should be
17 that --

18 VICE CHAIR SORG: Right, and --

19 CHAIRMAN JORDAN: -- the property
20 should have shall have.

21 VICE CHAIR SORG: Right, so that's
22 why I'm saying that signage on the light post

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1 on the interior of the lot indicating the
2 party responsible for maintenance of the lot
3 and providing a telephone number to call.

4 CHAIRMAN JORDAN: I hear what
5 you're saying and I think I'm trying to get to
6 what Mr. Hinkle wanted in such a way that
7 regardless whether the place is -- okay, it's
8 sold. I'm thinking we should make it in such
9 a way that it runs kind of with the property
10 for that use so that it is -- for instance,
11 the signage on this lot shall have signage on
12 this light. The light post shall be on the
13 interior, da, da, da, da, da, toward the lot.
14 We can work it out. We can work it out
15 with --

16 VICE CHAIR SORG: I will say that
17 I think what I'm saying is getting to what
18 you're saying and what Mr. Hinkle is saying.

19 MEMBER HINKLE: Right.

20 CHAIRMAN JORDAN: Okay.

21 MEMBER HINKLE: I think so.

22 VICE CHAIR SORG: But maybe

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1 it's --

2 CHAIRMAN JORDAN: We're spending
3 too much time on this. We're spending too
4 much time, so let's -- in light of that, let's
5 do that. So then we have to go back through.
6 And what's going to be the language that's
7 going to run through all of these that -- to
8 handle that way? What's the suggestion?

9 VICE CHAIR SORG: That's the only
10 place where it says CVS.

11 CHAIRMAN JORDAN: All right. Is
12 that it?

13 VICE CHAIR SORG: Yes.

14 MEMBER HINKLE: so I think the
15 language that Ms. Sorg proposed --

16 CHAIRMAN JORDAN: All right. Then
17 we'll substitute that in.

18 MEMBER HINKLE: Okay.

19 CHAIRMAN JORDAN: All right. Any
20 other deliberation on this matter?

21 (No audible response.)

22 CHAIRMAN JORDAN: Then I would

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1 move that the grant the relief requested by
2 the applicant with the -- is it 15 -- 14 -- 15
3 conditions submitted in the Office of
4 Planning's report as amended here on the dais.

5 VICE CHAIR SORG: Second.

6 CHAIRMAN JORDAN: Motion made and
7 seconded. Mr. Miller?

8 COMMISSIONER MILLER: Since this
9 use has operated there for over 60 years, I'm
10 wondering if we can change the five-year
11 condition to at least a 10-year condition.

12 CHAIRMAN JORDAN: I'm certainly
13 willing to do that.

14 COMMISSIONER MILLER: So I would
15 -- sounds like the person making the motion
16 and the seconder accepted that as part of
17 their motion.

18 CHAIRMAN JORDAN: Yes.

19 COMMISSIONER MILLER: Thank you.

20 CHAIRMAN JORDAN: And I'm sure the
21 applicant's not going to fight that.

22 So, all right. All those in favor

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1 of the motion, signify by saying aye.

2 (No audible response.)

3 CHAIRMAN JORDAN: Signify by
4 saying aye.

5 (Chorus of ayes.)

6 CHAIRMAN JORDAN: I listen. I'm
7 just not automatic. I listen.

8 All opposed, nay.

9 (No audible response.)

10 CHAIRMAN JORDAN: The motion
11 carries. Mr. Moy?

12 MR. MOY: Staff would record the
13 vote as 4-0-1. This is on the motion of
14 Chairman Jordan to approve the application
15 with the 15 conditions as listed in the OP
16 report including the amendment in the language
17 of condition No. 14 and condition No. 1 which
18 changes the term period from 5 years to 10
19 years. Second the motion, Vice-Chair Sorg.
20 Also in support of the motion Mr. Miller, Mr.
21 Hinkle. No other Board Members participating.
22 Again, the motion carries on a vote of 4-0-1.

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1 CHAIRMAN JORDAN: Thank you, Mr.
2 Moy. Can we have a summary order, please?

3 MR. MOY: With pleasure.

4 CHAIRMAN JORDAN: Now you can say
5 thank you.

6 MR. FREEMAN: Thank you again.

7 CHAIRMAN JORDAN: Then let's move
8 to our next case. For some reason we have a
9 lot on this docket today. I don't know how
10 that happened, but that -- no. We're okay.
11 We're okay.

12 MR. MOY: The next application
13 before the Board is application No. 18435.

14 CHAIRMAN JORDAN: Yes.

15 MR. MOY: This is the application
16 of Friendship Family, LLC, pursuant to DCMR
17 3103.2, for a variance from the floor area
18 ratio limitation under section 772, variance
19 from the rear yard requirements under section
20 774, variance from the parking requirements
21 under subsection 2101.1, and variance from the
22 loading requirements under subsection 2201.1.

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1 This is to allow an addition to an existing
2 veterinary hospital in the C-2-A District at
3 premises 4105 Brandywine Street, N.W.
4 Property located in Square 1732, Lot 822.

5 Mr. Chairman, in your case folders
6 there is a request for party status from a
7 Bruce Lawry under Exhibit 26. And also I
8 believe the applicant's going to be asking for
9 expert witness.

10 CHAIRMAN JORDAN: I thought that
11 party status request has changed in light of
12 an agreement that was made with the applicant
13 and how there is a letter of support. Am I
14 correct?

15 VICE CHAIR SORG: He also
16 specifically indicated that he --

17 CHAIRMAN JORDAN: Withdrawing?

18 VICE CHAIR SORG: -- withdrawing
19 his request for party status in that letter.

20 MR. MOY: Okay. That's good.
21 Thank you.

22 CHAIRMAN JORDAN: All right.

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1 18435. Would you please identify yourselves,
2 please?

3 MR. COLLINS: My name is
4 Christopher Collins with Holland & Knight,
5 attorney for the applicants.

6 MR. GLASSMAN: I'm Peter Glassman.

7 CHAIRMAN JORDAN: Please make sure
8 your microphone's turned on.

9 MR. GLASSMAN: Sorry. Peter
10 Glassman. I'm director of Friendship Hospital
11 for Animals and managing manager of Friendship
12 Family, LLC.

13 MS. MARA: Karen Mara. I'm the
14 hospital administrator for Friendship Hospital
15 for Animals.

16 MR. HOLT: I'm Michael Holt. I'm
17 the architect for the hospital.

18 CHAIRMAN JORDAN: Okay. Yes? All
19 right. I guess no one else is speaking.
20 Okay. Just a second.

21 Mr. Collins, we believe that the
22 record is quite full, especially in light of

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1 -- and really appreciate you working with the
2 neighbor on this who had given us great pause
3 about the effect on this development on that
4 particular -- Mr. Lawry's household. I'm glad
5 that you've now come to agreement on this.

6 And in light of that we believe
7 that the record is full. We've reviewed the
8 record and believe that all the elements that
9 are necessary to grant the relief requested
10 has already been presented to us. And so we
11 would turn to you to see how you wish to
12 proceed, whether or not you will waive any
13 presentation, or you have the right to make a
14 presentation if you so wish to.

15 MR. COLLINS: We'd like to waive
16 the presentation, however, there is a
17 housekeeping measure I need to bring to your
18 attention. That is to formally request that
19 you waive the notice requirements to allow us
20 to amend the application to add special
21 exception relief for the roof structure. It
22 was addressed in our prehearing statement. It

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1 was a function of a request made by the ANC
2 and the neighbor. And we believe that we've
3 thoroughly addressed that special exception
4 test in our statement as well.

5 CHAIRMAN JORDAN: I think it was
6 -- your request was timely, so we already have
7 done it, so we accept that.

8 MR. COLLINS: Thank you. I would
9 also just like to note that in addition to
10 what you have in the record we have submitted
11 six additional letters of support this morning
12 that we just received.

13 CHAIRMAN JORDAN: Thank you. Then
14 let's turn now to the Office of Planning to
15 see if there's anything in addition that they
16 would like to add other than what they have on
17 the record.

18 MR. MORDFIN: Hi. Good morning.
19 I'm Stephen Mordfin with the Office of
20 Planning and I would just like to make one
21 note that in the first condition in the report
22 the report says that the applicant would pay

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1 100 percent of the cost of the Capital
2 Bikeshare to any employee that requests it,
3 and the applicant had requested that it state
4 100 percent of the annual registration for
5 Capital Bikeshare.

6 CHAIRMAN JORDAN: Let me catch up
7 with that. So we're changing -- I don't have
8 that on my other list. No, I don't have that.
9 Yes, I don't have -- it's -- I'll just have to
10 go -- no, I have all the conditions kind of
11 consolidated and I did not have that on --
12 it's in OP, yes.

13 MR. COLLINS: Mr. Chair, that is
14 -- as corrected by Mr. Mordfin, that is what
15 we offered with the ANC and that is what our
16 TDM -- TMP program --

17 CHAIRMAN JORDAN: No, I just have
18 a summary of conditions and just need to
19 rework it. And I didn't have that on my list.

20 Okay. Does the Board have any
21 questions for Office of Planning?

22 (No audible response.)

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1 CHAIRMAN JORDAN: Does the
2 applicant have any questions for the Office of
3 Planning?

4 MR. COLLINS: No, sir.

5 CHAIRMAN JORDAN: And do we have
6 any other government agency here with us here
7 today?

8 (No audible response.)

9 CHAIRMAN JORDAN: And I think we
10 do have the letter from the Department of
11 Transportation. No, I don't have a letter.
12 Do we? Department of Transportation?

13 I've been informed that the
14 Department of Transportation has no objection
15 to the application.

16 Is there anyone here from ANC 3E?

17 (No audible response.)

18 CHAIRMAN JORDAN: We do have a
19 letter of support from ANC 3E which we'll give
20 great weight to. That's in support of the
21 application.

22 Is there anyone in the audience

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1 who wishes to speak in support of this
2 application?

3 (No audible response.)

4 CHAIRMAN JORDAN: Anyone wishing
5 to speak in opposition to the application?

6 (No audible response.)

7 CHAIRMAN JORDAN: Then we'll turn
8 back to the applicant for rebuttal and
9 closing, but there's nothing to rebut. So
10 unless there's something you want to say.

11 MR. COLLINS: I would simply ask
12 that you request -- request that you approve
13 our application at the earliest possible date.

14 CHAIRMAN JORDAN: Then we will
15 close this hearing based upon the record. Oh,
16 wait, wait, I got to back up and reopen it.
17 Go ahead.

18 VICE CHAIR SORG: Thank you, Mr.
19 Chairman. I have a question for the
20 applicant.

21 Have you submitted proposed
22 conditions based on, you know, what the -- I

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1 Mean, the DDoT report doesn't just say no
2 objections. It says we think this and that
3 and that thing. As well as the agreement with
4 the ANC, which I think was fairly recently
5 reached, as well as the agreement with the
6 adjacent neighbor.

7 MR. COLLINS: We have not
8 submitted a comprehensive list of conditions.
9 We could do that. We could go through them
10 now. We could do that. Some of them in the
11 agreement are not -- you know, they --

12 VICE CHAIR SORG: Well, certainly.

13 MR. COLLINS: -- issues.

14 VICE CHAIR SORG: Certainly.

15 CHAIRMAN JORDAN: Well, what are
16 you asking? You're not asking that we
17 incorporate the agreement, those things in the
18 agreement.

19 VICE CHAIR SORG: No, I was asking
20 if they had already submitted proposed
21 conditions, because I didn't see it in my
22 record.

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1 MR. COLLINS: No, we have not.

2 CHAIRMAN JORDAN: Yes, because I
3 didn't see the -- I had --

4 VICE CHAIR SORG: The reason for
5 my asking the question is because the DDoT
6 report did come in recently and I don't think
7 that all of the conditions proposed in the OP
8 report reflect all of the, you know,
9 suggestions that DDoT has. So --

10 CHAIRMAN JORDAN: Have you had a
11 chance to review them?

12 MR. COLLINS: What we do have is a
13 list of what we -- those items within the OP
14 and DDoT report having to do with
15 transportation issues that we have agreed to,
16 which kind of summarizes all those items. So
17 we'd be happy to hand that in to you now.

18 CHAIRMAN JORDAN: I don't know I
19 missed this thing. Okay. Taking a look at
20 the conditions to see if it's something that
21 we can deal with here or do we need to have
22 you submit -- listing conditions. Have you

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1 had conversation with DDoT regarding their
2 proposed conditions?

3 MR. COLLINS: We have. We've gone
4 through it. We have spoken with them and we
5 are prepared to address them. I think many of
6 them we've agreed to.

7 CHAIRMAN JORDAN: What ones are
8 you not in agreement with?

9 MR. COLLINS: Well, let me just --
10 I'm looking at page 2 of the DDoT report, item
11 1, the TDM program, transit subsidies. They
12 ask that we increase the target rate to 50
13 percent, and we've agreed to that.

14 For carpooling and vanpooling they
15 identify they would like to see established
16 goals for the program. And we have said that
17 we will promote this activity in line with the
18 monetary incentives comparable to those for
19 transit subsidies, which is what they had
20 asked us to tie into.

21 For bicycle parking they ask that
22 the bicycle parking be provided in a covered

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1 area such as the existing parking garage in a
2 secure room and following the DDoT bicycle
3 parking facility design guidelines. And we
4 will put them in. They will be in the -- the
5 bicycle parking spaces are in the lower level
6 in a room that is now identified as a
7 conference room on the new plans. The news
8 plans show it as without a label because the
9 conference room is being moved back into the
10 hospital instead of in the cellar. And so
11 that would be the room where the bicycles are.

12 For performance monitoring, item
13 No. 2, performance monitoring, we've agreed to
14 performance monitoring to coordinating sharing
15 these monitoring efforts with DDoT.

16 QA/QC, that's their own I think
17 internal quality insurance/quality control
18 they were going to check.

19 So, yes, so we -- those are the --
20 how we responded to those.

21 CHAIRMAN JORDAN: So they were --
22 is that four conditions?

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1 MR. COLLINS: Well, the --there's
2 -- under TDM there's three items and there's
3 performance monitoring. So it's a total of
4 four, that's correct.

5 CHAIRMAN JORDAN: Ms. Sorg, you
6 said there's other things that you wanted --

7 VICE CHAIR SORG: Well, let me
8 give an example: In the OP conditions,
9 condition 1B, that the applicant agrees to
10 operate valet parking either within space at
11 the front of the building on Brandywine Street
12 as permitted by DDoT or within its garage
13 space, blah, blah, blah. I think in reading
14 the record that's a recommendation by OP.
15 There's a different agreement that the
16 applicant in their prehearing statement
17 indicated that they had with the neighbor with
18 regard to the valet parking. And there's just
19 a little bit of differing language.

20 I think that everybody's in
21 agreement with the valet parking, but I'm not
22 sure that I would be comfortable today on the

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1 dais indicating exactly what language should
2 be in a potential condition for the valet
3 parking without perhaps, you know, a little
4 more, you know, closer look at conditions that
5 the applicant would be happy about.

6 Because clearly, as you mentioned,
7 Mr. Chairman, they've worked very closely with
8 the ANC and the neighbor and gotten their buy
9 in for a project that they were potentially
10 not the happiest with. So to get those
11 conditions right I think in this case would be
12 important.

13 CHAIRMAN JORDAN: All right.

14 VICE CHAIR SORG: And then --

15 CHAIRMAN JORDAN: Well, let's do
16 this: Since we've closed this hearing and we
17 withhold deliberation and move this to a
18 hearing, a decision date, but the interim if
19 you can give us a consolidated list of
20 conditions that works -- takes care of all the
21 -- what might be in it, what might be some
22 differences in languages and -- as Ms. Sorg

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1 has said, and present that to us --

2 MR. COLLINS: We'd be happy --

3 CHAIRMAN JORDAN: -- prior to that
4 decision date.

5 Is there anything else anyone
6 needs? Mr. Hinkle?

7 MEMBER HINKLE: Yes, thank you,
8 Mr. Chair. I do have another question for the
9 applicant. Within the terms of the agreement
10 with the neighbor, Mr. Lawry, there are some
11 physical items that are discussed within those
12 terms. Do the plans that we have reflect
13 what's within those terms, like the parking
14 signage and the -- you know, just for an
15 example, metal siding and some of these other
16 elements? Do the current plans we have
17 reflect those?

18 MR. COLLINS: Yes, they do.

19 MEMBER HINKLE: Okay.

20 MR. COLLINS: They do.

21 MEMBER HINKLE: Thank you.

22 CHAIRMAN JORDAN: Anything else

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1 that we need from the applicant?

2 (No audible response.)

3 CHAIRMAN JORDAN: Then, Mr. Moy --
4 Mr. Moy? There he is.

5 MR. MOY: Was taking a little bit
6 of a recess, but I'm still here.

7 CHAIRMAN JORDAN: We need a -- do
8 we have a date? Was it November twenty --

9 MR. MOY: Seventh. The 27th is
10 our next decision meeting.

11 CHAIRMAN JORDAN: Twenty-seventh?
12 You should have that ready for us by then, do
13 you believe?

14 MR. COLLINS: The 27th?
15 Certainly. When would you like it? The 27th
16 is the decision date?

17 CHAIRMAN JORDAN: Yes. Mr. Moy --

18 MR. MOY: That's a Tuesday. Is it
19 possible to submit by the Monday previous,
20 which would be November the 19th?

21 MR. COLLINS: Yes.

22 MR. MOY: Okay.

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1 CHAIRMAN JORDAN: Okay. Well,
2 good. Then we will move this for a decision
3 to November 27th.

4 MR. MOY: Twenty-seventh.

5 CHAIRMAN JORDAN: And you're to
6 submit by November 19th the consolidated
7 conditions. All right?

8 All right. Anything else?

9 (No audible response.)

10 CHAIRMAN JORDAN: Well, good.
11 Then we will bring this particular hearing to
12 a close.

13 MR. COLLINS: Thank you.

14 MR. MOY: The next application
15 before the Board in this morning's session is
16 application No. 18398. This is the
17 application of Kenneth L. and Ellen J. Marks,
18 pursuant to 11 DCMR 3013.2. This is for a
19 variance from the lot occupancy requirements
20 under section 403, rear yard requirements
21 under section 404, and nonconforming structure
22 requirements under subsection 2001.3, to allow

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1 the construction of an addition to an existing
2 one-family row dwelling in the R-3 District.
3 This is at premises 2130 Bancroft Place, N.W.
4 Property located in Square 2532, Lot 802.

5 Mr. Chairman, if you'll recall,
6 this application was rescheduled from its
7 public hearing of September the 18th.

8 Now this case, unless there's been
9 a change, there is a party -- there are a
10 number of party status requests.

11 CHAIRMAN JORDAN: Yes. Go ahead
12 and read them.

13 MR. MOY: Okay. And I'm just
14 going to read this for the record and the
15 Chairman can pick up. From a Chris Chappin or
16 Chapin Exhibit No. 32, Preserve or Green Space
17 under Exhibit 41, Seyon B. Crocker under
18 Exhibits 35 and 36, the Sheridan-Kalorama
19 Historical Association under Exhibit 29,
20 Deborah Carstens Exhibit No. 26, and Norman
21 Pozez and Melinda Bieber under Exhibit 25.
22 And I believe that covers the party status

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1 requests.

2 MR. HITCHOCK: Mr. Chairman?

3 CHAIRMAN JORDAN: Yes, please?

4 MR. HITCHCOCK: For the record,
5 Con Hitchcock. I represent some of the
6 parties for party in opposition status. There
7 is one in addition that Mr. Moy did not
8 mention, Marie Drissel and Curtis Bristol who
9 I don't have the exhibit number, but they live
10 across the street at 2135 Bancroft Place.

11 As we indicated in our prehearing
12 submission in this file two weeks ago, the
13 neighbors I'm working with are Ms. Carstens,
14 Mr. Pozez and Ms. Bieber, the immediate
15 adjacent neighbors. Ms. Drissel and Dr.
16 Bristol and Sheridan-Kalorama Historical,
17 knowing that the Board does not want to hear
18 multiple presentations, we've tried to
19 streamline it and to keep things moving as
20 quickly as possible.

21 CHAIRMAN JORDAN: All right.

22 That's what we were trying to do without a

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1 score card a minute ago --

2 MR. HITCHCOCK: Sure. Okay.

3 CHAIRMAN JORDAN: -- trying to
4 check the boxes and see --

5 MR. HITCHCOCK: If I run through
6 that again would that be helpful?

7 CHAIRMAN JORDAN: No, no. I have
8 your plea and so we've kind of checked that
9 off. What I don't have -- well, what I need
10 to -- who I need to hear from is -- you don't
11 have Chapin, correct, Ms. Chris Chapin?

12 MR. HITCHCOCK: Preserve Our Green
13 Space, no, I'm not working with them.

14 CHAIRMAN JORDAN: Well, is Chris
15 Chapin here?

16 MR. HITCHCOCK: There's --

17 CHAIRMAN JORDAN: Oh, that's part
18 of Sheridan-Kalorama? Neighborhood Council?
19 Right. If you'd please come up to take the
20 microphone, please?

21 MR. HITCHCOCK: Yes, well --

22 CHAIRMAN JORDAN: Do we have a

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1 separate request?

2 MR. HITCHCOCK: While she's coming
3 up, the Sheridan -- there is the Sheridan-
4 Kalorama Neighborhood Council. And there's a
5 separate Sheridan-Kalorama Historical
6 Association. The Sheridan-Kalorama Historical
7 Association is the one that would like to
8 present as part of the organized statement.

9 CHAIRMAN JORDAN: The Sheridan
10 Council?

11 MR. HITCHCOCK: No, Historical
12 Association, SKHA. Yes, if the parties that
13 we would propose --

14 CHAIRMAN JORDAN: Now who is Mr.
15 Chaplin with?

16 MR. HITCHCOCK: Chapin.

17 CHAIRMAN JORDAN: Chapin.
18 Who's --

19 MR. HITCHCOCK: Mr. Chapin is with
20 the Sheridan-Kalorama Neighborhood Council,
21 and he will not be presenting. But they're a
22 joint party and join, you know, the four that

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1 I am working with; Ms. Carstens, Mr. Pozez and
2 Mr. Bieber, Ms. Drissel and Dr. Bristol and
3 the Historical Association, SKHA. Ms.
4 Drissel, Marie Drissel is seated to my left
5 and will be able to respond --

6 CHAIRMAN JORDAN: If you'll let
7 me --

8 MR. HITCHCOCK: Sure.

9 CHAIRMAN JORDAN: -- let me
10 monitor this hearing. Okay?

11 MR. HITCHCOCK: Okay.

12 CHAIRMAN JORDAN: Thanks. Just
13 stay with me. Do I have a separate request
14 for the Kalorama Neighborhood Council --
15 Association Council as -- I don't see a
16 request for party status. I have a Chris
17 Chapin, is it? Chapin as in opposition
18 requesting party status, but not in behalf of
19 any organization or group.

20 Do we have anything other than
21 that?

22 (No audible response.)

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1 CHAIRMAN JORDAN: Is Mr. Pepper
2 here for Green Space?

3 MR. PEPPER: Yes, I am.

4 CHAIRMAN JORDAN: Okay. Thank
5 you. Now, Mr. Hitchcock, I believe we have
6 you representing every party that has
7 submitted a request for party status in
8 opposition other than Preserve Our Green Space
9 and Sheridan-Kalorama.

