

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 15, 2014

+ + + + +

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

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

MARCIE COHEN, ZC Vice Chairman
PETER MAY, Commissioner
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:

ALLISON MYERS, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing and Meeting held on April 15, 2014.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

2 (9:45 a.m.)

3 CHAIR JORDAN: Then let's go to the
4 first hearing case. It's 18739, please.

5 MR. MOY: 18739, okay.

6 (Off the record comments.)

7 MR. MOY: Okay, the --

8 MALE PARTICIPANT: That's the
9 public's, well --

10 CHAIR JORDAN: Well, if you're
11 here, let's --

12 FEMALE PARTICIPANT: I'm here.

13 CHAIR JORDAN: Okay. Let's --

14 MR. MOY: Well --

15 CHAIR JORDAN: All right. Let's
16 go ahead and do that and then we'll grab Mike.
17 Because that's why I gave you guys kind of the
18 batting order, but okay we'll do that. We'll
19 come back to that.

20 MR. MOY: Okay. Very good. The
21 Board is flexible. Okay. Application Number
22 for public hearing 18692 of 1717 E Street, LLC.

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1 This is a request from the
2 applicant, Mr. Chairman, for a variance from
3 the use provisions to construct a new eight unit
4 apartment house under subsection 330.5 as
5 advertised.

6 If the Board will recall, this was
7 heard initially on March 4th, 2014. It was
8 continued by the Board for additional
9 information. And I believe that post-hearing
10 document is under Exhibit 29.

11 CHAIR JORDAN: Okay. The parties
12 here for 18692?

13 MALE PARTICIPANT: Just waiting on
14 the --

15 (Off microphone comments.)

16 CHAIR JORDAN: He's your
17 representative? Okay. All right. We'll
18 give him some minutes. Counsel --

19 (Off microphone comment.)

20 CHAIR JORDAN: Thank you. We'll
21 then let's go back to the original case, please.

22 MR. MOY: Okay. So we're back at

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1 the top of the batting order. So we're looking
2 at 18739 of Charles B. Mathias. This is
3 special exception request for a two story rear
4 addition to a one-family row dwelling under
5 Section 223, not meeting the court requirements
6 under Section 406 in the R-3 District at
7 premises 2803 Dumbarton Street, N.W., Square
8 1240, Lot 868.

9 CHAIR JORDAN: Okay. Could you
10 please identify yourself.

11 MR. HERSEY: Good morning, Mr.
12 Chairman, members of the Board. My name is
13 Outerbridge Hersey. I'm an architect
14 representing Charles B. Mathias.

15 CHAIR JORDAN: Thank you. Well,
16 that's right, we're going to wait for you. I
17 told you we're playing musical Zoning
18 Commission and they have to tag hands before one
19 can come in and the other.

20 I really thought that the
21 application and the documents that already are
22 in the file supported the request for relief.

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1 I didn't have any questions. Other Board
2 members have any issues or something they need
3 to drill down on 18739 or want to hear from the
4 applicant?

5 Okay. As you know, you've been
6 here before. You have the opportunity to do a
7 presentation if you want. However, the
8 Board's indicated to you that we believe that
9 the record is already sufficient to grant the
10 relief. So do you want to --

11 MR. HERSEY: I'll accept that with
12 pleasure, Mr. Chairman.

13 CHAIR JORDAN: Okay. Then let's
14 turn to the Office of Planning and see if
15 there's anything in addition that they wish to
16 add to -- oh, good morning, Mr. Jackson.

17 MR. JACKSON: Good morning. My
18 name's Arthur Jackson of the DC Office of
19 Planning. I have nothing additional to add and
20 as noted in the report, we support the requested
21 relief.

22 CHAIR JORDAN: Okay. Thank you.

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1 Any questions, Board, for Office of Planning?
2 Does the applicant have any questions for
3 Office of Planning?

4 Is there anyone here for this case
5 from the Department of Transportation? Anyone
6 here from the Department of Transportation for
7 this case? We do have a letter of no objection
8 from the Department of Transportation, no
9 objection to the requested relief.

10 Is there anyone here from ANC 2E for
11 this particular matter, ANC 2E? We have a
12 letter from ANC 2E which we will give great
13 weight to which recommends the approval of the
14 application.

15 Is there anyone in the audience
16 wishing to speak in support of this
17 application? Anyone wishing to speak in
18 support? We do have three letters of support
19 from neighbors, Malcolm Peabody, Daniel Booker
20 and the U.S., oh it's U.S. Commission of Fine
21 Arts has submitted their support letter.

22 Is anyone wishing to speak in

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1 opposition? Anyone wishing to speak in
2 opposition? Then we would normally turn it
3 back to the applicant for any rebuttal or
4 closing, but we are going to just drive by that
5 and close the record. And I would move that we
6 grant the relief requested in 18739.

7 MEMBER HINKLE: I'll second.

8 CHAIR JORDAN: Motion made and
9 second. Any further discussion? All those in
10 favor signify by saying aye.

11 (Multiple ayes.)

12 CHAIR JORDAN: Those opposed nay.
13 The motion carries. Mr. Moy.

14 MR. MOY: Yes, sir. Staff would
15 record the vote as four to zero, this on the
16 motion of Chairman Jordan to approve the
17 application for the relief requested. Second
18 the motion, Mr. Hinkle.

19 Also in support is, for the motion,
20 Mr. Turnbull, Ms. Heath and we have, yes, that's
21 four. And we have a member not participating
22 today, so the motion carries four to zero.

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1 CHAIR JORDAN: Okay. Summary
2 order --

3 MR. HERSEY: Thank you, Mr.
4 Chairman.

5 CHAIR JORDAN: -- please. Summary
6 order, please.

7 MR. MOY: Yes, sir.

8 CHAIR JORDAN: Thank you.

9 MR. HERSEY: Thank you.

10 CHAIR JORDAN: We might as well do
11 -- yes, because then we've got one more. We're
12 going to just share them out of the way you know.
13 Well, let's call 18740.

14 MR. MOY: Okay. That would be
15 Application Number 18740 of Sheridan School,
16 Inc. This is pursuant to 11 DCMR 3104.1. This
17 is a request for a special exception under
18 Section 206 to allow the continued operation of
19 an existing private school with an increase in
20 student enrollment from 226 to 230 students in
21 the R-2 District at premises 4400 36th Street,
22 N.W., Square 1968, Lot 10 as advertised.

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1 CHAIR JORDAN: Okay. Would you
2 please introduce yourselves?

3 MR. BROWN: Good morning, Mr.
4 Chairman, members of the Board, Patrick Brown
5 from Greenstein DeLorme and Luchs.

6 MS. PAYNTER: Good morning, Adele
7 Paynter from Sheridan School, the acting head.

8 CHAIR JORDAN: Is your microphone
9 on, please?

10 MS. PAYNTER: Is it on? Oh,
11 apologies for that. Adele Paynter, the acting
12 head of Sheridan School.

13 MR. STOLL: My name is Mike Stoll.
14 I'm the director of finance and operations at
15 the Sheridan School.

16 MS. MILANOVICH: Good morning,
17 Jami Milanovich with Wells and Associates,
18 traffic consultant for the project.

19 MS. OLSON: Good morning, Kate
20 Olson from Greenstein DeLorme and Luchs.

21 CHAIR JORDAN: Okay. Let me see
22 where we are here. This is a request to

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1 continue a relief that has been previously
2 granted, I guess, several different times
3 probably since 1963.

4 I think that there's a couple of
5 questions that I have, but more importantly, I
6 want to see where we are between -- but is there
7 a representative here from DDOT? Okay.
8 Because I think that was one of just the real
9 issue.

10 And we got your supplemental. I
11 had a couple of quick questions about the
12 supplemental just to get a better understanding
13 of the traffic study. But otherwise we don't
14 really, Mr. Brown, need a full presentation
15 here.

16 I think the record has everything
17 that you need. There's going to be some
18 general questions and I certainly want to go
19 over these conditions that I couldn't
20 understand most of them. But I understand
21 you've been operating for while under those
22 conditions, but I'm going to talk to you about

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1 that.

2 Board, is there anything else that
3 you need to hear from them? On the traffic
4 study, I know that the afternoon study was
5 conducted on Tuesday and Thursday, was it also
6 the same for the morning or just one time?

7 MS. MILANOVICH: Yes, the morning
8 was just conducted on Tuesday. The reason we
9 did two counts for the afternoon was because
10 they were so much lower than the counts that
11 were conducted ten years ago.

12 We wanted to just be sure we didn't
13 miss anything. So we went back out and got a
14 second data point on Thursday and found, in
15 fact, they were very consistent with the
16 Tuesday counts.

17 CHAIR JORDAN: And how were those
18 days of the week or that particular week chosen?
19 What was the methodology?

20 MS. MILANOVICH: Well, so when we
21 scoped the study with the DDOT back in August,
22 we didn't anticipate having to do counts

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1 because it was a very modest request. It
2 wasn't going to be a significant traffic
3 generator.

4 So we filed our report in January,
5 but on March 20th is when we were actually
6 requested by DDOT to do the counts. The school
7 was on spring break the following week and so,
8 frankly, we were just left with that one week
9 before the hearing in which to do the counts.

10 But it was considered a typical
11 week, typical weekdays that we did the counts.
12 There was, you know, nothing special or unusual
13 about the activities at the school that day.

14 CHAIR JORDAN: And as you know,
15 DDOT had some concerns. Well, they thought
16 they needed additional information. I guess
17 that was the request for the additional study?

18 MS. MILANOVICH: That's correct.

19 CHAIR JORDAN: And so since the
20 time you've presented the requested study to
21 DDOT, have you heard anything one way or the
22 other from them?

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1 MS. MILANOVICH: Yes, we actually
2 received their supplemental report and I talked
3 with Jonathon Rogers at DDOT following his
4 submission of that report. They were in
5 agreement that the trip generation has
6 significantly reduced over the past ten years.

7 But they had indicated in their
8 supplemental report that they felt that
9 although the trip generation had decreased
10 significantly, the trip generate, they
11 thought, was still relatively high compared to
12 other schools in the district. So they
13 requested that we do monitoring reports
14 biannually, every other year. So --

15 CHAIR JORDAN: Excuse me just one
16 second.

17 MS. MILANOVICH: Sure.

18 CHAIR JORDAN: Did the Board get a
19 supplemental DDOT report or did I miss it?

20 MR. VARGA: The original report was
21 submitted on time, however, they indicated they
22 didn't have enough information in order to --

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1 CHAIR JORDAN: I understand that --

2 MR. VARGA: -- make a
3 recommendation.

4 CHAIR JORDAN: -- but they said --

5 MR. VARGA: Oh.

6 CHAIR JORDAN: -- they made a
7 supplement.

8 MR. VARGA: Yes, they made a
9 supplemental with a time waiver requirement as
10 --

11 CHAIR JORDAN: I --

12 MR. VARGA: -- part of it.

13 CHAIR JORDAN: -- don't think we
14 got that. The Board has not gotten it. Did
15 we? I could be wrong.

16 MR. MOY: I would think --

17 CHAIR JORDAN: When did it come in?

18 MR. MOY: -- Wednesday would be
19 ---

20 MR. VARGA: Exhibit 28.

21 MR. MOY: Yes.

22 CHAIR JORDAN: 28?

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1 MR. MOY: Exhibit 28.

2 CHAIR JORDAN: Okay. I'm sorry.

3 Let me go back and take a look at that.

4 MR. VARGA: I believe --

5 CHAIR JORDAN: That's fine then.

6 MR. VARGA: -- it should have been
7 in the --

8 MR. BROWN: Mr. Chair, it's a memo
9 dated April 10th, 2014.

10 CHAIR JORDAN: Just let us get
11 ourselves together, please. Yes.

12 MR. VARGA: Exhibit 28.

13 CHAIR JORDAN: Okay. Oh, it
14 should have -- okay. When did that get in the
15 record? Because I think we're all kind of
16 looking like hmm.

17 (Off microphone comments.)

18 CHAIR JORDAN: Yes. When did that
19 get in the record, Mr. Moy.

20 MR. MOY: The entry date, Mr.
21 Chairman, was April the 11th.

22 CHAIR JORDAN: I found it. We've

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1 all found it. It's either we were remiss or
2 this one got past us. So they're saying that
3 it's unlikely to increase any trip generations,
4 but they still want this additional monitoring.

5 We'll I'll leave that between --
6 they're requesting monitoring to be required
7 for 30 days of the start of first semester each
8 year, school must make a report within 45 days
9 of monitoring. Monitoring must include
10 current vehicle counts and all. Okay. We'll
11 take a look at that and see what, if anything,
12 we need to do with it. Yes, Mr. Brown.

13 MR. BROWN: I think we'd like to
14 respond or you can raise the question then we're
15 prepared to respond.

16 CHAIR JORDAN: If we had a question
17 about it, right?

18 MR. BROWN: Yes.

19 CHAIR JORDAN: Got you. Board --

20 MR. BROWN: Oh, I think it probably
21 requires a little bit more than that because
22 there's some errors in the report presented by

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1 DDOT as far as that the numbers they come to and
2 the conclusions that flow from those incorrect
3 numbers.

4 CHAIR JORDAN: Yes, I understand.
5 I think the Board's comfortable with the report
6 that's been submitted by the applicant, at
7 least I am. I didn't have any other drill down.

8 And it seems logical that with the
9 counts going down, then it would require less
10 monitoring. Why they need more monitoring now
11 than what you had before when it was up. So I
12 just don't understand that. But that's just
13 me. Board, feel free to ask questions if
14 there's something you need to hear. But let
15 me, I want to go through these conditions.

16 MR. BROWN: Mr. Chairman, it may
17 help, we produced a red line version of the
18 conditions.

19 CHAIR JORDAN: No. Are you
20 changing the conditions from what's been
21 submitted? From what you filed --

22 MR. BROWN: Yes.

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1 CHAIR JORDAN: -- are you asking
2 the Board to changing it?

3 MR. BROWN: No, we're not changing.
4 We're just allowing you to compare against the
5 original.

6 CHAIR JORDAN: We're already
7 there.

8 MR. BROWN: All right.

9 CHAIR JORDAN: We've done some
10 thing. Let me run this hearing, Mr. Brown.

11 MR. BROWN: Okay.

12 CHAIR JORDAN: Thank you. I
13 appreciate your help and support. However, we
14 kind of --

15 MR. BROWN: I will follow the
16 rules.

17 CHAIR JORDAN: Thank you. We did
18 have, I mean, I did have some drill down issues
19 on the conditions and even looking at the
20 recommendation from Office of Zoning, we had
21 some interpretation questions.

22 And so there's been some dotting the

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1 I's or cross the T's now. Let me ask you this,
2 you didn't make any changes from that which was
3 submitted?

4 MR. BROWN: No, we did not.

5 CHAIR JORDAN: Okay. Then we're
6 still good. There's some rewording here
7 regarding what's important for this Board is
8 that as this Board changes or if DCRA has to do
9 some enforcement, then there should be an
10 ability to understand what is to be enforced.
11 And everybody should be clear about what the
12 rules are with the do's and don'ts.

13 I mean, shouldn't have to need a
14 Ph.D. to kind of, or a roadmap to try to figure
15 your way through the conditions, at least
16 that's my opinion. And I think it's the duty
17 of this Board to make sure that those things are
18 clear and to reduce the need for interpretation
19 because as you know, matters get hung up.

20 You've been lucky to this point, I
21 guess. You've been operating in such a great
22 way that you have not had that issue. But I

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1 would feel remiss if we didn't make some
2 changes. And I want to offer that to the Board.

3 For instance, condition number one,
4 let me say this, everything that is the
5 substance of these conditions, they might have
6 been moved around, but they're still here. You
7 can kind of check off going by your old list.

8 So for condition number one, that
9 the term of the special exception shall be blank
10 years. Whether or not, as we go through this
11 hearing or not, we put a term of time in there
12 is still up in the air, but that's what number
13 one will say.

14 Deleting all the rest, approved by
15 this order shall remain in effect, because it
16 speaks for itself. If we issue a order, you can
17 only operate within that time period if we issue
18 a time period for the order. So you can't
19 operate outside of that. So I think that's
20 self-explanatory.

21 And Board, let me know, just jump in
22 when you think that there's some changes that

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1 are not making sense that I've added. Two, the
2 parking layout of the small parking area in
3 front of the school building on 36th Street N.E.
4 shall be maintained -- northwest, okay.

5 Yes, we'd really be having problems
6 going Northeast, right? Northwest, I didn't
7 make that change. Not Northeast, Northwest
8 shall be maintained in the current
9 configuration.

10 And no stacked parking shall be
11 allowed in the parking area in front of the
12 school building on 36th Street. That's in some
13 parts of them, then there's some other parts.
14 They weren't all together, so I wanted to make
15 sure we were clear about what the parking
16 requirements were.

17 The main parking area on Alton
18 Place, N.W., shall be maintained in the current
19 configuration. And the drive aisle in that lot
20 shall not be used for parking of motor vehicles.

21 All right. The new number four
22 would be during school hours the parking area

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1 on Alton Place shall only be used by faculty and
2 staff.

3 After school hours, the parking
4 area shall only be used by the school visitors,
5 parents and members of the Board of Trustees.

6 Number five, the applicant shall
7 maintain and enhance all landscaping in a
8 health growing condition, replacing it when
9 necessary.

10 You can see the changes or I can, in
11 fact, you know, do we have an extra copy? I'm
12 sorry, I was remiss. I should've have just
13 given a copy --

14 MR. MOY: Yes, sir.

15 CHAIR JORDAN: -- of the red line.
16 Just give him a copy, so.

17 MR. MOY: I'll get the red line.

18 CHAIR JORDAN: I'm sorry. It
19 would have been easier for you to follow.
20 We're used to getting things, but not giving.

21 MR. BROWN: Okay. I actually saw
22 this. Okay.

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1 CHAIR JORDAN: Okay. Do you see
2 the red line? Do you have that? Okay. Which
3 number was I on.

4 MALE PARTICIPANT: Five.

5 CHAIR JORDAN: I'm going to number
6 six now, right? Number six, okay. The
7 numbers of students shall not at any time exceed
8 230 of which no more than 50 shall be
9 kindergarten students.

10 Students is defined, without
11 exception, as all children, including children
12 who pay tuition or receive scholarships, who
13 are enrolled in the school or participate in the
14 summer school or summer camp activities.

15 Number eight, no trash shall be --
16 no, number seven. The hours of operation shall
17 be between 7:30 a.m. and 6:00 p.m. Monday
18 through Friday.

19 Number eight, no trash collection
20 shall occur before 9:00 a.m. or after 6:00 p.m.
21 Monday through Friday. Number nine, the
22 applicant shall schedule deliveries at the,

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1 should be the property, not subject property,
2 the property.

3 Drop that other subject. It got
4 past me. At the property so that all pick ups
5 or deliveries shall occur at an entrance
6 located on the north side of the building facing
7 Alton Place after 9:00 a.m. and before 6:00 p.m.
8 Monday through Friday.

9 The applicant shall post and
10 maintain a sign adjacent to the door located
11 nearest to the parking lot on Alton Place
12 indicating that no deliveries shall be, drop
13 the other or, shall be accepted except for
14 during the designated hours.

15 B, only as necessary time sensitive
16 deliveries of produce, perishable goods or
17 similar items may be accepted at the building's
18 main entrance at 36 Street between 7:00 a.m. and
19 9:00 a.m. No deliveries shall be made during
20 the weekend or on school holidays.

21 And number ten, there's a lot of
22 conditions here, but we have to make everybody

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1 happy, right? Number ten, the applicant shall
2 maintain a community liaison group in
3 coordination with the advisory neighborhood
4 commission, 3F.

5 The applicant shall at least once a
6 year and at other times as required or
7 requested. My question, you see that by who,
8 it didn't indicate. I didn't know who was
9 making that determination. So what was --

10 MR. BROWN: It could have been one
11 of the neighbors or the ANC.

12 CHAIR JORDAN: If, I'm sorry, any
13 other neighbors or any other ANC.

14 MR. BROWN: Yes, and I think that
15 was the intent.

16 CHAIR JORDAN: Okay. And
17 required, is it required by the ANC or request
18 by the ANC because it's as -- all right. Let's
19 --

20 MR. BROWN: Requested.

21 CHAIR JORDAN: Other times as
22 requested? That --

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1 MR. BROWN: Yes.

2 CHAIR JORDAN: -- sound better?
3 Okay. As requested. The community liaison
4 group shall meet at the school and review issues
5 on ongoing interests including traffic and
6 parking, landscaping, compliance, BZA
7 conditions, school operations, any planned
8 construction, renovation and maintenance.

9 Now, I didn't see where the
10 community liaison group was defined. Did I
11 miss that?

12 MR. BROWN: In a previous iteration
13 it was defined geographically by people within
14 a certain distance.

15 CHAIR JORDAN: Okay. So let's put
16 that in parenthesis and just say as previously
17 defined or something. After this point we
18 start talking about neighbor list.

19 It was inconsistent to this
20 community liaison group and so we go through
21 this. If you're talking about another list,
22 let's talk about it because it's not --

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1 MR. BROWN: I think the group was
2 supposed to be the one defined down in what used
3 to be 9 --

4 CHAIR JORDAN: Okay.

5 MR. BROWN: -- B.

6 CHAIR JORDAN: Well, we'll get to
7 it then and just let me know where we're off.

8 MR. BROWN: Okay.

9 CHAIR JORDAN: So the community
10 liaison group has been previously defined in
11 the previous order or something?

12 MR. BROWN: It was defined in the
13 previous order and then I think it's defined
14 here in the conditions that we had offered.

15 CHAIR JORDAN: Where are they
16 defined?

17 MR. BROWN: I think because you're
18 talking here about electronic notice of special
19 events and then, it's in what used to be 9B or
20 9A. And you're providing notice to ANC 3F and
21 all property owners and occupants and then in
22 the 3500 and 3600 block of Yuma.

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1 CHAIR JORDAN: But it didn't define
2 community liaison group?

3 MR. BROWN: No.

4 CHAIR JORDAN: So you're trying to
5 say that's the group that should --

6 MR. BROWN: Yes.

7 CHAIR JORDAN: -- be? So let's go
8 back to the previous nine, where is it, it would
9 be the new 10B, right?

10 MR. BROWN: Yes.

11 CHAIR JORDAN: New 10B, so when you
12 come to that, did I read that yet? I don't
13 think I did.

14 MEMBER HEATH: No, you didn't.

15 CHAIR JORDAN: So when we read that
16 we're going to define that.

17 MR. BROWN: Okay.

18 CHAIR JORDAN: See those are the
19 kind of problems that we were having. Didn't
20 know who was on first. Okay. So which one was
21 I on before I had stumbled? Okay. So we did
22 A, right?

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1 MR. BROWN: Yes.

2 CHAIR JORDAN: So then let's do B
3 here, the one where we're at. Provide
4 electronic notice of special events on a
5 continuous basis, but not less than monthly to
6 ANC 3F and to all property owners or occupants
7 in the 3500 and 3600 block of Yuma, 3500 and 3600
8 block of Alton Place and 4300 to 45 -- that's
9 a huge community relation group.

10 Okay. But that's what you wanted.
11 Okay. So you've got neighbors here, but let's
12 call this the community. This is all the
13 community liaison group?

14 MR. BROWN: Yes.

15 CHAIR JORDAN: Wow.

16 MR. BROWN: It's a much smaller
17 group than --

18 CHAIR JORDAN: Than what it appears
19 to be?

20 MR. BROWN: Yes.

21 CHAIR JORDAN: Okay. So we'll put
22 that in the parenthesis then. Okay. That's

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1 what we were missing because it didn't define
2 it anywhere here. Okay. Number 11, you see we
3 deleted the things that you had under C, have
4 been picked up in other places.

5 Number 11, the applicant shall not
6 park school buses or vans, A, on any residential
7 street within the boundaries of ANC 3F or B, on
8 the property after school hours unless
9 arrangements for off street parking are
10 terminated by the owner of the off street
11 parking area or a third party who controls the
12 parking area and the applicant is unsuccessful
13 in making arrangements for alternative off
14 street parking.

15 In the event the arrangements for
16 off street parking are terminated, the
17 applicant shall, in good faith, seek to make
18 alternative arrangements for off street
19 parking promptly and shall not park any school
20 buses or vans on the property.

21 After school hours no longer than 60
22 days in an aggregate. There was this 60 days,

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1 so I didn't know whether or not that was total
2 or, you know, 60 days in a row or any of that
3 stuff.

4 So I just figured what the community
5 doesn't want period. You should find a place
6 within that time. So that's why I put in the
7 aggregate.

8 Within 14 days of the event a school
9 bus or van is parked on the property, the
10 applicant shall report to the community liaison
11 group on its good faith effort to make
12 arrangements for alternative off-site parking
13 arrangements.

14 Thereafter, the applicant shall
15 continue to report to the group biweekly. That
16 should be counted on biweekly basis until the
17 bus or van is relocated off property. We do
18 some little tweaks with some of the typos, but
19 yes, okay?

20 Number 12, I think, is the same as
21 your previous 11 except there was a typo that
22 was caught under B. It's screening not form,

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1 but from. So we caught that one.

2 Thirteen, even in weekend
3 activities or events at the property shall be
4 restricted to those activities and events that
5 are customary to an elementary school,
6 kindergarten through eighth grade.

7 During activities or events at the
8 school, ingress and egress shall be restricted
9 to the building main entrance on 36th Street.
10 B, the applicant shall deliver to all members
11 of the community liaison group, drop the other
12 of, all notice of planned activities and events
13 at least one week in advance by mail or
14 electronic mail.

15 And I want to be sure you understand
16 what I've said there because it was kind of open
17 whether or not how you gave them notice, but,
18 and it's a question of whether or not it's
19 electronic or whether it was snail mail.

20 If you sent it out a week in advance,
21 then they might not get it until two days if it
22 was by mail. So here I wanted to make it clear

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1 that they had to have it in their hands at least
2 a week in advance. So you might have to send
3 it out ten days in advance, okay? Just that's
4 kind of what I was trying to clean up here.

5 And I don't know why I deviate
6 because I forget where I am. Number 15, is that
7 right, no, Number 14. Is that right? Yes,
8 Number 14. Number 14?

9 MEMBER HEATH: This one.

10 CHAIR JORDAN: Which one? Where
11 am I? Number 13, I'm still on 13?

12 MR. BROWN: Yes.

13 MEMBER HEATH: Yes.

14 CHAIR JORDAN: See, I told you I get
15 lost here.

16 MEMBER HEATH: And it was C.

17 CHAIR JORDAN: 13C?

18 MEMBER HEATH: Yes.

19 CHAIR JORDAN: Where am I?

20 MEMBER HEATH: With the exception
21 of the Farmer's --

22 MR. BROWN: Yes.

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1 MEMBER HEATH: -- Market.

2 CHAIR JORDAN: Oh, okay. That's
3 my C, is at 14. That's 14.

4 MR. BROWN: No --

5 MEMBER HEATH: That's 13.

6 MR. BROWN: -- 13C.

7 CHAIR JORDAN: 13C?

8 MEMBER HEATH: Yes.

9 CHAIR JORDAN: I don't know what
10 the heck I have here. Okay. With the
11 exception of the Farmer's Market, the applicant
12 shall be restricted to a maximum of 12
13 activities or events of 50 or more persons.

14 The event or activity shall be
15 limited to no more than 24 vehicles. That's
16 supposed to be on the property, is that what
17 they meant by that? Because it says or no more
18 than 24 vehicles. I didn't understand what
19 that was supposed to mean.

20 MS. PAYNTER: That's going to be
21 about 24 vehicles --

22 MR. BROWN: Yes.

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1 MS. PAYNTER: -- right?

2 CHAIR JORDAN: That's on the
3 property, you know, you park onto your property
4 here, right?

5 MR. BROWN: You know --

6 CHAIR JORDAN: No?

7 MS. PAYNTER: I think they're
8 saying if we have more than that number of
9 vehicles for the event, we need to notify them,
10 not just on our property.

11 MR. STOLL: And drop offs.

12 MS. PAYNTER: Right.

13 MR. BROWN: Yes. It was the volume
14 of vehicles coming to the site, not necessarily
15 that they're going to be physically on the
16 property.

