

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING AND HEARING

+ + + + +

TUESDAY

JULY 22, 2014

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment 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, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairman
MARNIQUE HEATH, Board Member
JEFFREY HINKLE, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Commissioner

OFFICE OF PLANNING STAFF PRESENT:

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

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
BRANDICE ELLIOTT
STEPHEN GYOR

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

EVELYN ISRAEL

The transcript constitutes the minutes from the Public Hearing held on July 15, 2014

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 for variances from the court (776), parking
 (subsection 2101.1), loading (section 2201)
 requirements and special exceptions from the
 roof structure (sections 770.6 and 411) and the
 rear yard (section 772) requirements to allow
 the construction of a new hotel with retail use.
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Application No. 18799: 152
 3808 through 3816 Morrison Street,
 N.W. for a special exception under
 section 214, to allow continued use of
 accessory parking spaces in the R-2
 zoned western portion of the subject
 site to serve the PNC Bank branch
 on the C-1 zoned eastern portion of the site

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Adjournment

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

2 (9:32 a.m.)

3 CHAIRMAN JORDAN: Good morning.
4 Please come to order. We=re located in the
5 Jerrily R. Kress Memorial Hearing Room at 441
6 4th Street, N.W. This is today=s meeting for
7 the Board of Zoning Adjustment, and hearings of
8 the Board of Zoning Adjustment of the District
9 of Columbia.

10 My name is Lloyd Jordan,
11 Chairperson. To my right is Jeffrey Hinkle,
12 member of the Board; to my left, Marnique Heath,
13 member of the Board. To her left is Anthony
14 Hood, Chairman of the Zoning Commission.

15 Please be advised that today=s
16 proceedings are being recorded by a court
17 reporter who=s seated to my right, and also
18 being webcast live. Therefore, I=m going to
19 ask you to refrain from any disruptive noises,
20 here, in the hearing room today.

21 That=s a signal to make a move to
22 turn off any devices that may ring or may make

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1 noise.

2 If you=re going to -- excuse me. If
3 you=re not familiar with how we operate at the
4 Board, through the back door to my left should
5 be a document back there, that explains how we
6 operate, so feel free to get that, so you can
7 familiarize yourself with how we operate, here,
8 at the board.

9 If you=re going to provide any
10 testimony, be a witness, or read a statement to
11 the Board, I=m going to ask you to do two things.

12 I=m going to need you to do two
13 things, one of which is to complete two witness
14 cards per person, and give them to the court
15 reporter prior to testifying, or giving a
16 statement, or addressing the Board. So if
17 you=re going to address the Board, in any way,
18 I=m going to need you to complete two witness
19 cards per person, and give them to the court
20 reporter prior to testifying, or presenting
21 your statement.

22 The second thing I=m going to need

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1 you to do is to now stand -- if you=re going to
2 testify of provide a statement to the Board, I
3 need you to now stand and take the oath of
4 affirmation being given by the Board=s
5 secretary.

6 Mr. Moy.

7 MR. MOY: Thank you, Mr. Chairman.

8 Good morning

9 Do you swear, or affirm, that the
10 testimony you=re about to present in this
11 proceedings is the truth, the whole truth, and
12 nothing but the truth? Ladies and gentlemen,
13 you may consider yourselves under oath.

14 (Witnesses sworn.)

15 CHAIRMAN JORDAN: Can I have a -- in
16 the case of 18799, I need the representative of
17 the Applicant and a representative of all those
18 who have submitted a request for party status
19 to come to the witness table, please. Please
20 give the court reporter your witness cards.

21 18799. Those who have submitted a
22 request for party status and a representative

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1 for the Applicant.

2 Okay. Let=s begin. Let=s go ahead
3 and be seated. Let=s begin, and we will work
4 this out.

5 Starting to my left, please
6 identify yourselves.

7 MR. COLLINS: My name is
8 Christopher Collins, with the law firm of
9 Holland & Knight, representing the Applicant in
10 this case.

11 CHAIRMAN JORDAN: Make sure your
12 microphone is on, please.

13 MR. MCCARTHY: My name is Jim
14 McCarthy. I am chair of ANC 3G.

15 CHAIRMAN JORDAN: Yes. The next
16 person. Will you please identify yourself. Just
17 make sure your microphone is on.

18 MR. SCHUERCH: Schuerch. I live at
19 3819 Livingston Street with my wife.

20 CHAIRMAN JORDAN: Next, please.

21 MR. MESSINEO: I=m Carl Messineo.
22 I=m a property owner at 3825 Livingston Street,

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1 N.W., and opponent.

2 CHAIRMAN JORDAN: Next, please.

3 MS. HILLIARD: I'm Mara Verheyden
4 Hilliard. I'm a resident and owner of 3825
5 Livingston Street, N.W., directly adjacent.

6 CHAIRMAN JORDAN: Next, please.

7 MS. SHENK: Janet Shenk. Thank you.
8 Janet Shenk. I'm a resident and owner at 3821
9 Livingston Street, N.W.

10 CHAIRMAN JORDAN: Okay. Next,
11 please.

12 MS. MOLDENHAUER: Meridith
13 Moldenhauer of the law firm of Griffin, Murphy,
14 Moldenhauer & Wiggins on behalf of Chevy Chase
15 Arcade LLC, the adjacent property owner.

16 CHAIRMAN JORDAN: All right. Thank
17 you.

18 MS. MAGUIRE: Hi. Annemarie Maguire,
19 owner and resident, 3819 Livingston Street,
20 N.W.

21 CHAIRMAN JORDAN: Did I miss
22 something, Ms. Maguire? Oh. Yes. I do have

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1 that. Thank you. I have it. All right.

2 One second. I'm trying to catch up
3 with myself.

4 All right. Mr. Collins, let me just
5 ask a quick question. You're just requesting a
6 special exception for keeping the present use
7 with newer, additional conditions. You have not
8 made an application to the board in regards to
9 the trash storage facility; is that correct?

10 MR. COLLINS: That is correct, Mr.
11 Chairman.

12 CHAIRMAN JORDAN: All right. Thank
13 you. Need to get that clear.

14 What's not before the Board today is
15 any issue regarding the trash facility or the
16 easement with that, and in light of that,
17 Moldenhauer, I'm not allowing your client to
18 have party status in this. Your request for
19 party status centered around that issue solely,
20 besides doing a back door and trying to seek
21 relief. You can always make an application, if
22 you believe it's necessary, to receive the

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1 Board to weigh in on that particular matter. But
2 that matter=s not before us.

3 Regarding those who submitted
4 applications for party status, except for --
5 well, the other individuals who submitted
6 request for party status, unless the Applicant
7 has a concern, your filing on Friday was out of
8 time. However, I understand the reason why that
9 was done.

10 Mr. Collins, do you have any issue
11 with the Board accepting their late filing?

12 MR. COLLINS: I do not, sir.

13 MS. MOLDENHAUER: Mr. Jordan, can I
14 address your ruling.

15 CHAIRMAN JORDAN: You can; just
16 quickly.

17 MS. MOLDENHAUER: I believe it is
18 germane to the case. It=s germane to three
19 specific aspects that go to the merits of the
20 case, and are a portion of the Applicant=s
21 statement. Obviously, I understand your
22 statement that maybe we=re not. There are court

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1 cases, or Board cases, that say that we=re not
2 able to bring in issues of special exceptions
3 versus variances. That=s not what we=re doing
4 here. We=re actually addressing three aspects
5 of the Applicant=s case.

6 One. We=re addressing section
7 2014.7, which goes to the special exception
8 standard in regards to additional structures on
9 the property.

10 Two. We=re addressing 2303.1(c) of
11 the Applicant=s case in chief, and we=re also
12 addressing a condition that has been part of the
13 orders that have obviously followed this
14 property for a long time. Condition G, and then
15 later described as Condition, I believe it is,
16 9, of the conditions with regard to additional
17 structures.

18 CHAIRMAN JORDAN: Okay. I=m going
19 to deny it based upon the application that was
20 submitted at the time. Your application was
21 regarding the necessary adverse effect on the
22 perpetuation of the easement, your concern

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1 about the easement, that=s not before the
2 Board, and the second part was about the trash
3 storage and pickup. I mean, that=s what you
4 requested.

5 MS. MOLDENHAUER: But there is
6 trash storage going on on PNC=s property as
7 well.

8 CHAIRMAN JORDAN: But your
9 application was one in which to protect your
10 client=s trash storage and facility, pickup
11 facility, and you were seeking special relief
12 from the Board to issue an order to protect
13 that. I don=t find that germane to what the
14 Applicant has asked for.

15 Mr. Collins, do you want to reply?

16 MR. COLLINS: Mr. Chairman, I would
17 agree with you. The application that is before
18 the Board is for the continuation of the parking
19 lot, and we do not believe that there is a
20 property right sufficient for Chevy Chase
21 Arcade to assert a right to store trash on the
22 property, and even if there was, Mr. Chairman,

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1 we don=t want that issue tied up with our
2 parking lot special exception.

3 We have no ability to enforce the
4 trash. We have no ability to control the trash.
5 There are liability issues. There=s a host of
6 issues that -- and for all those reasons, we do
7 not want their trash issue tied in to our
8 special exception for parking.

9 CHAIRMAN JORDAN: Okay.

10 MS. MOLDENHAUER: Mr. Chairman --

11 CHAIRMAN JORDAN: I=m good. We=re
12 not going to have a debate, back and forth.
13 That=s not what my intent is today.

14 Unless the Board has an issue with
15 that, I=m going to say that -- not allow party
16 status to Chevy Chase Arcade. Any issue with
17 the Board? For the reasons stated.

18 Now to the others. That would be --
19 is it Schuerch, Messineo, Hilliard, and Shenk.
20 And Maguire. Correct? Did I believe anybody
21 out?

22 We=ll grant party status. We

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1 understand the issue here is the request for
2 after-hours use of the parking lot and et
3 cetera. What we normally do, and the reason
4 why I called this case earlier, is we require
5 the Applicant and those with party status
6 requests to have a conversation before the case
7 is called, to see if you can meet some common
8 ground and work something out.

9 It=s been very successful for the
10 Board, having people have that conversation,
11 especially at the 9th hour, before we hear the
12 case, and as we always say, it=s better for
13 people to come to agreement and work things out
14 than for the Board to do it.

15 So I=m going to ask you all to have
16 this conference. If you need the conference
17 room, I think we can make room for you to have
18 that, and we will call this case back again. And
19 just let me know.

20 But I certainly encourage each
21 party, and the Applicant, to try to work
22 together on this. I don=t know. There might be

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1 a misunderstanding or not. We've been
2 successful, I think 12 different party status
3 in a case that was very controversial, and ended
4 up working itself out.

5 So I'm going to ask that you take the
6 time and have that conversation now, please.

7 MR. MCCARTHY: And that should
8 include we five residents and home owners, and
9 the PNC --

10 CHAIRMAN JORDAN: And let me tell
11 you this. Thank you for reminding me. And I'm
12 going to consolidate all your party status
13 requests to one party, so you all will have to
14 work together because it's all the same issue
15 that you have.

16 Let me ask one other question. Is
17 your intent to put on evidence or just to make
18 a statement to the Board?

19 MS. HILLIARD: Our intention is to
20 make a statement and present evidence.

21 CHAIRMAN JORDAN: Okay. All right.
22 Then by evidence, you're going to have

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1 witnesses or exhibits, or you=re just --

2 MS. HILLIARD: Exhibits.

3 CHAIRMAN JORDAN: Okay. How many
4 exhibits do you have?

5 MS. HILLIARD: I think approximately
6 six or seven.

7 CHAIRMAN JORDAN: Okay. Well,
8 we=ll just leave it. So we have a consolidated
9 party status meeting, so in this break period,
10 besides having a conversation with the
11 Applicant, you need to decide who=s going to be
12 the lead person representing your party group,
13 and then let me know when you come back Okay?
14 Thank you.

15 All right. With that, then, let=s
16 get ready to call our public meetings. Thank
17 you very much.

18 Let=s call, collectively, 18808 and
19 18873, please.

20 MR. MOY: All right. Before I do
21 that, can I make a real quick announcement for
22 the record.

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1 CHAIRMAN JORDAN: Yes. Go ahead.

2 MR. MOY: For the record, five of
3 the scheduled applications on the docket today
4 have been rescheduled. The first application is
5 Application No. 18801 of Fort Lincoln. That has
6 been rescheduled to July 29th, 2014.

7 The second application, 18802, of
8 Newsletterman, that application has been
9 rescheduled to September 30th, 2014.

10 The third application, 18790, of
11 Jefferson LLC, has been rescheduled to October
12 21st, 2014.

13 I'm getting there, Mr. Chairman.
14 I've got two more application.

15 CHAIRMAN JORDAN: That's okay.

16 MR. MOY: Application No. 18767 of
17 Darryl R. Clark has been rescheduled to
18 September 23rd, 2014.

19 And finally, Application No. --
20 actually, it's Appeal Application No. 187943,
21 of ANC 2A, has been rescheduled to September
22 30th, 2014.

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1 So with that, Mr. Chairman, before
2 the Board is decisions on two applications on
3 the Board=s expedited review calendar.

4 The first case is Application No.
5 18783 of Vitaliy Kurbatshiy. This is for a
6 special exception under Section 223 relief.

7 The second case on this expedited
8 calendar is Application No. 18808 of Thomas
9 Trotter, also a special exception under Section
10 223.

11 CHAIRMAN JORDAN: Great. Thank
12 you, Mr. Moy.

13 Board, I=m going to move that we
14 approve the request for relief in 18808 and
15 18783, seeing that both parties -- this is on
16 our expedited docket -- both parties have
17 waived their right to -- there=s no hearing,
18 this is for decision -- and move in a
19 consolidated motion that 18808 and 18783 be
20 granted the relief requested.

21 So that=s my motion.

22 MEMBER HINKLE: I=ll second that.

1 CHAIRMAN JORDAN: Motion made and
2 seconded. Any discussion? Any issues on
3 readiness?

4 (No response.)

5 CHAIRMAN JORDAN: All those in
6 favor of the motion, signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN JORDAN: Those opposed,
9 nay.

10 (No response.)

11 The motion carries.

12 Mr. Moy.

13 MR. MOY: Yes, sir. Staff would
14 record the vote as four to zero, this on the
15 motion of Chairman Jordan to approve the
16 expedited review calendar containing two
17 applications, as cited by the Chair. Second the
18 motion, Mr. Hinkle. Also in support, Mr.
19 Anthony Hood and Ms. Marnique Heath, and we have
20 a Board member not present today. The motion
21 carries.

22 CHAIRMAN JORDAN: Thank you.

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1 Summary orders for both, individually.

2 MR. MOY: Thank you, sir.

3 CHAIRMAN JORDAN: We'll come back
4 to 18799. Let's call 18800.

5 MR. MOY: Okay. Again, in open
6 session cases, Application No. 18800 of 633
7 Park, Inc., pursuant to 11 DCMR 3103.2. Mr.
8 Chairman, this is before the Board for relief
9 from multiple variance requests. Staff would,
10 I believe -- I believe the Applicant has amended
11 the application to add rear yard relief, but I
12 think for the record, it would be convenient if
13 the Applicant restated the relief being
14 requested.

15 CHAIRMAN JORDAN: Okay. Let's get
16 started.

17 Ms. Moldenhauer, would you start
18 the identification.

19 MS. MOLDENHAUER: Good morning
20 Meridith Moldenhauer on behalf of Griffin,
21 Murphy, Moldenhauer & Wiggins. I'm here on
22 behalf of the Applicant, 633 Park,

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1 Incorporated, and I=d just like to introduce,
2 first, the individuals that we have at the table
3 with us today, before we get in to some of the
4 preliminary matters.

5 I have with me Mubashir Khan on
6 behalf of 633 Park. I also have Jim Foster on
7 behalf of Arcadia Design. Not with me at the
8 table, but here, today, also to testify or
9 answer questions, if necessary, is Tony, the
10 project construction manager, and also Amir
11 Khan --

12 CHAIRMAN JORDAN: Wait. The who?

13 MS. MOLDENHAUER: The project
14 construction manager.

15 CHAIRMAN JORDAN: The name, I mean.

16 MS. MOLDENHAUER: I=m sorry. Tony
17 Khan.

18 CHAIRMAN JORDAN: Okay. I=ve got
19 two Khans, right?

20 MS. MOLDENHAUER: Yes.

21 CHAIRMAN JORDAN: Okay.

22 MS. MOLDENHAUER: You=ll have a

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1 third one in a moment. And then Amir Khan on
2 behalf of Fairfax Realty.

3 And I guess one of the preliminary
4 matters is our late filing. We filed that in
5 response to OP=s report that we received last
6 Tuesday, and HPRB=s report that we received on
7 Friday. The team worked diligent, over the
8 weekend, to try to address some of those
9 concerns, and so we request the Board to admit
10 those late filings, which reduce the degree of
11 relief for the lot area relief based on a
12 38-unit project versus a 41-unit project. It
13 also reduces the lot occupancy relief, or the
14 lot occupancy that was being provided on the
15 site from 68 to 64 percent lot occupancy.

16 We are seeking rear yard relief, and
17 a nonconforming structure, and then also court
18 relief.

19 CHAIRMAN JORDAN: That was a
20 mouthful.

21 MS. MOLDENHAUER: Another
22 preliminary matter would be the party status,

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1 which we would oppose, but I believe we're
2 getting to that point.

3 CHAIRMAN JORDAN: Okay. Thank you.

4 A couple things. One. The Board will
5 grant the leave to file, and we appreciate you
6 taking care of it, and the basis we understand
7 completely, and why you did it, and what you
8 were looking for.

9 One thing you left off in your
10 conversation, before we get to the party status
11 issue, is that you also tendered an expert
12 witness.

13 MS. MOLDENHAUER: We did. We
14 provided the resume for Amir Khan, an expert in
15 real estate and marketing.

16 CHAIRMAN JORDAN: And I'm not going
17 to accept him as an expert. I don't believe his
18 background is sufficient enough to grant expert
19 status. Unless the Board has an issue with that,
20 then that's going to be the ruling.

21 MS. MOLDENHAUER: He'll also testify
22 just generally as to --

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1 (Simultaneous speaking.)

2 CHAIRMAN JORDAN: Regarding the
3 party status request, do we -- okay. I don=t
4 think we got everybody identifying themselves.
5 We kind a jumped ahead of ourselves, to some
6 extent, right?

7 Let me catch up again. All right. So
8 where did we leave off with identification?

9 Where did we leave off with
10 identification? How far did we get?

11 MS. MOLDENHAUER: I believe I
12 introduced my parties, personally, but if you=d
13 like them to introduce themselves --

14 CHAIRMAN JORDAN: Yes. Because you
15 were just running through it --

16 MS. MOLDENHAUER: Okay. I was going
17 fast. I=m sorry, Chairman, and members of the
18 Board.

19 CHAIRMAN JORDAN: Okay.

20 MR. FOSTER: Good morning. My name is
21 Jim Foster from Arcadia Design.

22 CHAIRMAN JORDAN: Okay.

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1 MR. M. KHAN: Good morning My name is
2 Mubashir Khan, representing 633 Park, Inc.

3 MR. BOESE: Good morning My name is
4 Ken Boese, chair of ANC 1A.

5 MR. HOLMES: Good morning. My name is
6 Bobby Holmes. I=m a ANC member, 1A-09.

7 CHAIRMAN JORDAN: 1A-09?

8 MR. HOLMES: Yes, sir.

9 MS. JONES: And I=m Judi Jones. I=m
10 a party status request.

11 CHAIRMAN JORDAN: Ms. Jones, I=m
12 not likely to grant you party status. Your
13 application submitted doesn=t meet the
14 requirements for party status. I understand you
15 have some concerns about the development.
16 You=re not required to have party status in
17 order to talk or to speak to the Board.

18 So I=ll give you that opportunity
19 when we ask for those in opposition, or et
20 cetera, to give you the time to talk about your
21 issues and the concern with the project, if
22 that=s okay with you.

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1 MS. JONES: Okay.

2 CHAIRMAN JORDAN: Okay. All right.
3 So then let=s move back around and see where we
4 are.

5 Let me go to OP, to see if there=s
6 still issues with OP on this. Ms. Elliott ,if
7 you would identify yourself, and then let=s --

8 MS. ELLIOTT: Thank you, Mr.
9 Chairman. I=m Brandice Elliott, representing
10 the D.C. Office of Planning. Our recommendation
11 was for denial, based on the pre-hearing
12 statement that we received prior to filing our
13 report.

14 There have been some changes, some
15 that may impact certain parts of the request,
16 such as the design of the building. Certainly
17 the Applicant has made an effort to push the
18 setback, to push the facade of the structure
19 back further, so it=s more in line with the
20 existing development.

21 And then they=ve also made some
22 effort to redesign the facade, so that it

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1 actually appears to look more like a row home.
2 So they've made some improvements.

3 I think that we would be interested
4 in hearing some more discussion about the need
5 for the additional density. We still have some
6 reservations, based on what we said in our
7 report.

8 In an R-4 District, this is really
9 pushing the limits of what we consider an
10 apartment building, and I'm not sure that the
11 Applicant has demonstrated the practical
12 difficulty needed for the units, and then the
13 additional relief for the rear yard and courts,
14 because it just seems that this particular
15 structure is -- it's just simply too large for
16 the site on which it's located.

17 So I think that that's where we stand
18 currently.

19 CHAIRMAN JORDAN: Okay. And are you
20 still contending that this site doesn't have an
21 exceptional condition?

22 MS. ELLIOTT: We recognize that

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1 there is some uniqueness related to the landmark
2 itself. I'm not sure that I'm on the page with
3 the Applicant concerning an exceptional
4 condition related to the addition.

5 CHAIRMAN JORDAN: Okay. All right.
6 So turning back -- thank you. Turning back to
7 the Applicant, then let's deal with those
8 issues. I think I'm pretty comfortable,
9 myself, as to what's been submitted. I have some
10 other questions on the economics.

11 But let's begin -- unless the Board
12 -- Board, is there anything else that we need
13 to drill down in? I mean, just generally on this,
14 let's hear your response to OP, in regards to
15 the areas that they cite as a concern. I think
16 that from the filings, it's clear, to me, that
17 we have the issues of the uniqueness of this
18 property, so I don't worry about spending time
19 there.

20 But why don't we address the
21 practical difficulty issues regarding the rear
22 yard and the density issue. Any other thing you

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1 want to talk about; but that=s just the Board=s
2 concern.

3 MS. MOLDENHAUER: Okay. We=ll turn,
4 then, to Mubashir Khan, and I=ll have him
5 provide a shortened version of kind of our full
6 presentation, focusing mostly on the challenges
7 of the site, and the degree of density that=s
8 required.

9 MR. M. KHAN: Okay. I guess we=re
10 starting with the presentation, right?

11 I=ll try to go as soon as possible,
12 try to save some time.

13 Again, just to the background, I=ve
14 been doing development in Washington, D.C. for
15 ten-plus years, and I=ve done development from
16 single-family houses to multi-family, and
17 rowhouses, duplexes. That=s the front of the
18 project.

19 Okay. Now on the screen, this is
20 where our property=s located, 625 Park Road, and
21 as you can see, it=s just east of Georgia Avenue
22 commercial corridor, and it=s in very close

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1 proximity to Petworth Metro Station, which is
2 just hardly three blocks, and there are three
3 bus routes on Georgia, bus stops on Georgia,
4 which are really a walkable distance from this
5 property, and there=s a lot of public
6 transportation, car-share, and Capital Bike
7 stations, et cetera. That kind of
8 transportation is enough there.

9 Can you move on to the next one.

10 CHAIRMAN JORDAN: Please. Just give
11 us one second.

12 MR. M. KHAN: Yes. Turn off the
13 lights. I would appreciate that. Thank you.

14 Okay. This is the front of the
15 property. As you can see, that the historic
16 church is there, and just to give you a little
17 background on the property. I purchased this
18 property back in April of 2013, and at that time
19 this property was in the market for six to nine
20 months before I submitted my contract, so --

21 CHAIRMAN JORDAN: Six --

22 MR. M. KHAN: Six to nine months.

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1 CHAIRMAN JORDAN: Six to nine
2 months. Okay.

3 MR. M. KHAN: Six to nine months, and
4 so basically I had the property under contract
5 in January or February of 2013, and I closed in
6 April 2013. And there was a existing church who
7 wants to move to the new location in Maryland.
8 They already purchased the property, under
9 contract, and they want to move there, and so
10 they were looking to sell this property and move
11 to their new location.

12 So they already had reduced the
13 services, and before I took over the property,
14 they already moved their entire services and
15 offices there to the new location in Maryland.

16 Okay. After I purchased the property
17 in April 2013, we just did the regular, what we
18 did -- our civil plans, mechanical plans,
19 architectural plans, all that stuff for DCRA for
20 permitting. It took us another three-four
21 months, and then we submitted our building
22 permits in August of 2013, and we also got our

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1 demo permit in June of 2013. And since then, my
2 permit expeditors, my engineers, and
3 architects, were working back and forth with
4 DCRA to try and get the building permit.

5 And after almost a one year hard
6 work, in February of 2014, this, when we were
7 almost, very close to getting our building
8 permit as a matter of right. Now I would like
9 to mention here that I purchased this property
10 to do a development as a matter of right.

11 It was never my desire to come to DC
12 -- seeking relief. So that=s why -- that=s what
13 we did with their plans, asked for a matter of
14 right, and we submitted that plans and asked for
15 a matter of right. And as I said, after almost
16 one year working with DCRA, in February 2014,
17 we were surprised and shocked that there was a
18 landmark application filed for this property,
19 when we were almost 90 percent close to our
20 building permit, and due to that landmark
21 application --

22 CHAIRMAN JORDAN: Did you know who

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1 filed that?

2 MR. M. KHAN: I'm sorry?

3 CHAIRMAN JORDAN: Who filed that?

4 MR. M. KHAN: There was a historic
5 organization who filed this landmark
6 application and due to that --

7 CHAIRMAN JORDAN: I need for the
8 record. Identify who -- respond to the
9 question.

10 MR. M. KHAN: Okay. Sorry.

11 MR. BOESE: I wrote the nomination
12 and filed it. My name is Kent Boese. It was filed
13 through Historic Washington Architecture.

14 CHAIRMAN JORDAN: Very good. Thank
15 you. All right.

16 MR. M. KHAN: Okay. And after that,
17 of course our building permit was stopped, and
18 the potential of the lot was reduced for
19 development, and so after that we -- right after
20 that landmark application, I went back to Office
21 of Planning, I met Mr. Joel Lawson, and Mr. David
22 Maloy, and investigated this, talked about

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1 this, and basically because of this now, our
2 developmental opportunities are reduced.