10 MR. HITCHCOCK: The Sheridan-
11 Kalorama, yes, sir. Yes.

12 CHAIRMAN JORDAN: And I have -- I
13 didn't say because I said that had submitted.
14 And so the -- except for the group that you
15 are representing, then the only other party
16 request that I have is Preserve Our Green
17 Space and Sheridan-Kalorama. And that is with
18 Mr. Pepper. Okay? I don't have any request
19 from any other organization other than the
20 ones I've named here that's made a timely
21 request for party status.

22 VICE CHAIR SORG: I'm sorry, if I

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1 can just jump in, there's a letter here that
2 says Sheridan-Kalorama Neighborhood Council
3 advises that Hitchcock Law Firm -- and he just
4 said he's not representing them.

5 CHAIRMAN JORDAN: Yes, read that
6 into the record.

7 VICE CHAIR SORG: So if I can
8 clarify, you said you are not representing the
9 Sheridan-Kalorama Neighborhood Council.

10 MR. HITCHCOCK: The Neighborhood
11 Council. I have this form that was filed
12 along with the letter that you just read on
13 August 23rd. To the extent -- yes, they would
14 be part of the group as well. Everyone except
15 POGS, Preserve Our Green Space. So --

16 VICE CHAIR SORG: Oh, I thought
17 you had said Preserve Our Green Space was part
18 of the Sheridan-Kalorama Neighborhood Council.

19 MR. HITCHCOCK: Oh, they're part
20 of the neighborhood, but they're not part of
21 the neighborhood --

22 VICE CHAIR SORG: Ah.

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1 MR. HITCHCOCK: The neighborhood
2 council is a citizen group. The historical
3 association is a preservation organization.

4 VICE CHAIR SORG: And neither of
5 those are the Sheridan-Kalorama Citizens
6 Association?

7 MR. HITCHCOCK: There is no
8 citizens association. There's the Sheridan-
9 Kalorama Neighborhood Council.

10 CHAIRMAN JORDAN: And you're
11 representing --

12 MR. HITCHCOCK: Yes.

13 CHAIRMAN JORDAN: And so the only
14 other group that is not being represented by
15 you is the --

16 MR. HITCHCOCK: Preserve Our Green
17 Space.

18 CHAIRMAN JORDAN: -- Preserve Our
19 Green Space?

20 MR. HITCHCOCK: Yes, sir.

21 CHAIRMAN JORDAN: Okay.

22 MR. HITCHCOCK: Yes.

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1 CHAIRMAN JORDAN: That's what I
2 thought. Okay. All right. Now let me ask,
3 Mr. Peppers, is it? Pepper?

4 MR. PEPPER: Yes.

5 CHAIRMAN JORDAN: Were you here to
6 take the oath and --

7 MR. PEPPER: No, I was not.

8 CHAIRMAN JORDAN: Okay. Anyone
9 that has not taken the oath and/or affirmation
10 given by Mr. Moy, please stand and --

11 (Whereupon, the witnesses were
12 sworn.)

13 MR. MOY: Thank you.

14 CHAIRMAN JORDAN: Now, Mr. Pepper,
15 on what basis are you seeking party status?

16 MR. PEPPER: Our organization,
17 Preserve Our Green Space in Sheridan-Kalorama
18 focuses on the protection of the open space,
19 which is a significant part of the
20 neighborhood. This open space is
21 substantially protected by the existing zoning
22 and would be affected by the proposal today.

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1 CHAIRMAN JORDAN: And what kind of
2 organization and how long has it been in
3 existence?

4 MR. PEPPER: It's been in
5 existence for a little bit more than a year.
6 It is a -- it's working on several cases in
7 the neighborhood that relate to protecting the
8 green space and the open space within the
9 neighborhood.

10 CHAIRMAN JORDAN: And how does
11 that differ than the group being represented
12 by Mr. Hitchcock, because I understand Mr.
13 Hitchcock's group also is talking about
14 protection of the green space and etcetera.

15 MR. PEPPER: Our primary purpose
16 is to protect the green space. It's a
17 secondary purpose I believe, but you --

18 CHAIRMAN JORDAN: But still it's
19 a --

20 MR. PEPPER: -- should have them
21 speak for themselves.

22 CHAIRMAN JORDAN: Okay. All

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1 right. Got you. All right.

2 I believe that interest is already
3 -- your interest is already being protected
4 within the same interest raised by the group
5 being represented by Mr. Hitchcock, and so I'm
6 not inclined to grant a separate party status
7 for that. I can ask that if you would like
8 that you may want to talk with this group, but
9 under the regulations we don't have to grant
10 party status to everyone, especially if their
11 interest is already being protected by another
12 party at the table. And I think the group as
13 being consolidated is one which includes the
14 interests in which you have provided us, the
15 interest that needs to be protected by your
16 group. So I'm not necessarily inclined to do
17 that. I don't know if you've had conversation
18 and there's a reason why you may not have
19 joined this group in regards to being in
20 opposition. Have you had conversations and --

21 MR. PEPPER: Not to that point. I
22 would say though that our -- just looking at

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1 the testimony of the different groups, that
2 ours does take a different angle, that on a
3 different case there were over 300-and-some
4 signatories in the neighborhood that
5 specifically supported the concerns of this
6 organization. And it seems to me the Board
7 would miss an opportunity. But it is true
8 that we agree in many ways with the comments
9 made by the other people represented by Mr.
10 Hitchcock today. But I think that I could at
11 least provide my testimony and I would be more
12 than happy to yield any cross-examination
13 responsibilities to Mr. Hitchcock.

14 CHAIRMAN JORDAN: Or you can also
15 not be granted party status and still speak in
16 opposition.

17 MR. PEPPER: That would be
18 acceptable.

19 CHAIRMAN JORDAN: Then we will
20 proceed in that manner. And by consolidating,
21 Mr. Hitchcock, the people that you're
22 representing, I'm taking that as one group and

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1 being represented given party status as one
2 consolidated group.

3 MR. HITCHCOCK: Correct. One
4 consolidated group --

5 CHAIRMAN JORDAN: Just so we
6 understand. Okay.

7 MR. PEPPER: -- with one
8 consolidated presentation; yes, sir.

9 CHAIRMAN JORDAN: So then that
10 would be the order. Okay. Great.

11 So now let's start this hearing.
12 Everybody clear? I think we found out who's
13 on first base and where we are and exactly --
14 now, we can do introductions, please.

15 MS. PRINCE: I'm Allison Prince
16 with Goulston & Storrs. I'm here on behalf of
17 the applicant, Ken Marks and his wife Ellen.

18 Good afternoon, Chairman Jordan
19 and Members of the Board. I'm pleased to be
20 here today on --

21 CHAIRMAN JORDAN: Would you
22 introduce the other --

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1 MS. PRINCE: Oh, I will.

2 CHAIRMAN JORDAN: -- persons at
3 the table, please?

4 MS. PRINCE: This is Ken Marks,
5 the property owner, and Art Lohsen, the
6 architect here with James Martin. They're
7 both from Frank & Lohsen, an architecture
8 firm.

9 CHAIRMAN JORDAN: Okay.

10 MS. PRINCE: I will be asking that
11 Mr. Lohsen be treated as an expert witness in
12 architecture, and I do have his résumé here
13 today. He is my only expert.

14 CHAIRMAN JORDAN: Okay. I'm
15 trying to see did we already -- did you
16 previously submit his information?

17 MS. PRINCE: We did not.

18 CHAIRMAN JORDAN: I would ask in
19 the future that you submit that prior to. And
20 he will be testifying regarding?

21 MS. PRINCE: The architecture, the
22 design of the addition.

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1 CHAIRMAN JORDAN: Design of the
2 addition? Mr. Lohsen has never testified
3 before this body before?

4 MR. LOHSEN: I believe I have,
5 Chairman. It's been probably 9 or 10 years,
6 but I have appeared before the Board.

7 CHAIRMAN JORDAN: Have you been
8 accepted as an expert in any other
9 jurisdiction?

10 MR. LOHSEN: Not to my knowledge.

11 VICE CHAIR SORG: Mr. Chairman, I
12 have no issues with accepting Mr. Lohsen as an
13 expert personally.

14 CHAIRMAN JORDAN: Okay. Anyone
15 else on the Board need to -- all right.

16 Then we will accept him as an
17 expert here, Mr. Moy, so we can so note the
18 record.

19 All right. Where were we? Now in
20 the interim we had this matter that was
21 continued. Was there any conversation among
22 what the applicant and any of the opposition

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1 in trying to resolve some -- any issues?

2 MS. PRINCE: Yes, there was. And
3 in fact there was a dramatic change to the
4 plans. The plans were fundamentally changed.

5 CHAIRMAN JORDAN: Yes. I'm just
6 trying to take a look here to see where we
7 might have -- where we need to get your
8 presentation centered upon. I would probably
9 direct you to be in your presentation hitting
10 those areas which the opposition has talked
11 about, because I believe your record is clear
12 on a lot of requirements for the relief that
13 you seek.

14 MS. PRINCE: We will focus on the
15 areas --

16 CHAIRMAN JORDAN: Which has
17 changed. The relief --

18 MS. PRINCE: Right.

19 CHAIRMAN JORDAN: -- you know,
20 changed in light of scaling down the project
21 to now would be requesting a special exception
22 as far as a variance. And I think we're -- so

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1 under 223. So if you would?

2 MS. PRINCE: I will.

3 CHAIRMAN JORDAN: Just one second.
4 Anything else particularly the Board needs
5 other than --

6 VICE CHAIR SORG: Thank you, Mr.
7 Chairman. I think of principal interest with
8 regard to an architectural presentation would
9 be light and air with, you know, as the
10 breezeway would affect that to begin with --

11 CHAIRMAN JORDAN: Okay. Those
12 items --

13 VICE CHAIR SORG: -- given the
14 special exception.

15 CHAIRMAN JORDAN: Those items that
16 were addressed by opposition is where we'd
17 like you to focus, if you would. Yes. Okay.
18 Please proceed.

19 MS. PRINCE: Thank you for your
20 time this afternoon. As I said, I'm Allison
21 Prince with Goulston & Storrs here on behalf
22 of the property owner. You'll hear today from

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1 Mr. Marks, the property owner, and the
2 architect as well.

3 At the outset I'd like to state
4 that this property is very unusual. We don't
5 need to meet that first or any part of the
6 variance test because we're now a special
7 exception. But in fact the property is quite
8 unique. It wasn't built as a home. Rather,
9 it was built as a ballroom for the house to
10 the east. It contains only two stories, while
11 virtually all of the house in the square and
12 across the street are three and four stories.

13 While the proposed lot occupancy
14 is more than permitted in the R-3 Zone, it
15 only exceeds it by 10 percent. But the
16 interesting point is that, as you can see in
17 Exhibit C to my prehearing statement, the vast
18 majority of properties in this immediate
19 neighborhood and in the square greatly exceed
20 the 60 percent lot occupancy. It's quite an
21 unusual condition and one that I studied
22 carefully when I took on the case, because as

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1 you know, we started with a proposal that
2 involved 88 percent lot occupancy and I wanted
3 to see how our proposed lot occupancy compared
4 to those surrounding us. This is a situation
5 where many, many of the houses in the area are
6 nonconforming.

7 As we stated at the outset,
8 there's been a dramatic change to the
9 application, one that I don't think has been
10 fully acknowledged by the opposition. Solely
11 in response to the concerns of this community,
12 the entire design concept has changed. The
13 original concept was a glassy conservatory
14 link that would link the existing single-
15 family house to the garage in the rear. The
16 garage would have a second story with a master
17 bedroom and this courtyard link was in an
18 essential component of that design scheme. It
19 was one that the owner was very excited about,
20 but literally abandoned. And he abandoned it
21 in favor of a single six-foot wide breezeway
22 link solely to accommodate the neighbor's

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1 concern about loss of open space. And while
2 we tried to argue that it's not the same to
3 have a glassy conservatory, you can't compare
4 that to building footprint, that it's really
5 -- it really has much less impact.

6 The neighbors would hear none of
7 that. They were concerned about lot coverage.
8 So we listened and abandoned the concept
9 entirely. And it was only for that reason
10 that we abandoned the concept. And that
11 caused the application to drop back to a
12 special exception level of review.

13 And as this Board knows, section
14 223 was created several years ago for cases
15 just like this, to allow homeowners to
16 accommodate their homes for a current use to
17 adapt them in ways to fit their way of living
18 without holding those owners to a variance
19 burden of proof. And here we easily meet the
20 three parts of the burden of proof under
21 section 223.

22 First, as you know, we can't

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1 unduly affect light and air, and that's why we
2 had a very detailed light study done that
3 clearly shows that the effect on light and air
4 to neighboring properties is absolutely
5 minimal. The irony here is that the two
6 buildings on either side cast so much -- have
7 such an effect on light and air to this
8 property that it is literally impossible for
9 this property, even with its modest addition,
10 to have a dramatic impact on light and air on
11 the others. And what I mean by saying that is
12 that the property to the west is four stories
13 that occupies almost 100 percent of the lot.
14 There is a share wall that forms the western
15 property line. A share wall goes straight up
16 that bounds my client's western property line.
17 And on the east side there is a similarly
18 large home that occupies almost the entire
19 lot. It is that house that really creates
20 shadows that make it impossible for our
21 property, even with the addition, to have a
22 significant effect on light and air.

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1 And further in that same vein, we
2 will not unduly compromise privacy of use and
3 enjoyment. I think the photographs speak for
4 themselves in that regard.

5 And finally, the addition. As
6 viewed from the street or alley can't
7 substantially intrude on the character, scale
8 and pattern of houses along the street
9 frontage. And I believe that since this is
10 the only two-family dwelling in the square in
11 which it's located, it's clear that it is
12 highly consistent with the existing pattern of
13 development in that neighborhood to allow a
14 mere third story. Not a fourth story, which
15 by the way would require variance rely, merely
16 a third story.

17 I think you'll see some comments
18 in the record about our failure to meet the
19 requirements of the historic easement that
20 binds the property, a private façade easement.
21 You may also hear comments about the Historic
22 Preservation Review Board's need to review the

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1 project. I think this Board is aware that you
2 have no jurisdiction over private agreements.
3 Our façade easement with the L'Enfant Trust
4 will be dealt with separately. In fact, we
5 were instructed to first secure zoning
6 approval before going back to the trust. And
7 then HPRB will in turn review this project
8 after this Board has acted.

9 So unless the Board has questions,
10 I'd like to proceed with the testimony of Mr.
11 Marks and then we'll proceed with the
12 testimony of the architect.

13 CHAIRMAN JORDAN: For the record I
14 do want to say that we don't have jurisdiction
15 regards to the conservatory easement and the
16 trust agreement. We don't. And that would be
17 out of line and out of order for us to have
18 testimony in that regard.

19 MS. PRINCE: Thank you.

20 MR. MARKS: Good afternoon. My
21 name is Ken Marks and I'm here representing
22 both myself and my wife Ellen.

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1 A little background before I go
2 forward. Both my wife and I are native
3 Washingtonians. Both of our families operated
4 businesses within the city for many, many
5 years, unfortunately, displaced with the riots
6 in '68. But both families stuck it out,
7 reopened new businesses again in the District
8 of Columbia. And we consider ourselves
9 natives, although in our married life and
10 raising our family we fled to the suburbs, as
11 many people did in that era, and we have a
12 great desire to come back and live in our
13 city, which we truly love.

14 We chose Kalorama. Everybody
15 reaches a stage in their life where they need
16 to downsize their home. Kids are out. We do
17 have grandchildren. Looking to enjoy them for
18 many years. We want to change our lifestyle
19 and move back into the city. We are very
20 interested in having a walking lifestyle. And
21 my office at 1700 K is within walking distance
22 and that -- one of my plans is to begin a new

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1 lifestyle by walking to my place of business.

2 My business, I have been working
3 in the District of Columbia since 1969. I
4 went to work for a company called Carey
5 Winston Company, which is now called
6 Transwestern, and feel that in my very, very
7 fortunate career have had a great deal to do
8 with the upbringing of this wonderful city
9 that we live in.

10 Why did we choose this particular
11 house? We were in thought process as to what
12 we were going to do when downsizing. Was it
13 going to be an apartment? Was it going to be
14 a house? We now live in a large home in
15 Potomac, Maryland and we made the choice to go
16 out and look for a home. And just saw an ad
17 run by Sotheby's one day and on a lark got in
18 our car, went downtown and walked into this
19 wonderful jewel of a home which we very much
20 want to improve for our own lifestyle and go
21 forward with our lives.

22 I from the very beginning have

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1 been cognizant that I have neighbors and I
2 have made an effort to spare no dollars,
3 expert help that is sitting next to me, or to
4 address any questions or concerns that my
5 neighbors have. It was my desire from day one
6 to move into a neighborhood and have extremely
7 friendly relations with my neighbors. And
8 therefore, I hope that I have bent over
9 backwards in trying to accommodate their
10 concerns.

11 The dream house would have been
12 the conservatory. It was an incredible
13 concept. It was beautiful. But if we can't
14 have it and it's going to make people unhappy
15 by it being there, my wife and I decided that
16 it wasn't worth the battle and we would -- we
17 redesigned once again in order to meet the
18 concerns of my neighbors.

19 I thank you for the opportunity to
20 speak and if there are any questions, I'm
21 certainly here to answer them.

22 CHAIRMAN JORDAN: Okay. No,

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1 proceed on, please.

2 MS. PRINCE: I'd like now to
3 proceed with testimony from the architects,
4 Mr. Lohsen.

5 MR. LOHSEN: I'd just like to
6 state that all the design work that you'll see
7 here today was prepared under my direction.
8 I'd like James Martin, who's a member of our
9 staff and one of our key historic
10 preservations experts and has been the project
11 manager for this project to do the
12 presentation.

13 MR. MARTIN: Good afternoon. I'm
14 James Martin.

15 CHAIRMAN JORDAN: Well, let me say
16 this so we can -- as I said, we really don't
17 need this full-out presentation. There's
18 items and issues that we think would be more
19 beneficial to you, if you hit them directly,
20 dealing with those things that are raised in
21 the opposition. The green space issue, light
22 and air issues, those things.

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1 MS. PRINCE: I think you're
2 suggesting that you don't need us to walk
3 through the plans. You understand the plan.

4 CHAIRMAN JORDAN: Unless the Board
5 has some -- I think their plans are pretty
6 clear.

7 MS. PRINCE: All right.

8 CHAIRMAN JORDAN: To me. I don't
9 know if anybody else on the Board any step-
10 through. And if they do, they will ask
11 questions --

12 MS. PRINCE: Right, then we
13 will --

14 CHAIRMAN JORDAN: -- regarding
15 that.

16 MS. PRINCE: -- focus solely on
17 light and air and the shadow studies and --

18 CHAIRMAN JORDAN: Unless, do you
19 need to walk through the plans? Okay. No.

20 MS. PRINCE: Okay. Thank you.

21 MR. MARTIN: Okay. I'm focusing
22 on the property here with light and air. The

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1 existing house here is two stories and what is
2 proposed is three stories. The approximate
3 height of the adjacent properties still with
4 the proposed third story would be lower in
5 height or comparable to the adjacent
6 properties, as well as many on the block.

7 Property is here located on the
8 block. And addressing the light and air, I'm
9 going to change to an exhibit showing the
10 solar studies that we generated. We visited
11 the site multiple times, visited the site from
12 neighbors' properties with meeting with the
13 neighbors at multiple times during the day to
14 see how the light was in this area. We also
15 computed the generated models to show
16 throughout the day there's a minimal change.
17 The only time of the day really that receives
18 light in the area where the proposed breezeway
19 is located is only from an early afternoon
20 from about 11:45 to 1:15 from our models. And
21 I have that exhibit here. One second.

22 As submitted, this exhibit shows

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1 in the existing conditions in the rear
2 courtyard with the adjacent properties shadows
3 from the two properties are cast in the
4 morning down directly onto the property, and
5 in the afternoon are cast in the opposite
6 direction. The proposed breezeway and
7 addition shown here is in no way casting a
8 shadow in the morning onto this property.
9 This property, as we mentioned, is a four-
10 story wall on the border of the property. In
11 the afternoon the existing conditions of this
12 roof garden deck here is casting similar
13 shadows with the proposed conservatory and
14 breezeway.

15 Images here, right here is located
16 the proposed area of the breezeway. It is in
17 shadow, as I mentioned, for a majority of the
18 day receiving light only when the sun is
19 directly above as seen here from the adjacent
20 property. And this is the deck of 2128
21 Bancroft Place that is in shadow already.

22 VICE CHAIR SORG: I'm sorry, maybe

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1 I wear contacts. I can't see those pictures
2 way over there.

3 MR. MARTIN: Okay.

4 VICE CHAIR SORG: Do you think --
5 yes, and the sun -- and the solar studies that
6 you're showing are the same one that were
7 submitted in the prehearing statement?

8 MR. MARTIN: Yes.

9 VICE CHAIR SORG: Okay. But the
10 images we haven't seen before?

11 CHAIRMAN JORDAN: And you said
12 conservatory. I thought we were out of that.
13 We're just doing the breezeway, correct?

14 MR. MARTIN: Oh, I'm sorry.
15 Breezeway. I apologize.

16 This is the morning light in the
17 winter. And as you can see, the shadow is
18 cast down from this property, 2128 Bancroft,
19 onto the courtyard.

20 The proposed conservatory would
21 not be blocking light or air to the adjacent
22 property.

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1 CHAIRMAN JORDAN: Proposed
2 breezeway.

3 MR. MARTIN: I'm sorry.

4 VICE CHAIR SORG: You may want to
5 stop saying conservatory.

6 MR. MARTIN: I'm sorry. It's just
7 I've heard about it and I --

8 CHAIRMAN JORDAN: So the
9 breezeway.

10 MR. MARTIN: Breezeway. Thank
11 you. The proposed breezeway here would not be
12 casting light in the morning. It's actually
13 the next door neighbor's property, 2128, that
14 continues to cast light onto 2130.

15 In the summer conditions, in the
16 afternoon this is the existing condition with
17 light being casted from the west, casting
18 light over the entire courtyard here of our
19 client's property. The proposed condition
20 shows --

21 CHAIRMAN JORDAN: You mean the
22 property to -- the left one there is casting

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1 the light?

2 MR. MARTIN: Yes.

3 CHAIRMAN JORDAN: The shadow?

4 Yes.

5 MR. MARTIN: Casting shadow. And
6 the proposed condition actually captures some
7 light on our property, but does not
8 dramatically impact the light of the adjacent
9 property because the existing condition
10 already, with the height of this building is
11 casting shadows down on the property to the
12 opposite side.

13 CHAIRMAN JORDAN: Now are those
14 windows on the property, I'm going to say to
15 the right; I don't know if they're east or
16 west -- the property -- yes.

17 MR. MARTIN: Okay. The second
18 story windows will not be affected at all.

19 CHAIRMAN JORDAN: So there's no
20 lower level windows?

21 MR. MARTIN: There are ground
22 floor level windows that are already in shadow

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1 in the existing conditions, as seen here in
2 this image. This is the ground floor deck.

