

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 22, 2008

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CURTIS L. ETHERLY, JR., Commissioner
MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

DAN EMERINE

PAUL GOLDSTEIN

ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on July 22, 2008 and July 23, 2008.

TABLE OF CONTENTS

WELCOME:

Ruthanne Miller 5

THOMAS AND KATHLEEN AIELLO

APPLICATION NO. 17803 - ANC-3D: 15

WITNESSES:

Christine Roddy 16

Cary Kadlecek 17

KC Aiello 40

ANC-3D:

Alma Gates 23

OFFICE OF PLANNING:

Stephen Mordfin 24

CLOSING REMARKS:

Cary Kadlecek 44

MOTION TO APPROVE APPLICATION 17803: . . . 45

VOTE TO APPROVE APPLICATION 17803: . . . 47

PRIMAL FITNESS, INC.

APPLICATION NO. 17798 - ANC-6C: 47

Request for Party Status: 50

Grant Party Status: 56

ANC Request Postponement/Request Denied 56/61

WITNESS:

Mark Toorock 63

Ray Valentine 64

CROSS EXAM BY MS. KEYS: 129

OFFICE OF PLANNING:

Paul Goldstein 134

PERSON/PARTIES IN OPPOSITION:

Brenda Keys 146

CLOSING REMARKS:

Mark Toorock 160

SET FOR DECISION - AUGUST 1, 2008: . . . 186

D.C. CARRY-OUT

APPLICATION NO. 17800 - ANC-8A: 186

Reschedule Hearing to September 9, 2008: 192

YUM'S IV CARRY-OUT

APPLICATION NO. 17802 - WITHDRAWN:

Withdrawn: 196

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS

<u>FLIP-IT BAKERY/DELI</u>	
<u>APPLICATION NO. 17801 - ANC-4C:</u>	203
<u>WITNESS:</u>	
Deborah Williams-Lofton	206
<u>OFFICE OF PLANNING:</u>	
Arthur Jackson	208
<u>ANC-4C:</u>	
Ronald Bland	210
<u>PERSONS/PARTIES IN SUPPORT:</u>	
James Rayford	214
<u>CLOSING REMARKS:</u>	
Deborah Williams-Lofton	215
<u>MOTION TO APPROVE APPLICATION 17801:</u>	215
<u>EXHIBIT 25 - COUNCIL MEMBER BOWSER LETTER</u>	218
<u>VOTE TO APPROVE APPLICATION 17801:</u>	220

<u>APPLICATION NO. 17761 OF HARRY L. BELIN, ON</u>	
<u>BEHALF OF EVERMAY SOCIETY</u>	
Christopher Collins, Holland & Knight,	222
representing applicant	
Jeff Johnson, Holland & Knight	
<u>WITNESSES:</u>	
Harry L. Belin, owner	295
Alexandra Kovach, Director of Hospitality	323
Erwin Andres, Grove/Slade Associates	341
Stephen Benson, O'Brien, Butler, McConihe,	
Schaefer	366
David Petrou, resident	387
Bill Mahr	404
Beverly Silverberg	405
DAvid Kuckarski	408
French Wallop	411
Charles Park	415
Avery Miller	472

<u>APPLICATION NO. 17578 OF HARTFORD STREET, LLC</u>	
Melvin Mitchell	426

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

2 9:39 a.m.

3 CHAIRPERSON MILLER: Good morning.

4 This hearing will, please, come to order.

5 This is the July 22nd Public Hearing of the
6 Board of Zoning Adjustment of the District of
7 Columbia. My name is Ruthanne Miller. I'm
8 the Chair of the BZA. To my right is Mr. Marc
9 Loud. He is our Vice Chair. And next to him
10 is Mr. Michael Turnbull from the Zoning
11 Commission. And to my left is Mary Oates
12 Walker and Shane Dettman, Board Members. Next
13 to Mr. Dettman is Mr. Cliff Moy from the
14 Office of Zoning, Ms. Lori Monroe from the
15 Office of Attorney General and Ms. Beverley
16 Bailey, also from the Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please,
20 be advised that this proceeding is being
21 recorded by a Court Reporter and is also
22 webcast live. Accordingly, we must ask you to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 refrain from any disruptive noises or actions
2 in the hearing room.

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

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

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Sections 3117.4 and
7 3117.5 of our Zoning Regulations, the
8 following time constraints will be maintained:
9 The applicant, persons and parties, except an
10 ANC, in support, including witnesses, 60
11 minutes collectively. Persons and parties,
12 except an ANC, in opposition, including
13 witnesses, 60 minutes collectively.
14 Individuals 3 minutes.

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

22 Nothing prohibits the Board from

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

4 The record will be closed at the
5 conclusion of each case, except for any
6 material specifically requested by the Board.
7 The Board and the staff will specify at the
8 end of the hearing what is expected and the
9 date when the persons must submit the evidence
10 to the Office of Zoning. After the record is
11 closed, no other information will be accepted
12 by the Board.

13 The Sunshine Act requires that the
14 Public Hearing in each case be held in the
15 open before the public. The Board may,
16 consistent with it's Rules of Procedure and
17 the Sunshine Act, enter Executive Session
18 during or after the Public Hearing on a case
19 for purposes of reviewing the record or
20 deliberating on the case.

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

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

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

8 The Board will now consider any
9 preliminary matters. Preliminary matters are
10 those which relate to whether a case will or
11 should be heard today, such as requests for
12 postponement, continuance or withdrawal or
13 whether proper and adequate notice of the
14 hearing has been given. If you are not
15 prepared to go forward with a case today or if
16 you believe that the Board should not proceed,
17 now is the time to raise such a matter.

18 Does the staff have any
19 preliminary matters?

20 MS. BAILEY: I believe Mr. Moy has
21 a preliminary matter, Madam Chair. I do not.

22 CHAIRPERSON MILLER: Thank you.

1 Mr. Moy?

2 MR. MOY: Yes, Madam Chair. We
3 are in receipt this morning of a request to
4 continue Case No. 17800 of D.C. Carry-Out for
5 the Board's consideration.

6 CHAIRPERSON MILLER: And are the
7 parties in that case here? And would you come
8 forward to the table, please? Good morning,
9 would you introduce yourselves for the record,
10 please?

11 MR. MOHAMMED: I'm Anthony
12 Mohammed, Commissioner of ANC-8A, Chair.

13 CHAIRPERSON MILLER: Could you
14 repeat it for the Court Reporter?

15 MR. MOHAMMED: Anthony Mohammed,
16 Chair, ANC-8A.

17 MR. SCARBOROUGH: Good morning.
18 Glenn Scarborough and I'm representing Mr.
19 Nessar Ahmadi, owner of the D.C. Carry-Out.

20 CHAIRPERSON MILLER: He is the
21 owner of the carry-out, but is -- he is not
22 the owner of the building?

1 MR. SCARBOROUGH: Right. That's
2 absolutely right.

3 CHAIRPERSON MILLER: And did the
4 owner of the building authorize him to bring
5 this case at all?

6 MR. SCARBOROUGH: Well, the owner
7 of the building is an 85 year-old gentleman,
8 Mr. Papallordo, and he is just non-responsive
9 to just about everything, except the checks,
10 the rent checks, he is responsive to those.
11 Otherwise, we have not been able to get his
12 attention, so to speak. So I don't know what
13 position does that place us in this morning.

14 CHAIRPERSON MILLER: Well, at this
15 point though, as I understand it, you are
16 seeking a continuance in any event?

17 MR. SCARBOROUGH: Not -- we're not
18 seeking.

19 CHAIRPERSON MILLER: You're not
20 seeking a continuance? Oh, I'm sorry. What's
21 the preliminary matter then?

22 MR. SCARBOROUGH: I don't know.

1 Mr. Moy?

2 CHAIRPERSON MILLER: Is this the
3 address 3710 Minnesota?

4 MR. SCARBOROUGH: 2427 Minnesota.

5 CHAIRPERSON MILLER: So maybe
6 there is a mix-up here. Let me see.

7 MR. MOY: Do you have a copy of
8 the --

9 CHAIRPERSON MILLER: Okay. So
10 you're not seeking a continuance. You are
11 here to present the case. Okay. There is an
12 issue with respect to your authorization in
13 that I think our regulations read that an
14 owner may bring an application. Are you aware
15 of that?

16 MR. SCARBOROUGH: Well, yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. SCARBOROUGH: But by the same
19 token, where does that leave us if the --
20 where our owners -- now, Mr. Papallordo's --
21 we have made service, but Mr. Papallordo's
22 wife passed not too long ago. His phone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 number has been disconnected. I don't know.
2 Maybe he's not still alive.

3 MR. MOHAMMED: I mean, you have to
4 get permission. I think that's what that
5 means.

6 MR. SCARBOROUGH: Thank you.

7 CHAIRPERSON MILLER: Okay. We
8 were just calling this case, at this point,
9 because we thought there was a preliminary
10 matter. And it may be that --

11 MR. SCARBOROUGH: Well, I'm
12 waiting to hear.

13 CHAIRPERSON MILLER: Yeah, we're
14 going to check our records.

15 MR. SCARBOROUGH: Okay.

16 CHAIRPERSON MILLER: Okay. Yeah,
17 we got an email related to a property on
18 Minnesota Avenue and staff thought it related
19 to this case and asking for postponement, so
20 that's what we thought was going on here.

21 MR. SCARBOROUGH: It wasn't us.

22 CHAIRPERSON MILLER: Okay. So I

1 think in which event, we will send you back
2 and call you in the right order.

3 MR. SCARBOROUGH: Okay. Thank
4 you.

5 CHAIRPERSON MILLER: I have
6 flagged one issue for you. I don't know if
7 there is anything you can do about it or not,
8 but, okay. We will deal with that when we
9 call the case.

10 Okay. Then, are there any other
11 preliminary matters?

12 MR. MOY: No, I think that will do
13 it. Sorry.

14 CHAIRPERSON MILLER: Okay.

15 MR. MOY: Sorry for the miscue.

16 CHAIRPERSON MILLER: That's okay.
17 Then at this point, all those who are
18 interested in testifying today, either in
19 support or opposition, with respect to any of
20 the cases that are on the morning agenda,
21 please, rise and Ms. Bailey will administer
22 the oath.

1 MS. BAILEY: Would you, please,
2 raise your right hand?

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. BAILEY: Thank you.
6 Application No. 17803 of Thomas and Kathleen
7 Aiello, excuse the pronunciation, pursuant to
8 11 DCMR 3104.1, for a special exception to
9 allow a rear addition to a one-family dwelling
10 under section 2416, that's a theoretical lot
11 controls, in the R-1-A District at premises
12 4831 Foxhall Crescent Road, N.W., Square 1397,
13 Lots 1017 and 1020.

14 CHAIRPERSON MILLER: Are you going
15 to be setting up some plans or something?

16 MS. RODDY: We are, but we have
17 other testimony that can go forward as well.

18 CHAIRPERSON MILLER: Okay. You
19 can start.

20 MS. RODDY: While he's doing that.

21 CHAIRPERSON MILLER: All right.
22 Why don't you introduce yourselves for the

1 record to start?

2 MS. RODDY: Okay. Hi, my name is
3 Christine Roddy and I'm with the Law Firm of
4 Pillsbury Winthrop Shaw Pittman. And with me
5 is Cary Kadlecek also with Pillsbury. KC
6 Aiello, the owner of the property, and
7 Outerbridge Horsey, who is an expert in
8 architecture. We also have our landscape
9 architect here available for questions, should
10 you have any. And with that, I'm going to --

11 CHAIRPERSON MILLER: Wait. I want
12 to say that we read the file. We don't think
13 you need a full blown presentation to convince
14 us on this. I think we want to start out with
15 a few questions and then see where we want to
16 go, what we would need to see.

17 MS. RODDY: Okay.

18 CHAIRPERSON MILLER: Because as I
19 understand it, you really don't need any
20 relief from any of the normal Zoning
21 Regulations regarding the residence district,
22 height, density, none of that. And in fact,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you are in compliance with the order that
2 created the subdivision. Is that correct?

3 MS. RODDY: That's correct.

4 CHAIRPERSON MILLER: But it has
5 expired?

6 MS. RODDY: That's correct.

7 CHAIRPERSON MILLER: Okay. So
8 this is my first question. Are you aware of
9 two orders that the Board issued in this case?
10 One is 17697 of ANS Associates, December 18,
11 2007; and then a previous Order 15340-A of ANS
12 Associates. The decision date was July 3,
13 2007.

14 MR. KADLECEK: This is Cary
15 Kadlecek from Pillsbury Winthrop Shaw Pittman.
16 Yeah, I have both of those orders in front of
17 me and those were granted, I believe, some
18 relief to what we are seeking today.

19 CHAIRPERSON MILLER: Yeah, I think
20 it's very similar. In fact, it's the same
21 subdivision, isn't it? And basically, in
22 those two cases, if I can summarize it,

1 basically, the first time an applicant came in
2 and wanted to develop on one of the lots and
3 the order had expired and he had sought a
4 motion for modification of plans in order to
5 do that.

6 We said no, you can't, it's
7 expired. We have no authority under the old
8 order. And so then he came in with a special
9 exception and I know Ms. Gates was involved in
10 this as well. And then we looked at the same
11 criteria that you are asking us to look at
12 here.

13 The normal residence district
14 requirements and then the order. So it's the
15 same, is it not?

16 MR. KADLECEK: Yeah.

17 CHAIRPERSON MILLER: Okay.

18 MR. KADLECEK: Yeah, it's the
19 same. It's the same situation.

20 CHAIRPERSON MILLER: Okay. So and
21 in fact, I think that, you know, our regs
22 could probably speak better to this situation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 In fact, I'm sure there is a reg that
2 specifically says when a 2516 order has
3 expired, what do you do if you want to build
4 there. And so that's the way this Board has
5 interpreted the regs, as to what you do.

6 MR. KADLECEK: Our position is
7 that this was approved as a particular
8 footprint under that 1991 order. And because
9 that order has now expired, we are seeking the
10 special exception, because we are changing the
11 foot -- as -- although it's a small footprint
12 change, we're still seeking to change the
13 footprint that was approved by that order. So
14 that's why we are seeking the special
15 exception under 2516.

16 CHAIRPERSON MILLER: It's not also
17 -- it's not just that you are building, it's
18 also that you are combining lots?

19 MR. KADLECEK: Yes, but that was
20 part of combining them for assessment and
21 taxation purposes.

22 MS. RODDY: That has been

1 completed.

2 MR. KADLECEK: Which has been
3 completed.

4 CHAIRPERSON MILLER: Okay. That's
5 one area I just kind of would like to pursue
6 just a little bit more, because we have to
7 speak of tax lots and then we speak of record
8 lots. So it has been changed as a tax lot,
9 right?

10 MR. KADLECEK: Right.

11 CHAIRPERSON MILLER: In this
12 proceeding, would it be changed as a record
13 lot? Is that part of what you would be doing
14 by combining two of the lots or not really?
15 I didn't -- it wasn't really specifically
16 addressed that way, but we're wondering if
17 that is happening.

18 MR. KADLECEK: Yeah, no, as part
19 of this proceeding, we are not seeking to make
20 a record lot, just the tax lots.

21 CHAIRPERSON MILLER: You're just
22 seeking to do your addition?

1 MR. KADLECEK: Right.

2 MS. RODDY: These were created as
3 theoretical lots, which are treated as record
4 lots. But, in fact, they are tax lots. So
5 the process that we went through to combine
6 them was a combination of lots -- assessment
7 and taxation lots. But because they are
8 theoretical lots, we -- it is treated now as
9 it will be one record lot.

10 I guess I don't want to say
11 record. It's one theoretical lot from the two
12 previous lots.

13 CHAIRPERSON MILLER: I guess my
14 question is if you weren't coming in for a
15 special exception to do the addition, you are
16 just combining the lots, would you be seeking
17 relief from us to combine the lots?

18 MS. RODDY: No.

19 CHAIRPERSON MILLER: No. Okay.
20 It's just because of your building?

21 MS. RODDY: Correct. That process
22 has actually been completed through the

1 surveyor's office.

2 CHAIRPERSON MILLER: Oh, okay.

3 MS. RODDY: Already.

4 CHAIRPERSON MILLER: Okay. Are
5 there other questions on this?

6 MEMBER DETTMAN: Just for clarity,
7 you are not actually combining two theoretical
8 lots? The two theoretical lots will actually
9 still exist, you just have one taxation lot?

10 MR. KADLECEK: Well, they have
11 been combined according to the surveyor's
12 office. Yes, they have been combined into
13 one.

14 MEMBER DETTMAN: The theoretical
15 lot?

16 MR. KADLECEK: The theoretical
17 lots have been combined.

18 MEMBER DETTMAN: Okay. Thank you.

19 CHAIRPERSON MILLER: It seems a
20 little odd to me that -- you know, what our
21 order did before. Not our order, the BZA's
22 order of 1991 created those lots and you are

1 changing that. And that, I mean, I wouldn't
2 see why you wouldn't be changing that here, as
3 opposed to just the surveyor's office. But in
4 any event, you are here and you are -- you
5 know, we can recognize the lot being changed
6 in this order as well.

7 So I'm not sure though we need a
8 whole presentation, because I think, unless,
9 you know, there is something you really want
10 to show us, but I want to hear from the ANC as
11 well. Perhaps, Mrs. Gates, you can come up
12 here.

13 I think just the record seems so
14 full that there were no adverse impacts at all
15 and that everything that you were doing was
16 allowed by both the Zoning Regulations and the
17 specific order. Good morning, Ms. Gates.

18 MS. GATES: Good morning, Madam
19 Chair. Alma Gates from ANC-3D. To be honest
20 with you, I have been very puzzled by this
21 application, because even though they have
22 expanded the footprint slightly, they still

1 have maintained all the required setbacks.
2 This is not a new dwelling that is being built
3 as was the case in the earlier case we heard
4 for the same subdivision.

5 So I think it seems rather onerous
6 for any property owner in Foxhall Crescent to
7 have to come back here for a special exception
8 when the addition to their property meets all
9 the setback requirements. But we did support
10 it. I don't mean but we supported it. I
11 mean, we did support it.

12 CHAIRPERSON MILLER: Why don't we
13 just go right to Office of Planning and hear
14 their opinion on this, if the Board doesn't
15 have any other questions right now. Okay.

16 MR. MORDFIN: The Office of
17 Planning does support this application and is
18 willing to stand on the record.

19 CHAIRPERSON MILLER: Okay. Let me
20 just go back to the applicant. We just want
21 to pursue a couple of questions with you as
22 opposed to showing how it complies with

1 everything, because I think it's pretty
2 evident in your pleadings and in the Office of
3 Planning report and Ms. Gates finding very
4 little to be concerned about.

5 This particular lot that is at
6 issue, all the lots were looked at in the old
7 order, correct? It's just that not all the
8 houses were built on them. Then I understand
9 what Ms. Gates is saying the issue is every
10 time somebody in this subdivision wants to do
11 a little addition, do they have to come in for
12 a special exception? Correct? Because that's
13 what it is looking like. Okay.

14 MS. GATES: Yes.

15 MR. KADLECEK: Yes. Our
16 interpretation was sort of two-fold. Like I
17 said previously, the house was built according
18 to a footprint that was approved by the BZA
19 order. Additionally, there was a ruling by
20 Zoning Administrator Botner and I don't have
21 the ruling, I apologize, but there was a
22 ruling by him which certainly implied that

1 there is no right to build on any theoretical
2 lot, any sort of construction, and, therefore,
3 we would have to seek a special exception
4 under 2516 in order to build anything and
5 change the footprint which was originally
6 approved according to the theoretical lot.

7 CHAIRPERSON MILLER: Okay. I
8 would just say this to Board Members, I mean,
9 there seems just a little change. I that the
10 subdivision was approved though with the 34
11 lots and that there is a change going on to
12 combine lots and we can see whether there is
13 any adverse impact from this, which the
14 surveyor didn't find and I don't think is
15 apparent at all, and then from this little
16 addition.

17 But I would say, you know, we can
18 go through the motions here really quickly.
19 That's what I'm saying. We don't need an hour
20 presentation on something that looks like, you
21 know, maybe doesn't even need a special
22 exception. But I think because our rules do

1 not specifically speak to it, that we should
2 go through that process.

3 It was required for the additional
4 dwelling. I know there is a difference
5 perhaps between a whole additional dwelling
6 and an addition. However, that order approves
7 the plans that were submitted before or
8 whatever. And this addition, I think, is new.

9 But I would do it really quickly.
10 And we can just go through the motions. And
11 perhaps, you know, there is an examination of
12 the regulations going on right now to improve
13 our regulations and this is one area that
14 probably -- that does need improvement, so
15 that a homeowner doesn't have to come in with
16 a whole big application, perhaps, for a small
17 addition that meets all the other
18 requirements.

19 MS. GATES: May I ask one
20 question, Madam Chair, please? Was an opinion
21 sought from the current Zoning Administrator?

22 MR. KADLECEK: Yes, we did go

1 before the Zoning Administrator.

2 MS. GATES: So Mr. LeGrant sent
3 you down here?

4 MR. KADLECEK: Um-hum.

5 MS. GATES: Okay. Thank you.

6 MR. KADLECEK: Yes. Well, when
7 you guys, Outerbridge, correct? You went to
8 the Zoning Administrator before you -- when
9 you had the plans reviewed, I believe, right?

10 MS. RODDY: I'm sorry.

11 MR. HORSEY: Outerbridge Horsey,
12 architect, 1228 1/2 31st Street, Washington,
13 D.C. No, I did not review the plans with the
14 Zoning Administrator. The rear yard was in
15 compliance once the lots were combined, so
16 there was no reason to do so. And the reason
17 we came down here was for the theoretical lot
18 issue, not any setback issues.

19 MS. RODDY: And I guess one of the
20 reasons why we didn't is just based on the
21 previous opinion from the prior Zoning
22 Administrator.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: Mr. Horsey,
2 I'm sorry, could you repeat what you said
3 about the reason that you brought this
4 application was because of the theoretical lot
5 issue and not the setback?

6 MR. HORSEY: Well, the nature of
7 the application before you has to do with the
8 theoretical lot. Normally, the process is
9 that the proposal and addition does not meet
10 the setback requirements, one submits to the
11 Building Department, the application is
12 rejected and then it comes down here for
13 review and that's how we get here.

14 But since we didn't have that
15 situation, our -- there was nothing wrong with
16 the yard setbacks, we didn't go that route,
17 It was assigned a direct application related
18 to this specific theoretical lot section.
19 Does that make sense?

20 CHAIRPERSON MILLER: This is self-
21 certified though, is it not?

22 MR. HORSEY: Yeah, yeah.

1 CHAIRPERSON MILLER: Okay. So we
2 don't have an official letter from the ZA
3 saying you need to do this. Okay. So it
4 might have been good to get the Zoning
5 Administrator's opinion first, but I don't
6 think -- at this point, you are here. I mean,
7 based on the record, I think that you meet all
8 the requirements, so maybe we shouldn't
9 prolong this process.

10 I think the other thing that there
11 is a twist here is because of combining the
12 lots that were approved. And that might not
13 be specifically what we were addressing in
14 your application, but I see that as a little
15 twist in this case, that it was approved for
16 34 lots and now you are changing the lots. So
17 okay.

18 MEMBER DETTMAN: Madam Chair?

19 CHAIRPERSON MILLER: Yes.

20 MEMBER DETTMAN: If I could just
21 ask one question?

22 CHAIRPERSON MILLER: Yes, go

1 ahead.

2 MEMBER DETTMAN: Just so I'm
3 clear, you had said that the reason why you
4 are here is because the existing dwelling was
5 approved as a footprint and you are modifying
6 that footprint and that's the reason why you
7 are here. Because essentially, you are, in
8 your mind, changing the subdivision that was
9 approved by the BZA prior?

10 MR. KADLECEK: We are changing the
11 footprint on the house that was approved by
12 the BZA. I wouldn't necessarily say that we
13 are changing the subdivision.

14 MEMBER DETTMAN: Okay.

15 MR. KADLECEK: I think there is a
16 subtle distinction, because the subdivision
17 itself still exists, but we're changing the
18 house as it was approved and the footprint
19 that was approved pursuant to that particular
20 order and we are changing that, which is why
21 we're seeking the relief.

22 CHAIRPERSON MILLER: I don't want

1 to beat a dead horse, but you can just say you
2 disagree, but aren't you also changing the
3 subdivision, because of the lot configuration?
4 Because it's no longer 34 lots that was
5 approved by the Board. There are now 33.

6 MR. KADLECEK: I would say, yes, I
7 disagree. Primarily because the subdivision
8 itself still exists and the fact that there is
9 a different number of lots doesn't change how
10 the lot -- the configuration of the cutouts
11 and the way that the overall subdivision was
12 created and how it was created. So because of
13 that aspect, I wouldn't say that we are
14 changing the overall subdivision.

15 I see it more as a microcosm
16 within an overall subdivision that was created
17 to a much larger BZA order.

18 MS. RODDY: And I mean, yes, it is
19 true that we have combined those two lots, but
20 that one lot could be available for future
21 development. So it's not necessarily a
22 permanent change, because there is still that

1 possibility in the future pursuant to the
2 order.

3 CHAIRPERSON MILLER: If it were
4 developed in the future, would the lots change
5 again or no?

6 MS. RODDY: Yes. I mean, we would
7 have to come before the Board and, right, we
8 would have to go through that process again.

9 CHAIRPERSON MILLER: When there is
10 building, you're saying?

11 MS. RODDY: Right.

12 CHAIRPERSON MILLER: Okay.

13 MS. RODDY: Um-hum.

14 MEMBER DETTMAN: Well, Madam
15 Chair, I think that, like you said, since they
16 are here, they are here and we can go forward
17 with the case. But I just question whether or
18 not they actually should be here. I think we
19 see a lot of 2516. For whatever reason,
20 people want to build multiple principal
21 buildings on one lot of record and that's why
22 2516 exists.

1 But going forward after that
2 subdivision is approved, I would think that
3 the theoretical lots, for all intents and
4 purposes, especially for measuring compliance
5 with the Zoning Regs, should act like a record
6 lot. And if someone owns a record lot and can
7 put an addition onto their existing single-
8 family dwelling and it meets all of the area
9 requirements, if this theoretical lot was
10 actually a record lot, they could do it as a
11 matter of right.

12 I don't see why because the
13 subdivision was approved previously by BZA
14 order under 2516, why it should be any
15 different. But, like you said, I see no harm
16 in going forward, except for the very small
17 precedent that it would be setting going
18 forward that anything, any addition to a
19 single-family dwelling that was approved under
20 2516 would have to come to the BZA. That's my
21 observation.

22 VICE CHAIRMAN LOUD: Madam Chair,

1 I agree with Mr. Dettman. My understanding is
2 that since it is self-certified, there would
3 not be a precedent or am I incorrect?

4 CHAIRPERSON MILLER: No, I don't
5 think that there is a distinction. I think
6 there would be a precedent, but I don't think
7 we are doing to issue an extensive order on
8 this. I think it will be a summary order,
9 because I think the question really is, I
10 think it's just an unclear regulation.

11 VICE CHAIRMAN LOUD: Well, it's
12 clear that they put a lot of work into this.
13 It is also clear that we are supportive of it.
14 They ANC is supportive of it. And I think
15 that since they are here, we ought to move
16 forward and just analyze it as a 2516.

17 CHAIRPERSON MILLER: I agree.
18 Actually, we can comment in our summary order
19 if we want that we're not sure that relief was
20 necessary.

21 VICE CHAIRMAN LOUD: Right.

22 CHAIRPERSON MILLER: But if so,

1 you know, they would meet the requirements.
2 Does the Office of Planning have any further
3 comment on whether relief is necessary in this
4 case? It's a little bit different from the
5 previous case. The house has already been
6 built. It's an addition to it that, you know,
7 meets all the other Zoning Regulations.

8 MR. MORDFIN: Well, the reason we
9 also thought that relief was required, as 2516
10 is written, is because the previous order had
11 expired in 2001, which left this subdivision
12 hanging. So if anybody wants to do anything,
13 they have to come back for a special
14 exception. And that's why we thought it made
15 sense that they come back for a special
16 exception in order to build onto this house.

17 CHAIRPERSON MILLER: Yes, Ms.
18 Gates?

19 MS. GATES: That truly gives me
20 heartburn. I would go along with Mr.
21 Dettman's finding. The theoretical lot
22 subdivision has been built for all intents and

1 purposes. If they were putting up a new
2 house, as was the earlier case, that would be
3 one thing. This house has been built. So as
4 I said before, I don't understand why, if they
5 meet all the setback requirements, they have
6 to come back to do this.

7 MS. RODDY: If I could just add
8 something that might help clarify? We also --
9 in addition to the prior Zoning
10 Administrator's ruling, there is also two
11 previous BZA cases where houses were built on
12 the theoretical lot and it came back before
13 the Board to put an addition on those houses.

14 So the cases are similar or
15 identical to this one, but I could let you
16 have the case numbers for those. That set a
17 precedent for also why we are here. Those
18 were Application Nos. 15973 and 15439.

19 CHAIRPERSON MILLER: Okay. So
20 those also were because they were pursuant to
21 a specific plan approved by the Board. They
22 had to come back later for any additions or

1 changes to the plan, that's the theory,
2 correct?

3 MS. RODDY: Right. Well, it was
4 they were built on theoretical lots and
5 because they were doing the addition, they
6 came back for 2516 relief.

7 CHAIRPERSON MILLER: Okay. We can
8 talk about it. I think I would suggest we
9 don't need to spend too much more time on it.
10 We've gotten a lot of information on this
11 issue. I think I would recommend that, you
12 know, we consider the application that was
13 self-certified and that there is loss
14 according to such an application is necessary
15 whether it is a good regulation or not, I
16 think should be examined in the Zoning
17 Regulation review coming up.

18 And I don't think this is being a
19 precedent that we would be setting, especially
20 if we can certainly state that we're not sure
21 that relief is necessary. But, it seems to
22 me, based on the precedent, it probably is.

1 So do you have any other comments?

2 COMMISSIONER TURNBULL: Madam
3 Chair?

4 CHAIRPERSON MILLER: Any
5 objections to just considering it?

6 CHAIRPERSON MILLER: I would agree
7 with you. I think at some point, hopefully
8 for us in the future, it's almost going to
9 clarify when theoretical lots actually become
10 record lots since they are existing and built
11 upon. And that you have a matter-of-right and
12 they are simply going for a building permit
13 and not having to come for any kind of special
14 exception. It would be good to clarify that.

15 CHAIRPERSON MILLER: Absolutely.
16 And Office of Planning, I hope you will take
17 note of that, because I know that there is an
18 ongoing Zoning Regulation review going on
19 right now and there are problems in some of
20 our regulations and this looks like one of
21 them. So do you have a comment? Okay.

22 The application is before us. It

1 looks like you have done a lot of work on it.
2 I don't think we need a full blown
3 presentation, because I think the Board is
4 pretty much convinced or we're not even sure
5 you necessarily need to be here. And there is
6 no adverse impacts from this addition.

7 You have gone through all of the
8 requirements of 2516 and you have gone through
9 the previous order to show that it is in
10 compliance with both. Is there anything else
11 you want to add today?

12 MR. KADLECEK: Yeah, I would
13 actually like the applicant, KC Aiello, just
14 to talk a little bit about how she has
15 interacted with the neighbors and gotten
16 support of the neighbors.

17 CHAIRPERSON MILLER: Okay.

18 MS. AIELLO: Okay. Hi, my name is
19 Kathleen Aiello. I go by KC. I'm the
20 applicant. And in terms of what I have done
21 with the neighbors, I think some of this is in
22 your file, but we live in Battery Kemble

1 Place, which has a homeowners association. So
2 I sent -- we have an email distribution
3 letter, so we sent the plans to everybody in
4 the neighborhood -- in our association to see
5 if they had any problems or issues. No one
6 had any problems or issues, only actually well
7 wishes for us to get this done.

8 And then the second thing I did is
9 I met with the three members who are the
10 president of our board and the other two
11 members of our board and went through the
12 plans with them and they signed a letter said
13 -- they signed a letter that is in our
14 application, the president of our board on
15 behalf of all the board members.

16 And then I also met with all of my
17 adjoining neighbors just personally to make
18 sure that they were okay with everything that
19 we were doing and also they are fine and happy
20 with that and have signed letters also to that
21 effect, that I think you also have in the
22 package.

1 So you know, certainly spent -- we
2 have lived there for 12 years, so we know our
3 neighbors pretty well. And so we're looking
4 for this to be a nice experience for -- as
5 nice of an experience as you can have when you
6 do a little renovation for everybody. And to
7 that end, we're not going to do any
8 construction on the weekends either. We will
9 be keeping that during the weeks.

10 CHAIRPERSON MILLER: Well, that's
11 great. I mean, because we certainly see a lot
12 of applications where neighbors have concerns.
13 So when there is not any, that's a good sign.

14 I didn't see, I think that Ms.
15 Gates also mentioned it, is the homeowners
16 letter in the record?

17 MS. AIELLO: Yeah, everything is
18 in the record.

19 CHAIRPERSON MILLER: Is it? Okay.

20 MS. AIELLO: It wasn't at the -- I
21 don't know if I had everything to them at the
22 ANC hearing, but everything is in the record

1 now.

2 MR. KADLECEK: Yeah, it's in the
3 prehearing statement. I believe it is -- I
4 think it is at our Exhibit 28, Madam Chair,
5 Attachment E. Yeah, that's correct.

6 CHAIRPERSON MILLER: Okay. Okay.
7 I think also, just for the record, in the
8 previous case, there was concern about -- by
9 a lot of these neighbors in this same
10 subdivision, so it's not that the neighbors
11 are not outspoken or anything. Okay.

12 Any other, anything else you want
13 to put in the record?

14 MR. KADLECEK: I think we're going
15 to -- we will stand on the record for
16 everything else. I think that based on what
17 you have told us before that a presentation
18 from Outerbridge is unnecessary.

19 CHAIRPERSON MILLER: Any other
20 questions from Board Members for the
21 applicant? Okay. Does the Office of Planning
22 have anything else they want to add on the

1 record?

2 MR. MORDFIN: No, Madam Chairman.

3 CHAIRPERSON MILLER: Any questions
4 for Office of Planning? Okay. Ms. Gates,
5 anything else you want to add on the record?

6 MS. GATES: No.

7 CHAIRPERSON MILLER: Okay. I
8 assume you all don't have questions for Office
9 of Planning or for the applicant? No, okay.
10 Anybody else here who wishes to testify in
11 support of this application? Anybody who
12 wishes to testify in opposition? Okay. Any
13 closing remarks?

14 MR. KADLECEK: I would just like
15 to say in light of the complete support that
16 we have for the application and the clear way
17 in which we meet all the requirements of the
18 Zoning Regulations, we do request that you
19 issue a summary order and Bench decision, I'm
20 sorry.

21 CHAIRPERSON MILLER: Okay. I
22 think we can deliberate on this now. I would

1 move approval of the application of Thomas and
2 Kathleen Aiello, pursuant to 11 DCMR 3104.1,
3 for a special exception to allow a rear
4 addition to a one-family dwelling under
5 section 2516, theoretical lot controls, in the
6 R-1-A District at premises 4831 Foxhall
7 Crescent Road, N.W. Do I have a second?

8 VICE CHAIRMAN LOUD: Second, Madam
9 Chair.

10 CHAIRPERSON MILLER: As I stated
11 earlier, this application is self-certified
12 and the applicant has gone through thoroughly
13 showing how it meets the requirements of 2516,
14 as well as the previous Board order that
15 expired, that authorized the subdivision in
16 this case. That was an order in 1991. It
17 expired in 2001. And now, at this point, they
18 are only wishing to add an addition, rear
19 addition that does not violate any of the
20 Zoning Regulations or the order.

21 And they have shown that that's
22 the case and we have gone through all the

1 elements of 2516, as has the Office of
2 Planning, and found that -- their compliance
3 with it.

4 ANC-3D is in support, that's our
5 Exhibit 27. The Homeowners Board of Directors
6 is in support, neighbors are in support.
7 There is no adverse impact apparent
8 whatsoever. Other comments?

9 VICE CHAIRMAN LOUD: I think you
10 have captured it fully, Madam Chair. Mrs.
11 Aiello also testified about being in the
12 neighborhood 12 years and going through a
13 series of briefings of neighbors and part of
14 the response that she got is that Exhibit 28
15 Attachment D, and these are four neighbors.
16 I think the most immediate neighbors that are
17 saying that there is no light and air impact.

18 So I think the record is full and
19 we can probably, if Madam Chair is ready, move
20 to a vote.

21 CHAIRPERSON MILLER: Okay. Any
22 other comments? Okay.

1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining? And would you
5 call the vote, please?

6 MS. BAILEY: The vote is recorded
7 as 5-0-0 to grant the application. Mrs.
8 Miller made the motion, Mr. Loud seconded,
9 Mrs. Walker, Mr. Dettman and Mr. Turnbull
10 support the motion.

11 CHAIRPERSON MILLER: Thank you.
12 And this can be a summary order, as there is
13 no party in opposition. And this will be a
14 regulation that will be looked at by Office of
15 Planning and others in the zoning review
16 process to clarify, you know, what to do in
17 the future about modifications with these
18 theoretical lot divisions.

19 Okay. Thank you very much. Enjoy
20 your addition. We are ready for the next case
21 when you are, Ms. Bailey.

22 MS. BAILEY: Application No. 17798

1 of Primal Fitness, Inc., pursuant to 11 DCMR
2 3103.2, for a variance from the use provisions
3 to operate a fitness center under subsection
4 330.5 at premises 219 M Street, N.W. The
5 property is Zone R-1-A. It is located in
6 Square 1397, Lots 1017 and 1020.

7 We just received the Affidavit of
8 Posting this morning and I just need a moment
9 to look to make sure that the property was
10 posted timely.

11 CHAIRPERSON MILLER: In the
12 meantime, the parties in this case can come
13 forward.

14 MS. BAILEY: Madam Chair, it seems
15 from the affidavit that the property was
16 posted in a timely manner.

17 CHAIRPERSON MILLER: Why don't you
18 have a seat at the table and then, good
19 morning, you can introduce yourself for the
20 record.

21 MR. VALENTINE: Madam Chairman, my
22 name is Ray Valentine. I'm the owner of 219

1 M Street, N.W.

2 MR. TOOROCK: Good morning, Madam
3 Chair, my name is Mark Toorock. I reside at
4 1341 Q Street, N.W., and I am the owner of the
5 business, Primal Fitness, which currently
6 operates at 219 M Street, N.W.

7 CHAIRPERSON MILLER: Okay. We
8 have an application for party status by Ms.
9 Brenda Keys. Is she here?

10 MS. KEYS: Yes.

11 CHAIRPERSON MILLER: And would you
12 come forward, please? And when you are not
13 speaking, can you turn your microphones off?
14 Because they just compete. Okay.

15 MS. KEYS: Good morning, my name
16 is Brenda Keys.

17 CHAIRPERSON MILLER: And your
18 address, please?

19 MS. KEYS: 215 New York Avenue,
20 N.W.

21 CHAIRPERSON MILLER: Okay. Good
22 morning.

1 MS. KEYS: Good morning.

2 CHAIRPERSON MILLER: You have an
3 application here for party status. And I just
4 want to make sure you understand the
5 difference between party status and testifying
6 as a person. Are you aware that there is a
7 difference?

8 MS. KEYS: No.

9 CHAIRPERSON MILLER: Okay. Just
10 to be brief, if someone is more uniquely
11 impacted by relief that would be given from an
12 application, such as this, you know, they live
13 in close proximity, such as you do or
14 whatever, they can seek party status from the
15 Board. And that's something we would consider
16 granting to you.

17 And if we granted that, that would
18 mean you could participate almost on the same
19 level as the applicant. You could cross
20 examine the applicant. You could present
21 witnesses. You could submit evidence, put in
22 pleadings. It's like being an active member

1 of this litigation almost.

2 Otherwise, well, in which case,
3 you know, the Board would consider whether you
4 are qualified for it, whether you are uniquely
5 impacted differently from the general public.

6 Otherwise, if you just want to
7 testify, if all you want to do is testify, we
8 don't have to consider anything. And you have
9 three minutes later in the proceeding. I'll
10 call upon anybody who wants to testify in this
11 case and you could come testify.

12 MS. KEYS: Okay.

13 CHAIRPERSON MILLER: Do you
14 understand that? You want to think about it
15 for a second?

16 MS. KEYS: Um --

17 CHAIRPERSON MILLER: Do you want
18 to do more than just testify or do you just
19 want to --

20 MS. KEYS: I want to do more than
21 just testify.

22 CHAIRPERSON MILLER: Okay. So

1 let's look at your party status application
2 which you submitted.

3 MS. KEYS: Okay, fine. Okay.

4 CHAIRPERSON MILLER: You have a
5 business nearby?

6 MS. KEYS: Yes, a grocery store,
7 yes.

8 CHAIRPERSON MILLER: Okay. And
9 how close is it?

10 MS. KEYS: Next door.

11 CHAIRPERSON MILLER: Is there
12 anything separating it?

13 MS. KEYS: There is an alleyway.

14 CHAIRPERSON MILLER: Okay. And
15 you will be impacted differently from the
16 general public how?

17 MS. KEYS: From the noise level,
18 from the weights being dropped. I have been
19 impacted with damage to my building, cracks in
20 my wall.

21 CHAIRPERSON MILLER: Okay.
22 Anything else?

1 MS. KEYS: The ceiling has just --
2 cracks in my ceiling.

3 CHAIRPERSON MILLER: Okay. Okay.
4 But that's a general category.

5 MS. KEYS: Yes.

6 CHAIRPERSON MILLER: Any questions
7 by the Board?

8 VICE CHAIRMAN LOUD: I just want
9 to make sure I understand. I saw your
10 application where you mentioned the -- you
11 know, all of the things that you just
12 mentioned, the loud thumping noise, building
13 vibration, cracked walls, chipped paint, large
14 mirror fell, lighting fixtures are loose. But
15 I did not understand that there is actually an
16 alley that separates your building from the
17 old fire station?

18 MS. KEYS: Yes, there is.

19 VICE CHAIRMAN LOUD: There is an
20 alley?

21 MS. KEYS: There is.

22 VICE CHAIRMAN LOUD: So it's not

1 an attached party wall?

2 MS. KEYS: No.

3 VICE CHAIRMAN LOUD: Okay. I
4 mean, not that it makes a huge bean of
5 difference for section 3106, but I just wanted
6 to be clear in my mind.

7 CHAIRPERSON MILLER: Also, the ANC
8 is a party as a matter of right. Are they
9 here? Anybody here from the ANC?

10 MS. KEYS: He told me yesterday he
11 would be here.

12 CHAIRPERSON MILLER: Okay. He is
13 not here right now.

14 MS. KEYS: No.

15 CHAIRPERSON MILLER: Okay. So let
16 me ask the applicant, do you have an objection
17 to the Board granting Ms. Keys party status or
18 do you have any concerns about that that you
19 want to raise, at this point? As I said, it
20 just means that she would be able to
21 participate in a little bit more active
22 manner.

1 MR. TOOROCK: I have no objection.

2 MR. VALENTINE: I have no
3 objection either. If I may clarify, just in
4 the preamble, what was the square, the lot and
5 square? I believe that we are in Square 0555.
6 Again, I may have misheard and I just wanted
7 to make sure we were on the same page on that.

8 COMMISSIONER TURNBULL: Did you
9 say 055?

10 MR. VALENTINE: 0555.

11 COMMISSIONER TURNBULL: Not 555?

12 MR. VALENTINE: Not 555.

13 COMMISSIONER TURNBULL: Okay. We
14 have it -- we just have a typo here.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Dettman says that the square that you cited is
17 the correct one, that's mentioned on the
18 surveyor's plat. But that staff may have had
19 the wrong square in the opening that you
20 heard. Thank you for that clarification.

21 Okay. Do Board Members have any
22 concerns with granting party status to Ms.

1 Keys? Okay. Then, Ms. Keys, we will be
2 granting you party status. So that means our
3 order of procedure is the applicant is going
4 to be presenting their case first and you can
5 cross examine when they are done. I'll let
6 you know when that is. Okay. And then you
7 will have an opportunity to present your case,
8 too.

9 Okay. The other preliminary
10 matter, I believe, was that the ANC had
11 requested a postponement to allow the
12 applicant to address allegations of damages to
13 the adjacent property as their reason. They
14 are not here to argue for their motion. I
15 would like to ask the applicant first, are you
16 in favor of a postponement or are you ready to
17 proceed or what's your response to that
18 request?

19 MR. TOOROCK: Madam Chair, with
20 all due respect to the ANC's inability to hear
21 our case in time to hear that, I would like to
22 proceed on the grounds that there is a pending

1 case in the District of Columbia Superior
2 Court against my business for operating
3 without a business license, which pends on a
4 Certificate of Occupancy, which pends on the
5 zoning hearing.

6 So for me, personally, there is
7 greater impact to delaying the case.

8 CHAIRPERSON MILLER: So it would
9 be prejudice to you if it were delayed?

10 MR. TOOROCK: I'm not sure I
11 understand the --

12 CHAIRPERSON MILLER: Well --

13 MR. TOOROCK: You said the word
14 prejudice. I apologize.

15 CHAIRPERSON MILLER: Okay. Well,
16 there is this certain harm that could come to
17 you if there is a delay, which -- because it
18 would affect your getting the Certificate of
19 Occupancy, which affects your business
20 license, as you just described, because of the
21 court proceeding.

22 MR. TOOROCK: Yes, ma'am, yes.

1 CHAIRPERSON MILLER: Okay.
2 Someone has just come in the room. Are you by
3 any chance with the ANC on Application 17798
4 for Primal Fitness? No, okay. All right.

5 Ms. Keys, do you have a comment?
6 As a party you can comment on the
7 postponement.

8 MS. KEYS: I disagree with the
9 postponement for the simple reason that -- I
10 agree with the postpone with the ANC. Yes, I
11 do.

12 CHAIRPERSON MILLER: Okay.
13 Anything else?

14 MS. KEYS: No.

15 CHAIRPERSON MILLER: Okay. Um,
16 when considering requests for postponement and
17 things like that, we often apply the rules
18 that are in our regulations for waivers of
19 rules and those two standards are good cause
20 and no prejudice to a party, that's why I was
21 using the term prejudice.

22 In my view, I would be against the

1 postponement, because I heard that there would
2 be prejudice to the applicant. And I think in
3 this proceeding, we will consider evidence
4 with respect to any adverse impacts on
5 neighboring properties. So if the applicant
6 is ready to proceed, I think we should proceed
7 and Ms. Keys can present evidence also in this
8 case and we can hear how the applicant intends
9 to respond to any of those concerns.

10 Any other comments? Plus the ANC
11 isn't here to move it, but yeah?

12 MS. KEYS: I would just be curious
13 to know when the action was filed against you
14 and at what state in the proceeding are you?

15 MR. TOOROCK: I'm not clear on the
16 exact date. I do have the transcript from the
17 court case, which I apologize I haven't
18 submitted for official record. I just picked
19 it up yesterday. This was Thursday, March 13,
20 2008, was the hearing. That hearing was
21 postponed until September 5th, based on my
22 good faith efforts to do everything else

1 possible to obtain a business license.

2 And I have now done 7 of 9
3 checklist items that would be there to get a
4 business license. So the only one -- I have
5 an application in place for a surety bond,
6 which is one of the requirements. I have my
7 clean hands certificate.

8 My business -- and I'm going to
9 use the wrong term here, I apologize, but I
10 have paid for some two-year business license.
11 It's not a business license, but it's some
12 license of my business with the DCRA. I
13 registered for taxes. All of those other
14 things are in place, so really the two things
15 holding this up now are my surety bond
16 application and my Certificate of Occupancy.

17 And if those things were in
18 effect, then it would seem, and I'm quoting
19 things that happened in this case and in the
20 continuance, that the case would actually be
21 dropped against me, because I would no longer
22 be operating without a business license, which

1 was the charge in this case was operating a
2 license without a business.

3 MR. VALENTINE: If I might add,
4 you are adverse -- are you talking about the
5 adverse action with respect to the case or
6 with respect to when it was filed? I believe
7 Brenda filed the second one, but that should
8 be a matter of record in there. Excuse me,
9 Ms. Keys, was that your question? Oh, you're
10 talking about that. Okay.

11 MR. TOOROCK: When this case was
12 filed.

13 MR. VALENTINE: Okay.

14 MS. KEYS: Right. I was making
15 reference to the case that the applicant
16 mentioned.

17 MR. VALENTINE: Okay. Thank you.

18 MS. KEYS: Thank you.

19 CHAIRPERSON MILLER: Does the
20 Board agree that we should proceed today then
21 and hear the case? Okay. All right. This
22 isn't a formal motion, so I don't believe we

1 need to vote on it. It's just a report by the
2 ANC.

3 Okay. So we are ready to hear
4 your case. And your case is not like the
5 previous case though. I think that you should
6 address -- it's for a use variance, correct?
7 And I think it's fairly well briefed as well.
8 I mean, as I understand it, you are in a
9 firehouse, correct? That's a building in a
10 residential district and it hasn't been used
11 as a residence before.

12 And I know the Office of Planning
13 is supporting you. What you -- if I could
14 just ask you to kind of just address those
15 elements of the use variance. And I started
16 to for you, but, you know, what is exceptional
17 about your property in the context of this,
18 you know, case and in a residence district.
19 And then why would it be an undue hardship
20 upon you if we didn't grant the relief and why
21 there is no substantial detriment to the
22 public or the Zone Plan.

1 MR. TOOROCK: Yes, Madam Chair.

2 CHAIRPERSON MILLER: Okay.

3 MR. TOOROCK: The three
4 requirements, the first one, the uniqueness of
5 the property. As it was mentioned, the
6 property wasn't built to be a residence. It
7 was built to be a fire station. It is a
8 unique shape. It faces directly onto New York
9 Avenue, even though the address is M Street.
10 The curb is actually along New York Avenue,
11 N.W.

12 It doesn't have proper amenities
13 to become a residential dwelling without -- it
14 sits, according to structural engineer, Vince
15 Ford, on a slab that is probably 6 to 12
16 inches or 8 to 12, rather, inches deep of
17 concrete. So putting in proper plumbing and
18 things like that would cause undue hardship to
19 create this into a dwelling.

20 Further, if it were to become a
21 dwelling, frankly, it would be out of
22 character with the neighborhood. I think

1 frankly if someone wanted to put \$10 million
2 into it, it would be a beautiful home. I'm
3 not sure that that would be characteristic of
4 the neighborhood.

5 So the uniqueness is that the
6 building was never meant to be a residence.
7 It's not a residence. It's a firehouse. It's
8 a commercial property. It has got 12 foot
9 ceilings. It backs onto an alley without any
10 room. It doesn't have staircases and things
11 like that that would make it suitable to be
12 subdivided into flats or whatever size unit
13 would be appropriate for a dwelling.

14 CHAIRPERSON MILLER: I mean, i can
15 see what you are saying. Basically, it's a
16 firehouse and we all know, you know, that it's
17 not suitable for a residence. But did you
18 ever get a quote as to actually how much it
19 would cost to convert this to a residence?

20 MR. VALENTINE: About a year ago,
21 actually it's maybe more like two, two and a
22 half years ago, we thought about really laying

1 the place out. And I guess the initial
2 numbers were around a half million dollars.
3 I'm not really that adverse, but my brother,
4 who is my partner, is very adverse.

5 And plus, we couldn't see -- one,
6 we didn't want to sell the property. Two, it
7 made more sense economically to look at the
8 commercial aspects of the property. And,
9 three, I guess, the city coming in many years
10 ago and debating with us why they are taxing
11 us as a commercial property. Again, we just
12 said maybe we should just go ahead and use the
13 commercial aspect and not get really deep in
14 debt.

15 I guess you also need to have a
16 vision and I couldn't envision it as a house.
17 And that's primarily what it was that -- there
18 were two general plans. And one of them was
19 to make it into a house and I think I had
20 vision, because I bought the place in the
21 first place. You had to have vision to pick
22 it up in the '70s like I and my brother did.

1 But we never saw it as a house.
2 And even though this particular architect
3 didn't push it as a property, he more or less
4 showed us how a general layout could be. And
5 we never thought that much about that.

6 CHAIRPERSON MILLER: But if you
7 had to put all that much money in this to say
8 you could feasibly do it and turn it into a
9 house, then do you think there is a market for
10 what it would cost to either rent it or buy it
11 to make up for all the money that you would
12 have to put in in that neighborhood?

13 MR. VALENTINE: The only thing
14 that could possibly make up for it is because
15 it's a unique property and that might result
16 in you getting your money back, because it's
17 a unique property. But to me, the risk by far
18 outweighed the potential rewards for it.

19 In addition, even if we made it
20 into four condos, the condos on the bottom you
21 still couldn't rent for a lot, because the
22 windows, the way it is laid out, it's just no

1 way that you could make that into something
2 that would be economically viable, unless you
3 did the \$2.5 million conversion and used a lot
4 of glass and worked around.

5 They were talking about having a
6 mini atrium in the middle and, you know,
7 digging out the basement. And I just couldn't
8 see putting that kind of cash into it with the
9 potential for just a home costing a couple
10 million bucks in that neighborhood. So -- and
11 that was when property values were looking
12 pretty good.

13 So but I think it just came down
14 to the vision that we just couldn't envision
15 it. Now, could I envision it as a place where
16 I would like to live? Yes, but I wouldn't put
17 anything into it and I would live around
18 having only one set of staircase in the back
19 and because I'm that type of guy. But could
20 I actually see paying the taxes and living in
21 there?

22 And you follow what I'm saying,

1 because it's a unique property, yes, you would
2 like to live there. But the other aspect is
3 I would like to have it -- get the best use of
4 it and I think the best use on that particular
5 area would be commercial.

6 CHAIRPERSON MILLER: What did you
7 mean, is the property odd-shaped, did you say?

8 MR. VALENTINE: It's the -- the
9 property was built to hold fire engines. So
10 the first floor is about 70 feet long and
11 maybe it's 23 feet wide. And it -- originally
12 -- I can give you the history, but I don't
13 know if you want to take the time and all,
14 because I can give you the whole history about
15 when the horses were in there and all that.

16 But the first -- the problem with
17 the property is that first floor, the garage
18 area is a garage area. And over the years,
19 that is what it was used for. It was used for
20 storage or garage. You can't live there.
21 There is no kitchen there. The fire
22 department had a kitchen down there years ago,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 but, you know, it was non-functional when we
2 got it. So we never used it.

3 MR. TOOROCK: If I may add,
4 because it was a firehouse and originally
5 meant to be cleaned out easily, the floor is
6 on a grade. So I think considerable work
7 would need to be done, so that people's eggs
8 didn't roll off the counter if you did put a
9 house in there. So there is a 6 inch
10 difference between the height of the front of
11 the downstairs and the back. Maybe 6 to 8,
12 maybe 9 inches.

13 MR. VALENTINE: It's a little more
14 than that. It's so that when the vehicles
15 rolled in, the water would run out under the
16 doors in the front. So it's imperceptible
17 until you start building and using a plumb
18 bob.

19 MEMBER DETTMAN: In addition to
20 the structural characteristics of the building
21 being built as a firehouse and the cost that
22 it would take to effectively convert it to a

1 residential use, I'm wondering if there is any
2 other characteristics of the property that
3 would prevent you of converting it to a
4 residential use, such as the provision of
5 parking, recreation space, historic
6 constraints?

7 MR. VALENTINE: It is a historic
8 property. I don't remember whether or not
9 they made it into one of the landmark
10 properties or not. When all of that was
11 happening, I was not in favor of historical
12 areas there. And it's -- and let me also
13 state that I live around the corner. It is my
14 neighborhood.

15 And because I -- it -- I'm not
16 opposed to living in an Historic District.
17 I'm opposed to having someone, and I apologize
18 to any people present that may be this person,
19 that doesn't live in my neighborhood dictate
20 to me what we can do in the neighborhood. And
21 that was my biggest concern.

22 I guess this was back in the late

1 '70s or early '80s when we started the whole
2 historic preservation thing. That was, to me,
3 the reason why I voted against it. But I was
4 -- the vote came out, I believe it was, 74 and
5 1 against and I was the one against. But that
6 was only because I felt as though we needed
7 more representation in the Historic District
8 and designation process.

9 I don't want the person next door
10 to me to paint their house cobalt blue, so I
11 can see the reason why you would want an
12 Historic District for something like that.
13 But I just felt as though -- but, yes, in
14 answer to your question, there are some
15 constraints and I have been told that I can't
16 put a -- you can't put a sign on it.

17 And if you do, it has got to be a
18 certain type of sign. It has got to be a
19 period sign if the house was -- home was --

20 CHAIRPERSON MILLER: I think what
21 Mr. Dettman is trying to get at is, you know,
22 are there historical constraints or others

1 that make it difficult to convert this
2 building for residential use?

3 MR. VALENTINE: Oh, oh, and
4 actually, I'll address that, too. And that is
5 that we were told about the fire escapes. If
6 you're going to have a certain type of
7 residence on the second floor, you needed the
8 fire escapes. And I remember, we couldn't
9 quite get with them to figure out how to do
10 it, because they said you can't put it on the
11 front. And then they were telling us that you
12 can't put it on the side.

13 And if you can't put it on the
14 front and on the side and because it is semi-
15 attached, we were figuring out well, where can
16 you put it? So yes, there were some things
17 with respect to that.

18 I believe that we could have
19 gotten through them, but it would have been a
20 process. So instead of just having something
21 that is clear cut that you can do, no, there
22 was another level of paperwork that was going

1 to be needed in order to do anything in there.

2 And again, that was one of the
3 concerns when we were talking about having it
4 as a residence. And they were talking about
5 not condos, because we couldn't see a person
6 living in the, what we call, 217 side on the
7 lower level, because there would be no
8 windows. Absolutely no windows for someone
9 like that.

10 So therefore, the first floor
11 could have only been one condo and we would
12 have had to get permission to cut holes for
13 additional windows in the walls, which would
14 have been another expense.

15 MR. TOOROCK: May I say also that
16 the back and side yards are not really
17 suitable for residential use. There is a
18 small back courtyard area. It is sunk about
19 7 feet below the level of the back alley and
20 it is directly against the back alley. So
21 when some -- when a car drives by there, you
22 know, it kind of spews dust and stuff into the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 alley, which is probably, you know, at most 10
2 or 12 feet for that back courtyard.

3 And the side yard has about a 7
4 foot wall maybe on it. So the thing we are
5 describing as an alley is actually a side yard
6 of this property. It belongs to this
7 property. But again, for a residence, if
8 that's where you can go is walk out your door
9 or look out your window and see a 7 foot wall,
10 although there are many people that live in
11 those conditions, I'm not sure anyone is going
12 to buy a 1,000 square foot dwelling, if that's
13 their only egress from the building.

14 CHAIRPERSON MILLER: Okay. So
15 does that above cover it for you with respect
16 to, you know, what's exceptional about the
17 property and that leads to practical
18 difficulty, not practical difficulty, undue
19 hardship in converting it to a residence?

20 MR. TOOROCK: If I may, there is
21 one more --

22 CHAIRPERSON MILLER: Um-hum, okay.

1 MR. TOOROCK: -- thing. And I
2 apologize. In my diligence to chop things up,
3 I have a case for the building on the corner,
4 which is the corner of M Street, N.W. and New
5 Jersey Avenue. And they had applied for a use
6 variance for a business as well. And I even
7 chopped the date off this.

8 So I think I can get the date from
9 the next case. No, I apologize. But I just
10 want to, if I could, present their -- kind of
11 the closing statement of a person at the time,
12 Mr. Sockwell, and his reason for supporting
13 their variance for that building, because I
14 feel it's very relevant to the variance being
15 applied for for the first house. And it does
16 address some of these issues.

17 And I'm reading from this.
18 "Really, it's very close to New York Avenue
19 and suffers the impacts from the traffic and
20 so forth. And with the car repair shop where
21 the old fire station was and so forth, I can
22 see, to my mind, this is not really

1 particularly suitable for residential use,
2 particularly families with children."

3 And then I go on "I don't think it
4 in any way interferes with the intent of the
5 Zoning Regulations."

6 If I might add -- and then this is
7 Mr. Sockwell. "If I might add one other
8 thing, normally, when a C Zone is mapped along
9 the street, it will include all the properties
10 that would be of similar character. In this
11 case, you've got the fire station just one
12 other residential property between yourself
13 and the commercial spaces to the east.

14 And the unfortunate thing is
15 perhaps 50 or 60 years ago it was in much
16 lower activity area, but today it certain does
17 not function for its original intended
18 purpose. More than anything, it actually fits
19 more within the context of a commercial
20 environment at that particular location.
21 Being the corner building that doesn't
22 residential environment which is contiguous

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 along the New Jersey Ave. side."

2 And I feel that applies especially
3 to us. If you look at the report, which I
4 submitted, which I think I left at my chair,
5 oh, no, I have a copy, I have included in
6 there a map on -- I'm sorry I didn't number
7 the pages. It has been a while since I did a
8 book report.

9 There is a map in every copy
10 except mine, of course, for convenience, that
11 shows the block and shows the use of all the
12 commercial spaces along that block. And that
13 there is, in fact, only two of the -- although
14 it is all Zoned R-4, only two of the buildings
15 actually have residents in them. Everything
16 else is, in fact, now being used for
17 commercial use along the block.

18 One of the residential buildings
19 actually has an architecture firm downstairs,
20 so it's mixed use and only one has one
21 resident. And at the end of my report is a
22 letter from that resident, who actually has an

1 adjoining wall, in support of our application.

2 CHAIRPERSON MILLER: Do you have a
3 signed letter from that person? I think you
4 submitted a letter.

5 MR. TOOROCK: I apologize. I
6 don't have the signed letter with me.

7 CHAIRPERSON MILLER: Okay.

8 MR. TOOROCK: I wouldn't purport
9 that he made this letter without being able to
10 back it up and I would be happy to get a
11 signed copy. I know that I have one, which I
12 had brought to the Mount Vernon Square
13 Neighborhood Association. I believe I left it
14 with them.

15 CHAIRPERSON MILLER: Okay. I
16 think you had indicated in your pleading that
17 you were going to give us a signed copy,
18 that's why I'm asking.

19 MR. TOOROCK: Yes, I apologize.

20 CHAIRPERSON MILLER: Okay.

21 MR. TOOROCK: I didn't obtain
22 another one.

1 MEMBER DETTMAN: You said of the
2 two residential properties that show up on the
3 map that is in your filing, the one that you
4 share a common division wall with is the one
5 that has the architecture firm?

6 MR. TOOROCK: No, sir, that's the
7 one that has a single resident, Terrence
8 McPartland, and he is the person who submitted
9 the letter.

10 MEMBER DETTMAN: Okay. So it's
11 the other residential property that has the
12 architecture firm in it?

13 MR. TOOROCK: Yes, sir.

14 MEMBER DETTMAN: Okay. Thank you.

15 CHAIRPERSON MILLER: You did a
16 great job with all this, these maps and
17 everything.

18 MR. TOOROCK: Thank you.

19 CHAIRPERSON MILLER: Okay. So I'm
20 looking at this one now that Mr. Dettman was
21 referring to. It's just very helpful to see
22 where the market is and to see where the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 residence is and to see where the alley is.
2 How many commercial businesses are on this
3 block? You said all but two are --

4 MR. TOOROCK: Yes, there is also
5 another picture, actually, right below that
6 map. There is a picture which kind of shows
7 the nature of the block. We have -- an I'll
8 show the picture just for clarification.

9 CHAIRPERSON MILLER: That's what I
10 was looking at that I think it's really --
11 it's very helpful.

12 MR. TOOROCK: Yes. So the
13 building that we can see actually in the
14 immediate left, which we can hardly see, is
15 the building from which I read from that case.
16 So that has a use variance as commercial. And
17 I believe it is the entire building that has
18 the variance.

19 CHAIRPERSON MILLER: The one
20 that's next to the residence that's next to
21 you?

22 MR. TOOROCK: That's correct.

1 CHAIRPERSON MILLER: Okay.

2 MR. TOOROCK: So that sandwiches
3 that single residence which is Terrence
4 McPartland's residence. He is a tenant. He
5 is not the owner. I was unable to reach the
6 owner of the building for his consensus. I
7 was hoping to get his backing. I don't
8 believe he has any negative feelings towards
9 our application. However, I can't also say
10 that he has definitive positive, because I
11 haven't gotten that from him.

12 So then you have Terrence
13 McPartland's house, which is the grey
14 building, which as you can see shares a wall
15 with the gym, with 219 M Street, the
16 firehouse. You can then see the side yard
17 which we call side yard or alley, although at
18 the very back of that, if you look at the map
19 above, on the corner was the old stable
20 building.

21 So there is, in fact, where we
22 have this map with the green and the blue,

1 there is actually a wall that goes from the
2 back of Ms. Keys' store all the way to that
3 stable. And that's what I was talking about
4 with the 7 foot wall in the side yard.

5 So that side yard is, in effect,
6 sunken from the back of the property. The
7 property grade, as I mentioned, is obviously
8 on the curb in the front. However, in the
9 back at the alley side, it is maybe 7 feet,
10 about 7 feet below grade.

11 You know, so it sinks in. And as
12 you walk down the alley, you have Ms. Keys'
13 store and then you have a wall that gets
14 progressively higher on your right hand side
15 with no exit from that, short of climbing over
16 the wall.

17 Then we have Ms. Keys' food store,
18 the B&M Food Store which can be seen with the
19 kind of yellowish, and I apologize if my
20 printer didn't print well on your copies,
21 thing in the window and we can see the steel
22 grate door on the left hand side of the store.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Then we have a barber shop, a
2 carry out and a laundromat, which does a wash
3 and fold service as well. So it's a staffed
4 laundromat. To the right of that is the
5 building which has the architecture firm in it
6 on the -- it's a slight walk-up level. I'm
7 unsure as to whether it has a garden apartment
8 or not, but a slight walk-up level to the
9 architecture firm and I believe above that is
10 all residential. I'm not positive on that.

11 And then to the right of that,
12 which we can't see in the picture, but we can
13 see in the map is a church. And there is
14 actually a pretty large side yard for that
15 church as well.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. And do you want to address the
18 substantial detriment question to the public,
19 including neighboring properties?

20 MR. TOOROCK: Yes. I don't
21 believe that there would be substantial
22 detriment to the neighboring -- to the

1 neighborhood. I would like to first, if I
2 could, address the positive benefits and these
3 were discussed at the Mount Vernon Square
4 Neighborhood Association as well.

5 Frankly, it brings people to the
6 area. People use the businesses in the area.
7 I believe that an active property is better
8 than an inactive property, a vacant property.
9 I have to say, and I'm not sure how relevant
10 you will all find this, but I'm not a shy
11 person. And there are people who do drugs and
12 other illicit activities in the alley and I
13 tell them to leave very actively.

14 So we are very proactive in the
15 neighborhood. You know, where someone else
16 may be afraid of teenagers hanging out doing
17 drug deals, I'm not shy about telling them
18 that they don't belong. Very politely and
19 respectfully, but I tell them that they don't
20 belong.

21 On the advice and request of the
22 Mount Vernon Neighborhood Square Association,

1 when my clients go out for a jog for their
2 warmup, we actually run through the alleys, so
3 people know that there is a presence there.

4 My clients include 15 different
5 law enforcement and military agencies from the
6 FBI Washington D.C. Field Office to Department
7 of State to local and federal police officers,
8 SWAT teams, EST, fire fighters, all kinds of
9 military clients, because of the fitness --
10 the type of fitness that we provide.

11 So just having increased presence
12 is one thing, having increased police
13 presence, I think, is another positive benefit
14 to the gym. Terrence McPartland had issue
15 with the last business to occupy the place to
16 the fact that he moved out because of the
17 noise. And Ray had to actually pay his rent
18 back to his landlord.

19 So if you're sensitive to noise,
20 certainly that's apparent when he moves out
21 because of the last business. He has moved
22 back and written an endorsement letter for our

1 business. So I think that that speaks
2 strongly to the level of noise that is
3 generated certainly through the adjoining
4 wall.

5 So I think that the business is
6 very positive. Most of our clients do either
7 run, bike or take the Metro. Some of them
8 park. We have no problem with the parking.
9 If anything, people from the carry out, from
10 Ms. Keys' store, from the barbershop park and
11 block us in and we don't complain. We're very
12 neighborly about it.

13 If one of my clients has to get
14 out, I walk in the barbershop I say hey, does
15 someone have a blue Toyota, they come out and
16 move it. We don't give anybody any hassle.
17 I don't want to impact their businesses
18 negatively and say hey, you can't park here.
19 You know, I could get every car that parked
20 out there towed and that would be, obviously,
21 very negative for their businesses. People
22 would stop using their businesses. That's

1 obviously not our intent.

2 I also have offered all of the
3 businesses, including Ms. Keys, a free
4 membership in the gym. This was only about a
5 month and a half, two months ago. So after
6 the other proceedings, but I included
7 everybody in that offer. I have not, as of
8 yet, had a neighborhood open house. I have
9 not, as of yet, done things like -- well, I
10 can't say I haven't done youth mentoring
11 programs.

12 I had three high school students
13 in the school for a week and they actually
14 received school credit, because I teach a
15 discipline called Parkour and actually had to
16 study it and write a report on it and they did
17 receive school credit for that.

18 However, without a business
19 license, there is a limit to the number of
20 kids I'm going to bring in. I have spoken
21 with the DC. There is a special police office
22 that deals with youth offenders and I have

1 visited them and spoken with them and started
2 the wheels turning in saying hey, I'll take
3 the worst kids.

4 I'll bring them in. I'll beat
5 them up in a workout and they will gain some
6 self-respect and they will gain the other
7 benefits that one gains from martial arts
8 through training with me. I have trained in
9 martial arts for 10 years and I believe there
10 are positive benefits to that. And I teach
11 those benefits.

12 One of the affidavits at the ANC
13 meeting, although I don't believe it made it
14 on record, was from a client of mine who is
15 also a resident of the neighborhood who said,
16 you know what, when kids come by, Mark doesn't
17 shoe them away, he goes out and talks to them.
18 He invites them in. He says hey, how you
19 doing?

20 You know, I have pictures of the
21 kids in the neighborhood, you know, standing
22 around watching me change the oil in my

1 motorcycle and actually hand them a wrench and
2 having them help, you know. So these things
3 to me are very important as to the effect and
4 the impact on the neighborhood is how you
5 treat people.

