

In the Application of: ☒
☒ Case No. 96-7C
The Klingle Corporation ☒
☒

Monday,
March 24, 1997

BEFORE :

STAFF PRESENT:

MADELIENE DOBBINS, Director
VINCENT ERONDU

A G E N D A

PAGE

Case Number 96-7C

The Klingle Corporation

Architect's response to opponent's plan

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Graham Davidson 14

Rebuttal Witness - B.F. Saul 15

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Hearing Adjourned

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

2 5:37 p.m.

3 CHAIRPERSON BENNETT: Good evening,
4 ladies and gentlemen. My name is Maybelle Taylor
5 Bennett. I'm Chairperson of the Zoning Commission
6 for the District of Columbia. Joining me this
7 afternoon are Commissioners Franklin, Kress and
8 Parsons. I declare this adjourned public meeting
9 reopened.

10 The case that is the subject of this
11 hearing is Case Number 96-7C, an application of the
12 Klingle Corporation requesting consolidated review
13 and approval of a planned unit development and a
14 related change of zoning from R-5-D to R-5-E for Lot
15 801, Square 2214, located at 3133 Connecticut
16 Avenue, N.W.

17 The PUD site consists of 113,561 square feet of land
18 area, a portion of which is currently occupied by a
19 historic building, the Kennedy-Warren Apartments.

20 The Commission opened the public hearing
21 in this case on January 6, 1997, at which time it
22 addressed preliminary matters and heard the
23 testimony of the applicant and the Office of
24 Planning presentation. The hearing was continued on
25 February 20, 1997 and March 13, 1997. During those
26 sessions, the Commission addressed preliminary

1 matters, heard testimony of other government
2 agencies, the report of the neighborhood commission,
3 ANC 3-C, cross examination of the applicant on
4 additional material, parties and persons in support,
5 and parties and persons in opposition.

6 This evening, the order of procedure
7 will be as follows: preliminary matters, cross
8 examinations of rebuttal witnesses. The Commission
9 will adhere to the schedule as strictly as possible.
10 Those presenting testimony should be brief and non-
11 repetitive. I think we're not really taking
12 testimony. We're just doing cross exs tonight.
13 Each individual appearing before the Commission
14 needs to complete two identification slips. All of
15 you should be familiar with that.

16 The decision of the Commission in this
17 contested case must be based exclusively on the
18 public record. To avoid any appearance to the
19 contrary, the Commission requests that parties,
20 counsel and witnesses not engage the members of the
21 Commission in conversation during any recess or at
22 the conclusion of the hearing session. While the
23 intended conversation may be entirely unrelated to
24 the case that is before the Commission, other
25 persons may not recognize that the discussion is not
26 about the case. The staff will be available to

1 discuss procedural questions.

2 Why don't we then turn to any
3 preliminary matters?

4 MS. DOBBINS: Good evening, Madam Chair,
5 Members of the Commission.

6 The only preliminary matters I would
7 have would be the information that's been placed in
8 front of you, just new information for the record.

9 CHAIRPERSON BENNETT: All right, thank
10 you.

11 Why don't we then continue with the
12 cross examination of the applicants' rebuttal
13 witnesses?

14 Yes, Mr. Feola?

15 MR. FEOLA: Thank you, Madam
16 Chairperson.

17 For the record, Phil Feola with the law
18 firm of Wilkes, Artis, Hedrick & Lane for the
19 applicant.

20 I don't believe we finished rebuttal.
21 Mr. Saul never had a chance to say his little piece
22 at the end.

23 CHAIRPERSON BENNETT: Oh, okay.

24 MR. FEOLA: In addition, Mr. Parsons
25 raised a question asking for a response to a plan
26 that was presented by the opponents, Ms. Murray, I

1 believe. We are prepared to address that. It will
2 only take five minutes by our architects. Well, I
3 think it would be better for the record, if this is
4 going to be something that the Commission considers,
5 to give the applicant an opportunity to address it.
6 And then, of course, the opponents have an
7 opportunity to cross examine the witnesses.

8 So, what I'm suggesting, I'm asking for
9 is permission for the architect to take five minutes
10 to talk about the alternative Ms. Murray suggested,
11 and then Mr. Saul finishing rebuttal, and then cross
12 examination.

13 CHAIRPERSON BENNETT: All right. Why
14 don't we do that?

15 MS. NEWMARCK: Excuse me, may I be heard
16 for a moment on that?

17 CHAIRPERSON BENNETT: Sure.

18 MS. NEWMARCK: Thank you.

19 Andrea Newmarck for Cathedral Park.

20 May I request that that be put off until
21 the end? I'm concerned that with the timing, that
22 if that goes forward now, we may not finish the
23 things that were scheduled for today. If I recall,
24 Mr. Parsons asked for their response to be in
25 writing. That would give us, of course, a chance to
26 respond in writing without taking up the short time

1 that we have here today which we didn't plan to do.
2 They certainly could have done that last week when
3 the architect -- the last time when the architect --

4 MR. FEOLA: I'm sorry, Madam
5 Chairperson. This really goes to the heart of the
6 issue. Ms. Newmarck was asked by this Commission to
7 provide her expert's testimony. She refused to do
8 that. There was no way we could have prepared for
9 that alternative that Ms. Murray surprised us with
10 last time. So, I don't see that she needs to
11 respond to our response to her proposal to start
12 with. I think we can argue about this forever, but
13 I think for five minutes, the Commission will then
14 have a record complete to respond to Ms. Murray's
15 position. Then you can make your decision on an
16 educated basis.

17 CHAIRPERSON BENNETT: All right.

18 Mr. Parsons, would you not want to hear
19 what response they have today?

20 COMMISSIONER PARSONS: Yes.

21 CHAIRPERSON BENNETT: We will go forward
22 in that manner then.

23 Why don't you bring Mr. Saul and your
24 architect forward, Mr. Feola?

25 MS. NEWMARCK: And we would like to
26 reserve the right to present rebuttal testimony as

1 the Court of Appeals said in Hilton Hotels that
2 we're entitled to do.

3 MR. FEOLA: I'm sorry, but I'll object
4 to that because --

5 MS. NEWMARCK: I'm sure you will.

6 MR. FEOLA: -- the rules don't provide
7 for surrebuttal, no matter what the court said.

8 MS. NEWMARCK: Actually, they do.

9 CHAIRPERSON BENNETT: May we proceed,
10 please? We do have another hearing this evening.

11 MR. FEOLA: Thank you.

12 Mr. Cox, you've heard, and Mr. Davidson
13 you've heard the last time a suggestion by the
14 architect for the opponents that a much smaller
15 project built on the site, I believe the northern
16 part of what we're calling the southern wing, would
17 preserve more open space on Connecticut Avenue and
18 create a better urban design for the avenue. Have
19 you had an opportunity to look at that? And could
20 you comment on that for the Commission?

21 MR. COX: Thank you, Phil.

22 Warren Cox, Hartman Cox Architects and
23 Graham Davidson, Hartman Cox Architects on my right.

24 Madam Chairperson and members of the
25 Commission, what we would like to do tonight is
26 finish our rebuttal comments and in particular,

1 address Mr. Parsons' concerns with regard to the
2 smaller project suggested by Mrs. Murray.

3 These issues related to the design of
4 the proposed addition concern open space, the
5 building footprint and setback along Connecticut
6 Avenue, building height, and most importantly in our
7 opinion, whether the character and the design of
8 this addition are appropriate for this section of
9 Connecticut Avenue. We have brought along the model
10 which is in front of you. If this is in a
11 satisfactory position, all well and good. If we
12 could move it so it's in a better position, we
13 should do that now because we're really going to be
14 talking about issues.

15 Would you like it a little closer?
16 Fine, good because we think this illustrates our
17 points really better than any selection of
18 photographs or slides.

19 The model shows the immediate situation
20 along Connecticut Avenue and will illustrate our
21 points very clearly. As you can see, the Kennedy-
22 Warren is surrounded by open space. The zoo alone
23 is 178 acres. The nearest building on its side of
24 the street to the south is 740 feet away, down here,
25 over eight times the proposed building height and to
26 the north which is off the model, another 380 feet.

1 Not only is a very small percentage of open space
2 along this stretch of Connecticut Avenue being
3 removed -- only 14 percent in fact. This section is
4 actually only 14 percent of that total -- it can be
5 argued that the addition would actually help frame
6 and define the zoo confines. That is, this space is
7 the zoo. When you move this and down, you're really
8 framing the zoo space and indicating very clearly,
9 what portion along Connecticut Avenue is occupied by
10 the zoo.

11 Does this proposed addition have an
12 adverse impact on the zoo entrance? The view that
13 the opposition so dramatically pointed to last time
14 was the view from the service and automotive
15 entrance driveway, which is right up here which is
16 what they've got over there. Not only is the main
17 entrance to the zoo here, the ceremonial entrance,
18 330 feet south of the proposed addition, but it is
19 also screened by a large densely wooded berm which
20 is here. The south wing would have virtually no
21 impact on the zoo's main entrance.

22 The setbacks on Connecticut Avenue and
23 the building footprint. This addition would not be
24 the unrelieved brick wall characterized by our
25 opponents in 3100 Connecticut Avenue. It would, in
26 fact, be a combination of vertical shafts and

1 recessed courts with highly articulated and
2 elaborately detailed walls and windows. The
3 proposed addition to the Kennedy-Warren goes to
4 great lengths to break down the building mass. If
5 one looks at the footprint or site plan, one will
6 discover that these elements are in the plan, both
7 in size and configuration, almost identical to those
8 at Cathedral Mansion, which is right here. You can
9 see the Ts, the crossing and the way they're set up.

10 With the addition, these two buildings,
11 in fact, would be quite complimentary on the street.
12 Both hold to similar property lines and then set
13 back their courtyards, a theme we have already
14 illustrated, is repeated up and down Connecticut
15 Avenue. Please note the relationship of the
16 courtyards which is building opposite void. The
17 void of 3100 is opposite the addition. The void
18 here is opposite the end here. So, you have a
19 relationship, really, which is like this so that you
20 don't get front against front.

21 Is the proposed addition to the Kennedy-
22 Warren too tall for its location notwithstanding the
23 fact that it is within the legal height limit? We
24 have demonstrated that most of the buildings along
25 this stretch of Connecticut Avenue are six to nine
26 stories tall, which means 60 to 90 feet which you

1 can see coming down Connecticut Avenue, which is why
2 we included the rest in the model. Cathedral
3 Mansion is four stories, plus a pitched roof. We
4 estimate its height at close to 60 feet. The
5 addition to the Kennedy-Warren would only be about
6 one-third higher and the bulk of Cathedral Mansion
7 would be over 250 feet from the Kennedy-Warren
8 addition. That's back here.

9 It is also a big building, as you can
10 plainly see, virtually as long as the Kennedy-Warren
11 with the addition. In fact, when the model was
12 loose, I took it out of the model and put it on top
13 of the Kennedy-Warren. It's longer. Would then the
14 Kennedy-Warren with its addition seem
15 disproportionately taller or overpower our
16 neighbors? You can see it in the model here and the
17 relationship. I'm sure you've driven up Connecticut
18 Avenue and seen it in place.

19 What about the character and the design
20 of the proposed addition? First of all, the
21 character of the addition is completely in keeping
22 with the unfinished fragment. It should be. They
23 were designed as a piece.

24 Would it be better with a different or
25 smaller configuration? Not in our opinion or in the
26 opinion of the Fine Arts Commission, DC HPRB or the

1 Art Deco Society, all of which approve the original
2 concept. The fact that it is asymmetrical not only
3 makes for more interesting building, where you go
4 bump, bump, void, bump. The three bays on the
5 street set up a rhythm that hold the street line
6 better than a simpler, shorter form which would cut
7 off here, leave the extra void, and be a rather
8 simple symmetrical relationship.

9 It is clearly unfinished now. It looks
10 unfinished. The addition would complete the
11 building and make a much more cohesive design. This
12 building needs this addition. I mean, you can see
13 what it looks like now. It looks like it has had
14 its arm chopped off. I'm not going to force that.

15 Would the finished building have the
16 proper architectural and character for this section
17 of Connecticut Avenue? In our opinion, and as I
18 think we've demonstrated, it has the proper massing,
19 modulation, scale of elements, level of detail,
20 material concise. It is of the same general
21 architectural period as most of the other buildings.
22 It will fit right in. What more can one ask? If
23 this building had been built as designed at the
24 time, not only would we not be here tonight, but I'm
25 certain that everyone concerned, the opposition
26 included, would be singing its praises.

1 CHAIRPERSON BENNETT: Thank you.

2 MR. FEOLA: Three questions for Mr.
3 Davidson.

4 Mr. Davidson, last time, the Opponents
5 3100 stated that the open space that will be lost by
6 this addition -- I believe they stated was 34,000
7 square feet. Does that square with your
8 calculations?

9 MR. DAVIDSON: No.

10 MR. FEOLA: And what do your
11 calculations show?

12 MR. DAVIDSON: Twenty-two thousand
13 square feet.

14 MR. FEOLA: The opponent stated last
15 time that the green space in the courtyard was
16 approximately 5,500 square feet, if my memory serves
17 me right. Does that square with your calculations?

18 MR. DAVIDSON: No.

19 MR. FEOLA: And your calculations show?

20 MR. DAVIDSON: Ten thousand, two
21 hundred.

22 MR. FEOLA: And finally, there was some
23 --

24 CHAIRPERSON BENNETT: I'm sorry, what
25 was that referring to again?

26 MR. FEOLA: The open space in the

1 courtyard.

2 CHAIRPERSON BENNETT: Open space in the
3 courtyard.

4 MR. FEOLA: Green space in the
5 courtyard. I'm sorry.

6 CHAIRPERSON BENNETT: Oh, okay. So,
7 instead of what it is what?

8 MR. FEOLA: Mr. Davidson?

9 MR. DAVIDSON: The opposition stated, I
10 believe, that the green space in the courtyard was
11 5,500 square feet. In fact, I calculate it at
12 10,200.

13 MR. FEOLA: And finally, there was some
14 dispute as to the lot occupancy for the site. Have
15 you had an opportunity to go back and recalculate
16 the lot occupancy?

