

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 11, 2014

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:33 a.m., Lloyd Jordan, Chairperson, presiding.

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
ALLISON MYERS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
PAUL GOLDSTEIN
KAREN THOMAS

The transcript constitutes the minutes
from the Public Hearing held on February 11, 2014.

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

(10:33 a.m.)

MR. MOY: First application on the docket for hearing, Mr. Chairman, is application number 18706. This is the application of Lawrence S. Ward and Jessica Furey. This is a request for special exception for an addition under Section 223, not meeting lot occupancy 403, and non-conforming structure under Section 2001.3.

CHAIRPERSON JORDAN: Thank you. Would the parties please take a seat at the table and identify yourselves? Make sure your microphone is on.

MS. FUREY: Good morning. My name is Jessica Furey.

MR. CRUIKSHANK: My name is Neal Cruikshank. I'm an architect, the architect.

MR. WARD: Lawrence Ward.

CHAIRPERSON JORDAN: I'm sorry?

MR. WARD: Lawrence Ward.

CHAIRPERSON JORDAN: You can turn your microphone on.

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1 MR. WARD: Lawrence Ward.

2 CHAIRPERSON JORDAN: And you are?

3 MR. WARD: Homeowner.

4 MS. FUREY: Homeowners.

5 CHAIRPERSON JORDAN: All right, to me,
6 this is pretty straightforward. I'm trying to
7 understand and get my arms around the ANC support,
8 which is kind of conditional if I'm not mistaken.
9 They have some conditions.

10 MS. FUREY: That is correct.

11 CHAIRPERSON JORDAN: And one is the BZA
12 can only deal with relief that arises out of the use
13 of the property from the zoning regulations, and
14 there are some things that I don't think we could
15 do. But I took a stab at trying to rework these
16 conditions, and I think there's some trees that are
17 going to be removed from this property?

18 MS. FUREY: Some small trees, yes.
19 That is correct.

20 CHAIRPERSON JORDAN: Then you talked
21 with ANC about replacing those trees?

22 MS. FUREY: That is correct.

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1 CHAIRPERSON JORDAN: And shrubbery
2 too?

3 MS. FUREY: Yes, that is correct.

4 CHAIRPERSON JORDAN: And there's a fear
5 about there's going to be some storm water runoff
6 with the property development, and you're agreeing
7 to take care of that?

8 MR. WARD: Yes.

9 CHAIRPERSON JORDAN: Okay. I think we
10 can get ourselves to where we need to be on that.
11 I really thought the application spoke for itself.
12 You had approval from -- recommended approval from
13 OP, the ANC 3E, and also the Department of
14 Transportation. You have letters of support from
15 neighbors.

16 Does the Board have any questions they
17 need to ask this applicant?

18 COMMISSIONER TURNBULL: I'm fine, Mr.
19 Chair.

20 MR. HINKLE: Just real quick. Do we
21 have a copy of a site plan perhaps that would show
22 the plantings that would meet the request of the

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1 ANC?

2 MS. FUREY: Actually, we were going to
3 do a consultation with Riversmart, which is a DC
4 program.

5 MR. HINKLE: Oh, that's right.

6 MS. FUREY: So, we do not currently have
7 an idea of where the shrubbery would go.

8 MR. HINKLE: Okay.

9 MS. FUREY: But we plan to have that
10 consultation within the next couple of months.

11 MR. HINKLE: Understood. Thank you.

12 CHAIRPERSON JORDAN: Let me go over
13 what I kind of changed: the conditions. The ANC had
14 proposed four conditions. But one of the things
15 that we have to make sure in our orders for
16 conditions that there is something that is
17 enforceable, and we are clear about what is really,
18 really means.

19 So, let me -- I actually changed the four
20 to two conditions, and I think it encompasses all
21 the concerns of the ANC. I changed it to the
22 applicant in consultation with Riversmart Homes

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1 Program to implement a storm water mitigation plan
2 to control storm water runoff to a level no greater
3 than that which will occur if the property only had
4 40 percent lot occupancy. Such mitigation shall
5 include the landscaping of the property.

6 The second would be the applicant shall
7 plant on the property at least four medium shade
8 trees and replace any shrubbery removed. So, I
9 just kind of consolidated that, and thought it took
10 the spirit of what the ANC was looking for.

11 MS. FUREY: Mr. Chairman, we are very
12 comfortable with the spirit of what you are
13 suggesting. My only concern is if they come in and
14 tell us that since the trees that we've removed are
15 very small that we may not be able to accommodate
16 four large-sized trees.

17 Some of the trees that we're removing
18 are about this wide in diameter. They're very,
19 very small.

20 So, if the property will allow the
21 planting of four large additional shade trees,
22 we're open to that. But they may tell us that

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1 there's not adequate space. So, that's why there
2 was the provision there that if this planting cannot
3 be accommodated on our property that we would do it
4 in the neighborhood.

5 I just don't know what the analysis is
6 going to be at the end of the day.

7 CHAIRPERSON JORDAN: I don't know if
8 that's something we can sit and enforce. All
9 right, let me -- I was talking to counsel just to
10 try to understand within our purview. I'm going to
11 suggest that what we would do here is keep the first
12 condition, because that's in light of what the ANC
13 wanted.

14 However, I'm going to ask that the
15 applicant and ANC enter into their own agreement
16 regarding any alternative. I will remove the
17 second part of what I just read, and any other
18 alternatives as ANC has conditioned their support
19 based upon that which they listed.

20 I can easily incorporate the first, but
21 you can do an agreement with the ANC. And I'm
22 suggesting that prior to -- a condition prior to the

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1 issuance of the C of O that the applicant present
2 the agreement with the ANC prior to -- prior to
3 getting their C of O.

4 MS. FUREY: I'm sorry --

5 COMMISSIONER TURNBULL: Mr. Chair, I
6 would agree. I think we can mention something like
7 that. We've often done that in Zoning Commission
8 orders, where it may not be enforceable from our
9 standpoint. There is a reference to the fact that
10 they're going to have an agreement to do something,
11 and that's between them and the ANC.

12 I don't really think they're going to
13 plant two large trees. I mean they may grow to be
14 large caliber trees, but normally you're only going
15 to plant a two-inch or three-inch caliber tree, and
16 that's kind of a quid pro quo that they're going to
17 offer to the ANC.

18 I mean I think we can mention it in the
19 order, but it is -- I would agree with you. It is
20 not really for us to follow up on.

21 MS. FUREY: We're fine with that.

22 CHAIRPERSON JORDAN: If there's no

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1 other issues or questions from the applicant, then
2 I'm going to see if the applicant is willing to waive
3 any additional testimony and we can just proceed on
4 with the hearing.

5 MS. FUREY: Yes.

6 CHAIRPERSON JORDAN: Okay, so then
7 let's move to the Office of Planning, and see if
8 there's anything in addition that the Office of
9 Planning needs to add to what they've already
10 reported.

11 MR. GYOR: Good morning, Mr. Chairman
12 and Members of the Board. Steven Gyor with the
13 Office of Planning. The Office of Planning
14 supports the application, and rests on the record.
15 Thank you.

16 CHAIRPERSON JORDAN: Thank you.
17 Board, any questions of Office of Planning?
18 Applicant, any questions of Office of Planning?
19 Then let's move to Department of Transportation.
20 Anyone for Department of Transportation here for
21 this particular matter? Anyone from Department of
22 Transportation? No? Okay.

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1 We do have a letter from the Department
2 of Transportation having no objection to the
3 requested relief. Is there anyone here from ANC
4 3E? Anyone from ANC 3E? We do have a letter of
5 approval from -- recommending approval from ANC 3E
6 with those conditions that we discussed.

7 Is anyone here wishing to speak in
8 support of this application? Anyone wishing to
9 speak in support? Anyone wishing to speak in
10 opposition? Anyone wishing to speak in
11 opposition? Then we would close this hearing based
12 upon what's already in the record, and move to
13 decision.

14 I would move that the relief requested
15 by the applicant be granted with the condition as
16 I previously read that the applicant in
17 consultation with Riversmart Home Programs shall
18 implement a storm water mitigation plan to control
19 storm water runoff to the level as if the property
20 had a 40 percent occupancy, and such mitigation
21 shall include landscaping of the property, and that
22 the applicant shall meet with the ANC and present

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1 to the zoning administrator an agreement regarding
2 their conditions. That would be my motion.

3 MR. HINKLE: Second.

4 CHAIRPERSON JORDAN: Motion second.
5 Any additional discussion? All those in favor
6 signify by saying aye.

7 (Chorus of ayes.)

8 Those opposed nay. Motion carries.
9 Mr. Moy?

10 MR. MOY: Staff will record the vote as
11 3 to 0. There was a motion from Chairman Jordan to
12 approve the application for relief requested, and
13 additions with conditions cited by the Chairman.
14 Seconding the motion Mr. Hinkle. Also in support
15 Mr. Turnbull. We have a Board Member not present
16 and a seat vacant. Motion carries 3 to 0.

17 MS. FUREY: Thank you.

18 CHAIRPERSON JORDAN: Let's call 709.

19 MR. MOY: Application number 18709 of
20 DAZ, D-A-Z, LLC. This is pursuant to DCMR 3104.1
21 and 3103.2. These are multiple relief requests for
22 a special exception, and variants, Mr. Chairman, at

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1 125 New York Avenue.

2 CHAIRPERSON JORDAN: All right, thank
3 you. Would you please identify yourselves? Make
4 sure your microphone is on, please. Push it.
5 You'll see a bright, glowing green light. It's not
6 on. Now speak.

7 MS. PARSA: Ziba Parsa, DAZ LLC, the
8 owner.

9 MR. TRULIO: William Trulio, the
10 architect.

11 CHAIRPERSON JORDAN: Okay, thank you.
12 This is another that I think the need for relief is
13 clear. You are aware that the Office of Planning
14 is issued a condition, seeing that the Child
15 Development Center space should not -- should be
16 restricted to only -- should not be allowed to have
17 residential use. You saw that, and no problem with
18 that?

19 MR. TRULIO: No problem.

20 CHAIRPERSON JORDAN: Okay, Board, any
21 questions we need to drill down on?

22 MR. HINKLE: I'm happy with everything.

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1 CHAIRPERSON JORDAN: Okay. We feel as
2 though there is enough in the record to support your
3 request for relief. So, with that, if you're
4 willing to waive any additional statements in
5 hearing, we can proceed on.

6 MS. PARSA: Sure.

7 CHAIRPERSON JORDAN: Okay, then let's
8 go to Office of Planning, and see what Mr. Goldstein
9 has for us. In addition, if there's anything
10 additional to what you've already put in your
11 report.

12 MR. GOLDSTEIN: The only thing
13 additional I have is to introduce myself. Paul
14 Goldstein with the Office of Planning. Actually,
15 maybe you did that, so I didn't need to do that much.

16 CHAIRPERSON JORDAN: We didn't do the
17 drumroll.

18 MR. GOLDSTEIN: We're supportive of the
19 application. You noted the condition that we noted
20 in our report, and we are happy to answer any
21 additional questions that you may have.

22 CHAIRPERSON JORDAN: Any questions?

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1 MR. TRULIO: I would only offer you one
2 little piece of information on it. That this
3 building has been on this site at least since 1887.

4 CHAIRPERSON JORDAN: Sometimes we have
5 people when we're moving this thing along start to
6 talk and get themselves into trouble. You might
7 want to just hold tight. But you can talk. I mean
8 it is up to you.

9 MS. PARSA: No thank you.

10 CHAIRPERSON JORDAN: All right. Did
11 you do a presentation from the ANC?

12 MS. PARSA: I contacted them, and they
13 haven't responded. I sent email to Commissioner
14 Bonn. I have the email copies.

15 CHAIRPERSON JORDAN: Okay, that's --
16 because that was the only --

17 MS. PARSA: I offered to go and --

18 CHAIRPERSON JORDAN: That's good.
19 Anyone here from the Department of Transportation
20 for this particular matter? Then we do have a
21 letter from the Department of Transportation with
22 no objection to the relief. We do not have a letter

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1 from ANC 5E, but the applicant has represented that
2 she has reached out to ANC 5E.

3 We do have letters of support from
4 neighbors in support of this application. Is there
5 anyone else here wishing to speak in support of this
6 application? Anyone else in support? Anyone in
7 opposition? Anyone in opposition?

