

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 15, 2023

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference pursuant to notice at 9:30 a.m. EDT, Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL H. BLAKE, Commissioner
PETER MAY, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

MARY NAGELHOUT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on February 15, 2023.

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

Case No. 20866

Application of Shihyan Lee and Julie Gutin 6

Case No. 20838

Application of Embassy of the Republic of Kosovo 11

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen. Today's date is 02/15/2023. This is a public hearing of the Board of Zoning Adjustment for District of Columbia. We are going to be convening a chancery application. However, prior to that, we're going to do a preliminary matter for the Board pursuant to the Foreign Missions Act 2022 -- oh, I'm sorry, 22 U.S.C 4301-4316 and Chapter 10 of the zoning regulations.

Again, my name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair, Board Members, Carl Break -- Carl Blake. Federal representatives are Marcel Acosta, the executive director representing the National Capital Planning Commission, and Peter May representing the National Park Service, U.S. Department of Interior. We also have, for a preliminary matter, Chrishaun Smith, Board member. And that, again, is not for the FMBZA hearing.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone, you'll be muted during the hearing so as not to pick up sound and background noise. If you're experiencing difficulty

1 accessing Webex or with your telephone call-in, then please call
2 our OZ hotline number at 202-727-5471 to receive Webex log-in or
3 call-in instructions.

4 To all persons planning to testify either in support
5 or opposition, we'd ask you remember to state your name and home
6 address before providing oral testimony or your presentation.

7 The order procedures for our foreign missions case is
8 as follows: one, statement of witnesses and the applicant; two,
9 government reports, including the United States Secretary of
10 State and the District of Columbia Office of Planning on behalf
11 of the Mayor; reports or recommendations by other public
12 agencies; report of the Advisory Neighborhood Commission.
13 Persons in support and persons in opposition would be public
14 testimony portions of the hearing.

15 Please note that requests for party status in a
16 chancery application are not applicable because this is a
17 rulemaking proceeding.

18 The following time constraints will be maintained. I
19 guess we'll just go ahead and see about -- the applicant will
20 have 60 minutes for their case. Persons testifying in support
21 or opposition will be permitted three minutes each, except an
22 ANC, the ANC will have, I believe they get, five minutes or as
23 much as the Board is having questions for. These time constraints
24 do not include time used during questions from the Board. The
25 Board may further place reasonable restrictions on time as

1 permitted by our hearing docket today.

2 Because this is a rulemaking procedure, there are no
3 parties, there is therefore no cross-examination. The record
4 will be closed at the conclusion of each case, except it will
5 remain open for any material specifically requested by the Board.
6 The Board and staff will specify at the end of the hearing exactly
7 what is expected, and the date when the materials must be
8 submitted to the Office of Zoning. After the record is closed,
9 no other information shall be accepted by the Board.

10 The District's Procedures Administrative Act requires
11 that a public hearing on each case be held in the open before
12 the public pursuant to Section 405 and 406 of that Act. The
13 Board may, consistent with its rules or procedures and Act, enter
14 into closed meetings on a case for purposes of seeking legal
15 counsel on a case pursuant to D.C. Official Code Section 2-
16 575(b)(4) and/or deliberate on a case pursuant to D.C. Official
17 Code Section 2-575(b)(13), but only after providing the necessary
18 public notice, in the case of an emergency closed meeting, after
19 taking a roll call vote.

20 The decision of the Board in this legislative procedure
21 must be based exclusively on the public record. To avoid any
22 appearance to the contrary, the Board requests that persons
23 present not engage the members of the Board in conversation.
24 Preliminary matters are those that relate to whether their case
25 will or should be heard today, such as requests for postponing,

1 a continuance, or withdrawal, or whether proper and adequate
2 notice of the hearing's been given. If you're not prepared to
3 go forward with a case today or (indiscernible) the Board shall
4 not proceed, then during the preliminary portion would be a good
5 time to raise that matter.

6 Mr. Secretary, do we have any preliminary matters?

7 MR. MOY: Good morning, Mr. Chairman and members of the
8 Board. I do have a quick announcement for the record. First,
9 with regard to today's docket, Case Application No. 20867 of
10 Stephanie Ajello has been postponed and rescheduled to March
11 15th, 2023. And other than that, as you've mentioned in your
12 opening, there is a preliminary matter to one of the cases today,
13 and I can read that into the record or call that case for the
14 record when you're ready, sir.

15 CHAIRPERSON HILL: Yes, please do, Mr. Moy.

16 MR. MOY: This would be Application No. 20866 of Shihyan
17 Lee and Julie Gutin. This is a self-certified application
18 pursuant to Subtitle X, Section 901.2 for special exceptions as
19 follows: under Subtitle E, Section 5201 from the lot occupancy
20 requirements, Subtitle E, Section 304.1 building area
21 requirements for an accessory structure, Subtitle E, Section
22 5003.1 and under Subtitle U, Section 301.1(e). The property's
23 located in the RF-1 zone at 637 A Street, S.E., Square 879, Lot
24 117. Mr. Chairman, there is three documents that were submitted
25 within the 24-hour block. There is a letter for motion for

1 continuance from the Applicant. Also yesterday there was a filing
2 from the opposition party represented by the attorney who was in
3 the panel, and I believe the Applicant also filed an affidavit
4 of maintenance. So if you'll allow me, sir, I can submit -- I
5 can check the -- I can allow that into the case record.

6 CHAIRPERSON HILL: Okay. Thank you. I think unless
7 the Board has any issues, I'd like to go ahead and allow
8 everything into the record. It seems as though we do have the
9 items there, unless the Board has any issues with that. If so,
10 please speak up now.

11 ZC COMMISSIONER MAY: Hold on. I'm sorry. Where are
12 they in the record? I don't see them.

13 CHAIRPERSON HILL: Sure, I think they're there, Mr.
14 -- Commissioner May. I want to say -- well, I see Item 42, 39,
15 and 38.

16 ZC COMMISSIONER MAY: Like in ZDOCS (phonetic)?

17 CHAIRPERSON HILL: I go through the -- not ZDOCS. I
18 just go through the website.

19 ZC COMMISSIONER MAY: Am I like the only person who
20 uses ZDOCS anymore?

21 CHAIRPERSON HILL: I don't know. I've tried ZDOCS and
22 I get kind of -- I never know exactly -- so I just always go
23 through the website.

24 ZC COMMISSIONER MAY: All right. Okay. Well.

25 CHAIRPERSON HILL: I'll give you a minute to look that

1 one up.

2 ZC COMMISSIONER MAY: If you would please. Or if
3 somebody could release them in ZDOCS, then I would be --

4 CHAIRPERSON HILL: Yeah, well, that's even better, I
5 guess. If you want to go ahead and release them, Mr. Moy, into
6 ZDOCS.

7 MR. MOY: Okay. The staff is working on that now, sir.

8 CHAIRPERSON HILL: Okay. Thanks.

9 And Commissioner May, I guess what I'm looking at here
10 it seems like things we'll be able to discuss with the Applicant
11 and the party status person.

12 ZC COMMISSIONER MAY: All right. Go ahead and I'll get
13 caught up.

14 CHAIRPERSON HILL: Okay.

15 Could the Applicant, which I believe is Ms. Fowler,
16 introduce yourself for the record please?

17 MS. FOWLER: Good morning. I'm Jennifer Fowler. I'm
18 with Fowler Architects, representing the homeowners.

19 CHAIRPERSON HILL: Good morning.

20 MS. FOWLER: Good morning.

21 CHAIRPERSON HILL: Ms. Ferster, could you introduce
22 yourself for the record, please?

23 MS. FERSTER: Good morning. Andrea Ferster, I'm
24 counsel for Enise Han, who is a party in opposition.

25 CHAIRPERSON HILL: Okay. Well, welcome, Ms. Ferster,

1 I don't think we've seen you in a while. Good to see you.

2 Let's see. So Ms. Fowler, you want a postponement? I
3 think I got an idea why, but if you could please go ahead and
4 explain why you want a postponement?

5 MS. FOWLER: Yeah. So we, as you know, we had party
6 status applicants and Ms. Han, Ms. Enise Han, of 635 was granted
7 party status. And she recently retained Ms. Ferster to kind of
8 help with negotiations. And we had a meeting with the homeowners
9 and myself and Ms. Ferster and Ms. Han and came to some agreements
10 as far as, you know, plan changes and construction management.
11 We do need more time to, you know, revise the plans, file -- you
12 know, kind of work out the details of the agreement and get the
13 plans uploaded. So we are requesting a postponement to March
14 15th if the schedule allows in order to kind of submit what's
15 needed for that. But in exchange there would be a withdrawal of
16 party status for this application.

17 CHAIRPERSON HILL: Okay. So that's a month from now.

18 And Ms. Ferster, I'm going to hear from you before we
19 determine this.

20 But Mr. Moy, what's the 15th looking like for us?

21 MR. MOY: We're -- the docket for March 15th, Mr.
22 Chairman, we have -- we currently have four cases. So if you
23 consent to that date, that would give you five cases for that
24 date.

25 CHAIRPERSON HILL: Okay. I think we'll be able to

1 handle that on that day.

2 Ms. Ferster, do you have any additional information to
3 add to the Board?

4 MR. FERSTER: No, I don't. Ms. Fowler has stated
5 exactly what has happened. We have had productive discussions
6 with the Applicant and we just need a little more time to ideally
7 enter into an agreement that, as she said, would result in
8 withdrawal of Ms. Han's party status. And that March 15th is a
9 good date for us.

10 CHAIRPERSON HILL: Okay.

11 All right. Mr. Moy, let's go ahead and move that to
12 the 15th.

13 Ms. Fowler and Ms. Forster, we will hear this case on
14 the 15th then. So thank you very much.

15 MS. FOWLER: I'm sorry, one quick question. When would
16 the filings be due for that, Mr. Moy.

17 MR. MOY: Typically, Ms. Fowler, unless the Board
18 disagrees, at least a week prior to March 15th.

19 MS. FOWLER: Okay. That's plenty of time. Thank you.

20 CHAIRPERSON HILL: Okay. Great. All right. We'll see
21 you guys on the 15th then. Thank you.

22 Okay. I just want to get a couple of items from my
23 file for this next case. So if you guys can just give me a few
24 minutes, I'll be right back.

25 (Whereupon, there was a brief recess.)

1 CHAIRPERSON HILL: Okay. I don't know if I lost a
2 couple people, which is totally understandable. Got Mr. Acosta.

3 (Pause.)

4 CHAIRPERSON HILL: Okay. Mr. Moy, can you hear me?

5 MR. MOY: Yes, sir, I'm here.

6 CHAIRPERSON HILL: Okay. I know that Mr. Smith will
7 not be joining us. Mr. Smith, can you hear us?

8 COMMISSIONER SMITH: I can hear you.

9 CHAIRPERSON HILL: Okay. Well, I hope you have a nice
10 day.

11 COMMISSIONER SMITH: All right. Take care, everyone.

12 CHAIRPERSON HILL: Bye-bye.

13 Mr. Young, thank you, if you could take out Mr. Smith.

14 And Mr. Moy, you can call our case.

15 MR. MOY: Thank you, Mr. Chairman. Before the Board
16 is Case Application No. 20838 of the Embassy of the Republic of
17 Kosovo. This is an application pursuant to Subtitle X, Section
18 201 to locate a chancery use in a low to medium density residence
19 zone. Property's located in the R1-B zone at 3612 Massachusetts
20 Avenue, N.W., Square 1931, Lot 5. As the Board is aware, this
21 was last heard by the Board on January 11, 2023, where the Board
22 granted the Applicant's motion for a continuance. Other than
23 that, Mr. Chairman, we do have eight individuals who have signed
24 up to testify at this hearing. They signed up prior to this
25 hearing. And I believe -- let me check -- and also within this

1 24-hour block for filings, we do have two letters filed by
2 opposition individuals. So if you wish to allow that into the
3 record, then I can have staff do that.

4 CHAIRPERSON HILL: Yeah, unless the Board has any
5 issues, I'd like to see everything that people are trying to get
6 into the record. And then also if you can put that into IZIS
7 for Commissioner May. And then we have -- I guess I'll go ahead
8 and -- we do have a representative from the Department of State
9 I believe, as well as the ANC commissioner I see. And then --
10 all right.

11 Ms. Wilson, if you can hear me, if you could introduce
12 yourself for the record.

13 MS. WILSON: Hi, Alex Wilson from Sullivan & Barros on
14 behalf of the Applicant in this case. And I'm here with the
15 ambassador of Kosovo to the United States, Ambassador Dugolli.

16 CHAIRPERSON HILL: Okay. Great.

17 Mr. Ambassador, can you hear me?

18 MR. DUGOLLI: Yes, I can.

19 CHAIRPERSON HILL: Well, welcome, thank you for joining
20 us this morning. Would you mind introducing yourself for the
21 record?

22 MR. DUGOLLI: My name is Ilir Dugolli, I'm ambassador
23 of the Republic of Kosovo to the United States.

24 CHAIRPERSON HILL: Thank you, Mr. Ambassador.

25 MR. DUGOLLI: Thank you.

1 CHAIRPERSON HILL: And who else, Ms. Wilson, is with
2 you?

3 MS. WILSON: Mr. Bucar Maxin (phonetic) is here. He's
4 also from Kosovo, but I don't believe he will be providing any
5 testimony today.

6 CHAIRPERSON HILL: Okay. And then I see a Mr.
7 Seagroves? Mr. Seagroves, can you introduce yourself for the
8 record? You're on mute, sir.

9 MR. SEAGROVES: Yes. Hi, this is Cliff Seagroves. I'm
10 the principal and deputy director of the Office of Foreign
11 Missions, U.S. Department of State.

12 CHAIRPERSON HILL: Okay. Great. Well, welcome, Mr.
13 Seagroves, as well.

14 All right, let's see. Commissioner Nash, can you hear
15 me?

16 ANC COMMISSIONER NASH: Yes, Mr. Chairman, I can.

17 CHAIRPERSON HILL: Could you introduce yourself for the
18 record as well?

19 ANC COMMISSIONER NASH: Certainly. My name is Rick
20 Nash. Address 3456 New York Street, N.W. And I am testifying
21 on behalf of the AMC and SMD 3C08, which I represent, it includes
22 the subject property of the Applicant.

23 CHAIRPERSON HILL: Okay. Great. Great, Commissioner,
24 thank you for joining us as well.

25 All right. Ms. Wilson, if you want to go ahead and

1 walk us through your presentation as to why you believe that your
2 client is meeting the criteria for us not to deny this
3 application. And I will let you begin whenever you like.

4 MS. FERSTER: Great. Thank you so much.

5 Mr. Young, could you please pull up the presentation?

6 Our proposal is to locate a new chancery at this
7 location. The hearing was originally scheduled for last month,
8 but we delayed to work through public space concerns from DDOT,
9 and that has all been addressed and DDOT recently submitted its
10 report with no objection to the case file. So that has been
11 successfully resolved. Next slide please?

12 For some background on the Republic of Kosovo, it was
13 formed about 15 years ago in February 2008. It was previously
14 part of Serbia and is in the middle of the Balkans and it is
15 bordered by North Macedonia to the southeast, Albania to the
16 southwest, Montenegro to the west, and Serbia to the north and
17 east. While the majority of the world recognizes its
18 independence, there are countries in the region which continue
19 to threaten its existence. The relationship between the United
20 States and Kosovo and the diplomatic mission, it's critical to
21 the fate of Kosovo in efforts to be a free, independent democracy.
22 When Kosovo was established 15 years ago, it found some rentable
23 office space in the District for its chancery use, but has been
24 searching for a permanent chancery location since then. The
25 search for a chancery in the District has focused on the typical

1 likely locations, including Embassy Row and DuPont Circle, where
2 available properties are sparse and typically expensive. In
3 addition, other regulations for foreign entities such as a wait
4 period for approval can have outsized effects during a heated
5 real estate economy, as sellers are not willing to wait for such
6 approvals when there are ready and willing buyers at hand. And
7 even when the seller is another foreign mission, problems can
8 occur. For example, in 2011, hundreds of potential sites were
9 reviewed, Kosovo had a promising perspective location on Embassy
10 Row, but the seller was another foreign mission, which also
11 required a lengthy approval from its capital before entering a
12 contract with Kosovo. Kosovo had its own budget restraints as
13 procedure required that the contract and purchase had to occur
14 within the 2011 year. So due to the respective countries'
15 bureaucracies, Kosovo missed what has essentially been its best
16 opportunity to purchase a property on Embassy Row. And those
17 just outline some of the difficulties it's had finding location
18 for its chancery. Next slide please?

