

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 5, 2002

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JAMES HANNAHAM	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.
Marie-Claire Brown, Esq.

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

(1:15 p.m.)

CHAIRPERSON GRIFFIS: The hearing will please come to order.

Good afternoon, ladies and gentlemen. This is the 5th of February 2002 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, and I welcome you all here today. Joining me today is Ms. Anne Renshaw, who is the Vice Chair of the Board. Mr. Curtis Etherly is also with us today, and Mr. Hannaham, representing the Zoning Commission, is sitting on this case, as is Mr. Levy, representing the National Capital Planning Commission.

We are ably staffed with Mr. Hart, Ms. Bailey, and Mr. Nyarku. Ms. Sansone is the corporation counsel with us today.

Copies of today's hearing are on the table near the door that you did enter into. We are going to have a little bit of difference in normal proceedings for those familiar. For those that aren't, it won't make any difference. But I will go through this, and I am going to be redundant, give my quick opening statement here to get it generally out there, and then we will go through and take the time and appropriateness to make

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1 sure everyone has a firm understanding of how we're
2 proceeding today.

3 Of course, all persons planning to testify,
4 either in favor or in opposition, should fill out witness
5 cards. Witness cards are in two locations, one at the
6 table at the door you entered into, and one on the table
7 in front of us. Two of those should be filled out and
8 given to the Reporter, who is sitting to my right, when
9 you come forward.

10 The order of procedure for the appeal today
11 will be as follows. And, again, I will go over in more
12 detail and specificity. However, we will begin first
13 with the statement of -- and witnesses of the appellant
14 and co-appellant, co-appellant being the ANC today.
15 Second, we will go to the Zoning Administrator. Third,
16 we will hear from Father Flanagan, the property owner
17 involved. And, fifth, we will have the rebuttal and
18 closing statements by all participants today.

19 And, again, I will get into that with a little
20 more clarity. However, let me just run through some of
21 the other basic things that we want to take care of today,
22 and, of course, cross examination will be taking place
23 and permitted by the applicant -- or by the appellant
24 and the participants today.

25 The record will be closed at the conclusion

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1 of each case, except for material that we specifically
2 request, and we will be very specific on what that is
3 and timing involved.

4 The Sunshine Act requires us to have the
5 public hearing on each case held in the open and before
6 the public, and that's what we're doing here today. The
7 Board may, consistent with the rules of procedure and
8 the Sunshine Act, enter into executive session during
9 or after the public hearing on a case for purposes of
10 reviewing the record or deliberating on the case.

11 The decisions of the Board in these contested
12 cases must be based exclusively on the public record,
13 and we try and will do a very good job at avoiding any
14 appearance to the contrary. The Board requests that
15 persons here today and after this not engage members of
16 the Board in conversation.

17 I would ask, also, that we turn off all cell
18 phones and beepers at this time, so as not to disrupt
19 the proceedings. A couple of extra things. We obviously
20 do have cameras in here today -- obviously, a lot of
21 attention. I would ask that photographers be -- use,
22 frankly, some common sense and not disrupt any
23 proceedings. I certainly don't want to have flashes
24 going off through this that will -- might interrupt the
25 Board, but, more importantly, interrupt people giving

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1 testimony.

2 I don't want to have photographers walking
3 around, taking pictures, getting in front of table for
4 people that are giving testimony. And, again, if it
5 becomes a problem, I will readdress this and maybe set
6 down some further guidelines.

7 If we start to fill up this room, I would
8 ask people's assistance if people are coming in. We have
9 set up chairs outside in the hall, if people want to be
10 out in that area, and there should be transmission
11 directly for you to watch in that area.

12 Also, if anyone has now or at any time
13 difficulty hearing what is being said, you can somehow
14 signal the Board member, or you can come up and talk to
15 staff and we will make provisions, whether it be get a
16 seat up closer or make other provisions as needed for
17 that.

18 When last we met I went over a few things,
19 and I believe the section was 3108, which is decorum,
20 and I want to thank everyone that was here before, and
21 thank you in advance if you're here just today, about
22 the great decorum we had previously and would anticipate
23 that the same would occur today.

24 We have a lot to cover again today. It will
25 be complex and hopefully fascinating, but I would

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1 appreciate that people, as limitedly as possible, refrain
2 from any sort of gestures, comments from the galley.
3 Note that any comments made do not go into the record
4 and are of no real value or use, and that is probably
5 more than enough said on that point.

6 So I think we are ready, in fact, to ask staff
7 to call the first case, and only in the afternoon.

8 MS. BAILEY: Thank you, Mr. Chairman. The
9 case of the afternoon is application 16791, appeal of
10 Southeast Citizens for Smart Development in Advisory
11 Neighborhood Commission 6B, pursuant to 11 DCMR 3100 and
12 3101, from the administrative decision of Michael D.
13 Johnson, Zoning Administrator, allowing the location of
14 Father Flanagan's Boys Town Phase I (a residential group
15 home) in a C-2-A District at premises 1308, 1310, 1312,
16 and 1314 Potomac Avenue, Southeast. The property is
17 located in Square 1045 on Lots 134, 136, 137, and 138.

18 All those persons wishing to testify, please
19 stand. All those persons who will be testifying this
20 afternoon, please stand to take the oath.

21 (Whereupon, an oath was administered to those
22 persons planning to testify.)

23 CHAIRPERSON GRIFFIS: Okay. One first
24 note. For clarification, we do have ANC-6B which has
25 joined in this appeal, and they are identified as a

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1 co-appellant.

2 I'm going to ask everyone to come
3 forward -- Southeast Citizens, ANC-6B, Zoning
4 Administrator, and Father Flanagan's
5 representatives -- and have a seat at the table. I'm
6 not asking for witnesses. I'm asking for
7 representatives. So as my math goes, I will have four
8 chairs filled.

9 The music stopped, Mr. Bello, so we are one
10 chair short.

11 (Laughter.)

12 Okay. Thank you.

13 I want to just get to Board preliminary
14 matters at this time, and then we'll walk through some
15 of the other processes of this afternoon. Do Board
16 members have any preliminary issues?

17 MEMBER ETHERLY: Mr. Chairman?

18 CHAIRPERSON GRIFFIS: Yes, Mr. Etherly.

19 MEMBER ETHERLY: Thank you very much, Mr.
20 Chairman. Good afternoon, ladies and gentlemen. My
21 name is Curtis Etherly. As you all are aware, the Board
22 takes issues of conflict of interest, either potential
23 or implied, very, very seriously.

24 To that end, as a matter of disclosure to
25 both my colleagues and the members of the audience who

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1 have gathered here today, I am a resident in the
2 neighborhood where the affected property is located, have
3 been a resident for two years as a homeowner.

4 Prior to becoming a member of the Board of
5 Zoning Adjustment, and, therefore, a representative of
6 this Board, I was approached as a homeowner by a
7 representative who inquired as to whether or not I would
8 be interested in signing a petition in favor of the
9 development. As a new homeowner in the neighborhood,
10 I did so.

11 Once again, let me emphasize that this was
12 prior to my appointment to the Board by the Mayor. I
13 have disclosed this fact to my colleagues here. I have
14 not set in on any committee meetings, community meetings,
15 ANC meetings, or otherwise, during my term of residence
16 at my current home address.

17 With that being said, Mr. Chairman, I'd like
18 to, of course, once again disclose that matter and give
19 the parties and representatives an opportunity here, as
20 well as my fellow colleagues on the Board, to comment.

21 CHAIRPERSON GRIFFIS: Thank you, Mr.
22 Etherly. Let me just take some questions from Board
23 members at this time if there are any. I would start
24 out, just for a clarification, that you signed this when
25 you were a new homeowner. You had been there how long

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1 approximately?

2 MEMBER ETHERLY: I had been approximately
3 at the property for about a month.

4 CHAIRPERSON GRIFFIS: And were you familiar
5 at all with the project, the proposed project, at that
6 time?

7 MEMBER ETHERLY: No, sir.

8 CHAIRPERSON GRIFFIS: Okay. Board members?

9 VICE CHAIRPERSON RENSHAW: Mr. Chairman, for
10 Mr. Etherly, did you receive anything from the
11 representative who was asking you to sign this petition?
12 Did you receive a copy of the document that you were
13 signing?

14 MEMBER ETHERLY: No, Madam Vice Chair, I did
15 not.

16 VICE CHAIRPERSON RENSHAW: You are on the
17 Board of various nonprofit organizations?

18 MEMBER ETHERLY: That is correct.

19 VICE CHAIRPERSON RENSHAW: And I'd like to
20 know if any of these nonprofit organizations on which
21 you sit have any dealings with Boys Town.

22 MEMBER ETHERLY: To the best of my knowledge,
23 no, Madam Vice Chair.

24 VICE CHAIRPERSON RENSHAW: Thank you.

25 MEMBER LEVY: Mr. Etherly, do you feel

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1 that -- is it your feeling that you can hear and decide
2 this case in a fair and impartial manner?

3 MEMBER ETHERLY: It is my feeling, Mr. Levy,
4 that I would be more than capable and able to hear this
5 case in a fair and impartial manner.

6 VICE CHAIRPERSON RENSHAW: Mr. Etherly, have
7 you made any other public comments about Father Flanagan's
8 or the community's response, since you have become a
9 homeowner and become aware that you -- after you signed
10 this petition you are aware of the development?

11 MEMBER ETHERLY: Let me take your question
12 in two parts, Madam Vice Chair. After signing the
13 petition, I have become aware of the development. Once
14 again, I have taken no part in any community meetings
15 or privately held meetings pertaining to this proceeding.

16 VICE CHAIRPERSON RENSHAW: Thank you.

17 MEMBER ETHERLY: And I would further note,
18 Mr. Chairman, that, once again, with the -- with the
19 approval of my colleagues and the parties represented,
20 I have read the record in its entirety and would be
21 prepared to move forward with hearing the continuation
22 of this case this afternoon.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Etherly.

25 Any other questions from the Board? Okay.

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1 Very quickly, if I can start on my left, can
2 you just give me your name and your representation today
3 for the record?

4 MR. JARBOE: My name is Kenan Jarboe. I'm
5 Chair of ANC-6B.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MS. FERSTER: My name is Andrea Ferster.
8 I'm counsel for Southeast Citizens for Smart Development.

9 MR. FEOLA: Phil Feola with Shaw Pittman on
10 behalf of Father Flanagan's Boys Town.

11 MS. BROWN: Good afternoon. Marie-Claire
12 Brown, Assistant Corporation Counsel, on behalf of the
13 Zoning Administrator.

14 CHAIRPERSON GRIFFIS: Thank you very much.

15 Mr. Jarboe, comments about Mr. Etherly's
16 disclosure this morning -- this afternoon, rather?

17 MR. JARBOE: I have one question.

18 CHAIRPERSON GRIFFIS: Yes.

19 MR. JARBOE: I was unclear as to the petition
20 you signed. Who had circulated that petition?

21 MEMBER ETHERLY: To the best of my
22 recollection, Mr. Jarboe, I cannot recall whether or not
23 there was any identifying indicia in terms of
24 organizational affiliation on the petition. I was
25 approached by an individual who was accompanied by a

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1 youth, had explained some broad contours relating to the
2 project.

3 Once again, as I had mentioned in my opening
4 statement, I do sit on a number of nonprofit boards related
5 to youth-related leadership development and activism,
6 and so felt in that -- in that vein that I didn't have
7 necessarily any concerns there. But I cannot recall
8 whether or not there was a specific organization to which
9 that petition was tied.

10 In terms of the record materials that the
11 Board has in front of it, I was not able to see whether
12 or not that actual petition is here. So based on my review
13 of the record, I didn't see it indicated in our files
14 before us.

15 MR. JARBOE: Thank you.

16 CHAIRPERSON GRIFFIS: Thanks.

17 MR. JARBOE: We would have no objection to
18 Mr. Etherly remaining in this case.

19 CHAIRPERSON GRIFFIS: Okay. And what I'm
20 going to do is go down the line, ask if you have any
21 questions. If you want to then state objection or not
22 objection, that's great. Otherwise, I will come back
23 after all of the questions are asked.

24 Ms. Ferster?

25 MS. FERSTER: Yes, I have one question.

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1 Were you approached by any of the neighbors who are
2 opposing the Father Flanagan's Boys Town development with
3 a comparable petition or request that you sign a statement
4 opposing the project?

5 MEMBER ETHERLY: No, Ms. Ferster. To the
6 best of my recollection, I have not been approached by
7 any representatives of any of the opposing organizations
8 or groups.

9 CHAIRPERSON GRIFFIS: Mr. Feola, any
10 questions?

11 MR. FEOLA: No, sir.

12 CHAIRPERSON GRIFFIS: Thank you.

13 Ms. Moore? I'm going to stop that right now.
14 Ms. Brown?

15 MS. BROWN: Just one quickly. Mr. Etherly,
16 in evaluating your position on this, have you made any
17 independent determination as to whether or not the project
18 one way or another affects your ownership?

19 MEMBER ETHERLY: No, I have not made any such
20 determination.

21 MS. BROWN: Nothing further for Mr. Etherly.

22 CHAIRPERSON GRIFFIS: Thanks.

23 Then, for the Southeast Citizens for Smart
24 Development, Inc., your position?

25 MS. FERSTER: We don't object.

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1 CHAIRPERSON GRIFFIS: No objection.

2 Mr. Feola for Father Flanagan's?

3 MR. FEOLA: No objection.

4 CHAIRPERSON GRIFFIS: Thank you.

5 MS. BROWN: No objection for the --

6 CHAIRPERSON GRIFFIS: Thank you.

7 Okay. We can move on, then, to preliminary
8 matters that staff may have.

9 COMMISSIONER HANNAHAM: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes, Mr. Hannaham.

11 COMMISSIONER HANNAHAM: Might I, while we
12 still have these folks before us, and we're looking at
13 relationships with, you know, the case --

14 CHAIRPERSON GRIFFIS: Sure.

15 COMMISSIONER HANNAHAM: -- I'd just like to
16 mention that I did have a relationship with one of the
17 expert witnesses scheduled to appear -- Kirk White. We
18 both served on the Board of Trustees of the Committee
19 of 100 for a period of about six years, lasting up until
20 about two years ago.

21 I just want to make the record clear that
22 that would have -- that the extent of my involvement with
23 him was solely related to Committee of 100 business.
24 That in no way would affect my ability to make a fair
25 judgment with regard to the evidence in this case.

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1 CHAIRPERSON GRIFFIS: Good. Thank you, Mr.
2 Hannaham. We will take comments on all of that very
3 quickly. But I would also add to it that I am a previous
4 trustee of the Committee of 100 also, have stepped down
5 off of it when I became Chair of the BZA. And so if it
6 is expeditious, you can have questions to Mr. Hannaham
7 or myself, and I would clearly state the fact that I am
8 prepared to hear this impartially.

9 So we will start again in the same order.
10 Mr. Jarboe?

11 MR. JARBOE: I have no questions.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. FERSTER: No questions.

14 CHAIRPERSON GRIFFIS: Thank you.

15 MR. FEOLA: Phil Feola. No questions.

16 MS. BROWN: No questions for the Zoning
17 Administrator.

18 CHAIRPERSON GRIFFIS: Okay. And can we just
19 state if there are any objections at this time? Fine.
20 Actually, let's go straight down so we keep things in
21 order.

22 MR. JARBOE: ANC has no objections.

23 CHAIRPERSON GRIFFIS: Ms. Ferster?

24 MS. FERSTER: The Southeast Citizens have
25 no objection.

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1 MR. FEOLA: Likewise, Father Flanagan has
2 no objections.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. BROWN: And the District has no
5 objections.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 Okay. Any other preliminary matters from
8 the Board? No need for more surprises?

9 Then, does staff have any preliminary matters
10 for the Board?

11 MS. BAILEY: No, Mr. Chairman, not that I'm
12 aware of.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. BAILEY: Do I have a preliminary matter,
15 Mr. Chairman?

16 (Laughter.)

17 CHAIRPERSON GRIFFIS: No. I think we are
18 all set.

19 Then, the question goes, are the parties
20 ready to proceed? Father Flanagan has indicated that
21 they are.

22 MS. BROWN: The District is ready.

23 CHAIRPERSON GRIFFIS: The District is ready.
24 And ANC?

25 MR. JARBOE: The ANC is ready.

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1 CHAIRPERSON GRIFFIS: Okay. Indeed,
2 indication that all parties are ready to proceed.
3 Therefore, we will go to establishing the order of
4 procedure and time limits.

5 First, as indicated, we're going to hear from
6 the appellant. We are giving one hour, exclusive of cross
7 examination and Board members' questions. Second, we
8 will have the ANC. Can the ANC give an indication of
9 how much time they may need?

10 MR. JARBOE: Mr. Chairman, I have a one-page
11 testimony. It should take 15 minutes. Since we're
12 not -- since we've turned our case essentially over to
13 the appellants --

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. JARBOE: -- they will be handling all
16 of -- any cross --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. JARBOE: -- or any questioning.

19 CHAIRPERSON GRIFFIS: And that's
20 appreciated. What we'll do is just mark it as 15 minutes,
21 and, of course, we will have some discretion on that.
22 If 30 seconds more is needed, we'll probably deal with
23 that.

24 Third, we will go to the Zoning
25 Administrator. And what I'm going to do is just ask you

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1 to give me an indication of what kind of time -- we were
2 looking at 30 minutes. Are you fitting your --

3 MS. BROWN: Thirty minutes should do it for
4 the District. We actually are only putting the Zoning
5 Administrator on, exclusive of any cross.

6 CHAIRPERSON GRIFFIS: Okay. And then for
7 the Father Flanagan's, again, also, we had looked to 30
8 minutes up to one hour. Mr. Feola, if you would give
9 an indication if that is suitable.

10 MR. FEOLA: Yes, I think we were thinking
11 about 45 minutes would --

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. FEOLA: -- cover it.