3 Can we go to next slide. I'm sorry.
4 Okay. Okay.

5 So on this feature land use map, as
6 you can see, this property is very uniquely
7 located on the edge of two high-density zones.
8 On the east of it, we have Georgia Avenue
9 commercial corridor, and in front of the same
10 block, across the street, we have this higher
11 density R-4 zoned district where there are a lot
12 of apartment buildings.

13 And we happen to be on the moderate
14 density side of the block. And as I said, I
15 discussed this opportunity with Mr. Joel Lawson
16 in Office of Planning, and we were initially
17 talking about even doing a PUD on this project,
18 but after -- we did little bit work on that as
19 well -- but after a couple of weeks, we figured
20 out that the property is not big enough for PUD.
21 So that=s why we are here, in front of the Board,
22 seeking for relief.

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1 This is zoning map, and as you can
2 see again, it=s very close to -- the property
3 is literally like three-four lots away from
4 Georgia Avenue corridor, and right in front of
5 the higher-density zone of the property, of the
6 block.

7 Okay. About the character of the
8 neighborhood. We are in a mixed block where
9 there are a lot of apartment buildings already
10 there. We have a few townhouses in the same block
11 as well. We have like 601 Park Road, which is
12 a 22-unit property in that same square. We have
13 608-610 Newton Place, which is 12 units. 636
14 Newton, 23 units. 636 Newton Place, 13 units.
15 648 Newton Place, four units. And still in front
16 of us, there=s a big development of Park, more
17 than -- which is existing 174 units, and where
18 a new development is coming up for 500-plus
19 units right in the same block. And this one,
20 as you can see that our property=s already
21 located in --

22 CHAIRMAN JORDAN: Can you get to the

1 point, the issue that we've been talking about.
2 We don't need to do the --

3 MR. M. KHAN: Okay.

4 CHAIRMAN JORDAN: We went through
5 the full presentation. We're trying to get to
6 these issues.

7 MR. M. KHAN: Okay. Okay. Now, on
8 this one, we've been delayed, we believe --
9 we've been delayed on this project to historic
10 landmark status, at least 18 to 24 months, and
11 after that now we -- and I would like to mention
12 again -- we are not contract purchaser on the
13 property, we did not buy the property on
14 condition to seek relief from BZA. We own the
15 property and we bought the property as a matter
16 of right development, but which, unfortunately,
17 is not possible any more.

18 And now with this thing all our
19 previous design, everything is pretty much gone
20 to drain, and we can't use those previous plans
21 now. We have to restart our building permit
22 processes. We have to restart all of our

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1 construction documents, MEP plans, all that
2 good stuff, and the permitting process, not to
3 forget DCRA takes forever to permit that.

4 And now on top of ten or twelve
5 disciplines from DCRA, now we have to face HPRB,
6 who will review this project again as well. So
7 there=s more, again, the permitting process,
8 and other than permitting, now we have to hire
9 specialized labor and materials.

10 CHAIRMAN JORDAN: Let me go back one
11 more time, and try to get to our practical
12 difficulty dealing with --

13 MS. MOLDENHAUER: This is just
14 leading the way for the financial aspect. The
15 delay causes the additional, some of the
16 additional practical difficulty here, due to
17 the unforeseen landmark application at the time
18 that he purchased the property.

19 So this is just providing additional
20 information about that.

21 CHAIRMAN JORDAN: Okay. So your
22 contention that the additional density is

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1 necessary because your cost has gone up?

2 MR. M. KHAN: Right. That is one of
3 them.

4 CHAIRMAN JORDAN: That=s kind of
5 what we=re trying to get to. I mean, we don=t
6 need to take the slow boat to China. I mean, come
7 on. That=s --

8 MR. M. KHAN: Okay.

9 MS. MOLDENHAUER: Why don=t we just
10 go ahead and go -- if we want to walk through
11 the financial hardship in regard to the pro
12 forma.

13 CHAIRMAN JORDAN: We=ve been
14 talking now, what? 15 minutes, and that=s the
15 kind a stuff we could get to and just deal with
16 --

17 MR. M. KHAN: Okay. Okay. So now a
18 project that fully complies with zoning
19 requirements would be economically infeasible.
20 Investment required is substantial due to
21 existing conditions of the property,
22 profit-loss analysis submitted to the Board

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1 shows the infeasibility of alternatives.
2 Compliance with the lot area requirement would
3 result in a practical difficulty.

4 And now here is the original intent
5 to develop this property as matter of right. On
6 the left, you can see that the 18 units prior
7 to landmark develop -- prior to landmark status.
8 We were trying to get a rate of return was 12.4
9 percent, and the project would have taken 2.5
10 years, and we could have developed 43,298 square
11 foot as a matter of right.

12 On the right, you can see now 18
13 units with landmark, and as you can see, that
14 the rate of return is now negative 17 percent.

15 So with the existing structures,
16 with the landmark structure there, the matter
17 of right is not even a feasible option. And the
18 reason is because there is a structure --as you
19 can see, that with the landmark situation --
20 it=s going to take us another four years to
21 complete now because we=ve been delayed, and now
22 there=s additional architectural fees, and

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1 other costs related to that.

2 Now, our prior design was very
3 efficient, but now with the new design, we're
4 losing a lot of space in the common staircase,
5 common hallways, and both wings, or both
6 sections of the building, and that causes us
7 drastically -- and plus we have to retain the
8 existing building. We have to keep the existing
9 building as well.

10 MS. MOLDENHAUER: Can you just
11 describe for the Board, just briefly, how you
12 were originally going to develop the project,
13 mean actually explain why a landmark
14 application was then filed.

15 MR. M. KHAN: Okay. Right. Original
16 intent was to develop as a matter of right,
17 apartment building, 18-unit apartment
18 building, duplex apartments, and very efficient
19 design, pretty much with no common hallways, and
20 units were having their own individual
21 entrances, and basically that was the design
22 originally we had. It was basic construction.

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1 Majority of that was new
2 construction. We were keeping existing walls of
3 the church building, but now that=s not possible
4 anymore.

5 MS. MOLDENHAUER: What walls were
6 you doing to demolish?

7 MR. M. KHAN: We were going to
8 demolish the front, but we were keeping some
9 sidewalls, as well, to make --

10 CHAIRMAN JORDAN: So that
11 encouraged -- or excited the landmark
12 designation?

13 MR. KHAN: Right.

14 CHAIRMAN JORDAN: Okay. I guess it
15 would.

16 MR. KHAN: Okay. Okay. Now, in this
17 scenario -- to your right, you can see that
18 41-unit scenario, which was filed with BZ
19 application and we were pretty much getting the
20 same kind of return of 12.9 percent as matter
21 of right originally. But this was prior we got
22 the OP report.

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1 But last week, when we received the
2 OP report, and HPRB, we went back over the
3 weekend and we worked very hard to address those
4 concerns, and we reduced our setbacks. We pushed
5 the building back, and now we have smaller
6 addition, and we are reducing unit size to 38,
7 and now our returns are even decreased to 11.3
8 percent, and -- but we want to consider -- we
9 want to make sure we work with all parties.

10 CHAIRMAN JORDAN: Let me ask you, in
11 your figures, your warranty bond seems to go
12 down. It=s less. I don=t know if there=s an error
13 or what. If you look at the 18 years on your
14 warranty bonds, 34 units, and 38 units on your
15 warranty bond, the cost -- you kind a lost me
16 on the cost.

17 MR. M. KHAN: Warranty bond is a 10
18 percent bond. Is that what you=re talking about?

19 CHAIRMAN JORDAN: Yes. The warranty
20 bond. It=s not major. I was just trying to follow
21 your financing --

22 MS. MOLDENHAUER: It goes -- it=s

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1 the number of units, so --

2 CHAIRMAN JORDAN: Right. So as the
3 units go up --

4 MS. MOLDENHAUER: And it produces
5 --

6 CHAIRMAN JORDAN: The units are
7 reduced? It didn't reduce between 18 and 30 --

8 MS. MOLDENHAUER: It went from 6.18
9 to 5.56. So it went down.

10 MR. M. KHAN: Right.

11 CHAIRMAN JORDAN: What am I looking
12 at? For 18units, I see a warranty bond of 5.77,
13 right?

14 MR. M. KHAN: That=s 10 percent of
15 the construction cost, which --

16 CHAIRMAN JORDAN: Okay. And then I
17 see a warranty bond on 34 units at 5.97.

18 MR. M. KHAN: Right. That=s the 10
19 percent of the construction costs.

20 MS. MOLDENHAUER: It=s not the
21 units. It=s construction costs. It=s hard costs
22 for construction costs.

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1 MR. M. KHAN: Because that=s where
2 the D.C. government asked us to hold that.

3 CHAIRMAN JORDAN: Okay. But your
4 construction costs goes up slightly a bit as you
5 get more units, correct?

6 MR. M. KHAN: Right. The
7 construction cost goes higher.

8 CHAIRMAN JORDAN: Okay. Now, if we
9 look at the warranty bond for 38 units. Your
10 warranty bond is less than it was for 34 units,
11 and less than what it was for 18 units. Am I
12 wrong? Am I seeing something not correct?

13 MR. M. KHAN: Now, let me see the 34
14 units. I don=t have. Give me one second.

15 CHAIRMAN JORDAN: I mean, I might be
16 seeing something --

17 MR. M. KHAN: Okay. Here. Oh, I
18 don=t have -- do you have that, Eric?

19 MS. MOLDENHAUER: Can I ask you to
20 turn the lights on because I=m trying to read,
21 and I can=t read the numbers. I=m sorry.

22 Thank you.

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1 MR. M. KHAN: Okay. 34 units. Let=s
2 see. 34 units. You know, for the 34 units, the
3 warranty bond is 597,647.

4 CHAIRMAN JORDAN: All right. For 38
5 units, what is it?

6 MR. M. KHAN: Oh, that=s a error then.

7 CHAIRMAN JORDAN: That=s what I was
8 getting at with my initial question.

9 MR. M. KHAN: I=m sorry about that.
10 I=m sorry about that.

11 CHAIRMAN JORDAN: Okay. We were
12 trying to get on the same page. I was like, oh
13 -- we actually do look at these financials.

14 MR. KHAN: No, actually -- then I=m
15 sorry. I=m sorry. It=s not error.

16 CHAIRMAN JORDAN: It=s not error?

17 MR. M. KHAN: Sorry about that.
18 Because 34 units was designed with last week=s
19 proposal of bigger scale. But now we went back
20 last weekend, and just reduced the building.

21 So now if you see that, the -- yes,
22 the building is now reduced to 37,630 square

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1 feet, and 38 units in area.

2 CHAIRMAN JORDAN: Okay.

3 MR. M. KHAN: So we created a new
4 scenario over the weekend for 38 units. The 41
5 units and 34 units were there before also. So
6 we did not touch those scenario. We just
7 inserted a new scenario of 38 units. So now we
8 have a smaller building. We have less square
9 feet. Now we=re developing a building of 37,000
10 square feet.

11 MS. MOLDENHAUER: I think that the
12 numbers are actually skewed but the reality is
13 -- I think the assumption that is incorrect here
14 is the fact that the 38 unit is the current
15 proposed physical structure of the building,
16 which has the reduced setback, which obviously
17 has less structural material as a smaller
18 building. But the 34 and 41 unit scenarios are
19 based on the original plan, which was a larger
20 building --

21 CHAIRMAN JORDAN: More
22 construction.

1 MS. MOLDENHAUER: Yes.

2 MR. M. KHAN: Right. And 34 unit,
3 you can see that --

4 CHAIRMAN JORDAN: It doesn't
5 follow, though. But anyway, let's go on. It's
6 significant. I was just trying to make --

7 MR. M. KHAN: On 34 units, you can see
8 that construction costs -- 41,000 square feet.
9 Okay.

10 CHAIRMAN JORDAN: Got it. Okay.

11 MR. M. KHAN: Okay. That's fine.
12 Sorry.

13 MS. MOLDENHAUER: Just go ahead and
14 address the overall concept of the practical
15 difficulty --

16 MR. KHAN: Okay. So basically -- and
17 at the end, I would like to say that we did
18 extensive outreach to community, and we have
19 developed the units which are more
20 appropriately sized, and we kept a footprint,
21 height, and exterior of the church will remain
22 unchanged, which is a landmark now, and so --

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1 and this, we are converting in to diverse
2 housing stock as well, and also like -- I met
3 Ms. Jones who=s in party status, three-four
4 times, and we had very fruitful discussions, and
5 I listened to her concerns, and I tried to work
6 with her as well.

7 And we also have this unanimous
8 support from ANC, and we have 29 letters of
9 support, including both neighbors, and from the
10 front of the property as well.

11 MS. MOLDENHAUER: Mr. Khan is
12 available for any question on the financials,
13 or we can jump in to some of the architectural
14 issues regarding the specific kind of --

15 CHAIRMAN JORDAN: Yes, go ahead.

16 MS. MOLDENHAUER: So I=ll turn now
17 to --

18 CHAIRMAN JORDAN: Well, let me --
19 first, let me -- Board, any questions of Mr. Khan
20 based on what we=ve heard?

21 (No response.)

22 CHAIRMAN JORDAN: Okay.

1 MR. M. KHAN: Thank you.

2 CHAIRMAN JORDAN: You=re going to
3 addressing the rear yard?

4 MR. FOSTER: Yes.

5 CHAIRMAN JORDAN: Okay.

6 MR. FOSTER: Good morning. My name
7 is Jim Foster, again, from Arcadia. I was
8 brought in only recently by the Applicant to
9 assist in resolving the design constraints
10 imposed by the new landmark status, and after
11 considerable interaction with OP, and ANC,
12 various neighborhood entities, we=ve developed
13 what we hope you=ll see is a proposal that
14 responds to the intricate requirements of the
15 existing conditions and historic character of
16 the site.

17 The project I think that we
18 basically covered is a 38-unit building,
19 overall, which we recently reduced from 41
20 units.

21 It=s comprised of 12 units in the
22 original church, five in the cellar, and then

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1 in the original sanctuary, we have seven
2 two-story units. And then we've separated the
3 proposed addition from the church by a 12 foot
4 open court, and that's attached to the church
5 with a connector that we placed at the far rear
6 of the property to relieve it from the facade
7 and not make it visible because of the landmark
8 status, which essentially forces us to not have
9 a rear yard, because that connector has to be
10 at the back, right on the property line of the
11 existing church, and then it needs to connect
12 in to our new addition.

13 So therefore, the addition has to be
14 essentially the existing rear facade of the
15 church.

16 MS. MOLDENHAUER: Can you describe
17 to the Board the issue of where the door and the
18 windows are located, as to why that connector
19 has to be located where it is.

20 MR. FOSTER: Yes. If you've seen
21 elevations of the side of the church, there's
22 these tall windows on the west facade, and in

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1 order to get the connector to work and not impede
2 the visual of the original windows, the last
3 window closest to the alley, actually, the
4 existing window has a higher sill, and it=s just
5 enough room, that we were able to insert the
6 connector underneath the sill of that window,
7 so it doesn=t affect any of the original
8 openings in the church structure.

9 And then that connection has a door
10 from the addition through and in to the church
11 structure.

12 Should we skip to like whatever the
13 site plan then, on whatever? This slide actually
14 shows -- it=s basically a schematic. The gray
15 box to the right is the existing church. In
16 between is the 12 foot court. You can see the
17 connector at the top, and the structure to the
18 left is the new addition.

19 It=s kind a hard to see in the light,
20 but the green area around all of that, to the
21 east of the sanctuary, in between, in front of
22 the church and in front of the new structure,

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1 is almost 34 percent of the lot is given over
2 to greenspace, to maintain the integrity of the
3 visual relation of the historic facade to the
4 street.

5 And we, as we've already noted, we
6 pushed the front facade back even further than
7 our original proposal. The third floor is pushed
8 20 feet back from the front property line, which
9 aligns with the adjacent, facades of the
10 adjacent rowhouses. That was an additional, I
11 think, 14 feet further back than it was before.

12 The first and second floor of the
13 building was pushed back an additional six feet,
14 so it now only projects six feet past the facades
15 of the adjacent rowhouses.

16 And then we have three bay windows
17 that their faces now align with the front
18 porches of the adjacent rowhouses, which,
19 initially, they projected several feet past
20 that.

21 MS. MOLDENHAUER: Can I ask you a
22 question, staying on the prior slide. Did you

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1 have conversations with Historic Preservation
2 staff about being able to connect after the
3 landmark had been applied for? About being able
4 to connect the addition more substantially to
5 the side of the church?

6 MR. FOSTER: I specifically had a
7 conversation with Tim Dennee at HPRB, and they
8 were, I can only say, vehemently opposed to us
9 doing any substantial connection to the west
10 facade of the church, that would in any way
11 impact the original masonry openings, which
12 constitute almost the entire width of the
13 facade.

14 CHAIRMAN JORDAN: Yes. Didn't they
15 have something like that in their report? I
16 thought I might have seen --

17 MR. FOSTER: Yes. He was very, very
18 adamant about us not altering any of those
19 openings, whatsoever, on the side facade.

20 So it=s forced us to locate the
21 addition tight to the west side of the property
22 and create the open space in between, and

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1 around, and in front, and has basically caused
2 the addition to be long and narrow, which has
3 practical implications with efficiency of floor
4 plan layouts, cost of construction because
5 there=s additional exterior wall, in stepping
6 back the facades. We have a lot of additional
7 construction because of transfer beams to
8 change the facade. We have a lot of underpinning
9 to do on the left-hand side of the structure
10 where we abut the existing townhouses.

11 We have to shore under the western
12 property line, which we practically wouldn=t
13 have to do if we could build a new building in
14 the center of the lot that was square and simple.
15 We could have a side yard and reduce those costs
16 significantly.

17 This drawing shows, because of the
18 skinniness of the building, essentially, the
19 units in -- we have to have a closed court on
20 the west side to get light and air in to our
21 units, and that=s obviously one of the
22 conditions we=re talking about here.

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1 That closed court essentially even
2 makes the center of the building even skinnier,
3 and makes it really difficult to do unit
4 layouts. If we were to make it the 15 feet that=s
5 generally required to get our minimum size, the
6 center of the building would almost be
7 undesignable as a floor plan layout.

8 What I=m showing in this scheme is
9 a straight hallway that would go through, if we
10 -- and you can see on the left, the units are
11 only about eight or nine feet deep, and I would
12 be forced to jog the hallway to create more
13 balance in the center units, and even then, my
14 unit layouts are only about 15 to 17 feet,
15 which is pretty small, and now I have a very
16 circuitous long, snaky hallway, that then also
17 eats up more of my core factor and efficiency
18 factor from the design of the building.

19 Also this might show as well, that
20 we have two staircases. This building would, by
21 matter of right, be a single egress building for
22 its size, but because of the length of the floor

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1 plan, we=re concerned that we=re going to have
2 an issue with fire egress, for length of travel
3 from a remote bedroom to a required exit.

4 So that we do believe that we=re
5 going to have to have two staircases in the
6 addition, as opposed to what we would do if we
7 had a smaller, or a more efficient square, floor
8 plan, with shorter hallways, that we would
9 probably not need to have the second stair.

10 MS. MOLDENHAUER: So instead of
11 potentially one stair, you actually now have
12 three stairs?

13 MR. FOSTER: We still have a stair.
14 Well, what we did in the church, by the way,
15 because of the -- there are complications with
16 the church building itself. The windows on the
17 side facades are quite tall on the lower part,
18 and then there are these little, very small
19 crescent windows on top.

20 On the front of the building there
21 are even taller windows, but the sill lines of
22 those windows don=t match the sill lines on the

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1 side windows. And so in order for us to insert
2 a floor in to this building, in order to have
3 two floors of space, of units, we originally had
4 a first floor with a floor, and then a second
5 floor with a stair connecting the two floors.

6 But because of the complication, and
7 the implications of how that floor would impact
8 the windows, and the first floor would have very
9 tall grand windows, but the second floor would
10 have these little teeny squishy windows on the
11 top that were almost impossible to retrofit to
12 provide fire egress by the code.

13 So what we came up with was a concept
14 to make seven two-story units in the original
15 sanctuary, so that every unit has the big window
16 and the little window, and the front unit is two
17 stories, so I don't have the problem inserting
18 a floor where these tall windows are. The
19 problem with that is I now have seven staircases
20 instead of one staircase.

21 Now I'm at a little bit of advantage
22 because you have the stair is now up in the unit,

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1 it can be sold as the unit square footage.
2 However, we have about a 1,000 square foot loss
3 of efficiency in the floor plate because of the
4 open space required inside the unit to connect
5 the two floors of a unit.

6 So it was about a 1,000 square foot
7 hit on our floor plate efficiency.

8 MS. MOLDENHAUER: Can you now go to
9 the renderings and talk about how we've
10 addressed some of OP=s --

11 MR. FOSTER: Yes. This rendering,
12 obviously from across the street, the upper one
13 shows that -- and I don=t know if you remember,
14 or have, you know, available to you the
15 original proposal we had submitted just last
16 week, I guess. These were just done over the
17 weekend.

18 But starting from the top -- or I'll
19 start from the bottom. We added three doorways
20 to the street. We already have the three bays.
21 And we had, and still have, a common entry off
22 of the courtyard in to the center of the building

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1 for a common core. But what we did then was we
2 put entrances to the first floor units from Park
3 Road, with stoops up to the door, so it sort of
4 mirrors the rhythm of the stoops on the adjacent
5 townhouses.

6 In changing the setback, the
7 original bays were only two feet deep, because
8 the front facade of the first and second floor
9 was further forward.

10 In pulling that back, and even
11 pulling the bays back a little bit more, the bays
12 now are four feet deep, which enabled me to put
13 glass not only on the front but the sides as
14 well, which I believe makes them look a little
15 lighter and more delicate facing the sidewalk.

16 Then we go up to the second floor.
17 The top of the second floor, the bays are even
18 further articulated, and the roofs of the bays
19 are dropped down below the third floor line, to
20 sort of give that line a little resolution as
21 well.

22 Then the third floor steps back a

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1 full 10 feet, so that the front face of the third
2 floor is 20 feet back from the property line and
3 aligns with all of the adjacent rowhouses.

4 And then beyond that, the mezzanine
5 is set back I believe another 20 feet, or so,
6 beyond that.

7 The third floor, as it wraps around
8 on the east side, steps back, as it did before,
9 two feet from the side facade of the first and
10 second floor, and then the mezzanine, also
11 there, steps back, I think about 14 feet or so,
12 I forget the exact number, from the side facade.

13 I think it shows up in a section
14 some place. We do have roof terraces off of the
15 mezzanine, and those, the railing that forms the
16 edge of the terraces is also set back an
17 additional three feet from the face of the third
18 floor.

19 MS. MOLDENHAUER: Can you speak a
20 little bit about the material, and the
21 additional practical difficulty that may be
22 caused by both aspects of the building having

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1 to go through Historic Preservation.

2 MR. FOSTER: Yes. In speaking back
3 toward the church itself, we obviously have
4 costs associated, as you might imagine, with the
5 restoration of the existing structure.

6 All of the original masonry openings
7 have to be maintained, and because all --
8 really, none of the existing windows would meet
9 the various codes that we're going to be forced
10 to address. So we're going to have to replace,
11 or retrofit all of the window openings, in order
12 to comply with and be compatible with the
13 Historic Preservation issues, and the landmark
14 status of the building.

15 There's a lot of intricate detailed
16 brickwork on the facade. The stepped profiles,
17 the flashing details. There's a lot of -- the
18 renderings don't quite show it, but if you look
19 at the photographs, there are a lot of arched
20 headers in rowlock brick that are -- some need
21 a lot of repointing and attention, and there's
22 going to be quite a lot of cost with that.

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1 And then on the side facade, we have
2 the same issue with the little crescent windows
3 that we have to retrofit to make them fire egress
4 windows, which is going to be quite costly.

5 The interior of the church, in
6 addition to the things I mentioned about loss
7 of efficiency of the floor plans, we also -- the
8 existing structure is, as you might imagine,
9 pretty wonky, if you will. The sanctuary has a
10 raked floor, It goes from about three feet down
11 from the front to the back, in a stadium effect
12 in the sanctuary, rather uncommon, in my
13 opinion, and so because of that, the entire
14 first floor of the structure is going to have
15 to be removed, and of course we're putting in
16 second floors for some of the units as well.

17 All of that structure has to be
18 interlaced and integrated with the existing
19 structure, which isn't true, in the sense that
20 the building is not square from front to back,
21 or side to side, so that inserting these new
22 floors is not going to be a matter of just

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1 throwing in some joists. They=re going to all
2 have to be custom cut and custom sized, at great
3 labor and expense.

4 In addition, all of the structure is
5 out of square, so any new framing or drywalling,
6 or finishing on the inside of the church is going
7 to be rather -- really, in any renovation or
8 restoration, that=s typical, but in here,
9 especially so because of the deterioration of
10 the existing structure and the fact that it=s
11 settled oddly, and has this kind of trapezoid
12 shape in the plan now.

13 The new addition, you know, within
14 reason, costs what it costs, but because we=ve
15 made every attempt possible to mitigate the
16 size, and make it contextual with the block and
17 with the church, I do believe there are some
18 practical costs greater than a building of
19 comparable size would be that didn=t have these
20 issues to deal with, namely, changing the brick,
21 changing the brick pattern, and stepping the
22 floors back, creating the aby windows, and all

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1 the variables that we've done to sort of reduce
2 the bulk and mass of the building, will add cost
3 to, you know, creating facades in the
4 structure.

5 In addition, like we mentioned
6 before, the very shape of the building will be
7 more because a square would be so many linear
8 cubic feet of construction, whereas a long,
9 skinny box actually numbers to that.

10 MS. MOLDENHAUER: Thank you very
11 much. That concludes our presentation from
12 individuals. I'll just simply summarize and
13 kind of identify how I think that the testimony
14 has satisfied the standards. As indicated --

15 CHAIRMAN JORDAN: I think we might
16 be good with that. Unless the Board has any other
17 questions or issues, I think we followed quite
18 clearly, we understand, and I don't think you
19 have to summarize it. I think we're okay.

20 MS. MOLDENHAUER: Okay. Unless --

21 CHAIRMAN JORDAN: Unless -- you
22 know, we may come back in rebuttal, when we go

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1 to OP and see if there=s still some issues.

2 MS. MOLDENHAUER: I=ll reserve, if
3 there=s any comments or questions then. Thank
4 you.

5 CHAIRMAN JORDAN: Board, any
6 additional questions of the Applicant?

7 (No response.)