17 MR. DAVIDSON: Yes, we have.

18 MR. FEOLA: And the result?

19 MR. DAVIDSON: It's 59 percent.

20 MR. FEOLA: Thank you.

21 Really, I have only two questions for
22 Mr. Saul, Madam Chair.

23 Mr. Saul, you've heard a lot of
24 testimony in the past two sessions concerning the
25 amount of parking this project is providing and that
26 your proposed addition to the Kennedy-Warren does

1 not provide enough to avoid an adverse impact on the
2 community.

3 Would you comment on that, please?

4 MR. SAUL: Yes.

5 Frank Saul for the applicant.

6 Let me say that after reviewing Mr.
7 Petersen's testimony, the ANC's testimony, going
8 back over our own sense of data, I'm more convinced
9 than ever that we are estimating the demand that
10 this new wing will develop accurately.

11 However, having heard the impassioned
12 pleas from our neighbors at 3100, we are now going
13 to amend our application to include another
14 additional level, a fourth level of parking. This
15 will increase our parking to 205 spaces for 166
16 apartment units. I might add that this is at some
17 expense. We will be encountering a rock at the
18 elevation we will need to go to, but nevertheless,
19 we want to satisfy the concerns of the neighbors.

20 MR. FEOLA: If it will please the
21 Commission, we need your permission to make this
22 amendment.

23 CHAIRPERSON BENNETT: I have no problem
24 with the amendment.

25 Is there a procedural problem, Madam
26 Director?

1 MS. DOBBINS: No. The Commission can
2 only authorize revisions during the public hearing
3 process. So it's appropriate.

4 CHAIRPERSON BENNETT: All right.
5 Colleagues?

6 MR. SAUL: I would like to note that
7 that does, in fact, satisfy the amount of
8 approximately 200 spaces that the ANC was
9 requesting, and I think also Woodley Park Community
10 Association.

11 Furthermore, I would commit on behalf of
12 the owners that should we be wrong and should the
13 space be used up, we will agree to provide valet
14 parking if, at any point in time, the demand for
15 spaces in the building reaches the point where we
16 can not satisfy any tenants or their guests. We
17 feel quite confidently now with these two changes,
18 that this new wing will in no way exacerbate the
19 parking situation in the Cleveland Park
20 neighborhood, and are quite confident that that will
21 not occur.

22 Thus, I think I can just summarize, with
23 these two changes, we, again, are very confident
24 that we will not be exacerbating the parking
25 situation in the neighborhood.

26 MR. FEOLA: Mr. Saul, I'm going to ask

1 you to address the question of the smaller building
2 that was proposed by Ms. Murray last time, and
3 whether or not this project is feasible from your
4 standpoint.

5 MR. SAUL: Yes, we, again, have looked
6 at the opposition's proposed plan which would result
7 in, we estimate, approximately 80 units and came
8 very quickly to the conclusion that it would not be
9 economically viable. Therefore, it's not an
10 alternative that we would be willing to pursue.
11 Quite simply, a building, especially of this nature
12 with historic aspects and some high costs associated
13 with it, you can't spread the base building costs
14 over that few a number of units. In fact, 166 is
15 relatively small in today's marketplace and it would
16 simply not work.

17 I might add that we feel quite strongly
18 that it would be a mistake. As to our architects,
19 we think it would not be the appropriate treatment
20 for the Avenue. I guess that's the second reason we
21 wouldn't do it. But most importantly, it would not
22 be viable and we would not be willing to proceed on
23 that basis.

24 MR. FEOLA: Madam Chairperson, that ends
25 our rebuttal. We, obviously, would like to say some
26 type of closing statement.

1 CHAIRPERSON BENNETT: Sure.

2 Questions, colleagues, of the
3 applicants?

4 COMMISSIONER FRANKLIN: Mr. Saul, when
5 you say you would offer valet parking, could you be
6 a little more explicit as to how that parking would
7 be handled? Would it be on-street parking?

8 MR. SAUL: Oh, no, no. This would be in
9 the garage.

10 COMMISSIONER FRANKLIN: In the garage?

11 MR. SAUL: Yes. What we would do is
12 simply implement a program -- and I think we've
13 actually talked to some tenants. They would
14 actually -- some would prefer it; some obviously
15 wouldn't. We would set up a tiered pricing
16 structure and motivate folks to use the valet and
17 that would obviously --

18 COMMISSIONER FRANKLIN: Oh, okay.

19 MR. SAUL: We can add in excess of 100
20 spaces with valet service.

21 COMMISSIONER FRANKLIN: Oh, I see.

22 MR. SAUL: And that would be 24-hour, in
23 the garage, not on the street.

24 COMMISSIONER FRANKLIN: So, basically,
25 this is a more elegant way of expressing what I
26 called stack parking?

1 MR. SAUL: Yes.

2 COMMISSIONER FRANKLIN: Okay.

3 Can you assure this Commission that no
4 tenants of the new wing will be parking on the
5 street?

6 MR. SAUL: I don't know that we can
7 ensure it. Individuals can always make their own
8 decisions. My strong feeling is that this wing is
9 going to be, as I mentioned earlier in my testimony,
10 at the upper end of our current units and I just
11 simply would not expect someone who's going to come
12 in and pay rents to live in that building, to want
13 to deal with what you've heard -- the problems of
14 parking in the neighborhood when they have space
15 available right there in the lot. I think for that
16 type of individual, it's just not worth the savings.

17 So, I believe that none will, but
18 obviously, individuals can choose and do what they -
19 -

20 COMMISSIONER FRANKLIN: Well, helping
21 out a little bit on this, is it possible to include
22 parking within the basic rental charge in such a way
23 that it really becomes a very significant economic
24 disincentive to park on the street?

25 MR. SAUL: The problem with that
26 scenario is that then we're asking tenants who

1 aren't parking cars to pay for the tenants who are
2 parking cars. How are we going to differentiate
3 without tacking on?

4 COMMISSIONER FRANKLIN: Well, can you
5 require people to indicate to you whether they have
6 a car or not?

7 MR. SAUL: Once I do that, then I
8 suppose I'm going to be asking them to pay more to
9 rent the unit, which is the same as --

10 COMMISSIONER KRESS: I'm sorry, may I
11 interrupt a little bit?

12 I think this is of the largest concern
13 to myself, personally. I think this is a very
14 exciting project. I think you've got terrific
15 architects working on it and I think it's a very
16 good design. But we have heard very
17 concretely of the worry of the neighborhood and the
18 parking situation. I, personally, would very much
19 like you to think about -- I mean, I'm sorry, \$90.00
20 a month or \$110.00, or \$80.00, or \$70.00, whatever
21 it is, there are those who will say, "that's too
22 much. I will park on the street." I would like to
23 have some way -- I'm a Ward 3 resident. This is my
24 Ward. I do not feel comfortable adding parking into
25 this neighborhood.

26 I would like to know in some way that

1 what you're proposing will not add to the parking in
2 the neighborhood. I understand the problems because
3 you might have an older person who has no car and
4 that's not fair that they then pay for living in the
5 unit and the parking costs attendant to it.

6 But is there any way possible that you
7 can think of or that you can put forth to us where
8 you can truly say to us that anybody that you rent
9 to in the future -- and I do think there has been
10 some good points made and you've read about them as
11 well as I, and I've heard them here -- that we will
12 not add to the parking problem, which we do know
13 exists. I don't think any of us will argue with
14 that. We have a problem.

15 By the way, I think this is really
16 terrific, you've come forward with this extra
17 parking area. My problem is, how do we assure that
18 the people who come in to rent from your units do
19 not choose, because of the cost be it \$70.00 to
20 \$110.00, doesn't matter, that they're going to park
21 on the streets and add to the parking problem in
22 this very difficult neighborhood?

23 I'm sorry. Very long question. I
24 rattled on and I didn't mean to.

25 MR. SAUL: Well, it's a tough question.
26 To be honest with you, I'm not sure that -- you

1 know, there's always going to be an individual who,
2 for whatever reason, may want to not take advantage
3 of the convenience of parking in the building.
4 Again, I would emphasize that I just don't see it
5 happening. It is more likely, I think, in the
6 existing building where we do have some smaller,
7 less expensive units, rent controlled units. In the
8 new wing, I really have a hard time seeing an
9 individual who's going to be willing to pay the
10 rents to live there is going to want to park three
11 blocks away.

12 I would say that if we are right and
13 that the demand level is where we think it is, and
14 that we end up with a lot of extra spaces -- we
15 would have to go back to our tenants to get approval
16 of this, but if we do have empty spaces, obviously,
17 we'd rather see them full. If we can reach an
18 agreement with our residents' association, we would
19 be willing to rent them to owners in the
20 neighborhood and across the street.

21 COMMISSIONER KRESS: I'm glad to hear
22 you say that. I happen to live in a condominium
23 myself with parking and I have my own security
24 problems. But considering the problem of parking in
25 this neighborhood, I would really hope you would
26 talk to the residents to allow a specific number of

1 people in the neighborhood that would be controlled
2 -- and that would provide a level of security by
3 knowing who those folks were -- to park, if that
4 were possible. I understand the residents saying,
5 "I'm not comfortable because I don't want that
6 security problem." But we have a parking problem.
7 I think we all agree. I think that's why you've
8 come forward with more parking spaces. It's how do
9 we solve this parking problem?

10 MR. SAUL: I do think that, you know,
11 with the modern security cards and building design,
12 we might be able to come up with a solution that
13 would be acceptable to our residents, but again, I
14 don't know.

15 COMMISSIONER FRANKLIN: Would there be,
16 for example, an elevator that would carry people
17 from the garage to the lobby, but not to higher
18 levels of the building?

19 MR. SAUL: To a separate exit or
20 something like that.

21 COMMISSIONER FRANKLIN: Yes.

22 COMMISSIONER KRESS: Yes, that would be
23 a good idea.

24 MR. SAUL: I don't think we've got that
25 in our current plan.

26 COMMISSIONER KRESS: But you could

1 program that, I would think.

2 MR. SAUL: It's possible, yes.

3 Obviously, we don't want to incur more expense. In
4 the unlikely event that we are wrong and they're all
5 full, I don't want to build extra exits, et cetera,
6 et cetera and then find out --

7 COMMISSIONER FRANKLIN: Well, but it's a
8 standard thing when you do have people who are not
9 residents parking, or who are not in the office
10 building parking, to control their access to the
11 building by having the garage level lead to a
12 separate elevator to the lobby and you have to
13 change elevators before you can go higher in the
14 building.

15 MR. COX: Yes, we've looked at this and
16 we think we could use the upper level of parking for
17 non-residents and then take them straight out to the
18 street by a ramp. So, that would work fairly
19 easily.

20 COMMISSIONER FRANKLIN: Oh, I see. Oh,
21 I see.

22 COMMISSIONER KRESS: Oh, that's a
23 terrific idea. Terrific.

24 COMMISSIONER FRANKLIN: Yes, okay. And
25 they would not have access to the rest of the
26 building?

1 MR. COX: They wouldn't even go into the
2 rest of the garage.

3 COMMISSIONER FRANKLIN: Well, and you
4 might also give some consideration to whether it's a
5 condition of the lease that people have to park in
6 the building if they own a car. I mean, I don't see
7 any reason why that can't be made a term and
8 condition of the lease.

9 MR. SAUL: Yes.

10 COMMISSIONER KRESS: I hear you saying
11 yes. I have never even thought or contemplated of
12 asking any person before us that. I think that is
13 an excellent question. I would really like to know
14 -- if you say yes, I would really like to know that
15 every person in that building has an acknowledged
16 parking space. I'm very concerned for the
17 community.

18 I think of all the things I've heard
19 from Ms. Newmarck and everyone else, I think the one
20 that comes home to me the most is the parking
21 problem. Is there some way that you can help
22 guarantee to us that every person who has a car who
23 moves in that building is dealing with it in some
24 appropriately, and preferably in one of your parking
25 spaces?

26 MR. SAUL: I think the idea is a

1 creative one. I'm not sure that legally we can --

2 COMMISSIONER KRESS: I'm not sure
3 legally what you can do either --

4 MR. SAUL: -- do that because you can't
5 --

6 COMMISSIONER KRESS: -- and I don't mean
7 to suggest that.

8 MR. SAUL: You can't do much when you
9 choose tenants these days without getting in
10 trouble.

11 COMMISSIONER KRESS: Yes.

12 COMMISSIONER FRANKLIN: You mean under
13 the rent control regulations?

14 MR. SAUL: We would consider it, but I
15 don't know if we can legally do that.

16 COMMISSIONER FRANKLIN: Yes. I don't
17 see any reason why you'd have a legal problem, but
18 I'm glad to be educated on that subject.

19 MR. SAUL: I'm not the attorney, so I'm
20 not quite sure either.

21 COMMISSIONER FRANKLIN: Count yourself
22 fortunate.

23 MR. SAUL: I just know that you can't
24 say no to people if they want to rent. So, whether
25 a car qualifies, I don't know.

26 COMMISSIONER FRANKLIN: Okay. I don't

1 see anything under our regulations in the District
2 that would prevent you from imposing that as a
3 condition of the lease. And if people are going to
4 pay anyway, they shouldn't have any objection to
5 that. So, take it under advisement, please.

6 MR. SAUL: Certainly.

7 CHAIRPERSON BENNETT: Further
8 discussion?

9 Mr. Parsons?

10 COMMISSIONER PARSONS: Gentlemen, I'm
11 disappointed -- not surprised, but disappointed in
12 your response to Ms. Murray's suggestion of last
13 time. I wanted to ask Mr. Saul, in the presentation
14 that you made at the Commission of Fine Arts which
15 was shown to us last time which would have taken the
16 front bay off of that southern addition, were any
17 units lost in that proposal?

18 MR. SAUL: I think nine.

19 COMMISSIONER PARSONS: Nine?

20 MR. SAUL: Nine units, yes.

21 COMMISSIONER PARSONS: So, that is still
22 viable and you lose nine?

23 MR. SAUL: Yes. Every unit you lose
24 slowly diminishes the ability --

25 COMMISSIONER PARSONS: Is there a break
26 point? Is it nine?

1 MR. SAUL: Well, there's always a break
2 point. I did not do an analysis of what the break
3 point is, no.

4 COMMISSIONER PARSONS: But certainly 80
5 is not it?

6 MR. SAUL: Certainly 80 is not.

7 COMMISSIONER PARSONS: So, if we
8 approved a building as Ms. Murray proposed last
9 time, what you've said here tonight is you would not
10 build it?