14 CHAIRPERSON GRIFFIS: And our indication was
15 that basically the Zoning Administrator and Father
16 Flanagan's would have a combined one hour. So it seems
17 as if that's fitting into that parameter.

18 Has the appellant and the ANC discussed
19 organizing rebuttal today? Are you -- Ms. Ferster, are
20 you going to be doing it entirely, or --

21 MS. FERSTER: Yes. I will be doing it for
22 both the ANC and for the Southeast Citizens.

23 CHAIRPERSON GRIFFIS: Okay. Then, what we
24 would like to do for closing arguments is this. We would
25 like to hear all closing arguments at the same time,

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1 meaning that we would move all of that to the end and
2 have everyone close.

3 Let me just get comments on that, if there
4 are any problems. If you are in wild support, no need
5 to comment, in which case I note wild support.

6 (Laughter.)

7 MR. JARBOE: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. JARBOE: The ANC will not have a closing
10 statement.

11 CHAIRPERSON GRIFFIS: Indeed.

12 MR. JARBOE: Our statement will be all
13 contained in our testimony.

14 CHAIRPERSON GRIFFIS: Indeed. And that's
15 fine. And we are looking at it as a co-appellant, and
16 Ms. Ferster is representing your position.

17 MR. FEOLA: Mr. Chairman?

18 CHAIRPERSON GRIFFIS: Yes.

19 MR. FEOLA: For the record, Phil Feola. The
20 rebuttal is oral rebuttal? Are we talking about after
21 the hearing submitting papers, or do we not know that
22 yet?

23 CHAIRPERSON GRIFFIS: Well, we don't know
24 the submission. Right now what we're talking about is
25 oral rebuttal.

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1 MR. FEOLA: Okay. Thank you.

2 CHAIRPERSON GRIFFIS: Okay. And then, do
3 we have -- do you have any preliminary matters at this
4 time for the Board?

5 MR. JARBOE: Mr. Chairman?

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. JARBOE: Because of oppressive business,
8 I may have to leave and come back. I do have
9 authorization -- our executive secretary is here. He is
10 fully authorized by the ANC to represent the ANC in this
11 matter. I have also signed authorization for him to
12 present our testimony should the case arise.

13 I don't anticipate that I will be gone long,
14 but I need to step out while the appellant's case is going
15 on.

16 CHAIRPERSON GRIFFIS: Okay. What kind of
17 time are you talking about? You're leaving when?

18 MR. JARBOE: I have to be somewhere at
19 roughly 2:00, and I can be back here roughly by a quarter
20 after 2:00.

21 CHAIRPERSON GRIFFIS: I don't think you're
22 going to miss your turn.

23 MR. JARBOE: Just wanted to be sure.

24 CHAIRPERSON GRIFFIS: Okay. That's I think
25 all the housekeeping we have at this time, unless I have

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1 missed anything, which should be brought to my attention.

2 And if that's not the case, then we can proceed. And
3 I think we're ready, then.

4 Ms. Ferster, it is your mike.

5 MS. FERSTER: Thank you. I have an opening
6 statement, if that's okay.

7 We are today presenting our appeal of the
8 decision of the Zoning Administrator, who ruled last
9 August that Father Flanagan Boys and Girls Town could
10 build four residential units on contiguous lots as part
11 of the Boys Town Capitol Hill campus as a matter of right
12 in a C-2 zone.

13 We envision a succinct case today in support
14 of this appeal. We have proposed three fact witnesses
15 as well as three expert witnesses. Our fact witnesses
16 will be brief. They will take no more than five minutes
17 each, and they will introduce and summarize our case and
18 briefly state the concerns that have prompted this appeal
19 as well as the concerns that have led so many people from
20 the neighborhood to fill this room to hear this appeal
21 today.

22 The heart of our case will be presented by
23 our expert witnesses. They are Kirk White and Patricia
24 Harden. Through their testimony, we will demonstrate
25 why this case is controlled by Section 732.1 of D.C.

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1 zoning regulations, under which a youth residential care
2 facility housing more than 16 children is only permitted
3 to locate in this zone by special exception.

4 Our zoning expert, Kirk White, will testify
5 that the occupancy limits on community-based residential
6 facilities established by D.C. zoning regulations reflect
7 the unique concerns about the impact of large facilities
8 and institutions, campuses if you will, on residential
9 neighborhoods.

10 The required BZA review of facilities housing
11 more than 15 persons under Section 732.1 of the
12 regulations embodies a presumption that the target
13 populations are best served by smaller group homes, and
14 also ensures when a group home of more than 15 children
15 is proposed that such a large facility meets all
16 applicable licensing and code provisions.

17 These legitimate and important zoning goals
18 would be undermined if the large residential facility
19 proposed by Boys Town which will house at least 24 children
20 on its campus is not subject to BZA review.

21 Mr. White's testimony will also demonstrate
22 that the Zoning Administrator has the legal authority
23 and the obligation to consider Boys Town's Capitol Hill
24 campus as a single facility, even though it is being
25 constructed on four separate lots of record. It is

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1 generally accepted that unless the zoning code provides
2 to the contrary, contiguous and commonly-owned lots of
3 record should be treated as a separate lot where necessary
4 to prevent owners from manipulating lot lines to
5 circumvent zoning rules.

6 D.C. zoning officials are specifically
7 empowered to treat a lot for zoning purposes as consisting
8 of several lots of record. And we draw your attention
9 to the definition of lots under Section 199 of the zoning
10 regulations which specifically provides that -- and I'm
11 quoting -- "a lot may or may not be the land so recorded
12 on the records of the surveyor of the District of
13 Columbia."

14 While the Zoning Administrator never really
15 addressed this issue, the owners appear to take the
16 position that a developer is permitted to evade occupancy
17 limits on certain uses by spreading a single development
18 out over several contiguous lots, all in common ownership
19 as a means of avoiding BZA review, even though the facility
20 is identical in every respect to the sort of large facility
21 that may only be built with BZA review and approval.

22 This view is wrong. It would allow an
23 artificial focus and recorded lot lines to obscure what
24 we know is the reality of an institutional use as a way
25 of evading review by this Board. And this will only lead

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1 to more evasions.

2 One can envision private schools and day care
3 centers, which are also subject to occupancy limits, as
4 a condition of matter of right development, skirting
5 enrollment caps by simply subdividing property or buying
6 adjacent lots.

7 Mr. White will also testify that the
8 principle that zoning pertains to property and cannot
9 be made personal to the owners of property, which has
10 been cited by the property owners here, is not implicated
11 by the application of this established zoning principle.

12 The principle that zoning cannot be personal
13 would only be implicated if this Board were to rule that
14 while Boys Town may locate its four housing units as a
15 matter of right, if it sells its facility to a new operator
16 that new operator must secure a special exception to make
17 the same use of the property. And this is not the result
18 that the appellant has sought here.

19 This appeal is not personal to Boys Town,
20 and any zoning decision made here today should plainly
21 run with the land and apply to any new land owner or
22 operator of this facility.

23 There is also little doubt that the four
24 building units proposed by Boys Town are part of a single
25 facility. The owner's own descriptive material, which

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1 has been submitted to D.C. permitting officials and
2 available to the Zoning Administrator for his review at
3 the time he undertook this review, which are included
4 in Exhibit 8 of our prehearing submission, plainly
5 characterize the four housing units as being part of the
6 Boys Town -- and I quote -- "Capitol Hill campus" -- a
7 single facility owned and operated by a single service
8 provider, Father Flanagan Boys Home, Inc.

9 The plans show that the four residential
10 units, along with the other buildings planned in the
11 second phase of the project, will be served by a single
12 driveway entrance enclosed within a single fenced campus
13 and would appear to resemble, in all outward respects,
14 a single facility.

15 Now, the Zoning Administrator's decision
16 never really looked at whether the four residential
17 structures should be considered part of a single youth
18 residential care facility. Instead, it appears that the
19 Zoning Administrator simply accepted the owner's
20 assertion on the building permit application that it was
21 building four separate group homes, despite the
22 inconsistency with this assertion with the other material
23 that had been submitted as part of the permitting review.

24 However, had the Zoning Administrator made
25 such an inquiry, there are a number of facts concerning

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1 the nature of the relationship between these four
2 residential units that are likely to contradict the
3 owner's characterization of these units as being separate
4 group homes.

5 We, therefore, believe it is important for
6 this Board to understand the operational and programmatic
7 differences between group homes that are truly run as
8 separate and independent facilities and a single group
9 home that simply utilizes separate
10 residential -- separate structures as residential units.

11 And we will do this through our expert witness, Ms. Pat
12 Harden, who is a licensed social worker and
13 psychotherapist who is familiar with the operational and
14 programmatic characteristics of group residential
15 facilities.

16 Ms. Harden will explain the sorts of sharing
17 of facilities, staff, and program services that would
18 typically occur in residential units operated by a single
19 entity in groups so closely together, including such
20 things as centrally managed functions such as food service
21 and building and ground maintenance and coordination of
22 the various therapeutic services that these children will
23 receive in the activities that they engage in.

24 Ms. Harden's testimony will demonstrate that
25 even where a group home houses its residents in separate

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1 structures, if these structures are located in close
2 proximity to each other, and indeed are enclosed within
3 a fenced campus, that the home will also embody all of
4 the negative characteristics of a large institution that
5 the zoning regulations say must be subject to BZA
6 oversight. And also, that such a grouping, an operation,
7 is counter to the therapeutic needs of the children who
8 are placed in such a facility.

9 We will also present testimony from a
10 community member who is knowledgeable about Ward 6
11 planning to demonstrate that applicable planning
12 principles set forth in the Ward 6 plan would be violated
13 if such a large facility were permitted to located in
14 this area without BZA oversight under standards that are
15 set forth under the special exception process.

16 And then, finally, the Vice Chair of the
17 Southeast Citizens will briefly conclude our case.

18 Our first witness will be Mr. Wilbert Hill,
19 who is the Chairman of the Southeast Citizens for Smart
20 Development, and he will give a brief introduction to
21 our case in chief.

22 CHAIRPERSON GRIFFIS: Great. Thank you.
23 And as he comes forward, this is what I'm proposing for
24 the procedure in terms of witnesses. What I'd like to
25 have is after each witness -- and, Board members, please

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1 give me your opinion on this if you see -- if you have
2 an opinion on it. But I would suggest that we do go
3 witness by witness with the cross examination immediately
4 after each of the witnesses, rather than doing an entire
5 panel.

6 What I'm going to have is, after cross
7 examination, Board questions of the witness. And then
8 we will allow for an opportunity, if needed, for redirect.

9

10 Ms. Ferster, is that acceptable to you?

11 MS. FERSTER: Yes, that's acceptable for our
12 witnesses.

13 CHAIRPERSON GRIFFIS: Right. And Board
14 members? Okay. Is that clear to everybody? Okay.

15 Then, you're welcome to proceed.

16 MS. FERSTER: Okay. Mr. Hill, can you
17 please state your name and your address for the record?

18 MR. HILL: My name is Wilbert Hill, better
19 known as Wil Hill in the community. I live at 701 14th
20 Street, Southeast, with my 85-year old mother who is a
21 semi-invalid. I'm one block from this site and have been
22 a resident since 1972.

23 I won't repeat my written statement, but I
24 will just give you a little bit of introduction on myself.

25 I'm the Chair of the Southeast Citizens for Smart

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1 Development. I'm the Vice Chair and Commissioner of
2 ANC-6B, and I've been serving since -- I'm on my 13th
3 year as an ANC Commissioner.

4 I chair the Southeast Citizens Advisory
5 Council for the First District Police Department, and
6 I am Chair of PSA 112E. I am a former Big Brother and
7 was nominated for Big Brother of the Year for the
8 Northeast/Southeast Council. And last year, in May of
9 last year, I received the Capitol Hill Achievement Award
10 from CHAMPs organizations, which is Capitol Hill
11 Association of Merchants and Professionals.

12 The community is concerned about the CBRF
13 overconcentration. More than 20 CBRFs in the
14 neighborhood now, including the D.C. Health Care across
15 the street on 14th and Potomac Avenue. A large social
16 service facility nearby -- large social services
17 facilities nearby consist of D.C. General, D.C. Jail,
18 CSOSA.

19 CSOSA is Court Service and Office of
20 Supervision Agency, which I have been working very closely
21 with, have arranged meetings with the community people,
22 and also have arranged for tours of the organization at
23 the grounds of D.C. General Hospital. We have CAG,
24 Community Action Group, and we have Sasha Bruce.

25 Large CBRFs, such as Boys Town, have a huge

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1 impact on this community. That's the reason we're asking
2 the BZA that they need to look at this very closely.
3 Required an oversight by this Board especially because
4 Boys Town refused to meet with this community in June.

5 July the 13th of 2000, the ANC had a meeting.

6 They invited them. They never showed up. CALC,
7 Community Advisory Liaison Committee, invited them
8 several times. They always came up with reasons not to
9 appear. And the Southeast Citizens for Smart Development
10 attempted to invite them to a meeting. They never showed
11 up, and the only thing that I've ever received from Boys
12 Town is a lawsuit that's naming me four times.

13 CHAIRPERSON GRIFFIS: Okay. And, Mr. Hill,
14 I thank you for that. And as you remember -- I believe
15 you were here for preliminary matters -- we covered an
16 awful lot of issues that were suppressed in this case.

17 And, of course, we've given ourselves the latitude to
18 decide on those as they come up. But I just want to
19 caution you, if you have more to continue with, that we
20 will not be stepping in too far into some of the issues
21 that you've brought up. But we appreciate your comments
22 today.

23 I know I interrupted you, so please proceed
24 if you have anything further.

25 MR. HILL: I believe that's all I have to

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1 say.

2 CHAIRPERSON GRIFFIS: Okay. Thank you very
3 much.

4 Is there any cross examination? Ms. Brown
5 has indicated no. Mr. Feola?

6 MR. FEOLA: Just a couple of questions, Mr.
7 Chairman.

8 Mr. Hill, have you ever been to the Sargeant
9 Road campus of Boys Town?

10 MR. HILL: Yes, I have.

11 MR. FEOLA: More than once?

12 MR. HILL: I've been there once. I'm not
13 sure whether -- I think it's only once.

14 MR. FEOLA: Thank you.

15 CHAIRPERSON GRIFFIS: Pausing for a little
16 technical correction here.

17 Okay. Board members, questions of the
18 witness? Not seeing any indication of that --

19 VICE CHAIRPERSON RENSHAW: I'll ask a
20 question --

21 CHAIRPERSON GRIFFIS: Yes, indeed. Ms.
22 Renshaw?

23 VICE CHAIRPERSON RENSHAW: -- of Mr. Hill.

24 Thank you, Mr. Hill, for coming today. We
25 appreciate your participation in the meeting. You

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1 mentioned that the large CBRFs have an impact on your
2 community. You've certainly been there a long time,
3 since 1972. Would you care to very briefly enumerate
4 the impact on the community for me?

5 MR. HILL: Well, we have so many social
6 services down there now, CBRFs, that we feel that the
7 community cannot continue to stand more coming into the
8 neighborhood. We have two large public housing
9 facilities down there, and we have more activity over
10 at D.C. General.

11 We had a -- at one time, a halfway house
12 wanting to go over there. And I feel that the community
13 is just being overimpacted with CBRF facilities.

14 VICE CHAIRPERSON RENSHAW: All right.
15 Thank you.

16 CHAIRPERSON GRIFFIS: Anything else? And,
17 again, this I think goes -- what Ms. Renshaw is doing
18 is just getting a -- somewhat of a context for her own
19 edification. But we are looking at, of course, an appeal
20 of permit -- for a permit. So we will keep that in mind
21 as we proceed.

22 Any redirect, Ms. Ferster?

23 MS. FERSTER: I have no redirect.

24 CHAIRPERSON GRIFFIS: Okay. You can
25 continue on.

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1 MS. FERSTER: Our next witness is Mr. Kirk
2 White.

3 CHAIRPERSON GRIFFIS: While he approaches
4 the table, it's my understanding that you're offering
5 him as a zoning expert, an expert witness in zoning, is
6 that correct?

7 MS. FERSTER: Yes, we are. And we are
8 prepared to conduct voir dire, unless opposing counsel
9 would like to stipulate to his qualifications as a zoning
10 expert.

11 MR. FEOLA: We have no objection to Mr. White
12 being --

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. FEOLA: -- recognized as a zoning expert.

15 CHAIRPERSON GRIFFIS: Ms. Brown?

16 MS. BROWN: The District is not challenging
17 Mr. White's qualifications.

18 CHAIRPERSON GRIFFIS: Okay. Thank you.

19 MS. FERSTER: Thank you. And we have
20 submitted Mr. White's statement of his background as part
21 of our original prehearing submission at Exhibit 11.
22 So unless -- if the Board would like me to conduct some
23 voir dire, I would be happy to do that. Otherwise, I
24 would ask that the Board qualify Mr. White as an expert
25 in zoning.

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1 CHAIRPERSON GRIFFIS: Board members, any
2 questions of Mr. White or questions of further information
3 needed?

4 Okay. No, I think we can proceed. We'll
5 accept him as an expert in zoning.

6 MR. WHITE: Good afternoon, members of the
7 Board. As counsel has noted, I'm Kirk White. Bear with
8 me on my voice. It stems from a stroke.

9 This case is an appeal by the community group
10 Southeast Citizens for Smart Development from the Zoning
11 Administrator. This is an appeal regarding Boys Town,
12 a proposal to house 24 children in four structures each
13 with six children, plus two staffers, on Square 1045 on
14 Potomac Avenue, Southeast.

15 It is important to note that Square 1045 is
16 a fairly large square, and it is our understanding that
17 the Boys Town group has acquired most of it.

18 In 1974, I believe, that land was rezoned
19 from R-4 to C-2-B. I had the pleasure of being on the
20 staff of OP at that point and handled that case.