19 When Kosovo had the opportunity to purchase the subject
20 property, it obtained the proper State Department approval. It
21 was within budget and it was the appropriate size for the mission,
22 as the proposal was only for seven employees. And in terms of
23 timing, the seller was willing to wait for the appropriate
24 approvals. It appeared to be a suitable location given the
25 proximity to the National Cathedral, its adjacency to

1 Massachusetts Avenue and Garfield along a busy intersection.
2 There's a large church across the street. Embassy and chancery
3 uses are a couple of blocks to the south. St. Albans is across
4 the street. And then across the other side of the block is
5 another church in the square. Next slide please?

6 The proposal includes six offices and seven employees.
7 The proposed hours of operation are from 9 a.m. to 5 p.m. Monday
8 through Friday. Daily consular type visitors are not
9 anticipated. The Applicant is not proposing to make any
10 alterations to the building envelope. I will offer the public
11 space changes on the next slide as we are proposing public space
12 changes. There are two vehicle parking spaces provided in a
13 garage on the ground floor of the building and the remaining
14 employees will walk or take public transportation or do a
15 rideshare. And there is a large driveway off 36th Place with
16 room for any drop offs or deliveries outside of the normal
17 deliveries that serve the greater community. While there are no
18 changes to the building envelope, there are proposed public space
19 changes, and the updated site plan with those changes was
20 submitted into the record in Exhibit 47A. As I mentioned at the
21 postponement hearing last month, the previous owner never
22 obtained public space approval for the public space changes. I
23 did want to make that clear. There were some -- there was some
24 confusion in the record I gathered from some of the letters from
25 the neighbors. I'm sorry if that wasn't clear, but that the

1 previous owner should have been required to obtain the public
2 space approvals, such as the fence and driveway replacement. And
3 had he gone through the public space committee, these changes
4 would have already been done before Kosovo purchased the
5 property. But Kosovo has agreed to make extensive public space
6 improvements which will be in compliance with the regulations.
7 And while any significant unexpected expense is not ideal, the
8 changes will establish an openness to the property in view of the
9 property from Massachusetts Avenue and Garfield, as the property
10 has largely been hidden from view for many years. And so the
11 proposal includes removing these cedar trees along Massachusetts
12 and Garfield. That existing wood fence is about six feet, so
13 those trees are quite tall. It will be relocating and replacing
14 the fence from this privacy fence to an iron post fence that has
15 50 percent visibility. And then on the other side, towards 36th
16 Place, the fence will be moved in towards the property, the
17 sidewalks will be widened all around the property, and the
18 driveway will utilize an existing second curb cut for an entrance
19 and exit rather than the current alley entrance and exit. Again,
20 DDOT submitted a report that it has no objection to the proposal.
21 We had very productive conversations with their team and the
22 proposed work will bring this property in line with DDOT
23 standards, which is an overall positive for the change of use as
24 there would be limited enforcement available if this were a
25 single-family home or an embassy. Next slide please?

1 This is another view. This is from Massachusetts
2 Avenue. It was taken before the renovation was complete with the
3 upper floor, but the cedar trees still remain. As you can
4 imagine, when they are removed and the fence is replaced with the
5 open fence, the building will be visible from Massachusetts
6 Avenue. While there are some small plantings permitted in public
7 space, it's nothing like what's there now. And again, while the
8 public space changes were unanticipated, it will create a more
9 direct relationship between the property and this busy corner due
10 to the increased visibility of the property. Next slide please?

11 With respect to the mixed use area, the context of the
12 FMA is, of course, important since the zoning regulations used
13 to evaluate the application are based on the FMA. The FMA was
14 enacted to create a mechanism to assure the protection to
15 interests of the United States while giving due consideration to
16 local interests. The idea was to alleviate the restrictive
17 chancery relocation rules in place at the time of the enactment.
18 In this context, it's helpful in light of the assertion that the
19 regulations are intended to really limit the mixed use area to
20 this square and a strict 50 percent threshold. The FMA was
21 enacted to be a broad set of rules, not a restrictive set of
22 rules, and provide a mechanism for review on the merits of the
23 application. Next slide please?

24 The regulations reflect the intent of the FMA by giving
25 discretion to the FMBZA. While Section X 301.7 suggests the

1 square as a starting place for determining the appropriate area,
2 there's certainly room to go outside the square with sufficient
3 justification, which we have provided to the record, and we'll
4 go into more detail today. The zoning regulations further reflect
5 the FMBZA's discretion by noting that even if the square or the
6 identified area is not over 50 percent nonresidential, the FMBZA
7 may still find that it is a mixed use area upon a showing of
8 nonresidential uses as may be submitted by the Applicant. So the
9 mixed use requirement must be satisfied. There's not a strict
10 requirement to limit the area to the square, nor a strict
11 requirement that there be more than 50 percent nonresidential use
12 in the area for it to be considered mixed use. And this is
13 evidenced in some other cases in which the Board and Office of
14 Planning found the area to be something other than the square.
15 And we aren't relying solely on those cases to prove our
16 justification. But it does evidence that it is possible to go
17 outside the square. In Case No. 19301 and the Zambian chancery,
18 the area utilized a property in another square and it considered
19 that to be a nearby property adjacent to the property. Similarly,
20 in Case No. 19875 of Nepal, it included a mixed use area outside
21 of the square. And in Case No. 20254, Zambia, OP noted that
22 there were seven chanceries across the street and that went into
23 the mixed use area determination. And again, we included these
24 cases in the burden of proof statement, not as the sole basis
25 for explaining venturing outside of the square, but just as

1 evidence that the Board has discretion when choosing the area and
2 is not limited to the square. Next slide please?

3 Ultimately, it is up to the Board to determine the
4 mixed use area that most accurately depicts the existing mix of
5 uses adjacent to the proposed chancery location. And in our
6 case, this was submitted to the record in Exhibit 23 pursuant to
7 Y 301.7 and X 201.3 through .5, we chose an area that would
8 generally put the property in the middle of the mixed use area
9 rather than at the edge of the mixed use area as using only the
10 square would situate this property at the very edge, since it
11 sits at the edge of the square and only has one directly touching
12 property. It has streets on all other sides. In terms of what
13 depicts the existing mix of use is best, one justification is
14 that the property's proximity and relationship to this
15 intersection is critical, the streets connected with the other
16 properties around this intersection, including portions of St.
17 Albans campus, which are directly visible from the property. We
18 thought of Massachusetts Avenue as a connector rather than a
19 boundary, as the street is generally a connector, and the
20 regulations do not limit the area by street boundaries, but rather
21 what accurately depicts the mix of uses adjacent to or otherwise
22 nearby the proposed location of the chancery. In terms of how
23 it was calculated for square footage, the portion of the cathedral
24 that we picked was St. Albans campus. We originally had more of
25 the National Cathedral, but ultimately reduced it to this portion

1 as we realized we could exclude portions of a property too. We
2 used a tool called Atlas Plus to do this. It's a D.C. government
3 tool. And we thought it was appropriate to include the campus,
4 given that the property is closer to or just as close to the
5 campus boundary as to properties on the other side of its square.
6 The portion of St. Albans that we use is approximately 346,000
7 square feet. The on -- the other nonresidential uses are
8 approximately 130,000 square feet. And so the total
9 nonresidential uses in our identified area is approximately 76
10 percent compared to the single-family square footage, which is
11 about 24 percent. And this is all in Exhibit 23A for reference.
12 There've been some comments in the record that we should not be
13 allowed to include St. Albans, especially in addition to the
14 other nonresidential properties we included. Without St. Albans,
15 we would have 130,000 square feet of proposed nonresidential
16 uses. That would include the church and embassy across the
17 street, as well as the church on the other side of the square.
18 That would put us just below 50 percent at 47.6 percent
19 nonresidential. And of course, we assert that the proximity to
20 the subject property is one of the reasons at least a portion of
21 St. Albans should be included. Again, the boundaries of the
22 school campus are closer to the subject property than some of the
23 properties in the square. So even if there is an argument that
24 a reduction was necessary or that a smaller portion of the campus
25 better define the area, the Board has that discretion, we would

1 be amenable, but we do think some portion should be included
2 given the proximity. And in terms of exceeding 50 percent
3 nonresidential, this would occur even with a reduced portion, as
4 we would only need to include just over 13,000 square feet from
5 the campus for it to be over that 50 percent. And so in this
6 case, the subject property has multiple street frontage and the
7 experience from the surrounding property is mixed as there are
8 residential uses to the west and south and then institutional
9 uses to the north and east. It is a mix of uses in the area
10 nearby this particular property. When standing on the property
11 and looking around, we asked ourselves what is nearby or adjacent,
12 that is how we picked these uses. We asked is this in the middle
13 of a square and neighborhood, what is the -- what does this look
14 like directly outside the property, are there pedestrian streets,
15 vehicle traffic, bus stops, anything unique about the
16 surroundings that would make this a mix of uses. And so the
17 neighbors have talked about this being an entirely residential
18 neighborhood and feel that the experience on or around this
19 subject property is objectively different than, say, a property
20 interior to the square with only frontage on 36th Place. And I
21 see the photographs are pulled up and they demonstrate this. The
22 cedar trees again are going to be removed. And there's a lot of
23 information in the record saying that we are not adjacent or
24 connected simply because we have a view of St. Albans. But this
25 is not simply a view, it's the domination of the sightlines from

1 the property, showing the proximity to the use. And these DDOT
2 changes, which are consistent with DDOT and public space
3 regulations, really open up this property as this area of public
4 space and again connects this property more directly to the public
5 along not only Massachusetts Avenue but Garfield Place as well,
6 creating possibly more of a city or urban feel on this side rather
7 than a suburban feel on the other side, and for an occupant in
8 this particular property compared to other properties in the
9 area. Next slide please?

10 They're just some more views. Next slide please?

11 Next slide please?

12 While the public space changes certainly enhance the
13 connection to Massachusetts, these changes are not something that
14 were done to bolster the application. These changes should have
15 been required by the previous owner had he properly gone through
16 the public space process. So the property should already be more
17 open and it would have been had it properly been permitted by
18 the previous owner. Next slide please?

19 This just shows how far the sightline extends down
20 Massachusetts Avenue. Once the fence and hedges are removed, the
21 bus stop directly in front of the property will be visible. It
22 serves the M2 and foreign M6 bus lines. A bus schedule from
23 yesterday shows that a bus arrives on average every 15 minutes,
24 so there will be quite a bit of pedestrian and bus traffic in
25 front of the property, giving it on this side at least a more

1 nonresidential or city like feel. Next slide please?

2 This side faces 36th Place, which has a more
3 residential feel. Certainly there are larger apartment buildings
4 in the general surrounding area, which are also residential uses.
5 The difference though is that the subject property isn't defined
6 only by its frontage on 36th Place. The address is not 36th
7 Place. Sure, it has a vehicular entrance and exit off 36th Place
8 because DDOT isn't going to allow a curb cut on Massachusetts
9 Avenue or paved parking in that public space area. These
10 properties are across the street. And sure, the street isn't as
11 wide as Massachusetts Avenue, but the regulations don't place
12 strict limits on defining an area. They just require a
13 justification for going outside the square.

14 And Mr. Young, could you please go back to Slide 9 just
15 to pull up our area one more time?

16 And I want to go back to the justification for going
17 outside of the square. In answering some of the questions we
18 asked originally to define this area, such as, you know, what is
19 nearby, what you see when you're on the property, is this in the
20 middle of the square neighborhood, is this a suburb, city, or a
21 mix, is there vehicle traffic, bus stops or anything unique about
22 the surroundings, he answer is the property is located nearby a
23 mix of uses. It is unique compared to the other properties in
24 this square because of its location on the edge of this square
25 at this intersection of three streets and having a more direct

1 view of Massachusetts Avenue and Garfield, as well as St. Albans
2 and the Greek church. Further, the square isn't entirely
3 residential, as there is a church on the other side of the square.
4 There is a bus stop which sees service approximately every 15
5 minutes that is directly in front of the property, and there's
6 vehicular and pedestrian traffic directly adjacent to this
7 property. Again, because this experience is more unique to this
8 property than even a property a few doors down with only one
9 frontage and a different orientation, it was appropriate to go
10 outside of the square to define the area. Of course, ultimately
11 the Board can decide that the area is mixed use even if the
12 properties included in the defined area are below 50 percent
13 nonresidential.

14 And so with that, Mr. Young, I'll go -- I want to go
15 to Slide 16 to discuss the merits of the case.

16 In terms of the merits of the chancery application, the
17 proposal is consistent with the criteria of X 201.8 and the FMA.
18 Favorable action by the FMBZ on this application was fulfill the
19 international obligation of the United States. The U.S.
20 Department of State supports the filing of this application, as
21 indicated by the letter included with the initial filing and
22 subsequent filing in Exhibit 30. The propo- -- the property is
23 not located in a historic district, nor is it a District landmark.
24 Further, the Applicant is not proposing any changes to the
25 exterior building envelope. Next slide please?

1 The property is served by several metro bus routes, as
2 I mentioned, directly in front of the property. It is located
3 on Massachusetts Avenue and is located near its intersection with
4 Wisconsin. Vehicle access to the property is located off 36th
5 Place and there is a driveway which can be used for any drop-
6 offs or deliveries outside of those that serve the greater area.
7 And parking on the driveway is not permitted as it is located
8 within the building restriction lane. The building does have a
9 garage for two spaces which can be used by employees. Other
10 employees are anticipated to walk, bus, or cycle or use a ride
11 share. Next slide please?

12 In terms of municipal interest, the proposed chancery
13 shall not adversely impact the use of neighboring properties and
14 is compatible with the mix of uses nearby. The public space
15 request from DDOT associated with the change in use will result
16 in significant public space improvements, including widening
17 sidewalks around the property. I want to emphasize that the
18 Chancery has agreed to undertake a substantial amount of public
19 space work and costly work to rectify the actions of the previous
20 owner. They're essentially investing into the District too. The
21 public space enhancements are certainly an overall benefit to the
22 District and the area with no cost or very limited cost to the
23 District, and that goes to the municipal interest as well. In
24 terms of federal interest, as noted by the State Department in
25 Exhibit 30, the government of the Republic of Kosovo has been

1 helpful in addressing the United States land use needs in the
2 capital. Such cooperation is essential for successfully
3 achieving the federal government's mission of providing safe,
4 secure, and functional facilities for the conduct of U.S.
5 diplomacy and the promotion of the U.S. interests worldwide.
6 Further, the proposed chancery will support the diplomatic
7 mission of promoting political, economic, and cultural relations
8 with the United States, as well as strengthening U.S. and Kosovo
9 relations. The United States has traditionally been an ally of
10 Kosovo, and Kosovo considers its history, fate, and values
11 intertwined with those of the United States. Kosovo would not
12 exist as a country, nor would its people exist freely but for
13 the support from the United States, along with the sacrifices of
14 its own people to be a free and independent democracy. And it
15 is important for Kosovo's foreign mission to establish a chancery
16 near other diplomatic missions in a favorable location. Next
17 slide please?

18 To conclude, the FMA and the mixed use determination
19 was not intended to place strict limits, but rather alleviate
20 applicants from overly restrictive requirements for foreign
21 missions in place prior to the FMA and allow for the discussion
22 to be focused on the merits of the case. Another purpose of the
23 FMA is to protect the federal interests while giving due concern
24 to local interests. The federal interest is significant, as
25 evidenced by the State Department's submissions in the record.

1 In terms of local concerns, the threshold issue is the primary
2 concern from the ANC, as detailed in its report. That is
3 ultimately up to the Board, although as noted today, the location
4 of the property is nearby a mix of both institutional and
5 residential uses. Even if the defined area does not meet a strict
6 50 percent nonresidential threshold, the Board can still find it
7 mixed use simply based on the nearby uses. And in this case,
8 there are a mix of uses nearby. Regarding other concerns, the
9 use itself is relatively limited and should not have an adverse
10 impact on the use of neighboring properties. The proposal is
11 only for seven employees. There will be no consular activities.
12 And any events will be small and infrequent. Kosovo has been
13 searching for 15 years for a suitable chancery location as renting
14 office space indefinitely is not sustainable, and this would
15 advance both Kosovo's mission and the federal interest abroad.
16 In reading through the letters from the neighbors, we saw a
17 proposed list of conditions or requests from the neighbors.
18 Generally, we are adhering to a number of those requests, such
19 as fixing the public space issues, limiting on-site parking,
20 having no consular activities. Limited staff is already proposed
21 and I believe we will already be required to use public trash.
22 In initiating this application, we reached out to the former SMD.
23 We had an in-person meeting, a Zoning Committee meeting, and the
24 full ANC meeting, of course. And during that time we sent a
25 proposed memo that could have been used as the basis for a

1 community agreement. Unfortunately, we were not given an
2 opportunity to continue our discussions with respect to the use
3 itself at the full ANC meeting since the threshold issue of the
4 mixed use area was the primary concern, but Kosovo is committed
5 to continuing those discussions. This is not the first time the
6 ambassador and his staff have encountered opposition to an
7 establishment of a mission where there were residents nearby.
8 During his time in Brussels as ambassador to Belgium, they went
9 through a similar process for a chancery and that use was
10 ultimately approved. In his tenure they never received one
11 complaint, as they were engaged members of the community. And
12 similarly, if this is not disapproved, the ambassador and staff
13 are committed to continue discussions with the community and form
14 a relationship with the community and continue to be good
15 neighbors.