11 MR. SAUL: I can emphatically tell you
12 we would not even try.

13 COMMISSIONER PARSONS: So, that's why
14 your architect did not bring such a proposal forward
15 to share with us tonight?

16 MR. SAUL: Correct.

17 COMMISSIONER PARSONS: Thank you.

18 COMMISSIONER KRESS: I would just like
19 to say one thing as we close here. This parking
20 issue is to me of the utmost importance. I feel
21 very convinced by Hartman-Cox's presentation on the
22 size and the mass. I feel that the other folks who
23 have looked at this with the Historic Preservation
24 Review Board and the Commission of Fine Arts, I
25 think -- I am very convinced by the edging, by the
26 defining of what this space is.

1 My problem really totally resolves to
2 the parking issue and I do not feel in any way that
3 I can move forward with this without feeling
4 comfortable for our community that this parking is
5 taken care of. I think that architecturally, some
6 of the impacts that are perceived will be perceived
7 differently. I believe that Hartman-Cox has
8 expressed well the impacts of this building. I
9 happen to disagree with some of my colleagues here.
10 I think this would be good architecture.

11 But I am very concerned about the
12 parking issue and I am very concerned that not one
13 person extra enters on to these streets because of
14 the architecture or the addition that we may
15 potentially allow. I'm just being really frank and
16 right up front.

17 MR. SAUL: Sure. Well, let me respond.
18 If it is legal, if there is no problem with us
19 making it a requirement of our lease that if a
20 renter has a car, they have to rent in our garage,
21 we will put that in our lease, assuming that it's
22 legal.

23 COMMISSIONER FRANKLIN: Okay. One other
24 question, Mr. Saul.

25 I do also appreciate the proffer of
26 additional parking because I share with Commissioner

1 Kress, the same concerns over parking. I recall in
2 our first hearing, either I or another Commissioner
3 asked you about the way in which what is it, Uptown
4 Caterers handles parking for people who are using
5 the ball room end. As I recall, you sort of
6 distanced yourself from that saying that was their
7 particular concern.

8 Frankly, I don't think you should
9 distance yourself from it and that's clearly another
10 element that is adding to what is an unacceptable
11 parking deficit in the area. Now, we heard some
12 testimony that what they do when they valet park for
13 those events is they park cars unlawfully on the
14 bridges or elsewhere. Although we are also told
15 that there's parking at the zoo because of some
16 arrangement that they've made with the zoo.

17 Can you clarify for us what actually
18 does occur and whether it's within your power to
19 ensure that in no event would the valet parking
20 provided by that enterprise that's within your real
21 estate be parking cars on the streets?

22 MR. SAUL: Unfortunately, I don't think
23 we can do that. If we could, we would be happy to
24 try to relieve that situation. I would point out
25 that it is an existing condition. It has been
26 operated that way for many, many years.

1 COMMISSIONER FRANKLIN: Well, I should
2 say on the streets unlawfully.

3 MR. SAUL: I don't know if they do.
4 They may. People park illegally quite often in the
5 District. You run the risk of getting a ticket and
6 just because a valet parks your car doesn't mean you
7 don't get your ticket and it's on your tag. So, I
8 don't know that they do that. I would think they'd
9 be running some risk if they did, if the valet
10 company did. I don't know how we can do that. We
11 don't have the power in our lease to do that.

12 COMMISSIONER FRANKLIN: Well, I think
13 it's certainly within your power to assure that
14 somebody who is a contractor to you abides by the
15 laws.

16 MR. SAUL: Well, we do do that and we
17 cite them when they don't. We're doing everything
18 we can to aggressively pursue them when they do
19 violate their lease. I'm not sure that there's much
20 more we can do other than that.

21 COMMISSIONER FRANKLIN: That's all I
22 have, Madam Chair.

23 CHAIRPERSON BENNETT: Okay, further
24 questions?

25 Cross examination.

26 MS. NEWMARCK: I didn't want to usurp

1 the ANC. They usually go first, which is why I
2 looked at him.

3 CHAIRPERSON BENNETT: All right.

4 Mr. Mendelson, do you have cross ex?

5 MR. MENDELSON: For the record, I'm Phil
6 Mendelson with ANC 3-C.

7 I had a number of questions regarding
8 parking and I think some of those questions have
9 been taken care of. Again, it's the revised
10 proposal that there will be an additional level of
11 parking with an additional 55 parking spaces?

12 MR. SAUL: That's correct.

13 MR. MENDELSON: And that in addition,
14 there will be if needed, attendant assisted parking,
15 I think is what it's sometimes called?

16 MR. SAUL: Correct.

17 MR. MENDELSON: I just want to explore
18 that a little bit. How is that attendant assisted
19 parking going to be triggered?

20 MR. SAUL: It would be triggered if we
21 ever reached a point where a tenant -- we did not
22 have a reserved space available for a tenant who
23 wanted one.

24 MR. MENDELSON: So, if you were one
25 tenant over in demand, then you would proceed to
26 hire -- I was trying to estimate on my way down here

1 tonight -- I think it would be five employees to run
2 attendant-assisted --

3 MR. SAUL: Well, not necessarily. We
4 already have full-time garage staff and in fact, we
5 already do do some valet parking for guests and
6 such. So, we would probably, depending upon the
7 number of cars, have to add one or two people.

8 MR. MENDELSON: Do you know of any other
9 residential apartment buildings along Connecticut
10 Avenue that have tenant-assisted parking?

11 MR. SAUL: I think we came up with one
12 or two that do. I don't recall their names. And
13 I'm not sure they were on the avenue, but they were
14 in the city. Yes, I think the Van Ness building has
15 got one.

16 MR. MENDELSON: So, you would look to
17 them sort of as a model of how to implement this?

18 MR. SAUL: Not necessarily. I mean,
19 it's pretty easy. You just stack the cars and when
20 people call down, you pull their car out. It's not
21 -- not complicated.

22 COMMISSIONER FRANKLIN: So, there are no
23 reservations under that circumstance -- reserved
24 spaces, I should say?

25 MR. SAUL: Well, no. People who want
26 reserved spaces would be able to have them and

1 people who would prefer to use the valet would use
2 the valet. I think we would be able to do it such
3 that we can accommodate anybody that needs any.

4 COMMISSIONER KRESS: See, one of the
5 things that troubled me -- and I'm sorry. I live in
6 a condominium myself. You can go there and you can
7 count the empty spaces, but my space is mine and
8 it's reserved for myself. Now, I live in a
9 condominium which is different than a rental --

10 MR. SAUL: Correct.

11 COMMISSIONER KRESS: -- but most of the
12 time, you rent a space and in fact, I do that. So
13 that when I come home at all the strange hours I can
14 come home, I have a space. I think that was one of
15 the things that I was particularly concerned about
16 as I heard the traffic situations and what-not.
17 Because for the most part, as I know it, both in
18 rental -- well, not always, but that there are pre-
19 designated spaces. And while you can go there and
20 count them empty, I'm very concerned about counting
21 them empty when no one else can park there. And so,
22 I'm really happy to hear you coming forth like you
23 are right now with some other options on these
24 parking situations.

25 COMMISSIONER FRANKLIN: May I also
26 suggest that I'm familiar with situations where when

1 a tenant is going to be -- excuse me for taking your
2 time.

3 MR. MENDELSON: No, that's fine.

4 COMMISSIONER FRANKLIN: Where a tenant
5 is going to be out of the city, for example, for
6 vacation or whatever, that they phone in to indicate
7 that they are going to not be there.

8 MR. SAUL: Exactly.

9 COMMISSIONER FRANKLIN: Therefore, that
10 space becomes available.

11 MR. SAUL: Exactly.

12 MR. MENDELSON: So then, I guess just to
13 wrap this up, this piece of it, it's your testimony
14 that the order, should one issue that grants the
15 PUD, regarding attendant-assisted parking say that
16 on the occasion that there is demand even of one car
17 above what the capacity is, that you will then
18 provide attendant-assisted parking?

19 MR. SAUL: Correct.

20 MR. MENDELSON: I have a hunch I'll have
21 some more questions when I think about this some
22 more. At the moment, I'll rest, thank you.

23 CHAIRPERSON BENNETT: All right.

24 Ms. Newmarck?

25 MS. NEWMARCK: Thank you.

26 I have a few questions, only some of

1 which are directed to the parking. But let me start
2 with that since that's, obviously --

3 COMMISSIONER KRESS: The hot topic.

4 MS. NEWMARCK: -- the hot topic of the
5 evening.

6 On that note, I'm certainly glad to hear
7 that 50 extra spaces are being proposed. But as the
8 Commission is aware, our parking expert said that
9 they would need 90 more spaces for the break-even
10 point. So, we're really not even at the break-even
11 point as far as we are concerned.

12 But I think the bigger concern is that
13 previously, the applicant had said that they
14 couldn't build another parking level because of
15 bedrock and blasting. So, we're concerned. We want
16 to know how they plan to do it? What's different
17 now? What is the guarantee they'll do it? I would
18 suggest that --

19 COMMISSIONER KRESS: Well, the guarantee
20 is us and I think it is a good question to ask them
21 how they're doing that though.

22 MS. NEWMARCK: Right. And what I was
23 going to ask rather than to ask the panel of nine
24 engineers that are sitting here, was to have some
25 kind of feasibility study provided to the Commission
26 that we could respond to because this is a very

1 important subject and it's new.

2 COMMISSIONER KRESS: I, as an architect,
3 don't need a feasibility study. I just need their
4 commitment they're going to do that. I don't want
5 to speak for the rest of the Board here. I would
6 hope that would be adequate for you because if they
7 say they're going to do it and then acknowledge that,
8 then you have what you need.

9 MS. NEWMARCK: Well, I think our concern
10 is that if the way they're going to do it is through
11 dynamite and blasting, that that might have other
12 impacts on the community that haven't been
13 considered this far. And I don't know the answer to
14 that, but that would be a very serious question, for
15 the zoo as well. I mean, the zoo may come back and
16 say, "well, this was one thing but, you know,
17 dynamite is another."

18 MR. FEOLA: Madam Chairperson, I mean,
19 this is getting to the point of the absurd. I mean,
20 we've heard for three nights, they want more
21 parking. Now they've heard they got more parking,
22 but they're not sure how it's going to be done and
23 they want some details of how it's going to be done.
24 Well, we don't have construction documents. We
25 haven't gotten that far. We probably won't know
26 whether we have to blast, or scrape, or chop away

1 until we dig the dirt out. I don't think it's fair
2 to the applicant to wait six or eight or ten months
3 to find that out.

4 CHAIRPERSON BENNETT: I would also
5 mention that Ms. Newmarck, you're testifying.
6 You're supposed to be asking questions of the
7 rebuttal witnesses. This is another place where
8 whether you're counsel or whether you're speaking on
9 behalf of yourself as a condo owner is beginning to
10 be problematic.

11 So, you know, we've heard what you've
12 said. We would appreciate it if you could be
13 respectful of the fact that we have a hearing coming
14 up. We would like for you, if you can, to be as
15 efficient as possible in cross examining the
16 witnesses here about the rebuttal testimony that
17 they've given us.

18 MS. NEWMARCK: Yes, ma'am. I was
19 speaking as a party and I thought that if the panel
20 were to agree to that kind of study, I could
21 efficiently not cross examine at all. That's the
22 reason I brought it up. I'll move on to the cross
23 examination.

24 Whichever one of you can answer this, do
25 you have any idea of how long the construction
26 period would be if you're required to do this

1 additional blasting that you're talking about?

2 MR. DAVIDSON: I believe we -- we
3 obviously have not spent a great deal of time
4 looking at this, but I believe we had to add between
5 one and two months of construction time for this
6 level. That would be in addition to the
7 approximately 18 months.

8 MS. NEWMARCK: So, you're saying it
9 would go from 18 to 20?

10 MR. DAVIDSON: Approximately, yes.

11 MS. NEWMARCK: And what is that estimate
12 based on?

13 MR. DAVIDSON: A very quick look between
14 our contractor and ourselves, based on the drawings
15 that we have just submitted.

16 MR. SAUL: Madam Chair, for the record,
17 Mr. Sher and Mr. Slade who testified last time are
18 here for cross examination. They're not up at the
19 table right now though.

20 CHAIRPERSON BENNETT: All right.

21 MS. NEWMARCK: Mr. Saul, are you aware
22 that the tenants who currently park in unreserved
23 spaces don't like having their cars moved around?

24 MR. SAUL: No, I'm not.

25 MS. NEWMARCK: Would it surprise you to
26 learn that the --

1 MR. FEOLA: I'm going to object. He
2 didn't testify to what the existing tenants said or
3 didn't say.

4 CHAIRPERSON BENNETT: That's correct.
5 Next question?

6 MS. NEWMARCK: What guarantees do you
7 have that the valet parking that you're proposing
8 would be used by the tenants as opposed to simply
9 having them park on the street because they don't
10 like their cars being moved around?

11 MR. SAUL: I think I just testified that
12 we would put it in our lease as a requirement that
13 they park in the garage.

14 MS. NEWMARCK: A requirement they park
15 in the garage.

16 Well, what would happen if people didn't
17 move into your building for that reason? I mean,
18 would you then change that requirement?

19 MR. SAUL: I suppose we'd be stuck with
20 it.

21 MS. NEWMARCK: Be stuck with the
22 requirement? In other words, that that could be
23 made a condition of any approval order?

24 MR. SAUL: Right. Yes.

25 MS. NEWMARCK: Okay.

26 What would happen if it doesn't work

1 out? I mean, once the building is built, would it
2 be torn down if the valet parking system didn't
3 work?

4 MR. FEOLA: I object.

5 MS. NEWMARCK: I'm not going to have an
6 answer to that. I'll move on.

7 CHAIRPERSON BENNETT: Thank you.

8 MS. NEWMARCK: Okay. I'd like to direct
9 these questions to, I believe it was Mr. Cox that
10 testified about that model.