6 It's very important. It's, in
7 fact, perhaps the only thing that matters,
8 because anything else is -- the way you treat
9 people is what comes through. That's what
10 affects them, that's what impacts them. So
11 even the -- there are people who come by
12 probably weekly asking for money or other
13 things and I treat them very respectfully.

14 I ask them not to ask my customers
15 for money, but I do it in a way that preserves
16 their dignity and let's them know that this is
17 an active business and this is not a place to
18 act like that. However, I'm not looking down
19 on them for their request. I'm simply asking
20 that they don't do that in my place of
21 business.

22 CHAIRPERSON MILLER: Okay. Let me

1 interrupt you if I can.

2 MR. TOOROCK: Yes.

3 CHAIRPERSON MILLER: Because I
4 mean, it's clear you do a lot of really good
5 things, you know. And so I don't think that's
6 at issue. And I think, you know, part of your
7 argument is you do add this vitality and
8 security to the neighborhood and it's a
9 neighborhood friendly business in general.

10 I think the one issue that is on
11 the table, I guess, is is there a negative
12 impact on Ms. Keys' property from the noise
13 and the dropping of weights is what he heard
14 or, you know, things that would cause cracking
15 and --

16 MR. TOOROCK: Yes, yes.

17 CHAIRPERSON MILLER: Can you
18 address that?

19 MR. TOOROCK: Yes, I would like to
20 address that.

21 CHAIRPERSON MILLER: Okay.

22 MR. TOOROCK: Um, at some point,

1 Ms. Keys came over and said that there was
2 vibrations and noise. She came into our gym
3 and said, you know, there is vibrations and my
4 walls are cracking from you guys dropping
5 weights or something it's not a quote, it's a
6 paraphrase, if you will.

7 And we said okay, I'm sorry about
8 that, let's see what we can do about it. And
9 I would say probably four times Ray got on his
10 cell phone and stood in Ms. Keys' store and I
11 got on my cell phone and stood in the gym and
12 dropped the weights the way that we drop them
13 in the class.

14 I need to say that we have \$5,000
15 worth of rubber flooring, which is actually,
16 let's see, 100 times -- it's about 10,000
17 pounds worth of rubber flooring that was
18 delivered on four pallets to my old location.
19 So three-quarter inch thick horse stall mats
20 that cover the entire floor of the large room,
21 almost the entire floor of the large room.

22 The weight plates are made of

1 rubber. They are a special plate called a
2 bumper plate which is meant to absorb impact
3 when it is dropped. On top of that, we have,
4 since Ms. Keys' complaints started,
5 implemented policies where we actually lay
6 down two additional mats and we have signs all
7 over the gym that say weights must be dropped
8 on double stacked green mats.

9 In addition to that, and there is
10 a vibration that goes through, let me start by
11 saying that very clearly. There is a
12 vibration that goes through. I don't believe
13 there is actual noise that goes through.
14 However, there is something that can be felt
15 through the ground, so -- when certain
16 exercises are done.

17 I think it's important to talk
18 about the frequency of these as well however.
19 In Ms. Keys' case for the court, there was a
20 complaint from one of her customers that it
21 ruined her shopping experience. I need to say
22 that in Ms. Keys' store, there is a plate of

1 plexiglass, so you don't actually go into the
2 store, you go into the foyer and you ask for
3 your item and it is handed to you through a
4 window.

5 So I don't feel that it is a place
6 where a shopping experience would be 20
7 minutes or longer unless you are there on
8 social business, which is certainly within the
9 right of the store. Ms. Keys is a
10 neighborhood figure and she should have people
11 in there and they should be comfortable in
12 there.

13 However, the exercises that we do
14 that cause these vibrations, in the first
15 place, we don't even run classes for half of
16 the times where the alleged noise is taking
17 place, which is a little bit disturbing to me.
18 However, we don't do those exercises all the
19 time either. One of the exercises which
20 caused the greatest distress, we have done one
21 time since her complaint six months ago and
22 that was a flipping of a large tractor tire

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and yeah, that made a lot of noise and that
2 made a rumble. And we cut it out all but
3 entirely. We have done it once since then at
4 a time when, I don't believe Ms. Keys was in
5 the store.

6 So even when we all are dropping
7 weights, the weights aren't dropped all the
8 time. They are not used in the workout every
9 day. They are probably used three times a
10 week. When they are used three times a week,
11 it would be 6:30 in the morning, 8:00 in the
12 morning, both times when Ms. Keys isn't there,
13 then any time between 11:00 and 2:00 when we
14 typically only have two to three clients. So
15 maybe three clients are dropping this weight
16 five or six times and then at 5:00 p.m. and
17 6:00 p.m., very busy, and weights would be
18 dropped with some frequency.

19 So that's the only time really
20 when I would say there is a frequency to the
21 weights being dropped that causes this
22 vibration.

1 In an effort to alleviate the
2 distressed caused to Ms. Keys from this, not
3 only have we implemented the green mat policy,
4 I paid \$500 to cut a channel in the concrete
5 between the two buildings. So that side yard
6 now, the concrete is disjoined from the two
7 buildings. The vibration still travels
8 through the dirt. It is less than it was
9 before cutting the concrete. Obviously, not
10 having the solid concrete between the two
11 buildings.

12 So steps have been taken to
13 alleviate this. We also recently hired Vince
14 Ford who is a structural engineer and we have
15 agreed to comply with his recommendations.
16 His recommendation was that we plaster the
17 cracks on Ms. Keys' wall. Ray is good at
18 plastering, so he is going to do that. He has
19 agreed to do that.

20 After we plaster the cracks on the
21 wall, Mr. Ford will come in and monitor as a
22 professional whether more cracks are created.

1 I personally don't feel that the cracks that
2 exist were caused by us. So this will be a
3 good test, because if more cracks happen --
4 well, frankly, we would have to stop dropping
5 weights, because her property sits even closer
6 to New York Avenue than ours does and probably
7 10,000 18 wheelers go down that street a day,
8 they cause quite a rumble themselves.

9 So I don't think that some
10 dropping of some weights in recent times can
11 be blamed for cracks in the walls which I
12 think Ray would testify when the first time I
13 looked at the cracks, there was paint in the
14 cracks. So they didn't appear to me to be new
15 cracks.

16 You know, obviously, some distress
17 has been caused to Ms. Keys. I have made
18 attempts to make amends. I have agreed to do
19 whatever Vince Ford recommends and that's the
20 plastering, the remonitoring. We are actually
21 going to move most weight activities into that
22 small back room. We are waiting for Ray to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 clear some stuff out.

2 That will adversely impact my
3 business. However, I'm willing to do that in
4 light of trying to be a good neighbor to Ms.
5 Keys. And I have done several other things to
6 be a good neighbor to Ms. Keys.

7 The first, I would like to point
8 out back in this picture, and I do feel this
9 is relevant, I hope you agree, because I --
10 again, being a neighbor is what this is about.
11 The car immediately in front of my side yard
12 is Ms. Keys. I don't park my car in my own
13 prime space and, in fact, have kicked my own
14 customers out of that space to preserve it for
15 Ms. Keys.

16 So that has been done every single
17 day throughout the court case, throughout her
18 complaints, throughout her storming in when
19 there was a news crew filming my gym and
20 making audible complaints to a news crew in an
21 effort to, frankly, hurt my business. Despite
22 that --

1 CHAIRPERSON MILLER: Okay. We
2 don't want to get too far off course.

3 MR. TOOROCK: Okay.

4 CHAIRPERSON MILLER: We really
5 want to focus, you know, is there really an
6 adverse impact, you know. And we're thinking,
7 you know, if we granted the relief, would
8 there be any conditions we would want to put
9 on it. You know, when you are talking about
10 moving the weight activity, is it going to be
11 closer to Mr. McPartland's side?

12 MR. TOOROCK: No, it would
13 actually be further away from Mr. McPartland
14 as well.

15 CHAIRPERSON MILLER: Okay.

16 MR. TOOROCK: And what Vince Ford
17 -- his preliminary suggestion, again we don't
18 have his report yet, was that weights up to 90
19 pounds could be dropped in the gym area and
20 weights heavier than 90 pounds would only be
21 dropped in the back room, because it -- you
22 know, and I can quote him and I hope this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 makes it in his report.

2 He said "The vibrations are minor"
3 and that's a direct quote from him, which, you
4 know, hopefully will be backed by his report.

5 CHAIRPERSON MILLER: When is his
6 report coming to you?

7 MR. VALENTINE: Well, I was hoping
8 that he would have given it to us within a
9 week of when he did it, but we haven't gotten
10 it yet. I called him yesterday. I haven't
11 received a call back from him. He did say
12 that he would give us a full and complete
13 report, plus he would also monitor what was
14 going on.

15 The main thing is if you look at
16 this map, what he was talking about was moving
17 the heavier weights back to this rear room
18 back here. And that takes it farther away
19 from Ms. Keys' building. And when we did drop
20 the weights back there, there was a
21 significant difference in the vibration, so --

22 CHAIRPERSON MILLER: Do you know

1 how far vibrations travel?

2 MR. VALENTINE: The -- in asking--
3 talking to Mr. Ford, we were -- he was
4 surprised that they traveled that far through
5 the ground, particularly when the concrete
6 slab had been decoupled. But he stated that
7 what essentially could be happening is because
8 of the density of the ground that that ground
9 just travels, the vibrations actually just
10 travel through it, even though it's not rock,
11 it has very -- it's very dense. It's not
12 loose or disturbed soil at all. So again, he
13 was surprised at just how much the impact
14 traveled through that.

15 CHAIRPERSON MILLER: The weight
16 dropping that's on the first floor?

17 MR. VALENTINE: That's right.

18 CHAIRPERSON MILLER: That's where
19 all the activity is on the first floor? Okay.

20 VICE CHAIRMAN LOUD: Just a few
21 quick questions on this point, Madam Chair.
22 Just so I'm really clear on what we are

1 talking about now, we're talking about noise
2 that comes from the vibration of dropping
3 weights only right now, right?

4 MR. TOOROCK: If I may, personally
5 I can attest that I have felt vibrations while
6 standing in Ms. Keys' store. I cannot attest
7 that I hear a noise.

8 VICE CHAIRMAN LOUD: No, no, no.
9 I'm just asking. I'm just trying to find out
10 what our discussion is right now. We are
11 essentially talking about vibrations that come
12 from dropping the weights?

13 MR. TOOROCK: Yes, yes, that's
14 correct.

15 VICE CHAIRMAN LOUD: Okay. And as
16 to those vibrations, your testimony is that it
17 only happens from -- at 6:30, 8:00 a.m. and
18 then from 11:00 to 2:00, roughly?

19 MR. TOOROCK: And then 5:00 and
20 6:00 p.m.

21 VICE CHAIRMAN LOUD: 5:00 and
22 6:00. And is this every day or is it five

1 days a week or what's the frequency?

2 MR. TOOROCK: Classes are held
3 five days a week. I would say that on weights
4 above 90 pounds, which is what Mr. Ford felt
5 the vibrations needed to be negated was any
6 weight over 90 pounds. And I should preface
7 that even that weight when we did the test
8 with Mr. Ford, that's me holding 125 pounds
9 over my head at 7 feet and launching it,
10 essentially.

11 So it's not a very frequent time
12 that someone is picking up much more than that
13 and dropping it to create those vibrations.
14 I would say it's three days a week or less
15 that we use weights that are that heavy or
16 heavier. And also not all clients drop the
17 weights. So we're not talking about something
18 that has 100 percent frequency.

19 If I have a day where there is
20 weight training, it doesn't mean that every
21 person is dropping the weight that's over 90
22 pounds. Some people pick up a weight that is

1 300 pounds --

2 VICE CHAIRMAN LOUD: Okay. Let me
3 slow you down.

4 MR. TOOROCK: -- and set it down.

5 VICE CHAIRMAN LOUD: If I can, let
6 me slow you down. This is all sort of like
7 this for you. It's like right in the palm of
8 your hand. But for me, I'm trying to get a
9 handle on just the basic facts. And then if
10 I'm unclear, then I'll ask you some follow-up
11 questions on it.

12 But basically we are talking about
13 three days a week or less for the weights that
14 are over 125 pounds?

15 MR. TOOROCK: Over 90 pounds.
16 Yes, sir.

17 VICE CHAIRMAN LOUD: Over 90,
18 okay. And then even that may last what 5 or
19 10 minutes, you are saying?

20 MR. TOOROCK: Typically our
21 workouts are 15 minutes or less, because there
22 is a warmup period, which includes jogging,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pull-ups, push-ups.

2 VICE CHAIRMAN LOUD: Okay.

3 MR. TOOROCK: There is skill
4 training.

5 VICE CHAIRMAN LOUD: Okay. Okay.

6 MR. TOOROCK: Oh, sorry.

7 VICE CHAIRMAN LOUD: So roughly
8 6:00 a.m., 8:00 a.m., 11:00 to 2:00 and then
9 5:00 to 6:00 and three days a week, that's
10 probably about for 15 minute periods during
11 those times?

12 MR. TOOROCK: The period may be a
13 little longer due to the fact that if I have
14 six clients, they may overlap let's say a 25
15 minute period that they are actually in the
16 workout during that hour.

17 VICE CHAIRMAN LOUD: Let me ask
18 this question.

19 MR. TOOROCK: Yes.

20 VICE CHAIRMAN LOUD: A quick
21 question for you.

22 MR. TOOROCK: Yes, sir.

1 VICE CHAIRMAN LOUD: I lift
2 weights and, obviously, I'm not near the level
3 that you are talking about now, because where
4 I lift weights, we don't drop them on the
5 floor at all. Why do the weights have to be
6 dropped on the floor?

7 MR. TOOROCK: Well, the type of
8 exercise we do it is fairly unique and this is
9 why it is so attractive to military personnel
10 and fire fighters in its proven effectiveness.
11 And I'll try to make this as brief as I can.
12 For exercise to be effective, it has to strain
13 your muscles. And to strain your muscles, the
14 faster and heavier thing that you can pick up,
15 the better.

16 So not only is the quantity of
17 weight, but the speed at which you lift that
18 weight and the level of exhaustion to which
19 you lift that weight. So this is -- it is
20 crucial to my business, because my business is
21 not a commercial gym which uses machines. It
22 is not an aerobics studio with pink dumbbells,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 no offense to anyone who goes to an aerobics
2 studio and uses pink dumbbells. We have them.

3 But the methodologies that we use
4 and some of our clients -- we have a girl who
5 is ranked sixth in the country in judo. We
6 have elite SWAT and Hostage Rescue Team
7 members who are extremely strong and the
8 method that they use to get there involves
9 picking up such a large amount of weight so
10 rapidly that at the end of your use of that
11 weight, you may be exhausted to the point
12 where you can't set it down gently.

13 VICE CHAIRMAN LOUD: Okay. So
14 bottom line, there would be no alternative way
15 to mitigate from having to drop the weights on
16 the ground for the specific types of body
17 building and muscle building exercises that
18 you are talking about?

19 MR. TOOROCK: That's correct.

20 VICE CHAIRMAN LOUD: All right.

21 MR. TOOROCK: Stopping dropping
22 weights would adversely affect my business, so

1 that's why we're looking to build that studio
2 in the back for heavier weights where we will
3 actually build a suspended floor or again
4 whatever it takes. We have agreed to comply
5 with the recommendations of Vince Ford to
6 mitigate the vibration, stopping the cause of
7 the vibration, unfortunately, would be
8 stopping my business, in effect.

9 VICE CHAIRMAN LOUD: Okay. Now,
10 have you discussed any of Mr. Ford's
11 preliminary recommendations with Ms. Keys?

12 MR. TOOROCK: We have. And when I
13 say we, Ray's relationship with Ms. Keys is
14 much more longstanding than mine, and I have
15 to say much more favorable. Ms. Keys has been
16 an opponent of my business and, therefore, my
17 dealings with her have been relatively brief.

18 I must say to my end, respectful
19 and courteous, but relatively brief. We have
20 done things throughout --

21 VICE CHAIRMAN LOUD: We can
22 follow-up with Ms. Keys, I guess, in greater

1 detail, but just from you, which parts of her
2 -- of this report is it your recollection that
3 you have discussed with her?

4 MR. TOOROCK: Well, I know that we
5 were with the engineer when he suggested the
6 patching of the walls. So all three of us --
7 actually, there was a fourth person with the
8 engineer. When we discussed patching the
9 walls, I believe we were all together for
10 that. And I believe that since then Ray has
11 talked about when he would be able to come and
12 do that plastering, so that we could begin the
13 next phase, which would be the monitoring
14 process.

15 VICE CHAIRMAN LOUD: Okay. And
16 just in terms of Mr. Ford's report, it's your
17 understanding he will be giving you a written
18 report, at some point?

19 MR. TOOROCK: Yeah.

20 VICE CHAIRMAN LOUD: Okay.

21 MR. TOOROCK: Yes.

22 VICE CHAIRMAN LOUD: And do you

1 know if he used any sound monitoring equipment
2 or any technology to perform his tests?

3 MR. TOOROCK: I'm fairly certain
4 that he did not.

5 VICE CHAIRMAN LOUD: And then one
6 final question. As a part of the process to
7 get your C of O for the fitness center, does
8 DCRA either require you to make a statement
9 regarding noise and/or sound levels or do they
10 come out, which is probably not likely, and
11 monitor for noise?

12 In other words, is that an element
13 of the vetting process?

14 MR. TOOROCK: It is not, from what
15 I can tell from the items. Again, I mentioned
16 I have done several of the checklist items.
17 I don't believe there is any actual
18 inspection. Again, dropping the weights is
19 fairly unique to our place. We fall under the
20 same thing as a health spa. We fall under the
21 same thing as a ballet studio. We actually
22 run Yoga classes upstairs. We fall under the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 same thing as a Yoga studio.

2 So I don't think that noise and
3 vibration if you go to a Gold's Gym is -- I
4 don't think it's part of a typical fitness
5 center, so I don't think that's considered.

6 VICE CHAIRMAN LOUD: All right.
7 Thank you.

8 CHAIRPERSON MILLER: Any other
9 questions? Yes?

10 MEMBER DETTMAN: I have just two
11 questions. And the first one is actually
12 going to seem a little bit flippant and I
13 apologize. But I did -- I have never heard of
14 Parkour before and so I had to Google it. And
15 seeing that you jump over things and climb
16 things and, you know, sort of like an obstacle
17 course.

18 And so in terms of I understand
19 that you are using the neighborhood a little
20 bit for your jogs and your workouts, but you
21 are not jumping over anyone's fences or
22 anything, are you?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TOOROCK: No, we don't go on
2 anybody's personal property. We have used the
3 school, the front steps at the school of
4 Dunbar. We crawl up and down those and there
5 is also a park with sort of a pyramid
6 structure that's on New Jersey Avenue next to
7 the fire station and we have used those
8 premises as well for -- yes, essentially,
9 using it as sort of an obstacle course or just
10 using the outdoors as exercise equipment.

11 MEMBER DETTMAN: Um-hum.

12 MR. TOOROCK: Stepping up on a
13 wall, grabbing a railing, doing push-ups
14 outdoors, things like that.

15 MEMBER DETTMAN: Okay. I didn't
16 think you would be jumping anyone's fences.
17 The same question is to what extent is the
18 public space in front of your building used?
19 I saw -- you had mentioned that it is -- that
20 there is parking there. I saw in Mrs. Keys'
21 filing that at times maybe some equipment,
22 some workout equipment is moved outdoors. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 so I'm just trying to get a sense of the
2 extent to which that public space is used for
3 your business.

4 MR. TOOROCK: Sure. And I would
5 like to answer that in two ways sort of. One
6 is that we want to -- once we have our
7 business license, and I say this, because I
8 feel it is pertinent, our intention is to open
9 those front doors fully all the time and have
10 it be a very open place that is open to the
11 neighborhood, that people see a positive thing
12 happening in there. That's our intention.

13 The public space, I have to say
14 there is only one time that I can recall, and
15 there are pictures on my website that will
16 document the date, where we moved two rowing
17 machines out into that space and two women
18 used these rowing machines and rowers are the
19 only machines I -- we have. As I said, we
20 don't have a lot of that typical gym
21 equipment. So there is only one time that I
22 can recall that the rowing machines were moved

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 out there.

2 People do run out there and we
3 have also probably, I want to say three or
4 four times, done pushups and kind of
5 calisthenic exercises out there. So to that
6 extent, it's not used very frequently at all.
7 If it were permissible, then I would like to
8 use it more. I think people exercising
9 outside is a great thing. I'm not against
10 that.

11 So if it were permissible and it
12 were seen -- again, we want to talk to the ANC
13 and Mount Vernon Square. If people don't see
14 that as a negative, I would love to have
15 people exercising outside and have it be
16 related to my business. That's -- I should
17 hope for that.

18 MEMBER DETTMAN: Aside from the
19 parking, just looking at your use of the
20 public space for exercise purposes, have you
21 had to ever take any precautions or you are
22 careful that it doesn't obstruct the public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 space in moving pedestrians up and down New
2 York Avenue and M Street?

3 MR. TOOROCK: Yes. I have to say
4 that I think that there has been some
5 unclarity. Is that a word? Some -- it hasn't
6 been entirely clear what exactly is public
7 space in front of the firehouse. I've been
8 told by some parties that the public space
9 begins at the firehouse door, which doesn't
10 seem correct to me.

11 You know, looking at this, you can
12 see the side yard. You can see that there is
13 a fair amount of space. If you look at the
14 building to the left, the residence, there is
15 a fence that you can see. It's just a
16 slightly lighter shade in front of that. I
17 would believe that probably the property of
18 the firehouse could continue right across that
19 line and that perhaps some of that is not
20 public space.

21 To the extent that it is public
22 space, we were -- we maintain the sidewalk.

1 We put down ice melt, you know, and our
2 clients are very respectful. When they go out
3 for a run, it's not like a group of Marines
4 hooting and hollering. It's people going for
5 a jog.

6 They don't get in the way of other
7 people. Again, we want to be welcomed in the
8 neighborhood. So, you know, that's adhered to
9 pretty strictly and almost at all times, there
10 is an instructor that goes out with the group
11 for a jog. Sometimes we do send them out on
12 their own. You know, in the afternoon it's
13 very busy. There is school kids there. There
14 is pedestrians there. And we, you know, play
15 along.

16 MEMBER WALKER: Mr. Toorock, when
17 did you engage Mr. Ford or maybe it was Mr.
18 Valentine? Who engaged Mr. Ford, I guess, is
19 first question.

20 MR. VALENTINE: Madam Chairman, I
21 engaged Mr. Ford.

22 CHAIRPERSON MILLER: Ms. Walker is

1 asking you the question. Actually, I don't
2 know if you can tell.

3 MR. VALENTINE: I'm sorry?

4 CHAIRPERSON MILLER: Ms. Walker is
5 actually asking you the question.

6 MR. VALENTINE: Oh, I'm sorry. I
7 didn't --

8 CHAIRPERSON MILLER: Okay.

9 MEMBER WALKER: And when was that?
10 When did you engage him?

11 MR. VALENTINE: I'm not sure. I
12 would have to go back to my notes. I could if
13 you gave me some time on that. I'm not
14 positive.

15 MEMBER WALKER: Just ballpark. I
16 mean, was it -- was this a recent engagement?
17 When was his evaluation of the site?

18 MR. VALENTINE: I'm guessing maybe
19 it was about a month ago. About a month ago.

20 MEMBER WALKER: And what was it
21 exactly that prompted you to engage his
22 services?

1 MR. VALENTINE: I felt as though
2 we should get a third-party, someone who would
3 come in and particularly when Ms. Keys is
4 saying that she has got property damage, what
5 better person to get than a structural
6 engineer and especially someone like Vince
7 Ford, who is one of the best known structural
8 engineers in the city, to come and assess the
9 situation.

10 And plus, I felt as though he
11 would be someone who could give us enough
12 guidance from a professional point of view
13 saying okay, here is what the problem is.
14 Here is what the solution is to it and we
15 should be able to get everyone to agree to
16 that. He is going to tell us here is what you
17 have got to do to fix this. And he is not
18 just someone who is just taking a look at
19 things and saying here is what's happening.

20 In fact, the discussion that we
21 had with him was very enlightening. He told
22 us what he thought had happened here and it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 wasn't something that he was guessing. It was
2 saying, hey, you know -- he didn't have to say
3 I've been doing this for 30 years. He said
4 I'm looking at this wall and I had to go and
5 look over here, because there is plumbing
6 here.

7 And sure enough, there was
8 plumbing there. And he said that's the reason
9 why the walls look like this in certain
10 properties that are 100 years old. And so we
11 get someone like that.

12 My feeling was that we get Vincent
13 Ford to come in, state here is the problem.
14 He said that he would also monitor it after we
15 did the fixes. And that I told Brenda that we
16 would -- I get a little --

17 MEMBER WALKER: Let me ask you
18 another question. You said that one of his
19 recommendations was to actually --

20 MR. VALENTINE: Well, let me
21 finish, if I may. I'm sorry.

22 MEMBER WALKER: Okay.

1 MR. VALENTINE: That Brenda and I
2 are friends. I apologize. That I apologize.
3 That we are friends and this has been the
4 hardest thing for me not to be able to be with
5 my friend for two months, but we're back
6 together. We're going to figure this out.
7 I'm sorry.

8 MEMBER WALKER: Let me ask Mr.
9 Toorock a question.

10 MR. VALENTINE: Yeah.

11 MEMBER WALKER: If you want to
12 just take a break.

13 MR. VALENTINE: Thank you.

14 MEMBER WALKER: I want to make
15 sure that I understand where Mr. Ford has
16 recommended that the weights be moved. You
17 said it's the back area. Is it the small area
18 on the green map, on the blue and green map
19 that projects from the rear of the structure?

20 MR. TOOROCK: Yes, that's correct.
21 There is a small separate square, sort of off
22 to the top right of the picture.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER WALKER: And so is it the
2 case that you are planning to do that? Are
3 those --

4 MR. TOOROCK: That's correct, yes.

5 MEMBER WALKER: So when is it
6 likely that that move will be complete?

7 MR. VALENTINE: Back to me. I'm
8 okay. That I told Brenda this that, one, we
9 had to be okay that whatever happened, we had
10 to make sure that she was whole on this, that
11 what I had to do -- we have that back room.
12 It has a lot of stuff in it that I have to get
13 out. I can't get it out until about two weeks
14 from now.

15 And then that would allow Mark to
16 move all of his equipment in and then we would
17 see. That has to work or otherwise we have to
18 go with another plan, which may mean more
19 isolation or whatever. But Vince felt as
20 though if we put the equipment back in that
21 room and even though it affects Mark, he can
22 still deal with it because the equipment is in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the facility and it's just that they have to
2 go to another area of the building to drop the
3 heavy weights.

4 But I told Brenda that it's
5 probably -- I probably can't do that until the
6 week following this week and so we're talking
7 about 12 more days to get that equipment out
8 of there.

9 MR. TOOROCK: If I may briefly
10 add, just that I have done some preemptive
11 work for that. I have moved some stuff out of
12 the way of that stuff into the basement, you
13 know, so it's something that we have been
14 pretty active about.

15 MEMBER WALKER: Thank you.

16 VICE CHAIRMAN LOUD: Just a real
17 quick follow-up to the Commissioner's
18 question. Is there a picture of that back
19 room in the file or -- and it could very well
20 be that I just --

21 MR. VALENTINE: A picture of that
22 room would look like any other room with a lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of stuff in it. So if you've got a basement
2 that has a lot of stuff in it, that's the
3 way --

4 VICE CHAIRMAN LOUD: Well, if
5 there was, I just wanted to mark it off in my
6 file.

7 MR. VALENTINE: Okay.

8 VICE CHAIRMAN LOUD: Since it
9 seems to be a pivotal point moving forward.

10 MR. TOOROCK: Yes, without -- I
11 apologize again for my lack of page numbers,
12 but there are three photos on this page.

13 VICE CHAIRMAN LOUD: I have that
14 exact page.

15 MR. TOOROCK: The top photo is
16 that room.

17 VICE CHAIRMAN LOUD: Thank you.
18 So this is on the main level?

19 MR. TOOROCK: That's correct.

20 VICE CHAIRMAN LOUD: The top
21 floor.

22 MR. TOOROCK: This is what we call

1 the stable. It's where the horses were
2 originally kept and brought down the alley.
3 No, sir.

4 VICE CHAIRMAN LOUD: Okay.

5 COMMISSIONER TURNBULL: No, I'm
6 looking on the out --

7 VICE CHAIRMAN LOUD: Thank you.

8 MR. TOOROCK: Oh, yes, sir. Yes,
9 sir, from the back outside --

10 COMMISSIONER TURNBULL: That's
11 from the back side, that's it?

12 MR. TOOROCK: Yes, sir, that's
13 correct.

14 COMMISSIONER TURNBULL: Okay.

15 MR. VALENTINE: And that roof that
16 you see just above that, that's Ms. Keys'
17 property there.

18 COMMISSIONER TURNBULL: Thank you,
19 Madam Chair. Let me just ask, because now Mr.
20 Ford is a structural engineer?

21 MR. TOOROCK: Yes, sir.

22 COMMISSIONER TURNBULL: But he has

1 experience with acoustics? I mean, because
2 there are separate acoustical engineers that
3 deal with vibration noise.

4 MR. VALENTINE: He is not an
5 acoustical engineer, but he said that he would
6 come through and make sure -- that he was
7 concerned, because you can feel it. He felt
8 as though like we felt and just like with Ms.
9 Keys, it doesn't take an engineer to feel the
10 vibration.

11 COMMISSIONER TURNBULL: I guess
12 what I'm saying is he is going to monitor it,
13 but there is not any devices he is putting in.
14 It's just a visual sensing? He's going to
15 come by periodically?

16 MR. VALENTINE: That's correct.
17 Well, I told him the same thing I told Ms.
18 Keys that we had to make sure that she was
19 whole.

20 COMMISSIONER TURNBULL: Right.

21 MR. VALENTINE: And I felt as
22 though we would get someone separate to do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that and plus someone who could also verify
2 that her property isn't being adversely
3 affected.

4 COMMISSIONER TURNBULL: Sure.
5 Now, you had originally in the side yard,
6 which is your side yard, you had channeled
7 along there?

8 MR. VALENTINE: That's right.

9 COMMISSIONER TURNBULL: And did I
10 understand it from the top of the street to
11 the back of this building it drops almost 7
12 feet?

13 MR. VALENTINE: That's correct.
14 If you look at Ms. Keys has a parking lot in
15 her back in the rear.

16 COMMISSIONER TURNBULL: Right.

17 MR. VALENTINE: And actually if
18 you walk down that side yard, by the time you
19 get to the end of her building, that parking
20 lot is -- I guess if I took my hand and put it
21 up about that high --

22 COMMISSIONER TURNBULL: Okay.

1 MR. VALENTINE: -- that's where --
2 but there is a parapet that goes up, oh,
3 another 3 feet, so the wall maybe might be
4 about what 10 feet high, but on the other side
5 it's only 7 feet.

6 COMMISSIONER TURNBULL: Right.
7 Now, you don't have the final recommendations
8 from Mr. Ford, but you -- is it your
9 understanding he may be asking you for like a
10 raised platform floor or some kind of springs
11 or something?

12 MR. TOOROCK: That's a
13 possibility. However, what we did during the
14 test is we took two more layers. I mentioned
15 that we used additional padding.

16 COMMISSIONER TURNBULL: Right.

17 MR. TOOROCK: Even without those
18 layers of additional padding, when we dropped
19 the weights in the back room, he stood in
20 actually the side yard and noticed that there
21 was a large difference in the reduction of the
22 vibration. So the suggestion was simply to

1 move the weights back there.

2 That's, again, the first step.

3 The -- what I plan to do is actually build
4 weight lifting platforms in there which have
5 again that three-quarter inch thick rubber.
6 On top of it, I'll put down a layer of the
7 padding. And this room will be used for just
8 the larger weights, which again are less
9 frequent use and sort of separate from the
10 other exercise program.

11 COMMISSIONER TURNBULL: Okay.

12 MR. TOOROCK: But yes, if the
13 further recommendation was to build a
14 decoupled floor, then we would seek to do that
15 as long as it wasn't -- you know, if this is
16 a \$30,000 floor, that's it for me
17 unfortunately. But if it's a couple thousand
18 dollar solution or something that I can build
19 myself, then I'm very happy to do that.

20 You know, as I said, if I may
21 expand just a little bit, the important thing
22 to me that we have Vince Ford and we have

1 agreed to comply with his recommendations to
2 appease the situation. And agree to appease
3 the situation. So whatever the technical cure
4 is really, that may be one step, it may be
5 two, it may be three, but whatever it is,
6 we're going to follow that path and get it
7 done. And again make Ms. Keys whole and make
8 it so that there is no disturbance to her and
9 her business.

10 COMMISSIONER TURNBULL: Sure.

11 Okay. Thank you.

12 MR. TOOROCK: Thank you.

13 CHAIRPERSON MILLER: So does that
14 mean that you will do whatever it takes, so
15 that there is absolutely no vibration to her
16 property?

17 MR. TOOROCK: I have to say along
18 those lines, absolutely no vibration is beyond
19 what I would consider reasonable for a
20 property that again has 18 wheelers going by
21 all day and other things that cause what I see
22 as almost an equivalent amount of vibration.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So --

2 CHAIRPERSON MILLER: What's it
3 mean "make her whole?" I mean, what --

4 MR. TOOROCK: It means make it so
5 that she is not disturbed by my business.
6 That there is nothing that agitates her about
7 my business, that there is nothing that makes
8 her life any worse because of my business or
9 certainly that adversely affects her business
10 because of my business.

11 MR. VALENTINE: And it's what it
12 will take to -- for us to be friends, to
13 maintain our friendship on that. So that's
14 just a personal commitment that I have.

15 CHAIRPERSON MILLER: Okay. Any
16 other questions? Ms. Keys, do you have any
17 questions related to their testimony to them?
18 Your mike.

19 MS. KEYS: Mark, how long have you
20 been in business? Have you operated business
21 in D.C.

22 MR. TOOROCK: I believe it's about

1 19 months.

2 MS. KEYS: Have you ever had a
3 license?

4 MR. TOOROCK: No, I have not.

5 MS. KEYS: Is there a reason why
6 you operating a business in D.C. without a
7 license?

8 MR. TOOROCK: Yes, because I don't
9 have a Certificate of Occupancy and that's one
10 of the steps necessary to get a license.

11 MS. KEYS: But you haven't been at
12 this location for 18 months?

13 MR. TOOROCK: No, I have not. The
14 previous location I was in had a Certificate
15 of Occupancy.

16 MS. KEYS: But did you have a
17 business license?

18 MR. TOOROCK: No, I did not.

19 MS. KEYS: So had I not taken you
20 before the courts, you probably wouldn't have
21 applied for a license now. Is that true?

22 MR. TOOROCK: That is not true.

1 In my lease with Mr. Valentine, which was
2 signed long before you took me to court, it
3 says there is no Certificate of Occupancy for
4 this building and there are actually detailed,
5 I don't know what you would say, concessions
6 for what should happen once the Certificate of
7 Occupancy is granted and once I receive my
8 business license. Is that --

9 MR. VALENTINE: That's correct.

10 MS. KEYS: But you started this
11 business in September. It was March the
12 following year that I went before the courts.

13 CHAIRPERSON MILLER: Ms. Keys, I
14 just want to help you focus a little bit.

15 MS. KEYS: Um-hum.

16 CHAIRPERSON MILLER: Because we
17 don't need to hear too much about the court,
18 because that's not relevant really to our
19 decision.

20 MS. KEYS: Okay. Okay.

21 CHAIRPERSON MILLER: Okay. We
22 want to know, though if I can go back to the

1 three prong test, what's in our regulations,
2 you know, it's exceptional, undue hardship and
3 then I think where you are most relevant is is
4 whether there is a, you know, substantial
5 detriment to you or your property.

6 MS. KEYS: As far as the weights
7 are concerned, you know, I have a great
8 concern about the weights. Due to the fact I
9 am the one who have sat in my business night
10 after night, because of the dropping of the
11 weights, the drumming to my head and I would
12 just have to sit there at nighttime.
13 Sometimes an hour, hour and a half after I
14 close my business to just sit and get myself
15 together, because of the dropping of the
16 weights.

17 Sure, for 30 years, I have
18 listened to trucks pass New York Avenue. The
19 trucks have never interfered with my business.
20 When I went to Mark --

21 CHAIRPERSON MILLER: Ms. Keys, our
22 procedures are just -- are somewhat rigid and

1 I want to be a little bit flexible, but I
2 think we should stick to the format for the
3 most part. And that is if you have questions
4 now about their testimony --

5 MS. KEYS: I have no questions
6 about the --

7 CHAIRPERSON MILLER: Okay.

8 MS. KEYS: -- testimony.

9 CHAIRPERSON MILLER: Okay. All
10 right then. In which case, what we're going
11 to do is then listen to Office of Planning and
12 after you hear Office of Planning even would
13 be better.

14 MS. KEYS: Okay.

15 CHAIRPERSON MILLER: Then you get
16 your chance to testify.

17 MS. KEYS: Okay.

18 CHAIRPERSON MILLER: So if you
19 don't want to have some questions right now,
20 we can just go to Office --

21 MS. KEYS: No, because I know they
22 have talked with Mr. Ford. Mr. Ford has been

1 over, so as far as that is concerned, no.

2 CHAIRPERSON MILLER: Okay. So we
3 will go to Office of Planning and then we'll
4 come back to you. Good morning, Mr.
5 Goldstein.

6 MR. GOLDSTEIN: Good morning,
7 Madam Chair.

8 CHAIRPERSON MILLER: Yes, sir.

9 MR. GOLDSTEIN: And Members of the
10 Board, my name is Paul Goldstein and I am a
11 Development Review Specialist with the Office
12 of Planning. The Office of Planning supports
13 the applicant's request for a use variance
14 under section 330.5 to permit a commercial
15 use, in this case, a fitness center in a
16 residential district. The subject property is
17 Lot 805 in Square, we're just saying, 555, but
18 drop the placeholder, which is improved with
19 the historic former firehouse and the property
20 is Zoned R-4.

21 Commercial fitness centers are not
22 permitted by right in an R-4 District. As a

1 result, the applicant must satisfy the three
2 part variance test. As provided in our
3 report, we believe that the proposal satisfies
4 the requirements for a use variance.

5 First, the property is unique due
6 to a confluence of factors. The existing
7 building was originally constructed as a
8 firehouse and not for residential use. It has
9 some expansive open spaces, a loom, internal
10 rear staircase leading to the second floor and
11 no apparent kitchen facilities or dedicated
12 parking spaces.

13 There is testimony that the
14 property has never been used for residential
15 purposes. Rather, it has operated
16 commercially for about 30 years. It has been
17 taxed at a commercial rate. And the former
18 firehouse is also located on what is
19 principally a commercial block. The building
20 is two doors down from a property to the west,
21 that achieved a use variance back in 2000 for
22 office use.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Abutting the property is the, as
2 you have heard the testimony, residential
3 single-family dwelling, but then to the east
4 of the property are four clear commercial
5 uses. And then one dwelling that seems to
6 have some type of office use in it that I
7 observed. I can't testify whether maybe the
8 second floor is used for residential, but it's
9 possible, as the applicant was mentioning, but
10 there did seem to be a sign for an
11 architecture office.

12 And then to the east of that is a
13 church. So the fact that the former firehouse
14 is not built for residential, it has never
15 been used as a residential and it is located
16 in what is a commercial strip on a very
17 heavily used New York Avenue stretch that is
18 leading to the I-395 turn, I would believe
19 that there are a number of factors leading to
20 an exceptional condition.

21 This exceptional condition, we
22 believe, does create an undue hardship for the

1 property to conform to that R-4 Zoning. It
2 was not intended to be used for a single
3 family dwelling or flats. It has functioned
4 as a location for commercial businesses, it
5 has an atypical layout. It lacks dedicated
6 parking. It has a historic status, which
7 would, in fact, I believe, impact its reuse in
8 remodeling it beyond, I assume, the interior
9 it would have an impact on being able to
10 adjust it.

11 And that would affect its ability
12 to conform to the R-4 District. There are
13 other possible permitted uses in an R-4. It
14 wasn't our believe that those seemed like
15 reasonable uses for this property on a
16 commercial strip. And can't testify to any
17 market demand for such things as a museum or
18 a private club of some sort, but it didn't
19 seem like that was necessarily a likely use
20 for this property.

21 And so they had given the location
22 and the state of the property, it seemed like

1 it would be an undue hardship to make the
2 owner make this a residential property,
3 layout, location and financial, I would say
4 creating undue hardship.

5 Third, given the commercial nature
6 of the block as well as the heavily traveled
7 roadway of New York Avenue, which approaches
8 the I-395 entrance -- I'm sorry, pardon me.
9 Yeah, let me continue this. As well as the
10 heavily traveled roadway of New York Avenue as
11 it approaches the I-395 entrance, which is
12 about a tenth of a mile west of the property,
13 it's not our belief that the addition of the
14 fitness center would result in a substantial
15 detriment to the public good.

16 I think there has been some
17 testimony that, in fact, it could actually add
18 to the vibrancy of the area, add to the
19 security of the area. It seems like it could
20 actually be a public benefit. There certainly
21 is going to be more testimony about its impact
22 on its one particular neighbor. This hearing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is enlightening and we're learning more as we
2 go and as the Board is too.

3 It sounds like there is a real
4 effort being made at the very least to try to
5 broach these differences and deal with them.
6 It seems like the use would certainly be good
7 for the general public. There is one
8 particular neighbor who seems to be impacted
9 by it.

10 We would support trying to bridge
11 this gulf between them. And it sounds like
12 they are on their way and perhaps the hiring
13 of the structural engineer, some kind of
14 monitoring would -- and perhaps the movement,
15 the shifting of the weights would actually be
16 something that could get at a solution to
17 their issue.

18 But more generally, it seems like
19 this would be a good use for the community.
20 It would have a public good. It seems like it
21 is bringing activity to the area. It is
22 unclear that -- or I think there might be some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 suggestion that this property may not be used
2 if it had to be converted to residential.

3 I guess you could say there could
4 be some other commercial use coming in, but it
5 seems like there are probably some issues that
6 they can get past, so that this use can
7 continue and serve the neighborhood.

8 So I would like to see what the
9 neighbor has to say here, hear what her
10 thoughts are.

11 But in conclusion, the Office of
12 Planning supports the use variance request.
13 We think it meets the three part variance
14 test. And I'm available for questions.

15 CHAIRPERSON MILLER: Thank you. I
16 just have a quick couple questions. With
17 respect to the other permitted uses in R-4, is
18 your analysis the same that is applied to the
19 residential use that the layout, the location
20 and financial reasons all would make it an
21 undue hardship for the property, for the owner
22 to use the property in those other ways that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are permitted?

2 MR. GOLDSTEIN: I would believe
3 that is the case. If theoretically enough
4 money poured into any property could be used
5 for something. But it just didn't seem
6 likely, it didn't seem reasonable for that
7 particular location, for that particular
8 layout. So our belief was that it wasn't --
9 it would be a hardship to convert it to those
10 other uses.

11 Saying that if some day there was
12 an interest in this being a residential
13 property, it could, in fact, revert to
14 residential at some point in the future. It
15 just doesn't look like it's a reasonable use
16 at this time.

17 CHAIRPERSON MILLER: So the fact
18 that it could be converted in the future to
19 one of the permitted uses, does that go to not
20 being a substantial detriment to the Zone
21 Plan?

22 MR. GOLDSTEIN: I think that

1 could, yeah. That's actually, I think, a good
2 point.

3 CHAIRPERSON MILLER: And the
4 question then it seems to me that really the
5 question here today is basically the impact on
6 the neighboring property. Do you find that
7 based on, you know, what's in the record so
8 far and we haven't heard from Ms. Keys yet,
9 but you are able to say that there is no
10 substantial detriment to the public good?

11 MR. GOLDSTEIN: Well, given that
12 the applicant seems motivated to resolve this
13 issue, I guess there is two parts. To the
14 general public, I don't think there is any
15 detriment. It only sounds like there is some
16 detriment to the neighbor. If the structural
17 engineer confirms that there are vibrations
18 that are affecting her structure, it seems
19 pretty clear.

20 I would still like to think that
21 if the applicant is motivated to resolve this
22 issue, I would say there is no substantial

1 detriment to the public good. I would like to
2 hear the testimony a bit more of the neighbor.
3 To start out, it -- you know, there is about
4 a 9 foot court between the neighbor and the
5 firehouse. I can't say that I have heard of
6 vibrations and this affecting property this
7 way, but I'm certainly hearing that there are
8 some impact, vibration impact.

9 It's unfortunate that it hasn't
10 yet been fully resolved, but it sounds like
11 there is motivation to resolve it.

12 CHAIRPERSON MILLER: Thank you.
13 Any other Board questions?

14 VICE CHAIRMAN LOUD: One quick
15 follow-up question. At Exhibit 22, the ANC
16 report, Commissioner Ward says that, repeated
17 what Mark Dixon said, there were constituents
18 that were opposed to the application, because,
19 I think, of the issue regarding Ms. Keys. Did
20 you find that there were other constituents or
21 members of the community apart from Ms. Keys
22 who were opposed to it?

1 MR. GOLDSTEIN: I haven't seen
2 anything else. The applicant indicated to me
3 that he also presented it to the Mount Vernon
4 Square Association and that I haven't seen
5 anything in the record, but that they were
6 actually supportive of it.

7 VICE CHAIRMAN LOUD: Okay.

8 MR. GOLDSTEIN: But there were
9 some questions about the vibration there, too.
10 I haven't see anything opposed. No one has
11 contacted me nor have I seen anything in the
12 record.

13 VICE CHAIRMAN LOUD: Okay.

14 MR. GOLDSTEIN: Other than, of
15 course, the neighbor here.

16 VICE CHAIRMAN LOUD: What we have.
17 Okay. Thank you.

18 CHAIRPERSON MILLER: Ms. Keys, you
19 are allowed to ask Office of Planning a
20 question if you would like. Also, I'm sorry--

21 MS. KEYS: No, go ahead.

22 CHAIRPERSON MILLER: Also, I want

1 to get a copy of the Office of Planning report
2 if you don't have one. Do you have one?

3 MS. KEYS: No.

4 CHAIRPERSON MILLER: Okay. So Ms.
5 Bailey, when you have a chance, can someone
6 give her a copy of the Office of Planning
7 report?

8 MR. TOOROCK: If I may, I brought
9 extra copies.

10 CHAIRPERSON MILLER: Oh, good.

11 MR. TOOROCK: I would be happy to
12 give her one.

13 CHAIRPERSON MILLER: He's got it.
14 Thank you.

15 MS. KEYS: Thank you.

16 CHAIRPERSON MILLER: I know you
17 can't like read it that quickly, you know, but
18 it -- do you have a question you would like to
19 ask of the Office of Planning? I think that
20 Office of Planning is most interested in
21 hearing your testimony. But this is the
22 chance for you to ask. Oh, wait a second, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know what, while you are taking a look at
2 that, I can ask the applicant if they have any
3 questions.

4 MS. KEYS: Okay.

5 CHAIRPERSON MILLER: Of the Office
6 of Planning, do you?

7 MR. TOOROCK: I do not.

8 MR. VALENTINE: I do not.

9 CHAIRPERSON MILLER: Okay. Ms.
10 Keys, do you want a couple of minutes to look
11 it over or are you okay?

12 MS. KEYS: No.

13 CHAIRPERSON MILLER: All right.

14 MS. KEYS: No, I don't have any
15 questions.

16 CHAIRPERSON MILLER: Okay. And
17 there is no one here from the ANC, I'm asking
18 again? Okay. Then at this time, Ms. Keys,
19 you can give your testimony.

20 MS. KEYS: Okay. Again --

21 CHAIRPERSON MILLER: And we are
22 all very interested.

1 MS. KEYS: -- I am Brenda Keys.
2 And in September of last year when the gym
3 opened up, at first it seemed like it was
4 really a nice gym, until the noise started
5 impacting my business and impacting me.

6 I had spoke to Mark a couple of
7 times and I told him, so he says well, I'll
8 have to speak to Ray. So they came, as they
9 said, and did a test in the store. When they
10 first came, there were little cracks in my
11 wall. For 30 years, I haven't had no problems
12 with my walls.

13 Since they have been there for
14 those 6 to 9 months, 7 -- 9 months, cracks are
15 just coming throughout my walls. My ceiling
16 is cracking. I made a statement about me
17 sitting there listening to the noise. It's
18 every time I heard noise like this (thumping
19 noise), it bothers me, because of the thumping
20 noise that I have constantly been
21 experiencing.

22 There have been other business

1 there in that building throughout the years.
2 There have been a music studio, never no
3 problem. Dance studio, no problem. The
4 problem didn't come until the weights came.
5 And this is what I keep talking about, because
6 I know this has been a hardship on me as far
7 as my head is concerned, constantly listening
8 to these weights.

9 I have a problem with them running
10 through the neighborhood. The men have been
11 running around shirtless. This is a
12 residential neighborhood. You know, we
13 addressed this at one of the ANC meetings.
14 It's a residential neighborhood, why would he
15 have his people crawling around on the
16 streets?

17 He says he trains military people,
18 he trains police officers. All of these
19 training facilities have a facility away from
20 a residential neighborhood. The type of
21 training that he wants to do, you know, there
22 are a couple of guys who gets down and walk on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 their hands like throw their legs up in the
2 air. This is not acceptable in a residential
3 neighborhood.

4 As they say, they went to Dunbar.
5 There is a letter here from one of the
6 neighbors who went to Dunbar and talked to
7 them. They said they have no permission to be
8 on Dunbar grounds, that's private property.
9 The Park Service said they are not supposed to
10 be over there. So if he is going to rent 219
11 New York Avenue, all of his activities should
12 be taken care of in 219 New York Avenue. No
13 other gym goes around neighborhood areas
14 taking over the neighborhood.

15 Ray Valentine has stated that we
16 have been good neighbors. We have been
17 excellent neighbors, excellent neighbors. And
18 I -- we haven't had a fallen out, but he know
19 how I feel as far as this situation is
20 concerned. Mark, on the other hand, has not
21 been cooperative. The reason why I had to go
22 to court is because he jumped the fence at me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 telling me I did not hear noise coming from
2 his place. I was hearing traffic.

3 He didn't do that one time, but he
4 did it twice. So I said if he will go to this
5 level with me, what would he do next? So I
6 had no other choice but to go to corporation
7 counsel on Mark.

8 So at this time, that's my
9 statement.

10 CHAIRPERSON MILLER: Let me ask
11 you, what do you have, if any, in your mind,
12 that would make you whole? I mean, that's
13 what they say, they are not going to do it
14 unless you are made whole.

15 MS. KEYS: When I --

16 CHAIRPERSON MILLER: What does
17 that mean?

18 MS. KEYS: -- am made whole,
19 peace, quiet and harmony. You know, I have
20 never had to go through this. I've never
21 experienced this. And no one but me and my
22 sister who have worked there with me know the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feelings you have when you're hearing thumping
2 noises.

3 CHAIRPERSON MILLER: It doesn't
4 mean for you that you won't hear those
5 thumping noises.

6 MS. KEYS: Those thumping noises,
7 yes, that's my main concern.

8 CHAIRPERSON MILLER: Okay.

9 MS. KEYS: And I mean, I don't
10 want them to put a bandage on the situation
11 and say they are going to do it now and later
12 on, you know, they go back and say well, we
13 have gotten our license, we can go ahead and
14 do -- I wouldn't want that. Mark has made a
15 statement that they don't use the outside for
16 exercising.

17 Tuesday before I went to the
18 neighborhood meeting, they had weights set up
19 outside, so, you know, I don't want them to
20 say I can do this and I can do that after I'm
21 once zoned, because -- or after I have all of
22 my license, because I will still be there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I've been there for 30 years and never had
2 problems like this. Of all the other
3 businesses that have been in that building,
4 never a problem.

5 CHAIRPERSON MILLER: I just want
6 to tell you since you're not familiar with the
7 process, I don't think.

8 MS. KEYS: No.

9 CHAIRPERSON MILLER: Okay.

10 MS. KEYS: This is the first time
11 I've been to zoning.

12 CHAIRPERSON MILLER: Okay.

13 MS. KEYS: And I think I did years
14 ago.

15 CHAIRPERSON MILLER: Okay. Well,
16 you're doing great. It's not exactly an all
17 or nothing thing. Like for instance, we could
18 issue an order allowing the use of the
19 building, granting the use of that building,
20 but with certain conditions that have to be
21 met and those conditions would go on always.
22 It's not like oh, I got my order and I can do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 whatever I want, you know. So I just want to
2 let you know that, because I know that sounds
3 like one of your concerns.

4 MS. KEYS: Yes.

5 CHAIRPERSON MILLER: And have you
6 met with Mr. Ford?

7 MS. KEYS: Yes.

8 CHAIRPERSON MILLER: And how do
9 you feel about confidence level with respect
10 to, you know, his evaluating the situation and
11 coming up with solutions?

12 MS. KEYS: Well, I'm quite
13 comfortable. He said he would send a report,
14 which he has not, but I'm quite comfortable.

15 CHAIRPERSON MILLER: Other
16 questions? Yes, Mr. Turnbull?

17 COMMISSIONER TURNBULL: Yes. I
18 wonder, Ms. Keys, has -- you said some of the
19 other neighbors have commented about some of
20 the -- that people have been using the
21 facilities. But has the ANC, itself, raised
22 this as an issue and --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KEYS: The ANC has.

2 COMMISSIONER TURNBULL: Have they
3 said anything to Mr. Valentine?

4 MS. KEYS: Yes, he has.

5 COMMISSIONER TURNBULL: Oh, they
6 have?

7 MS. KEYS: Yes.

8 COMMISSIONER TURNBULL: They have
9 issued -- well, is it a letter that they sent
10 to him about --

11 MS. KEYS: No.

12 COMMISSIONER TURNBULL: Just a
13 verbal --

14 MS. KEYS: Verbal communication,
15 yes.

16 COMMISSIONER TURNBULL: From the
17 chair of the ANC?

18 MS. KEYS: No, the ANC, Mark
19 Dixon.

20 COMMISSIONER TURNBULL: Mark
21 Dixon?

22 MS. KEYS: Yes.

1 COMMISSIONER TURNBULL: Okay.

2 Specifically about the --

3 MS. KEYS: The --

4 COMMISSIONER TURNBULL: --

5 behavior of the people going in and out?

6 MS. KEYS: Yes.

7 COMMISSIONER TURNBULL: Okay.

8 Thank you.

9 MS. KEYS: Um-hum.

10 VICE CHAIRMAN LOUD: A couple of
11 quick follow-up questions. And thanks this
12 morning for coming. I think you sat through
13 some of the testimony where one of the
14 proposed solutions would be to relocate the
15 equipment that is dropped on the floor from
16 where it currently is to the rear of their
17 property. Do you have a sense of what impact
18 that might have on you if the sound and/or
19 vibration only happened in the rear of your
20 property?

21 MS. KEYS: I will not know until
22 they really do a full test. As he says, the

1 room right now is just packed, so they can't
2 do a test.

3 VICE CHAIRMAN LOUD: Okay. Fair
4 enough.

5 MS. KEYS: Um-hum.

6 VICE CHAIRMAN LOUD: What do you
7 have in the rear of your store?

8 MS. KEYS: Well, it's just a big
9 open store. In the back area is my storage
10 area, my restroom and that's the back of my
11 store.

12 VICE CHAIRMAN LOUD: Okay. And
13 also I believe you sat through the testimony
14 that, essentially, as I understand it, the
15 equipment that causes the most noise impact,
16 vibration impact is this over 90 pound
17 equipment, which is only dropped Monday,
18 Wednesday and Friday.

19 MS. KEYS: That's --

20 VICE CHAIRMAN LOUD: Certain
21 times, very certain times of the day. One of
22 those times sounds like you would not even be

1 present in your store. I'm not certain, 6:00
2 a.m.

3 MS. KEYS: In the mornings I'm not
4 there.

5 VICE CHAIRMAN LOUD: Okay.

6 MS. KEYS: But at 11:00 I'm there.
7 5:00 I'm there. And last week it was
8 Wednesday, Thursday, Friday. I got my
9 calendar and I wrote it down. Since they said
10 they don't do it, and some days I'll just go
11 and just stand right there at the doorway to
12 make my presence known that I know that they
13 are dropping the weights and they just look at
14 me and kind of stop.

15 VICE CHAIRMAN LOUD: But the
16 greatest impact to you would be the 11:00?

17 MS. KEYS: 11:00 and the 5:00.

18 VICE CHAIRMAN LOUD: And the 5:00
19 p.m.?

20 MS. KEYS: Yes.

21 VICE CHAIRMAN LOUD: And is it
22 your understanding consistent with Mr.

1 Toorock's testimony that it is primarily three
2 days a week, whether it is Wednesday,
3 Thursday, Friday, Monday, Wednesday and Friday
4 or do you have different testimony?

5 MS. KEYS: I have different
6 testimony, because it's more than three days
7 a week and Saturday morning, this week, 11:00
8 they were dropping weights.

9 VICE CHAIRMAN LOUD: Okay. If as
10 a result of the location of the equipment to
11 the rear and for some reason it all fit
12 together, it worked in the sense of reducing
13 the noise and reducing the vibration impact,
14 would those be your primary concerns?
15 Clearly, I have heard you talk about the
16 shirtless working out and all that.

17 MS. KEYS: Yeah, that would be my
18 primary concern as long as my walls don't
19 crack no more and my building don't cave in on
20 me.

21 VICE CHAIRMAN LOUD: Okay. All
22 right. Thank you.

1 MS. KEYS: Um-hum.

2 MEMBER WALKER: Ms. Keys, what are
3 the hours of operation of your business?

4 MS. KEYS: From 8:00 to 8:00.

5 MEMBER WALKER: 8:00 to 8:00.

6 Thank you.

7 MS. KEYS: Um-hum.

8 CHAIRPERSON MILLER: Is that --
9 which days of the week that is?

10 MS. KEYS: It's pretty much seven
11 days a week. Sundays I get there at 9:00 and
12 I leave at 6:00, um-hum.

13 CHAIRPERSON MILLER: Okay. Other
14 questions? Does the applicant have any cross
15 examination for Ms. Keys?

16 MR. TOOROCK: If I may, there are
17 two points and I'm not sure, am I allowed to
18 address a point or only ask a question?

19 CHAIRPERSON MILLER: Well, we're
20 almost at your point where -- I mean, we're
21 almost at the place where you could address a
22 point. If you have a question, you should ask

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it first. And then we will see if there is
2 anybody who wants to testify. I don't see
3 anybody else. Which is the normal procedure.
4 And then it would be like closing and rebuttal
5 from you, so that's -- we're just about there.

6 Is there anybody else here who
7 wishes to testify in support or opposition in
8 this case? Okay, no. So do you have any
9 questions? If you don't, you can go right
10 into --

11 MR. TOOROCK: They are not
12 questions, but three points I would like to
13 address.

14 CHAIRPERSON MILLER: Okay.

15 MR. TOOROCK: And first, Brenda,
16 speaking directly to you, I have to say I feel
17 it is very unfair that you say I came at you
18 or jumped over the fence. I have never acted
19 aggressively towards you a day in my life,
20 so --

21 MS. KEYS: That's not true.
22 That's why --

1 CHAIRPERSON MILLER: Okay. You
2 know what, I think -- I know why you want to
3 get that on the record and it's really not too
4 germane to what this Board is --

5 MR. TOOROCK: Okay.

6 CHAIRPERSON MILLER: -- going to
7 be deciding.

8 MR. TOOROCK: Okay. Then three
9 other points.

10 CHAIRPERSON MILLER: Okay.

11 MR. TOOROCK: One, there are no
12 cracks on the outside wall. There is actually
13 a common wall along the outside of Ms. Keys'
14 building. There are no cracks on that outside
15 wall, so I find it extremely unlikely that the
16 building will come crumbling down on her. And
17 I think that Mr. Ford's report will address
18 that as well.

19 Secondly, the Mount Vernon Square
20 Neighborhood Association specifically
21 requested somebody stood up not related to
22 myself or Mr. Valentine and asked us to run

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 through the neighborhood and go through the
2 alleys. So I feel that that shows support
3 from the Mount Vernon Square Neighborhood
4 Association. And they did say that they would
5 support it with the provision that, of course,
6 the vibration issue was taken care of, which
7 we agreed to, of course.

8 Finally, to address the issue of
9 the workouts, Mr. Loud, sir, I'm sorry if I
10 represented that it was a specific day. I'm
11 talking about on average the weights are used
12 about three days a week. And I would like to
13 submit for the record that at primal-
14 fitness.com, there is a log of the workout
15 that we have done every day since we opened.

16 So it could very easily be gone
17 back and seen, not only what the workout was,
18 but how my clients performed at this workouts.
19 In a lot of instances, that is a service we
20 provide to the client. So you could actually
21 go back and see which days had lifting. And
22 that would indicate where the weights had been

1 dropped and where they hadn't.

2 Pretty clearly, if one had an
3 understanding of which exercises meant a
4 certain quantity of weight that was being
5 dropped and I feel again that that will
6 reflect my sentiment that on average it's
7 three days a week or less that heavy weights
8 are used in the workout routines.

9 CHAIRPERSON MILLER: Okay. I
10 think that we are coming to the end of this
11 proceeding. And, you know, if you want to say
12 more, you can, but I think you have said,
13 okay, a lot. I want to say a couple of things
14 and get your reaction.

15 Basically, the only really
16 outstanding issue is, as far as I can see that
17 needs more, the impact on Ms. Keys' property.
18 There is an outstanding question. You know,
19 you have committed to work it out, but it's a
20 little bit vague for us right now and we just
21 would like to suggest that, and I would like
22 your reaction to this, we leave the record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 open for Mr. Ford's report to come in to the
2 record, because you all are referring to Mr.
3 Ford kind of like coming up with the solution.
4 And I think it would be a good idea if this
5 record had that solution in it, if possible.

6 And so what I suggest is we leave
7 the record open for that and for comments by
8 the parties as to, you know, whether that
9 satisfies you or you are going to do that, you
10 are going to follow through with that and Ms.
11 Keys is satisfied that that solves the
12 vibration problem.

13 And then I see a couple other
14 loose items, such as, you know, what will the
15 hours of operation be? Like we are aware of
16 what the issue is out there. We want to make
17 sure that it is solved. Is there going to be
18 an issue at all with this thumping noise? And
19 if we're going to find that there isn't, we're
20 going to find because Mr. Ford has recommended
21 this and it is working or it is going to work.

22 And the hours of operation are

1 such and such and weights are only going to be
2 at such and such hours and then there is also
3 predictability with, you know, what's
4 happening at this fitness place.

5 And then if possible, we could
6 leave time for the ANC to get in another
7 report, if they wanted. They are a party. If
8 they read this, they were waiting to see how
9 her concerns were going to be addressed and
10 they could address it.

11 Now, as far as schedule goes,
12 there are two things going on. One is you
13 mentioned, first of all, you have some court
14 proceeding that this is related to. And then
15 second of all, we have this proceeding, how
16 long is it going to take for Mr. Ford's report
17 and do we want to give the ANC time to comment
18 on it as well?

19 If we did, I assume that wouldn't
20 be until October, because they probably don't
21 meet in August. And this report, I don't know
22 when this report is coming. And then it would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 give you all time to work everything out in a
2 friendly manner. That's -- if there is no
3 urgency, I know you -- I believe you have
4 authorization to operate in the meantime, if
5 I'm not mistaken. A temporary Certificate of
6 Operation -- of Occupancy, is that correct?

7 MR. TOOROCK: We do not. I would
8 say that the urgency is that the pending case
9 on, I believe it is, September 5th, which was
10 when the continuance of the other case, of
11 again, me operating without a business license
12 and that's my urgency and my hardship is that
13 I need to present at that case that I have
14 made every effort to get a business license.

15 And I have crossed everything else
16 off the list, as I mentioned, with the
17 exception of this and that's why -- and I
18 appreciate you hearing the case today, that's
19 why I wish to have it heard. The ANC doesn't
20 meet in August. So yes, that would -- it
21 would make it difficult for me on the grounds
22 that I have to go to my -- I don't know if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this is relevant, go to my business every day
2 that I have poured my life savings into and go
3 to sleep every night wondering if it is going
4 to be there the next day.

5 And that's a -- it's a stressful,
6 frustrating situation to be in, you know, when
7 essentially it seems to me --

8 CHAIRPERSON MILLER: Let me just
9 jump in there for a minute. Two things. One
10 is, first of all, we go into recess in August.
11 We are meeting next Tuesday and we have a lot
12 of decisions on our docket, if you want to
13 call it that. And we could have your's if you
14 had -- we would like to see this case though
15 have Mr. Ford's report in it. And we don't
16 have to have the ANC's comments per se. They
17 didn't come today. They could get it in. I
18 doubt if they can meet.

19 But Ms. Keys and you, I don't know
20 that that's possible, you know. Could there
21 be a report forthcoming on the next few days
22 and your comments on it. Is that possible?

1 Because otherwise, I think what you have to
2 say to the court is you have made all good
3 faith effort and you are -- you have had your
4 hearing and the Board, you know, is getting
5 more information and will be deciding in the
6 fall and that's beyond your control.

7 I don't think DCRA closes down a
8 business while the applicant's case is pending
9 before the BZA. I have never seen that. It's
10 probably not possible to have Mr. Ford's
11 report in next week?

12 MR. TOOROCK: It may be. I would
13 have to call him.

14 CHAIRPERSON MILLER: Oh, okay.
15 But it --

16 MR. TOOROCK: What date are you --

17 CHAIRPERSON MILLER: Well, our
18 decision is July 29th, but we need all our
19 materials by I don't know, the Friday before.

20 MR. MOY: Normally, it would be
21 Thursday, but in this situation, it's on the--
22 to accommodate the Board, so I mean, the Board

1 has done as late sometimes as Monday and the
2 staff will just turn around and get the
3 materials to the Board Members.

4 MR. TOOROCK: It may be with
5 regards directly to the report that the report
6 is finished at this time, since we don't have
7 -- it's my understanding that Ray tried to
8 reach Mr. Ford yesterday and was unsuccessful.
9 It may be that the report is done and not
10 delivered to us. So in that case, it would be
11 possible to deliver it.

12 And, Madam Chair, with all due
13 respect, while I understand that the DCRA
14 isn't going to close the case, based on the
15 BZA case being pending, that's another three
16 months I go without sleep. I'm -- it creates
17 a difficult situation for me, because as long
18 as that case is open and there is a chance
19 that they could take this business away from
20 me, I'm taking money out of my pocket. I'm
21 supporting --

22 CHAIRPERSON MILLER: And so that--

1 MR. TOOROCK: -- families.

2 CHAIRPERSON MILLER: You are the
3 applicant, okay. And what I was trying to
4 create was the best case scenario for you, you
5 know. We've got Mr. Ford's report. We've got
6 Ms. Keys having time to look at it. You know,
7 I'm not necessarily saying that we are going
8 to do that. I was exploring that as an
9 option, just to give you that option.

10 Ms. Keys, do you think if you saw
11 a report from Mr. Ford next week that that
12 would give you more peace of mind if the Board
13 saw that and included that in its
14 deliberation? Put your mike on.

15 MS. KEYS: We already have an
16 agreement on the table for a report along with
17 the completion of work.

18 CHAIRPERSON MILLER: A written
19 agreement?

20 MS. KEYS: No.

21 CHAIRPERSON MILLER: Oh, I see.

22 MS. KEYS: All the --

1 CHAIRPERSON MILLER: Okay.

2 MS. KEYS: Verbal, yes.

3 CHAIRPERSON MILLER: Okay. Okay.

4 All right. We're having a special hearing on
5 August 1st and it was just suggested that we
6 could decide this case after our hearing on
7 August 1st to give a little bit more time.
8 Then I would suggest we just want a little bit
9 more in the record which goes to the
10 mitigation against adverse impacts against Ms.
11 Keys' property.

12 So that would include --
13 hopefully, I think that Mr. Ford's report
14 would be good to have. If it's not available
15 and you want us to proceed without it, we can
16 do that. And perhaps a written -- something
17 in writing about this agreement that you have
18 between you two, so that the Board could be
19 convinced that any of those adverse impacts
20 are going to be worked out.

21 Any commitments, you know, you are
22 presenting to us that it's not going to go

1 forward unless such and such, things that you
2 agreed to, what the hours of operation,
3 everything that goes to mitigating the adverse
4 impacts that affect her property. That's the
5 only issue that we would like more information
6 on.

7 And, Ms. Keys, the record will be
8 open for you as well to, you know, add
9 additional written comments if you like as to
10 what conditions you would like the Board to
11 consider in order to make -- in order to
12 mitigate any adverse impacts on your property
13 and your responses to what they are proposing.

14 Since you are neighbors and
15 friends and want to work it out, I would leave
16 it open. It could be a joint report or it
17 could be two separate filings with everything
18 you have got on this issue.

19 Before the -- so what day would
20 that be, Mr. Moy, that they could get this in?

21 MR. MOY: Well, let's see, if I
22 understand correctly where the Board is

1 looking at, the Special Public Meeting on
2 August 1st, correct?

3 CHAIRPERSON MILLER: Yes.

4 MR. MOY: Well, typically, I would
5 say the previous week, but I understand the
6 time constraints. Is the Board thinking about
7 all the filings at one time or we were looking
8 at two dates?

9 CHAIRPERSON MILLER: I think at
10 one time. I think they are really going to
11 talk to -- yes, Ms. Keys, do you have a
12 question?

13 MS. KEYS: August the 1st, I will
14 not be here.

15 CHAIRPERSON MILLER: No, you don't
16 need to be here.

17 MS. KEYS: Okay.

18 CHAIRPERSON MILLER: We are not
19 going to hear anything more from you.

20 MS. KEYS: Okay.

21 CHAIRPERSON MILLER: We want all
22 your other input to be in writing. And we are

1 just debating like what's the drop dead date
2 that we could get it in order to give you time
3 under these circumstances. So --

4 MR. MOY: Because otherwise, if
5 it's a one time submission, Madam Chair, I
6 just off the top of my head, I think perhaps
7 Monday, July the 28th. If the Board feels
8 that they want to allow more time for filings?

9 CHAIRPERSON MILLER: We can go
10 later, I think. I could go even to July 31st,
11 noon.

12 MR. MOY: Well, that would be a
13 Thursday.

14 CHAIRPERSON MILLER: Yeah.

15 MR. MOY: Thursday, noon?

16 CHAIRPERSON MILLER: Because I
17 don't think this is going to be too complex.
18 It's basically going to address that one
19 issue.