8 Then we would conclude this hearing
9 based upon the record, and I would move that we grant
10 the relief requested by this applicant with the
11 condition that the space allocated to the Child
12 Development Center shall not have residential use.

13 COMMISSIONER TURNBULL: Second.

14 CHAIRPERSON JORDAN: Motion made and
15 seconded. All those in favor signify by saying
16 aye.

17 (Chorus of ayes.)

18 CHAIRPERSON JORDAN: Those opposed
19 nay? Motion carries. Mr. Moy?

20 MR. MOY: Staff will record the vote as
21 3 to 0. This on motion of Chairman Jordan to
22 approve the application for the amended relief for

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1 two variants, relief and -- well, I take that back.
2 Two variants, relief and one special exception.
3 Also in support Mr. Turnbull -- second rather, and
4 Mr. Hinkle in support. We have a board seat vacant,
5 a member not present.

6 The approval comes with one condition as
7 the Chairman cited. Motion carries 3 to 0.

8 CHAIRPERSON JORDAN: Thank you. We're
9 going to be in recess for five minutes.

10 (Whereupon, the above-entitled matter
11 went off the record at 10:48 a.m. and resumed at
12 11:00 a.m.)

13 CHAIRPERSON JORDAN: Okay, 707,
14 please.

15 MR. MOY: The next application before
16 the Board is application number 18707 of Antioch
17 Baptist Church. This is a request, Mr. Chairman,
18 for variants relief from the parking lot location
19 requirements under Section 214.4, and special
20 exception to establish accessory parking and
21 storage under Section 214.

22 CHAIRPERSON JORDAN: Thank you. Okay,

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1 please identify yourself first.

2 MR. BROWN: Joseph Brown. Good
3 morning.

4 CHAIRPERSON JORDAN: Joseph Brown, and
5 you are?

6 MR. BROWN: Representative for the
7 church.

8 CHAIRPERSON JORDAN: Okay, do you have
9 an authorization letter?

10 MR. BROWN: Yes.

11 CHAIRPERSON JORDAN: Okay, 23? Is
12 that it? All right, good. I'm a bit concerned
13 about this application. I'm going to be hard
14 pressed to grant you any relief unless you can show
15 us how you meet the zoning variance request,
16 variants test. I know the Office of Planning has
17 indicated in their report -- you've seen the Office
18 of Planning's report?

19 MR. BROWN: Yes.

20 CHAIRPERSON JORDAN: That they had
21 concerns because they didn't have enough detail. I
22 know, Mr. Goldstein, you got additional information

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1 on this?

2 MR. GOLDSTEIN: This is Paul Goldstein
3 filling in for Arthur Jackson, who is unfortunately
4 -- they've had a death in his family. I'm not aware
5 of any information. Maybe the applicant can
6 clarify. I haven't been provided with anything in
7 addition in response to the report. But if the
8 applicant has submitted some additional
9 information, I'm just not aware of it.

10 CHAIRPERSON JORDAN: Okay, have you
11 submitted any additional documentation to Office of
12 Planning on this?

13 MR. BROWN: The only thing that we
14 submitted additional was our version of a site plan
15 that Mr. Jackson did not think was sufficient,
16 indicating the two concerns he had. One being the
17 part where we would have to build a brick wall or
18 shrubbery separating our lot and the residential
19 lot next door, and he was concerned with the
20 surfacing.

21 In the site plan that we provided
22 originally, sir, we did -- we were of the impression

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1 that the entire lot is what we were putting the
2 application in for. So, originally, we thought we
3 complied with the landscaping portion because there
4 is 14 feet of landscaping on the parcel, but not in
5 the fence portion.

6 Mr. Jackson was of the impression that
7 the fence portion needed to have five percent. So,
8 we could accomplish that with the shrubberies on
9 both sides as we indicated. And if we needed to
10 concrete or blacktop the surface, we could do that
11 as well.

12 CHAIRPERSON JORDAN: Okay. A lot of
13 times people come in, and they have good intentions,
14 and they're trying to do something, but there's
15 certain requirements for that to happen. One is
16 you have to show this property has some type of
17 exceptional condition or uniqueness to it, and
18 therefore it presents a practical difficulty for
19 you to meet the requirements of the zoning
20 regulations.

21 I have not seen that. Not that you
22 can't tell us here and show us as you sit here today,

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1 but I have not seen that in the documents that you
2 presented. So, that would be the thing that you
3 need to show us in your testimony or your
4 presentation to us.

5 Let us know how this property is unique,
6 and why you should be granted the relief that you
7 request.

8 MR. BROWN: In support of what you're
9 asking, we may very well be ignorant of everything
10 that we are required to do. And unfortunately,
11 during the process, we were educated on a lot of the
12 aspects of what we're doing.

13 Originally, we were just seeking tax
14 exemption for the lot, and that's when we came into
15 the understanding that we were actually using the
16 parcel in an unauthorized manner. And so, that's
17 why we attempted to move forward to get the
18 necessary relief to get it re-zoned, and this type
19 of stuff. Not only for tax exemption, but so we can
20 be in compliance with the law.

21 In doing so, to the best of our ability,
22 we attempted to understand all of the aspects of

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1 what we're doing, looked through some files, and
2 decided that we did obtain the lot in 1996. And it
3 is not sufficient to do too much of anything else.

4 Our primary church property houses
5 everything that we need as far as that is concerned.
6 There is not sufficient space on that parcel for
7 parking. And otherwise, the lot would just sit
8 vacant.

9 We have been parking. For over 15
10 years, we've been using that as a parking lot, and
11 again, last year we discovered that this was an
12 unauthorized use because we were, again, attempting
13 to obtain tax relief.

14 When I came into the position of the
15 finance manager, that's one of the first things I
16 noted: that we weren't -- that's the only thing we
17 were paying taxes on. And so, I began to inquire
18 about that.

19 Unfortunately, the predecessors are
20 either deceased or are no longer with us, and there
21 are no credible records to determine why they've
22 never attempted to get this lot relieved.

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1 So, at any rate, we are attempting to
2 come in compliance with whatever we need to do to
3 obtain the proper relief, and to use this space
4 without it just being vacant. As such, we did
5 provide some information that would support.
6 There is no space on our existing lot for this. Our
7 -- the church-owned equipment would be parked in an
8 area or in a place where it would welcome vandalism
9 and that type of stuff.

10 Since this lot was fenced, we thought
11 that we could use it for the secure parking of our
12 church-owned vehicles, because we don't operate --
13 we're not at the church 24 hours. So, in the after
14 office hours, our vehicles are left vulnerable. It
15 is our church van that we use to transport members,
16 and our 4x4 pickup, which we use for grocery
17 shopping, and a snow plow is attached to that.

18 CHAIRPERSON JORDAN: You're asking us
19 for relief, a variance from the -- where are we?
20 Variance from the parking lot location
21 requirements, and a special exception for accessory
22 use. I'm just trying to get you there. I'm going

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1 back over your statement. Does the Board have any
2 other issues or questions? Yes, Mr. Turnbull?

3 COMMISSIONER TURNBULL: I'm just
4 wondering if for benefit of the church it might be
5 prudent to postpone this so they have a chance to
6 meet with the Office of Planning? Maybe Mr.
7 Goldstein can fill in for Mr. Jackson and offer some
8 advice on how to -- what they may need to provide
9 to help us on this.

10 CHAIRPERSON JORDAN: Yes. I'm going
11 to suggest, in fact, I'll tell you what I'm going
12 to do for you because I don't think the church should
13 waste its money, and you might be able to get where
14 you need to be. But I'm going to, in your favor,
15 continue this case to another date and ask if Mr.
16 Goldstein can meet with them outside or something
17 today, in the hall or something, and have a
18 discussion about the standards that are required.

19 I'm not saying that you can't get there,
20 but listening to you today and going through your
21 documents, the information that we need is not
22 there. And you just need some direction on how to

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1 pull it. It may be there.

2 I wouldn't want to deny this application
3 based upon the need. I think you're probably close
4 enough, and the amount of relief you're looking for
5 is not really that great. But -- and I know you're
6 stumbling through this on your own, just trying to
7 figure out how you're going.

8 So, let's do that if that's okay with
9 you. We'll give you a new date, and you try to work
10 out what is necessary to get this by talking to the
11 Office of Planning, and anyone else who very well
12 may be able to help you.

13 MR. BROWN: Yes, sir. Well, thank you.

14 CHAIRPERSON JORDAN: Mr. Moy, where are
15 we?

16 MR. MOY: We're looking into March, Mr.
17 Chairman, because of the size of dockets in
18 February.

19 CHAIRPERSON JORDAN: I'm not trying to
20 squeeze him in.

21 MR. MOY: Okay, so, I'm looking at Mr.
22 Turnbull. He doesn't have a date when he is

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1 returning in March. So, in terms of the size of the
2 docket and needs for the Board, staff would suggest
3 not to put this off too long.

4 CHAIRPERSON JORDAN: I want to give him
5 sufficient time to seek help on this.

6 MR. MOY: I would suggest March 18, Mr.
7 Chairman.

8 CHAIRPERSON JORDAN: Okay, let's put
9 March 18th, and any additional filings need to be
10 put in by March 11th.

11 MR. MOY: Yes.

12 CHAIRPERSON JORDAN: Okay. So, we're
13 going to continue this matter to March 18th, with any
14 additional filings due by March 11th. I strongly
15 advise that you get some help and support for this
16 so we can get it taken care of, if we can, on March
17 18th.

18 MR. BROWN: Thank you, sir.

19 CHAIRPERSON JORDAN: Thank you. Where
20 are we, 671?

21 MR. MOY: The next application before
22 the Board is Application Number 18671, Jemal's T.P.

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1 Land, LLC. This -- this application, Mr. Chairman,
2 was previously postponed from December 10th, and
3 December 18th, 2013. I think the 18th was a snow
4 day.

5 The caption, as advertised, that is in
6 the case folders was for -- was for special
7 exception relief and --

8 CHAIRPERSON JORDAN: Let's -- let's
9 take a seat here on this. I don't want anybody to
10 get ready to do anything because I don't think this
11 is ready to be heard. Let me just go ahead and have
12 you introduce yourselves, and then I want to get
13 down to where our issues are.

14 MS. BATTIES: Good morning, Leila
15 Batties, with the Law Firm of Holland and Knight,
16 on behalf of the applicant.

17 MR. ANDERSON: Erwin Anderson of Grove
18 Associates.

19 MS. HERNANDEZ-AYALA: Colline
20 Hernandez-Ayala with GTM Architects.

21 MR. SHER: Steven E. Sher, the Director
22 of Zoning and Land Use Services with Holland and

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1 Knight.

2 CHAIRPERSON JORDAN: You look
3 familiar. Guess I've seen you about 10,000 times,
4 but that's okay. Good seeing you. We missed you
5 last week. This -- this -- this matter? The Board
6 has been trying to get their arms around it, and I
7 think OP has been trying to get their arms around
8 it. Office of Attorney General has been trying to
9 get their arms around it, trying to understand what
10 you're asking for.

11 There was -- there was a previous case
12 in this matter, 17679, and that case had been
13 continued a couple times, and then got additional
14 extensions to April 2014.

15 Then we got a new application. The new
16 application is not seeking a modification of 17679.
17 It has been -- it is asking for additional relief.
18 It is asking for substantial change to the relief
19 that was granted and planned even in 17679.

20 Then in December we find inside of a
21 document there's an attempt to try to make this a
22 modification of 17679. It doesn't go that way.

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1 So, one, I need to know what you're trying to do.
2 If it is a modification, then it hasn't been related
3 back to, one, the standard requirement for
4 modification, and two, they -- and it is nothing
5 involving -- if it is a new application, then
6 there's no discussion of all the relief that was
7 given in 17679.

8 Carrying that further, all
9 notifications and all advertisement of this has not
10 been a modification. It has been a new application
11 based upon the relief sought only of -- the relief
12 for the parking and loading. And you also have
13 17679 due to expire in April 2014.

14 I don't see how this Board can go forward
15 without one having to be properly noticed, which is
16 has not been properly noticed, and two, trying to
17 understand what you're doing with the previous
18 relief under 17679, and the fact that there's been
19 significant change of plans in a number of units
20 even in this matter.