21 CHAIRPERSON GRIFFIS: Mr. White, if I could
22 interrupt you, you just stated that it was actually
23 rezoned from all R-4? So Square 1045 was R-4 and was
24 rezoned into the C-2-B?

25 MR. WHITE: I think there was a pocket or

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1 two of C-2-A.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. WHITE: Or --

4 CHAIRPERSON GRIFFIS: Of C-2-A, and then
5 C-2-B. Okay. Thank you.

6 MR. WHITE: And here we have the Zoning
7 Administrator, who is a fine individual and responsible
8 person, to deal with the public, and so forth. However,
9 I think he has made a mistake, and the mistake is this.

10 They have a site plan calling for I believe it's -- it's,
11 first of all, two units and then eventually more, which
12 they submitted to the Department of Consumer Protection.

13 And that piece of work indicates the size and location
14 of these buildings.

15 Now, when Andrea was talking to you about
16 the individual lots argument of the appellant, I'll speak
17 to that for a moment. I think it's a mistake not to look
18 at the other units that are planned for the site and to
19 add up the number of people who will be served, because
20 you will soon see that the facility they plan is larger
21 than the matter of right calculations, and actually
22 requires a special exception.

23 Nobody is saying that it isn't a good plan
24 or that it's totally inappropriate. What we're saying
25 is they have to come to you in order to get approval to

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1 build what they're going to build.

2 The Zoning Administrator looked -- did not
3 look beyond the recorded lots because -- under the
4 principle that one lacks support in the zoning regulations
5 and uses that require special exceptions under the zoning
6 regulations are capable of being spread out over more
7 than one lot of record.

8 We know that it is the practice of DCRA to
9 reference record lots in connection with zoning, and
10 that's probably adequate for most decisions. But this
11 one is different and unique in the fact that there are
12 several proposed structures, all within one zoning lot
13 for the purpose of argument, and that it ignores the lot
14 lines that are actually there.

15 There's a case that comes up in the Supreme
16 Judicial Court in Massachusetts that took up adjoining
17 lots and used the calculations from those lots to
18 determine whether something should go simply by
19 Administrator and which should come to you and which
20 ultimately before the Zoning Commission.

21 Section 199 of the zoning regulations defines
22 "lot of record" as a lot recorded in the records of the
23 surveyor of the District. It also defines "lot" as to
24 zoning regulations. It states that a lot may or may not
25 be the land so recorded in the records of the surveyor.

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1 In other words, the zoning regulations
2 themselves indicate that there are two kinds of lots -- a
3 lot of record, which stems back to the basic surveyor,
4 and a lot just singly, which may be used to activate zoning
5 on more than one parcel of land.

6 Just from my own experience, my house on
7 McKinley Street in Northwest -- I don't have that house
8 now -- but was on actually four lots, which is unusual.

9 I've never seen it before. Didn't cause any trouble,
10 but, indeed, that house had four lots. Now, since it
11 was built in 1920, you know, one might say that's a
12 grandfather situation.

13 And there are other lots that you come in
14 contact with with respect to zoning. One might be a
15 campus plan, where the individual lots of record could
16 be numerous, but there's one lot for zoning purposes
17 covering that whole campus.

18 So it's not unusual that something would
19 happen and this kind of interpretation we're advancing
20 would take place. And the zoning regulations governing
21 community-based facilities do not specifically provide
22 that the focus of the review is on lots of record.

23 In fact, as we talked about before, it doesn't
24 mention lots at all. It was the Zoning Administrator
25 who interpreted the situation as lots of record. Could

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1 well have been something quite different in that the land
2 would remain in one lot of record but there would be
3 several lots for zoning purposes.

4 I want to go back very briefly to the mid-'70s
5 when these regulations were adopted. I happen to have
6 been there on the staff. And it's a tough issue. There's
7 a balance between the neighbors of wanting some kind of,
8 you know, recognition that there -- they need to be
9 protected on occasion with an introduction of something
10 new called a community-based residential facility.

11 Now, it's no longer new. It's been used,
12 in fact, throughout most of the city. It is working
13 fairly well. The trouble is that individual -- certain
14 individual neighborhoods -- and this happens to be one
15 of them -- are impacted in the sense there are several
16 CBRFs or planned CBRFs that impact on Capitol Hill,
17 Southeast. Adams Morgan in the past was one of those
18 neighborhoods. 14th and Columbia was also a neighborhood
19 impacted by that.

20 And that -- and continuing that, the Federal
21 Government, particularly the courts, as a matter of fact,
22 have pressed the city for more and more CBRFs. Now, I'm
23 not saying that that's not a valid response, but it -- each
24 case needs to be looked at on its own. This is one of
25 them that would benefit for a site plan review type of

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1 thing, and there are others as well.

2 Then, the very small ones that are in
3 somebody's house, which are the majority of them, may
4 have made peace with their neighbors, and they really
5 don't want a site plan review. But this is the largest
6 CBRF new case that I'm aware of.

7 And as I said, the Federal Government, in
8 backing the fair housing law, says to the city, "Go out
9 and get some more." Well, indeed, they are trying
10 to -- this group is trying to establish that. But the
11 problem is, once again, unless some kind of a site plan
12 review is conducted by OP, or whoever, you just don't
13 know enough of the facts in a zoning application down
14 at DCRA.

15 You don't know enough facts to understand
16 the impacts, whether the impacts are automobile parking
17 or the truck loading. We took a glance at their site
18 plan, which by the way has two side-by-side units. So
19 the limitation on the size of the units has been exceeded.

20 That shows that the benefit of site plan review could
21 determine, you know, what's going to happen.

22 That doesn't necessarily mean that all of
23 them should be denied or sent back to the files or, you
24 know, not handled with the kind of care that you do and
25 which the Department of Consumer Affairs and also OP give

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1 things.

2 And let me deal just in closing with one
3 point, and that is the issue of the time table, the issue
4 of delay.

5 Now, because we think a mistake has been made,
6 we have claimed to be the delay factor here. We have
7 a fact here of saying, "Oh, look, we need a BZA review."

8 But everybody is aware of the fact that Father Flanagan's
9 organization is a fine one, and it's welcome in the city
10 in view of the foster care problems that have been, you
11 know, reviewed in the press, and so forth.

12 But a promptly-held review of the impacts
13 of this project would give you some more information on
14 how to handle this case. You know, it may be it will
15 make it moot, but right now it's almost like nobody cared
16 to look at it, and the folks in the neighborhood could
17 very well bear the brunt.

18 Do you want to ask me a couple of questions?

19 MS. FERSTER: Well, I actually have one
20 question that I would like to ask you, because you did
21 mention something about your house on McKinley Street
22 and the fact that it was sited on four lots of record,
23 four separate lots of record.

24 MR. WHITE: Right.

25 MS. FERSTER: Can you expand a little bit

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1 more on where your house was situated on those lots, and
2 how that complex of lots should be treated should you,
3 for example, seek to build it -- had sought to build an
4 addition on your house that perhaps didn't meet the
5 setback or side yard requirements for just one of those
6 single lots?

7 MR. WHITE: The house was built in 1920, and
8 at that time there were four record lots. Why that's
9 so, I don't know, why the builder decided to make four
10 lots rather than one lot. I mean, it's a typical, you
11 know, R-1-B house, Dutch colonial.

12 And, of course, we loved it dearly, but it
13 had that -- I was afraid that if we assessed the property
14 we'd be in trouble. So I never asked the question as
15 to why --

16 (Laughter.)

17 -- why the individual lots were established.
18 Anyway, we -- the zoning inspector came. Nobody cited
19 this. We didn't initiate anything. But it's curious,
20 and there are other places, some with properties on them
21 and some vacant, where there are separate lots but one
22 zoning lot for the purpose of erecting a house.

23 MS. FERSTER: Okay. Thank you.

24 And then, one of the things I'd like you to
25 elaborate on, if I could, is whether or not the

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1 interpretation of the Zoning Administrator in this case
2 could lead to other interpretations that could be damaging
3 to other uses that establish occupancy limits by
4 simply -- by allowing developers to spread development
5 over separate lots of records. Can you envision any kind
6 of slippery slope that might result from that sort of
7 interpretation?

8 MR. WHITE: Yes, I can. I mean, the vexing
9 problem of the record lot versus the lot -- the lots that
10 are referred to in the regulation just defines "lot,"
11 and it's basically a fairly limited fashion. But there
12 is no doubt places throughout the city where houses are
13 built and there are several lots but one lot of record.

14 Of course, you get some PUDs, like
15 Hillendale, which has its own site plan review. But one
16 lot -- and I think it's 300 approximately, or a little
17 less, individual lots, which for tax purposes are shown
18 in the ownership of the occupant, and the occupant can
19 sell that house even though there's one lot of record.
20 He's selling a tax lot.

21 And that's to -- another thing with the campus
22 plan. Like Catholic U, I think -- I think Mr. Feola
23 handled the campus plan, and that had separate lots for,
24 let's say, the dormitories and other buildings on the
25 campus. But it's one lot in terms of setting zoning

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1 requirements, which give overall density and use to a
2 campus plan. And, of course, that's dealt with by the
3 Board.

4 MS. FERSTER: Okay. Thank you. I don't
5 have any more questions.

6 CHAIRPERSON GRIFFIS: Cross examination?

7 MS. BROWN: Good afternoon, Mr. White.

8 MR. WHITE: Good afternoon.

9 MS. BROWN: Mr. White, you've mentioned
10 mistakes that you opined that were made by the Zoning
11 Administrator. And you referred to the correct
12 characterization as a campus plan for this type of
13 project, didn't you?

14 MR. WHITE: Exactly.

15 MS. BROWN: Are you familiar with zoning
16 regulation 3035, which deals with campus plan
17 development?

18 MR. WHITE: Yes, I -- I've seen it.

19 MS. BROWN: And you are familiar with the
20 fact that that statement specifically restricts that
21 regulation to institutions of higher learning, aren't
22 you?

23 MR. WHITE: That's right.

24 MS. BROWN: And this would not be considered
25 an institution of higher learning, correct?

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1 MR. WHITE: No, it would not.

2 MS. BROWN: So, therefore, the campus
3 development plan does not apply to the Boys Town --

4 MR. WHITE: It's an analogous type of thing.
5 It shows a pattern of lots, which may be similar in the
6 case --

7 MS. BROWN: But where the regulations
8 specifically provide for something related to the campus
9 development plan, that would refer to institutions of
10 higher learning, correct?

11 MR. WHITE: That's right. But you also have
12 to look at the comprehensive plan there to see land use
13 depicted. I know a lot of departments like the -- a lot
14 of the departments of this government like to ignore the
15 fact that there is a comprehensive plan.

16 And in this case, the Ward 6 plan calls for
17 a special treatment area, which includes this plan. And
18 that would be a form of site plan review.

19 MS. BROWN: Now, since you bring up the
20 comprehensive plan and the Ward 6 plan, is it your
21 testimony that those plans supersede the zoning
22 regulations in effect in the District?

23 MR. WHITE: They don't. But if there is a
24 distinction between them, it's up to you, the Zoning
25 Commission, or the City Council to find a way to correct

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1 that.

2 MS. BROWN: And until such time as those
3 corrections have been made by the Zoning Commission or
4 the City Council, the zoning regulations in fact supersede
5 the Ward 6 plan or the comprehensive plan, correct?

6 MR. WHITE: They do, unless like it's a
7 special treatment area or other land use text were to
8 apply to it. But ordinarily, day by day, you know, you
9 have to make a case, because otherwise the zoning would
10 override.

11 MS. BROWN: Well, let's talk specifically
12 about Lot 1045. Do the zoning regulations not supersede
13 the comprehensive plan, Ward 6 plan, in this case?

14 MR. WHITE: Well, at this moment, other than
15 the adoption of the overall comprehensive plan that has
16 Ward 6 in it nothing has been done to activate
17 the -- particularly the retail areas that are called for
18 in this special treatment area, which is the -- I'll get
19 it in a second -- which is the -- in the comprehensive
20 plan but not actually --

21 MS. BROWN: So, therefore, the zoning
22 regulations control this particular lot.

23 MR. WHITE: That's right.

24 MS. BROWN: Thank you. Also, you mentioned
25 the idea that this should be considered -- that this

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1 property should -- this project should be
2 considered -- actually, this should be converted to one
3 single lot. This is a C-2-B zoned area, correct?

4 MR. WHITE: Yes.

5 MS. BROWN: And are you familiar -- do you
6 know whether or not there are any residents in districts
7 immediately adjoining that lot?

8 MR. WHITE: Not too far away. A typical
9 Capitol Hill neighborhood with R-4 --

10 MS. BROWN: But you don't know whether or
11 not there is any residential district that's within 25
12 feet of Lot 1045?

13 MR. WHITE: Not that I --

14 MS. BROWN: Suppose I told you that there
15 was. Does that make a difference with respect to this
16 development?

17 MR. WHITE: Would they be the lots that
18 eventually either Beau Bowken, who was the previous owner,
19 tore down or -- I don't think it's the Boys Town people
20 who tore those down. But it could be.

21 MS. BROWN: Are you familiar with zoning
22 regulation Section 2517.1?

23 MR. WHITE: If you'd refresh my
24 recollection.

25 MS. BROWN: That's the section that deals

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1 with the construction of two or more structures on a single
2 lot.

3 MR. WHITE: Actually, that's our point.
4 There is the possibility of having separate lots, but
5 you need to know what's proposed for them. To leave out
6 some part of a project really doesn't help anything.

7 MS. BROWN: Let me, if I could, read to you
8 Section 2517.1. "This section shall permit two or more
9 principal buildings or structures to be erected as a
10 matter of right on a single subdivided lot that is not
11 located in or within 25 feet of a residence district."

12 MR. WHITE: Yes, that's really not very
13 clear. Does it mean there has to be residents within
14 25 feet in order to get a permit?

15 MS. BROWN: And if, in fact, there was a
16 residence district -- let's say, an R-4 zone
17 district -- within 25 feet of the proposed development,
18 that would preclude Boys Town from erecting two or more
19 structures on a single lot, correct?

20 MR. WHITE: Yes, ma'am.

21 CHAIRPERSON GRIFFIS: Mr. White, can I
22 interrupt you for a minute? If you could, just move your
23 mike a little bit closer to you.

24 MR. WHITE: Sure.

25 CHAIRPERSON GRIFFIS: Thank you.

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1 MS. BROWN: Mr. White, you also testified
2 with respect to the record lot. I believe in Ms.
3 Ferster's opening statement, as well as in your testimony,
4 you indicated that the definition as appears in 199.1
5 "lot" includes what may or may not be found in the office
6 of the surveyor.

7 MR. WHITE: Right. The difference would be
8 it's not a recorded lot but a lot for zoning purposes.

9 MS. BROWN: Okay.

10 MR. WHITE: Often with tax lots inside of
11 it.

12 MS. BROWN: Tell me, what is your
13 understanding of a record lot?

14 MR. WHITE: A record lot would be a lot that
15 was approved by the surveyor and added to the land records.

16 MS. BROWN: And are you familiar with the
17 section of the zoning regulations that guide the Zoning
18 Administrator through the issuance of building permits,
19 specifically 3202?

20 MR. WHITE: Yes.

21 MS. BROWN: Are you familiar with
22 Section 3202.3, which --

23 MR. WHITE: I am not specifically aware of
24 it. Could you read it?

25 MS. BROWN: If I might read this to you.

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1 "Except as provided in Section 2516 in the Act of Congress
2 of June 28th, 1898," and I'll leave out all of the other
3 references, "a building permit shall not be issued for
4 the proposed erection, construction, or conversion of
5 any principal structure, or for any addition to any
6 principle structure, unless the land for the proposed
7 erection, construction, or conversion has been divided
8 so that each structure will be on a separate lot of
9 record."

10 MR. WHITE: Right. That has really been
11 superseded by the practice of lawyers and developers,
12 and so forth, to use a single lot of record, and within
13 that single lot -- let's say for rowhouses, for
14 example -- and they -- you might have 250 separate tax
15 lots within a lot of record.

16 MS. BROWN: And is it your testimony that
17 lawyers and developers have superseded the zoning
18 regulations in effect?

19 MR. WHITE: Well, I think its
20 interpretations have been used. Having been a lawyer
21 for developers, I'm not condemning it. You know, in fact,
22 this site would be fine if it were one record lot with
23 separate tax lots and those tax lots covered the buildings
24 in which the young people are to be housed.

25 MS. BROWN: But notwithstanding the ability

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1 of lawyers and developers to possibly circumvent the
2 regulations as they are written, this regulation does,
3 in fact, state record lot, correct?

4 MR. WHITE: Yes.

5 MS. BROWN: And, in fact, each of these four
6 permits that were issued by the Zoning Administrator were
7 for a structure on a lot of record, is that not correct?

8 MR. WHITE: Yes.

9 MS. BROWN: Okay. And based on the other
10 provisions, the provision that speaks against the campus
11 development setting, where there is not an institution
12 of higher learning or where there is a prohibition against
13 constructing structures that are within 25 feet of a
14 residential district, the only way that this permit could
15 have been issued would have been on a per record lot basis.
16 Isn't that correct?

17 MR. WHITE: Yes. The overall thing -- the
18 overall lot should be a lot of record. But you have
19 to -- you can't just look at development occurring in
20 this lot and this lot and thereby get around the
21 requirements on size and CBRFs.

22 MS. BROWN: Are you familiar with any section
23 of the zoning regulations that dictate that the Zoning
24 Administrator should go outside of the regulations in
25 effect?

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1 MR. WHITE: No, but it's mindless to issue
2 a permit for one facility and not be aware there's a
3 separate facility next to it that's planned, each of which
4 have so many children authorized. And that's what the
5 neighbors are concerned about, not that there will be
6 one but that it will be too big.