3 CHAIRMAN JORDAN: Mr. Hitchcock,
4 if you need to come up so can follow -- okay.

5 MR. MARTIN: So that is the
6 existing conditions of the property at the
7 ground floor level.

8 VICE CHAIR SORG: That's the
9 property to the north?

10 MR. MARTIN: That is to the east
11 looking from the alley back at the rear of the
12 house.

13 In terms of greenery in the space,
14 unless there are any other questions about the
15 light and air --

16 CHAIRMAN JORDAN: We're good.
17 Proceed, please.

18 MR. MARTIN: This I'll have to
19 bring a plan up.

20 COMMISSIONER MILLER: I have one
21 statement.

22 CHAIRMAN JORDAN: Yes, sure.

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1 COMMISSIONER MILLER: You may have
2 just covered this; maybe I missed it, but do
3 you agree with the Office of Planning's
4 statement that the breezeway would impact the
5 early afternoon light available to 2128
6 Bancroft's second floor windows in the court?

7 MR. MARTIN: Not to the second
8 floor windows.

9 CHAIRMAN JORDAN: Is that the
10 diagram -- the diagram down at the bottom to
11 the right, what time frame is that again?

12 MR. MARTIN: This is in the
13 afternoon cast at the summer solstice.

14 CHAIRMAN JORDAN: Okay. Mr.
15 Miller?

16 COMMISSIONER MILLER: That's it at
17 this time. Thank you.

18 CHAIRMAN JORDAN: Yes.

19 MR. MARTIN: Regarding the plans,
20 the existing plan here shows the ground level
21 plan, the entry level from -- this is the
22 existing ballroom that we described, which is

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1 the living room. It's one open space here.
2 This is the existing roof deck above the
3 garage. It has a perimeter of planters, but
4 this area here is a wooden deck. What is
5 proposed above the new master bedroom addition
6 is a similar condition in which the perimeter
7 would be with plants going all the way around
8 to surround and soften the appearance of the
9 roof seen from the adjacent properties looking
10 down. The difference is the area in between
11 the perimeter would actually be a true green
12 roof as opposed to a wooden deck. This would
13 not be an occupied area. It would have
14 vegetation that is not meant for walking on or
15 using.

16 In turn, even though the breezeway
17 is proposed here in the courtyard, there would
18 be additional green space provided than what
19 is existing byu adding all of this green
20 space, as well as softening the front
21 appearance of the residence and the rear
22 appearance with terraces with planters that

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1 would have cascading vegetation.

2 Okay. Are there any questions in
3 regard to green space or the light and air?
4 I know those are the two that you've asked to
5 focus on.

6 CHAIRMAN JORDAN: So presently the
7 green space that exists now is the green space
8 -- well, the shrubbery that's on top of the
9 garage now and that area which will remain
10 open except for the breezeway.

11 MR. MARTIN: Correct. The area
12 that exists right now with the greenery is the
13 courtyard.

14 CHAIRMAN JORDAN: Yes, and that
15 will remain but for the breezeway?

16 MR. MARTIN: Yes.

17 CHAIRMAN JORDAN: So that's the
18 portion that would be green space that would
19 be removed?

20 MR. MARTIN: Yes.

21 CHAIRMAN JORDAN: But it's going
22 to be increased because the top of the garage

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1 will now be -- won't be wooden, it will be --

2 MR. MARTIN: Complete coverage of
3 green space. Also it's important to note that
4 this breezeway is not going down to the
5 structure and the surface of the courtyard.
6 It would be open below to allow planters to
7 remain even though it would be shade plants.
8 This is not a structure that's going to be
9 touching the surface of the courtyard. There
10 will still be planting beds and plants located
11 beneath.

12 That I can show. This is looking
13 from the rear of the property out towards the
14 proposed addition of the garage. This area
15 above here will be the green roof with the
16 perimeter plantings, lower surface of
17 greenery, and there will be planters provided
18 on top of the breezeway. And the area beneath
19 will actually be open to allow plants and the
20 existing beds to remain. None of the flower
21 beds in the existing courtyard are to be
22 removed.

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1 CHAIRMAN JORDAN: Any questions
2 of --

3 (No audible response.)

4 CHAIRMAN JORDAN: Okay. Thank
5 you.

6 MR. LOHSEN: James, can you also
7 address the privacy, the views from the
8 neighbors to the proposed breezeway and
9 courtyard? We had those drawings from the
10 other property. Thank you.

11 MR. MARTIN: We've gone over this
12 one here. This is the street view looking
13 from the street at the front of the house.
14 This is what -- the view of the neighborhood.
15 This is what the neighbors would see.

16 In terms of greenery, there would
17 be a -- this is an existing parapet wall right
18 now on the house. This would be softened with
19 a planter recessed behind it allowing more
20 greenery to cascade from that level.

21 This is from the adjacent
22 property, 2128 Bancroft Place, from their deck

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1 looking at the new proposed third-floor
2 addition and the wall of the breezeway.
3 Planters would be provided above. I know that
4 our client has offered to work with the
5 neighbor on the treatment of this wall. Has
6 been willing to provide greenery on this wall,
7 if desired. It's conversations that we've had
8 recently. The treatment of this wall would be
9 incorporated in our designs per the neighbors'
10 request.

11 MR. LOHSEN: And the height of
12 that wall above the deck is approximately
13 11'6", James?

14 MR. MARTIN: Correct.

15 MR. LOHSEN: To the top of the
16 wall?

17 MR. MARTIN: To the top of the
18 wall. That's not including the open railing.

19 VICE CHAIR SORG: Are these two
20 options? Yes.

21 VICE CHAIR SORG: Is that what
22 you're showing?

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1 MR. MARTIN: Yes, one was the
2 prior design. With the conservatory there
3 would have actually been a lower roof that
4 started to pitch up, which would have been the
5 glass roof.

6 VICE CHAIR SORG: Okay.

7 MR. MARTIN: And this would have
8 allowed light in, whereas this is now the
9 service walkway above and suggested treatment
10 of this wall.

11 VICE CHAIR SORG: Okay. The left
12 hand is no more?

13 MR. MARTIN: No more. Yes. It's
14 just showing that there's flexibility in how
15 it can be perceived and seen from that view.

16 COMMISSIONER MILLER: You said
17 it's 112 feet in height?

18 MR. MARTIN: Eleven-and-a-half
19 feet from the deck here to the top of the
20 actual solid structure. There would be an
21 open railing above that we would work with the
22 neighbors.

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1 COMMISSIONER MILLER: What's the
2 height inside the actual breezeway?

3 MR. MARTIN: Inside the breezeway,
4 ceiling height or --

5 COMMISSIONER MILLER: Yes.

6 MR. MARTIN: Roughly there's about
7 two steps up from the main house to the garage
8 structure, so we have to come in at that
9 level. It would probably be 9-10 feet
10 estimated. I don't know the exact height of
11 what that ceiling height would be, but the
12 overall height of the entire structure from
13 deck to top would be 112.

14 MR. LOHSEN: In other words, the
15 height of that wall is limited by the fact
16 that we have to step up to get to the second
17 floor above the garage.

18 CHAIRMAN JORDAN: If you would
19 move back down in front of Mr. Moy, we're
20 going to project that. We've worked out to
21 project it on the screens.

22 MR. MARTIN: Thank you.

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1 CHAIRMAN JORDAN: I don't know if
2 that helps or we can see any better, if
3 everyone can see, but -- okay.

4 COMMISSIONER MILLER: So there's
5 no way to lower that height any further from
6 its impact on the -- there's now way to lower
7 that height?

8 MR. MARTIN: The green roof above
9 the proposed master suite addition is going to
10 require maintenance, and the only way to get
11 there would be from the existing house. So
12 there has to be -- we -- there would have to
13 be a walkable surface to get from the main
14 house, which would be through the upstairs
15 bedroom. So that height has sort of defined
16 where the roof would be of this breezeway.

17 MS. PRINCE: Regarding the green
18 roof, I do want to be clear, and we're open to
19 a condition that makes it very clear, that
20 that is a functioning green roof. That is not
21 outdoor recreation space. That was put there
22 to increase the amount of green space in the

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1 interior of the site.

2 CHAIRMAN JORDAN: Before you
3 proceed on if there's anything else that you
4 want to present, I think I'm going to offer
5 Mr. Hitchcock the opportunity to cross-examine
6 the architectural presentation at this point
7 so we don't just disjoint it.

8 Do you wish to cross-examine
9 anyone?

10 MR. HITCHCOCK: Mr. Chairman, I
11 have several questions, but I think it might
12 be more efficient -- we have our own
13 presentation dealing specifically with light
14 and air and the green space.

15 CHAIRMAN JORDAN: Oh, no, you can
16 do your presentation, but I just thought if
17 you want -- give you the opportunity to cross-
18 examine if you wanted to.

19 MR. HITCHCOCK: Yes.

20 CHAIRMAN JORDAN: But I'm hearing
21 you say no. Okay.

22 MR. HITCHCOCK: Yes.

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1 CHAIRMAN JORDAN: Thank you. Yes.

2 MR. HITCHCOCK: So I'll wait.

3 Reserve as to one or two other questions once
4 the presentation is finished.

5 CHAIRMAN JORDAN: You can do your
6 presentation --

7 MR. HITCHCOCK: Right.

8 CHAIRMAN JORDAN: -- when you do
9 your presentation, but if you want a cross-
10 examination, you need to do that now.

11 MR. HITCHCOCK: Very good. One
12 question -- a couple questions to Mr. Marks.
13 Mr. Marks, when you talked about working with
14 the neighbors and when you applied for the
15 variance, your statement said that you had met
16 with the adjacent neighbors "who are now
17 support of the project for a variance." What
18 did they --

19 CHAIRMAN JORDAN: I'm talking in
20 regards to the architectural presentation
21 solely.

22 MR. HITCHCOCK: Okay.

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1 CHAIRMAN JORDAN: If there is
2 anything you want to cross in regards to what
3 was just -- we just -- regarding the
4 architectural --

5 MR. HITCHCOCK: No, I don't have
6 anything on that. We will deal with that in
7 our case in chief.

8 CHAIRMAN JORDAN: But -- all
9 right.

10 MR. HITCHCOCK: But I have one or
11 two other questions, not --

12 CHAIRMAN JORDAN: For the
13 applicant.

14 MR. HITCHCOCK: I have a question
15 on green space, too, but I can --

16 CHAIRMAN JORDAN: In regards to
17 what was just presented, or just in general to
18 the applicant?

19 MR. HITCHCOCK: It -- well, the
20 question deals with -- when they switched from
21 conservatory to breezeway there's a magnolia
22 tree that would have been torn down. And my

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1 question is will that tree remain? I don't
2 know if you want to take that now or later.

3 CHAIRMAN JORDAN: Is that an
4 architectural question that needs to be
5 answered by the architects?

6 MS. PRINCE: No, it is not.

7 CHAIRMAN JORDAN: Okay. Then we
8 can come back to it.

9 MR. HITCHCOCK: Very good. Thank
10 you.

11 CHAIRMAN JORDAN: Yes. All right.
12 if you can continue, Ms. Prince, with your --
13 if you've hit those areas, if you have
14 anything else.

15 MS. PRINCE: That completes our
16 presentation.

17 CHAIRMAN JORDAN: Is there
18 anything else that the Board needs or wants to
19 hear from the applicant regarding this special
20 exception? Yes, please, Mr. Miller.

21 COMMISSIONER MILLER: What is the
22 -- has the applicant filed an application with

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1 HPRB yet, or you're waiting to see how this
2 proceeding --

3 MS. PRINCE: The original
4 conservatory scheme was reviewed by HPRB
5 staff. When the scheme was adjusted to the
6 breezeway scheme, we have not yet returned to
7 HPRB. We'll do that immediately after action
8 from this Board, should this application be
9 granted.

10 VICE CHAIR SORG: I guess one
11 question I was going to ask; actually is I
12 think the same question, is it looks like
13 there is one mature tree in the courtyard
14 there. Is that going to remain or not?

15 CHAIRMAN JORDAN: Just make sure
16 you're microphone is turned on, please.

17 MR. MARKS: Thank you for
18 reminding me. The tree won't remain. It's --
19 I think to be perfectly honest, it really
20 doesn't belong as close to these houses as
21 it's sitting. It's a rather large tree at
22 this stage of the game. With constant

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1 droppings and constant all kinds of droppings
2 from birds that congregate in the only tree in
3 the environ. Okay? And aside from being
4 extremely messy in the backyard, it creates a
5 hazard for stopping drains and a lot of other
6 things if it doesn't get constant care.

7 VICE CHAIR SORG: Okay.

8 MR. MARKS: So it's the plan that
9 is to take the tree down, but still have lots
10 of greenery in its place.

11 CHAIRMAN JORDAN: The tree roots
12 are now in the drainage?

13 MR. MARKS: The tree roots are
14 driving patio up. I hope they're not, but
15 they could be going against my neighbor's wall
16 at 2132. I know they've had some water
17 problems in the past. And I hope that what
18 I'm going to do will alleviate any of that.
19 I'm here to be -- to make improvements, not do
20 something that's a detriment to my neighbor,
21 and I'm sincere about that.

22 VICE CHAIR SORG: Thank you.

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1 CHAIRMAN JORDAN: Mr. Hinkle?

2 MEMBER HINKLE: Yes, thank you,
3 Mr. Chair.

4 The property to the west, how tall
5 is that wall that's adjacent to your property?

6 MR. MARTIN: I believe it's
7 approximately -- it's four stories, anywhere
8 from 44 to 50 feet in height.

9 MEMBER HINKLE: And that wall's a
10 solid wall, brick wall or --

11 MR. MARTIN: Solid masonry wall,
12 yes.

13 MEMBER HINKLE: So there's no
14 windows or anything that --

15 MR. MARTIN: There is one window
16 that is facing the -- what would still remain
17 open in the courtyard.

18 MEMBER HINKLE: Did you explore
19 putting the breezeway on that side of the
20 property versus the east side?

21 MR. MARTIN: Yes, we did. In
22 early studies we did and speaking with our

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1 client we did. The breezeway on that side, we
2 had heard from the neighbor that lives there
3 that there has been structural issues with
4 that wall. One of our earliest meetings was
5 the structural integrity of adding something
6 against this wall that they've had structural
7 issues, waters issues. Whereas now where
8 we're building there is no solid party wall,
9 masonry wall that we're building up against.

10 MEMBER HINKLE: Okay. Great.

11 Thank you.

12 CHAIRMAN JORDAN: Any other
13 questions?

14 (No audible response.)

15 CHAIRMAN JORDAN: Ms. Prince, is
16 there anything else that you think you would
17 want to give us that you think we need in
18 those areas?

19 MS. PRINCE: No, that completes
20 our presentation.

21 CHAIRMAN JORDAN: Thank you. And
22 do you want to now, Mr. Hitchcock, cross-

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1 examine the applicant's presentation period?

2 MR. HITCHCOCK: Yes, sir, I just
3 had the one question that I phrased earlier to
4 Mr. Marks, who had indicated that the
5 neighbors were in support of the variance and
6 just wonder if you could say what exactly they
7 said that led you to that conclusion?

8 MR. MARKS: I personally have
9 never heard from Mr. Pozez or Ms. Bieber that
10 they have approved anything about my plans,
11 but I did -- I thought in the first meeting
12 that I had when I brought James Martin with me
13 to visit Ms. Carstens -- thought that she
14 liked and the design that we initially
15 formulated. Maybe that -- that was my
16 impression.

17 Later I believe we were discussing
18 at that meeting keeping her fence, which is on
19 my property, open to the glass that would be
20 created. At that time we were talking about
21 the conservatory. And the day after our
22 meeting I got an email back; and I believe we

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1 still have it, from Ms. Carstens that said
2 that on second thought rather than the
3 importance of being able to see into the
4 garden she thought that privacy was a more
5 important issue.

6 MR. HITCHCOCK: But --

7 MR. MARKS: And that's the only
8 communication that I've had regarding whether
9 somebody liked or did not like my plan.

10 MR. HITCHCOCK: But that was not
11 an affirmative endorsement. It was an
12 acknowledgement that if it goes forward A
13 rather than B, wasn't it?

14 MR. MARKS: Yes, I've never
15 professed that any of my neighbors have
16 approved of my plan. I hit a buzz saw here,
17 so I'm -- you know, it's why we're sitting
18 here today.

19 MR. HITCHCOCK: Thank you, Mr.
20 Marks.

21 No further questions, Mr.
22 Chairman.

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1 CHAIRMAN JORDAN: Thank you. Then
2 let's turn now to the Office -- the Planning,
3 please. Office of Planning.

4 MR. GYOR: Good afternoon, Mr.
5 Chair and Members of the Board. Stephen Gyor
6 with the Office of Planning.

7 OP is supportive of the reduction
8 in scale of the proposal resulting in the
9 current special exception request. Based on
10 our analysis OP believes that the proposal
11 addresses the special exception test. The
12 applicant provided materials indicating that
13 the nonconforming portion of the proposal
14 should not result in undue impact given the
15 nature of the adjacent developments. OP does
16 not, however, conduct independent light and
17 shadow studies. I'd just note that.

18 The proposal would not be out of
19 character with other developments on the
20 block. Rather it would appear to be modest
21 compared to many of the other properties. OP
22 is supportive of the applicant's -- efforts of

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1 the applicant and the neighbors to address
2 issues related to the design of the side wall.
3 And as such, OP recommends approval is
4 available for questions.

5 CHAIRMAN JORDAN: Does the Board
6 have any questions for Office of Planning?

7 VICE CHAIR SORG: I have one
8 question, Mr. Chairman. Thank you.

9 You go through a fairly detailed
10 analysis in your report, but I -- and correct
11 me if I'm wrong, but I don't really see that
12 you address the question of the rear yard as
13 separate from the question of lot occupancy.
14 So if you can clarify the portions of the
15 special exception test that you believe are --
16 or what you believe about that in relation to
17 the rear yard specifically request.

18 MR. GYOR: The property currently
19 includes -- does not include a rear yard.
20 It's essentially -- well, the garage is -- has
21 zero setback from the alley. And the
22 applicant's proposal would be in -- would be

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1 consistent with neighboring properties in the
2 sense that there are properties adjacent to
3 the subject property that do not include rear
4 yards. And it does not appear that a rear
5 yard -- it does not appear that an addition
6 over the garage would affect the light and air
7 of properties across the alley.

8 VICE CHAIR SORG: You're saying it
9 doesn't include a rear yard. Just because it
10 has a garage that abuts the alley doesn't mean
11 that it doesn't include a rear yard. From
12 what I can see it has a significant rear yard.

13 MR. GYOR: Right. Well, it does
14 include a 52-foot rear yard. I'm talking
15 about the setback from the alley.

16 VICE CHAIR SORG: Right. I'm
17 talking about the rear yard relief.

18 MR. GYOR: Right.

19 MR. LAWSON: I'm sorry. Joel
20 Lawson with the Office of Planning. I think
21 the nature -- you know, because of the nature
22 of the application the nature of the rear yard

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1 changes certainly through this application.
2 All of a sudden the garage, which is an
3 accessory structure, becomes part of the
4 principal building. So the rear yard in this
5 case would, at least by our understanding,
6 typically would be measured from the rear
7 property line in a case like this because the
8 garage would be connected to the house.

9 So you're absolutely right that
10 there's a significant amount of open space,
11 green space, almost like a courtyard I guess
12 separating the house from the garage, but by
13 connecting the two, like I said, the nature of
14 the rear yard itself is changed.

15 Now, as Mr. Gyor said, we feel
16 again that from our analysis and the issues
17 that we look at as part of our normal review
18 we think that the applicant has sufficiently
19 made the case for special exception relief
20 from the rear yard, but that's where we were
21 coming from.

22 But, yes, we certainly didn't mean

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1 to downplay kind of the visual and visual
2 importance of that open space between the
3 house and what will be, or what would be this
4 application's approved the two-story structure
5 where the garage is now located.

6 VICE CHAIR SORG: Actually that
7 brings me to another question, and I'm sure
8 it's on the plans, but I just don't remember.
9 And this is either to OP to the applicant, I
10 guess. What are the dimensions of the
11 courtyard that remains open space, or maybe
12 square feet?

13 MR. MARTIN: That's about twenty
14 -- the courtyard width is 26 feet. It's a
15 six-foot breezeway, so technically the
16 courtyard below will still be 26 feet wide.
17 At the ground floor it will be 20 feet of open
18 space in width. The depth will remain the
19 same.

20 VICE CHAIR SORG: Which is what?
21 If you can tell me square feet or give me both
22 dimensions so that I can do the calculation in

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1 my head, that would be nice. What I'm trying
2 to get at is just what kind of open space is
3 being provided. You know, square feet.

4 MR. LOHSEN: So at the breezeway
5 level the open space would be 20 foot by 26
6 feet, approximately 20 foot wide, 26 feet
7 deep.

8 VICE CHAIR SORG: So about 520
9 square feet?

10 MR. LOHSEN: And the courtyard
11 below that remains 26 by 26.

12 VICE CHAIR SORG: Okay. Thank
13 you. That is useful.

14 CHAIRMAN JORDAN: Any other
15 questions of Planning from the Board?

16 (No audible response.)

17 CHAIRMAN JORDAN: Does the
18 applicant have any questions of Planning?

19 MS. PRINCE: We do not.

20 CHAIRMAN JORDAN: Mr. Hitchcock,
21 you have any questions of Planning?

22 MR. HITCHCOCK: (No audible

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1 response.)

2 CHAIRMAN JORDAN: Okay. Then
3 let's move now to any other government agency
4 that we have here today. Department of
5 Transportation. Anyone here from Department
6 of Transportation?

7 (No audible response.)

8 CHAIRMAN JORDAN: Do we have a
9 report from Transportation?

10 (No audible response.)

11 CHAIRMAN JORDAN: Exhibit 30? And
12 the Department of Transportation has --
13 Exhibit 39 has submitted a letter of no
14 objection to this application.

15 Is there anyone here from ANC 2D?

16 (No audible response.)

17 CHAIRMAN JORDAN: I believe we
18 have a letter from ANC -- well, okay. We have
19 a letter here from ANC 2D. I think it is
20 Exhibit -- is it 48? They have not written a
21 decision upon the special exception is my
22 understanding. They voted against the initial

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1 variance request for the first set of plans,
2 but have not rendered an opinion regarding the
3 special exception.

4 Is there anyone in the audience
5 here wishing to speak in support of the
6 application?

7 (No audible response.)

8 CHAIRMAN JORDAN: Okay. Then
9 we're going to move to the presentation from
10 the opposition, please, and then we will take
11 anyone in the audience in support -- I mean
12 opposing that that's not a party.

13 Okay. Let's begin, please. Are
14 you still getting set? Are you ready to
15 begin?

16 (No audible response.)

17 VICE CHAIR SORG: I don't think
18 your mic is on.

19 MR. HITCHCOCK: Oh. Thank you,
20 Mr. Chairman, Members --

21 CHAIRMAN JORDAN: We have to wait
22 until Mr. Moy --

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1 MR. HITCHCOCK: Oh.

2 CHAIRMAN JORDAN: -- passes out
3 the documents so we can start the clock,
4 please.

5 MR. HITCHCOCK: Okay.

6 CHAIRMAN JORDAN: Mr. Moy, we're
7 waiting on you to start the clock, please.
8 Thank you.

9 Please, Mr. Hitchcock, begin,
10 please.

11 MR. HITCHCOCK: Thank you, Mr.
12 Chairman, Members of the Board. For the
13 record my name is Con Hitchcock and I'm
14 representing the parties presenting this
15 consolidated appeal.