16 And with that, I would like to conclude my presentation
17 and allow some time for the ambassador to address the Board.
18 Thank you.

19 CHAIRPERSON HILL: Okay. Thanks, Mr. Young, for
20 dropping that slide deck.

21 So my fellow Board members, what I'd like to do is kind
22 of get through all the testimony and then ask questions and see
23 if we can let those that need to leave, leave.

24 Mr. Ambassador, you had something you'd like to address
25 or say to the Board?

1 MR. DUGOLLI: Well, thank you very much, Mr. Chair and
2 esteemed members of the Board. I'll be very brief.

3 This Friday will mark 15th anniversary of our
4 independence. We also celebrate 15 years of diplomatic relations
5 between our two countries, the United States and the Republic of
6 Kosovo, as the United States remains one of our most important
7 partners in our work, our role, and provision. Of course, proper
8 conditions for our work here is of utmost importance for us.
9 It's 15 years since we've been present in the city where my
10 predecessors and colleagues have enjoyed hospitality of the
11 Washington D.C. and through the work they've contributed to
12 deepening relations between our two countries and strengthening
13 ties between our two peoples.

14 Now, during these 15 years, there's been no shortage
15 of efforts to have our chancery, yet for one reason or the other
16 that has simply been impossible. We've come to a point where
17 after years of efforts, last year we acquired the premise that
18 we hope to have as our chancery, following months of negotiations
19 and, of course, the approval by the FM, and other steps, we were
20 happy to complete the settlement and proceed with subsequent
21 steps, but without being able to gain the ANC support as we would
22 have wanted.

23 In my shared personal fractions, when we bought our
24 first chancery in Brussels, where I was serving as ambassador,
25 we had almost the same set of complaints and resistance. And in

1 the meantime so over a decade since we established that embassy
2 there, there's been nothing but cordial and good neighborly
3 relations. So I just want to conclude and being very respectful
4 of your time in saying that I very much hope that your decision
5 today will support our diplomatic work in representing our
6 country in this important capital and enable us to further
7 strengthen ties between the Republic of Kosovo and the United
8 States. Thank you for your attention and thank you for your
9 support.

10 CHAIRPERSON HILL: Okay. Thank you, Mr. Ambassador,
11 and congratulations on your anniversary on Friday.

12 Let's see, can I hear from the secretary -- I'm sorry,
13 can I hear from the State Department?

14 MR. SEAGROVES: Sure. I can read what we submitted on
15 the record or however you would like me to do this.

16 CHAIRPERSON HILL: Whatever you would like to do. I
17 don't know how -- I'm just trying to see how big the -- you can
18 just give us your testimony or summarize what you submitted in
19 the record.

20 MR. SEAGROVES: Yeah, okay, perfect.

21 So as we submitted our letter for the record, the
22 Department of State certainly supports this project. There is
23 certainly a strong federal interest in seeing this project move
24 forward, for all the reasons that our colleagues have already
25 outlined. As also mentioned, that the -- we have had very

1 favorable support from the various levels of the host government
2 in Kosovo with respect to our reciprocal needs for our U.S.
3 embassy in that country. And so we'd like to make sure that we
4 extend that as much as possible here. We certainly have been
5 meeting with the embassy and certainly happy with their decision
6 to address the issues that were not of their making in the public
7 space area and certainly want to recognize that, and overall
8 fully support this and are available to answer any questions as
9 needed.

10 CHAIRPERSON HILL: Okay. Thank you, Mr. Seagroves.

11 Commissioner Nash, can you hear me? Oh, no, wait a
12 minute, I'm sorry. Mr. Commissioner, let me -- I still have to
13 go to the Office of Planning, and then I'll get to you. Can I
14 hear from the Office of Planning please?

15 MS. THOMAS: Good morning, Mr. Chair, members of the
16 Foreign Missions Board. Karen Thomas with the Office of Planning
17 presenting the OP report for the Applicant application of the
18 location of the chancery of the Republic of Kosovo at 3612
19 Massachusetts Avenue, N.W. This property is a corner lot located
20 at the intersection of three streets: Massachusetts Avenue,
21 Garfield Street, N.W., and 36th Place, N.W. Abutting the property
22 to the east is Massachusetts Avenue, and to the south is a
23 detached single-family home.

24 The Applicant is proposing minor interior alterations
25 to accommodate up to six offices and seven employees and is not

1 proposing to make any alterations to the building envelope. With
2 the proposed hours of operation from 9:00 to 5:00 Monday through
3 Friday, daily visitors are not anticipated. The Foreign Missions
4 Act and the zoning regulations govern the location and expansion
5 of chanceries. Since the location is within a low density zone,
6 the Board must -- shall determine rather, whether the proposed
7 location is in a mixed use area determined on the basis of
8 existing uses, which includes office and institutional uses.
9 Before applying the criteria of subtitle X 201.8, the regulations
10 do allow for the use of an area, including this square and
11 something other than the square. And this area shall be the area
12 that the Board determines most accurately depicts the existing
13 mix of uses adjacent to the proposed location of the chancery.
14 And so the commonality of not distant uses, including along the
15 Massachusetts Avenue corridor, where there are many institutional
16 uses, including chanceries, churches, and other uses fronting
17 Matsa- -- Massachusetts Avenue, rather within a short walking
18 distance. And I could list the number of embassies there, but
19 they are all within a three- to five-minute walk from the site.
20 These properties are also not distant and they share the common
21 corridor of Massachusetts Avenue. The area presented by the
22 Applicant includes properties within the Square 1931, as required
23 by the regs, and portions of Square 1942 and 1944, which are
24 properties along Mass Avenue, opposite and obliquely opposite to
25 3612 Mass Avenue.

1 The Applicant provided visuals in their presentation
2 to show the difference between the Mass Avenue frontage and the
3 character of the interior of the square. When proposed within a
4 mixed use area with low density uses, the applicant is instructed
5 to take special care to protect the integrity of the residential
6 area. In this case, the defined area was identified with 76
7 percent of the lot area occupied by nonresidential uses. And
8 should the Board determined that this is adequate, then the only
9 other evaluation would be the six criteria of Section 201.8, as
10 discussed in our report. OP and DDOT provided our analysis based
11 on these criteria. And we note that the Applicant has not
12 proposed any additions or renovations of the building, so there
13 are no concerns with respect to increase in bulk and massing and
14 yards. However, as reviewed by DDOT, we see that DDOT and the
15 Applicant worked together to come to an agreement on several
16 issues related to the public space as outlined in their latest
17 submission. OP is satisfied that the Applicant has agreed to
18 improve the pedestrian access around the public space perimeter
19 of the site as required by DDOT. And this would be a benefit to
20 the neighborhood and one which would not have been immediately
21 realized if the building would have remained in residential use,
22 as we notice that the sale of the home would have been a matter
23 of right and the public space issues may have gone largely
24 unnoticed. The Applicant purchased this property without the
25 knowledge of the former owner's lack of interaction with the

1 agencies. But be that as it may, DDOT requires the public space
2 to be rectified and the Applicant has complied to do so. And
3 this is in the municipal interests. To address the point
4 regarding whether another a chancery or embassy could or would
5 located with the Mass Heights neighborhood, particularly on this
6 side of Massachusetts Avenue, while it is difficult to speculate
7 about that, it would be looked at differently by OP had this
8 Applicant occupied a lot well within the boundaries interior to
9 the neighborhood. Based on the requirements, this square and the
10 adjacencies issue, there would be mostly a residential character
11 and the outcome could have been different since it would have
12 been out of range of adjacency of Mass Avenue where the embassies
13 and chanceries are primarily located in the District. In
14 addition, on the face of it, the character of the interior square
15 is markedly different from the subject property, which fronts
16 Mass Avenue, and OP's review would have been different. With
17 that, I will -- I will finish my testimony here and be happy to
18 take any questions. Thank you.

19 CHAIRPERSON HILL: Okay. Thanks, Ms. Thomas.

20 Commissioner Nash, can you hear me?

21 ANC COMMISSIONER NASH: Yes, Mr. Chairman, I can.

22 CHAIRPERSON HILL: Okay. Commissioner, in terms of the
23 order with which I'm supposed to proceed, you are the last to
24 give your testimony, and then I'm going to try to take some
25 questions from everyone, including yourself. Would you like to

1 give your testimony now, Commissioner?

2 ANC COMMISSIONER NASH: Yes, I'll do so.

3 So Mr. Chairman, as I as I mentioned, I represent ANC
4 SMD 3C08 which includes not just the subject property, but also
5 the Applicant's claimed mixed use zone, Massachusetts Avenue
6 Heights, which is a low density residential area where the subject
7 property is based, as well as the other neighborhoods in the
8 vicinity of the National Cathedral close.

9 I'm going to speak briefly to the ANC's resolution and
10 report, but I want to take time to respond to some of the
11 statements by Ms. Wilson and the Office of Planning and explain
12 why the Applicant has provided no rational basis for rejecting
13 the ANC's conclusion. Now, our resolution and report are in the
14 record in Exhibits 21 and 26. And the ANC specifically found
15 the tax square 1931, which is wholly within the boundaries of the
16 Massachusetts Avenue Heights neighborhood, most accurately
17 depicts the existing mix of uses adjacent to the proposed chancery
18 location and as the proper area of determination. Now, this is
19 an identifiable quantifiable actual square. The ANC further
20 determined that the area north of Massachusetts Avenue should not
21 be considered adjacent. Using Square 1931 to make this
22 determination results in a finding that the area is not mixed use
23 and instead low density residential as approximately 85 percent
24 of the properties in Square 1931 are used for residential
25 purposes, with only one property in that square, Temple Micah,

1 devoted to a use other than residential. The ANC urges the Board
2 to fully consider and define that Square 1931 is the relevant
3 area under consideration for the mixed use determination and to
4 disapprove the instant application to locate the chancery in this
5 low density residential area. The findings of fact and the bases
6 on which the ANC made this determination are attached as exhibits
7 in the record as well.

8 I do want to speak to the claims that the Applicant has
9 has made. And you know, she's provided no evidence that would,
10 you know, in our view, allow the Board to reject the ANC's
11 conclusion. First of all, there are a couple statements that are
12 made that are -- need to be corrected. Ms. Wilson referred to
13 adjacent chanceries, and including one chancery that is across
14 the street, but in looking at her map, as I recall, the property
15 identified as Exhibit D, a property on the corner of Massachusetts
16 Avenue and Fulton Street, which lies almost a quarter mile from
17 the subject house, it's shown is the Embassy of Liberia. But
18 it's, in fact, not a chancery office at all. It's an embassy
19 house and therefore should not be included in the nonresidential
20 uses. She makes reference, as does OP, to chanceries that are
21 not distant. But again, the chanceries that have been referred
22 to are actually between a third of a mile and half a mile located
23 away from the subject property and it's telling that the Applicant
24 doesn't include any of them in their area of determination because
25 they are not adjacent. References to Embassy Row, similarly, are

1 not within the area of determination because this property is
2 located some one and a half miles from the heart of Embassy Row.
3 Indeed, with correcting the erroneous reference to the Embassy
4 of Liberia, which is a house, not a chancery, it's pretty telling
5 that Applicant includes not a single chancery or office use or
6 commercial use in its area of determination.

7 Applicant also states that Square 1931 is not an
8 appropriate area because the property lies at the edge of that
9 square, but in fact the property extends almost 200 feet into
10 Square 1931. Its principal frontage is on 36th Street, which is
11 50 percent greater than the frontage that it has on Garfield
12 Street and Massachusetts Avenue. And I notice that the Office
13 of Planning said that if this were another property that was more
14 located in the -- had more relationship to the residential square,
15 they wouldn't support the use. The entire frontage of this
16 property, the vehicle access, the pedestrian access, the openings
17 to the street, the entrance, are all along 36th Street. Now
18 Applicant's claim their determination essentially boils down to
19 its contention that the property is approximately in the center
20 of an oddly shaped area that is drawn to cherry-pick the parcels
21 that it needs to meet the threshold determination. And while it
22 proposes basing a mixed use finding on properties that are across
23 wide arterial roads and parks and up to a quarter mile away, at
24 the same time it excludes single-family residential properties
25 that are closer just half a block away to the subject parcel.

1 And I'd refer you to the detailed testimony of the Massachusetts
2 Avenue Heights Citizens Association in the record that shows how
3 Applicant has chosen remote properties located across arterial
4 roads up to 1,600 feet to the north and east from the subject
5 property, while omitting all of the residential properties and
6 the immediate adjacent tax Square 1933 and the low density
7 residential area that lies approximately 400 and 900 feet from
8 the subject property. So is MAHCA shows in its written testimony,
9 all the residential homes located in Square 1933, which the
10 subject Applicant has chosen to exclude, are closer to the
11 proposed chancery site than the properties identified by the
12 Applicant on which it bases its claim zone of determination. And
13 they offer no rational basis for this selection.

14 They also make much in their photos of the location of
15 the property at the intersection of Garfield Street and
16 Massachusetts. I believe the Applicant referred to this as the
17 sort of nexus. But it's important to point out that, in fact,
18 it's not even possible for vehicles to -- coming from the east,
19 from the direction of the White House and the State Department
20 and where other chanceries are located down Massachusetts Avenue
21 itself, to turn into the subject property on 36th Street. Any
22 vehicle access -- seeking to access the property coming from the
23 east has to take a circuitous route through the neighborhood,
24 requiring it to go on Fulton Street to reach 36th Street. And
25 so given that traffic to reach the site is not connected or coming

1 from Massachusetts, but rather going through the neighborhood,
2 it's all the more puzzling that the Applicant would omit Square
3 1933 from its area of determination where the houses are closer
4 than the properties it pulls in in Squares 1942 and 1944. And
5 in fact, the Applicant's own photos make quite clear the
6 separation and distance of the property from the institutions to
7 the north and east across a four-lane arterial road, two medium
8 sized parks, and a pocket park, and even St. Albans itself is
9 separated, further separated, by a -- really a small ravine that
10 requires any vehicle or pedestrian access to go nearly all the
11 way to Wisconsin Avenue or all the way to Fulton Street even to
12 access the property.

13 And then I noticed as well in the Applicant's slides
14 that she attempts to use the view of the National Cathedral from
15 the subject property's upper floor to support its contention that
16 the Cathedral Close should be part of the area of determination.
17 But if use of the Cathedral or even some proximity to the
18 Cathedral Close are used to define an area of determination, then
19 all of the residential neighborhoods: Woodley Park, Cleveland
20 Park, and additional properties in Massachusetts Heights, all
21 within the boundaries of ANC 3C are ripe for foreign missions to
22 locate in low density residential zones. In fact, some of these
23 areas are not separated by a four-lane arterial from the Close.
24 And then any applicant could do what the Applicant tries to do
25 here, simply to draw an area of determination to minimize low

1 -- adjacent low density residential properties and bootstrap
2 itself to (indiscernible) the Close, a vast campus that includes
3 the Cathedral, three Cathedral affiliated schools, Woodlands
4 Gardens and Fields, all these low density residential
5 neighborhoods are with ANC 3C and since the residential area
6 across Tilden Street and a narrow park from the Federal
7 International Chancery Center. If foreign missions seeking to
8 locate in low density residential areas can go outside the square
9 to attach themselves to large institutional enclaves in the
10 general vicinity, the North Cleveland Park and Wakefield would
11 similarly be vulnerable as well. This could lead to a result
12 that clearly would be contrary to LU-341 in the comprehensive
13 plan and the policies underlying the Foreign Missions Act. So
14 on behalf of the ANC, I respectfully ask you to find that Square
15 1931 is the proper area of determination.