17 CHAIR JORDAN: Okay. So how do you
18 track that?

19 MR. BROWN: Well, I think the
20 burden is on the school to identify those
21 events. And they have a pretty good idea of
22 what the volume of the events are.

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1 CHAIR JORDAN: Okay.

2 MR. BROWN: Do you?

3 MR. STOLL: We do. Yes, we do.

4 CHAIR JORDAN: All right. If you
5 can leave with it and somebody pulls a tech on
6 you, then you're living with it. I just think
7 that it's not clear.

8 MR. STOLL: Yes, if you guys like to
9 make it clear, we can. What I've typically
10 done is look at a standard of 50 people because
11 50 people typically equates 25 cars. So any
12 time we're going to have an addition 50 people
13 on site, I send out notification via email.

14 CHAIR JORDAN: Okay. So do we need
15 to lay out the second part? Because the way it
16 was previously written, well, you know it was
17 previously written if the event or activity
18 shall be limited to no more than 24 vehicles.
19 But you're not having events for the vehicles,
20 so --

21 MR. BROWN: It's standard.

22 MS. PAYNTER: You can just strike

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1 that part. If we do it by person, that works
2 as well for giving us a --

3 CHAIR JORDAN: Okay.

4 MS. PAYNTER: -- count.

5 CHAIR JORDAN: I want to make sure
6 you're okay with your community groups and
7 everybody if we do that. I mean, I understand
8 and I would agree with you, but I want to make
9 sure your community group and folks who work
10 through this is okay with that.

11 It makes more sense. The number of
12 people makes more sense. I don't see how you
13 can control 24 vehicles or know that you
14 actually had more. Ah-ha, 25, I saw one three
15 block away. I know they came to your event. I
16 mean that's just not workable for me.

17 Okay. So let's do that. So we're
18 going to drop the events shall have a limit of
19 no more than 24 vehicles. I'd try to squeak it
20 in there, but I'd still have -- as that's what
21 the box was.

22 The applicant shall not use the

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1 property for commercial or profit-making
2 functions or activities such as dances,
3 concerts, exercise classes or other events.

4 The condition shall not apply to
5 CASA or similar summer education programs,
6 summer camp traditional to an elementary school
7 offered by the applicant or to the Farmer's
8 Market operating at the subject property.

9 So then this must be really Number
10 14. I thought I had 15, must be 14. Okay.
11 The applicant shall use its best efforts to
12 ensure that the students enter and exit the
13 school building by either 36th Street entrance
14 or the playground doors closest to 36th Street
15 that face Yuma.

16 B, faculty and staff enter and exit
17 the school building through, one, the doors
18 located on 36th Street, two, the doors adjacent
19 to Yuma, three, the doors adjacent to the
20 parking area on Alton Street for faculty and
21 students and staff who park their vehicles in
22 the parking area.

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1 C, students, parents, visitors,
2 faculty and staff entering and exiting the
3 school building on the Alton Place "north side"
4 of the building when coming to the subject
5 property by bicycle or using bicycle racks
6 located on the Alton Place side. Somebody want
7 to flow chart all this?

8 Number 16, the applicant shall, oh,
9 this is actually going to be 15 because I'm one
10 number off. The applicant shall provide
11 faculty and staff with incentives including
12 Smart Benefit Program to encourage the use of
13 public transportation or carpooling to the
14 property.

15 The applicant shall give priority
16 to or reserve at least three signed, it should
17 be parking spaces, three designated parking
18 spaces for persons who occupy.

19 So the sign is, I'll probably clean
20 it up so that the sign, if you've got three
21 spaces, there's supposed to signage there that
22 says hey, this is priority for people who

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1 carpool.

2 Next, the applicant, which would be
3 16, the applicant shall comply with implement
4 and enforce the traffic management plan
5 described in BZA Exhibit, what was the exhibit
6 number? But it says as may be amended after
7 consultation with the community liaison group.

8 So, you know, that's going to invoke
9 at some point also, DDOT or whatever to some
10 extent and even the Board's kind of
11 jurisdiction regarding any impact of traffic
12 management. So, what --

13 MALE PARTICIPANT: Exhibit 27.

14 CHAIR JORDAN: It's Exhibit 27?
15 So why don't we, maybe the way to do that, as
16 long as it does not exceed the traffic count
17 that's been submitted in the applicant's
18 traffic report. Does that make sense?

19 MR. BROWN: Okay.

20 CHAIR JORDAN: Board, does that?
21 Do you understand what I mean?

22 MR. MOY: Could you repeat that for

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1 the staff again, Mr. Chairman?

2 CHAIR JORDAN: I know. I just
3 doing it to myself.

4 MR. MOY: Oh, okay.

5 CHAIR JORDAN: Traffic impact is
6 not greater than that which was been submitted.
7 I think that's the way, that the traffic impact
8 is not greater than that contained in the
9 applicant's expert transportation report.

10 I don't see how this stuff's going
11 to be managed, but just good luck trying to
12 manage it. Is this a point where we need to
13 pause and talk about the monitoring that DDOT?

14 MR. BROWN: I think that would be
15 worthwhile.

16 CHAIR JORDAN: Yes, so --

17 MR. BROWN: Yes, because I think --

18 CHAIR JORDAN: Now, DDOT is
19 requiring you to do monitoring reporting, which
20 doesn't seem a lot, but what's your pushback on
21 that? I'm not concerned about the numbers they
22 had in their report, but what about --

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1 MS. MILANOVICH: Yes, we have a
2 couple of concerns. First, as you pointed out,
3 the trip generation has significantly
4 decreased over the last ten years. So, you
5 know, we feel that the school's doing the right
6 thing and doesn't need to continue monitoring
7 in order to continue, you know, the lower trip
8 generation.

9 DDOT's other reason for, or I guess
10 their reason for requiring the monitoring
11 stemmed from the fact that they felt that the
12 trip gen for Sheridan, the rate was higher than
13 other school in the district.

14 But we found a number of errors in
15 their comparative school data. For example,
16 in one case for Holy Trinity School that they
17 cited as a comparable, they counted only the
18 inbound trips rather than the inbound and
19 outbound trips.

20 So the rate they presented which was
21 .44 is actually .91 trips per student. So, and
22 you can see on the chart on the screen when you

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1 correct the errors in the DDOT report, the trip
2 generation for Sheridan is actually in line
3 with other schools in the district.

4 I would also note that the
5 enrollment for Sheridan is much lower than some
6 of the other schools. So the actual number of
7 trips generated by Sheridan is lower even
8 though the rate may be higher. And when you
9 look at the p.m., the rates are very comparable
10 in the p.m.

11 CHAIR JORDAN: Okay.

12 MS. MILANOVICH: So we believe --

13 CHAIR JORDAN: All right.

14 MS. MILANOVICH: -- that the
15 school's doing the right thing and has their
16 trip generation under control and it's not
17 necessary to do the reporting.

18 CHAIR JORDAN: Okay. Board, any
19 thoughts on that? You know, I think we also
20 cover it by just making the last tail we put to
21 the last one that the traffic impact can't be
22 greater than that which you submitted because

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1 that then will revoke the problem with their
2 special exception.

3 I mean, yes, does that make sense?
4 Just leave it as, because that in-and-of-itself
5 becomes a monitoring unit by itself, right?
6 Because they cannot be greater than their
7 traffic impact study presently.

8 Unless, what are you thinking?
9 That we should put something, that a monitoring
10 report should be done? Okay. All right. So
11 then, all right.

12 And I want DDOT to know we took that
13 in consideration, what they had, and that we
14 think we put the proper brakes there if there's
15 an issue.

16 All right. I think we're on,
17 really Number 17. I have listed as Number 18
18 on the clear copy or whatever, but it's Number
19 18, is it?

20 No later than May 1st of each year,
21 the applicant shall submit an annual report to
22 the zoning administrator setting forth its

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1 ongoing compliance with the conditions two
2 through, well, those numbers are going to
3 change, whatever we're quoting to those
4 conditions above of this order during the prior
5 calendar year and shall transmit copies of the
6 annual report by electronic mail to the Office
7 of Planning, ANC 3F and the community liaison
8 group.

9 The annual report shall include, at
10 a minimum, the detailed information of the
11 number of students enrolled by range and
12 average number enrolled. All right. You know
13 what it is, right, because.

14 A breakdown of faculty and staff by
15 full-time, part-time, contract basis for those
16 contract personnel who work more than ten hours
17 per week on an average and the number of written
18 complaints and allegations of non-compliance
19 received by the applicant during the prior year
20 with a description of the nature of the
21 complaint and allegation and a copy of each
22 complaint.

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1 All right. I need help with the
2 next one. I guess I understand now. It says
3 the applicant shall notify, it said in advance
4 and there was some other language. So it used
5 the word neighbors again, and I said so that's
6 the community liaison group?

7 MR. BROWN: Yes, sir.

8 CHAIR JORDAN: Okay. So we
9 changed that to community liaison group.
10 Okay. Yes, I think they have this. Okay.
11 The applicant shall notify ANC 3F and the
12 community liaison group at least, and it didn't
13 say how much in advance, any plans it has for
14 renovation of the existing playground, any
15 substantial maintenance or renovation or
16 interior work.

17 The applicant shall meet with the
18 community to discuss the schedule and
19 appropriate construction management measures
20 and et cetera.

21 It seems like this is one we caught
22 before. I think this is kind of redundant to

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1 one of the other ones already that you had to
2 give notice. But what did you discuss about
3 advance notice? Is this another seven day
4 notice?

5 MR. BROWN: I think probably
6 something a little bit longer than that. We
7 didn't specifically, but I think 30 days.

8 CHAIR JORDAN: Okay. All right.
9 At least 30 days in advance. Okay. And then
10 on this last one that you had, where they
11 applicant shall not be required to obtain
12 additional Board approval for renovations of
13 existing playground provided that the existing
14 blue prints and location, the law speaks for
15 itself.

16 The regulation speaks for itself on
17 that. If you're going to do any changes to any
18 plans that we have, then you know the
19 requirements.

20 We can't grant you the ability to
21 come and make changes to plans that are outside
22 of what the zoning regulation requires. And I

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1 just found it unworkable and, but you want to
2 respond back to that, Mr. Brown?

3 MR. BROWN: Well, I think the
4 replacement in kind of a playground, again,
5 that's what we're talking about, the surface of
6 a playground, by itself should not be a
7 triggering event for a --

8 CHAIR JORDAN: Okay.

9 MR. BROWN: -- private school
10 special exception.

11 CHAIR JORDAN: Okay.

12 MR. BROWN: So I was just trying to
13 clarify that in the order itself. Now --

14 CHAIR JORDAN: But read it the
15 other way.

16 MR. BROWN: Pardon?

17 CHAIR JORDAN: But read it the
18 other way. That any other changes being made
19 that might be triggered by the zoning
20 regulations by this condition means what you
21 would assume you didn't have to come to get
22 whatever relief you need to get.

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1 MR. BROWN: Well, I wasn't trying
2 to get --

3 CHAIR JORDAN: I understand --

4 MR. BROWN: -- that.

5 CHAIR JORDAN: Oh, I understand
6 that, but I'm just saying that's how ambiguous
7 this particular provision is and how on my first
8 reading, I don't know about the other Board
9 members, I could be off, but that's, you know,
10 John Doe reading it and --

11 MR. BROWN: Well, I was trying to be
12 specific to the playground and not extend it
13 beyond that. I understand your concern. I'm
14 not so sure I agree with, because I tried to put
15 in the limits of the playground, existing
16 footprint, location and topography.

17 So a replacement in kind of that
18 type of item, I think, is appropriately not
19 triggering a further special exception. Now,
20 the minute we differentiate from what's there
21 now, if the playground was to get larger, the
22 grade was to change or some other condition of

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1 it and location on the site, I think that would
2 certainly warrant BZA action.

3 But a replacement in kind of a
4 surface. I mean that's what we're talking
5 about. A --

6 CHAIR JORDAN: But that's not what
7 it was limited to. It says any additional
8 changes. The applicant shall not be required
9 to obtain additional Board approval for the
10 renovation of the existing playground provided
11 that the existing footprint location and
12 topography or grade is generally maintained.

13 There's a lot of stuff that can
14 happen there. So that's just me. Other Board
15 members want to weigh in that?

16 MR. BROWN: I'm not so sure what
17 you're, and I'm not trying to be difficult, but
18 I'm not so sure what your concern is.

19 CHAIR JORDAN: I don't know what
20 the realm of possibilities. I understand what
21 you're intent is, I just don't know the realm
22 of possibilities.

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1 MS. MILANOVICH: Can I --

2 CHAIR JORDAN: Anybody else --

3 MS. MILANOVICH: -- speak a little?

4 CHAIR JORDAN: No, just give me one
5 second.

6 MS. MILANOVICH: Oh sure.

7 CHAIR JORDAN: And Board, I don't
8 want to make a big to do over nothing. Anybody
9 else?

10 COMMISSIONER TURNBULL: Mr. Chair,
11 I think if they're simply replacing something
12 in kind --

13 CHAIR JORDAN: So that's --

14 COMMISSIONER TURNBULL: -- I don't
15 think they would need to --

16 CHAIR JORDAN: Okay.

17 COMMISSIONER TURNBULL: -- come
18 before us. I mean, if it's simply, if they have
19 an all-weather surface and they're simply
20 replacing it, I think if it's just the existing
21 what you've got and you're simply replacing a
22 new swing set with an existing swing set or

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1 something that's falling apart or is dangerous,
2 I don't think I have an issue with that.

3 CHAIR JORDAN: Okay. So why don't
4 we just add here for the in kind.

5 COMMISSIONER TURNBULL: In kind,
6 yes.

7 CHAIR JORDAN: Renovation in kind.
8 Then that way, all right, then that we're
9 limiting. Otherwise you were not limited.
10 You were open to what you were doing. And you
11 were carrying it here, but it's not here.

12 So I think that's the word. And
13 just put it there for in kind renovations and
14 changes. I think that's simple. All right.
15 Thanks appreciate it. See, that's why we're a
16 team.

17 Any questions about how we kind of
18 altered the conditions? Does it include
19 everything that you think it should, that the
20 previous document included?

21 MR. BROWN: Yes.

22 CHAIR JORDAN: We just tried to

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1 make it, you know, flow a little better. I
2 think some of them are real steep for you, but
3 you've agreed to it, so. Board, any other
4 thing on the conditions? Yes.

5 COMMISSIONER TURNBULL: Well, Mr.
6 Chair, yes, I guess the only thing is going back
7 to one, which is the term issue.

8 CHAIR JORDAN: Yes, that's one.

9 COMMISSIONER TURNBULL: And in my
10 only, you know, we have --

11 CHAIR JORDAN: Term conditions,
12 oh.

13 COMMISSIONER TURNBULL: -- what is
14 it, it's the ANC report, Exhibit 22. And my
15 only concern, and maybe the applicant could
16 talk about it, it says, "whereas neighbors have
17 expressed concern with Sheridan's ongoing
18 compliance with previous BZA orders and
19 continue."

20 And I don't know, has there been a
21 lot of complaints, I guess, about this and what
22 are the issues that come up that would cause the

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1 ANC to still say that it should be for no more
2 than five to ten years? That's my only, and I
3 don't know if you want to speak to that or?

4 MR. BROWN: Well, I'll let Mike
5 speak, but I think the statement in the ANC
6 letter about the complaints overstates the
7 situation. And I think that if you look at the
8 annual reports that Mr. Stoll has religiously
9 submitted on behalf of the school, that those
10 complaints aren't part of the reporting and
11 that certainly would have been his requirement
12 to do so. But Mr. Stoll can --

13 MR. STOLL: Yes, I very
14 infrequently get any sort of push back or
15 complaints from the neighbors. Excuse me.
16 I've been at the school now for seven years.

17 When I first arrived in the summer
18 of '07, it became clear that we weren't doing
19 the best that we could to follow all of these
20 conditions in terms of deliveries, trash pick
21 up, those type of things.

22 And those are the complaints that we

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1 got early on, deliveries being to our kitchen
2 before 9:00 a.m., trash pick up on the weekends.
3 We've cleaned all of that up now, of course.
4 I'm not going to say we're perfect because we're
5 not because we can't control our vendors
6 completely.

7 But we've done a very good job of
8 complying to those conditions. And we get very
9 few, if any, complaints to the school on a
10 regular basis.

11 COMMISSIONER TURNBULL: Okay.
12 Thank you.

13 MR. STOLL: Yes.

14 CHAIR JORDAN: If there's not
15 anything else, we can turn to OP and get their
16 feed in.

17 COMMISSIONER TURNBULL: Okay.

18 CHAIR JORDAN: Good morning.

19 MS. THOMAS: Good morning, Mr.
20 Chair, members of the Board. The Office of
21 Planning is recommending approval as requested
22 by the applicant including the removal of the

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1 term limit.

2 We feel that it's sufficiently
3 bound by all of these conditions and at any
4 minor change in the operations would kick them
5 out --

6 CHAIR JORDAN: Yes.

7 MS. THOMAS: -- to the BZA in any
8 event. So we feel that it would be
9 unnecessary. They have been operating at this
10 location for the past 50 years, so --

11 CHAIR JORDAN: Yes.

12 MS. THOMAS: -- with that said.

13 CHAIR JORDAN: Okay. All right.
14 Board, any questions? Office of Planning?
15 The applicant in question, Office of Planning?
16 Is anyone here from DDOT? We do have their
17 supplemental report which we've talked about
18 and considered certainly.

19 Anyone here from ANC 3F? We do have
20 the letter of support from ANC 3F, but recommend
21 that we have a five to ten-year term. Five to
22 ten-year term? Anyway, between five and ten

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1 years, I guess that's what they're going to
2 accept for the term. Although, they didn't
3 give any reasons for why they wanted to limit
4 it.

5 So we'll just go by that and so I
6 don't know if they meet the requirements for
7 great weight regarding that, but certainly we
8 give them deference regarding their
9 recommendation.

10 But there's nothing that the Board,
11 if we do something contrary, need to respond to
12 because they didn't give any reasons for their
13 recommendation.

14 Anyone here wishing to speak in
15 support of the application? Anyone in
16 support? Any in opposition? Anyone
17 anywhere? Coming back to the applicant, if you
18 feel like there's something you need to rebut
19 or that you think you need to do a closing, I
20 don't know think you need to do a closing, then
21 we would just --

22 MR. BROWN: No, I think the Chair

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1 and the Board have covered the bases.

2 CHAIR JORDAN: Okay. Then we will
3 close the record and then move into
4 deliberation. Board, the first thing, I don't
5 know what the Board's feeling about the time
6 limitation. That's the only thing that's
7 really before us. Any thoughts? Mr. Hinkle.

8 MEMBER HINKLE: Yes, thank you, Mr.
9 Chair. I understand the school's been there
10 since 1963 --

11 CHAIR JORDAN: Yes.

12 MEMBER HINKLE: -- I think? And,
13 you know, I've sat on this Board for quite a
14 while and this is the most complete list of
15 conditions I've seen for a school like this.
16 I'm confident that they could continue to
17 operate at this location under these conditions
18 without a term limit.

19 CHAIR JORDAN: Yes.

20 MEMBER HINKLE: You know, it's if
21 they fail to meet one of the requirements,
22 there's certainly other approaches that the

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1 neighborhood could take to ensure that they try
2 to meet those conditions. So I'm okay with
3 eliminating the term limit --

4 CHAIR JORDAN: Okay.

5 MEMBER HINKLE: -- myself.

6 CHAIR JORDAN: Yes, Ms. Heath.

7 MEMBER HEATH: I agree with Mr.
8 Hinkle. I'm satisfied with the conditions and
9 recognize that if changes are made, they're
10 going to have to come back to the Board.

11 CHAIR JORDAN: Okay. Mr.
12 Turnbull, do you have anything? Yes.

13 COMMISSIONER TURNBULL: I concur
14 with my colleagues and I think we should move.

15 CHAIR JORDAN: Okay. Then, go
16 ahead. Do you want to move?

17 COMMISSIONER TURNBULL: Okay.
18 Mr. Chair, I would move that we approve
19 Application Number 18740 of Sheridan School,
20 Inc. pursuant to 11 DCMR 3104.1 for a special
21 exception under Section 206 to allow the
22 continued operation of an existing private

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1 school with an increase in student enrollment
2 from 226 to 230 in the R-2 District at premises
3 4400 36th Street, N.W., Square 1968, Lot 10.
4 And look for a second.

5 CHAIR JORDAN: With the conditions
6 --

7 COMMISSIONER TURNBULL: With the
8 conditions --

9 CHAIR JORDAN: -- as modified.

10 COMMISSIONER TURNBULL: -- as
11 modified that we discussed on that that's --

12 CHAIR JORDAN: In the term
13 limitations, yes.

14 MEMBER HEATH: Second.

15 CHAIR JORDAN: Motion made and
16 second. Any further question? All those in
17 favor signify it by saying aye.

18 (Multiple ayes.)

19 CHAIR JORDAN: Those opposed nay.
20 The motion carries. Mr. Moy.

21 MR. MOY: Staff would record the
22 vote as four to zero. This is on the motion of

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1 Mr. Turnbull to approve the applications with
2 the 20 conditions as amended. Second the
3 motion, Ms. Heath. Also in support Chairman
4 Jordan and Mr. Hinkle and the Board member not
5 present. The motion carries four, zero.

6 CHAIR JORDAN: And we can have a
7 summary order, please.

8 MR. MOY: Yes, sir.

9 CHAIR JORDAN: Thank you very much.
10 And we're going to be in recess for five
11 minutes. Thank you.

12 (Whereupon, the foregoing matter
13 went off the record at 10:36 a.m. and went back
14 on the record at 10:44 a.m.)

15 CHAIR JORDAN: Mr. Moy, would you
16 call 18692, please?

17 MR. MOY: Okay. The next
18 application before the Board is Application No.
19 18692 of 1717 E Street LLC. As the Board will
20 recall this application, it was continued from
21 the sessions of January 14th and March 4th.
22 And I believe the Board requested additional

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1 information from the applicant. And I'll end
2 with that, Mr. Chairman.

3 CHAIR JORDAN: All right. Thank
4 you. All right. Could you please identify
5 yourselves?

6 MR. BELLO: Good morning, Mr.
7 Chair, Board members, Toye Bello, representing
8 the applicant.

9 MR. DIRUGGIERO: Gerard
10 DiRuggiero, a broker at Urban Land Company, as
11 a real estate expert.

12 MR. FOWLER: Philip Fowler with
13 Colombo Bank.

14 MR. ALI: Ramy Ali with Ram Design,
15 project architect.

16 MR. KHAN: Faraz Khan, I'm one of
17 the developers.

18 CHAIR JORDAN: Okay. Let's go
19 back --

20 MR. DAMANI: Good morning.

21 CHAIR JORDAN: Yes, go ahead
22 please.

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1 MR. DAMANI: Oh, good morning,
2 Mreza Damani, with the developer, partner.
3 Yes, hello.

4 CHAIR JORDAN: Now, Mr. Bello, are
5 you offering Mr. DiRuggeriero as an expert?

6 MR. BELLO: Actually, at the
7 preliminary hearing the Board already
8 qualified him as an --

9 CHAIR JORDAN: We did --

10 MR. BELLO: -- expert.

11 CHAIR JORDAN: -- qualify? Okay.

12 MR. BELLO: What we're offering
13 today is Mr. Fowler as the construction finance
14 expert.

15 CHAIR JORDAN: Do we have a resume?
16 Has he previously been accepted by the Board?

17 MEMBER HEATH: I think so.

18 CHAIR JORDAN: Yes.

19 MR. BELLO: We actually had late
20 filings and we requested a waiver of that
21 deadline.

22 CHAIR JORDAN: What was the late

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1 filings?

2 MR. BELLO: That'll be the resume
3 of Mr. Fowler and --

4 CHAIR JORDAN: You filed them,
5 you're saying?

6 MR. BELLO: Yes, we did through BZA
7 submissions.

8 CHAIR JORDAN: When did you do
9 that?

10 MR. BELLO: Yesterday.

11 CHAIR JORDAN: Did you bring them
12 with you?

13 MR. BELLO: Well, yes, I have
14 copies here.

15 CHAIR JORDAN: Can you give them to
16 Mr. Moy, please?

17 MR. BELLO: Yes.

18 CHAIR JORDAN: You know, and I'm
19 going to beat you up probably more than others.
20 You've been in front of this Board many times.
21 Last minute filings give us big concerns.

22 MR. BELLO: And I appreciate --

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1 CHAIR JORDAN: The Board puts in
2 hours and hours before coming here and then we
3 get last minute things as you know.

4 MR. BELLO: I appreciate that with
5 the Board.

6 CHAIR JORDAN: And so you're
7 offering Mr. Fowler as an expert for what
8 purpose?

9 MR. BELLO: Construction finance.

10 CHAIR JORDAN: Construction
11 finance. Oh, this is more than just a resume
12 for, this is like a lot of stuff. Can you tell
13 me what you've offered us? Mr. Bello, would
14 you --

15 MR. BELLO: Certainly.

16 CHAIR JORDAN: No, we've already
17 gotten that, except for this is some more stuff.
18 Go ahead, please.

19 MR. BELLO: Well, we had filed a
20 timely submission originally.

21 CHAIR JORDAN: Correct.

22 MR. BELLO: That contained --

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1 CHAIR JORDAN: The supplemental
2 information brought here.

3 MR. BELLO: -- some of the stuff
4 that you requested in the last hearing.

5 CHAIR JORDAN: So some of this is in
6 addition to that, is that what you're saying?

7 MR. BELLO: Well, some of these are
8 in support of what -- first of all, some of this
9 is Mr. Fowler's written testimony. And a debt
10 service profile for a rental if the project were
11 a rental project.

12 CHAIR JORDAN: We had previously
13 requested that, so you just supplemented the
14 record with that which we had asked for. Okay.

15 MR. BELLO: Yes, that's correct,
16 sir.

17 CHAIR JORDAN: Okay. Okay. And I
18 think we already have this comparable market
19 study information unless it changed.

20 MR. BELLO: Well, what you had was
21 the sales and --

22 CHAIR JORDAN: Oh, this is a

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1 rental.

2 MR. BELLO: -- this is the rental.

3 MR. MOY: While there's a pause,
4 Mr. Chairman, if this request for expert status
5 is for Mr. Faraz Khan, it's under Exhibit 25,
6 which is dated --

7 CHAIR JORDAN: For who?

8 MR. MOY: Who's it for? I'm sorry.

9 CHAIR JORDAN: Fowler.

10 MR. MOY: Oh, Fowler.

11 MR. BELLO: That'll be Mr. Fowler.

12 MR. MOY: Okay.

13 CHAIR JORDAN: Is Mr. Fowler in the
14 book? Mr. Fowler have --

15 MR. MOY: I haven't --

16 CHAIR JORDAN: -- you --

17 MR. MOY: -- found that.

18 CHAIR JORDAN: -- been accepted by
19 the experts here?

20 MR. FOWLER: I don't believe so.

21 No, sir.

22 MR. BELLO: Well, his resume is

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1 submitted as part of --

2 CHAIR JORDAN: Yes, we're --

3 MR. BELLO: -- his --

4 CHAIR JORDAN: -- looking at it
5 now. Thanks.

6 MR. BELLO: Thank you.

7 CHAIR JORDAN: Yes, we'll just have
8 Mr. -- yes?

9 ZC VICE CHAIRMAN COHEN: Mr.
10 Chairman, you are being forwarded as a expert
11 in finance --

12 MR. FOWLER: Correct.

13 ZC VICE CHAIRMAN COHEN: --
14 correct?

15 MR. FOWLER: Commercial real
16 estate finance, yes.

17 CHAIR JORDAN: No, no, just be real
18 because we have to be real specific about, and
19 this Board has been kind of open about that, the
20 type of experts.

21 We have people come in as experts on
22 real estate, but what part of real estate or

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1 whatever? I'm taking this is as you're
2 commercial real estate --

3 MR. FOWLER: Commercial real
4 estate --

5 CHAIR JORDAN: -- finance.

6 MR. FOWLER: Yes, sir.

7 CHAIR JORDAN: Yes, that's okay.

8 ZC VICE CHAIRMAN COHEN: I really
9 would support him as an --

10 CHAIR JORDAN: Yes.

11 ZC VICE CHAIRMAN COHEN: -- expert.

12 CHAIR JORDAN: We accept him as an
13 expert in commercial real estate finance. And
14 Mr. Moy, I think we should start continuing that
15 in the book as to what people's classifications
16 are --

17 MR. MOY: Absolutely.

18 CHAIR JORDAN: -- and what areas.

19 MR. MOY: I agree, Mr. Chairman.

20 CHAIR JORDAN: All right. Well,
21 you know, we're not going back through the whole
22 hearing which we've already had. I would

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1 suggest to the Board we deal with this
2 supplemental information.