20 MR. MOY: Yes, we could --

21 VICE CHAIRMAN LOUD: Madam Chair?

22 CHAIRPERSON MILLER: Yes, that's

1 what I -- see what I'm -- tell me if I'm
2 wrong. What I see here is that there are
3 friends and neighbors involved and that you
4 don't need there any proposal or whatever in
5 advance, that you all are going to be sharing
6 and talking, right? Sharing information and
7 talking and you can file the same day? Am I
8 wrong?

9 MR. TOOROCK: If I could perhaps
10 paraphrase and ask if it would be sufficient
11 that what I would draft is a letter on -- in
12 the name of Primal Fitness stating that it
13 will comply with whatever Vince Ford's
14 recommendations are to alleviate the vibration
15 to the satisfaction of Ms. Keys, would that be
16 sufficient?

17 CHAIRPERSON MILLER: If that's the
18 best you can do, it's your case. I think my
19 first preference would be to see Mr. Ford's
20 report. I think that would be good to have in
21 the record. If you can't get it --

22 MR. TOOROCK: I mean along with

1 it.

2 CHAIRPERSON MILLER: Okay.

3 MR. TOOROCK: Along with the
4 report. However, in regards to Ms. Keys and
5 myself and ourselves relationship, I would be
6 happy to also ask Ms. Keys to sign that
7 letter, so that she knows that I have signed
8 a Letter of Intent to comply with the
9 recommendations to reduce the vibration to her
10 satisfaction.

11 CHAIRPERSON MILLER: That's a
12 possible route, you know. You can talk about
13 it. That's a possible route. It will be in
14 the record. Whatever is represented to us,
15 we're going to consider to put in our order.
16 So I guess one question up here is though do
17 you need to file something first a day earlier
18 so she can respond a day later, have time to
19 see what you did.

20 We can set a schedule up that way
21 or, Ms. Keys, two days, but we wanted to give
22 enough time. We're condensed here. Would you

1 like them to file something first and then you
2 think about it a day?

3 MS. KEYS: Yes.

4 CHAIRPERSON MILLER: Is a day
5 enough? Okay.

6 MR. VALENTINE: Let me ask. If --

7 CHAIRPERSON MILLER: Yes?

8 MR. VALENTINE: Madam Chairwoman,
9 if I may ask or if I may add, if it's also a
10 possibility that we can get this report and
11 also possibly have a joint statement from both
12 of us?

13 CHAIRPERSON MILLER: Yes, that
14 would be great, if you can do that. We are
15 just going to set the schedule and leave it.
16 So you can do either one. Joint is better, I
17 mean, then we can really see that you have,
18 you know, had a meeting of the minds and
19 everything.

20 So I guess we can do it in the
21 alternative.

22 VICE CHAIRMAN LOUD: Madam Chair?

1 CHAIRPERSON MILLER: Okay. Can
2 you make Monday, the 28th, close of business
3 deadline for the applicant to file, if you are
4 filing just singly and Wednesday close of
5 business for Ms. Keys to file? If it's going
6 to be a joint, it could be Wednesday for both,
7 for the joint. Okay.

8 MR. TOOROCK: If I may ask this,
9 does filing mean submitting it to the Office
10 across the hall and getting it stamped? Is
11 that --

12 CHAIRPERSON MILLER: Yeah and
13 serving the parties, which would be Ms. Keys
14 and the ANC, right? Okay.

15 MR. TOOROCK: Thank you.

16 VICE CHAIRMAN LOUD: Madam Chair?
17 I will go along with the consensus here on the
18 Board, but I'm a little concerned about Ms.
19 Keys. This is a technical report in nature.
20 It's not necessarily something that is
21 accessible to lay people. And I'm a little
22 concerned about us trying to force fit it into

1 a certain time line when there is no
2 indication that there is prejudice from
3 extending it out a little.

4 And her having to rush, although
5 she said it's okay, and if she says on the
6 record it's okay, then it's okay with me, her
7 having to rush to get through the document and
8 then prepare some kind of response to it. For
9 me, the issue is not the plastering on the
10 walls piece, which they have agreed to
11 address, but the relocation of the equipment
12 to the rear and the noise and/or vibration
13 impact to her property from that.

14 And that's the part of the report
15 that I think that has the meat in it that she
16 has got to take a look at and they have got to
17 work through whether or not that is going to
18 meet her situation. And to me, for her to
19 have, you know, 24 hours to do all of that, it
20 just seems to me like a little more time would
21 be needed. But that's my only reservation.

22 I would just hate to sit here and

1 try to vote on this one way or the other and
2 there's still that outstanding issue.

3 CHAIRPERSON MILLER: Well, I think
4 that she might see the report as early as it
5 is ready. I don't think that should be a two
6 day thing, number one. You know, we are
7 saying that the applicant would file by Monday
8 if they are going to file alone.

9 VICE CHAIRMAN LOUD: Um-hum.

10 CHAIRPERSON MILLER: It doesn't
11 mean the report -- well, I should say, the
12 report should be made available to Ms. Keys as
13 soon as it is ready.

14 I think we heard like some
15 prejudice expressed by the applicant if he had
16 to wait and he doesn't want to wait. I also
17 heard some willingness to make some open ended
18 commitments, you know, like they are going to
19 do whatever it takes. I don't know. So it
20 won't be solely dependent upon the report.

21 VICE CHAIRMAN LOUD: Well, will
22 it? I thought he would do whatever -- well,

1 there is a difference between saying he will
2 do whatever is in the report and none of us
3 know what's in the report and saying you will
4 do whatever it takes to make the -- Mrs. Keys'
5 whole.

6 MR. TOOROCK: Yeah.

7 VICE CHAIRMAN LOUD: Is it the
8 latter or going above and beyond the report?

9 MR. VALENTINE: Madam Chairperson,
10 I understand that we are dancing around all
11 these technicalities, but there is a
12 commitment to make her whole. And there
13 should be some type of way that you can
14 stipulate in your decision that this decision
15 is what we're going to do, but with the
16 stipulation that she be made whole. You
17 follow what I'm saying?

18 CHAIRPERSON MILLER: Yeah. What I
19 would like to request though is I heard you
20 say that and we have heard it like in
21 different ways and what we wanted is in
22 writing, so we know exactly what you have

1 committed to. And then we can have our order
2 reflect commitments or be conditioned on
3 commitments.

4 MR. TOOROCK: Yes, if I may also
5 address Mr. Loud's question? Sir, if the
6 report comes back and we follow what the
7 report says and it doesn't fix the problem,
8 then I will take the next step and the next
9 step to the reason that my business can
10 support and that I can do.

11 Again, if the next steps says
12 spend \$60,000 on an oil dampened suspension
13 thing, then I can't do that. I have to close
14 my business. However, if there -- so again,
15 I'm not just doing what's in the report.
16 Again, I think we have already -- we know what
17 is in the report from a practical standpoint,
18 which is move the weights to the back room.
19 So that's the next step that we will take to
20 alleviate the vibration.

21 If that doesn't fix the vibration
22 and Ms. Keys is still adversely affected, then

1 I'll take the next step, which is put in more
2 padding, try and build a decoupled floor in
3 there. If that still doesn't fix the
4 vibration, then I've got to decide whether my
5 business can survive in that area without
6 adversely affecting Ms. Keys' business.

7 And I'm happy to state in writing
8 whatever would be suitable to say that my goal
9 isn't just to comply with the report; however,
10 it is to comply with -- and I need to say here
11 fair and reasonable use of the property.
12 Again, I don't feel that my vibration should
13 have to be reduced to less -- I felt the
14 vibration in this building a few moments ago.
15 I don't feel that my vibration should have to
16 be reduced below the level of say a truck
17 going by or some other normal cars of being in
18 the city level of vibration and I'm happy to
19 submit to whatever scientific testing is
20 deemed for that.

21 CHAIRPERSON MILLER: Okay. I --

22 MR. TOOROCK: If there is a --

1 CHAIRPERSON MILLER: -- think you
2 are making very good points. And we have got
3 to end this hearing in a minute, because we
4 have another that has been waiting and then
5 we're supposed to start again. But that's
6 exactly where I think you should go in the
7 written pleadings. You tell us all that, that
8 you are willing to, you know, do it to this
9 extent.

10 Not to -- you know, you don't have
11 to be unlimited if that's not what you are
12 willing to do. Whatever you think is fair and
13 reasonable, because we want an order to
14 reflect what is fair and reasonable. We
15 don't, you know, want it to be unrealistic.

16 So it's open for all of those
17 kinds of concerns that relate to, you know,
18 mitigating any adverse impacts. We think that
19 the record is full with respect to the first
20 two prongs and we would just like to give you
21 the opportunity to buttress the third prong
22 however you want. It's not just related to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Ford's report. We think that would be
2 good to have in the record, if possible.

3 But it's not just related to that.
4 It's related to, you know, hours of operation,
5 placement of things, communication, whatever.
6 Okay. If you have other questions, you can
7 ask Mr. Moy, right, you know. You can call
8 him if you are unclear about anything. Okay.
9 Anything else?

10 MR. TOOROCK: Thank you very much.

11 CHAIRPERSON MILLER: Okay. Thank
12 you.

13 MS. BAILEY: Madam Chair, I do
14 have a question.

15 CHAIRPERSON MILLER: Yes.

16 MS. BAILEY: And that is was it
17 Mrs. Keys was definitely granted party status
18 in this case? I know there was discussion.

19 CHAIRPERSON MILLER: Yes.

20 MS. BAILEY: Okay. Thank you.

21 CHAIRPERSON MILLER: Again, on the
22 29th we will be deliberating on this case, but

1 we won't be taking any testimony or evidence
2 whatsoever. Did I say --

3 MR. TOOROCK: The 29th?

4 CHAIRPERSON MILLER: August 1st,
5 August 1st. I'm sorry. If you wanted to hear
6 it, you could come here. It would be probably
7 late in the day, but otherwise, you can also
8 tune in on the website. It's on the website
9 on the Internet live.

10 Okay. Then that concludes this
11 case. Okay. We're going to take a quick five
12 minute break. The Court Reporter gets those.
13 Okay.

14 (Whereupon, at 12:26 p.m. a recess
15 until 12:41 p.m.)

16 CHAIRPERSON MILLER: Ms. Bailey,
17 whenever you are ready, we're ready for the
18 last case on the agenda for this morning.

19 MS. BAILEY: Thank you, Madam
20 Chair. It's Application No. 17800. It's the
21 application of D.C. Carry-Out, pursuant to 11
22 DCMR 3104.1, for a special exception to allow

1 a fast food restaurant under section 773. The
2 property is located in the C-2-A District at
3 premises 2427 Minnesota Avenue, S.E., Square
4 5578, Lot 74.

5 Are you associated with D.C.
6 Carry-Out? Please, have a seat at the table.
7 Madam Chair, Members of the Board, I'm not
8 absolutely sure if the property owner is here,
9 but the last time I checked, there was not a
10 letter of authorization from the property
11 owner to the operator of the facility.

12 CHAIRPERSON MILLER: Sir, why
13 don't you have a seat? Yeah, that was I think
14 an issue that we touched upon earlier this
15 morning when we thought we had a preliminary
16 matter with this case. But I don't think
17 there is a Letter of Authorization in the file
18 from the owner.

19 Would you like to introduce
20 yourself, sir, and then we can get into the
21 case.

22 MR. AHMADI: My name is Nessar

1 Ahmadi. I'm owner of the business of the D.C.
2 Carry-Out.

3 CHAIRPERSON MILLER: Were you here
4 with somebody earlier this morning?

5 MR. AHMADI: Yes, please. I need
6 like a couple of minutes he is coming. Maybe
7 he used --

8 CHAIRPERSON MILLER: Okay. We can
9 wait.

10 MR. AHMADI: Thanks.

11 CHAIRPERSON MILLER: Okay.

12 MR. SCARBOROUGH: Glenn
13 Scarborough.

14 CHAIRPERSON MILLER: And could you
15 give your address, please?

16 MR. SCARBOROUGH: 82 Webster
17 Street, N.E., Washington, D.C.

18 CHAIRPERSON MILLER: Was there
19 somebody else here this morning also from the
20 ANC, Mr. Mohammed? Did he have to leave?

21 MR. SCARBOROUGH: I have no idea.

22 CHAIRPERSON MILLER: Okay.

1 MR. SCARBOROUGH: He is not on our
2 side.

3 CHAIRPERSON MILLER: Okay. Okay.
4 Shall we address the first issue that we
5 touched upon this morning that goes to the
6 owner of the property? The Regulation 3113.3
7 says "The owner of the property for which
8 application is made may file an application
9 with the Board."

10 In some instances we do have
11 tenants or others who bring an application,
12 but they bring it with the authorization of
13 the owner. And it looks like some of these
14 issues that we have seen in the file affect
15 the building and I would think the owner. But
16 what is the situation here?

17 MR. SCARBOROUGH: Well, only one
18 issue and I think it's the trash would really
19 affect the owner. And we are willing to do
20 whatever is necessary to take care of that
21 situation. I don't think any other issues
22 concern the owner, just the business for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 most part.

2 CHAIRPERSON MILLER: We cannot
3 grant an application by a tenant. We have to
4 grant it only with the owner's authorization.

5 MR. SCARBOROUGH: Now, suppose we
6 discover that Mr. Papallordo is no longer with
7 us, that's the owner? I mean, what do we do
8 then?

9 CHAIRPERSON MILLER: Somebody owns
10 the property, his estate.

11 MR. SCARBOROUGH: Well, now,
12 probably. I don't know what the situation is,
13 but we will need to have the owner with us or
14 his approval?

15 CHAIRPERSON MILLER: Yes. Just
16 you need to have a letter from the owner
17 authorizing you to bring this action and then
18 it can go as far as the owner wants to go. If
19 the owner is willing to say that you have the
20 authority to represent the owner in all
21 matters related to this case, that's fine or
22 whatever it is.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SCARBOROUGH: Okay.

2 CHAIRPERSON MILLER: But the
3 regulation says at least that even to file the
4 application, that the owner -- that you have
5 the owner's authorization to file the
6 application.

7 MR. SCARBOROUGH: Um-hum.

8 CHAIRPERSON MILLER: That's not
9 here. Now, I mean, there are other issues.
10 There is graffiti. I mean, it's the owner's
11 property, you know.

12 MR. SCARBOROUGH: Right.

13 CHAIRPERSON MILLER: So but I
14 don't understand your situation. Are you
15 going to be able to -- are you planning on
16 doing that?

17 MR. SCARBOROUGH: Well --

18 CHAIRPERSON MILLER: Why haven't
19 you done it?

20 MR. SCARBOROUGH: -- like I said,
21 this guy has been impossible to get in touch
22 with. I think it's political, but we will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discuss that a little later. Can you give us
2 some time and reschedule this hearing?

3 CHAIRPERSON MILLER: Yes, we can
4 do that.

5 MR. SCARBOROUGH: Okay. When
6 would that be?

7 CHAIRPERSON MILLER: Mr. Moy,
8 let's look at the calendar.

9 MR. MOY: Madam Chair, while the
10 Board is also looking at th same schedule, the
11 earliest possible date would be September the
12 9th in the afternoon.

13 MR. SCARBOROUGH: Um-hum.

14 MR. MOY: We have two cases
15 scheduled for the afternoon, but one of the
16 two cases is -- apparently has been withdrawn.

17 MR. SCARBOROUGH: Okay. Well, um,
18 I don't think we will need quite that long.
19 See, we have a temporary Certificate of
20 Occupancy Mr. LeGrant did. And I think it
21 expires on the 8th of August.

22 MR. AHMADI: End of August.

1 MR. SCARBOROUGH: Oh, it's the end
2 of August. Okay. Well, then sure, what was
3 that date again?

4 CHAIRPERSON MILLER: We recess in
5 August.

6 MR. SCARBOROUGH: Okay.

7 CHAIRPERSON MILLER: So that's why
8 we're going to September. So actually that's
9 a good date. That's the first date in
10 September actually that we are meeting.

11 MR. SCARBOROUGH: It's September
12 what?

13 CHAIRPERSON MILLER: 9.

14 MR. SCARBOROUGH: 9, okay. Well,
15 I guess the zoning police won't lock us up if
16 we -- okay, we're fine.

17 CHAIRPERSON MILLER: I think the
18 fact that you have a case pending before the
19 Board should make it all right.

20 MR. SCARBOROUGH: Okay. Maybe
21 that should give us enough time to find Mr.
22 Papallordo and get his agreement here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: Also, I
2 noticed that there is, you know, some
3 opposition in this case.

4 MR. SCARBOROUGH: Oh, is it?

5 CHAIRPERSON MILLER: By the ANC
6 and others. And --

7 MR. SCARBOROUGH: And others?

8 CHAIRPERSON MILLER: Am I wrong?

9 MR. SCARBOROUGH: I hope so.

10 CHAIRPERSON MILLER: By the ANC.
11 Oh, okay.

12 MR. SCARBOROUGH: Actually, just
13 this one ANC Commissioner. I don't even
14 understand how one guy can speak for the whole
15 neighborhood. We have petitions signed by
16 everyone in the neighborhood and it is going
17 to be an interesting case. You are going to
18 enjoy it. In the meantime, you guys take the
19 month off and --

20 CHAIRPERSON MILLER: Yes, but if
21 you have petitions, you might want to get it
22 in the record. I mean, I was just going to

1 say --

2 MR. SCARBOROUGH: They are there.

3 CHAIRPERSON MILLER: This is also
4 an opportunity for you if there are concerns
5 you can work out in the meantime with respect
6 to some of the issues that have been raised,
7 like the graffiti and the trash or whatever.

8 MR. SCARBOROUGH: Um-hum.

9 CHAIRPERSON MILLER: You know, we
10 might have a better hearing in the fall
11 anyway.

12 MR. SCARBOROUGH: Oh, yeah.

13 CHAIRPERSON MILLER: Okay.

14 MR. SCARBOROUGH: So I'm hoping
15 for it. In the meantime, thank you.

16 CHAIRPERSON MILLER: All right.
17 And thank you for your patience this morning.
18 Okay. We've finished with the cases for this
19 morning and I just want to let people know who
20 are here and who are watching on the Internet
21 the line up for this afternoon and how we plan
22 to maximize our time on that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 First of all, Case No. 17802,
2 Yum's IV Carry-Out, has withdrawn the
3 application, so the Board will not be hearing
4 that this afternoon. There is no action
5 required on the Board's part, so that has
6 dropped off.

7 What we would like to do is if all
8 the parties are here at 1:00, we will come
9 back and hear the first case that's scheduled,
10 17801, Flip-It Bakery. Okay. Good. We will
11 come back at 1:00 for that. We can't start it
12 earlier in the event that there are other
13 people who want to come and it's not scheduled
14 until 1:00.

15 Okay. And then we will take up
16 second 17761, Harry Belin and Everymay
17 Society, and 17578 would be last. Okay. So
18 we will be back at 1:00.

19 Oh, I should say after the Flip-It
20 Bakery, I think the Board would then take its
21 lunch break. Okay.

22 (Whereupon, at 12:53 p.m. a recess

1 until 1:04 p.m.)

2 CHAIRPERSON MILLER: This hearing
3 will, please, come to order. This is the
4 afternoon hearing on July 22, 2008 of the
5 Board of Zoning Adjustment of the District of
6 Columbia. My name is Ruthanne Miller. I'm
7 the Chair of the BZA. To my right is Mr. Marc
8 Loud, our Vice Chair. Next to him is Mr.
9 Michael Turnbull from the Zoning Commission.
10 To my left is Mary Oates Walker and Shane
11 Dettman, Board Members.

12 And with us also is Ms. Lori
13 Monroe from the Office of Attorney General.
14 Joining us shortly will be Ms. Beverley Bailey
15 from the Office of Zoning and Mr. Cliff Moy
16 from the Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please,
20 be aware that this proceeding is being
21 recorded by a Court Reporter and is also
22 webcast live. Accordingly, we must ask you to

1 refrain from any disruptive noises or actions
2 in the hearing room.

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

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

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Section 3117.4 and
7 3117.5 of the Zoning Regulations, the
8 following time constraints will be maintained:
9 The applicant, persons and parties, except an
10 ANC, in support, including witnesses, 60
11 minutes collectively. Persons and parties,
12 except an ANC, in opposition, including
13 witnesses, 60 minutes collectively.
14 Individuals 3 minutes.

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

22 Nothing prohibits the Board from

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

4 The record will be closed at the
5 conclusion of each case, except for any
6 material specifically requested by the Board.
7 The Board and the staff will specify at the
8 end of the hearing exactly what is expected
9 and the date when the persons must submit the
10 evidence to the Office of Zoning. After the
11 record is closed, no other information will be
12 accepted by the Board.

13 The Sunshine Act requires that the
14 Public Hearing on each case be held in the
15 open before the public. The Board may,
16 consistent with it's rules of procedure and
17 the Sunshine Act, enter Executive Session
18 during or after the Public Hearing on a case
19 for purposes of reviewing the record or
20 deliberating on the case.

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

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

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

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

14 At this time, the Board will
15 consider any preliminary matters. Preliminary
16 matters are those that relate to whether a
17 case will or should be heard today, such as
18 requests for postponement, continuance or
19 withdrawal or whether proper and adequate
20 notice of the hearing has been given. If you
21 are not prepared to go forward with a case
22 today or if you believe that the Board should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not proceed, now is the time to raise such a
2 matter.

3 Does the staff have any
4 preliminary matters?

5 MR. MOY: If there are any, I
6 think they can be handled case by case basis,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay. Yes, I
9 believe there are some that will be handled in
10 the case and we have already stated that Case
11 No. 17802, Yum's IV Carry-Out, has withdrawn.

12 All right. At this point then,
13 would all individuals wishing to testify
14 today, please, rise to take the oath? Mr. Moy
15 will administer the oath.

16 (Whereupon, the witnesses were
17 sworn.)

18 CHAIRPERSON MILLER: Okay. As I
19 stated this morning, the first case that's on
20 the agenda is Flip-It Bakery and, Mr. Moy, is
21 there something special to call that case?

22 MR. MOY: Well, I should read the

1 case if it hasn't been done yet, Madam Chair.

2 CHAIRPERSON MILLER: Okay. Thank
3 you.

4 MR. MOY: This first case for the
5 afternoon is Application No. 17801 of Flip-It
6 Bakery/Deli, pursuant to 11 DCMR 3103.2, for
7 a variance from the use provisions under
8 section 330.5, to allow a bakery/delicatessen
9 in the R-4 District. This is at premises 4530
10 through 4532 Georgia Avenue, N.W. This is
11 located in Square 2918, Lot 807.

12 CHAIRPERSON MILLER: Would the
13 parties in that case, please, come forward?
14 Good afternoon, would you introduce yourself
15 for the record, please?

16 MR. BLAND: I am ANC Commissioner
17 Ronald Bland. My Single Member District is
18 4C03. The Flip-It Bakery is in my Single
19 Member District and I am the Vice Chair of 4C.

20 MR. RAYFORD: Good afternoon. My
21 name is James Rayford. I'm a community member
22 in the neighborhood with Flip-It Bakery

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testifying for the bakery.

2 CHAIRPERSON MILLER: And your
3 address is what?

4 MR. RAYFORD: My address is 443
5 Delafield Place, N.W, Washington, D.C.

6 CHAIRPERSON MILLER: And you are a
7 community member, is that what you said?

8 MR. RAYFORD: Yes, ma'am.

9 CHAIRPERSON MILLER: So you are
10 not a party in the case, correct?

11 MR. RAYFORD: Yes, that's true.

12 CHAIRPERSON MILLER: Okay. You
13 are just one who would testify in support of
14 the application?

15 MR. RAYFORD: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay. So
17 I'll call on you when we get to that stage in
18 the proceedings.

19 MR. RAYFORD: Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 Okay. And?

22 MS. PINIDA: Good afternoon, my

1 name is Rufina Pinida. I am the owner of the
2 Flip-It Bakery.

3 MS. WILLIAMS-LOFTON: My name is
4 Deborah Williams-Lofton and I guess I'm the
5 agent representing and filing all of the
6 paperwork for Flip-It Bakery.

7 CHAIRPERSON MILLER: You're the
8 agent representing the owner?

9 MS. PINIDA: Yes.

10 CHAIRPERSON MILLER: Okay. Well,
11 first of all, I want to compliment you on the
12 filings. It's a very well-presented case.
13 You are here for a use variance. I think that
14 the filings show, to me, very clearly how you
15 meet the standards. And you know, I would be
16 happy to entertain more, but what I have
17 gleaned from it, is that it's an irregular
18 shaped lot to begin with, correct?

19 And it's only developed with a
20 one-story building that has been used only for
21 commercial purposes. And the reason you are
22 here is because there was a three year break,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 so you lost your right to continue operating
2 the nonconforming use. Is that correct?
3 Okay.

4 I don't see any opposition in the
5 file. I see only support by the ANC,
6 neighbors, your Council Member Ms. Bowser. Is
7 there anything that you want to add at this
8 point?

9 MS. WILLIAMS-LOFTON: The only
10 point that I would like to make in favor of
11 the bakery is that this shall happen and it's
12 something the Board should take into
13 consideration. I don't know which way you
14 will lean nay or in favor of.

15 But at the beginning before they
16 even signed any leases or anything, they took
17 all the initial steps to see if this was an
18 appropriate place if they could open up this
19 business and went through all the -- you know,
20 down to DCRA, got the appropriate licenses,
21 you know, building, construction, plumbing,
22 the whole nine yards.

1 And it wasn't until we got to the
2 end that we are before you and it puts a lot
3 of people out of business. A lot of people
4 don't have the time or the money to do this
5 and come back at the end and all of a sudden
6 they can't open up their business, because of
7 a piece of paper or something that is not on
8 the books.

9 So if it's something at any point
10 at any time that could be known ahead of time,
11 it would, I think, save the consumer a lot of
12 headache.

13 CHAIRPERSON MILLER: I think that
14 goes to your -- the second prong. You have
15 this three part test that you have to make
16 before us and that, to your undue hardship,
17 you went through all of that and you had
18 authorization by DCRA with the building
19 permits. I think that's unusual. I hope --
20 we haven't seen that too much. But that is an
21 unusual situation.

22 So you know, that is one of the

1 criteria would be an undue hardship for you
2 not to be able to open after you did all that,
3 relying on DCRA. I'm glad you brought that
4 up. That is an important point in your case.

5 Okay. Anything else you want to
6 add, at this point? No? Okay. You will have
7 another opportunity, if you want. Any Board
8 questions? Okay. Why don't we go to the
9 Office of Planning then? Good morning, good
10 afternoon.

11 MR. JACKSON: Good afternoon,
12 Madam Chair and Members of the Board. My name
13 is Arthur Jackson. I'm a Development Review
14 Specialist of the District of Columbia Office
15 of Planning. I will briefly summarize the
16 Office of Planning's report. Essentially, I
17 want to stand on the record. The report is
18 before you with the issues that were raised by
19 this case.

20 We found that in the end, we could
21 recommend approval, because it met the three
22 prong test for the relief that is being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 requested. And that concludes my summary of
2 the Office of Planning report. I will remain
3 available to answer questions.

4 CHAIRPERSON MILLER: Thank you.
5 And that's a very full report. I just have
6 one question for you. It looks like you
7 analyzed the second prong under the practical
8 difficulty test instead of the undue hardship
9 test, which -- and this is a use variance.

10 MR. JACKSON: That's correct,
11 Madam Chair. My error. I would say that in
12 terms of the undue hardship, the history of
13 the application and the fact that the
14 applicant did go in and, based on the
15 information available at the time, made a move
16 forward with the determination that -- their
17 determination with the assistance of DCRA,
18 that this was an allowable use on the site.

19 And only after the permits were
20 issued and they were asking for a C of O to
21 realize that they was -- this was a
22 nonconforming use with regard to their

1 existing zoning. So that provides the undue
2 hardship and, therefore, it meets the second
3 prong of the test for a use variance.

4 CHAIRPERSON MILLER: Thank you.
5 Any other questions for Office of Planning?
6 Does the applicant have any questions for
7 Office of Planning? No. Does the ANC? No,
8 oh, okay. Okay. Yeah, I think this is a
9 pretty straightforward case. That's part of
10 the reason we wanted to hear this first before
11 we even went to lunch, because I know you have
12 been waiting a long time.

13 Does the ANC wish to testify on
14 this?

15 MR. BLAND: Yes. I have a couple
16 of points to make. The letter that was sent
17 to the Board, to Ruthanne miller, is dated
18 April 28th. That should read May 28th. That
19 correction should be made. And in the body of
20 the letter, at the time the letter was written
21 supporting the application for change for a
22 variance, there were 13 lot owners who had

1 responded to the inquiry that I had sent out.
2 And of all 13, there was no objection.

3 In the interim, I did receive one
4 more response and it was actually post-dated
5 or dated postmarked June 27th. It was
6 received by the ANC office of July 2nd, well
7 beyond the cutoff date, but it is a part of
8 the record. And that was the only objection.

9 So 92 percent of the respondents
10 were favorable to the application. The other
11 7 or 7.5 percent was unfavorable. So we
12 thought we had 100 percent favorable decision,
13 but we don't. We don't. And the record --
14 and the letter is here, so it's part of my --
15 part of the ANC records.

16 CHAIRPERSON MILLER: We don't seem
17 to have that letter.

18 MR. BLAND: Which one?

19 CHAIRPERSON MILLER: We have the
20 ANC report.

21 MR. BLAND: Yes.

22 CHAIRPERSON MILLER: Dated April

1 28th.

2 MR. BLAND: No, you don't -- you
3 won't have this.

4 CHAIRPERSON MILLER: Oh.

5 MR. BLAND: This is the -- this is
6 what was -- what the property owners were
7 responding to me. It came very late in the
8 record. In fact, I started not to take it,
9 but I said, no, it's here. So it's part of
10 the record that there was one objection. The
11 letter actually that we sent to you, if it was
12 reviewed, audited, it would actually be in
13 error, because there was one objecting party.

14 CHAIRPERSON MILLER: But at the
15 time that you had your ANC meeting and wrote
16 your report, you hadn't gotten that objection?

17 MR. BLAND: There were no
18 objections, no.

19 CHAIRPERSON MILLER: Okay. Was
20 there a reason given?

21 MR. BLAND: No.

22 CHAIRPERSON MILLER: Okay.

1 MR. BLAND: No reason given for
2 the objection nor why it was late being
3 received.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. Anything else?

6 MR. BLAND: No. Our letter sets
7 forth the basis for which we, as a Commission,
8 supported the application for variance.

9 CHAIRPERSON MILLER: Okay. And
10 this letter is to be afforded great weight.
11 It was written reflecting a meeting that was
12 noticed and a quorum was present and there was
13 a unanimous vote in support of it. And it
14 notes the customers in the area found this
15 bakery to be an asset to the community.

16 MR. BLAND: Correct.

17 CHAIRPERSON MILLER: And it's
18 clean and well lighted and tastefully
19 decorated. I must say, the pictures of it are
20 just beautiful. I think it is very tastefully
21 decorated. Okay. Do any of the parties have
22 any or do any Board Members have questions for

1 the ANC? Does the applicant have questions
2 for the ANC? Yes, the ANC. Okay.

3 I forget your name, but now you
4 can come forward and testify in support of the
5 application. Mr. Rayford? Okay.

6 MR. RAYFORD: Good afternoon,
7 Ma'am.

8 CHAIRPERSON MILLER: Good
9 afternoon. Do you want to testify in support
10 of the application?

11 MR. RAYFORD: Yes, ma'am. As I
12 stated, I live within a 10 block radius of the
13 bakery. The majority of my neighbors are
14 aware of it and patronize the bakery. It is
15 a very, very nice and family-orientated type
16 business. So we were in support of it. I
17 come speaking for the majority of my neighbors
18 in the Delafield Place, 5th Street, 4800 Block
19 of 5th Street and Decatur Street, 500 Block of
20 Decatur Street area.

21 It is in walking distance and it's
22 open at appropriate hours, and even on

1 Saturdays, so we really enjoy it. And we just
2 wanted to come down and let you know that.

3 CHAIRPERSON MILLER: Thank you
4 very much.

5 MR. RAYFORD: Thank you.

6 CHAIRPERSON MILLER: Does anybody
7 have any questions? Okay. Thanks so much.
8 Is there anybody here who wishes to testify in
9 opposition to the application? Okay. Do you
10 have any closing remarks?

11 MS. WILLIAMS-LOFTON: I would just
12 like to say if any of you are ever in the
13 neighborhood, please, feel free to stop by.

14 CHAIRPERSON MILLER: Well, first,
15 we have to rule on this. Okay. If there
16 aren't any other questions, I believe that the
17 Board is ready to deliberate on this
18 application. And I think we can do it under
19 motion.

20 I would move approval of
21 Application No. 17801 of Flip-It Bakery/Deli,
22 pursuant to 11 DCMR section 3103.2, for a

1 variance from the use provisions under section
2 330.5, to allow a bakery/delicatessen at
3 premises 4530/4532 Georgia Avenue, N.W. Do I
4 have a second?

5 VICE CHAIRMAN LOUD: Second, Madam
6 Chair.

7 CHAIRPERSON MILLER: I just
8 briefly want to go through the three prong
9 test that we need to find in order to grant a
10 use variance.

11 The first one is that there be an
12 exceptional condition and then that that gives
13 rise to an undue hardship on the owner. And
14 in this case, there were a few exceptional
15 conditions. This building has a history of
16 only being used commercially and that goes
17 back to before the enactment of the Zoning
18 Regulations.

19 And the only reason you need to
20 now come and get a use variance is because the
21 nonconforming use lapsed for over three years
22 and that provision is in 2005 of our

1 Regulations. It is developed only with a one-
2 story building on an irregular shaped corner
3 and it is currently divided or appears divided
4 as having two store fronts.

5 So it's a piece of property that
6 has always been used commercially, never
7 residentially and isn't suited for it. There
8 is an undue hardship on the owner were it to
9 comply with the regulations, in part because
10 it -- I think it would be difficult to
11 reconfigure for residential use.

12 And then in large part because
13 what we heard about their having gone through
14 DCRA and all the expenses and getting
15 permission and getting their building permit
16 and investing in renovations and then were
17 they not to be able to use it for a bakery,
18 that would be an undue hardship.

19 And there are certainly cases that
20 talk about zoning history as being a factor in
21 undue hardship analysis as done by the Court
22 of Appeals.

1 Finally, there is no substantial
2 detriment to the public or the Zone Plan. We
3 have evidence in the record of support from
4 the ANC and we have heard testimony from a
5 community member and there is no opposition.
6 And Council Member Bowser has also submitted
7 a letter recommending approval in this case.
8 Her letter is Exhibit No. 25, dated July 1,
9 2008.

10 The ANC is in support of it
11 finding it as an asset to the community. We
12 have heard and we can see by the photos that
13 are in the record how tastefully it is
14 decorated and I think in general, I mean, a
15 bakery in your neighborhood is really very
16 nice. I can see why it would be an asset, but
17 this one looks particularly beautiful.

18 And I think that covers it for me.
19 Do other have comments on this?

20 VICE CHAIRMAN LOUD: Madam Chair,
21 think you did cover it excellently. I don't
22 have anything of substance to add to it

1 really. I just wanted to commend the
2 applicant for going through the process and
3 hanging in there and making it through that
4 process.

5 I know how difficult it is to
6 operate a retail business successfully on
7 Georgia Avenue and I'm pleased that we, at
8 BZA, have not foiled your efforts to stay on
9 Georgia. It sounds like the business is doing
10 well and the only thing, pending the vote in
11 a few minutes, that really would have set it
12 back would have been had we decided against
13 it.

14 So continue, good luck in that
15 effort.

16 CHAIRPERSON MILLER: Other
17 comments? Okay. Yeah, I think this was a
18 fairly easy analysis that all of the elements
19 are there. And I hope we do get a chance to
20 go to this bakery some time. But first, we
21 have to vote on it.

22 So if there are no further

1 remarks, all those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining? And would you
5 call the vote, please?

6 MS. BAILEY: Madam Chair, the vote
7 is recorded as 5-0-0 to grant the application.
8 Mrs. Miller made the motion, Mr. Loud
9 seconded, Mr. Dettman, Mrs. Walker and Mr.
10 Turnbull support the motion.

11 CHAIRPERSON MILLER: Thank you.
12 And this can be a summary order, as there is
13 no party in opposition.

14 MS. BAILEY: Thank you.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. So your order should be ready shortly.
17 Okay.

18 MS. WILLIAMS-LOFTON: Thank you.

19 CHAIRPERSON MILLER: You're
20 welcome. Okay. At this point, the Board is
21 going to take a half hour lunch break. We
22 usually take it before the beginning of the

1 afternoon session, but in this case, we
2 decided to do the first case and we'll take
3 our lunch and then we'll come back fresh for
4 17761, Harry Belin and Everymay Society.

5 So we will be back at 2:00.

6 (Whereupon, the Public Hearing was
7 recessed at 1:29 p.m. to reconvene at 2:29
8 p.m. this same day.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

2 2:29 p.m.

3 CHAIRPERSON MILLER: Ms. Bailey, I
4 believe we're at Case No. 17761. Could you
5 call that case?

6 MS. BAILEY: Of Harry L. Belin, on
7 behalf of the Evermay Society, pursuant to 11
8 DCMR § 3104.1 , for a special exception to
9 allow a non-profit organization under section
10 217 at premises 1623 28th Street, Northwest.
11 The property is zoned R-1-B. It's located in
12 square 1285 on lot 815.

13 As you're aware, Madam Chair, this
14 is a continuation of a hearing that was
15 started previously. Just quickly with
16 reference to the preliminary matters.

17 There are four requests for party
18 status, one of which was withdrawn, that is
19 Mr. Robert C. Ray. That request was within.
20 And there are still three outstanding requests
21 for a party status.

22 CHAIRPERSON MILLER: Thank you.

1 Would the parties in this case
2 come forward, or counsel for the parties.

3 And so the party status
4 applicants, I have Mr. Ellen Steury. Okay.
5 And then Mr. Gregory Mercheck and Ms. Avery S.
6 Miller. Are they here?

7 MR. CROCKETT: I am here
8 representing them. Don Crockett, Your Honor.

9 CHAIRPERSON MILLER: Okay.

10 MR. CROCKETT: Ms. Miller works
11 for CVS and they have a big crunch on this
12 afternoon. She's a producer for the Charlie
13 Gibson Show and she probably won't be able to
14 be here today. But I'm representing her.

15 CHAIRPERSON MILLER: Are they one
16 party? Are they planned as one party?

17 MR. CROCKETT: I am specifically
18 representing him -- I'm sorry. Her.

19 CHAIRPERSON MILLER: Her.

20 MR. CROCKETT: And Ellen is
21 representing all the rest of the parties. I
22 think they have given --

1 CHAIRPERSON MILLER: Okay. You're
2 Mr. Crockett?

3 MR. CROCKETT: Yes.

4 CHAIRPERSON MILLER: And you're
5 representing -- did you give an address for
6 the record?

7 MR. CROCKETT: Yes, I would be
8 glad to. My address is 3071 3050 Street, Northwest,
9 Washington, D.C. zip code 20007. And my
10 telephone number is 202 --

11 CHAIRPERSON MILLER: No, you don't
12 have to give out your telephone number. You
13 don't want all these people to call you.
14 Right.

15 MR. CROCKETT: It's in the book.

16 CHAIRPERSON MILLER: Okay. So
17 you're representing Ms. Miller.

18 And, Ms. Steury, Mr. Crockett just
19 said you're representing everybody else?

20 MS. STEURY: I have letters. I
21 have letters from the two other party
22 applicants, including my husband who was here

1 last time, and Michael Goldberg who because of
2 this scheduling situation could not be here
3 today. They had planned to represent
4 themselves, but asked me to because they can't
5 be here.

6 CHAIRPERSON MILLER: For both of
7 them?

8 MS. STEURY: Yes.

9 CHAIRPERSON MILLER: Okay. You
10 have a letter from them authorizing you?
11 Great.

12 MS. STEURY: Yes. It's in the
13 file.

14 CHAIRPERSON MILLER: Okay. What's
15 your husband's name again?

16 MS. STEURY: Steven, with an V.

17 CHAIRPERSON MILLER: Okay. With a
18 V. Okay.

19 And did if Mr. Mercheck is being--

20 MS. STEURY: Mercheck.

21 CHAIRPERSON MILLER: Mercheck.

22 Thank you. Is he being represented by anybody?

1 MS. STEURY: He had planned to be
2 here today. He has not given me authorization
3 to represent him that I know of. He is
4 concerned that his job conflicts him from
5 having representation. So he's being cautious
6 about that.

7 CHAIRPERSON MILLER: So you're not
8 able to represent him for party status. Do you
9 know if he's interested in party status
10 anymore?

11 MS. STEURY: I do know he's
12 interested in party status.

13 CHAIRPERSON MILLER: Okay. But--

14 MS. STEURY: He's trying very hard
15 to rearrange his schedule to get here.

16 CHAIRPERSON MILLER: Oh, so he may
17 get here later --

18 MS. STEURY: He may be here.

19 CHAIRPERSON MILLER: But he's not
20 here for this. Okay. All right.

21 I think that's it for the party
22 status applicants. Am I missing anybody that

1 anyone knows of?

2 Okay. We'll continue the
3 introductions.

4 COMMISSIONER EASON: May I be
5 heard on the party status request?

6 CHAIRPERSON MILLER: Yes, we're
7 going to get that. I thought we'd get the
8 introductions and then be heard on the party
9 status. Okay.

10 COMMISSIONER EASON: Good
11 afternoon, Madam Chair and Members of the
12 Board. I'm Charles F. Eason, Jr., Commissioner
13 with Advisory Neighborhood Commission 2E.

14 CHAIRPERSON MILLER: And your
15 address?

16 COMMISSIONER EASON: 3027
17 Cambridge Place, Northwest. And that's
18 Washington, D.C.

19 CHAIRPERSON MILLER: Thank you.
20 That's fine.

21 Okay. Mr. Collins?

22 MR. COLLINS: Christopher Collins

1 with Holland & Knight. Address 2099
2 Pennsylvania Avenue, Northwest, D.C.

3 CHAIRPERSON MILLER: Okay. So we
4 have party status applications from Ellen and
5 Steve Steury, for Avery Miller who is
6 represented by Don Crockett. We do have a
7 party status application for Mr. Gregory
8 Mercheck but he's not here, he doesn't have a
9 representative at this point. And then party
10 status application by Michael and Marion
11 Goldberg who it's been represented have
12 authorized Ms. Steury to represent them.

13 Okay. Now, did you want to make a
14 comment right now, Mr. Collins?

15 MR. COLLINS: I did.

16 CHAIRPERSON MILLER: Okay. Do you
17 oppose them?

18 MR. COLLINS: My understanding is
19 Ms. Steury is here on her own behalf and
20 representing two other parties for whom she
21 has a letter?

22 CHAIRPERSON MILLER: We have a

1 copy of the letter for the Board and for Mr.
2 Collins and the ANC.

3 MS. STEURY: I have one copy here.

4 CHAIRPERSON MILLER: One copy?
5 Why don't you show it to Mr. Collins first,
6 and then Ms. Bailey can copy it when there's
7 time.

8 MR. COLLINS: Is it in the record?

9 MS. STEURY: It's on the record
10 already.

11 MR. COLLINS: These are from
12 Michael Goldberg and from Steven Steury. So
13 those would be who she represents?

14 CHAIRPERSON MILLER: Can someone
15 pass it to Ms. Bailey and she can make copies
16 for the Board?

17 The letters that you've just
18 handed Mr. Collins are letters of
19 authorization for Ms. Steury to represent --
20 what did you say? Michael Goldberg?

21 MR. COLLINS: Michael Goldberg and
22 Steven Steury.

1 CHAIRPERSON MILLER: Not Marion
2 Goldberg?

3 MR. COLLINS: No.

4 And then Mr. Crockett filed a
5 document last evening indicating that he would
6 be the attorney for Ms. Miller, Avery Miller.
7 Is there a letter on that representation?

8 CHAIRPERSON MILLER: Well, is
9 there a question for us? We have the letter,
10 correct?

11 MR. COLLINS: Yes. Is there a
12 letter from --

13 CHAIRPERSON MILLER: We have a
14 letter. We just got it today as well. Part of
15 the reason we went a little bit over 2:00 was
16 because there were a lot of papers in there
17 for us to review that came in yesterday.

18 MR. COLLINS: Yes.

19 CHAIRPERSON MILLER: And this was
20 one of them. And it's dated July 21st, 2008.

21 MR. COLLINS: And it says what? I
22 haven't seen it.

1 CHAIRPERSON MILLER: Oh. Well,
2 let's get you a copy. Do you have a copy of
3 this for Mr. Collins?

4 MR. COLLINS: Oh, I have this
5 letter. This is a letter from Mr. Crockett.
6 I'm looking for the letter from Ms. Miller
7 authorizing Mr. Crockett to represent her.

8 MR. CROCKETT: Well, to shorten
9 this I do have a retainer agreement with Mrs.
10 Miller. And if that's what the Board wants, I
11 have it.

12 CHAIRPERSON MILLER: Well, Mr.
13 Collins seems to be challenging it for some
14 reason.

15 MR. COLLINS: Well there's two
16 reasons.

17 CHAIRPERSON MILLER: Okay.

18 MR. COLLINS: First of all --

19 CHAIRPERSON MILLER: But you're
20 right, that is the way it normally comes into
21 the Board that the person who is authorizing
22 writes the letter.

1 MR. COLLINS: Right.

2 CHAIRPERSON MILLER: So, okay.

3 MR. COLLINS: And then secondly,
4 Ms. Miller's not present, her attorney is
5 present and he would not be the witness on her
6 behalf, he would be the attorney. So without
7 the witness, what would Mr. Crockett do?

8 CHAIRPERSON MILLER: He's a party,
9 he can cross examine.

10 MR. COLLINS: Well, he's not a
11 party. She's the party.

12 CHAIRPERSON MILLER: Well, as
13 counsel for the party.

14 MR. COLLINS: Yes. So she would
15 not be here to present and be cross examined,
16 but he can cross examine other parties, other
17 witnesses on her behalf? I've never seen that
18 where someone who is an attorney represents a
19 party who has requested party status and is
20 not present to fulfil the obligation of party
21 status that's set forth in the regulations.
22 At section 3106 it says to participate as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 party in a proceeding before the Board the
2 effected person shall provide the following.

3 So Ms. Miller did submit some
4 documentation 14 days in advance, including
5 the fact that she would not be represented by
6 counsel in her statement that she filed. And
7 now we have her not here to fulfil her
8 obligation if she was going to be granted
9 party status to be present and participate,
10 but her counsel is here. I've never seen that
11 before.

12 CHAIRPERSON MILLER: Okay.

13 MR. CROCKETT: May I --

14 CHAIRPERSON MILLER: Just let me--
15 I mean certainly you can respond. But could
16 you state which regulation you're referring
17 to?

18 MR. COLLINS: Sure. Section
19 3106.2, and I have copies for the Board.

20 CHAIRPERSON MILLER: We have our
21 rules. So I'm looking at 3106.2. Could you
22 read what part --

1 MR. COLLINS: Sure. "To
2 participate as a party in a proceeding before
3 the Board any effected person shall file with
4 the Board not less than 14 days in advance the
5 following information." And the information
6 is there. And parties, typically, are people
7 who are present and participate, which is what
8 the regulation states.

9 Now Ms. Miller's not here. She has
10 an attorney here. The attorney is not a fact
11 witness. The attorney can't make any
12 presentation because he's not a witness at
13 all; he's the attorney. So what would he do?

14 MR. CROCKETT: May I respond?

15 CHAIRPERSON MILLER: Okay. But I
16 just want to ask one other question and then
17 you can respond.

18 MR. CROCKETT: Okay. I'm sorry.

19 CHAIRPERSON MILLER: With respect
20 to 3106.2(d) whether the person will appear
21 through legal counsel and if so, the name and
22 address of the legal counsel does that not

1 contemplate perhaps that legal counsel can--

2 MR. COLLINS: Well, she can be
3 represented, certainly there's a requirement
4 there that she state 14 days in advance
5 whether she would appear through legal counsel
6 and if so the name and address. And that did
7 not happen. But in all instances that I'm
8 aware of and familiar with, the applicant for
9 party status is here with his or her attorney
10 if represented by counsel.

11 The fact that the person
12 requesting party status to be granted party
13 status without being here is unusual. And even
14 more so unusual is to have an absent
15 perspective party participant be represented
16 by counsel and allow the counsel to proceed as
17 if the party was here and participating but
18 the person is not here participating. So
19 they're not allowed to have party status.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Crockett?

22 MR. CROCKETT: Madam Chairman, I

1 am not aware of any rule, and certainly not
2 this rule, that requires the party to be
3 present as opposed to her or her attorney. And
4 I certainly read the rule the same way you
5 just read it, that a party may be represented
6 by an attorney. And we have submitted the
7 documentation necessary to bind Ms. Miller
8 with anything that I do on her behalf as her
9 attorney.

10 I think that is true in civil
11 litigation generally as well as in
12 administrative litigation before a Board such
13 as this. And while it may be unusual, in this
14 case that does not mean that it is not
15 authorized. It certainly is authorized. And
16 Ms. Miller decided last week when it became
17 apparent that there were going to be problems
18 with this, that she would appear by way of an
19 attorney rather than by herself because of her
20 problems that she had. And I entered my
21 appearance, and I do represent her. And I
22 think I should be able to go forward.

1 She has submitted all the
2 requirements under the rule. Her written
3 statements are in the record. And that is her
4 testimony, just like all the rest of the
5 written statements in the record by other
6 people who aren't available for cross
7 examination.

8 CHAIRPERSON MILLER: Any other
9 comment?

10 COMMISSIONER EASON: I would say
11 that I've never been in a situation where it
12 was my understanding that a party couldn't
13 appear through counsel without being present.
14 Just, you know, there are never situations
15 where that's not even possible when the
16 party's a corporation or some other kind of
17 entity. If the party's not there through their
18 legal counsel. And so I would side with the
19 argument that was made by Mr. Crockett. And
20 I would support to allow him to represent the
21 party.

22 MR. COLLINS: Madam Chair, as

1 you've pointed out many, many times including
2 this morning in earlier cases, that granting
3 party status bring with it several
4 obligations. If people want to be a party,
5 they must participate as a party. And you
6 just can't mail it in. You have to be present
7 to participate.

8 Now if Ms. Miller is not here to
9 be cross examined yet her attorney is allowed
10 to cross examine other witness, that seems to
11 be fundamentally unfair and contrary to the
12 spirit of the rules.

13 MR. CROCKETT: One more response--

14 MS. STEURY: I would like to speak
15 to the equities please.

16 CHAIRPERSON MILLER: Just as
17 second. Is there an objection to Ms. Steury's
18 application for party status?

19 MR. COLLINS: No. There's no
20 objection to Ms. Steury's application nor her
21 representation of Mr. Goldberg or Mr. Steury.

22 CHAIRPERSON MILLER: Okay. Is it

1 the consensus of the Board to grant Ms. Steury
2 party status? Because I want to get this
3 right, you know go in the right order at this
4 point so she can participate in this
5 conversation as a party now. Okay. So we're
6 granting you and your husband party status.

7 MS. STEURY: Thank you.

8 CHAIRPERSON MILLER: Okay.

9 MS. STEURY: Thank you.

10 I think a little bit of history
11 will help the equities in perspective here.

12 This was first scheduled for May
13 13th. Ms. Miller cleared her calendar for that
14 date, had applied for party status before that
15 date and expected until the applicant
16 postponed to be here.

17 Now at the ANC meeting when the
18 applicant announced that he was postponing --

19 MR. COLLINS: Madam Chair, why is
20 Ms. Steury arguing Ms. Miller's point.

21 MS. STEURY: Because it effects
22 all of the parties involved here.

1 At the ANC meeting when the
2 applicant decided to postpone, he represented
3 to all those present that this would not go
4 forward before September.

5 MR. COLLINS: That's not true.

6 MS. STEURY: And it was on that
7 basis --

8 MR. COLLINS: That's not true.

9 MS. STEURY: There's a tape.

10 MR. COLLINS: That's not true.

11 CHAIRPERSON MILLER: Okay.

12 There's a difference of opinion.

13 Go ahead, what's the point.

14 MS. STEURY: It was on that basis
15 that there was no objection at that. We knew
16 at that time that several people would have
17 extended periods of time away from home out of
18 town.

19 We -- I was the only one on the
20 basis of that representation that showed up at
21 the May 13th meeting just to make sure things
22 went forward as expected. And they did not go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forward as expected. The applicant chose a
2 July 15th date. I objected. You said it was
3 a good thing to get the parties together to
4 focus. I mentioned on the record that there
5 was a lot of travel planned and that this
6 would be difficult. Now --

7 CHAIRPERSON MILLER: Okay. If the
8 reason that she can't participate because she
9 out of town?

10 MS. STEURY: No.

11 CHAIRPERSON MILLER: No?

12 MS. STEURY: No, but she was out
13 of town last week when this was scheduled on
14 very short notice for this week. And she was
15 unable to get coverage for her night --
16 tonight's broadcast. They're short, it is
17 vacation time and the show must go on.

18 CHAIRPERSON MILLER: Mr. Crockett,
19 you're actually her attorney. She can't be
20 here because she has a business obligation, is
21 that right?

22 MR. CROCKETT: That's right.

1 CHAIRPERSON MILLER: Okay. Just
2 so that's the good cause. I just want to get
3 it in the right context.

4 MR. COLLINS: And I would just
5 mention, Madam Chairman, the Board has just
6 approved party status for Mr. Goldberg who
7 also cannot be here today.

8 CHAIRPERSON MILLER: I didn't to
9 Mr. Goldberg, yet.

10 MR. CROCKETT: Oh.

11 MS. STEURY: You approved me
12 representing him, though, right?

13 CHAIRPERSON MILLER: I'm sorry. I
14 thought we were doing you and your husband as
15 a joint party.

16 MS. STEURY: Well, let me -- I
17 guess what happened is that Mr. Collins said
18 he had no objection to me representing Mr.
19 Goldberg --

20 MR. COLLINS: Well, to speak on
21 his behalf, but not that he would be granted
22 party status.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: So you didn't
2 do that.

3 Okay. I think what we just did --
4 and I'm going to back up. I just want to make
5 sure that the Board is comfortable with that.

6 You're here, obviously, you're
7 participating as a party. Ellen Steury, we
8 have definitely given her party status. We
9 also gave it to her husband. I think we
10 recognized them as a unit. I don't think they
11 both have to be here in order for that unit to
12 be represented. Do you have a problem with
13 that, Mr. --

14 MR. COLLINS: I would agree with
15 that.

16 CHAIRPERSON MILLER: Okay. All
17 right. So we'll leave Mr. Goldberg for later.

18 All right. So basically there's
19 good cause for her not to be here from what
20 I've heard. She's being represented by
21 counsel. And Mr. Collins is objecting because
22 -- I don't know that we have seen it, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, a person who did not show up who is
2 granted party status and had counsel there
3 instead. I don't personally that it's not
4 allowed in our regulations.

5 I think participating as a party
6 would mean, it's not exactly defined her, but
7 he would be able to cross examine and make
8 legal arguments on behalf of his client. I
9 don't see that that's precluded here. In
10 fact, it does say you can appear -- or whether
11 you want to appear through counsel.

12 We would expect -- and I open this
13 up for other comments from the Board with
14 respect to testimony. You cannot cross examine
15 the testimony that's in the file, and that
16 takes on way different weight than testimony
17 that is being cross examination. But that's a
18 different issue. A party doesn't even have to
19 testify -- a person who applies for party
20 status, they don't even have to testify if
21 they don't choose to.

22 How do other Board members feel?

1 VICE CHAIRMAN LOUD: I think I
2 struggle with it a little bit, Madam Chair.
3 But I think I agree with you. I think the
4 failure of the party status applicant to
5 appear cuts both way. You can't cross, but on
6 the other hand they're not going to be
7 offering damaging testimony. And the written
8 testimony that they've submitted as a part of
9 the record will be evaluated accordingly. It's
10 just written testimony. We'll take it into
11 consideration and weigh it with the other
12 items that are a part of the record.

13 And I don't see anything in the
14 rules that would preclude the party status
15 applicant from not being granted that if they
16 have the requisite interest just because their
17 counsel appears in their stead. And, in fact,
18 the language sort of implies that that
19 scenario is anticipated and approved by the
20 regs.

21 So I'm inclined to agree with
22 Madam Chair on this in terms of granting party

1 status application. Status, I'm sorry.

2 CHAIRPERSON MILLER: Yes. We
3 didn't get -- and after we decide whether we
4 can with just the attorney here, the we can
5 look at the merits. But I'm pretty sure she's
6 another impacted neighbor that lives nearby,
7 so I don't think that's a big issue.

8 What do others feel about the
9 legal counsel issue?

10 MEMBER WALKER: Madam Chair, I
11 agree. I think that 3106.2(d) clearly
12 contemplates an individual appearing through
13 counsel. So I think if we look at the plain
14 language of that provision, then we reach the
15 conclusion that Mr. Crockett can represent Ms.
16 Miller.

17 CHAIRPERSON MILLER: Okay. Is
18 there any issue with respect to Ms. Miller
19 being distinctly impacted by the application
20 different from the general public, I mean to
21 the merits of the party status application?

22 MR. COLLINS: Well, if the way the

1 rules are written, 3106.2(e)5 requires an
2 explanation of how that person's interests are
3 more significantly distinctly or uniquely
4 effected in character or kind by proposed
5 zoning relief. That would mean that
6 technically there would be one opposition
7 party and no one else could also be uniquely
8 effected.

9 CHAIRPERSON MILLER: It does not
10 say one and only. It says uniquely effected in
11 character or kind by the proposing zoning
12 relief than those of other persons in the
13 general public.

14 MR. COLLINS: Right.

15 CHAIRPERSON MILLER: I don't think
16 that it means than the next door neighbor.

17 But Mr. Collins raises a point
18 that we often see in these kind of cases where
19 there are a few neighbors all effected
20 differently than the general public. And that
21 it's often efficient for them to join together
22 to present a case in opposition. And so we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 examine that.

2 The way the rules read is that if
3 you listened to my intro at the beginning that
4 the parties in opposition collectively get 60
5 minutes. So either you join as one party and
6 you have up to 60 minutes, or whatever the
7 specific time is or you're separate and you're
8 collectively given that amount.

9 So I don't see it as a big issue,
10 but it's sometimes more efficient to join
11 together as one party.

12 MR. CROCKETT: Well, Madam
13 Chairman, we have no problem with the 60
14 minute rule.

15 And insofar as Ms. Miller is
16 concerned, she does live almost right next
17 door to Mr. Steury. And they are the neighbors
18 that are most severely impacted by the traffic
19 that goes into the driveway that is less than
20 a 100 feet from their windows. And she also
21 has small children on that block. And I think
22 that distinguishes her from a lot of the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 residents that are impacted near this driveway
2 and the Evermay house. So I don't think there
3 is any question whatsoever that she and her
4 husband and her family are severely impacted,
5 much more so than I am. And I live down at
6 31st and Q and there is not much impact to me,
7 and I'm a member of the general public. But
8 there is severe impact to her and her family
9 being up there only about 100 feet from the
10 driveway.

11 COMMISSIONER EASON: Madam Chair,
12 I would just if I could very briefly, the
13 Commission would of course endorse the party
14 status for Avery Miller. And --

15 MR. COLLINS: I'm going to object
16 to this because the ANC is limited to only
17 testifying what's in their report. The report
18 has nothing about party status. This is way
19 outside the scope of the ANC --

20 CHAIRPERSON MILLER: That's a very
21 interesting point. I don't know if that's
22 true. We haven't really treated the ANC like

1 that. What we've said is they're only
2 entitled to great weight with what's in their
3 report. But we haven't said, I mean for
4 instance the ANC cross examines. That's not
5 in their report. They're allowed to
6 participate as a party, that's what the rules
7 say.

8 MR. COLLINS: At the appropriate
9 time, I can do it now or I can do it when he
10 begins his testimony I can get into that
11 issue, if you like.

12 CHAIRPERSON MILLER: If you feel
13 it's necessary in order to protect your
14 client's rights with respect to the party
15 status question, then you may as well address
16 it now.

17 MR. COLLINS: Well, with respect
18 to the party status I don't think the ANC has
19 any issue on the party status because that's
20 not what they voted on. And the testimony by
21 an ANC representative cannot go beyond the
22 four corners of the issues that the ANC voted

1 on.

2 COMMISSIONER EASON: But Madam
3 Chair --

4 CHAIRPERSON MILLER: Would you
5 look up the regulation?

6 MR. COLLINS: Madam Chairman, I'm
7 looking at section 3115.2 and .3.

8 COMMISSIONER EASON: Madam Chair,
9 as I understand it, the Commission is a party
10 to this proceeding. We have submitted a
11 report. I'm not even sure that I will be
12 offering any testimony on behalf of the
13 Commission. But as we just discussed in terms
14 of the parties in the other context, I think
15 that we have not only a right but a duty to
16 weigh in on these things as they come up.
17 They certainly cannot possibly be anticipated
18 in advance of the hearing. So obviously
19 they're not treated in any report that the ANC
20 has prepared and submitted.

21 CHAIRPERSON MILLER: I read 3115.3
22 as limiting what the ANC can say that diverges

1 from the report to represent the ANC consensus
2 vote. But if the ANC under our rules has a
3 right to participate as a party, then I think
4 that right goes to this type of issue as well.
5 Do others --

6 VICE CHAIRMAN LOUD: Madam Chair,
7 I would agree. I don't read section 3115.3 as
8 restrictively as suggested by Mr. Collins. If
9 there's another section that would in some way
10 limit the role of the ANC representative at
11 the hearing, it would be helpful to have that
12 pointed out. But I think in 3115.3 we're
13 talking merely about the ANC representative
14 appearing at the hearing and somehow going
15 beyond what's in the great way to report--

16 COMMISSIONER EASON: Right.

17 VICE CHAIRMAN LOUD: -- that
18 resulted from the quorum meeting and the
19 properly noticed meeting, et cetera, et
20 cetera. And placing restrictions on what the
21 ANC rep can then say in connection to that
22 approved ANC report. Right now we're talking

1 about the ANC in its capacity as a party with
2 respect to all of the issues coming before us,
3 and not just the ANC report.

4 So again, I don't see 3115.3 as
5 restrictively as that. But if there's another
6 section that speaks to that.

7 MR. COLLINS: Mr. Loud, just let
8 me preface if I heard correctly the ANC
9 representative said -- prefaced his remarks by
10 saying "The Commission would have no problem,"
11 or "the Commission would have no issue with
12 this."

13 Now, he's one commissioners. He
14 can't speak on behalf of the Commission on
15 something they didn't vote on. If he's giving
16 his personal opinion as a resident of
17 Georgetown, that may be fine. But that's not
18 something that's part of the ANC great weight.
19 It's not in the written report. It can't be
20 given great weight. It's not even relevant.
21 It's beyond the scope of the report and
22 specifically disapproved by section 3115.3.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER EASON: Madam Chair--

2 MR. COLLINS: It says no other new
3 matters may be presented orally by the
4 designated ANC representative. That's clear.

5 COMMISSIONER EASON: Madam Chair,
6 if I could respond to that.

7 CHAIRPERSON MILLER: Okay. I
8 think that's an interesting point. Yes?

9 COMMISSIONER EASON: It is an
10 interesting point, but I think we can put it
11 to rest quickly. The resolution that was
12 adopted by the Commission and submitted to
13 this Board includes in paragraph 4 "The
14 Commission authorizes Commissioners Solomon,
15 Star, Lewis, Lowenstein, Birch, Eason and
16 Skelsee or any of them to present the report
17 of the Commission and to act for the
18 Commission on any matters which may come
19 before the Board relative thereto." And it
20 was expressly intended to make sure that there
21 was no question about this kind of thing.

22 MR. COLLINS: Right. Exactly. With

1 regard to the report. To present the report
2 of the Commission and to act on the Commission
3 with respect to any matters relative thereto.
4 The report --

5 CHAIRPERSON MILLER: What was the
6 question that he wanted to comment on?
7 Whether Ms. Miller was impacted?

8 MR. COLLINS: Exactly. Yes.
9 Exactly.

10 COMMISSIONER EASON: I'm sorry. I
11 was responding to his question about the issue
12 that there can only be one opposition party.
13 And I don't think that that makes any sense at
14 all. Otherwise, there would be a race to the
15 courthouse and whoever showed up first would
16 be the one who gets to speak for everybody.
17 And that doesn't provide due process
18 whatsoever.

19 CHAIRPERSON MILLER: Okay. Let's
20 move on. You know, I think that's kind of
21 harmless thing. It's just an opinion on the
22 procedure of whether the two or more parties

1 should merge. So I don't think it's he
2 speaking on behalf of the ANC Commission per
3 se. But I think we often like to get an
4 opinion from the ANC.

5 Okay. We didn't grant party
6 status yet to Ms. Miller I don't believe. I
7 think that's before us.

8 And I think, Mr. Collins, would
9 you say that -- is it your position that she's
10 not uniquely impacted? She has to be the one
11 and only and the one and only is Ms. Steury
12 who you don't have an objection to?

13 MR. COLLINS: Oh, I have no
14 objection to Mr. Steury.

15 CHAIRPERSON MILLER: She's --

16 MR. COLLINS: Or Mr. Steury.

17 CHAIRPERSON MILLER: They're
18 uniquely impacted because they're closer than
19 Ms. Miller?

20 MR. COLLINS: Because they're the
21 closest right.

22 CHAIRPERSON MILLER: Okay. So you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't think that she's close enough to be
2 different from the general public? That's the
3 standard.

4 MR. COLLINS: That's right.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Crockett, and you just -- would you just
7 address that briefly?

8 MR. CROCKETT: Yes. She's only 20
9 feet away. I mean, she's one house down from
10 Ms. Steury and there is absolutely no
11 difference in the impact between the two of
12 them. And they are probably the two most
13 impacted houses at that driveway. So they're
14 both uniquely impacted and much more so then,
15 as I say, the rest of us who live further away
16 in Georgetown as members of the general
17 public.

18 CHAIRPERSON MILLER: Comments from
19 Board members?

20 VICE CHAIRMAN LOUD: I don't read
21 the rule to say that it has to be only unique.
22 It can be more significant than the general

1 public, which would involve many of the cases
2 that we deal with where you may have a west
3 and an east adjoining property owner and they
4 both are significantly impacted, although
5 their impact may not be unique as to each
6 other. So I don't read the rule to limit to
7 just unique situations.

8 CHAIRPERSON MILLER: I would
9 suggest that then we grant party status to Ms.
10 Miller, Ms. Avery Miller.

11 If there's no letter of
12 authorization for Mr. Crockett to represent
13 Mr. Mercheck, I don't believe we should grant
14 him party status. There's no letter either
15 way. Mr. Crockett's letter, I believe, only
16 goes to Ms. Miller.

17 Is that right? You only have
18 authorization for Ms. Miller?

19 MR. CROCKETT: That's correct.

20 CHAIRPERSON MILLER: Okay. Do
21 Board Members feel otherwise? Okay. So we're
22 granting party status to Ms. Avery Miller who

1 is being represented by Mr. Don Crockett her
2 legal counsel.

3 And that leaves the Goldbergs
4 here.

5 I don't think, Ms. Bailey, we got
6 all the letters that might have been floating
7 around. Is there a letter of authorization
8 from the Goldbergs to have Ms. Steury
9 represent them?

10 MS. STEURY: Yes. It was one of
11 the two that I handed up.

12 CHAIRPERSON MILLER: Where do the
13 Goldbergs live in relation to where you live
14 and are their interests the same as yours?

15 MS. STEURY: They're aligned with
16 my interests, They live one, two, three, four
17 houses away, if I counted correctly. We're
18 rowhouses, so we're very closely situated.
19 They've been active in this matter since the
20 first application was filed in 2002 and have
21 participated in the ANC meetings in the past,
22 and have participated in the neighborhood

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meetings and worked with the neighbors on this
2 issue. They, I believe, are not on the 200
3 foot list. They're the first house outside the
4 200 feet.

5 They are -- and as their letter
6 explains, they are as effected as the next
7 neighbor who is within the 200 feet in terms
8 of the parking problems and the noise problems
9 and the congestion. They're letter --

10 CHAIRPERSON MILLER: And why
11 aren't they here today?

12 MS. STEURY: Because they left for
13 an extended period of time for this summer
14 thinking that this --

15 CHAIRPERSON MILLER: On vacation?

16 MS. STEURY: Yes.

17 CHAIRPERSON MILLER: Mr. Collins?

18 MR. COLLINS: Well, they're
19 outside the 200 foot list then. And
20 regardless of what's been said before,
21 certainly the Board has typically not granted
22 party status to anybody outside the 200 foot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 list.

2 CHAIRPERSON MILLER: They're also
3 not represented by counsel as when we were
4 looking at the rules, you know it said through
5 counsel. I'm not sure it says through another
6 neighbor or somebody like that. That's why I
7 see this one being a little bit different.

8 MS. STEURY: Madam Chair, I don't
9 understand the distinction you're drawing
10 because in 3106.1 it says "In proceeding
11 before the Board any person or party may
12 appear on that person or party's own behalf;
13 any person or party may be represented by any
14 other person duly authorized in writing to do
15 so." It does not draw a distinction between
16 those --

17 CHAIRPERSON MILLER: But I'm
18 looking 3106.2 which talks about party status,
19 I think. That's where I saw the difference.

20 MS. STEURY: I don't see it.

21 CHAIRPERSON MILLER: You'll have
22 to be granted party status before you -- well

1 -- 3106.1 talks about where you are a party.

2 I just want to raise that one --
3 we'll throw one other question out here.
4 Because we're looking at the regulations and
5 I haven't come to my conclusion yet. But I
6 think there might be a difference in dealing
7 with this couple as a party in and of
8 themselves as opposed to if you were joined --
9 if they want to join as one party and you were
10 representing the whole party.