16 Now MAHCA and other witnesses in their written
17 testimony address the serious procedural and substantive flaws
18 in the Applicant's submission, which I'm not going to repeat
19 here, but I will conclude by emphasizing that while the applicable
20 regulations don't permit a chancery in the location proposed by
21 Kosovo, the Applicant must engage with the neighborhood and agree
22 to reasonable mitigation measures in the event that the Board
23 finds that Kosovo satisfies the threshold mixed use test. Indeed,
24 even more mitigation will be needed now that DDOT requires the
25 Applicant to remove the screening around the property and a second

1 curb cut on 36th Street, which MAHCA has testified in the record
2 will reduce current street parking by 50 percent. You know,
3 Applicant said that these changes will allow the property to
4 really change its character from a suburban type feel to more of
5 an urban type feel, which I would submit is contrary to the policy
6 that requires that the impact on low density residential areas
7 be maintained. DDOT's changes, in fact, will only exacerbate
8 that impact on the neighborhood because the principal frontage
9 and all the access to the property are on 36th Street. So until
10 Kosovo's application reflects these limitations and conditions
11 and the conditions proposed by the neighborhood which are
12 attached to the written testimony of Mr. Edward Strohbehn, Ms.
13 Ann McMaster, and other witnesses, the BZA should not approve the
14 application. So I thank you for your consideration.

15 CHAIRPERSON HILL: Thank you, Commissioner.

16 Okay. Let me see here. So I'm trying to be a little
17 conscious of the ambassador's time and also the witness from the
18 State Department. Does anybody have any questions of the
19 ambassador and or the State Department? First, I'm going to turn
20 my Board.

21 Okay. Commissioner, do you have any questions of the
22 ambassador or the representative from the State Department?

23 ANC COMMISSIONER NASH: No, I don't.

24 CHAIRPERSON HILL: Okay.

25 So Mr. Ambassador, you can hear me and Mr. Seagroves

1 from the State Department, it is up to you as to whether or not
2 you would like to stay on camera or if you'd like to drop off
3 into the background. And if we need to find you, we can. Let
4 me find out from you, Mr. Seagroves, what you'd like to do?

5 MR. SEAGROVES: I'll stay in the background.

6 CHAIRPERSON HILL: Okay. Mr. Ambassador, what would
7 you like to do?

8 MR. DUGOLLI: Likewise, we'll stay in the background.

9 CHAIRPERSON HILL: Okay.

10 So then, Mr. Young, if you could go ahead and return
11 Mr. Seagroves and the ambassador to the background, and if we
12 need them, we can pull them forward.

13 And then and I hate to -- well, I shouldn't say hate
14 -- guys, I'm going to take a quick break and then we'll come back
15 and start with questions and everything that we have for
16 everybody, if that sounds good with the Board.

17 All right. Then we're going to take a quick break,
18 everyone. Thank you.

19 (Whereupon, there was a brief recess.)

20 CHAIRPERSON HILL: Okay. Thanks, everybody, for coming
21 back.

22 Commissioner Nash, are you there?

23 ANC COMMISSIONER NASH: I am, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Great. Perfect. Thank you.

25 Ms. Thomas, are you there?

1 MS. THOMAS: Yes, I'm here.

2 CHAIRPERSON HILL: Okay. Thank you.

3 So just again to clarify what this is, is this is a
4 rulemaking procedures, so therefore there's not any rebuttal
5 really from witnesses. So -- and also no conclusions. But I
6 usually ask for a summation.

7 So Mr. Commissioner, you can give us a little summation
8 at the end when we're finally done here.

9 But I'm turning to my Board members. Who has questions
10 for whom, and if you'd like to raise your hand?

11 Go ahead, Commissioner May.

12 COMMISSIONER MAY: Yeah. I have questions for the
13 Applicant. So I'm a little -- I'm trying to understand a little
14 bit more about the property. And you provided photographs in
15 your submissions that show sort of different iterations of the
16 property really. Right? Some of them are much older than the
17 current structure that's there and just -- like there's a big
18 parking lot though I think is not there or it's not showing up
19 in the current drawings. So I mean, what was the property when
20 they had that more traditional looking house and the big, big,
21 big parking lot there, was that just a residential use back then?

22 MS. WILSON: It was, it was a residential use. And
23 then the previous owner put an addition on the property, removed
24 the paving in public space, renovated the driveway along 36th
25 Place, and replaced the fence around the property. And all of

1 that public space work was done without permits, which was the
2 issue that we later learned in our conversation with DDOT.

3 COMMISSIONER MAY: Right. So and it looks like there
4 was a fence on the outside alongside the sidewalk at one point,
5 is that -- was that removed and then replaced with a fence on
6 the inside the sidewalk -- I mean, on the inside of the line of
7 trees?

8 MS. WILSON: I thought it was in the same location as
9 the current fence. I don't have the -- any information about
10 what was there before in terms of a plat or anything like that.
11 But if I pull up the photos from 2018, it looks like it was
12 interior still. I believe it's on the Mass Ave and Garfield
13 side.

14 COMMISSIONER MAY: There are definitely photos that
15 you've submitted that show a fence along the outside alongside
16 the sidewalk.

17 MS. WILSON: Oh, yes, on 36th Place.

18 COMMISSIONER MAY: Okay.

19 MS. WILSON: Yes, yes, there was a fence there and that
20 was replaced in the same location.

21 COMMISSIONER MAY: I see. Okay. Well, I mean, it's
22 pretty startling if there was a house that had a driveway that
23 it fit like six cars.

24 MS. WILSON: Uh-huh, in public space.

25 COMMISSIONER MAY: In public space. And that's not

1 even where the garage was, right, there was still a garage on
2 the other side.

3 MS. WILSON: Yes.

4 COMMISSIONER MAY: Okay. So there's a history of this
5 property. So the -- I understand you've reached agreement with
6 DDOT. If you could provide a little bit more detail on that, I
7 would appreciate it. The fence that's being replaced, is that
8 the same wooden -- or that new wooden fence, and it's -- and I
9 see on the plans that you submitted that the alignment is
10 different to allow either for an immediate widening of the
11 sidewalk or potential future widening of sidewalk or what have
12 you. The fence that's going in is a metal fence that's mostly
13 open. What's the height of that fence?

14 MS. WILSON: It's going to be six feet.

15 COMMISSIONER: Okay. That's unusual for DDOT in public
16 space, is it not?

17 MS. WILSON: It is. They allowed it and said they've
18 allowed some other foreign missions in the past to do that. And
19 I believe it's a privacy concern as there is that bus stop
20 directly in front of the property. So they did allow that. And
21 there have been rec- -- an attempt for a break-in recently, so
22 that was -- we discussed that with them.

23 COMMISSIONER MAY: It's a -- so you said privacy, but
24 it's more security.

25 MS. WILSON: Sorry, security, yes. Yeah.

1 COMMISSIONER MAY: Yeah. Okay. And there was some
2 -- I can't remember where it was. I went looking for it and I
3 couldn't find it, but there was something about the timing of the
4 public space improvements. Is that still the case that you're
5 looking to have like three years to do all this stuff or however
6 many years it was?

7 MS. WILSON: Yes, we've requested three. It might not
8 take that long. They have to obtain funding from their government
9 in order to do this, so it's going to be staged. And I believe
10 the order is to remove the trees first because those -- that's
11 the easiest thing to do.

12 COMMISSIONER MAY: Right.

13 MS. WILSON: And it impacts that view from
14 Massachusetts Avenue. The next thing is to replace the fence and
15 then remove some of the paving in the driveway and reopen an
16 existing second curb cut. I did want to clarify I believe there
17 was -- we're not proposing any new curb cuts, just to make that
18 very clear.

19 COMMISSIONER MAY: Right.

20 MS. WILSON: And then the last thing would be we are
21 -- Kosovo is going to widen the sidewalk. So it's not on DDOT
22 to do that, we -- they are actually going to finish that out.
23 And that would be the last stage.

24 COMMISSIONER MAY: Okay. And so can you tell me what
25 the timing of those three phases were again? I got confused by

1 that. The trees or will that come -- will any of this work be
2 immediate or?

3 MS. WILSON: The trees will be done -- let me pull up
4 my set.

5 CHAIRPERSON HILL: Commissioner May, as part of that
6 report that we got, I think -- and I don't know if this is what
7 the Applicant has -- the removal of the cedar trees along Mass
8 Avenue and Garfield Place within 18 months of approval, removal
9 of the wooden fence along the perimeter within 24 months of
10 approval, construct a new six foot iron post fence in a new
11 location as shown in red on the site plan within 24 months of
12 approval, remove some driveway paving on the south side of the
13 driveway adjacent to the alley and restore the landscaping within
14 24 months of approval. This is awful helpful to me to read
15 through. Close the gate entrance of the -- close the gate
16 entrance off the alley and use the existing curb cut for driveway
17 access for the circular driveway within 24 months of approval,
18 and then widen the sidewalk within 36 months of approval.

19 COMMISSIONER MAY: Got it. Thank you. I appreciate
20 that. I knew I read some of that at some point, but I couldn't
21 find it when I went back looking for it during the testimony.

22 CHAIRPERSON HILL: Yeah.

23 COMMISSIONER MAY: So the -- all right, that's good.

24 And DDOT has agreed to the timing on all of this as
25 well?

1 MS. WILSON: Yes, they have, they understand there's a
2 significant amount of work from DDOT.

3 COMMISSIONER MAY: And then just a couple other
4 questions. There'll be no consular activities happening here,
5 so this is basically just back office, there won't be people
6 coming in for visas and things like that, that would ordinarily
7 happen in a consular office?

8 MS. WILSON: Correct. Correct, yes.

9 COMMISSIONER MAY: Okay. And small infrequent events,
10 so that's pretty vague.

11 MS. WILSON: So this is a new location. There hasn't
12 been a schedule of events outlined. In my discussions with the
13 ambassador, he said in the near future they anticipate maybe
14 three to five events, an average of 30 guests. That's what's
15 anticipated so far. Again, this is a brand new location. They've
16 never had a chancery location that they've owned, so --

17 COMMISSIONER MAY: Okay.

18 MS. WILSON: -- it's not a set schedule, but that's the
19 general idea.

20 COMMISSIONER MAY: Okay. And then the last thing is
21 when it comes to the map of the area, there are two park areas,
22 regular park areas, that are excluded from the area. Can you
23 explain why that is and whether that affects the calculation in
24 any way?

25 MS. WILSON: It shouldn't impact the calculation as it

1 does not include -- at least it does not skew it in our favor by
2 any means. It's not considered a residential area. I'm not sure
3 it would count towards nonresidential either. So we just excluded
4 it for those reasons.

5 COMMISSIONER MAY: I see. So you weren't sure what to
6 do with it and just cut it out?

7 MS. WILSON: Yes. And thought it -- I mean, it's
8 relevant in that there's two nice parks nearby, but it doesn't
9 add to either side.

10 COMMISSIONER MAY: Okay. All right. That's it for my
11 questions. Thank you.

12 CHAIRPERSON HILL: Okay.

13 Let's see, any of my other fellow Board members?

14 Sure, Ms. John? You're on mute, Ms. John.

15 VICE CHAIR JOHN: Thank you. So Ms. Wilson, can you
16 point out for me where the second curb cut is? I believe a good
17 exhibit would be Exhibit 4, and I'm looking at the second
18 photograph, which is an aerial view of the property. And I can
19 see one curb cut on 36th Place. And so the second curb cut would
20 be where the garage is?

21 MS. WILSON: So if you look at photograph 6 on that
22 photo exhibit, on page 6, you can see the second curb cut to the
23 property on -- to the south. There's a curb cut to the north,
24 shown on page 5, and then the curb cut to the south, which wasn't
25 being used previously on page 6. And so DDOT has asked us to

1 just take away that fencing. Obviously, there's a new fence
2 proposed. But to leave that open for a full circular driveway
3 connecting the two curb cuts that currently exist, and then to
4 close that alley entrance.

5 VICE CHAIR JOHN: Okay. Thank you. I see it now. So
6 the trash would be removed through that second curb cut, which
7 is now closed by the fence.

8 MS. WILSON: Exactly. Exactly. That would be -- we
9 would be able to use both curb cuts for the driveway and then
10 the alley area will be closed and we will replace that paving
11 with some green space because that is within the BRL, which has
12 been evaluated by DDOT.

13 VICE CHAIR JOHN: Okay. And then can you show me in
14 one of the photographs where that new metal fence, the six-foot
15 iron fence would be? Would it be at the rear of the property or
16 on 36th Place?

17 MS. WILSON: It will be surrounding the property. If
18 you look at Exhibit 47A, you'll see the outline of where the new
19 fence is proposed in red.

20 VICE CHAIR JOHN: Okay. Yes, I did see that.

21 MS. WILSON: Uh-huh. And so it will be all around
22 there. It's being moved out towards Massachusetts --

23 VICE CHAIR JOHN: Uh-huh.

24 MS. WILSON: -- right now. And then in towards the
25 property along 36th Place and Garfield. And that will allow for

1 the proper width of sidewalks.

2 VICE CHAIR JOHN: Okay. And I'm looking at Exhibit 4
3 again, photograph 8, I believe that's the bus stop. Is there
4 still an entrance on 16th Street behind that bus stop? It seems
5 to be an entrance to the property, but I cannot be sure.

6 MS. WILSON: There's no longer an entrance to the
7 property.

8 VICE CHAIR JOHN: Okay.

9 MS. WILSON: There is no entrance to the property.

10 VICE CHAIR JOHN: Okay. So did you have any comments
11 on the discussion about whether or not the property at 3507 Fulton
12 Street should be included in the nonresidential square footage?

13 MS. WILSON: So we included it. I am aware it's an
14 embassy. We looked through some other cases submitted for
15 chancery uses, and they utilized, I believe, some of them, at
16 least 19875 utilized a couple of embassy uses in their
17 calculations, and so that's why even though an embassy a
18 residential use, they included it.

19 VICE CHAIR JOHN: Okay. That's it for now. I might
20 have something else later on. Thank you.

21 CHAIRPERSON HILL: Okay.

22 Mr. Blake, Mr. Acosta, Commissioner Nash, do you have
23 any questions? We're -- just so you know, Commissioner, we're
24 just asking questions, we're not like -- it's a fine line between
25 questions and rebuttal. But Mr. Nash, do you have -- Commissioner

1 Nash, do you have any questions?

2 ANC COMMISSIONER NASH: Yeah. First, I want to correct
3 one thing in the record. I made a reference in my testimony to
4 36th Street, and that should be 36th Place, as I think we know.
5 I do have one follow-up question for the Applicant's counsel on
6 why the property under the name Embassy of Liberia was included,
7 even though it was -- it's an ambassador's residence and not a
8 chancery office. Ms. Wilson, if the ambassador of Kosovo proposed
9 to use this property as his official residence, would we be --
10 would you have filed an application before the Foreign Missions
11 BZA?

12 MS. WILSON: No, because this is for a chancery
13 proposal, and an embassy is a matter of right use.

14 ANC COMMISSIONER NASH: A residence is a matter of
15 right use?

16 MS. WILSON: Well, yes, of course a residence and the
17 ambassador's residence, the embassy, would be a matter of right
18 use.

19 ANC COMMISSIONER NASH: Okay. Thank you.

20 CHAIRPERSON HILL: All right. Thanks, Commissioner.
21 I guess I don't really have a lot of questions. I don't know, I
22 mean, the -- we can take testimony in a moment. And I guess I
23 do have a couple of summary things that I'd like to hear from
24 about the Applicant and their work with the ANC.

25 I guess, Ms. Thomas, can you hear me?

1 MS. THOMAS: Yes.

2 CHAIRPERSON HILL: I mean, the only thing that I'm kind
3 of -- or I shouldn't say the only thing -- the mixed use
4 determination, like the -- when you -- when the Office of Planning
5 took into account of the mixed use determination for this area
6 that the Applicant has put forward, did the Office of Planning
7 also think about the other embassies and chanceries that are on
8 either side of Massachusetts Avenue that are in this area when
9 they took this into consideration?

10 MS. THOMAS: I would say yes, we did look at
11 Massachusetts Avenue as being a common -- as a common link. If
12 you notice in our report, when we looked at the term adjacent,
13 having -- it also includes a definition of having a common
14 endpoint or border immediately preceding or following. So we
15 looked at Massachusetts Avenue as the -- as a sharing of a common
16 corridor for these -- it's a common corridor for embassies. I
17 mean, I wouldn't look -- even go so far as to look in the heart
18 of the Embassy Row where Kalorama area is, but if you look just
19 in the area of Observatory Square, if you could -- if you were
20 to pull up a map, you could see -- you would see just before --
21 just after the Massachusetts Avenue bridge you have embassies on
22 both sides, Embassy of Iran, former embassy, Embassy of Brazil.
23 As you come around Mass Avenue, then you have the Holy C, and
24 you almost reach up to our pro- -- the subject property there
25 where you have Embassy of Norway just on the -- across from

1 Observatory Circle. And then you come up to our -- the subject
2 property here. So you know, we looked at the character of that
3 -- of Massachusetts Avenue as being a common thread and certainly
4 the fact that this is on the corner and not in the interior of,
5 let's say, the -- of the neighborhood in Massachusetts Heights
6 neighborhood. So that did form a basis for our -- you know, in
7 our thinking.