7 MS. BROWN: Based on what I'm hearing from
8 you, it's your testimony that, in fact, the Zoning
9 Administrator followed the zoning regulations by the book
10 in this case rather than looking at a bigger picture.

11 MR. WHITE: Yes, and that's a mistake.

12 MS. BROWN: I have nothing further.

13 CHAIRPERSON GRIFFIS: Mr. Feola?

14 MR. FEOLA: Thank you, Mr. Chairman. Phil
15 Feola for the property owner.

16 Mr. White, I just have a couple of questions,
17 followup to Ms. Brown. I assume you don't dispute the
18 fact that these four units are separate buildings, is
19 that correct?

20 MR. WHITE: They are separate buildings.

21 MR. FEOLA: If these -- if Boys Town owned
22 four lots, one on this property for one of these houses,
23 one in Marshall Heights, one in Brookland, one in Spring
24 Valley, they would be able to build those four separate
25 houses on four separate record lots?

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1 MR. WHITE: I don't think so.
2 That's -- maybe our dispute is over that point.

3 MR. FEOLA: So you think no matter where Boys
4 Town would build these four houses, no matter how far
5 apart these properties might be, they would be treated
6 as a campus?

7 MR. WHITE: Yes. As a matter of fact, that's
8 what you have on Potomac Avenue, which is a campus. The
9 materials submitted by --

10 MR. FEOLA: But you're saying it would be
11 a campus even if I put one in Ward 7, one in Ward 3, one
12 in --

13 MR. WHITE: Could be.

14 MR. FEOLA: Okay. In your experience, can
15 you cite any case, project, building permit, or anything
16 of tangible evidence in which the Zoning Administrator
17 ruled beyond the confines of a record lot? In other
18 words, looked next door to see what was going on?

19 MR. WHITE: I haven't seen one, but this
20 situation where he issues a permit for one house and a
21 permit for another house, and they're right next door,
22 and when --

23 MR. FEOLA: I understand. You're saying he
24 should have, but you can't cite to a situation in the
25 past 30 years where he has.

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1 MR. WHITE: No, it's just common sense.

2 MR. FEOLA: If this property was held by a
3 for-profit developer and were to build four single-family
4 houses on this property in single ownership on four
5 separate record lots, it is your opinion, then, that the
6 Zoning Administrator should look at the cumulative effect
7 of those four properties?

8 MR. WHITE: No. Our argument is one that's
9 solely to CBRFs.

10 MR. FEOLA: Solely to the future occupants
11 of these houses.

12 MR. WHITE: Right.

13 MR. FEOLA: Okay. Are you familiar with
14 Zoning Commission Order 725 that specifically permits
15 this kind of CBRF as a matter of right in this zone?

16 MR. WHITE: Yes. But here again, if you have
17 one next door, you've got to add those children to the
18 children you've already given a permit to.

19 MR. FEOLA: Well, I'm going to show a copy
20 of 725, and I'd like you to point out to where the Zoning
21 Commission directs the Zoning Administrator or the Board
22 of Zoning Adjustment to look for the property -- look
23 at the property next door to add up the numbers.

24 MR. WHITE: No.

25 MR. FEOLA: And if you don't -- I mean, this

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1 is -- it's an unfair question that I hand you a paper,
2 and I -- if counsel would like to submit something for
3 the record later, that's fine. It's not a -- not trying
4 to --

5 MR. WHITE: That's fine. Just -- Mr. Feola,
6 I'm not asking this for record purposes, but you and I
7 have many years of practice together.

8 MR. FEOLA: Right. I should have disclosed
9 this to my client, Mr. Hannaham. We were law partners
10 for almost 15 years.

11 MR. WHITE: And it was my pleasure.

12 MR. FEOLA: Mine as well. And Mr. White got
13 smart and got a real job and got out of the practice of
14 law.

15 MR. WHITE: Yes. In the sense that if we're
16 raising a new issue that -- and, indeed, we may
17 be -- concerning the appropriate permit process for CBRFs,
18 it does defy imagination to have the Administrator
19 approve, you know, one house and the second house, and
20 even the third house, which he does in a single lot of
21 record, not a single lot -- a record lot, thereby avoiding
22 precisely what the Zoning Commission said to do, and what
23 the limits are in terms of size of a facility, what zones
24 they're in, etcetera, is an attempt to balance the need
25 for these facilities, for those that are in need,

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1 with -- not disrupting the normal play of the Zoning
2 Administrator and the applicants, and so forth.

3 This is specifically when he approves one
4 house, and then he approves entirely the second house,
5 and then doesn't, you know, take into account the fact
6 that they are two facilities. And it's the number of
7 people involved that, you know, these gradations have
8 been set.

9 MR. FEOLA: So 1995, Boys Town comes to the
10 Zoning Administrator with one lot, one house, six kids,
11 gets it approved. Year 2000, Ms. Renshaw comes and buys
12 the property next door and applies for a permit for six
13 kids for a foster home, and then Feola comes next. The
14 Zoning Administrator has to go back and look at the uses
15 that were permitted on the property earlier.

16 MR. WHITE: Right. Otherwise, it's a
17 mindless exercise.

18 MR. FEOLA: The zoning of this site is C-2-B,
19 is that not correct?

20 MR. WHITE: It is.

21 MR. FEOLA: The gist of your testimony and
22 the appellant's claim here is that the -- my
23 understanding, and if I'm wrong tell me -- that the
24 cumulative effect of these four houses would trigger some
25 land use impact that would demand a review by the BZA.

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1 MR. WHITE: Right.

2 MR. FEOLA: My recollection is that the
3 property that we're talking about, the four houses, is
4 about 30,000 square feet. What other uses could you put
5 on this property in a C-2-B zone?

6 MR. WHITE: Probably not -- you know, just
7 a regular apartment house would be one. Ideally --

8 MR. FEOLA: Approximately 100 units?

9 MR. WHITE: Could be.

10 MR. FEOLA: Office building?

11 CHAIRPERSON GRIFFIS: For my clarification,
12 are you talking about all four of the lots? Or are you
13 talking about each lot is 30,000?

14 MR. FEOLA: No, no, the four lots together
15 are --

16 CHAIRPERSON GRIFFIS: Okay. Combined.

17 MR. FEOLA: -- 29,000.

18 CHAIRPERSON GRIFFIS: That's fine.

19 MR. WHITE: And the purpose of -- as a matter
20 of fact, that's when C-2-B was adopted, back in the
21 mid-'70s when Mr. Bowken, who handled the property, wanted
22 to be allowed to put up apartments. And, of course, he
23 has the right not to do that, if he so chooses.

24 MR. FEOLA: So assuming you could do an
25 apartment building of 100,000 square feet, if I did the

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1 math right, which is about 100 units, your client's claim
2 is that these four houses that have 32 kids in them, or
3 32 people in them, 24 kids, is going to have a bigger
4 land use impact than that apartment building.
5 That's -- is that what I'm hearing?

6 MR. WHITE: I believe so, because you've
7 got --

8 MR. FEOLA: Because they have more cars?

9 MR. WHITE: Well, they've got common dining
10 facilities and truck loading, and so forth. It may be
11 that in the end that it can be demonstrated not to have
12 an adverse impact. But nobody is doing that kind of
13 determination at this point.

14 MR. FEOLA: A couple of things that you
15 mentioned in your direct testimony or in response to a
16 question. One, you mentioned the Hillendale
17 development, which we worked on together. That was done,
18 some 40 acres if I recall, in a single ownership?

19 MR. WHITE: Yes.

20 MR. FEOLA: And it was subdivided by tax lots
21 by a single owner, is that correct?

22 MR. WHITE: That is correct.

23 MR. FEOLA: 300 plus or minus units?

24 MR. WHITE: Right.

25 MR. FEOLA: And is there a fence or a wall

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1 around that property?

2 MR. WHITE: There is.

3 MR. FEOLA: Do you recall -- your testimony
4 indicated that you worked with the MPO -- the Misual*
5 Planning Office was the predecessor to OP -- at the time
6 that this property was rezoned --

7 MR. WHITE: Right.

8 MR. FEOLA: -- from R-4 to C-2-B, I believe.
9 Do you recall whether the community embraced that zoning
10 change?

11 MR. WHITE: I think there were divided
12 opinions.

13 MR. FEOLA: Can you point to anything -- just
14 one final question, Mr. Chairman. Anything specifically
15 in the zoning regulations that requires the Zoning
16 Administrator to look at properties next door to a permit
17 application?

18 MR. WHITE: Yes. I looked at all of the
19 CBRFs yesterday and it kind of got me confused. But one
20 of the provisions, C-2 allows seven to eight persons.
21 It has a 500-foot rule in it.

22 MR. FEOLA: Seven to eight persons, is that
23 correct?

24 MR. WHITE: Seven or eight, yes, that's
25 right.

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1 MR. FEOLA: But we have six.

2 MR. WHITE: Yes. But two instances of six
3 and you're out of the regulation. You're exceeding it.

4 MR. FEOLA: Yes. Three hundred houses
5 together don't equal one apartment building, though, do
6 they?

7 MR. WHITE: Well, it certainly exceeded the
8 tax revenue.

9 MR. FEOLA: I'll grant you that. But would
10 300 townhouses, because they're attached together, be
11 an apartment building?

12 MR. WHITE: No, no. They're separate
13 facilities.

14 MR. FEOLA: Okay.

15 MR. WHITE: Let me just complete this thing
16 about -- in R-2, again, youth rehab homes, youth
17 residential care homes, "shall not have an adverse impact
18 on the neighborhood because of noise, traffic, occupancy,
19 or the number of similar facilities in the area." I mean,
20 there's a specific charge in the C-2 zone as well as in
21 the R-2 zone to conduct an impact statement. They happen
22 to have left that out when they got to --

23 MR. FEOLA: But isn't that significant, the
24 Zoning Commission left it out? I mean, the Zoning
25 Commission wrote the regulations. Don't you think if

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1 they wanted to have it in, since they put it in all those
2 others, they would have continued that same language?

3 MR. WHITE: Well, it's possible with the --

4 MR. FEOLA: So what you're saying, the Zoning
5 Commission made a mistake because they didn't do what
6 your clients think they should have done. I'd submit
7 that the relief there is the Zoning Commissioner's, not
8 before this Board.

9 MR. WHITE: Well, may I --

10 MR. FEOLA: I'm sorry. I shouldn't cut you
11 off.

12 MR. WHITE: It could be both.

13 MR. FEOLA: All right. I have no further
14 questions.

15 CHAIRPERSON GRIFFIS: Did you want to
16 present that as a question? Is the remedy the position
17 of the Zoning Commissioner, or was that just a statement
18 that will be -- just left. Okay.

19 Board members?

20 Let me start out quickly, Mr. White. You
21 had referenced a site plan. Do you have the submittal
22 site on that, so that we know what we're looking at?
23 I believe we have one in -- or why don't you tell me what
24 you were referring to.

25 MR. WHITE: I'm not sure. I think that's

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1 the site plan that the home submitted along with the
2 application.

3 CHAIRPERSON GRIFFIS: Right. Okay. And
4 which is part of the submission, which is, if I'm not
5 mistaken, Volume 1, Exhibit 2?

6 MR. WHITE: Yes.

7 CHAIRPERSON GRIFFIS: And you can correct
8 me as we keep going on. I had a quick clarification.
9 You kept referring to two units. Do you want to --

10 MR. WHITE: Two buildings each containing
11 six children and two administrators.

12 CHAIRPERSON GRIFFIS: Okay. Have you found
13 that site plan reference? So we're looking at -- you've
14 pulled it out. We're looking at C4, C1.1, and I
15 have -- excuse me -- and A101, is that correct?

16 MR. WHITE: I believe that's correct. Did
17 the Board receive the site plan that originally was
18 submitted to Environmental Services? But it's under that
19 that we are talking about the fact that in the end there
20 will be at least six extra houses and a storage garage.
21 And it's quite a large operation.

22 CHAIRPERSON GRIFFIS: Right, yes. I think
23 you're going afield of what I was talking about. You
24 have an additional site plan which, if I'm not mistaken,
25 is in Exhibit 8, which is part of the Environmental

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1 submission. Is that what you were referring to, then?

2 MR. WHITE: Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 How is that different than what we just looked
5 at?

6 MR. WHITE: I think it's pretty much the
7 same.

8 CHAIRPERSON GRIFFIS: Okay. Can you
9 clarify for me again the two units on that site plan?

10 MR. WHITE: I know it's one, two, three,
11 four, five, six -- four units each with --

12 CHAIRPERSON GRIFFIS: Okay, I think I'm
13 following now then.

14 (Pause.)

15 Now to that you talked about the site plan
16 and you indicated that the buildings have exceeded the
17 limitation of size for the units. And I guess I need
18 clarification on that in terms of what are you referring
19 to as the unit. Is that the building, the structure?
20 And then how has it exceeded its limitation? And I'm
21 assuming that limitation is the zoning limitation. Is
22 that correct?

23 MR. WHITE: The zoning limitation applying
24 to the first unit and then a second unit and then a third
25 unit, cumulatively, they're beyond the occupancy

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1 requirement.

2 CHAIRPERSON GRIFFIS: Okay, so when you
3 indicated that the limitation of size of the units was
4 exceeded, you were actually talking about then the
5 population based on the cumulative effect of the CBRF.
6 Okay.

7 Three points that you made that I took note
8 of and I think they're all similar and going in the same
9 direction and I would like you to give this Board perhaps
10 a little more of your understanding of where you're trying
11 to go with this.

12 MR. WHITE: Okay.

13 CHAIRPERSON GRIFFIS: First, you made a
14 statement that -- well, let's start with Section 199 which
15 is a Lot of Record. You indicated there would also be
16 a lot, a single lot for zoning purposes. That single
17 lot should then be looked at as one lot as in a campus
18 plan. We've walked down that road a little bit.

19 What I need to get to is (1) how does the
20 Zoning Administrator get to that point of which he reviews
21 that, or she reviews that? Basically, directly, how does
22 the ZA does this?

23 And then, you give another statement and I'm
24 just writing quickly, so I don't have it verbatim, but
25 that somehow there should be a process by which there's

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1 a site plan approval, giving the Board more information
2 for a site plan review, again going to the same issue.

3 How does the Zoning Administrator do that in this case?

4 MR. WHITE: Should I answer that?

5 CHAIRPERSON GRIFFIS: Yes. That's period.

6 MR. WHITE: These departments, obviously,
7 here, city government are not all that well coordinated.

8 But assuming that they could be for this purpose, would
9 be an administrative directive, a linking together the
10 Permits Office and the Office of Planning, possibly the
11 Transportation Department.

12 CHAIRPERSON GRIFFIS: But are you talking,
13 are you talking about what should be proposed to happen
14 or are we looking at a process by which was not proceeded
15 with?

16 MR. WHITE: Really the latter because you
17 can, when you see a need which you're obviously looking
18 at the campus plan, looking at the homes plan will involve
19 exceeding the limitation by a number of persons. So that
20 should tip one off to run a check on this with the Office
21 of Planning, perhaps the Human Services types, to
22 determine that yes, in fact, it's going to be okay, don't
23 worry about. Forty-eight children is not so bad. Or
24 saying look, it's too big. Let's cut back thus far and
25 enter into an agreement.

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1 CHAIRPERSON GRIFFIS: Where in the process
2 does the tip off come then?

3 MR. WHITE: When you open your envelope to
4 look at Case Number So and So.

5 CHAIRPERSON GRIFFIS: When who opens what
6 envelope?

7 MR. WHITE: When the Zoning Administrator,
8 outcomes or maybe it comes in separately, this campus
9 plan. I mispeak, not campus plan, but site plan.

10 It's right there. It says look. It's not
11 just this one and the second one. It's three or four
12 more in the same location.

13 CHAIRPERSON GRIFFIS: Okay, so your point
14 is that part of the permitting submission that would go
15 to the Zoning Administrator would include a site plan
16 that was, in fact, submitted to the DISF form and that
17 the Zoning Administrator shouldn't then review that in
18 context with his review for the specific zoning
19 regulation.

20 MR. WHITE: Right, right.

21 CHAIRPERSON GRIFFIS: Okay, Board Members,
22 I will follow up later, but please, if there are other
23 questions at this time.

24 Take a brief second here just to get
25 organized.

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1 (Pause.)

2 VICE CHAIRPERSON RENSHAW: Mr. White, you
3 spoke earlier about the need for the site plan review
4 by the Office of Planning or whoever.

5 At what point should that have impacted this
6 application?

7 MR. WHITE: At the time the application was
8 received by DCRA.

9 VICE CHAIRPERSON RENSHAW: Then DCRA would
10 alert the Office of Planning or whoever, that a site plan
11 was needed?

12 MR. WHITE: Right. AS it happens, that
13 process is available and works fairly well for other
14 matters.

15 VICE CHAIRPERSON RENSHAW: All right.

16 CHAIRPERSON GRIFFIS: Do you want to
17 elaborate on "other matters"? What does it work well
18 in?

19 MR. WHITE: Well, first of all, the
20 environmental assessment that would -- even if it was
21 a slope review or that kind of thing.

22 It's always a good idea, although it's not
23 heard of very much, to get the Human Services involved
24 when this is their jurisdiction in this kind of case.

25 I'm trying to say I did a lot in the District

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1 government and I enjoyed it, but what I used to do is
2 just get together people to look at an application,
3 whether it's a matter of right, quote unquote or not,
4 to do a fairly speedy job of examining the possible
5 impacts.

6 VICE CHAIRPERSON RENSHAW: But then it would
7 be up to the Zoning Administrator to call these people
8 together or does he, or she if that's the case, punt to
9 the Office of Planning and then the Office of Planning
10 takes up the coordination with the other agencies?

11 MR. WHITE: That's the best idea, yeah.

12 VICE CHAIRPERSON RENSHAW: Of government.
13 Now is it your feeling that this is not done because it
14 delays the development of the particular or the -- shall
15 we say it slows down, retards, the application process?