21 So, I don't even think we can go forward.
22 I was going to say you can go forward and try to

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1 justify, but I'm having real problems, Mr. Turnbull
2 and Mr. Hinkle, regarding the notice, the public
3 notice, and whether or not this is a modification
4 application.

5 So, why don't you tell us what you're
6 trying to do, but I don't think we're going to go
7 forward.

8 MS. BATTIES: Okay. Good morning. We
9 are seeking a modification of the previously
10 approved plans. You've given some of the history
11 in your opening remarks, but you're right; in
12 September, we filed an application and a site plan
13 that looks substantially different than what is
14 presented before the Board today.

15 The reason that's the case is when we --
16 between the time that we filed, and then our
17 original hearing date, which was in December, the
18 applicant worked very closely with the neighbors in
19 addressing their concerns.

20 Our original site plan, the one filed in
21 September, requested 110 units and reconfigured the
22 site plan, and parking lot much different in a way

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1 that was significantly different than what was
2 previously approved.

3 But based on our conversations with the
4 neighborhood and the ANC, we decided it was best to
5 go back to what was originally approved, keep the
6 building footprints the way they were; keep the site
7 plan configuration the way -- the site plan
8 configuration the way it was originally approved,
9 and just increase the number of units in the
10 building. Not by expanding the footprint of the
11 building, but changing the unit size and unit mix.

12 So, that is really the only thing that
13 has been done to the plan that was originally
14 approved. Now, the increase in the number of units
15 resulted in a higher parking count because the
16 ratio, the parking required for this zoning
17 district, is 1 to 1.

18 So, when we decided to increase the
19 number of units from 76 to 100, we were able to
20 accommodate most of the parking onsite, but not all
21 of it. We're short -- we provide 95 parking spaces
22 for the apartment building, where 100 spaces are

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1 required. Also, the increase in the number of
2 units resulted in, or triggered a need, for a
3 loading variance.

4 But again, we're able to accommodate a
5 loading berth, a 30-foot loading berth on the
6 property, where 55-foot is required. But other
7 than that, the configuration of the plan, the
8 footprints of the two new buildings have not
9 changed, and we are relocating the three
10 single-family homes that are on the property or that
11 -- one has been raised, but will be reconstructed.
12 Those will be as shown on the plan that was approved
13 by the Board in 2008.

14 That's why we are -- we came back with
15 the modification versus a new plan, because after
16 our discussions with the neighbors, we realized
17 that the plan that we were going forward with was
18 essentially identical to the plan that was approved
19 by the Board in 2008.

20 CHAIRPERSON JORDAN: Yes, but the
21 original application didn't have that information.
22 Since there's a notice defect here, changing

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1 mid-course, our notice, and the change is
2 completely different. Also, what's before -- in
3 December some time, you tried to change it and make
4 it a modification.

5 It was like, "Oh, timeout. We're going
6 to make this a modification.," although we were
7 arguing the whole time prior to that, and even
8 thereafter that it's not a modification. I think
9 you just used it -- just used the word modification
10 more -- we weren't thinking you were using it as a
11 term of art, but you were actually just using it and
12 saying how you make an adjustment to the particular
13 plan.

14 So, it has been very confusing in
15 reviewing this application. If it is confusing to
16 us, it is confusing to the public, and they have to
17 know what's going on with the property. I think
18 this has to be re-advertised. I think we need to
19 make sure that your application is very clear up
20 front that this is an application for modification.

21 Your initial application said nothing
22 about modification.

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1 MS. BATTIES: That is correct.

2 CHAIRPERSON JORDAN: Yes, and we also
3 have a party in opposition. Is it Mr. Werner?
4 Where are my notes? Just hold tight because I don't
5 know if we're at the point where we need to involve
6 you at this point.

7 I just don't -- in my opinion, and
8 certainly it is for the Board to make a decision,
9 but I think we need to -- excuse me. Ms. Glazer,
10 can I see you a second?

11 I was also advised in your filing you're
12 not asking for an extension of the 17679.

13 MS. BATTIES: No, we're not.

14 CHAIRPERSON JORDAN: So, that
15 terminates April 2013.

16 MS. BATTIES: Correct.

17 CHAIRPERSON JORDAN: So, you would do
18 an extension for that at some point too?

19 MS. BATTIES: That's not our intention.

20 CHAIRPERSON JORDAN: Okay.

21 MS. BATTIES: That's not our intention.

22 Let me just say we have an active, valid plan right

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1 now, and their intention is to pull permits prior
2 to -- they've applied for permits --

3 CHAIRPERSON JORDAN: Okay.

4 MS. BATTIES: -- prior to the
5 expiration of the approval. But Mr. Sher did
6 advise me that when we originally filed this
7 application --

8 CHAIRPERSON JORDAN: It's a new
9 application.

10 MS. BATTIES: -- the notice did include
11 all -- it included the special exception for the
12 multi-family in this district, the R5 district. It
13 did include the parking and the loading variants.

14 So, we -- it was filed as a new
15 application, but it included all of the relief that
16 we're seeking now. But when we came back the second
17 time, and we did change a caption to show it as a
18 modification of the previously approved plan, but
19 all of the relief that we're seeking now was part
20 of the original notice.

21 The other thing I just want to clarify
22 is that the neighborhood and the ANC have been very

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1 involved in this project, starting back in October
2 --

3 CHAIRPERSON JORDAN: Yes, but that may
4 not be everybody walking up and down the street.
5 Let me -- let me -- give me a second. Let me try
6 to put my arms around it.

7 You want to go forward just on this
8 relief, and if you need something else, it's just
9 at you guys' peril whether or not -- it's at your
10 peril. So, you're asking us just to hear this
11 relief on parking and loading, but there's also been
12 an adjustment on the number of units that was
13 granted in the plans from the previous relief, and
14 you're not asking us to modify that?

15 MS. BATTIES: No, because the FAR on the
16 property has not changed.

17 CHAIRPERSON JORDAN: It has met a --

18 MS. BATTIES: It has not changed, and
19 we're --

20 CHAIRPERSON JORDAN: Has not changed?

21 MS. BATTIES: It has not increased.
22 The FAR on the property with the plan that is being

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1 presented to the Board today --

2 CHAIRPERSON JORDAN: But there's a
3 change of plans?

4 MS. BATTIES: No. Well, the interior,
5 the interior of the building has changed, but the
6 site plan itself has not changed significant from
7 what was previously approved. The site plan
8 configuration is the same as what was approved in
9 2008. It is only the number of units internal to
10 the building. The footprint of the building has
11 not changed.

12 CHAIRPERSON JORDAN: So, you just want
13 us to do this based upon what you filed? We can --
14 we can -- Board, any thoughts on this?

15 MR. HINKLE: I'm good.

16 CHAIRPERSON JORDAN: Thank you. All
17 right, we just huddled and we're not coming out --
18 we're not going to scream, "Omaha." This is what's
19 going to happen. And I'm even clearer now. You
20 are modifying.

21 First of all, we can't have confusion
22 and have two orders out there, and that's what you

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1 potentially have. You have order in the plans
2 that's submitted in 17679, and then you submitted
3 plans under 18671. There will be two sets of plans
4 out there with -- two sets of plans.

5 18671 doesn't necessarily -- we
6 should've had -- this should be case 17679 with a
7 DC or whatever. That's the way we're going to
8 proceed in this matter because your new changes are
9 actually modifying that which was there. And
10 you're asking for some additional relief in that
11 regard.

12 I want to go ahead and let's get this
13 noticed. Let's see if we can clean up the
14 application. I'm going to ask you to meet with the
15 zoning office and make sure we can roll over to
16 17679. Let's make sure that we have a
17 modification.

18 It is advertised as a modification for
19 17679 because you're not just modifying. Yes, you
20 might be, but you're changing plans that were
21 already granted. You're doing it. So, we have to
22 modify. When can we put this back on and get the

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1 notices out properly to all the parties? When can
2 we get this back on the register as fast as we can?
3 Get it on the register and get it done, so we can
4 get this thing moving, so that they can also meet
5 their date.

6 MR. MOY: I'm looking at middle towards
7 late March, Mr. Chairman, with a number of days
8 notice, assuming they file today.

9 CHAIRPERSON JORDAN: They're going to
10 file their plans on the old -- I'm trying to make
11 sure you don't lose your April 2014 date. But
12 you're ready to move forward with 2014; you're going
13 to apply for plans anyway?

14 MS. BATTIES: Yes.

15 CHAIRPERSON JORDAN: What date is this?

16 MR. MOY: I would say for now, and I'm
17 cutting this really close, March 18th hearing.

18 CHAIRPERSON JORDAN: Okay.

19 MS. BATTIES: Yes.

20 COMMISSIONER TURNBULL: Thank you, Mr.
21 Chair. I'm just wondering if we could have -- we
22 had had Exhibit 34 dated February 7th submitted,

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1 which had a revised site plan sheet, A101A. I
2 wonder if we could have a better version.

3 I guess what I'm -- in the small plan
4 that we got, it -- you've -- in response to the
5 Department of Transportation's comments, you had
6 removed a couple of parking, but the drawing and
7 maybe it is just because of the small scale, still
8 looks like there's a parking space that encroaches
9 into the loading zone area.

10 I wonder if we could get a better drawing
11 of how the parking spaces relate to the loading
12 zone, and how clear it really is to get in and out.
13 I think if you could provide us with a loading
14 diagram that shows how the trucks actually would
15 move in and out, just to clarify that.

16 CHAIRPERSON JORDAN: Okay, so, the date
17 Mr. Moy?

18 MR. MOY: March 18th.

19 CHAIRPERSON JORDAN: All right, so,
20 we'll move this to March 18th. Just make sure we
21 get this re-advertised. I'm going to ask counsel
22 if you could work with Office of Zoning so we can

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1 get this -- we can get this on the docket properly,
2 so we can get that done like right away, so we can
3 get the advertisement out, and so we can be ready
4 to go on the 18th.

5 Mr. Moy, make sure our office includes
6 this as a modification to 17679.

7 MR. MOY: That is correct; 17679, sir.

8 CHAIRPERSON JORDAN: Okay. All right,
9 let's do that. Thank you. Mr. Moy, thank you.
10 You heard all the dialogue, and you previously had
11 party status, and you're probably going to have it
12 again. But just make sure we're on this new
13 application. I appreciate it. Thank you.

14 Ms. Thomas, I forgot to acknowledge --

15 MR. MOY: Well, I guess I'm going to
16 move in for Mr. Chairman. The next and last item
17 before the Board is Appeal Number 18705 of Kingman
18 Park Civic Association and W. Simpkins.

19 CHAIRPERSON JORDAN: Is this the last
20 case? Would you please identify yourself? Let's
21 start right to left, please?

22 MR. POSTULKA: John Postulka,

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1 Assistant Attorney General.

2 MR. LeGRANT: Matthew LeGrant, Zoning
3 Administrator, DCRA.

4 MR. PERRY: Thomas Perry, Program
5 Manager for the Engineering and Construction of DC
6 Streetcar with DDOT.

7 MR. WALTON: Frazer Walton on behalf of
8 the Civic --

9 CHAIRPERSON JORDAN: Walton?

10 MR. WALTON: Yes, sir.

11 CHAIRPERSON JORDAN: Okay.

12 MR. SIMPKINS: William Simpkins,
13 plaintiff.

14 MS. DOUGLAS: Good afternoon. Dorothy
15 Douglas, former ANC Commission and Chairperson, and
16 also State Board of Education on behalf of Kingman
17 Park Civic Association. Thank you.

18 MS. RAGLIN: Veronica Raglin,
19 R-A-G-L-I-N, on behalf of the Kingman Park Civic
20 Association? Did you get it?

21 CHAIRPERSON JORDAN: Yes.

22 MS. RAGLIN: I am Veronica Raglin,

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1 R-A-G-L-I-N, on behalf of the Kingman Park Civic
2 Association.

3 CHAIRPERSON JORDAN: Please make sure
4 your mic is on.

5 MR. MURRAY: Charlie Murray, Junior, on
6 the --

7 CHAIRPERSON JORDAN: Say the last name
8 again.

9 MR. MURRAY: Charlie Murray, Junior.

10 MR. WALTON: Mr. Chairman, again,
11 Frazer Walton. If I -- as a preliminary matter, if
12 I could introduce to you as well members of the
13 community who are here.