8 CHAIRPERSON HILL: Okay. I guess the only thing that
9 I'm trying to understand was, you know, I was here when we heard
10 the case for the Embassy of Nepal, and the Embassy of Nepal again
11 was even more of, I think, an interior location on a block then
12 Massachusetts Avenue. And as I recall, the Office of Planning
13 was also in agreement with the argument that the Embassy of Nepal
14 had put forward. I guess I'm just making a comment for my fellow
15 Board members.

16 Okay. All right. Oh, sorry, go ahead, Mr. Blake.

17 COMMISSIONER BLAKE: I have a quick question for
18 Commissioner Nash. We talked a little bit -- we heard that from
19 both sides there was some discussions in the ANC meeting about
20 ways in which the embassy could -- or the chancery could work
21 with the neighborhood and the ANC to come up with some mechanisms
22 and some, you know, agreements on operations. I've seen in other
23 cases, other situations, applications where we've seen agreements
24 between the ANC and the chancery. In this particular case though
25 it sounds like the conversation was cut off after the

1 determination was that the issue was going to focus on the
2 appropriate area. But I heard the ambassador indicate that their
3 willingness to have discussions and work out some form agreement.
4 I also heard you reference some testimony by others that may be
5 good conditions. Would those conditions be conditions that the
6 ANC has reviewed and voted to present to them or something like
7 that or is this just -- I'm trying to get a sense of where the
8 ANC's process is in term to working out some comfortable
9 relationship.

10 ANC COMMISSIONER NASH: Sure, Commissioner Blake, thank
11 you for the question. When the ANC considered this matter, it
12 focused primarily on the threshold issue, which is the mixed use
13 zone, the area of determination, and found that that the areas
14 as we discussed, Square 1931, and so the Applicant fails the
15 threshold test. You know, certainly the ANC is supportive -- in
16 the event that the Board were to find that this application should
17 go forward, the ANC, I know, would be supportive of appropriate
18 conditions, you know, being put in place between the Applicant,
19 the neighborhood, with the ANC. But the ANC has not voted
20 specifically on what those conditions are. And frankly, that's
21 been, you know, that's been a difficult process because, as you
22 know, this application has changed and areas have changed over
23 time. And then, you know, most recently, the Department of
24 Transportation changed some of its positions from its earlier
25 submission in December I believe it was to now. And in its

1 earlier submission, for example, it noted that it would not
2 support fencing, you know, more than 42 inches in height. Now
3 it supports a 60-inch fence. That fencing is inconsistent with
4 any other any other fence for a chancery location that is anywhere
5 in the vicinity. You know, third of a mile away, the Vatican
6 legation and the Embassy of Norway, again, more than a third of
7 a mile away from this property have much lower fences. The other
8 issue is that the DDOT did not focus on where the, you know,
9 where the impacts are. It never considered at all the traffic
10 pattern that I have explained -- that I've touched on and that
11 MAHCA explains in detail where traffic trying to reach the site
12 has to go through the residential neighborhood. It's
13 disappointing that they didn't. And in fact, we were surprised
14 in a in a meeting with DDOT last week that the DDOT staff
15 acknowledged that they had never visited the subject property,
16 had never inspected the area, relying instead on, you know, the
17 frankly confusing array of photographs that the Applicant has
18 offered up, which a couple of the commissioners have already
19 asked about, and Google Maps. So and finally, some of the points
20 that DDOT is now insisting on, namely the removal of the
21 vegetation and fencing, not only on Massachusetts Avenue, but on
22 36th Place where all of the business of the chancery is going to
23 take place, will only make the impact worse for the neighborhood.
24 So if this Board were to find that the application can go forward,
25 you know, now is the time when the Applicant needs to engage and

1 agree to conditions that will further mitigate that impact.

2 MR. MOY: Okay. Thank you, Commissioner. I think that
3 the criteria for our approval is a little bit different and also
4 for the conditions that we would incorporate in an order, but I
5 will defer to the other members of the Board as we discuss that.
6 Thank you.

7 ANC COMMISSIONER NASH: Thank you.

8 CHAIRPERSON HILL: Okay.

9 All right. I'm going to go ahead and begin public
10 testimony. What I think, depending upon what the Board wants to
11 do, I mean, since this is our only case today and we all have
12 committed our day, we can do -- I don't think it's necessary at
13 this point, but if the Board did want to speak with legal counsel,
14 we can. And I think at the end of this, regardless of where we
15 might get, I think I'm going to need some -- would like some time
16 to review the record more thoroughly. And I would want the
17 Applicant, even though I know it's in different places, to provide
18 us something that shows the timeline for the DDOT -- for the
19 public space and DDOT issues, and then also anything that the
20 Applicant had maybe spoken with the ANC about if this were
21 actually to go forward. Again, we don't know if it's going to
22 go forward, but if it had, we would like to see that discussion
23 have already taken place and those recommendations put in one
24 spot that the embassy and the ANC had at least spoken of, agreed
25 to, what have you. The -- a lot of, as Mr. Blake just referred

1 to, some of the issues that the ANC might discuss with the embassy
2 are not pertinent to the regulations that we would have an ability
3 to tie to the order if it were to move forward, but at least then
4 we would know the discussion had taken place and that the embassy,
5 as I do believe they would want to be a good neighbor, had had a
6 discussion with the ANC. Now, again, we're still at the threshold
7 issue of the -- whether this meets the criteria given the square
8 and whether we believe it's a mixed use square.

9 So after saying all that, Mr. Young, do you want to go
10 ahead and please allow our public testimony? Do you have anyone
11 here in favor, Mr. Young.

12 MR. YOUNG: No, I believe they are all in opposition.

13 CHAIRPERSON HILL: Okay. Then why don't you go ahead
14 and -- oh, sure, go ahead, Ms. -- Vice Chair John.

15 VICE CHAIR JOHN: Yes, Mr. Chairman. I just wanted to
16 make an observation that -- or a comment -- that, you know, in
17 an FMBZA case, the Board has certain criteria that it must
18 consider in deciding whether to not disapprove the application.
19 And those criteria are in Subtitle X 201.8. And this is not a
20 typical BZA application for a special exception. So the FMBZA
21 process is a little different, as you have noted before. And so
22 the Board cannot really go outside of those criteria in imposing
23 conditions, so as we listen to the testimony, I'm going to be
24 looking to see how the comments and the objections and the
25 suggestions are consistent with Subtitle X 201.8.

1 CHAIRPERSON HILL: Okay. Thank you, Vice Chair John.

2 VICE CHAIR JOHN: Thank you.

3 CHAIRPERSON HILL: Mr. Young, how many do we have to
4 testify?

5 MR. YOUNG: We have eight.

6 CHAIRPERSON HILL: Why don't we bring them in four at
7 a time, please.

8 MR. YOUNG: Okay.

9 CHAIRPERSON HILL: And if you can just tell me the
10 names.

11 MR. YOUNG: You have Robert McDiarmid, David McMaster,
12 Ann McMaster, and Frances Francis are the first four.

13 CHAIRPERSON HILL: Okay.

14 Let me see, Mr. McDiarmid, I see or saw you a second
15 ago. Can you hear me?

16 MR. MCDIARMID: Yes, I can. Thank you.

17 CHAIRPERSON HILL: Okay. Great. Could you introduce
18 yourself for the record please, sir?

19 MR. MCDIARMID: Yes. I'm Robert McDiarmid. I live at
20 3625 Fulton Street within 25 -- within 200 feet of the instant
21 property on the corner of Fulton and 36th Place.

22 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
23 McDiarmid, and thank you for taking the time to be with us today.
24 I have three minutes on the clock there for your testimony and
25 you can begin whenever you like.

1 MR. MCDIARMID: Thanks. I'll try to make it. The
2 first question is a -- as to whether this is a mixed use area.
3 There's an awful lot on the record already on that issue, but
4 I'd like to add one additional thought. If all the land on the
5 Cathedral Close that Kosovo believes to be in mixed use area, is
6 adjacent, which I think it is not, and according to any
7 dictionary, the requirement -- dictionary -- required by the
8 rules. Then there is a parking space on the Close for use of
9 people involved with all the facilities on the Close, including
10 St. Albans School. If it is adjacent, then people ought to be
11 willing to use that parking space instead of 36th Place. Just
12 think about that, if you will. And think about the definition
13 that is in the -- your rules.

14 Secondly, this is being operated as an FMBZA case. The
15 buildings on this site were constructed with little concern for
16 whether it met the zoning requirements and the owners knew it or
17 didn't care. Either they cheated Kosovo or Kosovo was aware of
18 that, and gone -- went forward anyhow. We filed quite a lot of
19 comments complaining that the building was out of compliance.
20 But when DDOT filed, Kosovo talked to DDOT and reached agreement
21 with them on conditions which DDOT believed would enable it not
22 to object anymore. They didn't talk to any of the neighbors. We
23 do have objections to those agreements with DDOT, which we --
24 some of which we think would be to the advantage of Kosovo as
25 well. But we can't appeal if we -- if you don't get to us and

1 we are not parties in this FMBZA case, and we can't appeal. To
2 do it ordinarily as a BZA -- sitting as a BZA, you would hear
3 these exceptions and deal with them and the parties -- there
4 would be parties and the parties could appeal if they didn't like
5 the result. Operating this as an FMBZA issue, which it should
6 not be in this case, does not allow anybody who knows anything
7 about this case to appeal or object as a party.

8 Third, we have some problem with the timeline that
9 Kosovo thinks appropriate, for up to three years to make these
10 changes and 18 months to make the most basic ones. Unfortunately,
11 we've learned that we can't -- we haven't been able to trust the
12 people who own this property before. And why should we trust a
13 promise, even if embedded in an FMBZA order? The implicit
14 conditions that the government -- is the government of Kosovo
15 will have to appropriate the money, and Kosovo is a new
16 government, potentially at war for its very existence.

17 CHAIRPERSON HILL: Mr. McDermott, I don't mean to
18 interrupt you so much. You are out of time, but please go ahead
19 and finish.

20 MR. MCDIARMID: Thank you. I am. The FMBZA should not
21 approve the proposal based on promises, but require those changes
22 before allowing the chancery to go forward. Thank you.

23 CHAIRPERSON HILL: Thank you. Why don't you just mute
24 yourself, Mr. McDiarmid, if you wouldn't mind, just wait for us
25 there.

1 Is it McCarthy -- oh McMaster. Either McMaster would
2 like to speak up and introduce themselves?

3 MR. MCMASTER: Hi, I'm David McMaster.

4 CHAIRPERSON HILL: Hi, Mr. MacMaster. You want to go
5 ahead and introduce yourself for the record?

6 MR. MCMASTER: Certainly. I'm David McMaster. My home
7 is 2820 36th Place, which is directly across and less than 50
8 feet from the only entrance to the Applicant's property.

9 CHAIRPERSON HILL: Okay.

10 MR. MCMASTER: The quiet and (indiscernible) of our
11 home will be negatively impacted if the Board does not disapprove
12 this application. The application suffers many deficiencies,
13 foremost the logic used to create a contrived mixed use area. I
14 ask you to do not accept the fiction that the property is oriented
15 in any way to Mass Avenue. It is entirely established on 36th
16 Place, or the contention that Mass Avenue is not a well-
17 established demarcation of boundary. It is. And don't be misled,
18 there are no chanceries in the adjacent squares and none south
19 of Massachusetts Avenue between Observatory Circle and Wisconsin.
20 Approval means a significant expansion of chancery locations.
21 With the time constraints, I'll not expand further, I'll ask the
22 Board to give careful consideration to Exhibit 53, comments in
23 opposition from MAHCA, and give great weight to the ANC
24 recommendation. Should the Board disagree, conditions must be
25 included to maintain the neighborhood's character. Exhibit 54

1 includes a full list vetted by MAHCA neighbors of conditions
2 needed. The only community outreach by the Applicant was a
3 meeting where issues of parking, traffic, and trash were raised.
4 The Applicant's attorney implied further discussions to come.
5 There have been none. The ambassador said, regarding reserved
6 parking, "I pledge that we absolutely not apply." Still, the
7 application applies for an additional two to three spaces. These
8 statements highlight the need for conditions. The statement
9 states no daily consular activity, only two employees will drive,
10 that there are already two garage spaces and a large driveway on
11 site, yet they ask for more reserved spaces. The very last minute
12 DDOT plan allows for reopening a second curb cut. If this is
13 done, it will eliminate two to three street spaces. Allowing the
14 reopening of the second curb cut and reserved spaces will
15 eliminate fully one half, one half, of the already limited parking
16 on the block. Conditions should be applied to disallow reopening
17 of the second curb cut, no application for reserved parking to
18 be made, no daily consular activity, limits on the events and
19 attendants, and employees should be prohibited from obtaining
20 residential parking stickers. Further, to maintain residential
21 character, fencing should be limited to 42 inches in height.
22 Currently, most front yards in the square are unfenced and none
23 exceed 42 inches. Many Massachusetts Avenue embassies are
24 similarly equipped, fronts are unfinished, unfenced, or they have
25 42-inch height. Again, a listing of -- a full listing of

1 conditions desired can be found at Exhibit 54. I appreciate your
2 time.

3 CHAIRPERSON HILL: Thank you, Mr. McMaster.

4 Ms. McMaster, would you like to introduce yourself for
5 the record? You're on mute, Ms. MacMaster. Or you were -- now
6 you're back on mute. No, I can't hear you.

7 MS. MCMASTER: I'm going to remove my headset, does
8 that help?

9 CHAIRPERSON HILL: Yep, great. Yep. Perfect.

10 MS. MCMASTER: Okay. Perfect. I am -- sorry about
11 that. I am Elizabeth Ann McMaster.

12 CHAIRPERSON HILL: Can you tell us where you live
13 please?

14 MS. FOWLER: Yes. I reside at 2820 36th Place, N.S.

15 CHAIRPERSON HILL: Okay. Ms. McMaster, as with
16 everyone, you'll have three minutes to give your testimony and
17 you can begin whenever you like.

18 MS. MCMASTER: Sure. My family lives directly across
19 the street. We're so not distant that we can see in each other's
20 windows. I want to say that I agree with MAHCA's Exhibit 53 and
21 the ANC resolution that mixed use determination is proper. But
22 I want to address how the BZA, if they choose to approve the
23 application over our objections, can protect the residential
24 character of the neighborhood. The approval should be
25 conditional on quantifiable terms, not the anticipated use, which

1 is the equivalent of a pinky swear in the application. This is
2 really critical given the number of misrepresentations that the
3 ambassador and his counsel have made to the neighborhood, some
4 of which are recorded on videotape. I'm particularly concerned
5 that they correct the numerous intrusions into the public space
6 outlined in the DDOT's December 30th report. That data's
7 important. The updated report posted two business days ago is a
8 substantial departure from the initial report and makes the
9 negative impact much, much worse. DDOT freely admitted no site
10 visit was made. They simply relied on Applicant input and they
11 also added that evaluation was difficult because of the numerous
12 incorrect and outdated documents in the application. They
13 seemingly waived many D.C. standards for public realm and do not
14 address traffic access at all. Please reject the February 10th
15 DDOT report and the Applicant's site plan as submitted. I however
16 am intimately familiar with the location. To keep the residential
17 character any chancery should be reoriented to the extent
18 possible to Mass Ave, with the following modifications, most of
19 which were listed in DDOT's December 30th report: when the wood
20 fencing and evergreens are removed, they need to add landscaping
21 to create the required park-like appearance of the public space.
22 Note, not all chanceries even have fencing, including Norway,
23 Bolivia, Finland, some of the closer ones on Mass Ave. Six-foot
24 fencing will make this neighborhood -- it will look like a prison.
25 We are heartsick about this. The fencing should be the standard,

1 if allowed, 42 inches high, 50 percent open design. We would
2 like them to add a foot gate from Mass Ave and limit any large
3 signage or flags to Mass Ave, any signage on 36th Place where
4 all of their entrances currently are, I want to add there was
5 never a foot gate on Mass Ave. The signage on 36th Place should
6 be limited to one small plaque. It's also important they don't
7 add any additional equipment, commerc- -- communication towers
8 and such. But since I'm running out of time, I want to add that
9 we feel strongly the restoration should require prior to
10 occupancy. It's inconceivable they'd be given 36 months to comply
11 or that they cannot afford the anticipated expense. This is
12 simply not credible. The property is a four and a half million
13 dollar luxury home. It is one of, if not the, single most
14 expensive residence in this neighborhood, and they state plans
15 in their filings for interior renovations. It's not the BZA's
16 role to offer a sovereign government essentially a layaway plan
17 to cede back control of U.S. public space. In closing, I'll say
18 that please look at my photographs, which are a little different
19 from the ones submitted by the Applicant. This would be Exhibit
20 61B, they're taken from the street level and give you much more
21 accurate depiction of the impact the embassy will have. Their
22 photographs are taken from the third floor of that building.
23 Thank you.