11 You testified that the zoo entrance was
12 330 feet south of the proposed new wing. Is that
13 correct?

14 MR. COX: No, that's not correct.

15 MS. NEWMARCK: Okay. Would you clarify
16 where that figure came from?

17 MR. COX: No, that's not correct. Wait
18 a minute. You said 380?

19 MS. NEWMARCK: I said 330.

20 MR. COX: Three hundred, and thirty,
21 that is correct.

22 MS. NEWMARCK: Now, you said that at
23 that distance, it wouldn't have an impact, is that
24 correct? It wouldn't have an impact on people
25 entering the zoo from that entrance?

26 MR. COX: In my opinion, yes.

1 MS. NEWMARCK: In your opinion.

2 In the slides that you showed us
3 earlier, the slides of buildings you said were
4 comparable height, tall, weren't they the buildings
5 down here?

6 MR. COX: They are the buildings here,
7 here, and then, of course, this one is also
8 comparable.

9 MS. NEWMARCK: Are you saying that you
10 didn't show pictures of these buildings in your
11 slides?

12 MR. COX: Yes, I did.

13 MS. NEWMARCK: You did.

14 Now, the buildings that are right across
15 from the Kennedy-Warren, you said these were four
16 story, right, and these are nine?

17 MR. COX: They are four stories with a
18 pitched roof which adds about 15 feet to the height.

19 MS. NEWMARCK: With a pitched roof. And
20 of course, the Kennedy-Warren has a roof too, right?

21 COMMISSIONER KRESS: In some locations,
22 yes.

23 MS. NEWMARCK: In some locations. Okay.

24 Can you tell me how one constructs a
25 model that makes a four story building look about
26 the same size as a nine story building?

1 COMMISSIONER KRESS: Are you questioning
2 that the model is not to scale?

3 MS. NEWMARCK: Yes, ma'am. Yes.

4 COMMISSIONER KRESS: I wouldn't allow
5 that.

6 MR. COX: The model is to scale. We
7 could actually take it out and you could check it.
8 It is about 50 -- to this point. If you actually
9 get down and look, you'll see that the Kennedy-
10 Warren is about that much taller which is three
11 stories. The model is --

12 COMMISSIONER KRESS: Could you tell us
13 when you construct a model -- just very briefly. We
14 have very little time --

15 MR. COX: Okay.

16 COMMISSIONER KRESS: -- but how you go
17 about ascertaining the heights and constructing a
18 model?

19 MR. COX: In the case of the Kennedy-
20 Warren, of course, we've got the drawings. What you
21 do here is since you don't have the drawings, you go
22 look at it. You estimate the height. Then when you
23 make the model, you actually lay out the pieces of
24 the model to scale and then construct it
25 accordingly. You don't just sort of eyeball it and
26 do it. You actually do it exactly to scale.

1 COMMISSIONER KRESS: Thank you.

2 MS. NEWMARCK: I saw you lift this up
3 before. It comes out, so I guess I could put it
4 next to it here.

5 MR. COX: This is ridiculous. The thing
6 is down in the ground. It would get across --

7 COMMISSIONER KRESS: Ms. Newmarck, where
8 are you going?

9 MS. NEWMARCK: I'm just trying to
10 ascertain this because, I mean, I can tell you, I've
11 stood here many times and looked at this building
12 and it's not -- that's not how it looks.

13 COMMISSIONER KRESS: Well, I am having a
14 very big problem with that. We have acknowledged
15 the Hartman-Cox firm as experts and I truly do
16 believe that, unless someone can prove to me
17 otherwise, that they are constructing this according
18 to all of the rules and regulations, if you will, of
19 height, bulk and massing that belong to a model. If
20 you can prove to us that there is something that is
21 inappropriate, we might hear that but otherwise, I
22 think we have to assume, since we've recognized them
23 as our experts, that what's being constructed here
24 is in appropriate height and scale.

25 MR. COX: Yes, Ms. Newmarck, this is
26 clearly higher than that. Your building has a very

1 high main story, three floors and then the pitch
2 roof. It's approximately 60 feet tall. I mean,
3 you're agreeing that that's true. This building is
4 90 feet high at this point. It's about 30 feet
5 higher. That's what the model shows if you put your
6 eye down and look at it.

7 MS. NEWMARCK: The model also shows the
8 trees on Connecticut Avenue practically diverging.
9 I mean, it looks as though a car driving down
10 Connecticut Avenue would be virtually on a country
11 road with no sunshine coming through. Can you tell
12 me how the trees were done? How it was decided to
13 have the trees converging?

14 COMMISSIONER FRANKLIN: Ms. Newmarck, I
15 for one, don't like this line of questioning because
16 I think you're trying to infer or imply, I should
17 say, that this model has been made for the purpose
18 of misleading this Commission and I don't believe
19 that it has been done for the purpose of misleading
20 this Commission. Furthermore, I think you are
21 defeating your case because you are objecting to
22 what, in my judgment, is a fair model but then
23 recognizing that it is not showing what you hope it
24 would show.

25 MS. NEWMARCK: Well, I --

26 COMMISSIONER FRANKLIN: Because it is

1 showing, in my judgment, exactly what is there on
2 the ground. Now, it may have more trees.
3 Architects like to have a few more trees usually in
4 models than there may be, but it is not something
5 that I regard as trying to mislead any of us as to
6 what is the reality on the ground.

7 MS. NEWMARCK: Well, I respectfully
8 apologize if my cross examination appeared out of
9 line. I mean, I do feel sort of that it's part of
10 what I need to do here which is to question the
11 model and ensure its accuracy. It was not intended
12 to suggest malfeasance and I apologize if that's the
13 way the Commission received it.

14 COMMISSIONER KRESS: Thank you.

15 MS. NEWMARCK: Mr. Cox, can you tell us
16 why the buildings immediately to the north of the
17 Kennedy-Warren are not on this model?

18 MR. COX: Because when we originally
19 made the model, it ended here. And having made all
20 of this, we didn't feel that it was necessarily
21 particularly important to make another block up
22 here. That was simply a judgment call.

23 MS. NEWMARCK: Do you know how tall the
24 buildings on Connecticut Avenue immediately to the
25 north of the Kennedy-Warren are?

26 MR. COX: Well, that's right. There's

1 no building immediately to the north. It's across
2 the park.

3 COMMISSIONER KRESS: How far away is the
4 next structure?

5 MR. COX: Three hundred and eighty feet.

6 COMMISSIONER KRESS: Three hundred and
7 eighty feet?

8 I think that's a reasonable reason why
9 that isn't on the model.

10 MS. NEWMARCK: Mr. Cox, can you tell us
11 how far down in the other direction the model goes?

12 MR. COX: Two blocks.

13 MS. NEWMARCK: Two blocks. And
14 according to your testimony, the zoo interest is 330
15 feet, right?

16 MR. COX: Right.

17 MS. NEWMARCK: Okay. So, we're talking
18 about six times as far, aren't we?

19 COMMISSIONER KRESS: Further than that
20 if that's 380 feet.

21 MS. NEWMARCK: No, this is 330, he said.

22 MR. COX: What's the question again?
23 How far north is the other building, the next
24 building up here?

25 MS. NEWMARCK: I'd simply like the
26 record to reflect that it goes many, many hundreds

1 of feet in the other direction and yet, the next
2 building up the road which is four stories on
3 Connecticut, isn't here.

4 COMMISSIONER KRESS: Correct. And
5 that's on a map behind you and that's on an exhibit.

6 MR. FEOLA: First of all, I'm going to
7 object. There's no evidence that it's four stories.
8 She just said it. Because she says it doesn't make
9 it evidence.

10 MR. DAVIDSON: I would also like to add
11 that this was actually a very conscious decision to
12 stop the model at this point. It had a lot to do
13 with the fact that Klinger Valley goes through at
14 this point. There's a very long bridge that goes
15 over Klinger Valley. What this Klinger Valley and
16 its bridge does is effectively act as a border to
17 all the Connecticut Avenue community which really
18 starts here and goes south.

19 What we tried to do with this model is
20 show the community of the Kennedy-Warren, the
21 buildings that are really associated with the
22 Kennedy-Warren. Once you cross this bridge in
23 Klinger Valley, you are into a very different
24 environment. You are into a retail, commercial
25 neighborhood. It's really a completely different
26 thing and it's not something that one should discuss

1 relative to the Kennedy-Warren building itself.

2 MS. NEWMARCK: Mr. Davidson, are you
3 aware of the numerous letters from residents of 3217
4 Connecticut, which is the building to the north,
5 opposing this expansion?

6 MR. FEOLA: He didn't testify to that.

7 MS. NEWMARCK: I was asking if he is
8 aware of it because he's talking about where the
9 community ends.

10 COMMISSIONER KRESS: He's objecting.

11 CHAIRPERSON BENNETT: He's objecting.
12 And if he didn't testify to it, he may or may not be
13 aware. So, why don't we move on to the next -- we
14 are the ones who should be aware.

15 MS. NEWMARCK: Okay.

16 COMMISSIONER FRANKLIN: While she's
17 looking at her notes, I might observe, as you
18 proceed south on Connecticut Avenue across Klinge
19 Valley, I think the massing of the Kennedy-Warren
20 and the massing of the Woodley Park Towers is about
21 the same in the sense of its general impact on the
22 urban feel, so-to-speak.

23 COMMISSIONER KRESS: We're talking from
24 an everyday commuter here.

25 MS. NEWMARCK: Yes. Yes. I think
26 that's a point we made in our presentation too, that

1 it is.

2 CHAIRPERSON BENNETT: Are you about to
3 wind up?

4 MS. NEWMARCK: Unfortunately, I'm not.
5 I have to be honest with you. There are three
6 witnesses here who testified to things we hadn't
7 heard before, and Mr. Sher and Mr. Slade who were
8 supposed to be the subject of today's cross exam
9 haven't been questioned yet.

10 MR. FEOLA: Madam Chairperson, their
11 whole testimony only took ten minutes. We've been
12 on cross examination for 35.

13 CHAIRPERSON BENNETT: Let's see if we
14 can be more efficient, please? We do have another
15 hearing and there are people who are going to be
16 coming here for that hearing, okay?

17 We also have a special meeting between
18 this and that.

19 MS. NEWMARCK: Yes, I realize. That was
20 my concern when this started.

21 For the record, I've been up here about
22 12 minutes. I don't know how long Mr. Mendelson was
23 here.

24 You stated that the Fine Arts Commission
25 approved the original concept. I don't remember who
26 stated that, but I'd like to ask whoever did whether

1 the Fine Arts Commission considered the impact on
2 the zoo?

3 COMMISSIONER FRANKLIN: By law, Madam,
4 they're supposed to.

5 MS. NEWMARCK: I know that, and that's
6 why I was asking if they did. Because I don't know
7 if they're aware that there is a letter in the file
8 from Carter Brown.

9 MR. FEOLA: Again, she's testifying.
10 They didn't testify to what was in the Fine Arts
11 Commission's mind and we wouldn't know unless the
12 Fine Arts Commission was here. The Fine Arts
13 Commission did approve this project. That's in the
14 record as well.

15 COMMISSIONER KRESS: I agree.

16 MS. NEWMARCK: Mr. Davidson, you
17 testified that the lawn was 22,000 feet as opposed
18 to 34,000. Could you show us how you calculated the
19 22,000?

20 COMMISSIONER KRESS: I don't know if we
21 have enough time for the whole calculation.

22 MS. NEWMARCK: Well, just the places he
23 counted is what I want.

24 COMMISSIONER KRESS: Perhaps Mr.
25 Davidson could be very brief and just talk about --
26 I assume that we're talking about the architectural

1 and planning standards for how one calculates the
2 space. Maybe you could be very brief and say it
3 very quickly, just for the record?

4 MR. DAVIDSON: It may be a semantic
5 problem. The south wing sits on approximately
6 34,000 square feet of land. About 12,000 square
7 feet of that land is currently ramp and other areas
8 which are paved and not really green space. The
9 lawn area which is in front of the building, or to
10 the south of the existing building that people can
11 actually walk on and that people can see from
12 Connecticut Avenue is 22,000 square feet.

13 MS. NEWMARCK: So, you're saying that
14 you measured the part of the lawn that people can
15 see from Connecticut Avenue?

16 MR. DAVIDSON: You said that the lawn --
17 you referred to the lawn, so I measured the lawn
18 which is where the trees and the grass are, the
19 green space.

20 MS. NEWMARCK: Could you tell us how you
21 measured the 10,200 square feet that you calculated
22 to be the grassy part of the driveway?

23 COMMISSIONER KRESS: Very brief -- I'm
24 sorry. I'm not trying to shorten this. I am trying
25 to shorten this.

26 MR. DAVIDSON: The entire courtyard area

1 in the entrance courtyard is about 18,000 square
2 feet. From that, I subtracted all of the driveway
3 and all of the sidewalk that leads to the main
4 entrance, which leaves the perimeter plantings
5 beside the building all the way around, as well as
6 the central courtyard space, as well as a small six
7 to ten foot area in front of the wall in the center.
8 Those areas added up, came to 10,200.

9 COMMISSIONER KRESS: Is this standard in
10 the industry to make calculations like this?

11 MR. DAVIDSON: Good heavens, no.

12 COMMISSIONER FRANKLIN: In other words,
13 were you subtracting the hardscape and just
14 measuring the green area?

15 MR. DAVIDSON: I was subtracting all of
16 the hardscape occupied -- I was subtracting the
17 roadway and the sidewalk that lead from the
18 Connecticut Avenue sidewalk to the entrance. There
19 are small pieces of what might be considered
20 hardscape, that is small walks two feet wide or so,
21 within a couple of the planted areas that I threw
22 into the green area.

23 MS. NEWMARCK: So then, it's your
24 testimony that the green space that is in or about
25 the driveway is half the size of the lawn that this
26 building will replace?

1 COMMISSIONER KRESS: Ms. Newmarck, I
2 would just say I think the drawings reflect that. I
3 think that the model reflects that. I'm not quite
4 sure the point you're trying to make. We can argue
5 a lot about what actual square footages are, but as
6 we look to make our judgments, I think we can see it
7 from the model. I think we can see it from the
8 plan. Knowing what you've pointed out to us, and I
9 think rightly so, you were very wise to point out to
10 us that some of these parking decks go above ground
11 and that we should look at that carefully no matter
12 how that's defined. I think you've made your point
13 that that's something that we should look very
14 closely at. I'm just not sure that all this
15 questioning is getting us anywhere.