3 Why don't you do a presentation and
4 tell us about the rental information because
5 the Board's just getting that and we have not
6 had the chance to peruse the rental
7 information.

8 MR. BELLO: Thank you, Mr. Chair.
9 I think if you look at the debt service profile
10 for a project being potentially a rental
11 project, which is not what my clients are in the
12 market to do, but just for your purposes.

13 You would find that the conclusion
14 is that the six unit building actually results
15 in a negative cash flow for an apartment. So
16 even if they wanted to, they couldn't obtain a
17 loan to construct this project as a rental
18 property. And that's really the summary of
19 that.

20 CHAIR JORDAN: What's the period of
21 pay out on your rental debt analysis?

22 MR. BELLO: I think I would have a

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1 developer answer that question. That'll be
2 what he's testifying to as a fact witness.

3 CHAIR JORDAN: Yes.

4 MR. DAMANI: If I may, with regards
5 --

6 CHAIR JORDAN: Please speak into --

7 MR. DAMANI: -- to --

8 CHAIR JORDAN: -- the microphone
9 and say your name again, please.

10 MR. DAMANI: Mreza Damani.

11 CHAIR JORDAN: Okay.

12 MR. DAMANI: So with regards to the
13 question that you have raised on that, what we
14 have done is we have estimated a six-and-a-half
15 percent or six or six-and-a-half interest rate
16 based on the communication with the commercial
17 lenders.

18 What we would look to get typically
19 because we are not a property management or buy
20 a project for rental purposes. So we don't
21 have those in our files to, you know, refer.

22 So based on our communication with

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1 our financial experts, that's the number at the
2 rate we were growing and so we did the math based
3 on that.

4 However, it does not have amortized
5 numbers, so that is just interest only. Hence,
6 if it were to be amortized then the number would
7 be further higher and in a six unit scheme the
8 net flow would be further negative.

9 CHAIR JORDAN: So you don't know
10 what amortization rate for the interest rate
11 that was used, do you?

12 MR. DAMANI: The interest rate was,
13 I believe, six percent or six-and-a-half
14 percent. I'm absolutely not sure which one.
15 However, it does not have the amortized number.

16 If one were to amortize it, the
17 number would go higher as a monthly payment or
18 a --

19 CHAIR JORDAN: What's the terms
20 that --

21 MR. DAMANI: Interest only.

22 CHAIR JORDAN: What's the term

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1 though?

2 ZC VICE CHAIRMAN COHEN: But
3 basically, it's they have a sales pro forma.
4 They don't have a rental pro forma.

5 CHAIR JORDAN: I'm real clear of
6 that.

7 ZC VICE CHAIRMAN COHEN: Okay. I
8 just --

9 MR. DAMANI: Right.

10 ZC VICE CHAIRMAN COHEN: I
11 understand why they didn't amortize it, but you
12 always have to have an exit strategy.

13 CHAIR JORDAN: That's kind of all
14 I've done.

15 ZC VICE CHAIRMAN COHEN: Okay.

16 MR. DAMANI: Right.

17 FEMALE PARTICIPANT: It's 11?

18 CHAIR JORDAN: Yes, that was the
19 question. Yes, that was why I was trying to get
20 your reporting on --

21 MR. BELLO: I see.

22 CHAIR JORDAN: -- and you don't --

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1 MR. BELLO: Sorry.

2 CHAIR JORDAN: -- have that.
3 Okay. All right. Then what were the rental
4 rates that were used?

5 MR. DAMANI: Yes, the rental rates
6 were based on the information which we received
7 from our expert who is in the market for us --

8 CHAIR JORDAN: Okay. Let me --

9 MR. DAMANI: -- there.

10 CHAIR JORDAN: -- be simple.
11 What's the dollar amount that was used in
12 computing --

13 MR. DAMANI: Of the --

14 MR. BELLO: Mr. Chair, I think the
15 broker actually provided a comparative market
16 analysis if --

17 CHAIR JORDAN: So that comes out --

18 MR. BELLO: -- you have a --

19 CHAIR JORDAN: -- of this?

20 MR. BELLO: -- a question. But he
21 --

22 CHAIR JORDAN: Yes, if he --

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1 MR. BELLO: -- can testify to that.

2 MR. DAMANI: I remember that.
3 However, if you would, it's \$1,700 for a two
4 bedroom. Is the --

5 CHAIR JORDAN: That's what --

6 MR. DAMANI: -- number.

7 CHAIR JORDAN: -- it was, Mr. --

8 MR. DIRUGGIERO: That's correct,
9 yes.

10 CHAIR JORDAN: Okay. You don't
11 think that's steep for that area?

12 MR. DIRUGGIERO: Well, it is an
13 emerging market there, so it might be a little.
14 I took into consideration that there would be
15 new construction. Most of the comparables
16 are really in poor condition and.

17 CHAIR JORDAN: Yes.

18 MR. DIRUGGIERO: So that was
19 probably a little higher, but, you know, it is
20 a larger, you know, and new construction
21 building, so I went up a little.

22 CHAIR JORDAN: Ms. Cohen.

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1 ZC VICE CHAIRMAN COHEN: Thank you.

2 I'd like to ask, it's Mr. Fuller, is it?

3 MR. FOWLER: Fowler.

4 CHAIR JORDAN: Fowler.

5 ZC VICE CHAIRMAN COHEN: Fowler,
6 okay. Are your assumptions based on, during
7 construction, having the partners give you a
8 prior guarantee?

9 MR. FOWLER: Of course. Yes.

10 ZC VICE CHAIRMAN COHEN: Okay.

11 MR. FOWLER: Yes.

12 ZC VICE CHAIRMAN COHEN: Now,
13 because some of your assumptions, obviously, I
14 need to understand the whole, you know, basis
15 that you're. And do you have a relationship
16 with them, so you are the lender first refusal?

17 MR. FOWLER: I have a relationship
18 with Mreza and Faraz. My employment at
19 Washington First was a construction lender for
20 a project on Missouri Avenue to Mreza and was
21 a construction lender to Faraz on a project up
22 in the Bethesda market, a single family

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1 residence. So they are known to me and
2 previous clients that I would like to maintain
3 going forward.

4 ZC VICE CHAIRMAN COHEN: And in
5 your expert opinion would this project work as
6 a rental?

7 MR. FOWLER: I didn't look at the
8 numbers clearly on a --

9 ZC VICE CHAIRMAN COHEN: Okay.

10 MR. FOWLER: -- rental basis. So I
11 would have to hold off on that. I was provided
12 the pro forma for two alternative developments,
13 one a six unit and one an eight unit and was
14 asked to comment on my feelings on those two.
15 But I did not look at it on an alternative basis
16 as a rental.

17 ZC VICE CHAIRMAN COHEN: So, what
18 are you looking for as far as a condominium?
19 Obviously, you're right, I mean, having more
20 units makes it much more efficient and provides
21 a greater return. But what downsides are there
22 in going with six units, which is allowed by --

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1 MR. FOWLER: You know, if you'd
2 absolutely say there were absolute downsides to
3 it. It's a matter of looking at the numbers and
4 the margins and understanding what the risks of
5 development are and understanding what the
6 components of capital that need to be committed
7 both in terms of debt and equity and look at what
8 are acceptable returns associated with that
9 scheme, that investment.

10 CHAIR JORDAN: But a lender aren't
11 you concerned about the debt cover ratio?
12 What's the debt cover ratio here --

13 MR. FOWLER: I --

14 CHAIR JORDAN: on a six unit?

15 MR. FOWLER: -- didn't look at
16 those numbers. I can and I --

17 CHAIR JORDAN: How do you --

18 MR. FOWLER: -- and could run a --

19 CHAIR JORDAN: -- derive this --

20 MR. FOWLER: -- report.

21 CHAIR JORDAN: Yes, and --

22 MR. FOWLER: I mean, I wouldn't --

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1 CHAIR JORDAN: Well, when does the
2 bank got into the amount of profit return to the
3 -- because when I hear the terms of profit
4 returns, that's a profit that we're walking
5 away with by the owners. And that's what
6 they're talking about here in this report and
7 what's been submitted to us.

8 MR. FOWLER: Well, that's what I'm
9 looking at is the feasibility if there's a six
10 unit development or an eight unit development,
11 how do I react to it.

12 CHAIR JORDAN: So what's the
13 lender's yield on this project?

14 MR. FOWLER: The lender's yield is
15 just their debt. I mean, it's the cost of
16 capital --

17 CHAIR JORDAN: I understand that.

18 MR. FOWLER: -- the cost of the
19 debt.

20 CHAIR JORDAN: So what's that
21 number here?

22 MR. FOWLER: It would be probably

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1 today, you know, anywhere five-plus percent --

2 CHAIR JORDAN: Right. Okay.

3 MR. FOWLER: -- as a debt provider.

4 CHAIR JORDAN: You understand what
5 I'm getting at. I mean, there's a difference
6 than what we're talking about making the
7 project float and a tweak. Because you have
8 here in your letter that 11 percent project
9 profit is two skinny.

10 MR. FOWLER: For the risk
11 associated with a commitment of 1.7 million in
12 capital. It seems, from my desk, in care of --

13 CHAIR JORDAN: Who's risk? The
14 bank's risk? Let me --

15 MR. FOWLER: Well, the risk of --

16 CHAIR JORDAN: I'm asking you
17 because it's been put forth about getting the
18 deal financed.

19 MR. FOWLER: Well --

20 CHAIR JORDAN: But you're talking
21 about is it a comfortable return or acceptable
22 return on their investment is what you're

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1 trying to answer by this letter, not, well, not
2 if it's a financeable deal for your bank.

3 MR. FOWLER: Well, I'm looking at
4 it in terms of the comfort level of the margin
5 for error as to whether you would get involved
6 in a project or not.

7 CHAIR JORDAN: But we deal with
8 that with the debt ratios and then in any other
9 reserves that we build in. Isn't that right?

10 MR. FOWLER: On an operation of an
11 existing property, you would look at the debt
12 coverage ratio and the like. For a new
13 development project which would have risk
14 associated with development, the covers of what
15 if, you want margin for error.

16 In a development in terms of the
17 numbers that I saw with the eight unit
18 configuration as opposed to the six unit
19 configuration provided more profit, more
20 margin for success.

21 CHAIR JORDAN: But it works at 11
22 percent too.

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1 MR. FOWLER: It's feasible, yes.
2 It shows you you can make more money than you
3 spend and --

4 CHAIR JORDAN: You clearly
5 understand I understand what you're saying.
6 You --

7 MR. FOWLER: Anything that makes
8 more money than you spend is, you know,
9 feasible.

10 MR. BELLO: Mr. Chair --

11 CHAIR JORDAN: And it's a bankable
12 deal at 11 percent. Yes.

13 MR. FOWLER: Bankable is always
14 beauty's in the eye of the beholder.

15 CHAIR JORDAN: Oh, we're going to
16 play games. Okay.

17 MR. FOWLER: No, no, no, but yes, I
18 mean --

19 CHAIR JORDAN: That's all right.

20 MR. FOWLER: -- but, I mean, not
21 everybody's --

22 CHAIR JORDAN: I kind of do the --

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1 MR. FOWLER: -- risk is acceptable
2 to everybody.

3 CHAIR JORDAN: I just want to say
4 I'm a trial lawyer. So we don't need to go
5 there.

6 MR. FOWLER: Well --

7 CHAIR JORDAN: Mr. Bello?

8 MR. BELLO: Yes. Well, Mr. Chair,
9 if I can just add to that, not as a financial
10 expert, but as a land user practitioner. What
11 was submitted to the records are that we're not
12 saying that this is not a doable deal.

13 The question is what onerous
14 standards does it put upon the owners of the
15 property to constitute a hardship? And we're
16 saying all that is related to the presence of
17 the infrastructure on this property.

18 CHAIR JORDAN: Right.

19 MR. BELLO: It's --

20 CHAIR JORDAN: Right.

21 MR. BELLO: -- extremely unique and
22 there are certain risk factors that are not

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1 quantifiable in --

2 CHAIR JORDAN: Right.

3 MR. BELLO: -- that regard.

4 CHAIR JORDAN: And I would agree
5 with you. Your argument's not a financial
6 argument, but we have to get this information
7 in record. You guys are, you know. We need to
8 see the alternatives, where it works.

9 We understand. I think your, my
10 estimation, your hardship is on the conditions,
11 the property that this other infrastructure
12 that it hits this property. Has it been a
13 property, based upon the expert testimony,
14 that's been hard to sell?

15 It's not the one in finance.
16 Although you were trying to take the square,
17 what is it, square and put in the round hole then
18 try to make it work. But good try.

19 But, so I agree with you Mr. Bello.
20 And I think your supplemental document did fill
21 in those blanks about that and hit hard about
22 that utility easement restriction and some

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1 other stuff that was on this property. And I
2 think Mr. DiRuggeriero --

3 MR. DIRUGGIERO: DiRuggeriero,
4 yes.

5 CHAIR JORDAN: -- the fact sold
6 about the difficulties and one, finding the
7 comps, but also about how the property tried to
8 sell.

9 I mean it was there and it was a lot
10 being asked for this property and it had the
11 restrictions. So I just wanted to add that.
12 Board, any other questions you have for this?
13 Anybody? Ms. Cohen?

14 ZC VICE CHAIRMAN COHEN: You know,
15 can I --

16 CHAIR JORDAN: Yes, please, Ms.
17 Cohen.

18 ZC VICE CHAIRMAN COHEN: Well, not,
19 can I add something of OP?

20 CHAIR JORDAN: Well, we're going to
21 go to OP.

22 ZC VICE CHAIRMAN COHEN: Oh.

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1 CHAIR JORDAN: Yes. So then, if
2 it's okay, we'll go to OP. You got anything
3 then?

4 MR. BELLO: Absolutely. Thank
5 you.

6 CHAIR JORDAN: Ms. Thomas.

7 MS. THOMAS: Oh.

8 CHAIR JORDAN: We have your report
9 if you want to add or subtract or whatever. But
10 we understand where you are because we've
11 already been down that road, but.

12 MS. THOMAS: Yes, I'll just stand
13 on the record in this case. We don't see how
14 the regulations can support each units. Our
15 hands our tied with what the regulations state.

16 We can support a use variance with
17 respect to the putting in apartment, given the
18 situation on the lot, but not beyond six units.

19 CHAIR JORDAN: And again, you can't
20 support eight units because?

21 MS. THOMAS: Because we believe
22 that it goes beyond the density that would of

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1 been if the lot were three lots and separated,
2 it goes beyond the density that's anticipated
3 for that type of lot in the R-4 District.

4 CHAIR JORDAN: Okay. Ms. Cohen,
5 please?

6 ZC VICE CHAIRMAN COHEN: I
7 understand that OP doesn't take into account
8 the economic reasons for adding density, but my
9 question is are the surrounding properties
10 within this neighborhood that has, would this
11 be compatible with other properties in the
12 neighborhood so that it doesn't actually stand
13 out?

14 MS. THOMAS: Yes, we believe an
15 apartment building, right at this location
16 would be compatible. We just don't believe
17 that eight units, it goes beyond the realm of
18 what can fit on that lot. And given the fact
19 that it is even further limited by that
20 easement.

21 CHAIR JORDAN: Okay.

22 ZC VICE CHAIRMAN COHEN: All right.

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1 But again, we're not looking at any economics,
2 your argument is strictly --

3 MS. THOMAS: Strictly --

4 ZC VICE CHAIRMAN COHEN: -- that
5 lot?

6 MS. THOMAS: -- that lot, yes. But
7 to answer your question, the apartment building
8 itself will not be out of character with the
9 surrounding neighborhood.

10 ZC VICE CHAIRMAN COHEN: Thank you.

11 CHAIR JORDAN: So when you do your
12 evaluation and say you can't support between
13 the difference the two additional units, that's
14 not based upon any economics, it's just you're
15 saying straight density. So you haven't done
16 any calculations, would that be correct?

17 MS. THOMAS: No, we haven't done
18 any calculations. We're not capable of that.

19 CHAIR JORDAN: Yes, you are. But
20 I've just got to be careful because I want to
21 make sure. I have to make a record. If we
22 don't agree with OP, that we're doing it for the

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1 reasons why that we have in the record and
2 understand that the actual financials are not
3 calculated it's just straight off the zoning
4 regs. Applicant any questions of Ms. Thomas?

5 MR. BELLO: Just a couple.

6 CHAIR JORDAN: Sure. You do?

7 MR. BELLO: Yes, I do.

8 CHAIR JORDAN: Okay. Going to
9 that dark hole.

10 MR. BELLO: Okay. Ms. Thomas, I
11 just wanted to drill down on the density issue.
12 An apartment house is a use that can be
13 established in the R-4 zone under
14 circumstances, isn't it?

15 MS. THOMAS: Yes, that's correct.

16 MR. BELLO: And the tool of density
17 control is a function of lot size, is that
18 correct?

19 MS. THOMAS: That's correct, yes.
20 Yes.

21 MR. BELLO: So this is where, if
22 this was an existing building that could

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1 convert to an apartment house in the zone, it
2 would be subject to a minimum lot size of 7,200
3 square feet based on the number of units?

4 MS. THOMAS: That's correct.

5 MR. BELLO: All right.

6 MS. THOMAS: But that's a
7 hypothetical. If the lot were developed with
8 an apartment unit or some other type of
9 structure, it could have been converted and we
10 would've supported it.

11 MR. BELLO: Now --

12 MS. THOMAS: But you derive in
13 hypotheticals, so this is use variance. We're
14 asking for a use variance, so we don't want to
15 talk about what if in this instance because it's
16 a use variance and that density under the use
17 variance is different from what if the lot were
18 developed pre-'58.

19 MR. BELLO: The density is
20 different for this type of apartment use?

21 MS. THOMAS: It's a new apartment,
22 yes. It would have been considered

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1 differently. It's a --

2 MR. BELLO: Well --

3 MS. THOMAS: -- new apartment
4 building, so it's a use variance. It's not a
5 conversion, so we don't want to consider it as
6 a conversion.

7 MR. BELLO: Well, the point that
8 I'm trying to make, and I don't want to sound
9 argumentative, is that we want to compare
10 apples to apples, right?

11 So we're here before the Board for
12 a use variance because the unique circumstance
13 of the property has forced us to be here, not
14 because the applicant wants to be here.

15 If the applicant could have
16 developed three standard lots, they would have
17 been able to do six units. And that's the view
18 that the Office of Planning --

19 CHAIR JORDAN: Are you asking a
20 question or are you just clearing it up?

21 MR. BELLO: Well, I'm prefacing my
22 question because, you know, basically -- but

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1 anyway --

2 CHAIR JORDAN: Can we get to the
3 long and short of it?

4 MR. BELLO: The short of it is that
5 the nine units are to be constructed on a lot
6 that exceeds 7,200 square feet.

7 CHAIR JORDAN: Yes.

8 MR. BELLO: The lot size for this
9 property is actually 8,246. And we're
10 providing twice the required number of parking
11 spaces. So in terms of density, we're well
12 below the density that would otherwise be
13 permitted for a similar use, wouldn't you say?

14 MS. THOMAS: What similar use?

15 CHAIR JORDAN: So you're arguing
16 that there could be --

17 MR. BELLO: Apartments --

18 CHAIR JORDAN: -- nine units.

19 MR. BELLO: -- or apartments.

20 CHAIR JORDAN: You saying --

21 MR. BELLO: Excuse me.

22 CHAIR JORDAN: -- under the zoning

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1 regulations you can have nine units within the
2 8,240 square feet.

3 MR. BELLO: We could have more with
4 --

5 CHAIR JORDAN: But I'm saying --

6 MR. BELLO: Yes.

7 CHAIR JORDAN: Right.

8 MR. BELLO: At minimum.

9 CHAIR JORDAN: Well, because if you
10 do 900 square feet a unit or something.

11 MR. BELLO: Exactly.

12 CHAIR JORDAN: All right. So
13 that's his question. He's --

14 MS. THOMAS: But that's for an
15 existing building. And I mean, if you say you
16 don't want to compare apples and oranges,
17 you're talking about two that you are comparing
18 apples with oranges. That's a conversion.

19 Let's not talk conversions. This
20 is a use variance. This is use that's not
21 predicated for that zoned district normally.
22 You're asking to build a new structure, so you

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1 have to go by what the regulations say for a what
2 a new structure if you're going to be doing it.
3 So, you know, you are mixing apples with oranges
4 when you try to tie it in with a conversion --

5 MR. BELLO: Yes.

6 MS. THOMAS: -- and what could have
7 been had with a conversion. I think that's
8 what you're doing.

9 MR. BELLO: Well, just one last
10 question. If the Board, in their infinite
11 wisdom, were inclined to grant this relief, it
12 becomes a matter right use. But if that's the
13 case, then the density would be consistent with
14 what would be otherwise allowed for.

15 MS. THOMAS: If the Board so deems,
16 then that will be the Board's decision.

17 MR. BELLO: Okay.

18 MS. THOMAS: Okay.

19 MR. BELLO: Ma'am, thank you. No
20 further question. That's okay.

21 CHAIR JORDAN: And Ms. Cohen, did
22 you have questions of OP?

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1 ZC VICE CHAIRMAN COHEN: I do. And
2 it may be in the record and I, you know, it's
3 been a while since I read the whole record, you
4 know, deeply. But, do you own this land free
5 and clear?

6 MR. DAMANI: At the time when we
7 were looking to purchase the land, just wanted
8 to share a small history --

9 CHAIR JORDAN: Answer the
10 question, please. Do you own the land free and
11 clear?

12 MR. DAMANI: The LLC owns the land,
13 but there's a small loan on it. It's not free
14 and clear.

15 ZC VICE CHAIRMAN COHEN: Okay.

16 MR. DAMANI: Yes.

17 CHAIR JORDAN: Ms. Thomas, is this
18 a very dense area? Is it a very dense area, a
19 lot of residents in this residential area?

20 MS. THOMAS: I don't understand.

21 CHAIR JORDAN: Is it a very densely
22 populated area?

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1 MS. THOMAS: I don't understand
2 what you mean. It's --

3 CHAIR JORDAN: I mean is it a lot of
4 people living in this area? Is there a lot of
5 units and, you know?

6 MS. THOMAS: There are a lot of
7 units, yes. It's a substantial mix of
8 apartments and row dwellings. Yes.

9 CHAIR JORDAN: Okay. You know,
10 because it's different if you're looking at an
11 area like around Dupont Circle and other
12 spaces. And you know that it's just a heavily
13 populated, heavily dense area.

14 MS. THOMAS: Right.

15 CHAIR JORDAN: And you believe it's
16 a densely populated area?

17 MS. THOMAS: It's not Georgetown.
18 It's not Capitol Hill. It's in terms of,
19 they're not high rises around. I wouldn't say
20 they're high rises. They're low rise garden
21 apartments with row house mix within the R-4.

22 CHAIR JORDAN: Okay. Did you go

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1 out there?

2 MS. THOMAS: Yes, I know the area.

3 CHAIR JORDAN: And so, but it's I
4 guess --

5 MS. THOMAS: I wouldn't say it's a
6 very dense area. The houses are occupied.
7 It's a moderate dense --

8 CHAIR JORDAN: Oh --

9 MS. THOMAS: -- moderate density,
10 yes.

11 CHAIR JORDAN: Moderate density,
12 okay.

13 MS. THOMAS: Yes.

14 CHAIR JORDAN: Yes, thanks.
15 That's kind of what --

16 ZC VICE CHAIRMAN COHEN: Mr.
17 Chairman?

18 CHAIR JORDAN: Yes.

19 ZC VICE CHAIRMAN COHEN: I just
20 want to remind the Commission is that the ANC
21 does support this project as long as the
22 applicant agrees to restrict the number of

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1 residential parking permits to be issued to
2 residents to no more than three. And that this
3 be recorded when in record. So I think that
4 from my point of view, it would --

5 CHAIR JORDAN: We're not doing
6 deliberation at this point. We're still --

7 ZC VICE CHAIRMAN COHEN: Oh. Yes,
8 just well --

9 CHAIR JORDAN: Yes, you just --

10 ZC VICE CHAIRMAN COHEN: Okay.

11 CHAIR JORDAN: Okay. I was just
12 warning you this kind of whole effort --

13 ZC VICE CHAIRMAN COHEN: Whatever.

14 CHAIR JORDAN: Because we're still
15 under fact gathering. But I understand what
16 you're saying. All right. Any other
17 questions of OP? Okay.

18 We already went through this
19 process. So this is just on the supplement.
20 We went through everything else. Anybody else
21 wishing to just speak, and we'll do that again
22 since we continue the hearing, in support?

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1 Anyone in opposition? We've
2 already gone through that because this is just
3 supplementing the record and we just kept the
4 record open just in case we had questions for
5 it.

6 Back to the applicant for any
7 rebuttal and closing, please. Or any
8 additional questions the Board may wish to ask.
9 Any rebuttal, wrap up?

10 MR. BELLO: Thank you, Mr. Chair.
11 I think this application presents or
12 exemplifies what the zoning regulations
13 actually intended in terms of uniqueness in
14 property.

15 The public infrastructure that
16 impedes the development of this property as a
17 matter of right is something that's been in
18 existence since the early 1900's, something
19 that's totally out of the control of the
20 property owner.

21 So foreknowledge of that cannot be
22 deemed self-imposed hardship in any kind of

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1 way. The footprint to which the property is
2 restricted is what is dictated by the easement.

3 And once the footprint crosses the
4 two property lines, the applicant is foreclosed
5 from any matter of right development that they
6 can make reasonable economic return on, which
7 would be either a single family dwelling or a
8 two family flat.

9 So either way this slides it, if
10 they do three units, it's an apartment house,
11 if it's six units, it's an apartment house, so
12 you see this is an apartment house.

13 The distinction here is that there
14 are risk factors associated with this property
15 including buyer apathies that we can not
16 empirically anticipate. And so the additional
17 margin of profit that we're asking for is to
18 mitigate against those risks.

19 The property's in keeping with the
20 density limitations put on apartment buildings
21 in the R-4 zone. It provides twice the parking
22 requirement for the property on site, not to

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1 talk about the RRP limitation.

2 So the property's facing a lot of
3 challenges and we believe that it meets the test
4 for a hardship upon the owner upon which the
5 Board can respectfully and hopefully grant
6 approval. Thank you.

7 CHAIR JORDAN: So I missed a point
8 about RPP. I thought you were committed to
9 RPP?

10 MR. BELLO: Yes, we are.

11 CHAIR JORDAN: Okay.

12 MR. BELLO: I'm --

13 CHAIR JORDAN: All right.

14 MR. BELLO: -- just saying that.

15 CHAIR JORDAN: So there are going
16 to be three RPPs. You're committed to three.
17 Okay.

18 MR. BELLO: That's correct. That
19 is going to be a part of the sales material.

20 CHAIR JORDAN: Okay. Ms. Cohen.

21 ZC VICE CHAIRMAN COHEN: I guess my
22 question would be because this is "the

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1 proceeding is a very tight deal", are you going
2 to be adding some green features so that in the
3 long run if this has to be a rental property,
4 you're keeping the cost of maintenance down?

5 MR. DAMANI: Yes, we are.
6 Recently, we have exactly thought about, you
7 know, what you just asked. And since the cost
8 nowadays, even the utilities or outside lights
9 could add up and the grass and so. So, yes, we
10 have to keep that in mind and not overdo certain
11 elements in the project which could cost more
12 to maintain down the road. So yes, it's in
13 consideration.

14 MR. BELLO: Just to add to that
15 there's the new green area ratio requirements
16 on the zoning regulations that makes it
17 imperative. Thank you.