8 CHAIRMAN JORDAN: Let=s then turn
9 to OP, and see if there=s some additional
10 information that you want to provide us, or
11 discussion regarding what you just heard.

12 MS. ELLIOTT: Thank you., Mr.
13 Chairman. I think overall, our position is that
14 we=re uneasy about the density in the R-4
15 District, and that the purpose of the R-4 is to
16 preserve row dwellings, create, you know, a
17 different type of housing. That being said, Mr.
18 Foster did present some compelling statements
19 concerning the need for the additional relief.
20 Should the Board decide to approve this, we
21 would support the relief that has been
22 requested.

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1 CHAIRMAN JORDAN: Okay. It=s like
2 policy, I=m supposed to say this; however, I
3 understand why we don=t do it.

4 MS. ELLIOTT: I=m giving -- I=m
5 throwing out the options.

6 CHAIRMAN JORDAN: I got it. I got
7 you. No. We=re good. We=re good.

8 MS. ELLIOTT: Our issue is with the
9 third prong of the variance test, and we=re not
10 sure that the integrity of the regulation s is
11 actually being upheld with this particular
12 request, given the density that=s been asked
13 for.

14 COMMISSIONER HOOD: Mr. Chairman.

15 CHAIRMAN JORDAN: Yes, Mr. Hood?

16 COMMISSIONER HOOD: I also have
17 some concerns, as Ms. Elliott has already
18 mentioned. Not Ms. Elliott. Did I get your name
19 wrong? Did I say it right this time?

20 MS. MOLDENHAUER: You got it right.

21 COMMISSIONER HOOD: Got it right
22 for a change. I usually get it mixed up. But

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1 anyway, I=m just concerned, though. I think Ms.
2 Elliott, if you -- and I thought about this
3 earlier, but I don=t want to come to BZA and take
4 over. I=m just curious. I noted you=re being
5 asked, on the spot, about it, and I=m not sure
6 which way the chairman is going.

7 But I=m just curious. Would you need
8 some more time to make, kind of analyze exactly
9 what you heard, and have a little more ease
10 with the third prong? Because I do have an issue
11 with the integrity and the character.

12 MS. ELLIOTT: Sure. I would be happy
13 to share some additional information.

14 The statement that was filed
15 yesterday did identify other apartments that
16 were located in this neighborhood. And so I
17 briefly looked at those, just to see what kind
18 of density they were providing. Now granted, in
19 this case, they=re all built pre-1958. So, you
20 know, it=s not a, you know, quite up to the bar
21 of what we would expect today.

22 But they all generally have a lower

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1 density than what=s being requested in this
2 case. Park Morton is a little bit interesting.
3 I don=t know that I want to spend a whole lot
4 of time on it, But that particular development
5 is providing 856 square feet per unit.

6 636 Newton Place. That was
7 constructed in 1951, and currently provides 23
8 units. That is the only exception, where it=s
9 providing less -- excuse me -- more density than
10 this project, at 395 square feet per unit. but
11 the other ones, one of them comes in at 827
12 square feet. And then there=s the next lowest,
13 which is 480 square feet per unit.

14 And so I think when you compare it
15 with what=s going on in this neighborhood, this
16 is still a little bit higher density.

17 I think that we could get to a point
18 where we could support more units than what the
19 regulations would allow on this lot. But I think
20 that that number would come to, closer, to
21 about 30 units, allowing the 18 units in the
22 church conversion, or the 15, if the Applicant

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1 prefers. But then more of a row home style
2 development on the remainder of the lot, where
3 each row dwelling would have two units.

4 COMMISSIONER HOOD: Okay. Thank
5 you.

6 CHAIRMAN JORDAN: Okay. So you
7 suggest that there can still be a smaller
8 footprint, and with the addition of some
9 rowhouses accompanying the property. Is that
10 correct?

11 MS. ELLIOTT: Right. Our initial
12 thought, what we were kind of hoping when we came
13 across this, when this was submitted, was that
14 the church would be converted, and then the
15 remainder of the lot would be split in to
16 conforming R-4 lots, and then each one could be
17 developed as a row dwelling that would support
18 a flat. I mean, ideally, I think we can work with
19 what the Applicant has produced so far. We
20 would just prefer to see fewer units, closer to
21 about thirty, which is what would be achieved,
22 had that lot been divided in row dwellings.

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1 CHAIRMAN JORDAN: How many row
2 dwellings?

3 MS. ELLIOTT: By our calculations,
4 there would be room for six lots that would
5 conform to the R-4 District, at most, so there
6 may be some --

7 CHAIRMAN JORDAN: Well, but --

8 MS. ELLIOTT: I said "at most." So
9 --

10 CHAIRMAN JORDAN: And then how do we
11 get it financed? And what=s the numbers on that
12 from the projections that OP may have performed
13 regarding the alternative?

14 MS. ELLIOTT: I=m sorry. The
15 numbers?

16 CHAIRMAN JORDAN: Yes. What=s the
17 cost of doing 30 units and then subdividing for
18 six lots to be row houses.

19 MS. ELLIOTT: Well, certainly, we
20 didn=t conduct our own pro forma.

21 CHAIRMAN JORDAN: Okay. All right.
22 Any other questions?

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1 MEMBER HINKLE: Mr. Chair.

2 CHAIRMAN JORDAN: Yes?

3 MEMBER HEATH: Park Morton. That=s
4 across the street. Is that slated to be
5 redeveloped?

6 CHAIRMAN JORDAN: Can the
7 Department speak to that.

8 MS. ELLIOTT: There are some -- I
9 can=t speak to the details, because honestly,
10 it is going to cross many agencies at a very --
11 at a higher level than what I=m privy to. But
12 yes, at some point, it is intended to be
13 redeveloped.

14 MEMBER HINKLE: And what=s the
15 projected density of that?

16 MS. ELLIOTT: I don=t believe that
17 there=s a plan --

18 MS. MOLDENHAUER: We=re passing out
19 a copy of a proposed --

20 MS. ELLIOTT: Okay.

21 CHAIRMAN JORDAN: You said
22 something. I just lost my question. Any other

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1 questions of OP?

2 (No response.)

3 CHAIRMAN JORDAN: Does the
4 Applicant have questions of OP? Please.

5 MS. MOLDENHAUER: I do. Thank you.
6 I'm passing out copies of the Park Morton
7 project and they were proposing, I don't know,
8 477 units. Does that sound like the size of the
9 project that they're proposing?

10 (No response.)

11 MS. MOLDENHAUER: I'm passing out
12 copies of it. That's fine. In calculating --
13 actually, I'll have our architect talk about the
14 six lots. Did you consider a requirement of
15 having street frontage and the minimum width
16 requirements for determining the ability to get
17 to six lots?

18 MS. ELLIOTT: WE simply just
19 conducted some rudimentary measurements, and so
20 that's why we said "at most, six lots."

21 MS. MOLDENHAUER: And were you also
22 then proposing, potentially, to build right up

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1 against the face of the face of the church? The
2 width of the church would have to be -- or any
3 proposed lots would have to be pulled away from
4 the church.

5 Were you calculating the entire
6 width of the lot minus the church facade?

7 MS. ELLIOTT: No. In that case we
8 didn't.

9 MS. MOLDENHAUER: So you did not
10 consider, then, the need for HPRB to request to
11 have it pulled away from the facade of the
12 church?

13 MS. ELLIOTT: Right. We did not
14 consider the greenspace requirement.

15 MS. MOLDENHAUER: In regards, some
16 of -- on page four of your OP report, you
17 referenced that some of the other examples that
18 you've provided, such as 819 D Street, which had
19 a degree of relief higher, plus it was giving
20 less number of square feet per unit, was not
21 comparable because it did not provide an
22 addition.

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1 But didn't they provide an addition
2 to the third floor of that structure?

3 MS. ELLIOTT: Their addition was a
4 mezzanine. It didn't actually impact the floor
5 area, the footprint of the building.

6 MS. MOLDENHAUER: But it was in
7 addition to what was existing there?

8 MS. ELLIOTT: It was an interior
9 addition.

10 MS. MOLDENHAUER: And when you're
11 considering the kind of -- OP is opining on the
12 design, or the desire for flat layouts. Is that
13 considering the challenge of the property being
14 landmarked, and not being able to develop it as
15 it originally could have, if the landmark
16 application hadn't been filed?

17 Or is it more like a theoretical
18 ideal?

19 MS. ELLIOTT: Well, I mean,
20 certainly, we didn't invest, you know,
21 construction research in to it, but I think that
22 the point is, even with what's been proposed,

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1 we could certainly work with that, but ideally,
2 there would be fewer units in it.

3 MS. MOLDENHAUER: And does the
4 appearance of -- and obviously providing the
5 three stairs in to the structure, in the revised
6 plans, does that provide at least some
7 additional view as the appearance of rowhouses
8 or flats kind of potentially could have
9 appeared, creating more of a pedestrian feel on
10 the street?

11 MS. ELLIOTT: Yes, and I think
12 that's why we would be okay with the design
13 that's been presented. Frankly, I think that it
14 was responsive to HP's concerns. You were
15 responsive to OP's concerns in that regard by
16 pushing the front back, and I think that it's
17 definitely something that we can, you know,
18 work with. Like I said, our preference is just
19 for fewer units. Thank you.

20 MS. MOLDENHAUER: Thank you. And
21 I'll take a moment to provide some additional
22 information for the Board to respond to those

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1 comments as well, later on.

2 CHAIRMAN JORDAN: Okay. Board, any
3 additional questions for OP? I did have
4 something. I know this Park Morton
5 redevelopment is too new and -- but you don't
6 have any projections to what the density is
7 going to be, do you, based upon what you --

8 MS. ELLIOTT: I apologize. No, I
9 don't have anything on you for that.

10 CHAIRMAN JORDAN: Okay. So we can't
11 say, just visually, by this document, that it
12 appears to be rather large; right?

13 MS. ELLIOTT: it would be -- my
14 understanding is it would be increased density
15 from what it currently is.

16 CHAIRMAN JORDAN: Okay. And I know
17 it's too soon to have that kind of conversation.
18 All right. Mr. Boese, do you have any questions
19 you'd like to ask Office of Planning?

20 MR. BOESE: I don't know if I have
21 a question, it's more of a comment, and that is,
22 if this had been allowed to originally be -- been

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1 developed by right, where there was no landmark
2 application, it was always my understanding
3 that this project would have been far more dense
4 than what's being proposed.

5 CHAIRMAN JORDAN: Let me stop you.
6 So is that your understanding? I'll make it a
7 question.

8 MR. BOESE: Thank you.

9 MS. ELLIOTT: By right, with the
10 church, and not as a landmark designation, it
11 would be permitted 18 units, and 38 are being
12 proposed.

13 MR. BOESE: Okay. Because it was my
14 understanding in an R-4 District, that as long
15 as you have an existing building, you can
16 convert that in to an apartment type building.
17 Is that correct?

18 MS. ELLIOTT: The R-4 District does
19 allow for the conversion of churches like this
20 provided that there's 900 square feet of lot
21 area per unit, and based on the lot size of over
22 just 16,000 square feet, 18 units would be

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1 permitted, by right.

2 MR. BOESE: Okay.

3 CHAIRMAN JORDAN: Okay. Where are
4 we in this ball game? Anyone from Department of
5 Transportation on this particular matter?
6 Anyone from Department of Transportation?

7 (No response.)

8 CHAIRMAN JORDAN: We do have a
9 report from Department of Transportation who
10 recommended no objection to the application.

11 Now you can make -- representative
12 of ANC 1A, please, go ahead.

13 MR. BOESE: Thank you, Mr. Chairman.
14 I would just like to say that the decision to
15 pursue a landmark application was not taken
16 lightly, and we have spent a lot of time with
17 the Applicant over the last several months, and
18 consulted with other commissioners, including
19 Commissioner Holmes here, and we actually, in
20 working with the Applicant, delayed
21 consideration of the landmark application for
22 two months, just so that we could make sure we

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1 had what we thought was a good solution to this
2 problem.

3 The commission considered this this
4 month, and unanimously supported approval of
5 the variances. In our opinion, we see this as
6 a win-win, where juggling two, often opposing
7 approaches, we certainly want more density. We
8 certainly want more housing. The city needs more
9 housing. But at the same time, we feel it's very
10 important to protect and preserve that which is
11 historically significant in the community,
12 which of course helps ground the community and
13 creates a sense of place.

14 We also recognize that there -- to
15 us, there's a practical difficulty in that the
16 original church structure is set back so far,
17 which automatically -- I mean, the benefit is
18 we get greenspace, which we painfully need. But
19 it does take off a significant portion of the
20 lot that could have been developed.

21 Additionally, when you look at the
22 history of the lots, what is currently one lot

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1 was originally four, and so the landmark
2 application, rightly, only addresses the
3 original church lot.

4 There would probably be more
5 hesitancy to support this solution, had the
6 church been on the western side of the existing
7 lot rather than the eastern site. It creates
8 a really nice break between what we know is going
9 to be a really dense Georgia Avenue corridor,
10 which we're already starting to see, versus the
11 rowhouses and flats that are just to the east.

12 so that your property actually does
13 create a nice visual break between the two
14 densities.

15 And when we consider that Park
16 Morton, as proposed, is going to be far more
17 dense than what's currently there, and when we
18 look at the zoning map and see how the Georgia
19 Avenue commercial overlay actually does not go
20 as far east on Park Road, as it does in many other
21 parts of the Georgia Avenue corridor, it seems,
22 to me, that perhaps when the overlay was done,

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1 more consideration should have been given to
2 that intersection than Planning originally did.

3 So, you know, I'm happy to answer
4 questions but we feel this is a really good
5 solution to what otherwise is a thorny problem,
6 and we've always, from the beginning, wanted to
7 find a win-win, where we can balance
8 preservation, desire of the community to
9 continue to embrace what makes the community
10 special versus the stresses of new development
11 that we also equally want to see in the
12 neighborhood.

13 CHAIRMAN JORDAN: Thank you. Board,
14 any questions of the commissioner?

15 (No response.)

16 CHAIRMAN JORDAN: The Applicant,
17 any questions?

18 MS. MOLDENHAUER: Just two brief
19 questions. One of the reasons for filing the
20 landmark application was due to the addition
21 that was placed in front of the facade; is that
22 correct?

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1 MR. BOESE: That is correct.

2 MS. MOLDENHAUER: And taking away,
3 then, the greenspace that you were just
4 referring to, that is now being preserved by
5 maintaining that historic facade?

6 MR. BOESE: That's correct.
7 That's, I consider, a great service to the
8 community, that would not have been there
9 otherwise.

10 MS. MOLDENHAUER: And the ANC
11 supported the 41 unit original proposal and did
12 not -- was unanimous, did not have a problem with
13 the 41 units?

14 MR. BOESE: That is correct. That is
15 what we voted on.

16 CHAIRMAN JORDAN: Any other
17 questions?

18 COMMISSIONER HOOD: Let me ask you
19 this, commissioner. Do your constituents agree
20 with the ANC? Most of your constituents? I know
21 what the ANC vote is, but what about your
22 constituents?

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1 MR. BOESE: It's my -- from those
2 that have reached out to me, there is a great
3 deal of support. Part of the reason why the
4 landmark application was pursued, or even
5 considered, was after several members of the
6 community reached out with concerns about the
7 property and how it was going to be redeveloped.

8 And so there were a number of issues
9 as far as the history of the building, the
10 windows, what may or may not happen with those.

11 So, I mean, to date, no one has
12 personally spoken to me or contacted me directly
13 in opposition to this.

14 COMMISSIONER HOOD: Okay. And I
15 know there are letters of support. My colleagues
16 mentioned that. But I also know how things go
17 in the city. You know, folks who write a letter
18 in support. But there's also another element,
19 a group of folks who may not write the letters,
20 but have some concerns, and I know the ANC will
21 hear that first, more than anyone. So I
22 appreciate it. Thank you.

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1 MR. BOESE: And I agree with that.
2 We're probably the first to hear a complaint.

3 COMMISSIONER HOOD: Exactly.
4 That's why I asked you that question. Thank you.

5 CHAIRMAN JORDAN: And you held a
6 meeting, that you didn't have that type of
7 opposition?

8 MR. BOESE: This was actually at a
9 couple of different ANC meetings, and they were
10 properly noticed. We saw a presentation in June,
11 which we had intended to vote, but it was clear
12 that there was more discussion needed, so we
13 tabled it until July, so that those discussions
14 could continue.

15 COMMISSIONER HOOD: And everybody
16 doesn't go to the ANC meetings, Mr. Chairman.
17 That's why I asked the question. Thank you.

18 CHAIRMAN JORDAN: Okay. And we
19 haven't yet done the home surveys. So I mean,
20 we're going to always kind of have that kind a
21 situation. Any additional questions of the ANC?

22 (Off-mic conversation.)

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1 CHAIRMAN JORDAN: So you want to be
2 ruled out of order. You're not chairing this
3 meeting.

4 COMMISSIONER HOOD: You want to get
5 sua sponte?

6 (Laughter.)

7 COMMISSIONER HOOD: I can go ahead
8 too.

9 CHAIRMAN JORDAN: Anyway. But you
10 see -- but we've already made our decision. But
11 anyhow, where am I? Is it your day today? Let's
12 get another Zoning Commission member in here
13 today then. We have to look at the next time
14 Anthony Hood is on.

15 So any other questions of ANC?

16 (No response.)

17 CHAIRMAN JORDAN: Then anyone
18 wishing to speak in support of the application?
19 Anyone wishing to speak in support? Please.
20 Let's grab you a spot. Come to the table and
21 identify yourself.

22 MS. DIGGS: Good morning. Roxanne

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1 Diggs.

2 CHAIRMAN JORDAN: Ms. Diggs, were
3 you here to get sworn in this morning?

4 MS. DIGGS: Yes, sir.

5 CHAIRMAN JORDAN: Did you turn in
6 your cards?

7 MS. DIGGS: Yes, sir.

8 CHAIRMAN JORDAN: Thank you. Go
9 ahead, please.

10 MS. DIGGS: Basically, I just want
11 to, you know, just say that I live directly
12 across from the area. It would be very good for
13 the community, in actuality. Since the building
14 has been closed, it's just been treacherous.
15 It's a sore sight. You know, It's just anyone
16 that has -- I don't know how to put it in, you
17 know, so many words. But anyone that has a
18 disagreement with this, they are not looking at
19 what I see on a daily basis. I feel as though
20 it would enhance the beauty of the community.
21 It would, you know, open up opportunities for
22 a lot of people that are in need of homes. It

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1 would eliminate a lot of like the rat
2 infestation. It would eliminate a lot of the
3 drug activity that goes on over in that area.

4 So I just feel as though it's a very
5 good, you know, opportunity for the whole
6 community.

7 CHAIRMAN JORDAN: Thank you. I
8 really appreciate your taking the time, coming
9 down.

10 MS. DIGGS: Yes, sir.

11 CHAIRMAN JORDAN: Taking the time
12 and coming down and talking to us, and we can
13 see you, and hear from you directly.

14 MS. DIGGS: Yes, sir.

15 CHAIRMAN JORDAN: Issues and
16 concerns raised in -- but no, it really means
17 a lot to the Board, to do that --

18 MS. DIGGS: It would mean a lot to
19 me to see this development go on.

20 CHAIRMAN JORDAN: Does the Board have
21 questions of Ms. Diggs?

22 (No response.)

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1 CHAIRMAN JORDAN: Does the
2 Applicant have questions of Ms. Diggs?

3 (No response.)

4 CHAIRMAN JORDAN: The ANC have
5 questions of Ms. Diggs?

6 (No response.)

7 CHAIRMAN JORDAN: All right. Thank
8 you. Any other person wishing to speak --

9 MS. DIGGS: Thank you,
10 Commissioner.

11 CHAIRMAN JORDAN: No, thank you
12 very much.

13 MS. DIGGS: Thank you, sir.

14 CHAIRMAN JORDAN: Yes. Mr. Holmes;
15 right?

16 MR. HOLMES: Yes, sir.

17 CHAIRMAN JORDAN: ANC 1A-09.

18 MR. HOLMES: 1A-09.

19 CHAIRMAN JORDAN: Got you.

20 MR. HOLMES: The reason they put --
21 tabled the contents, because I approached Mr.
22 Ken Boese and asked him -- I needed more details.

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1 I live three blocks away from the development.
2 I trusted in my ANC. I personally went around
3 on the street, knocked on doors, talked to
4 people, and just a month ago, on July the 12,
5 I threw a birthday party for a little girl who
6 got shot around there.

7 And it brought the community out,
8 and we tabled it among ourself, and they all
9 agree on development will bring a big change to
10 the neighborhood. It will bring more officers
11 in the neighborhood and a quicker response for
12 drug problems and that going on now.

13 I'm dealing with the house next door
14 to the property, now, where there's constantly
15 drug realities and people living next door,
16 they're fighting now, so it's a big headache.
17 So the development would bring more relief to
18 me and to the neighbors.

19 CHAIRMAN JORDAN: Thank you.

20 Any questions, Board, for Mr.
21 Holmes?

22 (No response.)

1 CHAIRMAN JORDAN: Applicant, any
2 questions for Mr. Holmes?

3 (No response.)

4 CHAIRMAN JORDAN: Thank you, Mr.
5 Holmes, and we certainly appreciate you coming
6 down, too, as well as the ANC support, and
7 providing the input, and taking a step up to get
8 intimately involved with the development as it
9 was happening. It's always best to be on the
10 front side of that, and we also encourage our
11 Applicants to do that, instead of on the back
12 end.

13 Anthony, what's your term for
14 neighborhood relationship?

15 COMMISSIONER HOOD: It's called the
16 Good Neighborhood Policy.

17 CHAIRMAN JORDAN: That Mr. Hood's
18 Good Neighborhood Policy which we've all
19 adopted. And it's very important. And we find
20 in so many developments happening, and people
21 not talking to the neighbors, and which the
22 impact is absolutely unacceptable.

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1 Any other person wishing to speak in
2 support? Anybody else wishing to speak in
3 support?

4 (No response.)

5 CHAIRMAN JORDAN: Anyone wishing to
6 speak in opposition, and we do have -- is it Mr.
7 Jones?

8 MS. JONES: Jones.

9 CHAIRMAN JORDAN: Jones. I'm sorry,
10 Ms. Jones. I couldn't see my notes here.

11 Ms. Jones, please, you have three
12 minutes to tell us your opposition. We do have
13 your filing, and we do know that you raise a lot
14 of issues about construction and property
15 values, which is not generally something that
16 the Board is going to consider. But you also
17 raise something about economic and
18 environmental impact on your property. Please
19 go ahead.

20 MS. JONES: Thank you very much.

21 I appreciate your allowing me to
22 testify. I'd like to -- I did come to an ANC

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1 meeting on July 9th, and that was postponed to
2 July 17th because they didn't have a quorum.

3 I was never asked to speak. I would
4 have spoken at the July 9th meeting but I didn't
5 know where the July 17th meeting was held. So
6 I'd like to say that I have talked with
7 Commissioner Holmes on two occasions, and with
8 Mr. Khan on three occasions, and I was never
9 invited to come to the ANC meeting.

10 So good morning. My name is Judi
11 Jones. Thank you for allowing me to testify
12 before you. I was glad to get two letters in the
13 mail about this development in the Park View
14 area. There have been other developments
15 claiming matter of right, and thank goodness
16 this isn't a matter of right. That should have
17 communicated with the neighbors, as I stated in
18 my party status application. We did not --
19 those neighbors did not get any letters until
20 May 22nd, and so we had about a month and a half
21 to apply for party status.

22 So I'm just making -- I'm not on the

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1 back end. I immediately applied for party
2 status.

3 The Park View -- I would like to see
4 the entire block enhanced by any development,
5 but this development should have a positive
6 impact, rather than detract, in any way, to the
7 community.

8 The Park View area is just beginning
9 to emerge from a long history of decay, and I
10 want the growth managed by someone who is
11 invested in the community as well as the ANC,
12 and I want my investment enhanced by the
13 development as well.

14 However, if it is approved as is, I
15 would like to advocate on my behalf on that
16 investment.

17 The following are recommendations
18 that I have discussed with Commissioner Holmes
19 and Mr. Khan. This is the first time I've seen
20 the -- I don't know what the technical thing is
21 -- but when you're standing on ground and seeing
22 the design. I did not know they were townhouses.

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1 I thought they were all apartment buildings.
2 Apartments.

3 I see it as one lot, and one
4 contiguous building, and the development
5 applies for variances to take -- I would like
6 to see them apply for variances to take the roof
7 off the church on one side, the west side of the
8 church, to make the development one building.

9 Since the church has been declared
10 historic, the development should use brick and
11 other material that closely matches the
12 exterior of the church for the entire structure.
13 Keep the church facade, and move the new facade
14 and new building together, to create a
15 semicircle in front, to reduce the traffic jam
16 off Park Road.

17 I'd like to see the electricity run
18 underground. In my townhouse, it is run
19 underground, and the electricity never goes
20 out.

21 I would like to see ground floor
22 office space, or commercial space for social,

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1 and church ministries. Also the ANC 1A office
2 could be there, I don't know if you have one or
3 not, in a small meeting area.

4 The church -- I'm really surprised
5 that they are declared historic. The church was
6 kind a forced out, if you talk to them, but they
7 had ministries that were on the ground level,
8 that helped the AA -- with an AA and NA
9 ministries, and I'd like to see those ministries
10 included, or come back from Maryland to help
11 that area.

12 Allow the development to build a
13 four-story building according to the Takoma
14 Overlay, if ground floor retail space is
15 included. Beautify the entire alley in
16 collaboration with the 610 Newton Place
17 development --

18 CHAIRMAN JORDAN: Begin to wrap up,
19 please.

20 MS. JONES: I am. Publicize the
21 construction schedule, especially large
22 equipment approved by DDOT, and if they break

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1 it, they repair it, replace it. Work with DDOT,
2 D.C. agencies to make alley corners more vehicle
3 friendly. Dedicate housing units, 20 percent to
4 workforce housing, and 10 percent to low-income
5 veteran or senior housing.

6 And these recommendations are
7 suggested as a compromise between the historic
8 designation and the developer's ability to
9 build 10 to 15 more units that could be set aside
10 for dedicated housing recommendations.

11 I have discussed these with -- I have
12 said that. Mr. Khan has said he has been dealing
13 with this for two years, and that shouldn't be
14 a reason to, not to adjust. And the development
15 should add value to the community. As designed,
16 it will not add value to the community
17 constantly distressed by social and public
18 safety issues.

19 So I'm not against the development
20 as a development, but I am against it as it is
21 designed. And it's an opportunity to make our
22 community viable and sought after, while

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1 allowing businesses to flourish.