11 MS. STEURY: I understand you
12 might not accept this. But in my
13 communication yesterday and the day before
14 with Mike and Marion Goldberg, they both
15 signed their letters but it was their
16 recollection not having a copy of their party
17 status application on them and neither did I
18 as we were having our conversation, that
19 Marion had not filed for party status. That
20 Mike had filed for the two of them. And that's
21 why he was the one who signed --

22 CHAIRPERSON MILLER: But that's

1 not my point. My point is you had talked
2 about a person who wasn't here but her legal
3 counsel was here and she authorized the legal
4 counsel to represent here. That's Ms. Miller.
5 Okay. Now we have another couple who are not
6 here. They don't have legal counsel that
7 they've appointed to represent them. And they
8 said that they would like somebody else, if I
9 recall this correctly, who is going to be a
10 party in the case, meaning you, to represent
11 them on their behalf. I'm saying I think I
12 might see a difference if they weren't
13 separate party, if they just became part of
14 your party. They were a part of your party and
15 you are representing that party, that being
16 the Steury/Goldberg party as opposed to
17 they're being a separate party. So I just
18 want to float that and see how that sits with
19 you.

20 MS. STEURY: I can't at this time
21 see how that would -- how our interest would
22 diverge. But I have not thought about this

1 long. But it does not sound --

2 MR. CROCKETT: Madam Chair, having
3 been through some of these before, one of the
4 reasons people want to become parties is
5 because if there is an eventual appeal, only
6 a party can participate in an appeal to the
7 Court of Appeals. And so from that point of
8 view it's important to have party status.

9 CHAIRPERSON MILLER: That's often
10 a concern that's been raised before this
11 Board. And I'm not sure if I have the statute
12 handy right here or not. But actually the
13 standard is for appealing to the court is not
14 that you'd be a party, it's just that you have
15 been -- you have to be impacted by the decision.
16 It's not the exact legalistic language. But
17 I just want to take that out of the equation.
18 And we have heard that a lot.

19 So I'm just looking for the letter
20 that authorized Ms. Steury again so I can see
21 what the Goldbergs actually said.

22 MR. COLLINS: But Ms. Chair --

1 Madam Chairman, if there was a party three
2 blocks away that was seeking to be
3 bootstrapped in by Ms. Steury because she's a
4 party to represent them as also a party, you
5 wouldn't allow that. Because the party would
6 be three blocks away. There's a bright line,
7 and the bright line that attest that you as a
8 Board have consistently applied has been the
9 200 foot list. And, you know, there's one side
10 of the line, there's the other side of the
11 line. And the Goldbergs are outside the line.

12 CHAIRPERSON MILLER: Mr. Collins,
13 is your position that the Goldbergs aren't
14 distinctly impacted different from the general
15 public because they're further away outside
16 the 200 feet --

17 MR. COLLINS: They're at the other
18 end of the block. That's right.

19 CHAIRPERSON MILLER: Okay.

20 MS. STEURY: Madam Chair, I
21 concede that they're 200 feet away. I do not
22 concede that they're not distinctly impacted

1 as opposed to the rest of the even three or
2 four block area.

3 Did you want the number of their
4 party status application? Okay.

5 CHAIRPERSON MILLER: I was just
6 looking for the authorization, how it read.
7 Because, you know, to see if we were to
8 consider them differently if they were part of
9 your party. And I wanted to look at the letter
10 to see whether we could even do that in light
11 of how they wrote their letter. But I have
12 it. It was handed to me. Thank you.

13 I have a question. They're not
14 even represented here. Well, you can --
15 they've authorized you to represent them.

16 How are they different from the
17 general public? What's the difference between
18 where they are and the general public.

19 MS. STEURY: Two or three block
20 away or --

21 CHAIRPERSON MILLER: They are two
22 or three blocks away from --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEURY: No, no. I'm sorry.

2 CHAIRPERSON MILLER: Oh.

3 MS. STEURY: Different from
4 someone who might be two or three blocks away?

5 CHAIRPERSON MILLER: I don't know.
6 I mean what makes them particularly impacted?
7 I don't know if somebody 400 blocks. I don't
8 know where the line is drawn. It kind of
9 depends where the streets are and --

10 MS. STEURY: Yes. And, in fact,
11 that's why they are as impacted as the person
12 next them for all practical purposes.

13 Given the layout of the property
14 and the overflow of parking for parking
15 spaces, the Goldbergs are as effected as Mr.
16 Petrou, who is within the 200 foot radius.
17 And their driveway has been repeatedly
18 blocked. They have not been able to have
19 guests at their home because of the traffic
20 congestion and the parking problems and things
21 like that. So they are indistinguishable
22 really from the person right next to them

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 within the 200 feet.

2 CHAIRPERSON MILLER: All right.
3 Mr. Collins, your light is on. Did you want to
4 say something? No?

5 MR. COLLINS: No. I've said what
6 I need to say.

7 CHAIRPERSON MILLER: Okay. Okay.
8 And if you were to, you know, advocate on
9 behalf of yourself and Mr. Crockett is going
10 to be advocating on behalf of Ms. Miller,
11 would there be some interest of theirs that
12 wouldn't be covered that you would have to
13 cover separately?

14 MS. STEURY: I doubt it.

15 CHAIRPERSON MILLER: Okay. Let me
16 ask you one more question, Ms. Steury. What's
17 the point of leaving them as part of your
18 party? Mr. Crockett's concerned about
19 standing to appeal in the Court of Appeals is
20 not effected by whether they're named as a
21 party.

22 MS. STEURY: When this started we

1 all expected to be representing ourself and
2 not having this situation. It's been because
3 of the rescheduling interfering with
4 vacations. They have been a part of this all
5 along. So when they asked if I could
6 represent them, I as a courtesy to somebody
7 whose been in this boat with us all this time,
8 I of course said yes. I don't think that
9 their interests will be any less represented
10 one way or another. I will represent the
11 interests for our block.

12 CHAIRPERSON MILLER: Okay. You
13 know, it's unfortunate. It is summer, but
14 everybody has different schedules and the
15 Board does the best it can to accommodate the
16 citizens. And party status, the way I
17 understand it, it is a more active
18 participation in the hearing. And so I think
19 that you either have to be here or have to
20 have counsel here. And that the Goldbergs'
21 interests will be represented in any event by
22 Ms. Steury and Mr. Crockett, and perhaps by

1 the ANC. I don't know. But certainly by
2 those two. So I don't think it will do very
3 much to add names to the party at this point,
4 you know, unless I heard that they were going
5 -- or if they were going to be filing some
6 pleadings, you know, and they couldn't be
7 here. It doesn't look that way, that we need
8 to protect their right to participate. And
9 they are outside the 200 feet.

10 So I would be inclined to not
11 grant them party status.

12 MS. STEURY: May I ask a question?
13 Should this continue, would they be able to
14 revive their party status application if they
15 were present?

16 CHAIRPERSON MILLER: No. I don't
17 believe so. But let me just say this:
18 Everybody is able to put in testimony and they
19 could work through you still without being
20 named as a party to participate since your
21 interests seem quite so closely aligned. So,
22 others who --

1 VICE CHAIRMAN LOUD: I agree with
2 you, Madam Chair. I'm not clear on the reason
3 why we would do it. There would be no -- for
4 example, if there were cross examination it's
5 not like Ms. Steury would say okay well the
6 next ten cross questions are for me, then
7 after that say well the following five cross
8 questions are for the Goldbergs. They're not
9 here. They're not going to be calling
10 witnesses. The whole reason for party doesn't
11 seem to apply in this particular context when
12 they're not here and they're not represented
13 by counsel.

14 CHAIRPERSON MILLER: Okay.
15 Others? You concur? Okay.

16 All right. So that's the consensus
17 of the Board.

18 I think that we have made it
19 through party status, have we not,
20 applications? All right.

21 I want to cover a couple of other
22 preliminary matters I think we have before us.

1 Let's see.

2 We had quite a lot of papers
3 waiting for us. So let me just pull them and
4 get to some of the preliminary matters.

5 Okay. There is one issue we did
6 fairly quickly last week, and I just want to
7 touch upon it again. And it is raised in one
8 of the motions that have been filed before us
9 dealing with the posting question. And we
10 dealt with it rather quickly, so I just wanted
11 to go back to it.

12 Ms. Steury raised an issue about
13 not going forward on the case because posting
14 wasn't complied with. And in particular, she
15 was referring to 3113.15 which says: "The
16 applicant shall post notice at each street
17 frontage on the property involved and on the
18 front of each building located on the subject
19 property. Each notice shall be in plain view
20 of the public."

21 And we dealt with that fairly
22 quickly saying that we found that there was

1 adequate notice. That there was notice posted
2 on the property, but it wasn't on each
3 building. And I think Ms. Steury's reaction
4 might have been well regulation says each
5 building. So I wanted just to go back and
6 reference our authority for finding that the
7 notice that was provided particularly on the
8 property as opposed to on each building was
9 adequate.

10 We do have authority in the 3100.5
11 to waive certain regulations. And the standard
12 for that is good cause. If there's good cause
13 and it wouldn't prejudice the rights of a
14 party and it's not otherwise prohibited by
15 law. And when we're looking at posting we
16 want to make sure we look at it in the context
17 of all the notice that had been given and make
18 sure that the public's aware that there is
19 this hearing and that we did find, though,
20 rather quickly that that was the case; that
21 there was posting on the property, that all
22 the notices were sent out to people within 200

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feet. That the neighbors certainly knew about.
2 That the ANC knew about, et cetera.

3 And actually, it's the first time,
4 I've been here five years, that I have even
5 noticed that you're supposed to put notice on
6 every single building. But that's another
7 regulation that might come under review, I
8 think.

9 But anyway, so I just wanted to
10 especially bring to Ms. Steury's attention the
11 reasoning that was the basis for that finding.
12 And that's 3100.5

13 Yes, Mr. Collins.

14 MR. COLLINS: I just have two
15 points on that just to complete the record.

16 The second part, the second
17 sentence in that provision says: "Each notice
18 shall be in plain view of the public." If you
19 look at the affidavit of posting that was
20 filed in the case, you'll see the sign
21 promptly posted on the right hand gate post,
22 if you will, of the driveway. There's only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 one driveway to the property.

2 On the easel is the site plan of
3 the property. This is the entrance right
4 here. The sign was posted. And here's 28th
5 Street. The sign was posted right there.
6 Here's one building. Here's another building,
7 the front of that building right there. This
8 is the front of the third building, the
9 carriage house. Here's the greenhouse down
10 here.

11 So you have if posting on the
12 front of those building wouldn't serve any
13 purpose and it would not be in plain view of
14 the public. So for those reasons I believe
15 that you also can waive that rule for good
16 cause.

17 MS. STEURY: I hear that you're
18 going to waive or find good --

19 CHAIRPERSON MILLER: We already
20 did waive. We did. But we did it so quickly
21 I wanted to just bring it back and let you
22 understand what happened.

1 MS. STEURY: And there is a fact
2 here that I'm unwilling to concede. Because I
3 have as of yesterday submitted photographs
4 taken of the property that show that you can
5 see from the street even without going on the
6 property, which is open about 24/7 now, and
7 see the buildings and there could have been
8 postings in plain view even from passers by on
9 the street.

10 MR. COLLINS: But you would have
11 had to walk by the posting right on the
12 gatepost.

13 MS. STEURY: That's true.

14 CHAIRPERSON MILLER: Okay. I
15 mean, I'm sure you could have. That's the
16 first I even heard of that, but we've had
17 schools that have a ton of buildings come for
18 special exceptions and I would doubt that they
19 posted every building. But I don't know. I
20 mean, you're the first person that's brought
21 it to our attention.

22 MS. STEURY: Well, my lesson was

1 learned from the Tudor Place decision order
2 where it was obvious. There had been a big
3 fight over it when the seventh out of seven
4 signs was posted three days late.

5 CHAIRPERSON MILLER: That was
6 right before my time. Okay.

7 So I want to make sure that we
8 just quickly address some motions that have
9 been filed.

10 I have a motion of adversely
11 effected neighbors to dismiss the application
12 for failure to demonstrate entitlement to a
13 special exception under section 217. Okay.
14 I'll make a brief comment and other Board
15 Members can chime in, certainly if they
16 disagree. I don't want to hear argument on
17 this, really.

18 Basically this goes to the merits
19 of the case. And we don't -- we can tell from
20 the huge file in this case that we need to
21 have a hearing and hear the case. That it's
22 not something that we would rule on as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 matter of law and dismiss at this point, if it
2 was even intended that way.

3 When we have motions to dismiss
4 that we actually do dispense with this at the
5 beginning of a case, it's because for instance
6 they failed to state a claim upon which relief
7 could be granted so there's no point in having
8 a hearing, because there's no valid claim.

9 But we're here for a hearing, so
10 this just does not seem appropriate for a
11 motion to dismiss in my view. Is there
12 anything that the -- does want to add?

13 It doesn't mean -- let me just say
14 this: It doesn't mean that when we finish the
15 hearing we're going to look at this again and
16 then look at all the points that were made and
17 consider it in our deliberation. What I'm
18 saying is now I don't believe it should be
19 granted without a hearing. Do others have an
20 opinion?

21 VICE CHAIRMAN LOUD: Madam Chair,
22 just so the record is clear, you're making

1 reference now to the motion to dismiss that
2 was filed by Mr. Crockett on behalf of Avery
3 Miller, is that correct? And without
4 prejudice to another motion that was made by
5 Mr. --

6 CHAIRPERSON MILLER: That's
7 correct.

8 VICE CHAIRMAN LOUD: Thank you.

9 MR. CROCKETT: Well, Madam Chair,
10 that is my motion. And I'm perfectly willing
11 to reserve argument on the motion until after
12 the testimony in. It might be more fruitful.

13 CHAIRPERSON MILLER: Okay. All
14 right. Yes. Why don't we just hold this.
15 Okay. We're just going to put that and hold
16 it in abeyance until the end of the case and
17 it can be considered.

18 There is another motion by party
19 opponent Ellen Steury to dismiss or in the
20 alternative to postpone, a motion to bifurcate
21 the hearing and decisions. Ms. Steury?

22 MS. STEURY: Yes. Well, you've

1 just indicated you don't want to hear argument
2 now, right?

3 CHAIRPERSON MILLER: Well, I don't
4 want to hear argument that we should dismiss
5 the case now or not unless you can, you know--
6 there's something in here. They seem to go to
7 the merits and that's what we're here for to
8 hear the merits, except you have more in
9 yours. You have some other issues about
10 bifurcating that we need to hear only a non-
11 profit issue before we get into conditions or
12 something like that, is that correct?

13 MS. STEURY: Yes, that's correct.
14 And it does go to the merits, my motion to
15 dismiss. I think it's very brief, it's very
16 threshold. I think it would be appropriate to
17 handle it now, but you run the show. So I'll
18 defer.

19 CHAIRPERSON MILLER: I don't think
20 there's any facts in dispute that we should
21 hear. So we can just move on the papers --

22 MS. STEURY: I do think you could,

1 yes, I do.

2 CHAIRPERSON MILLER: Okay. Is
3 there anything you want to add as to what's in
4 the -- anything you want to add in what's in
5 the pleadings? Anything further you want to
6 say about that?

7 MS. STEURY: About the motion to
8 dismiss? You mean, you'll give me five
9 minutes?

10 CHAIRPERSON MILLER: I'll one to
11 two minutes. I mean is there more than what's
12 in here? Because I think that what's in here
13 goes to the merits. Does it not go to the
14 merits of the case?

15 MS. STEURY: It goes to the
16 merits.

17 CHAIRPERSON MILLER: And no
18 hearing--

19 MS. STEURY: It absolutely does.

20 CHAIRPERSON MILLER: But no
21 hearing is required for the merits?

22 MS. STEURY: I think that there is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 no hearing that is required for the merits in
2 this case. Because I think I can show you in
3 seven minutes that the non-profit certificate
4 that is in the application does not relate to
5 the non-profit that is described in the
6 application.

7 COMMISSIONER JEFFRIES: Okay.
8 That's the merits here. And there is a
9 dispute, so that's why we're going to have a
10 hearing.

11 MS. STEURY: May I ask, I haven't
12 heard a dispute.

13 CHAIRPERSON MILLER: Mr. Collins,
14 do you agree with her?

15 MR. COLLINS: Well, I agree with
16 you that there's a dispute on the merits, on
17 the facts. So this is what a public hearing is
18 all about.

19 MS. STEURY: Okay.

20 COMMISSIONER EASON: Madam Chair,
21 if I could, I don't mean to jump ahead, but
22 Ms. Steury did file a motion to bifurcate, and

1 that would allow the --

2 MR. COLLINS: Object. This goes
3 beyond the four corners of the ANC's position
4 in this case.

5 COMMISSIONER EASON: Actually, I'm
6 not sure that that's correct either. But if
7 I may just finish briefly, is that it may make
8 sense to entertain that notion first and if
9 you need to conduct the hearing with respect
10 to the bifurcated issue, which the ANC refers
11 to as the threshold issue, then you could
12 consider the motions to dismiss at that time.

13 CHAIRPERSON MILLER: I think the
14 motions to dismiss are so to the merits that
15 they don't belong at this point at all. And I
16 would concur with Mr. Crockett suggesting that
17 they be held in abeyance.

18 With respect to bifurcating, I
19 don't really see the point. Everybody's here.
20 I think we need to hear all the evidence. I
21 don't see any reason to bifurcate. Others?

22 I know you do, you made your

1 point.

2 MS. STEURY: And I would add that
3 not everybody is here because of the
4 scheduling issues we have several impacted
5 neighbors who aren't.

6 CHAIRPERSON MILLER: Not
7 everybody. That's true.

8 MS. STEURY: That would testify to
9 the second part of that.

10 COMMISSIONER EASON: Madam Chair,
11 if I just might? The Commission did
12 specifically recommend to the Board of Zoning
13 Adjustment that part of our report was that we
14 were unable to conclude the applicant meets
15 the requirements for the grant of a special
16 exception pursuant to section 217, and
17 therefore recommends the Board closely
18 scrutinize this essential threshold issue.
19 And I think in the interests of the Board's
20 time and hearing time rather than conducting
21 a full hearing which would include the notions
22 of all the kinds of restrictions that might be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 applicable should the Board feel that they are
2 entitled to the special exception, that you
3 decide first whether they meet the threshold
4 requirements.

5 CHAIRPERSON MILLER: Okay. And I
6 think what the Board normally does and what I
7 believe the applicant's case would address,
8 we'd go to the criteria of the special
9 exception first before we even get to whether
10 there's any adverse impacts that need to be
11 mitigated.

12 So the order is probably going to
13 be the same. It's just we're not going to
14 draw a line today and say, okay, we're not
15 going to hear any evidence about what measures
16 can be taken to limit adverse impacts on the
17 neighbors. That's all.

18 And sometimes we'll have to see
19 where this goes. You know, whether we'll leave
20 the record open or not at the end of it. We're
21 hardly at the beginning of it, so let's see.

22 Do Board Members feel otherwise

1 about putting a bifurcated hearing? Okay.

2 And we have never done that, I don't think.

3 Let me see if there's any other
4 loose end here before we get into the merits.

5 MS. STEURY: There was another
6 motion.

7 CHAIRPERSON MILLER: Yes.

8 MS. STEURY: That I filed.

9 CHAIRPERSON MILLER: Okay.

10 MS. STEURY: It was a motion to
11 hold the record open until the applicant's
12 2007 tax returns were -- or they're not called
13 tax returns, I guess. They're the non-profits
14 Form 990s, which the applicant has an
15 extension on those until August 15th. That was
16 the last I had been informed by the applicant
17 sometime in May or June. And also to allow at
18 least 30 days after either the record is
19 closed or the last pertinent transcript is
20 available to submit the post-hearing findings
21 of fact and conclusions of law.

22 CHAIRPERSON MILLER: Okay. I

1 would like to suggest that that also be held
2 in abeyance until the end of this hearing, at
3 least. Because the way we normally proceed is
4 we hear the case and then we understand it
5 better. We've gotten into the non-profit
6 issues or whatever it is. And then at the end
7 of the hearing we make an assessment as to
8 whether we should leave the record open for
9 certain information that we can better
10 determine at that point should be in the
11 record, should be part of the decision making.
12 How much time parties should have to do
13 proposed findings because we just have a
14 better feel for it. So let's do that. We'll
15 just put that aside. Okay.

16 Is that it for preliminary
17 matters?

18 Mr. Collins, whenever you're ready
19 to start presenting your case.

20 MR. CROCKETT: Point of order,
21 Madam Chairman.

22 MS. STEURY: Are we required to

1 leave?

2 CHAIRPERSON MILLER: If the
3 applicant needs the table for presentation,
4 you can have a seat in the back. I mean,
5 behind the table. And then we'll call you up
6 for cross examination. If there's room for
7 everybody, you know, you can stay. But if
8 it's crowded --

9 MR. CROCKETT: Where will we sit
10 on cross examination?

11 CHAIRPERSON MILLER: You can come
12 back to the table if you leave.

13 MR. CROCKETT: All right. Throw
14 somebody else out?

15 CHAIRPERSON MILLER: Yes,
16 whatever. But -

17 MR. CROCKETT: Do you have hand
18 held mike as well?

19 MR. COLLINS: Perhaps it would be
20 better if we had a hand held mike.

21 CHAIRPERSON MILLER: Okay. We'll
22 try to locate one for you. That would be

1 great.

2 Just get a seat where obviously
3 you can see.

4 MR. COLLINS: Good afternoon,
5 Madam Chair, Members of the Board. My name is
6 Christopher Collins with the law firm of
7 Holland & Knight.

8 Seated to my far right is Mr. Jeff
9 Johnson from our office as well.

10 And seated to my right is Mr.
11 Harry Belin, who is the owner of the property
12 and the CEO of the Evermay Society.

13 This is an application for special
14 exception relief for a non-profit
15 organization. We do have the support of the
16 Office of Planning and the Department of
17 Transportation and the unanimous support of
18 all the abutting owners, and the overwhelming
19 support from the Georgetown community
20 including the Citizens Association of
21 Georgetown and many individuals, residents and
22 organizations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There is a letter in the record
2 from the D.C. Attorney General's Office. I'd
3 like to provide some context on that. There's
4 been some other filings on that issue.

5 That is a letter from the Attorney
6 General's Office request this Board to give
7 expedited treatment. But the background of
8 that--

9 VICE CHAIRMAN LOUD: I'm sorry.
10 Can you mention the exhibit number for that,
11 if it has one?

12 MR. COLLINS: We'll get it in a
13 second. It's one of the early exhibits.

14 VICE CHAIRMAN LOUD: If you want
15 to proceed as we're looking for it, you can.

16 MR. COLLINS: Thank you.

17 The context of that letter was
18 that, and as the opposition has indicated, the
19 Evermay Society has been operating at the site
20 for several years. In preparation for this
21 BZA application last fall, Mr. Belin conducted
22 an open house inviting the neighbors over to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discuss operations of the site and foster
2 dialogue. Shortly after sending out the
3 invitations to that open house, there was a
4 visit by a city inspector. Shortly thereafter,
5 there was a notice from DCRA to discontinue
6 the non-profit organization use. Evermay
7 Society stopped all operations and fundraising
8 and took down their website immediately after
9 that.

10 We worked with the Zoning
11 Administrator to allow some previously
12 scheduled events to continue through the
13 holiday season. And as we continued on
14 through, there was then a letter from the
15 Attorney General's Office in a similar vein.
16 And we responded to that letter. I spoke with
17 the Attorney General's Office on several
18 occasions and worked with them to allow a
19 limited number of previously scheduled events
20 to continue under certain circumstances.

21 The Attorney General agreed in
22 writing in two letters, dated February 27th

1 and March 28th. And I have copies of those for
2 the record. I may they may already be in the
3 record.

4 MR. JOHNSON:

5 The OAG letter is Exhibit 25.

6 MR. COLLINS: We had meetings with
7 Jack Evans, the DCRA Director, to keep them
8 updated as we moved forward.

9 We've submitted several other
10 documents into the file today in response to
11 certain issues. And there are three documents
12 that with the number one, number two and
13 number three on the top. I gave them to Mr.
14 Moy's seat earlier this afternoon. And does
15 the Board have them?

16 CHAIRPERSON MILLER: I don't
17 think. But can you describe them further?

18 MR. COLLINS: Sure. We're
19 submitting them for the record. There are
20 three documents.

21 The first one, item number one, is
22 a letter from the Internal Revenue Service,

1 dated June 23, 2005, and I've highlighted --

2 CHAIRPERSON MILLER: I believe Mr.
3 Moy is passing them out now.

4 MR. COLLINS: Okay.

5 CHAIRPERSON MILLER: So they
6 should be in front of all of us.

7 MR. COLLINS: All right. The
8 first is the letter from the Internal Revenue
9 Service to Evermay Society. "Based on your
10 proposed activities and support, it is held
11 that you can reasonably be expected to
12 terminate your private foundation status under
13 section 50" such-and-such. "Accordingly, you
14 will be treated as a public charity described
15 in section" such-and-such "for an advanced
16 ruling period of 60 months beginning January
17 1, 2005.

18 So this letter indicates that the
19 Evermay Society is a public charity under IRS
20 regulations. You can't be a public charity
21 without being a non-profit organization.

22 The second document, number two,

1 is from the National Register of Historic
2 Places, it's a nomination form. We have in
3 the letter as Tab M the fact that the building
4 is on the inventory of historic sites. This
5 is just for your information. It is also on
6 the National Register. And you can see on the
7 fourth page in the National Register
8 verification is highlighted there.

9 The third document goes to section
10 217.1(b). We indicate on several times that
11 the building is in excess of 10,000 square
12 feet, not including other buildings on the
13 site. And that is gross floor area.

14 This is a -- the most recent
15 measurement was done for purposes of the
16 insurance. And this is a very close to the
17 way, almost identically to the way that the
18 gross floor area is measured from the outside
19 walls. And so I've highlighted on the second
20 page the first, second and third floors. The
21 total there is just over 10,000. It's 10,243
22 square feet of closed floor area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 With those, and given our time
2 constraints, I'd like to then at this point
3 just turn to our first point, Mr. Harry Belin.

4 Mr. Belin, would you please
5 identify yourself and proceed with your
6 testimony.

7 MR. BELIN: Good afternoon. My
8 name is Harry Belin. I live with my wife
9 Susan Belin at 9208 Harrington Drive in
10 Potomac, Maryland. I am the owner of the
11 Georgetown property known as Evermay.

12 Madam Chair, Members of the Board,
13 ladies and gentlemen of the audience, thank
14 you for the valued time and attention you are
15 offering in the consideration and deliberation
16 of Evermay's future. The home has a rich and
17 significant history associated with its
18 occupants and their commitment to giving back
19 to the community.

20 In 1789 George Washington
21 commissioned Pierre L'Enfant to begin the
22 design plans for the Federal City. Pierre

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 happened to room at the Union Tavern in
2 Georgetown next to a successful Scottish
3 merchant and businessman by the name of Samuel
4 Davidson. And the two were members of a
5 gathering of 18 landlords who sat with George
6 Washington at Sutter's Tavern to plan the city
7 in 1792.

8 That same year Samuel Davidson
9 began to purchase parcels of land which
10 eventually amounted to 13 acres on the heights
11 known as Dumbarton Rock overlooking
12 Georgetown. Both L'Enfant Davidson engaged
13 noted architect Nicholas King to help achieve
14 their dream.

15 For L'Enfant, the capital city for
16 a new nation and for Davidson a sanctuary he
17 named Evermay. The home was built in 1801.

18 More than a century later in 1923
19 Ferdinand Lemont Belin, my grandfather and
20 then diplomat, became the fifth owner. Today
21 the Evermay Estate includes the estate home,
22 several smaller buildings and little over

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three acres of terraced gardens and has been
2 in my family for three generations.

3 Historically, the Evermay Estate
4 has played host to many social and diplomatic
5 gatherings as well as community and other
6 special events throughout its ownership by my
7 family. Many of these gatherings included
8 discussions and deliberations resulting in
9 actions which solved problems, addressed
10 issues or otherwise benefitted society in some
11 way.

12 More importantly, the estate home
13 and gardens have always invoked a spirit of
14 creativity and dialogue that is far more
15 difficult to realize in a hotel setting,
16 corporate meeting room or an office building.

17 In times past before computers,
18 before large think tanks, even before golf it
19 was in the parlors and the living rooms of
20 estates in our nation's capital, such as
21 Evermay, where people came together to discuss
22 and address the issues of the today and define

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 solutions to problems effecting society.

2 In assessing the future of the
3 state, the thought emerged that Evermay,
4 situated at the heart of our nation's capital,
5 was ideally positioned to take on the role of
6 America's living room as a place where people
7 could continue to come together in a unique
8 setting in order to discuss and deliberate the
9 issues of the day and the need to the society
10 in the 21st century.

11 The mission of the Evermay Society
12 is based upon my family's history of social
13 activism in the community since 1923, as was
14 the case for those four homeowners that went
15 on before us. By example:

16 My grandfather, Ferdinand Lemont
17 Belin, businessman, diplomat, architect,
18 philanthropist was a founding trustee, vice
19 president and acting director of the National
20 Gallery of Art, as well as the landscape
21 architect for all of the exterior plantings
22 for the Gallery. One of the founders of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 National Trust for Historic Preservation,
2 member of the Commission on Fine Arts and
3 founder of the Old Georgetown Board.

4 Peter Belin, my father as
5 president of the Citizens Association of
6 Georgetown was responsible for helping to
7 better consolidate representation for the
8 residential community, which was then also
9 shared by two other organizations; Historic
10 Georgetown, Inc. and the Progressive Citizens
11 Association of Georgetown. He was also a
12 member of the National Capital Planning
13 Commission. Appropriate the Captain Peter
14 Belin award is given annually by CAG for
15 notable achievement by a resident of
16 Georgetown.

17 Mary Cootes Belin, my mother, was
18 founder of the New Scotland Garden Club, one
19 of five key members involved in the creation
20 of the City Tavern and a sustainable business
21 plan for its preservation and hosted the
22 Evermay Tennis Tournament at Evermay from 1059

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to 1972, which inspired the Washington Tennis
2 and Education Foundation which today serves as
3 an after school and summer tennis program for
4 at risk intercity kids.

5 Thus, in April of 1999 I found
6 myself as President and CEO of a newly formed
7 non-profit organization which we called the
8 Evermay Society, otherwise known as America's
9 Living Room where we specialized in hosting
10 conversation of an enduring consequence. Our
11 primary mission is to inspire and encourage a
12 new breed of leader in their chosen vocation
13 while at the same time fostering their
14 appreciation for a cultural revolution and
15 stewardship within the discipline of a civil
16 society.

17 As the property owner, I lease the
18 property to the Evermay Society for its
19 philanthropic outreach. In that lease, I
20 presently reserve 15 days per family per year
21 -- per year for family, excuse me, use of our
22 property. However, in reality my family and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have only used the property for a maximum of
2 four days per year on average since 2005.

3 As the property owner I pay the
4 taxes and undertake all capital improvements.
5 The Society has a budget which includes rent,
6 payroll for the three full time and two part
7 time employees, plus basic maintenance and
8 upkeep of the property.

9 As President and CEO of the
10 Society I am a full time volunteer and I do
11 not draw any salary or compensation from the
12 Society for my services as a volunteer
13 averaging 70 to 80 hour work weeks. Nor do I
14 draw any compensation as a board member.

15 The purpose of the Evermay Society
16 as stated in the articles of incorporation are
17 to promote consensus, civility and
18 responsibility amongst all people and nations
19 by inspiring a sense of community and
20 integrity that enhances reconciliation and
21 renaissance. To promote a better
22 understanding of all cultures and all people.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 To provide a forum for learning and an
2 environment for addressing community needs.
3 And to educate the public by discriminating
4 information and presenting or sponsoring
5 public discussion groups, forums, panels,
6 lectures, conferences, programs, symposium
7 meetings and other cultural, civil and social
8 events.

9 These purposes have been accepted
10 by the Government of the District of Columbia
11 which approved the filing of the articles of
12 incorporation and issued a certificate of
13 incorporation for the Evermay Society as a
14 non-profit corporation on 1 April, 1999. You
15 can find this document at Tab L of our pre-
16 hearing statement.

17
18 The non-profit articles of
19 incorporation have also been accepted by the
20 IRS, which granted the Evermay Society
21 501(c)(3) status back on 26 October, 1999 and
22 which status is still recognized as a public

1 charity by the IRS.

2 Evermay is the wellspring and
3 headquarters of the Evermay Society whose
4 mission is to use Evermay's historic home and
5 gardens as a forum in which to experience the
6 past, celebrate the present and engage minds
7 for the future's public good, locally,
8 nationally and through the global community.

9 Evermay transports our guests back
10 to a time when conversation was essential as
11 a force for change in opportunity using
12 history and legacy as an inspiration. Evermay
13 is providing that environment conducive to
14 addressing community needs in a setting which
15 is quiet, secure and open to all persons.

16 Let me emphasize that in the
17 context of a headquarters offering a suitable
18 forum and environment Evermay's physical plant
19 and gardens have always been considered
20 critical ingredients in the mix of criteria
21 required to call a meeting with credibility
22 and capability of knowing that as America's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Living Room we can effectively and graciously
2 aspire to a lofty set of public expectations
3 commiserate to that title.

4 As America's Living Room our role
5 is to foster and inspire solutions for the
6 most challenging issues leaders will need to
7 address in the 21st century and beyond. As
8 with think tanks, the hosting of conversation
9 to generate intellectual exploration needed to
10 identify the critical issues to a problem and
11 their proposed list of possible solution is
12 critically important. However, early on it
13 became obvious to us that ideas and proposed
14 solutions would not be our shortcoming as the
15 society has the opportunity to call from a
16 variety of sources to include weddings,
17 corporate or individual events and other non-
18 profit collaborations. Instead, the Society's
19 ultimate challenge is to build enduring
20 relationships leading to projects or campaigns
21 which will provide the staying power to
22 realize a lasting solution to a given problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Critical to any enduring
2 conversation is the need to identify a
3 champion committed to the time, years most
4 often, and money it will take to see the
5 venture through to its stated conclusion.
6 Also, a strong following of supporters and
7 enthusiastic foot soldiers, some preferably
8 with deep pockets. And sustainable business
9 plan.

10 With these criteria met, an
11 Evermay conversation of enduring consequence
12 is then nurtured into a life of its own on one
13 of two tracks, if not sometimes a combination
14 of both. Either we incubate, which begins as
15 an idea headquartered at Evermay and with the
16 shared resources of the estate home and staff,
17 ultimately develops into an organization
18 strong enough to stand on its own. The
19 Evermay Media Institute or EMI temporarily
20 headquartered at Evermay is such an example.

21 Last week you heard testimony from
22 John Scanlon, President of EMI. In September

1 of 2005 then an attorney, John attended what
2 we host periodically as a Crabgrass Fellowship
3 Dinner. The purpose being to mind for new
4 subject matter. The guest of honor and speaker
5 that evening was Norman Stone, an eminent
6 British filmmaker.

7 Later that same month John was a
8 guest at a day long Investing In Culture Day
9 at Evermay where filmmakers, performing
10 artists and politicians are brought together
11 with venture capitalists to explore
12 collaborative opportunities on ways for
13 America to better market Hollywood and the
14 entertainment industry to world audiences.

15 The next thing we hear is that
16 John has left his law practice to go to Uganda
17 to make a documentary on missionary work with
18 the night Children. That documentary soon
19 thereafter to be released under the title
20 "Sing" with its premier showing in March of
21 2006 at Evermay for fundraising purposes.
22 Further discussions led to the incorporation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and incubation of EMI at Evermay where in
2 addition to helping to sponsor a more recent
3 documentary titled "Sold on Human Trafficking"
4 in Togo, India and Pakistan, EMI and Evermay
5 are in the early stages of planning for an
6 Evermay film festival. This will be a week
7 long documentary film competition to be held
8 annually throughout the Washington
9 metropolitan area with a grand prize of
10 \$10,000 in the first year of hosting.

11 Otherwise, we collaborate whereby
12 interdependently we help several organizations
13 working within a particular vocation to aspire
14 to a higher calling where the whole becomes a
15 greater force for positive change than if they
16 continued to work independently of one
17 another.

18 Examples of this include the
19 Trinity Forum, also temporarily headquartered
20 at Evermay since last year and a critical
21 resource to the planning for a variety of
22 meetings over a year whereby their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 longstanding existence since 1991 at a
2 national and international level has developed
3 a credible Rolodex that guarantees the right
4 people will be at the table on a collective
5 basis for any given subject of concern.

6 Or as another example the Potomac
7 Heritage Partnership whose vision it is to
8 inspire and foster a sense of community and
9 integrity that promotes the preservation and
10 protection of the cultural and heritage
11 resources for the 14,760 square miles of the
12 Potomac River Water Shed, otherwise referred
13 to as the Fertile Crescent of American
14 Democracy.

15 The Potomac Heritage Partnership,
16 a charitable, non-profit organization was
17 founded in 1995 to expand the common knowledge
18 and enjoyment of resources within the Potomac
19 River Basin from the Fairfax Stone in West
20 Virginia to the Chesapeake Bay at Point
21 Lookout, Maryland and Smith Point in Virginia.

22 One of the many key projects for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the partnership has been the encouragement and
2 promotion of the Potomac Heritage National
3 Scenic Trail, a system of both land and water
4 trails connecting the mouth of the Potomac to
5 Pittsburgh, Pennsylvania, a physical
6 reflection of George Washington's dream to
7 improve opportunities for commerce between the
8 Atlantic seaboard and the western country, as
9 he called it, by way of the Potomac River.

10 Today the Partnership collaborates
11 within the Society's Heritage Trust Division
12 along with other organizations in various
13 stages of development to include the Historic
14 Homes of America and the Georgetown Heritage
15 Trust.

16 The Evermay Society has been
17 registered as a non-profit organization with
18 the D.C. Government since 1999, but has only
19 been operating on a consistent basis since
20 January 2005. Since that year the Society has
21 hosted the following number of events at
22 Evermay:

1 In 2005, 77 events;

2 In 2006, 50 events, and;

3 In 2007 77 events.

4 As our pre-hearing statement
5 outlines in greater detail on pages 11 and 12
6 we are requesting permission to host somewhere
7 between 65 to 85 events per year, with four
8 additional community events at greater than
9 200 guests.

10 Between a quarter and a third of
11 all events held at Evermay are financially
12 underwritten in whole or in part by the
13 Society. However, it is important to emphasize
14 that all events for which a payment is
15 required is required are secured through a
16 contribution, not a rental fee. And thus, all
17 events are designed to support the Society's
18 charitable and educational purposes.

19 As a fledgling organization,
20 contributions and grants to the Society
21 separate from our event income are not yet
22 sufficient to cover all of the Society's

1 expenses. However, with confidence we look
2 forward to that day when our philanthropic
3 causes are providing a majority of the income
4 required to carry our operating expenses, and
5 thus there will be less of a requirement for
6 the number of events which presently impact on
7 the delicate infrastructure of this historic
8 site and the neighborhood.

9 We have always been sensitive to
10 the needs of our neighbors. And since 2
11 September, 2003 the Society has developed and
12 refined a list of operating requirements and
13 protocols which the Society, our guests, their
14 caterers and other vendors must adhere to.
15 Those documents have been submitted to you in
16 our pre-hearing statements, Tabs J and K.

17 In the past whenever we received a
18 complaint or even before we received a
19 complaint, we felt that something that came to
20 our attention was creating a disturbance, we
21 addressed it immediately.

22 For the record, from September

1 2003 to March 2007 we received no complaints
2 from anyone, to include our close in neighbors
3 at 200 feet or less from our property line.
4 Then once on 23 March and again on 18 June of
5 last year we received complaints relative to
6 high security measures relating two
7 presidential visits. And on 19 May a
8 complaint involving traffic issues relating to
9 a Bat Mitzvah party. On all three counts we
10 moved within 24 hours of each incident to
11 apologize and put corrective in place.

12 This public relations outreach
13 also included a 21 May letter of apology from
14 me to our closet R Street, the Steurys, as
15 well as attendance at a meeting on 31 July,
16 2007 at their home to discuss matters of an
17 ongoing concern by the R Street neighbors. As
18 that meeting ended, I made a promise that once
19 everyone was back from summer vacation that I
20 would call for a neighborhood meeting in
21 preparation for our application for a special
22 exception. The meeting occurred on 14

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 November, 2007, as I will report in a minute.

2 The Society originally applied to
3 the BZA in 2003 for a non-profit organization
4 use. In our discussions with the community
5 back then what quickly became clear was that
6 we were not yet ready to move forward with
7 that application. The application for a
8 special exception was met with virtually
9 unanimous opposition in the community and the
10 Society withdrew the application.

11 Since that time we have been
12 working diligently to build the Society into
13 a credible and efficiently run organization.
14 And we believe that we now have a successful
15 model for the future with strong endorsement
16 from the community including 45 letters of
17 support, 150 signatures on a petition of
18 support and valued votes of confidence from
19 organizations such as the Citizens Association
20 of Georgetown, the Georgetown Business
21 Association, the Kiwanis Club of Georgetown,
22 the Georgetown Garden Club and the Georgetown

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mens Bible Study Group.

2 Last year in preparation for a new
3 application to the Board of Zoning Adjustment
4 I convened the above referenced 14 November
5 open house for the surrounding neighbors to
6 invite them to come to Evermay. The
7 invitation was made with the understanding
8 that we would be filing an application to the
9 BZA and that we wanted very much the
10 neighborhood input.

11 We had a very good turnout for
12 that meeting, and there was much discussion.
13 Several of our neighbors living around the
14 corner from Evermay on our street expressed
15 some concerns. We attempted to address them
16 and to schedule meetings to follow up. But we
17 received no response to our request to meet.

18 Shortly after an October mailing
19 of a save the date card for the November open
20 house meeting we were visited by city
21 inspectors and we received several citations
22 for operating without permits. We immediately

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contacted the D.C. authorities, cooperated
2 fully, paid the fines that were imposed and
3 filed all of the necessary paperwork. We also
4 shutdown our website and our non-profit
5 operations. And we did not accept any more
6 reservations for events or any more
7 contributions to the Society.

8 We met with the Zoning
9 Administrator to work out an accommodation on
10 those events that had already been scheduled.

11 We also received a letter from the
12 D.C. Attorney General's Office. And after some
13 discussion between our lawyers and that office
14 we reached agreement on a much reduced
15 schedule of events through July the 4th of
16 this year allowing us to honor or existing
17 comments for those events, but without any
18 further contribution being paid to the
19 Society.

20 We have cooperated with the
21 Attorney General's Office at every step. And
22 we've also met with the Director of DCRA Linda

1 Argo and her legal staff, and with Councilman
2 Jack Evans to keep them apprised.

3 Meanwhile, from late last year and
4 into this year we continued to ask for further
5 opportunity to discuss issues with our
6 concerned neighbors on R Street who came to
7 the November open house meeting. But we've
8 continued to receive no response.

9 Finally, several of them appeared
10 and spoke in opposition to our application at
11 the ANC meeting on April 29. And the request
12 of the Chairman of the ANC 2E, Mr. Ed Solomon,
13 we then agreed to request a postponement of
14 this hearing in order to engage in more
15 comprehensive dialogue at a great additional
16 expense in time and money to us. We had three
17 meetings with only one couple, the Steurys,
18 attending these meetings.

19 Several ANC Commissioners also
20 attended the meetings as well, but only one of
21 the three was attended by our single member
22 district 07 Commissioner Charlie Eason.

1 We have suggested a list of
2 operating conditions to address their concerns
3 and have agreed to include several of the
4 suggestions offered in those meetings into a
5 list of conditions of approval that we gave to
6 the Steurys and the ANC. Going forward we are
7 prepared to adopt these limitations and we
8 will submit them to the record at the
9 appropriate time.

10 We have also met with Mr. Mordfin
11 of the Office of Planning on several
12 occasions, both at Evermay and at his office.
13 And we are pleased to have the support of the
14 Office of Planning.

15 I'm also pleased at the level of
16 support we have received from our immediate
17 neighbors. From the people and organizations
18 of Georgetown and from others who have come to
19 know the Evermay Society and the valuable
20 contribution that it has made to the community
21 efforts locally, regionally, nationally and
22 internationally.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Madam Chair, you and members of
2 your Board had the opportunity to learn just
3 a bit about the Society's far reaching
4 philanthropic programs, not only from my
5 testimony but also from the testimony provided
6 by our group of supporters last week. You have
7 a full list of those supporters in your
8 record, and a new group of them are here today
9 to provide further testimony.

10 Turning to the zoning regulations,
11 I would now like to address how the use of the
12 property by the Evermay Society meets those
13 regulations.

14 Section 217.1, the Evermay Society
15 is a non-profit organization registered with
16 both the D.C. Government and the IRS. We have
17 filed copies of those relevant documents.

18 Section 217.1(a) Evermay is listed
19 as a historic site in the District Government
20 records and is on the National Register. You
21 have copies of those documents as well.

22 Section 217.1(b) as stressed by

1 counsel, the main house on the estate not
2 including any of the other buildings measures
3 10,243 square feet on the first, second and
4 third floors, not including the basement. You
5 have verification of this measurement which
6 was most recently made by an appraiser in
7 connection with our insurance.

8 Section 217.2 and Section 304.1 we
9 have the unanimous written support of all our
10 immediately abutting neighbors as well as the
11 written support of the vast majority of those
12 within 200 feet who have taken a position on
13 our application. All of that support is a
14 matter of record in this case and is a fair
15 indication that the use of the property by the
16 Society will not tend to adversely effect the
17 use of the neighboring property. Because of
18 the concerns that we have heard from our R
19 Street neighbors are mainly focused on
20 arrivals and departures at our events, I have
21 asked our Director of Hospitality, Alexandra
22 Kovach who will be following with her

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony to describe event procedures to you
2 and all of the preparation that goes into
3 making sure that the event creates no adverse
4 impacts on our neighborhoods, on our
5 neighbors.

6 It should be emphasized that
7 events are strictly controlled by employees of
8 the Society with the Director of Operations
9 involved with all exterior logistical
10 operational concerns involving traffic control
11 and the gardens. And the Director of
12 Hospitality, Alexandra, involved with all the
13 internal logistics and operations of the home.

14 Section 217.3. We have a 100
15 parking spaces on site, and with valet parking
16 we can park 120 vehicles. We have never had
17 more than 80 vehicles parked on the site for
18 any event, and we work very hard to have no
19 vehicles at anytime of any sort parked on the
20 street.

21 Several of our neighbors have
22 expressed concern -- excuse me. Section

1 217.4. Several of our neighbors have
2 expressed concern about whether we will
3 conduct a retail sales operation on site. So
4 I will read into the record directly from our
5 pre-hearing statement, the language that we
6 used, which satisfied their concerns. "No
7 goods, chattel, wares or other merchandise
8 will be commercially created, exchanged or
9 sold in the buildings or on the land by the
10 non-profit organization with the possible
11 exception of the sale to visitors of
12 publications materials or other items related
13 to the purposes of the organization. Visitors
14 are not permitted on site except by
15 appointment or else as a guest at a scheduled
16 meeting or event. The Evermay Society will
17 not operate a retail gift shop for walk-in
18 business on the property or otherwise engage
19 in the production, exchange or commercial sale
20 of merchandise to the general public on the
21 property."

22 Section 217.5. Again, let me read

1 from our statement on this issue. "The
2 application does not include any proposed
3 additions to the existing building or any
4 other modifications to the buildings or the
5 site. If such work is contemplated in the
6 future, the owner of the property will follow
7 the applicable procedural requirements to
8 obtain the necessary zoning and historical
9 preservation approvals."

10 In conclusion, what seems to be
11 one of the greatest concerns of the opposition
12 is the subject inurement and the belief that
13 the Belins continue to use the Society as a
14 commercial front or public hall business for
15 further improvements to their home at the
16 expense of the public and the inconvenience of
17 our close in neighbors. Facts and figures in
18 this hearing should prove beyond a question of
19 a doubt that we work hard at being good
20 neighbors. And that as good stewards, we care
21 about the maintenance and upkeep of Evermay,
22 which is clearly a community asset of historic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and open space importance.

2 As I have said repeatedly to many
3 people, if this issue were simply about the
4 enhancement of Evermay's bricks and mortar, I
5 would have sold the place long ago when back
6 in the early 1990s we looked at our options as
7 a family. Thus, I approach this bench
8 requesting your favorable consideration of my
9 application 17761 on behalf of the Evermay
10 Society.

11 And now I would like to turn
12 things over to Alexandra Kovach, our Director
13 of Hospitality, who will describe the property
14 and the steps taken by the Society to address
15 neighborhood concerns. And then the two of us
16 would be happy to answer your questions.

17 Thank you.

18 CHAIRPERSON MILLER: Thank you.

19 MS. KOVACH: Good afternoon. My
20 name is Alexandra Kovach, and I am the
21 Director of Hospitality at Evermay. My
22 personal residential address is 3741 39th

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Street, Northwest, Washington, D.C.

2 I will take you on a photographic
3 tour of Evermay and outline to you the care
4 with which we plan and host events on the
5 property.

6 As an introduction, I would like
7 to emphasize the beauty and historic
8 significance of this property and the impact
9 that it has on each of its visitors. In our
10 nation's city of monuments, Evermay sits at
11 the top of the hill a monument itself to
12 family and home. It represents generations of
13 families who are dedicated to both the
14 founding and growth of this city and all that
15 it stands for. And now, as America's Living
16 Room it invites conversation and celebration
17 within its walls and on its grounds to
18 continue to be an inspiration to all those who
19 come here. It is a sanctuary in the middle of
20 our nation's capital and one of the few still
21 owned, loved and cared for by one of its
22 original owners.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The Evermay Society is fortunate
2 to have the opportunity to carry on the legacy
3 of Evermay through its mission to experience
4 the past, celebrate the present and engage the
5 future.

6 As a part of its mission the
7 Evermay Society holds what we call Evermay
8 Society events on site. Mr. Belin has
9 explained to you the types of these events
10 that are held at Evermay. In order to raise
11 funds for the operating revenue of the
12 Society, the Society also makes Evermay
13 available for events by others. These can
14 include dinners, luncheons, garden tours and
15 weddings.

16 The events typically involve
17 outside vendors such as caterers for a lunch
18 or dinner or a cocktail reception.

19 Events can have anywhere from two
20 to 200 people, but the vast majority of events
21 has fewer than 150 attendees.

22 Some of these outside events also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 include other vendors such as musicians,
2 florists and photographers.

3 An Evermay duty officer is present
4 at every event for the duration of the event.
5 This is always an employee of the Evermay
6 Society and is not a volunteer position.
7 Almost without exception it is necessary to
8 have more than one Evermay employee at each
9 event.

10 The Society has developed a strict
11 set of rules and regulations governing our
12 outside events and their vendors, and we
13 strictly enforce and adhere to them. We are
14 very involved in the planning stage of each
15 event to ensure that the rules and regulations
16 are upheld throughout the event planning
17 process and that there are no surprises from
18 outside vendors. We do this in the interest
19 of the property, our clients and most
20 importantly, our neighbors.

21 The summary of rules and
22 regulations is at Tab J of your pre-hearing

1 statement and is a combination of those rules
2 and regulations that are found in our
3 agreement for the use of the property and that
4 govern what might be considered as external
5 effects that could adversely impact our
6 neighbors, as well as those internal operating
7 conditions that the Society imposes on itself
8 to minimize those effects.

9 In those rules and regulations we
10 have attempted to distinguish between a
11 meeting and an event for the sake of
12 simplicity. Meetings are generally in house
13 meeting among the staff or between the staff
14 and one or more outsiders to discuss the
15 business of the Society or, in my case, for
16 the purpose of planning the logistics of an
17 event.

18 The summary of rules and
19 regulations also says that an event requires
20 a contract with the contribution paid in full.
21 However, sometimes Evermay Society events are
22 totally underwritten by the Society with no

1 payment by the outside organization. These are
2 also considered to be events.

3 All these events with the
4 exclusion of regular business meetings as
5 previously mentioned are included in our 85
6 requested events.

7 Our statement says that our events
8 are limited to 220 people. This is a reduction
9 from prior years. We now, however, have
10 brought this number down to 200 with the
11 exception of four free community events which
12 can exceed the 200 person maximum. This does
13 not limit the number of community events each
14 year only to four, but that these four are the
15 only ones that can have a guest count
16 exceeding 200. Any other community events
17 under 200 guests would also be included in the
18 85 events.

19 You will see the transportation of
20 people and goods to and from Evermay for
21 events is strictly controlled. We require
22 valet parking for any event with over 25

1 attendees. Our valets do not park vehicles on
2 the street. They only park vehicles on our
3 property and we can handle up to 120 vehicles
4 with valet parking, but we have never reached
5 that limit in my tenure at Evermay.

6 Where possible we encourage the
7 use of 15 passenger Van Terras for guests, but
8 we only allow a maximum of six Van Terras to
9 be used. If an event would require more than
10 six Van Terras, we would encourage the client
11 to go elsewhere.

12 We do not make exceptions
13 regarding our rules and regulations.

14 We do not allow the use of buses
15 or stretch limousines, and we prohibit loading
16 and unloading of any vehicles on the street.
17 All vehicles must come onto the property to
18 pick up and discharge passengers, or to load
19 or unload trucks or vans.

20 We have limited the number of
21 permitted vendors in each service category;
22 caterers, musicians, florists to a small

1 number of firms who are familiar with our
2 policies and have strictly adhered to them in
3 the past. This is our insurance for the
4 enforcement of the rules and regulations with
5 the vendors during each event.

6 All service and performance
7 vehicles must deliver and park on site. In
8 order to avoid the beeping that normally
9 occurs, a circulation pattern has been
10 established to allow delivery trucks to avoid
11 backing up wherever possible.

12 All pre-event deliveries and post-
13 event pick ups occur only during normal
14 business hours and on Saturdays between 8:00
15 a.m. and 6:00 p.m. This means that after an
16 event except for light trash there is no
17 loading up of service vehicles until the next
18 business day. If an event occurs on Saturday,
19 the pick up is the following Monday.

20 We discourage the use of taxis.
21 However, if there is an event where we
22 anticipate that taxis may be used, we bring a

1 taxi radio dispatcher on site to direct taxis
2 to Evermay for pick up.

3 We have a traffic controller on
4 site for all events to ensure compliance with
5 our policies. When necessary, the traffic
6 controller helps with the smooth flow of
7 vehicles entering and exiting the property to
8 minimize any traffic congestion on the street.

9 We've also recently agreed that
10 when we are able to resume operations we will
11 hire an off duty MPD officer on an as-needed
12 basis for events with complex transportation.

13 We also strictly control noise
14 that may emanate from events. Amplified music
15 is only allowed indoors. Outdoor music is
16 limited to only stringed instruments and small
17 jazz combos, and only a small handheld
18 amplifier is allowed. No horns are permitted
19 outdoors. Vocalists who sing outdoors are
20 limited to two songs and must conclude by 7:00
21 p.m. Outdoor music of any kind must end by
22 8:00 p.m.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We consider the pavilion tent that
2 we sometimes use for events as outdoors. So
3 all the same rules apply.

4 All indoor music amplification
5 must be oriented so that the speakers are
6 facing inward with no open windows and must be
7 kept to a reasonable decibel level as
8 monitored and enforced by the Evermay duty
9 officer. The duty officer monitors the noise
10 from outside the house and throughout the
11 gardens on a regular basis throughout the
12 event to make sure that we are not causing any
13 disturbances. We have never had any
14 complaints about the volume of music.

15 We have agreed to establish a
16 neighborhood liaison committee to meet with
17 community representatives on a regular basis
18 and to inform residents of upcoming events on
19 site through the Evermay website and to
20 publish the cell phone number and name of the
21 Evermay duty officer on site for each event.

22 Our event hours are strict and are

1 dictated by the day of the week. And we do not
2 allow overtime.

3 The vendors' handbook is attached
4 to our statement at Tab K and includes more
5 comprehensive rules for our vendors. A copy
6 is given to each vendor who is contracted to
7 work at Evermay.

8 We are asking for up to 85 events
9 per year, not including the four free large
10 community events. And we believe that with the
11 controls that we have proposed we can handle
12 that number of events without any adverse
13 impacts.

14 Let me now take you on a quick
15 visual tour of Evermay so that you can get a
16 better understanding of what we are talking
17 about.

18 I'm also going to ask Amy from our
19 office to kind of follow along on the plot so
20 that you know where in the property we are,
21 although it's a little dark for that. But so
22 that you know where we are in the slides.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay. This is standing on 28th
2 Street at the entrance of the main gate of the
3 Evermay property.

4 When you get to the top of the
5 driveway there you look to the right and you
6 see the main home and courtyard.

7 If you turn to the left, you are
8 standing before the gatehouse and the
9 gatehouse parking, which is six parking
10 spaces.

11 If you look back behind you,
12 you're looking back toward the entrance at
13 28th Street with your back to the main home.

14 This is looking with the gatehouse
15 to your left toward the northern perimeter of
16 the property.

17 And this is at the start of the
18 descent of the descent of the road down to the
19 parking and lower level of the property
20 looking at the norther perimeter overlooking
21 the cemetery.

22 Again, following the road down the

1 cemetery is the only thing on your left hand
2 side.

3 At the bottom of the hill you find
4 the greenhouse parking spaces, which is for
5 five vehicles.

6 To your right is parking level A.

7 And then you would follow straight
8 ahead down to the road to the lower level
9 parking level B.

10 This is the road to parking level
11 B. Again, you see on your left hand side the
12 perimeter is all Oak Hill Cemetery.

13 This is parking level B. In front
14 of you is the rear of the Dumbarton House. We
15 work very closely with the Dumbarton House.
16 On our events when we have events on the same
17 days, we make sure that we work with them to
18 ensure minimal impact on our clients and our
19 neighbors.

20 This is the lower level garden of
21 Evermay. Again, you see Dumbarton House is the
22 left hand side. On the right is the Katz

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 residence and Mr. Russell Katz was here last
2 week to testify in our support.

3 The gate at your left is the gate
4 to the Katz residence. And we continue up the
5 steps and there we see the Heininger residence
6 who also has submitted a letter in support of
7 our application.

8 This is looking back towards where
9 we just where.

10 And then this is on your left side
11 of the screen you see the Hacker residence who
12 submitted a letter of support. Across the
13 street on 28th on the left hand side you see
14 the Ray residence and the right hand side is
15 the Hurd residence, all of whom submitted
16 letters of support for our application.

17 We would go then up the stairs to
18 the rose garden level where we have a majority
19 of our events on this level and the upper
20 level terrace by the main home. The lower
21 level where we just were we try to keep event
22 space off of there directly because it then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 keeps it farther away from the neighborhood.

2 This is looking in the rose garden
3 further towards -- back towards the Dumbarton
4 House. You can the rooftop over the hedge
5 there.

6 This is the Heininger home, again,
7 over the hedges and one level away.

8 This is, again, towards the
9 southern perimeter of the property.

10 And the same.

11 And more of the same, but with
12 some event set up for a wedding ceremony
13 showing the distances to the residences.

14 And, again, the same view.

15 And this is looking back in the
16 other direction towards 28th Street.

17 Here we've inserted some pictures
18 of some setups of events so that you can see
19 this is a wedding ceremony setup going in the
20 direction of 28th Street. You can see there
21 are cocktail tables set on the upper level
22 terrace close in to the home. And this is on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the opposite direction where the chairs would
2 be facing the -- sorry. The opposite
3 direction from 28th Street.

4 MR. BELIN: East.

5 MR. KOVACH: East. Thank you.

6 And then there again that's
7 showing a wedding ceremony. And that
8 particular wedding had a 193 guests. So they
9 don't even fill that whole lawn space.

10 This shows cocktail reception on
11 the rose garden level. This particular event
12 had 165 guests.

13 And then this is an upper level
14 terrace cocktail party. And this is the same
15 wedding with 193 guests.

16 This shows the flow of the event
17 from the second story from inside the home to
18 showing you how people come in and they go
19 down just to that level there on the rose
20 garden terrace.

21 And this is an interior picture
22 showing you the band setup in the ballroom not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 having any amplified music outdoors.

2 We're back on the upper level
3 terrace where you just saw the cocktail setup.
4 This is looking towards 28th Street with the
5 office guest house just there on the right.

6 And again, overlooking to 28th
7 Street. No neighbors are visible from that
8 point.

9 This is from the driveway looking
10 across the street on 28th Street.

11 And this is from the perimeter of
12 the driveway looking towards R Street and you
13 can see the Steury home there on the corner of
14 28th and R.

15 This shows a valet supervisor
16 directing traffic onto the property. And a
17 taxicab coming into the courtyard for a drop
18 off at the front door.

19 And again, the valet supervisor in
20 the courtyard directing traffic both taxis and
21 valets and Van Terras if there were any in
22 this case.

1 This is 28th Street at the time of
2 a wedding ceremony start time on April 5th
3 showing there are not too many cars parked on
4 the street. And, again, our street at the
5 same time of the start of our event.

6 This shows our traffic controller
7 directing taxis, guest vehicles on and off of
8 the property.

9 And this is location where trucks
10 from our vendors will load and unload. Again,
11 only during the hours as stated in my
12 testimony.

13 We have a very good relationship
14 with many of our neighbors and we continue to
15 do all that we can to address any potential
16 issues.

17 We, like so many others, believe
18 Evermay is a benefit to our community and we
19 work very hard to ensure it remains so.

20 I would be happy to answer any
21 questions.

22 MR. COLLINS: We would like to go

1 to our next witness, Mr. Erwin Andres, unless
2 you'd like to ask questions.

3 CHAIRPERSON MILLER: I just wanted
4 to know how many witnesses do you have?

5 MR. COLLINS: Two more.

6 CHAIRPERSON MILLER: Okay. I
7 think we can wait. Right? Okay.

8 MR. COLLINS: Mr. Andres is with
9 Grove/Slade Associates. He has testified
10 previous as an expert witness. I have copies
11 of his résumé if you like, but he's been here
12 many times in previous situations as an
13 expert. And I'd ask that he be accepted as an
14 expert in traffic and transport.

15 CHAIRPERSON MILLER: Yes. We've
16 recognized him many times.

17 MR. COLLINS: Thank you.

18 MR. ANDRES: Thank you. Good
19 afternoon, Madam Chair, Members of the Board.
20 My name is Erwin Andres, I'm the principle of
21 Grove/Slade Associates.

22 Our scope of services related to

1 this projects consisted of several tasks. The
2 first was to identify what existing conditions
3 are in the neighborhood with and without the
4 event. The second was to assist the planning
5 and development team to develop a
6 transportation management plan to support the
7 activities on site. And the third is to
8 coordinate with all of the relevant government
9 agencies, and in this case they include the
10 District Department of Transportation.

11 In that capacity, we've identified
12 some of the existing conditions based on site
13 visits as well as using some information I
14 gathered from some of the other projects that
15 we've worked on in the area.

16 With respect to existing site
17 conditions, as you may know the site is
18 located primarily on the east side of 28th
19 Street with its direct access, and it's a two
20 way access point, located just south of the
21 intersection of 28th Street and R Street.

22 It's important to note that the

1 intersection of 28th Street and R Street is a
2 wide angle intersection where in order to turn
3 left if you're heading north up 28th Street
4 and you wanted to head west on R Street, you
5 are required by law because there are stop
6 signs on both approaches to stop at that
7 location.

8 That actually helps the situation
9 with respect to our access because coming from
10 a stopped condition vehicles are basically
11 starting up before they enter. If they're
12 coming from the west and they're heading east
13 on R Street, they would have to come to a
14 complete stop, turn right and then wait for
15 the necessary gaps to turn left into our site.
16 So they are coming from a stop condition if
17 they are heading from the west.

18 It's important to note that in
19 this part of Georgetown many of the
20 intersections are always stop intersections.
21 However, it's interesting to note that on R
22 Street between 30th Street and 28th Street

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there is no stop sign along R Street. So from
2 between 30th and 28th Street if you're heading
3 east/west there's potential for motorists to
4 pick up a little bit of speed because of the
5 fact they've been hitting stop signs at almost
6 every intersection or every other intersection
7 in the corridor.

8 It's also important to note that
9 some of the other streets in the area have
10 different functions. P Street and Q Street,
11 both which are south of the site, are
12 classified as minor arterials by the District
13 Department of Transportation. As such it
14 carries traffic that warrants that
15 classification. Because of the fact if you
16 look at a map P Street and Q Street provide
17 direct east/west access for the Wisconsin
18 Avenue corridor and commuters or residences in
19 the area to the Dupont Circle/Golden
20 Triangle/Foggy Bottom area. Those are the
21 major -- P Street and Q Street provide that
22 major connection because to the north and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 south they're very limited.

2 As a result, there are buslines.
3 Actually, there are the Metrobus D buslines
4 that travel along Q Street. And the G busline
5 that travels along P Street. So that confirms
6 the amount of -- the usefulness, for lack of
7 a better term, of those corridors in
8 transferring people east/west through this
9 area of town.

10 In addition to that, in the
11 vicinity of the site there is RPP two hour
12 restrictive parking. What that means is that
13 there is residential permit parking with the
14 restriction that if you are not a resident,
15 you are allowed to park on these streets for
16 no more than two hours. In some instances
17 that may not be as enforced as it should. As
18 a result, we believe that this parking
19 restriction actually support the application
20 in that most of the attendees coming to these
21 events are there longer than two hours. As a
22 result, they either risk getting a tick or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they're actually residents who are coming to
2 the event that choose to park on the street.
3 Given that and given the testimony that's been
4 presented earlier, there is capacity on site
5 to allow for the parking that it has been
6 identified for the most intense events that
7 are projected for the Evermay property.

8 In addition to that, because R
9 street only has parking on the south side and
10 on the north side, there are limitations to
11 the amount of on street parking that is
12 afforded to the R Street residents because
13 they don't have two sides of the street to
14 draw from.

15 Based on our -- we have done
16 existing traffic counts as well as existing
17 parking counts for days when there are events
18 and days when there are not events.

19 What we have found is that on days
20 that do not events, which are existing
21 conditions, what currently occurs is that
22 because P Street and Q Street carry a lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 traffic, the corridors of 28th and R Street
2 tend to get commuter cut through traffic
3 during the peak hours because of the fact P
4 Street and Q Street get somewhat congested.
5 As a result, there is a spike in traffic
6 volumes related to some commuter volumes which
7 is completely unrelated to the Evermay Society
8 and their application. Regardless of whether
9 Evermay is there or not, this is a current
10 condition.

11 It's important to note that when
12 we did our analysis all of the intersections
13 without the event, all the intersections
14 operated at level service B or better except
15 for one intersection, which is the
16 intersection of 28th and Q Street where that
17 we've identified during the peak hour, which
18 we've based on counts. Discovered that the
19 peak hour is between 5:15 and 6:15. During
20 that hour that intersection, unsignalized
21 intersection of 28th and Q Street approaches
22 capacity conditions. And as a traffic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 engineer it doesn't surprise me because if you
2 go further south a block at the intersection
3 of 28th and P Street there's actually a
4 traffic signal there. One of the very few
5 traffic signals basically in that part of
6 Georgetown.

7 In addition to the non-event
8 conditions, we've also looked at an event that
9 took place on Saturday, April 12th with a
10 start time of 7:00 p.m. And it was a 150 person
11 event. And from that we've identified what
12 characteristics are associated with some of
13 these type of events.

14 It's important to note that there
15 are as a result of that event there were 55
16 cars parked on site for a 150 person event. So
17 even though the event is toward the high end
18 of what this facility can hold, the parking
19 spaces on site were only about a third full or
20 slightly greater than a third full.

21 And the reason for that, as I
22 breakdown the people who arrived there, was

1 that there are different characteristics
2 associated with the people arriving at these
3 events.

4 First is that many of them
5 carpooled. Normally the events, social events
6 it's been our experience that there are people
7 who show up at events alone. So that's one --
8 basically one characteristic.

9 The second is for 150 person
10 event, we counted a 133 people attending. So
11 there's a built in absentee rate where some
12 people don't necessarily show up to an event
13 even though they have RSVP'ed for it.

14 In addition to that, although the
15 Evermay Society discourages taxis, there were
16 26 taxis that showed up. And as a traffic
17 engineer what I get from that is that this
18 type of event was a local event, an event that
19 draws from either a local -- that has a local
20 flavor because of the fact that many of these
21 attendees would choose to take a taxi rather
22 than drive themselves because of the fact they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 wanted pay for a taxi to bring them here from,
2 say, from Arlington or Bethesda. So with
3 that, we've identified sort of the dissection
4 of this crowd.

5 Also what we've identified is that
6 when we did the parking counts related to the
7 event there were still available spaces. And
8 it's been identified in our traffic and
9 parking report. Based on the two block
10 walking distance from the front entrance, we
11 did a parking survey, an on street parking
12 survey, when the event was being held.

13 And it's also important to note
14 that there was also an event being held at
15 Dumbarton House at the same time.

16 So what we noticed was that 28th
17 Street was fairly fully occupied. We noticed
18 that along Q Street and along R Street there
19 were occupied spaces as well. So there was
20 competition for those spaces, but the benefit
21 that the Evermay Society has that many other
22 institutions don't have is the fact that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 do have, as has been mentioned before, an
2 excess of 100 parking spaces that would be
3 difficult to find in Georgetown, nevertheless
4 the District itself.

5 So the benefit that's provided by
6 providing valet parking is that -- there are
7 two benefits. One, obviously, we are looking
8 to provide all of the parking off of the
9 District streets which provides for residents
10 to have that parking as well as some of the
11 other institutions that need on street parking
12 because they don't have as much on street
13 parking that the Evermay has.

14 In addition to that, because we
15 have an on site parking facility, it cuts down
16 on the amount of circulation for people who
17 decide to drive that, you know, all I have to
18 do is go to the front entrance because they
19 know they will have a free valet parking
20 space. For them, it only takes a person who
21 is not familiar with the area to go around the
22 block once or twice before they realize, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know what? This is not worth it. So then as
2 patrons understand that the parking is valet
3 and the parking is free, basically two items
4 that are important, we believe that this can
5 be accommodated on site.

6 In addition to that, we've
7 coordinated with DDOT. DDOT's has provided us
8 their approval of the project given some of
9 the transportation demand management measures
10 that have been identified by Evermay. And we
11 support that fully.

12 So with that, I conclude my
13 presentation.

14 MR. COLLINS: Thank you.

15 The last witness is Mr. Stephen
16 Benson. Mr. Benson is an attorney and a
17 partner with the law firm of O'Brien, Butler,
18 McConihe, Schaefer and has spent the last 23
19 years representing non-profit organizations
20 and tax exempt organizations. And I would like
21 to offer him as an expert witness in this case
22 on non-profits and the tax exempt

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 organizations.

2 CHAIRPERSON MILLER: Do we his
3 résumé in the --

4 MR. COLLINS: No, but I have it.
5 I have a copy of the résumé here.

6 CHAIRPERSON MILLER: Okay.

7 MR. CROCKETT: I don't know
8 whether this works, but --

9 CHAIRPERSON MILLER: Yes, that's a
10 big issue for the opposition and this is not
11 an expert we're familiar with. So you should
12 get a copy and let us know if you object. And
13 the same with Ms. Steury.