18 CHAIR JORDAN: Any other questions
19 anybody? All right. With that then we will
20 close the record on this matter. Is the Board
21 ready to deliberate? Any thoughts, anybody?
22 Ms. Cohen, you wanted to talk about under the

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1 deliberation, if you wanted to talk about the,
2 you were saying before when you said --

3 MEMBER HEATH: ANC's --

4 CHAIR JORDAN: Yes, it was with
5 ANC's --

6 ZC VICE CHAIRMAN COHEN: Oh.

7 CHAIR JORDAN: -- support and all
8 that. Yes.

9 ZC VICE CHAIRMAN COHEN: Yes, in my
10 opinion, when the ANC supports a project and
11 they don't have any objection other than that
12 they would like to see something in the zoning
13 order, I believe strongly that they are not
14 objecting to its being too dense or
15 inappropriate, that it is in context with their
16 neighborhood.

17 So I would take it on face value some
18 of the assumptions made in the pro forma. They
19 waived our experts that were proffered. We
20 accepted them as experts. And so I would weigh
21 in on their opinions strongly as well. And,
22 personally, I would be in favor or voting for

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1 the eight units.

2 You know, I know that this is really
3 not a issue for the BZA, but the comprehensive
4 plan does encourage affordable housing or
5 housing throughout the city. So I would go for
6 the eight units and would vote for that.

7 MEMBER HEATH: Did you say that
8 this was --

9 CHAIR JORDAN: Is there an
10 affordable unit to this?

11 MR. BELLO: I'll take that. Well,
12 the answer is no.

13 CHAIR JORDAN: Okay. I didn't
14 think so. Okay. All right. Ms. Cohen, was
15 that a motion you were making or just --

16 ZC VICE CHAIRMAN COHEN: Can I just
17 clarify something? This is not an eligible
18 project anyway for IZA, I don't believe. Is
19 that correct?

20 MS. THOMAS: It's under ten units.

21 ZC VICE CHAIRMAN COHEN: Right.

22 MR. BELLO: Yes, ten units or --

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1 ZC VICE CHAIRMAN COHEN: I would
2 make a motion to approve BZA case 18692,
3 application of 1717 E Street, LLC.

4 CHAIR JORDAN: Is there a second
5 anyone?

6 MEMBER HINKLE: No, Mr. Chair. If
7 I could say something. I'm not sure if that
8 includes the ANC recommendation to restrict --

9 ZC VICE CHAIRMAN COHEN: It does.

10 MEMBER HINKLE: It does. I'm
11 concerned about the monitoring of that
12 requirement and maintaining that requirement.
13 As we know, currently there's not kind of a
14 process for the DMV to ensure that properties
15 that, even if it's written in the covenants,
16 don't receive the RPP permit.

17 And I'm especially concerned on
18 properties where, you know, it might have eight
19 units, but only in this case, three units are
20 being allowed. I mean, I'm not quite sure how
21 that's actually managed. And so I have real
22 concerns about that.

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1 I think the applicant has made the
2 case for the eight units and I'm very supportive
3 of the project. Certainly, there's a unique
4 condition to this property and, you know, I am
5 taking on my understanding of, you know, the
6 development terms.

7 I think the experts have explained,
8 you know, kind of the justification for the
9 eight units. But I personally have a
10 difficulty not only in restricting a whole
11 property from the RPP permits, but a fraction
12 of that. And I just don't understand how
13 that's --

14 CHAIR JORDAN: Where the number
15 came from?

16 MEMBER HINKLE: Where it came from
17 or how it could be maintained in the future. So
18 that's my one --

19 CHAIR JORDAN: Well --

20 MEMBER HINKLE: -- concern.

21 CHAIR JORDAN: -- let me just do
22 this. So we're having a discussion and I think

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1 we still have a motion, we didn't get a second
2 for the motion. Does somebody just want to
3 second the motion? I'll second, so we can keep
4 this line going.

5 But one thing to remember, they also
6 have seven parking spaces. They're going to
7 have seven. That's more than what they're
8 required to.

9 MEMBER HINKLE: Right.

10 CHAIR JORDAN: So to some extent I
11 think the RPP request is just kind of a bone.
12 And there was a concern by the ANC and that's
13 why the applicant is offering it for that
14 purpose only.

15 We've done this before, but there is
16 an issue about, as Mr. Hinkle has said, about
17 how these things are really enforced. There's
18 some disagreement between DDOT and DMV about
19 who can do what and when and hopefully that's
20 going to get resolved. But you do have
21 adequate parking based upon the zoning
22 regulations. Ms. Cohen, you had something?

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1 ZC VICE CHAIRMAN COHEN: Yes, and I
2 would think that the applicant would take it
3 very seriously since they did get the ANC
4 approval. And if it is included in the zoning
5 order, I think, you know, it behooves them to
6 also assume responsibility.

7 And yes, I think in the long term we
8 do have to, and I know DDOT is working on this,
9 to see how enforcement can take place. So I
10 would hope that, and they're shaking their
11 heads yes, so for the record, it is the
12 applicant's responsibility to enforce this.

13 CHAIR JORDAN: Better not get
14 caught. All right. Any other discussion?
15 All those in favor of the motion signify it by
16 saying aye.

17 (Multiple ayes.)

18 CHAIR JORDAN: Those opposed nay.

19 MEMBER HINKLE: Nay.

20 CHAIR JORDAN: Motion carries.
21 Mr. Moy, we've got call your roll. He's just
22 looked and looked at you like what are you

1 doing?

2 MR. MOY: Did we have a nay vote on
3 this?

4 CHAIR JORDAN: Yes, we do.

5 MR. MOY: We did?

6 CHAIR JORDAN: It was Mr. Hinkle.

7 MR. MOY: All right. So staff
8 would, excuse me, record the votes as three to
9 one. This on the motion of Ms. Cohen to approve
10 the application which includes the condition of
11 restricting the number of RPPs to no more than
12 three permits.

13 Second the motion is Chairman
14 Jordan. Also in support, Ms. Heath. We have
15 Mr. Hinkle objecting to the motion and no other
16 members participating. So again the motion
17 carries on the count of three to one.

18 CHAIR JORDAN: The motion carries.
19 Summary order, please.

20 MR. MOY: Thank you, sir.

21 CHAIR JORDAN: Thank you.

22 MR. BELLO: Thank you.

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1 CHAIR JORDAN: Okay. Let's do
2 this. I wanted to just do the motion on
3 Rosebusch in five.

4 (Whereupon, the foregoing matter
5 went off the record at 11:25 a.m. and went back
6 on the record at 11:30 a.m.)

7 CHAIR JORDAN: Mr. Moy?

8 MR. MOY: Yes, sir.

9 CHAIR JORDAN: All right. Let's
10 call 18735 and 18737, which will be handled as
11 a consolidated appeal.

12 MR. MOY: All right. Next, and
13 completing the docket, are the two appeals,
14 Appeal Number 18735 of NC Street Holdings and
15 18737 of Chadbourne and Park, LLP.

16 Mr. Chairman, as a preliminary
17 matter there are three filings to the appeals.
18 One is a motion from Greenstein DeLorme to waive
19 14 days to file supplemental information which
20 was filed Friday, April 11th.

21 And there are two oppositions to
22 that filing from the property owner and DCRA,

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1 the appellee, which was filed yesterday,
2 Monday, April the 14th.

3 (Off the record comments.)

4 CHAIR JORDAN: Okay. We're
5 consolidating this appeal. I don't see why
6 they run independently. And for the effective
7 efficiency of the Board, as Chair, I'm
8 consolidating these two matters, so. And
9 basically the arguments are the same, so we
10 don't need to be very redundant regarding this
11 matter. So let's start from the right going
12 left. And we have a full house here at the
13 table. Please identify yourselves.

14 MR. POSTULKA: John Postulka,
15 assistant attorney general for DCRA.

16 MR. LE GRANT: Matthew Le Grant.
17 I'm the zoning administrator, DCRA.

18 MR. AVITABILE: David Avitabile
19 with the law firm of Goulston and Storrs,
20 representing the intervenor and the property
21 owner.

22 MR. EPTING: I'm John Epting with

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1 Goulston --

2 CHAIR JORDAN: Just make sure --

3 MR. EPTING: John Epting with
4 Goulston and Storrs, representing the
5 intervenor.

6 MS. GIORDANO: Cynthia Giordano
7 with Saul Ewing Law Firm, representing the
8 appellant Chadbourne and Park Law Firm.

9 MR. BROWN: Patrick Brown,
10 Greenstein DeLorme and Luchs, representing the
11 appellant in the original 18735.

12 MR. BLANCHARD: Lyle Blanchard --

13 CHAIR JORDAN: Let's make sure your
14 microphone's on, please.

15 MR. BLANCHARD: Lyle Blanchard
16 with Greenstien DeLorme and Luchs,
17 representing the appellant and H Street
18 Holdings, LLC.

19 MR. BELLO: Toye Bello.

20 CHAIR JORDAN: All right. There
21 is a consolidated appeal from 18735 and 18737
22 all running to the same property. And the

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1 appeals are generally centered around, unless
2 I'm mistaken, about whether or not there's one
3 building or two buildings and whether or not
4 there's a meaningful connection, is that
5 correct?

6 MS. GIORDANO: Correct.

7 CHAIR JORDAN: That's essentially
8 the issue. So when we do our presentations,
9 unless there's something that we miss here,
10 we're not going to be here all day and we're not
11 going to have a lot of lawyering kind of things
12 going on.

13 We need to hit the issue and deal
14 with the point. I'm going to ask the applicant
15 how much time do you think you need to do your
16 presentation? The appellant, excuse me.

17 MR. BROWN: Mr. Chairman, and --

18 CHAIR JORDAN: Appellant.

19 MR. BROWN: -- Ms. Giordano and I
20 have coordinated, so I think collectively we'll
21 take an hour or less.

22 CHAIR JORDAN: Oh, I don't think we

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1 will. We don't need to take an hour for this.

2 MR. BROWN: Well, Mr. Chair --

3 CHAIR JORDAN: Well, make me a
4 offer. Tell me why you think it's going to be
5 an hour's worth of dialog?

6 MR. BROWN: Well, I said or less.
7 I think it will be substantially less. I would
8 caveat your position earlier that this is all
9 about whether this is a single --

10 CHAIR JORDAN: Okay.

11 MR. BROWN: -- building. That
12 certainly is a critical and fundamental issue,
13 but it goes beyond that because even if you were
14 to determine that this addition was, in fact,
15 a single building with a valid building
16 connection, there are, in fact, issues under
17 that scenario that are very much an issue as
18 well.

19 So I just want to be clear on that
20 that it's not one issue and we're done.
21 There's obviously the preliminary issue of the
22 building, whether it's a single building or

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1 not.

2 Obviously, if it is, in fact, not a
3 single building, the matter is resolved, I
4 think, in favor of the appellants. But if it
5 is, in fact, considered a single building, then
6 it's a question about whether that single
7 building complies with a myriad of other
8 regulations. So --

9 CHAIR JORDAN: Okay.

10 MR. BROWN: -- I want to create
11 appropriate expectations for the Board.

12 CHAIR JORDAN: Okay. And you're
13 doing a consolidated presentation?

14 MR. BROWN: Yes.

15 CHAIR JORDAN: All right. We will
16 start the clock at one hour and then we'll see
17 what that leaves us for the appellees and
18 intervenors, so, which I still think is the
19 wrong way that we characterize this thing
20 because actually the party in interest is the
21 property owner.

22 And at best, you know, the

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1 Government doesn't have a real dog in this
2 fight. I mean, so I think we need to look at
3 that when we're doing this rewrite as to who
4 should be the real appellees in these matters,
5 but so. All the benefit and financial interest
6 and et cetera for the most part is for the
7 appellee. So let's go ahead again.

8 MR. AVITABILE: Excuse me,
9 Chairman --

10 CHAIR JORDAN: Yes.

11 MR. AVITABILE: -- Jordan. Just
12 as a preliminary matter, I believe Mr. Bello
13 walked in midway through the hearing this
14 morning. I just want to confirm that he's been
15 sworn in.

16 CHAIR JORDAN: Yes, do you want to.

17 MR. BELLO: Well, I haven't.

18 CHAIR JORDAN: All right. We'll
19 stand up and swear you. Okay. Well, I'm
20 taking everything you told us before. You have
21 a continuing thing to swear. No, you've been
22 here many times to swear before us. Go ahead.

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1 (Mr. Toye Bello sworn in.)

2 MR. MOY: Okay.

3 CHAIR JORDAN: All right.

4 MR. BROWN: And before we proceed,
5 I think Ms. Giordano wanted to make a brief
6 opening remark. And then we'll go right into
7 the --

8 CHAIR JORDAN: No, you're going to
9 proceed with her opening remark. The clock is
10 starting as soon as you open your mouth.

11 MR. BROWN: Absolutely.

12 CHAIR JORDAN: Okay. I just want
13 to make sure we're all clear. And all the
14 preliminary motions that were filed are all
15 being denied.

16 They're all talking about the same
17 thing. We're not going to go through all that.
18 We're going to deny it. We're moving on. You
19 can begin, please.

20 MS. GIORDANO: Thank you, Mr.
21 Chair. Good morning, Mr. Chair, members of the
22 Board. I will address the connection issue.

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1 The appellee's characterization of
2 the Hyatt as an addition to the Marriott is
3 based upon a definition in the zoning
4 regulations, that is the definition of
5 building.

6 That definition is interpreted in
7 isolation by appellees and actually in
8 disregard of a number of substantive zoning
9 provisions which provide clear direction as to
10 how the facts presented by this proposed Hyatt
11 hotel should be treated.

12 In particular, Section 2517 is
13 instructive. It permits two principle
14 buildings on one record lot when and if each
15 individual building needs the applicable
16 zoning standards as applied to its own taxation
17 lot. That makes sense.

18 Each building must separately and
19 independently meet the applicable loading and
20 parking requirements. When it's here, the
21 buildings function independently of each other
22 and share no common parking or loading

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1 facilities.

2 It does not make sense that the
3 definition of building should be stretched to
4 the point that a new Hyatt hotel, which
5 functions independently of a different
6 adjacent hotel with whom it shares no parking
7 or loading facilities, should be able to avoid
8 meeting the parking and loading requirements by
9 calling itself an addition.

10 This is a clear subversion of the
11 intent and purpose of the zoning regulations.
12 That intent and purpose, first and foremost, is
13 to assure that adequate and appropriate
14 parking, loading, light and air and other
15 standards are met. In fact, that --

16 COMMISSIONER MAY: Ms. Giordano,
17 can I interrupt for one second? Your paper is
18 rubbing against the microphone --

19 MS. GIORDANO: Oh, I'm sorry.

20 COMMISSIONER MAY: -- and it's
21 making a lot of static so I --

22 MS. GIORDANO: Okay.

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1 COMMISSIONER MAY: -- can't hear
2 you.

3 MS. GIORDANO: I apologize. The
4 fact that other matter of right applications
5 arguably similar to this application have been
6 approved by the zoning administrator is not
7 dispositive here.

8 The Board has the authority to look
9 beyond a practice of matter of right knee jerk
10 approvals of technical connections and to
11 assess whether the practice is consistent with
12 the purpose and intent of the zoning
13 regulations.

14 The Board has not previously
15 considered a connection of the type proposed
16 here. The previous connection cases
17 considered by the Board are easily
18 distinguished.

19 They were residential. They were
20 in common ownership. Our submission goes into
21 some detail to assert that and I won't go into
22 that detail here.

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1 As our case is presented in full, we
2 ask that the Board exercise it's authority as
3 the interpreter of the zoning regulations to
4 reject the obvious inconsistencies with the
5 zoning standards as a result of
6 mischaracterizing the Hyatt as an addition to
7 the Marriott.

8 And we ask the Board to mandate that
9 the intervenor comply with Section 2517 of the
10 zoning regulations or seek appropriate
11 variances. Thank you.

12 CHAIR JORDAN: Thank you.
13 Anything else?

14 MR. BROWN: And I'd like to
15 introduce Mr. Bello. We had requested in our
16 prehearing statement and provided his resume
17 that Mr. Bello be recognized --

18 CHAIR JORDAN: Accepted.

19 MR. BROWN: -- as he has as an
20 expert witness in plenty of other cases and --

21 CHAIR JORDAN: Mr. Bello's in our
22 book as an expert.

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1 MR. BROWN: Okay, thank you. Then
2 I'd like to call Mr. Bello as a witness. And
3 also for the Board's convenience, we have some
4 boards over here, but we also have hard copies
5 of documents.

6 And also to be clear, these
7 documents with the exception of one chart which
8 we created, which you'll obviously recognize,
9 all the other documents actually come from the
10 intervenor's statement. So there are no new
11 documents being introduced and we were using
12 them to illustrate our points along the way.

13 CHAIR JORDAN: Okay.

14 MR. BROWN: But I'd --

15 CHAIR JORDAN: Any objections to
16 submission?

17 MR. AVITABILE: No.

18 MR. POSTULKA: No.

19 CHAIR JORDAN: Do you want to -- did
20 you get the documents?

21 MR. BROWN: And is that board in the
22 correct place?

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1 CHAIR JORDAN: For the video?

2 MR. BROWN: Yes, or for --

3 CHAIR JORDAN: I think it's being
4 projected, yes.

5 MR. BROWN: -- the Board members,
6 but you'll have your own --

7 CHAIR JORDAN: Well, we just don't
8 --

9 MR. BROWN: -- hard copies.

10 CHAIR JORDAN: -- have -- we're
11 just not doing the overhead. I don't see the
12 overhead for this screen.

13 MR. BELLO: I did project.

14 CHAIR JORDAN: That's all right.
15 I can go on the website. Thank you. Now,
16 let's see what this report says.

17 MR. BROWN: Mr. Bello, by way of
18 background, you served as a zoning
19 administrator, both as an acting and in a
20 full-time capacity as well as a zoning
21 reviewer, is that correct?

22 MR. BELLO: That is correct.

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1 MR. BROWN: And when you were
2 reviewing a building permit application based
3 on an addition to an existing building were
4 there special requirements to make an accurate
5 review of that application?

6 MR. BELLO: Yes.

7 CHAIR JORDAN: What was that
8 question again?

9 MR. BROWN: If he was reviewing an
10 application for an addition to an existing
11 building were there specific requirements for
12 the documentation he needed to review for that
13 project?

14 MR. BELLO: Yes, and the minimum
15 completeness was such documents as itemized
16 there under Section 3202.2. And under that
17 provision the zoning administrator is
18 authorized to request any such additional
19 information that would assist his
20 determination about a compliance of a building.

21 One critical requirement,
22 obviously, would be the completeness of the

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1 submission of the documents. In this instance
2 there will be plans, not only for the addition,
3 but complete plans also for the existing
4 building.

5 MR. BROWN: And in this case the
6 existing building was the Marriott and the
7 addition was the Hyatt, correct?

8 MR. BELLO: That is correct.

9 MR. BROWN: And you reviewed the
10 permit file for this permit?

11 MR. BELLO: I did.

12 MR. BROWN: And in that file, were
13 there complete plans for the existing Marriott?

14 MR. BELLO: Absolutely not. There
15 were no plans or information on the existing
16 building whatsoever, other than --

17 COMMISSIONER MAY: I'm sorry. Mr.
18 Brown, is there a requirement in the zoning
19 regulations that says that it has to happen this
20 way or are you talking about a DCRA process?

21 MR. BELLO: I --

22 COMMISSIONER MAY: I'm asking Mr.

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1 Brown. Is there a requirement in the zoning
2 regulations that, you know, what gets submitted
3 in order to get a permit in a circumstance like
4 this?

5 MR. BROWN: Mr. Bello just
6 testified to the section in the zoning
7 regulations that set forth the requirements for
8 an applicant --

9 COMMISSIONER MAY: So it's in the
10 zoning regulations that it's. What section of
11 the zoning regulations?

12 MR. BELLO: That's at 202.2.

13 COMMISSIONER MAY: Okay.

14 CHAIR JORDAN: 202.2?

15 MR. BELLO: 3202.2.

16 MR. BROWN: And then I'm --

17 CHAIR JORDAN: Excuse me. One
18 more time, please.

19 MR. BELLO: 3202.2.

20 MR. POSTULKA: I'm not sure that
21 I'm understanding that testimony. I think he
22 said that they can request those documents, not

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1 that they must request those documents.

2 COMMISSIONER MAY: Well, I think
3 this is their opening statement. I was just
4 seeking a clarification of what he was
5 testifying to. So you can raise your question
6 later, I think.

7 CHAIR JORDAN: Right.

8 COMMISSIONER MAY: And so, I thank
9 you.

10 CHAIR JORDAN: Proceed please, I
11 guess.

12 MR. BROWN: And the complete
13 documentation that you would need to make an
14 accurate assessment of zoning compliance in
15 this case, was that included in the permit plans
16 that were approved?

17 MR. BELLO: Not in the documents
18 that I reviewed, no.

19 MR. BROWN: Was there any reference
20 to valet parking in their permit plans?

21 MR. BELLO: Not in the documents
22 that I reviewed, no.

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1 MR. BROWN: If we could turn your
2 attention to the two plans provided by the
3 intervenor, first, the connection plan and the
4 enlarged connection plan. And if you could
5 briefly describe the connections that's being
6 provided between the Hyatt addition and the
7 existing Marriott.

8 MR. BELLO: Well, although the
9 color legend reflects the yellow area within
10 which the Marriott exists and the so called
11 service corridor connection in the Hyatt hotel,
12 there, in fact, isn't any physical
13 communication between the Marriott and the
14 Hyatt.

15 The corridor serves, obviously,
16 what would appear to be the maintenance needs
17 of the existing Starbucks and the Walgreens
18 which, quite frankly, by definition are not
19 adjunct uses to the hotel.

20 In other words, they're not within
21 the hotel and they cannot be accessed directly
22 from the Marriott hotel. So there isn't any

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1 physical communication between the Hyatt and
2 the Marriott.

3 MR. BROWN: And that would include,
4 down at the bottom, the area that's marked
5 shared vestibule for Marriott and Hyatt Place
6 hotels?

7 MR. BELLO: That would include that
8 area and in my opinion from reviewing the
9 limited plans that were in the record, it
10 appears that that's a matter of necessity in
11 order to maintain the minimum required egress
12 for the Marriott. But it serves as no
13 communication connection to the Hyatt
14 whatsoever.

15 CHAIR JORDAN: What's a
16 communication?

17 MR. BELLO: A communication would
18 be --

19 CHAIR JORDAN: No, what is a
20 communication?

21 MR. BELLO: It can be as minimum as
22 a door that grants you access into a space that

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1 is assumed to be contiguous space.

2 CHAIR JORDAN: All right. Go
3 ahead.

4 MR. BROWN: So in this case there is
5 no communication between the Marriott and those
6 Hyatt additions, is that correct?

7 MR. BELLO: In fact, from the
8 vestibule the door only leads to the fire
9 control command room for the Hyatt. In order
10 for any guests in the Marriott to access the
11 Hyatt, they'd actually have to come outside to
12 get back in the front door of the Hyatt.

13 MR. BROWN: And reading, and you
14 put this in your rebuttal report, but reading
15 the requirements for building as it's defined
16 in the regulations as well as the requirements
17 under 3203 and 2517.2, do you view the
18 connection that's being proffered here as
19 creating a meaningful connection, creating a
20 single building?

21 MR. BELLO: I think it's virtually
22 impossible to interpret the connection issue

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1 without looking at these sections
2 collectively.

3 Any interpretation that would
4 profess to have limited itself to just the
5 definition of a building provided in Section
6 199, well, would not have substantively and
7 completely reviewed that issue in my opinion.

8 MR. BROWN: And the intervenor has
9 cited to case laws in the context of residential
10 connections creating a single building and
11 those cases to support this as a single
12 building. How would you distinguish that case
13 and that reasoning to the situation we have
14 here?

15 MR. BELLO: Well, first of all, the
16 cited case was related to a single family
17 dwelling that is owned by and occupied by a
18 family, one individual.

19 It cannot be deemed to be a
20 commercial occupancies that are separated
21 whatsoever. The fact of the existence of the
22 tax lot or the assessment in tax lots on the

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1 property which was proffered as case law,
2 actually cannot be recorded because of an
3 encumbrance by a highway plan.

4 So this use and the case are totally
5 different. And I might add that the issue of
6 building connection is one that is so unique
7 that each project can actually present unique
8 circumstances that requires a more profound and
9 robust review of what the essence of that
10 connection is.

11 MR. BROWN: In this case, does it
12 make a difference or is it relevant to your
13 review of the connection issue that you have
14 proposed two competing hotels, the Hyatt and
15 the Marriott?

16 MR. BELLO: Well, the way I'd like
17 to answer that is to ask a rhetorical question,
18 which is if the zoning regulations were not
19 concerned with ownership of property, why
20 mention it in Section 3202.3(c)? Because that
21 section offers a narrow exception to the rule
22 about one single building occupying a single

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1 lot of record.

2 And that section says that any
3 combination of commercial occupancies
4 separated in their entirety, erected or
5 maintained in a single ownership shall be
6 considered as one building.

7 I think this also underscores the
8 point that to take a narrow view about the
9 separation of occupancies or what one could
10 call superficial building connection cannot be
11 the single factor that determines what a single
12 building is on a single lot of record.

13 MR. BROWN: If this building -- let
14 me rephrase that. A determination that this
15 was not a single building, but two separate
16 buildings, what would be the result as far as
17 additional zoning requirements or zoning
18 issues that would need to be complied with?

19 MR. BELLO: Well, first of all, the
20 tax and assessment lot would have to be recorded
21 through a subdivision process. And that would
22 necessitate that division of Record Lot 190.

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1 And in this case the building permit is issued
2 to Lot 880 without the required evidence of the
3 instrument for recordation of that lot.

4 MR. BROWN: And a separate building
5 would have to comply independently of all the
6 regulations, independent from the existing
7 Marriott?

8 MR. BELLO: Absolutely.

9 MR. BROWN: And that would include
10 --

11 MR. BELLO: Parking, loading, rear
12 yard.

13 MR. BROWN: And based on your
14 review of the proposed Hyatt, would that
15 building as a separate building comply with the
16 zoning regulations?

17 MR. BELLO: I don't believe so.
18 And I actually believe that the necessity to
19 strain compliance is the single driving force
20 in trying to constitute this as an addition to
21 the existing Marriott.

22 MR. BROWN: That --

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1 MR. BELLO: Well, starting with the
2 parking requirement, obviously, without some
3 construct about the relationship between the
4 Hyatt parking facility to the existing Marriott
5 facility, not only would the Hyatt not be able
6 to meet its minimum requirements for parking,
7 it would also not be able to invoke the use of
8 the valet parking provisions in order to avert
9 the minimum size space requirements for
10 parking.

11 MR. BROWN: Is there, as it's
12 currently proposed, any relationship between
13 the Marriott parking and the Hyatt parking?

14 MR. BELLO: Physically, absolutely
15 not. There's no pedestrian or vehicular
16 access between those two parking facilities.

17 MR. BROWN: If I could, Mr. Bello,
18 draw your attention to their two zoning
19 computation sheets. The first is marked
20 ZA78-663. And the first time you were able to
21 review this document was after receiving the
22 intervenor's pre-hearing statement?

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1 MR. BELLO: That's correct.

2 MR. BROWN: Had you tried to obtain
3 this document independently from DCRA's
4 records?

5 MR. BELLO: Yes.

6 MR. BROWN: And you were
7 unsuccessful?

8 MR. BELLO: Very much so.

9 MR. BROWN: If I could draw your
10 attention to Item 21, number of residential
11 parking spaces. This is for the original
12 construction of the Marriott, is that correct?

13 MR. BELLO: That is correct.

14 MR. BROWN: And when the Marriott
15 was originally constructed in about 1978, what
16 does this zoning computation sheet tell you as
17 far as the parking that was provided and the
18 basis for it?

19 MR. BELLO: Well, that box actually
20 indicates that the hotel was going to be
21 providing a maximum of 89 parking spaces, a
22 number which coincides with, you know, what the

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1 maximum required number would have been for a
2 hotel of 354 rooms, I believe, is the original
3 number of guest rooms.

4 So that'll be 89 were the maximum
5 number of parking spaces required and 89 were
6 provided by the Marriott hotel at the time of
7 its construction.

8 MR. AVITABILE: Chairman Jordan,
9 in event to move this hearing along, we're
10 willing to stipulate for the record that the
11 existing Marriott parking is what it is and
12 we're not using any of the existing Marriott
13 parking to satisfy our parking requirement.

14 I think that will advance us through
15 the mathematics that we're about to see and we
16 could just jump right to whether or not our
17 valet parking works. I'm just trying to speed
18 things along.