2 CHAIRMAN JORDAN: We thank you for
3 taking the time, and certainly, again, being up
4 front with your comments and issues.

5 MS. JONES: Right.

6 CHAIRMAN JORDAN: And I would just
7 hope that in the future, that Applicants, as
8 well as the communities at large, allow
9 everybody to get to the table and have these
10 discussions.

11 Any questions of Ms. Jones?

12 (No response.)

13 CHAIRMAN JORDAN: Applicant,
14 questions of Ms. Jones?

15 MS. MOLDENHAUER: I just wanted
16 to confirm -- you did have two meetings with Mr.
17 Khan to discuss and understand your concerns?

18 MS. JONES: I had three meetings
19 with Mr. Khan and two with Commissioner Holmes.
20 Two of those three meetings were with
21 Commissioner Holmes.

22 MS. MOLDENHAUER: And I'm trying to

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1 understand. You're indicating that you're not
2 for the design but you're for added value, and
3 more density based on the Takoma Overlay?

4 MS. JONES: Right, and I discussed
5 this with Mr. Khan on another occasion. That it
6 would allow him to -- reading the OP report, if
7 he's not asking for enough variance, that would
8 give enough reason for them to hopefully approve
9 and then allow for more density.

10 MS. MOLDENHAUER: No other
11 questions.

12 MS. JONES: More units.

13 CHAIRMAN JORDAN: Okay. Good. Mr.
14 Boese. Any questions that you'd like to ask Ms.
15 Jones?

16 MR. BOESE: No. I'm fine.

17 CHAIRMAN JORDAN: Okay. Great.
18 Anyone else wishing to testify in opposition?

19 (No response.)

20 CHAIRMAN JORDAN: Before we go --

21 COMMISSIONER HOOD: Ms. Jones, let
22 me ask you a question. Obviously you're familiar

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1 with the neighborhood area.

2 MS. JONES: Very.

3 COMMISSIONER HOOD: Very familiar.

4 MS. JONES: I live there.

5 COMMISSIONER HOOD: Okay.

6 MS. JONES: For 10 or 12 years.

7 COMMISSIONER HOOD: Okay. In your
8 outreach -- because I know the work that you do
9 -- in your outreach, would you say that my
10 question earlier about some folks -- and I know
11 you can't get everybody.

12 MS. JONES: Correct.

13 COMMISSIONER HOOD: But it always
14 good to try.

15 MS. JONES: Right.

16 COMMISSIONER HOOD: Would you say
17 that -- because we do have some letters here in
18 support. Would you say that the outreach has
19 been pretty good as far as the Applicant
20 reaching out to the community? What would you
21 say in that respect?

22 MS. JONES: Well, I didn't know

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1 anything about the development until I got the
2 letter in the mail.

3 COMMISSIONER HOOD: And that was
4 from the Office of Zoning.

5 MS. JONES: That was from the Office
6 of Zoning, and they said if you wanted to apply,
7 or have input -- and by the time I reached out
8 to the ANC, they had already had a meeting.

9 COMMISSIONER HOOD: Okay.

10 MS. JONES: And so I had to inquire
11 about when their next meeting was. They hadn't
12 voted on it, but I believe there was a
13 presentation made at the June meeting. I missed
14 that meeting. And so I tried to go to the July
15 meeting, but again it was postponed, and I did
16 not know where the additional meeting was held.

17 COMMISSIONER HOOD: So have you
18 done any outreach, yourself, in that area?

19 MS. JONES: No. Not -- not -- oh.
20 Well, with my neighbors, my immediate
21 neighbors, and they are -- they didn't know
22 anything about it either. I was wondering how

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1 I got a letter. And they said that they got a
2 letter but they didn't know anything about it.

3 We are having -- next to our
4 townhouse area is another development, and they
5 had so many problems out of that development,
6 I'm surprised that they -- they don't know
7 anything about the ANC. I asked them who the ANC
8 was. So I don't know how -- only because I know
9 how I would run it in my area, that is the reason
10 I reached out to the developer and the ANC in
11 that area. I didn't want to disrespect their
12 protocol. But we didn't know anything about it.

13 COMMISSIONER HOOD: All right.
14 Thank you.

15 CHAIRMAN JORDAN: Before we go in to
16 rebuttal, we'll take a five minute break.

17 (Whereupon, recess was taken from
18 11:08 a.m. until 11:15 a.m.)

19 CHAIRMAN JORDAN: Let's go on the
20 record and come back in to session.

21 Any rebuttal?

22 MS. MOLDENHAUER: Yes. We have a

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1 very brief rebuttal, just to address a couple
2 issues. So I'll turn first, to Jim Foster from
3 Arcadia.

4 MR. FOSTER: Hi. Jim Foster again. I
5 just want to address the issue of the
6 feasibility of dividing the space to the left
7 in to six lots, and the number of units we could
8 do. Assuming that we need to keep a space between
9 the church and a new structure, the existing
10 addition is about 56 feet wide.

11 That would only -- there's a
12 requirement in the code that a minimum lot size
13 is 18 feet wide in this jurisdiction. So that
14 would really only allow us three lots on this
15 space available to the left of the church.

16 With flat, a flat use, that would
17 allow six, a total of only six units combined.

18 In the church itself, the square
19 footage of the church, in conjunction with the
20 rule, 900 square feet rule, if we were to
21 consider the church separately, would allow us
22 only eight units in the church.

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1 The total number of units allowed on
2 this lot, by that math, is a 14 unit total.

3 And we still have all the costs
4 associated with it earlier, with the cost of the
5 development. All the same issues would apply,
6 but we would have far fewer units, and far fewer
7 square footage of course too.

8 MS. MOLDENHAUER: Thank you. I'll
9 turn to Mr. Khan.

10 MR. KHAN: Thank you.

11 CHAIRMAN JORDAN: So based upon 14
12 units, what would it cost, the estimated
13 guesstimation of cost?

14 MR. FOSTER: I think Mr. Khan
15 probably should speak to that. But you mean the
16 cost of construction for the 18 units? I think
17 you need to answer that.

18 MR. KHAN: With the landmark or
19 without the landmark?

20 MR. FOSTER: I think the landmark's
21 going --

22 MS. MOLDENHAUER: There's no change

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1 in the landmark now.

2 MR. FOSTER: The landmark's the
3 landmark, and it's going to be there with all
4 the restrictions of. I mean, we can't get around
5 that. No matter if we had gone in with something
6 else, you're still going to have some issues
7 with the landmark, so --

8 MR. KHAN: Okay. I have it here for
9 18 units -- or having 14 units, there will be
10 still, I would say around -- in \$7 million range.
11 Or 6.5 to 7 million dollars, off top of my head.

12 MR. FOSTER: And you divide that by
13 14 units.

14 MS. MOLDENHAUER: Divide by
15 fourteen.

16 MR. KHAN: Okay. Hold on.

17 MR. FOSTER: Five. \$500,000.
18 500,000. Right? About \$500,000 a unit. About
19 \$500,000 a unit.

20 MR. KHAN: It's 464,000, roughly.

21 MR. FOSTER: See. About 500 -- see?

22 (Laughter.)

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1 MR. FOSTER: Didn't use a calculator
2 either.

3 MR. KHAN: Oh. Yes. I mean of course
4 there are commission costs, and all the
5 acquisition costs, a lot of other things.

6 CHAIRMAN JORDAN: And what's the
7 square feet of the unit? What's square feet of
8 the unit? 900 square feet? Right? So we're
9 talking about --

10 MR. FOSTER: The church would be
11 about 900, 950.

12 MR. KHAN: Right.

13 CHAIRMAN JORDAN: Okay. From a
14 marketing standpoint, is that something that we
15 can -- someone could sell?

16 MR. KHAN: No.

17 CHAIRMAN JORDAN: All right. All
18 right. Any additional rebuttal?

19 MS. MOLDENHAUER: I just want to
20 address some of the -- I can go to Slide 31, to
21 just some of the questions -- it may be hard to
22 see -- about the impact on the zone plan, and

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1 the uniqueness here. That this is not going to
2 create precedent because of the fact that --
3 we're talking also about a uniqueness in the
4 fact that in churches -- if you see that diagram,
5 we've taken the northern -- northwest --
6 northeast corner of Washington, D.C., and all
7 of the blue and red dots are churches. Less than
8 a third of those churches are actually located
9 in R-4 zones. So, in other words, the number of
10 churches that are actually in a situation like
11 this -- OP recently submitted documentation
12 indicating that in R-4 zones, 59 percent of the
13 lots are actually smaller than the minimum lot
14 size requirement.

15 So you're talking about most lots
16 are actually very small, and even within the
17 churches, a majority of the churches that are
18 located in the R-4 zones -- you can look at a
19 church located on the right-hand side, on Upshur
20 Street, it's surrounded by all row homes. It's
21 surrounded in an area that is surrounded
22 constantly by row homes. Upshur. You can see all

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1 the row home structures. On Randolph again,
2 rowhouse structures surrounding it. Those are
3 single family homes to the north of the church
4 on Randolph. And then on Taylor, again, row
5 homes surrounding the property.

6 This is a very unique situation,
7 where the character of the block -- we're
8 talking about high density, we talked about
9 potentially 477 units directly across the
10 street at the Park Manor.

11 CHAIRMAN JORDAN: Is that what --
12 it's 477 units?

13 MS. MOLDENHAUER: 477, Park -- yes.
14 And so - sorry. What is it? Park ...?

15 MR. KHAN: Park Morton.

16 MS. MOLDENHAUER: Park Morton. And
17 potential development of a hundred -- 477 units,
18 which is, if you multiply -- I believe it's about
19 a two acre lot in order to do that, from our
20 research there'd be 186 square feet per unit
21 on a two acre lot.

22 Now obviously that's a higher

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1 density, and that's part of the uniqueness here,
2 that this church is on an R-4, but it's squeezed
3 around a C-2A zone, higher density, directly
4 across the street from the site, and the
5 Applicant here is asking for -- if you go on to
6 the next slide -- lot area relief that is -- if
7 you look at -- these are all the cases that have
8 been approved by the Board, and it's at 438,
9 which is, you know, providing more lot area
10 than the five other cases that are above it, in
11 regard to other, you know, projects.

12 And it's the largest lot, a 16,650
13 square foot lot. And so in that regard, we find
14 that, you know, this case does create a
15 practical difficulty. It does have unique
16 aspects to it in regard to the landmark status,
17 which are creating a challenge for the owner in
18 regard to the extended delays, the additional
19 costs, and the fact that no matter what, they're
20 not going to be able to build right up against
21 the structure, but, rather, they're going to
22 have to pull away from the structure, and also

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1 work with the windows, the challenges that Mr.
2 Foster talked about in regard to the floor and
3 everything.

4 And the Applicant has, I believe,
5 done an extraordinary amount of outreach. The
6 only individual here that testified in
7 opposition actually indicated that she'd be for
8 more density by applying the Takoma Overlay, and
9 that she'd rather see commercial uses on the
10 site. That would have required a use variance.

11 Now that's not why we're here, but
12 I think that it does show that the community is
13 supportive of this project, and that this
14 project does create a unique situation, which
15 is not going to create a precedent for
16 potentially other situations, and should not
17 create an adverse impact on the zone plan due
18 to the fact of the surrounding community, that
19 we're not having a -- we're not comparing it to
20 other R-4, other similar R-4 types of locations.
21 That being said, we believe that we've satisfied
22 the three prong standard for the variances

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1 requested.

2 In this case, there is -- and we'd
3 be open for any other additional questions.
4 Otherwise, we'd seek a decision from the Board,
5 if they believe that the matter is ripe at this
6 time.

7 CHAIRMAN JORDAN: Good. Thank you.
8 Then we will bring this matter to a close.

9 Is the Board ready to deliberate, or
10 do you need any additional information?

11 COMMISSIONER HOOD: Mr. Chairman, I
12 had a question for Ms. Moldenhauer on her
13 rebuttal. Or closing.

14 You mentioned about the -- you keep
15 bringing up the Park Morton development. What's
16 the status of it?

17 MS. MOLDENHAUER: I am aware that
18 about two months ago, there was -- that they were
19 delayed in the process, from my understanding,
20 based on the fact that the organization that was
21 working on, that was taking too long to relocate
22 the existing individuals, because the whole

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1 concept was to provide affordable housing, and
2 they're DHCD housing, and they want to relocate
3 the 177 individuals that live in that property
4 to other locations.

5 I believe it's still slated -- and
6 obviously, you know, that project included the
7 477 number of units, included OP support, you
8 know, there was, you know, sign-off from
9 obviously the mayor, from Harriet Tregoning at
10 the time.

11 So while I believe that there is
12 still some -- it's not formally finalized yet.
13 It does, I think, show the degree of density,
14 that a large number of individuals in the city,
15 in regards to planning, had supported for the
16 project.

17 COMMISSIONER HOOD: Now help me
18 understand. You keep referencing this project
19 across the street. Now the encroachment in to
20 the R-4 Zone, which this project that we're
21 talking about today is, you say it doesn't do
22 anything to the zone plan. But help me

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1 understand how it doesn't start encroaching in
2 to and just keeps on coming. Help me understand
3 that, because you keep referencing this
4 project, which is across the street, and then
5 you reference the project, your application.
6 Help me understand how this will not encroach
7 in to the community.

8 MS. MOLDENHAUER: I think that it's
9 a question not of encroachment, but the fact
10 that this is not locating a apartment building
11 -- one apartment building could be provided as
12 a matter of right, so it's not a question of an
13 apartment building versus not an apartment
14 building.

15 This property could be an H unit
16 apartment building. So it's a question of number
17 of units, and I think that because the property
18 is located on the end of the R-4 Zone, that
19 you're not asking -- we're not asking for
20 relief, slab dab in the middle of an R-4 Zone,
21 as I was indicating of other similar church
22 locations.

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1 So I do think that in that regard,
2 it is not having an adverse impact on the zone
3 plan. Obviously, we are here for relief. So I'm
4 not saying that we're not here for relief. We
5 are here for relief. We are in an R-4 Zone.

6 But I don't believe that it's going to have
7 an adverse impact, because you're not asking for
8 relief in an area that is located in a
9 surrounding R-4 rowhouse type location. You're
10 asking for relief for an R-4 area that is on the
11 edge of a zone, thus, you're going to be just
12 simply considered to be more part of the
13 commercial higher-density corridor to the south
14 and to the west.

15 And then you have, as we heard
16 testimony from Kent Boese, you'll have, then,
17 the 12 foot, which is more than what OP
18 originally was looking at, a 12 foot opening,
19 and then the church with the open grass area.
20 That will create a nice visual effect, and view,
21 going in to the R-4 Zone, and in to the rest of
22 Park Road further to the east.

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1 COMMISSIONER HOOD: Thank you.

2 CHAIRMAN JORDAN: Thank you. Board,
3 any additional questions?

4 (No response.)

5 CHAIRMAN JORDAN: Is the Board ready
6 to deliberate? Then let's do that.

7 I would be in support of granting the
8 relief in this matter, for several reasons. One.
9 I think this property clearly shows its
10 uniqueness, and exceptional situation and
11 condition. You have a church sitting in the
12 middle of the property that has landmark
13 designation, with some requirements at HPRB
14 regarding how the property can be used.
15 Existing nonconforming use. The property is a
16 rather large property, in and of itself, and a
17 lot that has some other challenges to the
18 particular lot.

19 There's 4,680 square feet of
20 greenspace that's remaining on this property.
21 The property, in and of itself, where the
22 connection has to sit, has some -- in regards

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1 to what's being required because of landmark
2 status, so that it's not as visible from the
3 street, gives some other challenges in regards
4 to its rear yard, and so you don't want to
5 interfere with that historic designation.

6 Additionally, the economics of the
7 numbers that's necessary to make this thing
8 work, I think we have substantial evidence
9 that's been presented by the Applicant, that
10 supports that lesser units cannot be supported.
11 Nor have we seen anything substantial to the
12 contrary.

13 I know Office of Planning has, by
14 policy, been challenged -- challenges against
15 any kind of apartment housing in a R-4, and
16 questions the density here. However, this is
17 a matter of right, could have had an 18 unit
18 apartment building on the site. So that
19 apartment argument goes away. But more
20 importantly, there has not been any alternative
21 shown about what kind of dense, less denser
22 units can be there, and are there feasible,

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1 financially feasible. That kind of work has not
2 been presented to the Board.

3 There is -- and I'm weighing very
4 heavily, but taking in the background,
5 consideration of the Park Morton redevelopment,
6 which is still kind of in the drawing phase, but
7 we do see from some of the renderings, that it's
8 going to be a rather dense building, and there
9 are some other buildings that, on the record,
10 as indicated by Office of Planning, have some
11 high density -- is of high density.

12 We also had testimony presented,
13 that if we did the schematic as submitted by OP
14 of 30 units, and then a number of rowhouses, that
15 actually there's only going to be three lots on
16 there, not six lots, due to the other landmark
17 restrictions, and the fact that the spacing of
18 the width of the lots would only be 18 feet. That
19 only there is a maximum of 14 units, could be
20 in that scenario, that it would generate a cost
21 of \$500,000 per unit, which is not marketable.

22 But there was support, great support

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1 by the ANC, really getting their arms around
2 this, and worked in all aspects of this
3 property, this development, I think something
4 that was beneficial, and are very supportive of
5 this project, to me, and we give great weight
6 to the ANC seven to zero vote in support of this,
7 along with 27 letters of those in the community
8 who support this.

9 There has been some opposition, has
10 been well-represented by Ms. Jones, that there
11 should be some other alternative, there's some
12 other thoughts and alternative on the property.
13 However, Ms. Jones also supports the level of
14 density on this property.

15 Whether or not this can be a retail,
16 mixed-use property, is a whole other issue, and
17 the concerns about construction, and et cetera,
18 is not before this Board, for this Board to deal
19 with.

20 What did I miss? Anyway, that's
21 what I think about it. I could stand in support.
22 Anybody else want to weigh in on this?

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1 Mr. Hinkle.

2 MEMBER HINKLE: Yes. Thank you, Mr.
3 Chair. I think you did a good summary in terms
4 of where I'm at on this project. Certainly, the
5 property, I think, exhibits a unique condition
6 with the landmark status of the church. That
7 certainly creates a practical difficulty,
8 developing the site in any feasible manner.

9 I just wanted to say, I do appreciate
10 the work of the ANC. I think they've done a great
11 job on this, and their support is really
12 important in terms of how it impacts the third
13 prong of the variance test, and with that, I
14 think you stated my position on this quite well.

15 CHAIRMAN JORDAN: Anything else?
16 Anybody else in addition?

17 COMMISSIONER HOOD: Mr. Chairman.

18 CHAIRMAN JORDAN: Mr. Hood. Please.

19 COMMISSIONER HOOD: I had some
20 calls, and I think Mrs. Moldenhauer's last
21 comments helped me to -- because you know R-4
22 Zones in this city have been under scrutiny, and

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1 under siege, more or less. But I think her
2 comments, for me, helped me get over to the point
3 where I can join my colleagues in voting for
4 this.

5 In looking at this, at first, I had
6 planned on voting against it. But also from
7 hearing Ms. Elliott's, I guess reversal, and not
8 being a denial of this application, and along
9 in support, and with the ANC, and hard work,
10 again, for me, on the end of the R-4 Zone. So
11 I will promise not to on this one, and I will
12 be voting in support of it.

13 CHAIRMAN JORDAN: Hearing that, I
14 would move that we grant the relief requested
15 by the application and revised plan submitted.

16 MEMBER HEATH: I'll second.

17 CHAIRMAN JORDAN: Motion made and
18 seconded. All those in favor of the motion,
19 signify by saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN JORDAN: Those opposed,
22 nay. The motion carries. Mr. Moy, please.

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1 MR. MOY: Staff would record the
2 vote as four to zero, this on the motion of
3 Chairman Jordan to approve the request for the
4 -- amendment request for variance relief. Also
5 in support, Ms. Heath, or, rather, seconded it.
6 In support, Mr. Hood and Mr. Hinkle. A board
7 member not present. The motion is unanimous,
8 carries, four to zero vote, Mr. Chairman.

9 CHAIRMAN JORDAN: We will do a
10 summary order of this one, and let it go. But
11 let me say this. I appreciate everybody taking
12 the time, and concern, coming down, and working
13 these -- and presenting your position on this,
14 and I appreciate the Applicant's reaching out
15 and trying to do some work. I certainly
16 appreciate you, Ms. Jones, your input, and the
17 other neighbors in support, and the ANC, and Ms.
18 Diggs, and others -- Mr. Holmes -- for really
19 getting your arms around, try to make something
20 work, one way or the other. But we appreciate
21 it. Thank you.

22 I think we can handle -- since we've

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1 already had the hearing on 18772, I think we
2 don't have much on that. We've got all the
3 documents. Let's call that one, because I don't
4 think it's going to be -- we can handle that
5 relatively quickly.

6 MR. MOY: Yes. Thank you, Mr.
7 Chairman. This application was continued from
8 a public hearing scheduled last June 10th, 2014.
9 So this is Application No. 18 -- I assume we've
10 got a -- do we have a quorum for that? We might
11 have a quorum issue on that.

12 I'll have that for you in a second,
13 Mr. Chairman.

14 CHAIRMAN JORDAN: We're going to
15 find out, just give us a second, if we've got
16 a quorum issue or not. That's okay. You know,
17 he hears a thousand cases a week between the BZA
18 and the Zoning Commission, so -- okay. That's
19 okay. We understand.

20 MR. MOY: You kind of threw me
21 there, Mr. Chairman.

22 CHAIRMAN JORDAN: That's okay.

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1 MR. MOY: I thought we had everyone.
2 Okay. Again, once again, let me start from the
3 top.

4 This is Application No. 18772 of MR
5 Gallery Square LLC, and this is requesting three
6 variances and two special exception relief.
7 Last year, June 10, 2014. And I believe the Board
8 on June 10th requested additional information
9 which is in your case folders under Exhibit 39
10 and Exhibit 42-B.

11 CHAIRMAN JORDAN: Okay. Thank
12 you. Would you please identify yourselves.

13 MR. SHIKER: Yes. Good afternoon.
14 Or good morning. My name is Christie Shiker with
15 the law firm of Holland & Knight representing
16 the Applicant. I have Conrad Cafritz to my left.
17 He is with Cafritz Interests.

18 MR, ANDRES: Erwin Andres,
19 principal for Gorove/Slade Associates.

20 MS. SIRCAR: Anita Sircar, Davis,
21 Carter, Scott, architect of the project.

22 MR. NIRMALANI: Hiro Nirmalani,

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1 Davis, Carter, Scott.

2 CHAIRMAN JORDAN: Okay. When we
3 last -- in our last episode, we went through a
4 series of things, and questions, and we have
5 some additional documents which are -- we had
6 requested, which has been submitted. What's
7 this for?

8 MR. MOY: These are letters in
9 support that was submitted by the Applicant just
10 moments ago, Mr. Chairman.

11 CHAIRMAN JORDAN: We haven't
12 accepted this for the record. I'm just holding
13 off on that. In other words, it's been requested
14 for that. There was some opposition to this,
15 some questions that were raised.

16 Do we have a representative here
17 from Department of Transportation? Yes. Please
18 identify yourself.

19 MS. ISRAEL: Yes. Evelyn Israel for
20 DDOT.

21 CHAIRMAN JORDAN: Okay. We had some
22 issues regarding the status of -- some concerns

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1 raised by DDOT and others. One. What's DDOT's
2 position on this?

3 MS. ISRAEL: DDOT is in support of
4 this application.

5 CHAIRMAN JORDAN: All right. But
6 that's without valet parking; is that correct?

7 MS. ISRAEL: Yes, although valet
8 parking is actually a public space issue, and
9 at this point actually the Applicant has taken
10 that off the table, to either potentially be
11 worked out later, or not at all, and just remove
12 it. It will not -- it does not hinder the
13 operation, of operations, whether valet parking
14 exists or not.

15 CHAIRMAN JORDAN: And did DDOT run
16 an independent assessment as to the number of
17 trips that will be generated on this property?

18 MS. ISRAEL: We looked very
19 carefully at the assessment that they provided
20 us, and we 100 percent concur with their
21 assessment. Ultimately, it will generate a
22 minimal number of trips.

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1 CHAIRMAN JORDAN: Okay. What else?
2 I'm trying to pull out the questions we had for
3 OP before. Just give me a second.

4 Okay. What about the drop off/pick
5 up? Has that been worked out in regards to this
6 property?

7 MS. ISRAEL: The drop off/pick up is
8 not necessarily an issue, predominantly,
9 because cars are not ultimately going to be --
10 there will be no parking on the site, and we
11 anticipate that the vast majority of all trips
12 are going to be generated by transit, walking,
13 predominantly transit more than anything else.

14 CHAIRMAN JORDAN: So will there be
15 a drop off/pick up designation on the street for
16 this?

17 MS. ISRAEL: As of this moment, no.

18 CHAIRMAN JORDAN: Okay. It's a
19 commercial street, so there's no RPP. Okay.

20 Any other questions, Board, for
21 DDOT? I know we had -- I'm trying to go through
22 my notes, see if I hit all our questions we had

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1 for -- all right.

2 Thank you. Let me go to the
3 Applicant. Where are we regarding the
4 Chinatown Design Board? Where are we regarding
5 the Chinatown Design Board?

6 MS. SHIKER: So the Chinatown
7 Design Review Application was submitted on July
8 11th. It is currently pending with the Office
9 of Planning and the Chinatown Steering
10 Committee. It's also been sent to the community.
11 We are waiting for initial comments from the
12 Steering Committee, so that we can continue that
13 process, re-present to the community and to the
14 ANC, and then go through that review process.

15 The Steering Committee, as I
16 explained at the last hearing, provides
17 comments, and we would take those comments, make
18 changes. It is simply to the facade, primarily
19 the street level of the project, and that
20 process has to be completed before a building
21 permit could be issued.

22 So we have started it and we are

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1 continuing to move through it.

2 CHAIRMAN JORDAN: Okay. And where
3 are you on the pick up/drop off? How is pick
4 up/drop off, is going to be handled?

5 MS. SHIKER: I would ask Mr. Andres
6 to briefly walk through how that work. We have
7 done our evaluation and a valet staging zone is
8 not necessary for the operation of the hotel,
9 based on our analysis, and Mr. Andres, if you
10 could just briefly talk about how that would
11 work, please.