14 CHAIRPERSON JORDAN: If we get to
15 testimony or something, we can have people who will
16 do so. We don't really need to have everybody
17 introduce themselves.

18 MR. WALTON: They're not going to
19 introduce themselves. I just wanted you to know
20 they're here.

21 CHAIRPERSON JORDAN: Glad to have them.
22 Glad when neighbors and people come out. We need

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1 more of that. I mean really.

2 MR. MCGRATH: Excuse me, Mr. Chairman.
3 I represent the Kingman Park Association as well,
4 and on behalf of the Committee 100 on the Federal
5 City. My name is Dorn McGrath, and I'm here to
6 speak on behalf of -- I'm not sure that I'm correctly
7 listed. I don't know whether I should be listed as
8 --

9 CHAIRPERSON JORDAN: You're
10 representing whom?

11 MR. MCGRATH: The Committee of 100 --

12 CHAIRPERSON JORDAN: I don't think
13 you're submitted as a party to this. So, you can
14 speak with organizations get to speak.

15 MR. MCGRATH: I will do that. Very
16 good. Thank you, sir.

17 CHAIRPERSON JORDAN: All right.

18 MS. DOUGLAS: Since he reminded me, I'm
19 also one of the Trustees of the Committee of 100.

20 CHAIRPERSON JORDAN: All right, let's
21 -- this is something that's been pretty contentious
22 for the neighborhood. I do not -- here's the

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1 problem we're having. This appeal -- in this
2 appeal, a lot of issues were raised which were
3 beyond the jurisdiction of this Board.

4 The Board is only adjustment, although
5 I wish we could reach into some of these things and
6 deal with some of these issues because I can
7 understand how the community is affected. This
8 Board is one of very limited jurisdiction and
9 authority.

10 We can only deal with the
11 responsibilities of any activities that may be
12 appealed as an action of the Zoning Administrator
13 regarding the zoning regulations. That does not
14 include the comprehensive plan; it doesn't include
15 the environmental issues, construction issues,
16 educational issues. What else has been raised?

17 So, the only issue you have remaining
18 that is within the jurisdiction of this particular
19 Board is that how Section 330 and 350 is applicable
20 under zoning regulations, and did the zoning
21 administrator make any errors in his office in its
22 review of the permit?

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1 So, that's where we are. Unless you
2 have something else, as a matter of law, you can show
3 us where we're wrong. But I'm very certain about
4 what I just said.

5 MR. WALTON: Did you want me to speak?

6 CHAIRPERSON JORDAN: Yes, I'll give you
7 an opportunity to rebut that in some kind of way if
8 you felt -- but I mean I can't see how I'd change
9 from that because that's the law, and that's the way
10 this Board has operated, and the law is the law.
11 Cases cite that, and I know this case has been
12 around, and you've been in court, out of court,
13 knocking on doors and trying to get help. And I
14 wish you can get there for you, but we are very, very
15 limited in our jurisdiction.

16 MR. WALTON: Thank you, Mr. Jordan. We
17 are still in court, by the way. Thank you. Just
18 wanted to say that we, for the record, and this is
19 for the record of course; we do not agree that you
20 do not have the authority to take these issues into
21 consideration, and I say that respectfully because
22 if you look at, number one --

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1 CHAIRPERSON JORDAN: Get me there,
2 because I want to get there for you.

3 MR. WALTON: Sure.

4 CHAIRPERSON JORDAN: So, I can justify
5 if we do something for you. But get me there.

6 MR. WALTON: Well, there's a number of
7 reasons, and of course I will share my time with my
8 --

9 CHAIRPERSON JORDAN: I tell you what.
10 You got five minutes to get me there. We're not
11 going through a whole bunch. If you can get me
12 there on a point of law, please.

13 MR. WALTON: Not a problem. First
14 thing is that if you look at 10 DCMR, it provides
15 transportation impacts. That's a DCMR regulation.
16 Requires full environmental impact statements for
17 --

18 CHAIRPERSON JORDAN: DCMR 10 is not
19 applicable to the Board of Zoning.

20 MR. WALTON: I understand, but it is a
21 DCMR regulation. Now, when you say that it is not
22 applicable to the zoning regulations, we do say that

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1 the DC Code is applicable because that's the law.
2 That's not only a regulation; it's a law and you must
3 follow the law.

4 CHAIRPERSON JORDAN: What part of the
5 DC Code gives this Board authority to handle those
6 issues?

7 MR. WALTON: Sure. I will state to you
8 that DC Code 6506 number 1 requires permits to be
9 issued for any type of construction.

10 CHAIRPERSON JORDAN: Are you familiar
11 with the DC Code that gives this Board authorization
12 to act?

13 MR. WALTON: We're speaking of permits,
14 and that is part of your jurisdiction.

15 CHAIRPERSON JORDAN: Our jurisdiction,
16 and I'm trying to get you there, so tell me where
17 I'm wrong, that the DC Code provides what this Board
18 has authority and jurisdiction over.

19 MR. WALTON: Well, DC Code requires
20 prior to construction. If you're going to have a
21 zoning issue, or an issue related to zoning, you
22 must comply with permits before the Board.

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1 Further, DC --

2 CHAIRPERSON JORDAN: This is what I'm
3 trying to do so you don't waste your time and I don't
4 waste your time. Roundabout circular arguments is
5 -- I'm asking you hit it right on the head. When
6 the ball is coming to the bat, let's hit it. Tell
7 me where you think we have authority so I can support
8 that, and not extrapolating something that is
9 unrelated, and saying, "Well, this word is used, and
10 because this word is used, meaning that I can take
11 this back" -- I understand what you're trying to do,
12 and I want to help. Trust me.

13 MR. WALTON: Understand, understand.

14 CHAIRPERSON JORDAN: But we, this
15 Board, has to operate within the bounds of the law.

16 MR. WALTON: Right.

17 CHAIRPERSON JORDAN: Within its
18 authority. Because it wouldn't help you if we made
19 a ruling and it just gets kicked out, right?

20 MR. WALTON: Of course.

21 CHAIRPERSON JORDAN: It makes us all
22 look bad.

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1 MR. WALTON: Of course.

2 CHAIRPERSON JORDAN: And we will have
3 wasted all your time and efforts. So, I'm asking
4 you to help me help you get you where you need to
5 be.

6 MR. WALTON: Well, I'll give you
7 another example, and this should be the home run
8 that you're looking for. You indicated a moment
9 ago that you don't have jurisdiction over the
10 comprehensive plan. Well, Durant versus the DC
11 Zoning Commission, and that's a DC Court of Appeals
12 case that came out, last I believe May of 2013,
13 provides that it is the job of the Zoning Commission
14 to make certain that the rules of the Zoning
15 Commission are not inconsistent with the
16 comprehensive plan.

17 And so, with that in consideration, then
18 it would be within your purview to make certain that
19 what the comprehensive plan is saying is not
20 inconsistent with the zoning regulations in the
21 placement of this element.

22 CHAIRPERSON JORDAN: We are the Board

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1 of Zoning Adjustment.

2 MR. WALTON: Correct.

3 CHAIRPERSON JORDAN: So, you're very
4 correct about what Durant says. It says the Zoning
5 Commission. Do you understand the difference
6 between the Zoning Commission and the Board of
7 Zoning Adjustment?

8 MR. WALTON: Yes.

9 CHAIRPERSON JORDAN: Okay. And it is
10 required -- and so we only act upon what the Zoning
11 Commission provides in the zoning regulations.
12 And so, when the Zoning Commission meets, and
13 makes a regulation for which we are to guard,
14 enforce, interpret, by that time they've made a
15 determination whether or not the zoning -- the
16 comprehensive -- their zoning regulation fits
17 within a comprehensive plan. We don't do that
18 here.

19 So, that's clearly what I think you're
20 trying to argue, and it doesn't get you there. You
21 know, maybe this should've been in front of the
22 Zoning Commission in some kind of way, but that's

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1 not where we are.

2 MR. WALTON: Well, I would say to you
3 that because it has never come in front of the Zoning
4 Commission we -- it would not come before the Zoning
5 Commission. It is the DCMR administrator, who is
6 making an attempt to apply the placement of this
7 facility on the grounds of Spingarn, pursuant to the
8 zoning regulations, and they're inconsistent.

9 CHAIRPERSON JORDAN: We understand
10 your argument. That's why I'm saying we're
11 limited. Whether or not the zoning administrator
12 has properly interpreted those provisions of the
13 zoning regulations, not the comprehensive plan, not
14 the environmental this, that and the other.

15 MR. WALTON: Right.

16 CHAIRPERSON JORDAN: But the zoning
17 regulations. I do think that you've made an
18 argument for why we should be hearing that
19 particular point under 330 and 350; that's your
20 argument, and that's within the purview of this
21 Board to deal with.

22 MR. WALTON: Okay.

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1 CHAIRPERSON JORDAN: All the other
2 stuff? It's not. And I wanted to give you time to
3 get me there so that we could try to help you, one,
4 in such a way that we -- any action that we take is
5 an action provided by law. And so, we've probably
6 beat this horse to death. You can't get me there
7 on anything else, other than those two provisions
8 out of the zoning regulations. You with me on that?

9 MR. WALTON: Yes.

10 CHAIRPERSON JORDAN: You want to
11 respond?

12 MR. LeGRANT: No. I agree with
13 everything you said.

14 CHAIRPERSON JORDAN: Okay, then what we
15 have before us is the limited ability of this Board
16 to examine whether or not the zoning administrator
17 acted properly in his interpretation of 11 DCMR 330
18 and 350.

19 MR. WALTON: And whether it was timely.

20 CHAIRPERSON JORDAN: Timely?

21 MR. WALTON: Is timeliness an issue?

22 CHAIRPERSON JORDAN: What do you mean

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1 by timely? Maybe I'm missing it.

2 MR. WALTON: Well, we believe that the
3 zoning administrator acted after construction has
4 commenced. That's --

5 CHAIRPERSON JORDAN: That wouldn't be
6 the purview of him acting. There may be an
7 enforcement issue that might be raised, and
8 something, but it is not in regards to his
9 interpretation and operation of that.

10 I think from what I reviewed on the
11 record is that your argument goes to when the
12 application was made for the permit. Is that what
13 your argument is?

14 MR. WALTON: Correct.

15 CHAIRPERSON JORDAN: That's not in the
16 purview of this argument. I mean this discussion.

17 MR. WALTON: Okay.

18 CHAIRPERSON JORDAN: They have a
19 sequence of processes that they have to follow when
20 a zoning review is submitted to the zoning
21 administrator within -- someone making an
22 application for permit?

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1 MR. WALTON: Yes.

2 CHAIRPERSON JORDAN: And that is in the
3 sequence. So, that's nothing that we would handle
4 here. So, you can correct me if I'm wrong, but
5 that's certainly not what you're here to do.

6 We're here to hear the decision --
7 whether or not the decision of the zoning
8 administrator, within the zoning regulations, were
9 proper or not.

10 MR. WALTON: I -- we -- we can proceed
11 on that, and we would stand on our briefs and proceed
12 without taking the Board's time.

13 CHAIRPERSON JORDAN: I just wanted to
14 give you an opportunity because I'm trying to --
15 especially when the communities have issues, I want
16 to make sure we're all on the same page, and try to
17 get you there within whatever power we have to get
18 you there.

19 MR. WALTON: Thank you.

20 CHAIRPERSON JORDAN: But unless I've
21 heard something differently, and said, "Ah-ha,"
22 then I could've turned to DCRS, and said, "That's

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1 why we're going to do this." But we didn't get
2 there. So, okay.

3 So, we have been briefed in regards to
4 the question, and your argument is that the zoning
5 regulations under the particular sections did not
6 allow for this type of facility to be placed as a
7 matter of right in an RFI?

8 MR. WALTON: That is correct.

9 CHAIRPERSON JORDAN: I've read all the
10 briefs from everybody, and understand clearly what
11 the issue is, but I need to -- did you file a motion
12 for leave to file a response to DCRA, which you
13 already filed, correct?

14 MR. WALTON: That is correct. Yes.

15 CHAIRPERSON JORDAN: So, why don't we
16 give yourselves ten minutes, and let us hear your
17 arguments. We already got your briefs, to let you
18 know.