14 MR. CROCKETT: I don't know
15 whether I can get this thing to work. Is it
16 working now? I'm sorry.

17 First of all, I would object to
18 the fact that this is being put before me
19 right now when theoretically everything that
20 was a part of the submission should have been
21 submitted 14 days in advance.

22 I did come down and look at the

1 file yesterday and I found nothing like this
2 in there. And I don't know that I can object,
3 but I do object that he is not qualified as an
4 expert and he should not be allowed to testify
5 as an expert. But I'm going to have to read
6 this first.

7 MR. COLLINS: Our list of
8 witnesses is in the record and it includes Mr.
9 Benson.

10 MEMBER WALKER: Well, I object.
11 I'll just speak be loud enough so I can be
12 heard.

13 I object. I received a list of
14 the witness statement --

15 CHAIRPERSON MILLER: You have to
16 be on the microphone. I'm sorry. So the court
17 reporter can pick you up.

18 MS. STEURY: I received the
19 witness statement along about -- well, it was
20 filed on July 3rd and I received it by mail
21 the next Monday. And Mr. Benson was not
22 listed as an expert at all and there was no

1 subject matter that he was identified with.
2 So I've not had an opportunity to prepare and
3 think about what he might be presenting here
4 as an expert. And so I do object.

5 CHAIRPERSON MILLER: Mr. Collins,
6 he's on the witness list that was submitted
7 July 3rd, is that what you're saying? That's
8 what she said.

9 MR. COLLINS: Yes.

10 CHAIRPERSON MILLER: Is there
11 anything else to add to that?

12 MR. COLLINS: Well, Mr. Benson was
13 on the witness list, and we're verifying that
14 whether it was July 3rd or what the date is,
15 just so you have it. But he is on our witness
16 list.

17 MS. STEURY: And I will note even
18 though it's a mute point, at the time that was
19 filed that was a late notice anyway for the
20 next scheduled hearing.

21 MR. COLLINS: It was filed in
22 response to issues that were raised. It is

1 dated July 3rd. It's Exhibit 47.

2 CHAIRPERSON MILLER: Ms. Steury,
3 what this witness list for party in
4 opposition, Ellen Steury, in which Mr.
5 Benson's name --

6 MS. STEURY: I prepared that
7 knowing that I have no compulsory process. And
8 after my experience last -- I've never met Mr.
9 Benson. I don't know him. And after my
10 experience here last time when Mr. Collins had
11 a very restrictive view of cross examination,
12 so I listed them as witnesses I might call if
13 Mr. Collins objected to my examination -- the
14 cross examination and determined that they
15 were -- my questions were out of the scope of
16 cross examination. So it was a protective
17 measure.

18 I'm not interested in calling Mr.
19 Benson if he does not testify for the other
20 side.

21 CHAIRPERSON MILLER: Mr. Collins,
22 where can I find the witness list in the

1 record?

2 MR. COLLINS: Exhibit 47.

3 CHAIRPERSON MILLER: Okay. And
4 maybe I can go back to Ms. Steury unless you
5 can answer this, I look at Ms. Steury's
6 Exhibit 72 in which she lists Mr. Benson as a
7 witness, and then she describes his
8 qualifications or something, something about
9 him. And I look at your Exhibit 47 and where
10 he's just listed as an attorney, you know,
11 with this law firm.

12 MR. COLLINS: Yes.

13 CHAIRPERSON MILLER: Was there
14 somewhere else that you identified his
15 qualifications?

16 MS. STEURY: May I answer that?

17 CHAIRPERSON MILLER: Okay. You
18 pulled it.

19 MS. STEURY: Yes. No. I discerned
20 that from the tax returns and things like
21 that. Those were all from information that
22 was at some point provided to be by Mr. Belin

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or on behalf of the Evermay Society, but not
2 on the basis of information that Mr. Collins
3 put in the record.

4 CHAIRPERSON MILLER: Okay. But
5 you're on notice that these are his
6 qualifications.

7 MS. STEURY: I don't call them
8 qualifications.

9 CHAIRPERSON MILLER: I'm sorry.
10 What do you call them?

11 MS. STEURY: I call them subjects.
12 Subjects is what I -- which was a guess.

13 And if I were to cross examine
14 him, it might on those issues. I do not intend
15 to call him on those issues.

16 CHAIRPERSON MILLER: Mr. Collins,
17 do you have anything else you want to add
18 while we're looking at this?

19 MR. COLLINS: There's no
20 requirement in the rules that you identify the
21 subject matter of your expert witness
22 testimony or your witness testimony. We were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 required to submit a list of witnesses, and I
2 did that. And I think Ms. Steury for
3 embellishing on that and identifying the
4 subject matters to which he is going to
5 discuss.

6 MR. CROCKETT: Madam Chairman, I
7 don't know whether this will work or not.

8 This is comes as a complete
9 surprise. In normal federal practice you're
10 required to identify expert witnesses
11 separately and provide their qualifications
12 before a hearing. We had no opportunity to
13 understand that this witness was being
14 provided as an expert. I still don't
15 understand what his alleged expertise would
16 be. Being an attorney, there aren't many
17 things that we as attorneys can be experts on.

18 MR. COLLINS: I'm just going to
19 respond two things on that. Number one, this
20 is not a federal practice. And number two,
21 for someone who had just filed last evening at
22 6:00 I'm kind of interested to hear his claim

1 of surprise.

2 CHAIRPERSON MILLER: Their witness
3 list, is that what you're referring to?

4 MR. COLLINS: His filing.

5 CHAIRPERSON MILLER: Yes. His
6 whole filing?

7 MR. COLLINS: Yes, his entire
8 filing.

9 CHAIRPERSON MILLER: Okay. Ms.
10 Steury, you had another comment?

11 MS. STEURY: Yes. I would have
12 expected a witness statement which is
13 mentioned at least in the regulations.

14 CHAIRPERSON MILLER: A witness
15 statement? Do you want to point to the
16 regulation and we'll look it up.

17 MS. STEURY: Yes. Now it doesn't
18 -- I'm not saying that it's a requirement. I'm
19 saying that it's mentioned in the statement
20 that says everything that the applicant is
21 going to rely on as evidence at the hearing
22 has to be in the record 14 days in advance. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I would argue, and have in one of my motions,
2 that a lot of this has come in today at the
3 last minute when -- which really deprives the
4 opposing neighbors of an opportunity to
5 review, consider and rebut some of this
6 information.

7 There have been other changes that
8 have been presented today that are at odds
9 with the application. These were known long
10 ago.

11 Mr. Benson has been around since
12 the foundation of this -- I mean, since the
13 formation of this corporation. And our
14 objections have been well known since April
15 29th or before to Mr. Collins and Mr. Belin
16 about the nature of this application. So
17 there was no need for this surprise.

18 CHAIRPERSON MILLER: Okay. I want
19 to make a couple of comments similar to what
20 Mr. Collins said. This isn't federal
21 practice, even though we look to the courts
22 for guidance in many areas. We don't strictly

1 follow all of the minutes. In fact, they
2 don't I believe have this party status
3 situation where you're just admitted as a
4 party the day of the hearing, in any event.

5 It also appears to me that the
6 provision you may be referring to is 3113.8
7 "No later than 14 days before the date of the
8 hearing for the application, the applicant
9 shall file with the Board any additional
10 statement, information, brief, reports
11 including reports or statements of expert and
12 other witnesses, plans or other material that
13 the applicant may wish to offer into evidence
14 at the hearing." Is that correct?

15 MS. STEURY: That would be the
16 one.

17 CHAIRPERSON MILLER: Okay. I
18 don't read it as requiring the résumé of the
19 witnesses, though in fact that can be helpful.
20 As you were saying, it doesn't say it's a
21 requirement. It can be helpful. We've seen
22 it both ways in these proceedings.

1 But I personally don't see
2 prejudice here because it seems to me you've
3 done your homework very religiously. And, in
4 fact, captured the subject areas that you
5 associated with Mr. Benson.

6 MS. STEURY: I certainly did not
7 expect him as an expert witness. I expected
8 him as a fact witness because he's been
9 involved in the incorporation and the filing
10 of the 1023.

11 CHAIRPERSON MILLER: What would
12 that mean, Mr. Collins. How different? She
13 recognizes that he's been involved in the tax
14 preparation for all these years. What other--
15 I don't know. Or that expertise would be a
16 surprise here? I'm trying to --

17 MR. COLLINS: I don't know. He's
18 an expert. He's practiced for the last 23
19 years in non-profit and tax exempt
20 organizations in the District and elsewhere.
21 And that's what he'll be testifying as to
22 here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This is an issue that was raised
2 by the opposition and we're simply -- we have
3 filed documents from the IRS, we've filed
4 documents from D.C. Office of Corporations.

5 This Board typically looks to the
6 expertise of other boards and agencies for
7 certain guidance. For instance, this Board
8 does not independently determine whether a
9 building is a historic landmark or is a
10 historically contributing building. You rely
11 upon the expertise of your sister agency the
12 HPRB. This agency does not independently
13 determine whether a medical use is a
14 community-based residential facility. You
15 rely upon your sister agency the State Health
16 Planning and Development Agency.

17 Similarly, this Board cannot
18 independently determine that this use is
19 either a non-profit or is not a non-profit
20 because you'd rely upon the Internal Revenue
21 Service and the D.C. Office of Corporations.
22 We filed those documents.

1 In addition, we're providing him
2 because that's not good enough for the
3 opposition, we're providing a witness to
4 testify on that issue.

5 CHAIRPERSON MILLER: So the fact
6 if we were to qualify him as an expert, then
7 that would give him a little bit more
8 credibility in leading us through those
9 documents and --

10 MR. COLLINS: Yes.

11 CHAIRPERSON MILLER: -- and saying
12 this is what this means.

13 MR. COLLINS: That's correct.

14 CHAIRPERSON MILLER: Okay.

15 MR. COLLINS: This is what he
16 does. This is stock and trade.

17 CHAIRPERSON MILLER: Yes.

18 MR. COLLINS: And also just to
19 make the record clear, he is on the Board of
20 Trustees of Evermay Society. But he doesn't
21 get paid for that. This is what he does. He's
22 an expert in non-profit and tax exempt

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 organizations.

2 CHAIRPERSON MILLER: Do Board
3 Members have any questions for Mr. Benson or
4 for Mr. Collins?

5 MEMBER WALKER: I have a question
6 just following up on your statement that he is
7 an expert in non-profit organizations. I
8 mean, that's not exactly what his résumé says.
9 I mean, what exactly is his legal specialty?

10 I mean, just because you provide
11 general counsel to non-profit organizations
12 doesn't make you an expert in non-profits. It
13 doesn't make you tax lawyer. What is his area
14 of legal specialty?

15 MR. COLLINS: Well, perhaps I
16 could Mr. Benson to address that issue.

17 MR. BENSON: Thank you, Madam
18 Chair.

19 Like Mr. Collins indicated, for
20 the last 23 years I've been in private
21 practice here in Washington, D.C. I'm a senior
22 partner of a law firm, O'Brien, Butler,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 McConihe, Schaefer. Our firm specializes in
2 representing non-profit and tax exempt groups.
3 That's our specialty. It educates general
4 counsel. We do anything that a non-profit or
5 a tax exempt organization needs as far as
6 legal help goes. And that can come as far as
7 doing tax matters, incorporation matters;
8 anything a non-profit it needs to do, we
9 handle that on their legal side.

10 MEMBER WALKER: And you stated
11 that in terms of your firm's specialty, but
12 I'm particularly interested in your personal
13 specialty.

14 MR. BENSON: Correct. Our firm,
15 all the partners, all the associates at our
16 firm, we all specialize in non-profit and tax
17 exempt organization work. And so all of us
18 have extensive experience. We represent and
19 have represented hundreds and hundreds of non-
20 profits both national, international and
21 local. So all of us are experts in non-profit
22 law.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER WALKER: Do you also
2 represent for profit organizations?

3 MR. BENSON: We do. Some of our
4 non-profits actually have commercial
5 activities. So they have subsidiaries that do
6 not qualify as a non-profit so they would be
7 involved in profit making activities. Usually
8 related to like insurance programs or
9 membership benefit programs for the non-
10 profit.

11 MEMBER WALKER: Thank you.

12 COMMISSIONER EASON: Yes, Madam
13 Chairman, I was just going to ask the very
14 same questions. Because his résumé speaks to
15 experts of his firm and not to him. And I
16 think that your colleague hit the nail on the
17 head. Thank you.

18 MR. CROCKETT: One more thing,
19 Your Honor. My understanding is that Mr.
20 Benson has been the attorney for Mr. Belin and
21 for the association and as such he has a
22 personal interest in this as being the

1 attorney and receiving money for all of this.
2 And he cannot be considered an independent
3 expert witness. He is the attorney for the
4 client. And if he's going to give testimony
5 here today, that's the testimony that he
6 should give is as the attorney of the client.

7 CHAIRPERSON MILLER: Is there some
8 ethical cannon or something you want to bring
9 to our attention? Because my understanding
10 would be that that might go to the weight that
11 we give to the testimony, that we would keep
12 that in mind. But that that doesn't go to his
13 being allowed to testify as an expert witness.

14 MR. CROCKETT: Well, I'm not
15 claiming that he's not being allowed to
16 testify. If he wants to take the Board through
17 the tax returns or anything else, that's fine
18 with me as a fact witness. But as being an
19 expert lawyer in this area, absolutely not.
20 He's biased and he cannot be an independent
21 expert.

22 VICE CHAIRMAN LOUD: I think as

1 Madam Chair indicated, that goes to the
2 weight. It happens all the time in court
3 where, for example, a treating physician is
4 allowed to testify as an expert in cases
5 involving his or her client. There are a
6 number of cases in D.C. Court of Appeals
7 *Atlantic Reporter* 2nd, 3rd or 4th that
8 establish that. So I don't want to go around
9 and around about that. But it just goes more
10 to the weight of the evidence. And during the
11 cross you can attack that by a number of
12 means.

13 COMMISSIONER EASON: Madam Chair,
14 I just really want to get one thing clear
15 before we proceed. As pointed out, he has been
16 counsel to the Evermay Society and to Mr.
17 Belin. And I presume that in putting him on
18 the stand that they're waiving any
19 attorney/client privilege and that we'd be
20 free to inquire about those kinds of things.

21 CHAIRPERSON MILLER: Mr. Collins,
22 do you want to respond to that?

1 MR. COLLINS: No.

2 CHAIRPERSON MILLER: I think we'll
3 cross that bridge if we come to that.

4 Yes, Ms. Steury?

5 MS. STEURY: I would like to make
6 one more concrete example of why I'm not
7 prepared because I was noticed on this. I was
8 doing my homework and I had previously, even
9 before Mr. Benson was identified as a witness,
10 not an expert witness, I had looked at the
11 website for his firm and tried to do as much
12 research on him as I could. And I had known he
13 was going to be qualified as an expert today,
14 I would have brought that information. I do
15 not have it on me.

16 As my recollection is, that his
17 firm has six or seven people, is that correct?
18 Six or seven people. They list at least ten
19 specialties. So these are points about which
20 we could debate if there had been fair notice
21 and I was allowed to prepare.

22 CHAIRPERSON MILLER: Ms. Steury, I

1 just want to ask a question. We might take a
2 quick break because we've been here a long
3 time. But you also -- you have a list of
4 witnesses. I just had it. But do you have it?
5 Are you proposing any expert witnesses or
6 you're just proposing witnesses?

7 MS. STEURY: I'm not proposing any
8 expert witnesses.

9 CHAIRPERSON MILLER: Okay. I have
10 another for Ms. Steury also. Were you
11 surprised that Mr. Andres was offered as an
12 expert witnesses?

13 MEMBER WALKER: You going to need
14 to speak on the mike so the court reporter can
15 catch you.

16 MS. STEURY: No, because his
17 traffic study was in the application, and I
18 had reviewed it.

19 CHAIRPERSON MILLER: Mr. Collins,
20 can you just give us a little proffer as to
21 what he would be testifying to?

22 MR. COLLINS: Sure. Mr. Benson

1 will just talk briefly about what the
2 requirements are for non-profit organization
3 status in the District and what being a public
4 charity and a private foundation mean in terms
5 of IRS regulations, and how the Evermay
6 Society complies with those.

7 CHAIRPERSON MILLER: And is there
8 anything else in the pre-hearing statement
9 that goes to those issues or are those issues
10 a surprise?

11 MR. COLLINS: The issue is
12 certainly not a surprise. We in our pre-
13 hearing statement we've included the D.C.
14 Government Superintendent of Corporations
15 indication non-profit status.

16 This Board has long held that just
17 filing evidence of that status is sufficient
18 to prove that for non-profit organization
19 purposes. I have a case here *Jeffrey Gilbert*,
20 *BZA Application 13487* which involves an SP-1
21 District, but the issue was a non-profit
22 organization, whether it was in fact a non-

1 profit organization. The ANC was challenging
2 non-profit organization status there.

3 And bear with me just a second.

4 In that case the Board -- the ANC
5 there said this 13487 at paragraph 17, I have
6 copies if you like but I can read it to you as
7 well. "The ANC opposed the application on four
8 grounds, the first of which was that the use
9 proposed is not that of a non-profit
10 organization within the meaning of section"
11 and it was the older section of the
12 regulations.

13 And then the Board on paragraph 19
14 says: "As to the issues and concerns raised
15 by the ANC, the Board finds as follows: B
16 Based on information filed by the applicant
17 the Association of American Publishers is
18 registered with the Internal Revenue Service
19 as a non-profit organization." Period, end of
20 discussion.

21 So you accepted as the evidence of
22 non-profit status what was filed or what the

1 IRS determination was.

2 We have here both the D.C.
3 Government determination and an IRS
4 determination. But in order to fully address
5 this issue because it keeps getting raised and
6 every one of Ms. Steury's filings that have
7 happened over the last several weeks this
8 keeps coming up and keeps coming up. So we
9 thought we'd offer a witness to address that
10 issue. We think we have sufficiently
11 addressed it based on what's been filed and
12 what this Board has expertise to determine,
13 and what expertise it would defer to other
14 organizations to determine. And we're adding
15 additional information just to make sure.

16 CHAIRPERSON MILLER: Okay. We're
17 going to recognize Mr. Benson as an expert
18 witness based on the résumé and then his
19 answers to questions from Ms. Walker it seems
20 clear that he is an expert in those areas of
21 the non-profit issues. And while this résumé
22 was not filed in advance, I don't think the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rules exactly require it, though I think it is
2 a good idea. But I don't think that there's a
3 big surprise to the opposition that would
4 prejudice them in that. Because we heard from
5 Ms. Steury his name was put down as a witness
6 and she went to the website and saw the areas
7 of expertise that the firm specialized in. So
8 I don't believe it should be a surprise that
9 prejudices the opposition for the applicant to
10 address this issue with someone who is
11 qualified and who they have put everyone on
12 notice would be a witness.

13 MS. STEURY: I just want to
14 correct the correct. Because I think you
15 misconstrued what I said. I went to the
16 website long before he was ever on a witness
17 list. I did not prepare for him as an expert
18 witness in a way that I would have because he
19 was noticed as an expert witness.

20 I didn't see his name on that list
21 and then go research. In fact, I researched
22 no farther after I saw his name on that list

1 because he was not identified as an expert.

2 CHAIRPERSON MILLER: I wanted to
3 just ask you one other questions, even though
4 we have decided. When you say you didn't
5 prepare in a way that you would have if you
6 knew he was an expert witness, what do you
7 mean?

8 MS. STEURY: I gave you a concrete
9 example of what's already come up and what's
10 been said before. He claims to be an expert
11 in a particular area. His firm lists about
12 ten areas. It looks -- now I'm going from
13 memory from the website. If I recall
14 correctly, he's listed on the website as an
15 expert in family law. If I recall correctly,
16 there's a list of clients. They all look like
17 trade associations to me. I would have gone
18 into things like that and had proof or
19 documented--

20 CHAIRPERSON MILLER: Okay. So you
21 would have challenged his expertise?

22 MS. STEURY: Yes.

1 CHAIRPERSON MILLER: Okay. Thank
2 you.

3 We're reading for you to testify.

4 MR. BENSON: Thank you, Madam
5 Chair.

6 Steve Benson, 888 17th Street,
7 Northwest, Washington, D.C.

8 I want to briefly address the
9 issue of the non-profit status of Evermay
10 Society and the non-profit activities engaged
11 in by the organization.

12 As indicated earlier, I have
13 served as legal counsel for Evermay Society
14 since its inception. I did the legal work to
15 incorporate it in the District of Columbia,
16 Did the legal work to file the Form 1023
17 application with the IRS to secure the federal
18 income tax exemption under the Internal
19 Revenue Service code. So I'm familiar with
20 Evermay Society. I'm familiar with the
21 activities of the Society.

22 And the District of Columbia non-

1 profit organizations come under the D.C. Non-
2 Profit Corporation Act. And that's found in
3 Title 29 Chapter 3 of the D.C. Code. And one
4 of the provisions under D.C. Non-Profit
5 Corporation Act are the purposes by which non-
6 profit organizations can be recognized as non-
7 profit organization in the District of
8 Columbia. Specifically that can be found at
9 Title 29 Section 301.04. And there are 21
10 enumerated purposes, permitted purposes for
11 non-profit organizations in that statute. And
12 that's not an exhaustive list. That is an
13 including but not limited to the following 21
14 areas. Included in the list of 21 enumerated
15 purposes which can be recognized includes
16 social purposes, civic purposes, business
17 purposes and commercial purposes in addition
18 to things such as charitable and benevolence.
19 So they're broad, far ranging purposes by
20 which the D.C. Code recognizes non-profit
21 activities in the District of Columbia.

22 And in the regulatory agency

1 that's responsible for regulating non-profit
2 corporations in the District of Columbia is
3 the D.C. Department of Consumer and Regulatory
4 Affairs. In April of 1999 we filed articles of
5 incorporation with DCRA. They checked the
6 requirements of the D.C. Code and granted
7 Evermay Society non-profit status by the
8 issuance of a certificate of incorporation in
9 1999.

10 Since 1999 it has recognized as a
11 non-profit corporation. That status has not
12 been changed by DCRA. And today it is still
13 recognized by the District of Columbia DCRA as
14 a non-profit corporation in the District of
15 Columbia.

16 In addition, the IRS, we filed a
17 Form 1023 in order to secure federal income
18 tax exemption under the Internal Revenue Code.
19 Under 501(c)(3) of the Internal Revenue Code
20 you must be a non-profit corporation. They
21 checked the filings and the IRS granted the
22 Evermay Society its 501(c)(3) status in 1999

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as well. Since 1999 the IRS has not revoked
2 or changed that status and it still is
3 recognized by the IRS today as a non-profit
4 corporation and recognized under section
5 501(c)(3) as exempt from income tax under the
6 Internal Revenue Code.

7 One other provision of the D.C.
8 Non-Profit Corporation Act that's relevant in
9 this matter is the not for profit corporation
10 is defined under Title 29 Section 301.02 as a
11 corporation, not part of income which is
12 distributed to its members. This does not,
13 however, permit the reasonable compensation to
14 be paid for services rendered on behalf of the
15 organization.

16 One of the other things that the
17 IRS does is it monitors the activities of the
18 non-profit organizations through annual tax
19 return submissions. All non-profit
20 organizations that secure \$1,000 or more of
21 income and revenue that's unrelated to its
22 non-profit purposes must file what's called a

1 Form 990-T. And in that they have to list
2 their unrelated business revenue or income.

3 Evermay Society since 1999 has
4 never had to file a Form 990-T. It has never
5 had to list any unrelated income that's
6 unrelated to its exempt purposes. So all of
7 the activities that the Evermay Society has
8 engaged in have been recognized by the D.C.
9 Government and by the IRS as non-profit
10 related activities. And this is consistent
11 with the non-profit purposes that Mr. Belin
12 testified to earlier. There are four
13 numerated purposes within the articles of
14 incorporation, including in there is promoting
15 community needs, providing forums for the
16 community, engaging in civic, cultural and
17 social activities. So all of the activities
18 that have been testified to earlier by these
19 witnesses as far what Evermay Society is
20 engaged in support the purposes of the
21 organization and are recognized by the IRS as
22 being consistent with the non-profit purposes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the organizations.

2 There was some indication that Mr.
3 Belin was engaged in some type of a commercial
4 enterprise. Well, non-profit organizations
5 are encouraged to engage in commercial and
6 business ventures. The requirement that the
7 IRS and D.C. Government impose upon them is
8 that they use the revenues that are generated
9 to support the non-profit purposes. And they
10 can't inure to the benefit of a private
11 individual. That's the essence of it, not
12 whether it's a non-profit organization or not
13 or whether or not the activity itself is
14 profit making or generates a revenue. It's how
15 the revenues are used by that non-profit
16 purpose. It has to be used for public benefit
17 and not a private benefit.

18 Mr. Belin testified earlier about
19 in his situation he is not paid, he's not
20 compensated for his 80 of work as CEO for the
21 organization. Many non-profit organizations
22 pay director fees. Evermay Society does not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pay director's fees. Evermay Society pays a
2 below market rate for rental of the space.
3 There is also standard release terms in the
4 lease with the Evermay Society that are
5 consistent with other not for profit
6 organization that i represent. As far as the
7 landlord, in this case Mr. Belin being
8 responsible for all capital improvements, but
9 the tenant in this case Evermay Society being
10 responsible for general maintenance and upkeep
11 and returning the property at the end of the
12 lease in the same condition as they took the
13 space at the beginning of the lease. Those
14 are all consistent commercial terms of a lease
15 here in the District of Columbia, So the
16 question, the issue is not the non-profit or
17 the non-profit activities, it has to do with
18 whether or not Evermay Society exists for the
19 public benefit and a public good. And I
20 believe that those issues that I just
21 enumerated indicate that Evermay Society is
22 being used for public good and not for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 benefit of Mr. Belin.

2 I'll be happy to answer any
3 questions you might have. Thank you.

4 MEMBER WALKER: Do we have a copy
5 of Evermay's 501(c)(3) letter in the file?

6 MR. COLLINS: The letter of 2005
7 that I referenced earlier was one of the three
8 handouts early in my presentation.

9 MEMBER WALKER: And that's the
10 only letter -- it doesn't actually reference
11 501(c)(3).

12 MR. COLLINS: No. But I guess non-
13 profit --

14 MR. BENSON: The original IRS
15 determination letter was from 1999. That would
16 indicate its classification under the Internal
17 Revenue Code. And that would indicate it's
18 501(c)(3) status.

19 MEMBER WALKER: Do we have a copy
20 of the 1999 letter?

21 MR. COLLINS: The IRS letter? We
22 do not have it. We can submit that. We have

1 a copy of the 2005 letter which says --

2 MEMBER WALKER: I saw that letter.

3 MR. COLLINS: Yes.

4 MEMBER WALKER: But I was
5 interested in the initial letter indicating
6 the 501(c)(3) status that Mr. Benson
7 referenced.

8 MR. COLLINS: But I'm not sure
9 that that's relevant because the zoning
10 regulations don't require a 501(c)(3) status.
11 They simply require a non-profit status.

12 MEMBER WALKER: I'm only asking
13 because he mentioned it as being in existence.

14 MR. COLLINS: I see. Well, it's
15 in existence.

16 MR. CROCKETT: Madam Chair?

17 CHAIRPERSON MILLER: You might be
18 out of order.

19 MR. CROCKETT: I am asking for a--
20 I have a problem here.

21 CHAIRPERSON MILLER: What? Oh, I'm
22 sorry. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: (Off microphone).
2 He has to leave for his work. And I was asking
3 for the indulgence of the Board to take him
4 out of order so he could give his short
5 testimony and then be on his way, if that's
6 possible.

7 CHAIRPERSON MILLER: Okay. What
8 time does he have to leave?

9 MR. PETROU: Well, I would have
10 liked to have left right about now, but I can
11 stay at least another 15/20 minutes.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Collins, any objection?

14 MR. COLLINS: No. None at all.

15 CHAIRPERSON MILLER: Okay. In the
16 meantime, are you looking for the 501(c)(3)
17 letter or no?

18 MR. COLLINS: Well, we're going to
19 look and see if we have one with us.

20 CHAIRPERSON MILLER: Okay. We do
21 take witnesses out of order to try to
22 accommodate people, you know, who have been

1 here all day and have to go. So, why don't you
2 come to the table and give your name and
3 address and testimony. Okay.

4 MR. PETROU: Sure. Thank you,
5 Madam Chairwoman.

6 My name is David Petrou, P-E-T-R-
7 O-U. I live at 2810 R Street, that's within
8 the 200 feet of perimeter to Evermay.

9 I purchased the home in March of
10 1987, so I've been a resident there for 21
11 years.

12 CHAIRPERSON MILLER: May I ask
13 you, just so we understand --

14 MR. PETROU: Of course.

15 CHAIRPERSON MILLER: -- are you
16 testifying in general, you know, either in
17 support or opposition?

18 MR. PETROU: I believe I'm
19 testifying as a fact witness.

20 CHAIRPERSON MILLER: You're a fact
21 witness of Ms. Miller.

22 MR. PETROU: Pardon me?

1 CHAIRPERSON MILLER: For Ms.

2 Miller are you a fact witness?

3 MR. PETROU: No. I am a resident
4 of R Street. I am one of the R Street
5 neighbors.

6 CHAIRPERSON MILLER: You're not
7 testifying for any of the parties?

8 MR. PETROU: No. I'm testifying on
9 behalf of myself as a resident.

10 CHAIRPERSON MILLER: Good. Okay.
11 Good.

12 MR. PETROU: I'm here --

13 CHAIRPERSON MILLER: Good.
14 Welcome. Okay.

15 MR. PETROU: Yes. Thank you. I
16 just got back from two weeks overseas, and I
17 listened with great interest this afternoon to
18 Mr. Belin, to Alexandra Kovach who I've known
19 for a number of years. She knows that many
20 times I'm a proud resident out there going up
21 and down 28th Street with garden gloves and
22 trash bag picking up the refuse that results,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not just from events that may be held at
2 Evermay, but cab drivers often park on the
3 shaded side of 28th Street between Q and R on
4 the other side, which is another property.

5 But what I did want to say is
6 despite Mr. Belin's very detailed description
7 about all the things that he's taken into
8 consideration for the neighbors let me tell
9 you the reality that I've experienced over
10 those 21 years, particularly in the last six
11 or seven.

12 If you can repeat the number, Mr.
13 Belin, of the events that were last year. Was
14 it 77, I believe. Is it 77? Right. You don't
15 have to refer to calendars or be a rocket
16 scientist to recognize that's well over one a
17 week.

18 They do vary in size. But I can
19 tell you that while there may be parking for
20 150 cars, I can't tell you how many times I
21 have returned to my home at 2810 R Street and
22 there are cars literally blocking driveway so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that I can't get into my driveway. I've had to
2 call the police. I didn't bother calling
3 Evermay. I called the police to have them
4 towed.

5 I can speak from my own experience
6 that wherever valet parking is offered, except
7 maybe the two years I lived in Los Angeles, I
8 never avail myself of that because I like to
9 come and park on my own and leave when I want
10 to leave. So even though Mr. Belin is gracious
11 to have those parking places, I'm sure there
12 are many, many people who think like me.
13 Because when there events there, our street is
14 chockablock packed with cars and people
15 dressed very nicely are walking down the
16 street to Evermay. That's a fact.

17 The noise is certainly a factor.
18 As I say, I live within two houses of the
19 Steurys. I'm within that 200 feet limit. I
20 have heard trucks backing up preparing for
21 events, waiting for the light. If I want to
22 entertain in my own backyard, you know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sometimes I do that hearing.

2 It might be America's Living Room,
3 but I'm concerned about my own living room.
4 And, you know, when there are major events,
5 weddings, things that have nothing to do with
6 non-profit status that impacts directly on the
7 quality of my home.

8 As I say, we keep hearing this
9 theme. I'm an accredited communications
10 professional. That's a nice catch phrase,
11 America's Living Room. But it isn't the
12 Belin's living room. They don't live there. I
13 do. And my home is as important to me. It's
14 my single greatest investment, as I'm sure
15 Evermay is to the Belins. The difference is
16 reside there 12 months of the year.

17 So I think the impact is really
18 much more considerable than has been presented
19 today. I'm sure you'll hear that. You received
20 that in the letter I wrote to you dated June
21 30th, by many of my neighbors, Michael and
22 Marion Goldberg, Jo and Analisa Brand, Avery

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Miller and her husband Greg, the Steurys.

2 So while the intentions may indeed
3 be very good, the reality is not very good.
4 And I just wanted to give my testimony as a
5 resident there who values the tranquility.

6 I'm a native Washingtonian. I'm a
7 graduate of Georgetown University. I left for
8 about seven years after I graduated. I lived
9 in New York, I lived in Los Angeles, I lived
10 in London, I lived in Budapest, Hungary. I
11 just returned Friday night and Saturday I was
12 there with my trash bag and gloves picking up
13 all the garbage on both sides of 28th Street.

14 So for someone who values his
15 living room, and as much as the Belins value
16 American's Living Room, I just wanted to say
17 that I think the number of events, the size of
18 events really seems to be in conflict with the
19 kind of residential tranquility that I
20 invested in 21 years and I hope to maintain as
21 a resident of our street.

22 I'll leave you with a last

1 example. In October I believe there was a --
2 was it a World Bank event that you had there,
3 Mr. Belin? Something for the World Bank. And
4 there were wall-to-wall limousines up and down
5 28th Street. I don't know if any of them were
6 stretch or not. And I can certainly tell you
7 there have been times where Ellen Steury and
8 I have laughed because we've been trapped in
9 our own houses when President Bush comes
10 there, which usually happens several times a
11 year. We're not able to leave our homes.
12 We're not able to take out our cars.

13 So you've heard one side of the
14 story. I hope at least in these few minutes
15 I've given you a different perspective.

16 CHAIRPERSON MILLER: Thank you.
17 Yes, and we have read all the letters that
18 came in.

19 MR. PETROU: Okay. Is there
20 anything you want to ask of me?

21 CHAIRPERSON MILLER: Yes. I would
22 like to ask you some. I know you're going to

1 go and this --

2 MR. PETROU: And I thank you very
3 much. I thank the Board's indulgence, the
4 BZA's indulgence for seeing me out of order.

5 CHAIRPERSON MILLER: And you
6 certainly raise valid concerns. I guess my
7 question to you is what would you like to see
8 happen? Would you like the special exception
9 denied or would you like to see the special
10 exception granted but events limited and more
11 conditions placed on the property?

12 MR. PETROU: Sure. In the 20 years
13 that I ran my own award winning communications
14 firm representing clients from British Airways
15 to Black and Decker to Starwood Hotels and
16 Resorts, to Spring PCS my philosophy with my
17 clients was always the art of negotiation is
18 compromise. And I would think that a
19 compromise that -- you know, right now under
20 the circumstances and what with Mr. Belin and
21 his attorney's representatives are proposing,
22 of course I would ask that it be denied. But

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if a reasonable number of events that, you
2 know, don't have the kind of negative impact
3 that is pretty continual with 77 events a
4 year. Again, I don't have the facts and
5 figures in front of me. I'm sure Ellen has
6 submitted that with Tudor Place just a few
7 blocks from our home, I think it's a much
8 lower number than that.

9 So I'm sure, you know, if Mr.
10 Belin is proposing I think he said 85 events
11 for next year, then I would absolutely ask the
12 BZA to deny that exception. But if there was
13 room for reasonable compromise, I'm a
14 reasonable person and I would think that that
15 might be the efficacious solution to this.

16 CHAIRPERSON MILLER: Okay. One
17 more question for you.

18 MR. PETROU: Surely.

19 CHAIRPERSON MILLER: I thought Mr,
20 Belin testified to attempts to negotiate with
21 neighbors and compromise, and many people not
22 showing up or something. Did you attempt to--

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PETROU: I went to the open
2 house. I thought that was very nice. But it
3 seemed to me in that Mr. Belin was operating
4 from the time he last applied for an exception
5 to now in violation of the zoning laws that,
6 you know, how can you negotiate when someone
7 is continuing to flout the laws of the
8 District of Columbia that apply equally to me
9 as they do to Mr. Belin? So I saw and my
10 perspective as a neighbor was there's no point
11 in talking until you comply with the law.

12 CHAIRPERSON MILLER: Okay.

13 MR. PETROU: That was my personal
14 perspective, Madam Chairwoman.

15 CHAIRPERSON MILLER: Thank you.

16 MR. PETROU: Okay.

17 CHAIRPERSON MILLER: Do other
18 Board Members have questions?

19 Does the applicant have any -- do
20 you have any questions?

21 MR. COLLINS: A few questions.

22 CHAIRPERSON MILLER: Okay.

1 MR. COLLINS: Did you ever make
2 any complaints to Evermay about these issues
3 that you've raised here?

4 MR. PETROU: I spoke to Alexandra
5 a number of times. But I never made formal
6 complaints to the Evermay Society or to Harry.

7 MR. COLLINS: Okay. There is a
8 two hour parking permit restriction.

9 MR. PETROU: Yes.

10 MR. COLLINS: Is that enforced in
11 your neighborhood?

12 MR. PETROU: In the evening,
13 never. I've never seen it. And that is a
14 continual problem that is not exclusive to
15 Evermay. I've had to call many times where
16 cars have been there with out of state license
17 plates. And they're there weeks at a time.
18 But I have had evenings where events are going
19 on at Evermay, and I've returned home and my
20 driveway is blocked to the point where I can't
21 get my car in. And I've not called Evermay.
22 I've called the police.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: And have you had the
2 same experience with events from Dumbarton
3 House as well?

4 MR. PETROU: No. Dumbarton is far
5 enough away from my house that I don't -- that
6 has not been a problem, to my knowledge.

7 People that I have seen arriving
8 in their cars parking in front of my home are
9 walking down the street and around the corner
10 to Evermay. I haven't seen them going up the
11 street to Dumbarton. I'm what? Five or six
12 blocks from Dumbarton Oaks.

13 MR. COLLINS: The trash on 28th
14 Street?

15 MR. PETROU: Yes.

16 MR. COLLINS: Does that come from
17 the attendees at the Evermay events?

18 MR. PETROU: Again, I have seen --
19 I can tell you it comes from all sources. I
20 have seen cab drivers during the day trying to
21 grab some shade, have their lunch and toss it
22 right out the window, even as I'm standing

1 there starring.

2 I've also seen limousine drivers
3 clearly parked there in the evening for their
4 client's attendance at Evermay events do the
5 very same thing.

6 And Alexandra knows I'm a very
7 good neighbor and I do try to keep the area
8 clean and work in concert with Evermay, which
9 is a beautiful estate.

10 MR. COLLINS: I understand. Thank
11 you.

12 MR. PETROU: Okay. Surely. Okay.

13 CHAIRPERSON MILLER: Okay. Any of
14 the other parties have any burning questions
15 they want to ask? No. Thank you.

16 MR. PETROU: Thank you very much
17 for hearing me out a little. And I apologize
18 that I have to leave. Thank you.

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 Okay. I meant to note for the
22 record that we've been joined by Mr. Curtis

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Etherly over here from the Zoning Commission,
2 and that he was here before Mr. Benson began
3 his testimony.

4 Mr. Etherly has a demanding
5 schedule. So he's not going to be able to
6 stay for the full hearing, which I believe
7 we're going to try to keep on going for a
8 while. I think that what we're going to do
9 though, since Mr. Etherly might have to leave
10 around 6:00 -- is that right, Mr. Etherly?

11 COMMISSIONER ETHERLY: Thank you,
12 Madam Chair, for your accommodations. And my
13 apologies for arriving late. I did get the
14 benefit of hearing the discussion around the
15 debate on the expert question. I'm going to
16 try to be flexible as I can tonight. I may
17 have to leave and come back, but I'm going to
18 walk through as much of this as possible.

19 So with your okay if it's
20 appropriate for questions now, I'd be
21 interested to coming back to Mr. Benson.

22 CHAIRPERSON MILLER: Okay. I just

1 want to clarify when we might break so that
2 people will know that they can make calls.
3 And I know that we have again another case
4 still on the agenda, and I think they're
5 waiting to see what's going to happen here.
6 And so I want to have a brief meeting to
7 discuss schedule.

8 But if it's the case that you
9 might need to leave by 6:00, we could start
10 with Board questions right now and you can get
11 in some of your questions.

12 COMMISSIONER ETHERLY: No, no. I'm
13 entirely flexible. I mean given that in
14 addition to our participants for this case and
15 other cases here, it probably is going to be
16 helpful to sort our approach out before moving
17 forward. So I'm fine.

18 CHAIRPERSON MILLER: Okay. So we
19 want to take a 15 minute break and assess the
20 situation. But before we do that, I just want
21 to make sure that the parties here are
22 intending on staying beyond 6:00 to continue

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with this hearing.

2 MR. COLLINS: Certainly this party
3 is. We have also witnesses in support here,
4 some of whom are in the same constraints as
5 Mr. Petrou. So if there's some accommodation
6 to be made at some convenient point.

7 CHAIRPERSON MILLER: Well, let me
8 say, but this might this be -- if there are
9 people here that have to leave very soon and
10 you would like us to hear their testimony
11 before we break, we could accommodate them if,
12 you know, there's an emergency in anybody's
13 schedule.

14 MR. COLLINS: Yes, please.

15 CHAIRPERSON MILLER: Okay. How
16 many individuals is that?

17 MR. COLLINS: Three.

18 CHAIRPERSON MILLER: Okay. Why
19 don't we take them.

20 MR. COLLINS: Thank you.

21 CHAIRPERSON MILLER: Yes. Okay.
22 I assume that the other parties don't have any

1 objection? Not hearing any.

2 Okay. Where do you want to start?
3 From my right over here? It looks like all
4 hands are pointed towards you.

5 MR. MAHR: Okay. Madam Chairman,
6 my name is Bill Mahr. I'm at 3723 Reservoir
7 Road.

8 The first time I went to an
9 Evermay event was when Harry Belin sponsored
10 the "Singh" film prescreening. That was back
11 in, I think it was March 2006 time frame. I
12 was very impressed with the intent of that
13 film to make people aware of the plight of
14 children in Uganda. Also at that event
15 afterwards I milled around a little bit with
16 the people there and I met a young filmmaker
17 who -- that was also there, saw what was going
18 on. And made a film of her own about the
19 genocide in Rwanda and the reconciliation
20 efforts that are taking place there.

21 So it really struck me that the
22 people that Evermay attracts are people that

1 are trying to make a difference in our world,
2 make it a better place to live.

3 I had an opportunity at a follow
4 on event later to run into a researcher, a
5 medical researcher who was also very much
6 involved and doing the same sort of thing;
7 making this a better place to live doing
8 research to improve our lives. And I'm
9 involved in cancer research myself, so that
10 really peaked my interests.

11 So I think anything we can do as a
12 community to allow Evermay to continue these
13 conversations, let people interact, share,
14 exchange ideas is a good thing.

15 Thank you very much.

16 CHAIRPERSON MILLER: Thank you.

17 MS. SILVERBERG: Madam Chair, my
18 name is Beverly Silverberg. And I'd like to
19 thank the Board for their indulgence in
20 hearing us before you take your break. I
21 appreciate that very much.

22 I've encountered Evermay in a

1 number of different ways. About ten years ago
2 I was on the Board of the NCCJ, that started
3 out its life as the National Conference of
4 Christians and Jews and then they figured out
5 there were other people in the world and it
6 became the National Conference for Community
7 and Justice.

8 And my Executive Director said we
9 were going to have a retreat to do our
10 strategic planning at this place called
11 Evermay, that I had never heard of before. And
12 I encountered Evermay and the largess of Harry
13 Belin and the Evermay Society that made it
14 possible for us to hold our retreat there. As
15 a non-profit we didn't have a lot of money and
16 we wanted to spend that we had on our
17 programs. And so having the ability to have
18 our non-profit strategic program there was
19 very generous.

20 And most recently the USO, a
21 friend of mine told me that she was trying to
22 get a program started with the USO for the

1 wives and family members of wounded soldiers
2 that were at Walter Reed and were there, you
3 know, in intense emotional situations 24 hours
4 a day. And that they wanted to do something
5 for the wives and family members that was just
6 an afternoon off. And so she contacted
7 hairdressers and manicurists and massagers.
8 And to launch that event Harry Belin made
9 Evermay available for that group. And it was
10 a wonderful afternoon. And you could just see
11 people who came in with a lot of tension by
12 the end of the afternoon just having had a
13 wonderful time. And that was made possible
14 because of the Evermay Society.

15 So I would like to see those kinds
16 of activities and events continue. I think
17 that Harry Belin and Evermay are really a
18 fabulous asset to our regional community. The
19 historic home that is Evermay is an assist to
20 our nation. And the opportunity experience the
21 elegant past as we celebrate life cycle events
22 in the present is a gift that the Belin family

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has made possible. And a gift that I hope
2 that you will enable others to enjoy as well,
3 and continue to enjoy.

4 Thank you for the opportunity to
5 testify. I appreciate it.

6 CHAIRPERSON MILLER: Thank you.
7 Thank you for sharing that with us.

8 MEMBER WALKER:

9 I'm sorry. Did you give your
10 address for the record?

11 MS. SILVERBERG: Yes. I live in
12 Maryland. Beverly Silverberg. And it's 3904
13 Calverton Drive and that's in Hyattsville.

14 MEMBER WALKER: Thank you.

15 MR. KUCKARSKI: Thank you. Madam
16 Chair and Board Members, thank you so much for
17 allowing our testimony. And my name is David
18 Kucharski. I live at 3705 Media Lane in
19 Bowie. And I'm President and owner of the
20 Sterling Artists Music Agency. My relationship
21 with Evermay Society is that over the last two
22 years we've provided most of the live music

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for the outdoor events at Evermay. So I'm
2 intimately familiar with their strict music
3 policies.

4 And what I'd like to say is that
5 from the very first day we began working with
6 Mr. Belin and Alexandra they've made it --
7 they quickly expressed a very deep concern and
8 genuine concern for the well-being of their
9 neighbors.

10 And it's a beautiful place. I had
11 a lot of creative ideas, but they quickly
12 contained all of those ideas into something
13 that was very respectful to their neighbors.
14 And that actually eliminated a lot of
15 possibilities that I would normally use for
16 their events. And as Alexandra indicated, we
17 don't use any types of horns, no trumpets, no
18 saxophones, no drums, no amplified music
19 except for a few rare instances where perhaps
20 an acoustic guitar may need a little bit more
21 reenforcement. In that case they bring a very
22 small battery powered amplifier. And it's a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very subtle reenforcement. But other than that,
2 that we're essentially limited to string
3 groups. We often provide string trios, string
4 quartets and some small strolling string
5 ensembles.

6 So the sounds that comes from our
7 music is very well contained within the
8 property. It's just enough for the guests to
9 enjoy within the immediate area. It doesn't
10 flow off of the property at all. And it's
11 specifically considered to be that way.

12 And I'd like the Board to know
13 that at every event that we've played in the
14 last two years Mr. Belin and Alexandra have
15 consistently stood by their policies and they
16 haven't wavered from that policy one bit. And
17 they've consistently demonstrated a genuine
18 concern for their neighbors through those
19 policies.

20 And I'd be happy to answer any
21 questions you have with regards to the music.

22 MR. CROCKETT: Madam Chairman, I

1 have a question.

2 CHAIRPERSON MILLER: You do?

3 Okay. Because basically I thought we hear the
4 panel and then ask.

5 MR. CROCKETT: Okay.

6 CHAIRPERSON MILLER: But if you
7 have just one question --

8 MR. CROCKETT: Well, I may have
9 two.

10 CHAIRPERSON MILLER: Okay. So can
11 you hold it?

12 MR. CROCKETT: I'll hold it.

13 CHAIRPERSON MILLER: All right.

14 Unless you have to go? Are you all right with
15 that process? Okay. I see two more people at
16 the table. So why don't you hear you and then
17 we'll open it up for any quick questions.

18 Okay.

19 MS. WALLOP: Madam Chair and the
20 Board, thank you very much for hearing us
21 tonight. And I realize that we're all staying
22 and sacrificing time out of our busy schedules

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be here.

2 My name is French Wallop. I'm a
3 resident of the District of Columbia at 5040
4 Glenbrook Terrace, Washington, D.C. 20016.

5 I have grown up in Georgetown most
6 of my life. And I have been privileged and
7 happy enough to have known the Belins for many
8 years. All of my life Harry's brothers and
9 family and parents for very, very long time.

10 I do not know of a family in this
11 country, and this is not an exaggeration, that
12 have given more of themselves without any kind
13 of expectation or recognition. They have gone
14 out of their way to help intercity projects,
15 intercity scenarios where children are brought
16 forward where there's been no, again,
17 expectation of press or publicity. There has
18 been nothing that they have not tried to do on
19 behalf of values for both the city as well as
20 for families, as well as for international
21 expectations, whether Christian, Jews,
22 Muslims, whatever. It doesn't matter. They

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have been the most open and accommodating
2 family that I can think of.

3 It really bothers me when I hear
4 of scenarios like this where I understand that
5 democracy is a great thing and we're really
6 lucky to have it. We're really lucky to be
7 able to sit here and agree to disagree.
8 However, I find it particularly compelling
9 when the balance of what people are saying
10 today seems to be a bit out of kilter with
11 what is really going on both in the city,
12 taking your time tonight with other critical
13 scenarios whether it's the city council or
14 whether zoning board.

15 We're talking about a situation
16 where we have certain residents of Georgetown
17 that are disturbed because there's traffic.
18 Well, my goodness. Again, I have lived in
19 Georgetown and in Washington most of my life.
20 I can tell you from experience, and I'm one of
21 the naughty ones that does it, if I want to
22 leave from Wisconsin Avenue and I want to get

1 to M Street quickly, I will come and go to R
2 Street, right off Wisconsin Avenue. I'll down
3 28th Street. I'll go either to P or Q or to M
4 and it's a great cut through. And if you know
5 the city, that's how it works. Everybody does
6 it. And it's nothing new to any of us that
7 drives in the city.

8 We are lucky enough also to have
9 people that give way when we come through,
10 because that's the way most people in
11 Georgetown behave. They are gracious and
12 accommodating.

13 I was also amused about the World
14 Bank situation. The World Bank meets once a
15 year, every two years here now. And they
16 bring huge amounts of revenue to the city.
17 They bring huge amounts of revenue to the
18 hotel industry. They bring traffic. It's a
19 pain. There is nothing we can get around the
20 city without it.

21 We all know that if we try to go
22 downtown to do our business that they have now

1 blocked off because of security reasons all of
2 the four or five blocks around the city.

3 I know, I've got to close here.

4 I will just simply say that there
5 isn't a more wonderful family that does more
6 for this country and more for the city than
7 the Belin family. Both Harry and Susan have
8 given hugely. And I would hope that you would
9 consider naturally approving this special
10 exception for Evermay.

11 Thank you very much.

12 CHAIRPERSON MILLER: Thank you.

13 Yes, sir?

14 MR. PARK: My name is Charles
15 Park. You may notice that the English
16 language is not my normal tongue. It is the
17 result of the hard work, and please forgive me
18 if I ever make a grammatical mistake.

19 I live in Fairfax County last 30
20 years. And over the years I learned that
21 history leaves many footprints; those who
22 achieved leave a larger footprint, it may be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the rascals that leave small footprints.

2 Madam, if you look at their house
3 almost next door, there is 2910. Kaye Graham
4 lived there until 2001.

5 Next block is 3000 block of R
6 Street. Abe Fortus -- Carolyn Agar, cigar
7 smoking lady lived there.

8 Across street, behind Q Street is
9 the John Warner and his wife Elizabeth.

10 Coming downward with 33rd Street
11 you can see the number of houses. There's a
12 big star that lives there such as former
13 Secretary of State David Atchison and than
14 John and Terrica Hinz and then the -- I forgot
15 the name.

16 And then go down 33rd Street there
17 is a Madam Secretary of State Madeline
18 Albright and then across Wisconsin Avenue on
19 N Street, 3307 N Street, a young man from
20 Massachusetts with a young wife with one
21 daughter lived there for four years and we
22 moved into 1600 Pennsylvania Avenue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Coming back to N Street and 30th
2 Street is C. Douglas Dillon. And across the
3 street is Avril Harriman.

4 From there you turn around to go
5 up to 28th Street, the house built 1792. Name
6 is Evermay.

7 I'm privileged to work for Mr.
8 Harry Belin. My job is to bring in taxis on
9 different occasion. And I worked for the taxi
10 company to bring the taxis for the different
11 occasions and different places, such as White
12 House and Christmas party at the Cheneys, the
13 Vice Presidential office.

14 My equipment, I just want to show
15 you what I do. My equipment, the most
16 important thing is walkie-talkie. This one has
17 25 miles range. I bring it from the street,
18 from 7:00 p.m. to 1:00 a.m. in the morning.
19 Quietly and discreetly.

20 When they come in, I use this
21 baton. Light it so that they can see it light.

22 At both the White House and the

1 Vice President's residence to get their
2 attention whether it's the Supreme Court
3 Justice Sandra Day O'Connor or Senator George
4 Allen, I use this. This is an attention
5 getter.

6 One day four years ago I was at
7 the Vice President's, snowy, rainy,
8 temperature is just about 38 degrees. Here
9 comes 700 people after Christmas party. You
10 can see this, disorderly as you can get. But
11 I use this. And after using from 9:00 to 11:30
12 somebody comes in my -- behind me and tap on
13 shoulder. Mr. Park, you have a powerful toy
14 on you. I looked around and a grayed haired
15 man, I said -- I have a powerful lung.

16 Anyway, I use this. This is in my
17 right hand. I use both of it simultaneously.
18 But I am prohibited to use my right hand at
19 Evermay. You never hear the whistle.

20 Just like a boxer in the fighting
21 ring. My right hand taped around and I'm
22 using only my left hand with this baton.

1 While I'm working there, sometimes
2 I have free time to walk around in the
3 evening, late in fall, I go look over the
4 parking lot. Sometimes I see a big muscular
5 deer and accompanied by the young beautiful
6 three girlfriends, natural walking around. A
7 few minutes later I see the expectant mother
8 with two sisters and three youngsters marching
9 around the parking lot. This shows how
10 tranquil, how quiet it is.

11 We try very best under his
12 guidance, a man with a velvet glove. But I
13 don't know what's inside the velvet glove.
14 Maybe sharpened his fingernail, I don't know.
15 But we would even pick up the chewing gum
16 wrapping or Coca Cola cap.

17 And this gentleman just testified
18 that how 28th Street is crowded. Let me tell
19 you how 28th Street is. That's one of the few
20 streets has no parking limitation at all 24
21 hours. Am I wrong? I haven't seen it, or I
22 beg your pardon. All right.

1 Anyway, just like Monday I saw.
2 There were two trucks and one cab, they're
3 having a lunch. Because that's one of the
4 shaded area, a very cool area. And when I
5 look at the east side over 20th Street, the
6 walls of the Evermay is spanking clean.
7 Nothing there.

8 I parked my car. I looked -- I
9 walked from R Street to P Street. I couldn't
10 find a single chewing gum wrapping. But when
11 I turned on the left side of it, I picked up
12 three beer cans and one Coke bottle. Is it
13 there because of Evermay? I wouldn't guess it.

14 CHAIRPERSON MILLER: Mr. Park?
15 Mr. Park?

16 MR. PARK: Yes.

17 CHAIRPERSON MILLER: I'm over
18 here.

19 MR. PARK: Okay. Thank you.

20 CHAIRPERSON MILLER: We kind of
21 let you go overtime.

22 MR. PARK: Okay. Okay.

1 CHAIRPERSON MILLER: Is there
2 anything you want to say to close?

3 MR. PARK: And both under the
4 leadership of Mr. Belin and his able assistant
5 Alexandra Kovach, they do a wonderful job. I
6 salute to them. That's all.

7 CHAIRPERSON MILLER: Thank you.

8 Okay. I think before we break
9 we're going to allow some questions and then
10 you all can leave.

11 I just do want to acknowledge, you
12 know, Case No. 17578, the Hartford case. I
13 know that you're waiting here very patiently.
14 And when we have a break we're going to assess
15 what's going to happen with your case. Okay.
16 So we haven't forgotten about you and thank
17 you for your patience.

18 Are there Board questions for
19 these witnesses? Okay.

20 We're going to see if any of the
21 parties have a question. I think that Mr.
22 Crockett had a question.

1 MR. CROCKETT: Thank you, Madam
2 Chairman.

3 I did have a question for the --
4 I'm sorry, I forgot your name.

5 MR. KUCHARSKI: David.

6 MR. CROCKETT: David. No, the
7 music man. I'm sorry. David what was your
8 last name?

9 MR. KUCHARSKI: Kuckarski.

10 MR. CROCKETT: Kuckarski. I'm
11 sorry.

12 Yes. With respect to the music
13 that is presented at these functions at
14 Evermay, have you specifically at various
15 times gone outside to stand on the street when
16 the music is playing to determine whether or
17 not you can hear it?

18 MR. KUCHARSKI: We do. In fact,
19 Alexandra and I monitor the perimeter inside
20 and I do walk outside as well. But throughout
21 the entire event, Harry, Alexandra and myself
22 monitor the entire perimeter. And I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 walked outside as well to monitor. So I do
2 know that it is contained inside the property.

3 MR. CROCKETT: So is it standard
4 procedure for Harry to be at all of these
5 events?

6 MR. KUCHARSKI: I've seen him at
7 every event that I've been at. Yes, sir.

8 MR. CROCKETT: Okay.

9 MR. KUCHARSKI: And Alexandra, and
10 another --

11 MR. BELIN: We have one more
12 worker we consider an Evermay worker.

13 MR. KUCHARSKI: Right.
14 Consistently the two of them and myself.

15 MR. CROCKETT: And to your
16 knowledge with respect to weddings and other
17 things are people required to take your music
18 service or can they bring their own?

19 MR. KUCHARSKI: We've become --
20 we've been considered their exclusive music
21 provider at this point because we understand
22 their rules and regulations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: So if I'm going to
2 do a wedding, I've got to hire you?

3 MR. KUCHARSKI: Yes, sir.

4 MR. CROCKETT: Okay. Thanks.

5 CHAIRPERSON MILLER: Yes, Ms.
6 Steury?

7 MS. STEURY: I have a question for
8 the first gentleman that spoke, and I'm sorry,
9 I've forgotten your name already.

10 MR. MAHR: Bill Mahr.

11 MS. STEURY: Thank you. This is
12 basically a curiosity question. How did you
13 get involved in the very first event there.
14 How were you invited? The first event that
15 you spoke about.

16 MR. MAHR: You know, I really
17 don't remember. I just remember I got an
18 invitation to show up at the screening for
19 that film. But, honestly, I really don't
20 remember how I got that invitation right now.

21 MS. STEURY: Okay. And do you
22 have any other relationship that might explain

1 that invitation or --

2 MR. MAHR: I do know John Scanlon
3 who was very much involved with that film. So
4 it was either John or Harry probably, you
5 know, issued an invitation. I just don't
6 remember.

7 MS. STEURY: Did you know Harry
8 before?

9 MR. MAHR: No, I did not.

10 MS. STEURY: Okay. Thank you.

11 MR. CROCKETT: No further
12 questions.

13 CHAIRPERSON MILLER: Okay. Thank
14 you very much.

15 Okay. So we're going to take a 15
16 minute break and discuss, you know, the rest
17 of the schedule for this evening. You all
18 might want to do the same and make any phone
19 calls you might need to make. Okay.

20 (Whereupon, at 6:09 p.m. the
21 hearing was adjourned until 6:47 p.m.)

22

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 6:47 p.m.

3 CHAIRPERSON MILLER: Okay. We're
4 back on the record. And as I indicated before,
5 we have another case that's on the agenda for
6 this afternoon. And what I'd like to do is
7 have Ms. Bailey just call that case briefly so
8 we can discuss with that applicant what's
9 going to happen with his case.

10 So, Ms. Bailey, would you call
11 case number 17578, please?

12 MS. BAILEY: Madam Chair, that's
13 the application of Hartford Street, LLC. And
14 it's a request for modification of approved
15 and six month time requirement pursuant to §
16 3129 of the zoning regulations. The
17 application was granted on April 3, 2007
18 pursuant to 11 DCMR § 3104.1 for a special
19 exception to construct new residential
20 development consisting of 18 row dwellings
21 under sections 353 and 410 at premises 2700
22 Hartford Street, Southeast.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Would you please come to the
2 table?

3 I believe Mr. Melvin Mitchell is
4 coming to the table.

5 CHAIRPERSON MILLER: I think at
6 this point we say good evening, Mr. Mitchell.

7 MR. MITCHELL: Good evening.

8 CHAIRPERSON MILLER: And thank you
9 for your patience today.

10 It seems that in an effort to
11 finish the cases that are before us before our
12 August recess we've hit a couple of crunchers.
13 This case that we're hearing right now was
14 before us last Tuesday. And many of their
15 witnesses testified in the evening. And we
16 still will be going through the evening on
17 this case.

18 So we need to reschedule your
19 case. And we would like to accommodate you
20 the best we can to have your case heard before
21 and decided, if possible, before our August
22 recess.

1 We have scheduled a special
2 hearing and meeting on a day that we don't
3 normally meet in order to finishes the cases.
4 And we'd like to add you to August 1st. And
5 we would you in at first thing, 9:00 in the
6 morning if you can do that.

7 MR. MITCHELL: Of course.

8 CHAIRPERSON MILLER: Okay. Great.

9 The other thing is, we did receive
10 a filing from you as a result of the hearing
11 that we did have with respect to the motion
12 for modification. And I would just like to
13 request that you fill in a few more details,
14 perhaps. We thought you might be doing that
15 at the hearing, but since there's this time if
16 you could address it in writing I think it
17 would be better.

18 Number one is again to address
19 what's different now than before that has
20 prompted the relief for FAR and the request
21 for the modification of the plans. I know that
22 we discussed it at the hearing, but I had

1 asked that you just embody that in writing.

2 And if you look at the transcript
3 from the proceedings that we had, you'll see
4 where I said that specifically on page 109 of
5 the transcript. You can find that on the
6 internet if you're not familiar with that.
7 Are you familiar with that?

8 MR. MITCHELL: I'm not sure about
9 the internet.

10 CHAIRPERSON MILLER: Okay. Well,
11 the Office of Zoning has a website.

12 MR. MITCHELL: Right.

13 CHAIRPERSON MILLER: And if you go
14 to the website you can click transcripts.

15 MR. MITCHELL: All right.

16 CHAIRPERSON MILLER: And this
17 transcript is on the website now. And then
18 put in your application number and it will
19 pull it up.

20 MR. MITCHELL: Okay.

21 CHAIRPERSON MILLER: Okay. And
22 the other item that we would appreciate your

1 addressing more fully goes to the second prong
2 of the variance test dealing with practical
3 difficulty in which you make reference to
4 untold economic consequences. And we're aware
5 that this case is about affordable housing,
6 but we need you to put in writing a little bit
7 more detail about the economic consequences
8 instead of just leaving it to our general
9 understanding of the affordability.

10 Okay. Other than that, I think
11 the--

12 MR. MITCHELL: May I just ask one
13 question?

14 CHAIRPERSON MILLER: Yes.

15 MR. MITCHELL: A clarification.
16 Fundamentally the reason we're here, the
17 reason that this has happened when you say
18 what's the difference between now and then,
19 the difference is simply that I, for whatever
20 reason, did not specifically request FAR. Had
21 I had done it, there's nothing in -- I don't
22 believe there's anything in the records that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 indicate that it would not have been granted.

2 CHAIRPERSON MILLER: And that's
3 what we discussed and really, you know, then
4 the question was did you need to bring a new
5 application.

6 And I believe that there was
7 discussion at the last hearing that the survey
8 showed something different which did effect
9 what the FAR is.

10 MR. MITCHELL: Okay.

11 CHAIRPERSON MILLER: And that that
12 was different than what it would have been. So
13 on those grounds we were entertaining hearing
14 this as a modification.

15 MR. MITCHELL: Right. Okay.

16 CHAIRPERSON MILLER: And also,
17 Office of Planning was in support. And there
18 were a couple of other things going on. But
19 the ANC is in support.

20 MR. MITCHELL: Right.

21 CHAIRPERSON MILLER: And that
22 everybody I think who had an interest in this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 case would know about it and could participate
2 in it. So if you could also -- I think you
3 were told that you needed to do your filings
4 on the ANC as well.

5 MR. MITCHELL: I did all of that.

6 CHAIRPERSON MILLER: That's great.
7 So then other than the ones that you'll be
8 doing before the 1st, you'll also copy them?

9 MR. MITCHELL: Yes. Oh, of
10 course. Of course.

11 CHAIRPERSON MILLER: Okay.

12 MR. MITCHELL: All right. So just
13 make sure that I understand what's different
14 from now and then you want me to try and flush
15 that out a bit more. And then --

16 CHAIRPERSON MILLER: In writing.
17 Because I think we did talk about it. Yes.

18 MR. MITCHELL: Yes.

19 CHAIRPERSON MILLER: And we're
20 talking about it now.

21 MR. MITCHELL: Right. Right.

22 CHAIRPERSON MILLER: But as far as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your final pleading. And I also suggested
2 that, you know, feel free to contact the
3 Office of Planning who was also supportive of
4 your application.

5 MR. MITCHELL: Well, again, I
6 think I did that and their position is they --
7 in their long lengthy addressing of the
8 project, they were completely supportive. And
9 they have no issues. They're surprised about
10 this, quite frankly.

11 CHAIRPERSON MILLER: Okay.
12 No, I only meant if you're having any problems
13 putting the material together that we're
14 talking about, feel free to ask them. You
15 can't ask us again. I mean, this is it.

16 MR. MITCHELL: Right. Okay.

17 CHAIRPERSON MILLER: But you could
18 Mr. Moy if you have a question, I guess.

19 MR. MITCHELL: Okay. All right.
20 Okay. All right. Okay. So just write
21 another letter? Would I be referencing it the
22 same as I have this one, request for

1 modification of approved plans application,
2 specific request for relief? Would I be
3 addressing --

4 CHAIRPERSON MILLER: It can be a
5 very -- you can either redo this and just add
6 the material that we're talking about.

7 MR. MITCHELL: Right.

8 CHAIRPERSON MILLER: Or you can do
9 an addendum to this, either way.

10 MR. MITCHELL: Okay.

11 CHAIRPERSON MILLER: As long as we
12 have the material.

13 MR. MITCHELL: Okay. Fine.

14 MEMBER WALKER: And to the extent
15 that you're referencing any surveys that were
16 done or, you know, plans that revised --

17 MR. MITCHELL: Yes.

18 MEMBER WALKER: -- if you could
19 either make reference to those exhibits in the
20 record or attach them to your new submission--

21 MR. MITCHELL: Sure.

22 MEMBER WALKER: -- then that would

1 be very helpful.

2 MR. MITCHELL: Okay. All right.

3 And again, this submission that I've just
4 made, I did that, you have the plan that is
5 actually working its way through the Building
6 Department as opposed to the exhibit that was
7 made with the submission, the original
8 submission?

9 MEMBER WALKER: Right. So we just
10 need to know exactly how the original
11 submission--

12 MR. MITCHELL: Right.

13 MEMBER WALKER: -- differs from
14 the current site plan.

15 MR. MITCHELL: Okay. All right.
16 I think I'm clear.

17 And August the 1st, 9:00. What is
18 that? Is that a Tuesday? Friday. Okay.
19 Here, I assume, right?

20 MS. BAILEY: Madam Chair, before
21 Mr. Mitchell leave, we may want to give him a
22 date when we wanted those things to be filed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in the record.

2 CHAIRPERSON MILLER: Good point,
3 Ms. Bailey. Okay.

4 How much time do you need? Is a
5 week sufficient for your purposes?

6 MR. MITCHELL: Yes.

7 CHAIRPERSON MILLER: So you could
8 file this by Tuesday the 29th?

9 MR. MITCHELL: Sure.

10 CHAIRPERSON MILLER: Okay.

11 MR. MITCHELL: Tuesday, the 29th
12 of July?

13 CHAIRPERSON MILLER: Yes.

14 MR. MITCHELL: And the hearing
15 will be two days later.

16 CHAIRPERSON MILLER: Maybe that's
17 too close.

18 MS. BAILEY: That will be doable
19 for us. We could make sure you get it before
20 the 1st if it's filed that Tuesday and the
21 hearing is that Friday. That should be --

22 CHAIRPERSON MILLER: By noon

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Tuesday?

2 MS. BAILEY: Yes.

3 CHAIRPERSON MILLER: Can you do it
4 by noon Tuesday?

5 MR. MITCHELL: Sure. Certainly.

6 CHAIRPERSON MILLER: Okay.

7 Because we'll be here all day Tuesday and then
8 we'd be able to take it with us. Okay.

9 MR. MITCHELL: I'll try to make an
10 appointment and get it done Monday. How about
11 Monday?

12 CHAIRPERSON MILLER: Monday would
13 be great. And then served the ANC and OP
14 also.

15 MR. MITCHELL: Yes. Yes.

16 CHAIRPERSON MILLER: Okay. I
17 don't anticipate any responses from the
18 others, but we could leave the record open.
19 They're fully on board with your --

20 MR. MITCHELL: When do I -- so we
21 get started.

22 CHAIRPERSON MILLER: Okay. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MITCHELL: All right.

2 CHAIRPERSON MILLER: Thank you.

3 So I'm going to say that we'll
4 leave the record open until the 31st for any
5 responses, but we're not expecting any. Yours
6 is the important filing because I don't think
7 anyone else is filing. Okay. Thank you.

8 Okay.

9 MS. BAILEY: Madam Chair, we're
10 back to the Evermay case. I just wanted to let
11 you know that what I placed before the Board
12 are some photographs that were handed to me.
13 These items were handed to me by the
14 applicant. They were some additional
15 photographs and a letter with attachment from
16 the Office of the Attorney General.

17 I was told that these documents
18 were also given to the parties. I just wanted
19 to make sure that you understand what these
20 documents are.

21 CHAIRPERSON MILLER: Okay. Ms.
22 Bailey, did you say that we have photographs

1 that were in the PowerPoint?

2 MS. BAILEY: There were additional
3 photographs. Most of the photographs were
4 previously filed by the applicant. These were
5 a few other photographs that were not in the
6 original package, but they have been, I was
7 told, handed to the parties as well.