16 MS. NEWMARCK: Okay. Yes, I think --
17 and that was a different point too, I might add,
18 because this really goes to how much green space
19 will be left. That went to the footprint and the 59
20 percent figure that they gave.

21 Which actually brings me to my next
22 question which is, you stated that you came out with
23 59 percent again and I would like to know whether
24 you considered this time, those in-fill structures
25 that we showed slides of at the last hearing? In
26 other words, did you count the spaces in here which,

1 in fact, have structure in them?

2 MR. DAVIDSON: Those three spaces are
3 not in the lot coverage calculation, no.

4 MS. NEWMARCK: Why is that?

5 MR. DAVIDSON: Lot coverage is
6 calculated according to the zoning regulations, of
7 course.

8 MS. NEWMARCK: That's right. But --

9 COMMISSIONER KRESS: That's why you were
10 right to point that out to us. They are doing the
11 lot coverage by the standard zoning calculations and
12 you've pointed out that that may be somewhat
13 misleading in how these spaces are handled. I think
14 you were appropriate to do that.

15 MS. NEWMARCK: Well, perhaps that would
16 be something to respond to in writing as a legal
17 matter later.

18 MR. FEOLA: No, I don't think. She
19 made her statement. She made her comments. She had
20 her experts up here. Our expert says differently.
21 I mean, there's just a difference of opinion.

22 COMMISSIONER KRESS: It's not
23 differently. It's a matter of the code and how the
24 code interprets it, and she's making an observation,
25 I think, from a person who might view it.

26 I just don't see this as a big issue.

1 I'm sorry. I would prefer to move on if that's
2 possible.

3 I'm sorry --

4 CHAIRPERSON BENNETT: Oh, no, no.
5 You're doing quite well.

6 MS. NEWMARCK: Okay. I believe this is
7 all that I have for these witnesses. I have some
8 questions for Mr. Slade and for Mr. Sher.

9 CHAIRPERSON BENNETT: Okay.

10 Thank you, gentlemen.

11 COMMISSIONER KRESS: Yes, go ahead.

12 CHAIRPERSON BENNETT: Did the ANC want
13 to cross examine these gentlemen first?

14 MR. MENDELSON: At this point, the ANC
15 has no questions.

16 CHAIRPERSON BENNETT: All right, thank
17 you.

18 COMMISSIONER KRESS: Thank you.

19 I'm sorry. I thought you still had a
20 statement to say.

21 I'd really like to help you. You might
22 want to pull up that podium behind you. It will
23 take two seconds. You have a lot of papers and I
24 think it's kind of awkward to try to handle all of
25 that. That's good.

26 MS. NEWMARCK: Thank you.

1 Mr. Slade, you stated in rebuttal that
2 Cathedral Park's Kennedy Warren parking survey, you
3 said the size of the sample was too small? Do you
4 remember that?

5 MR. SLADE: I don't remember that I said
6 the sample was too small. I felt that there was an
7 obvious error in the results. There is an obvious
8 error in the results and it could have to do with
9 sample size.

10 MS. NEWMARCK: You said that the rate of
11 return wasn't high enough. Do you recall that?

12 MR. SLADE: I don't recall.

13 MS. NEWMARCK: Do you believe a higher
14 rate of return would yield more reliable results?

15 MR. SLADE: Rate of return isn't
16 necessarily the problem. The problem is that there
17 is a clear error in the results.

18 MS. NEWMARCK: What's the clear error?

19 MR. SLADE: The results show that 238
20 cars are currently registered to park in a garage
21 that doesn't have a capacity for that.

22 MS. NEWMARCK: Are you referring to your
23 extrapolation that you did?

24 MR. SLADE: No, your extrapolation.

25 MS. NEWMARCK: Could you point me to the
26 place where we say that there are 238 cars in the

1 garage?

2 MR. SLADE: You want me to find the
3 place in your report?

4 MS. NEWMARCK: That's right.

5 MR. SLADE: I used your percentages of
6 total cars owned and cars parked in the garage to
7 calculate that number and it was -- it was 268,
8 actually.

9 MS. NEWMARCK: That was your calculation
10 though, right?

11 MR. SLADE: Yes.

12 MS. NEWMARCK: Okay. Now, you didn't
13 survey the Kennedy-Warren tenants on their parking
14 habits at all, did you?

15 MR. SLADE: We obtained data regarding
16 cars registered in the garage directly from Kennedy-
17 Warren's files on tenants' cars registered in the
18 garage. We had factual information on how many cars
19 were registered.

20 MS. NEWMARCK: Did you survey the
21 tenants?

22 MR. SLADE: No.

23 MS. NEWMARCK: Okay. But your client
24 could easily have performed a survey of its own
25 tenants, couldn't they?

26 MR. FEOLA: Objection. Objection.

1 We've been through this before.

2 COMMISSIONER FRANKLIN: That's
3 argumentative, Ms. Newmarck.

4 MS. NEWMARCK: Could your client have
5 performed a parking survey of their tenants?

6 MR. SLADE: I don't know.

7 MS. NEWMARCK: You don't know. Did you
8 consider doing that?

9 MR. SLADE: No.

10 MS. NEWMARCK: Why not?

11 MR. SLADE: Because of the kinds of
12 problems you had with it. You can't expect to get
13 accurate results in an emotionally charged situation
14 like this case has been.

15 MS. NEWMARCK: Don't you do that all the
16 time?

17 MR. SLADE: Not if the situation is like
18 this, never if it's like this.

19 MS. NEWMARCK: So, you don't take
20 surveys in zoning cases?

21 MR. SLADE: Yes, we do.

22 MS. NEWMARCK: Well, aren't there always
23 two sides of the coin?

24 MR. SLADE: Yes, there are. But we
25 wouldn't survey a group of people that we were in
26 the middle of a negotiation with.

1 MS. NEWMARCK: What emotion do you feel
2 was charged with the Kennedy-Warren tenants?

3 MR. SLADE: Pardon?

4 MS. NEWMARCK: What was the emotional
5 charge with the Kennedy-Warren tenants?

6 MR. SLADE: I have no idea. What do I
7 think the --

8 MS. NEWMARCK: You have no idea?

9 MR. SLADE: -- emotional charge was?

10 MR. FEOLA: I'm going to object.

11 COMMISSIONER FRANKLIN: Let's not debate
12 this issue, Ms. Newmarck, please.

13 CHAIRPERSON BENNETT: For real, it's not
14 helping us. I mean, the point of cross examination
15 is to help clarify information for use by the
16 Commission in making its decision.

17 MS. NEWMARCK: I'd like to point out
18 that in Mr. Slade's testimony for which we have the
19 transcript, it states on page 189, lines two through
20 seven, "I think the point simply is that when you
21 take a sample like this and you get a 19 percent
22 return, you try to stratify it and see how many are
23 parking out of that 19 percent. In and out of the
24 building, you get very small results in each of the
25 stratifications. Then you try to extrapolate it
26 back up to the total numbers and it throws your

1 results off in another direction."

2 Are you aware that Cathedral Park
3 approached your client about performing a parking
4 survey and your client was uninterested?

5 MR. FEOLA: Objection.

6 MS. NEWMARCK: Basis?

7 MR. FEOLA: He didn't testify to
8 anything about this.

9 CHAIRPERSON BENNETT: He didn't testify
10 to that.

11 MS. NEWMARCK: He testified that the
12 survey we performed was inadequate. This is
13 entirely within --

14 MR. FEOLA: Ask him a question about the
15 survey, not about --

16 MS. NEWMARCK: -- the scope of what he
17 testified.

18 MR. FEOLA: -- what your approach --
19 was.

20 MS. NEWMARCK: Mr. Feola, you know that
21 this is well within the scope of what he testified
22 to.

23 MR. FEOLA: It is not.

24 CHAIRPERSON BENNETT: Ms. Newmarck and
25 Mr. Feola, can we please keep our eye on the prize.
26 We have two other things happening this evening.

1 I mean, I think you were clear about the
2 statements that you wanted to make and the
3 impression you wanted to leave with us. At some
4 point, you all are going to have to trust us to use
5 our discretion to come to a decision here.

6 MS. NEWMARCK: But I would like to
7 proffer that what I'm trying to show is that they
8 had access to data and didn't use it and didn't
9 gather it.

10 MR. FEOLA: Again, she's testifying.
11 She has no basis that we had access to any data.

12 MS. NEWMARCK: I'm making a proffer
13 because I haven't been allowed to ask a question.
14 That is exactly what the Court of Appeals says one
15 should do in this situation.

16 MR. FEOLA: Do you have evidence that we
17 had that evidence, Madam?

18 MS. NEWMARCK: I offered it to you. I
19 have the letter.

20 MR. FEOLA: What letter? There's no
21 survey that was done except your survey. We have no
22 evidence --

23 MS. NEWMARCK: And I offered you the
24 results and you didn't want them.

25 MR. FEOLA: You gave us the results last
26 time.

1 MS. NEWMARCK: I gave them to you now,
2 right. You were not interested. Will you stipulate
3 to that?

4 MR. FEOLA: I'm not sure what you're
5 talking about.

6 MS. NEWMARCK: Will you stipulate to the
7 fact that you were not interested in looking at our
8 data?

9 MR. FEOLA: No.

10 MS. NEWMARCK: Well then, I have to make
11 a proffer and I've made it.

12 MR. FEOLA: A proffer of what? I'm not
13 sure what you're saying. This is really ridiculous.

14 CHAIRPERSON BENNETT: And I don't mean
15 any harm, but I'm not sure any of this is helping me
16 make a decision about this case.

17 MS. NEWMARCK: I can't say that I blame
18 you. This is not helping any of us.

19 CHAIRPERSON BENNETT: So, I would
20 appreciate it if you would move on to the next
21 question.

22 MS. NEWMARCK: Yes, ma'am.

23 In terms of your parking data, you
24 submitted supplemental parking data. You have
25 several tables that show the number of cars parked
26 in the garage. Is there anywhere on there where you

1 show the total number of cars?

2 MR. SLADE: I don't know which document
3 you're referring to. I'm looking.

4 MS. NEWMARCK: Okay, if you go to the
5 addendum that you submitted last time, it's a
6 parking addendum, and it's got tables in it. It's
7 Exhibit 237, it looks like.

8 MR. SLADE: Okay.

9 MS. NEWMARCK: Okay, and if you go to
10 the very first table, Table 1, it says, "the total
11 cars parked in the garage." Then it has a figure
12 that was extrapolated. Is there anywhere on here
13 that it has the total number of cars owned by the
14 Kennedy-Warren tenants?

15 MR. SLADE: On Table 1? Are you asking
16 just on Table 1?

17 MS. NEWMARCK: First on Table 1 and then
18 at all?

19 MR. SLADE: This is cars registered in
20 the garage by tenants who moved in in the last five
21 years.

22 MS. NEWMARCK: Okay. But this doesn't
23 tell you about tenants who have cars that are not in
24 the garage, for example, on the street. Is that
25 correct?

26 MR. SLADE: Correct.

1 MS. NEWMARCK: Okay. Is there anything
2 in this document that tells you about the total
3 number of cars? The cars that are on the street, in
4 other places? The cars that are owned as opposed to
5 just in the garage?

6 MR. SLADE: No, it's only cars that are
7 in the garage.

8 MS. NEWMARCK: Okay. So, really then,
9 there's no way of knowing from this information how
10 many cars are on the street or in other places than
11 the garage, right?

12 MR. SLADE: There is no way -- we did
13 not estimate in this document how many cars are
14 parked on the street by tenants, correct.

15 MS. NEWMARCK: Okay. So then, there's
16 no way of knowing from here whether the amount of
17 garage spaces are sufficient, is that right?

18 MR. SLADE: We believe that we have
19 interpreted the information about registration in
20 the garage accurately enough to determine that what
21 is being proposed for parking is sufficient.

22 MS. NEWMARCK: That's not my question.
23 My question is how can one determine from this
24 document whether there are 500 cars on the street or
25 five cars on the street? This only shows what's in
26 the garage, right?

1 MR. SLADE: Yes.

2 MS. NEWMARCK: Okay. What's more, does
3 this refer anyplace to the fact that there is a
4 waiting list to get into the garage?

5 MR. FEOLA: Objection. He never
6 testified to waiting lists. You had an opportunity
7 to ask the people that would know about waiting
8 lists when they were up here.

9 MS. NEWMARCK: I'm asking if this takes
10 it into account.

11 MR. FEOLA: Madam Chairperson, I'm
12 sorry, but you know, they asked for more parking.
13 We gave them more parking. We gave them more than
14 Mr. Petersen wanted with the valet and now we're
15 going to argue about whether or not they have to
16 blast to do it. Whether or not -- I don't see the
17 point, quite frankly.

18 CHAIRPERSON BENNETT: I understand your
19 frustration. Does the document that she has in her
20 hand take into account --

21 What is it?

22 MS. NEWMARCK: Waiting list.

23 CHAIRPERSON BENNETT: The waiting list?
24 It either does or it doesn't.

25 MR. SLADE: It does not.

26 CHAIRPERSON BENNETT: It does not.

1 Okay.

2 Next question.

3 MS. NEWMARCK: I'd like to refer your
4 attention to Table number 3. Now, Table number 3
5 appears to be parking space utilization at
6 comparable DC Northwest buildings, is that right?

7 MR. SLADE: They were buildings that
8 were cited to us.

9 MS. NEWMARCK: That were cited to you?

10 MR. SLADE: Yes.

11 MS. NEWMARCK: Okay. But you've got it
12 labeled "comparable buildings"?

13 MR. SLADE: Right, cited to us by others
14 as comparable.

15 MS. NEWMARCK: Okay. And the buildings
16 you're talking about are the Saratoga, McClain
17 Gardens, Village Tower, 2501 Porter, right?