19 MR. WALTON: All right. Yes, Mr.
20 Jordan, before we get started as a preliminary
21 matter, we have one witness who has to leave, and
22 she was wondering if she could go first with her

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1 statement. She is former DC School Board Member
2 and --

3 CHAIRPERSON JORDAN: Certainly. Be
4 glad to. Thank you.

5 MS. DOUGLAS: Thank you so much. I
6 need to pick my granddaughter up early. I just
7 wanted to say thank you for allowing me to be here,
8 to listen, and all you Board Members as well,
9 colleagues.

10 I'm also a graduate of Spingarn, 1969,
11 and I just wanted to say that I am in support of
12 Kingman's Association, the matter that's been
13 brought before you. As ANC Chairperson, I'm in
14 support also of the street costs, because as ANC
15 Chairperson, the ANC Commissions voted for the
16 railroad streetcars to go through, which is in the
17 post in I believe 2009.

18 But the matter that concerns me is the
19 distrust. This was not allowed - the digging of the
20 ground and all those things that they're down now
21 - wasn't part of the commissioner's voting to
22 support the streetcars.

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1 So, we were mislead, and I think that's
2 an issue that is coming forth now. We should not
3 have no car wash, no repair facilities, and also car
4 maintenance, and that would be an issue because then
5 they'll go back -- the car maintenance. They'll
6 worry about the oil and other stuff that'll be
7 seeping in the grounds, and all those things.

8 As ANC said, the lead chairperson would
9 just -- block of Minnesota Avenue, which has been
10 there for years. So, we're looking at that. That
11 earth was contaminated. So, the government had to
12 go and clean that up. So, that's another issue.

13 Also, you know that it's a historical
14 site that's already been cited. So, I think that
15 should be in consideration if it's already been
16 designated. Question is how is this other party
17 allowed to have this statement that I just mentioned
18 in there, because it is unfair to the community,
19 which was mislead to the community. So, I just want
20 to say thank you so much for hearing my concerns,
21 and also community concerns.

22 CHAIRPERSON JORDAN: Thank you, and I

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1 understand exactly what you're talking about, and
2 the issues raised. Because when I first heard them
3 myself, I was like, "Oh." But as we sit here as this
4 body, I have to be -- this Board has to only move
5 into what they can move into. But I understand.
6 Thank you. I appreciate it.

7 MR. WALTON: We would have Mr. Simpkins
8 go next to split our time.

9 CHAIRPERSON JORDAN: Thank you.

10 MR. SIMPKINS: Good morning, Mr.
11 Chairman, Members of the Board, staff. I live
12 across the street from the proposed facility on the
13 2500 block of Spingarn High School, which is still
14 in operation in terms of the middle school students
15 still going to school there at Brown. And the
16 technical school, high school, in Phelps.

17 There are students without a play yard
18 at all. In contravention of the
19 DCSustainable.gov, a website that promotes the
20 green space commitment of Washington, D.C., for its
21 citizens, and for vitality and further development.

22 The streetcar is going to be great. We

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1 support in theory the idea of the streetcar, but the
2 original plan, as Ms. Douglas suggested, was to be
3 headquartered at Union Station. That was what was
4 approved by the community; not to later run out of
5 money because of poor streetcar purchases before
6 time where there was storage fees that amounted to
7 more than the streetcars were valued at.

8 So, now that DDOT is scrambling, what
9 once was a regulatory authority is now an owner of
10 a mass transit facility, and that now becomes a
11 problem for the citizens that it has pledged to
12 protect.

13 As a regulator, they're great. As an
14 owner, not so great. Metro does not own DC Trolley.
15 It is DDOT that owns the trolley. And to have it
16 placed on a schoolyard is against everything we
17 know, including what was before you the zoning.

18 The R5 is an inappropriate zone for
19 whether it is called the Car Barn, which we disagree
20 with, and I hope that your office is able to say that
21 this is not a car barn. It is an outdoor switching
22 facility, an outdoor carwash with a few maintenance

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1 bays, where the system is going to be 40 miles in
2 total. The rest of the cars from the original two
3 miles is going to be put on that ground.

4 This is an inappropriate use, not just
5 because the kids are there, but because it is an R5
6 zone where there's a neighborhood to protect. It is
7 very important to see from the defendant's
8 pre-hearing statement that they admit that this is
9 a non-conforming facility in that it is a
10 maintenance facility, and that it is a repair
11 facility.

12 Whether you're talking about the
13 context of the overall poor plan, which Mr. Walton
14 was trying to show you, which I understand is
15 outside of your purview, but you have to understand
16 that when an EISF is required by law does not take
17 into account brake tests, does not take into account
18 painting, does not take into account oil storage and
19 waste.

20 It is under your understanding of what
21 an industrial use is, and what is to be located in
22 a R5 residentially zoned area. In the context,

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1 you're not here for historic preservation, but
2 there has to be a backdrop of understanding that it
3 is next to the hallowed grounds of Langston Golf
4 Course, and that it is right next to the housing
5 projects of the Langston Dwellings, which are -- we
6 have to protect the poorest of the people in
7 Washington, and not have a once -- a transportation
8 authority that was once responsible for regulation;
9 not run over those people. Not run over the kids
10 that are supposed to be protected. Not steal from
11 the children of Washington, D.C. Their green space
12 and our green space.

13 It is very interesting to see that the
14 defendants have admitted to this being a
15 non-conforming use and point to Goulston.
16 Goulston versus US is a case that I have printed out
17 and can give you right now if you'd like, but can
18 safely say that Goulston involves an appeal by Rex
19 Goulston in 1987 of a wire fraud conviction, and
20 that appeal was affirmed by The Court of Appeals
21 because they recognized that while the wire fraud
22 statute did not specifically include time cards

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1 where Mr. Goulston was accused of altering, that it
2 was under a catch-all phrase within the wire statute
3 fraud, saying any written fraud would be included.

4 So, therefore the intent of the draft
5 was clear. The history of that pace has been clear;
6 that indeed we cannot say from Goulston that any
7 interpretation, any broad interpretation is
8 acceptable that you have to look at the intent of
9 the drafters, and you have to look at the history
10 of the application.

11 We see from history that Metro has not
12 piggybacked non-conforming structures above
13 multi-bus platforms, which are allowed under the
14 mass transit facility exception, which defendant
15 says gives them the right to put a non-conforming
16 facility in an R5 zone.

17 When you have Goulston saying that, "No,
18 you have to look to the intent of the drafters," it
19 is clear that when you have shafts for utilities and
20 shafts for ventilation that's for a particular
21 place in a system. We have multi bus stops and
22 egress and ingress for subways. That's for

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1 ridership, facilitating ridership and public
2 access.

3 The facility in the 2500 block of
4 Benning Road does neither of those things. There
5 are appropriate zones a few hundred meters away,
6 whether you're talking about an original proposed
7 location at Union Station, which is still valid
8 despite DDOT's claim of being extinguishable, their
9 easement is extinguishable.

10 The city's easement is extinguishable
11 in 2025 when the high speed rail is going to be
12 introduced into Union Station. Amtrak has
13 repeatedly said that's not the case. There's
14 plenty of room for the original plan to be there;
15 that there is a -- in the -- father east on Benning
16 Road, a couple hundred yards father east, where the
17 tracks are going to pass incidently, there is an
18 appropriate zone.

19 But we know from the context of the
20 history of the operation of the new authority of
21 DDOT that they're running out of money, and this is
22 now a way to fit in the budget. Steal from the kids.

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1 Steal from the poor people. Steal from the middle
2 class people on Benning Road the site, the R5 site
3 that is inappropriate.

4 So, I know that we're coming to the end
5 of my statement. So, I'd just like to say in
6 conclusion that it is a non-conforming facility as
7 admitted by defendant. Goulston is not an
8 authority that allows an interpretation of mass
9 transit exception, and that because it is
10 non-conforming, we hope that you'll rule in our
11 favor. Thank you very much.

12 CHAIRPERSON JORDAN: Thank you.

13 MR. WALTON: Can I take one minute to --

14 CHAIRPERSON JORDAN: Two minutes at a
15 time exactly.

16 MR. WALTON: Thank you. We agree and
17 we adopt everything Mr. Simpkins has said under
18 11201 as a manner of right, and that's what I believe
19 the District is operating under. They believe
20 pursuant to the zoning regulation that, as a matter
21 of right, they can put this in any ward in the city.

22 Well, we don't disagree with that. If

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1 you're trying to establish a transportation system,
2 we understand that you have to locate facilities
3 within these wards. But the question is do you
4 locate it anywhere within a ward? That is the
5 question.

6 Specifically when you have an
7 educational campus, you have certain amenities that
8 are provided for residents within an R5 zone. Then
9 you don't merely do a broad brush and say, "We can
10 put this anywhere we like," because that's not
11 planning. That's just arbitrary and
12 capriciousness on the part of the government.

13 There was never -- we have submitted by
14 the way, for the record, the ANC statement along
15 with our exhibits, the position of the ANC, who,
16 from the beginning carries great weight, and they
17 have opposed this.

18 As a matter of fact, it was never brought
19 before the ANC Board. The ANC Board did issue a
20 letter indicating resolution that they assigned the
21 chair, and the vice-chair, indicating that they did
22 not want this on the grounds of the historic

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1 Spingarn High School and the schools on the hill.

2 It is for the preservation of
3 educational purposes for the next 50 to 75 years,
4 no matter who is living there and whether it is
5 white, black, green or blue. It is for children and
6 their education, their future.

7 So, we would ask this Board to look at
8 this; to look at what the mayor has done. We
9 believe it is an error, and everybody makes errors.
10 But what we are asking is we have suggested several
11 alternative sites. We believe that within Ward 5
12 there are alternative sites. As Mr. Simpkins said,
13 approximately 500 feet away, there's the PEPCO
14 Power Plant with a 500-foot setback.

15 So, what we are asking is the Board to
16 look at this: the Board of Zoning Adjustment. We
17 believe the administrator did this in a vacuum, did
18 not involve the community, and there are a lot of
19 issues including plumbing, sewage, storm water
20 runoff. All of these things are affecting our
21 community right now as we speak.

22 There's an underground stream that runs

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1 under the school. They're having problems with the
2 retaining wall. That's why they want a retaining
3 wall. And it is going to cause damage to our homes,
4 to our businesses. We're asking that this be
5 halted, and halted immediately. Thank you very
6 much.

7 CHAIRPERSON JORDAN: Thank you. Do
8 you have any other witnesses?

9 MR. WALTON: Yes. I'd like to, in the
10 interest of not taking your time, if there could be
11 a stipulation. Then I wouldn't have to call my
12 witnesses. But I would call three witnesses to
13 establish when this -- well, yes, I would like to
14 call a couple of witnesses just to simply ask --
15 well, they can testify on their own behalf as to
16 their feelings.

17 CHAIRPERSON JORDAN: It is not an issue
18 of feelings.

19 MR. WALTON: Sure.

20 CHAIRPERSON JORDAN: The only thing
21 that we can reverse is that the zoning administrator
22 did not do something which is required by law to do.

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1 MR. WALTON: Right.

2 CHAIRPERSON JORDAN: Understand
3 because I would be upset myself, but that's not --
4 I'm hearing all that, and I'm with you on the
5 emotional side of it all, and real side of it all.
6 But as we sit here, this particular Board does not
7 have the same equitable authority and powers that
8 maybe a court has that could grant you some type of
9 equitable relief maybe. And I understand you're in
10 court. So, maybe you'll get to that.

11 MR. WALTON: Right.

12 CHAIRPERSON JORDAN: But we can only
13 address that the zoning regulation says X. The
14 zoning administrator did this, and we're saying he
15 did not follow X. That's where we're at.

16 MR. WALTON: Well, with consideration
17 of that, when you say the zoning administrator, I
18 understand to a degree what you're saying. But to
19 a degree, we do not understand what you're saying
20 because we believe that the zoning administrator
21 had to take certain things into consideration when
22 he made his decision.

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1 CHAIRPERSON JORDAN: Here we go.
2 That's probably the crux of this whole thing:
3 understanding what the zoning regs say and what is
4 allowed by matter of right, what is allowed by
5 special exception and how we get to things with
6 variances.