16 Let me introduce the other
17 witnesses here at the table. To my immediate
18 left is Ms. Deborah Carstens who lives at 2128
19 Bancroft, the immediate adjacent property. To
20 her left is Melinda Bieber who lives on the
21 other side at 2132 Bancroft. To her left is
22 Marie Drissel who lives across the street at

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1 -- oh, I'm sorry, I didn't him there. Norm
2 Pozez who with Ms. Bieber live at 2132.

3 Sorry, I didn't see you sitting
4 back there.

5 Next to him is Marie Drissel at
6 2135 Bancroft Place. She and her husband live
7 direct across the street. And finally, to her
8 left is Ms. Kindy French from the Sheridan-
9 Kalorama Historical Association.

10 As you can tell, we have a
11 PowerPoint presentation that I think will shed
12 light, literally and figuratively on the light
13 and air questions the Board had questions
14 dealing with, as well as the green space
15 issues that I hope will give a fuller
16 presentation.

17 I've summarized on the second page
18 of the deck, which you should have, what the
19 testimony is and we're going to focus on the
20 light and air and the enjoyment of their
21 property.

22 The second bullet point, the

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1 individual neighbors will testify directly as
2 to the effects of this on them and you will
3 see that there's a somewhat different view
4 with respect to light, air and greenery.

5 The third point deals with what
6 was mentioned previously, the conservation
7 easement. We recognize of course as the
8 Chairman said that the easement is not
9 something over which the Board has
10 jurisdiction, but it is a barrier to the
11 construction. Even if you should approve it,
12 there's no guarantee --

13 CHAIRMAN JORDAN: We can -- I'm
14 going to ask that we don't have any testimony
15 regarding that. It's outside of our scope.

16 MR. HITCHCOCK: Okay. Well, if I
17 may, sir, it relates to the enjoyment of the
18 property, as one of the witnesses will
19 testify.

20 CHAIRMAN JORDAN: Again, I'm going
21 to ask -- because it's not going to be
22 relevant to the testimony that we need to have

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1 for today. I think you have other means of
2 enforcing that that this body has no control
3 over. And it doesn't -- so therefore, I'm
4 going to ask that we -- you withhold that and
5 do anything else that affects --

6 MR. HITCHCOCK: Okay. May I make
7 a proffer on that just for the record?

8 CHAIRMAN JORDAN: (No audible
9 response.)

10 MR. HITCHCOCK: Two twenty-three
11 talks about neighbors' enjoyment of their
12 property and whether it will be unduly
13 comprised. You will hear testimony from
14 people who were involved that 20 out of the 25
15 houses on this block do -- are subject to such
16 an easement. So the existence of the easement
17 which was done mutually does relate to
18 expectations of the neighbors in terms of what
19 they will enjoy. So that is the proffer for
20 why we are bringing it in. You're right
21 there's no jurisdiction, but it does affect
22 enjoyment of the property and compromising

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1 that enjoyment which section 23 addresses.

2 It's not something --

3 CHAIRMAN JORDAN: Doesn't that
4 call for us to recognize the existence of that
5 easement and then agreement?

6 MR. HITCHCOCK: The existence of
7 the easement is in agreement. We've put it in
8 the record. It's in the land records for this
9 house and all the others.

10 CHAIRMAN JORDAN: Again, but for
11 us to use it for the value that you're trying
12 to use it for would mean that this body would
13 have to render an opinion toward whether or
14 not it's either valid agreement or its effect
15 upon the neighbors.

16 MR. HITCHCOCK: I would -- well --

17 CHAIRMAN JORDAN: In this
18 application. Is that correct?

19 MR. HITCHCOCK: I would point out
20 the original statement that the applicant
21 filed did mention the existence of the
22 easement as a barrier to the project going

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1 forward. This is the thing they filed in
2 connection with the -- so --

3 CHAIRMAN JORDAN: So they --

4 MR. HITCHCOCK: -- they introduced
5 it and --

6 CHAIRMAN JORDAN: -- can't impose
7 jurisdiction upon us. Just a second, please.

8 Okay. Now I think I've already
9 made that ruling.

10 MR. HITCHCOCK: Yes.

11 CHAIRMAN JORDAN: You've made your
12 proffer. Let's proceed on.

13 MR. HITCHCOCK: Okay. And I'm
14 sure the other witnesses who are going to talk
15 about it will -- this was not intended to be
16 a centerpiece of what we're going to say.
17 We're going to talk about the light and air
18 and other, but --

19 CHAIRMAN JORDAN: Okay. Well,
20 this is for all witnesses that we're going to
21 exclude that kind of discussion.

22 MR. HITCHCOCK: Okay. And we've

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1 made the proffer and --

2 CHAIRMAN JORDAN: It's already in
3 the record. Thank you.

4 MR. HITCHCOCK: Yes, very good.
5 Thank you, sir.

6 This is the overview of Bancroft
7 Place. This is the area that's most directly
8 affected. Ms. Carstens, you'll hear from, is
9 on the left, the 2128. And Ms. Bieber and Mr.
10 Pozez are on the opposite side at 2122.

11 So without further ado, let me
12 turn it over to Deborah Carstens.

13 MS. CARSTENS: Mr. Chairman,
14 Members of the Board, my name is Deborah
15 Carstens. I live at 2128 Bancroft Place,
16 N.W., which is immediately adjacent to the
17 subject property. It is my hope that my
18 daughter, then my granddaughters will someday
19 live there. Protecting my home is very
20 important to me. I'm opposed to the second
21 story over the garage and the building of a
22 breezeway, both of which would diminish my

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1 enjoyment of my home. Let me explain why I'm
2 opposed.

3 Before I purchased my home I was
4 pleased to see the L'Enfant plaques on both
5 2128 and 2130. The existence of conservation
6 easements on both properties gave me
7 confidence that major façade and footprint
8 changes could not be made.

9 Here is the view from the veranda
10 on my ground floor. You can see the sunlight
11 that I enjoy. The trees you see in this
12 picture are on the Marks' property and would
13 all be destroyed in order to build the
14 breezeway and the second story. The short
15 fence in the center of the picture is where
16 the 11-foot tall brick breezeway would stand.
17 The greenery to the left shows the height and
18 position of the proposed second story. All of
19 the greenery you see in this picture would be
20 destroyed.

21 Let's consider the impact from the
22 interior of my home. My house, 2128, shares

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1 a solid brick wall with the house to the east,
2 2126. Therefore, the design of my house and
3 the light sources are all oriented to the west
4 towards the Marks' property. On the ground
5 floor we have five western-facing windows and
6 two double-glass French doors opening to the
7 veranda. The addition of a second story over
8 the Marks' garage and adding a so called
9 breezeway, which is really a solid wall to us,
10 would box us in, dramatically reducing sun,
11 light, air, view and making a joke of our
12 floor plan.

13 Here's a photo walk-through
14 showing the impact to me of the Marks' plan.
15 We'll start on the main floor at the back of
16 the house and work forward.

17 Here's the view from my breakfast
18 room at the rear of the house which shows the
19 light, plants, air I presently enjoy. This
20 will be replaced by a solid wall if the Marks
21 build a second story on their garage.

22 Moving forward to the kitchen,

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1 there are two windows facing west. This light
2 will be cut off by both a second story
3 addition and the solid wall of a breezeway.

4 Moving forward to the dining room,
5 glass double French doors with sidelights open
6 to the veranda. This view looks from my
7 dining room to the veranda. Instead of
8 sunlight air, I would see the solid brick wall
9 of their breezeway.

10 On the veranda notice everything
11 is designed for sunlight. Even the low fence
12 is slatted, not solid so sunlight can come
13 through. The Marks propose ripping out the
14 tall trees and replacing them with an 11-foot
15 solid wall down the property line, which they
16 call a breezeway. To construct a solid wall
17 here would darken this area and create a box
18 or tunnel effect on my property.

19 Moving forward to the living room,
20 these French doors which open to the veranda
21 would instead look into a tunnel-like space if
22 a solid wall is built on the property line.

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1 Let me pause at this point to say
2 that I did meet with the architects who were
3 very helpful in answering my questions about
4 how the proposed construction would affect my
5 property. That said, the fact remains that
6 when I look out my windows I will see a solid
7 brick wall rising up right next to my veranda
8 that will block the air and light I currently
9 enjoy.

10 Going upstairs, here's a view of
11 the Marks' backyard from my master bedroom
12 window. The proposed breezeway would run from
13 the three doors on the right of this picture
14 along the property line on the bottom to the
15 left where the deck is now. All of the
16 greenery shown in the lower half of this
17 picture would be ripped out. Sunlight into my
18 second story windows will be diminished if
19 they build a second story over the garage.

20 Here is the sunlight and open
21 space I currently have from my master bedroom.
22 The master bath and dressing area windows

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1 would also be affected by the Marks building
2 a second story. And here are three views from
3 the upstairs bedrooms that would be diminished
4 if this project is approved.

5 Mr. Chairman, it seems that the
6 protections for neighbors in section 223 are
7 written to prevent this exact situation. I
8 hope I've shown you that the enjoyment of my
9 property would be dramatically diminished by
10 the suggested alterations. Thank you.

11 CHAIRMAN JORDAN: Let me ask you,
12 have you met with the applicant and had
13 discussions about how to try to best mitigate
14 their desire?

15 MS. CARSTENS: Yes.

16 CHAIRMAN JORDAN: And did you --
17 what was the status of that? What happened?

18 MS. CARSTENS: When we met they
19 were discussing the conservatory.

20 CHAIRMAN JORDAN: Okay. And you
21 haven't met since?

22 MS. CARSTENS: I've met with the

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1 architects to discuss the breezeway, the brick
2 wall, the 11-foot brick wall.

3 CHAIRMAN JORDAN: And you've made
4 suggestions with an attempt to reach something
5 that was palatable to you or --

6 MS. CARSTENS: They showed me the
7 drawings that show the lamps on the 11-foot
8 brick wall facing me. I asked about those.
9 He said those aren't going to exist. Those
10 are just decorative for the purposes of the
11 drawing.

12 CHAIRMAN JORDAN: Yes.

13 MS. CARSTENS: Then he said, well,
14 you could put a trellis or greenery on the
15 wall or a window. I said, well, it's still an
16 11-foot brick wall.

17 CHAIRMAN JORDAN: Okay. Thank
18 you. Mr. Hitchcock?

19 MR. HITCHCOCK: Thank you, Mr.
20 Chairman. Ms. Bieber?

21 MS. BIEBER: Mr. Chairman, Members
22 of the Board, my name is Melinda Bieber. I

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1 live with my husband Norman Pozez at 2132
2 Bancroft Place with our three sons. I am
3 testifying today in opposition to the request
4 for an exception to permit the construction of
5 new additions on the property next door to us.
6 We have lived in our house for 24 years. I
7 understand that the only issues before you
8 today relate to zoning and I will try to keep
9 my remarks on those issues.

10 I understand that an exception
11 requires an applicant to prove that the
12 ability of adjacent neighbors to enjoy their
13 property will not be unduly compromised.
14 There are several ways in which the proposal
15 would have such a negative effect.

16 I have some comments here about
17 the easement, but I'm going to skip those.

18 We think it is important for the
19 Board to consider the development proposal
20 project as a whole and the consequences that
21 plan would have on us as immediate neighbors,
22 rather than just focus on the enclosed bridge

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1 as if it were an isolated element in the plan.
2 It is not. The enclosed bridge has no
3 independent function. It exists solely as a
4 means to an end; namely connecting the
5 proposed second story over the garage with the
6 second story to the front of the house. Not
7 only is the enclosed bridge a climate-
8 controlled elevated hallway, but the Marks are
9 adding a bathroom within this hallway.

10 Now you might say that the front
11 and rear additions are matter-of-right
12 additions so we shouldn't consider them, but
13 the Marks' proposal is not about matter-of-
14 right construction. The elevated bridge is an
15 integral part of the redevelopment plan. Mr.
16 Marks told the ANC in August that his plan was
17 an all or nothing proposition. Since that
18 time he has scaled back a bit on the extent of
19 the lot coverage, but the overall plan remains
20 unchanged and should be considered as a whole.

21 Indeed there is no reason to
22 believe that the Marks would add a second

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1 story with a master bedroom over their garage
2 unless they could connect that room to the
3 front of the house. Thus, the proposed
4 elevated bridge is an enabler of construction
5 that will have a harmful effect on our
6 enjoyment of our property. We share a party
7 wall with 2130 Bancroft and there will be
8 noise and air pollution for however long the
9 new construction takes, which we believe to be
10 one to two years.

11 Moreover, we understand that the
12 AC condensing unit will be on top of the
13 master bedroom which is over the garage and
14 adjacent to our terrace on the back of our
15 house. That noise will have a negative effect
16 on us as well.

17 Lastly, my husband owns a
18 construction company and his consultants have
19 advised him that it is inevitable that our
20 105-year-old home will suffer structural
21 damage and have water problems due to the new
22 construction. The negative consequences of

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1 such a move will be immediate on our family.
2 They will occur only if you grant the
3 requesting zoning relief. We therefore ask
4 the Board to deny this application. Thank
5 you.

6 CHAIRMAN JORDAN: Thank you. Does
7 the Board have any questions?

8 (No audible response.)

9 CHAIRMAN JORDAN: No? I'm sorry.
10 I did not give the applicant the opportunity
11 to cross-examine. Do you have any questions
12 of either one of the two witnesses so far?

13 MS. PRINCE: I just have a few
14 questions.

15 CHAIRMAN JORDAN: Sure.

16 MS. PRINCE: Ms. Carstens, the
17 deck that you've discussed, is that the only
18 deck associated with your house?

19 MS. CARSTENS: Are you talking
20 about the veranda on my floor plan?

21 MS. PRINCE: Yes. Do you have a
22 deck off the rear of your house --

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1 MS. CARSTENS: Yes.

2 MS. PRINCE: -- in addition to the
3 open space?

4 MS. CARSTENS: Yes, I do.

5 MS. PRINCE: And, Ms. Bieber, if a
6 breezeway were to be constructed would it be
7 your preference to have it located along your
8 party wall or where it's currently located?

9 MS. BIEBER: I would have to think
10 about that. I'm not sure.

11 MS. PRINCE: So you might be
12 amenable to having it be located along your
13 party wall? Because it was our understanding
14 that you had a strong preference to not have
15 it located along your party wall.

16 MS. BIEBER: Well, as you know,
17 we're really very, very concerned about the
18 age of that wall --

19 MS. PRINCE: Right.

20 MS. BIEBER: -- and the damages,
21 the structural damages that might occur.

22 MS. PRINCE: So you would be

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1 concerned about the breezeway being along your
2 party wall?

3 MS. BIEBER: Absolutely.

4 MS. PRINCE: Okay. And, Ms.
5 Carstens, when you were discussing the view
6 from upstairs, did you take into consideration
7 at all the green roof, the additional green
8 space that will be introduced to your view as
9 a result of the second story of the garage?

10 MS. CARSTENS: I won't be able to
11 see the green roof.

12 MS. PRINCE: Okay. And do you
13 have a shadow study of your own that you've
14 done to refute our shadow study, because there
15 were statements about effect on light and air
16 that were not supported by the only shadow
17 study that is in the record. Do you have
18 another shadow study that contradicts our
19 shadow study?

20 MS. CARSTENS: What I have are my
21 photos which were actually taken on a cloudy
22 day --

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1 MS. PRINCE: Yes.

2 MS. CARSTENS: -- which show the
3 sunlight streaming into my windows.

4 MS. PRINCE: Yes. Okay. Thank
5 you.

6 CHAIRMAN JORDAN: Thank you. Mr.
7 Hitchcock, your next bit of evidence, please?

8 MR. HITCHCOCK: Mr. Pozez, who is
9 the other adjacent homeowner, has the ANC
10 letter that the Chairman referred to earlier
11 which he can read or summarize as the Chair
12 sees fit.

13 CHAIRMAN JORDAN: I'm sorry, say
14 it again?

15 MR. HITCHCOCK: Yes, Mr. Pozez has
16 the ANC letter that was submitted previously
17 which he can either read into the record or
18 summarize. I think the Chair referred to it
19 earlier.

20 CHAIRMAN JORDAN: We already have
21 it in the record. We do have it in the
22 record.

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1 MR. HITCHCOCK: Then I will turn
2 to Ms. Drissel who had a few comments also on
3 the easement, but --

4 CHAIRMAN JORDAN: And just so that
5 we know, the letter was dated October 29th,
6 2012. And it states that the ANC has not had
7 the opportunity to consider the revised plans
8 and special exception --

9 MR. HITCHCOCK: Correct.

10 CHAIRMAN JORDAN: -- and asked
11 that the record remain open to allow them to
12 submit their --

13 MR. HITCHCOCK: Yes. No, that's
14 the letter we were referring to.

15 So I will then to turn Ms.
16 Drissel, who lives across the street. And she
17 had some elements in there dealing with the
18 easement as well, so they're in her statement
19 for the record. So she'll address the other
20 issues, too.

21 MS. DRISSEL: I will do my best to
22 drop --

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1 CHAIRMAN JORDAN: Let's be clear,
2 we're --

3 MS. DRISSEL: I'll drop them.

4 CHAIRMAN JORDAN: Yes, we're not
5 going to have conversation about the easement,
6 right. Yes.

7 MS. DRISSEL: I'm doing my best to
8 drop them.

9 CHAIRMAN JORDAN: Got you.

10 MS. DRISSEL: Okay. Good
11 afternoon, Mr. Chairman and Members of the
12 Board and staff. My name is Marie Drissel and
13 I was an ANC commissioner in 1976 in Dupont
14 Circle and first appeared before BZA and the
15 Zoning Commission in 1977 to use zoning to
16 protect the properties of N Street and
17 Jefferson Place, N.W. I was chairman of the
18 Sheridan-Kalorama ANC often appearing before
19 the FM BZA. And I might add, my family has
20 lived in Washington, D.C. for 160 straight
21 years.

22 I cannot imagine why the Marks

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1 bought this property and before they ever
2 lived in it considered these substantial
3 changes. There were many alternative
4 properties available to them in the
5 neighborhood in the same price range. I
6 happened to be out front the evening Mr. Marks
7 settled on 2130 Bancroft Place. I introduced
8 myself. After we exchanged pleasantries, he
9 said immediately to me that he had changes he
10 was going to make, including adding a new
11 floor.

12 This house is a jewel. He said
13 so. All three owners, prior owners were
14 friends of ours and two of them made
15 substantial improvements with one owner
16 spending hundreds of thousands in fully
17 permitted renovations. It meets the highest
18 standards of modern living. For purposes of
19 living, it is one of the best homes in
20 Sheridan-Kalorama.

21 Here are some of the slides from
22 the last time the house was on the real estate

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1 market to demonstrate that this house is fully
2 functional and the interior is the best. I
3 have attached a copy of its amenities
4 including heated hardwood flooring in the
5 kitchens and bathrooms, marble onyx alabaster
6 Baccarat fixtures and the highest quality
7 equipment and appliances throughout.

8 I'm going to skip everything about
9 the easements and just end on a final note.

10 On a final note, my husband and I
11 have witnessed four very serious fires on
12 Bancroft Place. This design poses practical
13 problems that our fire/EMS teams will face
14 when trying to get someone out of the back
15 master bedroom. This will be considered a
16 one-entry home for purposes of fire and
17 emergency services. It is the only one on
18 Bancroft Place like that. Thank you.

19 MR. HITCHCOCK: Ms. French?

20 CHAIRMAN JORDAN: Before we --

21 MR. HITCHCOCK: Sorry.

22 CHAIRMAN JORDAN: -- proceed, Ms.

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1 Prince, do you -- all right. Sure.

2 Your next witness, please?

3 MS. FRENCH: Dear Chairman and
4 Members of the Board, I am Kindy French,
5 president of the Sheridan-Kalorama Historical
6 Association. SKHA is dedicated to preserving
7 the Sheridan-Kalorama historic district, which
8 is primarily characterized residential
9 buildings designed by locally and nationally-
10 prominent architects and by its development as
11 an in-town enclave with a significant amount
12 of green space. SKHA appreciates this
13 opportunity to testify before you.

14 The revised plans with the
15 proposed skywalk running along Ms. Carstens'
16 property at 2128 Bancroft poses concerns. The
17 2100 block of Bancroft Place is an integral
18 part of the Sheridan-Kalorama historic
19 district. Preservation issues are of course
20 a matter for the Historic Preservation Review
21 Board and I will not get into these here.

22 I also have tried to take out

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1 everything about the L'Enfant Trust in my
2 testimony, so it'll be a little bit scattered.
3 Sorry.

4 CHAIRMAN JORDAN: That's okay.

5 MS. FRENCH: What matters for
6 purposes of this hearing is the fact that 2130
7 Bancroft Place, as well as the adjoining
8 properties, are subject to an easement
9 designed to protect the façade, other
10 elevations and open spaces.

11 I want to bring out the point that
12 this has been used as a single-family
13 residence for over a half century and in fact
14 the Marks' are leasing it to a family of four
15 right now for that purpose. There is no
16 reason to think that this building shouldn't
17 remain essentially unchanged.

18 The question about one's enjoyment
19 of his or her property obviously depends on
20 the facts in each issue. Here the Marks are
21 asking the Board to approve a project that
22 would violate limitations they voluntarily

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1 accepted when they bought this house and the
2 other homeowners on this block also place on
3 themselves to protect their properties.

4 The Marks point out the number of
5 houses in this area already occupy more than
6 30 percent of their lots. These excesses are
7 grandfathered. The precede the Zoning
8 Regulations and the historic district
9 designation and would not be approved today.

10 The particular property, 2130
11 Bancroft, is typical of attached houses in our
12 district which have the configuration of house
13 facing the street, green space behind the
14 house and a detached garage on the alley.
15 Should this special exception be granted, it
16 would set a precedent that would threaten the
17 green space of our district, one of its most
18 important characteristics.

19 And then I have pictures in your
20 packet and slides which show other complete
21 streets in our neighborhood that could be
22 affected by this, which is the 2100 and 2200

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1 block of Wyoming Avenue. And that's the
2 aerial shot. You have your own package
3 actually of these pictures. And then these
4 are two shots next from the alleyway where you
5 can see the enjoyment by all of the green
6 spaces in the courtyards. So if you actually
7 allowed all these other properties to build a
8 second story on top of their garage, all of
9 this green space would be deprived of the
10 neighborhood.

11 Then you also have the 1800 block
12 of 24th Street. This alleyway backs onto the
13 properties on Massachusetts Avenue. The same
14 would occur here. This is the aerial shot and
15 you can see the houses, the courtyards. And
16 you can barely actually see the garages for
17 all the green plantings that are there. And
18 then there's just the view from the alleyway
19 itself where you can see the enjoyment of
20 everybody, especially even on Massachusetts
21 Avenue that can enjoy the green spaces and the
22 courtyards.

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1 The next block is 2200 Q Street,
2 and the aerial shot really shows it very well.
3 You might see it better in your packet than on
4 the plan on the wall. And the next two shots
5 in the back where you can see the green space
6 it just shows over the garages.

7 And then we have Kalorama Circle,
8 which actually are single-family houses, but
9 have the same configuration where you have a
10 house, a courtyard and the garage is on the
11 alley. And this could all set a terrible
12 precedent in Sheridan-Kalorama for this kind
13 of a project was allowed to go forward. Thank
14 you.

15 CHAIRMAN JORDAN: Thank you. Any
16 cross-examination?

17 MS. PRINCE: (No audible
18 response.)

19 CHAIRMAN JORDAN: The Board have
20 any questions?

21 (No audible response.)