8 And then there's a letter from the
9 Office of the Attorney General addressed to
10 Mr. Collins with some attachments to it. And
11 I also told that these documents were handed
12 to the parties. And this is just for the
13 Board's information.

14 MR. CROCKETT: I'm going to ask
15 were these things submitted to us --

16 MR. COLLINS: Yes, it was one of
17 the first things I handed to you when I was
18 talking about the Attorney General, I handed
19 your that way. I handed the ones for the
20 Board this way and they wound up on the chair
21 over there instead of there.

22 And then finally, Ms. Bailey,

1 there was also the 1999 letter from the IRS
2 that I saw that you gave copies out to. The
3 letter that was requested.

4 MS. BAILEY: Yes. The Board
5 Members have that, Mr. Collins.

6 MR. COLLINS: Yes. And the
7 opposition got copies of that as well.

8 CHAIRPERSON MILLER: Okay. The
9 next thing I want to do before we get into
10 this case again is to just have a quick
11 conversation with the parties here about the
12 schedule for this evening.

13 Is it everyone's desire that we
14 finish this case this evening? Okay. So
15 people are committed to that.

16 MR. COLLINS: Yes.

17 CHAIRPERSON MILLER: The Board is
18 willing to do that.

19 Mr. Crockett?

20 MR. CROCKETT: Madam Chair, I
21 think we would be happy to defer the argument
22 after the presentation of evidence to some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time in the future rather than attempting to
2 get all of this done tonight.

3 We'd be more than willing to come
4 back to do the closing arguments and to argue
5 basically what I have put before the Board as
6 a motion to dismiss.

7 CHAIRPERSON MILLER: Okay. You
8 know, I read the procedure when we first
9 opened the hearing. And it is a little bit
10 different than court. And basically, you know,
11 the way it goes is the applicant makes a case
12 and then there's cross examination. And then
13 we hear from Office of Planning and there's
14 cross examination. And then we hear from the
15 ANC and there's questions. And then we hear
16 from the intervenor and questions.

17 But the point I'm trying to get to
18 is we don't then do closing arguments at the
19 end. Actually, each party does their closing
20 except for the applicant when they present
21 their case.

22 MR. CROCKETT: Well, I was --

1 CHAIRPERSON MILLER: So if your
2 motion --

3 MR. CROCKETT: Well, as I say,
4 we're going to be the last one. And there is
5 quite a bit in this record --

6 CHAIRPERSON MILLER: I'm not
7 saying we go to 2:00 in the morning. But I
8 think the point is I think the majority wants
9 to try to finish if we can. And so that's the
10 goal. I have no idea how long everybody's case
11 presentation is expected to be. Maybe we can
12 get a feel for that. Applicant is finished.
13 We're on now only doing questions, except for
14 your closing.

15 MR. COLLINS: That's correct.

16 CHAIRPERSON MILLER: Office of
17 Planning is not usually that lengthy, right?

18 MR. MORDFIN: Correct.

19 CHAIRPERSON MILLER: And you don't
20 have any witnesses or anything, it's just you
21 giving your report. Okay.

22 MR. MORDFIN: Correct.

1 CHAIRPERSON MILLER: We don't have
2 to worry about that.

3 And the ANC, do you have big case,
4 or not really, you have your report or what?

5 COMMISSIONER EASON: I don't think
6 we'll take very long.

7 CHAIRPERSON MILLER: Okay. So
8 it's basically the opposition parties.

9 Do you have an estimate of how
10 long your case will take? How many witnesses
11 you're going to be presenting? I know we have
12 a list here, but --

13 MR. CROCKETT: I think we're down
14 to two witnesses. Ellen and also my client is
15 supposed to be. She's finished her show. And
16 so I think because of the fact that we're
17 late, that she will be able to attend and
18 testify. At least that's my hope.

19 CHAIRPERSON MILLER: Great. Okay.
20 Okay. So it seems like it seems like it
21 should be doable. And we've heard most of the
22 public witnesses.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So then the next point I want to
2 make is it's not just going to be a marathon
3 without a break. That we will break at a
4 natural point so that if people want to get
5 dinner, you know, by 8:30 or whatever it is.
6 We'll see how it goes. But I think a lot of
7 people do need to get a little nourishment to
8 keep going throughout the evening so I just
9 wanted to let you all know that.

10 And if anybody, you know, needs to
11 have a stop for some reason, feel free to let
12 me know.

13 Okay. So we're now at questions
14 for the applicant's witnesses. I think we
15 will start with Board questions first and then
16 we'll go to the other parties.

17 VICE CHAIRMAN LOUD: All right.
18 Good evening, everybody. I've got a couple of
19 very quick questions. I think we'll be very
20 quick. And I believe that they're probably
21 for the applicant, but it could be for counsel
22 or the expert counsel.

1 My first question concerns the
2 statement, I guess, of the corporation's
3 purposes. You know, the mission of the non-
4 profit corporation. And the statement is
5 listed, I think, on page 7 of the pre-hearing
6 statement.

7 MR. COLLINS: Yes.

8 VICE CHAIRMAN LOUD: But there's
9 no real attachment or anything that actually
10 lists that includes the articles of
11 incorporation and the statement of the
12 purposes as they would be found on the
13 articles of incorporation. And if there is,
14 excuse me for overlooking it. Maybe you can
15 just provide me with a copy of it. I didn't
16 see it in any of the exhibits.

17 MS. STEURY: Exhibit 2 that.

18 MR. COLLINS: Exhibit 65 is the
19 record, the BZA record exhibit number.

20 MS. STEURY: I don't think so.

21 MR. COLLINS: Well, I'm looking
22 right it. It's stamped on the bottom 65.

1 VICE CHAIRMAN LOUD: Okay.

2 MS. STEURY: This is an additional
3 submission. I'm talking about something else.

4 VICE CHAIRMAN LOUD: Well, I mean,
5 it doesn't matter to me which version of it.
6 If it's in Exhibit 65, that's fine.

7 And I'm assuming that what's on
8 page 7 is an accurate reflection of what's
9 actually in the articles of incorporation and
10 will proceed on that assumption until I track
11 down the exhibit.

12 With respect to the statement of--

13 MR. COLLINS: Mr. Loud, it's
14 Exhibit 44.

15 VICE CHAIRMAN LOUD: Exhibit 44.
16 With respect to Exhibit 44 and the
17 articulation of the purposes of the Evermay
18 Society, just briefly can elaborate on how the
19 weddings that are discussed in sort of the
20 record is kind of replete with references to
21 weddings and it's also discussed in Exhibit
22 25, which is the memo or the letter from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Attorney General. Which of these elements,
2 purpose elements do the weddings fall under in
3 your estimation? And it could be more than
4 one. Is my question clear?

5 MR. COLLINS: I believe that you
6 were asking how weddings tie to the purposes
7 as we've listed them in our articles of
8 incorporation?

9 VICE CHAIRMAN LOUD: That's
10 correct. I think you have four sort of
11 different purposes to promote, consensus and
12 civility and to promote a better understanding
13 of all cultures, et cetera. And then you go
14 on to list a total of four, at least as
15 reflected on page 7.

16 MR. COLLINS: Right.

17 VICE CHAIRMAN LOUD: And so I'm
18 asking under which of those do you see the
19 organization and the renting out of the
20 facility for weddings to fall under?

21 MR. COLLINS: Under D. To educate
22 and tied into social events.

1 VICE CHAIRMAN LOUD: Okay.

2 MR. BELIN: We welcome them in to
3 let them know who we are and then support
4 their event tied to social events.

5 VICE CHAIRMAN LOUD: Okay. That's
6 fair enough.

7 The next question --I'm not saying
8 I agree or disagree, but I just wanted to see
9 in your mind where it fit.

10 The next question would be either
11 for you or for your counsel, which is I've
12 taken a look and I'm fairly comfortable with
13 the IRS determination letter as well as the
14 initial, I guess, authorization of the non-
15 profit entity. But the District also provides
16 for certificates of good standing. And it
17 would really go a long way for me, at least,
18 to know that there's a current certificate of
19 good standing for the non-profit corporation,
20 which I don't see in the record.

21 MR. COLLINS: We can provide that.

22 VICE CHAIRMAN LOUD: Okay. This

1 is my last question, and it concerns what I
2 thought I heard as the testimony of the expert
3 witness regarding the filing of a 990-T, is
4 that correct? A 990-T?

5 MR. BENSON: If a non-profit has
6 unrelated business income and has to file a
7 990-T, correct.

8 VICE CHAIRMAN LOUD: Okay. Does
9 the organization file an annual 990?

10 MR. BENSON: It files a 990-PF.
11 But yes, it files a 990 tax form.

12 VICE CHAIRMAN LOUD: Okay. And if
13 I understood your testimony correctly, it was
14 that because the organization has not filed a
15 990-T and they have not been called to
16 account, I think, by the IRS for having income
17 generated outside of its mission, that we are
18 to presume that the IRS has thereby reached
19 the conclusion that they have been operating
20 within the mission? Is that a fair statement
21 of your statement?

22 MR. BENSON: Correct.

1 VICE CHAIRMAN LOUD: Do you have a
2 case that would suggest that to be so?

3 MR. BENSON: Just the Internal
4 Revenue Code itself requires non-profits that
5 have unrelated business income to file the tax
6 return that indicates what's unrelated
7 business income on that tax form. That's a
8 statutory requirement that they file a
9 specific tax return that's required by the
10 code.

11 VICE CHAIRMAN LOUD: I understand
12 that. But it sounds to me like what you're
13 saying is that because -- and you determine
14 which filings you're going to -- you know, you
15 make an assessment of the organization each
16 year and determine which filings you're going
17 to file. And you have a legal duty to file the
18 correct ones. But it sounds like you're taking
19 it a step further in saying that because the
20 organization has made a determination not to
21 file 990-Ts because it's counsel or CPA or
22 account has determined that there is no income

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 outside of the mission, that therefore there's
2 a presumption that we should accept that the
3 organization has been operating within its
4 mission, which takes to me a step further than
5 would be required for the analysis.

6 MR. BENSON: I don't know how to
7 answer that, other than --

8 VICE CHAIRMAN LOUD: Well, I mean
9 if there's a case, for example, that would
10 articulate that outcome or an internal IRS
11 ruling or something like that that would
12 support the conclusion that you've drawn from
13 the act of your client in not filing the 990-
14 T. Do you follow what my sort of line of
15 thinking is on it?

16 MR. BENSON: Well, I'm stating a
17 factual determination that there's been no
18 unrelated business income because Evermay
19 Society has not filed the required form that's
20 required by law if it has unrelated business
21 income. That's just a factual issue.

22 VICE CHAIRMAN LOUD: Okay. And

1 the determination that there's been no
2 unrelated business income is made by whom?

3 MR. BENSON: In this particular
4 case they have outside auditors that have
5 their tax returns. And they've examined the
6 activities of the organization and the revenue
7 generated. And they've created tax returns
8 each year.

9 VICE CHAIRMAN LOUD: And would
10 that be your firm or a different firm?

11 MR. BENSON: This is outside, just
12 a CPA firm.

13 VICE CHAIRMAN LOUD: Is a CPA
14 firm, at least in connection with that
15 relationship, is the CPA firm performing an
16 annual audit of the organization in reaching
17 that conclusion.

18 MR. BENSON: Correct. Correct.

19 VICE CHAIRMAN LOUD: And so for
20 the most previous I guess that the 990-T
21 evaluation was made and the 990-T was not
22 filed, what year would that have been.

1 MR. BENSON: 2006.

2 VICE CHAIRMAN LOUD: And again,
3 just so I'm clear. You're saying that as a
4 part of the independent CPA's audit of Evermay
5 Society they reached a conclusion that the
6 organization is operating within its mission.

7 MR. BENSON: Correct.

8 VICE CHAIRMAN LOUD: Okay. And
9 what was the name of that firm?

10 MR. BELIN: Cocke, Szpanka and
11 Taylor. That's C-O-C-K-E and then -- you got
12 it. S-Z-P-A-N-K-A and Taylor.

13 VICE CHAIRMAN LOUD: Okay. Thank
14 you. I appreciate it.

15 MR. BELIN: You need an address?

16 VICE CHAIRMAN LOUD: If you can
17 just tell me the location.

18 MR. BELIN: Reston, Virginia.

19 VICE CHAIRMAN LOUD: Okay. Thank
20 you.

21 MEMBER WALKER: Madam Chair, I
22 have a couple of follow up questions.

1 Mr. Belin testified that all fees
2 paid to Evermay are contributions. And I was
3 particularly interested in the expert's
4 explanation of why fees are characterized as
5 contributions?

6 MR. BENSON: That's the way
7 they've set up their business model. Instead
8 of having it be rent paid, their business
9 model is that they require a person that wants
10 to use the facility to make a contribution
11 instead. So that's their business model.

12 It could have been configured a
13 different way, but they wanted the person
14 using the facility to be educated about
15 Evermay, its mission and therefore make a
16 contribution to that mission as part of the
17 use of the facility.

18 MEMBER WALKER: So someone who
19 uses the facility for a wedding, for example,
20 makes a contribution rather than paying some
21 sort of fee for the venue?

22 MR. BENSON: Correct.

1 MEMBER WALKER: And what are the
2 tax implications of that?

3 MR. BENSON: There has to be a
4 differentiation between the services that are
5 rendered and the actual charitable contribution
6 component of that. And the Evermay Society
7 has made an evaluation of what that is in
8 accordance with the IRS regulations. And so
9 they issue the requisite form afterwards to
10 the contributor to indicate how much is tax
11 deductible for charitable contribution
12 purposes and what component is not.

13 MEMBER WALKER: The letters that
14 have been submitted to the record from the
15 IRS, the 1999 letter and the 2005 letter
16 reference section 501, 507, 509. If you could
17 walk the Board through the interplay of these
18 sections as it relates to this organization.
19 I mean, are they a public charity, are they
20 non-profit.

21 MR. BENSON: Okay.

22 MEMBER WALKER: Help us understand

1 this.

2 MR. BENSON: In 1999 when they
3 applied for their 501(c)(3) status they also
4 applied for public charity status. All
5 501(c)(3) organization when they file are
6 presumed to be private foundations unless they
7 meet one of the exceptions so they can be
8 characterized as a public charity. Whether
9 you're a public charity or a private
10 foundation, you are still a 501(c)(3)
11 organization. That federal income tax
12 exemption doesn't change. But there are more
13 requirements if you are construed as a private
14 foundation. There's more things you have to
15 do on an annual basis to make sure that you
16 comply with the IRS regulations.

17 So the 509 references are to
18 whether or not you are a private foundation
19 versus a public charity. It doesn't change the
20 501(c)(3) status. You're still a 501(c)(3)
21 organization.

22 So what the IRS allows you to do

1 is they have a five year advanced ruling
2 period which they will presume that you are a
3 public charity if your original submission
4 indicates that you will be publicly supported
5 and you meet the public charities test, the
6 IRS will grant you a five year window under
7 which they will presume that you are a public
8 charity.

9 At the end of the five year period
10 based on your tax filings and your
11 submissions, you have to then do a report at
12 the end of the five year period. At that
13 point they then determine whether or not you
14 met the public charity, that classification,
15 or whether or not -- and if you did, then you
16 continue your public charity designation. If
17 you're not, then you revert back to the
18 private foundation status. You still maintain
19 you 501(c)(3) status; you're just now
20 classified under 509(a) in a different
21 category, private foundation.

22 And then in 2005 after the IRS

1 looked at them after the five year advanced
2 ruling period and said we don't think you have
3 been operating yet as a public charity.
4 Therefore, we're reclassifying you as a
5 private foundation.

6 Then there was a resubmission to
7 the IRS that said, no, we believe now that we
8 will fulfill going forward with the public
9 charity classification under 501(c)(3). At
10 which the IRS then granted the most recent
11 letter in 2005 that indicated based on your
12 recent submission, we are going to reclassify
13 you as a public charity and you must
14 demonstrate, again, for an advanced ruling
15 period that you will fulfill that. Otherwise,
16 you'll back to the private foundation
17 classification.

18 I hope that was --

19 MEMBER WALKER: And on what basis
20 did the IRS make the determination that they
21 essentially had to -- that required you to do
22 a resubmission?

1 MR. BENSON: Well, at the five
2 year window period you then submit how you
3 have been supported over that five year
4 period. If it indicates that you have been
5 publicly supported, then you'll continue your
6 public charity status. If it indicates you
7 don't -- you failed to meet those tests, then
8 they'll just reclassify you as a private
9 foundation.

10 The resubmission in 2005 once it
11 was reclassified as a private foundation, you
12 resubmit and you are submitting estimated or
13 budgeted revenue for the next five years. And
14 so based on that they'll give you another
15 advanced ruling period. You still have to at
16 the end of that time, at the end of the next
17 advanced ruling period, demonstrate that
18 you're a public charity. Otherwise, you'll go
19 back to a private foundation again.

20 You're still a 501(c)(3) a
21 charitable organization, however.

22 MEMBER WALKER: Thank you, Mr.

1 Benson.

2 We have had some references this
3 afternoon and this evening to Dumbarton Oaks
4 and Tudor Place. And I wonder if for the
5 record we could get some explanation as to
6 exactly what those entities are and where
7 they're located just in terms of the proximity
8 to Evermay?

9 MR. BELIN: To be sure, yes.

10 Dumbarton House is -- not Oaks. Dumbarton
11 House is what we've referred to today that
12 I've heard. I haven't heard Dumbarton Oaks.
13 There is a difference.

14 So in the case of Dumbarton House
15 we're catty-cornered at one corner.

16 Flip the document over. And that
17 way you can show -- it's a much easier to read
18 document and you can show exactly where.

19 CHAIRPERSON MILLER: We're going
20 to need everybody on mike, though. Do you
21 want the hand mike anything? Or can you reach
22 that mike?

1 MR. BELIN: Dumbarton House is in
2 this section right here. So it abuts right
3 here.

4 And the Katz residence with the
5 moongate is right here.

6 So you've got Dumbarton House and
7 then Tudor Place is three blocks -- four
8 blocks away.

9 MEMBER WALKER: What are they?

10 MR. BELIN: They are -- one is a
11 museum, Tudor. Tudor Place is a museum. And
12 Dumbarton House is a museum, too.

13 MEMBER WALKER: There was some
14 reference to traffic and congestion, I
15 believe, related to Dumbarton --

16 MR. BELIN: House.

17 MEMBER WALKER: -- House. So what
18 is it about their activities that cause
19 increased traffic and congestion?

20 MR. COLLINS: Excuse me, before
21 you answer the question. If you will take the
22 pre-hearing statement that we filed and look

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 at Tab A, which is the based atlas map. And
2 Evermay is highlighted in -- the perimeter is
3 highlight in kind of a purple or reddish
4 color. And if you look below to the bottom
5 right hand side outside the boundary of
6 Evermay you'll see Dumbarton House National
7 Society of Colonial Dames of America. And
8 that property includes on that plat lots 801,
9 813 and 814. Okay.

10 MEMBER WALKER: Thank you.

11 What is it about what they do that
12 contributes to the traffic and congestion?

13 MR. COLLINS: I just -- before he
14 answered, I just want to use this because
15 it'll help understand how they contribute to
16 the traffic.

17 MR. ANDRES: It's my understanding
18 that Dumbarton House holds events. I'm not
19 sure what restrictions are placed on them with
20 respect to holding events. But they do hold
21 events, including weddings. And actually,
22 Alexandra could probably talk to this. But

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with respect to events, they coordinate their
2 events at times when Evermay has events on
3 their property because there are times when if
4 there's a ceremony going on at Evermay, they
5 don't want sort of that -- sort of sound
6 spoilage going back and forth to disrupt the
7 ceremony. But there are times when the events
8 takes place at the same time, as we had
9 mentioned when we did our survey. And based
10 on that situation, because Dumbarton House has
11 very limited on site parking, it's my
12 understanding they probably have about a
13 dozen, if that many spaces on site as opposed
14 to Evermay that has, as we mentioned, over a
15 100 spaces. It's our understanding that
16 there's competition for on street parking
17 spaces. And we believe that there isn't that
18 much competition because most of the Evermay
19 patrons park on site. As a result, all of the
20 spaces that are freed up on the public streets
21 end up being taken by Dumbarton House and the
22 residents and everybody else in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhood who needs those on street parking
2 spaces.

3 So that's the interplay Dumbarton
4 House and Evermay.

5 MR. BELIN: I can add to that if
6 it will help --

7 MEMBER WALKER: Please do.

8 MR. BELIN: -- of if the question
9 answered.

10 MEMBER WALKER: Please do.

11 MR. BELIN: Increasingly I would
12 have to say that a lot of this traffic issue
13 could best be summed up as that was then. What
14 happens today, this is now, has an awful lot
15 less to do with traffic that we create.

16 We, in fact, are probably --
17 should be considered very, very good neighbors
18 because we keep the street free and clear of
19 what other two sites within a block of us
20 entertain regularly. One is a private home,
21 one's a museum. And because we don't use the
22 street, the street stays open and our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighbors have better parking opportunities
2 for their guests thanks to us and the fact
3 that we keep vehicles off the street.

4 So I would like to make sure that
5 the record has been corrected from what we've
6 listened to regularly as being what I would
7 say is far less fact now and much more
8 fiction.

9 MR. COLLINS: Mr. Belin, can I
10 just ask a follow up question. Is it your
11 understanding that sometimes valets for events
12 at Dumbarton House, and I'm referring Tab A
13 and the plot at Tab A, they come down Q Street
14 and turn up 28th Street and park vehicles on
15 28th Street.

16 MR. BELIN: Correct. And we've had
17 people that live on 28th Street confer
18 recently because I've wanted to be sure I'm
19 making factual statement today and not
20 fictional ones. We've got a person who lives
21 just across the street that often observes the
22 valet coming from up the street, down and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to Dumbarton House. And as I stand and
2 work traffic on our property, I have got to
3 know most of the valet companies and all of
4 their personnel. And half the time they're
5 saying hi to me as they go back down the hill.

6 So if the street is full, it is
7 most often as a result of somebody
8 entertaining within the block. Because we just
9 -- we don't allow cars on the street.

10 MR. COLLINS: Another follow up
11 question. You mentioned Dumbarton House is one
12 and the place that does a lot of entertaining.
13 The other is a private house. Is that at the
14 southwest corner of Q and 28th?

15 MR. BELIN: Correct. Correct.

16 MR. COLLINS: All right.

17 MR. BELIN: And when that resident
18 is in town, that's easily been every other
19 week.

20 MEMBER WALKER: And so it's the
21 case that because you said Tudor Place is
22 three or four blocks away that --

1 MR. BELIN: No. I don't think we
2 have any problems, any conflict there between
3 overflow into 28th Street or R Street. I think
4 our biggest problem, and one that I've talked
5 to our traffic consultant about is how we get
6 those first few clients that pull up in front
7 of our gate to come in and see an empty street
8 decide they're going to park out there. And
9 quite honestly, in the middle of traffic
10 control with cars, shuttles and other things
11 going on, it's sometimes difficult for me to
12 go out and say "You need to come in off the
13 street." But whenever we do, we try to.

14 And we've had people, as you heard
15 testimony last week, that actually have argued
16 with our valet that have said please come off
17 the street. And they said, yes, I've got a
18 zone 2 sticker. I can park here. And because
19 there isn't enforcement on that side or often
20 on 28th Street, it can fill up for that reason
21 also. Not fill up, but there are cars that
22 will park. But we really try to control that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And if there was signage or other
2 ways we could go about doing it, wouldn't be
3 the first to do it.

4 MR. COLLINS: But in terms of how
5 often that occurs where the street is filled
6 up, as you say, with cars from Evermay, that's
7 the majority of the times or the vast minority
8 of the times?

9 MR. BELIN: When one or two cars?
10 I'm only talking --

11 MR. COLLINS: Well, okay. That's
12 what I'm wondering. How many cars and how
13 often? Usually very few, is that your
14 testimony?

15 MR. BELIN: Oh, yes, absolutely.

16 MR. COLLINS: From Evermay?

17 MR. BELIN: Yes. Absolutely.

18 MEMBER WALKER: Okay. And it's
19 interesting that you take steps to control the
20 movement of your vendors' vehicles. But what
21 other than sort of patrolling the block when
22 you have an event and to tell people to park

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on site, I mean what steps do you take to
2 encourage your visitors to utilize the valet
3 parking rather than parking on the street?

4 MR. BELIN: Visitors or suppliers?
5 Service --

6 MEMBER WALKER: Not suppliers.
7 Your visitors?

8 MR. BELIN: Just visitors? We
9 start with the very first visit in to say it
10 is critically important. Ideally if we could
11 put it onto the invitations that go out
12 stating you must encourage your guest to park
13 on the property. We do that. Sometimes the
14 client isn't willing to put that onto a formal
15 invitation.

16 So we continue to work into ways
17 creatively of trying to solve this problem to
18 make sure that, as is rarely the case, but
19 nevertheless if it happens one a car, one car
20 there if we can eliminate that, we're going to
21 try to do that as well. And we continue to
22 come up -- you tell me, because you talk much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 more often than I do, why don't you weigh in
2 on this?

3 MS. KOVACH: In my initial meeting
4 with any client, I let them know there is no
5 street parking permitted. So that's how we
6 open the case with on the contract we state
7 these are the rules for transportation, and
8 it's one of our strictest guidelines, and I
9 review with them verbally while they are
10 visiting the site.

11 And I would say that in my
12 experience, and I've been at Evermay for two
13 years, that street parking and multiple cars
14 on the street have not been an issue very --
15 and on occasions when we have very large
16 events, which we have now eliminated from the
17 prospect of having them in the future now that
18 we've cut off at 200, we will no longer have
19 events that have 350 people for a reception
20 coming and going. Because we no longer will
21 take more than 200.

22 So I think those are the instances

1 when people have said I just want to go in for
2 a minute and come back out, they may have
3 parked in the street. But in this case going
4 forward our numbers are so strict and I am so
5 strict with our clients. And I would say that
6 I am one of the first event hospitality
7 director who is as involved with our clients
8 than have been in the past. So I'm very
9 involved with them from the beginning making
10 sure that these guidelines are followed from
11 the start.

12 MEMBER WALKER: Thank you.

13 MR. CROCKETT: Madam Chairman?

14 CHAIRPERSON MILLER: Yes.

15 MR. CROCKETT: I have another
16 point of order. (Off microphone).

17 CHAIRPERSON MILLER: Let me say
18 this, we're almost done with Board questions.
19 If we could take another few minutes. I don't
20 know how long her testimony is. It's very
21 short? You have to leave at 8:00. Maybe I
22 will pause.

1 You have to leave at 8:00? Okay.

2 All right. Well, I'll put my questions on
3 hold. All right. Okay. Let me do that. I
4 don't think you're going to have an objection.

5 MR. COLLINS: Not at all.

6 CHAIRPERSON MILLER: Okay. Let's
7 do it. Okay. Come on to the table.

8 MR. CROCKETT: Would you state
9 your name and your address for the record,
10 please.

11 MS. MILLER: Yes. My name is Avery
12 Miller. And I live at 2804 R Street.

13 MR. CROCKETT: And how long have
14 you lived there?

15 MS. MILLER: I've lived there
16 since 2004.

17 MR. CROCKETT: And have you
18 experienced adverse effects from the
19 operations at Evermay?

20 MS. MILLER: I have.

21 MR. CROCKETT: Would you explain
22 those to the Board?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MILLER: Yes. That part of
2 Georgetown, I know it seems like an oxymoron,
3 it's a very peaceful part of Georgetown. It's
4 very quiet and that's why my husband and I
5 chose that, as you can probably tell.

6 And, again, I so appreciate you
7 taking me out of order. But I have a very
8 stressful job, as does my husband. And so it's
9 just so nice to come home and we actually hear
10 crickets, if you can believe it, in Georgetown
11 through our window. But the only time we
12 don't hear crickets is when we hear --
13 actually, it was a very good description.
14 Sound spillage is Evermay describe it as.

15 And I'm sure you all if you've
16 been around a loud party, it's sort of the
17 thumbing of the beat. It's the honks. It's the
18 loud people. It's people coming out of a
19 wedding. Obviously, they have a wonderful
20 time and they take it out on the street
21 whether it's loud discussions or -- and
22 because the houses are so close to the street,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you hear all of it.

2 Also I know we go back and forth
3 on this lack of parking spots. I mean, I know
4 Mr. Belin remembers well last summer he had
5 many events for IMF and World Bank when they
6 were in town. I remember Mr. Belin being in
7 the middle of the street, it being total
8 chaos. People were ripping around that
9 corner. I have two small children, a 3 year
10 old and 6 year old. It's already sort of a
11 dangerous corner because the stop signs,
12 there's one stop sign on our street and then--
13 and then there's one coming up 28th Street.
14 And people pause, but they often rolling stops
15 and not really stop.

16 And so, you know, Mr. Belin was
17 out in the street. There were loads of
18 chauffeurs and their cars. And the drivers --
19 our driving spot -- our driveway was blocked,
20 which was I had to go to Mr. Belin. And I
21 sort of what talking to him as he was in the
22 middle of the street. He couldn't hear me. It

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 turned out the person was at his party. He was
2 kind enough to track down the guest, but it
3 took forever. And I was in a hurry to try to
4 get out of my house.

5 And even though chauffeurs can
6 park on the property, most of them don't.
7 Most of them congregate on the sidewalk
8 probably to chat with each other and to wait
9 for their clients and perhaps they have
10 another job, and they need to come back and
11 pick up that client. So they really don't go
12 into the property.

13 You know, and it's smoking and
14 that sort of thing, too.

15 And I feel like it really does
16 impact the way I live in that neighborhood.
17 I mean the idea that we already have so many
18 events and that there are going to be almost
19 a 100 events, that's a lot of events in a
20 quiet neighborhood.

21 CHAIRPERSON MILLER: Thank you.
22 Is that it?

1 MR. CROCKETT: Any questions from
2 the Board, that's it.

3 CHAIRPERSON MILLER: Well, I guess
4 I'd like to ask you the same question I asked
5 another gentleman who was here earlier. Are
6 you in favor of a total denial of the special
7 exception for Evermay to be there or you
8 looking for more conditions to be placed upon
9 Evermay?

10 MS. MILLER: Well, I think it's
11 just a difficult question. Because sort of --
12 I mean, the problem has been that Evermay
13 hasn't really been within the standards they
14 were supposed to be in. So I think it's
15 difficult to try to compromise with somebody
16 who hasn't been abiding by how they were
17 supposed to abide.

18 I mean, as his Hospitality
19 Director said, I mean they have these events
20 for 350 people or more. Those were colossal
21 events and there were many of them. And we
22 started to try to keep track of them, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we're all busy people, the neighbors. And,
2 you know, when we started keeping track of
3 them it seemed like there were a lot of these
4 events. And more than it seemed were allowed.

5 So I think it's difficult to talk
6 about compromise when we sort of -- when I
7 feel that he's been operating illegally up to
8 this point.

9 CHAIRPERSON MILLER: Okay. I
10 mean, it sounds like you are just totally
11 against Evermay being there based on whatever
12 the history has been?

13 MS. MILLER: Well, I think if it
14 continues the way it continues, then it's very
15 hard to be a good neighbor.

16 CHAIRPERSON MILLER: Well, my
17 question I guess -- I don't want to press you
18 too much and you have to go, I guess, but is
19 there some way that you envision that it would
20 be acceptable?

21 MS. MILLER: I think it would be
22 very hard.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: Okay. Any
2 other questions? Any --

3 MS. MILLER: Ms. Steury.

4 CHAIRPERSON MILLER: Wait, we go
5 to the applicant first, actually. Does the
6 applicant have any cross examination
7 questions.

8 MR. COLLINS: Just a few.

9 You mentioned the IMF World Bank
10 event. When was that, last summer?

11 MS. MILLER: Yes.

12 MR. COLLINS: Okay. The people --
13 you also mentioned that people are whipping
14 around the corner in their cars. You
15 mentioned there's a stop sign at 28th and a
16 stop sign at R, and people whip around the
17 corner so they're not stopping?

18 MS. MILLER: Right.

19 MR. COLLINS: But you also
20 mentioned they're rolling stops?

21 MS. MILLER: Right.

22 MR. COLLINS: So how fast is

1 whipping?

2 MS. MILLER: Well, you see, it
3 sort of depends. You're right, it's going
4 through a rolling stop. At the same time, for
5 instance, if they're going through the stop
6 and don't plan to hesitate and then there's
7 one of the big buses or something that
8 sometimes are sitting there waiting for the
9 guests to come out of Evermay, sometimes they
10 have to sort of go around that bus and go into
11 the middle of the road. So I guess it's --

12 MR. COLLINS: And when these buses
13 are sitting in the street waiting for guests
14 from Evermay, and when was the last time when
15 you saw one of those buses?

16 MS. MILLER: It's been several
17 months.

18 MR. COLLINS: Several months?
19 Okay.

20 These people who whip around the
21 corner when they do their rolling stops, are
22 they coming to or going from Evermay?

1 MS. MILLER: I have my dog out
2 there. I couldn't tell you.

3 MR. COLLINS: Okay.

4 MS. MILLER: I'm usually standing
5 there walking my dog and --

6 MR. COLLINS: So it's your
7 testimony that all this traffic, this rolling
8 stop --

9 MS. MILLER: Well, I'm sure Mr.
10 Belin, Mr. Belin was there at that event. And
11 it was fairly chaotic that day. People were
12 going very quickly. They were trying to get --
13 you know, you had cars parked in front of our
14 house, double parked. You had them double
15 parked in front of Evermay. You had Mr. Belin
16 in the middle of the street trying to direct
17 traffic. You had these cars sort of meandering
18 around obstacle courses. And then realizing
19 there was a stop sign.

20 MR. COLLINS: All right. No
21 further questions. Thank you.

22 CHAIRPERSON MILLER: Does the ANC

1 have any questions? Okay.

2 Intervenor? Intervenor.

3 Intervenor, opposition, that's you, Ms.
4 Steury.

5 MS. STEURY: Yes.

6 VICE CHAIRMAN LOUD: Mike.

7 MS. STEURY: I just wondered if
8 you would please recap some things you said at
9 the ANC meeting about when the --

10 CHAIRPERSON MILLER: It's cross
11 examination with respect to, you know what
12 she's testified to.

13 MS. STEURY: Okay.

14 MS. MILLER: Well, actually, I
15 think what Ms. Steury is referring to is when
16 the President? Yes.

17 I don't know if you've received
18 testimony, but when the President comes to
19 Evermay, which he does -- he has done -- I'm
20 not sure how many times. Perhaps Mr. Belin
21 can fill that in. But our lock is put in
22 lockdown.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And I don't know -- I mean, you
2 all may have experienced it before. I have
3 never experienced it before. You are literally
4 not able to enter or leave your residence. You
5 are not -- whoever is in your house -- and why
6 this became such an issue for me is because my
7 nanny was at home. My children needed to be
8 picked up at 3:30. And if any of you know the
9 dollars tick as the person is late picking up
10 your children at school. And she called me and
11 told me that the Secret Service refused to let
12 her leave our house in the car. And this was
13 for a lunch at Evermay. It's happened two or
14 three times.

15 And so we were in complete
16 paralysis. She couldn't go pick up my
17 children. I had to figure out alternate
18 arrangements.

19 And then another time the
20 President was at Evermay I had an air
21 conditioning man who had a Secret Service man
22 with a large weapon tell him to get off my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 roof. And, you know, with absolutely no
2 warning. We had never been told that perhaps
3 there was a big event, any of those things.
4 And so that, needless to say, is extremely
5 difficult when our block is put into lockdown.

6 VICE CHAIRMAN LOUD: Did I
7 understand you correctly that even -- your
8 nanny couldn't even walk to pick up your child
9 or it's just --

10 MS. MILLER: Well, she needed --
11 yes. It is she is not allowed to leave the
12 house. So, you know, she needed the car to go
13 get my children.

14 VICE CHAIRMAN LOUD: Well, what if
15 your child had been sick or there had been
16 some kind of emergency?

17 MS. MILLER: I -- you ask a very
18 good question. And what I ended up doing was
19 calling a friend who was able to pick up my
20 children.

21 VICE CHAIRMAN LOUD: I see.

22 MS. MILLER: And then we -- you

1 know, and then my nanny was able to tell the
2 Secret Service. And I guess the President left
3 at that time out of the driveway of Evermay
4 and then she was able to leave then, and then
5 pick up kids. Late, but it was fine because
6 my friend had been there.

7 VICE CHAIRMAN LOUD: Okay. Let's
8 say your child was sick. Your friend picked
9 your child up and took your child to the
10 hospital and you were home. Could you have
11 left to go?

12 MS. MILLER: You know, I think it
13 would be a one-on-one thing with -- one-on-one
14 conversation with Secret Service. But you are
15 put in lockdown.

16 VICE CHAIRMAN LOUD: Okay. Thank
17 you.

18 CHAIRPERSON MILLER: Okay. Any
19 other questions?

20 Well, I'm glad the timing worked
21 out okay.

22 MS. MILLER: Okay. Thank you so

1 much. I really appreciate it. And I'll go
2 back to the office.

3 CHAIRPERSON MILLER: Okay. I
4 guess it's my turn. Mr. Belin, it sounds like
5 you do some fantastic work, so I just want to
6 thank you for that. And, you know, what this
7 is about is controlling the spillover, you
8 know.

9 So, just with respect to Ms. Avery
10 Miller's testimony she referred to the
11 neighborhood being in lockdown when the
12 President comes. Can you address that? How
13 long a period of time is that? And I guess my
14 follow up question to that is, you know maybe
15 you learned from different experiences. But
16 it seems like notice to the neighbors is
17 something that Evermay could do unless it's a
18 security issues. I don't know. Can you address
19 that? Okay. Or Ms. Kovach?

20 MR. BELIN: Yes. Please, as the
21 Director of Hospitality she governs terms and
22 conditions very strictly.

1 MS. KOVACH: What I have
2 discussed, and this came up last summer and I
3 had discussion with the Secret Service, there
4 is a point when the President is mobile
5 between when he leaves the White House and
6 comes to Evermay, which they have clocked at
7 12 minutes of moving time that no one is
8 allowed to technically move around near the
9 perimeter of where he is going to arrive.

10 Obviously there are neighborhood
11 streets that, you know, people can't stop
12 moving between the White House and Evermay.
13 But at that time they have asked neighbors to
14 go into their homes and to not come or go. But
15 with identification, and then they have said
16 to me in the case of emergency, obviously, it
17 would be reviewed on a case basis. But after
18 the President has arrived at Evermay, with
19 identification the neighbors can come and go
20 freely from their homes.

21 So it's that 12 minute period of
22 time that they were -- they could have been

1 considered in lockdown.

2 The other issue is that there are
3 -- often times there have been -- or I should
4 say sometimes there have been security agents
5 who have been much more strict than at other
6 times. And, for example, there was an event
7 last spring that I cannot explain to you the
8 difference in an event that happened three
9 months before that was the exact identical
10 event, but that the security guidelines and
11 restrictions were four times what they had
12 been previously.

13 We cannot intervene with national
14 security. And this is what -- the reasons
15 that were given to us. So we're not allowed
16 to tell our neighbors ahead of time when the
17 President is coming.

18 At the time of our -- when we
19 stopped soliciting and doing business for this
20 hearing and application, we had started
21 working with the RNC and the White House
22 office and the Secret Service to work to see

1 how we could work more closely with our
2 neighbors and letting them know we had left a
3 few messages on the last, I think, maybe one
4 or two visits that we had a high security
5 event coming, but I was only permitted to do
6 that within three days.

7 So -- but at the same time, the no
8 parking signs are going up on 28th Street. So
9 everybody knows the President is coming, so
10 that's when we can kind of start talking about
11 it. But, unfortunately, we're not able to do
12 so earlier.

13 CHAIRPERSON MILLER: Once you can
14 do, are you allowed to say when it's going to
15 be?

16 MS. KOVACH: Yes.

17 CHAIRPERSON MILLER: Oh, okay.

18 MS. KOVACH: Yes. I did say to the
19 Steury's that between -- you know, at the times
20 between 11:00 and 11:15 or was it 11:15 to
21 11:25 that would be when this person would be
22 arriving and departing at 1:00. Therefore,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those would be times that would be difficult
2 for mobility if they were coming and going.
3 But that they were permitted, and that the
4 agents knew that our neighbors -- and the
5 agents knew that our neighbors were -- you
6 know, they had to attend their needs and make
7 sure that they were not inconvenienced or
8 obviously as little as possible.

9 CHAIRPERSON MILLER: Okay. And
10 with respect to the points that -- I forget
11 his name, but one of the gentleman who
12 testified earlier made about I think it's like
13 human nature that a lot of people want to park
14 on the street instead of inside because they
15 don't want for valet. They just want, it's
16 more convenient go get their car and go. How
17 do you know -- I think Mr. Belin said it's
18 just a few people who do that. But how do you
19 know it's just a few?

20 MR. BELIN: Well, because they
21 come across the street and come in through the
22 gate. And any chance I have to say do you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mind, please, return and get your car. We
2 really need you off the street. But I have
3 the opportunity to observe anyone.

4 CHAIRPERSON MILLER: So you stop
5 people who are walking in? Some people could
6 live in the neighborhood?

7 MR. BELIN: Sometimes I can't
8 because I'm too busy to stop the controls that
9 are in place that I need to be in top of. And
10 I just don't have the chance, other than to
11 then create a log jam where the horns start to
12 honk to try to get one person off the street.
13 And it's minor. There are not that many that
14 pull up like that.

15 CHAIRPERSON MILLER: Also, Ms.
16 Kovach, you said it's in the contract that you
17 sign, that people sign with you that they're
18 not allowed to park on the street, right?

19 MS. KOVACH: Their client rules.
20 Yes. We have a facility use client and a
21 client rules contract. They sign it, so we --
22 it's their contract, the client rules. And

1 that's where we indicate that they do not --
2 you know, we don't allow street parking and
3 that everything has to come on site and be
4 approved sized vehicles.

5 CHAIRPERSON MILLER: Okay. As
6 I've kind of mentioned earlier and even in
7 asking question of some of the witness, you
8 know what's before us is your application. And
9 that in addition to determining whether to
10 grant or deny it, that if we decide to grant
11 it, whether or not to place conditions on it.

12 And, for instance, it sounds like
13 some conditions might even be helpful. That if
14 there was a BZA order that required parking on
15 site, that that would actually be -- would
16 strengthen your position and the client's
17 cooperation.

18 And for instance, the other thing
19 I wanted to explore with you was, you know,
20 you said well it's hard to get them to put
21 that in an invitation. But if you had like
22 small cards that could go in there and, I

1 don't know if you've thought about this or
2 not, but that those kind of rules on it that,
3 you know, on site parking only or -- have you
4 tried that?

5 MS. KOVACH: We have not.

6 CHAIRPERSON MILLER: Okay.

7 MS. KOVACH: But I would certainly
8 be happy to support it. And I think too would
9 our clients because we give them -- you know,
10 we give them so many strict guidelines that
11 they want to help us achieve our goals and
12 rules and regulations.

13 CHAIRPERSON MILLER: And this
14 summary of Evermay Society rules and
15 regulations that's attached at Exhibit J to
16 the pre-hearing statement. When you say
17 "summary," are there more rules if this is
18 just summarizing the rules, or are these the
19 rules?

20 MR. BELIN: It's close to the
21 comprehensive --

22 MR. COLLINS: Can you describe

1 where these rules come from, this summary
2 comes from, either you -- either one?

3 MS. KOVACH: This is a combination
4 of what is in the vendor handbook for our
5 vendors and what is in the client rules. So
6 we have not put in, I believe, here on things
7 like we permit votive candles, but not these
8 candles. I mean, we left those off because
9 this doesn't matter to you. But those are in
10 our client rules.

11 And, you know, use of raspberries
12 and strawberries in the dining room. That's
13 not on here. But those are in the vendor
14 handbook.

15 These are significant rules that
16 are a combination and summary of what is both
17 in the vendor handbook and in the client rules
18 that they sign.

19 MR. COLLINS: And these are the
20 rules that would effect -- have external
21 effects or effect externally?

22 MS. KOVACH: Correct.

1 CHAIRPERSON MILLER: How long have
2 these been in effect?

3 MR. BELIN: Well, vendors'
4 handbook was first put out by me in September
5 of 2003. And we've continued to work on them,
6 improve upon them, refine them, challenge the
7 caterers, reduce the number of number of
8 caterers. It's an ongoing constant evaluation
9 of what's working and not working.

10 CHAIRPERSON MILLER: How about the
11 restrictions with respect to visit parking?
12 How long have you had those in effect? When
13 you did the -- when you make the parking lot,
14 when was that?

15 MR. BELIN: Well, that was --
16 let's see, 2004 or 2005. Two years. Four?

17 CHAIRPERSON MILLER: Do you turn
18 away anyone who wants to use your facilities
19 for a meeting or an event? Or how do you
20 control -- for instance, you have a number
21 like 77 or something that you had. I don't
22 know whether that just happened to be the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 number of requests or are there some kind of
2 standards or criteria to be able to use the
3 facilities?

4 MR. BELIN: Up until recently what
5 you have heard as averages or the reality of
6 things, 77, 55, 77 that's the way it turned it
7 out. So even with our not having felt the
8 constraints that we are beginning to
9 understand will be part and parcel of what
10 we're working through now, we never hit 85.

11 And we've never -- if we've turned
12 away someone recently, it would have been --
13 well, you're asking a question that's very
14 difficult for us to answer. Because we've
15 been closed down now for almost a year. So
16 what was then and what is now is still a
17 little bit in need of being finalized and
18 defined.

19 Do you want to add to that?

20 MS. KOVACH: Well, I think that
21 the numbers have come from a few different
22 things. And one is from the Society standpoint

1 of what is required to operate. And secondly,
2 of what the house will bear and what we will
3 bear.

4 We are not looking to exhaust and,
5 you know, just wear out the house itself with
6 events and constant use. It's not a museum
7 that's open every day with visitors coming and
8 going. And so this is a number that makes
9 sense for both the home itself and the staff.
10 Because, as we mentioned, we are at every
11 event from beginning to end. So we only do,
12 you know, one wedding a weekend. We do not
13 pack them in as other locations do. So this is
14 a number that we've come at from a few
15 different perspectives.

16 CHAIRPERSON MILLER: But is there
17 a number that you need to have of a certain
18 size to sustain the public charity, or
19 whatever? I mean --

20 MR. BELIN: Yes.

21 CHAIRPERSON MILLER: If my
22 understanding from what I've been listening to

1 and reading is that you do all this great non-
2 profit work, but in order to pay for that and
3 keep the grounds that allow them to come
4 there, you need to have these other events to
5 pay for it. And all the money from the other
6 events go right into the non-profit, except
7 what has to be used to pay for the service,
8 correct?

9 I don't know if that's in the
10 application. But, for instance, I just want to
11 put it out here. That, you know, often people
12 will ask us to limit the number of events, you
13 know. And so we would want to know what that
14 number might be arranged so that we can factor
15 that in. That, you know, well if you really
16 needed 70 events in order to -- I don't know--
17 do you know what I'm saying? To sustain the
18 Evermay non-profit it might be good to hear
19 something about that. I don't know if you've
20 thought about that or what.

21 MR. COLLINS: Well, I'll start and
22 then you can jump in.

1 MR. BELIN: Yes.

2 MR. COLLINS: We certainly have
3 talked about it. And the function of a number
4 of events is -- it's a number of things, as
5 Alexandra mentioned, about stress on the
6 house, stress on the neighbors and stress on
7 the staff. And the income has produced a large
8 number of smaller events, produced the same
9 amount of income as a smaller number of larger
10 events. So, that's really one of the
11 considerations. That's why it's a range.

12 MR. BELIN: And in my testimony I
13 tried to make it as clear as I could that the
14 ideal would be to reduce number of events
15 because philanthropically we're being through
16 other ways of generating income, whether
17 grants or contributions of an increased amount
18 because we're doing good works that we've had
19 little time -- I mean, these projects take
20 time. What we're envisioning three years ago
21 for the Evermay Media Institute is slowly
22 evolving, but having lost now almost a year

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time, we've had some setbacks. But I would
2 like to think that our numbers of events would
3 decrease as our philanthropic efforts take
4 hold and really begin to make a difference.

5 So there will be an effect on the
6 number there. But we didn't put 65 in not to
7 be very precise about things. That for now is
8 we're operating today and we'd be projecting
9 over the next year. We have to hit 65 events.

10 CHAIRPERSON MILLER: I know you
11 did some tables or something, and I don't
12 really have it in front of me. But when
13 you're talking about 65 events, are you
14 talking about the weddings and things like
15 that that raised the revenue or are you
16 talking about either a non-profit or other
17 event?

18 MR. BELIN: As stated, that's --
19 that includes everything, whether it's an
20 exclusively non-profit or it's a -- well,
21 actually we would really need the 65 events
22 for now that would be related to a

1 contribution; a wedding, an appropriate event
2 or otherwise. We can afford the other 20
3 roughly as what I would -- what we could call
4 non-profit or philanthropic outreach. And
5 that's frozen in time at this moment as best
6 as we can predict it.

7 CHAIRPERSON MILLER: I mean for
8 instance the prayer breakfast, is that
9 included as an event, which is very low impact
10 event, I Believe.

11 MR. BELIN: Yes.

12 CHAIRPERSON MILLER: That's
13 included --

14 MR. BELIN: The prayer breakfast
15 is -- I've considered more an issue of worship
16 than it is a meeting or an event.

17 CHAIRPERSON MILLER: I mean is
18 that in your number? Is that included?

19 MR. BELIN: No.

20 CHAIRPERSON MILLER: No. Okay.
21 It's not really an event?

22 MR. BELIN: No.

1 CHAIRPERSON MILLER: Okay.

2 Because you said -- 200. If you have two
3 people over there, that's not an event.

4 MS. KOVACH: Right --

5 CHAIRPERSON MILLER: In analysis.
6 Okay.

7 Let me just switch gears for
8 traffic for just a second. I just want to make
9 sure I understood, Mr. Andres, what you were
10 saying about 28th and Q and 28th and P. You
11 said 28th and Q -- no. 28th and P has a
12 traffic signal?

13 MR. ANDRES: Yes, correct. And
14 that's the only traffic signal basically in
15 that vicinity.

16 CHAIRPERSON MILLER: How does that
17 effect the traffic then at 28th and Q? I
18 wasn't sure what the correlation was?

19 MR. ANDRES: Well, the correlation
20 was that the Q street corridor carries a lot
21 of traffic. And because 28th is actually
22 considered by the District as a collector

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 roadway. It basically gets traffic from
2 arterials to other arterials. And that's what
3 the function of a collective roadway is.

4 Because you have that traffic,
5 which people have testified to as using that
6 as sort of a cut through route, it doesn't
7 surprise me -- it's not a surprise to me that
8 the 28th and Q Street intersection operates
9 close to capacity because of the fact that
10 28th and P has this traffic signal. 28th and
11 P if it did not have a traffic signal, it
12 would probably have the same capacity
13 constraints that 28th and Q would have. But
14 for some reason for the history associated
15 with this part of Georgetown, there is a
16 signal at 28th and Q. Or excuse me, 28th and
17 P.

18 CHAIRPERSON MILLER: I still don't
19 get the connection. So does 28th and P have
20 more traffic because it has a traffic signal?

21 MR. ANDRES: No. No. 28th and P
22 operates efficiently because it has a traffic

1 signal. But if it did not have a traffic
2 signal, it would have probably similar
3 capacity constraints that 28th and Q currently
4 has.

5 CHAIRPERSON MILLER: Okay. So
6 you're saying it's the same traffic pattern
7 basically?

8 MR. ANDRES: It's a similar
9 traffic pattern because as I mentioned before,
10 P and Q Streets are good with respect to
11 traffic east/west connectors.

12 CHAIRPERSON MILLER: I think you
13 also made a comment about taxis being local or
14 something that come to Evermay.

15 MR. ANDRES: Well, yes. What I had
16 mentioned was that when we did our survey,
17 there were 26 taxis that arrived and left.
18 What I had mentioned was, you know, as a
19 traffic engineer if I were to notice some
20 traffic associated with taxis, there's a good
21 sense that usually those taxis are for local
22 travel. Because if you're coming from, say,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 northern Virginia or from Bethesda, you know
2 it's rare that you would take a taxi that far
3 distance when you would either choose to drive
4 or take other modes.

5 CHAIRPERSON MILLER: So what
6 difference does that make to the neighbors
7 whether the people coming are local or --

8 MR. ANDRES: Well, I was just
9 characterizing the type of event that that was
10 taking place.

11 Usually local -- events that draw
12 locally tend to generate a little bit more
13 traffic than events that are associated with,
14 say -- if this was for example a destination
15 wedding, as I Alexandra pointed out, there are
16 Van Terras that would shuttle -- that would
17 provide the shuttles for numerous guests from
18 nearby hotels. And that's indicative of sort
19 of an event that caters to out of town guests.
20 But because there are taxis, and in this case
21 there were 26 taxis, it seems to suggest that
22 the attendees are coming from fairly nearby,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which is a much tighter radius.

2 CHAIRPERSON MILLER: And this may
3 be a question for Ms. Kovach, or you may know
4 it, I don't know. Do the taxis come into the
5 grounds and drop off inside or do they drop
6 off at the gate?

7 MR. ANDRES: They are --

8 CHAIRPERSON MILLER: Or the
9 entrance?

10 MR. ANDRES: Well, as Mr. Belin
11 has been outside, he has waived them in sort
12 of like a third base coach, you know, sending
13 somebody home. But, you know, yes it's part
14 of the regulations for taxis to come into the
15 site, drop off and exit the site.

16 MS. KOVACH: Madam Chair, could I
17 just clarify one other point in that?

18 When we do have a client who has a
19 lot of town guests, I strongly encourage them
20 to provide transportation from any hotels. And
21 this kind of further explains. If they do not
22 choose to do that at the beginning of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 event, then I strongly encourage them to
2 provide it at the end of the event.

3 So for instance on the example
4 that was used in the traffic testimony that on
5 the date of April 12th that we had 26 taxis
6 arrive, there were three Van Terras that were
7 hired to take guests off the property at the
8 end of the event that night. So that no taxis
9 were called. IF anyone needs a taxi at the
10 end of the night, we send them in a Van Terra
11 to a hotel where they can get a taxi.

12 So we try every effort with our
13 clients to get them to provide that
14 transportation, particularly at the end of the
15 evening when it's more disruptive to the
16 neighborhood to get the guests off quickly and
17 far away rather than having multiple taxis
18 coming in at the end of the night. So we do
19 our best to encourage that.

20 CHAIRPERSON MILLER: So it sounds
21 like you're having trouble, though, feeling
22 comfortable putting that in the contract that

1 it's required that they do that, is that
2 right?

3 MS. KOVACH: I don't -- I don't --
4 it's not in our contract saying they have to
5 do that, but it's also something that we can't
6 always control. They can't say you -- you
7 know, people will just take a taxi. It's
8 natural. People just come from New York for
9 a wedding, they get in a cab. I mean, this is
10 what they do. And they think it's crazy that
11 they couldn't do that.

12 So we do everything we can so that
13 when they do show up in the taxi, we get the
14 shuttle to get them out of there. And then if
15 we don't get that, we have Mr. Park, the taxi
16 dispatcher there to call in the cabs that are
17 needed so they're not calling them themselves
18 or waiting on the street and talking loudly,
19 et cetera.

20 CHAIRPERSON MILLER: Okay. I mean
21 my point goes to the discussion we were having
22 earlier. You know, perhaps if we were to grant

1 the application and then put conditions on,
2 whether we should consider a condition such as
3 that, you know parties coming from a hotel or
4 whatever required to come by Van Terra --
5 that's a new term. Okay.

6 MR. BELIN: Van Terras.

7 CHAIRPERSON MILLER: But, you
8 know, as we go through this hearing we want to
9 think whether that's enforceable. Because we
10 want our conditions to be enforceable as well.
11 But so if it could be enforceable, I mean it
12 sounds like one of the solutions that you're
13 trying to do but having trouble doing it, you
14 know. And so that we could add extra leverage
15 to that.

16 So we just need to think about --
17 if you have any ideas later on, but you know
18 whether it actually could be enforceable if it
19 were part of an order.

20 Okay. Anything else?

21 Why don't we turn to the ANC. Do
22 you have any cross of any of the witnesses?

1 COMMISSIONER EASON: (Off
2 microphone).

3 CHAIRPERSON MILLER: I can't hear
4 you.

5 COMMISSIONER EASON: I was going
6 to suggest, I don't know what your schedule
7 is, but that this might a time to take a
8 break. Amongst others, since I have a medical
9 condition that requires me to eat every so
10 often. And since I've been here since close to
11 1:00, this might be a good time for me to
12 break if that would be convenient with the
13 Board. And then we could do all the cross at
14 one time.

15 CHAIRPERSON MILLER: Okay. You
16 know, that's what I was wondering, if anybody
17 had any special needs to let us know. So --
18 I mean, I was thinking ideally that we would
19 finish with the applicant -- you know finish
20 the cross. But I certainly respect if you --
21 if there's a need to break now, we can do
22 that.

1 So figure out how long to take.
2 We're just considering how long a break we're
3 going to take. I'm open to have anybody has
4 any -- I think it would be somewhere between
5 a half an hour and an hour. Yes, I know
6 people don't want to be here until whatever
7 hour. A half an hour.

8 You know, you also need time to go
9 and get the food and --

10 MR. CROCKETT: I'm not sure what's
11 open.

12 CHAIRPERSON MILLER: Okay. We'll
13 see if we can help you with that.

14 I may need to make this a long
15 evening, but I think realistically, you know,
16 we're definitely we have to go somewhere to
17 get dinner and come back. So I think we're
18 going to say that we will break until 9:00,
19 which sounds late but that's where we're at.
20 Unless there are -- you know, anybody else
21 wants to comment. But I think that's the
22 reality of the situation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay. I'm not hearing.

2 Mr. Moy will be able to help
3 anyone who doesn't know where to go to get
4 food at this hour.

5 (Whereupon, off the record.)

6 CHAIRPERSON MILLER: We're back on
7 the record. We had another issue that Mr.
8 Collins wants to bring to our attention.

9 MR. COLLINS: Yes. One of our
10 witnesses, Mr. Benson, he's been waiting to
11 leave to pick up his -- his son is waiting to
12 be picked up. And that's the only ride he
13 has. So if somehow we could do the cross
14 examination of Mr. Benson now, before we
15 break, and then allow him to leave and take
16 care of that business, that would be great.

17 CHAIRPERSON MILLER: Did we lose
18 our ANC Commissioner already? Where is he?
19 Can you just ask him any question you might
20 have and then go if you want, if you need to?
21 We've got two needs here. One is -- did you
22 hear that? Okay.

1 Just Mr. Benson. Do you have any
2 question for him? Okay.

3 COMMISSIONER EASON: Thank you,
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay. Okay.
6 Go ahead.

7 COMMISSIONER EASON: I took it from
8 your testimony that you prepared of articles
9 of incorporation for the Evermay Society?

10 MR. BENSON: Yes, sir.

11 COMMISSIONER EASON: And those
12 were prepared pursuant to the District's Non-
13 Profit Corporation Act.

14 MR. BENSON: That's correct.

15 COMMISSIONER EASON: And that
16 covers a wide variety of different kinds of
17 non-profits including charitable and
18 educational organizations?

19 MR. BENSON: Yes, sir. That's
20 correct.

21 COMMISSIONER EASON: And in
22 preparing those you included as a paragraph --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I'm trying to find a purpose clause, I'm sure
2 you know what I'm talking about, that
3 indicated that the purposes of the corporation
4 that you were preparing this articles of
5 incorporation for was to be exclusively for
6 charitable and educational as defined 501(c)
7 of the Internal Revenue Code as amended, is
8 that correct?

9 MR. BENSON: Correct.

10 COMMISSIONER EASON: So your
11 purpose was to limit within that broad range
12 of different kinds of non-profits that can be
13 incorporated in D.C., is that correct? There
14 was a limitation on the broader range?

15 MR. BENSON: The articles of
16 incorporation have to, if you're going to get
17 501(c)(3) status have to comply with the
18 regulations that the IRS issues. And in
19 addition, it has to comply with the D.C. Non-
20 Profit Corporation Act.

21 COMMISSIONER EASON: Well, the Act
22 is probably the -- and please help me if I'm

1 wrong, the overarching constrainer of what a
2 D.C. non-profit can do? You selected to limit
3 that by the articles of incorporation so it
4 would comply with the IRS's requirements for
5 a 501(c)(3), is that right?

6 MR. BENSON: The articles of
7 incorporation were drafted both to comply with
8 the D.C. code as well as to comply with the
9 regulations of the IRS.

10 COMMISSIONER EASON: Okay. So the
11 purposes are limited to those approved for
12 501(c)(3) organizations, is that reading?
13 Exclusively it says for 501(c)(3) purposes?
14 And in fact, something less if I'm not wrong,
15 than the broadest 501(c)(3) purpose. Yours is
16 restricted exclusively to the charitable and
17 educational parts of organizations that could
18 qualify as a (c)(3), is that right?

19 MR. BENSON: I'm not sure I
20 understand your question.

21 The articles of incorporation were
22 drafted in compliance with the D.C. Non-Profit

1 Corporation Act as well as to comply with the
2 requirements of the IRS.

3 COMMISSIONER EASON: Right. And I
4 guess my question was as an expert in this is
5 it not correct that under 501(c)(3) there are
6 purposes other than charitable and
7 educational?

8 MR. BENSON: 501(c)(3) are
9 recognized as scientific -- so there's several
10 other categories beyond the broad categories
11 of charitable and educational.

12 COMMISSIONER EASON: Okay. All
13 right. So that in drafting the restrictions
14 under the District of Columbia law that this
15 corporation, the purposes of this corporation
16 would be the Evermay Society you not only
17 restricted them to 501(c)(3) activities, but
18 also forward to the charitable and educational
19 activities as defined in (c)(3), is that
20 correct?

21 MR. BENSON: Correct.

22 COMMISSIONER EASON: The articles

1 of incorporation are submitted to the
2 Department of Consumer and Regulatory Affairs.
3 Is it not correct that their review is limited
4 to ascertaining that the various elements
5 required by D.C. law are present in the
6 articles of incorporation? They don't
7 independently verify any of those, do they?

8 MR. BENSON: That's correct.

9 COMMISSIONER EASON: So the fact
10 that they issued a certificate of
11 incorporation doesn't suggest some sort of a
12 blessing on their behalf, other than that the
13 paperwork fit their requirements, is that
14 correct?

15 MR. BENSON: Correct.

16 COMMISSIONER EASON: Then it's at
17 some time or after if I understood your
18 testimony, you prepared or participated in the
19 preparation of an application to the Internal
20 Revenue Service of Form 1023 for recognition
21 of the exempt purposes, is that right?

22 MR. BENSON: Correct.

1 COMMISSIONER EASON: And I have,
2 and there is in the record, an application
3 dated June 30, 1999. Is that the one you
4 prepared or participated in preparing?

5 MR. BENSON: Yes, sir.

6 COMMISSIONER EASON: Subsequent to
7 that time did you ever amend in any fashion
8 that application? Did you do any amendments?

9 MR. BENSON: As I recall, I think
10 there were some supplemental information that
11 was requested by the IRS.

12 COMMISSIONER EASON: And do you
13 recall whether that -- I'm really now talking
14 about the exempt purpose and not the public
15 charity issue. Do you recall which that
16 related to?

17 MR. BENSON: I don't recall.

18 COMMISSIONER EASON: Don't recall?

19 Do you recall if that was
20 submitted as part of the IRS's consideration
21 of the June 30, '99 1023 application whatever
22 else you submitted?

1 MR. BENSON: Yes. Often times the
2 IRS will request additional information once
3 they receive the original submission. So all
4 of the information that you supply on
5 supplemental basis will be considered in the
6 original determination.

7 COMMISSIONER EASON: Well, to the
8 best of your recollection subsequent to the
9 receipt of the initial determination letter
10 did you ever file any further amendments to
11 the Form 1023 application?

12 MR. BENSON: We wouldn't have
13 filed an amendment I don't believe. I mean,
14 sometimes you submit supplemental information.
15 But I don't recall specifically about --

16 COMMISSIONER EASON: Did you ever
17 submit any supplemental information after the
18 initial determination letter was issued?

19 MR. BENSON: Not in relation to
20 its 501(c)(3) status.

21 COMMISSIONER EASON: All right. I
22 guess we were handed over here today a copy of

1 the October 26, 1999 determination letter for
2 the Internal Revenue Service. And while it's
3 in the record, I'll just read this first
4 sentence.

5 It says "Dear Applicant: Based on
6 the information you supplied and assuming your
7 operations will be as stated in your
8 application for recognition of exemption, we
9 have determined for exempt under 501(a) and as
10 an organization described in 501(c)(3)."

11 So as an expert in this I guess my
12 understanding is that they took what you said
13 in your application as it may have been
14 amended as of the date of this letter, and
15 assuming that your operations would be as
16 stated in that application they made this
17 initial determination, is that right?

18 MR. BENSON: Correct.

19 COMMISSIONER EASON: And that same
20 on the second page in the second paragraph
21 says, and I quote: "If you change your
22 sources of support, your purposes, character

1 or method of operation please let us know so
2 we can consider the effect of the change on
3 your exempt status and foundation status."
4 Okay.

5 So what you're saying is that
6 you've never submitted any kind of information
7 such as described, so therefore the
8 determination that the IRS made in 1999 is
9 based upon that 1999 application and the
10 purposes set forth in that?

11 MR. BENSON: Correct.

12 COMMISSIONER EASON: And one of
13 the Board Members asked a couple of questions
14 about the 990-T, the unrelated business income
15 tax matter. And, again quoting from page 3 at
16 this point in the second paragraph of the 1999
17 determination letter, the IRS says: "You are
18 not required to federal income tax returns
19 unless you are subject to the tax on unrelated
20 business income under section 511."

21 I'll skip over a little bit. And
22 then says: "In this matter we are not

1 determining whether any of your present or
2 proposed activities are unrelated trade or
3 business as defined section 513 of the code."

4 So am I correct to understand then
5 that there has been no determination by the
6 IRS other than not having objected to your
7 subsequent 990 returns that the rental incomes
8 that are generated for the Society as
9 contributions are unrelated business income or
10 not?

11 MR. BENSON: It's the requirement
12 of the taxpayer to file the 990-T if it has
13 unrelated business income.

14 COMMISSIONER EASON: But there's
15 nothing in the record -- or if there is
16 something that I don't know about that
17 suggests that they've ever agreed with any
18 determination by the taxpayer or that it's not
19 unrelated income tax?

20 MR. BENSON: There's been no
21 independent audit of the organization, no.

22 COMMISSIONER EASON: So would it

1 be far for me to say then that under the laws
2 of the District of Columbia and the Internal
3 Revenue Code the activities which the Evermay
4 Society are authorized to conduct are: (a)
5 circumscribed by the provisions of the Non-
6 Profit Corporation Act; (b) by the articles
7 of incorporation which includes that statement
8 that the activities are to be exclusively --
9 make sure I don't misquote myself --
10 charitable and educational as opposed to
11 scientific and whatnot, and by the
12 representations made in Form 1023 and any
13 addenda that you may have provided which I
14 don't believe are in the record? That those
15 three things are constraints on what the
16 organization can lawfully do?

17 MR. BENSON: That's correct.

18 COMMISSIONER EASON: And with
19 regard to -- I think there's some prior
20 testimony that spoke to the Internal Revenue
21 Service making a determination sometime in --
22 would it be 2000 -- 2004, then there was the--

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really another 60 month period, right?

2 MR. BENSON: Correct.

3 COMMISSIONER EASON: The first
4 determination was adverse to the Evermay
5 Society in terms of whether it was a public
6 charity or a private foundation?

7 MR. BENSON: It wasn't adverse or
8 not adverse. It was just a reclassification.

9 COMMISSIONER EASON: Okay. But
10 their initial decision based upon the
11 application, the 1023, was that they thought
12 that they were a public charitable. But after
13 that, the look back period, they found that
14 that wasn't the case?

15 MR. BENSON: Right. They were
16 reclassified as a private foundation.

17 COMMISSIONER EASON: Right. And
18 now you're engaged in a second iteration of
19 that?

20 MR. BENSON: Correct.

21 COMMISSIONER EASON: And so any
22 preliminary -- what do you call it? I guess

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you used the term determination of the public
2 charity private foundation thing is one that's
3 awaits a final decision at the close of the
4 look back period when you submit whatever it
5 is they decide, is that right?

6 MR. BENSON: It'll have no impact
7 on their 501(c)(3) status.

8 COMMISSIONER EASON: That's not
9 what I was asking you.

10 MR. BENSON: But it will -- after
11 the 60 month period it will either be
12 classified as a public charity under 501(c)(3)
13 or a private foundation under 501(c)(3).

14 COMMISSIONER EASON: All right.
15 Thank you. I appreciate you answering that
16 question.

17 MR. BENSON: Thank you.

18 CHAIRPERSON MILLER: You may have
19 answered this, Mr. Benson, I just want to ask
20 just in case. I don't remember.

21 What makes an entity qualify as a
22 public charity? I know it's based on the

1 support, but is it a certain percentage or --

2 MR. BENSON: Source of revenue,
3 yes.

4 CHAIRPERSON MILLER: A certainly
5 percent of the source of revenue?

6 MR. BENSON: Yes. Correct. It
7 can't be more than like 30 percent from
8 investment income because a lot of these
9 bigger foundations and non-profits will have
10 an endowment. So they'll generate their funds
11 to support their activities through their
12 investment endowments. And so the IRS will
13 recognize that as a private foundation. They
14 want public support from your non-profit
15 activities and cartable contributions to -- in
16 order to meet the test for a public charity.
17 And it's got to be at least 30 percent of your
18 revenue. Thirty percent of revenue from those
19 charitable contributions or related activity
20 revenue, and not more than one-third from
21 investment income.

22 CHAIRPERSON MILLER: And is there

1 an advantage to being a public charity instead
2 of a private foundation?

3 MR. BENSON: There's just more
4 annual requirements that are imposed on a
5 private foundation.

6 CHAIRPERSON MILLER: Thank you.

7 MR. CROCKETT: Madam Chair?

8 CHAIRPERSON MILLER: Yes.

9 MR. CROCKETT: I have a few
10 questions.

11 CHAIRPERSON MILLER: Okay.

12 COMMISSIONER EASON: May I be
13 excused?

14 CHAIRPERSON MILLER: Sure.

15 COMMISSIONER EASON: Thank you
16 very much.

17 MR. CROCKETT: Mr. Benson, as the
18 incorporator of this corporation you became
19 one of the first directors, is that correct?