16 MR. WHITE: I think it's been said that it
17 does slow it down. And the basic problem is to get people
18 who have a review capacity to accomplish it in a speedy
19 period or as a matter of fact, come together in a single
20 meeting to resolve all the issues. That could cut back
21 on delay. And delay is a factor, no question.

22 VICE CHAIRPERSON RENSHAW: Is it the custom
23 of the -- well, we'll ask this question when the Zoning
24 Administrator comes to the table, but in your opinion,
25 is it the custom of the ZA not to do this kind of thing,

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1 where he or she, as the case may be, may know that it's
2 best to do it?

3 MR. WHITE: Yes. And they don't like other
4 people fooling around with their procedures. They resent
5 the Office of Planning and so forth, but that gets into
6 the kind of mischief we have here today.

7 MEMBER LEVY: Mr. Chair?

8 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

9 MEMBER LEVY: Mr. White, I'd like for you
10 to clarify a statement that I believe you made under cross
11 examination by Mr. Feola. And that is you seemed to
12 indicate that it was your opinion that no matter where
13 these four facilities were located in the city, whether
14 or not they were located adjacent to one another, they
15 should still be considered, and you used the word
16 "campus", so I'll use the word "campus" -- do you recall
17 that?

18 MR. WHITE: Yes, I did. I think I went a
19 little bit too far because when things are scattered all
20 over the city, it's very hard to say they are all
21 connected. But indeed, when -- in this CBRF set up, they
22 may well be and the need for coordination exists with
23 lots two houses away from each other or next door.

24 MEMBER LEVY: Do you then -- do you think
25 the fact that the lots are adjacent to one another has

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1 any significance?

2 MR. WHITE: Yes, I do. It creates, quite
3 frankly, a presumption that you ought to conduct the
4 review so as to determine the number of children that
5 go in there and because the zoning regulations has these
6 separate treatments in the various zone districts. So
7 you can't just say okay, we've got one. There's one.
8 We have two. And there's another one. And the two of
9 them add up to meaning a facility that is larger in number
10 than the zoning allows.

11 MEMBER LEVY: I guess I'm still confused.
12 Are you arguing that it's because of their proximity to
13 one another and not --

14 MR. WHITE: Well, it could be that. It could
15 -- actually, that's an easier review kind of thing when
16 they're next door because it's not going to take a lot
17 of time to determine how they will impact that
18 neighborhood.

19 So typically, they're near each other or
20 adjacent.

21 MEMBER LEVY: Okay, thanks.

22 CHAIRPERSON GRIFFIS: Anything further of
23 Mr. White?

24 COMMISSIONER HANNAHAM: Mr. White, would you
25 just clarify? I remember the exchange you had with Ms.

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1 Brown, I believe, the Corporation Counsel. Is it your
2 understanding then that the statement that was made by
3 the Zoning Administrator was the fact -- a judgment call
4 he made, not that he violated any of the zoning rules
5 or regulations?

6 MR. WHITE: Yes, and he certainly -- the
7 interpreter of those in the first instance, I'm saying
8 he made a mistake, but not accounting for the fact that
9 there were two units there, each with a number of kids
10 and that would exceed a C2B limits for these facilities.

11 COMMISSIONER HANNAHAM: But he really was
12 within the rules of the -- or constituted at this time.
13 He didn't violate the zoning regulations with what he
14 did?

15 MR. WHITE: No, except that in this case you
16 have a facility with a number of kids and then you have
17 a second which isn't taken into account. It's sort of
18 common sensical that you would look at the totality of
19 it.

20 But I'm not saying that he violated --

21 COMMISSIONER HANNAHAM: He didn't do this
22 purposefully, it was a matter of judgment in your opinion?

23 MR. WHITE: That's right. He has a lot of
24 experience and so forth, but --

25 COMMISSIONER HANNAHAM: But this is one

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1 instance where you believe he might have slipped, his
2 judgment?

3 MR. WHITE: Right.

4 COMMISSIONER HANNAHAM: An error. Okay,
5 thank you.

6 CHAIRPERSON GRIFFIS: Let me follow up on
7 that. Because it seems to me that you're talking about
8 that at some point there should have been some sort of
9 site plan, campus plan review by another agency. You're
10 indicating that the Zoning Administrator should have
11 used, I believe you said, common sense in looking at other
12 things beyond it. You talked perhaps about there should
13 have been some other review, whether it be special
14 exception review. That seems to be pointing to the fact
15 that in some areas of the zoning regulations two things.
16 One, there is some ambiguity and/or two, the Zoning
17 Administrator has some discretion as to reviewing and
18 judgment.

19 Can you speak to specifically where you find
20 ambiguity in the regulations that might give that
21 discretion to the Zoning Administrator in this case?

22 MR. WHITE: I think it's with regard to CBRF
23 where you get the most ambiguity because you're talking
24 about facilities that end up being all over the city,
25 obviously, your point was well taken.

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1 And what I'm saying is it doesn't take much
2 common sense to say okay, we've got this unit and then
3 we've got this unit. Add them up and see how many kids
4 are there, because if you don't, you'll end up violating
5 the zoning regulations.

6 CHAIRPERSON GRIFFIS: So you're saying that
7 the writing on CBRFs at the lower end of the occupancy,
8 below 7, is ambiguous enough that there is flexibility
9 or they're just ambiguous enough that you may run into
10 problem?

11 MR. WHITE: Yeah, except that it isn't
12 ambiguous when somebody is proposing to build housing
13 for CBRF persons, side by side. And they exceed the
14 limitations of the zoning regulations as to numbers.
15 When they see that --

16 COMMISSIONER HANNAHAM: Okay. Anything
17 else for Mr. White at this time?

18 Take a minute.

19 VICE CHAIRPERSON RENSHAW: Can we call Mr.
20 White back at a later time?

21 MR. WHITE: I'd be happy to.

22 CHAIRPERSON GRIFFIS: Absolutely.

23 VICE CHAIRPERSON RENSHAW: Is it possible?

24 CHAIRPERSON GRIFFIS: Yeah, I think we will
25 reserve the right to call Mr. White back up if we have

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1 questions.

2 MEMBER ETHERLY: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yeah.

4 MEMBER ETHERLY: One final question for Mr.
5 White. Because I'm going to raise this issue again kind
6 of as we go through the proceedings. Counsel for the
7 owner's appeal raise the issue of Zoning Commission Order
8 725 which speaks to concerns about disparate treatment
9 of individuals in CBRF facilities. Help me deal with
10 the assertion that to allow -- what I'm trying to do is
11 I'm trying to square this argument regarding six unrelated
12 persons living together in a dwelling, family. You have
13 six persons, arguably, they're in each of the facilities
14 that are proposed here. Does -- is there an issue or
15 is there a concern under Commission Order 725, as you
16 see it, or is it your argument that the spirit of 725
17 still can be respected if you look at this facility in
18 its entirety?

19 MR. WHITE: That's what I'm saying.

20 MEMBER ETHERLY: Okay, okay. So if you look
21 at the facility in its entirety, there then isn't any
22 concern with Zoning Commission Order 725?

23 MR. WHITE: I think that in practical effect,
24 CBRF regulations or that part of 1 or 2 or 3 takes
25 precedence over anything else because of the importance

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1 of that type of development.

2 MEMBER ETHERLY: Okay, okay. Now let's come
3 back to this issue of Hillandale. There was some exchange
4 between Mr. Field and yourself regarding Hillandale and
5 then also some exchange with Ms. Brown with regard to
6 the issue of campus plans and we talked about the
7 analogousness of CBRFs in this particular setting to a
8 campus plan.

9 Is there -- is it your contention, your
10 testimony that it is appropriate to view this particular
11 project as it's currently proposed as being analogous
12 to a Hillandale --

13 MR. WHITE: Only analogous, not necessarily
14 controlling because Hillandale was a PUD.

15 MEMBER ETHERLY: Correctly.

16 MR. WHITE: It already got site plan review
17 and space. And they built the units, 250 or something
18 like that, each one on a Tax Lot.

19 MEMBER ETHERLY: But the absence of that
20 detailed site plan review here is an issue?

21 MR. WHITE: Yes, it is.

22 MEMBER ETHERLY: Okay, thank you very much.
23 Thank you, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Anything further?
25 Okay, thank you, Mr. White.

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1 MR. WHITE: Thank you, Mr. Chair.

2 MS. FERSTER: Should we call our next
3 witness, Mr. Chair?

4 CHAIRPERSON GRIFFIS: Absolutely.

5 MS. FERSTER: Our next witness is Patricia
6 Harden.

7 Can you please state your name for the record
8 and your address?

9 DIRECT EXAMINATION

10 MS. HARDEN: Yes, my name is Patricia Harden
11 and my address is 7101 Rock Ridge Lane, Alexandria,
12 Virginia.

13 MS. FERSTER: I'm going to conduct a brief
14 voir dire because I'd like to qualify Ms. Harden as an
15 expert in her field which is -- she is a licensed social
16 worker and psychotherapist and an expert in the area of
17 group homes. So -- and I would also note that her CV
18 has been previously distributed as part of our submission
19 on January 25th, I believe.

20 CHAIRPERSON GRIFFIS: Right. Before you
21 start with that, let me just get the read from the Board
22 whether we need further than what has been submitted.
23 I think it's fairly obvious qualifications as a social
24 worker, clinical and coordinative work is fairly
25 extensive. So in terms of expert in social work which

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1 you're proffering at this time, let me get comments from
2 the other participants.

3 Ms. Brown, and please feel free to signify
4 if you have no comments, so I don't have you come up to
5 table to make no comment.

6 MS. BROWN: The District has no objections
7 to Ms. Harden's qualifications. However, for the record,
8 the District objects to the testimony of Ms. Harden on
9 the basis that it's wholly irrelevant to the matter that's
10 before the Board today. We're reviewing obviously
11 whether or not a permit was properly issued and that it's
12 a legal matter versus the social concerns that I believe
13 Ms. Harden is going to testify about.

14 CHAIRPERSON GRIFFIS: And thank you for
15 bringing us there. What I want to do is indeed
16 differentiate those two issues. That being whether one
17 qualifies as an expert in social work, and then two, going
18 to the relevancy of what we have before us today.

19 Mr. Feola, did you have any other comments?

20 MR. FEOLA: No sir, I would reiterate what
21 Ms. Brown said though. We have no objections to her
22 qualifications as an expert.

23 CHAIRPERSON GRIFFIS: Thank you. In which
24 case I would accept Ms. Harden as an expert in social
25 work. However, I need to caution that although we'll

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1 give some leeway in terms of testimony, I need to be
2 brought quickly to an understanding of how this directly
3 relates to the appeal that's before us, before we go into
4 lengthy discourse in terms of operations, sizes or
5 anything else.

6 MS. FERSTER: Would you like a proffer?

7 CHAIRPERSON GRIFFIS: Sure.

8 MS. FERSTER: Okay, we believe that Ms.
9 Harden's testimony is directly relevant to the issue of
10 whether or not these four residential units that are being
11 built on four separate Lots of Records as they must be,
12 must nonetheless for purposes of determining whether the
13 occupancy limits in a separate regulation governing CBRFs
14 must be considered as a single entity because that's what
15 they are.

16 And we believe that Ms. Harden's testimony
17 is important because it will show what we believe the
18 Zoning Administrator was obligated to inquire into when
19 he received four identical simultaneous applications for
20 building permits on contiguous lots by the same owner,
21 seeking to build four CBRFs within an enclosed campus
22 plan that they elsewhere had indicated would be part of
23 a single facility. Now we believe there was enough just
24 right there in that written submission that would trigger
25 an obligation on the part of the Zoning Administrator

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1 to ask some more questions of the owner and Ms. Harden
2 is going to address what those questions that he should
3 have asked the owner are, so that he could understand
4 the relationship between these four residential units
5 and whether or not they are, in fact, operated as a single
6 facility in terms of administration as well as
7 programmatic integrativeness of their operations or
8 whether they were indeed for completely separate,
9 autonomous independent stand-alone CBRFs.

10 So I think it's obviously relevant, because
11 these are the questions he should have asked and we think
12 you ought to know that.

13 CHAIRPERSON GRIFFIS: Okay, so what we're
14 looking to do is somehow bring to us how four separate
15 structures by definition of what you're going to give
16 us will actually enlighten us to the fact that they are
17 one -- what's your word -- entity and we can go further
18 with that.

19 So we will look for you to address that.
20 How we then define this, based on your background and
21 knowledge.

22 MS. FERSTER: Thank you. Now I would just
23 like Ms. Harden to briefly and I understand you accept
24 her qualifications as a licensed, social worker and a
25 psychotherapist and you have her résumé, but I would like

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1 her to state for the record her specific familiarity with
2 group homes of this sort that's being proposed here.

3 CHAIRPERSON GRIFFIS: Is that not listed on
4 the --

5 MS. HARDEN: It is listed on there. However,
6 it's listed particularly, in particular instances where
7 I was professionally contracted with specific group
8 homes, but in addition to that through my almost 25 years
9 of private psychotherapy practice and my work in other
10 agencies such as Georgetown's Department of Child
11 Psychiatry, I have worked with numerous children who have
12 been housed in group homes who I've been psychotherapist
13 to numerous children who have been housed in group homes
14 in the District and other areas in the country. So that
15 is just to add to what's already in my résumé that you
16 have in front of you.

17 CHAIRPERSON GRIFFIS: Okay. Thank you.

18 MS. HARDEN: Okay, I'll try to get to this
19 as quickly as I can. I understand the interest in getting
20 to the point and getting -- moving this along. I'm a
21 clinical social worker and psychotherapist licensed in
22 the District of Columbia and Maryland and my capacity
23 as a social worker, I have worked with a number of group
24 homes for troubled children and developmentally impaired
25 adults in the District of Columbia and elsewhere. And

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1 I'm familiar with the different models on which group
2 homes can be operated.

3 In my experience, groups homes for children
4 who have been removed from their homes by social service
5 agencies are typically placed, tend to be operated in
6 a relatively standard fashion and usually fit within a
7 few models. Basically, there are four different models:
8 long term models for placement options, family members;
9 children are often removed from nuclear family members
10 and placed with other family members; foster homes. I'm
11 sure you're all familiar with those. Institutional
12 settings, such as psychiatric facilities, residential
13 long-term psychiatric facilities. And group homes.

14 Boys Town's materials indicate that the
15 intent to operate a group home for children who have been
16 removed from their families. The question here is
17 whether the Boys Town facility is simply a series of small,
18 independent group homes that coincidentally happen to
19 be located side by side or whether it is a single group
20 home with all the operational characteristics of a single,
21 larger home.

22 CHAIRPERSON GRIFFIS: Can I interrupt you
23 there?

24 MS. HARDEN: yes.

25 CHAIRPERSON GRIFFIS: You've just indicated

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1 that Boys Town's materials indicate. Which specific
2 materials indicate?

3 MS. HARDEN: The site plan materials, the
4 materials that we have been able to gather from them.
5 What we have not been able to gather from them are
6 materials that directly talk about the program they plan
7 to have there.

8 CHAIRPERSON GRIFFIS: Let me just keep going
9 over that and I'm sorry to interrupt you here, but --

10 MS. HARDEN: That's fine.

11 CHAIRPERSON GRIFFIS: Boys Town materials
12 indicate you're talking about operation, that they're
13 going to operate a group home for children who have been
14 removed from their families.

15 MS. HARDEN: Well, these are the materials
16 that they shared with us actually also at community
17 meetings that we invited them to.

18 CHAIRPERSON GRIFFIS: But let me just get
19 clear, is that part of a submission that we --

20 (Pause.)

21 Hold on two seconds.

22 MR. FEOLA: May I interrupt for a second
23 because I think this goes to the heart.

24 CHAIRPERSON GRIFFIS: I think you can object
25 and then interrupt, if you want. Go ahead.

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1 MR. FEOLA: Interrupt and then object, vice
2 versa?

3 This goes to the heart, I think, of why we
4 object, or the counsel for the Zoning Administrator
5 objects to this line of questioning. We've had no basis
6 to understand that Ms. Harden has any personal knowledge
7 or professional knowledge about how Boys Town is going
8 to operate these four homes and we're going to hear a
9 diatribe based on what I've seen based on her written
10 testimony about how generally they're run or how they're
11 run in Virginia or how they're some place else in the
12 world and I think it is totally irrelevant to the
13 proceeding before you. If you want to hear how Boys Town
14 is going to run the group home, we'll be happy to present
15 the witness from Boys Town about how it's going to be
16 run. But I think we're speculating, based on Ms. Harden's
17 good knowledge of how it's done elsewhere, that this is
18 how it's going to be done at Boys Town.

19 CHAIRPERSON GRIFFIS: Well, that brings up
20 a fascinating issue and I would turn to you, Ms. Ferster,
21 if certainly Father Flannagan's operation is going to
22 be presented or would be presented to you, is there need
23 for this witness at this time?

24 MS. FERSTER: Well, let me respond to Mr.
25 Feola's point first, and that is and I think that answers

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1 your question. Ms. Harden is an expert witness. She's
2 not visited Father Flannagan's operation at Capitol Hill
3 because, of course, it doesn't exist yet. So it's not
4 possible for her to or anybody other than the
5 representative from Boys and Girls Town to testify about
6 how this will be operated.

7 But --

8 CHAIRPERSON GRIFFIS: Well, I guess it might
9 be more appropriate --

10 MR. FEOLA: How is the Zoning Administrator
11 supposed to know when a building permit is applied --

12 CHAIRPERSON GRIFFIS: Let's let her finish
13 and then I'm going to jump in.

14 MS. FERSTER: Thank you. So she is an
15 expert. She is not a fact witness and the difference
16 between an expert and a fact witness is somebody who can
17 provide this Board with expert testimony based on her
18 familiarity with a general category of programs or
19 activities and give you information that is useful in
20 applying it to this particular situation.