18 MR. SLADE: Yes.

19 MS. NEWMARCK: Okay. Kennedy-Warren is
20 not on this list, right?

21 MR. SLADE: Right.

22 MS. NEWMARCK: Okay. Now, I notice that
23 this list has a -- waiting list and unused parking.

24 MR. SLADE: Yes.

25 MS. NEWMARCK: Why did you include
26 waiting list data for these other buildings, but not

1 for the Kennedy-Warren?

2 MR. SLADE: It's my understanding
3 there's no waiting list for parking at the Kennedy-
4 Warren.

5 MR. FEOLA: This was testified to by Mr.
6 Saul at the first session.

7 MS. NEWMARCK: Well, let's say there was
8 at best, conflicting testimony on the point.

9 CHAIRPERSON BENNETT: All right, let's
10 stipulate that and move on, please.

11 MS. NEWMARCK: All right.

12 Mr. Slade, have you had an opportunity
13 to look at the data from our parking survey?

14 MR. SLADE: Yes.

15 MS. NEWMARCK: You have. Did you notice
16 there's a question asking if people are on the
17 waiting list for parking?

18 MR. SLADE: Yes, I did.

19 MS. NEWMARCK: Did you notice how many
20 said they're on the list?

21 MR. SLADE: I don't recall the number,
22 but I think this is a semantical item again.

23 MS. NEWMARCK: It's semantics?

24 MR. SLADE: Yes.

25 MS. NEWMARCK: Okay, but there were a
26 number of people that think they're on the waiting

1 list, right?

2 MR. SLADE: They're parking in the
3 garage though. Their cars are being parked in the
4 garage while they're waiting for reserved spaces.

5 MS. NEWMARCK: So, those would be the
6 people that are parking in the unreserved spaces?

7 MR. SLADE: I believe so.

8 MR. FEOLA: Madam Chairperson, first of
9 all, we have never seen Ms. Newmarck's parking
10 survey data sheets.

11 MS. NEWMARCK: Mr. Slade just said he
12 did.

13 MR. SLADE: I didn't see the data
14 sheets, but I saw the summary tables.

15 MS. NEWMARCK: Okay. The data sheets,
16 by the way -- the specific ones were submitted at
17 the beginning of the hearing.

18 CHAIRPERSON BENNETT: Right. We have
19 those.

20 MS. NEWMARCK: But this is not going to
21 be very different.

22 Mr. Slade, you criticized the car owner
23 ratio that our survey yielded. What car owner ratio
24 did you find?

25 MR. SLADE: We didn't find a car owner
26 ratio within the building.

1 MS. NEWMARCK: And why was that?

2 MR. SLADE: Pardon? I'm sorry, I didn't
3 understand.

4 MS. NEWMARCK: And why is that?

5 MR. SLADE: We -- and I wasn't
6 criticizing the car ownership ratio in your data. I
7 was questioning the cars parked in the garage
8 estimated by your data, which was about 68 cars more
9 than are parked in the garage.

10 MS. NEWMARCK: But you didn't find any
11 car owner ratio, right?

12 MR. SLADE: We looked at the US census
13 information to confirm the car ownership information
14 that we were surmising from our data.

15 MS. NEWMARCK: Surmising, thank you.

16 Now, this report of yours shows that the
17 Kennedy-Warren garage is currently utilized to its
18 full capacity, right?

19 MR. SLADE: There are very large periods
20 of time when there are great vacancies in the
21 garage. But if you mean is it fully utilized at any
22 point of the day? There are times when it is fully
23 utilized, yes.

24 MS. NEWMARCK: I mean, can somebody get
25 a reserved parking space today if they want one?

26 MR. SLADE: No.

1 MS. NEWMARCK: Okay. Does this data
2 show how many tenants are unable to park in the
3 garage?

4 MR. SLADE: The data that you're holding
5 up, again, is my report?

6 MS. NEWMARCK: Yes, your report.

7 MR. SLADE: It does not because there is
8 not a waiting list to park in the garage.

9 MS. NEWMARCK: I'm sorry. It does not
10 because there's not a waiting list? You mean, the
11 only way you could show how many tenants are unable
12 to park in the garage is through a waiting list?
13 Isn't it a fact that the reason it doesn't show it
14 is because you didn't look for that data?

15 MR. SLADE: Let's go back to the
16 beginning. I don't understand the question.

17 MS. NEWMARCK: The question was, does
18 this show how many tenants are unable to park in the
19 garage?

20 MR. FEOLA: I think we're still --

21 MS. NEWMARCK: It's a yes or no
22 question. It's pretty simple.

23 MR. FEOLA: Madam Chairperson, we're
24 going around in circles.

25 CHAIRPERSON BENNETT: I'm sorry. We've
26 got something else going here. I've kind of got one

1 ear over here and one ear over here.

2 MR. FEOLA: It's officially an objection
3 to the whole line of questioning.

4 CHAIRPERSON BENNETT: Because it's
5 duplicative, you think?

6 MR. FEOLA: Yes.

7 MS. NEWMARCK: Does this show how many
8 Kennedy-Warren tenants park on the street?

9 MR. SLADE: No.

10 MS. NEWMARCK: Does this show how many
11 Kennedy-Warren tenants are waiting for garage
12 spaces? You're right. I already
13 asked that. I withdraw the question. It doesn't.
14 We talked about that.

15 Does it show how many Kennedy-Warren
16 tenants park in reserved versus unreserved spaces?

17 MR. SLADE: No.

18 MS. NEWMARCK: Does it account for
19 visitors?

20 MR. SLADE: No.

21 MS. NEWMARCK: In your expert
22 professional opinion, does this data show anything
23 about Kennedy-Warren tenant parking other than the
24 fact that the existing garage is fully utilized?

25 MR. SLADE: Yes.

26 MS. NEWMARCK: What does it show?

1 MR. SLADE: It, taken with the fact that
2 there's no one on the waiting list, shows that
3 there's 199 cars being parked by tenants in the
4 garage who wish to park in the garage.

5 MS. NEWMARCK: So then, would it be
6 accurate to say that your testimony is --

7 MR. SLADE: And when compared with the
8 US census data, it is extremely consistent with
9 ownership figures for the neighborhood.

10 MS. NEWMARCK: So, would it be accurate
11 to say that your testimony is premised on the
12 absence of a waiting list?

13 MR. SLADE: That is a building block in
14 the conclusion I drew, yes.

15 MS. NEWMARCK: Okay, thank you.

16 Mr. Slade, do you believe that the valet
17 parking plan proposed would work?

18 MR. SLADE: Yes.

19 MS. NEWMARCK: Okay. Would it surprise
20 you to learn that the tenants in the building who
21 responded to the parking survey are concerned about
22 the impact on their engines --

23 MR. FEOLA: Objection.

24 MS. NEWMARCK: -- and on their cars of
25 having their cars moved around?

26 MR. FEOLA: Objection. Speculation.

1 CHAIRPERSON BENNETT: He did not testify
2 to that.

3 MS. NEWMARCK: He testified that he
4 thought it would work. I'm asking him whether he's
5 considered that factor.

6 CHAIRPERSON BENNETT: Did you consider
7 that factor?

8 Could you state the factor again?

9 MS. NEWMARCK: The factor being that the
10 tenants in the building are reluctant to have their
11 cars getting moved around because --

12 MR. FEOLA: -- responded to the survey,
13 Madam Chair --

14 MS. NEWMARCK: -- of the impact it has
15 on the engine?

16 MR. FEOLA: -- is the correct question.

17 MS. NEWMARCK: That's fine. You can
18 respond to Mr. Feola's question. I'll take either
19 one.

20 COMMISSIONER FRANKLIN: But where in the
21 record, madam, is there any evidence that the
22 tenants would be concerned by attendant parking?

23 MS. NEWMARCK: I'm glad you asked that
24 question.

25 COMMISSIONER FRANKLIN: Was it testified
26 to by any of the gentlemen that you're cross

1 examining?

2 MS. NEWMARCK: No, not testified by
3 them, by the tenants.

4 COMMISSIONER FRANKLIN: Well --

5 MS. NEWMARCK: That's where, in the
6 record, there's evidence --

7 MR. FEOLA: But the tenants didn't
8 testify.

9 MS. NEWMARCK: -- that the tenants are
10 concerned.

11 MR. FEOLA: There was not one tenant
12 that came and stood at this microphone. This is Ms.
13 Newmarck's survey that she hasn't shown us yet, that
14 we don't know what's in it.

15 MS. NEWMARCK: Come on.

16 MR. FEOLA: I'll just look through it in
17 the next three minutes. No, take that away.
18 Really, this is really silly.

19 Her expert said we needed 240 parking
20 spaces. We're providing 205 fixed spaces --

21 MS. NEWMARCK: Excuse me. There's no
22 question pending. I object to Mr. Feola -- there's
23 no
24 -- there's --

25 MR. FEOLA: There's 100 valet spaces.
26 That's 305 spaces. That means --

1 MS. NEWMARCK: There's no question
2 pending.

3 MR. FEOLA: -- experts.

4 MS. NEWMARCK: Mr. Feola is testifying.
5 There is no question pending.

6 CHAIRPERSON BENNETT: Ms. Newmarck,
7 you've done your share of testifying too.

8 MS. NEWMARCK: I'm a party.

9 CHAIRPERSON BENNETT: Let's get to the
10 heart of this, please. I'm not learning very much
11 here.

12 MS. NEWMARCK: Mr. Slade, on what do you
13 base your contention that owner-occupied units have
14 a higher car ownership ratio than rental units?

15 MR. SLADE: The Institute of
16 Transportation Engineers. Two references published
17 by the Institute of Transportation. I can't recall
18 the titles right now, but it's a well documented
19 fact.

20 MS. NEWMARCK: It's a well documented
21 fact that owner-occupied units have a higher car
22 ownership ratio than rental units?

23 MR. SLADE: Yes.

24 MS. NEWMARCK: Does that include
25 condominiums?

26 MR. SLADE: Yes.

1 MS. NEWMARCK: Would you be able to find
2 that cite and provide it to us?

3 MR. SLADE: Yes.

4 MS. NEWMARCK: Thank you.

5 At this point, I believe that's all the
6 questions that I have for Mr. Slade. However,
7 before leaving the parking area, I would like to ask
8 for Mr. Slade's raw parking data. We provided ours
9 in the record. I'd like to see theirs as well,
10 whatever it was that he based his statistics on.

11 MR. FEOLA: It's already in the record.
12 It's part of the pre-hearing submission. In the
13 addendum, that was provided.

14 MS. NEWMARCK: The original data is?

15 MR. FEOLA: Yes, it is.

16 MS. NEWMARCK: The five years of going
17 back to the tenants? The records are in there?

18 MR. FEOLA: Oh, for the addendum?

19 MS. NEWMARCK: Yes.

20 MR. FEOLA: No.

21 MS. NEWMARCK: Okay, can we get that,
22 please?

23 MR. FEOLA: Sure.

24 MS. NEWMARCK: Okay.

25 And the one other thing is, we would
26 like an opportunity to respond in writing to the

1 valet parking plan. This is not something that we
2 were able to present in our case in chief because it
3 has only come up now. There is evidence in the
4 record of tenants that are opposed to it. There are
5 a lot of considerations as to whether it would work
6 or wouldn't work and we'd like an opportunity to --

7 CHAIRPERSON BENNETT: You may submit it
8 to the record.

9 MS. NEWMARCK: -- submit something.
10 Thank you.

11 CHAIRPERSON BENNETT: Can we get to the
12 next set of questions, please?

13 MS. NEWMARCK: Yes, ma'am.

14 CHAIRPERSON BENNETT: It's 7:00 and we
15 have two other agenda items.

16 MS. NEWMARCK: Before I begin with Mr.
17 Sher, does the ANC have any questions for him?

18 MR. MENDELSON: No.

19 MS. NEWMARCK: Thank you.

20 Mr. Sher, are you an attorney?

21 MR. SHER: For the record, no, ma'am.

22 MS. NEWMARCK: Okay. You're with the
23 law firm of Wilkes and Artis though, right?

24 MR. SHER: I am the director of zoning
25 services with the law firm of Wilkes, Artis, Hedrick
26 & Lane. They'd be mad at me if I didn't put all

1 four names in.

2 MS. NEWMARCK: Okay. And they're the
3 law firm that represents the applicant, right?

4 MR. SHER: Last time I looked.

5 MS. NEWMARCK: Okay. But you're here
6 testifying as an expert witness, right?

7 MR. SHER: I believe I am.

8 MS. NEWMARCK: Okay. You stated at the
9 last hearing, and I'm quoting from page 192 of the
10 transcript, "we asked people to bring us housing.
11 That's what they brought us."

12 Who are the "we" and the "us"?

13 MR. SHER: I believe I was speaking to
14 the "we" colloquially, being the District of
15 Columbia and the Zoning Commission specifically.

16 MS. NEWMARCK: Okay. Now, you stated
17 also that the land use map shows much of Connecticut
18 Avenue to be high density residential. I assume
19 you're talking about the brown areas on that map, is
20 that right?

21 MR. SHER: Yes, ma'am.

22 MS. NEWMARCK: Okay. Isn't it true that
23 those brown areas which you call high density
24 residential represent R-5-D as well as R-5-E zoning?

25 MR. SHER: Well, the land use map -- the
26 generalized land use map of the comprehensive plan

1 is not a zoning map. If one were to compare the
2 land use map to the zoning map, you would find lots
3 of different districts that are encompassed within
4 that designation shown as high density residential.
5 It would include both R-5-D and R-5-E and probably
6 others.

7 MS. NEWMARCK: Thank you.

8 And isn't it true that not a single one
9 of those brown areas on the Connecticut Avenue
10 corridor is R-5-E?

11 MR. SHER: Yes, that's correct.

12 MS. NEWMARCK: Okay. In fact, R-5-E is
13 the highest residential zone, isn't it?

14 MR. SHER: That's correct.

15 MS. NEWMARCK: Can you point to an R-5-E
16 building anywhere in Ward 3?

17 MR. FEOLA: Objection. He didn't
18 testify to that.

19 MS. NEWMARCK: Oh, yes, he did. He
20 absolutely did. If you'd like me to pull out the
21 reference from the transcript --

22 MR. FEOLA: No, no, he said he didn't
23 know. He didn't know whether there was one or not
24 is what he said.

25 CHAIRPERSON BENNETT: That's right.

26 COMMISSIONER FRANKLIN: He still doesn't

1 know.