24 CHAIRPERSON HILL: Thank you, Ms. McMaster.

25 Is it Ms. Francis, Mr. Francis, I can't see? Would you

1 like to introduce yourself for the record?

2 MS. FRANCIS: I'm trying to get --

3 CHAIRPERSON HILL: Oh, yeah, gotcha.

4 MS. FRANCIS: Okay?

5 CHAIRPERSON HILL: Yep. Yep. Can you introduce
6 yourself for the record?

7 MS. FRANCIS: Yes, my name is Frances Francis, and I
8 live right down the street at the corner of Gar- -- at the corner
9 of Fulton and 36th Place. And I will tell you that this case is
10 an absolute poster child for why we need zoning regulations and
11 enforcement of those regulations. Keep in mind that we're all
12 here, and no one in the neighborhood has filed to -- in favor of
13 this project because it's so bad. Nevertheless, if we're going
14 to follow the Mayor's idea of keeping these small neighborhoods,
15 which are quite wonderful, in D.C., then we've got to have zoning
16 and we've got to have enforcement. In this case, the developer
17 completely avoided enforcement by saying he was building a
18 residence. Now he flips it over to commercial in the heart of a
19 residential area. It is absolutely appalling because, as I guess
20 one of your commissioners noted, you don't have the ability to
21 condition this as you would in a regular zoning case. So what
22 is the neighborhood stuck with? We are stuck with a commercial
23 piece that is dreadful and would never have been allowed had the
24 original developer owner done what he should have done and
25 followed the rules. So if you don't follow the rules and you

1 let them get by this way, then all you do is encourage
2 disparagement of enforcement of our city's own zoning rules. It
3 is appalling. These people have not negotiated with the
4 neighborhood. And you tell us that we would -- you would not be
5 -- have the authority to impose conditions. What you should do
6 is reject this case because it's been a terrible thing from the
7 neighborhood's input. We have never been given a chance to help
8 develop. Our own DDOT and Office of Planning have not protected
9 us. Finally, I ask you to think about the people who work in
10 this particular business establishment. That iron fence, that
11 six feet tall, is never -- is going to be locked because they're
12 scared. They've already had a break-in. So what do you think
13 is going to happen to the employees, and the fire hazards have
14 not even been commented on. It's all going to be locked up and
15 ringed around on -- in this very -- in this very odd shaped
16 property. There's no way to get out because they didn't follow
17 the rules and the only entrance for this piece of property, which
18 has a Massachusetts Avenue address, think about the fire
19 department trying to find it, which has this Massachusetts Avenue
20 address, the only entrance is on 36th Place, a tiny little
21 residential street. I mean, this is such an appalling example
22 of how things should not work. And then to tell us, the
23 neighborhood, some of us who have lived here over 30 and 40 years,
24 that we don't have rights to even participate with the decisions
25 being made by the DDOT, which didn't look at fire protection for

1 the employees, which allowed a 30 -- a 6-foot high fence, which
2 is not allowed anywhere, is ridiculous and awful. There's an
3 easy solution: reject this application, make them do and follow
4 the rules as are right, and I think that the ambassador of Kosovo
5 should appreciate the fact that his country is celebrating 15
6 years of independence so they could make their decisions and make
7 their stay. Well, those of us who have been here 30 or 40 years,
8 or 30 or 40 weeks, we've been here a long time and we've worked
9 very hard to make this a nice neighborhood. And for our own
10 agencies not to protect us and to tell us that the laws are made
11 so that you cannot condition these, even if you agree with our
12 conditions, leaves you with very little choice, I think, to
13 protect this neighborhood and the District, unless you just
14 reject somebody who won't follow the rules. In any event, thank
15 you very much.

16 CHAIRPERSON HILL: Thanks, Ms. Francis.

17 Okay. I have one question and then I'll see if my
18 Board -- Mr. McMaster, can you hear me?

19 MR. MCMASTER: Yes, I can.

20 CHAIRPERSON HILL: You said something about that -- you
21 all -- I'm just saying you personally, it's okay, you personally
22 thought that some of DDOT's conditions you all would not have
23 agreed with, and it might be better off for the embassy in that
24 way. What were you speaking about?

25 MR. MCMASTER: Actually, I believe that was --

1 CHAIRPERSON HILL: Oh, I'm sorry.

2 MR. MCMASTER: -- I believe that was my wife.

3 CHAIRPERSON HILL: No, no, no, it was Mr. McDiarmid.
4 McDiarmid.

5 MR. MCMASTER: Yes, McDiarmid.

6 MR. MCDIARMID: Yes, it was.

7 CHAIRPERSON HILL: Yes. Could you -- if you heard the
8 question, could you tell me what you thought your answer was?

9 MR. MCDIARMID: Yeah, the most obvious one is the DDOT
10 conclusion that they should close the alley access, which is
11 (audio muted) is a difficult one, but not unreasonable, has been
12 there for a long time, and reopen a second curb cut. That cuts
13 down the limited amount of parking in the street that's available
14 to the neighborhood to begin with. And we've also dealt with
15 the question about whether or not they were going to claim
16 diplomatic parking spots blocked in for -- in the street already.
17 There's only parking on one side of the street. These are narrow
18 streets. They're weight limited. They're designed for only for
19 neighborhood parking. Thanks.

20 CHAIRPERSON HILL: Okay. Thanks, Mr. Mcdiar- -- how
21 do you say your name, sir?

22 MR. MCDIARMID: [Mc-Derm-Ut], thank you.

23 CHAIRPERSON HILL: [Mc-Derm-Ut], oh, okay. Mr.
24 McDiarmid.

25 All right. Do my fellow Board members have any

1 questions for this round of witnesses?

2 All righty. Seeing none -- oh, Vice Chair John?

3 VICE CHAIR JOHN: Yes. One question for Commissioner
4 Nash if he's still with us.

5 CHAIRPERSON HILL: Yeah, I think he's still here.

6 Commissioner Nash, are you there?

7 ANC COMMISSIONER NASH: I am, yes.

8 VICE CHAIR JOHN: So can you tell me how long the fence
9 has existed on 36th Place, N.W., has there always been a fence
10 on that side, a wooden fence?

11 ANC COMMISSIONER NASH: I'd have to defer to the
12 neighbors for specific knowledge. But I believe if you look at
13 the photos in the record, including those submitted by the
14 Applicant, a fence existed prior to the one that is there
15 presently. And then the present fence has certainly existed
16 since the current home was built.

17 VICE CHAIR JOHN: Okay. I was just looking for
18 clarification as to whether or not there had been a fence
19 surrounding the property, especially on the 36th Place. I'm
20 aware of the tall trees on Massachusetts Avenue and that there
21 was a fence behind that. What I'm not clear about is whether or
22 not the fence on 36th Place was simply replaced. And if you're
23 not able to answer, maybe Ms. McMaster knows?

24 CHAIRPERSON HILL: Or Ms. Francis, you want to raise
25 your hand, you seemed like you --

1 MS. FRANCIS: Yeah, I can shed maybe a little light and
2 then I would ask one of the neighbors who've been here even longer
3 than I have. That house, when I came here, some 30 years ago,
4 had (audio muted) --

5 CHAIRPERSON HILL: I lost you, Ms. Francis.

6 VICE CHAIR JOHN: We can't hear you.

7 CHAIRPERSON HILL: There you go.

8 MS. FRANCIS: Am I here with you?

9 CHAIRPERSON HILL: Yes.

10 MS. FRANCIS: Okay. What happened was there did not
11 used to be a fence with the original residents. Then what
12 happened was somebody else wrapped -- it got flipped and they put
13 up a very rickety fence, wooden kind of long fence. And some of
14 it worked and some of it got ripped apart as the contractor worked
15 on it. So the answer to your question is for many decades there
16 was no fence there when it was a residence. Then when it got
17 rented out to people we didn't know and they didn't want us to
18 see what they were doing, they put up a long fence. And so when
19 they started constructing and building the basement and all, they
20 took the fence down or quashed it -- parts of it down and so
21 forth and so on. So that's its story. So it was -- there was
22 never officially a fence there for 20 some years.

23 VICE CHAIR JOHN: Okay, thank you.

24 MS. FRANCIS: Uh-huh.

25 CHAIRPERSON HILL: Okay.

1 Commissioner Nash?

2 ANC COMMISSIONER NASH: Yes, Mr. Chairman.

3 CHAIRPERSON HILL: I'm just curious, do you know what
4 they did with that property? There's like -- it looked like
5 there's a big parking lot and some of it was in public space.
6 What were they doing then, do you know?

7 ANC COMMISSIONER NASH: I believe the parking lot was
8 used is, as I think Ms. Wilson also stated, for residential
9 parking for the residents that was then there. It was --

10 CHAIRPERSON HILL: Just had a lot of cars?

11 ANC COMMISSIONER NASH: Yeah, the property was, you
12 know, never used for commercial use.

13 CHAIRPERSON HILL: Okay. Okay. I was just curious.

14 All right. Mr. Young, if you could please excuse this
15 round of witnesses.

16 Thank you all very much for your testimony.

17 And then please give me the next batch. And then you
18 guys, we might take another quick ten-minute break and we'll come
19 back and we'll see where we are.

20 MR. YOUNG: Okay. We have Ronald Del Sesto, Edward
21 Strohbehn, Paul Ervin, and Paul Cunningham.

22 CHAIRPERSON HILL: Okay.

23 Mr. Del Sesto or Ms. Del Sesto, can you hear me?

24 MR. DEL SESTO: Yes, I can.

25 CHAIRPERSON HILL: Okay. Great. Could you introduce

1 yourself for the record please?

2 MR. DEL SESTO: Sure. My name's Ron Del Sesto, and I
3 live at 3606 Fulton Street, N.W., Washington, DC.

4 CHAIRPERSON HILL: Okay. Mr. Del Swesto, you'll have
5 three minutes to give your testimony and you can begin whenever
6 you like.

7 MR. DEL SESTO: Thank you. My name's Ron Del Sesto,
8 and I'm president of the Massachusetts Avenue Citizens
9 Association. Thank you for providing us with the opportunity to
10 testify today. We've submitted comments addressing in detail all
11 the points I will raise, and I'd like to respond to a few things
12 referenced by the Applicant early in the hearing.

13 The FMBZA should disapprove Kosovo's application for
14 at least four reasons. One, ANC 3C found that the appropriate
15 area for making the mixed use determination is Square 1931, where
16 85 percent of the property's located in the square are used for
17 residential purposes and only one property, Temple Micah, is not
18 devoted to such use. The FMBZA must afford this finding great
19 weight and in so doing and pursuant to 11 D.C.M.R Section 201.7.
20 If the FMBZA finds that the area is not mixed use, the FMBZA must
21 disapprove the application. It's actually pretty significant in
22 the regulation that the use the word shall. I couldn't find
23 another instance of that, but there's no discretion there, it
24 just must be disproved -- dis -- must disapprove.

25 Applicant provides -- the second reason why it should

1 be disappro- -- it should not be approved is the Applicant
2 provides no rational basis for the FMBZA to consider an
3 alternative to Square 1931. The reason for this is that all
4 nonresidential uses pointed to by the Applicant outside of Square
5 1931 are across an arterial street, which is Massachusetts
6 Avenue, N.W. Secondly, all such nonresidential uses are a
7 considerable distance away from the proposed location of a
8 chancery. In our comments, we identify those distances and you
9 can review attachments 1, 2, and 3, but they are 1,766 feet is
10 where St. Albans is located, 1,247 feet is St. Sophia, and 1,348
11 feet is from the misrepresented site that they identify as a
12 chancery, which is actually an ambassador's residence, which
13 should not be included in their total for nonresidential use, but
14 still is. And in fact, the Applicant suggested that they would
15 still consider that as part of their calculation of
16 nonresidential use, which is entirely inappropriate and wrong.
17 Applicant proposes to completely exclude all properties in Square
18 1933, which is a square immediately adjacent to Square 1931.
19 We've included a depiction of this as attachment 4 to our
20 comments. There is no basis for excluding all properties from
21 Square 1933 when it is adjacent to Square 1931, no matter how
22 you define that term. Properties in this square range in distance
23 from the proposed site for the chancery from 400 to 1,000 feet,
24 where a thousand's the furthest. All such properties are
25 substantially closer than -- in square -- to square -- to where

1 the residence is proposed to be located with the majority of 2436
2 lot's being within 700 feet of the proposed lots. So as you can
3 see, very much closer than any of the sites proposed that the
4 Applicant would have the FMBZA use for purposes of a mixed use
5 determination. And then also vehicular and pedestrian access to
6 the property will all occur mostly through Fulton Street for a
7 variety of reasons, which we also detail in our comments due to
8 the restrictions of accessing the site of the proposed chancery.
9 And so the properties that front this portion of Fulton Street
10 are all within Squares 1931 and 1933.

11 And then finally, the Applicant suggests that the
12 chancery would be located at the center of the area it proposes,
13 which is just patently false. When you look at the distances of
14 1933 to this property, there's no way that the Applicant can
15 maintain that -- what they've proposed is the center of the area
16 that they're proposing. The third reason it should be rejected
17 is the procedural infirmities that just plague this application
18 from the very beginning.

19 CHAIRPERSON HILL: Mr. Del Sesto, I just want let you
20 know you're out of time, but please continue.

21 MR. DEL SESTO: Okay. Well, the -- so the procedural
22 infirmities that plague the application, we detail that again,
23 all that, in our comments. So I guess I will leave that there.
24 But there's a lot of procedural improprieties with the comp that
25 exist to this day.

1 And finally, mitigation measures should be reasonably
2 agreed to as been referenced by a number of parties here. There
3 are a few things that I wanted to correct, but I guess I ran out
4 of time. But that's fine. Thank you.

5 CHAIRPERSON HILL: Thank you, Mr. Del Sesta. Thank you
6 so much. And just stay with us all, and if you wouldn't mind
7 just muting your line.

8 Mr. Strohbehn, can you hear me? You're on mute, Mr.
9 Strohbehn. And if you could introduce yourself for the record
10 when you get unmuted.

11 MR. STROHBEHN: Here we go. Thank you.

12 CHAIRPERSON HILL: Thank you.

13 MR. STROHBEHN: I'm Edward Strohbehn, I live at 2710
14 36th Street, N.W., two and a half blocks from the Kosovo property.
15 The key issue in this issue for you to look at is whether they
16 have properly chosen the area for the mixed use. They have not.
17 It's actually relevant, I think, that they've tried not once, not
18 twice, but three times to pick an area which they thought would
19 quality as a fixed (sic) use and how they wanted to present the
20 property to you. That's not the way you should look at it. In
21 fact, between our neighborhood and the school they've now chosen
22 is the 4th Street arterial highway, lots of high speed, creates
23 a (indiscernible) barrier which you cannot go by as a pedestrian,
24 and then a ravine that's 30-feet deep filled with trees. There
25 is no way that that is similar to a part of the neighborhood

1 where they want to put this chancery.

2 Secondly, I think it's relevant, I know it's not
3 decisive federal regulations, but relevant, if the city has just
4 adopted its comprehensive plan, which is a major, major effort,
5 they have made clear their view about chanceries as a particular
6 policy. It's called chancery encroachment in low density areas.
7 And they make clear that the city should encourage foreign
8 missions not to chancerize, as you see, and as I quote "take
9 special care to protect the integrity of residential areas."
10 That's key. That's key in this proceeding.

11 The third thing I'd like to say is that the -- it's a
12 small thing, but just relevant to how we see this record. Ms.
13 Wilson, in her presentation, which is the Zambia chancery as
14 being relevant to this decision, she failed to mention two key
15 -- several key things. That chancery was approved by you all
16 under the 1958 regulations, not the current regulations, and the
17 standards are quite different. Two, most importantly, the ANC
18 there and the citizens association both supported that
19 application and made it part of the record. That's not the case
20 here, where all of MAHCA opposes the recommendation.

21 And the final thing is is that the neighborhood here
22 at MAHCA has been a residential neighborhood for a century. It
23 is key and relevant and what they propose to do to it is what
24 the city and what you all think, and that should not be policy
25 for how you approve foreign missions. We would welcome the

1 ambassador's home, that's a residence. Thank you very much.

2 CHAIRPERSON HILL: Thank you, Mr. Strohbehn.

3 Mr. Ermis Ervin? Ervin? Mr. Ervin, can you hear me?
4 You're on mute, sir.

5 MR. ERVIN: Are we on?

6 CHAIRPERSON HILL: Yep.

7 MR. ERVIN: Ah, terrific.

8 CHAIRPERSON HILL: Could you introduce yourself for the
9 record please, sir?

10 MR. ERVIN: Yeah. I'm Paul Ervin at 3604 Fulton Street.
11 The property in question is 400 feet from me. And the alleyway
12 that is on that property basically exits almost onto my doorstep.