22 CHAIRMAN JORDAN: Mr. Hitchcock?

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1 MR. HITCHCOCK: That concludes our
2 presentation. Thank you, Mr. Chairman.

3 CHAIRMAN JORDAN: Very good. Any
4 questions, Board, before -- and then you've
5 already cross-examined.

6 (No audible response.)

7 CHAIRMAN JORDAN: Is there anyone
8 in the audience in opposition would like to
9 give a three-minute statement? And I think we
10 have Mr. --

11 MR. HITCHCOCK: Pepper.

12 CHAIRMAN JORDAN: -- Pepper. I'm
13 sorry.

14 MS. BIEBER: Excuse me, Mr.
15 Chairman. I have a plane to catch. I'm
16 taking my son to visit some colleges out west.
17 And so I want to excuse myself and --

18 CHAIRMAN JORDAN: Thank you.

19 MS. BIEBER: -- say thank you very
20 much.

21 CHAIRMAN JORDAN: Thank you for
22 coming and thank you for your input.

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1 MS. BIEBER: Okay. Thank you.

2 CHAIRMAN JORDAN: Mr. Pepper?

3 MR. PEPPER: Thank you, Mr.

4 Chairman and --

5 CHAIRMAN JORDAN: You're on our
6 three-minute clock.

7 MR. PEPPER: -- glad to hear it --
8 and Members of the Board. I will really
9 summarize --

10 CHAIRMAN JORDAN: Just give me one
11 second.

12 MR. PEPPER: Yes.

13 MR. MOY: Mr. Chair, since he's
14 representing organizations, it's five minutes.

15 CHAIRMAN JORDAN: Okay. Five
16 minutes then.

17 MR. MOY: Just let you know.

18 MR. PEPPER: Thank you, but I'll
19 still try to race for your three, Mr.
20 Chairman.

21 CHAIRMAN JORDAN: No, if you want
22 to use five, use five.

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1 MR. PEPPER: Even better, I'd like
2 you to look at the back of the written
3 testimony I've provided where it shows this
4 photograph. And you'll notice that the green
5 area at the bottom is the area that's going to
6 be covered by the deck that we're speaking of
7 today. So that'll give you a context right in
8 front of you. And if you would please include
9 my entire written statement for the record,
10 I'll summarize now.

11 The mission of Preserve Our Green
12 Space is to protect historically and
13 architecturally significant public and private
14 green space gardens and parks in Sheridan-
15 Kalorama that have value to the quality of
16 life of our neighbors and to the character and
17 health of the city.

18 My name is Jim Pepper. I am vice-
19 president of the organization.

20 The Sheridan-Kalorama neighborhood
21 is recognized because of this distinction as
22 a verdant enclave in the heart of the city.

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1 The Zoning Regulations and boundaries are well
2 attuned to protect this essential character.
3 That protected green character of our
4 neighborhood is a major part of the quality of
5 life of every homeowner and resident,
6 including the neighbors of the proposed
7 project.

8 We oppose the application for a
9 special exception under section 223 for the
10 proposed project. We believe this project, if
11 approved, will have substantial adverse effect
12 on the use and enjoyment of the neighbors'
13 property and on the intended zoning
14 protections for the neighborhood.

15 On the other hand, if the Board
16 does not approve this application, we believe
17 there will be no hardship. The significant
18 adverse effects are not obvious in the
19 application.

20 First, although the application
21 calls it a breezeway, this structure proposed
22 to be erected in a garden is not a breezeway

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1 at all. It is a two-tiered elaborately-
2 appointed elevated living space with hallway
3 and half bath. Its second tier is a walkway
4 with high concept railings. It functions as
5 an extension of the nonconforming garage and
6 deck proposed to be developed as a master
7 bedroom suite. The effect of this hallway
8 structure is to eliminate one-fourth of what
9 currently is an open formal designed garden.

10 Second, although the application
11 says the purpose of the project is to create
12 a more functional and more suitable house for
13 modern living standards, in fact the project
14 would build one unified structure that will
15 have the effect of compromising the garden,
16 walling off the neighbors from a significant
17 amount of the view, the sun and the light and
18 the garden.

19 Structures throughout our
20 neighborhood, including the adjacent 2128
21 Bancroft, are designed to enjoy the highly
22 diverse views of garden and green space. This

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1 is not a negligible or insignificant thing.
2 Despite the narrative of the application, it
3 directly affects the intent of the Sheridan-
4 Kalorama zoning requirements, which, if
5 allowed to function without this exception,
6 will protect these gardens and provide these
7 open views for the mutual enjoyment of the
8 neighbors.

9 The applicant, knowing of the
10 existing zoning and easement, bought the house
11 with a plan to eliminate the features of
12 garden, light, sun and view that are so
13 significant to our neighborhood. This goes to
14 the heart of disharmony with the general
15 intent of the Zoning Regulations. This owner
16 had and still has the opportunity to buy a
17 different house that meets his need without
18 sacrificing the qualities of 2130 Bancroft
19 that our zoning brings.

20 Third, although the application
21 states that the space below the hallway will
22 be open for increased landscaping, in fact it

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1 will eliminate the mature camellia trees now
2 growing in that space. Camellia trees are a
3 threatened species in the wild and are a
4 delightful garden amenity for the neighbors as
5 well as this property. This site of the
6 hallway is also the site of the greatest
7 benefit of the noonday and early afternoon
8 sun, of the greatest benefit of sun-loving
9 garden species and of the greatest benefit of
10 the garden for the neighbors. I do agree,
11 however, with the application when it says
12 will preserve the brick pavers.

13 Fourth, although the application
14 says that the neighbors requested the green
15 roof and plantings on the new deck above the
16 proposed master bedroom suite over the garage,
17 the fact is that we are unaware of any support
18 whatever in the neighborhood for this feature,
19 or anything about this proposal. Please note
20 this proposed green roof does not mitigate the
21 loss of garden caused by this hallway
22 structure. It replaces the existing

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1 abundantly planted deck over the current
2 garage.

3 Finally, although the application
4 seeks to create the appearance that the
5 expanded house will be compatible with the
6 neighboring nonconforming lot occupancies,
7 there are at least two things wrong with this
8 contention: One, the Zoning Regulations were
9 of course put into place to avoid future loss
10 of character and value to the neighborhood and
11 not seek a new standard of least possible
12 compliance.

13 Two, it is a vastly misleading
14 statement concerning the number of similar
15 properties in the neighborhood with garage and
16 courtyard. This was already pointed out by
17 Ms. French. There are -- we have counted at
18 least 40 houses in the neighborhood that are
19 similar to this with a courtyard and garden
20 and there's at least another -- there's 65 at
21 least in the neighborhood if you go beyond
22 into the detached homes. The existing

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1 nonconforming lot occupancy of 62 percent will
2 jump to 70 with this project. The effect will
3 be to destroy one-fourth of a formal garden
4 that is a substantial amenity for the
5 neighborhood and is protected by existing
6 zoning.

7 The special exception, if granted,
8 would not be in harmony with the purpose of
9 zoning. The large hallway will block the view
10 of the garden of light, of sun for one
11 neighbor, and two neighbors will lose
12 significant garden views. Currently the
13 existing ground level living space to be
14 covered, and compromised by the hallway
15 structure is the place that gets most of the
16 early afternoon sun and is of primary value to
17 the garden. This is an adverse effect in the
18 meaning of section 3104.1 of the Zoning
19 Regulations. Thank you for the opportunity to
20 present this testimony.

21 CHAIRMAN JORDAN: Thank you. Any
22 questions? Does the Board have any questions

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1 of Mr. Pepper?

2 (No audible response.)

3 CHAIRMAN JORDAN: Ms. Prince, any
4 questions?

5 I'm sorry, I'll ask Mr. Hitchcock.
6 Any questions?

7 MR. HITCHCOCK: No, sir.

8 CHAIRMAN JORDAN: Thank you.
9 Great. Then let's move back to the applicant
10 for any rebuttal, please.

11 MS. PRINCE: (No audible
12 response.)

13 CHAIRMAN JORDAN: Thank you all
14 for bringing your testimony forward. Thank
15 you.

16 MR. HITCHCOCK: Thank you.

17 MS. PRINCE: Thank you for your
18 time this afternoon. This application
19 involves a house that is unusually small for
20 the neighborhood and the use of section 223 to
21 adapt it for the owners' needs. It is a
22 classic section 223 case. It is not an

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1 inappropriate use of the Zoning Regulations in
2 any way. It is the reason why section 223 was
3 created.

4 As you've seen today, we have
5 several neighbor opponents who live in homes
6 that are substantially larger, and in most
7 cases occupy substantially more of the lot
8 than we're proposing here today. Many of the
9 opponents' houses even contain four stories,
10 while we're proposing three, which is the
11 limit in the neighborhood. As Ms. Drissel
12 noted, there are many nonconforming structures
13 in the neighborhood.

14 There's no expert testimony to
15 contradict the shadow studies that we've
16 presented. I think there's a lot of confusion
17 in the record. There is a difference between
18 views and light and air. There is no legal
19 entitlement to a view, as this Board is well
20 aware. Light and air is a different thing.
21 And certainly views will change. Views always
22 change when there are additions, but that is

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1 entirely different from an undue impact on
2 light and air.

3 There's no expert testimony in the
4 record to suggest that there will be an undue
5 impact on light and air. In fact, when the
6 second level of the garage is added and the
7 green roof is put on top of it, the increase
8 in height of the garage actually brings more
9 light and air into the neighborhood because
10 the garage will no longer be entirely in
11 shadow. The shadow studies show that. So
12 there's actually more light on our property as
13 a result of the addition without any adverse
14 impact on the neighboring properties.

15 Just to give you a specific answer
16 to the question that was asked earlier; I
17 think it's in the record, but I wanted to add
18 it clearly again, the existing courtyard is
19 520 square feet. It will be reduced to 340.
20 That's a 180 foot addition. On the other
21 hand, a green roof will be added that was
22 specifically discussed with members of the

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1 community that will add 702 square feet of
2 greenery to the interior of the square, as I
3 said, at higher elevation than the courtyard
4 level, so it will be more visible.

5 This house is located in a row
6 house zone. There is no side yard
7 requirement, so I don't want any confusion
8 over that issue as well. We're more than
9 happy to look at the treatment, the
10 architectural treatment of the wall that will
11 confront Ms. Carstens' property. We have
12 chosen a very high quality classicist
13 architecture firm that is very interested in
14 making this wall look appropriate. We will
15 install whatever change to the wall is
16 necessary to make it more appealing to Ms.
17 Carstens.

18 But the reason why the breezeway
19 is located where it is and not on the other
20 side is because the owner got information loud
21 and clear from the opposite owners on the
22 opposite side that they were extraordinarily

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1 concerned about the integrity of their 105-
2 year-old wall and had longstanding water
3 issues that they felt would be exacerbated by
4 any construction in that area. So we are
5 simply trying to accommodate the neighbors
6 based on the complaints that we've heard.

7 That concludes our presentation.
8 I greatly appreciate your attention to this
9 case and if there's any additional information
10 we can provide the Board that will help in the
11 decision making, we're certainly happy to do
12 that.

13 CHAIRMAN JORDAN: Okay. Okay.
14 Thank you. Does the Board have any questions
15 of the applicant?

16 (No audible response.)

17 CHAIRMAN JORDAN: No? Then we
18 will --

19 VICE CHAIR SORG: I have one
20 question. Has anybody -- I think we heard
21 testimony that one of the residents of 2132 --
22 is that right -- yes -- is a contractor. Has

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1 any professionals; engineers, contractors,
2 looked at that wall, party wall that you were
3 just mentioning?

4 MS. PRINCE: We have not
5 independently studied that wall. We took the
6 owners' word for it when they had explained
7 that there had been longstanding difficulties
8 with it. And given that the husband is in
9 that business, we -- and it is in fact an
10 extremely old wall.

11 CHAIRMAN JORDAN: Okay. Thank
12 you. Anyone else? Mr. Miller?

13 COMMISSIONER MILLER: Did you ever
14 explore a connection that was on the ground
15 level, on a lower level or underground and --
16 if you could -- could you just answer that?

17 MS. PRINCE: I think the
18 architects can answer that.

19 MR. MARTIN: The existing floor
20 plan, at the rear is a garage, and to go from
21 the main house, which at the lower level is
22 the kitchen and dining room that we saw in the

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1 pictures, you would be going through a garage
2 to get to the upstairs bedroom underground and
3 doing -- you know, ripping up the courtyard
4 that way as well.

5 CHAIRMAN JORDAN: And so going
6 back to the wall; and I guess it's the west
7 side -- is it? So there hasn't been any
8 examination on the structural integrity of
9 that wall that's independent to find out if it
10 can be reinforced or anything like that?

11 MS. PRINCE: No, we didn't have
12 any specific study of the wall, but we did
13 have extremely strong concerns expressed by
14 the owners of not even just disrupting the
15 wall; that was a major concern, but also an
16 explanation that there had been very chronic
17 issues with that side of the property and
18 water and drainage. I don't want to speak for
19 them.

20 CHAIRMAN JORDAN: Okay.

21 MS. PRINCE: But it was
22 overwhelmingly clear to us that we were not

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1 going to get them comfortable with the idea of
2 locating the connection on that side of the
3 property.

4 CHAIRMAN JORDAN: Okay. Thank you.
5 Yes? It's in regards to that question? Is
6 that what -- okay.

7 MR. MARKS: Believe me, it would
8 be a lot less expensive to utilize that wall,
9 but I'm not looking to make my neighbor
10 unhappy. So we didn't even address -- when we
11 decided to do with the breezeway, we didn't
12 even address that side of the property.

13 CHAIRMAN JORDAN: Yes. Thank you.
14 Any other questions, Board? Go ahead, please.

15 COMMISSIONER MILLER: I guess
16 following up on that, did you explore creating
17 a new wall adjacent to that wall that didn't
18 maybe touch it? Did you explore that?

19 MR. MARKS: No, we didn't. We
20 just wanted to stay away from the property.

21 MS. PRINCE: And I had understood
22 based on discussions with the property owner

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1 at the ANC meeting that there would still be
2 a concern if there were construction along
3 that side of the property. Again, I don't
4 want to speak for them. You could ask for
5 their further thoughts on it. You know,
6 perhaps if they embrace the concept of the
7 wall being on that side of the property, you
8 know, certainly we would be more than happy to
9 explore that. But it was really our
10 understanding that that was a major concern.

11 CHAIRMAN JORDAN: Okay. Well, we
12 -- yes?

13 VICE CHAIR SORG: I mean, I think
14 maybe part of what Mr. Miller is getting at is
15 that what we're -- it's a strange thing to
16 talk about, you know, totally redesigning or
17 relocating at the -- the program of an
18 addition for a 223 request, but it's not like
19 you've made either neighbor happy, you know?
20 So I wonder whether there is an optimal or
21 least -- from the opinion of the architect,
22 whether there is -- outside of the opinions of

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1 the specific concerns of the neighbors,
2 whether there is an optimal or least impactful
3 option for either of those sides. Because, I
4 mean, naturally -- well, you can answer that.

5 MR. LOHSEN: Be happy to. The
6 issue with building alongside the 105-year-old
7 wall are waterproofing and foundations, and
8 both are a concern. Our understanding is that
9 there was a water issue which had been a major
10 concern for that property owner. Those can be
11 addressed, but you're still -- you're asking
12 that owner to take your word that, yes, we'll
13 do it the right way.

14 The other concern is with the
15 structural integrity of the foundations. We
16 would have to go down and do likely some
17 underpinning, which again can be done. I
18 mean, we've worked on 600-year-old buildings
19 in Europe. It can be done and I think our
20 owner has the -- you know, the wherewithal and
21 the intent to do it the right way. But in the
22 interest of not asking that owner, that

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1 neighbor to take our word for it, the path of
2 -- the most appropriate design path is to
3 locate the breezeway -- and actually I should
4 have thought of this earlier, the appropriate
5 classical architectural term is a hyphen,
6 because it's not an open breezeway, but we
7 should have changed that at the beginning.

8 But call it what you will, the
9 most appropriate side for locating that
10 connection is the side we're currently
11 proposing, for several reasons: Not only to
12 minimize the interference with the historic
13 structural fabric of the wall next door, but
14 if you look at the plans of the existing
15 house, the existing stairs, the existing stair
16 down into the garage is all located on that
17 side of the property. So locating the
18 connection on that side helps to minimize the
19 effect of -- that that has on the rest of the
20 historic fabric of 2103.

21 So it wasn't a decision taken in
22 isolation solely because of the concerns of

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1 the neighbor, but that certainly had great
2 weight and was part of the factors in deciding
3 what was the appropriate solution.

4 CHAIRMAN JORDAN: Okay. Thank
5 you. I'm going to close this hearing and I am
6 going to close the hearing with -- and close
7 the record in this case except for two things:
8 And I would like to have proposed findings of
9 fact and conclusions of law by both parties
10 submitted. Additionally, I'm going to keep
11 the record open for ANC 2D to submit their
12 vote, their recommendation.

13 But I also want to caution both
14 parties. We have found that working things
15 out is better than us making decisions,
16 because somebody's not going to be happy. And
17 from what I'm hearing, there may be some room
18 somewhere to work something out. So it's just
19 a strong suggestion that maybe you want to,
20 you know, go into a room, close the door and
21 everybody try to work cooperatively to come
22 with something that everybody may not be happy

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1 with, but you can live with.

2 And the other side of that is that
3 you're neighbors, and hopefully they're going
4 to be neighbors for a long while. And so I
5 would just seriously suggest that in the
6 interim period that there's some dialogue
7 about some alternatives and options. Because
8 we don't have any qualms about making a
9 ruling. We've done it. Sometimes we make
10 them. It's just some hard ruling we live
11 with. But it's just a suggestion. And things
12 work out better by settlement and compromise
13 as to anything else.

14 Mr. Moy, can we have a date?
15 Certainly it's going to be after the date that
16 ANC 2D will be meeting, and that's December
17 17th. I'm going to need a date for the
18 proposed findings of fact and conclusions of
19 law to be submitted. And I don't think I need
20 any rebuttal to that. No, I don't want any
21 rebuttal to that. We'll just figure it out
22 from the documents submitted.

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1 MR. MOY: Just for clarification,
2 you said the ANC is meeting December 17th? Is
3 that it?

4 CHAIRMAN JORDAN: That's what they
5 have in their letter.

6 MR. MOY: Okay. All right.
7 That's right. Well, ideally if they have a
8 quick turnaround, there is a scheduled public
9 meeting in the afternoon of December 18th. I
10 don't know if that's doable for that ANC.

11 CHAIRMAN JORDAN: What is the next
12 date?

13 MR. MOY: If not that, we're into
14 January, Mr. Chairman, because that's --
15 because there's no other hearings after the
16 18th of December during that holiday week.

17 CHAIRMAN JORDAN: This is for a
18 decision.

19 MR. MOY: For a decision? January
20 15th.

21 CHAIRMAN JORDAN: Okay.

22 MR. MOY: We could do a special --

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1 CHAIRMAN JORDAN: Has the ANC had
2 their November meeting?

3 MR. HITCHCOCK: They've advised us
4 they don't meet. They're not having a meeting
5 in November. December was chosen because that
6 is the next regularly scheduled meeting.

7 CHAIRMAN JORDAN: Well, let's do
8 this: If they're going to meet on the 17th --
9 well, that's the 17th and someone has to
10 process a letter and then we meet on the 18th.
11 That's kind of a -- really too quick a
12 turnaround.

13 MR. MOY: The other suggestion,
14 Mr. Chairman, is if other than meeting for a
15 decision on the 15th the Board could hold a
16 special public meeting on January the 8th.

17 CHAIRMAN JORDAN: We are meeting
18 -- after the 18th we're not meeting, or --
19 until January 8th?

20 MR. MOY: That's correct.

21 CHAIRMAN JORDAN: Okay. All
22 right. Then let's go ahead and we'll set it

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1 down for a limited decision meeting for that
2 on the same date we have other hearings. Is
3 that what you're saying?

4 MR. MOY: Yes, that would be
5 January 15th in the afternoon. That's the
6 regular decision meeting.

7 CHAIRMAN JORDAN: No, no, no. I'm
8 saying are we meeting on the 8th of January?

9 MR. MOY: Yes. Yes.

10 CHAIRMAN JORDAN: And that meeting
11 is a hearing date?

12 MR. MOY: That's correct.

13 CHAIRMAN JORDAN: We can set this
14 down on that date for --

15 MR. MOY: That's right.

16 CHAIRMAN JORDAN: -- make a
17 limited -- for a decision on that date?

18 MR. MOY: That's right.

19 CHAIRMAN JORDAN: We will have a
20 meeting --

21 MR. MOY: A special --

22 CHAIRMAN JORDAN: -- a special

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1 meeting on that date?

2 MR. MOY: That's right, yes.

3 CHAIRMAN JORDAN: Okay. So that
4 would be January 8th. So we would need to
5 have the proposed findings of fact and
6 conclusions of law at least two weeks before
7 then.

8 Now if there is an agreement
9 worked out and a compromise agreement that's
10 worked out and subsequent change of plans,
11 then let us know and we will give you leave to
12 file that. But otherwise, we just want the
13 ANC letter and the proposed findings of fact
14 and conclusions of law. But certainly if
15 there's a compromise worked out, there will be
16 some amended plans, then we would accept that.
17 All right?

18 MR. HITCHCOCK: So that will be a
19 December 24th filing date?

20 CHAIRMAN JORDAN: Mr. Moy?

21 MR. MOY: That's right. Exactly.
22 That's a Monday.

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1 MR. HITCHCOCK: Thank you.

2 CHAIRMAN JORDAN: Okay. Well,
3 good. Thank you all. Appreciate it.

4 All right. We've had a heck of a
5 morning docket, so therefore we are now at the
6 2:00 hour and we need to take a break. We've
7 been at it for awhile and we didn't take an
8 afternoon -- didn't take a lunch break, so we
9 will stand in recess for 30 minutes, or
10 sitting recess, but we'll be in recess.

11 (Whereupon, the hearing was
12 recessed at 2:00 p.m. to reconvene at 2:30
13 p.m. this same day.)

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

2 2:45 p.m.

3 CHAIRMAN JORDAN: Well, no, I'm
4 just going to do this: I'm going to say we're
5 back in session.

6 MR. MOY: All right. Good
7 afternoon, Mr. Chairman, Members of the Board.
8 This is the afternoon session of the BZA
9 hearing of November 7th, 2012.

10 The first application before the
11 Board is application No. 18462. This is the
12 application of Kenneth L. and Ellen J. Marks,
13 pursuant to 11 DCMR -- no, I take that back.
14 I stand corrected. 18462. I'm off my rhythm
15 for a moment. Application No. 18462 of Karen
16 Sayre, pursuant to 11 DCMR 3104.1. This is
17 for a special exception to allow a third-story
18 addition to an existing flat, two-family
19 dwelling, under section 223, not meeting the
20 lot area and lot width requirements under
21 section 401, lot occupancy requirements under
22 section 403, and nonconforming structure

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1 requirements under subsection 2001.3 in the R-
2 4 District at premises 13 15th Street, S.E.
3 Property located in Square 1058, Lot 47.