20 MR. BENSON: That's correct.

21 MR. CROCKETT: Have you remained
22 as a director?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BENSON: Yes, sir.

2 MR. CROCKETT: Up until this day?

3 MR. BENSON: Yes, sir.

4 MR. CROCKETT: How many times a
5 year does the Board of Directors meet?

6 MR. CROCKETT: It holds an annual
7 meeting as required by D.C. law and it usually
8 meets several other times throughout the year.

9 MR. CROCKETT: Who are the current
10 directors?

11 MR. BENSON: Myself, Harry Belin,
12 Susan Belin, Hal Davies and Jerry --

13 MR. CROCKETT: How are the
14 directors selected?

15 MR. BENSON: They're self-selected
16 by the Board of Directors.

17 MR. CROCKETT: Who are the
18 officers currently?

19 MR. BENSON: Hal Davies is the
20 Treasurer, Harry Belin is the President and
21 Susan Belin is the First President -- Harry is
22 the Secretary.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: Do you keep minutes
2 of every meeting of the Board of Directors?

3 MR. BENSON: Yes, sir.

4 MR. CROCKETT: Are those in a
5 minute book?

6 MR. COLLINS: Madam Chair, can I
7 ask where this is going. He didn't testify
8 about any of this.

9 CHAIRPERSON MILLER: Exactly.

10 MR. COLLINS: And it's going way,
11 way down a road.

12 CHAIRPERSON MILLER: Exactly. We
13 were just conferring up here as to what the
14 relevance is and you're limited to cross him
15 on what he testified to.

16 MR. CROCKETT: Well, I'll be glad
17 to ask these questions of Mr. Belin. But our
18 position in this case is that the Society
19 itself is merely Mr. Belin's alter ego and
20 that it doesn't really serve the laudatory
21 purposes that they claim are being served here
22 as a charity, but that he receives rent from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it and maintenance of Evermay.

2 CHAIRPERSON MILLER: You're going
3 to have an opportunity to present your
4 argument and whatever witnesses are here for
5 you.

6 MR. CROCKETT: But that goes to my
7 questions about the --

8 CHAIRPERSON MILLER: But I'm not
9 sure what cross examination question. That's
10 why you asked him who the officers are?

11 MR. CROCKETT: Yes.

12 CHAIRPERSON MILLER: Isn't that in
13 the record anyway who the officers are?

14 MR. CROCKETT: Not the officers
15 today.

16 CHAIRPERSON MILLER: Today?

17 MR. COLLINS: Sir, you -- I'm
18 sorry.

19 CHAIRPERSON MILLER: That's all
20 right.

21 I thought this was basic
22 information that was in the record. But if I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mistaken. Mr. Collins? Mr. Belin? You
2 know, it's a waste of everybody's time to ask
3 questions about facts that are already in the
4 record.

5 MR. COLLINS: It wasn't what Mr.
6 Benson testified to, in any event. So it's
7 outside the scope of cross.

8 CHAIRPERSON MILLER: That's true.
9 It's not time to cross examine Mr. Belin.
10 We're just doing Mr. Benson now because he has
11 to leave.

12 MR. CROCKETT: Well, I understand
13 that.

14 CHAIRPERSON MILLER: Okay.

15 MR. CROCKETT: And if you don't
16 want me to go down this line, I'm through.

17 CHAIRPERSON MILLER: Okay. What
18 we said was was that we'd need to address what
19 he testified to. So if there's nothing
20 further about what he testified to, then that
21 should be it.

22 Ms. Steury?

1 MS. STEURY: Yes. Is this on?

2 Mr. Benson, you did mention a
3 lease and that it was at low market rates.
4 Can you recall whether or not the Board of
5 Directors made a decision about entering into
6 that lease?

7 MR. BENSON: The lease would have
8 been approved by the Board of Directors, yes.

9 MS. STEURY: Yes. And do you
10 remember that meeting?

11 MR. BENSON: I don't remember the
12 date of the meeting.

13 MS. STEURY: No. That's not what
14 I'm asking. I want to ask about the substance
15 of the meeting. Were you there?

16 MR. BENSON: Yes.

17 MS. STEURY: And did you vote to
18 enter into the lease?

19 MR. BENSON: Yes.

20 MS. STEURY: Do you remember what
21 the vote was? If it was close or not close?

22 MR. BENSON: My recollection is it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was a unanimous vote.

2 MS. STEURY: Okay. And an you
3 tell me the considerations that were
4 undertaken in deciding to rent that property?

5 MR. BENSON: Just let me clarify.
6 I don't have the minutes in front of me, but
7 Mr. Belin may not have voted on that motion.
8 He may have recused himself, but I don't -- I
9 don't know without looking back at the minutes
10 of that particular meeting. But Mr. Belin, my
11 recollection is he recused himself on certain
12 decisions related to the lease. So I wanted
13 to clarify that.

14 So can you ask your next question
15 again?

16 MS. STEURY: Yes. Thank you for
17 that.

18 Can you recall the considerations
19 that the Board undertook in deciding to enter
20 into that lease?

21 CHAIRPERSON MILLER: Did you talk
22 about the lease? You did? Okay. Excuse me.

1 MR. BENSON: Can you be more
2 specific about considerations?

3 MS. STEURY: Yes. Did you consider
4 renting any other property?

5 MR. BENSON: No. The Evermay
6 Society did not look at other space, as far as
7 I know.

8 MS. STEURY: Okay. And was there
9 any discussion about the size or expense of
10 the property compared to the needs of the
11 Evermay Society?

12 MR. BENSON: I don't believe so.

13 MS. STEURY: Okay. And at that
14 time it's my understanding that Mr. Davies,
15 who isn't here tonight, was the President of
16 the Board, is that correct?

17 MR. BENSON: At one point he was
18 the President, correct. And I think he was at
19 the time of the lease. Correct.

20 MS. STEURY: Yes. And can you
21 explain to me why he was a President only for
22 one year?

1 MR. BENSON: There was a change in
2 officers. The officers are voted upon each
3 and every year.

4 MS. STEURY: And do you know when
5 he became the President?

6 MR. BENSON: Not without looking
7 at the minutes of the Board meetings.

8 MS. STEURY: Okay. Are you
9 intimately involved -- I mean, let me back up.

10 Mr. Davies came on the Board of
11 Directors in 2005 when the Board of Directors
12 was expanded from three to five?

13 MR. BENSON: Correct.

14 MS. STEURY: Were you intimately
15 involved in selecting those two additional
16 Board members?

17 MR. BENSON: Yes. They were
18 proposed as additional Board members and voted
19 upon at a Board meeting.

20 MS. STEURY: Okay. And was Mr.
21 Davies also an employee of Evermay Society at
22 that time?

1 MR. BENSON: I don't recall. He is
2 currently on salary, but I don't know if at
3 the time he was. I just don't know.

4 MS. STEURY: Okay. So in your
5 mind just because this is the real question
6 I'm getting at, in your mind did he come on as
7 President and employee at the same time, or
8 can you not say?

9 MR. BENSON: I don't recall.

10 MS. STEURY: Okay. Now, I'm sorry
11 I can't remember your exact words and I didn't
12 get them down when you said it, and it's been
13 a while now. But you made some comment about
14 the 990-T and I think it was in that context,
15 and the taxpayer has an obligation and the IRS
16 is watching; something along those lines. Is
17 this any different in terms of the IRS
18 watching these returns than is true for
19 individual tax returns? I mean --

20 MR. BENSON: No. The taxpayer,
21 whether it's the Evermay Society or an
22 individual has an obligation to comply with

1 the Internal Revenue code rules. So, no.

2 MS. STEURY: Okay. Could you tell
3 me in your expert opinion, give me a
4 description of private inurement or
5 definition?

6 MR. BENSON: 501(c)(3)
7 organizations are supposed to exist for the
8 public good. Benefit inurement is when an
9 insider, such as a Board member or an officer
10 receives from the net revenue of the
11 organization outside a reasonable compensation
12 for services.

13 MS. STEURY: Is there a difference
14 between private benefit and private inurement?

15 MR. BENSON: No. Those are used
16 interchangeably. Benefit inurement is another
17 term. Private inurement, private benefit they
18 all have the same concept that the
19 organization is existing not for the public
20 good but for the benefit of a private
21 individual.

22 MS. STEURY: And you don't think

1 that there's a distinction between private
2 benefit such that it's broader than private
3 inurement and private inurement is restricted
4 to financial and private benefit could be non-
5 financial as well?

6 MR. BENSON: Not under the IRS
7 regulations that I'm aware of.

8 MS. STEURY: Okay.

9 MR. BENSON: There are specific
10 regulations called intermediate sanctions that
11 are financial based that relate to benefit
12 inurement that have been passed recently by
13 the IRS. So those may be what you're
14 referring to as the financial implications.
15 But those are what's called intermediate
16 sanctions.

17 MS. STEURY: Okay. In response to
18 something that Mr. Eason asked you, you said
19 there's been no independent audit of the
20 organization. And I want to make sure I
21 understand exactly what you meant by that.
22 Because earlier I had heard about independent

1 audits. So I want to make sure I understand if
2 these words are being used in the same way.

3 MR. BENSON: They're two different
4 things. Each year Evermay Society has an
5 outside CPA firm conduct an annual audit. The
6 IRS, however, has never audited the
7 organization. That's the distinction. They
8 have an annual tax return and audit prepared
9 every year by a qualified CPA. But the IRS has
10 never examined and done an audit of the
11 organization based on anything they saw in the
12 annual tax returns.

13 MS. STEURY: Mr. Benson, is there
14 anything that you can point to in the articles
15 of incorporation that say that the mission of
16 the non-profit is to preserve the historic
17 grounds and buildings of 1623 28th Street,
18 Northwest?

19 MR. BENSON: There's nothing
20 specifically referencing that.

21 MS. STEURY: If you were going --
22 tell me nonspecific then what you would point

1 to?

2 MR. BENSON: Well, there's four
3 designated purpose clauses, and they're
4 purposely drafted broadly because at the time
5 we don't know what all the activities
6 necessarily are going to be a non-profit as it
7 evolves over time. So we purposely try to make
8 those purpose clauses relatively broad to
9 encompass future activities.

10 So we did not specifically
11 identify a particular property such as the
12 Evermay Society in the articles of
13 incorporation. We made the articles broader.

14 MS. STEURY: But the articles
15 don't mention anything about a particular
16 place, is that correct?

17 MR. BENSON: Correct. Correct.

18 MS. STEURY: Does it mention
19 anything about preserving the Evermay
20 collection?

21 MR. BENSON: No.

22 MS. STEURY: Would you consider --

1 I withdraw that. I'm going to have to think
2 about how to phrase that in a minute.

3 I would like to ask you to look at
4 the Form 1023 that you prepared. And, yes,
5 you all have that. It's Exhibit 1 to number
6 65. Forgive me. I have to get another copy
7 for myself.

8 Okay. I would like you to turn to
9 projections that you can find on page 8,
10 please of the financial data. Are you with
11 me?

12 MR. BENSON: Yes, ma'am.

13 MS. STEURY: And I'd like you to
14 look at line 20 occupancy, rent, utilities, et
15 cetera.

16 Now, in the year that the Society
17 was incorporated it's listed there sa 12,000
18 for rent, utilities, et cetera, and that's a
19 partial year, right?

20 MR. BENSON: Correct.

21 MR. COLLINS: What page you are on
22 there?

1 MS. STEURY: Eight. And then in
2 column B it's the proposed tax years for 2000
3 and 2001, column B and C, is that right?

4 MR. BENSON: Yes.

5 MS. STEURY: And in those same
6 areas you've got a \$59,000 item and a an
7 \$11,000 total. That just seems to bounce
8 around a lot. Could you explain that a little
9 bit?

10 MR. BENSON: These would have been
11 numbers we would have gotten from Evermay
12 Society. So I don't have any independent
13 knowledge to the budgeted numbers on line 20.

14 MS. STEURY: No explanation why it
15 would be almost \$60,000 one year and the next
16 year it would be almost \$10,000?

17 MR. BENSON: I don't have any
18 recollection.

19 MS. STEURY: Okay. And do you
20 know what the rent, utilities, et cetera is
21 now eight years later, seven years later?

22 MR. BENSON: The rent, I believe,

1 is \$11,000. Almost \$11,000.

2 MS. STEURY: Excuse me. These are
3 yearly totals, are they not?

4 MR. BENSON: Correct.

5 MS. STEURY: Current year? So do
6 you believe the rent now is \$11,000 per year?

7 MR. BENSON: Correct.

8 MR. BELIN: No.

9 MR. BENSON: No?

10 MR. BELIN: (Off microphone).

11 MR. BENSON: Yes. \$11,000 per
12 month. I'm sorry. I may have misspoke.

13 MS. STEURY: Yes. So it's twelve
14 times, correct, what is listed in column C?

15 MR. BENSON: Correct.

16 MS. STEURY: In just the rent, not
17 including the utilities and the et cetera,
18 right?

19 MR. BENSON: Correct.

20 MS. STEURY: Do you know what "et
21 cetera" -- you're familiar with these forms,
22 I assume?

1 MR. BENSON: Yes, ma'am.

2 MS. STEURY: Do you know what "et
3 cetera" usually involves?

4 MR. BENSON: Where are on this
5 form?

6 MS. STEURY: I'm in line 20,
7 occupancy, rent, utilities, et cetera.

8 MR. BENSON: Anything related to
9 whatever your occupancy expenses would be.

10 MS. STEURY: So is it fair to
11 assume that in terms of the lease that was
12 signed in 2005 the et cetera would be the
13 grounds upkeep and the rest of what Evermay
14 Society now spends according to the lease on
15 the property?

16 MR. BENSON: That's correct.

17 MS. STEURY: Thank you. Now, if
18 you'll give me a moment, I'll try to get back
19 to my one other question.

20 If Mr. Belin's private property is
21 appreciating, would that raise a question
22 about private inurement for the Evermay

1 Society?

2 MR. BENSON: Not that I'm aware of
3 under the IRS regulations, no.

4 MS. STEURY: Can you explain how
5 you see it as not private inurement?

6 MR. BENSON: It's -- it's a rental
7 of the property in accordance with a typical
8 leave. So, I mean so in that sense it could
9 devalue, depreciate as well. So the IRS is not
10 -- it's looking to whether or not the property
11 is being used for public benefit, not whether
12 or not the property is going to appreciate or
13 depreciate in value.

14 MS. STEURY: Okay.

15 MR. BENSON: Thank you.

16 CHAIRPERSON MILLER: Okay. Is
17 that it for Mr. Benson?

18 MR. BENSON: Thank you very much.

19 CHAIRPERSON MILLER: Thank you
20 very much.

21 MR. COLLINS: Just a few questions
22 on redirect.

1 CHAIRPERSON MILLER: It's not it
2 yet.

3 CHAIRPERSON MILLER: I will be
4 very quick.

5 Mr. Benson, what if, are the
6 penalties for misstating information on a tax
7 return, such as these tax returns you've been
8 asked about today?

9 MR. BENSON: There's penalties,
10 penalties and interest and then, of course,
11 there's criminal violations if there's fraud
12 and the filing of the tax returns.

13 MR. COLLINS: As a Board Member
14 and an expert in this area in looking at these
15 documents that you've been given both tonight
16 and earlier do you see anything that would
17 give you any cause for concern?

18 MR. BENSON: No. And in
19 particular having the use of an outside audit
20 firm, the CPA do the annual tax return and do
21 the audit gave the Board the comfort to
22 approve those audited financial statements.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: And so you don't see
2 any issue or any problem as an expert witness
3 in any of these documents and that you feel
4 very comfortable this states -- or that the
5 information presented in this is totally in
6 accordance with the law.

7 MR. BENSON: Yes, sir.

8 MR. COLLINS: Thank you.

9 MS. STEURY: Redirect -- I mean
10 recross.

11 CHAIRPERSON MILLER: We don't have
12 recross.

13 MS. STEURY: You --

14 CHAIRPERSON MILLER: No, we don't.
15 No. Not under our rules.

16 Okay. Thank you, Mr. Benson.

17 I think we need to just do one
18 more reality check and see if this going to
19 finish tonight realistically or not. Last
20 week we did go until 11:00 and that other case
21 didn't finish. So I just want to get an
22 another assessment from the parties here and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 see if you still do think there's a chance
2 that we can finish or else you want to try for
3 another hour and a half after we take a break
4 or you want to stop here? Let me just hear
5 from the parties before we break.

6 MR. COLLINS: Well, on behalf of
7 the applicant we would very much want to
8 finish this evening. And I don't know if
9 anybody needs to take a break or not.
10 Personally, I don't need to take a break. I'd
11 rather be done.

12 Our presentation is done. All we
13 need now is the closing --

14 MR. CROCKETT: No break.

15 MR. COLLINS: -- and Mr.
16 Crockett's witness has already testified.
17 There's no more testimony from either he or
18 his witness.

19 CHAIRPERSON MILLER: I know that.
20 Okay.

21 MR. COLLINS: And so Ms. Steury I
22 think has one or two witnesses and the ANC has

1 the testimony based on the document that they
2 filed. And that's it.

3 CHAIRPERSON MILLER: Yes. We do
4 say limit case presentation to an hour
5 consolidated. So that's the max, I believe,
6 that the opposition would do. Do you think
7 you're going to be at that max.

8 MR. CROCKETT: I think we'll be
9 probably near the max on that. But the way
10 things are going with cross -- I have a good
11 deal of cross examination for Mr. Belin and
12 for the other people that are still here. I
13 still have cross examination for the Office of
14 Planning who hasn't given the testimony yet.

15 So as far as I'm concerned it's
16 9:00 at night which is when most lawyers go
17 home. I would prefer to go home and come back
18 at another time when we're fresh and we can do
19 this in a reasonable manner.

20 CHAIRPERSON MILLER: And what is
21 the time constraints that the applicant has?

22 MR. COLLINS: Well --

1 CHAIRPERSON MILLER: That's what
2 we understood that there were some.

3 MR. COLLINS: Well, frankly, there
4 are. The Society has been shutdown since last
5 year unable to undertake anything except out
6 of Mr. Belin's own pocket. There are no more
7 -- there are several more events that were
8 agreed to by the Attorney General. Employees
9 will lose their jobs. And the Society will
10 have to shutdown if we don't get a decision
11 fairly soon.

12 And it's clear to me, and it
13 should be clear to the Board, that whatever
14 the applicant is asking for here the
15 opposition will be asking for the opposite.
16 And that's not a surprise, but I think you
17 need to take that into consideration. I will
18 ask you to take that into consideration.

19 CHAIRPERSON MILLER: We do need to
20 take a break. And I did indicate that we were
21 going to take a break to get something to eat.
22 I don't think the ANC Commissioner was the

1 only one who needs to eat.

2 I guess the question is, though,
3 you know the less time the better. You have
4 to figure out where you're going to pick up
5 something, too. It's kind of an odd hour down
6 here. Whether a half an hour would give you
7 enough time or whether you need like -- we did
8 it at 9:30, do you think that the parties
9 could get back by 9:30.

10 Yes, sir. You have to come to the
11 table, though in order to be on the record.

12 PARTICIPANT: Madam Chair, could
13 we order in and continue to go while they're
14 bringing food?

15 CHAIRPERSON MILLER: I bet some
16 people are fading at this point and probably
17 can't make it. Is that what you were say, Ms.
18 Steury?

19 MS. STEURY: I have to have a
20 break.

21 CHAIRPERSON MILLER: Yes. I think
22 that would have been a good idea earlier. But

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 my question is be back by 9:30? Well, we're
2 okay. We have our plan. Mr. Moy's not here
3 anymore, but I heard him to say earlier that
4 there is a fast food around here that's open.

5 So what's realistic for them to be
6 back by? 9:40, 9:30? Okay. You want to try
7 to aim for that? Okay. Let's go. Thanks.

8 (Whereupon, at 8:57 p.m a recess
9 until 9:44 p.m.)

10 CHAIRPERSON MILLER: Okay. We're
11 back on the record.

12 And we're continuing cross
13 examination of the applicant's witnesses.

14 I don't see the ANC here. He's on
15 his way. All right.

16 We can start with the opposition
17 party's cross. You ready, or Mr. Crockett?

18 MR. CROCKETT: Okay. Mr. Belin,
19 are you ready?

20 MR. BELIN: Well, we'll see.

21 MR. CROCKETT: Tell me, how long
22 did you and your family live at 1607 28th?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: My lifetime. So a
2 number of years.

3 MR. CROCKETT: Well, the year,
4 yes.

5 CHAIRPERSON MILLER: First of all
6 -- okay, go ahead, Mr. Crockett. I wanted to
7 make sure the mike was on.

8 MR. COLLINS: Well, we object.
9 There's no testimony on that issue.

10 CHAIRPERSON MILLER: Exactly. You
11 know it's 9:45 and you're entitled to do cross
12 on whatever is relevant, whatever has been
13 testified to. But not, you know, a wide open--

14 MR. CROCKETT: The application --
15 I assume that I can cross on anything that's
16 been brought up in the application which he
17 signed and filed and all the exhibits that
18 were a part of it.

19 CHAIRPERSON MILLER: Go ahead, Mr.
20 Collins.

21 MR. COLLINS: No, it's testimony.
22 Cross examination on his testimony.

1 CHAIRPERSON MILLER: That's right.

2 MR. COLLINS: The documents, the
3 written documents are what they are.

4 MR. CROCKETT: Well, no, that
5 can't be. It can't be that an applicant could
6 come in here and make two sentence testimony
7 and then I can't cross examination on his
8 application.

9 CHAIRPERSON MILLER: Well, it's
10 not all Mr. Belin, though. There's a lot in
11 the application. Well, ask your question and
12 we'll see. But, you know, really --

13 MR. CROCKETT: Well, I will go on.

14 CHAIRPERSON MILLER: Okay.

15 MR. CROCKETT: When did you move?

16 CHAIRPERSON MILLER: Maybe we
17 should have -- well, why is this relevant for
18 the special exception for a piece of property,
19 how it's being used, whether or not this is a
20 non-profit use under 217; why does it matter
21 when he moved?

22 MR. CROCKETT: Well, does it

1 matter that he's not a resident?

2 CHAIRPERSON MILLER: Is there
3 something in the regulation that requires
4 that?

5 MR. CROCKETT: No. All right.
6 I'll go on.

7 Does person live at Evermay?

8 MR. BELIN: No.

9 MR. CROCKETT: What persons have
10 offices at Evermay?

11 MR. BELIN: What persons? As to
12 specific offices, that type of thing?

13 MR. CROCKETT: Well, no. Just how
14 many people work there on a daily basis as
15 part of the Society. Not the --

16 MR. BELIN: Three full time and
17 two part time.

18 MR. CROCKETT: Okay. And who are
19 those?

20 MR. BELIN: The President/CEO,
21 Director of Operations, Director of
22 Hospitality.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: Okay.

2 MR. BELIN: We've got the
3 Operations Coordinator.

4 MR. CROCKETT: Okay.

5 MR. BELIN: And then we have --
6 and we have a gardener and a bookkeeper.

7 MR. CROCKETT: And they are all
8 employed by the Society?

9 MR. BELIN: The Society.

10 MR. CROCKETT: Okay. Is there
11 anybody officing on site who just does
12 scholarly work or other work besides that of
13 the people you just named?

14 MR. BELIN: For the Society?

15 MR. CROCKETT: Yes.

16 MR. BELIN: No.

17 MR. CROCKETT: Okay. I think we
18 heard testimony as to who the Directors were
19 in 2007. And I wanted to ask you when you
20 started actually holding events at Evermay
21 that people paid for?

22 MR. BELIN: 2005. I mean, they've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been -- there had been smatterings of that
2 over time, even starting in 1999. But there
3 weren't very many.

4 MR. CROCKETT: How many would you
5 imagine per year that you charged people to
6 use Evermay for after 1999?

7 MR. BELIN: Between 1999 and 2005?

8 MR. CROCKETT: Yes.

9 MR. BELIN: For instance?

10 MR. CROCKETT: Yes.

11 CHAIRPERSON MILLER: Let me just
12 interrupt here. I'm sorry. I thought it was in
13 the record how many events you've had for the
14 last few years. And the point of cross
15 examination is not to ask these wide open
16 questions. I mean, if you had a problem with
17 what he testified to, it would be more in the
18 nature of isn't it true that you actually had
19 a 100 events in 2007 or something. You know,
20 it really zeros in on the testimony.

21 So I'm saying you need to focus to
22 what's relevant.

1 MR. CROCKETT: Well, I suppose at
2 this point then I ought to say that Ms. Steury
3 has listed all of these witnesses as her
4 witness. And if we have to do this this way,
5 if cross examination is restricted to what
6 came out of each witness' mouth and that's it,
7 then we want to call all of these witnesses as
8 our witnesses so that we can ask them the
9 questions that we want to ask them.

10 CHAIRPERSON MILLER: Well, I don't
11 think you can do that. Basically, I didn't
12 say that you -- we did discuss whether or not
13 you're specifically limited to the testimony.
14 And I didn't really go so far as to say that
15 if there was representations made by Mr. Belin
16 in the case that you couldn't challenge them.
17 But that doesn't mean you can ask wide open
18 questions to make your case.

19 And, Mr. Collins, you can respond
20 but it's been certainly my understanding that
21 if they want to be your witnesses, they can.
22 But you can't force them to be your witnesses.

1 MR. CROCKETT: Well, they are here
2 now and we put them on the witness list, so --

3 CHAIRPERSON MILLER: And under the
4 rules, you know, that doesn't mean -- Mr.
5 Belin, you going to be a witness for both
6 yourself and for the opposing parties.

7 MR. BELIN: No.

8 CHAIRPERSON MILLER: Okay. Now,
9 Mr. Crockett, we have our rules and our rules
10 give you an opportunity to cross examine. So,
11 it doesn't give you an opportunity to use the
12 witnesses to make your whole case by asking
13 wide open questions.

14 MR. CROCKETT: Well, quite
15 frankly, Madam Chairman, the only way we can
16 make our case is through these witnesses. The
17 neighbors cannot make a case as to whether or
18 not the Society is a legitimate society,
19 whether there is any intermingling of funds,
20 that sort of thing. I mean, all we can do is
21 to testify as to what the effects are.

22 CHAIRPERSON MILLER: Well, that's

1 important part of the case.

2 MR. CROCKETT: Yes.

3 CHAIRPERSON MILLER: The adverse
4 impact on the neighborhood.

5 MR. CROCKETT: That's very
6 important, but to say that the parties, the
7 opposing parties cannot look into or ask
8 questions that are relevant to the operation
9 of the Society at this location, I think
10 that's just a denial of due process.

11 CHAIRPERSON MILLER: Well, it's
12 not a fishing expedition here, Mr. Crockett.

13 MR. CROCKETT: It's a fishing
14 expedition.

15 CHAIRPERSON MILLER: If you're
16 challenging their non-profit status and you
17 have a question that deals, for instance, with
18 the non-profit status or information that they
19 testified to that you think is not correct and
20 you want to challenge that, you have an
21 opportunity to do that. But we're not here
22 for you to ask questions about the whole

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 history of Evermay, or whatever?

2 MR. CROCKETT: Well, we did have
3 the history of Evermay.

4 CHAIRPERSON MILLER: Well, if you
5 want to challenge something.

6 MR. CROCKETT: So I don't really
7 need to go -- I don't really need to go into
8 that. But let's start with the checks that
9 were written, the one in '99 for the filing
10 fee for the BZA. Who wrote that check and on
11 what account?

12 MR. COLLINS: There was no
13 testimony about a filing fee in '99.

14 MR. CROCKETT: The check -- there
15 was a testimony about the fact that an
16 application was filed in 1999 and it was
17 withdrawn.

18 CHAIRPERSON MILLER: Really, I
19 think, who wrote a check for a filing fee for
20 a BZA application is not relevant to the case.

21 MR. CROCKETT: Who wrote the check
22 for this BZA application? I know Mr. Belin

1 did. It's in the record. And I just want to
2 ask him on what bank account it was drawn,
3 whether it was the Society's or his.

4 MR. COLLINS: If it's in the
5 record and if it's a check in the record, then
6 it shows.

7 MR. CROCKETT: It doesn't show.

8 MR. COLLINS: Well then --

9 CHAIRPERSON MILLER: The question
10 is was it written from a personal checking
11 account or --

12 MR. CROCKETT: Yes.

13 CHAIRPERSON MILLER: -- the
14 foundation's checking account?

15 MR. CROCKETT: Yes, that was the
16 question.

17 CHAIRPERSON MILLER: Okay. And
18 that's relevant because you think there's some
19 kind of intermingling of funds or something
20 like that?

21 MR. CROCKETT: Yes. I don't think
22 that this Society is a legitimate society. I

1 think it's his alter ego, and that's going to
2 be our position and that's what I want to
3 cross examine him on.

4 CHAIRPERSON MILLER: And what bank
5 account this check came from would show that
6 this -- there's something illegitimate about
7 the foundation?

8 MR. CROCKETT: Not illegitimate.
9 It's not illegitimate. It's just that if Mr.
10 Belin wrote the check on his own account for
11 the society, then that's an indication that
12 the Society is something that he uses and he
13 pays for things when he wants to and out of
14 his own account he pays for things out of the
15 Society account when he wants to.

16 MR. BELIN: No. No. There's no
17 way. I don't know.

18 CHAIRPERSON MILLER: But are you
19 answering the question you don't know, is that
20 what you're saying?

21 MR. BELIN: Yes.

22 CHAIRPERSON MILLER: Okay.

1 MR. BELIN: I don't know. I mean
2 1999 --

3 MR. CROCKETT: No, I'm not talking
4 -- we're talking about this time.

5 MR. BELIN: I have no idea.

6 CHAIRPERSON MILLER: Can you
7 answer the question?

8 MR. BELIN: No. No idea.

9 CHAIRPERSON MILLER: I mean you
10 don't know, is that the answer?

11 MR. BELIN: I don't have -- I
12 would need to check the records to be very,
13 very sure before I answered a question like
14 that. We have several bank accounts.

15 CHAIRPERSON MILLER: Okay.

16 MR. BELIN: And they're all tied
17 to the Society.

18 CHAIRPERSON MILLER: Okay. It's
19 been asked and answered then.

20 MR. CROCKETT: Do you have a
21 business license to rent Evermay?

22 MR. BELIN: To the --

1 MR. CROCKETT: Do you have a
2 personal business license to rent the property
3 to Evermay?

4 MR. BELIN: To the Evermay
5 Society?

6 MR. CROCKETT: Yes, to the Evermay
7 Society. I think you've testified that you
8 don't receive a salary from the Evermay
9 Society?

10 MR. BELIN: That's correct.

11 MR. CROCKETT: Your wife doesn't?

12 MR. BELIN: No.

13 MR. CROCKETT: Do any of the
14 Directors?

15 MR. BELIN: No.

16 MR. CROCKETT: Do any of the
17 officers receive a salary?

18 MR. BELIN: Well, the -- the --
19 our chief financial officer receives a salary.

20 MR. CROCKETT: Okay. Is he the
21 only one?

22 MR. BELIN: Of the officers?

1 MR. CROCKETT: Yes.

2 MR. BELIN: Yes.

3 MR. CROCKETT: Okay. Now you
4 advertise that you have parking for 100 cars
5 and that you constructed these parking lots,
6 I think you testified, sometime in 2004?

7 MR. BELIN: Four or '05.

8 MR. CROCKETT: Did you obtain a
9 building permit and the permission of the
10 Historic Preservation Review Board before
11 constructing those parking lots?

12 MR. BELIN: We didn't construct
13 anything. We used existing space. None of the
14 drainage systems were altered. I don't know
15 where construction would have come into the
16 equation.

17 MR. CROCKETT: Did you put
18 blacktop down?

19 MR. BELIN: No.

20 MR. CROCKETT: The one place used
21 to be a tennis court.

22 MR. BELIN: It's still a tennis

1 court. It's a tennis court in the rough, but
2 it's a tennis court.

3 MR. CROCKETT: Okay. Let's go to
4 the parking on the street.

5 You said that in your opinion most
6 people don't park on the street.

7 MR. BELIN: Most people don't park
8 on the street as increasingly we have the
9 ability to control that. That's correct.

10 MR. CROCKETT: And the way you
11 control is is that you happen to be there, you
12 try and instruct them to come in and park in
13 the lot with the valet?

14 MR. BELIN: No. When you say
15 "most people," are we going to differentiate
16 between guests?

17 MR. CROCKETT: Yes.

18 MR. BELIN: And service
19 organizations?

20 MR. CROCKETT: Okay.

21 MR. BELIN: The services
22 organizations, there's no question. They won't

1 work for us another day if they don't come of
2 the street.

3 MR. CROCKETT: Okay. Well, that's
4 fine.

5 MR. BELIN: All right. So guests,
6 as much as we can control them, come off the
7 street because they know they're meant to.

8 MR. CROCKETT: And what other
9 mechanisms do you have besides just telling
10 them that's what they're supposed to rather
11 than --

12 CHAIRPERSON MILLER: Okay. In the
13 interest of time, I believe that we explored
14 this issue. Ms. Kovach answered very
15 thoroughly about the contracts that they have
16 with guests and things like that.

17 MR. CROCKETT: Have you ever
18 monitored the noise from the traffic outside
19 of the gates of Tudor Place?

20 MR. BELIN: No.

21 MR. CROCKETT: Okay. Do you know
22 what the neighbors experience in terms of

1 noise from the traffic when it's coming in,
2 let's say 8:00 at night when it's leaving at
3 12:00 or 1:00 at night; what type of effect
4 that traffic has?

5 MR. BELIN: At Tudor Place?

6 MR. CROCKETT: No. I'm sorry. Not
7 at Tudor Place.

8 MR. BELIN: You said Tudor Place.

9 MR. CROCKETT: At Evermay. I'm
10 sorry. I've got Tudor Place on my mind.

11 MR. BELIN: All right.

12 MR. CROCKETT: That's an old case,
13 an old memory.

14 MR. BELIN: I understand.

15 You're talking Evermay then?

16 MR. CROCKETT: I'm talking
17 Evermay.

18 MR. BELIN: Would you repeat the
19 question then?

20 MR. CROCKETT: The question is if
21 you're aware of the impacts of having the
22 traffic and the people who have been having a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 good time at these parties coming out of the
2 function, let's say it's a night function, and
3 whether that has an impact or not the nearby
4 neighbors?

5 MR. BELIN: There are times when
6 I'm sure it does, and we continue to work on
7 trying to correct those problems when they
8 come to our attention.

9 MR. CROCKETT: Do you know of
10 anyway you can eliminate those problems?

11 MR. BELIN: Not entirely.

12 MR. CROCKETT: So they're always
13 going to be there, aren't they?

14 MR. BELIN: At -- at particular
15 times, I would say yes, in all fairness. Yes.

16 MR. CROCKETT: And if you run
17 something like a restaurant office or
18 weddings, a restaurant business where you're
19 hosting weddings and functions where people
20 really want to have a good time and that's
21 what they're there for, and there is usually
22 alcohol served. And they're coming out at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 12:00 at night, there is going to be some
2 disturbance I think. At least that's been my
3 experience in life.

4 MR. BELIN: Occasionally depending
5 on how we manage the guest flow.

6 MR. CROCKETT: But you don't have
7 any control over them once they leave the
8 gate?

9 MR. BELIN: Well, they often
10 because we have a different mix of managing
11 events, if it's mostly shuttle you won't hear
12 the noise.

13 MR. CROCKETT: Okay. Now you
14 testified that the neighbors opposed your
15 application in 2002, is that correct?

16 MR. BELIN: 2002, correct.

17 MR. CROCKETT: 2002?

18 MR. BELIN: Yes.

19 MR. CROCKETT: And because of that
20 opposition you withdraw it?

21 MR. BELIN: Correct.

22 MR. CROCKETT: What's different in

1 the operation today that makes you feel that
2 that opposition should not exist?

3 MR. BELIN: Control.

4 MR. CROCKETT: Control of the
5 traffic?

6 MR. BELIN: Strict control of
7 everything, not just traffic. Everything.

8 MR. CROCKETT: Now I've looked at
9 the record and I believe that Ellen Steury put
10 this in the record at some point. Jack Evans
11 wrote a letter to the Board in the previous
12 proceeding stating all of his objections.

13 MR. BELIN: Correct.

14 MR. CROCKETT: And has Jack Evans
15 changed his mind? Do you have a letter from
16 Jack Evans saying that he now supports you?

17 MR. BELIN: No.

18 MR. CROCKETT: So as far as you're
19 concerned his objections are still the same?

20 MR. BELIN: I wouldn't know. I
21 can't answer for Jack Evans.

22 MR. CROCKETT: Have you asked for

1 his support?

2 MR. BELIN: Have I asked for Jack
3 Evans' support?

4 MR. CROCKETT: Yes.

5 MR. BELIN: No. I've kept him
6 apprised, as I stated in my testimony.

7 MR. CROCKETT: Okay. I wanted
8 to you ask you aside from the director we
9 talked about -- I mean the officer we talked
10 about who received a salary, who are the other
11 people that receive salaries that work for the
12 Evermay Society?

13 MR. BELIN: The Director of
14 Hospitality.

15 MR. CROCKETT: And what does she
16 earn?

17 MR. COLLINS: I object.

18 MR. BELIN: Yes, thank you.

19 CHAIRPERSON MILLER: Yes, what's
20 the relevance?

21 MR. CROCKETT: Shall I continue on
22 who gets salary?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: Yes, we'll take it.

2 Our Director, the Operations Coordinator.

3 MR. CROCKETT: Okay.

4 MR. BELIN: Our gardener.

5 MR. CROCKETT: I thought I saw
6 something that it was contracted out. That
7 yard maintenance was contracted out.

8 MR. BELIN: Some of it is now
9 because we have to dismiss our head gardener
10 and caretaker.

11 MR. CROCKETT: Okay. So do you
12 have a new one.

13 MR. BELIN: We have one man.

14 MR. CROCKETT: You have one man?

15 MR. BELIN: He was assistant
16 gardener. He fills the billet now.

17 MR. CROCKETT: Okay. And --

18 CHAIRPERSON MILLER: What's the
19 relevance here of who gets salary?

20 MR. CROCKETT: It goes to our
21 basic theory, once again, Madam Chairman. And
22 if I can't get into these issues which are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 solely within the knowledge of these people,
2 then --

3 CHAIRPERSON MILLER: I don't
4 understand where you're going and how it's
5 related to special exception and 217.

6 MR. CROCKETT: The fact that he's
7 running a business out of a single-family home
8 is related to a special exception where homes
9 are not supposed to be anything but home for
10 family; I think that all of the financial
11 transactions when you're talking about a
12 business that is applying for this Board
13 that's been operating illegally for five
14 years, it comes into this Board and asks for
15 a license to do what they've been doing
16 illegally, I think we have -- I think we
17 should have an opportunity to find out what
18 this business is and how it operates.

19 CHAIRPERSON MILLER: I think that
20 we need to be focused here. It's not 10:00 in
21 the morning. Not, that you won't get a full
22 opportunity for your cross, but I'm looking at

1 217. And that's the Board uses to determine
2 whether or not to grant the special exception
3 here. And I don't see the relevance about
4 asking who is on salary. But if you can point
5 to a provision in 217 and explain, we'll give
6 you --

7 MR. CROCKETT: Well,
8 unfortunately, 217 itself is totally vague. It
9 talks about the purpose of a non-profit
10 corporation. And what I'm trying to establish
11 here is what the purpose of this particular
12 non-profit corporation is. And in my view, and
13 from what I've looked at, the purpose is to
14 run a business. To run a wedding business. To
15 run an event business. And that is the
16 purpose.

17 And to me, that is inimical to the
18 zone R-B-1. And if that's all that they're
19 doing, and that's what they're doing, then
20 there should be no exception authorized.

21 COMMISSIONER EASON: Madam Chair,
22 if I could speak to that issue, now that I've

1 had a bite to eat?

2 It seems to me that there's two
3 parts of 217. One is that they have to be a
4 non-profit, and; (2) that they use the
5 proposed--

6 MR. COLLINS: This is cross
7 examination by Mr. Crockett --

8 COMMISSIONER EASON: There's an
9 objection, and I'm speaking to it.

10 CHAIRPERSON MILLER: That's true.
11 Just wait.

12 Mr. Collins, do you have something
13 to say to this?

14 And we're not preventing you from
15 making any whatever argument you all are going
16 to make in your opposition. The point is this
17 cross examination does not seem to go -- that
18 I was making to help us evaluate 217, whether
19 or not this organization meets the
20 requirements of 217. It seems to be off
21 field.

22 MR. CROCKETT: If you don't know

1 and have evidence as to what the specific
2 purposes. He stated all the purposes, which
3 had absolutely nothing to do with running a
4 commercial business out of a private home to
5 finance the activities of a society that
6 doesn't have any other activities. I mean,
7 what you see here is there is nobody in
8 residence there in a capacity of a scholar or
9 doing the work of relating us to the past.
10 The only thing that's going on there is that
11 they're running a business.

12 And if that's the purpose, then I
13 say it's an illegitimate purpose.

14 CHAIRPERSON MILLER: Okay. That's
15 your argument. But I still don't see it. You
16 can make that argument, but I don't see why
17 you should be probing salaries and the
18 positions here.

19 They've made a representation that
20 there is some salaried -- is it your position
21 that if you're a non-profit, you don't have
22 anybody on staff that you pay?

1 MR. CROCKETT: No. What I'm
2 getting at, Madam Chairman, is the nature of
3 the business. And the nature of this Society
4 and the purpose of its business.

5 CHAIRPERSON MILLER: Okay. You
6 said that a few times.

7 Mr. Collins, do you have anything
8 to say?

9 MR. COLLINS: Well, I just think
10 that this whole discussion is out of line. It
11 has nothing to do with the non-profit purposes
12 or the use of the property by a non-profit
13 organization.

14 Yes, it's been stated that the
15 property has been used by the non-profit
16 organization for a number of years without
17 this approval by this Board, and that's why
18 we're here. We're trying to get the approvals
19 that are necessary in order to allow the
20 operation to continue -- the non-profit
21 organization to continue on the property. And
22 that's why we're here. And we're stipulating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's why we're here. And the record is
2 clear that's why we're here. And there really
3 doesn't need to be any cross examination on
4 whether -- you know, that's the way the
5 operation has been going.

6 We're looking forward. We're
7 looking forward in order to get the approval
8 that's necessary to operate the Evermay
9 Society on this property.

10 CHAIRPERSON MILLER: Okay. And
11 I'm sorry. I don't think that I want to
12 entertain argument from the ANC at this point.
13 I don't think it is in your report
14 necessarily, something that you need to say to
15 defend Mr. Crockett's line of questioning.

16 MR. CROCKETT: Madam Chairman, I
17 am --

18 CHAIRPERSON MILLER: I think we
19 need to move on.

20 MR. CROCKETT: I am through and
21 this I will turn this over to Ms. Steury.

22 CHAIRPERSON MILLER: Thank you.

1 MS. STEURY: I'm going to start in
2 no particular order, Mr. Belin. Because I just
3 want to make sure I understood some of the
4 things that you said in your earlier
5 testimony.

6 Now you made the statement that
7 the abutting homes were unanimous in their
8 approval this application or support for this
9 application, right? The abutting homes to the
10 Evermay property?

11 MR. BELIN: Correct.

12 MS. STEURY: And can you tell me
13 how many abutting homes there are?

14 MR. BELIN: Well, in -- with --
15 considering that Dumbarton House is actually
16 not a home, but including that nevertheless,
17 they're a neighbor, one, two, three, four,
18 five.

19 MS. STEURY: Five. And how many
20 of those five homes have people living in them
21 right now?

22 COMMISSIONER EASON: I'm going to

1 object. The testimony was not as abutting
2 homes. It was abutting properties in support.

3 CHAIRPERSON MILLER: Sorry. I
4 don't see the distinction.

5 I think that it does go to the
6 meaning of his testimony. You know, how many
7 people does that represent. Okay. Go ahead.
8 I don't see a problem.

9 MS. STEURY: Let me be clear about
10 my question. The question is if these people
11 support it, are they experiencing what it
12 means to live there. No one lives at
13 Dumbarton House, right?

14 MR. BELIN: One person, I believe.

15 MS. STEURY: Lives there.

16 MR. BELIN: Caretaker.

17 MS. STEURY: Oh, okay. And then
18 out of the outer?

19 MR. BELIN: Then there's next
20 door, the Katz.

21 MS. STEURY: The Katz.

22 MR. BELIN: And they live there.

1 MS. STEURY: And the rest of the
2 homes are empty, correct?

3 MR. BELIN: No. 1607 is now
4 occupied.

5 MS. STEURY: And how long has it
6 been occupied?

7 MR. BELIN: A day. But it's been
8 occupied.

9 MS. STEURY: A day. I'll take
10 that answer.

11 It's been my observation that it's
12 not been occupied.

13 CHAIRPERSON MILLER: Okay. You
14 get to testify, too.

15 MS. STEURY: Pardon? Yes.

16 And you also stated that you have
17 been closed down for almost a year now. When
18 were the cease and desist orders issued?

19 MR. BELIN: Actually, the cease
20 desist were issued in December, but we had
21 investigators on the property and we had to
22 begin to gear up to trying to understand what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was going on in October.

2 MS. STEURY: But you've really
3 only been closed down since December, right?

4 MR. BELIN: By cease and desist.

5 MS. STEURY: Yes. And when you
6 say "closed down," you're talking about it
7 from a financial aspect? Because, actually,
8 the operations just were suspended July 4th
9 and there will be two more in August, right?

10 MR. BELIN: As far as --

11 MR. COLLINS: Think about that
12 question.

13 MR. BELIN: Yes. Yes. You're
14 talking about activities or are you talking
15 about how we're surviving?

16 MS. STEURY: No, I'm talking
17 about.

18 MR. BELIN: We're not surviving.

19 MS. STEURY: I'm talking about
20 activities. That from the neighbors' point of
21 view your operations have not ceased. From
22 your point of view and the financial point of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 view, your operations have ceased. So I'm
2 just trying to clarify for the record what he
3 meant by being "closed down for almost a
4 year."

5 MR. BELIN: Yes. Having been
6 reduced from 78 to 25, yes, we do -- we did a
7 shortened season. Correct.

8 MS. STEURY: When we spoke in the
9 negotiations a few weeks ago, we spoke about
10 outside auditors. And I understood you at that
11 time to say you didn't think you'd ever had an
12 independent financial audit. Did I
13 misunderstand or have you learned something
14 since then, or --

15 MR. BELIN: No, we have -- we have
16 an accountant that does our auditing.

17 MS. STEURY: Is that an
18 independent financial auditor?

19 MR. BELIN: I'm not a financial
20 genius here. I'm not quite sure how you're
21 asking the question.

22 MS. STEURY: Okay. Let me be a

1 little more specific.

2 MR. BELIN: Yes.

3 MS. STEURY: Do you get an end
4 product that includes a -- what I would think
5 of as a profit loss statement but I know
6 that's not the term for non-profits, but the
7 equivalent of that on a yearly basis that is
8 signed with an opinion by an independent
9 auditor?

10 MR. BELIN: No. We get an
11 accounting of our activities.

12 MS. STEURY: Okay. Now in your
13 testimony you mentioned that one of the goals
14 of the Evermay Society is to keep the property
15 open to the public. And at the same time, you
16 testified that people are permitted there only
17 by contract or by appointment. Can you
18 reconcile those for me so that I understand
19 what you mean when you say "open to the
20 public?"

21 MR. BELIN: Ask the question
22 again, if you would, please.

1 MS. STEURY: Yes. It sounds on the
2 one hand like you try to limit the visitors.
3 On the other hand, you say one of the goals is
4 to keep it open to the public. And those seem
5 to be contradictory to me. I wondered what you
6 mean when you say you want to keep it open to
7 the public.

8 From what I can tell -- you
9 answer.

10 MR. BELIN: Well, I don't
11 understand the question still.

12 MS. STEURY: Okay.

13 MR. BELIN: Because we don't limit
14 in the sense of anything but what we are
15 imposing upon ourselves when it comes to
16 capability, capacity. Now more recently how
17 we're trying to begin to define what may be
18 the minimum to the maximum number of events.
19 If that's what you're talking about as far as
20 limit, that's one thing.

21 MS. STEURY: No. Are the grounds
22 basically closed to people unless they have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contract or an invitation from you?

2 MR. BELIN: The grounds are closed
3 other than by appointment only.

4 MS. STEURY: You mentioned that
5 you think that there are very few cars from
6 your events parked on the street anymore. Can
7 you put a time frame on when you think that
8 started to be the case?

9 MR. BELIN: Two years ago.

10 MS. STEURY: Now this is -- but it
11 was longer than two years ago that you put in
12 the parking on property?

13 MR. BELIN: It could be three
14 years ago then. Parking certainly made a
15 difference. But I do think for your -- to be
16 very sure you understand what I'm saying,
17 we're constantly working to improve the
18 situation. And there have been a lot of things
19 we've included in our negotiations with guests
20 recently in the last two or three years that
21 give us greater control as to --

22 MS. STEURY: And have there --

1 MR. BELIN: -- as to what they can
2 do and what they can't do.

3 MS. STEURY: And has there been --

4 MR. BELIN: Parking lots don't
5 establish that. It comes from policy and
6 procedure instead.

7 MS. STEURY: Yes.

8 MR. BELIN: And enforcement of
9 that.

10 MS. STEURY: Yes. And have there
11 been additional changes in the just the last
12 few months on that score?

13 MR. BELIN: We haven't been in --
14 we haven't been doing business.

15 MS. STEURY: Well --

16 MR. BELIN: Other than the events.

17 MS. STEURY: Well, that's what I'm
18 talking about. That's what generates the
19 parking problem, right?

20 MR. BELIN: Well, it depends on
21 what we're talking about when you talk about
22 business. What are we talking about? Is this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 day-to-day, which we don't have or is this the
2 25 events we were allowed to host. Because --

3 MS. STEURY: I'm talking about the
4 events.

5 MR. BELIN: -- there's a big
6 difference. I mean --

7 MS. STEURY: I'm talking about the
8 events.

9 MR. BELIN: Okay. Then ask the
10 question again, please.

11 MS. STEURY: Okay. My question was
12 have you made, let's say since September of
13 2007, have you implemented new parking
14 policies to reduce the on street parking since
15 that time?

16 MR. BELIN: Yes. We continue to
17 work on that. Absolutely.

18 MS. STEURY: Okay. Did I
19 understand you correctly, and this is just
20 making sure that I heard it correctly, that
21 you did not accept any contributions to the
22 Evermay Society from these 25 events, or

1 whatever the correct number is, 28, whatever
2 the number was in 2008?

3 MR. BELIN: We did not collect any
4 further contributions. We were in some cases
5 able to collect on cost only, but not
6 contributions.

7 MS. STEURY: What do you mean by
8 "cost?"

9 MR. BELIN: Well, on a given day
10 we're able to compute, because we have to for
11 non-profit reasons when it comes to
12 contributions and what's entitled as far as a
13 tax deduction. We know exactly what it costs
14 us on any given day based on a wedding versus
15 regular event or a non-profit event. Each
16 costs us differently. That we were allowed to
17 charge for, one day at a time.

18 MS. STEURY: Okay. I'm being kind
19 of dense then. So let's just take an example
20 so I can understand this.

21 For a wedding of more than 100
22 people, I guess it's all the same, what is

1 entailed in what you are calling the costs?

2 MR. BELIN: Salaries, utilities,
3 cost of doing business by 356 days. Depending
4 on how many hours the salaried people work.

5 MS. STEURY: Thank you.

6 MR. BELIN: Yes.

7 MS. STEURY: I noticed when you
8 testified that you stated that some of the
9 testimony here had been fiction and that it
10 wasn't true anymore. Would you be willing to
11 concede that it was perhaps historical fact,
12 but not fiction? Was that the point that you
13 were trying to make?

14 MR. BELIN: Historical fact in the
15 sense of years ago then versus now, yes.

16 MS. STEURY: Okay. Do you have --
17 no. Not do you. Can you tell me what your
18 understanding is of private inurement, how you
19 understand that term if you have an
20 understanding?

21 MR. BELIN: That I personally
22 benefit from what goes on at Evermay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEURY: And do you believe
2 that if your property is appreciating while
3 the Evermay Society is keeping and maintaining
4 it, that that could be private inurement?

5 MR. BELIN: No. I think that --
6 that's not the case.

7 MS. STEURY: And do you have an
8 understanding of why that wouldn't be the
9 case?

10 MR. BELIN: It wouldn't be the
11 case in the sense that that's not what we do
12 business for.

13 MS. STEURY: Okay. Anything else?

14 MR. BELIN: No.

15 MS. STEURY: Okay. Give me a
16 moment and I can skip a lot of these
17 questions.

18 When you first set up the Evermay
19 Society as it was incorporated in 1999 was one
20 of your motivating factors for setting that
21 up, was one of them was to assist with the
22 financial burden of maintaining that home?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: Was my motivation --

2 MS. STEURY: One of your
3 motivating. Yes, one of your motivators?

4 MR. BELIN: It would be to assist
5 in supporting what I thought was necessary
6 when it came to our goals and objects as
7 America's Living Room. You can't be talking a
8 place that hosts at a level we do and have it
9 a run down estate home and gardens. How do
10 you answer the question otherwise?

11 MS. STEURY: Yes, I understand.
12 And you have stated -- you've been very candid
13 about it in publications as well as public
14 statements that's in your estimation not
15 feasible for the home to be maintained as a
16 private residence because of the expense of
17 it. Is that fair to say you'd agree with
18 that, that you have said those things?

19 MR. BELIN: Yes. In my generation
20 I had to come up with a new solution.

21 MS. STEURY: Okay. I'm going to
22 show you your articles of incorporation. I'm

1 sure you're familiar with them, and they're in
2 the record, as you know.

3 CHAIRPERSON MILLER: I know, but
4 where are they in case the Board wants to find
5 them at this point to look at them?

6 MS. STEURY: Exhibit 2 of docket
7 44.

8 CHAIRPERSON MILLER: Thank you.

9 MS. STEURY: Yes.

10 Can you show me in here --

11 CHAIRPERSON MILLER: You have to
12 be on mike.

13 MS. STEURY: Does it say in the
14 articles of incorporation that you're going to
15 be America's Living Room?

16 MR. BELIN: Yes, I think it does.

17 MS. STEURY: When you get there,
18 let me know.

19 MR. BELIN: To provide a forum.
20 And an environment.

21 MS. STEURY: I need to get my
22 copy.

1 MR. BELIN: Here.

2 MS. STEURY: Thank you. I'm with
3 you. I'm with you.

4 Okay. So you think that falls
5 under C, that's where you would put that?

6 MR. BELIN: I do.

7 MS. STEURY: Okay. Thank you.
8 That's helpful.

9 And --

10 MR. BELIN: Actually, it's all
11 four. If you're talking Evermay as the
12 estate, it's forum and environment. Otherwise
13 it's all four.

14 MS. STEURY: What's all four?

15 MR. BELIN: America's Living Room.

16 MS. STEURY: Oh, I understand what
17 you're saying. I was talking about Evermay,
18 the estate.

19 MR. BELIN: Okay.

20 MS. STEURY: Tying it to a place.

21 MR. BELIN: That's what I thought.
22 Yes.

1 MS. STEURY: Was there some reason
2 that the word "Evermay," I'm sorry not the
3 word because it is in here. But the property
4 Evermay at 1623 28th Street, Northwest was not
5 mentioned anywhere in the articles of
6 incorporation?

7 MR. BELIN: When we first filed,
8 we had far less of an idea that we have today
9 as to how we felt we could best position
10 Evermay for the future.

11 MS. STEURY: "Evermay" being
12 which?

13 MR. BELIN: That Evermay --

14 MS. STEURY: The property or the
15 Society?

16 MR. BELIN: Evermay the property.

17 MS. STEURY: Okay. So you weren't
18 sure how you were going to position it in
19 1999?

20 MR. BELIN: Had no idea. Just knew
21 that this was something that was important and
22 that we most importantly wanted to figure out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a way to give back.

2 MS. STEURY: Yes. But are you
3 telling me that this section C here is in your
4 mind the link to the property?

5 MR. BELIN: I --

6 MS. STEURY: So it was in your
7 mind -- I'm sorry, I cut you off. Your answer
8 was yes?

9 MR. BELIN: No, go on.

10 MS. STEURY: Your answer was yes?

11 MR. BELIN: No. At that time we
12 were putting as our attorney has stated it
13 earlier, we were defining things as broadly as
14 we could until we had a better sense of where
15 we were going and what we wanted to do.

16 MS. STEURY: Okay. So your answer
17 was no that you did not have Evermay, the
18 property, in mind?

19 MR. BELIN: Absolutely Evermay was
20 in my --

21 MS. STEURY: In your mind?

22 MR. BELIN: In our minds.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Absolutely.

2 MS. STEURY: Okay. I'm sorry.

3 MR. BELIN: Okay.

4 MS. STEURY: It is late. I think
5 I missed something. Okay. We don't need to
6 back up, we'll just go forward.

7 It was in your mind when you
8 incorporated this non-profit?

9 MR. BELIN: The estate, yes.

10 MS. STEURY: Yes. Okay. And so
11 you had a plan to use that estate as part of
12 this non-profit?

13 MR. BELIN: Absolutely.

14 MS. STEURY: Okay. Okay. Then
15 again I need to ask why isn't that mentioned
16 here?

17 MR. BELIN: I can't tell you.

18 MS. STEURY: Okay. Are you
19 currently the President of -- I believe you
20 testified that you were currently the
21 President of the non-profit?

22 MR. BELIN: That's correct.

1 MS. STEURY: But isn't it also
2 true you haven't the President every single
3 year?

4 MR. BELIN: That's correct.

5 MS. STEURY: And can you identify
6 the years you weren't?

7 MR. BELIN: I can't specifically.
8 But I know that was the case.

9 MS. STEURY: Okay. Well, do you
10 think it was more than one year?

11 MR. BELIN: No. It was one year.

12 MS. STEURY: Okay. And do you
13 think it was maybe 2005?

14 MR. BELIN: I have no idea.

15 MS. STEURY: Do you think it was
16 during the time period you signed the lease as
17 landlord?

18 MR. BELIN: I honestly can't
19 answer that question.

20 MS. STEURY: Okay.

21 MR. BELIN: All I know is the
22 reason for that had a lot to do with I had

1 other responsibilities with a business
2 elsewhere.

3 MS. STEURY: Okay.

4 MR. BELIN: And I needed someone
5 to stand in because I could not provide the
6 full time oversight that I needed to.

7 MS. STEURY: Yes. Were you in the
8 United States most of 2005?

9 MR. BELIN: My wife's very good at
10 this sort of thing.

11 MRS. BELIN: Most of the time.

12 MR. BELIN: Yes.

13 MS. STEURY: Okay.

14 MRS. BELIN: He does have to go
15 overseas for two or three weeks at a time.

16 CHAIRPERSON MILLER: If you want
17 to be on the record, you have to come to the
18 mike.

19 MR. BELIN: No.

20 CHAIRPERSON MILLER: Okay.

21 MR. BELIN: Most of the time.

22 MS. STEURY: Okay. Thanks.

1 And do you recall when Mr. Davies
2 was hired to be the CFO?

3 MR. BELIN: Without going back to
4 the minutes, I wouldn't be able to tell you
5 that.

6 MS. STEURY: But you know -- okay.

7 MR. BELIN: He's been around for--

8 MS. STEURY: Well, let me pose it
9 this way.

10 MR. BELIN: From 2005 on.

11 MS. STEURY: Okay. And would it
12 surprise you if I told you did not show up on
13 your tax return for 2004?

14 MR. BELIN: No.

15 MS. STEURY: That sounds about
16 right?

17 MR. BELIN: Yes.

18 MS. STEURY: So you think maybe
19 from 2005?

20 MR. BELIN: Yes.

21 MS. STEURY: Now in 2005 was when
22 he was President of the Society as well.

1 MR. BELIN: Yes.

2 MS. STEURY: So I'm wondering what
3 went into the decision to make a newcomer to
4 the operation the President? Can you help me
5 with that?

6 MR. BELIN: Without going back to
7 the minutes, I can't.

8 MS. STEURY: Okay. Was it your
9 decision?

10 MR. BELIN: No, it was the Board's
11 decision.

12 MS. STEURY: Okay. And did he
13 come in as a Board member first and an
14 employee second or was it sort of the other
15 way around?

16 MR. BELIN: Board member first.

17 MS. STEURY: Okay.

18 MR. BELIN: He was consultant
19 before he was an employee.

20 MS. STEURY: He was a consultant.
21 Okay. Thank you. I was going to ask how do
22 you pick your Board members.

1 MR. BELIN: Yes.

2 MS. STEURY: I'm going to ask you
3 also about the meeting where the lease was --
4 the Board determined to enter into the lease.
5 Do you remember any of the specifics about
6 that meeting or any of the considerations that
7 went into making that determination?

8 MR. BELIN: I remember in
9 particular the discussion by our CFO, Mr.
10 Davies, of the extend that he went to in
11 checking other organizations of like kind in
12 the city, especially the Cocoran Gallery of
13 Art, how others were doing business and shared
14 extensively on that count as to how he arrived
15 at the value.

16 MS. STEURY: So the monthly rent,
17 is that what you're talking about.

18 MR. BELIN: Right.

19 MS. STEURY: Okay. Do you agree
20 with Mr. Benson when he said that no other
21 property was under consideration?

22 MR. BELIN: No other property for

1 the Evermay Society?

2 MS. STEURY: Yes, as a rental?

3 MR. BELIN: As a headquarters?

4 MS. STEURY: Yes.

5 MR. BELIN: Correct.

6 MS. STEURY: Okay. Now that's a
7 huge property with a lot of grounds, right?
8 A lot of space?

9 MR. BELIN: Correct.

10 MS. STEURY: And you've got a
11 handful of people rattling around in there.
12 Can you tell me were there any Board
13 discussions about it being an excessively
14 large or excessively expensive property for
15 the operation, for the purposes of the Evermay
16 Society?

17 MR. BELIN: No. That as we set
18 out to achieve our vision, that it was a
19 perfect fit.

20 MS. STEURY: And your vision, can
21 you --

22 MR. BELIN: America's Living Room.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEURY: Okay. Now we've had
2 previous discussions that we need to focus on
3 here and tie up and firm up the facts about.
4 The Evermay Society under the lease is
5 required to maintain and keep the property.
6 And those terms, I think, in the lease are not
7 crystal clear. So I'm asking you to tell me
8 what that means. What expenses does the
9 Evermay Society entail in that maintenance and
10 upkeep? And let me just cut to the chase.

11 I think you distributed a document
12 sometime this spring that identified the costs
13 at about \$350,000?

14 CHAIRPERSON MILLER: Is that in
15 the record?

16 MS. STEURY: Yes. That would be
17 document 44 Exhibit 4.

18 MR. BELIN: Maintenance, repairs.

19 MS. STEURY: Yes. And that
20 \$350,000 figure, you remember that?

21 MR. BELIN: Let me see.

22 MR. COLLINS: Here's what she's

1 talking about here.

2 MS. STEURY: I've got an extra
3 copy if it's easier.

4 MR. BELIN: Okay. Yes. All
5 right. That would entail building
6 maintenance, upkeep, florists, painting,
7 grounds.

8 MS. STEURY: The gardener's
9 salary?

10 MR. BELIN: Gardeners.

11 MS. STEURY: Yes.

12 MR. BELIN: Well, payroll is
13 separated out here.

14 MS. STEURY: Okay. Yes. Right.
15 Heating and air conditioning
16 repairs?

17 MR. BELIN: Utilities.

18 MS. STEURY: Okay. Let me ask
19 you, does it include the rent or is this
20 exclusive of the rent?

21 MR. BELIN: It would include the
22 rent.

1 MS. STEURY: That includes the
2 rent?

3 MR. BELIN: Yes.

4 MS. STEURY: Okay. So
5 approximately \$130,000 in rent for 2008 is not
6 in addition to the \$350,000?

7 MR. BELIN: In 2008 there hasn't
8 been any rent.

9 MS. STEURY: Well, but there's a
10 schedule of rents.

11 MR. BELIN: Yes. So what's the
12 question?

13 MS. STEURY: The \$130,000 that
14 would be currently due under the schedule of
15 rents --

16 MR. BELIN: Yes.

17 MS. STEURY: -- is included in the
18 350 or in addition to the 350?

19 MR. BELIN: Included.

20 MS. STEURY: Okay. You saw -- or
21 perhaps you didn't see earlier when I showed
22 the articles -- sorry. The projected rents,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 utilities, et cetera in the Form 1043 on page
2 8. For a partial year there was \$2,000 -- I
3 mean I'm sorry. A \$12,000 in that category
4 and then it jumped to \$59,000 and then it went
5 back. These are projections, I understand.

6 MR. BELIN: Right.

7 MS. STEURY: It went back to
8 11,000. Can you explain to me why that is
9 bouncing around? Rent's usually a little more
10 stable than that. Is there something that
11 happened or was there something that needed to
12 be bought or some repair that you were
13 expecting?

14 MR. BELIN: I can't explain that.

15 MS. STEURY: Okay. And you don't
16 have any memory of it?

17 MR. BELIN: No.

18 MS. STEURY: Who was taking care
19 of your books in those days given that Mr.
20 Davies hadn't been hired yet?

21 MR. BELIN: It was a combination
22 of an Executive Director. I wasn't in country.

1 I was managing a business in Europe. I didn't
2 back until 2003. So I would have to check the
3 books to tell you why it was bouncing around
4 like that.

5 MS. STEURY: Okay. I'm done with
6 that now if you want to pass it back.

7 Did you have a lease with the --
8 you as landlord, did you have a lease with the
9 Evermay Society before 2005?

10 MR. BELIN: There was a time when
11 we did, and there was a time when we didn't.
12 I can't be precise on that.

13 MS. STEURY: Okay. Let's give you
14 a break about precision. Can you give me sort
15 of ballpark? Was it you did and then you
16 didn't, or you didn't and then you did? And
17 can you give me kind of time frames?

18 MR. BELIN: Didn't and then we
19 did.

20 MS. STEURY: Okay. So you started
21 without a lease and then you had a lease
22 before the 2005 lease was signed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: Correct.

2 MS. STEURY: Do you remember
3 anything about that prior lease?

4 MR. BELIN: Not without being able
5 to check the records.

6 MS. STEURY: Do you have any
7 recollection of whether it was much the same
8 or vastly different?

9 MR. BELIN: I would -- I wouldn't
10 be able to tell you that.

11 MS. STEURY: Who was the Executive
12 Director in those days?

13 CHAIRPERSON MILLER: Which days?
14 I'm just beginning to wonder where you're
15 going with this again.

16 MS. STEURY: This relates to the
17 operation of the non-profit, whether it is
18 independent, whether it serves the purposes of
19 the -- of a public charity as opposed to a
20 private individual. And this was a detail
21 question just because I realize that Mr. Belin
22 had just said -- I mean, it's not the focus of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 my question. It was a detail.

2 CHAIRPERSON MILLER: But
3 ultimately, like you said, you know "in those
4 days."

5 MS. STEURY: I'm sorry. It was
6 sloppy.

7 CHAIRPERSON MILLER: And we're
8 pretty much talking about now. I understand
9 that sometimes there's a history, you know
10 when it was incorporated, et cetera.

11 MS. STEURY: Right.

12 CHAIRPERSON MILLER: To a certain
13 extent. But there just seems to be a lot of
14 detail questions about do you remember what
15 happened way back then, and it's just not
16 clear to me that that's relevant to our
17 analysis. But --

18 MS. STEURY: Okay. I'll try to
19 sharpen it.

20 CHAIRPERSON MILLER: Okay.

21 MS. STEURY: You said you were out
22 of the country for a while and you came back

1 in what year?

2 MR. BELIN: I came back in in
3 April of 2003 and began to spend more time
4 here in the states.

5 MS. STEURY: Okay. And do you
6 know whether the Evermay Society had a lease
7 in 2003 when you came back?

8 MR. BELIN: I can't tell you that.

9 MS. STEURY: Okay. Now just to
10 make sure I heard you correctly, did you say
11 in your testimony that you would not be using
12 the 15 days in the lease that's set aside for
13 personal event or family events? Did you say
14 that?

15 MR. BELIN: No. I said that we had
16 as much as we negotiated for 15, we've only
17 used four in the last -- on an average, four
18 in the last three years.

19 MS. STEURY: Okay. There's
20 nothing in the lease that would prevent you
21 from renegotiating that number, is that
22 correct?

1 MR. BELIN: That's correct.

2 MS. STEURY: Either up or down,
3 correct?

4 MR. BELIN: Either up or down.
5 Right.

6 MS. STEURY: Mr. Belin, you
7 mentioned in your testimony that about a
8 quarter to the third of the events you have
9 are non-profit.

10 MR. BELIN: Underwritten.

11 MS. STEURY: Okay.

12 MR. BELIN: Is what I said.

13 MS. STEURY: Okay. You provided
14 me earlier with a roster that's in the record.
15 It's Exhibit 5 to document 44. I'll pass that
16 over.

17 And we've discussed this before,
18 right, Mr. Belin?

19 MR. BELIN: Yes.

20 MS. STEURY: And the numbers that
21 were given to me at one of the meetings where
22 we were discussing this, was 17. 13 and 14 for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the three years on this chart, right?

2 MR. BELIN: Correct.

3 MS. STEURY: And that's the same
4 number of years that you indicated there were
5 77 and then 50 and 77 events.

6 Now that does not divide out to a
7 quarter or a third. Is a quarter to a third
8 an estimate or is it based on some numbers
9 that don't show up here?

10 MR. BELIN: Oh, a quarter to a
11 third -- these are many -- these are the
12 actual events that we did have that I would
13 consider to have been underwritten partially
14 or totally.

15 MS. STEURY: Yes.

16 MR. BELIN: But there was a lot of
17 other activity that cost us in getting to that
18 point. So --

19 MS. STEURY: But they're not
20 events, right?

21 MR. BELIN: They could be events
22 in the making.

1 MS. STEURY: But an event has a
2 defined term in your application, right?

3 MR. BELIN: Right.

4 MS. STEURY: And that's not what
5 you're talking about now, right?

6 MR. BELIN: No. What we're talking
7 about now is what's here.

8 MS. STEURY: Okay.

9 MR. BELIN: Right?

10 MS. STEURY: And that 44 is what
11 is added up here, 204 is the total number of
12 events. And that works out to 21 percent,
13 which we've discussed before.