2 MS. NEWMARCK: You don't know, Mr. Sher?

3 MR. SHER: I still don't know all of the
4 densities of all of the apartment buildings in Ward
5 3. I haven't learned it since the last time.

6 MS. NEWMARCK: Would it surprise you if
7 I told you that I looked at the zoning map --

8 MR. FEOLA: Objection.

9 MS. NEWMARCK: -- and didn't see one?

10 MR. FEOLA: Objection.

11 CHAIRPERSON BENNETT: Let's move on to
12 the next question. His answer to your question is
13 he still doesn't know, all right?

14 MS. NEWMARCK: But you are an expert in
15 land use, right, Mr. Sher?

16 MR. SHER: This Commission has
17 threatened to tell me no from time to time, but the
18 last few times I've been down here, the answer is
19 yes.

20 MS. NEWMARCK: Okay. Can you point to
21 an R-5-E building anywhere in the District that has
22 a FAR of more than 6.29?

23 MR. SHER: I'll stand by my answer to
24 the previous question. I don't know the FARs of all
25 of the apartment buildings in the District of
26 Columbia.

1 MS. NEWMARCK: Does that mean your
2 answer is no?

3 CHAIRPERSON BENNETT: It means he
4 doesn't know all of the FARs of all of the apartment
5 buildings in the District of Columbia that are R-5-E
6 or probably any other zone classification.

7 MS. NEWMARCK: Madam Chairperson, I
8 didn't ask him if he knew all of them. I just asked
9 if he was able to point to one that's higher than a
10 6.29 Far, a residential building.

11 CHAIRPERSON BENNETT: Are you able to
12 point to one that is higher?

13 MR. SHER: In an R-5-E zone, I don't
14 know of one offhand.

15 CHAIRPERSON BENNETT: All right then.

16 MS. NEWMARCK: Now, you stated that the
17 regulations allow a 90 foot height on both sides of
18 Connecticut Avenue, do you remember that? From
19 Woodley Road to Macomb were your words, and you even
20 said including Cathedral Park. Do you recall that?

21 MR. SHER: From Woodley Road to -- I
22 held up a copy of the zoning map. I'd have to get
23 the map out shown over there to be sure that we're
24 talking about the same streets. But the area that I
25 had shown colored in brown on that map is R-5-D
26 which permits a 90 foot height as a matter of right.

1 I can get the map out and hold it up again.

2 MS. NEWMARCK: Yes, I don't think that's
3 necessary. But are you suggesting that you don't
4 recall testifying that those are all R-5-D from
5 Woodley Road to Macomb Street?

6 MR. SHER: In the --

7 MS. NEWMARCK: Would it refresh your
8 recollection to see the transcript of your
9 testimony?

10 MR. SHER: No -- refresh my recollection
11 to see what?

12 CHAIRPERSON BENNETT: Hold on. Don't
13 talk off the record, Mr. Sher.

14 For those of you who are here for the
15 7:00 hearing, we ask your forgiveness and we hope to
16 be getting to that case shortly.

17 MR. SHER: Okay. I'm looking at the map
18 that I held up the last time. From Woodley Road to
19 Macomb Street is zoned R-5-D with the exception of
20 the C-2A portion that is immediately opposite the
21 main entrance to the zoo. I don't know what exhibit
22 number this is in the record, but this is the map I
23 help up and that's what is the official zoning map.

24 MS. NEWMARCK: Excuse me, but could you
25 read what it says on the west side of Connecticut?
26 I believe you're looking at the east, but what does

1 it say on the west?

2 MR. SHER: On the west, it says R-5-D.

3 I mean, the line goes across the west side as well
4 as to the east.

5 MS. NEWMARCK: How about the buildings
6 on the west as opposed to Connecticut Avenue itself?

7 MR. SHER: Oh, once you get back off
8 Connecticut Avenue, it's R-5-B, just like it's R-5-A
9 on the other side; R-3 over here.

10 MS. NEWMARCK: Right.

11 MR. SHER: But on Connecticut Avenue in
12 this vicinity -- I mean, here's the map. It's in
13 the record.

14 MS. NEWMARCK: Can you tell from this
15 map what Woodley Park Towers and Cathedral Park are
16 zoned?

17 MR. SHER: By Cathedral Park, do you
18 mean the condominium directly across from the
19 Kennedy-Warren? It's R-5-D on the front and -- on
20 the Connecticut Avenue frontage and R-5-B behind it.
21 And Woodley Park Towers, I guess is R-5-B, to my
22 recollection.

23 MS. NEWMARCK: Thank you. Thank you.

24 MR. SHER: So, I take it, whatever. I
25 got hung on it.

26 MS. NEWMARCK: Okay. Now, you made much

1 of the fact that both R-5-D and R-5-E allow a 90
2 foot height, but they have different maximum FARs,
3 don't they?

4 MR. SHER: Yes.

5 MS. NEWMARCK: R-5-D is a 3.5 maximum,
6 right?

7 MR. SHER: Correct.

8 MS. NEWMARCK: And R-5-E is 6.0, right?

9 MR. SHER: Yes.

10 MS. NEWMARCK: So, a 90 foot building in
11 an R-5-E zone can cover significantly more of its
12 lot than a 90 foot building in an R-5-D zone, right?

13 MR. SHER: No.

14 MS. NEWMARCK: No? How can that not be
15 the case?

16 MR. SHER: The maximum permitted lot
17 occupancy in both zones is 75 percent.

18 MS. NEWMARCK: That's correct. But if
19 the maximum density is only 3.5 in one and 6.0 in
20 the other, wouldn't it stand to reason that a higher
21 building can fill up a lot more of its lot on the
22 one than on the other?

23 MR. SHER: It might, but it might not.

24 MS. NEWMARCK: How could it not?

25 MR. SHER: It depends on the height of
26 the floor to floors. It depends on whether they go

1 up rather than out.

2 MS. NEWMARCK: Let me rephrase the
3 question. I'm talking about a 90 foot building.
4 I'm not talking about a shorter one. Could a 90
5 foot building on the R-5-D lot fill up as much of
6 its lot as a 90 foot building on an R-5-E lot?

7 MR. SHER: It could be.

8 MS. NEWMARCK: How could it?

9 MR. FEOLA: He just answered the
10 question.

11 MS. NEWMARCK: No, he didn't.

12 MR. FEOLA: He said floor to ceiling
13 heights. He said you can have --

14 MS. NEWMARCK: Ninety feet is 90 feet,
15 Mr. Feola, and I'm not asking you.

16 MR. FEOLA: You can have a 90 foot
17 building that's one story high and that's one FAR,
18 madam.

19 MR. SHER: No, it's .75 FAR.

20 MR. FEOLA: .75 FAR.

21 MR. SHER: It only covers 75 percent of
22 the lot.

23 MS. NEWMARCK: I see. So, we're talking
24 about in theory, if you had one story that was 90
25 feet tall. Okay, now, I -- I understand your
26 answer. Now I understand your answer.

1 By the way -- excuse me. Okay, you
2 testified that if we all read the comprehensive
3 plan, we'll all come up with different conclusions
4 about what it says. Do you remember that?

5 MR. SHER: I think that's what I said,
6 yes.

7 MS. NEWMARCK: Okay. Now, the plan has
8 19 elements, right? Eleven District elements --

9 MR. SHER: Yes, it has 11 District-wide
10 elements --

11 MS. NEWMARCK: -- and eight ward.

12 MR. SHER: -- and eight ward plans.

13 That is correct.

14 MS. NEWMARCK: Right. And many of them
15 such as downtown plan, public facilities, human
16 services or the non-Ward 3 ward elements don't apply
17 here, right?

18 MR. SHER: Yes, certainly, the downtown
19 element doesn't apply. There are probably some
20 pieces of the public facilities element that might
21 apply, but in general, no. Certainly the ward plans
22 for the wards other than Ward 3 would not apply.

23 MS. NEWMARCK: Right. So, we're not
24 talking about this entire book. We're talking about
25 a handful of elements, right?

26 MR. SHER: Well, the entire book is the

1 comprehensive plan.

2 MS. NEWMARCK: Excuse me, but isn't it a
3 fact that only part of this book is the
4 comprehensive plan? That, in fact, it includes
5 other things in it as well?

6 Oh, I'm sorry, he's wrong. Those are
7 other ward elements. But in any event, the entire
8 book wouldn't be relevant here, right? Only the
9 Ward 3 element and certain District elements.

10 MR. SHER: Certain parts of the plan are
11 relevant; certain parts of the plan are not
12 relevant.

13 MS. NEWMARCK: Correct. Now, since
14 we've already responded in writing to your
15 consistency with the plan outline, I'm only going to
16 run by two quick examples -- I'm sure everyone will
17 be very happy to hear that -- and otherwise rely on
18 our written submissions on this.

19 But I would like to turn your attention
20 to Section 1407.4G. Can you tell me what that
21 section says?

22 MR. SHER: I certainly can.

23 MS. NEWMARCK: What does it say?

24 MR. SHER: It says "public action
25 objectives and policies are as follows: (d) The
26 Zoning Commission and the Board of Zoning

1 Adjustments shall consider the effects of a pending
2 application on the ward's historic landmarks in
3 districts and shall consider any negative effects to
4 constitute an adverse or detrimental impact."

5 MS. NEWMARCK: Okay. Now, can you tell
6 me what possible other reading than what it says,
7 one could attach to that?

8 MR. SHER: Reading other than what? I
9 read it. Do the words read the same for anybody who
10 picks it up? Probably so.

11 MS. NEWMARCK: Thank you.

12 I'd like to direct your attention to
13 another example, on Section 707.2. 707.2(b) to be
14 specific. Can you please tell us what that says?

15 MR. SHER: I could read it but it's in
16 the plan and everyone else can read it the same way.
17 "The policies established in support of the
18 buildings are as follows: (b) Design buildings to
19 include the use of appropriate arrangements of
20 building materials, height, scale, massing and
21 buffering to compliment the immediate region."

22 MS. NEWMARCK: Thank you.

23 If you wouldn't mind, could you turn to
24 1406.9(b) which I believe is similar, but I'll let
25 you tell me that.

26 MR. FEOLA: Madam Chair, I mean, I don't

1 know where we're going with this.

2 MS. NEWMARCK: This is the last one, Mr.
3 Feola.

4 MR. FEOLA: The plan speaks for itself.
5 I mean, it's the law. We're not arguing that what
6 the law says.

7 CHAIRPERSON BENNETT: I think she may be
8 getting at the fact that it can be interpreted
9 differently. I mean, she's going back to Mr. Sher's
10 original statement --

11 MS. NEWMARCK: That's exactly right,
12 Madam Chairperson.

13 MR. SHER: I thought I conceded that at
14 the beginning.

15 CHAIRPERSON BENNETT: You did. You did
16 at least to my satisfaction.

17 MR. SHER: I'm sorry. 1407.2 --

18 MS. NEWMARCK: No. What he said was
19 that we can read it and come to different
20 conclusions. What I'm showing is that the words are
21 pretty plain and clear and that's what he's saying
22 as I'm asking him questions.

23 MR. SHER: We could spend the next 22
24 hours and I read the whole book, but it's all here.

25 MS. NEWMARCK: I think that the point
26 has been made. As I said, we're going to rely on

1 our written submission to follow that through. But
2 you're right. It reads what it reads.

3 Now, you testified that housing is the
4 primary amenity offered in this PUD application, is
5 that right?

6 MR. SHER: I believe I did.

7 MS. NEWMARCK: Okay. Isn't it true that
8 housing is offered in every residential PUD?

9 MR. SHER: Probably so.

10 MS. NEWMARCK: So, is it your position
11 that every residential PUD application should be
12 approved?

13 MR. SHER: I don't know that I've ever
14 come in here and testified in opposition to one.
15 Maybe I never met a housing project that I didn't
16 like.

17 CHAIRPERSON BENNETT: That you didn't
18 like.

19 MS. NEWMARCK: Maybe you're already on a
20 developer's team.

21 COMMISSIONER KRESS: We actually did
22 turn one down.

23 CHAIRPERSON BENNETT: I think that's
24 right.

25 MR. SHER: You've turned down more than
26 one but --

1 CHAIRPERSON BENNETT: That's right.

2 MR. SHER: No, I would not say that
3 there is always a project that should be approved
4 simply because it's residential.

5 MS. NEWMARCK: Okay. So then housing
6 alone is not necessarily sufficient, right?

7 MR. SHER: Sufficient to warrant
8 approval?

9 MS. NEWMARCK: Right.

10 MR. SHER: No.

11 MS. NEWMARCK: Okay. You submitted
12 several prior orders granting PUD applications at
13 the last hearing. Do you remember that?

14 MR. SHER: Yes.

15 MS. NEWMARCK: In fact, I'd like to
16 request from the Commission at some point, if we
17 could get a list of those. We got copies of them,
18 but one of them, we only got odd numbered pages.
19 So, I just want to make sure we have everything
20 correctly.

21 CHAIRPERSON BENNETT: You can get that
22 from staff. Let's move on, please.

23 MS. NEWMARCK: Now, you stated that they
24 were, and I'm quoting from your testimony, "strictly
25 high-rise residential apartment buildings that
26 included no mixed use projects, no combination

1 office and retail." Do you recall that?

2 MR. SHER: I believe that's what I
3 testified.

4 MS. NEWMARCK: Okay. Isn't it true,
5 however, that both Order Number 483 which is 21st
6 and L Street, and Order Number 398 which is 26th and
7 K are C-3-C mixed use buildings?

8 MR. SHER: I'm sorry. Order Number 483
9 and what order?

10 MS. NEWMARCK: 483 and 398.

11 MR. SHER: 398 is not C-3-C. 483 is --
12 was -- is Zone 3-C-3.

13 MS. NEWMARCK: Okay. And in fact, 398 -
14 - I guess I misspoke. It's C-2-C, right? I'll
15 direct your attention to paragraph one.

16 MR. SHER: That is incorrect.

17 MS. NEWMARCK: Would you state for the
18 record what it is zoned?

19 MR. SHER: Page 11, Order Number 398,
20 Case Number 82-11C, the Zoning Commission in
21 consideration of the findings, et cetera, et cetera,
22 hereby orders approval of a planned unit development
23 for lots in square 16, a related map amendment from
24 R-5-B to R-5-D.