4 As the Board will recall, this
5 case was before the Board at its public
6 meeting of October 23rd, 2012 and I believe
7 because of the party status request was
8 removed from the expedited review calendar and
9 scheduled for the public hearing of today,
10 November 7th. That completes the staff's
11 briefing, Mr. Chairman.

12 CHAIRMAN JORDAN: All right.
13 Thank you. Good. Let's do this: Mr. Moy,
14 before we go further, would you please --
15 anyone who's going to testify in a case on the
16 docket for today, would you please stand and
17 take the oath or affirmation?

18 (Whereupon, the witnesses were
19 sworn.)

20 MR. MOY: You may consider
21 yourself under oath.

22 CHAIRMAN JORDAN: And prior to

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1 your testifying please complete two witness
2 cards and give them to the court reporter to
3 my right.

4 Also I'm going to ask that you
5 refrain from any disruptive noises since we
6 are being Web cast live.

7 Would you please introduce
8 yourselves?

9 MR. KEYS: Good afternoon, Mr.
10 Chairman. My name is George Keys and I'm here
11 on behalf of Karen Sayer, the owner of the
12 subject property. I provided the Board with
13 a copy of Ms. Sayre's letter designating me as
14 her counsel. She came to after the October
15 23rd hearing.

16 CHAIRMAN JORDAN: Do we have that,
17 Mr. Moy?

18 MR. MOY: (No audible response.)

19 CHAIRMAN JORDAN: You filed it,
20 correct?

21 MR. KEYS: Yes, it was filed
22 electronically yesterday.

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1 CHAIRMAN JORDAN: Okay.

2 MR. KEYS: And I should also say
3 that at the same time I filed a copy of the CV
4 of our architect, Will Teass. And if you
5 don't have that in front of you, perhaps Mr.
6 Moy could assist.

7 CHAIRMAN JORDAN: A copy of what?

8 MR. KEYS: Of the CV of Will
9 Teass, the architect for this project.

10 CHAIRMAN JORDAN: Will Teass?

11 MR. KEYS: Teass, yes. T-E-A-S-S.

12 CHAIRMAN JORDAN: Right. Do we
13 have a copy of the letter, Mr. Moy?

14 MR. MOY: (No audible response.)

15 CHAIRMAN JORDAN: Do we have Mr.
16 Teass in our book?

17 (No audible response.)

18 CHAIRMAN JORDAN: All right. You
19 just filed the letter on the 5th?

20 MR. KEYS: Yes.

21 CHAIRMAN JORDAN: And Mr. Teass is
22 going to testify regarding?

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1 MR. KEYS: I would like to ask him
2 to -- the Board to recognize him as an expert
3 in architecture. And I have another copy of
4 his CV, if it would make it easier for the
5 Board to --

6 CHAIRMAN JORDAN: No, we're good.
7 And has -- are you Mr. Teass?

8 MR. TEASS: Yes, sir, I am.

9 CHAIRMAN JORDAN: And have you
10 testified in any cases before us before?

11 MR. TEASS: Yes, I've had a couple
12 of BZA cases that have come before the Board.

13 CHAIRMAN JORDAN: Okay. We'll
14 accept him as an expert in architecture,
15 please. Yes, he's registered. I thought I
16 saw your number here.

17 VICE CHAIR SORG: Are you
18 registered at NCARB?

19 MR. TEASS: I'm registered in the
20 District. And I also -- I'm also -- I hold an
21 NCARB certificate as well.

22 CHAIRMAN JORDAN: Please, I was

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1 asking for introductions now. At the table
2 sitting with you, Mr. Keys, is?

3 MR. KEYS: To my right is Karen
4 Sayre, the owner of the property.

5 CHAIRMAN JORDAN: Okay.

6 MR. KEYS: And Mr. Teass, the
7 architect for the project.

8 CHAIRMAN JORDAN: Now I think we
9 have a motion for party status filed here by
10 -- is it Mr. Adams? Is Mr. Adams here? Mr.
11 Adams, would you come forward, please?

12 I don't know if you can -- did you
13 complete the witness cards and turn them in
14 for us?

15 MR. ADAM: Yes.

16 CHAIRMAN JORDAN: Okay. I know,
17 Mr. Adams, you had submitted some documents
18 before. One was a request to pull this from
19 the expedited docket. And I read your letter.
20 So you know, we have regulations as to what
21 cases go on expedited dockets and review. And
22 so if cases meet the criteria, they go on that

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1 docket.

2 Now how close in relation to this
3 property do you live?

4 MR. ADAM: It's adjacent. I'm in
5 No. 15.

6 CHAIRMAN JORDAN: And I'm trying
7 to pull up your letter.

8 MR. MOY: I believe it's Exhibit
9 26 and 27, Mr. Chairman.

10 CHAIRMAN JORDAN: We'll grant you
11 party status for the sake of this application.

12 MR. ADAM: Thank you.

13 CHAIRMAN JORDAN: So you
14 understand what party status means?

15 MR. ADAM: Vaguely, yes.

16 CHAIRMAN JORDAN: Well, let me say
17 this, and let me ask you then -- well, party
18 status means that you can put on a
19 presentation, have witnesses and cross-examine
20 other witnesses in the case. You don't need
21 party status to submit your view. You have a
22 right to be a witness in opposition and still

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1 do some of the same things, except you don't
2 get to cross-examine and etcetera. And you
3 have the right as a person, a party in
4 opposition to do a full presentation. So it's
5 kind of -- what do you think is your will?

6 MR. ADAM: Is my will for today?

7 CHAIRMAN JORDAN: Yes. Well,
8 yes --

9 MR. ADAM: I mean --

10 CHAIRMAN JORDAN: If you want us
11 to keep party status for you, we'll do so. Or
12 -- yes, go ahead.

13 VICE CHAIR SORG: Maybe there's
14 something I might be able to add here for Mr.
15 Adams. In your request for party status --
16 certainly there are certain criteria. You
17 know, certainly you're close enough as the
18 adjacent neighbor; it's a row house, and so
19 forth to be particularly affected by the
20 project that Ms. Sayre is proposing. But I
21 would note that many of the issues that you
22 brought up in your letter are not under the

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1 purview of the Board, and those include, you
2 know, structural concerns, concerns about
3 quality of construction and those kinds of
4 things.

5 So, you know, when you're
6 thinking about what the Chairman is asking
7 you, it may also be instructive to understand
8 what issues are before the Board and
9 appropriately before the Board and what issues
10 -- and, you know, certainly we want to
11 encourage neighbors to speak and so forth, but
12 -- so they get a little bit more understanding
13 about which of your issues are able to be
14 judged from a zoning perspective and which are
15 not right for this forum.

16 CHAIRMAN JORDAN: For instance, we
17 can't deal with asbestos issues, etcetera.

18 MR. ADAM: Yes.

19 CHAIRMAN JORDAN: That's not
20 before us and we wouldn't accept any testimony
21 regarding that.

22 MR. ADAM: Okay. Well, I'd get

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1 party status and then would probably not use
2 it.

3 CHAIRMAN JORDAN: Okay. Well,
4 that's fine. That's also your option. Okay.

5 MR. ADAM: But if -- you know, I
6 mean, I may have -- it would be nice to cross-
7 examine perhaps, but, you know, I'm not a
8 lawyer, you know, so --

9 CHAIRMAN JORDAN: Okay. Well,
10 then we'll grant you party status.

11 Mr. Keys, just a second before we
12 begin. Let me check with the Board.

13 Mr. Keys, we have of course
14 examined the filings in this case and the
15 record in this case and believe that there is
16 nothing that the Board needs to hear from you,
17 unless you just want to talk and put on a
18 presentation for us. We understand your
19 plans. We understand what the applicant needs
20 -- wants -- the applicant's project -- excuse
21 me, project and the relief that's necessary.
22 There is a, yes, you know, very small relief

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1 that you're asking for. And additionally that
2 you have support letters from the ANC and the
3 Capitol Hill Society and the Office of
4 Planning in support.

5 So there's no need to do a
6 presentation. You might offer that we then
7 move forward and you might want to save any
8 kind of rebuttal that you may have for those
9 in opposition after they do their
10 presentation. That I would suggest, but it's
11 certainly your right to do a full presentation
12 beforehand, etcetera.

13 MR. KEYS: Mr. Chairman, let me
14 have a moment.

15 Mr. Chairman, I think we'll accept
16 your suggestion of the Board and we'll defer
17 our presentation and just reserve the right
18 for rebuttal --

19 CHAIRMAN JORDAN: Yes, I think
20 that makes sense. Thank you.

21 MR. KEYS: -- of Mr. Adams' case.

22 CHAIRMAN JORDAN: Yes, I think

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1 that makes sense.

2 Let's then turn to Office of
3 Planning and see if there's anything in
4 addition or any need that the Office of
5 Planning has regarding the report they've
6 already submitted. Officer Jackson.

7 MR. JACKSON: Didn't get away
8 again. Yes, Arthur Jackson, D.C. Office of
9 Planning.

10 You have our report before you and
11 we'll stand in the record. And if you have
12 any additional questions for the Office of
13 Planning, we're available to answer them.

14 CHAIRMAN JORDAN: Okay. Thank
15 you. Does the Board have any questions for --
16 Ms. Sorg?

17 VICE CHAIR SORG: Yes, sir. Thank
18 you, Mr. Chairman.

19 I have one question. If the
20 project did not include the spiral stair and
21 the deck, what relief would be necessary?

22 MR. JACKSON: The spiral stair and

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1 the deck? Well, if they -- they would be --
2 let's see, now the existing -- let me verify
3 something. Currently the existing probably is
4 nonconforming for lot occupancy and they would
5 be expanding a nonconforming property.

6 VICE CHAIR SORG: But the third
7 floor addition in and of itself would be
8 expanding the lot occupancy?

9 MR. JACKSON: No, but in the past
10 what we have done is we have said that if the
11 existing building is nonconforming and you're
12 not -- well, actually --

13 VICE CHAIR SORG: I don't --

14 MR. JACKSON: -- if the addition
15 would be conforming, then they might not need
16 any relief.

17 VICE CHAIR SORG: Right.

18 MR. JACKSON: But that would
19 probably be a question we'd defer to the
20 Zoning Administrator to confirm.

21 VICE CHAIR SORG: Well, OP and the
22 Board has had a little bit of a parting of

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1 ways with regard to the nonconforming
2 structure question and when it's necessary and
3 when it's not. But maybe I can ask my
4 question again in a different way.

5 MR. JACKSON: All right.

6 VICE CHAIR SORG: Which is the lot
7 occupancy relief and the rear yard setback
8 relief is triggered by what portions
9 particularly of the project?

10 MR. JACKSON: The stair and the
11 deck.

12 VICE CHAIR SORG: Thank you.

13 MR. JACKSON: Yes. That help you?

14 CHAIRMAN JORDAN: It helped me.

15 Any other questions from the Board to the
16 Office of Planning?

17 (No audible response.)

18 CHAIRMAN JORDAN: Does the
19 applicant have any questions of Office of
20 Planning?

21 MR. KEYS: No, Mr. Chairman.

22 CHAIRMAN JORDAN: Okay. Mr.

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1 Adams, you have any questions of Office of
2 Planning?

3 MR. JACKSON: No, sir.

4 CHAIRMAN JORDAN: Then let's move
5 to any other governmental agency that's with
6 us today. Is Department of Transportation
7 here, or any other agency?

8 (No audible response.)

9 CHAIRMAN JORDAN: I don't think
10 so. And we do have a letter I believe from
11 Department of Transportation of no objection
12 to the application.

13 Is there anyone here from ANC 6B?
14 ANC 6B.

15 (No audible response.)

16 CHAIRMAN JORDAN: We do have a
17 letter from ANC 6B recommending approval to
18 which we'll give great weight. Oh, I think we
19 also have a letter I believe from Capitol Hill
20 Restoration Association recommending approval.

21 Okay. Is there anyone in the
22 audience wishing to speak in support of this

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1 application?

2 (No audible response.)

3 CHAIRMAN JORDAN: Now let's turn
4 to Mr. Adams. You have the right as a party
5 in opposition to put on a presentation of your
6 opposition. We do have your letters and other
7 documents that you have filed with us. So
8 please proceed.

9 MR. ADAM: Okay. Thanks. So I
10 handed in testimony today of nine pages which
11 elaborates some, and it also brings in some
12 more images from my point of view.

13 CHAIRMAN JORDAN: Today? You said
14 you did a filing today?

15 MR. ADAM: Yes.

16 CHAIRMAN JORDAN: Do we have a new
17 filing? This is just your written testimony
18 then? Okay.

19 MR. ADAM: Written testimony and
20 five pictures.

21 CHAIRMAN JORDAN: Okay. We're now
22 getting that.

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1 MR. ADAM: Okay.

2 CHAIRMAN JORDAN: And did you give
3 a copy to the applicant and her attorney?

4 MR. ADAM: I believe they get a
5 copy from Mr. Moy.

6 CHAIRMAN JORDAN: Mr. Keys, do you
7 have a copy of this?

8 MR. KEYS: Ah, yes, we have a
9 copy. Yes, thank you.

10 CHAIRMAN JORDAN: All right.
11 Proceed, please.

12 MR. ADAM: Okay. I'll just -- it
13 has been a long day for you all, so I'm
14 sure --

15 CHAIRMAN JORDAN: Do what you need
16 to do to make your case, if you wish.

17 MR. ADAM: Okay. I'll kind of
18 take through the highlights. My August 4th
19 letter, which helped initiate this at DCRA,
20 was conditional employing phrases such as
21 "raises some concerns" and "at this moment."
22 It was not an unalloyed letter of support, in

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1 contrast to the green light letter from the
2 other adjacent neighbor in number 11. My
3 letter was more like a yellow light. And I
4 guess, you know, it's -- well, I'll just keep
5 on the -- like temporal words, "at this
6 moment."

7 From what I can discern, nothing
8 prevents me assume that there would be future
9 movement based upon continued interaction
10 which could go either to a green light or a
11 red light. It also made clear that it was
12 written in haste, you know, with the optimism
13 inherent upon first meeting a potential new
14 neighbor and wishing to help them. But it
15 became misrepresented to the ANC as simply a
16 green light. The, you know, simple view graph
17 presentation, you know, letters of approval is
18 exactly the equivalent of the one on the
19 neighbor on No. 11.

20 So -- and, you know, I'll say that
21 I had a lot of other things on my docket, too,
22 and emergencies, so as -- and I puzzled why a

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1 project like this was put on expedited review.
2 I'm sorry, do you -- can you hear me?

3 CHAIRMAN JORDAN: Yes, we can hear
4 you fine.

5 MR. ADAM: But -- so, yes, I know
6 the ANC -- well, the complied with the
7 conditions to have great weight, but I
8 disagree with the circumstances surrounding
9 that. The -- and recently, you know, I heard
10 of the ANC meeting after the fact, and among
11 the things I learned was Sara Teem, which with
12 whom I've been exchanging emails, was less
13 than forthcoming with me perhaps because of my
14 protracted interest, my yellow light status.
15 Her omissions continued with ANC commissioners
16 at their October meetings on the 2nd and the
17 9th, and I was present in D.C. throughout that
18 time. During this tenure I've been out for
19 four weeks total.

20 The -- due to an incidental CC to
21 adjacent neighbors, I learned of the ANC
22 involvement in the process, just after the key

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1 meeting. And more important, those plans and
2 views I saw from the ANC office at Hill Center
3 had many views of the proposal that I'd never
4 seen. They showed me more clearly how the No.
5 13 addition would adversely impact my home
6 enjoyment and office use. Sorry for using
7 those words. I'm sure you hear enough of
8 them. And threaten my library and research
9 materials, many of them rare, unique and
10 irreplaceable.

11 And here it is in brief. The
12 daily adverse impact. Increased noise. To do
13 my profession, writing by synthesizing
14 countless sources and ideas requires much
15 solitude. This No. 13 addition expanding a
16 duplex to three stories would raise the noise
17 level in multiple ways. One, the unit's --
18 the top unit's new porch and so will outdoor
19 space would be just above my office window.

20 And two, while his current
21 bathroom quietly is in the dog leg, as is
22 mine, the two new bathrooms proposed would be

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1 raised high and put right against party wall
2 of my office with the gurgle of two toilets,
3 water pipes, full bath and a deluxe shower.

4 Three, adding another large
5 bedroom to unit 2 in the duplex along with
6 these two bathrooms would at least double the
7 comfortable occupancy of the upper unit to
8 four people.

9 Four, adding an additional floor
10 of walking traffic near my head at the attic
11 level is it's something to someone. There's
12 just this speaker, something perhaps not
13 dissimilar to an echo chamber right in my
14 office.

15 Five, the spiral staircase would
16 create a new way in and out. Foot traffic or
17 balcony entertainment would resound in the dog
18 leg.

19 Intrusions on privacy and light.
20 It would reduce my privacy allowing occupants
21 in No. 13 to peer over my shutters and into
22 the toilet and shower of my master bathroom in

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1 the dog leg. You can see some of that in
2 picture 2 of the -- my handout. It would
3 likely block the sky view from that window,
4 too. I can't tell how it would affect my
5 office window view, but a third story would
6 reduce morning light entering our dog leg.

7 Both of my back rooms would be
8 affected in various ways. Please refer to
9 pictures 3A and B. On the upper floor those
10 north blinds are usually drawn. I apologize
11 for the quality of the essentially black and
12 white pictures, but someone has the color
13 version. Those blinds admittedly are usually
14 drawn on the north, but on my lower floor my
15 set of double-hung windows would now look out
16 on metal stairs and also intrusive angles from
17 strangers outside my shutters and into my
18 dining room table.

19 The stairs would also intrude
20 visually -- oh, and that's picture 4A and 4B,
21 the lower dining room. And other, this is
22 proposed from No. 13's rooftop porch and

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1 French doors, and the new second story French
2 doors opening to the circular staircase would
3 make my backyard more like a fishbowl than a
4 sanctuary. Moreover, as you can see from the
5 architect's plans; such as page 10 in the BZA
6 application of 10th of August, the circular
7 staircase would swerve into the dog leg making
8 its presence known from at least four
9 different rooms of mine.

10 Let's keep in mind that this
11 duplex as is already exceeds its maximum lot
12 percentage, which is 60 percent as of right.
13 And our dog leg on No. 13's side has a utility
14 shack and certainly that obstructs views from
15 my living room, sunlight and ventilation.
16 Please see this on picture 1. It's out of
17 order there. Was this shack absorbed in the
18 new proposed design with all its additional
19 interior space? No. And so the new design,
20 including the circular stair, raises the
21 occupancy lot ratio -- well, first to 68 and
22 then to 70 percent.

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1 And it's in a relatively cramped
2 interior corner of the block that just got
3 more cramped with the addition on East Capitol
4 Street. And Ii should say that, you know, I
5 raised no objections to those additions on
6 East Capitol Street and another one on -- two
7 doors down, which also kind of intrudes on my
8 privacy. So, I mean, basically I'm -- you
9 know, I like development.

10 It's a more than long-term risk.
11 My party wall shared with No. 13 already
12 indicates minor stress, unlike my party wall
13 shared with No. 17, which has been stable
14 except for the earthquake. And you can see
15 the vibrations, but what happens when you add
16 two full bathrooms, a full tub of water, much
17 load on a new floor, a roof, etcetera,
18 directly above this? Open stairways of both
19 No. 13 and 15 houses are on the opposite side,
20 on the longer party wall.

21 And what happens when there's a
22 party or an open house for 10, 20, 30, 40, 50

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1 people walking on the added third floor? What
2 happens to my books and rare materials when a
3 bathtub overflows or pipes leak? And my prior
4 testimony has more on this. And you -- prior
5 testimony in this one has more on my book and
6 everything, so skip over that.

7 If the ANC vote again, how is this
8 disturbed by the -- that I was not included in
9 this, the discussions or in the notifications?
10 I know that the ANC, yes, sent a letter to you
11 and satisfied the great weight criteria, but
12 I would take issue with that because, one, my,
13 you know, letter of initial support was, you
14 know, a yellow light. You would think that,
15 you know, someone would have wanted to include
16 me in that. And when I talked to the ANC
17 about that, they were -- you know,
18 commissioners were shocked, to say the least,
19 and ANC 6B chairman Jared Critchfield replied
20 on August 15th to me that it would be a good
21 idea in the future to notify adjacent
22 neighbors directly so an embarrassment like

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1 this would not be repeated.

2 And it also puzzles me that the
3 BZA, given that the ANC is such an important
4 neighborhood step in the process -- a BZA
5 letter of 16th August, 2012 under the name of
6 Richard S. Nero to all the nearby neighbors
7 did not tell interested neighbors to keep a
8 watch for an upcoming ANC Meeting. There's no
9 mention at all in the ANC in the --

10 CHAIRMAN JORDAN: That's not the
11 Office of Zoning responsibility to provide
12 notice of ANC meetings to anyone. The ANC
13 usually -- it's upon the ANC to notify their
14 membership of those in the ANC district of
15 their meetings.

16 MR. ADAM: Well, but I find it, I
17 mean, just curious from certainly in an
18 expedited session where you want everything
19 to, you know, proceed right that there's not
20 an even -- even any allusion. I understand
21 what you're saying.

22 CHAIRMAN JORDAN: You would have

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1 -- you should have received a letter from your
2 house that the application was filed if you're
3 within the 200 feet. There would also have
4 been a posting of a sign in front. There
5 wasn't posting of this that relief was being
6 requested at the BZA for this development, for
7 this project?

8 MR. ADAM: But nothing on the ANC.
9 I'm just saying, you know --

10 CHAIRMAN JORDAN: All right.

11 MR. ADAM: -- how to prevent this
12 in the future from happening. Because if you
13 have an interested party, a party is
14 interested in me and doesn't even know, I
15 mean, that ANC's involved in this process
16 who's lived in the District for 23 years.

17 CHAIRMAN JORDAN: But that's an
18 ANC issue and not one that is a Board of
19 Zoning Adjustment issue. We make sure that
20 you have notice that the application's
21 pending, and that's in a couple of different
22 ways. Then it's upon the citizen, the home

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1 owner for themselves to be active and find out
2 what they need to do if they have any problems
3 with it, or support, or whatever. You know,
4 we can lead you to the water, but we can't
5 make you drink. So continue on, please.

6 MR. ADAM: On the DCOZ Web site
7 you see a lot of integration between the BZA
8 and the ANC. In fact, they're closely linked
9 in the documents. So I'm just saying --

10 CHAIRMAN JORDAN: Can't let you
11 finish that sentence, because it's really not
12 relevant in regards to this application.

13 MR. ADAM: Well, it's relevant in
14 the -- as I see it, with all due respect,
15 since you have said you're giving great weight
16 with the ANC's recommendation.

17 CHAIRMAN JORDAN: It's under the
18 law to give great weight.

19 MR. ADAM: I know, but --

20 CHAIRMAN JORDAN: Well, but that's
21 not before him and it's -- the ANC has
22 submitted a letter. If the ANC thought that

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1 they were misled, then they would be here.
2 They would have sent something. I need you to
3 be more relevant and to the point of what your
4 opposition is to this. Anything about the ANC
5 and their failure to -- for anyone to give you
6 notice from the ANC is not relevant to this
7 application. You've had notice in regards to
8 the application, which is important and
9 required, but whether or not you had notice of
10 the ANC meeting is not relevant to this
11 application.