21 Now Ms. Harden will be able to provide you
22 that information. She is being presented here so that
23 you can understand and have a context for what the Zoning
24 Administrator should have looked at here and that's
25 important for you to hear right now from Ms. Harden.

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1 Now I certainly could make that whole case on cross
2 examination, if you wanted. That would probably take
3 about two hours in my opinion because of the way, the
4 nature of listening -- what should have been provided
5 as direct testimony which can be done fairly efficiently
6 through Ms. Harden through cross examination. I would
7 be happy to do that, but it will take a long time.

8 CHAIRPERSON GRIFFIS: I don't think time is
9 our concern. It's getting to the basis of what we need.

10 So if it takes two hours, if it's the more effective
11 way to get what we need. And my point is this, I'm not
12 sure how the testimony that we're hearing right now which
13 will outline as you said certain other programs and how
14 they work and therefore going to the definition, it seems
15 to me that it would be a heck of a lot more useful, probably
16 in cross examination, once we know what a program is and
17 then we can decide specifically on that definition of
18 the program and if that somehow joins these lots or
19 whatever you're trying to do with it, it would be, I think
20 more appropriate, but let me leave that and see if other
21 Board Members have comments on that and let me hear from
22 the Board.

23 MS. FERSTER: And then I would like to
24 respond, as well, before you make a ruling because this
25 is an important part of our case and I want you to

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1 understand that we have the burden of proof here. We're
2 the Appellant. And we cannot assume that Father
3 Flannagan Boys Town is going to produce the witness that's
4 going to provide this information that we can then elicit
5 on cross examination.

6 CHAIRPERSON GRIFFIS: Yes.

7 MS. FERSTER: We need to be able to satisfy
8 our burden of proof and make our initial case at this
9 point. And if we can't do that by presenting Ms. Harden's
10 testimony, then we will be significantly hampered in being
11 able to make our case. And I would also just say that
12 the issue here is relevancy. That's the question. And
13 Ms. Harden's testimony is plainly relevant to the issue
14 we've brought up here which is whether or not these are
15 four independently run group homes or whether they're
16 a single facility. And that's the only basis for
17 excluding a key part of our case is the fact that it might
18 be irrelevant. And I think relevancy is plainly
19 satisfied here.

20 CHAIRPERSON GRIFFIS: Ms. Renshaw?

21 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
22 for one would like Ms. Harden to go forward. Had she
23 been allowed to do so, we would have been well into her
24 testimony and not wasting anybody's time.

25 I'll decide for myself whether or not her

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1 comments are relevant, but I think that she should be
2 allowed to present her material since the Appellant feels
3 that this is central to their case.

4 CHAIRPERSON GRIFFIS: Thank you, Ms.
5 Renshaw, and I can, in fact, listen to two different people
6 out of two different ears. So okay, without delaying
7 too far, let us proceed then with limited and I will be
8 interrupting you probably as we get through this because
9 I want to take some of it and I absolutely agree that,
10 in fact, there is some relevancy to this. I think there
11 is an importance of addressing this specific program.
12 I would ask Mr. Feola if he is, in fact, committing to
13 calling the representative to speak about the Flannagan
14 program.

15 MR. FEOLA: We reiterate our objection to
16 this line of testimony, but since it is going to be
17 admitted into the record, by the Appellants, we will call
18 an expert witness to talk about Boys Town's operations
19 at this facility.

20 CHAIRPERSON GRIFFIS: Okay. So we can
21 anticipate that happening in which case, Ms. Ferster,
22 in rebuttal, if I'm not mistaken, you can actually recall
23 your witness, so looks like we'll get it in all different
24 directions.

25 And again, what we're trying to do here is

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1 to keep to what we must and have to look at without going
2 far afield.

3 So let us proceed and I believe --

4 MEMBER ETHERLY: Mr. Chair?

5 CHAIRPERSON GRIFFIS: Yes.

6 MEMBER ETHERLY: Pardon me for interrupting,
7 but just as a matter of clarification, Ms. Harden's
8 testimony will not then speak specifically to Boys Town's
9 operations because of her absence of personal knowledge
10 about the facility, but will speak generally to her
11 professional expertise as it relates to group homes.
12 Correct, Mr. Chair?

13 CHAIRPERSON GRIFFIS: Right.

14 MEMBER ETHERLY: Thank you.

15 CHAIRPERSON GRIFFIS: Thank you.

16 MS. HARDEN: That's correct. I'll start
17 with where I left off.

18 The question here is whether the Boys Town
19 facility is simply a series of small, independent group
20 homes that coincidentally happen to be located side by
21 side or whether it's a single group home with all the
22 operational characteristics of a single, larger home.

23 Based on my experience with group homes, I
24 believe that the following operational characteristics
25 are indicative of a single group home, regardless of

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1 whether residents reside in separate structures or living
2 units. Living units for the children may or may not be
3 in separate or adjoining structures, but the facility
4 has the appearance of a campus or a compound, sometimes
5 fenced, often fenced, with common areas for recreation,
6 meetings, classrooms, offices, etcetera with all or most
7 activities centrally managed.

8 The facility is administratively
9 centralized. For example, the operation usually has a
10 single contract with D.C. Child and Family Services
11 Administration or other source for the program, rather
12 than separate contracts for each living unit. Intake
13 is usually done centrally by the facility and children
14 again assigned by the facility to the specific living
15 units rather than each living unit contracting separately
16 and doing their separate intakes.

17 Staff for all the living units is centrally
18 hired, trained and supervised and generally on the same
19 payrolls.

20 One set of back up in-residence supervisors
21 who will serve all living units, interchangeably as
22 needed, rather than requiring each living unit to have
23 its own back up and supervision structure, as well as
24 substitutes for vacation or other leave time.

25 One set of standards or rules for behavior

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1 and for handling children in each of the living units
2 is usually common to these kinds of compounds and
3 campuses.

4 Food services is usually centrally ordered
5 and delivered, often prepared in accordance with assigned
6 menu plans, all living units basically eating the same
7 food purchased from the same vendors.

8 A commonly owned set of vehicles used for
9 transporting the children, maintenance of the living
10 units arranged for and managed centrally, usually from
11 a single source or maintenance staff working in each home.

12 Typically, there's a team of outside professionals,
13 psychologists, social workers, educational experts,
14 mental health specialists, occupational therapies,
15 physical therapists who work with all the children. They
16 serve as consultants to the children in all of the homes,
17 rather than each home having its own professional team.

18 These professionals often work in a central location,
19 some office or building that is common to all of these
20 homes. Often there will be coordination of tutoring
21 programs, after school activities, recreational
22 activities instead of each of these units being operated
23 as an individual unit with planning, recreational. Even
24 in health care, planning for health care services are
25 often done centrally for the entire unit, all units,

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1 rather than each unit individually.

2 For purposes of contrast, a small, stand
3 alone group home for six children will be managed and
4 operated much differently. Day to day living expenses
5 would be handled by the home and not coordinated with
6 the central facility. For example, each home would make
7 its own arrangements for transportation, do their own
8 shopping, make their own arrangements for home
9 maintenance, for consultation services, and so forth.
10 All day to day activities will be arranged by the home
11 and not necessarily in conjunction with any other group
12 home or service provider. Often in these other units
13 where there are separate units under the umbrella of one
14 corporation on one campus, as I mentioned earlier.
15 Things like recreational activities and maintenance
16 activities are coordinated.

17 Centrally managed facility for 24 children
18 who reside in clustered living units has the advantages
19 from the operator's perspective of economies of scale
20 and operational efficiencies. However, in my view,
21 operating a group home for more than six children is less
22 desirable from a therapeutic standpoint, even where
23 small, clustered living units are utilized because it
24 is operated on a scale that is not sufficiently
25 personalized and surrounds already troubled children with

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1 too many negative influences and not enough positive role
2 models. For that reason, it would be very unlikely, in
3 my opinion, for four separate operators of group homes
4 for troubled children who did not envision any sharing
5 of facilities, staff or services, to decide to locate
6 immediately adjacent to each other.

7 There's a lot in the literature about the
8 need for children from troubled environments to be
9 rehabilitated in environments that are outside of those
10 troubled environments and to not have too many other
11 troubled people, behaviors, environments around them.
12 Other than for reasons on some sort of economy of scale,
13 it would be surprising to me that anyone would want to
14 have these houses right next to each other.

15 CHAIRPERSON GRIFFIS: That's a little
16 speculative, but basically what you're saying is, in fact,
17 in your experience --

18 MS. HARDEN: That's correct.

19 CHAIRPERSON GRIFFIS: You have seen what,
20 that adjacency has something to do with the environment
21 of CBRFs?

22 MS. HARDEN: That in my experience, I have
23 found that the reason people, corporations house units
24 adjacently is for economy of scale, economy of services,
25 not for the therapeutic needs of the children.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. HARDEN: As a matter of fact, it's
3 counter productive therapeutically to do that and really
4 only meets the needs having to do with ease of
5 administration in terms of working with these children.

6 And I have consulted two group homes that
7 have had this sort of site plan where they are in row
8 houses right next to each other, separate entrances,
9 etcetera, but have, for all intents and purposes, been
10 operated as one facility. In other words, I was part
11 of a consultation team for such an institution where they
12 had separate living arrangements, separate entries and
13 so forth and so on, but the same team operated for the
14 entire unit and the services were coordinated in the
15 manner in which I'm speaking and that has been for more
16 than one facility that I have been involved with several.

17 Based on this material, it's my opinion that
18 Boys Town intends to operate its Capitol Hill campus as
19 a single integrated facility rather than four separate
20 group homes, although we'll hear more about that.

21 The therapeutic needs of the children placed
22 in these residential facilities would not be served by
23 clustering them with an enclosed campus where the children
24 so nearby associates are children with similarly troubled
25 backgrounds, but instead these children are far better

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1 served by being placed in single family homes that are
2 spread out so that the children are exposed to positive
3 role models and environments, to public recreational
4 centers and other neighborhood centers. Given the
5 therapeutic disadvantages of these institutional-like
6 settings, it is unlikely that group home operators would
7 choose to do this for any reason that's therapeutic.
8 I mentioned that before.

9 And I would only go to say that there's been
10 quite a bit of research in this area and James Garbarino
11 out of the Cornell University has been doing a lot of
12 work on the effects of what he calls toxic social
13 environments on troubled children, on children in general
14 and on troubled children. And clustering children who
15 are themselves from already toxic social environments
16 in a situation where there is a surrounding toxic social
17 environment and they are clustered amongst themselves
18 is, in my opinion, not a therapeutically sound way to
19 go about this.

20 CHAIRPERSON GRIFFIS: Okay and I appreciate
21 that and I think that's good to know. However, I'm not
22 sure where the -- and maybe it will happen, but I'm not
23 sure where connection is in terms of your therapeutic
24 and benefit analysis goes to --

25 MS. HARDEN: Yes, and I want to say and the

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1 only reason I commented on it was because that when you
2 look at a program like this, you're looking for reasons
3 why an organization like Boys Town would want to put
4 together a program like this. And what I'm saying is
5 that therapeutically it goes against the grain of what
6 we know about troubled children and what we like to have
7 for them, so there must be other reasons for putting
8 together a unit like this and in my experience it's most
9 often been for economy and organizational ease for the
10 corporation.

11 CHAIRPERSON GRIFFIS: Okay, anything
12 further?

13 Yes, Ms. Brown, are you ready for cross
14 examination?

15 CROSS EXAMINATION

16 MS. BROWN: Very quickly. Good afternoon,
17 Ms. Harden.

18 MS. HARDEN: Good afternoon.

19 MS. BROWN: Ms. Harden, notwithstanding your
20 knowledge on the therapeutic and clinical aspect of group
21 homes management, you do not know whether or not the Zoning
22 Administrator has required anywhere to consider the
23 factors that you've just described?

24 MS. HARDEN: No, I don't.

25 MS. BROWN: Based on what I just heard, I'm

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1 going to paraphrase your testimony. You testified that
2 the Zoning Administrator should have treated these
3 applications differently because of the common ownership
4 and management of Father Flannagan's facility?

5 MS. HARDEN: Well, I really testified that
6 if part of the spirit of the Zoning Commission's
7 regulations is to speak to the needs of the community
8 and the children by talking about numbers of density
9 within the process of these types of group homes, then
10 within that spirit I think it would have been useful to
11 have more information about how the spirit of that type
12 of a regulation would be borne out by this actual facility.

13 MS. BROWN: Perhaps I didn't understand your
14 testimony, but I heard you speak to things like delivery
15 of food services and common use of vehicles and other
16 things that would be common to management of one group
17 home.

18 Hypothetically, suppose Etherly Group Homes,
19 Incorporated has applied for a building permit for a new
20 facility and that organization has 12 other group homes
21 which are not necessarily sharing a wall, but they are
22 within, there's one on Potomac, there's one on
23 Pennsylvania, there's one on G, there's one on
24 Independence, there's one on East Capitol and so on and
25 so forth. How does that differ? Based on your

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1 testimony, shouldn't the Zoning Administrator have --
2 wouldn't the Zoning Administrator be constrained to deny
3 that application because they're sharing the same
4 services, same personnel, etcetera?

5 MS. HARDEN: If the issue has to do with not
6 necessarily the issue of whether or not they're sharing
7 those facilities or those services, but whether the fact
8 that they're sharing those services is part of a process
9 that denotes them as a single use home, yes, I've seen
10 many group homes like that where corporations own group
11 homes across different parts of the city. They use the
12 same service providers, but they're not single use homes
13 because they don't share other therapeutic and
14 programmatic processes. So it really depends on how you
15 define a single group home and I am saying that there
16 are certain things that define a certain, a single group
17 home that if you have enough of those things in check
18 means you have a single group home, not one or two or
19 so forth.

20 MS. BROWN: The hypothetical that I raised,
21 the only difference between the scenario that brings us
22 here today and what I've described as the Etherly Group
23 Homes, Inc., the only difference would be that there is
24 a common wall shared between four houses here. Would
25 that require the Zoning Administrator to consider all

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1 of the other facilities owned and operated and therefore
2 deny a building permit?

3 MS. HARDEN: Well, it depends. I think that
4 what we're speaking to here is the issue of all of these
5 facilities on one shared property, enclosed in a certain
6 way, etcetera, and to me that gives us enough information
7 to want to know more about whether this is a single use
8 facility before deciding that it is not.

9 MS. BROWN: So then your testimony really
10 doesn't have to go, doesn't go with the management and
11 ownership, but rather the physical location of the
12 property?

13 MS. HARDEN: It goes with both, the ownership
14 and the physical, right.

15 MS. BROWN: You've never been involved with
16 any zoning type matters in any prior projects, have you?

17 MS. HARDEN: No, I have not.

18 MS. BROWN: No further questions.

19 CHAIRPERSON GRIFFIS: Thank you, Ms. Brown.

20

21 Mr. Feola, any cross examination?

22 MR. FEOLA: Just a couple questions, Mr.
23 Chairman.

24 Ms. Harden, I think you said that the
25 preferred clinical solution to foster care is to place

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1 children in I think you used the word single family homes.

2 Is that sort of what you're saying?

3 MS. HARDEN: Yes, there is a hierarchy, I
4 think, of preferred. I think the preferred would be in
5 a therapeutic foster care, if you cannot do a nuclear
6 family or an extended family placement. And then if you
7 are not doing that, you prefer to be in a facility that
8 as closely approximates a nuclear family and a single
9 dwelling setting, as you can, a home for these children.

10 MR. FEOLA: So therefore if there isn't an
11 availability to place the child in a nuclear family, there
12 are alternatives that are better. Are you aware that
13 the District places most of its children in foster care
14 in Prince George's County?

15 MS. HARDEN: I am. I am aware that the
16 District places most of their kids in foster care.

17 MR. FEOLA: Are you aware that Prince
18 George's County has stopped that?

19 MS. HARDEN: I was not aware of that, but
20 I heard that --

21 MR. FEOLA: Is it your opinion that the
22 District's foster care system operates effectively?

23 MS. HARDEN: No, it's not.

24 MR. FEOLA: Would you say it's in a crisis
25 mode?

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1 MS. HARDEN: It is in a crisis mode, but there
2 are many ways to solve a crisis and I'm stipulating that
3 in my professional opinion this is not the way to do it.

4 MR. FEOLA: So providing more foster homes
5 is not a way to solve the crisis?

6 MS. HARDEN: Not these kind of foster homes,
7 no.

8 MR. FEOLA: But you don't know what these
9 foster homes are?

10 MS. HARDEN: I have actually left three or
11 four messages to try to come and visit these homes and
12 have had one returned call and left many times --

13 MR. FEOLA: Say that again, you're under
14 oath. You have not had one returned phone call?

15 MS. HARDEN: No, I said I have had one
16 returned call from Connie Washington. I left a message
17 for Ms. Cheney who did not return my call and I have made
18 efforts to visit the program, so no, this is not about
19 my view about Boys Town particularly because I don't know
20 your program. You have not given me a chance to know
21 it. It's really my professional opinion -- I have not
22 had a chance to do that.

23 MR. FEOLA: I'm sorry, when were you hired
24 to come and testify here?

25 When was the first time you made the phone

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1 call to Connie Washington?

2 MS. HARDEN: I actually have that down here.
3 January 7th.

4 MR. FEOLA: We were at a hearing here in
5 December. You were listed as a witness. Why did you
6 wait until January --

7 CHAIRPERSON GRIFFIS: First of all, where
8 are we going on this? I mean is it of any interest to
9 us?

10 MR. FEOLA: Well, I think the allegation is
11 that we wouldn't let her come and see the facility and
12 I think that is wrong.