25 MS. NEWMARCK: Well, you may be right on
26 that. I think I'd have to look at that further.

1 CHAIRPERSON BENNETT: Are we winding up
2 now, please?

3 MS. NEWMARCK: We are winding up.

4 Isn't it also true that Order Number
5 656, which is 5333 Connecticut and 536 which is 4601
6 Connecticut required no change in zoning?

7 MR. SHER: That could be true. If you
8 give me a minute, I'll take a look.

9 MS. NEWMARCK: Okay.

10 MR. SHER: 656, 5333 Connecticut Avenue,
11 the applicant did not request a change of zoning.
12 And 690 --

13 I'm sorry, was that the other one?

14 MS. NEWMARCK: 536 which is 4601
15 Connecticut.

16 MR. SHER: 536. Again, the applicants
17 did not request a change of zoning.

18 MS. NEWMARCK: And Order Number 423,
19 which is 2010 Wyoming --

20 MR. FEOLA: Madam Chair, we'll stipulate
21 to the orders that didn't ask for a change in
22 zoning. CHAIRPERSON BENNETT: Thank
23 you.

24 MR. FEOLA: I mean, we don't need to go
25 through this.

26 MS. NEWMARCK: I'm simply cross

1 examining his statement as to the fact that these
2 are all just like this one. But I'd be happy to do
3 that in writing if the Commission would prefer?

4 CHAIRPERSON BENNETT: Anything you can
5 do in writing, at this point --

6 MS. NEWMARCK: Okay. All right.

7 All right. By the way, isn't it true
8 that each of these zoning orders puts a time limit,
9 like two or three years, on when construction must
10 commence?

11 MR. SHER: Yes.

12 MS. NEWMARCK: And that after that, the
13 applicant has to reapply?

14 CHAIRPERSON BENNETT: Or they can ask
15 for extension.

16 MS. NEWMARCK: Or ask for extension,
17 right?

18 MR. SHER: Yes.

19 MS. NEWMARCK: Okay. So, there's no
20 grandfathering of approvals. You have to come in
21 and ask for --

22 COMMISSIONER FRANKLIN: The Commission
23 is well aware of its procedures.

24 MS. NEWMARCK: Thank you. I'm sure far
25 better than I am. This was a discovery for me.

26 CHAIRPERSON BENNETT: Are we winding up

1 now?

2 MS. NEWMARCK: We are winding up. We
3 are winding up. I have a couple of more questions.

4 CHAIRPERSON BENNETT: Can we do it
5 within the next three minutes or so?

6 MS. NEWMARCK: I think -- well, what I'd
7 be willing to do is submit in writing. I realize
8 the time is running out.

9 CHAIRPERSON BENNETT: I would appreciate
10 that.

11 MS. NEWMARCK: I would be happy to do
12 that. I think that's it unless my colleagues -- I
13 think I can submit the rest. You'll be glad to know
14 I'm going to submit Ms. Newsome's request in
15 writing.

16 CHAIRPERSON BENNETT: Thank you.

17 MS. NEWMARCK: I would like to, while
18 I'm standing up here though, suggest to the
19 Commission that -- we would certainly encourage the
20 Commission to take Mr. Carter Brown up on his offer
21 to hear this --

22 MR. FEOLA: Objection. Mr. Carter Brown
23 is not here to make any offers.

24 MS. NEWMARCK: The offer is in a letter
25 in the file.

26 CHAIRPERSON BENNETT: We will read the

1 file.

2 MR. FEOLA: Mr. Carter Brown is not here
3 to ask him any questions.

4 CHAIRPERSON BENNETT: We will be reading
5 the file in its entirety.

6 MS. NEWMARCK: I just want to say that
7 we would support that.

8 CHAIRPERSON BENNETT: Thank you.

9 MS. NEWMARCK: Thank you.

10 MR. FEOLA: Madam Chair, three or four
11 minutes and I'll be out of your hair.

12 CHAIRPERSON BENNETT: Closing statement?

13 MR. FEOLA: I'll submit the bulk of our
14 closing comments in writing because we do appreciate
15 the length of time you've taken with this case.

16 I guess I'd just like to start by
17 expressing a little bit of surprise. I've had to
18 sit through the last couple of sessions and keep on
19 pinching myself as to what this project was about.
20 It isn't one of those locally unwanted land uses
21 that we read about, those lulus, the homeless
22 shelters, the waste transfer stations, a drug
23 treatment facility. This is about a housing
24 project. It's about providing new housing, 166
25 units -- which is actually smaller than our main
26 opponent's building which is 178 units -- of new

1 middle income housing for people who will live in
2 the District of Columbia, most likely work and shop
3 in the District. Most importantly, pay taxes and
4 vote in the District, entirely with private money.
5 No government loans, no special treatment.

6 This is an apartment house. That's what
7 we're looking at, in an apartment corridor on one of
8 the heaviest travelled roads in the region. It
9 seems to me it's exactly the right kind of project
10 for this site, for the District. It's the kind of
11 project the District should be encouraging. In
12 fact, every neutral entity which has looked upon
13 this project has looked upon it favorable, from a
14 positive editorial in Northwest Current -- not
15 hardly a hotbed of development for the District of
16 Columbia preservationally. The Art Deco Society,
17 the Commission of Fine Arts, its staff, the Historic
18 Preservation Review Board, its staff, and the Office
19 of Planning all support it.

20 Virtually, the only opposition from
21 directly across the street. Now, there's a lot of
22 innuendo. "Well, maybe Fine Arts didn't have all of
23 its ducks in a row. Maybe they didn't hear from all
24 the opponents." Well, I think that's not true. You
25 know, I've been turned down enough projects by those
26 bodies to know that they take a hard look at all

1 this information. What we have here is, for
2 whatever reason, 3100 didn't show up in those
3 forums. Not our fault. Those projects were
4 noticed. HBRB held two hearings on this matter and
5 in fact, sent us back to the drawing boards to take
6 another look at it.

7 So, again, we look at all the issues and
8 strip away all the emotions, what do you have here?
9 The original complaint said too much traffic,
10 disruption during construction. Well, Mr. Petersen
11 admitted last time that the impact on traffic can't
12 even be measured and that with proper mitigation,
13 there won't be any construction problems.

14 The third objection is number of
15 parking. We can argue with ratios and I'm not going
16 to argue that. But the existing parking problem is
17 not caused by the Kennedy-Warren. It's caused by
18 buildings like 3100. They have 178 units and 18
19 parking spaces. It's an existing problem. I think
20 Mr. Saul and the Klinge Corporation have recognized
21 that and have attempted to try to solve not only
22 what's perceived to be an adverse impact caused by
23 the Kennedy-Warren addition, but also to try to
24 solve something in the community. It's more spaces
25 than the ANC asked for. It's more spaces than
26 Woodley Park asked for.

1 So, what does it all come down to? It
2 comes down to whether or not it's appropriate to
3 have a 90 foot building on the east side of
4 Connecticut Avenue on the property line, partially
5 on the property line, 90 foot tall. Well, the
6 existing zoning allows that. In fact, if tomorrow a
7 hurricane blew over the existing Kennedy-Warren and
8 Cathedral Mansions, they both could be rebuilt on
9 the property line to 90 feet. So, I'm not sure
10 exactly what we're arguing about here except that
11 some people's views of Klinge Valley and the zoo
12 are going to be blocked by a building. Well, I'm
13 not sure that that is a legitimate reason to turn
14 down a project that otherwise has all the benefits
15 that have been attributed to it.

16 To the comprehensive plan for a second.
17 Section 112 -- the rules interpret the comprehensive
18 plan. You can go through that very big document Ms.
19 Newmarck had -- says -- specifically tells you how
20 to look at the comprehensive plan. In the first
21 instance, the law says that the elements of the plan
22 are overlapping and that this overlapping is
23 intentional. So, you can't take Section 1407.D3 out
24 of context with the rest of the law. It also says
25 that Section 112.4 says, "since a land use element
26 integrates the policies and objectives of all the

1 other District elements, it should be given greater
2 weight than those other elements."

3 What we have is a comprehensive plan
4 land use map that shows this property at high
5 density residential use, the highest density in the
6 plan. What we're asking for is for the zoning to be
7 consistent with that. Make the zoning the highest
8 zoning classification that this Commission has put
9 in place.

10 I think the Commission is faced with a
11 couple of questions. One, is the project going to
12 have an adverse impact because of traffic? No.
13 Even Mr. Petersen said no. Is the project going to
14 cause an adverse effect during construction? No, it
15 can be mitigated. Mr. Petersen agreed to that. Is
16 the project going to cause an adverse impact because
17 it does not provide enough parking? I think the
18 answer to that now is emphatically no. Is the
19 project new housing? The Commission's own rules
20 specify that that's an amenity to the PUD. We
21 didn't write the rules; the Commission did. Yes,
22 this is new housing. Is the project consistent
23 with the comprehensive plan? Well, the only expert
24 testimony, expert testimony you've heard on that
25 issue and the Office of Planning's report says yes.
26 So, the question really is whether or not the design

1 of this in-filled building is appropriate? We like
2 to think that the DCPL, Fine Arts, Historic
3 Preservation Review Board and the Art Deco Society
4 who we agree with have the right design solution for
5 this project.

6 So, in conclusion, you've heard very
7 passionate and emotional testimony from residents in
8 the area, virtually all of whom live in or have a
9 unit at 3100 Connecticut Avenue. They talk about
10 Woodley Park being a small town. Their views from
11 their windows would be blocked. It's not a high
12 density neighborhood. It's a low urban density
13 neighborhood. I'm not sure that's the Connecticut
14 Avenue I know in and around the zoo. But even if
15 they are correct, it's hard for me to understand how
16 166 new dwelling units here are going to change the
17 character of this area.

18 So, if you strip away all the emotions,
19 I think what you have before you is a project and a
20 rezoning which is consistent with the plan and where
21 all the credible evidence presented in this hearing
22 shows that there's not going to be an adverse
23 impact. And I would add, with every environmental
24 organization from the Sierra Club to the Chesapeake
25 Bay Foundation encouraging high density in-fill at
26 transit modes, this seems to be, again, as I said

1 before, the right development at the right location
2 and the District should encourage more of.

3 With that, I want to thank you for your
4 patience and indulgence in our case.

5 CHAIRPERSON BENNETT: Thank you.

6 COMMISSIONER KRESS: Madam Chair, could
7 I ask for one thing for the record?

8 CHAIRPERSON BENNETT: Sure.

9 COMMISSIONER KRESS: Part of the
10 conversation and discussion I was having with Mr.
11 Saul talked to a creative and innovative program to
12 help assure me, if no one else, that anyone who was
13 moving into that building would not be parking on
14 the street but parking in their structures. I would
15 like to ask that the record be left open to hear a
16 proposal from Mr. Saul or from Mr. Feola, if they so
17 choose. I would very much like to have the
18 opportunity to receive something like that.

19 CHAIRPERSON BENNETT: All right.

20 COMMISSIONER FRANKLIN: I would second
21 that motion.

22 CHAIRPERSON BENNETT: Anything else?

23 All right, ladies and gentlemen. I want
24 to thank you for your testimony and assistance in
25 this hearing. The record in this case will now be
26 closed except for information specifically requested

1 by the Commission. Ms. Kress just requested some
2 further information to come in on parking.

3 We have indicated to Ms. Newmarck that
4 we would accept her submissions that she offered
5 earlier-on, including Ms. Newsome's request. There
6 is to be information that has been requested
7 regarding raw data that was used in the parking
8 information that the applicant put together. It was
9 suggested that that would be forthcoming as well.

10 I'm sorry? Oh, all right.

11 Mr. Mendelson, is there something else?

12 MR. MENDELSON: For the record, I'm Phil
13 Mendelson.

14 The ANC would appreciate the opportunity
15 to be able to comment on these submissions.

16 CHAIRPERSON BENNETT: Okay. I think
17 there will be time to do that.

18 Thank you, you may sit down.

19 MR. MENDELSON: Thank you.

20 CHAIRPERSON BENNETT: Let me ask staff
21 if this will give them time to -- I think we may
22 need to push this date up and give them a week's
23 time to comment, or we're going to push this back.

24 Thank you. We adjusted the dates to
25 allow for the response times and what-not. We've
26 just identified what additional information we would

1 expect will be coming into the record.

2 Any special information or report
3 specifically requested by the Commission, as we did
4 just earlier, should be filed during the period
5 ending on May 16th in Suite 210 of 441 Fourth
6 Street, N.W. Any party to the case may file a
7 written response to any information or report filed
8 after the close of the hearing. Such responses
9 should be filed no later than seven days after May
10 16th, which is May 23rd 1997. Parties in
11 this case are invited to submit proposed findings of
12 fact and conclusions of law. Any party who submits
13 proposed findings and conclusions should do so by
14 May 23rd. Parties are reminded that their findings
15 of fact should not include findings stating how
16 witnesses testified. The findings should be those
17 findings the party believes the Commission should
18 make based upon the testimony and other evidence in
19 the record. Citations to exhibits and the
20 transcript are appropriate and encouraged.

21 To assist parties in the preparation of
22 these findings of fact and conclusions of law, a
23 copy of the hearing transcript will be available for
24 review in the Office of Zoning in about two weeks.
25 Copies of the transcript may also be purchased from
26 the recording firm. When the transcript is

1 received, the Office of Zoning will contact the
2 parties.

3 After the record is closed, the
4 Commission will make a decision on this case at one
5 of its regular monthly meetings. These meetings are
6 generally held at 1:30 p.m., on the second Monday of
7 each month and are open to the public. Any person
8 who is interested in following this case further may
9 contact the staff to determine whether this case is
10 on the agenda of a particular meeting. You should
11 also be aware that if the Commission proposes to
12 approve the application, the proposed decision must
13 be referred to the National Capitol Planning
14 Commission for federal impact review. The Zoning
15 Commission will take final action at a public
16 meeting following receipt of the NCPC comments,
17 after which a written order will be published.

18 I declare this hearing closed.

19 (Whereupon, the hearing was adjourned at
20 7:34 p.m.)

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