12 MR. ANDRES: Again, good morning,
13 Chairman Jordan, members of the Board. Erwin
14 Andres with Gorove/Slade. On page three of our
15 submission dated July 15th, 2014, we've, under
16 the heading, Proposed Mitigation, there -- it's
17 a multi-pronged approach, but to address your
18 question directly, the way that it would happen
19 is in the event that anybody, whether -- if a
20 patron decides to drive to the site, although
21 we have emphasized and encouraged them not to
22 drive to the site -- and even if they do, there

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1 is a staff member that would be available,
2 greeting guests, that in the event that somebody
3 pulls up, they would say don't pull up here. We
4 can tell the nearest garage is either the
5 CityCenter garage or the Gallery Place garage.
6 The Gallery Place garage is a half a block to
7 the south. The CityCenter garage is two blocks
8 to the west.

9 So those are the two primary parking
10 areas that we've identified, and we've
11 identified -- we've also done counts at those
12 two locations, and it is also included in our
13 supplemental submission, and there's over 900
14 overnight spaces that are available.

15 So there is a significant number of
16 overnight spaces that are available in the
17 nearby garages. So that's how we would address
18 anybody who would decide to drive.

19 CHAIRMAN JORDAN: The Applicant
20 hasn't reserved any spaces in those garages?

21 MR, ANDRES: No. We have not
22 reserved. However, we have coordinated with the

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1 operators of those two garages. One of them is
2 Colonial Parking at the Gallery Place Garage,
3 and the other is U Street Parking at the
4 CityCenter garage. We have secured two letters
5 of, I guess of interest, or of coordination with
6 them, that are included in our supplement.

7 CHAIRMAN JORDAN: So from a
8 practical standpoint, someone's going to be
9 outside always, and a car pulls up and I'm trying
10 to unload, and then how's that going to be
11 handled?

12 MR, ANDRES: Then at that point, the
13 doorman would say you can't unload here, this
14 is part of the restricted curb side. You're
15 going to have to go to the nearest garages and
16 bring your luggage to the site.

17 So they would wheel their luggage to
18 the site, as if they were wheeling their luggage
19 from Union Station or any of the other transit
20 facilities.

21 Has there been a conversation with
22 DDOT? And I can flip back to find out whether

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1 or not they're going to put a sign that says No
2 Parking, No Unloading.

3 MR, ANDRES: Currently, there is a
4 sign that says No Standing, or No Standing or
5 Stopping.

6 CHAIRMAN JORDAN: Okay. What about
7 No Unloading?

8 MR, ANDRES: Well, technically, No
9 Stopping means that you can't stop, so --

10 CHAIRMAN JORDAN: Frequently
11 people come to hotels, they think that means for
12 everybody but them. I'll be honest. Like, you
13 know, you pull up, that's what they do.

14 And you think that you're going to
15 have on the average of four people per day
16 driving. Is that what I understand your numbers
17 --

18 MR, ANDRES: That is correct. We've
19 looked at a spectrum of hotels, and we've
20 identified it in our report. The two hotels that
21 currently don't experience any drivers, they're
22 hostels or boarding rooms, where some of the

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1 facilities are shared, and some of the rooms are
2 much smaller than the price point associated
3 with this hotel.

4 And we also included one that's a
5 boutique hotel, that's bigger than our proposed
6 hotel, with more amenities, and so our hotel
7 falls somewhere in between. In addition to that,
8 we've also looked at the Pod Hotel, which this
9 is a model of, and it falls in line with the four
10 trips, four daily trips that the Pod Hotel in
11 New York City experiences.

12 CHAIRMAN JORDAN: Okay. Remind me
13 again. How are you handling the trash
14 containers? Where are they going to be located?

15 MR. ANDRES: The trash is located,
16 I believe in the rear of the building. There is
17 -- at the alley to the rear is 30 feet wide, and
18 there's actually a graphic on page eight of our
19 application, that shows that alley system.
20 There's a 15 foot alley that can access the rear
21 alley from both the north, on I Street, and to
22 the south, on H.

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1 The trash trucks, and all the trash
2 activity would be consistent with the trash
3 pickups that are taking place for all of the
4 other uses of the alley.

5 CHAIRMAN JORDAN: You know, the --

6 MS. SHIKER: And the trash
7 facilities are fully enclosed within our
8 building.

9 CHAIRMAN JORDAN: All right.
10 Because, you know, the people in opposition
11 certainly expressed concern about obstructing
12 that alley that's being used by other people,
13 and so we probably, if we went forward, have to
14 make sure that there's that type of restriction
15 there.

16 Is there any space being reserved,
17 in any of these locations, for employees to
18 park?

19 MR. ANDRES: No. The intent --
20 typically, staff associated with hotels come at
21 off-peak hours, and this is, given the
22 demographics of hotel workers, the fact that

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1 we're close to transit actually is a much bigger
2 incentive for them than parking.

3 CHAIRMAN JORDAN: How many staff
4 persons are going to be in this hotel on any
5 given shift?

6 MS. SHIKER: Approximately thirty.

7 CHAIRMAN JORDAN: And how many do
8 you expect will drive?

9 MR, ANDRES: Given the compensation
10 levels of these workers, there's a good chance
11 that most or all of them will potentially not
12 drive. Given that market rate pricing for
13 parking in the area, for not only hotel
14 employees, but any employees, is relatively
15 expensive.

16 CHAIRMAN JORDAN: Board, any other
17 questions you have?

18 COMMISSIONER HOOD: Let me ask
19 this, Mr. Andres. The letter of intent, when we
20 had the hearing, that I remember -- I was here
21 -- when we had the hearing, the Colonial was the
22 only one, and you said you did go out -- and I

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1 appreciate you all doing that -- you did go out
2 to the other company. What's the other company's
3 name?

4 MR, ANDRES: The other company is U
5 Street Parking, and they manage CityCenter
6 garage.

7 COMMISSIONER HOOD: Right. Okay.

8 MR, ANDRES: So we do have two
9 letters of intent. What we also did, and
10 actually I did this last night -- there's a third
11 garage at 801 I Street, and actually it's a
12 garage that is used to help supply the parking
13 for the Marriott Renaissance Hotel, and we did
14 a count. I did a count last night. There's 478
15 spaces empty in that --

16 COMMISSIONER HOOD: Is this the one
17 that's at the Marriott Hotel?

18 MR, ANDRES: No. The Marriott
19 Renaissance.

20 COMMISSIONER HOOD: Marriott
21 Renaissance Hotel?

22 MR, ANDRES: Yes.

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1 CHAIRMAN JORDAN: The one that's
2 always full?

3 MR, ANDRES: The --

4 CHAIRMAN JORDAN: Always full.

5 MR, ANDRES: The one on I Street.
6 801 I Street.

7 CHAIRMAN JORDAN: Always full.
8 Catty-corner from the little restaurant up the
9 way, and half a block from the Quizno's, and
10 across from the Department of the Mint.

11 MR, ANDRES: It is on the southwest
12 --

13 CHAIRMAN JORDAN: Yes. I know the
14 garage well.

15 MR, ANDRES: The northeast corner
16 of 8th and I.

17 CHAIRMAN JORDAN: I know the garage
18 well. You're not adding that in your count, are
19 you?

20 MR, ANDRES: Chairman Jordan, I was
21 there last night at 11:00 o'clock, and there
22 were 478 --

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1 CHAIRMAN JORDAN: O'clock last
2 night?

3 MR, ANDRES: Excuse me?

4 CHAIRMAN JORDAN: 11:00 p.m.?

5 MR, ANDRES: 11:00 p.m.

6 CHAIRMAN JORDAN: Oh, yes. Okay.

7 MS. SHIKER: But in addition to that,
8 there were over 900 spaces between the Gallery
9 Place and the CityCenter garages.

10 COMMISSIONER HOOD: Okay. Well, I
11 appreciate you going out and doing that, even
12 though the one where Chairman Jordan goes is
13 full all the time. They probably bring the cars
14 in so he can't park.

15 CHAIRMAN JORDAN: Okay. Let's go
16 over some of these conditions, and let me know
17 where I'm -- I think DDOT has some conditions.
18 And let me go over some of these conditions.

19 One. The Applicant shall require
20 that the hotel shall participate in the Capital
21 Bikeshare bulk membership program for a hotel.
22 Applicant shall require the hotel provide all

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1 guests a free 24-hour capital Bikeshare pass for
2 each day of the guest's stay. The benefits shall
3 be part of the hotel's marketing plan.

4 Three. The Applicant shall require
5 the hotel to provide all the employees,
6 annually, the option of a Capital Bikeshare or
7 car share membership with a \$100 use stipend,
8 or a \$100 Smart Trip Card. Applicant shall
9 require the hotel to provide bicycle parking
10 reasonably sufficient to accommodate the needs
11 of hotel guests and hotel employees.

12 And Applicant shall provide all the
13 transportation -- management -- conditions
14 set forth in the Applicant's transportation
15 report, which will be incorporated in the order,
16 adding the Applicant's trash container shall
17 not obstruct the use of the alley by any of the
18 neighbors, and the Applicant shall ensure that
19 there shall be no -- there should not be any on
20 street guest loading or unloading. Okay.

21 MS. SHIKER: Chairman, I believe
22 that the Department of Transportation had

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1 modified their conditions, and there was
2 something that was submitted at the last
3 hearing, following their original report.

4 CHAIRMAN JORDAN: Is that right?

5 MS. SHIKER: It is in the record at
6 -- it's the DDOT email in the record, at exhibit
7 like 36 or 35, and I know that Mr. Cochran had
8 submitted it for DDOT and Ms. Israel's here.
9 He's going to talk about that. That slightly
10 modified --

11 CHAIRMAN JORDAN: At the last
12 hearing?

13 MS. SHIKER: Correct.

14 CHAIRMAN JORDAN: It's the wrong
15 time to submit something that we're not
16 accepting in to the record.

17 MS. SHIKER: No. It was at the last
18 hearing. The June 10th hearing.

19 CHAIRMAN JORDAN: I understand
20 that, and one of the things about getting things
21 last minute, is that the Board goes through
22 these things well in advance of the hearing, and

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1 then we get -- sometimes we get bombarded with
2 all kinds of things, that we just don't have
3 enough time to go through.

4 So that would have been something
5 submitted that I didn't see, didn't look at. I
6 don't know about my colleagues. But that's just
7 not the time. And then if we do do those things,
8 then someone has to really make -- I'm not saying
9 it didn't happen -- a very affirmative act to
10 make sure that we see it.

11 So what's the exhibit number?

12 MR, ANDRES: It's Exhibit 32, Mr.
13 Chairman.

14 CHAIRMAN JORDAN: Okay. Let's see.
15 What things were different than what I just
16 read? Might be easier.

17 MS. SHIKER: Thank you. So the three
18 conditions that DDOT had put in to their report
19 would be that the Applicant agreed to provide
20 free daily Capital Bikeshare passes as part of
21 the Capital Bikeshare's bulk membership program
22 for hotels, upon request of the hotel guest --

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1 CHAIRMAN JORDAN: Give me one
2 second.

3 MS. SHIKER: -- in perpetuity, not
4 to --

5 CHAIRMAN JORDAN: Wait. Give me one
6 second.

7 MS. SHIKER: Oh. Sure. Sorry.

8 CHAIRMAN JORDAN: Okay. So the
9 first one says Applicant shall do what?

10 MS. SHIKER: Okay. So the Applicant
11 -- the first one says the Applicant agrees to
12 provide free daily Capital Bikeshare passes as
13 part of the Capital Bikeshare's bulk membership
14 program for hotels, upon request for hotel
15 guests, in perpetuity, not to exceed \$5,000 per
16 year.

17 CHAIRMAN JORDAN: So that amends
18 number one, because it basically says the first
19 thing, but there's more specificity in there.

20 MS. SHIKER: That's correct.

21 CHAIRMAN JORDAN: Okay. Got it.
22 Number two. So we incorporate that. Okay.

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1 MS. SHIKER: Number two would be the
2 Applicant agrees to provide an annual Capital
3 Bikeshare membership or a car-sharing
4 membership for each employee for the first three
5 years, and that amends the second and third
6 bullets that you pointed out.

7 CHAIRMAN JORDAN: Say that again.

8 MS. SHIKER: The Applicant agrees
9 to provide an annual Capital Bikeshare
10 membership or a car-sharing membership for each
11 employee for the first three years.

12 CHAIRMAN JORDAN: So that's each
13 new employee?

14 MS. SHIKER: Correct.

15 CHAIRMAN JORDAN: Each new employee.

16 MS. SHIKER: For the first three
17 years.

18 CHAIRMAN JORDAN: Of their
19 employment?

20 MS. SHIKER: For the first three
21 years of the operation of the hotel.

22 CHAIRMAN JORDAN: I understand

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1 that. I'm saying each new employee, for the
2 first three years, each new employee --

3 MS. SHIKER: Yes.

4 CHAIRMAN JORDAN: -- because
5 employees in hotels and situations change all
6 the time.

7 MS. SHIKER: Correct. That is
8 correct. And that replaces the second two
9 bullets in their original report.

10 CHAIRMAN JORDAN: Okay.

11 MS. SHIKER: And then the final
12 condition from DDOT was the Applicant agrees to
13 provide a minimum of two short-term bike parking
14 racks, i.e., four spaces, the location of which
15 will be addressed in the public space permitting
16 process.

17 CHAIRMAN JORDAN: Two short-term
18 bicycle racks?

19 MS. SHIKER: Yes, which is four
20 spaces. Two bikes per rack.

21 CHAIRMAN JORDAN: That's enough?

22 MS. SHIKER: In the public space.

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1 We're also providing -- inside, we're providing
2 five bike parking spaces inside.

3 CHAIRMAN JORDAN: Okay. So if I get
4 this straight, number one is essentially the
5 same but we're adding more specificity. Number
6 two. I think you're dropping number -- number
7 two drops off because you're not providing
8 guests with Bikeshare passes. Is that what the
9 big difference is?

10 MS. SHIKER: No. It's that they're
11 not in perpetuity any longer.

12 CHAIRMAN JORDAN: Okay. Thank you.
13 I'm just trying to see how they altered this.

14 All right. Okay. For each new
15 employee. Okay. For each. All right. So number
16 two, adding the word each new employee for the
17 first three years of their employment. Taking
18 that one out. Then we're adding that the
19 Applicant's trash containers shall not obstruct
20 the use of the alley to the neighbors, and the
21 Applicant should ensure there's no -- there is
22 not to be any on-street guest loading and

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1 unloading. Okay.

2 Is there anything else? Board, any
3 other questions? Any other issues?

4 (No response.)

5 CHAIRMAN JORDAN: Anything the
6 Applicant wants to present before we go on

7 MS. SHIKER: No. Thank you.

8 CHAIRMAN JORDAN: Okay. Then we will
9 close at hearing based upon the information
10 that's in the record.

11 I would move that we grant the relief
12 requested as modified, with the modified
13 conditions as we've just gone over them.

14 COMMISSIONER HOOD: Second.

15 CHAIRMAN JORDAN: Motion made and
16 seconded. Any further discussion?

17 (No response.)

18 CHAIRMAN JORDAN: All those in
19 favor of the motion, signify by saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN JORDAN: Those opposed,
22 nay. The motion carries. Mr. Moy.

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1 MR. MOY: Yes, sir. Staff would
2 record the vote as four to zero, this on a motion
3 of Chairman Jordan to approve the application
4 for the relief, the variance relief and the
5 special exceptions requested. Second the
6 motion, Mr. Hood. Also in support, Ms. Heath and
7 Mr. Hinkle. A board member not present. And this
8 is with the amended conditions. The motion
9 carries.

10 CHAIRMAN JORDAN: Thank you. I
11 believe we're okay with a summary order.

12 MR. MOY: Yes, sir.

13 CHAIRMAN JORDAN: Thank you.

14 MS. SHIKER: Thank you very much.

15 CHAIRMAN JORDAN: Very good. Thank
16 you. Okay. 799. 799, please. Let's find out
17 where we are. We're not going to need a full
18 presentation, no, but we're -- so don't worry
19 about that. We understand what's in the
20 application. Okay. Mr. Collins, if you'd go
21 ahead and begin the introduction, please.

22 MR. COLLINS: Thank you, Mr.

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1 Chairman. Just some guidance, please.

2 CHAIRMAN JORDAN: Just
3 introductions. I'm doing introductions right
4 now.

5 MR. COLLINS: Mr. Collins with
6 Holland & Knight, representing the Applicant.

7 MS. OSMAN: Lynn Osman with PNC
8 Realty Services.

9 MS. SHENK: Janet Shenk, 3821
10 Livingston Street.

11 MS. HILLIARD: Mara Verhayden
12 Hilliard, 3825 Livingston Street, an adjacent
13 resident.

14 MR. MESSINEO: Carl Messineo, 3825
15 Livingston Street as well.

16 MR. SCHURERCH: William Schuerch,
17 3819 Livingston Street.

18 MR. SPECK: Randy Speck, vice chair,
19 ANC 3G.

20 MR. MCCARTHY: Jim McCarthy, chair,
21 ANC 3G.

22 CHAIRMAN JORDAN: Mr. Speck, you're

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1 the chair of what?

2 MR. SPECK: Vice chair.

3 CHAIRMAN JORDAN: Vice chair. Okay.

4 And Mr. McCarthy, you are the chair?

5 MR. McCARTHY: I'm the chair; yes.

6 I'm also a neighbor of the parking lot. I live
7 directly behind it at 3835 Livingston Street.

8 CHAIRMAN JORDAN: And who's
9 speaking for the party in opposition?

10 MS. HILLIARD: I'm speaking for the
11 party in opposition, although my neighbors --
12 we seek not to be redundant, but they do have
13 somewhat different experiences among us.

14 CHAIRMAN JORDAN: Yes. But for
15 party status --

16 MS. HILLIARD: Yes, sir.

17 CHAIRMAN JORDAN: Only one of you is
18 going to speak in regard to party status. Others
19 can speak in regards to as any other person in
20 opposition.

21 MS. HILLIARD: Thank you.

22 CHAIRMAN JORDAN: Okay. Can you

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1 bring me, Mr. Collins, up on where we are with
2 our negotiations, our discussions with those
3 and --

4 MR. COLLINS: Sure. The discussion
5 s really centered on two issues, the lighting
6 of the lot and the hours of operation of the lot.
7 And we had a, I thought was a fruitful
8 discussion, and we have proposed to address the
9 lighting situation. There are some photos that
10 we saw, that clearly show the lights are not
11 directed downward as required.

12 CHAIRMAN JORDAN: I thought that
13 was even in a previous order on condition --

14 MR. COLLINS: It's in the orders,
15 Mr. Chair, but as actually technology changes,
16 the type of lighting changes. The poles didn't
17 change. The fixtures didn't change. The bulbs
18 changed. And so we'll be addressing that as soon
19 as Ms. Osman gets back to the office, is what
20 she committed to.

21 And then secondly, the hours of
22 operation of the lot. We have proposed -- we've

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1 heard from a number of constituencies about the
2 availability of the lot. It is now open 24/7.
3 Not now. Now it's closed per the direction of
4 the Zoning Administrator as a result of the
5 concerns expressed by the parties in
6 opposition.

7 CHAIRMAN JORDAN: What time does it
8 close?

9 MR. COLLINS: Right now?

10 CHAIRMAN JORDAN: What time does it
11 close?

12 MR. COLLINS: It closes at -- why
13 don't you -- yes, please.

14 MS. OSMAN: When the branch closes,
15 Monday through Thursday, at 5:00 p.m. Fridays
16 at 6:00 p.m. Saturdays at 1:00 p.m.

17 CHAIRMAN JORDAN: And how long has
18 it been operating -- how long has it been closing
19 at the end of the day?

20 MS. OSMAN: Since approximately the
21 third of fourth week of May of this year.

22 CHAIRMAN JORDAN: So this year. Up

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1 to that point it was -- okay. All right.

2 MR. COLLINS: And we agree with the
3 Zoning Administrator, that we would close that
4 and let him know, or let -- and the Enforcement
5 Branch of the Zoning Administrator's office
6 know that we would come back to the Board, and
7 discuss the continuation of hours of operation
8 after those time periods.

9 But he said in the meantime, he
10 wanted it closed at the close of business, and
11 that's what we're doing. So we had the
12 discussions. We have proposed to close the
13 gate at 10:00 o'clock, or close the -- lock the
14 lot at 10:00 o'clock at night, seven days a week.

15 We do have business customers with
16 large deposits. The ATMs are keyed to accept
17 very large deposits up until 10:00 p.m. So we
18 do have business customers coming to the ATM at
19 10:00 o'clock. We have a number of different
20 constituencies we're trying to address here. We
21 do have people who would like the lot open 24/7.
22 And we have neighbors, in front of you, who would

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1 like the lot closed at the close of business.

2 So we're trying to find a compromise
3 and we came up with 10:00 o'clock, and that would
4 be either -- and we would ask the flexibility
5 to do that, till 10:00 o'clock, and we would do
6 that either through an automated means, or
7 manual means. Right now, the only way to do it
8 is manually.

9 And what we would propose to do is
10 then seek to install electronic gates on a
11 timer, that PNC has done in other situations.
12 They have that technology, the ability to do
13 that. They have done it, and that would require
14 that we go -- for the location of that, we would
15 have to go to the Public Space Committee to get
16 authorization to put that, the automated gates
17 in place, because that is within a building
18 restriction line area and is treated as public
19 space, and Mr. Gyor is somewhat familiar with
20 that issue, and his office would be part of that
21 Public Space Committee process.

22 CHAIRMAN JORDAN: And where are we

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1 -- Ms. Hilliard, is it?

2 MS. HILLIARD: Yes.

3 CHAIRMAN JORDAN: In regard to that
4 proposal, where are you?

5 MS. HILLIARD: Well, there's a
6 couple factual issues. We've lived there, among
7 us, for decades. The lot, in fact, has not
8 historically been open. The lot, in fact, was
9 an accessory lot, authorized for us for bank
10 branching issues, and it was closed during the
11 -- when the branch was closed.

12 CHAIRMAN JORDAN: I'm just asking
13 you, right now, regarding the offer that they
14 remain open till 10:00.

15 MS. HILLIARD: Right. And so for
16 that reason, it's a material change in even the
17 application they submitted to the BZA, in terms
18 of what they want to do now, and we are opposed
19 to this change.

20 CHAIRMAN JORDAN: So you're not
21 accepting what --

22 MS. HILLIARD: To this conversion.

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1 CHAIRMAN JORDAN: You're not
2 accepting what they're saying. That's all I
3 really want at this point.

4 MS. HILLIARD: Yes.

5 CHAIRMAN JORDAN: All right. For
6 the basis of this hearing, then, I'm going to
7 be limiting in regards to what we need, Mr.
8 Collins. I think the record supports the
9 continuation of its special exception use of the
10 parking lot.

11 The only issue that's before the
12 Board now is that there's going to be
13 restriction toward the hours of operation.

14 Is that good with the Board?

15 So in regards to your presentation,
16 that's where we center it. We understand the
17 previous -- everything that's in the record. We
18 understand -- and even to the party in
19 opposition, we understand your position on --
20 your agreeing that the accessory lot should be
21 used. The only issue that's before this Board
22 now, because I think we have not only an

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1 agreement, but I think the record clearly
2 supports, and the Board would find,
3 hard-pressed not to continue this accessory use
4 for, at least up till 5:00 o'clock or 6:00
5 o'clock, whatever the timeframe is. We're just
6 dealing from that other window.

7 So that's what I'm going to restrict
8 our understanding of our hearing. Is that okay
9 with the Board? Good? Okay. Mr. Collins, then.

10 And the way we'll proceed -- so we'll
11 let everybody understand -- the Applicant has
12 the opportunity to put on its support for its
13 position. The party in opposition has the right
14 to cross-examine. The ANC of course has the
15 opportunity to ask any questions and
16 cross-examine also. Then we will go to -- and
17 the Board, at all times, can ask questions. Then
18 we go to Office of Planning for their input. And
19 then the Applicant -- everybody gets the
20 opportunity to cross-examine, and then we go
21 back to the audience for anyone in support or
22 whatever. Okay? Just so we know where we are.

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1 Those other members who sought party
2 status in the consolidated group, you would have
3 up to three minutes to provide a statement to
4 the Board, if you find necessary, of any
5 specialized opposition. But we're not going to
6 be repetitive. Okay. Good.

7 I'm sorry, Mr. Collins.

8 MR. COLLINS: Thank you. Thank you.
9 I can be very brief. This application has the
10 support of the ANC. It has the support of the
11 Office of Planning, and I have two witnesses
12 today, and they will introduce themselves when
13 they speak. Lynn Osman and Wayne Fortune from
14 PNC Bank. So Ms. Osman, would you please
15 identify yourself for the record and proceed
16 with your testimony.

17 MS. OSMAN: Good afternoon, Mr.
18 Chairman, and members of the Board. As Mr.
19 Collins said, I'm Lynn Osman. I'm the regional
20 manager for the PNC Financial Services Group,
21 Realty Services Operations for the Greater
22 Washington Area.

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1 I have been with PNC since 2006, and
2 prior to that with Riggs for 18 years.

3 I am responsible for the day to day
4 operations of our real estate. In 1988, I sat
5 before this Board to request a special exception
6 to allow for the continued use of the accessory
7 parking lot, and again in 1994 and '98. And I
8 come to you again, today, to ask for that same
9 exception.

10 In 1987, when I joined the Riggs and
11 was responsible for the management of the
12 property in discussion, I reviewed the previous
13 Board decisions to ensure compliance.

14 I found that the staff was using a
15 post-and-chain system to lock the parking lot
16 after hours, to secure it. I also found that
17 there were several occasions where the chain was
18 being cut and/or people were just driving over
19 the curb to leave the lot if they had been locked
20 in.

21 After the 19 --

22 CHAIRMAN JORDAN: Let me ask you. Is

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1 there any other office use in the building? Or
2 just the bank?

3 MS. OSMAN: Just the bank branch.

4 After -- we do have a storage of our
5 archives. Riggs was a -- had a very rich history,
6 and we maintained all of the archives. PNC has
7 then maintained that and actually uses it as a
8 collection point for some of the other banks
9 we've acquired. So back office.

10 After the 1994 approval, we changed
11 the system that they used with the chain to the
12 current gates that we have in place.

13 And then, after the '98 approval, my
14 office of Operations no longer told the branch
15 to enforce the closing of the gate, since the
16 order did not specifically say the gate had to
17 be chained closed.

18 We found that it was a benefit, not
19 only to our customers and to our employees, but
20 also to the community.

21 Then this past spring, we did
22 receive a letter from the Zoning Office that

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1 notified us that the variance had expired and
2 that we were to cease using the lot.

3 We immediately engaged Holland &
4 Knight, who contacted the Zoning Office to
5 request relief while we were filing our
6 paperwork for today. We submitted the request
7 to allow for that continued use by posting a
8 guard that stayed on the site from 5:00 p.m.,
9 when we closed, until 10:00 p.m., to inform
10 anyone that came to use the lot that it would
11 be closed.