19 CHAIR JORDAN: Yes, I was thinking
20 along the lines. Is there a issue? Is that
21 where we're going with your --

22 MR. BROWN: Well, I think it goes

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1 more than. Along the way, they seem to have
2 relied not just on the valet, but on this
3 parking. So I think, if they're willing to --

4 CHAIR JORDAN: But we know the
5 numbers.

6 MR. BROWN: Yes, right.

7 CHAIR JORDAN: This is what he's
8 stipulating to what the numbers are.

9 MR. BROWN: All right. And we're
10 willing to stipulate to this sheet. I had one
11 question with the following zoning computation
12 sheet marked ZA88-97.

13 MR. BROWN: And in reviewing that
14 computation sheet, Mr. Bello, in 1988 the Hyatt
15 was adding additional rooms, is that --

16 MR. BELLO: That's --

17 MR. BROWN: -- correct?

18 MR. BELLO: -- correct.

19 MR. BROWN: And as a result of
20 adding those additional rooms --

21 CHAIR JORDAN: Is that 71
22 additional, is that what it is?

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1 MR. BROWN: I believe that's
2 correct, yes.

3 MR. BELLO: 71.

4 MR. BROWN: They were required to
5 provide 18 additional parking spaces?

6 MR. BELLO: That's correct.

7 MR. BROWN: So and it's critical
8 they were providing additional parking spaces?

9 MR. BELLO: Additional required
10 parking spaces, yes.

11 MR. BROWN: They were not, at that
12 time, able to use or utilize the 89 spaces that
13 were built at the original construction to
14 satisfy the parking requirement?

15 MR. BELLO: Absolutely not.

16 MR. BROWN: Okay.

17 (Off the record comments.)

18 MR. BROWN: If I could, we also
19 prepared a chart. Would you be willing, the
20 parking chart, are you willing to stipulate to
21 that?

22 MR. AVITABILE: Let's see, 89

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1 spaces provided, 18, 33, I think we'll
2 stipulate to the Marriott parking is what it is
3 and we're not using any of the existing parking.

4 I think we're also willing to
5 stipulate, as you indicated in some of your
6 earlier documents in this, we said in our
7 pre-hearing submission that 2100.10 arguably
8 applies here, so that any of the existing
9 parking, even though it wasn't required at the
10 time, has since become required parking.

11 So all we need to focus on is the
12 additional 168 rooms that we're providing and
13 whether we're providing the additional
14 required 48 parking spaces.

15 MR. BROWN: Okay.

16 MS. GIORDANO: Now, I have a
17 question.

18 MR. BROWN: Okay.

19 MS. GIORDANO: If I may. Is the
20 statement accurate that they're not relying on
21 any of the Marriott parking in terms of the
22 valet scenario that they're saying they're

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1 using? Are they in fact, using the Marriott
2 parking garage to satisfy the valet
3 requirements?

4 MR. BELLO: Yes. Because without
5 a relationship to the Marriott parking spaces,
6 the number of parking spaces within the Hyatt
7 parking facility does not reach the threshold
8 of 75 upon which they can rely on for valet
9 parking provisions.

10 MR. BROWN: And again, you
11 testified that there's no physical connection
12 between the Hyatt and Marriott parking
13 facilities.

14 MR. BELLO: Well, they are two
15 separate parking facilities, correct.

16 MR. BROWN: And in the Hyatt
17 parking, which is separate, approximately how
18 many parking spaces were provided?

19 MR. BELLO: Well, based on the
20 approved drawings that I reviewed, there were
21 31 parking spaces, not 34 as the application
22 alluded. And a significant portion, a

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1 majority of those parking spaces did not meet
2 the minimum space requirements to serve as
3 required parking spaces.

4 MR. BROWN: And drawing your
5 attention to the board and the drawings showing
6 lower level two floor plan and lower level one
7 for the Hyatt, and this shows the parking
8 layouts for each level, correct?

9 MR. BELLO: Yes, correct.

10 MR. BROWN: And some of the parking
11 spaces are marked yellow, what does that
12 signify?

13 MR. BELLO: Well, those parking
14 spaces are those that come close to meeting the
15 minimum size requirements for a standard
16 parking space.

17 MR. BROWN: And --

18 MR. BELLO: That would be otherwise
19 deemed to comply with the required parking
20 space dimension.

21 MR. BROWN: And the spaces that are
22 marked with the red slashes, those parking

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1 spaces do not comply with the minimum
2 dimensional requirements?

3 MR. BELLO: They do not on two
4 counts. There were obviously preferred to
5 meet the size dimension requirements for
6 compact parking spaces.

7 Some of the dimensions there, they
8 don't provide a clear width and are not arranged
9 in a contiguous manner as required by the zoning
10 regulations.

11 MR. BROWN: So based on your review
12 of the plans, only six of the parking spaces
13 shown on the plan appear to come close to or
14 comply with the minimum requirements?

15 MR. BELLO: And that's correct.
16 And even if the compact spaces were up to the
17 standard requirements, they're way above the 40
18 percent limit allowed for compact spaces within
19 a parking facility.

20 MR. BROWN: Going back to the valet
21 parking question. And you testified earlier
22 on the valet parking was not part of the

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1 approved building permit drawings, is that
2 correct?

3 MR. BELLO: That's correct.

4 MR. BROWN: And so there was no
5 determination that they met the 75-space
6 minimum threshold for valet parking?

7 MR. BELLO: Well, first of all,
8 there were no indication on the plans
9 themselves that there would be valet parking,
10 number one.

11 Two, I think we found out in the
12 intervenor submissions that they communicated
13 merely by emails, so the reviewer who raised an
14 appropriate review comment as to the compliance
15 of these parking spaces or to the effect that
16 they would be invoking the valet provisions,
17 that's the closest that I could find in any
18 record.

19 MR. BROWN: But looking at the
20 Hyatt plans, is it correct they do not meet the
21 minimum 75-space threshold?

22 MR. BELLO: Not within their

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1 facility. I mean, they're only required to
2 provide 48 additional parking spaces.

3 Q And isn't DDOT review and approval
4 of a proposed valet parking program required?

5 A Well, in my view, I don't think that
6 the zoning administrator is in a position to
7 make independent decision about whether a
8 parking facility is conducive for valet parking
9 services.

10 Clearly, the approval of such
11 waiver is predicated on a certain determination
12 by DDOT, the criteria of which I don't think was
13 only the administrator or anybody can speak to
14 unless the DDOT reviews that parking facility
15 themselves.

16 MR. BROWN: And that review by DDOT
17 should occur prior to the approval of the permit
18 based on valet parking?

19 MR. BELLO: Yes, that makes all the
20 sense in the world, yes.

21 MR. BROWN: Do you see anything on
22 the plans that show how valet parking would

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1 operate, curbside, on M Street or otherwise?

2 MR. BELLO: Absolutely not.

3 MR. BROWN: So it's conceivable
4 that valet parking might not be operationally
5 functional or approved?

6 MR. BELLO: Yes, I think it's a fair
7 assessment.

8 MR. BROWN: And no determination
9 made by DDOT of what would be the peak hours,
10 the actual period of time that the valet would
11 operate?

12 MR. BELLO: Well, the issuance of a
13 building permit without the overview DDOT
14 presumes that DDOT would find a 12-hour peak
15 period conducive if at all.

16 And the question is if that were to
17 be the case, how do you reverse the issuance of
18 the building permit or the construction of the
19 building for that matter?

20 MR. BROWN: Okay. If I could turn
21 your attention to the drawing marked loading
22 plan. And if you could point us to the existing

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1 Marriott loading facilities.

2 MR. BELLO: The existing Marriott
3 loading facilities are those that are white
4 shaded within the yellow confines of the
5 Marriott building. So they're interior to the
6 Marriott.

7 MR. BROWN: And that's --

8 CHAIR JORDAN: Which drawing are
9 you on?

10 MR. BROWN: The loading plan.

11 CHAIR JORDAN: Okay. Got it. All
12 right. Got it. Yes.

13 (Off the record comments.)

14 CHAIR JORDAN: Got it.

15 MR. BROWN: And as the Marriott
16 hotel got larger over time from its original
17 construction to its various additions in 1988
18 and then 2006 --

19 MR. BELLO: The Marriott by itself?

20 MR. BROWN: Yes.

21 MR. BELLO: Yes, it has increased
22 in intensity of use with respect to number of

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1 guest rooms by combined 127 rooms, the 71-room
2 addition and the 56-room increase.

3 MR. BROWN: And then the Hyatt
4 proposes to add another --

5 MR. BELLO: 168 guest rooms.

6 MR. BROWN: And in your view does
7 that increase, which exceeds 200 rooms, well,
8 what triggering event does that --

9 MR. BELLO: Well, considering this
10 as an addition to the Marriott for the moment,
11 then collectively, since its construction,
12 Record Lot 198 has increased by a combined 295
13 rooms.

14 MR. BROWN: And that would trigger
15 additional loading requirements in your view?

16 MR. BELLO: Well, on two fronts.
17 And there are two competing requirements here.
18 The requirements under which the Marriott was
19 constructed has been amended since its
20 construction.

21 At the time of the Marriott
22 construction, I believe the Marriott was

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1 required to provide two loading berths of 30
2 feet deep and six service delivery spaces,
3 which were complied with at the time of the
4 construction.

5 Well, soon after the construction
6 of the Marriott, the loading provisions
7 changed. And one more point about the previous
8 regulations.

9 At the time of the construction of
10 the Marriott, the loading provisions that I
11 just stated were for each successive 200-room
12 increases. So if those regulations had
13 remained the same today, the Marriott would be,
14 with its collective addition of guest rooms --

15 MR. BROWN: That's what I thought.

16 MR. BELLO: -- would be providing
17 twice the required number of loading spaces and
18 service delivery spaces.

19 MR. BROWN: That's what I thought.

20 MR. BELLO: Well, right after the
21 construction of the Marriott the zoning
22 regulations were amended to increase if one is

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1 to look at the statement of reasons of the
2 Zoning Commission.

3 The loading and the parking
4 requirement for hotels and hotel expansions and
5 those new provisions require them for a hotel
6 with over 200 rooms, that there be a loading
7 berth at one at 55-feet deep, I believe another
8 additional one at 30-feet deep, loading
9 platforms and service delivery spaces. So
10 collectively, the record lot site has not had
11 to contend with providing a single additional
12 loading berth.

13 MR. BROWN: Although the single
14 record lot has dramatically almost doubled the
15 number of rooms on the site?

16 MR. BELLO: That's correct.

17 MR. BROWN: And taking the
18 intervenor's position that the increase in the
19 number of rooms doesn't trigger an increase in
20 required loading facilities, is there any limit
21 to how many rooms could be added without
22 additional loading facilities?

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1 MR. BELLO: By that logic, no
2 limit.

3 MR. BROWN: Okay. The location of
4 loading facilities is also governed by the
5 zoning regulations?

6 MR. BELLO: Yes, it is.

7 MR. BROWN: And tell me, the
8 proposed loading facilities, do they comply
9 with the applicable location requirements in
10 the CR zone?

11 MR. BELLO: Well, I think we have
12 to, first of all, establish that there are
13 additional loading requirements that the
14 record lot side is subject too because since the
15 amendment to the zoning regulations, what the
16 record lot side will be arguing is that the new
17 regulations do not apply to any number of
18 increases in the number of guest rooms on that
19 side, which is sort of problematic.

20 Because that interpretation would
21 actually result in post-1958 buildings being
22 restricted or being regulated more

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1 restrictively than buildings that were
2 constructed after nature of 1958.

3 Because those pre-'58 buildings
4 actually are a subject to requirements beyond
5 the certain threshold of an increase in
6 intensity of use.

7 So going from the required loading
8 berths, I think the zoning regulations are very
9 clear that required loading berths cannot be
10 provided within a court. That's one.

11 Two, the existing service delivery
12 spaces that the Marriott was required to
13 provide at the time of its construction, were
14 originally located in a side yard, a location
15 that is permitted by the zoning regulations.

16 It is the addition of the Hyatt, if
17 we're looking at this as a single lot of record,
18 that creates the court so that it essentially
19 establishes a non-conformity not in existence
20 at this time.

21 MR. BROWN: You may have answered
22 this fully, but based on your assessment, what

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1 additional in the way of loading would be
2 required?

3 MR. BELLO: Well, I think the
4 record lot is subject to a requirement based on
5 the cumulative increase in the number of guest
6 rooms since the provisions of the zoning
7 regulations were amended collectively.

8 Because that is also the same
9 standard that is applied to buildings that were
10 in existence prior to May 12, 1958. And quite
11 frankly, those buildings deserve a little bit
12 more protection because the new regulations
13 imposed on their existing condition what it is.

14 This is a building that was
15 constructed after the existence or adoption of
16 the current regulations. So they cannot be
17 regulated less restrictively.

18 So at minimum, this site hasn't had
19 the opportunity to comply with the current
20 provisions of the regulations as they apply to
21 cumulative increases over time.

22 MR. BROWN: If I could, if we could

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1 move on to the roof structure plan. And going
2 back to a point you made earlier, in order to
3 evaluate compliance with the roof structure
4 requirements for the Hyatt addition, you also
5 need to have full information on the existing
6 Marriott hotel, is that correct?

7 MR. BELLO: That is correct.

8 MR. BROWN: And the plans you've
9 reviewed, both in the permit drawings and this
10 drawing, do they provide you the information
11 you need to make a determination of compliance?

12 MR. BELLO: Absolutely not. If
13 the applicant, in this case the building owner,
14 represented this to be an addition to a single
15 lot of record, well, it goes to reason that that
16 building has a roof plan.

17 And the completeness of the roof
18 plan would necessarily include the existing
19 roof. The zoning administrator must have that
20 information in order to be able to reach a
21 determination as to whether there's a single
22 roof structure here or multiple roof

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1 structures.

2 The records that we find in the
3 public domain did not have complete roof plans,
4 neither did it have a builder's plan or
5 something that is critical and central to
6 review for zoning compliance.

7 Lot 880 would be a lot of
8 computation and not a record lot. And I can
9 only assume that because the building permit
10 references Lot 880, that what was submitted to
11 the zoning administrator may have been a plat
12 of computation, which is not a record lot upon
13 which he can base a complete review of the
14 project.

15 MR. BROWN: Or issuance of a
16 permit?

17 MR. BELLO: Absolutely.

18 MR. BROWN: If I could draw your
19 attention to the next, the public space plan
20 drawing. And when the Marriott hotel was
21 originally built in 1978, what was the
22 requirement for providing public space?

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1 MR. BELLO: The same as it is today,
2 ten percent of the lot area.

3 MR. BROWN: And when the Marriott
4 was originally built, it was Lot 187?

5 MR. BELLO: That's correct.

6 MR. BROWN: Over time the Marriott
7 hotel and the additions have occurred on Lot
8 190, correct?

9 MR. BELLO: That's correct.

10 MR. BROWN: And Lot 190, which is
11 about 64,000 square feet, is that correct?

12 MR. BELLO: That is correct.

13 MR. BROWN: That --

14 CHAIR JORDAN: 64 or 68?

15 MR. BROWN: 64 --

16 MR. BELLO: 64.

17 MR. BROWN: -- 64,446.

18 CHAIR JORDAN: Okay.

19 MR. BROWN: Show in the top right
20 hand of that --

21 CHAIR JORDAN: Okay. Yes, yes, I
22 got it. Yes.

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1 MR. BROWN: So for ongoing
2 compliance of the Marriott hotel under Lot 190
3 both in the additions and the Hyatt addition
4 proposed, public space will be required to be
5 provided at ten percent of that lot area, is
6 that correct?

7 MR. BELLO: That's correct.

8 MR. BROWN: So it's 64,446 feet?

9 MR. BELLO: Approximately, yes.

10 MR. BROWN: Looking at the drawing
11 provided by the intervenors, the area marked in
12 green, their labeling is exterior public space
13 of 1,776 square feet?

14 MR. BELLO: That's correct.

15 MR. BROWN: For Lot 190, would that
16 comply with the public space requirements?

17 MR. BELLO: Not close. Not for Lot
18 190, not for the predecessor, Lot 187.

19 MR. BROWN: And they're also
20 showing in yellow interior public space of
21 6,821 square feet. In your experience, that
22 interior lobby space that they're showing in

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1 the picture, does that comply with the public
2 space requirements in the CR zone?

3 MR. BELLO: Well, it does not and I
4 think it flies in the face of the language of
5 the provisions here. But the requirement is
6 for the public space to be provided between the
7 building line and public space or property
8 line. So it would necessarily be in front of
9 the facade of the building and public space.

10 MR. BROWN: And the requirement to
11 have public space and maintain that public
12 space would be continuous on Lot 190, so that
13 as an addition was made it would continue to
14 have to comply with the public space
15 requirement?

16 MR. BELLO: Well, insofar as the
17 public space that was provided at the original
18 time of the construction of the Marriott is
19 maintained.

20 But, you know, it is not
21 inconsiderable that in projects like this, or
22 any other project, that there may be a need to

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1 relocate where public space provisions
2 requirements are met.

3 So it wouldn't be unusual to
4 eliminate it in one place and relocate or
5 re-provide it elsewhere on the lot as long as
6 it's maintained.

7 MR. BROWN: And in reviewing the
8 plans for the permit, was there any reference
9 to public space on those plans?

10 MR. BELLO: None whatsoever.

11 MR. BROWN: And an addition to an
12 existing building, in your view, would still
13 maintain the requirement to comply with the
14 public space requirements?

15 MR. BELLO: There's no question
16 about it. As long as the property's
17 represented to be a record lot upon which a
18 single building is proposed, then, you know,
19 every opportunity for a complete review of
20 every provision of the zoning regulations is
21 required. That's part of the completeness of
22 the records.

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1 MR. BROWN: All right. Thank you,
2 Mr. Chairman. We're completed Mr. Bello's
3 testimony.

4 CHAIR JORDAN: Okay. Sure. Any
5 questions from the Board before we go to cross
6 examination? Yes. Please, Mr. May.

7 COMMISSIONER MAY: All right. So
8 the requirement in 3202.2 regarding the plans
9 of the existing building, are you saying that
10 there were no plans whatsoever of the existing
11 building?

12 MR. BELLO: None. That's --

13 COMMISSIONER MAY: Not any --

14 MR. BELLO: -- correct.

15 COMMISSIONER MAY: -- information
16 whatsoever?

17 MR. BELLO: Well, not substantive
18 enough for the ZA to have been able to do a
19 complete job of it.

20 COMMISSIONER MAY: Okay. So we'll
21 ask the ZA their opinion whether they had
22 sufficient information. I mean, the

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1 requirement is fairly general in 3202, isn't
2 it?

3 I mean, it says a plan elevation and
4 location. It doesn't even say plans. It says
5 plan elevation and location by dimensions.

6 MR. BELLO: Well, then the question
7 is in looking at every single provision of the
8 zoning regulations --

9 COMMISSIONER MAY: Right. Do they
10 have enough information to evaluate all the,
11 you know, everything that's being presented to
12 them. I mean, I understand the principle --

13 MR. BELLO: But --

14 COMMISSIONER MAY: -- of that, but
15 --

16 MR. BELLO: -- that's where the
17 completeness goes to.

18 COMMISSIONER MAY: Right. Okay.
19 I just wanted to understand that a little bit
20 better. So you raised the issue of the adjunct
21 status of the Starbucks and Walgreens because
22 they are not accessory operations.

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1 I mean, is adjunct a specific term
2 and has a specific meaning that excludes them
3 from consideration as part of the Marriott
4 building? I mean, does that somehow make them
5 separate being "adjunct"?

6 MR. BELLO: Well, I mean, you've
7 got to look at the whole project in totality.
8 If --

9 COMMISSIONER MAY: Well, I
10 understand the principle. I guess what I'm
11 asking you is there a, I mean, you used the term
12 adjunct, does that have a particular meaning
13 that excludes them from the totality of the
14 project in some manner?

15 MR. BELLO: Well, yes because the
16 conflict is then for an adjunct use, you've got
17 to be located within the hotel as defined --

18 COMMISSIONER MAY: Okay.

19 MR. BELLO: -- in Section 199.1.

20 And --

21 COMMISSIONER MAY: Okay.

22 MR. BELLO: -- including the

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1 definition of what is accessory.

2 COMMISSIONER MAY: Okay. So the
3 corridor, as you understand it, that separates
4 the buildings on the ground floor and then
5 actually provides the communication, if you
6 will, or the alleged communication, is that
7 actually an egress component from the Marriott?
8 I think you said something to that effect.

9 MR. BELLO: No, it isn't an egress
10 component from the Marriott. What I said was
11 that there was a necessity to create a
12 vestibule. In my view, probably to maintain
13 the minimum egress requirements from the
14 Marriott, that vestibule --

15 COMMISSIONER MAY: What is the
16 required component of egress for the Marriott.

17 MR. BELLO: Well --

18 COMMISSIONER MAY: That's what you
19 believe.

20 MR. BELLO: That's what I know.

21 COMMISSIONER MAY: That what you
22 know.

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1 MR. BELLO: Yes.

2 COMMISSIONER MAY: Okay.

3 MR. BELLO: But my point though, is
4 that that vestibule only serves the purpose of
5 discharging the Marriott guests outdoors to M
6 Street. It is not intended as communication
7 into the Hyatt for all intensive purposes.

8 COMMISSIONER MAY: Okay.

9 MR. BELLO: The only door from that
10 vestibule is to the fire command control room
11 for the Hyatt which is not accessible directly
12 into the Hyatt lobby. So you have to come out
13 of that building in order to enter the Hyatt.

14 COMMISSIONER MAY: Okay. You
15 cited a regulation and read it and I think I
16 misheard what the citation was. I thought it
17 was 3202.3(c), which doesn't exist, but it had
18 to do with the ownership of the building and
19 with regard to zoning regulations where that,
20 you know, even with multiple owners that it
21 would be considered a single building. You
22 know, I'm not expressing myself very well --

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1 CHAIR JORDAN: But that's what I've
2 got --

3 COMMISSIONER MAY: -- but.

4 CHAIR JORDAN: -- in my notes is
5 it's at 3202(c).

6 COMMISSIONER MAY: 3202(c)? Does
7 it exist? I mean did you find it --

8 CHAIR JORDAN: No.

9 COMMISSIONER MAY: -- as a --

10 MR. BELLO: It's --

11 COMMISSIONER MAY: So tell me --

12 MR. BELLO: -- attachable to .3(c).

13 CHAIR JORDAN: .3(c).

14 COMMISSIONER MAY: 3202 --

15 MR. BELLO: .3(c).

16 COMMISSIONER MAY: -- .3(c), which
17 I looked for and I couldn't find. Let me just
18 check again, 3202.3(c). Or maybe I read it and
19 I didn't see those words.

20 CHAIR JORDAN: Yes, because I went
21 to 3202 because that's what --

22 COMMISSIONER MAY: 3202.3(c),

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1 there is no C. There's only 3202.3.

2 MR. BELLO: You might have to get
3 updated regulations.

4 COMMISSIONER MAY: Oh. You'd
5 think they'd give me the updated regulations.
6 Oh, there we go. That's it.

7 CHAIR JORDAN: Oh, 3(c).

8 COMMISSIONER MAY: Got it, yes.
9 Okay. Thank you. Leave it here. I'm still
10 looking at it. Okay. So --

11 CHAIR JORDAN: 3202.3(c)?

12 COMMISSIONER MAY: Yes.

13 CHAIR JORDAN: I have it, so.

14 COMMISSIONER MAY: Yes, I usually
15 try to look at it on my online version of it,
16 but I didn't bring it today. I had to go by my
17 old paper one.

18 CHAIR JORDAN: Oh, 31. Okay.

19 COMMISSIONER MAY: So, and where's
20 the requirement --

21 CHAIR JORDAN: 31.

22 COMMISSIONER MAY: -- to what, I'm

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1 sorry. Just to be clear, there's actually no
2 requirement that valet parking meet minimum
3 standards, right?

4 MR. BELLO: There's no --

5 COMMISSIONER MAY: If the valet
6 parking is approved by DDOT and they meet all
7 their requirements of that, there's not
8 requirement for minimum standards, right? All
9 that is waived?

10 MR. BELLO: All that is waived with
11 the exception of the fact that what the
12 provisions stipulate is that there be a 12-hour
13 pick period within which --

14 COMMISSIONER MAY: I understand
15 that. It doesn't mean that you get a free pass
16 if somebody metrically calls it, you know,
17 valet parking.

18 I understand there are other
19 requirements, but the dimensional requirements
20 that you cited were such an issue. If valet
21 parking were approved, they would not apply,
22 the dimensional requirements?

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1 MR. BELLO: With one exception
2 though.

3 COMMISSIONER MAY: Okay.

4 FEMALE PARTICIPANT: I want to just
5 ask him about his opinion.

6 (Off the record comments.)

7 CHAIR JORDAN: C, which is right
8 here. Over here. Okay. Well, how did the
9 lines get out of whack?

10 MR. BELLO: I would refer you to
11 2115.14.

12 CHAIR JORDAN: Which number?

13 MR. BELLO: 2115.14.

14 CHAIR JORDAN: Okay.

15 MR. BELLO: All right. No, I think
16 that section contemplates the non-pick hour
17 period when attendant assistant valet parking
18 may not be available.

19 COMMISSIONER MAY: Yes.

20 MR. BELLO: And so in under the same
21 provisions for valet parking, it stipulates
22 that, and the emphasis on the word shall, meet

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1 the design requirements for width of aisles.

2 So even if you lay out a parking
3 facility for valet purposes, it's required to
4 show the possibility of maintaining aisle
5 widths when there isn't attendant parking --

6 COMMISSIONER MAY: Okay.

7 MR. BELLO: -- outside of --

8 COMMISSIONER MAY: All right.

9 MR. BELLO: -- a trial period.

10 COMMISSIONER MAY: So, but are you,
11 in your analysis of the parking as it is
12 proposed in this structure, you cite
13 shortcomings of the individual spaces, do you
14 also cite shortcomings with regard to aisles?

15 MR. BELLO: I'm not sure I
16 understand the question. Well --

17 COMMISSIONER MAY: So I'm trying to
18 understand the extent to which the parking as
19 proposed may or may not minimum dimensional
20 standards.

21 MR. BELLO: Yes.

22 COMMISSIONER MAY: So is there any

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1 problem with the aisles as since you brought up
2 2115.14?

3 MR. BELLO: Well, first of all, we
4 didn't have the benefit of such a parking floor
5 plan or layout to base on what is --

6 COMMISSIONER MAY: Can you just
7 answer that as a yes or no? Are you citing? I
8 mean, it doesn't mean that they're --

9 MR. BELLO: Well --

10 COMMISSIONER MAY: I'm not asking
11 you to testify do they exist, I'm just saying
12 are you raising that as an issue?

13 MR. BELLO: Well, we are, yes.

14 COMMISSIONER MAY: So you --

15 MR. BELLO: I believe so.

16 COMMISSIONER MAY: -- think that
17 they're deficient on the aisles widths?

18 MR. BELLO: There's not question
19 about it, yes.

20 COMMISSIONER MAY: Okay. I just
21 wanted a straightforward answer on that. And
22 last question is where's the 75 space, oh, I'm

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1 sorry, I found it. Never mind. Thanks.

2 CHAIR JORDAN: Any additional
3 questions, Board? Anyone?

4 MR. BELLO: Yes.

5 MEMBER HEATH: I have a question --

6 CHAIR JORDAN: Okay.

7 MEMBER HEATH: -- about your
8 determination of whether parking spaces meet
9 the --

10 CHAIR JORDAN: Right.

11 MEMBER HEATH: -- minimum
12 requirements. What was the basis of your
13 determination that some did not? And the
14 reason I ask is because I'm looking at
15 dimensions from the drawings.

16 And although the numbers are really
17 tiny, some parking spaces that are noted as the
18 same size, you've noted as not being
19 sufficient.

20 And I see areas where there are
21 columns within parking spaces that are still,
22 they're noted as being sufficiently sized, but

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1 in my judgement, based on what I'm seeing, I
2 might have come to a different conclusion. So
3 can you tell me your basis for determining
4 whether they were sufficient or not?

5 MR. BELLO: I would refer you to
6 Sections 2015.1, 2015.3. And those provisions
7 clearly state that the width dimensions for
8 required parking spaces, be they standard or
9 compact, must be --

10 CHAIR JORDAN: But are you asking a
11 question from reading the plans as submitted,
12 how you reached it, not what the regulations
13 were.