7 I'm not trying to make the argument for
8 DCRA, but I just want to express to you because not
9 everybody knows how the zoning regulations work. I
10 understand everyday that I'm here people -- as
11 you've seen in a number of your cases, we try to help
12 you. We try to get you where you need to be.
13 There's some things which the zoning administrator
14 has no discretion on period. Has no discretion.
15 They're called ministerial duties, requirements,
16 and that's to follow the law.

17 Some things he may have some discretion
18 to, but the Zoning Commission and counsel doesn't
19 give a lot of discretion to the zoning
20 administrator, and I think probably he should have
21 some more, but he doesn't have.

22 So, those things which are defined under

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1 the law will use a term. You'll hear the term
2 matter of right. That means even if the zoning
3 administrator hated it, if it fit all the zeros and
4 all the pluses that were supposed to be for that
5 particular use, he has to let it go. He may not like
6 it. But it is called as a matter of right.

7 What we have here in the argument being
8 made by DCRA, and I just wish you could -- wait. I
9 take that back. If there's a way for you to punch
10 holes in it, I'd give you the opportunity to do that.
11 But the law says that any use that's allowed as a
12 matter of right under the code, under 330 and under
13 350; 350 for an R5 and 330 for an R4, and it kind
14 of steps down. The use is allowed as a matter of
15 right in R1. Then that use is a matter of right in
16 R2 and R3 and R4 and R5.

17 So, that's what takes you back to I think
18 201. I think that's where you are, where a mass
19 transit facility is allowed in an R1. So,
20 therefore it is allowed in the zones which you're
21 talking about. And mass transit facilities, as in
22 the brief, are those things surrounding the use of

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1 the facility for mass transit and incidental
2 thereto, and the statute -- excuse me. And 199 says
3 not limited to, but basically what's around the
4 facility.

5 So, you haven't -- I haven't heard yet
6 how you can -- how you can help us help you by saying
7 that the zoning administrator was outside his
8 purview. That's what I've been begging for you to
9 get me to.

10 MR. SIMPKINS: I think I was very clear
11 that the mass transit facility allows --

12 CHAIRPERSON JORDAN: I'm not arguing
13 with you. I'm trying to tell you I heard what you
14 said. I heard everything that you said.

15 MR. SIMPKINS: Okay, but it doesn't
16 allow offices. It doesn't allow anything that is
17 not facilitating ridership, and vital to the
18 functioning of the facility in that spot.

19 CHAIRPERSON JORDAN: Is that what --
20 are you telling me that's what 11 DCMR 199 says?

21 MR. SIMPKINS: That's what the mass
22 transit facility says. That is correct. It says

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1 for multi bus-stop facilities and for ventilation
2 shafts, for utility shafts, and each of these things
3 indicate facilitation of ridership, public access
4 and for the necessary operation of the facility,
5 showing that in that location, that ventilation
6 shaft cannot be elsewhere. Not placed anywhere
7 else; that those utility shafts can't be placed
8 anywhere else.

9 So, we're saying that while it may be
10 necessary to have educational offices in a
11 headquartered facility, you cannot have a catch all
12 that says, and indeed there is no catch all in 11
13 DCMR Mass Transit Facilities. There is no catch
14 all that says offices, and anything else you need.

15 It doesn't say anything about repair,
16 which is a -- is an obvious need; that this is
17 something that's not an obvious end round -- end run
18 around zoning law for a mass transit facility. If
19 you need it for a particular spot but you do not need
20 to have repair garages in an R5 zone. You can have
21 that elsewhere in an industrial zone.

22 CHAIRPERSON JORDAN: Okay.

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1 MR. WALTON: And 1099 also says, as you
2 well pointed out, when it goes from 1 to 2 to 3 to
3 4, although it says if it was in 1 it could be in
4 2; if it was in 2 it could be in 3; if it was in 3
5 it could be in 4, and so on, and so on. But 1099,
6 as the District is arguing, allows for anything that
7 supports a mass transit facility.

8 We disagree with that because, one,
9 there's no mention of an electrical substation.
10 That is a major impact and footprint within the
11 community and within 25 feet of homes. So, we
12 believe that this thing is so massive, parking
13 spaces that are reserved for employees, this is so
14 massive that it goes beyond the description of just
15 a transit facility.

16 It is a massive facility and encompasses
17 whatever they want.

18 CHAIRPERSON JORDAN: Okay, what else is
19 being included in this development?

20 MR. WALTON: A carwash for the
21 facility, meeting rooms for the community, they
22 allege, which the community hasn't --

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1 CHAIRPERSON JORDAN: That's not part of
2 the mass transit facility?

3 MR. WALTON: Well, they say it is a
4 community meeting room for different meetings that
5 can be conducted by the community. That's what
6 they've included. They've said there's going to be
7 a training facility, a training center.

8 CHAIRPERSON JORDAN: Training center
9 for?

10 MR. WALTON: For the streetcar
11 employees, or something of that effect, or training
12 people how to operate the streetcar. That's a
13 massive footprint that is not provided for in the
14 definition --

15 CHAIRPERSON JORDAN: I'm asking you
16 what else -- what other uses are going into the
17 facility that you contend are not within -- let's
18 make sure we're clear, and I hope I'm helping the
19 Board here. Because 199 says -- defines mass
20 transit facility as, "a facility such as, but not
21 limited to." But not limited to. That's kind of
22 like the catch all.

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1 MR. WALTON: Right.

2 CHAIRPERSON JORDAN: Basically says,
3 "But related to." I would suggest it means but
4 related to stations, trackage, ventilating and
5 electrical equipment, parking lots. Oh-oh,
6 parking lots. Structures and buses or automobile
7 transfer areas that have been determined by the
8 Council Department of Columbia to be necessary to
9 the operation of a fixed right of way mass transit
10 system.

11 MR. WALTON: Right.

12 CHAIRPERSON JORDAN: So, that's why I'm
13 trying to get a list so I can try to see what doesn't
14 fit within here. That's all I'm --

15 MR. WALTON: I understand.

16 CHAIRPERSON JORDAN: So, what else
17 doesn't fit within that definition?

18 MR. WALTON: Well, you have --

19 CHAIRPERSON JORDAN: You've already
20 said offices.

21 MR. WALTON: Right.

22 CHAIRPERSON JORDAN: parking I think we

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1 got to take -- might want to strike that one because
2 it said parking lots. You said car wash.

3 MR. SIMPKINS: That's public -- that's
4 public access to the --

5 CHAIRPERSON JORDAN: I understand. I
6 understand.

7 MR. WALTON: And I also believe --

8 CHAIRPERSON JORDAN: But you're
9 saying meeting rooms?

10 MR. WALTON: Meeting rooms, training
11 center.

12 CHAIRPERSON JORDAN: What else is
13 there?

14 MR. WALTON: And electrical
15 substation. I think you have that.

16 CHAIRPERSON JORDAN: Yes, but I have
17 electrical equipment being allowed within 199.
18 What else are you saying is not allowed in 199?

19 MR. WALTON: But Mr. Jordan, before we
20 broad brushed this.

21 CHAIRPERSON JORDAN: I'm trying to help
22 you.

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1 MR. WALTON: I understand. God knows I
2 appreciate that. But what I'm saying is that we
3 also -- the zoning regulations must look at the
4 size, the footprint. Just to say a broad brush?
5 It is being arbitrary and capricious to say you can
6 have the whole world --

7 CHAIRPERSON JORDAN: I have to stay
8 within the statute, and it says nothing about size
9 in here. Doesn't say anything about broad brush.
10 I'm trying to list the uses. I understand what
11 you're saying, but I'm trying to get what's not in
12 here that's going on there.

13 MR. WALTON: Sure, and I understand
14 that. But I think that the zoning regulations
15 cannot be inconsistent. Again, back to the
16 inconsistent argument. You can't just say -- just
17 say, "These things can be put there," without having
18 some kind of context. That's why we have, as you
19 know, Mr. Chairman, architects and engineers. We
20 have to consider the sizes.

21 CHAIRPERSON JORDAN: You're trying to
22 take me down a road that's not really going to help

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1 you. But if you want to go there, we can sit and
2 listen to you. I'm trying to get you at least in
3 the ballpark.

4 MR. WALTON: Well, these are the
5 things. I think we've named most of the things that
6 they anticipate: additionally tracks. I think
7 it's four or five tracks or something leading into
8 it from the street.

9 There's no -- we have traffic problems
10 that make --

11 MR. MCGRATH: You have noise, Frazer,
12 and you also have 24-hour operations.

13 CHAIRPERSON JORDAN: Wait. We don't
14 talk out of turn.

15 MR. WALTON: Thank you.

16 CHAIRPERSON JORDAN: You need to go
17 over and talk to him, honestly. Because I can't
18 have that type of -- all right, thank you.

19 MR. WALTON: Sure. Well, I think we
20 testified that the storm water runoff this is
21 creating doesn't provide for that. It doesn't
22 provide for vibrations to the homes. We've put

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1 that in our brief. It doesn't provide for the
2 traffic that is interfering with 295.

3 So, all of these things are things that
4 the administrator, that is not within 199 -- they're
5 not included, but they're having a massive impact.
6 Thank you.

7 CHAIRPERSON JORDAN: Thank you. All
8 right, then that's it?

9 MR. WALTON: Yes, sir.

10 CHAIRPERSON JORDAN: Then let's turn to
11 DCRA. I'm well aware what's in your brief and I
12 understand where we are.

13 MR. POSTULKA: So, I won't remake the
14 legal arguments, but I do have Mr. Thomas Perry,
15 from the Department of Transportation, who can give
16 you some context and really explain the purpose of
17 this facility, which I think will be helpful.

18 CHAIRPERSON JORDAN: How does office
19 fit with the mass transit? The meeting rooms, the
20 training for transit. Yes, I understand the
21 tracks. But the carwash and office; how is that
22 necessary? How does that fit within a mass transit

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1 facility? If that's okay with the Board? Your
2 microphone?

3 MR. PERRY: So, basically the car barn,
4 which is also referred to as a maintenance and
5 operations facility, one for the carwash that
6 allows us to clean the trains, as well as perform
7 routine maintenance and also repair, and also
8 inspection of the system to help maintain safety
9 certification.

10 As far as the meeting and training
11 rooms, that's part of the ongoing education of staff
12 in terms of maintaining the streetcars --

13 CHAIRPERSON JORDAN: So, it's not just
14 for the public? It's for the staff but you open it
15 up to the public?

16 MR. PERRY: It is for the staff, but we
17 allow the opening up to the community if they wanted
18 to use it for obviously a meeting or some sort.

19 CHAIRPERSON JORDAN: And these are
20 transit staff? People who work in this staff of
21 mass transit?

22 MR. PERRY: Yes. These would be for

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1 streetcar operators, streetcar mechanics, and also
2 supervisors, and also safety training, which would
3 be pertaining to streetcar operation and other
4 activities.

5 CHAIRPERSON JORDAN: And offices?

6 MR. PERRY: For the offices, that would
7 be basically for staff, for supervisors.

8 CHAIRPERSON JORDAN: Okay. Board,
9 anything else you need to hear from DCRA? I think
10 we are on briefs and what have you?

11 COMMISSIONER TURNBULL: Just wondered
12 if maybe you could address a couple of the concerns
13 that were brought up about runoff? Carwash runoff
14 water?

15 MR. PERRY: So, basically for the
16 facility, we have the appropriate -- we've been
17 working with DDOES -- excuse me, DDOE to make sure
18 that our design encompasses and takes care of all
19 the storm water runoff.

20 The other thing for this particular
21 structure is it is going to be a sustainable
22 structure. It is going to also use rainwater

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1 collection as a means to make sure it meets many of
2 the green initiatives that the city has been trying
3 to foster for those buildings as we build them, to
4 make sure that they do not negatively impact the
5 environment.

6 In terms of the storm water and also some
7 of the concerns regarding storage of oil, this
8 particular facility will be designed to make sure
9 that we mitigate any negative impacts such as
10 storage of oil, and also rainwater. There are also
11 permeable pavers that will be used to help with
12 drainage collection.