12 We did this for a little less than
13 two weeks. When our office realized that we did
14 not -- we have not received formal conformation
15 from the Zoning Office that that was acceptable,
16 we decided it was in everyone's best interest
17 to stop that, and we started locking the gate,
18 right at 5:00 o'clock, as a temporary measure,
19 until we could come before the Board today.

20 During this time, I've attended two
21 ANC meetings to hear the concerns from the
22 community, from both sides, and I have also met

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1 with some of the neighbors at the site.

2 At that time, they brought to my
3 attention that we had issues with noise from
4 cars, from people, and lighting issues.

5 In my 27 years of managing this
6 property, that was the first time I'd had
7 neighbors reach out to me to express these
8 concerns, which Mr. Collins mentioned, we are
9 addressing the lighting issues. I will start on
10 that today.

11 So, in conclusion, I am requesting
12 a continuation of that special exception for the
13 use of the accessory parking, as I said, for
14 employees, for our customers, and for the
15 convenience of the neighborhood. Thank you.

16 CHAIRMAN JORDAN: Any questions for
17 this witness at this point?

18 (No response.)

19 CHAIRMAN JORDAN: Mr. Collins, did
20 you want to give us something -- why it needs
21 to stay open beyond 5:00 o'clock.

22 I'm saying beyond the --yes, when

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1 the bank -- after the bank hours.

2 MR. COLLINS: Sure; sure. There's a
3 couple of reasons. It has been used by others
4 in the community as a community resource to
5 alleviate the pressure of on-street parking.

6 It has been historically, being used
7 that way since the late '90s, for at least ten,
8 maybe upwards of 15 years, until May. We do
9 have customers who -- business customers who can
10 make large deposits at the ATM machine. The ATM
11 machine is keyed to take large deposits up until
12 10:00 o'clock p.m.

13 We do have customers who do not --
14 who use the ATM machine, but because of the
15 placement of the bollards -- I'm sure some of
16 you've had this experience, when you drive up
17 in your car, you can't, depending on the make
18 of your car and the location of the buttons and
19 the slots in the ATM machine, you can't always
20 reach it from sitting in your driver's seat.

21 Some people try and open the door and
22 do it. Others we've found drive in the lot, park

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1 in the lot, walk up to the ATM machine to make
2 their transaction that way.

3 CHAIRMAN JORDAN: Where is the ATM
4 machine in regards to the parking lot? It's in
5 the parking lot or --

6 MR. COLLINS: There's a map that's
7 attached to our --

8 CHAIRMAN JORDAN: Give me the exhibit
9 number. That'd be great; yes.

10 MR. COLLINS: I'll give you the
11 exhibit number in a second.

12 CHAIRMAN JORDAN: 27? Okay.

13 MR. COLLINS: This is Exhibit --
14 it is Exhibit 35-B.

15 CHAIRMAN JORDAN: Oh. 35-B. Okay.

16 MR. COLLINS: And you'll see that
17 there are -- that it is right adjacent to the
18 bank building. It is on the east side of the
19 parking lot. There is an ATM machine. There is
20 also a drive-in banking window, and it's
21 covered. There's a --

22 CHAIRMAN JORDAN: Give me a second.

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1 I'm trying to catch up with you. I'm looking at
2 the exhibit. Where is it?

3 Does it have ATM on there? Oh, that's
4 it, right there? Okay. Okay.

5 MR. COLLINS: Oh, I see. Okay. Oh,
6 I see. Right.

7 CHAIRMAN JORDAN: So that's right
8 off of Morrison Street side? MR.

9 COLLINS: The ATM?

10 CHAIRMAN JORDAN: Yes.

11 MR. COLLINS: There's two ATMs,
12 actually. The one -- there's one on Morrison
13 Street, on the facade of the bank, and that's
14 the one that the people who park and walk up use
15 that one.

16 There's also the ATM machines that
17 are just east of the bank, just south of Morrison
18 Street. They're not labeled as ATM machine, but
19 you can see on the site plan, there's a thing
20 that says Roof Overhang, and the ATM machines
21 are underneath that, the drive-up ATM machines.

22 CHAIRMAN JORDAN: Over here. On the

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1 facade. Okay. Okay. And where does the gate
2 fall, or the close -- how do you close it?

3 MR. COLLINS: Right now, manually.

4 CHAIRMAN JORDAN: From right here,
5 at this -- oh, those are gates. Yes. Those are
6 two gates. And then there's no gate -- there's
7 three spots you can drive in to -- well, I'm
8 going to say the parking lot. There's actually
9 two you drive in the parking lot. The one you
10 drive to the ATM?

11 MR. COLLINS: That's correct.

12 CHAIRMAN JORDAN: So if you closed
13 off the parking, you still had access to the ATM?

14 MR. COLLINS: For the drive-in.

15 CHAIRMAN JORDAN: The drive-in.
16 Okay. All right. Got it. Okay. I'm caught up
17 with you.

18 MR. COLLINS: Okay.

19 COMMISSIONER HOOD: Mr. Chairman,
20 can I ask a question. Does the ATM work all
21 night?

22 MS. OSMAN: Yes. It's 24/7.

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1 COMMISSIONER HOOD: All right.
2 Thank you. But it only takes large -- when you
3 say only -- it takes large deposits up till 10:00
4 o'clock, what --

5 MS. OSMAN: The convenience that we
6 offer to our customers is that if they can make
7 their deposits -- and it can be up to \$30,000
8 in cash deposits up to 10:00 o'clock, it will
9 be credited to their account by next business
10 day. So there's a benefit to their arriving
11 before 10:00.

12 CHAIRMAN JORDAN: Okay. Why do they
13 need to use the lot?

14 MS. OSMAN: Some of our customers
15 prefer to park on the lot and the walk over to
16 the walk-up ATM.

17 CHAIRMAN JORDAN: Because, as you
18 said, Mr. Collins, they can't really facilitate
19 the ATM from their car. They pull up to the ATM.
20 Is that what you --

21 MR. COLLINS: I'll let Mr. Fortune
22 answer that. Mr. Fortune is the branch manager.

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1 MR. FORTUNE: For the record, Wayne
2 Fortune, the branch manager. I've been there six
3 years, since 2008. The complaints that I get
4 from customers regarding the use of the drive-up
5 ATM have to do with various issues they have with
6 their sight, various issues that they have with
7 their physical impairment to reach. Some have
8 given us feedback.

9 We've actually changed the screens.
10 We've done a lot of different revisiting with
11 the vendors that service our ATMs, to see if
12 there's anything from a design perspective that
13 could be done to accommodate.

14 But it's an aging community with a
15 demographic that's still adopting the
16 technology and willing to use it. And as an
17 industry, somebody who's very actively engaged
18 in the American Bankers Association, that's
19 where it's all going -- electronic. Physical
20 branches are really not being visited as often.
21 They're really being visited for alternative
22 delivery channels, like the ATM.

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1 And we're currently looking at
2 enhancing both the ATMs with, you know, huge
3 amounts of capital, to improve the
4 functionality and the ability to do certain
5 things, right there, at those machines. It's
6 just an industry trend.

7 So our customers' use, and the
8 desire to be able to enjoy those alternative
9 delivery channels, is growing as well.

10 There are handicap spaces within the
11 parking lot that would be inaccessible without
12 the gates being open. So for the aging community
13 of that demographic there, they would be
14 precluded, oftentimes, from finding parking on
15 the street, convenient to be able to walk the
16 short distance that they might be able to travel
17 to the ATM.

18 CHAIRMAN JORDAN: Okay. Anything
19 else on this point? have you received
20 complaints from the community regarding the use
21 of --

22 MR. FORTUNE: I will personally

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1 testify to the fact that I have been there for
2 six years, that I personally have only closed
3 the gates two times, other than the short
4 window. It was because we intended to use the
5 parking lot the following day.

6 I know, because of the tenure of my
7 staff who've been there before, that we did not
8 close the gates before. There's been a good
9 continuation of policies --

10 CHAIRMAN JORDAN: Not before 10:00
11 o'clock. But has it always been closed after
12 10:00 o'clock?

13 MR. FORTUNE: We never closed it at
14 all.

15 CHAIRMAN JORDAN: Got you.

16 MR. FORTUNE: We never came back to
17 the lot. We never closed the gates, at all.

18 Further, I can tell you that in the
19 six years, I have also never received any
20 complaint about the parking lot or the use
21 thereof, until I received that call back in
22 March.

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1 MR. COLLINS: Mr. Fortune, can you
2 discuss the responses that you've received
3 since having locked the gate at the end of the
4 business day.

5 MR. FORTUNE: We have a lot of
6 customer traffic in our branch. It is one of the
7 largest branches in the Greater Washington
8 market. Many of the customers who have visited
9 the branch have been very curious, have asked,
10 why are we, all of a sudden, making changes. Some
11 of our customers have stated they've been
12 banking here for upwards of 30 years, and have
13 never had a problem being able to pull in to the
14 lot after the hours of the bank, specifically
15 to be able to use the ATM or any other banking
16 concerns like the night depository on the front
17 side of the building.

18 We received and field many
19 complaints about the parking lot being closed,
20 and during the time of the early closing, that
21 this window of time, we did receive one that was
22 so severe, it reduced my assistant manager,

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1 who's been a very good professional for many
2 years, to tears.

3 The customer literally made her get
4 me on the phone, on a Saturday morning of
5 Memorial Day weekend, before she would leave the
6 building, because she wanted a letter from the
7 branch manager excusing her from the violation
8 of after-hours parking, in which she received
9 a \$250 ticket for parking on private property.

10 CHAIRMAN JORDAN: Board, any other
11 questions of the Applicant?

12 (No response.)

13 CHAIRMAN JORDAN: Mr. Collins,
14 anything else you want to present on that point?

15 MR. COLLINS: Not at this time, sir.

16 CHAIRMAN JORDAN: Ms. Hilliard, do
17 you have any questions you would like to ask the
18 Applicant's witnesses? Just make sure your
19 microphone's on.

20 MS. HILLIARD: I apologize. Yes. I
21 did have a question I'd like to ask. This
22 discussion about the need, the

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1 newly-articulated need to have the parking,
2 accessory parking now open in to the evening
3 because of the ATM, that's nowhere reflected in
4 your application or your submission of
5 materials.

6 Is that correct? Or is it somewhere
7 that I'm not seeing it?

8 MR. COLLINS: Is that a question,
9 Mr. Chairman?

10 MS. HILLIARD: Yes. I'm asking you
11 to point to --

12 CHAIRMAN JORDAN: She said is that
13 correct. She said in your --

14 MR. COLLINS: Is it correct?

15 CHAIRMAN JORDAN: -- previous
16 submission, did you make the same
17 representations. Is that what you asked, Ms.
18 Hilliard?

19 MS. HILLIARD: Yes.

20 MR. COLLINS: That is not in our
21 statement that we -- it's in our presentation
22 this morning.

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1 MS. HILLIARD: And you did tell us
2 that in fact you expect and want to use the lot,
3 not just for the parking, to walk to an ATM, but,
4 in fact, for all the businesses in the area --
5 the restaurants, the movie theater, and you said
6 that that would be a community resource.

7 CHAIRMAN JORDAN: Let me go back
8 over. You're confusing me in the question. Are
9 you saying are there -- is your question is that
10 their use -- their need to keep the parking lot
11 open is not for their customers but for the
12 community -- other businesses in the community.
13 Is that what you're asking?

14 MS. HILLIARD: That's what I'm
15 asking and that's what they've said --

16 CHAIRMAN JORDAN: Is that your
17 representation? Did you say that's why you
18 wanted to keep it open?

19 MR. COLLINS: Mr. Chairman, is that
20 a question to me as the attorney?

21 CHAIRMAN JORDAN: Yes, that's a
22 question -- no. It's never the question to an

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1 attorney when your witnesses can -- because I
2 have a problem with our attorneys when they give
3 -- and not just -- not you. But we -- you know.
4 But the response should come from one of the
5 witnesses that testified.

6 MR. FORTUNE: The answer to the
7 question is that the signs in the parking lot
8 are clearly marked that they are for PNC
9 customers while performing PNC transactions
10 only. And we have no intention to change those
11 signs.

12 And so just like any other area of
13 the city, when you park and you get that leery
14 feeling in your stomach because you've parked
15 in a fire lane, or some other emergency spot,
16 and you walk away, you take that risk that you
17 might receive a ticket.

18 The signs are really meant for us to
19 be able to enforce during the day, so we can keep
20 the available spaces for our customers, and is
21 to deter anybody who's a non-PNC customer from
22 parking at any other time of the day because it

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1 stays up all day.

2 CHAIRMAN JORDAN: But you do allow
3 your lot to be used for non-banking customers,
4 after hours?

5 MR. FORTUNE: The answer to it is we
6 aren't available to enforce --

7 CHAIRMAN JORDAN: That's not what I
8 asked you. I said you still -- you allow people
9 to use your lot. You're not forbidding them to
10 use your lot after banking hours?

11 MR. FORTUNE: We deter them through
12 the signs.

13 CHAIRMAN JORDAN: So you deter them
14 through the signs. So are you enforcing that
15 signage? Are you enforcing it after hours?

16 MR. FORTUNE: No.

17 CHAIRMAN JORDAN: Okay. So I
18 understand. When I ask questions, they're like
19 real specific and very direct. There's either
20 yes, no, in between. There's not the side
21 dancing. That doesn't help when it happens. Next
22 question.

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1 COMMISSIONER HOOD: Mr. Chairman,
2 can I just ask a question. So how do you enforce
3 it during the day, other than -- how do you
4 enforce it during the day? How do you keep tabs
5 on all that action going on, while you're doing
6 your banking during the day?

7 MR. FORTUNE: It's actually pretty
8 easy. You know, we know which cars are
9 employees cars, because we obviously work
10 together and we've been doing so for a long time.
11 We know who our regular violators are, and we've
12 had our foot patrol officer physically, like go
13 to them and talk to them about removing their
14 cars, and placing those vehicles in the proper
15 areas, to leave it available for our customers.

16 And we do look to see if there is a
17 car that remains in the lot for an extended
18 period of time, that we don't recognize, and we
19 have ticketed in the past.

20 COMMISSIONER HOOD: Okay.

21 MEMBER HEATH: May I ask then, how
22 are you going to enforce non-PNC bank use after

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1 you've left and the branch has closed?

2 MR. FORTUNE: We intend to rely on
3 the signs to deter the non-PNC customers from
4 parking.

5 MEMBER HEATH: Then I have to ask:
6 Did you not just say to us this morning -- and
7 there are multiple witnesses here, one that --

8 CHAIRMAN JORDAN: We're going to
9 let that go in regards to settlement
10 negotiations. Let's -- there's other questions.

11 MEMBER HEATH: But they're not here
12 in terms of settlement negotiations. They have
13 said publicly -- you've said, publicly, that you
14 believe that the parking lot should be used as
15 a community resource, and available for
16 businesses and restaurants, and others who are
17 driving to the neighborhood and not for branch
18 use.

19 That is what you have said, and
20 you've said it publicly; isn't that correct?

21 And now you're saying something
22 different, when asked here.

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1 MR. FORTUNE: We are requesting the
2 special exception for the use of the accessory
3 parking lot for our employees, our customers,
4 and the convenience of the neighborhood.

5 CHAIRMAN JORDAN: For customers.
6 Got you. Okay.

7 MR. FORTUNE: That testimony was
8 earlier presented by Lynn Osman, verbatim.

9 CHAIRMAN JORDAN: I thought we were
10 talking about -- you needed this for your
11 customers. I missed the other point about the
12 community, because you said your previous use,
13 there had been some people who used it, from the
14 community, to relieve the stress. But your whole
15 intent, what we talk about now, is because your
16 customers need to do -- have the ability, up to
17 probably around 10:00 o'clock, to make their
18 large deposits; right?

19 MR. FORTUNE: That is certainly
20 something that would get in our way.

21 CHAIRMAN JORDAN: Because this is
22 an accessory business use for this lot; isn't

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1 that right? What this is?

2 MR. FORTUNE: Yes.

3 CHAIRMAN JORDAN: Okay. It's not
4 like community benefit side, unless that's
5 -- right? Okay. Got you. Any other questions?

6 MEMBER HEATH: I'll make them very
7 brief. I appreciate your indulgence. The ATM,
8 the walk-up ATM is not constrained within the
9 parking lot such, that if the bank shuts the lot,
10 people can't access the walk-up ATM. That's
11 correct; right? The walk-up ATM is accessible
12 at all hours?

13 MR. FORTUNE: You're right. The
14 current configuration would allow anybody who
15 walks up to access the ATM.

16 MEMBER HEATH: And the drive-up
17 ATM, and which there are two drive-up ATMs, and
18 the entrance to the drive-up ATM and the access
19 to the drive-up ATM, those drive-up ATMs are
20 open 24 hours, even if the parking lot is locked?

21 MR. FORTUNE: The current
22 configuration of the lot has a extended driveway

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1 that completely encircles the lot in question.

2 MEMBER HEATH: So shutting the
3 parking lot does not affect the ability of
4 people to either walk up to the ATM, or drive
5 up to the ATM, if they want to use drive-up ATMs,
6 since there are three ATMs right there. It
7 doesn't affect 24 hour use of the ATMs?

8 CHAIRMAN JORDAN: That's a
9 question?

10 MEMBER HEATH: Is that --

11 CHAIRMAN JORDAN: That was your
12 question?

13 MEMBER HEATH: Isn't that correct?

14 MR. FORTUNE: No. It is a
15 convenience.

16 CHAIRMAN JORDAN: I understand the
17 answer. All right. Have you got anything else
18 you need to ask?

19 MEMBER HEATH: You do have the
20 ability, through automated, manual means, to
21 put the gates on a timer. You could do that and
22 have those gates automatically shut at the time

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1 that the branch is closed; correct?

2 MS. OSMAN: Yes. We would need to
3 install new gates, and go through that process
4 that we've already discussed.

5 MEMBER HEATH: Thank you.

6 CHAIRMAN JORDAN: All right. The
7 ANC, any questions you'd like to ask the
8 Applicant, if you feel like it.

9 MR. McCARTHY: I just, as I listened
10 to this colloquy, the question occurred to me.
11 The driveway that accesses the ATM machines,
12 that is also on the property for which you are
13 requesting a special exception; correct?

14 MS. OSMAN: Yes; it is.

15 MR. McCARTHY: Okay. So the point
16 about the parking lot being locked but the
17 driveway still being accessible, there really
18 is no distinction in that sense, in that they're
19 both part of the special exception request?

20 MS. OSMAN: That's correct.

21 CHAIRMAN JORDAN: All right. Board,
22 any other questions?

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1 (No response.)

2 CHAIRMAN JORDAN: Thank you. Any
3 other questions?

4 (No response.)

5 CHAIRMAN JORDAN: Mr. Gyor,
6 anything you want to ask Office of Planning.

7 MR. GYOR: Good afternoon, Mr.
8 Chairman, members of the Board. Stephen Gyor
9 with the Office of Planning. We support the
10 Applicant's request for relief, and I have
11 suggested some conditions, which you have in the
12 report before you, and rest on the record. Thank
13 you.

14 CHAIRMAN JORDAN: And did you have
15 an opinion about any effect upon the parking
16 garage staying open 24 hours, or till 10:00
17 o'clock, till 5:00 -- any of that?

18 MR. GYOR: Well, our position is we
19 support the parking lot being used as a
20 community resource, essentially. But we do
21 typically support any mitigation measures for
22 parking lots in residential zones. So the

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1 screening and the lighting are definitely
2 issues that we consider.

3 CHAIRMAN JORDAN: Board, any
4 questions of Office of Planning?

5 (No response.)

6 CHAIRMAN JORDAN: Okay. Questions,
7 Mr. Collins, of Office of Planning?

8 MR. COLLINS: Just one, Mr. Gyor.
9 If the Board determines it appropriate, in your
10 list of conditions that you have in your report,
11 would you support the inclusion of, in addition
12 to what you have as Item 7 on page one of your
13 report, would you include what you have on page
14 six, under Item C, what you just testified to
15 about support, allowing the parking lot to
16 remain open and available after the bank is
17 closed?

18 MR. GYOR: Yes.

19 MR. COLLINS: Thank you.

20 CHAIRMAN JORDAN: Okay. Ms.
21 Hilliard, any questions you'd like to ask the
22 Office of Planning?

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1 MS. HILLIARD: The Office of
2 Planning had no consultation, or discussion, or
3 input from the nearby-affected residents who
4 have the automatic adverse effects of the block
5 being open.

6 CHAIRMAN JORDAN: Did they?

7 MS. HILLIARD: Did they?

8 MR. GYOR: I did not; no.

9 MS. HILLIARD: Thank you.

10 CHAIRMAN JORDAN: Any additional
11 questions?

12 MS. HILLIARD: No. Thank you.

13 CHAIRMAN JORDAN: Okay. Who else do
14 we have? Oh. Mr. McCarthy, any questions you'd
15 like to ask the Office of Planning?

16 (No response.)

17 CHAIRMAN JORDAN: Okay. All right.
18 Department of Transportation. Not here. Anyone
19 here wishing to -- oh. The ANC would like to make
20 your -- you can make your statement regarding
21 support.

22 MR. MCCARTHY: Yes. The ANC

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1 considered this matter -- actually has
2 considered this matter at several different
3 meetings. But at our duly-noticed public
4 meeting on July 14th of this year, we adopted
5 a resolution, unanimously, six to nothing, a
6 quorum being four, to support the application
7 of PNC for a special exception, and to impose
8 a number of conditions, which we have provided
9 to the Board in the form of settlement
10 agreement.

11 I think the key points I would make
12 are that the previous special exception, which
13 had expired, ran for a period of 10 years, and
14 since it expired, we thought it was appropriate
15 that there be a shorter period for the next
16 special exception, and so we voted to support
17 a five year special exception.

18 We had also heard from the
19 community, not necessarily in regard to this
20 application but in regard to other applications
21 for a special exception, about snow removal from
22 the sidewalks adjacent to areas that serve as

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1 parking lots, and so we added a provision in the
2 settlement agreement requiring the bank to
3 clear snow from the sidewalks.

4 CHAIRMAN JORDAN: You do have a
5 executed, separate settlement agreement with
6 the Applicant; is that correct?

7 MR. McCARTHY: We do. Yes, indeed.

8 CHAIRMAN JORDAN: All right. Got
9 it.

10 MR. McCARTHY: But finally, I think
11 with regard to this discussion, it's probably
12 appropriate to point out that we stated in this
13 settlement agreement, that the ANC concludes
14 that it's in the best interests of the entire
15 community for PNC to have the option, at its
16 discretion, to open its accessory parking lot
17 for reasonable use after banking hours.

18 As I mentioned earlier, when I
19 introduced myself, my house also neighbors the
20 parking lot, and as Ms. Osman, for the bank,
21 testified, we've never heard noise or had
22 complaints about the parking lot, nor do we

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1 consider it, in any sense, a nuisance.

2 And the bank has been operating at
3 24/7 as a parking lot for at least 16 years. And
4 so I would support, and the ANC also supported,
5 the bank having the discretion to continue that
6 use as a neighborhood service.

7 CHAIRMAN JORDAN: Thank you. Board,
8 any questions of Mr. McCarthy?

9 (No response.)

10 CHAIRMAN JORDAN: Does the
11 Applicant have any questions?

12 MR. COLLINS: No, sir.

13 CHAIRMAN JORDAN: Ms. Hilliard?

14 MS. HILLIARD: Just one question
15 for Mr. McCarthy. Your house, which is several
16 doors down from ours, actually does not fully
17 abut the bank parking lot. In fact, it's
18 partially the rear of your house is shielded
19 from the bank parking lot by very large trees,
20 a higher portion of the retaining wall, and a
21 residential property that is also halfway
22 across the space; isn't that correct?

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1 MR. McCARTHY: No; that's
2 incorrect. My house is actually directly behind
3 the driveway that services the 24/7 ATM
4 machines. So to the extent that light from the
5 parking lot, or from the area from which people
6 are asking a special exception interferes with
7 houses being the parking lot, I'm probably more
8 affected than any of the other houses would be.

9 Secondly, as you pointed out, there
10 is a large retaining wall. The reason for that
11 retaining wall is that the street runs uphill,
12 and my house is situated, relative to the
13 parking lot, at roughly the same elevation as
14 the others.

15 And finally, you know, my -- you've
16 described the impacts on your house, having
17 bedrooms and windows on the back that are
18 affected. We have a bedroom on the back of our
19 house that is directly behind the driveway. We
20 have another room that I work in often, it serves
21 as an office, I'm generally there until 11:30
22 at night.

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1 We have no air conditioning in our
2 house, so that we generally have windows open
3 24 hours a day during the summer. I have never
4 heard noise from this parking lot during the 29
5 years that I've lived there.

6 CHAIRMAN JORDAN: Additional
7 questions?

8 MEMBER HEATH: We'll address our --
9 the distinctions that are on testimony.

10 CHAIRMAN JORDAN: Okay. Thank you.
11 Anyone wishing to speak in support of this
12 application? Anyone wishing to speak in
13 support?

14 All right. Let's now move to -- okay.
15 Come forward. I'm going to need some space at
16 the table. Thank you. Appreciate it.
17 We have one spot and somebody can come, back and
18 forth, just be on deck.

19 Please identify yourself.

20 MR. ABBARIKI: My name is Mike
21 Abbariki. I'm the owner of Chevy Chase Arcade.

22 CHAIRMAN JORDAN: And did you -- you

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1 were here earlier to be sworn in?

2 MR. ABBARIKI: Yes. I did.

3 CHAIRMAN JORDAN: You submitted
4 your --

5 MR. ABBARIKI: Yes.

6 CHAIRMAN JORDAN: Okay. So you have
7 three minutes.

8 MR. ABBARIKI: Yes, sir. As the
9 owner of the Chevy Chase Arcade, I have been
10 personally involved with the management of the
11 building. The Chevy Chase Arcade building has
12 been my office for the past five years. So I'm
13 personally there every day.

14 The trash issue came up --

15 CHAIRMAN JORDAN: We're not
16 discussing the trash issue.

17 MR. ABBARIKI: Okay. Sorry. The
18 alley in the rear of the property is separate
19 entrance to the bank, has nothing to do with the
20 bank entrance.

21 CHAIRMAN JORDAN: Excuse me. let me
22 qualify myself. If you're saying the place is

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1 scattered with trash, and there's a problem with
2 trash, there's an impact to give them a special
3 exception. Yes. But whether or not you have
4 an easement, and it should be maintained and
5 protected, we're not going to hear that. So feel
6 free.