14 MEMBER HEATH: Right, and I
15 understand that.

16 MR. BELLO: Well, it depends.

17 CHAIR JORDAN: How did you
18 interpret what was in here in the drawings to
19 say that they weren't compliant, is that the
20 question?

21 MEMBER HEATH: That's correct.

22 MR. BELLO: Oh, well, that's based

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1 on a larger set of plans that were actually the
2 basis of the issuance of the building permit.

3 So, you know, some of these
4 supplement records that you see here are not
5 necessarily consistent with what the permit
6 approval plans there were.

7 CHAIR JORDAN: So this is not the
8 actual --

9 MR. BELLO: Well --

10 CHAIR JORDAN: -- drawing?

11 MR. BELLO: -- you've got drawings
12 that are showing their valet layout. That was
13 not part of the submissions for the issuance of
14 the building permit.

15 But I'm basing my opinion on two
16 things, one, the approved set of plans that are
17 available in the public domains and what those
18 dimensions are, and then, in reviewing the
19 submissions of the intervenor to the best of our
20 ability, yes.

21 (Off microphone comment.)

22 MEMBER HEATH: You're not on the

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1 mic.

2 CHAIR JORDAN: So what you're
3 saying was not submitted to the zoning
4 administrator?

5 MR. BELLO: The valet parking
6 layout was not part of the parking records.

7 CHAIR JORDAN: But the larger set
8 of plans that you said you reviewed.

9 MR. BELLO: Yes, the larger set of
10 plans, yes, actually depicts that --

11 CHAIR JORDAN: But this is what was
12 submitted to the zoning administrator?

13 MR. BELLO: Correct. I don't know
14 what you're looking at. What are you looking
15 at.

16 CHAIR JORDAN: What's the number on
17 that? What's the, okay.

18 MEMBER HEATH: We're looking at
19 lower level --

20 CHAIR JORDAN: A100?

21 MEMBER HEATH: Yes, lower level
22 two, A100 and A101.

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1 MR. BELLO: Okay. So what I did
2 was take a look at the --

3 CHAIR JORDAN: Let me ask you,
4 what's A100 and A101, was that what the zoning
5 administrator had in front of --

6 MR. BELLO: Yes.

7 CHAIR JORDAN: And on the A100 and
8 A101, they indicate that those spaces, if you
9 looked in those spaces from A100 and A101
10 without looking at the other set of plans, you
11 can see that these spaces would be deficient in
12 your explanation?

13 MR. BELLO: That is correct.

14 CHAIR JORDAN: Okay. From these
15 plans, on their own?

16 MR. BELLO: These plans that are --

17 CHAIR JORDAN: You don't know if
18 the other ones existed, right?

19 MR. BELLO: We'll never know.

20 CHAIR JORDAN: But these plans
21 would have done it. Oh.

22 MEMBER HEATH: So these plans where

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1 parking spaces are called out as
2 nine-feet-by-18-feet or less than nine feet,
3 but I still don't know how you would have made
4 that determination from these --

5 CHAIR JORDAN: From these plans?

6 MEMBER HEATH: Right. Right.
7 That's --

8 MR. BELLO: Because, well, let me
9 try this one more time. The --

10 CHAIR JORDAN: Okay.

11 MR. BELLO: -- approved set of
12 plans are large enough to review the
13 dimensions.

14 CHAIR JORDAN: And that's what
15 these --

16 MR. BELLO: And --

17 CHAIR JORDAN: -- are?

18 MR. BELLO: Exactly.

19 CHAIR JORDAN: And you --

20 MR. BELLO: And if --

21 CHAIR JORDAN: -- could see --

22 MR. BELLO: -- they --

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1 CHAIR JORDAN: -- from that --

2 MR. BELLO: -- were magnified, you
3 would see that those dimensions are taken to the
4 center line of the columns.

5 CHAIR JORDAN: Okay.

6 MR. BELLO: And the two sections
7 that I cited forbid that.

8 CHAIR JORDAN: Got you. All
9 right. Got you. We just don't have the floor,
10 you say.

11 MR. BELLO: Exactly.

12 CHAIR JORDAN: And we could've put
13 the numbers --

14 MEMBER HEATH: Yes, all of this --

15 CHAIR JORDAN: I guess we couldn't
16 see the numbers --

17 MEMBER HEATH: All of those --

18 CHAIR JORDAN: -- at this point.

19 MEMBER HEATH: -- parking spaces
20 are 18 feet deep --

21 CHAIR JORDAN: Yes, that's why --

22 MEMBER HEATH: -- that are there.

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1 CHAIR JORDAN: Well, the 18 feet,
2 so you're saying they were a foot short because
3 they're calling out 18 feet on here and --

4 MR. BELLO: Well --

5 CHAIR JORDAN: -- you saying it
6 should be 19, correct?

7 MR. BELLO: -- standard parking
8 spaces are nine-by-19.

9 CHAIR JORDAN: Yes.

10 MR. BELLO: Compacts are
11 eight-by-16.

12 CHAIR JORDAN: Let me help you as
13 Mr. May was trying to get you. The questions
14 are going to be like straightforward. We don't
15 need to go around the block to get to the answer.
16 It doesn't help any of us and we've been here
17 a long time.

18 So because you're a foot short,
19 that's what you're saying. Because in your
20 direct testimony you didn't say, well, how they
21 were defective. You just said they were
22 defective in general.

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1 So mine was more specific and you're
2 saying they're 18 feet as indicated here as
3 opposed to 19 feet. That's what you're saying.
4 Okay. Got you.

5 MR. BELLO: Yes.

6 CHAIR JORDAN: Got you. All
7 right.

8 COMMISSIONER MAY: Well, also --

9 MR. BELLO: Also in width.

10 CHAIR JORDAN: I mean in width, but
11 okay.

12 MEMBER HEATH: Right, the widths
13 vary, but --

14 MR. BELLO: Okay.

15 MEMBER HEATH: -- the depth is
16 consistent at 18.

17 MR. BELLO: Correct.

18 MEMBER HEATH: So --

19 CHAIR JORDAN: Got it.

20 MEMBER HEATH: -- part of my
21 question too is why are some of them okay if
22 they're 18 feet.

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1 MR. BELLO: I testified that we're
2 being generous.

3 MEMBER HEATH: Okay. Got it.

4 CHAIR JORDAN: The ones in yellow
5 are generous, right?

6 MEMBER HEATH: Yes.

7 CHAIR JORDAN: And the other ones
8 are just okay.

9 MEMBER HEATH: Okay. Got it.

10 CHAIR JORDAN: Any other questions
11 from the Board to the appellant? And let's go
12 for, what time is it? One second. All right.
13 Before we do cross examination, we're going to
14 be in recess for a half-hour.

15 (Whereupon, the foregoing matter
16 went off the record at 12:52 p.m. and went back
17 on the record at 1:32 p.m.)

18 CHAIR JORDAN: Okay. I think we
19 were about to start cross examination. DCRA
20 first if you --

21 MR. POSTULKA: No questions.

22 CHAIR JORDAN: Okay. Intervenor.

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1 MR. AVITABILE: We just have one
2 question for Mr. Bello. Mr. Bello, in your
3 experience, would applicants sometimes submit
4 additional information after the submission of
5 the initial building permit perhaps as
6 requested for additional information requested
7 by the Office of the zoning administrator or the
8 zoning division of DCRA?

9 MR. BELLO: Yes, as may be required
10 by review comments.

11 MR. AVITABILE: Great.

12 MR. BELLO: Absolutely.

13 MR. AVITABILE: Thank you.

14 CHAIR JORDAN: All right. Then
15 let's have the DCRA's case. Are you going to
16 roll, if you guys want to consolidate, I would
17 assume. Is that correct?

18 MR. POSTULKA: Well, I think they
19 are going to make legal argument and we want to
20 present the testimony of Mr. Le Grant for the
21 record, briefly. It should take less than ten
22 minutes.

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1 MR. AVITABILE: Yes, I think. And
2 then we will probably be no more than five
3 minutes, just one --

4 CHAIR JORDAN: Okay.

5 MR. AVITABILE: -- question.

6 CHAIR JORDAN: So you want to do a
7 presentation and then you want to do a fact
8 witness?

9 MR. POSTULKA: Yes, correct.

10 CHAIR JORDAN: Okay. Then you can
11 begin. Go ahead.

12 MR. AVITABILE: Great. Thank you.
13 Again, as background, I think we submitted a
14 very full and detailed filing with a number of
15 exhibits supporting why the building permit was
16 validly issued here.

17 Before I begin on our response to
18 some of the arguments you heard today, I did
19 want to address the issue with the ANC and their
20 position in this case because they did submit
21 a letter.

22 They submitted a letter, primarily

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1 because of concerns that have been raised by 22
2 West, which is the condominium across the
3 street from us. 22 West raised issues
4 regarding our signage.

5 It's not an issue that's really
6 relevant to the appeal, but nevertheless we
7 have sat down and met with them a couple of times
8 to discuss their issues. We made a proposal --

9 CHAIR JORDAN: Is that the building
10 next to the gas station?

11 MR. AVITABILE: It was a gas
12 station. Yes, that's right. That's the
13 building right there.

14 CHAIR JORDAN: Right, yes.

15 MR. AVITABILE: We made a proposal
16 on their sign issues. They responded with a
17 counterproposal just now and so we're
18 considering that. We need to talk with our
19 brand, Hyatt, about their counterproposal and
20 whether we can live with it. So we're working
21 on that issue.

22 That all said, we do think that the

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1 ANC's issues regarding the signage are not
2 relevant to the appeal, but we wanted to provide
3 the Board with some background and color while
4 we had the opportunity to speak.

5 Then, moving to the appeal. As I
6 think we said in our pre-hearing filing, you
7 know, it's always sometimes interesting and
8 good to know as background, what's this all
9 about and why are we all here.

10 And the real issue here that the
11 appellant's have, has nothing to do with these
12 zoning issues. It's the fact that our building
13 will cause them to block their at risk lot line
14 windows.

15 We've tried to work with them for,
16 I think, the better part of a year at this point
17 and we were unable to reach agreement with them,
18 so that's why we're here. But we just thought
19 it was important for the Board to have that
20 background.

21 Turning to the substantive issues,
22 first the building connection. I think to

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1 frame this all, a reminder that the test in an
2 appeal is not whether our proposal meets the
3 purpose and the intent of the zoning
4 regulations or whether the building could've
5 been built in a different way that would have
6 better met the purpose of the zoning
7 regulations.

8 It's whether the zoning
9 administrator erred in approving the building
10 permit based on the zoning regulations as they
11 exist and as they are interpreted under today's
12 standards.

13 So with that, I'll first turn to the
14 building connection, the central issue in this
15 case as the Chair identified. As we noted, we
16 have multiple forms of meaningful
17 communication between the separate portions of
18 the structure, the Hyatt portion and the
19 Marriott portion.

20 Commissioner May, to you question
21 about commercial adjuncts, those are defined in
22 the zoning regulations under the definition of

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1 hotel as commercial adjuncts are customarily
2 incidental in subordinate uses, including
3 things like a coffee shop, a newsstand or a
4 cigar store or other similar uses.

5 So in this case, we think the
6 Walgreens and the Starbucks are clearly
7 commercial adjuncts to the existing Marriott
8 hotel. They're also located within that
9 existing structure right now.

10 COMMISSIONER MAY: Is there a
11 requirement that they communicate with the
12 hotel?

13 MR. AVITABILE: There's nothing in
14 the definition of commercial adjuncts that
15 requires that.

16 COMMISSIONER MAY: Okay.

17 MR. AVITABILE: So we clearly have
18 one form of communication that is the shared
19 service corridor between our lobby and function
20 room and the Starbucks and the Walgreens that
21 will be actively used.

22 CHAIR JORDAN: Which one's the

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1 principal entrance of the building? Which
2 would be the principal entrance of the
3 building?

4 MR. AVITABILE: Principal entrance
5 of which --

6 CHAIR JORDAN: The property.

7 MR. AVITABILE: -- the existing
8 building?

9 CHAIR JORDAN: Yes, or the
10 combined. Where is it?

11 MR. AVITABILE: I think this is one
12 of the situations where you probably end up with
13 multiple principal entrances because you have
14 multiple principal uses, but if you had to pick
15 one, it might be the Marriott, it could be the
16 Walgreens at the corner, it could be ours.

17 We believe that the principal
18 entrance is the Marriott entrance because
19 that's the principal entrance that was first
20 there. That's the largest use that's part of
21 the building.

22 So if principal is, you know,

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1 defined as the most important, then the
2 Marriott entrance would be the principal
3 entrance. The --

4 CHAIR JORDAN: And where is that
5 entrance located?

6 MR. AVITABILE: That entrance is
7 located on 22nd Street, a little way up the
8 block, about mid-block close to the
9 intersection of 22nd and Ward Place.

10 CHAIR JORDAN: Okay.

11 MR. AVITABILE: So that's one of
12 our forms of communication is that shared
13 corridor. The other form of communication is,
14 of course, the enclosed vestibule where
15 Marriott egress is located and also where the
16 entrance and access to our fire control room is
17 located.

18 Again, that does provide
19 communication from the Marriott into our
20 portion of the structure. And we think that
21 meets test under the zoning regulations.

22 To kind of turn to some of the

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1 arguments that have been raised by the
2 appellants, first they raised the Section
3 3202.3 of the zoning regulations, which is just
4 not applicable here.

5 And the Zoning Commission actually
6 determined that nearly a decade ago in case 0305
7 which is the Federal Department of
8 Transportation headquarters on M Street, S.E.

9 In that case, the applicant had
10 originally tried to argue that two separate
11 commercial office buildings were a set of
12 separate commercial occupancies.

13 CHAIR JORDAN: What was the case
14 again?

15 MR. AVITABILE: ZC0305.

16 CHAIR JORDAN: Okay. Got it.
17 Thank you.

18 MR. AVITABILE: So there they tried
19 to argue the two commercial office buildings
20 met that test because they were under common
21 ownership.

22 And the Zoning Commission said, no,

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1 no, no, that section is meant to refer to strip
2 malls and only strip malls. Those are the
3 commercial occupancies that are separate, but
4 were erected under common ownership. So that
5 has no applicability here.

6 The only definition that applies to
7 what satisfies the definition of a connection
8 is the definition of building, which simply
9 says it needs to be communication at or above
10 the main floor of the building. And we have
11 that here.

12 The appellants have alleged that,
13 you know, somehow our separate ownership of the
14 different portions of this structure make it no
15 longer a single building and it's just not
16 consistent with the zoning regulations at all.

17 As you all know, zoning governs use
18 and not ownership. Here, the fact that two
19 competing hotel brands will be in separate
20 portions of this building is irrelevant to the
21 application of the zoning regulations.

22 Throughout town, there are many,

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1 many examples of multiple commercial office
2 buildings that are part of a single building for
3 zoning purposes. And those office buildings
4 clearly compete for tenants, for revenue, et
5 cetera.

6 Our office building at 20th and K
7 Street is connected to a commercial building
8 immediately behind us. It's just one of many
9 examples.

10 And similarly, they argue somehow
11 that the parking garages of the loading
12 facilities of the separate portions of the
13 structure need to be interdependent or
14 interrelated, and that's just not the case at
15 all either.

16 Again, referring to the example
17 that I know well, our office building at 1999
18 K has one parking garage accessed from 20th
19 Street. The office building we're connected
20 to has a separate parking garage that's
21 accessed from L Street. Those garages are not
22 connected in any way.

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1 And there's no requirement in the
2 zoning regulations for there to be a below grade
3 connection. In fact, the regulations
4 specifically say that a below grade connection
5 does not make separate portions a single
6 building. So we think that that's just the
7 arguments about ownership aren't relevant
8 here.

9 And finally, even if that was
10 relevant, I think the history of Lot 190 is very
11 instructive. The lot existed under single
12 ownership for many, many years and in the
13 mid-2000s they entered into a single record lot
14 agreement.

15 There are very common examples
16 throughout the city I'm sure many of you are
17 familiar with and that single record lot
18 agreement mandated a number of zoning features,
19 such as the building connection, other shared
20 features of the building, cross easements and
21 so on.

22 And importantly, among other

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1 features, our ramp to our parking garage
2 actually runs underneath the Marriott building
3 into our garage, so we're going to come off 22nd
4 Street.

5 So in a way, I guess you could say
6 that we do have our parking garage as a part of
7 their building because the ramp runs through
8 their building to reach our garage.

9 But at any rate, the point is that
10 to the extent that a single ownership test
11 should or shouldn't be required, the history of
12 our property shows exactly why that shouldn't
13 be the case.

14 Because if the appellants were
15 correct, so in 2006 when the property was under
16 single ownership, someone could have come in
17 and built our structure and it would have been
18 acceptable.

19 But somehow, now, in 2014, it's
20 unacceptable for a separate property owner to
21 build the same structure. That makes no sense,
22 and again, zoning governs use and not

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1 ownership. So the fact that the properties are
2 owned by different people is and should not be
3 relevant to your determination here.

4 Turning to the parking issue, I
5 think first and most importantly, as Mr. Bello
6 just acknowledged, it certainly does happen
7 that people submit documentation after the
8 initial building permit application that
9 supplements the application, provides
10 additional information, responding to the
11 zoning reviewers comments and so on.

12 And we included that documentation
13 in our pre-hearing filing, specifically Tab H,
14 where you saw Mamadou Ndaw, who is the zoning
15 technician in DCRA, asked us a series of
16 questions and we provided him with detailed
17 responses to those questions.

18 Among them he asked, well how are
19 you complying with the parking requirement?
20 And we submitted our valet parking plan showing
21 how we would fit 48 parking spaces within our
22 parking garage.

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1 We fully satisfied the requirements
2 of Section 2115 with regard to valet parking.
3 As I think we were going just before the break,
4 there were only two dimensional requirements
5 when you use the valet parking test.

6 One is do you have 285 square feet
7 per space, and we have that. And then the other
8 is you have to comply with the aisle width
9 requirements during the times when valet
10 parking is not used. And we do that.

11 If you look at the plans that were
12 submitted, they show aisle widths of, I think,
13 21 to 23 feet which exceeds the 20-foot minimum
14 requirement.

15 Finally, the appellants have argued
16 that somehow a DDOT review and approval of a
17 plan is required here, that's clearly not
18 required under Section 2115.

19 All Section 2115 requires, I'm just
20 going to read the language, is that, what
21 2115.11 says is that the "parking space
22 dimensional size, design and striping

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1 requirements may be waived provided that the
2 parking's managed during a specified 12-hour
3 peak period to be determined by the District
4 Department of Transportation by employed
5 attendants who park the vehicles using the
6 facility."

7 The only thing DDOT determines here
8 is what that 12-hour peak period is. There's
9 no reason why DDOT needs to make that
10 determination prior to the issuance of a
11 building permit.

12 It just needs to be determined prior
13 to the actual operation of the garage. It
14 certainly could be determined prior to the
15 issuance of the certificate of occupancy. And
16 in our case, we're actually planning to use
17 attendant assisted parking for 24 hours a day,
18 so it won't be relevant.

19 I think another point that they
20 raise regarding this, which I just want to
21 address as well, is they suggest that DDOT
22 somehow has to review the operation of the valet

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1 parking. And they refer to the fact, well,
2 cars will be dropping off people on M Street and
3 then going around the corner to the garage.

4 Well, as I'm sure you all know, not
5 all attendant assisted parking starts with
6 someone at the front of the building who then,
7 you know, brings your car around to a garage.

8 There are plenty of commercial
9 office buildings where you actually enter
10 yourself and there's an attendant when you get
11 into the ramp who then takes your keys and then
12 moves your car for you.

13 And when you come back, he'll then
14 get your car out, which highlights why this
15 operational requirement just isn't in the
16 regulations anywhere that the appellant
17 suggests is there.

18 So I think that's everything on the
19 parking issue. Moving then to loading. The
20 appellants, I think, spent a lot of time talking
21 about what the regulations should be or what
22 they would like them to be, rather than what

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1 they are.

2 When the Marriott was initially
3 built, there was a requirement that was based
4 on the number of loading berths and spaces for
5 each 200 rooms. Those regulations were
6 amended about two years later by the Zoning
7 Commission in Order 314.

8 And in Order 314, the Zoning
9 Commission amended the regulation to simply
10 require some loading for hotels with 30 to 200
11 rooms and then additional loading for hotels
12 with more than 200 rooms. That's it.

13 Once you have 200 rooms and you've
14 provided the loading for that, no additional
15 loading is required no matter how many
16 additional rooms you built. That's the way the
17 zoning regulations are written and that's the
18 regulations that apply here.

19 They also have alleged that somehow
20 because the loading was built under the old
21 regulations that may have required one set of
22 dimensions of spaces and now a deeper berth is

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1 now required, that should somehow compel us to
2 now provide a deeper berth.

3 Now, that's clearly not the case
4 and, in fact, the Zoning Commission said in that
5 order that amended the loading regulations,
6 Order 314 on Page 14, with regard to changing
7 the parking and loading requirements, the
8 zoning regulations cannot be made to apply
9 retroactively.

10 We all know this, but I just wanted
11 to reiterate that for the record. So, what
12 that means is we did not have to provide any
13 loading. We did choose to provide loading.
14 It's shown in the private alley off the rear of
15 our building.

16 And so the secondary issue the
17 appellants raise of where required loading
18 should be required and it's only allowed in an
19 open court if you're in a commercial or an
20 industrial zone district, that's not relevant
21 here because this isn't required loading.

22 We'd also argue that the commercial

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1 residential zone district is, in fact, a
2 commercial zone district. And this finally as
3 a matter of practice, it certainly does seem
4 that a alley is the appropriate place for
5 loading as our friends at DDOT have been
6 constantly reminding us over the years, as
7 particularly in the recent past.

8 CHAIR JORDAN: Yes.

9 MR. AVITABILE: Yes, the private
10 alley here. Next, turn briefly to the roof
11 structure requirement. As we outlined in our
12 filing, setbacks under the zoning regulations
13 are only required from exterior walls. That
14 means there must be some walls that are
15 interior.

16 We know there is some discussion
17 over what is an interior wall, but we believe
18 it's well-established under the zoning
19 regulations that there are two types of walls
20 that are interior, one are walls on a shared lot
21 line like the shared lot line we have with 1200
22 New Hampshire, where no setbacks are required,

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1 the other would be a wall that faces an interior
2 component of the building such as a closed
3 court.

4 Assuming that you agree with us that
5 this is one building, the western wall of our
6 structure faces the closed court, the donut
7 hole, so to speak, in the center of the
8 building. And that is clearly an interior wall
9 to the building. It is not exterior to a
10 street, to an alley, to a yard or an open court.

11 They now allege for the first time
12 that we also violated the regulations because
13 we don't have a single structure. Well, the
14 zoning regulations specifically allow for
15 multiple penthouses when separate elevator
16 cores are required.

17 And here, due to the nature of our
18 building, it requires a separate elevator core
19 and so, therefore, we're allowed to have a
20 separate mechanical penthouse, an elevator
21 penthouse, so that addresses that issue.

22 And finally, turning to the last

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1 issue with the compliance of the property, Lot
2 190, with the public space requirement. So the
3 definition of required public space at ground
4 level, and I want to affirm something here, it
5 is a requirement for public space at ground
6 level, not open space.

7 In some of the appellant's filings
8 they've used open space and public space
9 interchangeably, sometimes referred to it as
10 public open space. It is a requirement for
11 public space.

12 So it's required to be an area
13 equivalent to 10 percent of the total lot area
14 shall be provided as required public space for
15 all new development.

16 The area for new development shall
17 be located immediately adjacent to the main
18 entrance to the principal building or structure
19 on the lot and shall serve as a transitional
20 space between the street or pedestrian right of
21 way in the building or structure.

22 So, Chairman Jordan, to your

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1 question about, well, where's the principal
2 entrance, well, since the Marriott was the
3 first person on the block, so to speak, they
4 were the new development in 1978, they were
5 required to provide the public space adjacent
6 to their main entrance, their principal
7 entrance and we believe that's where it's
8 provided.

9 And it says here it's supposed to
10 serve as a transitional space between the
11 street and the building or structure. There's
12 nothing in there that says, contrary to Mr.
13 Bello's testimony, that it needs to be between
14 the property line and the building face.

15 If that were the case, area ways,
16 for example, because an area way is set back
17 within behind the building facade, but we've
18 counted those as public space all the time.

19 All it says is that it serves as a
20 transitional space between the street or
21 pedestrian right of way and the building or
22 structure. I think that presumes that you can

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1 have a space that is transitional, which means
2 it could be internal or external. 633.3
3 supports this.

4 It says the area for new development
5 shall be open to the sky or shall have a minimum
6 vertical clearance of one story or ten feet.
7 So clearly, contemplates that enclosed space,
8 covered space, roof space could be public space
9 at ground level.

10 Next, the area shall be suitably
11 lighted and landscaped for public use and may
12 be utilized for temporary commercial displays.
13 Well, I think if you enter the Marriott lobby,
14 which was recently renovated, it's clearly
15 lighted for public use.

16 There are benches and seating
17 available for people to congregate. I've,
18 myself, have spent time in there contemplating
19 the issues in this appeal. And as well as in
20 many of the other lobbies throughout the west
21 end, they're also in the CR zone district.

22 But, you know, it's clearly there

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1 for public use and that's the next prong, which
2 is the space shall be open and available to the
3 general public on a continuous basis.

4 And I walked right in, I didn't have
5 a hotel reservation, I wasn't attending the
6 convention, I sat there and I sat there for some
7 time. And plenty of people do that. And
8 finally, the area's not charged against the
9 gross foot area of the building, which isn't
10 relevant to this particular issue.

11 So here, we think that the lobby of
12 the Marriott clearly satisfies the
13 requirement. Even if you don't believe that
14 that's the case, the fact is the history of this
15 property, our site, could not have possibly
16 been the public space at any particular time.

17 When the Marriott was first
18 constructed, our property was occupied by
19 Lulu's, continued to be occupied by Lulu's in
20 1988 when Marriot was added on to. And so, we
21 did not serve as the public transitional space.

22 Similarly, even if we were a vacant

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1 portion of property, we could not serve as that
2 public space at ground level because we're not
3 adjacent to the main entrance of the building.

4 We're on the back side of it, so we
5 don't satisfy the requirements of Section 633.
6 So there's no way in which our property could
7 be used to meet that requirements.

8 And then I think finally, our last
9 counter-argument is that Section 633 only
10 applies to new development. You know, the idea
11 was when we remember the history of the west
12 end, of course, which was let's rezone the area,
13 eliminate the industrial uses that had been
14 there and develop more of a mixed use
15 environment.

16 So the idea was for when someone's
17 first coming in to develop one of those big
18 parcels of land, let's make sure they provide
19 this public space at ground level.

20 That was the Marriott's burden and
21 they clearly met it as evidenced by the fact
22 that they received building permits and

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1 certificates of occupancy over the years.

2 So that's, I think, our
3 counter-arguments. And with that, we're happy
4 to answer any questions on what we've testified
5 to or what we submitted in the record or we can
6 turn to DCRA.

7 I think the one last thing I would
8 note before I close, we did submit some
9 testimony or expert report from Armando
10 Lourenco who was also a former zoning
11 administrator who agreed with all of our points
12 and conclusions. Thank you.

13 CHAIR JORDAN: Questions? Yes.

14 COMMISSIONER MAY: Just a few. So
15 you brought up the issue of your office building
16 which is connected to the adjacent building.
17 Now, does that mean that that connection was
18 made in order to take advantage of them being
19 considered the same building? I mean is that
20 the --

21 MR. AVITABILE: Yes --

22 COMMISSIONER MAY: -- what

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1 happened --

2 MR. AVITABILE: -- that's why.

3 COMMISSIONER MAY: -- in that
4 circumstance?

5 MR. AVITABILE: And it was made, I
6 think, to allow for a more favorable measuring
7 point for our building and also to allow both
8 buildings to utilize the width of K Street to
9 allow both buildings to go to 130 feet.