13 CHAIRPERSON GRIFFIS: I see.

14 MS. HARDEN: That's really not my
15 allegation. My allegation is that I was not able to see
16 your facility and there are --

17 MR. FEOLA: Because you made numerous phone
18 calls and none were returned as I recall your testimony.

19 CHAIRPERSON GRIFFIS: Let me interrupt both
20 of you.

21 MR. FEOLA: I have no more questions.

22 CHAIRPERSON GRIFFIS: I think we've got the
23 tone and frankly we're going to get to the more substantive
24 issue because we're going to have the program presented,
25 the chance to get that information.

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1 MS. HARDEN: Absolutely.

2 CHAIRPERSON GRIFFIS: So thank you all for
3 that. Now we will turn to Board Members' questions.

4 Yes, Ms. Renshaw.

5 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'd
6 like to know from Ms. Harden whether she feels that a
7 single home would have more or less, a single facility
8 would have more or less impact on the community?

9 MS. HARDEN: Could you describe a single
10 facility?

11 VICE CHAIRPERSON RENSHAW: A single facility
12 where, for instance, the four units are considered as
13 a single facility rather than as four separate. With
14 a shared program and shared staff and shared vendors,
15 as you have outlined, does that have a greater impact
16 on the community?

17 MS. HARDEN: It's really hard for me to say
18 because I don't know that there would be -- I think that
19 if these were single homes, separately housed, that is
20 not on this facility, it would have much less of an impact.

21 So I think that is really the issue for the community
22 as I understand it, but that's really not my area of
23 expertise.

24 VICE CHAIRPERSON RENSHAW: Single homes
25 separated from one another?

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1 MS. HARDEN: Exactly. Exactly. But my
2 area of expertise really is the impact that it would have
3 on the children which I think would be much more positive,
4 yes.

5 CHAIRPERSON GRIFFIS: Anything else?

6 MEMBER ETHERLY: Mr. Chair, just as a quick
7 follow up, Ms. Harden, as we talk about this totality
8 of the circumstances, I think you heard a little bit of
9 the exchange that took place prior to your testimony.
10 I'm in a little bit of a rock and a hard place in that
11 we kind of have to in a way deal with the threshold question
12 before we get to where you are which is the threshold
13 question, do we look at this as a single facility or as
14 separate facilities. And you're talking to how you would
15 view this as a single facility.

16 In terms of the circumstances or the indicia
17 that we should look at, it sounds like what you're saying
18 is there's a totality that you have to give consideration
19 to here and that totality is going to be somewhat
20 amorphous. There aren't a top five factors that you look
21 at to determine single ownership, central administration,
22 what have you.

23 MS. HARDEN: Right.

24 MEMBER ETHERLY: So what I'm grappling with
25 and what I think might eventually have to happen for us

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1 to get where you are, for me to get where you are, pardon
2 me, is how do you go about conducting that type of
3 analysis, especially in the zoning setting because that's
4 the world that we're working in here right now?

5 MS. HARDEN: I think it really does get back
6 to some of what Kirk White was referring to about the
7 sharing of information and the looking together at the
8 various aspects of a program like this, that the Zoning
9 Board, I would hope, be willing to take some leadership
10 in when they are conducting their business.

11 MEMBER ETHERLY: Thank you. Thank you, Mr.
12 Chair.

13 CHAIRPERSON GRIFFIS: Thank you, Mr.
14 Etherly.

15 Ms. Harden, you've taken us down a path that
16 is trying to draw a connection between the operations,
17 the use and then you were going to zoning and I think
18 what Mr. Etherly is trying to state. Can you take another
19 brief moment to help me figure out based on your experience
20 where there's a cut off point in terms of when something
21 is an individual facility and when it is, in fact, separate
22 facilities.

23 I think you bring up an interesting point
24 in your testimony that there is two factors that you often
25 look at, generally, there's program and there's

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1 administration. Take a moment and maybe I'm being too
2 broad now and I'll help you get to it if it's too broad,
3 but either restate or be concise in terms of where the
4 cutoff point is. Could we have four franchises that are
5 run by one corporate entity that's actually
6 international? Does that help you? I'll let you answer.

7 MS. HARDEN: Well, I think that you know that
8 ideally you would look for separate entities owning each
9 of these homes because I think that's an assurance that
10 there would not be the type of coordination that would
11 speak to the need to define this as a separate sort of
12 a facility.

13 However, I do believe and I'm not sure I'm
14 getting to your question, so be more specific with me
15 if you can. I do think that there are ways that a
16 corporation can have homes on separate lots that are
17 shared, have some of these shared activities but are
18 likely to be, meaning shared, food service or purchasing,
19 that are unlikely to make them a single unit. So there
20 is this hierarchy.

21 CHAIRPERSON GRIFFIS: Where does it become
22 one entity, one facility and separate?

23 MS. HARDEN: Much more when we're dealing
24 with how those issues affect the program of the children,
25 what they eat, who takes care of their mental health needs,

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1 how behavior plans are formulated for them. That's when
2 I think it becomes more a single unit in terms of program.

3 CHAIRPERSON GRIFFIS: Okay, and then
4 therefore and you are saying, your testimony is that this
5 is one facility. However, if I'm not mistaken, how you're
6 defining a facility is actually in the programmatic sense.
7 You're looking at it from as an expert of social work
8 as how it affects, and you've just said it, how it affects
9 the children. That's how you're defining a single
10 facility.

11 MS. HARDEN: I am giving you my experience
12 of how these single facilities have and again, as I
13 mentioned, I cannot comment on Boys Town, but in my
14 experience what constitutes the single facility and in
15 my experience every facility that I've worked with that
16 has these sorts of adjacent homes are operated as single
17 unit facilities in the way that I am speaking and the
18 way that it affects the children.

19 CHAIRPERSON GRIFFIS: Good. Board Members,
20 other items, questions?

21 Redirect, Ms. Ferster?

22 MS. FERSTER: No, I don't have any redirect.

23 CHAIRPERSON GRIFFIS: I'm sorry, Ms.
24 Renshaw, you have something?

25 VICE CHAIRPERSON RENSHAW: yes, just one

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1 question for Ms. Harden. Is there any age bracket where
2 children benefit from being a single facility?

3 MS. HARDEN: Not children who are troubled
4 like this.

5 CHAIRPERSON GRIFFIS: Okay. We thank you
6 very much.

7 MS. HARDEN: Thank you.

8 CHAIRPERSON GRIFFIS: Let me do this. We're
9 at 3:40, if my eyes can see correctly. I'd like to stretch
10 my legs. So why don't we take a real 5 minute break and
11 -- actually, let's make it 10 minutes. I'll be realistic.
12 And we'll be back at 10 of 4.

13 (Off the record.)

14 CHAIRPERSON GRIFFIS: I think we're ready
15 to organize and proceed. If people can take their seats.

16 (Pause.)

17 MS. FERSTER: Mr. Chair, should I call my
18 next witness?

19 CHAIRPERSON GRIFFIS: yes, actually before
20 you do that, let me just talk about the rest of the day.

21 We will be losing a Board Member at 4:30. We will
22 maintain a quorum and so we will continue on. I
23 anticipate going up until 6 o'clock this afternoon unless
24 there are other developments and other circumstances.
25 We'll deal with those when they come up and I would

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1 anticipate having one more break possibly before that.

2 But that's all I have.

3 So Ms. Ferster, you're absolutely welcome
4 to call your next witness.

5 MS. FERSTER: Our next witness is Brian
6 Furness.

7 DIRECT EXAMINATION

8 MS. FERSTER: Mr. Furness will be testifying
9 very briefly on the Ward 6 plan and specifically the
10 provisions of the Ward 6 plan that govern the site in
11 question here. And I believe the Board previously ruled
12 on the relevancy of that testimony, so I'd like to qualify
13 Mr. Furness as an expert on the Ward 6 plan by asking
14 him to state his name and address for the record and
15 briefly state his experience and his familiarity with
16 the Ward 6 plan.

17 MR. FURNESS: My name is Brian Furness and
18 I reside at 1367 Massachusetts Avenue. I've been -----
19 I'm currently chair of the Community Development
20 Committee of the Capitol Hill Restoration Society, a past
21 president of the Capitol Hill restoration Society, a
22 resident on Capitol Hill since 1969, and have been
23 involved in community issues relating to planning, land
24 use, historic preservation and transportation, virtually
25 since I first arrived on Capitol Hill.

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1 MS. FERSTER: Did you get a copy of Mr
2 Furness' résumé or should I distribute it now? You have
3 it?

4 VICE CHAIRPERSON RENSHAW: We have an
5 outline of his testimony.

6 CHAIRPERSON GRIFFIS: Yeah, I don't have his
7 qualifications. Do you have copies for the other
8 participants? Okay.

9 MR. FURNESS: Mr. Chairman, a copy of my
10 proposed, an outline of my proposed testimony was
11 originally submitted in November. It has been revised
12 and given to the Clerk because my revised testimony omits
13 some of the areas that you ruled should not be addressed.

14 CHAIRPERSON GRIFFIS: Indeed, and we thank
15 you for updating that.

16 While we're looking at this, can you just
17 speak to your connection directly with the Ward 6 plan?

18 MR. FURNESS: As a member of the Board of
19 the Capitol Hill Restoration Society, I have been involved
20 in numerous discussions, briefings, review and other
21 activities concerned with planning on Capitol Hill and
22 specifically with the comprehensive plan.

23 CHAIRPERSON GRIFFIS: So through your
24 involvement with the Restoration Society, you were
25 involved in the committees that were actually drafting

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1 and writing the comprehensive plan in that portion of
2 it?

3 MR. FURNESS: Those committees reported to
4 the Board of which I was a member. I was involved directly
5 with the members who were involved in that particular
6 activity.

7 CHAIRPERSON GRIFFIS: I see. And were those
8 board members directly involved in the city agencies and
9 personnel that were actually writing the comprehensive
10 guide?

11 MR. FURNESS: These were community members
12 who participated on the committees and in the activities
13 that worked, that played a major role, I would submit,
14 in the elaboration, drafting and the -- and making the
15 comprehensive plans relevant to neighborhood conditions
16 and specifically to Ward 6.

17 CHAIRPERSON GRIFFIS: Okay. Ms. Brown,
18 have you had an opportunity to look at the résumé?

19 MS. BROWN: I have, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. BROWN: The District, the Zoning
22 Administrator is going to object to the testimony as Mr.
23 Furness as an expert. First of all, I'm not sure that
24 based on what we have heard here would establish him as
25 an expert with respect to planning. In the District of

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1 Columbia there is no direct connection between the Ward
2 6 plan that's been established. Certainly his connection
3 would be as a resident and with that in mind I certainly
4 could offer myself as a resident of Capitol Hill.

5 With respect to the issues that he is going
6 to testify on, I think it's been established by Mr. White
7 that the comprehensive plan and certainly the District
8 is prepared to provide case law to the Board that the
9 comprehensive plan and the Ward 6 plan do not supersede
10 the zoning regulations and in fact, to the contrary, they
11 have no place with respect to this unless and until they
12 have been amended by the Zoning Commission and the City
13 Council.

14 So I'm not sure where we intend to go with
15 the plan. The plan itself serves as a guide. It has
16 -- the plan serves as a guide and it is not controlling
17 on the issue of zoning.

18 CHAIRPERSON GRIFFIS: Okay, but I have to
19 say that, in fact, the comprehensive plan and the
20 individual ward plans don't have a position with the
21 Zoning Administrator's review of applications.

22 I understand that the zoning regs, and your
23 point is that they supersede the comprehensive plan, but
24 you wouldn't state that, in fact, that the comprehensive
25 plan has no place in the ZA's review of a specific project?

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1 MS. BROWN: As I said, they serve as a guide.

2 CHAIRPERSON GRIFFIS: Uh-huh.

3 MS. BROWN: They're not binding on the Zoning
4 Administrator.

5 MS. FERSTER: Mr. Chairman --

6 CHAIRPERSON GRIFFIS: So you would, bottom
7 line, object to having Mr. Furness as an expert witness.

8 MS. FERSTER: I do need to clarify my proffer
9 of Mr. Furness because he tells me that he did not intend
10 to be submitted as an expert and I will respect that
11 request. He is a lay witness, not an expert. So I
12 withdraw my request that he be qualified an expert. He's
13 not a professional planner. He's a lay witness who is
14 very familiar with the Ward 6 plan through his efforts
15 in the community to be -- and his involvement in the
16 development and discussions of that plan.

17 CHAIRPERSON GRIFFIS: Okay, thank you. In
18 which case, Mr. Feola, do you have comments?

19 MR. FEOLA: Mr. Chairman, we accept Ms.
20 Ferster's withdrawal, although I would say knowing Mr.
21 Furness and what he knows about planning he probably could
22 make that qualification. But I would second counsel for
23 the Zoning Administrator's position that this testimony
24 is not relevant and it should at least be given the weight
25 of that somewhat relevant, if not irrelevant testimony.

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1 Thank you.

2 CHAIRPERSON GRIFFIS: Okay, so you're
3 objecting to the testimony itself of which we have two
4 objections.

5 MS. FERSTER: Would you like me to respond,
6 Mr. Chairman?

7 CHAIRPERSON GRIFFIS: No, not quite yet.
8 Let me hear from Board Members first. Board Members,
9 any comments on the objection to the testimony we are
10 being presented with a lay witness at this time, but we
11 do have an objection to the testimony that is about to
12 proceed.

13 MEMBER LEVY: Mr. Chair?

14 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

15 MEMBER LEVY: I would like to see us proceed
16 with the testimony. At our last hearing date we took
17 up this matter. There was a -- when we looked at
18 pre-hearing motions and we decided that we would allow
19 testimony on the Ward 6 plan.

20 CHAIRPERSON GRIFFIS: Okay, so you're
21 indicating that the testimony you find would be relevant
22 and it has been indicated by the Board previously. Any
23 other -- I'm sorry, I may have cut you off.

24 MEMBER LEVY: No, I was just going to say
25 that given that he's been withdrawn, Mr. Furness has been

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1 withdrawn as an expert witness, I'd like to go ahead and
2 hear the testimony.

3 VICE CHAIRPERSON RENSHAW: I agree.

4 MEMBER ETHERLY: Mr. Chairman, I would also
5 agree. I would have had some challenges with the expert
6 designation, but I would similar to the conversation we
7 had regarding Ms. Harden's expert status, Mr. Furness
8 will be speaking specifically to the Ward 6 portion of
9 the comprehensive plan and not overall or general city
10 planning efforts.

11 Is that correct, Mr. Chairman, or is that
12 a question that I should direct to Appellant's counsel?

13 CHAIRPERSON GRIFFIS: No, I think that's my
14 understanding also in which case I think we have a fairly
15 clear consensus and I would like to take the testimony
16 and you're welcome to proceed, Ms. Ferster, with your
17 witness of Mr. Furness.

18 MR. FURNESS: Mr. Chairman, thank you very
19 much.

20 I would like to talk initially to the
21 importance of the comprehensive plan, to its legal
22 standing as we see it, its role in providing a context
23 for zoning decisions, as an expression of community
24 concerns, interests and desires, particularly those in
25 Ward 6, and the fact that all of these factors, in my

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1 opinion, underline the need and the requirement that this
2 project be subject to review by the Board of Zoning
3 Adjustment.

4 To begin with, to talk about the legal
5 standing, planning the comprehensive plan is grounded
6 in the Home Rule Act and especially in that part of the
7 Home Rule Act, it provides that zoning shall not be
8 inconsistent with the comprehensive plan. And I think
9 I would further argue that I would interpret this to mean
10 that the decisions of the Zoning Administrator should
11 not be inconsistent with the comprehensive plan.

12 Furthermore, the comprehensive plan was
13 approved by the City Council to guide land use and
14 development. I won't give you the citation here, but
15 that's available in my written testimony. Very
16 importantly, the comprehensive plan provides a context,
17 a nexus for zoning decisions. It provides a context,
18 the provisions provide a context that should inform the
19 zoning decision including the decision of the Zoning
20 Administrator.

21 And finally, the comprehensive plan is the
22 expression of community concerns, interests and desires
23 and I spoke a little bit earlier about the substantial
24 community input that went into the formulation of the
25 comprehensive plan and particularly the Ward 6

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1 comprehensive plan which we believe was one of the best
2 and most comprehensive ones elaborated in the city.

3 I won't review how the comprehensive plan
4 is organized and the hierarchy of provisions in the plan.

5 I'm trusting that if you look at my testimony, it talks
6 a little bit about that. But suffice it to say that it
7 is organized hierarchically.

8 The most important are -- the most important
9 of the plan elements that deal specifically with CBRFs
10 is that statement of specific policy and I quote "to
11 prevent further concentration of
12 community-based residential facilities, CBRFs, in Ward
13 6 neighborhoods and require future development of CBRFs
14 to be in accordance with the District-wide CBR plan."
15 This policy is in support of human services objectives.

16 As an expression of policy this takes
17 precedence over more general statements that relate to
18 the importance of CBRFs in the delivery of human services
19 and over the general statement of an objective which is
20 to provide a comprehensive network of private and public
21 health, social and economic services.

22 I would note further in this context the
23 specific condition of the objective to meet the needs
24 of residents of Ward 6 and the applicant to the best of
25 my knowledge has not provided any assurances that the

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1 facility will provide services exclusively or even
2 predominantly targeted at the residents of Ward 6 and
3 I maintain this is something that the Zoning Administrator
4 should have taken into account in his decision.

5 The comprehensive plan recognizes the impact
6 that CBRFs can have on Ward 6 neighborhoods and as I
7 pointed out earlier, calls for the elaboration of a plan
8 for their dispersal, more specifically, the District
9 government needs to plan for the equitable dispersement
10 of its CBRFs so that there's minimal impact on residential
11 neighborhoods, not only of Ward 6, but throughout the
12 District and we've heard from Mr. Hill about the
13 concentration of CBRFs and related facilities here in
14 this immediate area.

15 This plan, I should say, has not been done
16 by the city as it should have, but the fact that the plan
17 calls for this underlies the need for the Board of Zoning
18 Adjustment and city officials to review these factors
19 in reaching decisions about CBRF facilities.