13 CHAIRPERSON HILL: Okay. Mr. Ervin, if you'll -- you're
14 going to have three minutes like everyone else to give your
15 testimony and you can begin whenever you like.

16 MR. ERVIN: Terrific. Well, so I mean, yeah, everyone,
17 we've submitted our comments, which are obviously much more
18 thoughtful and we've, you know, kind of thought through things.
19 So I'll just say the original house was a single family R-1B
20 residence. Then when that house was bulldozed and the current
21 house was built, it was built as again as a single family R-1B
22 residence. It was then sold as a single family R-1B residence.
23 The fact that it's part of our neighborhood and our community is
24 not in question, nor is its obviously its tax square as being
25 part of the other single family R-1B homes that are here. I

1 myself was raised in this neighborhood and I have established my
2 own family here in this neighborhood. We've put a lot of -- a
3 great deal of effort into adjoining Guy Mason and making that a
4 place for kids. You know, in our neighborhood, basketball hoops
5 are put up on garages, kids play in the street and in the
6 alleyways. The reality is that other neighborhoods and ANCs
7 might not have objections to operating a chancery in their
8 neighborhoods. We do, and our ANC does as well. You know,
9 obviously there have been something like 29, 35 comments in
10 opposition to this. And I think as someone else said, no one
11 supports it, at least from those of us who will be directly
12 affected by it. I do think it's frankly a little ridiculous that
13 St. Albans or the National Cathedral are considered as part of
14 this area and that it's even -- I mean, it wasn't, but it was
15 kind of implied, you know, it was questioned whether or not other
16 R-1B properties that share an alleyway with this property should
17 potentially not be included. But, you know, but I do think, you
18 know, if the BZA feels that it should move to approve this special
19 exception, I think it would be wise for all interested parties
20 along with the BZA to physically go to the site to see the actual
21 location. Once you're physically on the street itself, it becomes
22 very clear that this property is within a neighborhood and bears
23 no relation and has zero interaction with the National Cathedral
24 or St. Sophia's or anything there. It's easy to carve up a map
25 and the photos, you know, they don't do justice, I would say, to

1 what's actually going on in vivo on site. And obviously I'm
2 learning now that the DDOT never made it there, like it seems
3 insane, but, yeah, so that would probably be my comments.

4 CHAIRPERSON HILL: Great. Thank you, Mr. Ervin.

5 Mr. Cunningham, can you hear me, and if so, could you
6 please introduce yourself for the record? You're still on mute,
7 Mr. Cunningham. There you go.

8 MR. CUNNINGHAM: Am I on?

9 CHAIRPERSON HILL: Yep.

10 MR. CUNNINGHAM: Thank you. Good --

11 CHAIRPERSON HILL: I lost you again, Mr. Cunningham.
12 You're on mute. Now maybe say something, Mr. Cunningham.

13 MR. CUNNINGHAM: Hello.

14 CHAIRPERSON HILL: Yeah, I can hear you.

15 MR. CUNNINGHAM: Okay. Thank you.

16 CHAIRPERSON HILL: Could you introduce yourself for the
17 record first, sir, please?

18 MR. CUNNINGHAM: My name is Paul -- I don't know what's
19 going on, it's bouncing in and out.

20 CHAIRPERSON HILL: I can hear you. Go ahead.

21 MR. CUNNINGHAM: Okay. My name is Paul Cunningham. I
22 live at 2707 36th Street, N.W. I am not, as other witnesses have
23 been, so immediately affected as a resident in the immediate
24 impact on my home. But I have lived in this neighborhood for 40
25 years. I was president of MAHCA for over 30 years and I am now

1 on the MAHCA board. And we've had a lot of zoning issues in my
2 tenure and now in the tenure of the current president. The
3 association was created to deal with zoning issues. And in my
4 40 years, this is the most cynical effort to change the nature
5 of the neighborhood that we have yet encountered. My neighbors
6 have stressed the law and the -- and Mr. Nash has stressed the
7 law and the facts. I think we have to step back and look at why
8 you have to make the finding about mixed use that you have to
9 make, which is the public interest. That supersedes all other
10 policy it concerns in this matter. If you take the cynical
11 approach of gerrymandering for the purposes of changing the
12 character of a neighborhood, you'll be going contrary, as others
13 have said, to the city's policies and to the interest of all the
14 affected citizens other than the developer of that property and
15 whatever interests Kosovo has. We do not have a shortage of
16 office space in the District today. We have a 20 percent vacancy
17 rate. The Mayor wants density closer to the city, we're two and
18 a half miles from my office where I'm sitting which is in the
19 heard of the downtown on K Street. This is not an appropriate
20 use of this property and is in no way necessary from a real estate
21 acquisition purpose. There are no offices in our neighborhood.
22 No one in our neighborhood would think of this as a mixed use
23 neighborhood other than for religious purposes if it hadn't been
24 asserted here by the Applicant. And you will be harming -- worst
25 of all, if you make this decision to support Kosovo, you will be

1 acting contrary to the public interest and belief in integrity
2 of law in the private -- versus the private interests of
3 developers. The Applicants have cited no public benefit to their
4 proposal. None. And the opposition and the ANC have identified
5 great public harm. You are charged with only allowing those
6 harms in this benefit-less application if you make a rational
7 finding that ours is a mixed use neighborhood. And it is not,
8 and you cannot -- there is no rational basis for that
9 determination. And if you make that decision, you will be showing
10 the District does not mean what it says when it wants to protect
11 these neighborhoods and you'll be adversely affecting interest
12 in the development of and use of private property -- use of
13 private property in the city. The city is trying to encourage
14 residential use. You're saying -- if you were to decide, as the
15 Applicants have urged, you would be saying that residential use
16 is always secondary to private and foreign interests, which is
17 not what the law provides. And it would be very detrimental to
18 the general spirit of adherence to the laws in the District of
19 Columbia. I hope you can find your way to stand up to this absurd
20 proposition and rule as required under 201 of the law and the
21 regulations. Thank you very much.

22 CHAIRPERSON HILL: Thank you, Mr. Cunningham.

23 All right. Does anybody have any questions for this
24 panel of witnesses?

25 Okay. All right. Let's see. Come on, come on, come

1 on. Oh, yeah. Mr. Del Sesto, can you hear me?

2 MR. DEL SESTO: Yes, I can.

3 CHAIRPERSON HILL: You did go -- you have been going
4 to the ANC meetings regarding this case, correct?

5 MR. DEL SESTO: Yeah, I was at the ANC meeting; I was
6 also at the community meeting that the ambassador held --

7 CHAIRPERSON HILL: Okay.

8 MR. DEL SESTO: -- with the -- sorry about my hair.

9 CHAIRPERSON HILL: No, that's okay.

10 MR. DEL SESTO: With the -- anyway.

11 CHAIRPERSON HILL: No, that's great, thanks for joining
12 us on camera. And then -- right, so then the Applicant has your
13 information supposedly, correct? Well, actually I know they do.

14 MR. DEL SESTO: Yeah.

15 CHAIRPERSON HILL: All right. Okay. Just checking.

16 All right. Okay. Anyone else?

17 Okay.

18 All right. Mr. Young, if you could please excuse this
19 panel. Thank you all for taking the time to speak with us this
20 morning.

21 MR. DEL SESTO: Thank you.

22 CHAIRPERSON HILL: Okay. I don't think -- I don't
23 think -- I have a few more questions for the Applicant. I don't
24 think I'm going to be able to make a decision today. I'd like
25 some information along the lines of what I had thought about

1 before. However, I just want everybody to get a little minute
2 to reset themselves because I'm going to just take a quick break
3 again and take a quick five to ten minutes. When ya'll get back,
4 y'all get back, but let's all just take a quick, quick break,
5 and then we'll come back. Thank you.

6 (Whereupon, there was a brief recess.)

7 CHAIRPERSON HILL: I think I saw Mr. Acosta there.
8 Yep, oop, there you go, there you go. Great.

9 Okay. After a short break, the Board is now back in
10 session at 12:15.

11 Okay. Ms. Wilson, are you there? Okay.

12 I'm going to give -- Commissioner Nash, I'm going to
13 give you like a quick summary, and then also I'll allow Ms.
14 Wilson, the Applicant, a quick summary.

15 What, you know, I'm looking through the criteria with
16 which we're supposed to determine whether or not we can approve
17 this or I should say not to disapprove. And again, for everybody
18 listening, you know, this is an FMBZA case. I believe that
19 they're here properly within the regulations as an FMBZA case.
20 I've heard many of them before. So this is not anything
21 particularly outside of the Board's norm. And some of the
22 criteria, again, is the international obligations to the United
23 States, historic preservations determination. There is a
24 notation here of adequate off-street parking, and then also, I
25 believe, special security, which could bring in the parking as

1 well as the fencing that's been spoken to. The opinion of the
2 Secretary of State, so we've had the Secretary of State give
3 their opinion. It's in the record and they're in approval. The
4 municipal interest is that of the Mayor would be that of the
5 Office of Planning. So we have the municipal interest and I'm
6 sorry, the federal interest was that again of the Secretary of
7 State. So what I think that some of the things -- I mean, again,
8 the threshold issue is whether or not we think that this is a
9 mixed use zone for this chancery need. So that's one thing that
10 the Board will have to determine and then go through some of
11 these issues that are within our purview as well as I just am
12 very curious as I don't think that it has been our position in
13 the past have been asking the applicant what their outreach has
14 been to the community, including the affected ANC and the
15 neighbors. So what I would ask of the Applicant prior to a
16 deliberation on this would be, again, something in the record
17 that clarifies the timeline that the Applicant has for what
18 they're proposing to do that DDOT had requested in terms of the
19 public space interest. And I did go through it, but I guess,
20 Ms. Wilson, you know, any type of flexibility that they might
21 have there with the Embassy of Kosovo and Kosovo as to when this
22 actually would take place. I mean, I think that the timeline in
23 some cases seems a little bit lengthy to me as well. I mean, 36
24 months to put in a sidewalk, you know. And so, you know, I just
25 think that, you know, maybe the -- you can work with your client

1 to see if that timeline can be tightened up because I would be
2 just again curious as to what it is that the Applicant is
3 proposing. Then secondly, reaching back out to the ANC, and as
4 I see the commissioner there, the commissioner and also the
5 association that is represented there in that area, which we've
6 heard from before, actually, Mr. Commissioner, looking at more
7 specific criteria that you think the community is concerned about
8 if this were actually to pass. So I'm asking now that you talk
9 to the Applicant and then the Applicant would submit that to us
10 as well as to what it was that the Applicant had agreed to. Now,
11 again, what would end up happening is whether or not we, the
12 Board, would be able to implement any of those condition- -- any
13 of those agreements as a condition, because it doesn't
14 necessarily fall before -- between -- it doesn't fall within the
15 regulations of this case. So however, you know, the Applicant
16 and you know, this is Kosovo, right, I mean, it's a country, so
17 they're -- where they want to be a good neighbor and we also want
18 to be a good neighbor to them when we're in their capital asking
19 for whatever we need. Right? So what I'm trying to get is, is
20 they have reason to work with the ANC to do what they can. Right?
21 And so I would ask for that to be submitted into the record as
22 well, so that we, the Board, can just hear what discussions had
23 taken place. So those would be my two items that I'd be
24 interested in seeing as part of the record. And I'm going to
25 let my fellow Board members chime in on anything I said and

1 anything they may want to hear or see whatever before we make a
2 decision. And I'm going to go around the table and start in the
3 way that I always do with -- well, actually it's a little bit
4 out of order, I don't know.

5 Mr. Blake, what do you got?

6 COMMISSIONER BLAKE: Mr. Chair, I actually don't have
7 any additional requirements at this point. The things you asked
8 for are sufficient beyond my needs, and I think I'm satisfied.
9 Thank you.

10 CHAIRPERSON HILL: Okay.

11 Commissioner May?

12 COMMISSIONER MAY: I don't need anything else. Thank
13 you.

14 CHAIRPERSON HILL: Mr. Acosta?

15 MR. ACOSTA: I'm fine, I think the issues that you
16 raised and the questions that you've posed to the Applicant are
17 appropriate for the next step.

18 CHAIRPERSON HILL: Thank you.

19 Vice Chair John?

20 VICE CHAIR JOHN: I don't need anything else, Mr.
21 Chairman. I would just again comment that for the Board to
22 incorporate some of the mitigation measures that the ANC is
23 requiring, they would have to be within the scope of the
24 regulations. So matters like whether or not they can have an
25 antenna is not within the scope. Kosovo could erect an antenna

1 is not within the scope of the application. And I can think of
2 other items. And so that's that would be my comment.

3 CHAIRPERSON HILL: Okay. Thanks.

4 And I am not pushing back on what Vice Chair John just
5 said because we've worked together a long time and she knows
6 exactly what I mean in that we don't -- we are unable to put
7 conditions forward that don't tie to the regulations that are
8 before us. However, this is an opportunity for the ANC to work
9 with the Applicant to get, if they want jars of peanut butter on
10 the sidewalk, I don't know where that came from now, then you
11 can talk about that or whatever it is you want to talk about.
12 Right? But the Board's only going to be able to talk about what
13 the Board is -- but what's before the Board. But so -- wow, I
14 don't know where that came from. So however, so that means,
15 Commissioner, if you could please talk with the Applicant.

16 Commissioner, do you have any questions or comments and
17 would you like to make a closing statement?

18 ANC COMMISSIONER NASH: Mr. Chairman, I would. First
19 of all, you know, the commission, you know, would join with the
20 neighbors and MAHCA, who have testified today and working with
21 the Applicant to come up with conditions that address, you know,
22 some of the changed reality in the event that the Board were to
23 determine that this is an appropriate mixed use zone. You've
24 also pointed out the State Department's general interest. But I
25 would submit that, you know, that is, of course, not relevant at

1 this stage to the threshold determination that the Board has to
2 make. I do have to address though something that the Office of
3 Planning said at this stage. Ms. Thomas from the Office of
4 Planning refers to, again, a corridor-centric approach to a mixed
5 use zone and cited chancery properties by the Massachusetts
6 Avenue bridge that are a mile distant from this property and
7 referred to other chanceries that are at least a third of a mile
8 away, that, of course, not out -- not even the Applicant has used
9 in its mixed use zone proposal because they're not adjacent. And
10 you know, for the Office of Planning to suggest a sort of elastic
11 or elongated Massachusetts corridor approach has no sense that I
12 can see.

13 CHAIRPERSON HILL: Hey, Commissioner Nash, I just want
14 to like -- again, this is where I get --

15 ANC COMMISSIONER NASH: Yeah.

16 CHAIRPERSON HILL: We don't allow rebuttal, and so
17 you're basically kind of, I hate that word, rebutting whatever
18 has been said --

19 ANC COMMISSIONER NASH: Yeah.

20 CHAIRPERSON HILL: -- from the Office of Planning.
21 Right? And the Board -- there's a lot of information in the
22 record as to whether or not the Board can make a determination
23 as to whether or not this is or isn't before us properly as a
24 mixed use zone. So what I was trying to get to -- and I appreciate
25 what you're trying to do for your constituents because I live in

1 an ANC, I know my SMD very well. And so you're doing a very good
2 job, I believe, for how you're representing your people. But
3 again, what I was trying to do is, again, give an opportunity to
4 have more of a discussion with the -- and I don't know what's
5 going to happen. Like you're right. Like if you -- it's very
6 clear what you all's opinion is. Right? And if it doesn't work
7 out and this gets rejected, not rejected, it gets disapproved,
8 then that's where we are. So I guess what I'm trying to get at
9 is like I understand what you're saying to inform in the form of
10 the Office of Planning's report. And I guess the only reason
11 why you're getting pushback from me is I'm not supposed to allow
12 any rebuttal. And so that's why you're getting this comment from
13 me. So but please go ahead and finish your thought and if you
14 can give us anything you'd like the Board to think about.