14 MR. BELIN: Not quite at 25.

15 MS. STEURY: Not 25, and certainly
16 not 33.

17 MR. BELIN: All right.

18 MS. STEURY: Now, Mr. Belin, you
19 also told me at a prior meeting that you had
20 in 2004 had 54 events, correct?

21 MR. BELIN: In?

22 MS. STEURY: 2004 there were 54

1 events?

2 MR. BELIN: All right.

3 MS. STEURY: And there were no
4 non-profit events that year?

5 MR. BELIN: I -- I believe there
6 would have been.

7 MS. STEURY: Would they have been
8 reported on 990 if there had been?

9 MR. BELIN: I would imagine so. I
10 don't know.

11 MS. STEURY: So if I told you that
12 the 990 showed no events for 2004, would that
13 refresh your recollection that maybe there no
14 non-profit events in 2004?

15 MR. BELIN: I think there were
16 things going on non-profit maybe that we
17 weren't charging for. I just, again, would
18 have to visit the record on that.

19 MS. STEURY: I've got the record
20 here. You're not questioning me, right?

21 MR. BELIN: No.

22 MS. STEURY: Okay. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: You've got
2 the record, then maybe you can speed this
3 cross and just ask him isn't it true that
4 blah-blah-blah if you have it in the record.

5 Do you have a lot more to go?

6 MS. STEURY: Well, I can show him
7 the tax return.

8 CHAIRPERSON MILLER: Okay.

9 MS. STEURY: I don't think I have
10 a lot more to go.

11 CHAIRPERSON MILLER: Okay. Okay.

12 MS. STEURY: I just didn't think
13 he was challenging me, but I wanted to be fair
14 and make sure that he wasn't challenging me on
15 whether or not his tax return showed zero.

16 MS. STEURY: My last question, Mr.
17 Belin is about the petition that was signed.
18 And I apologize if I faded out right at this
19 moment while you were testifying. Did you say
20 you invited people to your home for a little
21 evening event and for the signing of the
22 petition?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: I -- I did say that we
2 had a petition.

3 MS. STEURY: Okay.

4 MR. BELIN: Of some 150
5 signatures.

6 MS. STEURY: Okay. And some of
7 those signatures were supplied at an event at
8 your home? A little -- is it fair to call it
9 a party?

10 MR. BELIN: Open house.

11 MS. STEURY: A reception?

12 MR. BELIN: Yes.

13 MS. STEURY: Okay. And about how
14 many of them were collected there, do you
15 know?

16 MR. BELIN: One hundred thirty-
17 seven.

18 MS. STEURY: Okay. So the vast
19 majority of them? Okay.

20 If you'll give a moment, I think
21 I'm done. I'll just look again.

22 Thank you.

1 MR. BELIN: You're welcome.

2 MS. STEURY: Oh, one more
3 question. No, it's not important.

4 CHAIRPERSON MILLER: Thank you.

5 And does the ANC have any
6 questions?

7 COMMISSIONER EASON: Yes, we have.

8 And thank you again to Madam Chair
9 and the Board for accommodating me a little
10 earlier. I appreciate it very much.

11 I have one question. First off, to
12 your traffic consultant. I guess, is it fair
13 for me to assume that the on site visit that
14 you made was something you coordinated in
15 advance with Evermay in terms of the day you
16 went out when they were having an event?

17 MR. COLLINS: Can I object to
18 this? This goes outside the four corners of
19 the ANC's written report. The ANC's written
20 report talks about asking the Board to closely
21 scrutinize the essential threshold issue. And
22 asking the Board to closely scrutinize the

1 assertion that the proposed uses necessary to
2 the purposes of the non-profit organization.
3 Those are the --

4 CHAIRPERSON MILLER: Let me --

5 COMMISSIONER EASON: And it says
6 are you talking about me to impose strict
7 restrictions on any possible use? Did you
8 read that?

9 MR. COLLINS: Yes, I did. But I
10 don't know how that relates to your question.

11 COMMISSIONER EASON: Well, I'm
12 going to the conclusion that was addressed by
13 the traffic consultant and the bases for that
14 and how it relates to our concerns.

15 CHAIRPERSON MILLER: That's part--
16 number one is a threshold issue, the basis
17 requirements for a special exception under
18 217. Is that --

19 COMMISSIONER EASON: The question
20 I have at the moment --

21 CHAIRPERSON MILLER: No, is that
22 what one of the concerns is? Am I

1 understanding it? Because that covers the
2 impacts I would think on the neighborhood of
3 which traffic is one of them. And as I
4 understand the question, it basically goes
5 what were the conditions when you made your
6 traffic study? Was it one in which Evermay
7 knew you were coming or was it one that they
8 didn't know. Is that it?

9 COMMISSIONER EASON: That's
10 exactly it.

11 CHAIRPERSON MILLER: Okay. I
12 think that's a fine question.

13 COMMISSIONER EASON: Thank you,
14 Madam Chair.

15 CHAIRPERSON MILLER: Okay.

16 MR. ANDRES: To answer your
17 question, yes, we had to coordinate with
18 Evermay. If we were going to do a survey of
19 event conditions, it wouldn't make sense for
20 us to show up on a day when there wasn't an
21 event. So absolutely.

22 And given the -- sort of given the

1 schedule considering we were retained in
2 April, there was only a limited number of
3 events before we had to file. So it was a
4 timing issue with respect to the event that
5 was chosen.

6 COMMISSIONER EASON: I understand
7 from looking at your report, I don't have it
8 in front of me, but your study did not include
9 any event that would be considered a high
10 security event, is that correct?

11 MR. ANDRES: Yes, that's correct.

12 COMMISSIONER EASON: If I were to
13 tell you that I personally witnessed more than
14 one event that I would put on a category of
15 high security events and that the Metropolitan
16 Police Department blocked R Street from 30th
17 Street --

18 MR. COLLINS: Is there a question?

19 COMMISSIONER EASON: I'm just
20 getting there.

21 All the way west to 28th Street
22 and from the corner of 28th and R all the way

1 south to Q Street for a period of about three
2 hours if you would still conclude that that
3 kind of event, anyway, did not have an adverse
4 impact on the neighborhood?

5 CHAIRPERSON MILLER: I think that
6 -- this sounds like beyond his testimony. He
7 testified he didn't -- you just asked him did
8 you observe a high security event, he said no.
9 So are you asking him hypothetically about a
10 high security event?

11 COMMISSIONER EASON: Well, if you
12 recall, he was qualified as an expert witness
13 on traffic. And so now I'm asking about a
14 circumstance that I observed and whether his
15 conclusion would be the same with a high
16 security event as the event he observed. I
17 think that's a fair question.

18 CHAIRPERSON MILLER: You can
19 answer the question.

20 MR. ANDRES: Yes. Well, with
21 respect to closing off it seems like based on
22 your description a six block -- roughly six

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 blocks of Georgetown streets, even without an
2 Evermay event you would have significant
3 issues. Especially if it occurred during peak
4 hours.

5 As I mentioned before, P Street, Q
6 Street and in some instances R Street acts as
7 a commuter cut through route. So if you are
8 forcing all of the "commuters" who currently
9 R Street and you're forcing them to use P and
10 Q or not even Q, if that was closed off, even
11 without the Evermay event there would be
12 extreme congestion in your area.

13 CHAIRPERSON MILLER: Mr. Collins,
14 could I ask you to shut your microphone off?
15 There you go. Thank you. Okay.

16 COMMISSIONER EASON: And you were
17 here when you heard the testimony of the
18 event, I'm sorry I don't recall your title,
19 about these presidential events and what have
20 you. And if I told you that in connection with
21 those my observation has been that all
22 east/west traffic on 28th Street --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: This is testimony --

2 CHAIRPERSON MILLER: I agree.

3 COMMISSIONER EASON: I'm asking --
4 well.

5 CHAIRPERSON MILLER: You're asking
6 about -- your testifying about your
7 observations.

8 COMMISSIONER EASON: Well, it's
9 really a hypothetical for an expert.

10 CHAIRPERSON MILLER: Try to
11 rephrase it then.

12 COMMISSIONER EASON: Well, if
13 there were a situation where in connection
14 with an event held at Evermay that required
15 extraordinary security, that all east/west
16 traffic on 28th Street at least from M Street
17 to R Street was restricted for periods of 20
18 or 30 minutes at a time, that that would not--
19 would that have an impact on traffic in the
20 community? An adverse impact on traffic?

21 MR. ANDRES: I guess it would
22 depend what time of day that would occur.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Given the commuter natures -- the commuter
2 type nature of the streets in the area if
3 there were situations where P Street and Q
4 Street were cut off, are there opportunities
5 for congestion in the area? Yes.

6 Would you have a similar situation
7 if there was an emergency situation where a
8 pipe bursts? You would have that same type of
9 situation.

10 Streets get closed off regardless
11 of what the reason is. Yes. It would depend
12 on what time of day it occurred.

13 COMMISSIONER EASON: I have a
14 question, I guess it's for Mr. Belin, if I
15 could. You talked about a number of events
16 that you had different years. And there was a
17 question I think from one of the Board members
18 about the Mens Bible group, I guess. And we
19 had testimony last week from someone
20 affiliated with that. They said they had as
21 many as 75 people who met at Evermay every
22 week. Now that's --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELIN: Yes.

2 COMMISSIONER EASON: How often do
3 they meet at Evermay?

4 MR. BELIN: The Bible study --

5 COMMISSIONER EASON: Yes, sir.

6 MR. BELIN: -- meets once a week.

7 COMMISSIONER EASON: Once a week?

8 MR. BELIN: Right.

9 COMMISSIONER EASON: Fifty-two
10 weeks a year, more or less?

11 MR. BELIN: It used to be with a
12 summer break, and otherwise --

13 COMMISSIONER EASON: Now earlier
14 we discussed with your counsel, your corporate
15 counsel if I may refer to him as that, that
16 while a 501(c)(3) organization can have a
17 number of objectives, including religious, the
18 election was made by the incorporators of the
19 Evermay Society and which has not been changed
20 to limit the 501(c)(3) type activities to
21 charitable and educational. So they
22 specifically omitted any kind of religious

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 activities.

2 So can you explain to me why you
3 would consider a group of up to 75 people who
4 meet something close to 52 weeks a year for
5 religious purposes, I believe your testimony
6 earlier said you called it worship, you called
7 it worship; somehow furthers the non-profit
8 mission of the Evermay Society?

9 MR. BELIN: First, I don't know
10 where you got the number 75. That's wrong. IF
11 we had 25, we'd be lucky.

12 MR. COLLINS: How many do you
13 have?

14 MR. BELIN: We probably average
15 anywhere from 12 to 15 a week.

16 And I think faith is critical to
17 promoting consensus, civility and
18 responsibility amongst all people and nations
19 by inspiring a sense of community integrity
20 that enhances reconciliation and renaissance.
21 I think faith has got as much to do with that
22 as anything.

1 COMMISSIONER EASON: But could you
2 explain to me why you wouldn't consider that
3 an event, like any of the other events that
4 you claim have the same purpose?

5 MR. BELIN: Well, we differentiate
6 between an event that's contractual usually
7 with a contribution and a meeting is quite
8 different. This is a meeting that's faith-
9 based.

10 COMMISSIONER EASON: Well, that
11 leads me to ask how you draw that distinction.
12 If you had a meeting of the Republican
13 National Committee, would that be a meeting?

14 MR. BELIN: We talk business
15 hours. And our worship comes before business
16 hours. I don't know how to differentiate. But
17 you ask for a differentiation, that's what I'm
18 giving you.

19 COMMISSIONER EASON: And you're
20 saying that it's because it's before business
21 hours?

22 MR. BELIN: That's correct.

1 COMMISSIONER EASON: So an event
2 like a wedding that's after business hours you
3 would count differently?

4 MR. BELIN: No. Because a wedding
5 isn't an issue of -- I mean, with a wedding
6 comes a contract, all sorts of negotiations,
7 time spent with the client. I don't think --
8 the comparison is apples and oranges.

9 CHAIRPERSON MILLER: Mr. Eason, I
10 had in mind that this was a study group, that
11 that's a -- a study group sounds like
12 education to me and it sounds very different
13 from a wedding. That seems more like an event.

14 COMMISSIONER EASON: Well, I heard
15 Mr. Belin describe it as worship in his
16 testimony.

17 CHAIRPERSON MILLER: Oh. Well, in
18 that case it's dealing with worship. But I
19 don't want to get into what's the definition
20 of worship. However, we did hear things about,
21 you know, services and praying and things like
22 that. And in any event, is this not a study

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 group?

2 MR. BELIN: Absolutely. In the
3 final years studying the Bible, if it's a
4 Bible study.

5 COMMISSIONER EASON: Well, I'm
6 having trouble then with your definition of
7 event. And all I'm hearing is perhaps is that
8 if -- well, you don't charge supposedly. You
9 just accept contributions, which I have a
10 little difficulty with that issue separately.
11 But then how do you -- you know, if there's no
12 contribution, it's not an event?

13 MR. BELIN: No. That's not what I
14 said.

15 COMMISSIONER EASON: Well, could
16 you clarify it for me, please, exactly what
17 you do mean by events when you say you're
18 going to have so many events, how do you
19 define that?

20 MR. BELIN: You define that as an
21 occasion, wedding or otherwise. An event is
22 something you contracted, negotiated, spent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time on, involves a contribution and takes
2 time to put into place.

3 COMMISSIONER EASON: But that
4 doesn't help me to understand how events that
5 would take -- that you propose to have take
6 place at Evermay pursuant to this special
7 exception and limited under the terms of your
8 application, how you would distinguish between
9 the events that you count and the events that
10 you don't.

11 MR. BELIN: Well, I don't think
12 what we're talking as a Bible study is an
13 event. Because it doesn't require a contract,
14 it doesn't require a --

15 COMMISSIONER EASON: Well it
16 doesn't require a contract why? Because you
17 make that decision on a case-by-case basis?

18 MR. BELIN: No. Okay.

19 COMMISSIONER EASON: Or do you
20 have a policy that you can articulate that we
21 can all understand that let's us be able to
22 review to see whether it fits into category A

1 or category B.

2 VICE CHAIRMAN LOUD: Mr. Starls,
3 I've listened to him answer the question at
4 least four different times and we still have
5 to get to the Office of Planning's report and
6 their cross examination.

7 COMMISSIONER EASON: Well, thank
8 you.

9 VICE CHAIRMAN LOUD: I think
10 you've probed it well and you can hay of it as
11 part of your closing argument.

12 COMMISSIONER EASON: Thank you.

13 VICE CHAIRMAN LOUD: Because he
14 answered it at least four times.

15 COMMISSIONER EASON: Well, thank
16 you. And I will Mr. Starls that you recognized
17 him, although he's not here today.

18 VICE CHAIRMAN LOUD: I apologize.

19 COMMISSIONER EASON: And that's
20 quite all right.

21 VICE CHAIRMAN LOUD: Tell me your
22 name again, I'm sorry.

1 COMMISSIONER EASON: Eason.

2 Charles.

3 VICE CHAIRMAN LOUD: Mr. Eason.

4 All right. We're sorry.

5 COMMISSIONER EASON: Thank you
6 very much.

7 VICE CHAIRMAN LOUD: All right.

8 CHAIRPERSON MILLER: And I would
9 also like to, you know, second what Mr. Loud
10 said. There may be room for the applicant to
11 define further and more precisely, you know,
12 what event encompasses.

13 I also want to say at this point
14 that it is a 11:00 and first and foremost, I
15 would like the court reporter to be able to
16 signal to me -- or if we want to go off the
17 record for a minute and talk about this. But
18 at the last hearing that was continued until
19 like 11:00 at night. That the court reporter
20 had really hit the limit. So I just want to
21 make sure no matter how much we all might be
22 willing to keep talking, it sometimes take a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 toll on a court reporter.

2 So I'm just going to take a minute
3 and know where we are and whether we can
4 finish tonight or not.

5 (Whereupon, at 11:05 off the
6 record until 11:06).

7 MS. STEURY: I vote to quit
8 because it's been a long day. We're all
9 wearing out. I see people starting to nod off.
10 And I think that as much time as has been put
11 into this, it would not be fair to rush the
12 rest of it. And so I vote to quit and start
13 again when we are fresh.

14 CHAIRPERSON MILLER: Mr. Collins?

15 MR. COLLINS: We're ready to keep
16 going.

17 CHAIRPERSON MILLER: Well, if
18 we're going to keep going we have to do a
19 reassessment as to what that means again. We
20 are now -- so the ANC finished the cross or
21 not?

22 COMMISSIONER EASON: I think so.

1 CHAIRPERSON MILLER: Okay.

2 COMMISSIONER EASON: Of these
3 witnesses.

4 CHAIRPERSON MILLER: Yes, Mr.
5 Crockett.

6 Wait a minute.

7 Go ahead.

8 MR. CROCKETT: Madam Chairman, I
9 didn't understand when I finished my cross
10 examination of Mr. Belin, I thought we were
11 taking the witnesses one-by-one rather than
12 all the witnesses at the table. I had a few
13 questions, a very few, three or four, for the
14 traffic expert. I was under the assumption
15 that when I turned it over it was the cross
16 examination of Mr. Belin.

17 MS. STEURY: And ditto. I have
18 some for Ms. Kovach and Mr. Andres because I
19 thought we were doing it one at a time. That's
20 the way we started with Mr. Benson and I
21 didn't see anything --

22 CHAIRPERSON MILLER: I did that

1 with Mr. Benson because he had to go.

2 MS. STEURY: Well --

3 CHAIRPERSON MILLER: Yes. I mean
4 well when the Board asked the questions we
5 asked all the witnesses. But, okay.

6 I don't think we're going to
7 finish at a reasonable hour. So,
8 unfortunately, then the next question is, you
9 know, do we want to finish at least with the
10 applicant's witnesses, which might be a good
11 idea. Finish the cross. How do people feel
12 about that?

13 I thought we were finished, but
14 apparently -- can we finish the cross within
15 a half an hour at the most? Okay.

16 Now does the applicant feel about
17 that?

18 MR. COLLINS: Well, we've already
19 said we --

20 CHAIRPERSON MILLER: No, I
21 understand. Do you have a preface, though, if
22 we are going to stop whether we finish -- we

1 continue and at least finish the cross here.

2 MR. COLLINS: That makes the most
3 sense.

4 CHAIRPERSON MILLER: Yes. Okay.
5 All right. Why don't we finish the cross then
6 and then we can discuss when we're going to
7 pick up.

8 Okay. Mr. Crockett, so you finish
9 your cross with all the witnesses.

10 MR. CROCKETT: All right. Mr.
11 Andes, with respect -- I've read your traffic
12 report. I think it's very good for the time in
13 which you've had to do it.

14 What I gathered from it in reading
15 it was that there is indeed a traffic impact
16 as a result of some of these large functions
17 coming in either during rush hour or at other
18 times, is that correct?

19 MR. ANDRES: Based on our analysis
20 we've identified, as I mentioned in my
21 testimony, that the intersection of 28th and
22 Q Street operates at or near capacity during

1 the evening peak hour, which is between 5:15
2 and 6:15. And that's an existing condition.

3 MR. CROCKETT: And the addition of
4 another 75 cars going up to Evermay is going
5 to increase the traffic congestion, correct?

6 MR. ANDRES: Where's the 75 cars?
7 What were the 75 cars related to?

8 MR. CROCKETT: To an event.

9 MR. ANDRES: What type of event. I
10 didn't testify to 75 cars at all.

11 MR. CROCKETT: Well, that's what
12 I'm asking you. If 75 cars are coming to an
13 event at 6:00 on an afternoon, what effect is
14 that going to have at that intersection?

15 MR. ANDRES: Well, based on our
16 analysis and based on the conditions that we
17 saw at an event, 75 cars is equivalent to an
18 event that's over 200 attendees. And based on
19 the new policies that's been established with
20 this application we're not looking to have an
21 event greater than 200 vehicles -- excuse me,
22 200 attendees except for the four that have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been identified as community events throughout
2 the year. So --

3 MR. CROCKETT: What about those
4 four?

5 MR. ANDRES: Well, it's my
6 understanding that if those four were to take
7 place during peak hours, there would be
8 special provisions to be able to accommodate
9 those four evens. And those have been -- those
10 could include additional staff or valet and
11 things of that nature. But, again, it depends
12 on what type of event it is.

13 MR. CROCKETT: But you will
14 concede, will you not, that something has to
15 be done or otherwise there's a disruption of
16 the traffic?

17 MR. ANDRES: Well, as I mentioned
18 before, the capacity constraints are focused
19 at one intersection. And that intersection
20 during the evening peak hour, ways to address
21 that situation is to not have events start or
22 end during that peak hour.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: And you say that's
2 just one hour?

3 MR. ANDRES: Yes.

4 MR. CROCKETT: Which is the hour?

5 MR. ANDRES: Between 5:15 and
6 6:15.

7 MR. CROCKETT: Okay. Now, do you
8 consider that one observation of one event is
9 a valid statistical sample of what happens
10 with respect to other events that occur?

11 MR. ANDRES: Well, with respect to
12 identifying what the potential impacts of an
13 event is doing a study for one event allows us
14 to see what -- how the dichotomy of the
15 different users can impact the effect on the
16 traffic situation.

17 As I mentioned, the event that we
18 identified was a 150 percent event. And based
19 on our survey we noticed that the first thing
20 is that there's an absentee factor, as I
21 mentioned before, which only brought the
22 number of attendees to 133. In addition to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that, we also were able to gather from our
2 survey information how many people drove, how
3 many people took cabs and things of that
4 nature. So with that we are able to identify
5 what ranges of traffic impact can be
6 attributable to different types of events.

7 MR. CROCKETT: This is going to be
8 the configuration. You assume that it's going
9 to be the configuration of every other event
10 that takes place there, regardless of whether
11 they come from out of town, in town, in the
12 neighborhood or anything else?

13 MR. ANDRES: I did not testify
14 that we were basing our analysis on this
15 sample. What I testified to was that it gave
16 us a sense of ranges that can occur based on
17 the different types of users. Based on the
18 event that we surveyed we noticed that there
19 was taxis, which as I mentioned before, that
20 allowed is to see what the impacts were if the
21 event were a local event.

22 In the event that this was an out

1 of town event where many Van Terras were
2 utilized, as can be -- as there's a potential
3 for that to be. If there were more Van Terras
4 utilized instead of individual taxis, then in
5 essence the traffic impact would actually be
6 less.

7 So doing one event during the time
8 frame that we were asked to do this, allows us
9 to see what the potential impacts were with
10 respect to parking given that the event that
11 was a 150 person event and the maximum size
12 event were 200 persons.

13 So what we gathered was that from
14 a 150 person event, that event only utilized
15 55 spaces on site. Fifty-five of 120 spaces
16 on site were used. So if we were to
17 extrapolate to 200, would we feel comfortable
18 that there's enough parking on site?
19 Absolutely. And that's what I'm here to
20 testify about. That given the resources that
21 we have on site, we can accommodate the
22 projected parking event.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CROCKETT: Okay. You did not
2 do an on street parking, did you?

3 MR. ANDRES: Yes, we did.

4 MR. CROCKETT: You did? And what
5 was your conclusion there?

6 MR. ANDRES: Our conclusion was
7 that during the evening of the event, and that
8 event was Saturday April 12th, at the same
9 time that the event at Evermay was taking
10 place there was also an event taking at the
11 Dumbarton House. And based on the three block
12 area from -- as a reference point, from the
13 entrance there was -- actually referencing our
14 report, dated April 23, 2008, in that study
15 area that we did on an on street parking
16 supply and demand report, there are
17 approximately 264 total spaces, spaces where
18 you can legally park your vehicle. During
19 that evening when you had two events taking
20 place, 232 of those were occupied. So there
21 was about 12 percent of those spaces that were
22 unoccupied.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, again, it's my understanding
2 that because we were at the event, the
3 Dumbarton House event, it was a wedding.
4 Because we noticed that there were some sort
5 of noise overlaps with respect to what was
6 going on at Dumbarton House because there was
7 a ceremony going on at the Evermay property.

8 So given that, there is still
9 available parking in the study area. But we've
10 identified that most -- that many of the
11 parking spaces that were taken by the Evermay
12 users were on site. And that in conjunction
13 with the taxis that served that event.

14 MR. CROCKETT: Does your parking
15 study show on which streets the empty parking
16 spaces were?

17 MR. ANDRES: Yes, it's identified
18 in our figure 8 in our report, page 18.

19 MR. CROCKETT: All right.

20 MR. ANDRES: And it's every
21 street, every side of the street identifies
22 where the parking -- what spaces -- how many

1 spaces were occupied on each roadway.

2 MR. CROCKETT: And this was on a
3 Saturday from what time to what time?

4 MR. ANDRES: The Saturday before
5 the event started at 4:00 p.m. And then in
6 the middle of the event at 7:45 p.m.

7 MR. CROCKETT: Those are the two
8 times you took the parking --

9 MR. ANDRES: Yes, that's right.

10 MR. CROCKETT: So this would not
11 apply to an event that happened on a weekday?

12 MR. ANDRES: No, because --

13 MR. CROCKETT: Or a Sunday?

14 MR. ANDRES: Well, as I mentioned
15 before, because we were retained in April and
16 the event schedule was fairly limited because
17 of the existing situation, we chose one that
18 we thought was appropriate to -- close to the
19 maximum size that could be scheduled at this
20 location.

21 MR. CROCKETT: Okay. I have no
22 questions for anyone else.

1 MS. STEURY: Since you're close,
2 I'll start with you. We'll share, I guess.

3 You talked about the stop sign at
4 R and 28th, the two stop signs?

5 MR. ANDRES: Yes, that's correct.

6 MS. STEURY: And I understood you
7 to say that that was helpful for the traffic
8 congestion?

9 MR. ANDRES: Well, with respect to
10 the fact because it is a 90 degree turn for
11 somebody who is not familiar with the area and
12 does not realize that that is a sharp turn,
13 having stop signs on both approaches helps
14 them, first of all, to navigate that sharp
15 turn and then also to facilitate pedestrian
16 crossings at that intersection.

17 MS. STEURY: And did you observe
18 the traffic flow at that intersection for any
19 period of time?

20 MR. ANDRES: Yes.

21 MS. STEURY: And about how long?

22 MR. ANDRES: Well, I drive it

1 everyday, so there's that. In addition to the
2 peak hour periods that we did our traffic
3 counts at, I was also there for that. So a
4 period of roughly three hours on a weekday and
5 my personal driving experience everyday.

6 MS. STEURY: Okay. Great.

7 Did you notice that drivers didn't
8 stop?

9 MR. ANDRES: Yes. It's a
10 condition, again because of the fact that
11 these two corridors, the 28th Street corridor
12 and the R Street corridor, as I mentioned,
13 provides a cut through opportunity from the P
14 and Q Street corridors that you have motorists
15 that are going outside of this general area.

16 MS. STEURY: Yes.

17 MR. ANDRES: So any chance that
18 they can get to pick up additional seconds
19 here and there, it does not surprise me that
20 there's a lack of enforcement of that stop
21 sign.

22 MS. STEURY: Yes. And did you

1 happen to notice whether turning right they
2 stopped less often than turning less?

3 MR. ANDRES: It's -- again, it's
4 both situations are similar.

5 MS. STEURY: And would you say
6 more than half of them did not come to a full
7 stop?

8 MR. ANDRES: I've -- I didn't
9 quantify it, but you can tell that it's a
10 prevalent condition.

11 MS. STEURY: Okay. Now one of the
12 reasons I'm exploring this is because in my
13 experience -- never mind what my experience,
14 I could get to that at another time.

15 I was surprised to hear you say
16 that the traffic having a stop sign helped the
17 congestion along here. I understood that it
18 slowed things down.

19 MR. ANDRES: I did not testify
20 that it helped congestion.

21 MS. STEURY: Okay. Then I
22 misunderstood.

1 MR. ANDRES: What I testified to
2 was that having the stop signs there allowed
3 for the opportunity to navigate around that
4 corner.

5 Now accessing the site because
6 you're coming from a stopped condition or in
7 some instances a rolling slowing down, there's
8 not the situation where there are -- that you
9 are approaching the entrance at fairly high
10 speed is the intent of having those stop
11 signs.

12 MS. STEURY: I see. Is it also,
13 given your expertise, would you also say that
14 it's the case that having a lot of cars coming
15 in and out of that entrance at any given hour
16 really jams that R and 28th Street stop?

17 MR. ANDRES: Well, I'm not quite
18 sure what you mean. Based on what we've seen
19 with respect to pick ups and drop offs
20 associated with taxi, there is a going in and
21 coming out. For those who are parking and for
22 the vendors, there's just going in. They don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 go out, obviously, until at the end of the
2 event.

3 So there's only a limited number,
4 as I mentioned, in the event that we saw that
5 where there were 150 attendees -- excuse me.
6 A 150 guests that were scheduled, there were
7 only 26 taxis. So the 26 cars coming in and
8 26 coming out.

9 With respect to vehicles coming
10 out of that site, the gaps that are provided
11 by the fact that people come to a stop at that
12 location allows for those vehicles to turn
13 out.

14 MS. STEURY: I see your point.

15 Yes.

16 Reading between the lines of your
17 testimony here today and your report, is it
18 your conclusion that the Evermay activities
19 which are held at peak weekday -- peak non-
20 event -- let me rephrase.

21 There are two peak traffic times
22 that you talk about, and one is the peak

1 traffic time for the event and one is the peak
2 traffic time for the neighborhood, right?

3 MR. ANDRES: Yes, that's correct.

4 MS. STEURY: Okay. So if Evermay
5 is having a peak traffic time at the same time
6 the neighborhood is having a peak traffic
7 time, is it your testimony that 28th and Q
8 becomes so congested that it really needs a
9 stop light, although you don't recommend a
10 stop light for other reasons?

11 MR. ANDRES: Well, the concept of
12 a stop light goes -- does not -- is not
13 warranted by this application. The concept of
14 a stop light would involve -- as I mentioned
15 before, as an existing condition where that
16 intersection at operates at capacity. As I
17 mentioned before, to the block to the south
18 there is a stop light. But it's my
19 understanding that there's a reason why
20 there's only one stop light in that entire
21 neighborhood.

22 MS. STEURY: Yes.

1 MR. ANDRES: So, you know, you can
2 either choose to have that situation
3 consistently occur or -- and in addition to
4 that, there are what's called warrants,
5 traffic warrants that in order to place a stop
6 light, there are federal guidelines that
7 dictate whether or not you're allowed to put
8 a traffic light in.

9 MS. STEURY: Okay. So is it
10 correct to understand your testimony that
11 really the proper solution of this problem is
12 the additional traffic control person for
13 those times where it's at both peak Evermay
14 event time and peak rush hour time?

15 MR. ANDRES: Well, you know, first
16 of all we have to get an understanding of how
17 many events really do take place during that
18 peak time. It's my understanding that many of
19 the events, many of the larger events such as
20 the weddings --

21 MS. STEURY: Can I stop you a
22 minute? Because I'm asking how many. I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 asking if there was one, is that when that
2 solution to that problem would be appropriate,
3 the traffic control person?

4 MR. ANDRES: Well, that's one way
5 to treat the situation. But given our
6 experience as traffic experts what we do is
7 not only identify how you address the demand,
8 but how do you control the demand. And one way
9 to do it is a scheduling procedure.

10 Given some constraints in the
11 infrastructure, you don't -- I guess there are
12 ways to provide alternative measures besides
13 providing a traffic officer out there. In the
14 events that -- yes. In the event that there is
15 a large event, one way to manage that
16 situation would be a traffic control officer.

17 So you asked me to answer your
18 question; I just did.

19 MS. STEURY: Yes. I think you did.

20 Did you look at the impact of
21 traffic on pedestrians at all, was that part
22 of your study?

1 MR. ANDRES: Yes, it is.

2 MS. STEURY: And is that in your
3 report?

4 MR. ANDRES: We did identify with
5 our -- as a comprehensive look at the traffic
6 situation, we coordinated with DDOT. Because
7 as part of their initiatives they are pushing
8 pedestrian bicycle access. So, yes, we did.

9 MS. STEURY: And what was -- I'm
10 not talking about pedestrians into the events
11 as guests coming as pedestrians. I'm talking
12 about pedestrians that are unrelated to
13 Evermay events, an impact on them on this
14 street. Did you look at that?

15 MR. ANDRES: Well, with respect to
16 pedestrians, those pedestrians regardless of
17 whether or not Evermay has an event, they are
18 subject to the existing situation. So are
19 there crosswalks in a neighborhood that they
20 have the opportunity to cross? Yes.

21 Are there times when pedestrians,
22 you know, jay walk and not cross at the

1 intersection? Yes.

2 Can there be a comprehensive plan
3 to address pedestrians in the overall
4 Georgetown area? Yes.

5 And, you know, that's completely
6 separate from the --

7 MS. STEURY: I'm not asking you
8 that.

9 MR. ANDRES: -- from this
10 application.

11 MS. STEURY: Right. And I'm asking
12 you only about this application. Did you study
13 the impact of the extra traffic in the Evermay
14 area on the pedestrians in that area, or was
15 that not part of your study?

16 MR. ANDRES: Well, with respect to
17 what can be accomplished for pedestrians --

18 MS. STEURY: Could you just tell
19 me whether you studied or not first?

20 MR. ANDRES: Yes, I did.

21 CHAIRPERSON MILLER: What do you
22 mean? I mean -- do you mean is impacted by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cars?

2 MR. ANDRES: I answered the
3 question three times.

4 MS. STEURY: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MS. STEURY: The amount of traffic
7 whether he saw dangerous looking situations,
8 whether he saw people being cut of.

9 MR. ANDRES: Are there situations
10 where motorists that are not associated with
11 Evermay are not yielding to pedestrians? Yes,
12 we observed that. I'm not sure how the
13 Evermay event considering that that we are
14 looking to accommodate pedestrians and
15 bicyclists by providing some of the
16 transportation demand measures that we've
17 agreed to with -- so I'm not quite sure what
18 your question is.

19 MS. STEURY: I'll just state for
20 the record I don't think my question has been
21 answered yet, but I'm going to give up.

22 MR. ANDRES: Well, the question

1 was asked. I'm not sure what your --

2 MS. STEURY: I asked -

3 MR. ANDRES: -- I'm not sure what
4 you're asking.

5 MS. STEURY: I think you've
6 answered everything except what I tried to
7 ask. I tried to ask is given -- there are an
8 increased number of cars in the vicinity when
9 Evermay has an event, right?

10 MR. ANDRES: Okay.

11 MS. STEURY: And did you look at
12 the impact of that increased number of cars on
13 pedestrians that are unrelated to the Evermay
14 events, or maybe you didn't?

15 MR. ANDRES: No, we did.

16 MS. STEURY: Okay.

17 MR. ANDRES: As part of our
18 overall plan we --

19 MR. ANDRES: And did you come to a
20 conclusion?

21 MR. ANDRES: Well, that's what I'm
22 getting to.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 When we look at the overall plan
2 for the Evermay, as I mentioned we've
3 coordinated with DDOT to make sure that we
4 address their pedestrians issues.

5 With respect to the impact of
6 additional vehicles in the area on
7 pedestrians, as I mentioned, the roadway
8 network primarily consists of always stop
9 intersection. So even though there may be
10 additional cars on these roadways, the
11 pedestrian have the right of way when vehicles
12 come to a complete stop. So, yes, we have
13 looked at that situation.

14 MS. STEURY: And did you conclude
15 that there was an impact, or no impact, or the
16 same impact?

17 MR. ANDRES: Well, we concluded
18 that where based because of the transportation
19 demand management measures and the
20 transportation management plan efforts that
21 we're coordinating with DDOT, we are improving
22 some pedestrian access considerations to our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 site.

2 Now with respect to the overall
3 roadway network, we believe that because you
4 have more vehicles on the roads doesn't
5 necessarily mean that it prevents pedestrians
6 that are currently walking that they can't
7 cross. Because again, as I mentioned, there
8 are always stop intersections.

9 MS. STEURY: Yes. Never mind.

10 Okay. Let me ask a different question.

11 When you count taxi trips as you
12 report them in your report, when you say there
13 are 26 taxi trips, is that 26 in and another
14 26 out, or is that 13 in and 13 out?

15 MR. ANDRES: Yes. I didn't mention
16 taxi trips, I mentioned the number of taxis.
17 So there are 26 taxis. One taxi is that same
18 taxi coming into the site dropping off and
19 leaving. So, yes, that's one taxi.

20 MS. STEURY: So if there are 26
21 taxis, there are 26 entrances and 26 exits
22 from that spot?

1 MR. ANDRES: Yes, that's correct.

2 MS. STEURY: Okay. Thank you.

3 MR. ANDRES: Thank you.

4 MS. STEURY: Alexandra --

5 CHAIRPERSON MILLER: I just wanted
6 to ask a quick question. When you did your
7 observation on April 12th --

8 MR. ANDRES: Yes.

9 CHAIRPERSON MILLER: -- did you
10 observe conflicts between cars and
11 pedestrians?

12 MR. ANDRES: Well, in the
13 instances where there pedestrians walking up
14 28th Street, we did notice that the drivers
15 and the person managing the front entrance
16 allowed for those pedestrians to cross the
17 driveway safely, although that's not
18 technically their duty. But they did
19 facilitate that activity.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MS. STEURY: Alexandra.

1 MS. KOVACH: Hi.

2 CHAIRPERSON MILLER: I'm really
3 sorry, but we were just checking to see what
4 time the Metro close because a lot people go
5 by Metro here. And it closes at 12:00. So--

6 MS. STEURY: If she can come back,
7 I can put this off with no trouble.

8 CHAIRPERSON MILLER: Let me just
9 ask, is this the last witness your crossing?

10 MS. STEURY: Yes.

11 CHAIRPERSON MILLER: And you're
12 the last one to cross, right? There's nobody
13 else waiting to cross, is that right?

14 MS. STEURY: That's correct.

15 CHAIRPERSON MILLER: So can you do
16 this in five minutes so that we can make the
17 Metro?

18 MS. STEURY: I don't want to
19 guarantee that. I'll be glad to do it another
20 day.

21 CHAIRPERSON MILLER: Okay. Let me
22 ask Mr. Collins. Will Ms. Kovach be coming

1 back in any event or --

2 MR. COLLINS: I'm sorry --

3 CHAIRPERSON MILLER: Wait a
4 second.

5 Are any of you effected by the
6 Metro? All right. Let's finish the cross. I
7 just got a ride. Okay.

8 MS. STEURY: Ms. Kovach, you said
9 earlier that you had been working for -- do
10 you work for the Evermay Society?

11 MS. KOVACH: I do.

12 MS. STEURY: And how long have you
13 been with them?

14 MS. KOVACH: Two years.

15 MS. STEURY: Okay. And can you
16 give me a month and a year that you started?

17 MS. KOVACH: I accepted my
18 position there two years ago yesterday. And I
19 believe I began work two weeks later.

20 MS. STEURY: So that was in the
21 middle of 2006?

22 MS. KOVACH: Yes. August.

1 MS. STEURY: Okay. And you've
2 always been an employee of the Evermay
3 Society?

4 MS. KOVACH: Yes.

5 MS. STEURY: Was there a
6 Hospitality Director before you?

7 MS. KOVACH: The position I
8 applied for was Hospitality Coordinator. And
9 it was Director of Hospitality because of my
10 experience. I don't know what the position was
11 titled before I was there.

12 MS. STEURY: Now, as you know,
13 I've already been shown your salary and I'm
14 not trying to nose into your business or to
15 parade your salary. For the record, I don't
16 think it's scandalous, anyway. But you don't
17 show up on the 2006 tax return for the Evermay
18 Society. So as an employee I'm wondering.
19 There's one possibility that I can think of,
20 and that is if you earned under \$50,000 a
21 year. Does that provide an explanation of why
22 you wouldn't have shown up on the 2006 tax

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 return?

2 MS. KOVACH: I did not make
3 \$50,000 that year from the Evermay Society
4 because I began half way through the year. I
5 know that for sure.

6 I'm not involved with that side of
7 the business.

8 MS. STEURY: Oh, I understand
9 that.

10 MS. KOVACH: So I'm probably not
11 your best witness to ask that question of.

12 MS. STEURY: Right. Do you run
13 all events?

14 MS. KOVACH: At Evermay?

15 MS. STEURY: Yes. Yes.

16 MS. KOVACH: In the world?

17 MS. STEURY: Careful what you wish
18 for.

19 MS. KOVACH: I do.

20 MS. STEURY: Okay. So non-profit
21 and profit you are the event director, the
22 Hospitality Director?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KOVACH: Yes. Everything goes
2 through me.

3 MS. STEURY: Okay. In the couple
4 of photos you showed you had one that showed
5 pretty empty streets and you said that it was
6 at the start of an event and you gave a date.
7 Do you know about the time of day? I'm not
8 trying to pin you down too carefully. But it
9 was fourish or was it sixish or sevenish?

10 MS. KOVACH: I believe that one of
11 the dates was April 5th. And the ceremony that
12 day started at noon.

13 And I think both of those were on
14 April 5th.

15 MS. STEURY: For the noon event?

16 MS. KOVACH: For the 28th Street,
17 the ones we showed, yes, 28th Street and the
18 R Street.

19 MS. STEURY: Okay. That's a
20 Saturday noon?

21 MS. KOVACH: Yes.

22 MS. STEURY: Okay. And did you

1 notice that the next photograph that you
2 showed, I guess you have it there you can look
3 at it, showed a street full of cars?

4 MS. KOVACH: Yes.

5 MS. STEURY: And so could we just
6 agree that sometimes there's a lot of cars and
7 sometimes there's not a lot of cars?

8 MS. KOVACH: I do not have record
9 of when that photograph was taken. I know
10 that the majority of the photographs in my
11 presentation were taken on the 5th and 12th of
12 April. One of those dates, the 12th, was the
13 same that the traffic inspection or review
14 we've done, which had a simultaneous event
15 with Dumbarton House, as testified.

16 So my guess, though I did not take
17 the photographs because I was inside running
18 the event, is that that photograph was taken
19 the day of April 12th when there was a
20 simultaneous event with Dumbarton House.

21 CHAIRPERSON MILLER: Let me just
22 interject here. Could you identify for the

1 record if this is attached to the pre-hearing
2 statement, it's one of those photos or --

3 MS. KOVACH: Yes.

4 CHAIRPERSON MILLER: Okay.

5 MS. KOVACH: The only photos that
6 you got in addition were either event photos
7 that showed people and chairs and then one
8 shot of the home itself. But these photos are
9 in the pre-hearing statement.

10 CHAIRPERSON MILLER: Okay. Thank
11 you.

12 VICE CHAIRMAN LOUD: And what
13 number photos are we referring to?

14 MS. KOVACH: Well, one of them
15 we're talking about -- well, in the pre-
16 hearing statement, actually, photo number --

17 CHAIRPERSON MILLER: But they're
18 numbered.

19 MS. KOVACH: -- 42. I did not show
20 this in my presentation. I actually only
21 selected the ones that were from the 5th. But
22 they show the start time of the ceremony on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the 12th of April as well. But we didn't --
2 we felt that those slides would be repetitive
3 so we only showed two views on the same date.

4 MS. STEURY: And the 12th started
5 in the evening?

6 MS. KOVACH: It did.

7 MS. STEURY: CAG, the Citizens
8 Association of Georgetown is one of the non-
9 profits that the Evermay Society underwrites,
10 correct?

11 MS. KOVACH: Correct.

12 MS. STEURY: In terms of their
13 gala fundraisers?

14 MS. KOVACH: Yes.

15 MS. STEURY: Do you do -- does the
16 Evermay Society do more than just waive the
17 contribution? Do they also provide the food
18 and --

19 MS. KOVACH: No. We don't ever
20 provide food. Our caterers, our vendors do
21 that. However, our non-profit events do allow
22 our caterers to have an opportunity to

1 contribute to a non-profit or a community
2 event as the CAG fundraiser would be. So there
3 is a caterer who every day donates their
4 services to the CAG fundraiser. And that's
5 the case with a lot of our non-profit events.
6 That this gives the vendors who work with us
7 very closely with our Evermay events, the
8 opportunity to contribute to the non-profit
9 side of business as well.

10 MS. STEURY: Okay. And just to
11 clarify that we're on the same page.

12 MS. KOVACH: Yes.

13 MS. STEURY: When I said "do you
14 contribute the food," I meant financially.

15 MS. KOVACH: No.

16 MS. STEURY: Right. Okay.

17 MS. KOVACH: Just as I said, the
18 caterer donates that themselves and works with
19 them directly.

20 MS. STEURY: Okay. So in the CAG
21 situation you're telling me that the caterer
22 donates the food directly?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KOVACH: They -- I know that
2 they may charge for some portion of it, but
3 they give him -- if they charge them, and I am
4 not involved in their negotiations, it is a
5 major discount because it is one of their
6 contributions.

7 MS. STEURY: Okay. And are these
8 the same caterers that are on your list of
9 providers?

10 MS. KOVACH: We only allow four
11 caterers as of this date to work at Evermay.
12 And we have been four caterers for the last 12
13 months. We were five caterers for the 12
14 months previous to that.

15 MS. STEURY: Somebody fell off the
16 list, huh?

17 And what about the Georgetown
18 Business Association? I take it their fee is
19 waived as well?

20 MS. KOVACH: Yes. We have -- yes.

21 MS. STEURY: And the same
22 situation, the caterers can donate if they

1 want?

2 MS. KOVACH: Yes.

3 MS. STEURY: Okay. But you do not
4 kick in any more than waiving the required
5 contribution for these entities?

6 MS. KOVACH: I would have to think
7 very specifically. Because we've done a
8 handful of events with the Georgetown Business
9 Association on very different levels. I got--
10 yes, my caterers have made contributions. But
11 before I speak I would have to think hard.
12 Because I may have -- we may have given them
13 something additional. I don't -- I can't tell
14 you that for sure right now.

15 MS. STEURY: Okay. The amount of
16 the required contribution that is waived in
17 the case of the CAG, what's the dollar amount
18 of that?

19 MS. KOVACH: Our contribution for
20 non-profit clients is \$5,000 for the home and
21 garden.

22 MS. STEURY: Okay. And did you

1 also waive a fee of the Van Terras?

2 MS. KOVACH: No. That would be
3 our Van Terra client. We do not use the Van
4 Terras at the CAG fundraiser.

5 MS. STEURY: Okay.

6 MS. KOVACH: It's a neighborhood
7 event. So most people come actually on foot.

8 MS. STEURY: Do you recall in a
9 previous conversation saying that it saved CAG
10 \$11,000 year? I'm trying to get back to that
11 number.

12 MS. KOVACH: The contribution for
13 the home and gardens, as I just said, is
14 \$5,000. There is also a \$6,000 service fee
15 for the pavilion room, which was contributed
16 to the Citizens Association of Georgetown by
17 the tent company.

18 MS. STEURY: Oh, by the tent
19 company. And is Mr. Belin the owner of that
20 tent company?

21 MS. KOVACH: No, he is not.

22 MS. STEURY: Okay.

1 MS. KOVACH: It's another one of
2 our exclusive vendors who provides our tent.

3 MS. STEURY: Okay. And I want to
4 ask the same questions about the garden club.
5 Could you just --

6 MS. KOVACH: The garden club does
7 not use the pavilion room. We open the doors
8 of the -- the gates of estate, not the doors
9 of the home to the garden club. It is a garden
10 tour. And they are not charged a contribution.

11 MS. STEURY: Okay. Do you
12 consider that an event?

13 MS. KOVACH: Of course.

14 MS. STEURY: Okay.

15 MS. KOVACH: That would be one of
16 our events.

17 MS. STEURY: So it's classified as
18 contracted?

19 MS. KOVACH: Yes. The garden tour,
20 I'm sorry I just misspoke. The garden tour and
21 the CAG fundraiser and the Georgetown Business
22 Association holiday party have been listed as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three of the four community events that are
2 allowed to have 200 guests, which is outside
3 of the 85 events but what makes up to the 89
4 that's actually being requested.

5 MS. STEURY: Okay.

6 MS. KOVACH: Those are the four
7 evens over 200 guests permitted.

8 MS. STEURY: Okay. You're
9 familiar with this roster of non-profit
10 events?

11 MS. KOVACH: I have seen it, yes.

12 MS. STEURY: Could you --

13 CHAIRPERSON MILLER: Is that in
14 the record?

15 MS. STEURY: Yes.

16 CHAIRPERSON MILLER: Could you
17 identify it for the record, please? So we an
18 find it or somebody reading the transcript
19 could find it.

20 MS. STEURY: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MS. STEURY: Thank you. It's

1 Exhibit 5 to number 44.

2 You've talked about these with me
3 previously. And I just, I'm still having a
4 hard time understanding the one about the GWU
5 women's lunch. That was a contracted event?

6 MS. KOVACH: I'm sorry. What's the
7 date on that?

8 MS. STEURY: 4/21. I'm sorry. I'm
9 on the last page. I've turned a page and
10 didn't tell you'd done that.

11 MS. KOVACH: Okay. That was not a
12 contracted event.

13 MS. STEURY: Okay. Are there
14 other things on this list that are not a
15 contracted even? If you can scan the first
16 page, too.

17 MS. KOVACH: There are. There
18 are.

19 MS. STEURY: Can you identify
20 those for me? So they're not in your
21 application terminology events?

22 MS. KOVACH: No. No. That's not

1 correct.

2 MS. STEURY: What's --

3 MS. KOVACH: In my testimony I
4 stated that we had, I said, in the rules and
5 regulations we have attempted to distinguish
6 between a meeting and an event.

7 MS. STEURY: Yes.

8 MS. KOVACH: For the sake of
9 simplicity, meetings are generally in house
10 meetings among the staff or between the staff
11 and one or more outsiders to discuss the
12 business of Society or in my case, the purpose
13 of planning the logistics of an event.

14 Then I go on to say that sometimes
15 we have events that are underwritten by the
16 Society with no payments by outside
17 organizations, therefore there have been cases
18 when we have not had contracts. Going forward
19 and in more recent months we have the practice
20 of establishing a contract for the purpose of
21 guaranteeing that we're holding the event.
22 Even though it's for zero costs, we will still

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have a contract.

2 MS. STEURY: That's how I
3 understood it.

4 MS. KOVACH: However, all of these
5 events, as I said, with the exclusion of
6 regular business meetings are included in the
7 85 events. So all of these events that we're
8 talking about as events are included in the
9 85. Eighty-nine if you include the over 200
10 guest count.

11 MS. STEURY: Okay. Let me see if
12 I understand. Today if you were dealing with
13 this event, this thing that happened on 4/21
14 --

15 MS. KOVACH: Yes.

16 MS. STEURY: -- it would have a
17 contract that had a zero fee with it? Now
18 does that sort of close that loop?

19 MS. KOVACH: Yes.

20 MS. STEURY: Okay. It was
21 catered, which would make it specifically an
22 event. I mean that's, as I said also in my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony, the definition of an event. They
2 typically involve outside vendors, there's
3 catering, there's services provided.

4 MS. STEURY: Okay. And in that
5 one the fee was waived?

6 MS. KOVACH: Correct.

7 MS. STEURY: Thank you.

8 CHAIRPERSON MILLER: Ms. Kovach,
9 can I just ask you this one question?

10 MS. KOVACH: Sure.

11 CHAIRPERSON MILLER: You have
12 event defined in the summary of rules and
13 regulations as requiring a contract,
14 basically. And then I've heard you say it
15 includes outside vendors. Could this
16 definition of event be defined more fully for
17 this case?

18 MS. KOVACH: Yes.

19 CHAIRPERSON MILLER: Okay. It
20 could be improved upon?

21 MS. KOVACH: Yes. Definitely.

22 CHAIRPERSON MILLER: Okay. All

1 right. Then I think I would request that, you
2 know, that be provided before the next
3 hearing. At the end of this we're going to
4 discuss, you know, when the next hearing is
5 and if any further information might be
6 helpful between now and then.

7 MS. KOVACH: Yes.

8 CHAIRPERSON MILLER: Okay. Just
9 while we're on that, though, that one probably
10 would be a good one. Okay. Thank you.

11 Do you have a question?

12 MS. STEURY: I do have a question.
13 Because I'm not quite clear on what the
14 regulations require in terms of service. I've
15 been very confused. And can we make sure
16 we're served with these in advance?

17 CHAIRPERSON MILLER: It requires
18 service on parties. And you weren't
19 officially a party yet, so that may have been
20 some of the confusion.

21 MS. STEURY: Okay.

22 CHAIRPERSON MILLER: But now you

1 are. Okay.

2 Is there any redirect?

3 MR. COLLINS: There is a bit of
4 it. I'm just concerned about the time.

5 CHAIRPERSON MILLER: Okay.

6 MR. COLLINS: If I can do it --

7 CHAIRPERSON MILLER: You can wait?
8 We can wait.

9 MR. COLLINS: We're coming back
10 anyway.

11 CHAIRPERSON MILLER: We're coming
12 back anyway. Right. So it's mainly, you know,
13 your witnesses. And if that's better you and
14 your witnesses, I think that's probably better
15 for everybody.

16 Okay. Yes, right, we can't finish
17 tonight. It's an impossibility. Okay.

18 Dates. Unfortunately, we do take
19 an August recess and we are jammed packed
20 until then. So, you know, one part I thought
21 it might have been a possibility if we finish
22 tonight and possibly have a decision July

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 29th. And that's not going happen. We didn't
2 finish tonight. We can't possibly have a
3 decision July 29th.

4 So that brings us to September.
5 So first I want to try to schedule a date for
6 continuation of this hearing and then we can
7 talk about whether there's any filings that
8 might be in order that would get us quicker to
9 the resolution of this case.

10 The first day that we're back is
11 September 9th. We would be adding you to the
12 calendar. And I can't say that I have -- I
13 haven't seen any of the cases so that I don't
14 have a real understanding they're going to
15 take.

16 Staff seems to believe that it's
17 possible to put you in last in the afternoon
18 on September 9th. There are two cases
19 scheduled, I just don't know how long this
20 case is going to take.

21 Are you all available for
22 September 9th. It would start later in the

1 afternoon.

2 Yes?

3 MR. ANDRES: I'm getting married
4 September 6th.

5 CHAIRPERSON MILLER: Oh. And we
6 can go further on down the line or else you
7 can do your redirect of traffic now. I don't
8 know.

9 Let me see. September 23rd I know
10 is good.

11 MR. COLLINS: Let me just look and
12 see if there's any redirect that I have of Mr.
13 Andres. I do not.

14 CHAIRPERSON MILLER: Okay. Then
15 congratulations. Are you getting married at
16 Evermay?

17 MR. ANDRES: No. Rhode Island.

18 CHAIRPERSON MILLER: Okay. How
19 does September 9th look? Again, I can't make
20 any promises about how late this will go.
21 Hopefully, it won't go this late. We're
22 fitting you in, but there are only two cases

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 scheduled right now.

2 MR. CROCKETT: I'm sorry. I do
3 have a problem because I have surgery for hip
4 replacement scheduled on September 4th. And I
5 will be in no shape to do this until 30 days
6 thereafter.

7 CHAIRPERSON MILLER: Let me ask
8 you, what would you be doing in your case?
9 Because your client's not here, so you don't
10 have a witness that you would be putting on.
11 You've done the cross examination.

12 MR. CROCKETT: Cross examine the
13 Office of Planning.

14 CHAIRPERSON MILLER: Office of
15 Planning.

16 MR. CROCKETT: And I don't know
17 what your procedures are here with respect to
18 closing arguments. I understand that the
19 applicant has the opportunity to sum up. I
20 don't know what the opportunities are for the
21 opponents in that regard.

22 CHAIRPERSON MILLER: Okay. And

1 I'm asking these questions, and then I want to
2 hear from others. Because we have to weigh,
3 you know, the good cause and the prejudice.
4 And what I -- I've heard applicants say
5 there's a prejudice the longer this is delayed
6 at this point. But we do have in the file,
7 also I want to just say two things.

8 A motion by you, which I believe
9 sets forth your legal arguments, is that
10 correct?

11 MR. CROCKETT: That's correct.

12 CHAIRPERSON MILLER: Okay. So we
13 have that.

14 And then we have Ms. Steury also
15 representing similar interests, I think.

16 MR. CROCKETT: You want to --

17 CHAIRPERSON MILLER: Yes?

18 MR. CROCKETT: Then the question
19 is how long after the final testimony and
20 cross examination is taken and the transcript
21 is retrieved for the filing of the final
22 statement of position and findings of fact and

1 conclusions of law?

2 CHAIRPERSON MILLER: We don't
3 always do that. It's not a requirement in the
4 regulations. We often do it when it makes
5 sense. Usually we decide that after the
6 hearing.

7 Mr. Collins, do you have something
8 to say about that as well? I certainly what
9 you -- I understand that he would like to do
10 proposed findings, is my understanding.

11 MR. CROCKETT: Well, yes.
12 Specifically I have set forth what our legal
13 theories are in the motion to dismiss, but it
14 does not discuss the evidence that has been
15 presented here. And it is necessary in order
16 to afford my client the opportunity to really
17 participate in this case to tie the evidence
18 -- we've heard here today and we'll hear, into
19 the legal theories. And that is generally done
20 in findings of fact and conclusions of law.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Collins, did you want to comment on that at

1 this point?

2 MR. COLLINS: To drag this now
3 from July into October is from a hearing that
4 was originally scheduled on May 13th,
5 postponed at the request -- yes, May 13th.

6 CHAIRPERSON MILLER: Why was it
7 delayed, though? Was it delayed at your
8 request?

9 MR. COLLINS: It was a delay at
10 the ANC's request. We were asked to delay the
11 hearing to have an opportunity to talk to the
12 people that wouldn't talk to us for the last
13 six months prior to that. And now we're
14 delayed again. Now we're going from July to
15 October because a counsel who just showed up
16 24/48 hours ago is now asking for a 30 day
17 delay for personal reasons. We have a real
18 problem.

19 CHAIRPERSON MILLER: Mr. Moy, how
20 long does it take to get an expedited
21 transcript after the hearing?

22 MR. MOY: We've done that as

1 quickly as in about five days. Between five
2 to seven days I've done the expedited
3 transcript.

4 CHAIRPERSON MILLER: Okay. I
5 guess I would suggest that if everybody else
6 can make the hearing on the 9th that we go
7 forward on the 9th for the reasons that I've
8 said, but I'll reiterate.

9 One is that, you know, if we were
10 to go forward tonight Mr. Crockett would just
11 be making legal arguments of which, we do have
12 a motion that sets forth those arguments. And
13 then I think that Ms. Steury is representing
14 the same interests. We kind of explored that
15 during the party status application, and so
16 could effectively cross examine the witnesses
17 on behalf of the impacted neighbors.

18 I think that we should also,
19 though provide an opportunity for a filing of
20 findings of fact and conclusions of law and
21 the transcript will be available to Mr.
22 Crockett and everybody else to review the

1 evidence in the record.

2 And I think that it would be
3 sufficient time for them to do that. But let
4 me see. Let me hear.

5 In order for us to put this on a
6 normal decision meeting, which would be, I
7 guess, the first - oh, do we skip a day in
8 October? I'm looking the first meeting in
9 October and I'm not seeing it on our schedule
10 for some reason.

11 MR. MOY: It should be October the
12 7th, Madam Chair.

13 CHAIRPERSON MILLER: Which would
14 mean we would move the findings of fact and
15 conclusions of law by what date?

16 MR. MOY: When the next hearing
17 would take place?

18 CHAIRPERSON MILLER: If we did
19 September 9th.

20 MR. MOY: September 9th. I could
21 conceivably have that transcript ready for
22 review between seven and ten days if we hold

1 it September 9th. So, let's say by September--

2 CHAIRPERSON MILLER: I thought you
3 said that the parties could get an expedited
4 transcript faster than that? No?

5 MR. MOY: Well, I could probably
6 have that -- if the hearing takes place on
7 September 9th, the transcript for the
8 September 9th date probably could be ready
9 within five to seven days. So that would take
10 us either -- give me a little bit of cushion,
11 certainly by the 16th. But possibly it could
12 be before that, before the 16th. September
13 16th.

14 CHAIRPERSON MILLER: Okay. And
15 then when would proposed findings of fact and
16 conclusions of law be due in order for the
17 Board to deliberate on it on October 7th?

18 MR. MOY: It would be tight. I
19 mean, it's up to the parties.

20 CHAIRPERSON MILLER: Yes. Do we
21 have a date, though and then we can see how we
22 might want to -- if we need to move it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Well, for academic
2 purposes, let's say the Board holds the
3 hearing on September the 9th. Let's say the
4 transcript is ready before September 16th.
5 Let's say no later than September 16th. Would
6 the parties have an opportunity to take
7 advantage of that transcript to have something
8 prepared, let's say the following week, by
9 September 23rd, which is pretty tight. Or that
10 Friday of that week of the 23rd, which would
11 be the 26th, September 26.

12 MR. COLLINS: For the due date for
13 our findings of fact?

14 CHAIRPERSON MILLER: We're just
15 exploring what it would be.

16 MR. COLLINS: Well, if your
17 decision is not until October 7th, the week
18 before that would be September 30th. How much
19 time do you need the findings of fact in
20 advance?

21 CHAIRPERSON MILLER: We don't
22 usually need it more than -- we don't usually

1 need it even a week ahead.

2 MR. COLLINS: So if we did it on
3 the 30th.

4 CHAIRPERSON MILLER: We usually
5 need it by the Thursday before the Tuesday.

6 MR. COLLINS: Thursday before,
7 yes.

8 CHAIRPERSON MILLER: What day
9 would that be?

10 MR. MOY: Which will take us
11 October 2nd.

12 CHAIRPERSON MILLER: October 2nd.

13 MS. STEURY: Can you --

14 CHAIRPERSON MILLER: Yes, we're
15 going to hear from you all.

16 MS. STEURY: I just had a
17 question.

18 CHAIRPERSON MILLER: Okay.

19 MS. STEURY: Could you tell me how
20 many weekends are in there?

21 CHAIRPERSON MILLER: Do you have a
22 calendar too, or no? Okay.

1 MR. MOY: There's two. It's about
2 two weekends, Ms. Steury.

3 MS. STEURY: Thank you.

4 MS. BAILEY:

5 Ms. Steury, do you need a calendar?

6 MS. STEURY: Thank you. I think
7 maybe Ms. Miller does. Thank you very much,
8 Ms. Bailey.

9 CHAIRPERSON MILLER: Okay. Let's
10 hear your comments on that?

11 MS. STEURY: My motion had asked
12 for 30 days to give me four weekends. And as
13 I stated in the motion, I have a day job. And
14 actually, I worked for the federal courts.
15 The federal court has two deadlines a year
16 that effect all judges. I work for 13 of the
17 judges there, one of them is September 30th.
18 I will not in a position to be -- I have taken
19 vacation time three days now to prepare for
20 and attend these hearings. I will not be in a
21 position to be able to take vacation time to
22 accomplish this task. And I would say I need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 at least three weekends in order to get --
2 because that's when I have to do it.

3 MR. CROCKETT: Madam Chair, you
4 know I think that's par for the course with
5 those of us who participate in the community
6 in these types of things; that we all have day
7 jobs. This is all done on our own time. And it
8 is quite different for us than it is for a
9 lawyer who is in the practice and has this on
10 his plate everyday.

11 CHAIRPERSON MILLER: So you would
12 be requesting that proposed findings and
13 conclusions of law be submitted 30 days after
14 the 9th, which would be approximately October
15 9th, which would be after our scheduled
16 meeting day.

17 MS. STEURY: I think what I asked
18 for in my motion was 30 days after the
19 transcript became available.

20 CHAIRPERSON MILLER: Right.
21 That's the problem. Okay.

22 MR. MOY: Madam Chair, just for

1 more academics. If the Board wanted to
2 consider a special vote, maybe on the 14th of
3 October, which would be the following Tuesday.

4 CHAIRPERSON MILLER: We're going
5 to just go in there for a minute and look at
6 our calendars more carefully.

7 (Whereupon, at 12:09 a.m. off the
8 record until 12:17 a.m.)

9 CHAIRPERSON MILLER: We're back on
10 the record. And we looked at the dates and we
11 can't figure out anything better than the 9th.

12 And I did want to state that
13 remember that least Ms. Miller did get here
14 and actually testify tonight. So I that I
15 understand that, you know, Mr. Crockett can't
16 be here on the 9th, but actually you did get
17 to put the witness on.

18 Okay. And I said all the other
19 stuff about your legal arguments in the record
20 and Ms. Steury also represents the interests.

21 So, we're going to go forward with
22 the hearing on the 9th. It will be the last

1 case in the afternoon. And for the sake of
2 efficiency and anything we can do to move this
3 case further on -- oh, let me just say. The
4 date for -- we will decide this on the 14th,
5 I believe is what we said. We'll do a special
6 meeting. And then proposed findings and
7 conclusions of law would be do, what date, Mr.
8 Moy? That Thursday before the 14th?

9 MR. MOY: The date was October the
10 9th.

11 CHAIRPERSON MILLER: By what time?

12 MR. MOY: Three o'clock,
13 typically.

14 CHAIRPERSON MILLER: Okay. And
15 all parties need to serve all parties.

16 And the other thing I was starting
17 to say is for the sake of efficiency, I think
18 there are a couple of things that the record--
19 we could leave the record open for in between
20 now and then. And one was, you know, there's
21 an issue was is an event and we'll be talking
22 about how many events are being held and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things like that. And so, Ms. Kovach has
2 already stated that she could provide a more
3 complete definition of event. Okay. So we
4 can distinguish that from meetings or study
5 groups, or whatever. In the context of
6 evaluating impact on the neighbors and what is
7 actually going to be happening or you want to
8 happen at Evermay.

9 The other thing is I think we will
10 be discussing at the end of the hearing, and
11 actually not necessarily the end, Office of
12 Planning has proposed conditions. And
13 therefore, if anyone in advance wants to
14 submit any comments on those, they could be in
15 the record for consideration. And if there are
16 any other proposed conditions that anyone
17 wants to submit, we would leave the record
18 open for that as well.

19 I think that would be more
20 efficient. I don't see it happening, you know,
21 alternatively when we're done with the
22 hearing. I think we would like to try to get

1 as much in the record now so that at the end
2 of the hearing we'll be ready to have you just
3 do proposed findings and conclusions of law.

4 So, do we need a date for any of
5 those additional submissions? You know,
6 before the 9th.

7 MS. BAILEY: Madam Chair, there
8 was some discussion about a certificate of
9 good standing.

10 CHAIRPERSON MILLER: That's right.

11 MS. BAILEY: I don't know if that
12 is still needed or not.

13 CHAIRPERSON MILLER: Thank you
14 very much, Ms. Bailey.

15 And is there a rule that governs
16 when this should be filed or is, again, the
17 Thursday before the Tuesday sufficient? Do
18 you know, Mr. Moy?

19 MR. MOY: No, I think that would
20 be fine. That would go to the record for
21 preparation of the continued hearing on the
22 9th, September 9th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MILLER: Okay. Then
2 the Thursday before the 9th of September.

3 MS. STEURY: Is that also at 3:00?

4 CHAIRPERSON MILLER: Yes. That's
5 the magic time for our packages to go out.

6 Let's see, oh that's the 5th? No.
7 The 5th is a Friday. The 4th.

8 MR. MOY: That's correct.

9 CHAIRPERSON MILLER: Okay. The
10 4th.

11 MS. STEURY: And may I--

12 CHAIRPERSON MILLER: It's not
13 mandatory, but it's a suggestion because
14 conditions will be discussed at that hearing.

15 MS. STEURY: And may I ask again,
16 given that you gave a little extra time for
17 the findings of fact, can we still get an
18 expedited transcript to give us as much time
19 as possible? Because the month doesn't --
20 what am I not being clear about?

21 The month from the 9th to the 9th
22 does not give us much time if we don't have

1 the transcript almost immediately after that.

2 CHAIRPERSON MILLER: Yes. I think
3 there's confusion here.

4 MS. STEURY: Okay.

5 CHAIRPERSON MILLER: I'm not sure.
6 The 9th is when we're holding the hearing.

7 MS. STEURY: Yes.

8 CHAIRPERSON MILLER: The 14th is
9 when we're setting for this decision making.

10 MS. STEURY: Yes. But we have to
11 have our findings of fact and conclusions to
12 you by the 9th.

13 CHAIRPERSON MILLER: No. Okay.
14 Now we're going back to the hearing is the
15 9th.

16 MS. STEURY: Yes.

17 CHAIRPERSON MILLER: I was
18 suggesting, it's not proposed findings and
19 conclusions of law at all. I was saying that
20 at that hearing we will be discussing
21 conditions.

22 MS. STEURY: I understood all

1 that. I then went to the next question.

2 CHAIRPERSON MILLER: Okay. You
3 got that. So you --

4 MS. STEURY: I understand if we --

5 CHAIRPERSON MILLER: You're
6 expedited transcript?

7 MS. STEURY: Yes.

8 CHAIRPERSON MILLER: Which we
9 discussed earlier. Is that something -- okay.
10 Mr. Moy will be doing that.

11 MS. STEURY: Thank you.

12 CHAIRPERSON MILLER: Okay.

13 MS. STEURY: Thank you. I
14 appreciate that.

15 CHAIRPERSON MILLER: Okay. Any
16 other questions?

17 Gee, you think we should adjourn.

18 MR. COLLINS: So just to be clear,
19 the dates are then the hearing September 9th,
20 findings of fact conclusions of law by October
21 9th at 3:00. And then by September 4th we're
22 submitting the applicant's submitting some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 additional information about what's an event.
2 Everybody's invited to comment on the opening
3 conditions and suggest some conditions
4 themselves. And a certificate of good
5 standing all by September 4th.

6 CHAIRPERSON MILLER: Did you say
7 something about October 9th. Oh, that's
8 proposed findings and conclusions of law.

9 MR. COLLINS: Right.

10 CHAIRPERSON MILLER: Yes. Okay.
11 September 4th if you have any of
12 those filings for the 9th of September.

13 MR. COLLINS: Right.

14 CHAIRPERSON MILLER: Okay.
15 Anything else.

16 MR. COLLINS: The decision then
17 would be on the -- yes. You said that just to
18 be clear. The decision is on the 14th in a
19 special public meeting?

20 CHAIRPERSON MILLER: That's
21 correct.

22 MR. COLLINS: of October.

1 CHAIRPERSON MILLER: Anything
2 else? Okay. This hearing is adjourned.

3 (Whereupon, at 12:24 a.m. on July
4 23, 2008 the hearing was adjourned.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22