10 COMMISSIONER MAY: Right.

11 MR. AVITABILE: And I think that's
12 another point here is that people use these
13 connections all the time to --

14 COMMISSIONER MAY: Gain the
15 system.

16 MR. AVITABILE: Well, I wouldn't --

17 CHAIR JORDAN: Yes.

18 MR. AVITABILE: -- necessarily
19 phrase it that way --

20 COMMISSIONER MAY: I --

21 MR. AVITABILE: -- but that is how
22 they're used.

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1 COMMISSIONER MAY: Yes, and I used
2 a slang term, I guess, you know, because it
3 shouldn't properly qualify. But, I mean, in
4 essence it's really, I mean, this case is all
5 about the technicalities and, you know, the
6 appellant is interpreting the technical nature
7 of the regulations one way. You're doing it
8 another for whatever purposes.

9 And I certainly have seen that on
10 the Zoning Commission and seen it in the BZA.
11 And it's, you're right, I mean, I think the most
12 frequent thing that I have seen has been the
13 measuring point aspect of it.

14 If you become part of that same
15 building, you get the measuring height from
16 that street and you may actually get additional
17 height if there's a difference in grade.

18 So I've seen that before and I think
19 the Zoning Commission has wrestled with what
20 the meaningful connection actually is. So it
21 would help me, I mean, it clearly indicates with
22 your office building that determination was

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1 made. Was that made as part of a zoning case
2 or was it it was just a matter of right --

3 MR. AVITABILE: It's not a right.

4 COMMISSIONER MAY: -- and the ZA
5 determined that. So, what's the nature of the
6 connection in that building?

7 MR. AVITABILE: I just actually
8 walked down to it yesterday.

9 COMMISSIONER MAY: Okay.

10 MR. AVITABILE: So you come into
11 our building, there's a lobby and behind the --

12 COMMISSIONER MAY: I mean, where
13 are you coming in?

14 MR. AVITABILE: This is our lobby
15 off of K Street.

16 COMMISSIONER MAY: Yes.

17 CHAIR JORDAN: You're talking
18 about --

19 MR. AVITABILE: 1999 K Street,
20 sorry. You can come into the lobby, but then
21 behind the lobby is what they call a town hall.
22 The primary law firm tenant has a conference

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1 room space. It's a secured space you can only
2 enter if you have access.

3 In fact, we as members of a
4 different law firm are allowed to use it, but
5 only with permission. But you can get into
6 that space --

7 COMMISSIONER MAY: It's not as open
8 as perhaps the Marriott lobby to other lawyers,
9 I guess --

10 MR. AVITABILE: Correct.

11 COMMISSIONER MAY: -- right?

12 MR. AVITABILE: Correct.
13 Exactly. So if you can go into the town hall,
14 if you go all the way to the back of the town
15 hall, you'll see there's a door that leads into
16 a vestibule and then another door that is
17 locked.

18 But behind that locked door is a one
19 story glass corridor that you can take over into
20 1920 L Street which is on the other side of the
21 glass corridor. I don't know whether their
22 door is locked. It may very well be.

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1 COMMISSIONER MAY: So --

2 MR. AVITABILE: So that's the
3 connection.

4 COMMISSIONER MAY: -- I mean, the
5 fact that there's a communicating door is the
6 essence of the connection. There's no actual
7 communication. People are not walking back
8 and forth or necessarily even walking into a
9 common corridor and walking --

10 MR. AVITABILE: Correct.

11 COMMISSIONER MAY: -- within their
12 building or outside of the building.

13 MR. AVITABILE: That's correct.

14 CHAIR JORDAN: But isn't, in fact,
15 the question about principal entrances and et
16 cetera?

17 COMMISSIONER MAY: I'm not sure it
18 has anything to do with principal entrances
19 because that's the, I mean, that goes to a
20 different requirement that seems to be in
21 dispute.

22 I mean, what I guess I'm trying to

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1 understand is the nature of the meaningful
2 connection. I mean, I remember a case, I think
3 it was on I Street and the building was
4 connecting to K Street to get the additional
5 height and to get some advantage in where the
6 measuring point was.

7 So they not only got a taller
8 building, but they were able to measure it from
9 K Street. But I can't remember how we resolved
10 the question of the meaningful connection. I
11 don't suppose you ran across that case? That
12 was a PUD, I presume.

13 MR. AVITABILE: That one, I'm not
14 familiar with. I don't know that it's one that
15 we've handled. There are multiple ones we
16 cited in our original filing, the Square 54
17 development of the --

18 COMMISSIONER MAY: Yes.

19 MR. AVITABILE: -- old GW Hospital.
20 And there you had a office building and a
21 residential building and the same idea there
22 where there was a connection and it was just a

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1 corridor --

2 COMMISSIONER MAY: Yes.

3 MR. AVITABILE: -- no different
4 than the connection I just described.

5 COMMISSIONER MAY: Yes.

6 MR. AVITABILE: And less
7 meaningful, I would argue, than an actual
8 shared corridor where both sides are actually
9 utilizing it --

10 COMMISSIONER MAY: Right.

11 MR. AVITABILE: -- and can get into
12 it. But in the Sqaure 54 case, that allowed the
13 residential building to use the measuring point
14 of the office building off of Pennsylvania
15 Avenue.

16 COMMISSIONER MAY: Right. Okay.
17 So let's go to the loading dock issue for a
18 second. So, and the requirement for, you know,
19 what sizes of loading all sorts is less of an
20 issue for me, but the issue of having a loading
21 dock in an open court. But that's permitted
22 when it's a commercial zone, right?

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1 MR. AVITABILE: Yes. It's you're
2 allowed to have loading on any area of a lot when
3 you're located in a commercial or an industrial
4 zone district, and that's required loading.

5 COMMISSIONER MAY: Right.

6 MR. AVITABILE: The regulation
7 says required loading may be located in there.

8 COMMISSIONER MAY: Okay.

9 MR. AVITABILE: The regulation is
10 silent on when you provide additional loading
11 where it could be provided.

12 COMMISSIONER MAY: All right. And
13 this is where it all gets really technical.
14 Because even if it's not required loading from
15 a zoning perspective, it's required loading
16 from an operational perspective, right?
17 You're not going to operate a hotel without
18 having some kind of a loading dock?

19 MR. AVITABILE: I think it's
20 correct to say --

21 COMMISSIONER MAY: Right.

22 MR. AVITABILE: -- that we need to

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1 have some loading areas.

2 COMMISSIONER MAY: Yes. So when
3 it comes to the loading, I know that DDOT
4 prefers loading off of alleys even if they're
5 private alleys, but I don't think that they're
6 particularly fond of having to back into those
7 alleys, which I assume that you would have to
8 do. You can't go forward in and forward out of
9 that alley, can you?

10 MR. AVITABILE: I mean, it's a
11 30-foot wide alley, but I suspect you'd have a
12 hard time turning around a 30-foot truck --

13 COMMISSIONER MAY: Yes.

14 MR. AVITABILE: -- in that 30-foot
15 alley.

16 COMMISSIONER MAY: Yes. And is
17 there an existing curb cut and loading
18 circumstance there now, that, I mean, what I'm
19 wondering is whether you're going to wind up
20 going, you know, getting bounced at public
21 space committee or something like that?

22 MR. AVITABILE: No, the private

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1 alley's there now. It's been there since the
2 1970s when, I mean, it was a public alley before
3 then. It was closed actually, I think, jointly
4 by our predecessor and 1200 New Hampshire's
5 predecessor.

6 COMMISSIONER MAY: Okay.

7 MR. AVITABILE: There's actually
8 an agreement between both property owners that
9 governs the use of that alley.

10 COMMISSIONER MAY: Okay. All
11 right. That's it for my questions. Thank
12 you.

13 CHAIR JORDAN: Board, any other
14 questions? Okay. Well, there's no cross
15 examination because there's not, yes.

16 MR. POSTULKA: Is there a handheld
17 microphone?

18 CHAIR JORDAN: No singing though.

19 MR. POSTULKA: No singing. I got
20 it.

21 MR. LE GRANT: Hello? Hello?

22 CHAIR JORDAN: You're good.

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1 MR. LE GRANT: Okay. Good. All
2 right.

3 MR. POSTULKA: Could you state your
4 name?

5 MR. LE GRANT: Yes, I'm Matthew Le
6 Grant. I'm the zoning administrator.

7 MR. POSTULKA: Mr. Le Grant has
8 been previously recognized as an expert. I ask
9 that he be recognized here?

10 CHAIR JORDAN: Certainly.

11 MR. POSTULKA: Mr. Le Grant, have
12 you reviewed the proposed construction of the
13 Hyatt hotel?

14 MR. LE GRANT: Yes.

15 MR. POSTULKA: And will the Hyatt
16 hotel and the Marriott hotel be separate
17 buildings?

18 MR. LE GRANT: No.

19 MR. POSTULKA: And why not?

20 MR. LE GRANT: The Hyatt addition
21 to the existing Marriott hotel has the features
22 compliant with the definition of building in

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1 zoning regulations such that it is considered
2 a new building for zoning purposes.

3 MR. POSTULKA: Is there a drawing
4 that shows the connections?

5 MR. LE GRANT: Yes.

6 MR. POSTULKA: Is it that drawing
7 right to your --

8 MR. LE GRANT: Yes, it is.

9 MR. POSTULKA: Okay. Can you
10 point to those connections for the --

11 MR. LE GRANT: Yes.

12 MR. POSTULKA: -- Commission?

13 CHAIR JORDAN: I need you --

14 MR. LE GRANT: So --

15 CHAIR JORDAN: Wait a minute.
16 Wait, wait, wait a minute. You know, we're
17 recording this and we got court reporters and
18 somebody's going to look at this possibly in
19 another court, so we need to identify that which
20 we're pointing to --

21 MR. POSTULKA: Sure.

22 CHAIR JORDAN: -- so we can have it

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1 in our record.

2 MR. POSTULKA: All right.

3 CHAIR JORDAN: Okay.

4 MR. POSTULKA: Is the drawing that
5 is to your right, is it labeled connection plan?

6 MR. LE GRANT: It is. Well, this
7 is the enlarged connection plan that was
8 provided by the intervenor.

9 CHAIR JORDAN: And we didn't mark
10 those things, have we? You wouldn't offer it
11 to mark and you're saying they're already in the
12 record somewhere?

13 MR. POSTULKA: They are in our
14 book.

15 CHAIR JORDAN: Okay. Well, let's
16 identify them for the record because we need to
17 make sure we have a good record. I don't know
18 if this is going to stop here --

19 MR. POSTULKA: Sure.

20 CHAIR JORDAN: -- but I'm assuming
21 that it's not.

22 MR. POSTULKA: So --

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1 CHAIR JORDAN: So let's make sure
2 we have the record marked and identify these
3 documents, so they can be followed upon. So we
4 don't get it back and remand and remand again
5 and --

6 MR. AVITABILE: Mr. Chairman, may I
7 offer that we each go through and --

8 MR. POSTULKA: Well, actually we
9 can just do it from what's in the record. It'll
10 be easiest that way.

11 CHAIR JORDAN: Yes, that's fine.
12 That's how I --

13 MR. POSTULKA: It's Exhibit 22 of
14 the record which are our Exhibits A through M.
15 And this will be Exhibit 22 and I think as we
16 march through, it'll be Tabs A through E of
17 Exhibit 22.

18 CHAIR JORDAN: Okay.

19 MR. POSTULKA: This is in Tab A of
20 Exhibit 22.

21 CHAIR JORDAN: So this is 22A?

22 MR. POSTULKA: That's correct.

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1 CHAIR JORDAN: Okay.

2 MR. LE GRANT: Okay. So --

3 CHAIR JORDAN: And for the record,
4 we're identifying it as it's called connection
5 plan.

6 MEMBER HEATH: Enlarged.

7 MR. LE GRANT: Right.

8 MR. POSTULKA: Enlarged connection
9 plan.

10 CHAIR JORDAN: Enlarged connection
11 plan.

12 MR. LE GRANT: Right. So there's
13 two graphics. There was a connection plan and
14 this is the enlarged connection plan. And so
15 it's color coded as to the existing portion of
16 the building which is labeled Marriott hotel
17 above retail in yellow. And then the addition
18 is the Hyatt Place hotel in like turquoise.

19 And then the shared aspect of these
20 two portions of the same building is in red.
21 And the key here is the connections that allow
22 passage from one portion of the building to the

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1 other.

2 And so the red arrows show from the
3 existing building through points that the first
4 one goes to it's called the shared vestibule for
5 Marriott and Hyatt Place hotels. And then --

6 CHAIR JORDAN: The shared
7 vestibule? Oh, down at the bottom. Okay.
8 Got it, yes.

9 MR. LE GRANT: Right. Because the
10 front's on M Street. And then the other two
11 open to the shared corridor. And then on the
12 Hyatt side there are three connections, the
13 first to this vestibule and then the two others
14 from the Hyatt portion into the service
15 corridor.

16 CHAIR JORDAN: The red is the
17 service corridor, correct? The red is the
18 service corridor?

19 MR. LE GRANT: Yes.

20 CHAIR JORDAN: Okay.

21 MR. LE GRANT: So it's labeled
22 shared service corridor for retail spaces and

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1 Hyatt Place hotel. And so the combination of
2 these connections which are doorways and then
3 the definition of building speaks to the
4 existence of communication, which is also known
5 as the meaningful connection.

6 And its existence of the
7 communication, in my mind, has been the a person
8 can walk through one portion of the building
9 through the other through a door or a corridor.
10 And this is clearly the case here.

11 One can travel from this portion
12 through this door through the corridor into the
13 other portion of the building or exit along the
14 corridor.

15 MR. POSTULKA: Okay. All right.
16 Thank you.

17 CHAIR JORDAN: And that is at the
18 main floor above, is that what you're saying?

19 MR. LE GRANT: I'm sorry?

20 CHAIR JORDAN: That's at the main
21 floor or above?

22 MR. LE GRANT: Yes. This is --

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1 CHAIR JORDAN: Okay.

2 MR. LE GRANT: -- main floor.

3 CHAIR JORDAN: Put on the
4 microphone, please.

5 MR. LE GRANT: Main floor.

6 CHAIR JORDAN: Okay.

7 MR. POSTULKA: All right. So
8 we're clear for the record, you might want to
9 put the next drawing up, the parking drawing
10 which is Exhibit B. I guess that'll be 22B.

11 CHAIR JORDAN: Thank you.

12 MR. POSTULKA: Labeled valet
13 parking plans.

14 MR. POSTULKA: Have you determined
15 how many additional parking spaces will be
16 required by the construction of the Hyatt
17 hotel?

18 MR. LE GRANT: Yes, I have.

19 MR. POSTULKA: And how many will be
20 required?

21 MR. LE GRANT: It's 48 spaces.

22 MR. POSTULKA: And --

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1 CHAIR JORDAN: The next one is
2 identified. It's 22B and it's titled the valet
3 parking plan. Okay, got it.

4 MR. LE GRANT: Yes. Well, the
5 graphic here is valet parking plans. It's part
6 of the Intervenor's Exhibit 22.

7 CHAIR JORDAN: Okay.

8 MR. POSTULKA: And does that
9 drawing show the 48 parking spaces that will be
10 required?

11 MR. LE GRANT: Yes, it does. And
12 it does it in the form that the --

13 CHAIR JORDAN: Let me --

14 MR. LE GRANT: -- point is --

15 CHAIR JORDAN: -- put the brakes on
16 this for one second. I do not, and maybe I'm
17 missing it. Do we have it in what was submitted
18 by the --

19 MALE PARTICIPANT: 22? Oh, what
20 --

21 CHAIR JORDAN: Yes, but --

22 MALE PARTICIPANT: It was not

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1 resubmitted.

2 CHAIR JORDAN: It was not
3 resubmitted as part of the package. So that's
4 why we have to identify it this way. Thank you
5 very much. Because all those documents were
6 not submitted with that. Okay. Got it. so
7 we're back to the drawing.

8 MR. POSTULKA: Okay.

9 CHAIR JORDAN: All right.

10 MR. LE GRANT: Okay. So, as was
11 represented, two maps during the review of the
12 building permit application, the applicant
13 indicated that they were going to utilize the
14 valet parking provisions under Section 2115.

15 So as been stated earlier, the
16 dimensional requirements of the parking spaces
17 themselves as well as other dimensional
18 requirements do not apply when you have at least
19 285 square feet of area for each represented
20 parking space.

21 And this graphic also includes a
22 little table that speaks to this calculation,

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1 which ends up to have actually more, it's 378.4
2 square feet of area when you do the division of
3 the, in other words, required spaces into the
4 space that's there, it's 18,162 square feet.

5 So another thing that came up in
6 previous testimony was the dimensional
7 requirements for the aisle widths still do
8 apply. I believe it's 2115.4. And although
9 this graphic doesn't show that the other
10 graphics and the approved plans show an aisle
11 width exceeding the minimum standard of 20
12 feet.

13 MR. POSTULKA: Okay. Would you
14 put up the next drawing which would be 22C,
15 loading plan.

16 MR. POSTULKA: Mr. Le Grant, have
17 you analyzed whether or not any additional
18 loading will be required as a result of the
19 construction of the addition?

20 MR. LE GRANT: Yes, I have. And
21 the answer is that no additional loading spaces
22 are required for this addition to the existing

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1 building.

2 MR. POSTULKA: Okay. Why is that?

3 MR. LE GRANT: The loading
4 standards in Section 2201.1 speak to the
5 requirements for hotels. And based on the
6 number of guest rooms there's a threshold for
7 a hotel of 200 rooms or more.

8 The existing portion of the
9 building, the Marriott hotel, has, their
10 problem is basically two loading spaces. The
11 existing Marriott hotel has the two loading
12 spaces.

13 Because my interpretation of the
14 zoning regulation is that mention you've hit
15 that 200-room threshold, as been stated
16 earlier, there's no additional loading spaces
17 required under that applicable provision of the
18 zoning regulations.

19 MR. POSTULKA: Well --

20 CHAIR JORDAN: I mean, before you
21 go, so --

22 MR. POSTULKA: Sure.

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1 CHAIR JORDAN: -- that's your
2 interpretation as you've seen a Zoning
3 Commission case or a BZA case has one?

4 MR. LE GRANT: It's been, my
5 office's consistent interpretation.

6 CHAIR JORDAN: Interpretation,
7 okay.

8 MR. LE GRANT: And this is not the
9 only hotel that we've had --

10 CHAIR JORDAN: Got it.

11 MR. LE GRANT: -- recently of a
12 certain size. And unless they satisfy the two
13 loading space threshold, it's been determined
14 to be compliant.

15 MALE PARTICIPANT: Objection.

16 CHAIR JORDAN: Yes.

17 MR. POSTULKA: So no space
18 additional berths are required, but will an
19 additional berth be provided?

20 MR. LE GRANT: Yes, the applicant
21 has nonetheless provided at their own volition,
22 that's my requirement, as been stated earlier

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1 in the private alley, a loading berth and a
2 service delivery space to service the Hyatt
3 portion of the building addition.

4 MR. POSTULKA: Okay. And can you
5 identify that berth on the loading plan
6 drawing?

7 MR. LE GRANT: Yes, it pointed out
8 here and, you know, the private alley, well,
9 that comes off of Ward Place at the end where
10 it dead-ends, annexed to the Hyatt Place hotel
11 as the delivery space, loading space and a
12 covered loading platform all labeled on the
13 drawing.

14 MR. POSTULKA: As a non-required
15 berth, do the zoning regulations provide where
16 that berth can be located?

17 MR. LE GRANT: Zoning regulations
18 speak to location requirements for required
19 loading spaces. Because this is not a required
20 loading space, it is not subject to the
21 locational limitations set forth in Chapter 22.

22 MR. POSTULKA: Thank you. Moving

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1 on to the next drawing, which is 22D, roof
2 structure plan. Appellants argue that the
3 west wall of the addition's roof structure is
4 not set back far enough. Can you identify that
5 roof structure on the roof structure plan
6 drawing?

7 MR. LE GRANT: Yes. So again, I'm
8 referring now to intervenor's exhibit graphic
9 labeled roof structure plan. The existing
10 building is shown in yellow, the addition in
11 blue and the roof structure is in a darker blue.

12 The key aspect here is the what is
13 an exterior wall. The zoning regulations
14 require that rooftop structures be set back
15 from exterior walls.

16 Zoning regulations are silent as to
17 the definition of exterior wall. However, we
18 have precedence from the Board of Zoning
19 adjustments. It's generally known as the
20 Kalorama decision, it differentiates what is an
21 exterior wall versus and interior wall
22 precisely for this rooftop structure purpose.

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1 A exterior wall is a wall that
2 fronts upon, it faces public space which is a
3 street or alley, a required yard or an open
4 court.

5 In this case, as illustrated on that
6 graphic, is a roof structure that doesn't meet,
7 well, it's set back from M Street, the
8 requirement. I meant the requirement for the
9 setback, which is correct because you have to
10 be set back from public space.

11 But there is not setback on the
12 interior property line bordering 1200 New
13 Hampshire Avenue, as well as, what is a closed
14 court.

15 Now, a structure that abuts a closed
16 court is not a exterior wall. It's an interior
17 wall. So therefore, there's no setback. My
18 office found that this is compliant with the
19 zoning regulations since there's no setback
20 required.

21 MR. POSTULKA: And you're relying
22 on the previously mentioned Kalorama decision

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1 for that definition of exterior wall?

2 MR. LE GRANT: Yes.

3 MR. POSTULKA: Final questions I
4 have for you about the public space argument.
5 When an addition is constructed on a previously
6 existing building --

7 CHAIR JORDAN: Are we --

8 MR. POSTULKA: -- is it --

9 CHAIR JORDAN: -- going to another
10 exhibit?

11 MR. POSTULKA: In a second.

12 CHAIR JORDAN: Okay. All right.

13 MR. POSTULKA: Is there a
14 requirement that that addition provide public
15 space?

16 MR. LE GRANT: No. The particular
17 section that requires public space in a CR
18 district applies to new developments, not
19 additions.

20 MR. POSTULKA: Okay. So because
21 the Hyatt is an addition and not a brand new
22 building, is it required to provide public

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1 space?

2 MR. LE GRANT: It is not required to
3 require public space.

4 MR. POSTULKA: Okay. Assuming
5 that it was, now, we're going to move on to the
6 next --

7 MR. LE GRANT: Okay.

8 MR. POSTULKA: -- drawing. And
9 that is 22E, public space plan.

10 MR. LE GRANT: Yes, again, the
11 intervenor's graphic is labeled public space
12 plan. It has an illustration of the public
13 space portion of the existing Marriott hotel
14 portion of the building.

15 MR. POSTULKA: And did you visit
16 the lobby?

17 MR. LE GRANT: I did.

18 MR. POSTULKA: Okay. And is it
19 your opinion that the Marriott lobby would meet
20 the public space requirements?

21 MR. LE GRANT: Yes, I do.

22 MR. POSTULKA: Okay. No further

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1 questions.

2 MR. LE GRANT: Thank you.

3 CHAIR JORDAN: And, Board, any
4 questions?

5 COMMISSIONER MAY: Mr. Chair?

6 CHAIR JORDAN: Yes, please.

7 COMMISSIONER MAY: So I guess I'll
8 try to work in reverse order. I understand the
9 argument that the loading that's provided is
10 not required, but if that actually were
11 required parking, would that, I mean, sorry,
12 required loading. Back up from the beginning.

13 I understand loading, and your
14 argument is not required, but if this what they
15 have provided to access the Hyatt hotel were
16 actually required, would that be compliant with
17 the zoning regulations?

18 MR. LE GRANT: I did not apply the
19 dimensional requirements --

20 COMMISSIONER MAY: Yes.

21 MR. LE GRANT: -- for --

22 COMMISSIONER MAY: I guess, I mean

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1 with specific regard to the open court --

2 MR. LE GRANT: Yes.

3 COMMISSIONER MAY: -- issue. I
4 guess is my question.

5 MR. LE GRANT: Right. I did not
6 have to go to that level of analysis --

7 COMMISSIONER MAY: Yes.

8 MR. LE GRANT: -- because, right,
9 there is a question is the CR district or
10 commercial district or residential district,
11 once my staff determined that it's not
12 required, we didn't really go to that to detect
13 that question.

14 COMMISSIONER MAY: Okay. The
15 loading diagram also showed several ten-by-20
16 service delivery spaces existing. Those were
17 not required or are they required?

18 MR. LE GRANT: Well, the --

19 CHAIR JORDAN: And for the record
20 we're on 22C?

21 COMMISSIONER MAY: Yes.

22 MR. LE GRANT: Yes. And the

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1 requirement at that time that the original
2 portion of the building was constructed was
3 there will be two loading berths. They did not
4 have dimensional requirements, nor do I recall
5 if there was specific loading platform
6 requirements.

7 Presently, there are loading berths
8 and platforms there. So as is the case of any
9 application, my stance is that if the
10 dimensional requirements, which came out
11 afterward, that is if they're substandard,
12 don't have those requirements, then those
13 spaces are grandfathered.

14 COMMISSIONER MAY: Yes, okay. So
15 can we go all the way back to the first diagram
16 which is the enlarged connection plan? So I
17 guess I understand the corridor that sort of
18 snakes around the building --

19 CHAIR JORDAN: Just so I can again,
20 for the record, this is 22A --

21 COMMISSIONER MAY: Yes.

22 CHAIR JORDAN: -- the enlarged

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1 construction plan.

2 COMMISSIONER MAY: Yes. So I
3 understand that, but let's talk about the
4 vestibule at the front there. I see how
5 there's a doorway from the Marriott hotel that
6 connects to that little vestibule and then goes
7 --

8 MR. LE GRANT: Yes.

9 COMMISSIONER MAY: -- out. And so
10 is the connection there to the Hyatt Place
11 hotel, is that just the first control room or
12 is there actually, is there missing some other
13 --

14 MR. LE GRANT: Yes.

15 COMMISSIONER MAY: -- connection?

16 MR. LE GRANT: Well, it's adjacent.
17 There's a fire control room adjacent to this
18 vestibule.

19 COMMISSIONER MAY: Yes.

20 MR. LE GRANT: And then the
21 vestibule itself is simply, actually it's a
22 corridor --

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1 COMMISSIONER MAY: Right.

2 MR. LE GRANT: -- or a locked door.

3 COMMISSIONER MAY: But that's all
4 that it connects to. It's not an egress route
5 or anything like that from the Hyatt Place
6 hotel?

7 MR. LE GRANT: It's not my
8 understanding that it's a --

9 COMMISSIONER MAY: Yes.

10 MR. LE GRANT: Yes, that it's
11 egress.

12 COMMISSIONER MAY: Right. Okay.

13 MEMBER HEATH: Did you say it is or
14 it is not?

15 MR. LE GRANT: That --

16 MEMBER HEATH: The door from the
17 Hyatt leading into the vestibule --

18 MR. LE GRANT: Okay.

19 MEMBER HEATH: -- it's coming from
20 a fire control room, correct?

21 MR. LE GRANT: Right. Right, it's

22 --

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1 MEMBER HEATH: And that appears to
2 not connect back to the rest of the hotel.

3 MR. LE GRANT: It's, when I say
4 egress, there's egress requirements within the
5 building code that, of course, are not the
6 purview of the zoning regulations. Does it
7 function as an egress? Well, you can travel to
8 that space from both portions of the building.

9 COMMISSIONER MAY: Well boys --

10 MR. LE GRANT: I don't know if that
11 answers your question.

12 COMMISSIONER MAY: -- I guess, I
13 mean what we're wondering is when we look at
14 that funny space -

15 MR. LE GRANT: Yes.

16 COMMISSIONER MAY: -- is it just
17 the fire control room? Because I was picturing
18 it might actually be a, you know, connect
19 somehow to a stairway or corridor or to the
20 lobby or something like that. But it doesn't
21 appear to do any of that, so it's just the fire
22 control room.

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1 MR. LE GRANT: My recollection is
2 it's just the fire control room --

3 COMMISSIONER MAY: Oh, okay.

4 MR. LE GRANT: -- that's adjacent
5 in the addition portion of the plat.

6 COMMISSIONER MAY: Okay. Thank
7 you.

8 CHAIR JORDAN: Board, additional
9 questions? No? We're good. All right. So
10 is that it from --

11 MR. POSTULKA: I have no other
12 questions.

13 MR. AVITABILE: We just have a
14 couple of additional final points before we
15 conclude our --

16 CHAIR JORDAN: All right.

17 MR. AVITABILE: -- presentation.
18 First, this is I've got notes passed back to me.
19 Commissioner May, on your question about the
20 operation of the loading, through the building
21 permit process, we had discussions with DDOT
22 about how the loading would operate.