15 ANC COMMISSIONER NASH: Sure. Not to rebut, but again,
16 there's no basis even in the amended comprehensive plan. I will
17 say more generally, you know, the ANC chose the square. We
18 started as we're supposed to under the zoning code with the area
19 that most accurately depicts the existing use -- mix of uses
20 adjacent to the chancery and started with the land within the
21 square as we're supposed to. And even the Applicant, you know,
22 acknowledges that is the place to start. But what the Applicant
23 has not done is to provide any sort of rational basis to depart
24 from the ANC's determination to use Square 1931, which again is
25 within -- wholly within an area, a neighborhood -- and of the

1 various neighborhoods I represent, I can't think of a more
2 identifiable, cohesive, clearly defined residential neighborhood
3 as this one here, Massachusetts Avenue Heights. And as others
4 have pointed out, they offer no basis for including the subject
5 properties, and yet none of the residential properties that are
6 closer in square 1933. You know, it's a cherry-picked mixed use.
7 I think Mr. Cunningham said it appears almost gerrymandered, but
8 they haven't explained why they've chosen the properties that
9 they have and ignored properties that are closer. There's no
10 rational basis for it except that they want to define the
11 properties that will allow them to show that an area that is more
12 than 50 percent mixed use.

13 And then finally, I would say that if the Board were
14 to find that this property is in a mixed use zone that includes
15 all or a portion of large institutional uses like the Cathedral
16 Close, then properties along Garfield Street, along 34th Street,
17 along Woodley Road all would become subject to becoming embassy
18 chanceries. And there will be, you know, I hate to say this,
19 but there will be no principal distinction between those
20 properties, you know, attaching themselves to the Cathedral Close
21 to come up with a putative mixed use zone than what is at issue
22 here. So there is a broader interest, certainly in the ANC to
23 ensure, as the comp plan requires, that special care be taken to
24 protect the integrity of residential areas.

25 CHAIRPERSON HILL: Okay. Okay. Thanks, Commissioner.

1 All right. Ms. Wilson, there was a little bit of
2 rebuttal in there if you want to respond to anything. But if
3 you want to go ahead and give us your final thoughts and also if
4 you have any questions about what has been asked of you.

5 MS. WILSON: To start, no, I don't have any rebuttal
6 or anything like that. And I understand what's been asked. We
7 will submit more details on the public space plan and of course
8 we'll work with the ANC and work through their list of proposed
9 conditions and see what would be applicable in any order to tie
10 it into the regulations. And to conclude, the purpose of this
11 process and the FMA was originally to alleviate the previous
12 locational restrictions on foreign missions and to protect
13 federal interests which have been attested to today. It does not
14 appear that the intention was to turn the mixed use area into a
15 complex math problem, even under the 2016 regulation, which
16 governed the Nepal and Zambia cases that I mentioned and included
17 in my presentation and the record. For the hearing -- or for
18 the Nepal case, page 4 of the order notes that the Board was not
19 persuaded that the presence of a major arterial street is the
20 basis for considering only the square. So even under the 2016
21 regulations, that process has still been respected. You can go
22 outside of the square. And simply put, the justification for the
23 mixed use area is that we are bordered by multiple streets and a
24 main street and located nearby a mix of uses. We tried to pick
25 an area that would place us roughly in the middle of the mixed

1 use area and include the mix of uses near the property. The
2 property is on the edge of the square. It is unique in that way
3 since it's connected to these major streets with adjacency to the
4 mix of uses more so than a property to the interior, which would
5 be reviewed differently of course. And someone on this property
6 would have a different experience in terms of viewing its
7 surroundings than a property more interior. And I did go into
8 detail about the mixed use area for about ten minutes during the
9 presentation today. So that is sufficiently in the record. In
10 terms of the merits of the case, the proposed chancery location
11 will continue to foster U.S.-Kosovo relations and conclude
12 Kosovo's 15-year search for a suitable chancery location,
13 enabling it to fulfill its diplomatic obligations.

14 Thank you for having us here today, and we will -- we
15 look forward to submitting the additional information to the
16 record.

17 CHAIRPERSON HILL: Okay.

18 Commissioner, when do you all meet next, when's your
19 ANC meetings?

20 ANC COMMISSIONER NASH: We have an ANC meeting next
21 Wednesday, a week from tonight, I believe.

22 CHAIRPERSON HILL: Okay.

23 ANC COMMISSIONER NASH: Normally, our meetings are
24 around the third Monday of the month.

25 CHAIRPERSON HILL: Right. Right. So the one in March

1 would be the 22nd?

2 ANC COMMISSIONER NASH: Let me check. It's whatever
3 that Monday is. It would be, I believe, the 20th, so.

4 CHAIRPERSON HILL: Okay, the 20th.

5 ANC COMMISSIONER NASH: This one -- there's a federal
6 holiday, so it slips.

7 CHAIRPERSON HILL: Right.

8 So what, Ms. Wilson, in terms of timing with your client
9 -- I'm trying to figure out when you can at least get a decision
10 from us -- is of issue, I mean, do you think you would be able
11 to get something together that the ANC could hear about by the
12 22nd?

13 ANC COMMISSIONER NASH: I think it depends on how
14 quickly the Applicant is able to engage. I know that the
15 community and MAHCA are ready to engage.

16 MS. WILSON: We are ready to engage as soon as possible.
17 Time is of the essence for my client to do that.

18 CHAIRPERSON HILL: Okay. Then if you -- I'll let you
19 guys try to figure it out, Commissioner. You know, if you can
20 get -- if you can have, you know, your committee or what you need
21 to do to get it so that you can have something for your ANC to
22 discuss by the 22nd of this month. That means that we could get
23 something back from you guys on the 24th of this month, Ms.
24 Wilson, as I see you shaking your head, and that means we could
25 come back here for a decision on March 1st, which is two weeks

1 later.

2 ANC COMMISSIONER NASH: Yeah, I think that's -- that
3 timeframe is going to be awfully ambitious. I thought you were
4 referring to the -- as well as to the ANC meeting in March itself
5 to have -- to conclude negotiations with the Applicant and the
6 community and then present them to, you know, the ANC committee
7 and with an opportunity for the Applicant to be heard, and then
8 the ANC all within a week, I think is a tall order.

9 CHAIRPERSON HILL: Okay. Right. I --

10 ANC COMMISSIONER NASH: I think March is more
11 realistic.

12 CHAIRPERSON HILL: Ms. Wilson, can you tell us why, if
13 we got you back here for a decision on the 22nd of March, that
14 would be an issue?

15 MS. FERSTER: Well, I know they have to move out of
16 their current chancery location at some point. So there could
17 be a period of time where they didn't have offices. There was
18 an issue even just to delay it to today, which we were happy to
19 do to work out the public space issues. But time is of the
20 essence in this case.

21 CHAIRPERSON HILL: Okay. Well, I'm going to kind of
22 turn to my Board then again to a certain extent. Well, let me
23 do this, let me go ahead and put you on the 1st for a decision,
24 Commissioner, because I guess, Commissioner, what I'm trying to
25 figure out is this also has been postponed quite a bit, and the

1 information that we, the Board, want to hear, I don't know whether
2 it's anything that the ANC will be providing because we got what
3 we need to hear probably from the different agencies, insofar as
4 what I mean is that again in terms of what Vice Chair John keeps
5 speaking about what is really before us in terms of the record.
6 But if you find it untenable, then you can go ahead and submit
7 something to us, Mr. Nash -- Commissioner Nash, that would delay
8 or postpone the -- our decision on the 1st. So what I'm going
9 to try and do, and I know it's very tight, Commissioner, is that
10 if, Ms. Wilson, if you can get something to the commissioner
11 right away which speaks to what you understand the issues to be,
12 that again, you know, all of those issues that are -- they're
13 already in the record, right, you guys have already kind of talked
14 about them, I believe, and then get them to the commissioner and
15 see if they can do anything on the 22nd, and then we'll see if
16 you can submit something to us, the Board, by the 24th, Ms.
17 Wilson, as well as you, Commissioner Nash. And if at that time,
18 Commissioner Nash, you think that for some reason the Board needs
19 to extend the timeline, you can submit that on the 24th. Now,
20 again, whether or not the Board believes that any of the issues
21 are pertinent to our deliberations, it may or may not push back
22 our decision on to the 1st -- I mean, off of the 1st. And again,
23 I'm just saying I don't know what we're going to -- I don't know
24 what the Board's going to do yet. Right? So I mean, it might
25 be it might be no, so I don't know. Right? But that at least

1 gets somebody a decision by the 1st because I don't want to tie
2 up the embassy's decision-making process one way or the other.

3 So Mr. Moy, did you hear all of that in terms of what
4 we expect?

5 MR. MOY: Yes, I did, Mr. Chairman. I do have a
6 question though. If -- all right -- working backwards, so the
7 Board would make its decision at a meeting session on March 1st,
8 Applicant to make their filing by March 24th.

9 CHAIRPERSON HILL: February 24th?

10 MR. MOY: Yeah, February 24th.

11 As to the ANC, did you make reference that the ANC
12 would respond on the same day, February 24th, or would you allow
13 them additional days like the latest could be February 28th?

14 CHAIRPERSON HILL: The ANC can give us anything they
15 want at any time.

16 MR. MOY: Okay.

17 CHAIRPERSON HILL: If they wanted to give us on the
18 24th -- I mean, again, what -- Commissioner Nash, what Mr. Moy
19 is speaking to that is, you know, they might submit something on
20 the 24th, you might have a different opinion on the 24 -- I'm
21 sorry, you might have a different opinion and submit us something
22 on the 28th.

23 ANC COMMISSIONER NASH: One question. Did Ms. Wilson
24 say when the Kosovo lease is expiring and Kosovo has to move out
25 of its premises?

1 CHAIRPERSON HILL: No, she did not. I don't know. I
2 don't know if that's -- I don't know if she wants to share that
3 or not.

4 MS. WILSON: I'd have to ask them the exact date, but
5 I know this is holding up the decision-making process and their
6 lease has either ended or is ending really soon. And so this is
7 obviously their plan A, and there's no plan B at this point. So
8 a decision as soon as possible is of the utmost importance.

9 CHAIRPERSON HILL: I mean, if you figure out, Ms.
10 Wilson, I'll even -- I'm just trying to do what I can. Again,
11 if you talk to your client, the embassy, if you talk to, you
12 know, a country and, you know, the whole country decides whether
13 or not they have enough time, then go ahead and, you know -- I'm
14 going to put you on decision for the 1st, okay? And if something
15 happens that based upon what you're trying to do, you think that
16 you can get them a decision on the 22nd of March, which
17 Commissioner, you know, that's a long time from now. That's why
18 I'm trying to -- but I understand also how the ANCs work, they
19 only meet once a month. But we're currently on decision for the
20 1st. If that changes, we'll see what happens. But as of now, I
21 got all of the paperwork coming in on the 24th from the Applicant.
22 Then I have any response from the ANC on the 28th, which is the
23 day before the hearing, and then we'll go ahead and decide on
24 the 1st.

25 And Mr. Moy, I guess you're going to ask if Commissioner

1 May and Mr. Acosta is available on -- well, Commissioner May has
2 got his thumbs up for the 1st.

3 Mr. Acosta? Also for the 1st.

4 And then Commissioner May and Mr. Acosta, if it somehow
5 goes to the 22nd of March, are you all good that day too? I'm
6 getting a hesitant thumbs up from Commissioner May.

7 COMMISSIONER MAY: I mean, I don't want to prolong it,
8 but yeah, I could do that if we need to.

9 CHAIRPERSON HILL: Okay. So Commissioner May is not
10 in favor of prolonging it. And I guess -- I mean, I can also
11 ask my Board members, I mean, are you guys ready -- do you all
12 need any more time? I mean, if you're ready to go, we can talk
13 right now if you want. But you know, I'm trying to give the ANC
14 as much opportunity as possible. And so -- all right, I'll go
15 around the table.

16 Commissioner May, you seem good with the 1st, is that
17 correct? I can't hear you, Commissioner May.

18 COMMISSIONER MAY: Yes.

19 CHAIRPERSON HILL: Okay.

20 Vice Chair John, you seemed you wanted to say
21 something?

22 VICE CHAIR JOHN: Just a point of clarification. Are
23 we asking for a record of their discussion? We're not asking
24 for an agreement, are we? Okay. So they should just report --
25 they should just report on their discussions and the results of

1 those discussions to the Board? Because asking for an agreement
2 might take longer. If there can be an agreement, that would be
3 great. But basically, we need to know what's taking place between
4 now and our next -- or decision date.

5 CHAIRPERSON HILL: Yes. And I know Ms. Wilson -- I'm
6 sorry, Vice Chair John, did I interrupt you?

7 VICE CHAIR JOHN: No, I was finished.

8 CHAIRPERSON HILL: And I guess Ms. Wilson has been
9 before us plenty of times. And so what I want, Mr. Wilson, is
10 fine, everything that's happened with you guys by the 24th.
11 Right. And I know you're going to be open and transparent and
12 then whatever you think you -- and wherever you think you are
13 currently on the 24th in terms of discussions with the ANC and
14 conditions that you think your Appli- -- your client was able to
15 agree to -- and again, what I'm curious of is, again, this
16 timeline concerning the DDOT issues. Right? That has nothing
17 to do with the ANC. Right? Or shouldn't have -- I shouldn't
18 say has anything to do with the ANC. I want to understand with
19 -- the timeline better. And then whatever we get from you on
20 the 24th is whatever we get from you on the 24th. And then the
21 ANC can respond to that by the 28th. And then as Commissioner
22 May has at least now put forward, he is ready to move forward.
23 And so the 1st is good for him.

24 And I'm going to ask, Mr. Blake, is the 1st good for
25 you?

1 COMMISSIONER BLAKE: Yes, that's fine.

2 CHAIRPERSON HILL: Mr. Acosta?

3 MR. ACOSTA: Yes, it is.

4 CHAIRPERSON HILL: Okay.

5 All right. Commissioner Nash, I'm sorry to put you
6 under the gun there, I can see that you're -- you wanted to say
7 something. Did you want to say something?

8 ANC COMMISSIONER NASH: No. We'll try to work to the
9 commission's schedule. But I will in any event get back to you
10 and let you know what we've either been able to agree on or what
11 the open areas are, and again whether the commission itself has
12 an opportunity to weigh in.

13 CHAIRPERSON HILL: Yeah, I mean, you guys can weigh in
14 at any time, meaning up until the 28th.

15 ANC COMMISSIONER NASH: Well, I'm just saying given the
16 conversations that have to take place between the community, the
17 commission, and the Applicant and then, you know, have the
18 commission ready to weigh in or endorse those conditions all by,
19 you know, some point next week, the middle of next week, is a
20 tall order. We will do the best we can and I will let you know
21 where we are.

22 CHAIRPERSON HILL: Sure, I understand. Thanks,
23 Commissioner.

24 Yeah. I mean, the -- the Applicant, I doubt, is going
25 to stop talking to the community, right, regardless of where you

1 get by the 24th. And so that's going to be probably part of the
2 discussion. I guess again, Commissioner, what I'm trying to
3 point out, which has been pointed out several times on the record
4 thus far, is that a lot of the things that the community is going
5 to talk about are not within the purview of the Board of Zoning
6 Adjustment. So that's where I'm trying to get it. Even if you
7 talked about -- I don't know how I got it -- I don't know how I
8 got the jars of peanut butter, but again, even if you talked
9 about jars of peanut butter, it has nothing to do with us, we
10 wouldn't be able to rule on it. So that's what I'm trying to
11 get at. Things that you guys talk about that we can't rule about,
12 we can't rule about them. But anyway, Commissioner, I appreciate
13 and understand what you're trying to say, and let's just see what
14 happens by the 24th.

15 ANC COMMISSIONER NASH: Yeah. And we'll do our best
16 to separate those issues, you know, that the commission can rule
17 on from a broader package of conditions or agreements that the
18 community might seek were you to decide that this is a mixed use
19 zone.

20 CHAIRPERSON HILL: Wonderful. That's well said.
21 Better than I did. Okay.

22 All right. Anybody else? Anybody got any other hands?

23 Okay. All right. Mr. Moy, do you have what we need?

24 MR. MOY: Yes, I do. The only other thought I have is
25 you were silent on whether or not you needed any filings from OP

1 or DDOT. I'm assuming that's the case, that you're not asking
2 for any supplemental from these two agencies.

3 CHAIRPERSON HILL: Nobody seems to you raising their
4 hand from the Board; I don't need anything.

5 MR. MOY: Okay. Very good. So for the record, again
6 and check me on this, Mr. Chairman, so the Board is going to make
7 its decision making at a meeting session on March 1st; the
8 Applicant will make their filing by February 24th; and the ANC
9 could file at any time up until February 28th, close of business,
10 correct?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: Okay. We're good.

13 CHAIRPERSON HILL: Okay. Thank you.

14 All right. I want to thank you so much for your time.
15 And I'm going to go ahead and close the hearing. Goodbye,
16 everyone.

17 (Whereupon, the above-entitled hearing was adjourned.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

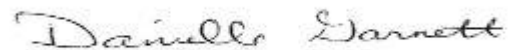
In the matter of: Public Meeting

Before: BZA

Date: 02-15-2023

Place: Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



DANIELLE GARNETT, CET-821