7 MR. ABBARIKI: Okay. That all I'm
8 saying, that, you know, it is grandfathered for
9 60 years, over 60 years, this piece of property
10 was sold to, as far as we can find out, there
11 was a deed for this easement.

12 And this wasn't just for easement.
13 There is a platform constructed by the previous
14 owners for this.

15 So I'm just bringing that
16 information to your attention, that there are
17 other activities in the bank. While I support
18 the bank for their ATM machine, I support the
19 bank for their community purposes that they've
20 been doing, they, part of their job was to bring
21 in -- some people bring their trash, and they
22 shredded the trash, and they have a trash house

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1 in their lot, that they have been using for that
2 community use.

3 I saw it. But these are the issues
4 that -- you know -- it's part of the parking lot.
5 I wish to support that, the use that we've been
6 doing it. It has its own way of doing it. We
7 have a deed, and we think that the bank is doing
8 a great job for the community, and the bank. I
9 own two accounts. I think they are a fantastic
10 bank. The manager is very good. The whole
11 community love them.

12 But the part I like to bring up was
13 in our ANC meeting, part of the ANC approval was
14 put forward to you to accept, to have that
15 condition of the trash, and what -- the location
16 and how it was done. The whole thing came up when
17 the restaurant opened. We didn't have any
18 problem before. But the ANC supported this, and
19 it was part of their application, a part of their
20 support, in here, for you to see. That's all I
21 have to say.

22 CHAIRMAN JORDAN: Thank you. Board,

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1 any questions?

2 (No response.)

3 CHAIRMAN JORDAN: Applicant, any
4 questions?

5 MR. COLLINS: No, sir.

6 CHAIRMAN JORDAN: Ms. Hilliard,
7 questions?

8 (No response.)

9 CHAIRMAN JORDAN: Okay. Thank you
10 very much. I appreciate it. Anyone else
11 wishing to speak on a issue germane before the
12 Board? Meaning that we're not talking about
13 easements here.

14 MR. BROWN: Thank you very much. My
15 name's Tony Brown.

16 CHAIRMAN JORDAN: Mr. Brown.

17 MR. BROWN: I was sworn in earlier
18 too. I am a business owner in the neighborhood.
19 Actually, my business is -- does reside in Chevy
20 Chase Arcade. I just wanted to say I've also been
21 a PNC customer since the early nineties, and I
22 am in support of the application.

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1 As a business owner, I do know the
2 community is well-served by having the parking
3 lot. I would also say, and reiterate some
4 comments that were made earlier, that having
5 interacted with neighbors in the community
6 since the parking lot has been closed, there has
7 been significant hardship, and complaints.

8 So I think that is a very vocal note
9 in the community, and I just wanted to make sure,
10 that as both a business owner and as a resident,
11 that I reiterate that fact. So thank you.

12 CHAIRMAN JORDAN: Very good. Thank
13 you, Mr. Brown. Questions, anyone?

14 MR. COLLINS: No, sir.

15 MEMBER HEATH: I have a question.

16 CHAIRMAN JORDAN: Mr. Brown.

17 MEMBER HEATH: Mr. Brown, you
18 identify yourself as a business owner. You are
19 actually the owner of the new Macon restaurant
20 in the arcade; is that correct?

21 MR. BROWN: Yes; it is.

22 MEMBER HEATH: And your customers

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1 are now -- or were trying to use the bank parking
2 lot after hours to park to go to your restaurant,
3 weren't they?

4 MR. BROWN: To that, actually, I'm
5 not sure. I honestly do not know where they park.
6 I do know that I hear -- as part of the community,
7 I hear a lot of --

8 MEMBER HEATH: And when you refer to
9 yourself as a resident, you're actually not a
10 resident. You live in Maryland; isn't that
11 right?

12 MR. BROWN: I'm a resident of the
13 community; yes. Right.

14 MEMBER HEATH: Okay.

15 MR. BROWN: But not a D.C. --

16 MEMBER HEATH: Just to clarify.
17 You're not a resident of this District?

18 MR. BROWN: Right. I do live about a
19 mile away; right.

20 MEMBER HEATH: In Maryland?

21 MR. BROWN: Yes.

22 MEMBER HEATH: Thank you.

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1 CHAIRMAN JORDAN: Okay. Thank you.

2 Anyone in opposition -- no. I'm
3 sorry. Let's now have the case presented from
4 the party in opposition. So you have ten
5 minutes to do your presentation, please.

6 MS. HILLIARD: I'm sorry. I did not
7 hear.

8 CHAIRMAN JORDAN: Ten minutes. We
9 try to keep it comparable to what the Applicant
10 used.

11 MS. HILLIARD: Thank you, Chairman
12 Jordan and commissioners. I understand that our
13 submissions are a part of the record, and so I
14 will not reiterate, or read from our existing
15 submissions, understanding that the Board is
16 evaluating, looked at them, read them.

17 CHAIRMAN JORDAN: Oh, yes.

18 MS. HILLIARD: What I think would be
19 helpful for us, and what we feel we need to point
20 out, is that -- which is obviously known to the
21 Board -- but this is a R-2 zoned area where they
22 want to put an accessory, have the continuing

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1 operation of an accessory parking lot,
2 accessory to a C-1 zoned commercial district,
3 a low-density commercial district intended to
4 be, you know, a small neighborhood -- serve a
5 small neighborhood tributary.

6 And although the PNC failed to get
7 proper zoning approval, and operated the
8 accessory lot, you know, illegally, or without
9 proper approval, for many years, and was not
10 enforcing, for some period of time, even their
11 obligations under the prior special exception,
12 we, as neighbors, were not objecting, and making
13 an issue of that, to say, well, this is, you
14 know, bad management and we don't think they
15 should have the accessory parking lot.

16 We agree with you, that the
17 accessory parking lot is fine as an accessory
18 parking lot. But it's not that it's a
19 restriction. They now are seeking an expansion
20 on use. That lot has not been open 24/7 for 16
21 years.

22 I've lived there for 14 years. I've

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1 lived in the neighborhood for the better part
2 of 50 years, back when it was Riggs, and the lot
3 was -- and under the special exceptions that
4 were allowed. It was allowed to be an accessory
5 lot for serving the business, not as -- a shift
6 now. This is beyond just an expansion. It's
7 actually a change in what the lot's purpose is.
8 It becomes a parking lot which is a different
9 zoning issue, a commercial parking lot open till
10 10:00, or whatever hours --

11 CHAIRMAN JORDAN: Commercial
12 parking lot. Do they charge?

13 MS. HILLIARD: No.

14 CHAIRMAN JORDAN: Okay.

15 MS. HILLIARD: And it's not -- and
16 that's not even in their original application.
17 The original application does not ask the Board
18 for an expansion to allow parking for, as a
19 quote, unquote, community resource, which
20 others are saying and acknowledging is what they
21 are now saying they want.

22 But when I ask them directly, they

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1 step back, and they're being very careful with
2 their language, and saying we have signs. But
3 I think the disingenuousness is really -- is an
4 increasing problem for us, if there's -- they're
5 not being forthright about what their intended
6 use it.

7 There's nothing about the ATM issue
8 in their application, at all. The ATM is not a
9 problem. There are two drive-up ATMs. We're not
10 seeking to have those shut. There is a walk-up
11 ATM. There is not a problem with the ATMs. Anyone
12 can drive up to an ATM, and, you know, if you
13 don't like leaning out your window, you can open
14 the car door. I mean, it's -- the ATMs are open
15 24/7, and there are two drive-ups, and they are
16 not affected by closing the parking lot and we
17 weren't seeking to stop those either.

18 The issue of the parking lot's use,
19 and it's obviously been unenforced for some
20 time, has grown, and it's grown because we see
21 opening of new restaurants, new businesses in
22 the neighborhood, and grown too because the

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1 branch manager's reached out to those
2 businesses, and encouraged the use of the lot
3 as a, quote, unquote, community resource.

4 So while it was sitting there, and
5 it used to be enforced and locked, at the point
6 -- whatever point in time it began to be
7 unlocked, you know, was marginal difference,
8 and as it became a larger and larger nuisance,
9 and really adversely affecting us with noise
10 with people returning to the cars -- I mean, if
11 you people coming, going, all night, and they're
12 coming, you know, even till 10:00, and coming
13 back to the cars, they're putting a parking lot
14 in our backyard in the evenings, that wasn't
15 there, and it's loud and disruptive.

16 And when I reached out to the branch
17 manager, and asked him if he could just conform
18 to the prior special exception, he told me that
19 the interests of the businesses and the people
20 that want to drive to the neighborhood, in his
21 words, quote, superseded the interests of the
22 neighbors who are adjacent to the parking lot.

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1 And he's come to public meetings,
2 and talked about how he's opening the parking
3 lot to the community as a community resource.

4 And when we asked the -- you know,
5 raised the issue at the ANC, the ANC took no
6 steps with regard to the fact that there was no
7 special exception in place, and that there had
8 been no BZA submissions, and no approval. When
9 we asked the branch, they took no action.

10 So we were ultimately forced to go
11 to the Office of Zoning and ask the Office of
12 Zoning to do something, because the problem's
13 becoming out of control, a nuisance, disruptive
14 at night. I have a 9-year-old son. It is loud.
15 We have a back yard. We like to be able to be
16 in the back yard. We have lights that come in
17 the bedroom windows.

18 And I note that this description,
19 the Office of Zoning advised the bank, when the
20 bank was notified that they were without a
21 special exception, they needed to apply for it,
22 I have an email from Mr. Reid in the Office of

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1 Zoning, and he said that the bank has been
2 informed that prior BZA approvals allowed the
3 bank to use the lot for parking, for customer
4 use, and prohibited any other use.

5 And further, he said that the bank
6 was advised that during this time, while they
7 were allowed to use it pending this Board's
8 review of the special exception application,
9 that during this time the lot should only be used
10 for customer parking during banking hours, and
11 that the gates to the entrance and exit must be
12 closed, which is in conformance with the prior
13 special exceptions.

14 I note that the 1986 BZA order that
15 had findings of facts, as opposed to being a
16 summary order, noted that the property serves
17 as a parking lot for customers of Riggs National
18 Bank, and that the law provides parking for 28
19 cars, and is open only during the hours the bank
20 is open. The lot is supervised by an attendant
21 on duty during those hours. The lot is chained
22 off during hours it is not in operation.

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1 And it also says the lot is used for
2 short-term parking for bank customers.

3 And since then, each exception
4 that's been authorized said for continued use
5 of the prior use, and that brought us to this
6 point, where then there was no application.
7 There was no enforcement.

8 Now, in their initial application,
9 most recently, they said that it was
10 unauthorized use that was happening. Those are
11 the words that are in their submission, that
12 there was -- that the late-night noise was based
13 on unauthorized use of the lot by people coming
14 in and using the lot, unauthorized.

15 Now they're stepping forward, and
16 changing that position to say that, in fact,
17 they are -- it's not unauthorized. That they
18 want to allow a new authorization to allow other
19 uses for that parking lot, not for bank
20 customers, not as an accessory lot, but as a lot
21 open for the Arcades' businesses, for the movie
22 theater, and we think that that's a material

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1 change also, just in terms of their initial
2 application.

3 They didn't apply for that to this
4 Board. They applied for accessory use of a
5 parking lot, not for a community resource or an
6 open parking lot, or a lot that's open till 10:00
7 p.m.

8 I note, too, there are two other --
9 which I'm sure everyone here is very familiar
10 with -- there are two other -- or three. But
11 two lots just within a block, and going two
12 blocks north of this accessory lot, that are
13 also accessory lots for those businesses. They
14 don't allow parking, for people to come and use
15 the movie theater.

16 In fact, they have signs that
17 prohibit parking for other businesses. The
18 Magruder's lot which is two blocks up, at 6:00
19 p.m. on Sunday when they're shut, they're shut.
20 They pull a, I think a chain, and like traffic
21 barrels across, and they close the lot.

22 The Avalon Theater, that's up there,

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1 has a sign on its door that says you can't park
2 in the CVS lot, or the Magruder's lot. But the
3 Avalon Theater is right next to the Magruder's
4 lot. So why should all of that now be moved down
5 to our back yards? All these R-2 Zone lots are
6 only being used as accessory lots for their
7 businesses, not as this new community resource,
8 and that's just a major divergence, both from
9 their application and from the historic use of
10 that lot.

11 We have some exhibits that we wanted
12 to submit to the record, to show the nature of
13 the impact on our homes.

14 I would note with regard to Mr.
15 McCarthy's presentation as to his home, one can
16 see it on the map. It actually is the farthest
17 away, in terms of being impacted along that line
18 of houses.

19 There's a photograph that the PNC
20 Bank submitted in to the record, that the
21 commissioners have, that shows a shot going
22 across the lot, and you can't see houses on the

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1 far side because there's a large -- the wall is
2 large there and there are very large trees.

3 Mr. McCarthy's house is behind that.
4 He is in fact screened and shielded, and half
5 of his house is -- the back is against -- what
6 you can see on the BZA zone map, is against
7 another residential property.

8 But we are the houses that are
9 directly impacted by the lights and the noise
10 coming from the lot. I have -- I don't know,
11 having not been in this process before, how you
12 wish to have exhibits presented. But we have a
13 photograph --

14 CHAIRMAN JORDAN: If you'd give
15 them to Mr. Moy, please.

16 (Pause.)

17 CHAIRMAN JORDAN: What about the --
18 where's the documents? Have we got the
19 documents? Oh. We didn't make copies. Okay.

20 Okay. Let's just do this while we're
21 waiting for those documents. Mr. Collins, any
22 cross-examination of the party-in-opposition's

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1 case? Or would want to hear -- wait till we get
2 all the -- those in opposition to also give their
3 statement? Whichever way you want to --

4 MR. COLLINS: Is the party in
5 opposition finished with their testimony?

6 CHAIRMAN JORDAN: Yes. See, she's
7 out of time, and if they are out of time, and
8 they submitted this document, which they kind
9 of already gave.

10 MR. COLLINS: Would I be able to get
11 a copy of what was submitted?

12 CHAIRMAN JORDAN: Do we have an
13 extra copy, please? Give Mr. Collins a copy,
14 please. Before you begin your cross, Ms.
15 Hilliard, I don't see what these pictures are
16 supposed to be showing us.

17 MS. HILLIARD: Yes. So let me just
18 briefly say what they are. One photo is a shot
19 from the parking lot directly across, showing
20 my house and its proximity, and the fact that
21 you can see it's not shielded from the lot.
22 Another photo is showing my --

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1 CHAIRMAN JORDAN: You show that
2 there's a fence there; correct?

3 MS. HILLIARD: Right. But you can
4 see the upper -- the fence, by the way, is a
5 slatted fence.

6 CHAIRMAN JORDAN: I understand.

7 MS. HILLIARD: So light comes through
8 the fence. But you can see the second level and
9 the third level directly, line of sight. And the
10 same with another photo that shows my neighbor's
11 house, Ms. Shenk's house.

12 CHAIRMAN JORDAN: Okay.

13 MS. HILLIARD: And the other is a
14 photo that shows from the house itself, from my
15 house, from the bedroom, the lights that are in
16 the parking lot and the proximity of the parking
17 lot. And that it's unobstructed, that view in
18 to the parking lot.

19 CHAIRMAN JORDAN: Mr. Collins,
20 please, cross-examination, if necessary.

21 MR. COLLINS: No, sir.

22 CHAIRMAN JORDAN: Okay. Mr.

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1 McCarthy, is there any questions you'd like to
2 ask the party in opposition, if you think it's
3 necessary?

4 MR. McCARTHY: Well, first of all,
5 there was mention made of two other accessory
6 lots, and there were some assertions made about
7 how often they're open, or whether they are
8 closed after hours.

9 Could I just get you to clarify, for
10 the record, Ms. Hilliard. The CVS parking lot.
11 Is that closed after hours of business?

12 MS. HILLIARD: The representation I
13 made, and I actually have photographs showing
14 those parking lot restrictions, is that they
15 don't -- they're not being used as a community
16 resource, and they are not open for use, for
17 people to use and walk off. They don't allow
18 people to use it except for the businesses that
19 they are an accessory lot for.

20 MR. McCARTHY: And --

21 MS. HILLIARD: And so that this is
22 a divergence, among all those three lots, that

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1 suddenly, this one is becoming the community
2 resource that's open for all uses.

3 MR. McCARTHY: You're getting
4 beyond me there. How is that enforced, other
5 than by signs in the parking lot?

6 MS. HILLIARD: Well, Magruder's
7 actually I believe locks their --

8 MR. McCARTHY: No, no, no, no. CVS
9 parking lot.

10 CHAIRMAN JORDAN: Wait, wait. Okay.
11 Let's -- one at a time. Answer the question. So
12 we were talking about CVS, how does CVS enforce
13 their lot, their cut-off time in their lot. How
14 do they enforce it.

15 MS. HILLIARD: I don't know. I'm not
16 -- I don't live right next to CVS. I'm just
17 aware, and I have the signs, if you'd like them
18 for the record. That's all.

19 CHAIRMAN JORDAN: Okay. You don't
20 know.

21 MS. HILLIARD: Yes.

22 CHAIRMAN JORDAN: Next question.

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1 MR. McCARTHY: Okay. Well, I was
2 just wondering if there was any difference
3 between the enforcement procedures at the CVS
4 lot, putting up signs, and having no other
5 barriers, and what PNC described as their
6 enforcement procedures of putting up a sign and
7 saying it's for PNC customers only.

8 MS. HILLIARD: But PNC has said that
9 it's not an issue of it being an enforcement
10 procedure. They intend to have the lot open as
11 a community resource in the evenings.

12 CHAIRMAN JORDAN: We're clear what
13 the evidence and what people are saying.

14 MR. McCARTHY: Okay. And how late is
15 the CVS parking lot open, whether or not it is
16 barred afterwards?

17 MS. HILLIARD: I assume that it
18 serves the businesses. That's what they say they
19 do, and that they don't allow any other use.

20 MR. McCARTHY: And how late is the
21 business open?

22 MS. HILLIARD: I don't know how late

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1 the business is open. I don't live next to that
2 parking lot.

3 MR. McCARTHY: Well, just for the
4 record, it's open until 10:00 o'clock.

5 Secondly, you mentioned that you had
6 complained to the ANC about the PNC parking lot
7 and that we took no action.

8 When did you make that complaint?

9 MS. HILLIARD: Twice. I made it with
10 you, personally, on the street, on Livingston
11 Street, when I raised the fact that there
12 appeared to be no valid special exception, and
13 that we were having to deal with the noise from
14 the evening parking.

15 And again in an ANC meeting, back in
16 either February or March of this year, it was
17 raised again, and there was a problem, that
18 there was no enforcement, that there was no
19 lawful exception in place to allow it to be used,
20 and that we had no problem with it being used,
21 but we just wanted to conform.

22 And there were others in that

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1 meeting, including Mr. Fortune, who then again
2 said that he wanted the lot to be open, that it
3 was the policy of the bank now that it should
4 be a community resource, and that they were now
5 going to open the lot.

6 MR. McCARTHY: All right. We have no
7 record of any complaint being filed with the
8 ANC. The matter came to our attention because
9 a complaint has been filed by Ms. Hilliard with
10 the Zoning Office.

11 We had no direct communication from
12 her or any request that the ANC take any action.

13 MS. HILLIARD: Is that a question?

14 CHAIRMAN JORDAN: Wait, wait. Come
15 on. I'm not going -- no back and forth, please.
16 All right. He's asked his questions. You don't
17 get the opportunity to do that. Okay? We keep
18 some order here.

19 All right. So now where am I?

20 Other persons, people wishing to
21 speak in opposition? Do we have -- you get three
22 minutes, if you wish. Yes. Who's --

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1 MR. SCHUERCH: I'm William
2 Schuerch. My wife and I own 3819 Livingston
3 Street. It is the house that is closest to the
4 bank building. Closest to the ATM machines.
5 And I won't say closest to the parking lot,
6 because the parking lot's kind of in the middle.
7 The portion of the lot used for parking is kind
8 of in the middle of the lot.

9 MR. COLLINS: Mr. Chairman, I'm
10 sorry to interrupt. But I just need a
11 clarification. You, earlier on, there were
12 four parties requesting, or persons requesting
13 party status. You consolidated them to one.

14 CHAIRMAN JORDAN: Correct.

15 MR. COLLINS: And Mr. Schuerch is
16 part of that party.

17 CHAIRMAN JORDAN: And said that the
18 others have the right to have their -- speak in
19 opposition, three minutes, like anyone else
20 would have.

21 MR. COLLINS: I see. All right.
22 Thank you.

1 MR. SCHUERCH: If I can recapture
2 all of my three minutes. Thank you. I appreciate
3 the Chair's intervention.

4 So, in fact, our home is the one most
5 affected by the lights, the parking lot, the
6 noise and also the trash issue.

7 We have also, along the side of our
8 house, the alley, which is the back of all the
9 businesses off Connecticut Avenue on the rest
10 of that block. The house is over 100 years old,
11 is essentially a historic property. We've fully
12 renovated it back to its older days ourselves,
13 and put many hundreds of thousands of dollars
14 in to doing that exercise over a 28 year period.

15 What's happened, that I want to
16 address, is one, there's been testimony about
17 -- that sounds as if the lot's been open forever.
18 It's not my experience. The lot, even today, has
19 usable arms that are now closed because the
20 Zoning Enforcement has ordered it closed.
21 They've been usable all the way through. The
22 signage on that property, consistently,

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1 throughout the period, has said only for bank
2 usage, customer usage in bank hours.

3 And at times, I personally, in less
4 than 10 and 16 years, as has been stated here
5 by others, have seen those gates shut, and in
6 prior times chains, and before that attendants
7 on that lot.

8 So the history is quite clear over
9 the 30 years, but when enforcement and when
10 action has started to not be taken, I can't speak
11 to that.

12 What has changed is we have now,
13 effectively, an active promotion by the bank for
14 other businesses to use their lot after hours.

15 If you go in to Mr. Macon's
16 restaurant, as I did one day, and I asked one
17 of his folks, where do I park around here? the
18 answer was use the PNC lot. You will get other
19 answers from other businesses in the same way
20 today. What you have is a shortage of parking,
21 no surprise, other parking lots that are
22 blocked, and now you have an open lot with no

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1 enforcement, despite its signage, that is
2 actively being used to give to customers an
3 opportunity to park. That's the real world.
4 That's not lawyers. That's not anything else.
5 That is progressively declining the quality of
6 life in our area, and the noise and that has
7 gotten more and more, and more and more -- more
8 recently than ever before.

9 In the whole 28 year period, we
10 haven't had much problem with the bank, quite
11 frankly. There are other issues where we've had
12 a problem more with the alley.

13 But as the lot has been used, and
14 before we got it closed by Zoning Enforcement,
15 it was progressively worse and disruptive, and
16 that's the problem, and why we've become active
17 and come before you. Thank you.

18 CHAIRMAN JORDAN: Thank you. Any
19 cross-examination, Mr. Collins?

20 MR. COLLINS: No, sir.

21 CHAIRMAN JORDAN: Ms. Hilliard?

22 (No response.)

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1 CHAIRMAN JORDAN: Mr. McCarthy?

2 (No response.)

3 CHAIRMAN JORDAN: Okay. Any other
4 person want to speak in opposition? Yes. Ms.
5 Shenk.

6 MS. SHENK: My name is Janet Shenk.
7 I'm a neighbor of the bank and a customer at the
8 bank. I just want to say first, that since the
9 gates have been down and locked after business
10 hours, it's been blissfully quiet, and I and my
11 family have appreciated that a great deal. Over
12 time, the problem has gotten incrementally
13 worse. This is not something that suddenly, car
14 alarms, and all of the noise associated with was
15 a huge issue. It's been incremental, but has
16 gotten to a point where we, as neighbors, felt
17 we had to act.

18 Two other just quick things. Quit e
19 a few years ago, I had to go to see Wayne, to
20 complain that leafblowers, the landscapers are
21 arriving at literally 5:30 in the morning, and
22 as soon as I told Wayne about it, it was

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1 corrected. My point being bank employees leave
2 the premises. They don't know what it sounds
3 like at night, or at 5:30 a.m. in the morning.

4 Lastly, I just want to say that this
5 notion that came up today about it being open
6 till 10:00 p.m., seems to me to be the most
7 unwieldy, uncommonsensical solutions, because
8 in the period where that was the case, where they
9 had a guard stationed, just -- this was just last
10 -- a couple a months ago, they had to have a guard
11 stationed, to tell people that there were new
12 -- there was a new regime, that they couldn't
13 park there all night.

14 We could hear the guard having to
15 explain to people every night. You're going to
16 have cars trapped there. Right now, when the
17 bank -- when the gates come down, at 5:00 or 6:00
18 o'clock, there are employees, including Wayne,
19 that are there, making sure no cars are trapped.
20 There hasn't been a problem. It's been bless --
21 it's been very peaceful. That's all I have to
22 say.

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1 CHAIRMAN JORDAN: Any
2 cross-examine? Please. No?

3 MR. COLLINS: No, sir.

4 CHAIRMAN JORDAN: Any questions?
5 (No response.)

6 CHAIRMAN JORDAN: All right. Anyone
7 else want to speak in opposition?

8 (No response.)

9 CHAIRMAN JORDAN: Then turning back
10 to --

11 MR. MESSINEO: I will speak briefly
12 in opposition. I respect my neighbors'
13 statements, so I won't repeat what they've said.
14 But I do want to underscore that there has been
15 an increasing problem with the severity of the
16 disruption that emanates from that property,
17 from the lot. The reason why everyone is here
18 is because these properties are the nearby
19 properties. We are close. The properties here,
20 people live in them 24/7. We're not the people
21 that want to come in from Maryland. It's not the
22 people that want to -- that are from the

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1 neighborhood and find some convenience in
2 driving four blocks to go to the new bar and
3 restaurant.

4 This is a situation that affects
5 everyone's residences here, and my property
6 here, in a way that is persistent. So that when
7 you take a look at this full parking lot at
8 night, and it's got 27 spaces, and it turns over
9 two or three times, and people are coming back
10 from carousing or drinking, only -- if only a
11 fraction of those people, if only 20 percent of
12 those people are loud, hit their horns, are
13 coming back making a commotion, what that means
14 is that the peace and quiet of these properties
15 is directly interfered with.

16 You can't unring that bell when that
17 happens. You can't unring the bell when
18 someone's trying to go to sleep, when our
19 9-year-old is trying to go to sleep, and there's
20 that kind of disturbance.

21 And there's actually no way for us
22 to enforce it.

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1 CHAIRMAN JORDAN: What time of
2 night does this go on?