13 COMMISSIONER TURNBULL: What about the
14 other issue -- one other issue with vibrations?

15 MR. PERRY: For vibrations?

16 COMMISSIONER TURNBULL: Yes.

17 MR. PERRY: Part of that has been the
18 landscaping that we've designed. We've also,
19 essentially with the retaining walls, set to screen
20 any of the traction and powered substations, as well
21 as screening the surrounding area of the
22 maintenance facility. That will help protect

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1 against both noise, both from a visual standpoint
2 and also for the noise.

3 COMMISSIONER TURNBULL: Okay, that was
4 my next question was noise. There has been a
5 concern about transformers. That leads to
6 electromagnetic current. What have you done to
7 safeguard that?

8 MR. PERRY: Well, one, in terms of the
9 particular traction powered substations, we use,
10 they have been shown to not transmit any of the
11 negative electromagnetic forces that I guess Mr.
12 Walton has been alluding to.

13 Also, we have our particular traction
14 powered substation recessed into the hill, and
15 we're actually before historic preservation right
16 now as we move towards 65 percent completion for the
17 construction documents. But right now, we're just
18 at 30 percent.

19 COMMISSIONER TURNBULL: What about the
20 impacts, the critical impacts? What about the high
21 school? Do you feel satisfied with what you're
22 doing?

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1 MR. PERRY: Yes.

2 COMMISSIONER TURNBULL: Okay, thank
3 you.

4 CHAIRPERSON JORDAN: Okay, any other
5 questions? Anything else you think you need to
6 present that isn't in your brief?

7 MR. POSTULKA: I think everything has
8 been covered.

9 CHAIRPERSON JORDAN: All right. Is
10 there a representative of the ANC here? I didn't
11 have a brief or anything from the ANC.

12 MR. WALTON: The ANC, Mr. Jordan, is not
13 here today, but we attached a copy of her statement.
14 She gave me a statement that was attached to our --

15 CHAIRPERSON JORDAN: It would have to
16 be the full board of the ANC.

17 MR. WALTON: It is a statement as well
18 from the full board of the ANC, I believe. I'm
19 sorry, that was a prior letter that was concerning
20 when the issue first began.

21 CHAIRPERSON JORDAN: I don't think we
22 have any action of the ANC.

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1 MR. POSTULKA: I've seen something
2 regarding the historic preservation issue, but
3 nothing regarding zoning.

4 MR. WALTON: And the second page of it
5 indicates, when you read that letter --

6 CHAIRPERSON JORDAN: What exhibit is
7 that?

8 MR. WALTON: I believe it is -- let's
9 see. I believe that's -- it is exhibit number 3,
10 and that's a letter to the DC Preservation Office
11 and Review Board. And it is at page 2, if you look
12 at page 2 of that letter. It is paragraph 2, I
13 believe.

14 CHAIRPERSON JORDAN: Yes, I see what
15 you're talking about. It's the Historic
16 Preservation Board.

17 MR. WALTON: Yes, sir.

18 CHAIRPERSON JORDAN: It is a letter of
19 support of the association before the Historic
20 Preservation Board.

21 MR. WALTON: That is correct, and at
22 page 2, they speak to the -- the board's disapproval

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1 of the construction of a streetcar barn there on the
2 front yard of Spingarn.

3 CHAIRPERSON JORDAN: It is not
4 applicable to this, though. It is a letter to
5 Historic Preservation about applying for support of
6 historic designation of the school.

7 MR. WALTON: Correct.

8 CHAIRPERSON JORDAN: I got you.

9 MR. WALTON: But it has the language
10 concerning the opposition is what we're saying to
11 the construction of a streetcar barn on the grounds
12 of Spingarn.

13 CHAIRPERSON JORDAN: It is not written
14 in support of this appeal.

15 MR. WALTON: No. That is correct.

16 MR. POSTULKA: And as far as -- I just
17 want to add one additional thing. My
18 understanding, and Mr. Perry can correct me if I'm
19 wrong, is that the ANC actually requested that these
20 meeting rooms, which are going to be in the building
21 anyway, be allowed to be opening up to the public.
22 So, that was at the request of the ANC.

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1 CHAIRPERSON JORDAN: All right. So,
2 where are we now? So, there's no one here from the
3 ANC. Is there an intervener? So, you get to do a
4 rebuttal.

5 MR. WALTON: Yes, and we have several
6 other witnesses, for convenience of the Board, if
7 you would like to hear from them. They have signed
8 up to testify. I don't know if they get several
9 minutes.

10 CHAIRPERSON JORDAN: They can do two
11 minutes. And you're going to make that part of your
12 rebuttal?

13 MR. WALTON: Yes.

14 CHAIRPERSON JORDAN: Okay.

15 MR. WALTON: Thank you. My rebuttal,
16 first of all, to the District's statement that --

17 CHAIRPERSON JORDAN: You might want to
18 have them speak first and then you do your rebuttal.
19 How many witnesses do you have?

20 MR. WALTON: Two -- three. Three
21 witnesses.

22 CHAIRPERSON JORDAN: Three witnesses?

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1 MR. WALTON: I'm sorry, five. Six
2 witnesses, and maybe one to two minutes each.

3 CHAIRPERSON JORDAN: I'm just watching
4 you add up numbers. Because my mind is now cutting
5 down time and you add another one, and I'm -- and
6 my mind is not as fast as it used to be doing
7 division. I'm going, "Okay, that's divided by" --
8 two minutes, please. State your name, please.

9 MS. RAGLIN: My name is Veronica
10 Raglin, R-A-G-L-I-N. I'm a Member of the Kingman
11 Park Civic Association. I have been sitting here
12 listening, trying to figure out just where we are.
13 It feels to be as if the Zoning Commission needs
14 to remand this back to the -- what do you call it?
15 The Commission Administrator.

16 It seems like there's nobody on the same
17 page. You have this very restricted view of what
18 you can deal with, but yet the Commission
19 Administrator. Is that -- I don't know what --

20 CHAIRPERSON JORDAN: The Zoning
21 Administrator?

22 MS. RAGLIN: Yes, it seems like that was

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1 not done properly. Everybody is not in step. It
2 seems as if there has been a jump to the zoning
3 without the broad look at what we are really dealing
4 with.

5 I don't think it is good enough to say
6 we can stick transportation here because the
7 government has the right. That's the same thing
8 Bull Connor said in the south. We've been doing it
9 this way, so let's continue doing segregation this
10 way.

11 I think that somewhere in this process,
12 there has not been an overall look at how this
13 affects the city, whether the city has the right or
14 not - the God-given right - to stick something
15 wherever they want.

16 Apparently, the focus is extremely
17 narrow here and yet the overall Zoning Commission
18 Administrator has not looked at it in a very broad
19 sense so that when he gets to your committee, you
20 are able to look at it as specific issues.

21 So, I don't know whether you have the
22 power, the purview or whatever to remand this back

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1 to the Commission for a review, where the community
2 and the Commission Administrator can decide whether
3 this is something that is viable for the community.

4 My feelings are I concur with Mr. Walton
5 in his statements. This is not a good idea, and it
6 needs to be reviewed again. So, my recommendation
7 is it needs to be remanded back to the Zoning
8 Administrator, or whatever that body is, to look at
9 the overall impact on the community. Finished.

10 CHAIRPERSON JORDAN: Thank you.

11 MR. MURRAY: My name is Charlie Murray,
12 Junior. I'm a Member of the Kingman Park Civic
13 Association.

14 CHAIRPERSON JORDAN: Is your
15 microphone on?

16 MR. MURRAY: I recommend -- I go along
17 with what Mr. Walton and Ms. Raglin were saying. It
18 was not properly studied. I figured that it should
19 go back to the top of the board for reviewing. It
20 never was properly studied. It never came to the
21 community.

22 I think it was overlooked. I think this

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1 should be referred back for assessment, or
2 re-looked at, and reexamined. And in taking the
3 community in with this here. The community was not
4 involved, and this here is the problem. It's lots
5 of problems.

6 I'm no engineer or nothing like that,
7 but I can see them, any one of their eyes, go back
8 and see it. It needs to be reexamined, reassessed
9 again from the top down.

10 CHAIRPERSON JORDAN: Thank you. Your
11 next witness? Did you all complete witness cards
12 and get sworn in? Okay, please state your name.

13 MR. BOBO: My name is Dennis Bobo. I'm
14 a graduate of Spingarn. I'm also -- I'm also a
15 graduate of engineering and have several masters
16 degrees. What you failed to realize is the
17 environmental impact statement. The
18 electromagnetic fields emitted by the streetcar
19 system are ridiculous.

20 And so, since there's an environmental
21 impact statement, are there laws? Are there laws
22 for the community? The District Government needs

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1 to be in compliance with the community. The
2 community is not allowed to have electromagnetic
3 emissions.

4 The other thing is that, as Ms. Raglin
5 stated, there's been no studies done to -- to verify
6 the use of this facility. We have streetcars that
7 are from foreign countries. We have funds from
8 public funds. Not private funds that are used.

9 The other thing is that Spingarn was
10 designated as a Historic Preservation Facility.
11 It has everything for education. It would propose
12 earlier that Spingarn be used as an eastern
13 representative of the UDC as well as the community.

14 Those things basically have been put on
15 hold or destroyed, and we -- we -- as indicated or
16 requested, somebody needs to look at what's
17 happening at Spingarn because it's not -- it's not
18 -- you don't do that to historic buildings.
19 Spingarn was opened up, I think, in 1952. It was
20 one of the last schools built in the '49 to '52 time
21 frame, and you're destroying it? You should not
22 destroy it.

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1 The other thing is Spingarn, as well as
2 the schools in that area, can provide education to
3 people. It can be formal education as well as
4 informal education. When I say informal
5 education, I mean certificates in certain training
6 for people to get jobs.

7 In that area alone, the bottom line you
8 spend for a streetcar maintenance facility and
9 streetcar? If you had employment in that
10 community, then there would be no crime and no
11 blight in the community. And so, what you're
12 basically doing is starving the community for two
13 reasons.

14 I don't think the District would
15 basically be that way, because what happens is the
16 District, even though it make a lot of money from
17 tourists, it's not at the convenience of the
18 citizens.

19 I was a former resident at Kingman Park,
20 as well as a graduate of the high school and several
21 universities in the area. But it's wrong what's
22 being done to Spingarn.

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1 CHAIRPERSON JORDAN: Thank you. As I
2 said, we're limited to what we can do. Some of you
3 are making arguments for the City Council to hear.
4 Who is your next witness, please? I appreciate it.
5 Thank you for your statement.

6 MR. WIGGINS: My name is James R.
7 Wiggins, Senior. I was owner of properties in the
8 2400 block of Benning Road before there was a
9 Spingarn. There was a lot of trees there then.
10 First, they cut the trees down. Then they proposed
11 putting Spingarn near Benning Road.

12 Then architects and engineers figured
13 that wasn't appropriate. They moved Spingarn
14 several hundred feet away from Benning Road because
15 of the landfill, the land that was put there. Okay?

16 Now, my buildings, which I'm sure a lot
17 of you have been through, have filed a lawsuit
18 because of the damage that's been done to my
19 buildings. All my basements have been flooded.

20 The Langston Theater that was in the
21 2500 block of Benning Road had continuous water
22 running out of that particular building. Now, I

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1 think you need to do some research and follow up on
2 my statements. Now, two and three blocks below me
3 on E Street there is continuous water flowing out
4 of the earth.

5 Two weeks ago, all the gas in our
6 neighborhood for some reason was cut off. During
7 the height of the worst temperatures that we've had
8 in several years. I don't know what gas is going
9 to be for that, but all of this is in tune with what's
10 going on out here in the community and these
11 buildings that I worked hard to get.

12 And I happen to be there the night
13 Spingarn opened up. They started building in 1949.
14 They opened it up in 1952, which is one of the
15 historic occasions. A good friend of mine, if you
16 look at the Supreme Court decision on segregation,
17 he was the one that represented the District of
18 Columbia because it wasn't a state.

19 They had to add that to the argument
20 before the Supreme Court. You're talking about an
21 historic building. Someone mentioned the fact
22 that this was the last school that was built under

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1 orders specifically for blacks.

2 Like I've said, the damage that I've
3 had; they've come out and took pictures and claimed
4 they're going to do something. Have not made one
5 effort to correct any of the conditions that I'm
6 experiencing today. And I'd like for you to follow
7 up to verify my statements. Thank you very much.