12 MR. ADAM: I'll get you to this
13 room right now. Okay.

14 CHAIRMAN JORDAN: Well, let me
15 tell you, as I sit here as a presiding
16 officer, it's not relevant. I'm going to ask
17 you to move on.

18 MR. ADAM: Okay.

19 CHAIRMAN JORDAN: Thank you.

20 MR. ADAM: Okay. And on August
21 20th I found out Mr. Sayre's architect wrote
22 a memo to the ANC. In part, "We have received

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1 notice that our BZA hearing date is Tuesday,
2 the 23rd of October. As we are seeking a
3 special exemption and we have the support of
4 both adjacent neighbors, we've requested an
5 expedited hearing date." Again, see, this is
6 a refrain that was used repeatedly that I
7 would argue misleads one to think it's, you
8 know, unconditional support.

9 Say now the testimony of an
10 adjacent neighbor who opposes the project
11 because of substantial adverse use and
12 enjoyment issues, that 70 percent of the
13 proposal has grown so now it exceeds lot
14 occupancy rules by 10 percentage points. My
15 express concerns started in August with a
16 yellow light and is concluding within an
17 expedited time frame despite family
18 emergencies and a partly obscured process.

19 I've owned my land and house in
20 D.C. for nearly a quarter century. I urge you
21 to uphold my rights to protect it. Thank you
22 for your attention.

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1 CHAIRMAN JORDAN: Okay. All
2 right. Thank you. Does the Board have any
3 questions of Mr. Adam? What's that, Ms. Sorg?
4 Was that yes or no?

5 VICE CHAIR SORG: I'm not sure.

6 CHAIRMAN JORDAN: Not sure? Mr.
7 Miller?

8 COMMISSIONER MILLER: Could you
9 just briefly summarize what you consider to be
10 the major substantial adverse impact on your
11 use of your property and the noise or light or
12 air? Could you just briefly summarize what
13 you consider to be the adverse impact on your
14 adjacent property from the proposal?

15 MR. ADAM: The -- well, the -- I
16 mean, my paramount concern is the book, so the
17 paramount concern would be the noise.

18 VICE CHAIR SORG: The applicant is
19 not proposing to increase the intensity of
20 use, is that correct? People are nodding.

21 CHAIRMAN JORDAN: What was that?

22 VICE CHAIR SORG: With regard to

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1 the noise, it brought me to a question for the
2 applicant, which was asking -- it was my
3 understanding in the application that they are
4 not intending to increase the intensity of
5 use; i.e., move it away from a two-flat
6 dwelling which it already is.

7 MR. KEYS: Perhaps we should just
8 let Ms. Sayre make a statement as to the
9 purpose that she intends for this renovation
10 and her plan for the property.

11 CHAIRMAN JORDAN: Why don't you
12 just kind of answer the question? Would be
13 good.

14 MR. KEYS: I'm not -- I don't want
15 to testify.

16 CHAIRMAN JORDAN: Okay. Ms.
17 Sayre?

18 MS. SAYRE: It would just be me
19 living there.

20 CHAIRMAN JORDAN: Okay. And you
21 want to know the use?

22 VICE CHAIR SORG: So there will be

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1 -- it's not a flat anymore?

2 MS. SAYRE: Oh, no. No, no.

3 VICE CHAIR SORG: It's going to be
4 used for a single family?

5 MS. SAYRE: No, no. In that unit
6 at the top, so it will still be two flats.

7 VICE CHAIR SORG: Okay.

8 CHAIRMAN JORDAN: Okay. Any other
9 questions of Mr. --

10 MR. ADAM: But actually the -- I
11 mean --

12 CHAIRMAN JORDAN: We're --

13 MR. ADAM: -- I can ask a question
14 of the witness' party status?

15 CHAIRMAN JORDAN: No. Well,
16 you've already ended your presentation. We
17 were moving to the Board asking you questions.

18 MR. ADAM: Oh, okay. Thank you.

19 CHAIRMAN JORDAN: Any other
20 questions of Mr. Adam? Does the applicant
21 have questions of Mr. Adam?

22 MR. KEYS: Yes, Mr. Chairman,

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1 briefly.

2 CHAIRMAN JORDAN: Sure. Please.

3 MR. KEYS: Mr. Adam, you've lived
4 you said in the neighborhood for 23 years. Is
5 that correct?

6 MR. ADAM: Correct, yes.

7 MR. KEYS: Have you ever attended
8 an ANC meeting?

9 MR. ADAM: Yes, I have. In the
10 1990s I attended them for security reasons.
11 You know, police officers would come and
12 everything. That's why I thought, you know,
13 the ANC -- I mean, I knew the ANC dealt with
14 commercial issues, but I didn't realize they
15 were into, you know, residential zoning
16 issues. But, yes -- but my main involvement
17 with the ANC was with, you know, early '90s
18 when you had a high crime rate there and going
19 to meetings with police officers.

20 MR. KEYS: So you know the ANC
21 meets on a monthly basis?

22 MR. ADAM: No, I wouldn't say

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1 that.

2 CHAIRMAN JORDAN: Mr. Keys, I'm
3 going to ask you for relevant questions as to
4 -- ANC meetings is not before us here.

5 MR. KEYS: I understand, but, Mr.
6 Chairman, we understand --

7 CHAIRMAN JORDAN: We're well
8 aware.

9 MR. KEYS: Okay.

10 CHAIRMAN JORDAN: There's been no
11 testimony that he has not gotten notice of
12 this proceeding. The testimony was regarding
13 the ANC and etcetera.

14 MR. KEYS: Mr. Adam, between the
15 date of your August 4 letter, your so called
16 yellow light letter, did you make any other
17 written expression of your objection to the
18 applicant's plans prior to your party status
19 application?

20 MR. ADAM: The -- yes, we had a
21 train of emails, not -- I don't know, they
22 printed out about 18 pages, so --

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1 MR. KEYS: I'm not sure if you
2 answered my question.

3 CHAIRMAN JORDAN: I think he said
4 that he had communicated by a series of
5 emails.

6 MR. KEYS: But communicated what
7 is the -- I mean, the question is -- well, I'm
8 not going to testify as to that.

9 In the beginning of your
10 statement, Mr. Adam, you spoke about evidence
11 of stress on the party wall.

12 MR. ADAM: That's correct.

13 MR. KEYS: What evidence of stress
14 on the party wall? Can you be more specific?

15 MR. ADAM: Yes, the pictures would
16 vibrate on the wall, the party wall, so --

17 CHAIRMAN JORDAN: I'm sorry, what
18 was your response? What was your response?

19 MR. ADAM: Oh, evidence of stress
20 would be that pictures would vibrate on the
21 party wall.

22 CHAIRMAN JORDAN: Okay. Next

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1 question, please?

2 MR. KEYS: Did you have a meeting
3 scheduled with the architect to visit your
4 property on November 5th of this year?

5 MR. ADAM: I was tentatively --
6 yes, we were trying to set one up.

7 MR. KEYS: Did you have a meeting
8 scheduled for November 5th for the architect
9 to visit your property?

10 MR. ADAM: Actually I never
11 solidified that date.

12 MR. KEYS: Did you cancel that
13 date, Mr. Adam?

14 MR. ADAM: Oh, when Will sent me
15 an email like I think last week or something,
16 it was kind of, you know, too late. So I just
17 said, you know, I was preparing for this
18 session after just spending another two weeks
19 in South Carolina. So, you know, I didn't
20 really have the time to do it then at that
21 point, so --

22 MR. KEYS: No further questions,

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1 Mr. Chairman.

2 CHAIRMAN JORDAN: Thank you, Mr.
3 Keys. Then let's -- is there any other person
4 in the audience who are here to give testimony
5 in opposition to this application?

6 (No audible response.)

7 CHAIRMAN JORDAN: Seeing none,
8 let's now turn back to the applicant for any
9 rebuttal if the applicant feels that any is
10 necessary. Mr. Keys, if you think you need to
11 respond to anything, otherwise you could just
12 move to closing.

13 MR. KEYS: Yes, I mean, I think
14 there are a couple things that we probably
15 would just want to clarify based on the
16 testimony. And I would ask Mr. Teass if he
17 would -- we've heard commentary about the
18 structural issue, evidence of stress. And I
19 want to just refer to that meeting.

20 What was your purpose of that
21 meeting? What was your intent?

22 MR. TEASS: Good afternoon. My

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1 name is Will Teass. I'm the architect who's
2 been retained by Karen Sayre for the purpose
3 of adding to her structure.

4 We had actually attempted to meet
5 with Mr. Adam several times, had offered to
6 meet with him several times. Most recently we
7 had set a time of 3:00 on Monday afternoon the
8 5th.

9 CHAIRMAN JORDAN: That wasn't the
10 question. I think the question from Mr. Keys
11 was about the stress issue of the wall.

12 MR. TEASS: Part of the function
13 of that meeting was both myself and my
14 structural engineer were interested in
15 visiting his premises to evaluate this stress
16 or stresses or damage or cracks or anything
17 that was visible from his side. As Mr. Adam
18 mentioned, he canceled the meeting in light of
19 other events.

20 CHAIRMAN JORDAN: Okay. So the
21 answer was you didn't have any information
22 regarding the less stress to his property?

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1 MR. TEASS: Correct, I didn't have
2 any information. I do have images of the
3 interior of Ms. Sayre's party wall.

4 CHAIRMAN JORDAN: Do you have
5 reason to believe that the applicant's
6 property causes stress to Mr. Adam's property?

7 MR. TEASS: No.

8 MR. KEYS: Mr. Teass, did you
9 request the opinion of a structural engineer
10 for this project?

11 MR. TEASS: At the onset of the
12 project we retained a structural engineer to
13 conduct a foundation assessment as well as a
14 visual party wall assessment to determine the
15 feasibility of adding a third story. A copy
16 of that report I believe was submitted to the
17 Board as a supplemental exhibit in the last
18 two weeks.

19 MR. KEYS: Mr. Chairman, you'll
20 find that as part of the November 5th
21 submission to the Board, the structural
22 report.

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1 CHAIRMAN JORDAN: Okay.

2 MR. KEYS: And the conclusion of
3 the structural report, Mr. Teass, was?

4 MR. TEASS: The structural
5 engineer concluded that adding a third floor
6 would post no adverse consequences to either
7 adjacent neighbor.

8 MR. KEYS: Ms. Sayre, would you
9 please comment on the necessity of the spiral
10 stair and the function it serves for your use
11 of the property?

12 MS. SAYRE: Yes. In its current
13 situation I cannot access the rear of my
14 property, which means for me to take even the
15 trash out, I have to walk it along 15th
16 Street, along East Capitol Street, down the
17 alleyway all the way through to the very
18 corner. I have no access at all in its
19 current situation. And I think you can see
20 the rather quirky configuration of the
21 alleyway which prevents any -- without the
22 staircase down, there is no way for me to get

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1 any access at all.

2 CHAIRMAN JORDAN: Okay. Good.

3 All right. Is that it, Mr. Keys?

4 MR. KEYS: That's all, Mr.

5 Chairman.

6 CHAIRMAN JORDAN: Mr. Adam, you
7 have any cross-examination in the areas of the
8 rebuttal?

9 MR. ADAM: Yes. The -- terms of
10 the trash removal, the -- isn't trash also
11 picked up from the front of the property on
12 15th Street?

13 CHAIRMAN JORDAN: You can answer
14 that question, please.

15 MS. SAYRE: I do not know that,
16 since I have not yet been able to move into
17 the property, but frankly I don't feel it's
18 appropriate to keep trash cans in the front
19 yard of your house.

20 CHAIRMAN JORDAN: Any other --
21 your next -- you have any other question?

22 MR. ADAM: Well, let me say that

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1 it is --

2 CHAIRMAN JORDAN: Well, by way of
3 question.

4 MR. ADAM: -- people -- oh.

5 CHAIRMAN JORDAN: You can ask
6 questions in the frame work of the information
7 that Mr. Keys just got from his witnesses.

8 MR. ADAM: Okay. The -- oh,
9 regarding the noise level and the tenure of
10 the -- you know, Mrs. Sayre and the property,
11 you know, I don't know how long you expect
12 anyone to live there. It seems --

13 CHAIRMAN JORDAN: What is your
14 question?

15 MR. ADAM: Well, with regard to
16 the noise level. I mean --

17 CHAIRMAN JORDAN: He did not ask
18 either of these two witnesses about noise
19 levels. The questions in regards to noise
20 levels was done during the time of your
21 presentation.

22 MR. ADAM: Okay. Well --

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1 CHAIRMAN JORDAN: We talked about
2 stress on the building and we talked about the
3 use of the stairwell.

4 MR. ADAM: Okay. In the
5 structural engineering report I believe you
6 have on record my -- the -- ask Will if that
7 -- if the two holes made in the -- were made
8 against the party wall.

9 CHAIRMAN JORDAN: I'm not -- there
10 was -- you're asking a question was there two
11 holes made against the party wall? Is that
12 your question?

13 MR. ADAM: Right, as opposed to
14 the exterior wall.

15 MR. TEASS: I'd be happy to answer
16 that.

17 CHAIRMAN JORDAN: I don't even
18 know if -- yes, go ahead.

19 MR. TEASS: As part of the
20 structural investigation we request a test pit
21 dug, or a hole dug to ascertain the foundation
22 condition. And that test pit was done because

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1 we didn't want to -- there's really -- because
2 it's a party wall, there's no way you can
3 really do a test pit in this particular case.
4 So what we do is we go to -- as close to the
5 corner as possible, uncover the foundation and
6 then the structural engineer makes a
7 reasonable assumption that that foundation
8 that he finds there is equal to or is
9 equivalent to the foundation surrounding the
10 property, including the party wall.

11 CHAIRMAN JORDAN: So was there two
12 placed in the wall?

13 MR. TEASS: There was a hole
14 placed in the ground, and a photograph of that
15 is included in the structural report.

16 CHAIRMAN JORDAN: Your next
17 question?

18 MR. ADAM: Well, was there any
19 holes placed in the party wall or any probing
20 of the party wall?

21 CHAIRMAN JORDAN: I think he just
22 stated that there was not. Am I correct?

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1 MR. ADAM: Okay. And so how do
2 you come to your conclusion that, you know,
3 since neither Will nor the -- Mrs. -- Ms.
4 Sayre occupies that residence that the
5 structure wall has no vibrations?

6 CHAIRMAN JORDAN: Please answer.

7 MR. TEASS: Typically -- so
8 there's two issues: One is the foundation
9 which we uncovered by reviewing the -- or
10 reviewed by uncovering the foundation itself.
11 The second in terms of vibration, typically
12 when a masonry wall vibrates or moves, there's
13 evidence of cracking. And in the structural
14 engineer's assessment of the exterior he
15 didn't notice any cracking, nor upon our
16 investigation of the interior plaster wall was
17 there any cracking on Ms. Sayre's portion. As
18 I said before, Mr. Adam did not allow us
19 access to his unit to determine if there were
20 cracks present in the wall on his side of the
21 party wall.

22 CHAIRMAN JORDAN: Do you have any

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1 other questions?

2 MR. ADAM: The -- well, I -- so
3 does the -- I guess does the -- Will think I'm
4 making this up, the vibrations?

5 CHAIRMAN JORDAN: What did you
6 say?

7 MR. ADAM: Do you think I'm making
8 up this --

9 CHAIRMAN JORDAN: That's not a
10 proper question. Do you have another
11 question?

12 MR. ADAM: Well, I'm saying my
13 wall doesn't have any fractures like Will is
14 saying or indications that it would otherwise
15 be stressed, yet it still vibrates.

16 CHAIRMAN JORDAN: Okay. All
17 right.

18 MR. ADAM: So how would he explain
19 how that might happen?

20 CHAIRMAN JORDAN: Do you have an
21 explanation or not?

22 MR. TEASS: My only explanation is

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1 that I attempted to review the condition in
2 his unit with the structural engineer, which
3 was denied.

4 CHAIRMAN JORDAN: Got you. Any
5 other question?

6 MR. ADAM: How was it that I'd --

7 CHAIRMAN JORDAN: Well, I think we
8 already have in the record that it was -- a
9 meeting was supposed to be set up and one way
10 or the other the meeting didn't happen. Is
11 that correct?

12 MR. ADAM: Yes, it was not.

13 CHAIRMAN JORDAN: Is that --

14 MR. ADAM: Deferred, not denied, I
15 would say.

16 CHAIRMAN JORDAN: Okay. But the
17 meeting didn't happen is what I said. Is that
18 correct?

19 MR. TEASS: Correct. The meeting
20 that was scheduled for Monday did not happen.

21 CHAIRMAN JORDAN: Is there another
22 relevant question you would wish to ask?

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1 MR. ADAM: No, that does it for
2 now.

3 CHAIRMAN JORDAN: Okay. Then I'm
4 going to conclude this hearing based upon the
5 record that we have deduced before us up and
6 -- before and today and close this hearing.

7 Is the Board ready to deliberate?
8 (No audible response.)

9 CHAIRMAN JORDAN: Is the Board
10 ready to deliberate, or do you have any other
11 issues or questions?

12 (No audible response.)

13 CHAIRMAN JORDAN: Then let's move
14 to deliberation. Anyone? Anyone want to
15 start this?

16 (No audible response.)

17 CHAIRMAN JORDAN: No? Well, I
18 believe based upon the evidence that's been
19 submitted both in the record and deduced here
20 today that the applicant has made a case for
21 the special exception relief that they've
22 requested in their application, that there's

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1 no substantial adverse impact upon the use and
2 enjoyment of any abutting adjacent property
3 owner, that the shadow studies and also the
4 testimony about the stress level as provided
5 by documents submitted by the applicant does
6 not show that there will be any substantial
7 adverse impact nor that the views are going to
8 be hindered in any particular way, and that it
9 meets the required lot occupancy as under 223
10 for 70 percent max. And so I would move that
11 we grant the relief requested in the
12 application. Anyone want to second that?

13 VICE CHAIR SORG: I'll second your
14 motion.

15 CHAIRMAN JORDAN: All right.
16 Motion made and seconded. Any unreadiness?

17 (No audible response.)

18 CHAIRMAN JORDAN: All those in
19 favor, signify by saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN JORDAN: Those opposed,
22 nay.

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1 (No audible response.)

2 CHAIRMAN JORDAN: The motion
3 carries. Mr. Moy?

4 MR. MOY: Staff would record the
5 vote as 4-0-1. This is on the motion of
6 Chairman Jordan to approve the application for
7 special exception relief under section 223.
8 Also seconded by Vice-Chairperson Sorg. Also
9 in support of the motion Mr. Miller and Mr.
10 Hinkle. No other Board Members participating.
11 So again the final vote is 4-0-1. The motion
12 carries.

13 CHAIRMAN JORDAN: Thanks. Let's
14 call our next case.

15 MR. MOY: The next application
16 before the Board is application No. 18436.
17 This is the application of David Benson,
18 pursuant to 11 DCMR 3103.2, for a variance
19 from the lot area requirements under
20 subsection 401.3, to allow the conversion of
21 a flat, a two-unit dwelling, to a three-unit
22 apartment house in the R-4 District. This is

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1 at premises 2703 11th Street, N.W. Property
2 located in Square 2858, Lot 17.

3 CHAIRMAN JORDAN: All right.
4 Let's get rocking here. Would you please
5 introduce yourselves? Please make sure that
6 the green button is on. Yes, push it.

7 MR. BENSON: Good afternoon. My
8 name is David Benson. I'm the owner of the
9 property in question.

10 CHAIRMAN JORDAN: Okay. And you
11 are?

12 MR. COUCH: And I'll Will Couch.
13 I'm the architect that he has retained.

14 CHAIRMAN JORDAN: Okay.

15 MR. COUCH: I also am the author
16 of the report.

17 CHAIRMAN JORDAN: Yes. Okay. Are
18 you doing the presentation, Mr. Couch, or Mr.
19 Benson?

20 MR. COUCH: Yes.

21 CHAIRMAN JORDAN: Okay. Well, you
22 have the right to do a presentation to the

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1 Board to see if we will approve your request
2 for a variance. As you know, the Office of
3 Planning has recommended the denial of your
4 application, and based upon the fact that you
5 have -- and it appears on what we have in the
6 record that you have not met the requirements
7 for a variance. So please address your
8 presentation toward those areas.

9 MR. COUCH: Sure. Okay. So as
10 you're aware, we are asking for a variance
11 from 401.3, which is the minimum lot area of
12 900 square feet of lot per unit. We currently
13 have 1,506 square feet, so we are short. We
14 would need obviously 2,700 square feet to do
15 this by right in an R-4 Zone.

16 There are a couple of things that
17 -- and Paul and I have been working on this
18 together, and he's been very helpful. We do
19 I guess differ a little bit, just because I
20 know that these houses are not unheard of in
21 the city, but this one is somewhat different
22 because it does have its own basement entry

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1 from the street, as well as one from the rear
2 to a space that's basically not finished. So
3 it has essentially in most places the headroom
4 you would need in order to finish the space
5 and has its own access like you would normally
6 see in to a typical flat.

7 But then what happens is -- it was
8 built in we're thinking around 1912 originally
9 as a duplex, and there have been no
10 significant changes to the structure since
11 then. So basically what happens is when you
12 walk into the house -- when you would normally
13 walk up a flight of steps, you normally expect
14 to walk into a single-family house. In this
15 case you walk into a vestibule and you're
16 given a choice; take the door on the right or
17 the door on the left. The door on the left
18 goes up to an existing flat and the door on
19 the right goes into another existing flat.
20 So basically where there would typically be
21 the single family house, you have two units.
22 Both have their own kitchens. Both have two

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1 bathrooms. Both have two bedrooms.

2 And so what Mr. Benson would like
3 to do is take that infrastructure, basically
4 renovate it, bring the electrical up to code,
5 bring all of the other elements up to code,
6 but keep the floor plan essentially the way it
7 is.

8 And historically it was built as
9 two flats above the basement. Currently the
10 basement doesn't really have a use. And
11 Paul's point, which is, you know, one way to
12 look at it, is that you could take that lower
13 portion of the structure and incorporate it
14 into a larger two-floor unit. You know, you
15 could argue about whether or not that is part
16 of, you know, what you see in D.C. I mean,
17 normally you wouldn't see that. Is it unheard
18 of? No. So I mean, you would typically have
19 the two-story unit above grade and not a two-
20 story unit, you know, one level partially
21 below, one above.

22 And we think that this

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1 neighborhood, because it's bordered on two
2 sides by C-2-A Zones and it's within visual
3 and earshot of Carlos Rosario Public Charter
4 School, it's a very active area. It's
5 becoming more and more active and it's our
6 opinion that one additional unit on this
7 property is not detrimental to the zone.

8 CHAIRMAN JORDAN: Okay.

9 MR. COUCH: And basically what our
10 proposal would do is add a unit to that
11 currently unused space, not even change the
12 façade because the door and the stair is
13 already there, and basically bring those other
14 two units up to par so that the building could
15 be habitable. Currently it's not habitable.
16 I mean, technically someone could live there.
17 No one would want to. I mean, it definitely
18 needs some work.

19 CHAIRMAN JORDAN: Got you. Okay.
20 Does the Board have any questions for the
21 applicant?

22 (No audible response.)

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1 CHAIRMAN JORDAN: Do you
2 understand the standards in which we have to
3 us to address --

4 MR. COUCH: I do.

5 CHAIRMAN JORDAN: Okay.

6 MR. COUCH: Yes. And it was my
7 opinion -- and, you know, I worked with an
8 attorney on this as well and it was our
9 opinion that, you know, that it is a hardship,
10 that this floor plan is unique. Paul
11 disagrees and, you know, I understand his
12 point, but we do feel this property is unique
13 and that it currently in its current state is
14 not something that is terribly useable for the
15 owner.