3 MR. MESSINEO: We're most disturbed
4 between the hours after 6:00. I mean, I don't
5 think that it's -- no one is -- I've not heard
6 from any of my neighbors that prior to 6:00 is
7 a problem.

8 CHAIRMAN JORDAN: But the lot's
9 used prior to 6:00, isn't it?

10 MR. MESSINEO: Yes. That's correct.
11 But that also reflects, I think, residential
12 home use which, you know, a lot of people are
13 out working during the day. Certainly, my son
14 is not trying to sleep at 5:00 p.m. So that
15 there's actually a bit of, you know, tolerance
16 from that. But from the evening hours, it's
17 different. It's residential use.

18 CHAIRMAN JORDAN: Evening. For
19 after 6:00 to what time, when you find
20 disruption?

21 MR. MESSINEO: What is the latest
22 that you've been --

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1 MS. HILLIARD: I mean it's until it
2 opens in the morning.

3 CHAIRMAN JORDAN: All night?

4 MS. HILLIARD: When they have it
5 open all night, it is disruptive all night, and
6 also --

7 CHAIRMAN JORDAN: There are people
8 using the lot, 12:00 o'clock, 2:00 o'clock in
9 the morning?

10 MS. HILLIARD: Yes. People are
11 coming back late. Absolutely. Yes. And even when
12 they did this brief period where they were
13 shutting at 10:00, it was disruptive, and loud.
14 And I'd note also that in winter months, you
15 know, by 6:00 it's dark, so then the lights are
16 constantly coming in.

17 You know, it's very disruptive,
18 and it's not -- they don't need it to be open
19 in order just to serve the bank branch.

20 CHAIRMAN JORDAN: Anything in
21 addition that you --

22 MS. MESSINEO: No. But I've looked at

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1 the other lot. Magruder's lot gates its lots.
2 I went over to the Avalon, which everyone loves,
3 on one's against the commerce that's happening
4 in our neighborhood. But the Avalon itself has
5 posted signs that say Avalon, you know,
6 patrons, you're not allowed to park in
7 Magruder's, the Safeway, the CVS parking lots.
8 Unauthorized cars will be towed. And that same
9 type of signage is manifest prominently in all
10 of the other, as well as this one, accessory
11 lots.

12 And what we've heard here is that
13 there is an ability -- without impairing the
14 bank accessory needs, the operational needs of
15 the bank, there is an ability for them to install
16 either automatic or manual means of preventing
17 access to the lot, and converting it to a
18 community or -- paid or unpaid, I mean it
19 effectively serves the commerce up and down that
20 street, and it does so at all hours.

21 CHAIRMAN JORDAN: All right. Mr.
22 Collins, any cross-examination?

1 MR. COLLINS: No, sir.

2 CHAIRMAN JORDAN: Okay. Then let's
3 turn it back to the Applicant for rebuttal.

4 Let me ask you a question. You
5 mentioned earlier, that there's a way for the
6 bank to have the automated gate, and it needed
7 some time for it to get that in place.

8 Is that used with a ATM card, Ms.
9 Edmonds? Is that --

10 MS. OSMAN: Osman.

11 CHAIRMAN JORDAN: Osman. I'm sorry.

12 MS. OSMAN: That's okay. We only
13 just came up with this when you sent us in to
14 the conference room to discuss it. So I haven't
15 worked out the mechanics of it.

16 CHAIRMAN JORDAN: But has it been
17 used before by PNC? I thought you said at some
18 other locations --

19 MS. OSMAN: I do have -- I have a
20 gate at another location that's on a time clock.
21 At 4:00 o'clock it lowers, and at 6:00 o'clock
22 it raises, and it's just a straight simple arm

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1 with a time clock.

2 CHAIRMAN JORDAN: But the other
3 thing you were thinking about, that you said you
4 had to go back and work on the schematics of it,
5 is that you said so it'd be -- remain accessible
6 for bank customers? Maybe I misheard you.

7 MS. OSMAN: I don't recall saying
8 that, but again, we'd need to work out the
9 details.

10 CHAIRMAN JORDAN: All right. Mr.
11 Collins, any other rebuttal?

12 MR. COLLINS: Just a few questions
13 for clarification. Then I'll get to the rebuttal
14 and closing.

15 Mr. Fortune, there's been some
16 allegations that you, as a branch manager, have
17 reached out to the businesses, to encourage the
18 businesses to use the lot. Do you recall
19 anything like that?

20 MR. FORTUNE: I have never reached
21 out to the businesses to use the lot. It has come
22 up in conversation, and we have talked about

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1 this particular situation, that we are closing
2 it currently.

3 MR. COLLINS: And Ms. Osman,
4 there's been various statements about whether
5 the lot has been open or not been open since the
6 time that the Zoning Administrator instructed
7 us to have it closed after bank hours.

8 To your best recollection, how long
9 has -- prior to that time, how long has the lot
10 been open on a 27/7 basis?

11 MS. OSMAN: To the best of my
12 recollection, it would be the past 16 years, and
13 the basis for that -- and I agree, I'm not at
14 the lot every day -- is that I have nightly
15 cleaning service from a contractor, and I have
16 never issued a key to open the lot to the
17 cleaner. I have snow removal during the winter.
18 I have never issued a key to the snow removal
19 company for plowing.

20 MR. COLLINS: Thank you. Just in
21 closing, a few statements. This is an
22 application for a special exception to continue

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1 the approval that we've had for many, many
2 years. The lot has been made available, after
3 hours, for many years. There were no issues, as
4 you heard, raised, until recently, and we think
5 that was in association with the restaurant
6 recently opening.

7 The bank does need access, customer
8 access to the lot after hours. As you've heard,
9 the ANC supports this application including the
10 after-hours use. The Office of Planning
11 supports this application, including the
12 after-hours use.

13 This is not an expansion of any prior
14 use. There was some statement that we have
15 somehow changed our application. And let me just
16 refer to Exhibit 5, which is the Applicant's
17 preliminary statement of compliance.

18 On the first page, the final
19 paragraph on the first page, where we said:

20 The Applicant understands that
21 recently, one or more residential neighbors
22 have expressed concern to the Zoning

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1 Administrator over late-night noise generated
2 by restaurant and bar patrons, and employees who
3 use the site without authorization to do so.

4 This was our characterization of
5 what the Zoning Administrator told us that the
6 neighbors had told him. We have not said that
7 this is the case. This is -- what I'm saying is
8 this is what they are saying is the case.

9 In our prehearing statement, which
10 is Exhibit 25, on page three, on the very top,
11 we say:

12 In recent years, the Applicant has
13 left the gates opened and unlocked 24 hours per
14 day, seven days a week, and the parking lot has
15 been used by patrons and employees of nearby
16 retail and restaurant establishments.

17 So we've been very clear about that
18 throughout. In my email to the Zoning
19 Enforcement officer, which is not part of the
20 record, but I will read it to you, an email that
21 I sent to Rohan Reid, who is the Zoning
22 Enforcement officer in the Office of the Zoning

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1 Administrator, I did say to him that -- I'm
2 sorry.

3 Based upon community sentiment --
4 which we've heard, once we closed the gates --
5 based upon community sentiment, we may request
6 that the BZA allow the gates to remain open after
7 hours as a convenience to the patrons of the bank
8 and the surrounding businesses.

9 So we've been very clear throughout.
10 We have not changed our statement on that. There
11 have been -- we have various constituencies that
12 we are trying to address.

13 There are the immediate neighbors,
14 who, here, came as a party in opposition. We have
15 other constituencies farther, in that same
16 community, who are not here expressing today,
17 but being represented through the ANC, who said
18 that there is some desire to keep the lot open
19 after hours.

20 Mr. Fortune has told you about
21 concerns that he's had expressed to him.

22 We've offered several conditions.

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1 We've offered the lighting. We will address the
2 lighting issue.

3 The trash that we've heard about
4 today the party in opposition is not an issue
5 before the Board today. It's not our trash. It's
6 the trash of Chevy Chase Arcade. You've already
7 ruled on that issue.

8 We are proposing, as a reasonable
9 accommodation, to close the lot, to lock the
10 lot, and to put signage on the lot that the lot
11 will be locked at 10:00 o'clock p.m., seven days
12 a week.

13 We think that 10:00 o'clock is a
14 reasonable accommodation. We think that -- we
15 don't think that that would allow, as we've
16 heard from some of the opposition, that people
17 will come and go. There'll be turnover on the
18 lot throughout the evening, if we lock the gate
19 at 10:00 o'clock.

20 That would allow those who are out
21 for, you know, a reasonable evening, to --
22 whether it's for our bank patrons who are going

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1 to make the deposits, or other banking
2 transactions through the ATMs, or as a
3 reasonable accommodation to the community for
4 those who -- to alleviate pressure on street
5 parking, to allow a reasonable use of the lot.

6 We are not -- we agree not to
7 continue the 24/7 availability, and we think
8 that 10:00 o'clock is a reasonable
9 accommodation for that.

10 So with that, I close, and request
11 your approval of the application.

12 Thank you.

13 CHAIRMAN JORDAN: Sure. Board, any
14 questions?

15 MEMBER HINKLE: You discuss closing
16 the lot at 10:00 p.m. What time would the lot
17 need to be open to accommodate the business?

18 MR. COLLINS: 7:00 a.m.

19 MEMBER HINKLE: 7:00 a.m. Thank
20 you.

21 MR. COLLINS: And that's what
22 happens now. People that start to use -- 7:00

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1 a.m.

2 MR. FORTUNE: Yes. It is.

3 CHAIRMAN JORDAN: Board, any
4 additional questions?

5 (No response.)

6 CHAIRMAN JORDAN: I have some. Let
7 me just catch up with myself. Give me one second
8 here.

9 Now there's a series of conditions
10 which has been proposed by both OP, and
11 opposition, as well as the ANC.

12 I understand, Mr. Collins, there is
13 an executed agreement with the ANC, so those
14 conditions -- some of those conditions are not
15 something that we would put in a zoning -- we
16 would not accept -- but you have a executed ANC
17 agreement?

18 MR. COLLINS: I think that Mr.
19 McCarthy may have been speaking generally. I
20 know with the -- with ABRA, there is a settlement
21 agreement, and I think by using the term
22 settlement agreement -- we don't have an

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1 executed settlement agreement with the ANC.

2 We've been to the ANC. They've
3 adopted a resolution that was submitted in to
4 this. We did not counter-sign it but we were
5 participating in it. They asked us if we agree
6 to the conditions, and we said that we did.

7 CHAIRMAN JORDAN: Some of those are
8 not applicable to the Board of Zoning in regards
9 to what our zoning relief would be, so we would
10 be hard-pressed to include it in a zoning order.

11 So I would suggest that probably the
12 ANC and the Applicant get together, and put some
13 signatures to the document, so that you have
14 that.

15 MR. COLLINS: There is no
16 signature. We had a discussion --

17 CHAIRMAN JORDAN: I understand
18 there's no signature. I'm suggesting, because
19 our order needs to be germane to the relief.

20 MR. COLLINS: If you're referring
21 specifically to the snow removal, perhaps?

22 CHAIRMAN JORDAN: Yes.

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1 MR. COLLINS: I pointed that out to
2 Mr. McCarthy, that this is not -- but what Mr.
3 McCarthy told me is that there was a prior case
4 in the neighborhood where that was included in
5 the ANC's resolution, and it was adopted by the
6 Board, and we have no objection to that.
7 Although it's not enforceable for zoning.

8 CHAIRMAN JORDAN: Okay. Let me go
9 through what I -- appear to be are going to
10 conditions, if we grant the relief. Well, before
11 I do that, there is an issue here. The ANC has
12 recommended five years, and you're requesting
13 -- and OP is suggesting 10 years. And the
14 Applicant is where on that?

15 MR. COLLINS: We're wherever you
16 are, Mr. Chair.

17 CHAIRMAN JORDAN: Okay. So we're
18 one year out.

19 MR. COLLINS: Except for that.

20 CHAIRMAN JORDAN: Okay. All right.
21 So we have to come back to that. So the approval
22 shall be OP is recommending 10 years.

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1 So reading conditions.

2 There shall be -- and the Board has
3 to discuss whether that term would be -- number
4 two. Two spaces of five spaces on the west side
5 of the lot, closest to the entrance to the bank,
6 shall continue to be marked for persons with
7 disabilities.

8 The Applicant shall add
9 landscaping, or pervious materials, should any
10 repair work requiring the removal of existing
11 paving become necessary. I'm kind of going in
12 to the ANC's recommendations. Again, the
13 recommendation was five years, and we've got to
14 debate that.

15 But number two is a repeat of
16 something that's already been adopted in the OP
17 recommendation.

18 Number three. All areas devoted to
19 driveway, access lanes, parking areas, shall be
20 maintained with paving mater -- oh. Did I skip
21 something? Wait a minute. Did I skip something?
22 Let me go back. Okay. Let me go back. On OP again.

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1 Bumper stoppers shall be maintained
2 for the protection of all buildings. No vehicle,
3 or any part thereof, shall be permitted to
4 project over any lot or building line and/or
5 over the public space.

6 All parts of the lot shall be kept
7 free of rubbish and debris, and shall be paved
8 or landscaped. Landscaping shall be maintained
9 in a healthy growth condition.

10 No other use shall be conducted
11 from, or upon the premises, and no other
12 structure, attendant shelter be erected.

13 I think this comes out of the
14 previous order.

15 Any lighting used to illuminate the
16 parking lot, or its accessory building, shall
17 be so arranged that all direct rays of such
18 lighting are confined to the surface of the
19 parking lot.

20 I think you discussed that.

21 The Applicant shall consider adding
22 landscaping and pervious material. I already

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1 covered that.

2 All areas devoted to driveway
3 access, lane parking areas, shall be maintained
4 with paving material forming a all-weather
5 impervious surface. Except if PNC resurfaces.
6 Then they'll look at using other materials as
7 previously defined.

8 Then the one about the snow removal.
9 Parking lot snow removal. That's outside the
10 property. We can't deal with that one. That PNC
11 shall erect signs requesting those using the lot
12 to be quiet and respect the peace of the
13 surrounding neighborhood when moving their
14 cars. There's several I had to strike in regards
15 to the trash and rubbish facility, and the
16 easement and abatement thereof, because it
17 wasn't germane.

18 So those are kind of the conditions
19 that would be there. And certainly any use
20 that's a legal use, whether or not it's -- that's
21 not a condition, but, you know, any other use
22 that's already permitted is something that's

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1 not a part of this order or a condition thereof.

2 So would that be consistent with
3 your understanding, Mr. Collins? What we talked
4 about, what you guys have agreed to, and what
5 OP has in regards to conditions?

6 Or do you have any issues with it?

7 MR. COLLINS: I was following. I
8 thought you were going through using the ANC's
9 conditions.

10 CHAIRMAN JORDAN: Because I have
11 OP's first, and then I had ANC's, and where they
12 were the same, I struck them.

13 MR. COLLINS: There's a few
14 differences. The ANC conditions reference the
15 attendant shelter, and facilities with the ATM
16 on their Item 7, whereas the OP report does not
17 reference the ATM and drive-in teller
18 facilities as the structures on the lot.
19 They've been there. They were approved a number
20 of years ago in a prior BZA order.

21 But they've never been incorporated
22 in the conditions as -- of the approval, because

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1 they're just -- these conditions of approval are
2 just what's required in the section, the
3 regulations, but --

4 CHAIRMAN JORDAN: What about OP's
5 number seven?

6 MR. COLLINS: OP's number seven
7 does not reference the ATM and drive-in teller
8 facilities, whereas the ANC's number seven
9 does.

10 CHAIRMAN JORDAN: Okay. So we can
11 substitute that number seven.

12 MR. COLLINS: Yes. And -- yes. And
13 then the other conditions -- I may have missed
14 it. But did you address the hours of the lot?

15 CHAIRMAN JORDAN: No. We have not
16 yet --

17 MR. COLLINS: Okay. I want to make
18 sure I didn't miss it.

19 CHAIRMAN JORDAN: Okay.

20 With that, then, we will close the
21 record, and Board, are you ready to deliberate
22 on this matter?

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1 Okay. I think the first thing for us
2 to consider, whether or not we have -- OP's
3 recommending 10 years, the ANC's recommending
4 five years. I think there are some issues, maybe
5 even before that. We talk about the period of
6 time of operation.

7 I think you couldn't get any more
8 different representations to this Board,
9 whether or not something just started, or
10 something's been going for 16 years, or
11 something's gone on for 30 years. I guess that's
12 just part of when a fact-finder is supposed to
13 try to decide which one is more palatable.

14 But let me say this. This is what I'm
15 thinking. Clearly, this parking lot is to be an
16 accessory use. It's not supposed to be a
17 community benefit use. It's not supposed to be
18 a use that's for any other purpose other than
19 something incidental, and accessory to the
20 bank's use in its operation. I think that's been
21 clear throughout the first special exception
22 that was given.

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1 That being said, however, that the
2 bank has made representations that they operate
3 -- they have made representation to their
4 customers, that they have up till 10:00 o'clock
5 at night to do banking transaction, and 10:00
6 p.m. at night for them to get this as a same-day
7 transaction. I think that would continue the
8 business hours, at least to 10:00 p.m. I don't
9 think it stops when the door stops. I think
10 they've made the representation that they have
11 the use, and the argument that the use of the
12 lot should be incidental, an accessory to that
13 banking use.

14 I would have problems with them to
15 use the lot beyond 10:00 p.m., because then it
16 becomes in to something else that it's not
17 supposed to be, and we've heard testimony that
18 it has some impact upon the surrounding
19 neighbors, and et cetera, about noise and all
20 that kind a stuff.

21 So I think if we stay just in light
22 of what the regulations call for, and that the

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1 lot is called an accessory use -- we've had
2 evidence that supports that the use of the bank
3 is actually, the property is till 10:00 p.m. for
4 their customers to make a delivery up to that
5 point in time, and have the same-day kind of
6 transaction.

7 Anyone else want to weigh in on that?

8 MEMBER HINKLE: Yes. Thank you, Mr.
9 Chair. I tend to agree. I mean, one of the
10 criteria of the special exception is the lot not
11 becoming objectionable in terms of noise, or
12 traffic, or other issues, and certainly we've
13 heard from the community regarding the noise
14 issue.

15 So I agree with you. I mean, this is
16 an accessory parking lot to the bank's use, and
17 not supposed to serve other uses at large.

18 So I certainly could support
19 limiting the hours. And we did hear from the
20 Applicant that they would need to open the lot
21 at 7:00 a.m. So I would recommend, certainly,
22 7:00 a.m. to 10:00 p.m., seven days a week.

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1 CHAIRMAN JORDAN: Any other
2 thoughts?

3 MEMBER HINKLE: As a condition.

4 COMMISSIONER HOOD: I would agree,
5 Mr. Chairman, because I think in the
6 opposition's testimony they mentioned the noise
7 started at 6:00 o'clock and I may be misquoting
8 it, but I think when you live in a residential
9 neighborhood, at some point in time, especially
10 when it abuts a busy area like this, I think
11 you're prone to hear some noise. If I think
12 you're going down a line of 10:00 o'clock, I
13 would be very supportive of that as being
14 conducive for the bank's patrons.

15 CHAIRMAN JORDAN: And then in
16 conjunction with that, because we have some
17 issues, and community issues, I'm not -- I don't
18 believe that there should be a 10 year. At best,
19 I think it must be much more limiting. In fact,
20 I was thinking three years but -- in regards to
21 a term. That's kind a what's bouncing around in
22 my head.

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1 Any feedback on that?

2 MEMBER HEATH: I was definitely not
3 in agreement with the 10 years, given the
4 community concerns, and five years was giving
5 me a little bit of heartburn, because if there
6 are issues as a result of the hours of operation
7 of the lot being 7:00 to 10:00, five years is
8 a long time to wait to have those addressed. And
9 so I would support three. Three years.

10 CHAIRMAN JORDAN: Any other
11 feedback?

12 COMMISSIONER HOOD: It's not a
13 showstopper for me, but I would support five.
14 I'm sure -- not discounting what the community
15 said, especially since we're mitigating the
16 factor for the accessory use, I would have
17 supported five as Office of Planning. But it's
18 not a showstopper for me. I'm just curious, and
19 I'm sure the community folks will say, well, if
20 we do three years, we have the same problem, then
21 what is the Board going to do to help, mitigating
22 more, so, you know, I could go with either

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1 three or five, but I guess due to the concerns
2 we've heard from the opposition, I would narrow
3 it down to three.

4 But I want to make sure, for the
5 record, that -- I probably won't be here then
6 -- but at some point in time, something needs
7 to be done --

8 CHAIRMAN JORDAN: You've been here
9 for a century, so --

10 COMMISSIONER HOOD: And that's just
11 it. See. If you've been around a while, when they
12 come back, and you've been there, you see the
13 same things, then you get really irritated and
14 aggravated when nothing has been resolved, so
15 -- That's another whole soapbox.

16 CHAIRMAN JORDAN: But, you know,
17 in fact, you gave me even more reason why it
18 should be the three years, because it appears,
19 when we keep the shorter window, we get more
20 compliance than we've seen before in others,
21 when we go beyond that kind of term. It's sad
22 but that's generally -- but I'm not saying

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1 that's the situation here. But at least we'll
2 get some immediate feedback, some shorter
3 feedback on this particular property.

4 So with that, I would then move that
5 we grant the relief requested, the special
6 exception to continue the accessory use of the
7 parking lot for a three year period, limiting
8 the time of operation from 7:00 p.m. to 10:00
9 p.m., and that all the other conditions, as
10 we've defined them, and talked about them on
11 this record, be implemented. That would be my
12 motion.

13 COMMISSIONER HOOD: I'll second it,
14 Mr. Chairman, with the fact of like the lighting
15 and everything, I understand -- yes, but I mean,
16 I'm talking about a time limit. Can we put a time
17 limit? Because we come back two years and a half,
18 and then they work on the lights before they come
19 back in front of this commission.

20 CHAIRMAN JORDAN: Oh. I got you.
21 Yes. So that I don't know how long it'd take
22 to do the lighting, but --

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1 MR. COLLINS: The representation by
2 Ms. Osman in her testimony was that she was going
3 to look in to and start the process with that
4 issue as soon as she gets back to the office.

5 CHAIRMAN JORDAN: So it should be
6 within the next 90 days or so.

7 COMMISSIONER HOOD: Within 90 days;
8 yes. I understand. As soon as you get back to
9 the office.

10 MEMBER HINKLE: Mr. Chair, just
11 another issue I just thought about is allowing
12 some flexibility to install a gate that can
13 close, either, you know, automatically or
14 manually. But I don't think a sign is sufficient
15 to state that this lot's closed at 10:00. I think
16 there needs to be some mechanism that actually
17 closes the gate. So I want to make sure that's
18 within the conditions.

19 CHAIRMAN JORDAN: So within a
20 condition that they prohibit, after 10:00 and
21 before 7:00, the use of the lot.

22 MEMBER HINKLE: Correct. By some

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1 sort of means, some sort of gate.

2 CHAIRMAN JORDAN: Yes. I think that
3 would be in light of what we really mean.

4 So all those in favor of the motion,
5 as modified, and that motion is that it would
6 be continue the accessory use between the hours,
7 except -- continue accessory use of the
8 property, that the Applicant shall prohibit the
9 use after 10:00 p.m. and 7:00 a.m. by some
10 mechanism, some enforcement mechanism, and that
11 the other conditions that we had listed here be
12 in play for three years.

13 MS. HILLIARD: May I ask one
14 question?

15 CHAIRMAN JORDAN: And the 90 days,
16 that it has to be -- 90 days, it has to be in
17 place on the lighting.

18 MS. HILLIARD: Just one.

19 CHAIRMAN JORDAN: You can't, not at
20 this point. Sorry. So all those in favor of the
21 motion, signify by saying aye.

22 (Chorus of ayes.)

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1 CHAIRMAN JORDAN: Those opposed,
2 nay. The motion carries. Mr. Moy.

3 MR. MOY: Staff would record the
4 vote as four to zero, this on the motion of
5 Chairman Jordan to approve the request for
6 special exception relief for the accessory
7 parking lot, with the amended conditions as
8 cited by the Board, including a period of three
9 years term period, and hours of operation from
10 7:00 a.m. to 10:00 p.m., as well as prohibiting
11 access by installing a gate that closes on the
12 lot.

13 CHAIRMAN JORDAN: Whichever means
14 necessary.

15 MR. MOY: Whatever's necessary.
16 Second the motion, Mr. Hood. Also in support,
17 Ms. Heath and Mr. Hinkle. A Board member not
18 present. The motion carries, Mr. Chairman.

19 CHAIRMAN JORDAN: Okay. Let's have
20 a full order. No. Let's have a --

21 MR. MOY: We do have a party in
22 opposition, Mr. Chairman.

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1 CHAIRMAN JORDAN: I got this.

2 MR. MOY: Okay. All right.

3 CHAIRMAN JORDAN: Let's have a -- we
4 have a summary with special -- go into hybrid
5 order, addressing the issues that were handled
6 here.

7 MR. MOY: Okay.

8 CHAIRMAN JORDAN: You understand.

9 MR. MOY: I understand.

10 CHAIRMAN JORDAN: Okay. Like we've
11 done before. Okay. So we preserve the record for
12 that which the issue arises.

13 All right. With that, we appreciate
14 everybody coming out and taking the time. I know
15 it's been a long, long day for you, and we
16 appreciate everybody's input. But that's kind
17 of what we're here for. We don't like being in
18 this position in regards to that, but we've got
19 to draw the line somewhere. We appreciate it.
20 Thank you.

21 Is there any other business coming
22 before the Board?

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1 MR. MOY: Well, as a matter of fact,
2 since you --

3 CHAIRMAN JORDAN: Oh, no.

4 MR. MOY: It's not the Board, it's
5 on me, actually. I need to amend a vote count
6 of the Board on the application 18772, Gallery
7 Square, the property in Chinatown, because I
8 inadvertently included Ms. Heath, because I
9 thought I heard her, but I know she wasn't
10 participating. So instead of -- this is for the
11 record and the transcript on this application
12 -- that instead of, when I recorded as four to
13 zero, it actually should be three to zero,
14 Chairman Jordan making the motion, Mr. Hood
15 second the motion, in support Mr. Hinkle.

16 CHAIRMAN JORDAN: Okay. So is there
17 any other business outside of that business --

18 MR. MOY: Thank you. Thank you, sir.

19 CHAIRMAN JORDAN: All right. Then
20 we're adjourned.

21 (Whereupon, at 1:40 p.m., the
22 hearing in the above-entitled matter was

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1 adjourned.)
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