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1 And we gave them a loading
2 management plan where we agreed to limit trucks
3 to no wider than 30 feet. And with that DDOT
4 was comfortable and actually DDOT signed off on
5 the building permit.

6 COMMISSIONER MAY: No longer than
7 20 --

8 MR. AVITABILE: No longer than --

9 COMMISSIONER MAY: -- longer than
10 30 feet.

11 MR. AVITABILE: -- 30 feet.

12 COMMISSIONER MAY: Right.

13 MR. AVITABILE: So --

14 COMMISSIONER MAY: Okay.

15 MR. AVITABILE: -- they were
16 comfortable with us using this loading area.
17 And the second fact there is there is loading
18 and trash today in that area. So this is not
19 a new use --

20 COMMISSIONER MAY: Right.

21 MR. AVITABILE: -- using that back
22 of the alley for loading --

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1 COMMISSIONER MAY: Right.

2 MR. AVITABILE: -- and trash.

3 COMMISSIONER MAY: So that private
4 alley looks like, I mean, there's a property
5 line running through it and it looks like it's
6 maybe two-thirds --

7 MR. AVITABILE: Two-thirds. It's
8 about 23 feet, I think, on our side of the line
9 and seven feet on their side of the line.

10 COMMISSIONER MAY: Right. So,
11 well, is it possible for this to function if you
12 only have the 23 feet?

13 MR. AVITABILE: There's an alley
14 agreement between the parties that goes back to
15 when the alley was closed --

16 COMMISSIONER MAY: Right.

17 MR. AVITABILE: -- that normally
18 when alleys are closed they're split 50/50.

19 COMMISSIONER MAY: Right.

20 MR. AVITABILE: But this agreement
21 allocated two-thirds to us and acknowledged
22 that both properties could, I believe, use the

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1 entire width of the alley for ingress and egress
2 for various operations.

3 COMMISSIONER MAY: In perpetuity?

4 MR. AVITABILE: I believe so. I
5 don't believe there's --

6 COMMISSIONER MAY: Yes.

7 MR. AVITABILE: -- any
8 limitations. The only --

9 COMMISSIONER MAY: Okay.

10 MR. AVITABILE: I'm sorry, go
11 ahead. It was --

12 COMMISSIONER MAY: No --

13 MR. AVITABILE: -- about the --

14 COMMISSIONER MAY: -- that's all
15 right.

16 MR. AVITABILE: -- only other item
17 we had to submit. As we showed in the record,
18 you know, once we submitted this project and
19 Matt's office was reviewing it, we received a
20 number of questions.

21 One of the questions we received was
22 well, do you have a building plat that shows the

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1 entirety of the building. And we submitted
2 that to DCRA and so I thought we should submit
3 that for the record as well, because this, of
4 course, would be a plan that shows the entire
5 building that Matt's office relied upon.

6 COMMISSIONER MAY: Okay.

7 MR. AVITABILE: So I wanted to
8 submit that for the record.

9 CHAIR JORDAN: Yes, and let me say
10 this. Our record should have everything that
11 the zoning administrator had to look at that the
12 time.

13 We've gotten costs and quagmire
14 before, especially matters going to the court
15 of appeals, that we're getting different sets
16 of drawings or plans.

17 And we need to have our record
18 reflect everything that the zoning
19 administrator had for the sake of making these
20 particular arguments that you're making. I
21 mean, we don't have to have every piece of
22 paper, but --

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1 COMMISSIONER MAY: Yes.

2 CHAIR JORDAN: -- every document
3 that's relevant to these appeals.

4 COMMISSIONER MAY: Mr. Chairman, I
5 would just want to make the observation that
6 having done some work in the zoning
7 administrator's office in the distant past
8 reviewing plans, I mean, you're getting the
9 actual building plans and in large sets.

10 And so a building like this is going
11 to be a really large set and I don't think the
12 Zoning Commission wants all of that paper.

13 CHAIR JORDAN: No, no, no, that's
14 why I said --

15 COMMISSIONER MAY: Yes.

16 CHAIR JORDAN: -- relevant to the
17 appeal.

18 COMMISSIONER MAY: Just the stuff
19 that's, right.

20 CHAIR JORDAN: But relevant to the
21 appeal.

22 COMMISSIONER MAY: Yes, right.

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1 MR. AVITABILE: Well, and that was
2 why we included the email correspondence that
3 we had with the Office of the Zoning
4 Administrator, so you could see everything that
5 transpired back and forth. Thank you.

6 CHAIR JORDAN: And let me put
7 another asterisk on that. And if there's
8 anything that's changed, we don't necessarily
9 need that unless it's been clearly identified
10 that you're submitting something that's
11 different than what the zoning administrator
12 had at the time you make the decisions. That's
13 for everybody. Okay.

14 Then anyone from ANC who's going to
15 do a presentation? No. We already have their
16 ANC letter, unless you're doing presentation,
17 you're okay. All right. All right. Then we
18 will turn back to the appellant for, do you have
19 any rebuttal that you want to provide?

20 MR. BROWN: Yes, very brief.

21 CHAIR JORDAN: All right. Excuse
22 me one second.

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1 (Off microphone comments.)

2 CHAIR JORDAN: Got you. Yes, it's
3 not part of, okay. Yes. I understand there's
4 others that are here to testify. However, our
5 regulations are set in what the procedures are
6 and who can participate in providing testimony
7 in an appeal.

8 And it doesn't allow for anyone
9 outside of, you know, the applicant, the ANC,
10 the Government agency and the intervenor, so we
11 have that. So I'm going back to the rebuttal.

12 MR. BROWN: Yes, sir.

13 CHAIR JORDAN: Yes.

14 MR. BROWN: Mr. Bello -- sorry,
15 Bello.

16 CHAIR JORDAN: And you can use up
17 your other eight minutes that you had left on
18 the clock unless you're going to go longer.

19 MR. BROWN: Okay.

20 CHAIR JORDAN: Just saying.

21 MR. BROWN: Mr. Bello, the practice
22 is been testified that in the permit processing

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1 that additional information --

2 CHAIR JORDAN: Mr. Brown, do me a
3 favor. Just kind of keep that mic somewhere
4 near you --

5 MR. BROWN: Okay.

6 CHAIR JORDAN: -- so we can --

7 MR. BROWN: The additional
8 information is provided in response to
9 requests. Is that additional information
10 properly added to the permit plans that are
11 approved such that additional information
12 should be reflected in the approved plans?

13 MR. BELLO: Yes, and any revisions
14 to the approved plans must be a part of what the
15 approval was predicated upon. It can't be,
16 well, submitted after the fact, after the
17 issuance of the building permit.

18 For the completeness of the record,
19 all revisions to the plans have to be reflected
20 prior to issuance of the building permit.

21 CHAIR JORDAN: So I'm trying to
22 understand. Let's just hit the ball on the

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1 head. Are you saying that the building permit
2 was already issued and then documents came in,
3 is that what you're saying?

4 MR. BELLO: Well, I find no
5 evidence in the public documents that were made
6 available to us to suggest that those revisions
7 became a part of that determination or approval
8 of the project.

9 CHAIR JORDAN: Are you saying you
10 don't know either way?

11 MR. BELLO: Based on what I saw, I
12 didn't see any revisions that would reflect a
13 lot of the arguments of the intervenor at this
14 point.

15 CHAIR JORDAN: All right. That's,
16 all right. That's the answer.

17 MR. BELLO: Yes.

18 MR. BROWN: To be specific --

19 CHAIR JORDAN: I think he can't
20 answer any different. I think he's saying he
21 can't tell one way or the other. I mean, we can
22 go down this line, but I don't know if it's

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1 really going to be relevant at this point --

2 MR. BROWN: Well, I think --

3 CHAIR JORDAN: -- unless you know

4 --

5 MR. BROWN: -- it can be specific

6 because --

7 CHAIR JORDAN: Okay. All right.

8 MR. BROWN: Just real quickly, and

9 I want to focus on, and I forget what the number,

10 but the valet parking plan that's been

11 submitted as an exhibit here, that was not part

12 of the approved building permit?

13 MR. BELLO: Not among those.

14 CHAIR JORDAN: Do you know that it

15 wasn't submitted or you didn't see it?

16 MR. BELLO: I don't want to prolong

17 this, but the --

18 CHAIR JORDAN: No, I want you to

19 answer it.

20 MR. BELLO: Once a permit is

21 issued, the plans, the plats, any documents

22 associated with that permit including the

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1 revisions of the plans become a permanent part
2 of the records that are available to the public
3 or that we can request of the zoning
4 administrator. Based on those documents, I
5 did not find any evidence reflective of how the
6 valet parking meets the requirement.

7 CHAIR JORDAN: When you went to go
8 look at the plans, you didn't see those things
9 in there. That's what you're saying?

10 MR. BELLO: Exactly.

11 CHAIR JORDAN: Okay. All right.
12 Okay. Proceed.

13 MR. BROWN: And while we're
14 focusing on the valet parking plan, although it
15 wasn't part of the permit approval, it's
16 showing vehicles parked in the drive aisles, is
17 that correct?

18 MR. BELLO: That's correct.

19 MR. POSTULKA: And as a result of
20 those valet parked vehicles being in the drive
21 aisles, the drive aisles certainly no longer
22 meet the minimum drive aisle requirements, is

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1 that correct?

2 MR. BELLO: I can extrapolate that
3 conclusion from the approved set of plans that
4 I saw that reflected the parking spaces and the
5 fact that the drive aisles in those plans were
6 approximately about 22/23 feet.

7 If we're to add the area of the
8 parking spaces within the drive aisle, I'm not
9 so sure how that is mathematically possible to
10 still maintain 21 feet. So I haven't seen any
11 evidence to support that.

12 MR. POSTULKA: And following up,
13 again, on the valet parking in order to provide
14 valet parking, you have to have a threshold of
15 75 parking spaces in that parking garage?

16 MR. BELLO: That's correct.

17 MR. POSTULKA: And the Hyatt
18 parking which is --

19 CHAIR JORDAN: Listen, Mr. Brown,
20 please identify. Because the valet plans
21 you're referencing, do we have that as exhibit
22 in the records?

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1 MR. BROWN: It's the same one I was
2 referring to previously. But in the question
3 I just asked Mr. Bello, the --

4 CHAIR JORDAN: It's not --

5 MR. BROWN: -- reference to --

6 CHAIR JORDAN: -- specific, you're
7 just in general.

8 MR. BROWN: Yes.

9 CHAIR JORDAN: Not one of these
10 exhibits. Okay.

11 MR. BROWN: No.

12 CHAIR JORDAN: Got you. All
13 right.

14 MR. BROWN: Where I refer to
15 something, I --

16 CHAIR JORDAN: Okay.

17 MR. BROWN: -- try to.

18 CHAIR JORDAN: Okay.

19 MR. BROWN: But in the concept of
20 valet parking, the valet parking has to have a
21 minimum threshold of 75 parking spaces in the
22 parking facility?

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1 MR. BELLO: That's correct.

2 MR. POSTULKA: And the Hyatt
3 parking facility is self-contained, correct?

4 MR. BELLO: It is self-contained.

5 MR. POSTULKA: And it does not have
6 75 parking spaces?

7 MR. BELLO: No, it does not.

8 MR. POSTULKA: So based on that, it
9 would never be entitled to avail itself of the
10 valet parking rules?

11 MR. BELLO: That's my considered
12 opinion, yes.

13 COMMISSIONER MAY: May I follow up
14 a question on that?

15 CHAIR JORDAN: Certainly.

16 COMMISSIONER MAY: The regulations
17 say that the 75 parking spaces within the
18 building or structure. It doesn't say the
19 parking facility within the parking garage or
20 anything like that.

21 So, I mean, you're essentially
22 basing this on the notion that the two would

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1 have to be considered separate buildings
2 because they're not connected, right?

3 MR. BELLO: Well, I think it goes to
4 the density of use within a parking
5 facility. It certainly can be reasonably
6 inferred from the zoning regulations that
7 providing 75 parking spaces within a parking
8 facility, provides a contiguous space that
9 lends itself to such valet purposes.

10 COMMISSIONER MAY: Okay. Well,
11 the plain language of it just says if a
12 commercial building or structure located in
13 certain zones where at least 75 spaces are
14 required, according to the scheduled parking
15 requirements, parking may be provided and
16 essentially as valet parking.

17 So all it says is that all you need
18 to have is 75 parking spaces in the building.
19 It doesn't dictate anything about what the
20 critical, I mean, I guess it implies that
21 there's some critical mass having to do with the
22 overall volume of parking.

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1 But there's nothing that says that
2 it has to be in the same structure, the same
3 contiguous space, the same facility.

4 MR. BELLO: Well, you know, I don't
5 think the zoning regulations are written for
6 that vacuum quite frankly. I think there's
7 some connectivity to the reality of how things
8 work.

9 COMMISSIONER MAY: I appreciate
10 that argument too, but I'm just trying to
11 understand what you're specifically testifying
12 to here.

13 And it seems to me that it's, I mean,
14 and I guess now I know better, it's not just the
15 building, it's that in spirit that should be on
16 the same --

17 MR. BELLO: Well, and in intent --

18 COMMISSIONER MAY: -- before.

19 MR. BELLO: -- and suppose, and
20 quite frankly, if you look at the provisions
21 under 2517, it is very clear that the zoning
22 regulations actually anticipates instances in

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1 which there may be more than one principal
2 structure on one lot.

3 And specifically speaks to leading
4 those minimum requirements when imaginary or
5 theoretical lot lines are drawn around each
6 building. So it's not totally silent on that
7 matter.

8 COMMISSIONER MAY: Thank you.

9 MR. BROWN: And if I could just, and
10 I don't know if this has been marked.

11 CHAIR JORDAN: What was this? I
12 think we just, this surveyor?

13 MR. AVITABILE: That was the
14 exhibit we just submitted. That was the
15 building plat for the entire --

16 CHAIR JORDAN: Do you --

17 MR. AVITABILE: -- record lot.

18 CHAIR JORDAN: -- remember, what's
19 it called?

20 MR. AVITABILE: The exhibit would
21 have just been submitted for the record just
22 now. We just submitted it --

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1 CHAIR JORDAN: All right. So it's
2 --

3 MR. AVITABILE: -- at the close of
4 our presentation.

5 CHAIR JORDAN: -- I think our last,
6 what you have in your record is 22M, right?

7 MR. AVITABILE: Well, right. But
8 this wasn't part of --

9 CHAIR JORDAN: I understand that.

10 MR. AVITABILE: Okay.

11 CHAIR JORDAN: The last you have in
12 the record is 22M. We'll make this --

13 MR. AVITABILE: Well, no because
14 then we had a whole second set of exhibits that
15 went N through Y. You can make this 22Z and we
16 complete the alphabet.

17 CHAIR JORDAN: Okay. Let's do
18 that.

19 MR. AVITABILE: Okay.

20 CHAIR JORDAN: And identify it for
21 us for the record. Identify it.

22 MR. AVITABILE: This is the

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1 building plat for the entirety of the
2 improvements on Record Lot 190 that was
3 submitted to DCRA in November 2013 as a part of
4 the building permit review process.

5 CHAIR JORDAN: For the
6 record, this is identified District of
7 Columbia Government Office of the Surveyors
8 document. And in the bottom left-hand side we
9 have SR14-01, you know, whenever the document,
10 0108882013 email. So, all right. Like I said
11 we'll try to build the record for --

12 MR. AVITABILE: Right.

13 CHAIR JORDAN: -- the next level on
14 this.

15 MR. POSTULKA: All right. Mr.
16 Bello, drawing your attention to this surveyors
17 plat. This plat was not among the approved
18 plans for the permit?

19 MR. BELLO: Not to my knowledge.

20 MR. POSTULKA: And this, if it had
21 been, would it be stamped with a DCRA approval?

22 MR. BELLO: Yes, the plat is

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1 sufficient in that manner. In another manner,
2 it is deficient because it's incomplete. A
3 plat that picks the birds-eye view of a property
4 and part of the necessary information on their
5 plat would be the roof structures upon the roof
6 of the so-called single building which would
7 assist the zoning administrators making a
8 determination whether there are several roof
9 structures here or whether there's a single
10 roof structure.

11 MR. POSTULKA: And is it
12 inconsistent with the permit that was issued,
13 which was issued to Lot 880?

14 MR. BELLO: Absolutely it is.

15 MR. POSTULKA: And this depicts Lot
16 190?

17 MR. BELLO: That's correct.

18 MR. POSTULKA: And makes no
19 specific reference to lot 880.

20 MR. BELLO: No, it does not.

21 MR. POSTULKA: Does it show any of
22 the public space?

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1 MR. BELLO: None whatsoever.

2 MR. POSTULKA: But in considering
3 Lot 190 and it's compliance, arguably, should
4 have provided public space?

5 MR. BELLO: Yes, to assure the
6 continued compliance of the existing building.

7 MR. POSTULKA: And on the public
8 space, the concept that this space could be
9 located in the interior lobby of the Marriott
10 hotel, is that something that you've ever
11 experienced being acceptable?

12 MR. BELLO: No, neither is it
13 practical. The public space requirement is
14 required to be accessible to the public 24 hours.
15 I'm sure that the intervenor cannot be
16 suggesting that this lobby area can be accessed
17 willfully 24 hours a day by anybody.

18 MR. POSTULKA: And the regulations
19 call for it to be located between the street and
20 the building?

21 MR. BELLO: That's certainly the
22 intent. It's not supposed to be interior space

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1 that is for security reasons restricted.

2 MR. POSTULKA: And it says open to
3 the sky or some minimum height. That's not to
4 allow interior space, but to allow what we used
5 to recall is an open arcade?

6 MR. BELLO: Definitely, yes.

7 MR. POSTULKA: Okay. And one last
8 question on the public space. There was a case
9 involving the appellants, where they made an
10 addition to their building, a BZA case, the
11 names and the case numbers in the record, but
12 you're familiar with where they made an
13 addition to their building?

14 MR. BELLO: Correct.

15 MR. POSTULKA: To an existing
16 building?

17 MR. BELLO: Correct.

18 MR. POSTULKA: And as part of that,
19 they diminished the public space?

20 MR. BELLO: That's correct.

21 MR. POSTULKA: And in order to do
22 that, they were required to obtain a variance

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1 from the Board of Zoning Adjustments?

2 MR. BELLO: Rightfully so.

3 MR. POSTULKA: Okay. So in the
4 same circumstances you would believe that the
5 public space requirements would apply to an
6 addition to the existing building on Lot 190?

7 MR. BELLO: That is correct.

8 CHAIR JORDAN: Okay. Okay.

9 MS. GIORDANO: Mr. Chair, we just
10 have a two-minute closing statement.

11 CHAIR JORDAN: All right. But let
12 me. Does the Board have any questions they
13 want to ask? Okay. Let me just ask a
14 question, taking one step back and not going to
15 dialog.

16 I need the list of the relevant
17 documents that the zoning administrator had
18 prior to making a decision in the case. And
19 maybe we'll get that by supplement, but I need
20 to see what that record was of the relevant
21 documents to this appeal. Okay?

22 Board, any other questions? All

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1 right. So why don't we go --

2 MR. BROWN: Mr. Chairman, are
3 specifying at the time he made the decision or
4 because many of the documents we're all relying
5 on now are created well after the fact given the
6 dates on those documents.

7 CHAIR JORDAN: That's what I said.
8 I thought I was --

9 MR. BROWN: I maybe made the --

10 CHAIR JORDAN: -- clear.

11 MR. BROWN: I just making --

12 CHAIR JORDAN: I thought I said
13 that like three or four times. Are you clear
14 about what I said?

15 MR. AVITABILE: Crystal.

16 CHAIR JORDAN: Okay. Mr. Brown,
17 we're on the same page?

18 MR. BROWN: Yes, sir.

19 CHAIR JORDAN: Got it. All right.
20 All right. So let's go ahead. Begin closing,
21 please.

22 MS. GIORDANO: Thank you. In

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1 conclusion, this case is about interpreting the
2 zoning regulations in the context of the
3 specific facts presented in this case.

4 The BZA, and not the zoning
5 administrator, has the ultimate authority to
6 interpret the zoning regulations. And this
7 would not be the first time that the BZA
8 provided guidance to the zoning administrator.

9 The definition of building in this
10 city has been stretched over the years beyond
11 what most reasonable people would consider to
12 be a bonafide addition.

13 I suspect this is a unique
14 interpretation limited to D.C. and very likely
15 the creative idea of a clever zoning attorney.
16 And I say that with all due respect.

17 We assert that the purpose and
18 intent of the zoning regulations is relevant to
19 interpreting the zoning regulations. And that
20 Section 2517 is obviously more logically
21 applicable to this development than a tortured
22 definition that was never intended for this

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1 application.

2 Section 2517 applies to two
3 principal buildings on one record lot, which
4 these buildings surely are in that the function
5 completely independently of one another.

6 The appellee's strange reliance on
7 the valet parking provisions clearly
8 demonstrate the illogical application of the
9 parking requirements in the context of these
10 two hotels as a single building.

11 The 75-space threshold requirement
12 which exists for a purpose and it assumes
13 application in the context of a single garage,
14 simply makes no sense when it is spread over two
15 separate parking garages.

16 And I just add in the context of a
17 hotel, valet parking is true valet parking.
18 Most visitors from out of town don't want to
19 negotiate a strange parking garage and they
20 have luggage, so they typically leave the car
21 with a valet attendant. Thank you very much.

22 CHAIR JORDAN: Thank you. Then

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1 this concludes our hearing. Does the Board
2 have anything --

3 MR. AVITABILE: Oh. Chairman
4 Jordan, we had some cross examination --

5 CHAIR JORDAN: I --

6 MR. AVITABILE: -- of the rebuttal.

7 CHAIR JORDAN: I'm following the
8 rules and regulations that we have in the zoning
9 regulations regarding appeals. And I think
10 it's very clear about the process. So that's
11 where we are.

12 MR. AVITABILE: Okay.

13 CHAIR JORDAN: It doesn't allow for
14 any additional cross examination, rebuttal
15 under the rules. Whether or not that's whether
16 we like it or not, it's what the rules say.
17 Just like it doesn't provide for another
18 closing from the appellant. I'm just going by
19 the rules.

20 I understand how it would be in
21 anything else, but that's not where we are.
22 Board, then is there something else the Board

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1 needs other than what I asked for? Anything
2 else you're going to need? Unless you folks,
3 you believe you can deliberate on this. Does
4 the Board think that the could?

5 COMMISSIONER MAY: Well, would we
6 leave this outstanding?

7 CHAIR JORDAN: Well, I just wanted
8 to make sure our record was clear. I mean it's
9 not key and essential, but I just want to make
10 --

11 COMMISSIONER MAY: It's a matter of
12 just what's, having a thorough record, I mean?

13 CHAIR JORDAN: Yes, but in that
14 record and that still could be submitted
15 regardless --

16 COMMISSIONER MAY: Yes.

17 CHAIR JORDAN: -- of what we're
18 doing.

19 COMMISSIONER MAY: I don't know
20 that we necessarily could bring it all the way
21 to conclusion, but I'm prepared to start
22 deliberations. I mean, we may wind up talking

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1 and then --

2 CHAIR JORDAN: Okay. Go ahead.

3 COMMISSIONER MAY: -- deciding.

4 CHAIR JORDAN: Let's find out where
5 we are.

6 MEMBER HEATH: One point --

7 CHAIR JORDAN: I'm listening.

8 MEMBER HEATH: -- with respect to,
9 right, with respect to the request you've made
10 for additional documentation. The one thing
11 that I would hope was in there that I'd like to
12 see are the detailed first floor, ground floor
13 plans because there's some question about, I
14 mean, obviously, what we're connecting to makes
15 a difference.

16 And so, for instance, in the case of
17 the fire control room, I don't consider that to
18 be a connection. But I think that the ground
19 floor plan would provide us with more of that
20 detail, so.

21 CHAIR JORDAN: Okay.

22 MEMBER HEATH: And I would think

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1 that the Zoning Commission had that detail --

2 CHAIR JORDAN: Zoning
3 administrator.

4 MEMBER HEATH: -- for their --

5 CHAIR JORDAN: Yes.

6 MEMBER HEATH: -- review. Right
7 --

8 CHAIR JORDAN: So that would be --

9 MEMBER HEATH: -- Zoning
10 Administration.

11 CHAIR JORDAN: -- included in that
12 set. So do you think we can go forward in your
13 deliberation now, or should we hold that until
14 May 20th because that's your next day?

15 Let's do that. Let's wait until
16 May 20th. I would suggest because you're back.
17 Is it May 20th, Mr. May is with us? And I want
18 to make sure so you can look at what you need.
19 You're comfortable with that?

20 COMMISSIONER MAY: Yes, let's do
21 that.

22 CHAIR JORDAN: All right. And so

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1 let me also offer this. Since we have that
2 time, we're going to work our way backwards.
3 I'm going to want submitted finding facts and
4 conclusion of law proposed. And working our
5 way back from, correct me, Mr. Moy, it is May
6 20th that we're going to have Mr. May?

7 MR. MOY: That's correct, sir.

8 CHAIR JORDAN: We'll put this on
9 for a decision and so we need to have both the
10 additional filings that we requested and the
11 finding facts and conclusions by May. Does May
12 13th give you enough time or do you want it
13 before that, Mr. Moy?

14 MR. MOY: The 13th would be fine or
15 you can make it Monday the 12th.

16 CHAIR JORDAN: Okay.

17 MR. MOY: You want everything all
18 on the same day or you want the --

19 CHAIR JORDAN: Yes, I mean there's
20 not going to be an exchange of documentation --

21 MR. MOY: True. True.
22 Understood.

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1 CHAIR JORDAN: -- or anything like
2 that. Yes.

3 MR. BROWN: Mr. Chairman, you've
4 asked for the list of documents that DCRA used.

5 CHAIR JORDAN: Yes, the relevant
6 ones to this appeal.

7 MR. BROWN: And would it also be
8 relevant to the Board to have us be able to
9 compare --

10 CHAIR JORDAN: Nope. No, we're
11 not doing that. I just want the documents and
12 records. And everybody --

13 MR. BROWN: Are they going to
14 actually going to provide the documents or just
15 a list of them?

16 CHAIR JORDAN: No, we need to have
17 the documents, a copy --

18 MR. BROWN: Sure.

19 CHAIR JORDAN: -- of those things
20 that are, so we can put them in the file. So
21 May 12th?

22 MR. MOY: Yes. And I'm assuming

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1 the list of the relevant documents are coming
2 from --

3 CHAIR JORDAN: And the relevant
4 documents are coming from the DCRA so we have
5 them.

6 MR. MOY: Okay.

7 CHAIR JORDAN: Okay.

8 MR. MOY: So it would be Monday, May
9 20th for everything.

10 CHAIR JORDAN: No, Monday, May
11 12th.

12 MR. MOY: I'm sorry. It's May
13 12th. Okay.

14 CHAIR JORDAN: And then we will
15 have this for decision on the 20th and that
16 includes your proposed finding facts and
17 conclusions. All right. Well, thank you very
18 much, appreciate it. Oh, one question.

19 COMMISSIONER MAY: Actually, I
20 just have one comment for the intervenor in this
21 case. You mentioned earlier that you were in
22 some discussions with the ANC or the property

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1 owner across the street.

2 And, you know, any time we get a
3 letter into the file from the ANC expressing
4 concern about the project, it certainly raises
5 a concern.

6 It doesn't really have any legal
7 bearing on this case, but I would just urge you
8 to, you know, pursue that discussion in an
9 earnest fashion and that you reach some
10 accommodation to satisfy the ANCs and the
11 neighbors because we all support a very good
12 neighbor policy.

13 CHAIR JORDAN: Absolutely.

14 MR. AVITABILE: Should we submit an
15 update on those discussions on May 12th, if it's
16 appropriate?

17 CHAIR JORDAN: That would be fine.
18 Thank you.

19 MR. AVITABILE: Okay.

20 COMMISSIONER MAY: Okay.

21 MR. AVITABILE: Thank you.

22 CHAIR JORDAN: All right. Then

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1 this concludes our hearing. Thank you.

2 (Whereupon, the hearing in the
3 above-entitled matter was concluded at 2:51
4 p.m.)

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