16 CHAIRMAN JORDAN: Okay. Anyone?

17 (No audible response.)

18 MR. COUCH: Does the explanation
19 of the floor plan make sense?

20 CHAIRMAN JORDAN: We hear what
21 you're saying.

22 MR. COUCH: Okay.

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1 CHAIRMAN JORDAN: I mean
2 whether --

3 MR. COUCH: All right.

4 CHAIRMAN JORDAN: -- we agree with
5 you, I don't know if it rises to an
6 exceptional condition or situation that would
7 lead to you getting a remedy from us here.

8 So anyone? Ms. Sorg?

9 VICE CHAIR SORG: Yes, I'm getting
10 there. In the vicinity of your property can
11 you guess at or talk about how many other
12 similarly scaled buildings have front, you
13 know, walk-down English basement entries?

14 MR. COUCH: Almost all of them,
15 but most of them are flats. So most of them
16 are single-family above and --

17 VICE CHAIR SORG: One above and
18 one underneath?

19 MR. COUCH: -- one below. This
20 one is nothing below, two above. So this one
21 you basically walk into a door, into a empty
22 space with a laundry sink and you can walk all

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1 the way through the basement to the backyard
2 through basically just glorified storage at
3 this point.

4 VICE CHAIR SORG: Can you talk
5 about --

6 MR. COUCH: And the two neighbors
7 look at -- the houses are identical
8 essentially. Mr. Benson lives in the house
9 next door, which has a finished basement.
10 It's the exact same façade and the single-
11 family above. And the one to the --

12 VICE CHAIR SORG: So the
13 uniqueness is -- they are arguing is that the
14 interior configuration is uncharacteristic --

15 MR. COUCH: Yes.

16 VICE CHAIR SORG: -- in the area
17 based upon the access?

18 MR. COUCH: Well, the access is
19 the same. It's based on what's there once you
20 walk --

21 VICE CHAIR SORG: Based on the --
22 right.

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1 MR. COUCH: Yes.

2 VICE CHAIR SORG: So can you talk
3 about what kind of investment would have to be
4 made to -- no, that's all my questions.

5 CHAIRMAN JORDAN: Okay. Mr.
6 Hinkle?

7 MEMBER HINKLE: Sure. I mean, can
8 you describe to us a little bit why you
9 wouldn't expand the first floor unit down into
10 the basement if you wanted to use that space
11 for -- I mean, what's restricting you from
12 doing that?

13 MR. COUCH: Physically?

14 MEMBER HINKLE: Perhaps
15 physically, or construction costs, or the
16 market.

17 MR. COUCH: It would be -- in my
18 opinion it would be more the market. If I
19 were -- I mean, I -- you know, I work on
20 spaces like this a lot and you don't typically
21 -- the kind of below-grade unit is typically
22 its own kind of entity and there's a certain

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1 -- you know, certain people don't mind that
2 living situation. A lot of people don't like
3 it. And the above-grade units are obviously
4 typically historically, at least in my own
5 experience, more desirable. And because of
6 that, I think when you tie that more desirable
7 main floor unit to the lower floor, you're
8 instantly making it partially undesirable. I
9 mean, people -- a lot of people don't want to
10 live in a basement. They think they're, you
11 know, yucky, mildewy, dark.

12 MEMBER HINKLE: Sure. Can you
13 reconstruct the two units and not use the
14 basement unit or the basement space and have
15 those two units be marketable?

16 MR. COUCH: Yes. Sure. But then
17 you have a -- you're at the same place. I
18 mean, that's why we're here, because then
19 you're left with, you know, 1,200 square feet
20 of overrun space that people are going to put,
21 I don't know, a washer and dryer in.

22 MEMBER HINKLE: Okay.

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1 CHAIRMAN JORDAN: Any other
2 questions of the applicant? Mr. Miller?

3 COMMISSIONER MILLER: Does the
4 applicant currently live there, or he rents
5 out the two units that are there?

6 MR. BENSON: No, it's not quite
7 habitable right now.

8 CHAIRMAN JORDAN: The whole
9 building's not?

10 MR. BENSON: I've moved out, so
11 it's vacant.

12 CHAIRMAN JORDAN: The building's
13 vacant?

14 MR. BENSON: Yes.

15 COMMISSIONER MILLER: Before you
16 moved out you were the only one living there?

17 MR. BENSON: Only person there,
18 yes.

19 COMMISSIONER MILLER: And your
20 intent if you had this relief would be to --
21 how would you use it? You would rent out
22 three units?

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1 MR. BENSON: That's correct.
2 That's the only financial -- that's the only
3 viable way I could use the property.

4 MR. COUCH: I don't know if it's
5 important to note, but Mr. Benson lives next
6 door as well and I don't think has any plans
7 to move. But he lives next door. Sees the
8 property every day.

9 CHAIRMAN JORDAN: Who lives next
10 door?

11 MR. COUCH: He does.

12 CHAIRMAN JORDAN: Oh, so you own
13 both? Oh, I got you.

14 MR. BENSON: That is correct.

15 CHAIRMAN JORDAN: Any other --

16 VICE CHAIR SORG: All right.

17 Let's try this: How many square feet per
18 apartment if you were to make three units?

19 MR. COUCH: Let's see. Each unit
20 would be about 1,050 square feet. The third
21 unit would actually be bigger than that
22 because there's a partial third story that is

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1 -- it's not appropriate to call an attic
2 because it's actually finished space, but it's
3 kind of the gable portion of the roof. So it
4 would have -- that top unit would have three
5 rather than two bedrooms. So it would be
6 around probably 1,300. Oh, sorry. He says
7 the top bedroom would have four bedrooms. I'm
8 sorry.

9 Also I'm not sure what kind of
10 weight you guys give this information, but I
11 kind of, you know, walked around for awhile
12 and there's several buildings the same size or
13 larger than ours with units that are in the
14 range of 750 to 920. There's a couple within
15 the, you know, one, two-block radius that are
16 around 1,100 per square -- per unit square
17 feet. All of these incidently -- I know it's
18 from an era gone by, but they do have -- they
19 do not meet the 900 square foot, but I know
20 that you don't take that into account.

21 CHAIRMAN JORDAN: Okay. Anybody
22 else have any follow-up questions?

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1 (No audible response.)

2 CHAIRMAN JORDAN: No? Okay. Then
3 let's turn now to the Office of Planning.

4 MR. GOLDSTEIN: Good afternoon,
5 Mr. Chair and Members of the Board. As you
6 have seen our report and the applicant
7 testified, we have recommended -- the Office
8 of Planning's recommended denial.

9 Mr. Couch was extremely helpful.
10 We worked through this application, and I can
11 understand why they want to do this project.
12 I don't see necessarily any harm to the public
13 in it.

14 The problem was we just couldn't
15 get -- we weren't persuaded by the arguments
16 to get past the variance test. We don't quite
17 see it as such an exceptional situation. And
18 just anecdotally, from my own experience I
19 haven't seen this as often. I think that's a
20 fair statement to say. I think it seems more
21 typical at least to have the flat in the
22 basement and then the single-family above, but

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1 I don't have any data regarding that. But
2 this property could be used for two units.

3 If you walk down the stretch that
4 it's on, it appears that some of the -- some
5 similar looking buildings have a similar
6 configuration. I went and checked it out.
7 And it could be wrong. This is just my
8 perception from the street, but 2715, 2713
9 along this block, they also appear to have
10 walk up the front stairs, two doors, two
11 apartments. That's at least my perception.
12 Certainly the owner of the property knows this
13 block better than I do. Some of the other
14 properties you just can't tell. And then
15 there was one that I noticed that had three
16 units in it. I don't know the circumstances
17 of it, but certainly it exists.

18 So we just -- the R-4 is not meant
19 to be an apartment zone. This situation you
20 could have two units in it. It could be
21 outfitted for it. So we just couldn't past
22 the exceptional condition here. And because

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1 of that, we just didn't see any practical
2 difficulty in using the property as it's zoned
3 for, which is up to a flat.

4 Like I said, I don't necessarily
5 see that there's any harm to the public good,
6 but the problem is is that we just -- it's
7 contrary to the intent of the zone plan, which
8 is pretty specific about conversions to
9 apartments. And with that, I can answer any
10 additional questions the Board may have.

11 CHAIRMAN JORDAN: Thank you. Does
12 anybody have questions? Any Board Member have
13 questions for the Office of Planning?

14 (No audible response.)

15 CHAIRMAN JORDAN: No? Does the
16 applicant have any questions for Office of
17 Planning?

18 MR. COUCH: I don't.

19 CHAIRMAN JORDAN: Okay. Then
20 let's turn to Department of Transportation.
21 Anyone here from Department of Transportation?

22 (No audible response.)

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1 CHAIRMAN JORDAN: We do have
2 letter I believe in our file of no objection.

3 Is anyone here from ANC 1B?

4 (No audible response.)

5 CHAIRMAN JORDAN: Do we have an
6 ANC report, because I have --

7 MR. COUCH: We did present to ANC
8 1B and --

9 CHAIRMAN JORDAN: I do have that.

10 MR. COUCH: -- they said they
11 submitted a letter supporting it and --

12 CHAIRMAN JORDAN: I have it here.

13 MR. COUCH: Okay. We got a
14 unanimous vote.

15 CHAIRMAN JORDAN: Yes, they voted
16 in support. The ANC voted in support of this
17 application.

18 MR. COUCH: Also submitted to the
19 file relatively recently, I'd say within the
20 past two or three weeks, were 15 letters from
21 neighbors supporting the project.

22 CHAIRMAN JORDAN: Yes, I do see

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1 that. We do have the letters in support in
2 the file.

3 Is there anyone in the audience
4 who wishes to speak in support of this
5 application?

6 (No audible response.)

7 CHAIRMAN JORDAN: Anyone in the
8 audience wishes to speak in opposition?

9 (No audible response.)

10 CHAIRMAN JORDAN: Then I'm going
11 to turn back to the applicant for any close up
12 that you might want to -- a statement or that
13 you may want to make.

14 MR. COUCH: I think I covered it,
15 unless they had -- unless there are some other
16 questions.

17 Do you have anything?

18 Hold on. Sorry, one second.

19 CHAIRMAN JORDAN: Yes, go ahead.
20 Sure. Yes.

21 MR. BENSON: I'd like to address
22 the Board for one quick second, if I may.

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1 CHAIRMAN JORDAN: Yes, please.

2 MR. BENSON: I realize
3 structurally there is no constraints, as Mr.
4 Goldstein has indicated. As the owner of the
5 property who is financially connected to the
6 property, it does have a financial constraint
7 for me to keep in its current configuration.
8 The only way for this property to remain
9 viable for me is to make it three units. If
10 I was just to keep it as a two-unit
11 configuration, it needs extensive renovations.
12 It has the original cloth wiring, plaster and
13 I cannot -- even though I'm the owner, I would
14 not stay in it for health reasons. You know,
15 it has extensive structural -- and it needs to
16 be gutted and totally renovated.

17 So I contacted my neighbors. I
18 wanted to get their approval and their
19 feedback. I talked to other engineers and
20 architects of the viability and impact on the
21 community and I wanted to make sure it didn't
22 have any before I approached the Board. I've

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1 owned the property for several years and this
2 has been on my mind for a couple, but I want
3 to make sure I did everything the right way
4 and not try to do any shortcuts or what have
5 you that some people might have considered
6 doing.

7 If we leave it as two units, it
8 just will not be feasible for me to keep the
9 property. It does work as a viable property
10 to maintain it as three units. I owe -- I'm
11 not sure if this is significant, but I owe a
12 significant payoff on the property. I
13 purchased the property in nineteen -- I'm
14 sorry, 2006. And when you add the
15 renovations, which are necessary for this
16 property to be habitable, the only way for the
17 economy of scale for me to make this work is
18 -- to be honest, is simply three units. And
19 I'll be relying also two parking spaces, so it
20 won't have any impact on the parking as well.
21 Thank you.

22 CHAIRMAN JORDAN: Good. Then

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1 we'll -- yes, you want to ask a question?

2 VICE CHAIR SORG: Yes, actually
3 what -- your statement, Mr. Benson, actually
4 goes a little bit towards what I was going to
5 ask or comment on. It sounds like from a few
6 pieces of this testimony that -- the variance
7 test can be met using a confluence of factors,
8 and one of those factors can be an economic
9 difficulty. That's something that was not in
10 the record and I don't think has been
11 demonstrably shown in a quantitative way today
12 in the hearing, but you are right now
13 testifying to that fact.

14 If we were -- I feel like if I
15 could understand a little bit more about the
16 economic impact, the cost of construction
17 estimates, what one might expect to rent such
18 a property for, what is the history of the
19 property, was it a blight to the neighborhood,
20 was it vacant, what would, you know, improving
21 the property do with regard to the
22 neighborhood -- I mean the thing is here,

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1 look, I mean we understand that you have all
2 the community support that you could get, and
3 that's great. And we all know this
4 neighborhood and it's fairly dense. Despite
5 being it being an R-4, it's a fairly dense
6 area.

7 And so there are it sounds like
8 other factors that may have not been explored,
9 especially because, you know, Mr. Benson,
10 you're the neighbor and have been for some
11 time may understand more about the uniqueness
12 that has been demonstrated and more about the
13 practical difficulty than you said today. So
14 I mean --

15 CHAIRMAN JORDAN: This is what
16 we're going to do if we can:

17 VICE CHAIR SORG: Maybe it's
18 something --

19 CHAIRMAN JORDAN: We're going to
20 continue this hearing and give you the
21 opportunity to present to this Board those
22 things that Ms. Sorg just talked to you about,

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1 the construction costs, the financial
2 feasibility kind of study to try to give you
3 the opportunity to go forward and get this
4 thing done. So we need that kind of
5 information.

6 The Board good with that?

7 COMMISSIONER MILLER: Yes.

8 CHAIRMAN JORDAN: Mr. Miller?

9 COMMISSIONER MILLER: Mr.

10 Chairman, I agree with the comments of the
11 Vice-Chair and would like to find a way to
12 grant this variance and get more housing in
13 this neighborhood that's more affordable.

14 CHAIRMAN JORDAN: Okay. Good. So
15 then let's have a date, Mr. Moy.

16 MR. COUCH: Thank you very much.

17 MR. MOY: This is for a decision
18 with the supplemental information to come, Mr.
19 Chairman. The next decision for the Board is
20 November the 27th.

21 CHAIRMAN JORDAN: Do you think
22 you'll have enough time? You might want to

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1 use some additional time, because you're going
2 to have to get some estimates.

3 MR. COUCH: I don't think that's
4 enough time.

5 CHAIRMAN JORDAN: Okay. You?

6 MR. BENSON: On my end, yes,
7 but --

8 MR. COUCH: I'm going to need a
9 contractor to come in and --

10 CHAIRMAN JORDAN: You're going to
11 need a contractor?

12 MR. COUCH: Yes.

13 CHAIRMAN JORDAN: You're going to
14 have to then look at someone to do the
15 financial analysis and --

16 MR. COUCH: Yes, I think we need
17 more time.

18 CHAIRMAN JORDAN: -- someone to
19 look at the marketability of it as a two and
20 a three, that kind of stuff?

21 MR. COUCH: Yes. Is there an
22 example of this type of information that you

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1 guys could give us?

2 CHAIRMAN JORDAN: Why don't you
3 come back and visit with the Office of Zoning
4 before you leave here today and they can help
5 point you in the right direction. Even the
6 Office of Planning can help you point you in
7 the right direction. Okay?

8 MR. MOY: I have two dates, Mr.
9 Chairman. The first date would be the -- oh,
10 just a second. Yes, December 18th at 1:00 or
11 January 15th at 1:00.

12 CHAIRMAN JORDAN: Which one of
13 those dates work for you?

14 MR. COUCH: Yes.

15 CHAIRMAN JORDAN: Which one?

16 MR. COUCH: Oh, the 18th is fine.
17 You said at 1:00?

18 MR. MOY: Okay.

19 CHAIRMAN JORDAN: Is that December
20 or January?

21 MR. MOY: December 18th.

22 CHAIRMAN JORDAN: Okay.

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1 MR. MOY: At 1:00.

2 CHAIRMAN JORDAN: Are you sure
3 you're going to have enough time to get --

4 VICE CHAIR SORG: You have --

5 MR. MOY: Is that enough time?

6 CHAIRMAN JORDAN: -- parking
7 studies, all that kind of stuff?

8 MR. BENSON: I'm sorry, could you
9 repeat the January date?

10 CHAIRMAN JORDAN: I'll tell you
11 what we're going to do:

12 MR. BENSON: When was the question
13 date?

14 CHAIRMAN JORDAN: The January 15th
15 would give you time to --

16 MR. BENSON: Okay.

17 MR. MOY: With the holiday, so
18 that's why --

19 CHAIRMAN JORDAN: We're straight.

20 MR. MOY: -- we're building enough
21 time for you.

22 CHAIRMAN JORDAN: January 15th,

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1 Mr. Moy.

2 MR. MOY: Yes, sir. Okay. Great.
3 I'm sorry. And maybe if you could file your
4 submission a week prior to that, so we're
5 talking January the --

6 CHAIRMAN JORDAN: It's not just a
7 simple function, so you're going to have to
8 actually get other people who are going to
9 have to do some reviews and submit some
10 reports and all that kind of thing.

11 MR. COUCH: Well, that's why I
12 want to make sure when we come back I have
13 what I need to have. So you're saying I can
14 talk to these guys over here and get an
15 example?

16 MR. MOY: If you can -- okay. The
17 decision would be January 15th. If you can
18 file your supplemental information by Monday,
19 January the 7th?

20 MR. COUCH: And is that January
21 the 15th at 1:00, or is that the morning --

22 MR. MOY: 1:00.

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1 MR. COUCH: 1:00.

2 CHAIRMAN JORDAN: Okay. With this
3 we'll conclude this.

4 MR. COUCH: File by when; I'm
5 sorry?

6 CHAIRMAN JORDAN: The week before.

7 MR. COUCH: The 7th? The 7th?

8 MR. MOY: Yes, that's a Monday.

9 CHAIRMAN JORDAN: Fifteenth and
10 eighth. That would be the 8th for filing.
11 It's a week before.

12 MR. MOY: I gave us an extra day.

13 CHAIRMAN JORDAN: Okay. Then do
14 it the 7th. Mr. Moy, it's his show. He needs
15 to know -- he knows when those documents need
16 to be here. Okay. Well, we thank you and
17 we'll see you then.

18 MR. COUCH: Thank you very much.

19 MR. BENSON: Very good. Thank you
20 very much.

21 CHAIRMAN JORDAN: Mr. Moy, the
22 next case?

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1 MR. MOY: Yes, the next and final
2 application before the Board --

3 CHAIRMAN JORDAN: After 1,500
4 cases today.

5 MR. MOY: -- would be application
6 No. 18437. This is the application of
7 Lawrence Palmer, pursuant to 11 DCMR 3103.2.
8 This is for a variance from the alley setback
9 requirements under subsection 2300.2(b), to
10 allow the construction of a free-standing
11 accessory garage serving as one-family
12 dwelling in the R-2 District at premises 4505
13 Meade Street, N.E. Property located in Square
14 5155, Lots 88 and 89.

15 CHAIRMAN JORDAN: Okay. Could you
16 please identify yourself?

17 MR. PALMER: My name is Lawrence
18 Palmer. I live at 4505 Meade Street, N.E.

19 CHAIRMAN JORDAN: Mr. Palmer, have
20 you had a chance to read the Office of
21 Planning's report and recommendation in this
22 matter?

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1 MR. PALMER: Yes, what I have done
2 so far -- I don't -- this is my first time at
3 this, but what I have done so far, I took and
4 cut the foot-and-a-half off. I was a foot-
5 and-a-half they said too close to the alley or
6 something, so I took and cut the foot-and-a-
7 half off.

8 CHAIRMAN JORDAN: Okay. Well, why
9 are we here?

10 MR. COCHRAN: I was informed of
11 this about 10 minutes ago, but you can see
12 that it was one of the recommendations we made
13 in our report. I think that the applicant has
14 the choice now of either withdrawing the case
15 or conceivably asking for a continuation until
16 he gets approval from DCRA just --

17 CHAIRMAN JORDAN: That's what
18 we're going to do for you. We're going to
19 continue this case to a date -- let's get a
20 good date in the future. And the reason why
21 we're going to continue it, because we don't
22 believe you need us to do anything for you.

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1 But what you need to do is make application
2 with Department of Consumer and Regulatory
3 Affairs, the Zoning Administrator, and he will
4 then let you know if it is okay that you don't
5 really need anything for us. And if you do,
6 you're case is still going to be pending so
7 you can back here. Okay? So you don't have
8 to pay money again and all that kind of stuff.

9 MR. PALMER: I already had that
10 application in. What if I take this back to
11 him and show where I done made the adjustment?

12 CHAIRMAN JORDAN: Right. Right.

13 MR. PALMER: Shouldn't have to
14 fill out another one.

15 CHAIRMAN JORDAN: Well, yes,
16 whatever they do over there, then, yes, you
17 need to go back there and show them that you
18 have made whatever changes. Take back that
19 letter he sent you on June 19th and say, here,
20 I made the change. This is what I changed to
21 the plans. Can you now approve it? Okay?
22 And then if he can, then you let us know and

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1 we just dismiss the case. And hopefully with
2 a nice letter to the Office of Planning they
3 may give you your money back. Otherwise,
4 we'll keep it going. If you need to come back
5 before us, then we already have your case
6 file. You don't have to pay again. Okay?
7 Good.

8 So what would be a date, Mr. Moy?

9 MR. MOY: I would suggest January
10 22nd, 2013.

11 CHAIRMAN JORDAN: That works for
12 me. Long as it's not on those dates we've
13 been using all day.

14 MR. MOY: And of course the
15 understanding would be that the applicant does
16 have his primary proof that DCRA -- that the
17 owner would file with this office withdrawing
18 your application.

19 CHAIRMAN JORDAN: Yes, thank you.
20 Okay?

21 MR. COCHRAN: And OP will be happy
22 to go with Mr. Palmer to meet with DCRA, if

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1 that's any help.

2 CHAIRMAN JORDAN: Look at that.
3 See, that's good customer service, especially
4 since you just got to go downstairs or
5 upstairs in the building, but it'll work.

6 MR. COCHRAN: If it had been a
7 block away, I would have done it.

8 CHAIRMAN JORDAN: Well, we really
9 appreciate it and we're trying to help you get
10 to where you need to be. And we thank you for
11 coming.

12 All right. Mr. Moy, is there
13 anything else that we need to do on this very
14 long and tiring day?

15 MR. MOY: Not from the staff --

16 CHAIRMAN JORDAN: Thank you.

17 MR. MOY: -- Mr. Chairman.

18 CHAIRMAN JORDAN: Nothing from
19 staff?

20 MR. MOY: Not from the staff.

21 CHAIRMAN JORDAN: Anybody on the
22 Board has anything we need to talk about?

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1 (No audible response.)

2 CHAIRMAN JORDAN: I think then we
3 can be adjourned. Thank you.

4 (Whereupon, the hearing was
5 concluded at 4:12 p.m.)
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