8 CHAIRPERSON JORDAN: Thank you. As I
9 said, that -- and I'm sorry all those things
10 happened to you, but that's not what this Board can
11 do. Sounds like there's a lot that you're saying
12 that the City Council should hear about and do
13 something, because it seemed like there's issues
14 going on that really -- or address the mayor's
15 office that you really need somebody to look out
16 for. Next, please?

17 MR. BROWN: My name is Ivan Brown, and
18 I'm a lifetime Washingtonian. Went to Spingarn.
19 Spent 18 years on that hill, and I'm President of
20 the Alumni Association. We just came out to
21 support everything that was said previously in
22 protest of this facility being built on Spingarn's

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1 grounds.

2 It just doesn't make sense to have this
3 facility there, where you're going to have kids
4 going up and down that hill everyday. I mean kids
5 get off the bus everyday at 26th and Benning Road,
6 and go up hill. They're going to have to walk
7 through streetcar tracks. And kids are kids, you
8 know.

9 But anyway, I don't want to hold up more
10 time. Just want to support.

11 CHAIRPERSON JORDAN: Thank you. State
12 your name again for us, please.

13 MR. MCGRATH: Yes. My name is Dorn
14 McGrath. I speak for the Committee of 100, and I
15 have sent a copy of my statement, which I will not
16 read now, to the Chairman, the present Chairman of
17 the Committee of 100 and the federal city, and she
18 has approved it.

19 So, I'm speaking now as well as for
20 myself but also for the Committee 100, and I don't
21 know of I'm an opponent or a proponent in this case,
22 but I think given your artful description of your

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1 limited authority, and I have to admire this Board
2 generally speaking. I think you've done a terrific
3 job looking over 100 cases, and -- more than 100
4 cases probably in your time.

5 But some of you may also remember there
6 were others besides those who witnessed who were
7 also extremely valuable citizens in the United
8 States. Very prestigious. Some of you are old
9 enough to remember Elgin Baylor. Some of you are
10 old enough to remember the Dave who was an important
11 figure in the sports field. Some of you are not old
12 enough to remember any of these gentlemen, or the
13 other alumni of Spingarn who have testified here
14 today.

15 One thing that I am in support of, and
16 this is why I'm confused as to whether I'm an
17 opponent or a proponent is to whether or not I've
18 marked my card correctly. But I fully support, and
19 the Community 100 fully supports the work of this
20 community, of Kingman Park.

21 We have worked with Kingman Park before,
22 and we intend to abide by your counsel, and your

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1 counsel is that we should take this up with the
2 Zoning Commission, and I think we should.

3 I wish to use a phrase unlikely in this
4 room, and this is spot zoning. You have
5 determined, and you have nothing to do with this,
6 but the Zoning Commission has determined to extend
7 a properly contrived zoning district east, to
8 include this site, which is wrong. It is spot
9 zoning if I've ever seen it, and I've seen a lot of
10 cases in the Supreme Court, as well as here.

11 I think this is a case -- you're correct.
12 It ought to be vented more carefully with the City
13 Council and with the Zoning Commission as such
14 because otherwise, all of you are vulnerable to
15 lawsuits, just as you are carefully defining
16 yourselves as part of the process.

17 And so, there are other examples of
18 misplanning and misguided application of the zoning
19 ordinance to this location. I think it is a
20 terrible decision, and I have other reasons for
21 thinking it is a terrible decision.

22 Most of you don't even know about the

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1 Burnham place, or the fact that Burnham Place is the
2 project designed to eliminate that ugly parking
3 garage surrounding the present Union Station. The
4 plans for Burnham Place provide for the arrival of
5 a subway station -- of a streetcar station on top
6 of the Hopscotch Bridge.

7 That's four levels higher than where the
8 Metro presently arrives at the Union Station, which
9 is wrong. I think it is a piece of bad judgment.
10 How are the people going to get from the top of the
11 Union Station, or the top of the Hopscotch Bridge
12 down four levels?

13 They're going to take with their
14 luggage, and if they don't have their luggage,
15 they're going to take themselves through almost two
16 full length football fields through Union Station
17 - part of it expose to the weather - down four
18 escalators to get on this Metro Station red line,
19 which runs through Union Station.

20 This is a terrible trudge. It should be
21 a lot of fun to go from Burnham Place onto 8th Street.
22 It is not. And whether that's bad planning or bad

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1 judgment in the first place by the Zoning Commission
2 or by the City Council remains to be seen.

3 You can't decide that. You shouldn't
4 decide that. I agree with you, Mr. Chairman, on
5 that particular view. And I am honored very much
6 to be able to testify as I have for the fact that
7 you're the right church in the wrong pew. We should
8 be -- we should be working with the City Council or
9 the Zoning Commission because this is an egregious
10 miscarriage of zoning. That's all I have to say
11 right now.

12 CHAIRPERSON JORDAN: Thank you for your
13 comments, and I was going to say that might be
14 something you need to have some conversations with
15 right now, with the Zoning Commission and group.
16 But I think there are some other issues, and I don't
17 want to speak for Mr. Turnbull. He's certainly
18 able to.

19 There's some community meetings planned
20 as soon as tonight and the rest of this week in
21 regards to the zoning re-write, because that's
22 something that you want to make sure that you're on

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1 front page with. Maybe do some changes and some
2 other things in those considerations. I'm sure Mr.
3 Turnbull is taking those things in, but you need to
4 attend those meetings.

5 A lot of times some of the stuff we do
6 up front then won't be on the back end. Your
7 two-minute wrap-up, please?

8 MR. WALTON: Yes, sir. I want to thank
9 the Zoning Adjustment Board for allowing me to
10 appear on behalf of Kingman Park today. I really
11 appreciate that, and I want to thank you, Mr.
12 Chairman, and in particular Mr. Turnbull, for many
13 of the issues that you have raised.

14 I would just say that in following your
15 directions in this regard, and I understand what
16 you're saying, Mr. Chairman, looking at 11350.1, it
17 states, "The R5 districts shall also permit the
18 construction of those institutional and
19 semi-public buildings that would be compatible with
20 adjoining residential uses and that are excluded
21 from the more restricted residences."

22 Then when you go to 11350.2, it says, "An

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1 R5B, a moderate height and density shall be
2 permitted." And we believe that this is not a
3 moderate height, and it is not a moderate density.
4 It is a gigantic footprint on our neighborhood
5 within 25 feet of our homes.

6 So, we believe that the zoning
7 administrator erred in that, looking at the
8 requirements of these two provisions. And with
9 respect to the filings of the District of Columbia
10 government, if you look at their exhibit, it shows
11 the streetcar, but you don't see -- in their
12 exhibit, you don't see the massive wires, the
13 massive catenary overview that you see that has our
14 entire community literally outraged, and the
15 public.

16 It obscures our total sight lines,
17 views. I don't think the Zoning Administrator
18 looked at this when he talked about height, when he
19 talked about density because we have tons of poles,
20 just poles up and down Benning Road, and this is
21 obstructing everything that this beautiful
22 community had.

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1 So, that's a real issue with us, and it
2 was not envisioned. And their own exhibit does not
3 show any of these poles. Their own exhibit does not
4 show any of these wires, and we believe as well it
5 is a health hazard to us. We're frightened to death
6 by it, and I think rightfully so because the
7 American Medical Association has said that they are
8 to be avoided, these electromagnetic lines.

9 So, we do believe that taking into
10 consideration 350 and 35.1 and 2 that none of these
11 considerations were made by the Zoning
12 Administrator because we have never seen anything
13 that he has addressed, including the traffic
14 issues. And with that, I want to thank you again,
15 all of you, for allowing us to appear.

16 CHAIRPERSON JORDAN: Thank you. We're
17 going to take a serious look at that. I know Mr.
18 Turnbull has a question to ask.

19 COMMISSIONER TURNBULL: Mr. Chairman,
20 I'd like to direct a question to Mr. LeGrant,
21 getting back to when you made your decision. What
22 did you look at, and how did you come to your

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1 conclusion?

2 MR. LeGRANT: Sure.

3 COMMISSIONER TURNBULL: Just for the
4 record anyway.

5 MR. LeGRANT: Again, Matthew LeGrant,
6 Zoning Administrator. When the Department of
7 Transportation presented the application to me, I
8 knew it was a major facility. And rather than
9 assign it to one of my staff, I personally did the
10 review.

11 The task was noted in DCRA's filing as
12 is this and mass transit facility? And that was I
13 think the key question, because as noted here
14 previously, a mass transit facility is a matter of
15 right use.

16 COMMISSIONER TURNBULL: In this zone?

17 MR. LeGRANT: In this particular zone,
18 it is -- it is noted in 201.1, which is R1, and then
19 by incorporation, R5 allows those uses as a matter
20 of right, and R4 on down to R1.

21 So, looking at the facility, I met with
22 the DDOT representatives, including Mr. Thomas, to

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1 understand clearly what was in the application. Of
2 course the permit that was before me was a retaining
3 wall and preliminary site work to that, that
4 facility. But I wanted to understand the full
5 aspect of the facility.

6 As Mr. Thomas described, what that
7 facility encompasses in my judgment did fall within
8 a mass transit facility, and includes the track,
9 this car barn or facility that is to provide the
10 service and maintenance for those streetcars.

11 So, in total, the facility to me clearly
12 qualifies as a mass transit facility. The zoning
13 regulations specify that it's a matter of right use,
14 and that's the point I determined that it met the
15 zoning applicable requirements. Obviously, all
16 the other aspects and the setbacks, the height
17 limits; a lot of occupancy had to be evaluated as
18 well.

19 At the end of that analysis, I found it
20 was consistent with Zoning Regulations.

21 COMMISSIONER TURNBULL: As far as you
22 know, this particular neighborhood, this site, has

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1 had the zoning for quite a while. This has not been
2 recently re-zoned?

3 MR. LeGRANT: As far as I know, I did not
4 look at the length of time that this particular
5 portion of the site had been zoned, the R5B, but that
6 is the zoning that was indicated to me as on the
7 official zoning map.

8 COMMISSIONER TURNBULL: Okay, I just
9 wanted to bring that up because spot zoning implies
10 a piece of land that has been rezoned for a
11 particular reason or would appear to be rezoned for
12 a particular reason.

13 This was not -- this was an existing
14 piece of land zoned R5, and it fits the matter of
15 right uses as far as your understanding.

16 MR. LeGRANT: That was the conclusion
17 of my analysis.

18 COMMISSIONER TURNBULL: Okay, thank
19 you.

20 CHAIRPERSON JORDAN: Well, that would
21 conclude our hearing. We have already had
22 rebuttal, and that was just a question that the

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1 Commissioner asked. What did you want to say?

2 MR. SIMPKINS: Less than two minutes.

3 CHAIRPERSON JORDAN: About what?

4 MR. SIMPKINS: 11 DCMR Section 199J
5 speaks to necessary facilities in necessary
6 location, and as a matter of right would be allowed
7 in an R5 zone. This is not a necessary location for
8 this. Thank you very much.

9 CHAIRPERSON JORDAN: Okay, all right.
10 So, we conclude this hearing based upon the evidence
11 which has been received by the Board, both prior to
12 today what's in the record. I mean what we received
13 today.

14 We'll put this on for decision. Is that
15 March 18th or something, Mr. Moy, when Mr. Turnbull
16 is here?

17 MR. MOY: Mr. Turnbull? Let's see what
18 date we have previously. March 11th.

19 CHAIRPERSON JORDAN: We will put it on
20 for decision on March 11th. I want to take this time
21 to thank all of you. I know how this issue is
22 affecting everybody in the community, and I hear you

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1 and I feel you, because it has been real clear in
2 your voice what is there.

3 I want to take a very serious look at
4 this. That's why we're not going to render a
5 decision today. Look at every aspect of it, and
6 just study this stuff for a minute and have our
7 decision on March 11th. But I appreciate you all
8 coming out for the effort. Thank you so much.

9 MR. WALTON: Thank you.

10 CHAIRPERSON JORDAN: We're over. You
11 can't say anything else. I'm sorry, but it is just
12 the rules. Mr. Moy, do we have any other business
13 coming before us today?

14 MR. MOY: Nothing from the staff, sir.

15 CHAIRPERSON JORDAN: All right, then.
16 We're adjourned.

17 (Whereupon, the above-entitled matter
18 went off the record at 12:50 p.m.)
19
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21
22

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