20 The comprehensive plan provisions promote
21 economic development at the general level. Development
22 themes in the ward are almost exclusively office
23 development and small retail business which will serve
24 both the office and residential communities.

25 It also calls for at the objective in the

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1 policy level, the plan calls for the provision of a range
2 of commercial facilities and services within commercial
3 corridors in Ward 6 and that certainly describes the site
4 that we are talking about here this afternoon.

5 It goes on, where development opportunities
6 exist, the city and the Ward 6 community shall work to
7 ensure that they are consistent with neighborhood and
8 city objectives.

9 The plan also calls for -- at the action
10 level, it calls for the designation of the area around
11 the Potomac Avenue Metro Station a special treatment area.

12 Mr. White has referred to that and that is to include
13 the development of under-utilized commercial sites and
14 I quote "e.g., the Bogan property at 14th and Potomac
15 Avenue, S.E." There is a specific reference in the plan,
16 in the plan, to this property and this should have been
17 a signal to the Zoning Administrator in making his
18 decision about what should be there.

19 With respect to the comprehensive plan
20 provisions regarding land use, once again, it established
21 a specific process for determining how the development
22 is to occur on this site, that there is to be a plan that
23 is supposed to be worked out that is supposed to govern
24 how this is supposed to be done.

25 That, Mr Chairman, and Members of the Board,

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1 concludes my testimony. I would only recall that the
2 comprehensive plan is important and I salute your decision
3 to hear this testimony because I think it's important.

4 I'm glad that you think it's important because it is
5 important. It is important as law. It is important as
6 a policy context. It must inform the decision of the
7 Zoning Administrator and it is important as an expression
8 of will of the public officials of the District of
9 Columbia, the Mayor and the City Council and is an
10 indication of the hopes, desires, aspirations and
11 determination of the residents of Ward 6 and this
12 neighborhood who had much to do with its preparation.

13 My conclusion is that it couldn't be clear
14 that it supports a mandate and a need for the review of
15 all aspects of the Boys Town application.

16 Thank you.

17 CHAIRPERSON GRIFFIS: Thank you very much.

18 Let me just also indicate that that was well outlined
19 and I think it goes to the heart of what you wanted to
20 state, but let me see if there's any cross examination.

21 Ms. Brown?

22 CROSS EXAMINATION

23 MS. BROWN: Very briefly, Mr. Furness. Is
24 this based on your knowledge of the comprehensive plan,
25 is it your testimony that the Zoning Administrator is

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1 empowered to invoke provisions of the comprehensive plan
2 where it's inconsistent with the zoning regulations?

3 MR. FURNESS: That, of course, that's
4 hypothetical, but my belief is that the Zoning
5 Administrator must take account of the comprehensive plan
6 and he is bound, I believe, to reach decisions that are
7 not inconsistent with the comprehensive plan. In my
8 testimony, I outlined those provisions of the Ward 6
9 comprehensive plan that I believe that if he had taken
10 those provisions into account he would have granted us
11 the relief that we seek, that is, a hearing on the relevant
12 issues.

13 MS. BROWN: And in situations where in your
14 view or in anyone's view there is an inconsistency between
15 the Zoning Administrator's decision and between the
16 regulations and the comprehensive plan, how does that
17 square? How does it get resolved?

18 MS. FERSTER: I'm going to object to that
19 question because Mr. Furness did not testify about the
20 zoning regulation. He never testified about whether or
21 not the Zoning Administrator's decision was or was not
22 inconsistent with the zoning regulations. He's simply
23 here to talk about the comprehensive plan and if you ask
24 him to say whether or not the Zoning Administrator should
25 take into account the comprehensive plan, that's fine.

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1 That's within the scope of his direct, but he never said
2 anything about or expressed any knowledge of whether the
3 Zoning Administrator's decision was, in fact, consistent
4 with the zoning regulations. In fact, Mr. White
5 testified that he believes that the Zoning
6 Administrator's decision was not consistent with the
7 zoning regulations. That was Mr. White's testimony.

8 MS. BROWN: Actually, I was using Mr Furness'
9 word, "inconsistent with the comprehensive plan."

10 MS. FERSTER: Right, not the regulations.

11 MS. BROWN: And I was asking him the question
12 based on the testimony that I just elicited from him.

13 MR. FURNESS: The wording of the Home Rule
14 Act is that zoning shall not be inconsistent with the
15 comprehensive plan. Is that being challenged?

16 MS. BROWN: I'm asking you where there is
17 an inconsistency, how is that squared, if you know?

18 MR. FURNESS: The --

19 MS. FERSTER: Can we clarify? Are you
20 talking about an inconsistency between the zoning
21 regulations and the comprehensive plan? Because Mr.
22 Furness again is not talking about the zoning regulations.
23 He's not an expert on the zoning regulations. He's not
24 particularly familiar with the zoning regulations and
25 he can't testify whether or not there's an inconsistency.

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1 CHAIRPERSON GRIFFIS: If I'm not mistaken
2 though what the question is going to is he's brought up
3 the issue of there should not be an inconsistency. And
4 the question is if there is one, can he speculate on how
5 it would be remedied.

6 Is that correct, Ms. Brown?

7 MS. BROWN: That's correct and I asked him
8 if he knew.

9 CHAIRPERSON GRIFFIS: And he's perfectly
10 able, Mr. Furness, you're perfectly able to say I do not
11 know and we can move on or you can give us --

12 MS. FERSTER: I would object to anybody
13 asking Mr. Furness to speculate about what happens when
14 there's an inconsistency between the plan and the zoning
15 regulations because he is not here to talk about zoning
16 regulations.

17 MR. FURNESS: My opinion is the plan is --
18 my personal opinion is that the plan should be respected
19 because that is more directly an outgrowth of citizen
20 participation and neighborhood and community activities.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. BROWN: And I accept that as a response
23 to he does not know how it's squared.

24 MR. FURNESS: I think am I prepared to say
25 how --

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1 MS. FERSTER: I'd rather you not.

2 MR. FURNESS: I was going to say that.

3 (Laughter.)

4 MS. FERSTER: I mean I don't want you
5 speculating.

6 MS. BROWN: I'm not asking him to speculate.
7 I simply asked him a question, if he knew how the
8 inconsistency is resolved and if he doesn't know it's
9 fair to say "I don't know that there's a problem with
10 that."

11 CHAIRPERSON GRIFFIS: If you're not prepared
12 to answer, whatever you want to say. If there isn't a
13 clear answer to that question which is going to process,
14 is there a process by which it happens, and Ms. Furness,
15 what I'm understanding what you're saying is at this point
16 your testimony doesn't go to answering the question of
17 what is the process if there's an inconsistency. Is that
18 correct?

19 MR. FURNESS: I believe there's a process
20 for examining the issues that I've raised and that's a
21 hearing before the Board of Zoning Adjustment.

22 CHAIRPERSON GRIFFIS: Okay. I think that's
23 as far as we can push it.

24 MS. BROWN: I have nothing further for Mr.
25 Furness.

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1 CHAIRPERSON GRIFFIS: Okay, tank you. Mr.
2 Feola?

3 MR. FEOLA: Just two questions. Mr.
4 Furness, the project that we were discussing here where
5 four single family houses for the nuclear family that
6 Ms. Harden testified to, would that be a violation in
7 your opinion of the Ward 6 element of the comprehensive
8 plan?

9 MR. FURNESS: I think the -- would it be a
10 violation? Let's go back to what the plan says. It says
11 it should prevent further concentration of
12 community-based residential facilities in Ward 6
13 neighborhoods.

14 MR. FEOLA: So if these were not
15 community-based residential facilities, but single
16 family row houses, it would not violate, in your opinion?

17 MR. FURNESS: Is it a CBRF? If it's a CBRF,
18 I believe that it would be --

19 MR. FEOLA: The question is if these were
20 single family houses for Feola's family --

21 MR. FURNESS: Then the question doesn't
22 arise, does it?

23 MR. FEOLA: The question I just asked. Is
24 that consistent or inconsistent with the comprehensive
25 plan?

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1 MR. FURNESS: The comprehensive plan that
2 I've testified to talks to CBRFs.

3 MR. FEOLA: So single family houses would
4 be -- are --

5 MR. FURNESS: Part of the residential fabric
6 of Capital Hill and other neighborhoods.

7 MR. FEOLA: I know from your résumé that you
8 are past president of Capitol Hill Restoration Society.
9 And you talked about the Bogan's property which is not
10 actually the part that's before this Board. It's the other
11 part that isn't before this Board right now.

12 MR. FURNESS: I quoted from the
13 comprehensive plan.

14 MR. FEOLA: I understand. I just want to
15 make that clarification for the Board.

16 MR. FURNESS: Yes.

17 MR. FEOLA: Are you aware or let me ask it
18 a different way. Do you know whether or not the Capitol
19 Hill Restoration Society opposed the rezoning of this
20 property including Bogan's from 4-F to 6-2-B?

21 If you don't know, you can say you don't know.

22 MR. FURNESS: The restoration society back
23 in the mid-1970s joined with others to -- if memory serves
24 -- oppose the -- a use that was proposed for the property
25 at that time. We did not -- we supported a use consistent

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1 with the zoning that was in place at that particular time.

2 My recollection would have been R-4, but it would have
3 also been the main issue related to the construction of
4 a building along Pennsylvania Avenue at Potomac Avenue
5 and 14th.

6 MR. FEOLA: Those are all my questions.

7 CHAIRPERSON GRIFFIS: Thank you. And I
8 think we have been rejoined, by the ANC members, is that
9 correct? And you can conceivably cross examine if you're
10 interested, and so if I see you dashing towards the table,
11 I'll note that as an indication and Ms. Ferster is going
12 to take up most of your responsibilities on that if I
13 understand your hand gestures from the back of the room.

14 So that being said. Board members?
15 Questions?

16 Mr. Furness, you talked about one of your
17 points, which it was at the action level that the
18 comprehensive plan goes. What I'd like to do is have
19 you give me a little bit more information of the quote
20 that I believe you read that was designated the area around
21 the Potomac Avenue metro station as a special-treatment
22 area.

23 Can you define what the special-treatment
24 area is? What is involved in that?

25 MR. FURNESS: This is that part -- the

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1 specific section citation is Section -- is Ward 6 Actions
2 to Implement the Plan Economic Development 1703.1c. But
3 it says, "to designate the area around Potomac Avenue
4 metro station as a special-treatment area." That is,
5 in planning terms, a plan that would essentially be
6 limited in scope but would include all of the
7 aspects -- all of the land-use aspects relevant to the
8 development and usage of this particular small area site.

9 It would most likely include not only the
10 Bogan property, which is specifically enumerated in the
11 plan, but it would include the area adjacent to the Potomac
12 Avenue metro site. It would probably include the use
13 of the Chamberlain School facility across the street,
14 maybe a little way up, east and west on Pennsylvania
15 Avenue. But, essentially, it would be designed to guide
16 land-use zoning and development decisions in this
17 particular area.

18 CHAIRPERSON GRIFFIS: Okay. Two things for
19 my clarification. Is this particular site, Square 1045,
20 within the special-treatment area?

21 MR. FURNESS: I would -- yes.

22 CHAIRPERSON GRIFFIS: Yes. And from the
23 indication that you've just given me, a special-treatment
24 area is an area identified that is to be planned for
25 appropriate land use, or is there actual land use that

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1 goes attendant with being designated as a
2 special-treatment area?

3 MR. FURNESS: It would -- let me quote from
4 the plan itself, if I may. It says, "a special-treatment
5 area analysis is to emphasize the economic development
6 potential and balance with predominantly residential
7 character of the area."

8 The boundaries of the special study area are
9 11th Street, S.E. on the west, including the
10 11th Street --

11 MS. BAILEY: Excuse me, sir. You need to
12 speak into the microphone, please.

13 MR. FURNESS: I'm sorry.

14 MS. BAILEY: That's okay.

15 MR. FURNESS: The boundaries of the special
16 study area are 11th Street, S.E. on the west, including
17 the 11th Street commercial corridor; D Street, S.E. on
18 the north; Kentucky Avenue on the east, and the
19 Southeast-Southwest Freeway on the South.

20 The special treatment area study to include
21 development of underutilized commercial sites, e.g.,
22 Bogan property at 14th & Potomac Avenue, S.E., protection
23 of residential properties and neighborhoods in the study
24 area, including the residential neighborhood south of
25 Pennsylvania Avenue, bounded by 13th Street, S.E. on the

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1 west, Pennsylvania Avenue on the north, 15th Street, S.E.
2 on the east, and the Southeast-Southwest Freeway on the
3 south.

4 CHAIRPERSON GRIFFIS: Okay. So if I'm not
5 mistaken, it's descriptive of what the elements of this
6 study area should be. It has identified the specific
7 boundaries that are appropriate for certain general land
8 uses that ought to be accommodated that would then factor
9 in well with the residential character.

10 MR. FURNESS: That's correct. It sets
11 out -- yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 Board members?

14 Can I ask you specifically your understanding
15 of the comprehensive plan, Section 112.6? It talks about
16 the zoning impact of the district elements of the plan.

17 "Note directly, subsection C in issuing or processing
18 any building or construction permit, or any certificate
19 of occupancy, the zoning administrator, Board of Zoning
20 Adjustment, and the Zoning Commission shall evaluate the
21 proposal in conjunction with the applicable sections of
22 the comprehensive plan and the comprehensive plan maps."

23 Are you familiar with that?

24 MR. FURNESS: I would appreciate an
25 opportunity to review a copy before commenting further

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1 on it.

2 CHAIRPERSON GRIFFIS: Okay. Oh, all right.
3 Well, then, we'll get you a copy.

4 MR. FURNESS: I'll be delighted to come back
5 to you.

6 MS. FERSTER: I'm sorry. Did you give the
7 citation?

8 CHAIRPERSON GRIFFIS: 112.6c. What I'll do
9 is have staff run a quick copy of this, and we can get
10 back to it.

11 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes?

13 VICE CHAIRPERSON RENSHAW: I have to leave
14 at this point. But before I do, I would like to ask
15 Mr. Furness a question.

16 His background in civic activities is
17 considerable. And I join with Mr. Feola when he said
18 that certainly Mr. Furness' planning background is
19 substantial. And I note that Mr. Feola has shaken his
20 head up and down.

21 I want to ask you just a general question
22 because of your involvement in your community. Can you
23 tell me -- can you tell the Board from your vantage point
24 what the impact of a single facility is going to have
25 in your community?

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1 MR. FURNESS: The -- well, a single
2 facility -- and I think we're talking about the facility
3 that Boys Town has in mind --

4 VICE CHAIRPERSON RENSHAW: Yes.

5 MR. FURNESS: -- that is with 24 children
6 and the possibility of a rather larger facility, of an
7 additional facility that would border on Pennsylvania
8 Avenue.

9 It's hard to say exactly what the impact would
10 be. Suffice to say that the residents, the people who
11 live in that immediate area feel that it would be -- that
12 it would be bad for the neighborhood and that it would
13 be bad for the children there.

14 It's always hard to say. But this
15 would -- there's a feeling that this would frustrate the
16 economic development; that it would frustrate the
17 revitalization of this particular area, in part, because
18 it would have a deterrent impact on the existing
19 commercial and residential base. And it would preclude
20 the kinds of development that would be consistent with
21 the development of Pennsylvania Avenue, consistent with
22 the development that should attend areas in the vicinity
23 of metro stops. And it would be inconsistent with the
24 revitalization of the residential neighborhood that's
25 immediately adjacent to this property.

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1 CHAIRPERSON GRIFFIS: Mr. Furness, if I can
2 just interrupt Ms. Renshaw, because I want to keep to
3 the relevancy of the testimony. And certainly,
4 Mr. Furness is talking about the comprehensive plan and
5 the work plan. Are you saying in that effect of this
6 facility that it would compromise -- or can you tell me
7 how your testimony connects to the answer to that
8 question?

9 MR. FURNESS: I was responding to
10 Ms. Renshaw's question.

11 CHAIRPERSON GRIFFIS: Which was an excellent
12 one.

13 MR. FURNESS: My testimony was focused on
14 the need for the zoning administrator to take the Ward 6,
15 the comprehensive plan provisions, into account in his
16 decision.

17 CHAIRPERSON GRIFFIS: Okay.

18 VICE CHAIRPERSON RENSHAW: Mr. Furness,
19 when you became aware of this program, this application,
20 did you contact, or your organization contact the zoning
21 administrator and submit your views to the zoning
22 administrator and also the applicant?

23 MR. FURNESS: We have -- we have made known
24 our concerns with respect to the project. Did we -- I
25 do not believe that we submitted something directly to

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1 the zoning administrator, except through the Southeast
2 Citizens for Smart Development, which certainly has made
3 its views, and those, I would maintain, of many of the
4 residents and organizations on Capitol Hill known
5 directly to the zoning administrator.

6 VICE CHAIRPERSON RENSHAW: Thank you very
7 much.

8 MR. FURNESS: You're welcome.

9 MEMBER ETHERLY: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yeah. --

11 MEMBER ETHERLY: Mr. Furness, thank you very
12 much for your testimony. It's very helpful to get that
13 walk through the comprehensive plan. What I want to
14 direct your attention to is, in the outline of your
15 testimony on page 2, as it relates to the portions of
16 the plan that deal with CBRFs, I just want to make certain
17 I understand how you're presenting the items that are
18 quoted in Section 1, Statement of Specific Policy,
19 Section 2 and Section 3.

20 Are you noting those excerpts from the plan
21 to state that they're differing levels of weight that
22 we should accord each of those statements as it relates
23 to CBRFs? Obviously, the importance of a network of
24 public and private health services and so forth vis a
25 vis economic and commercial development.

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1 MR. FURNESS: Exactly. In the interest of
2 time, I sought not to review the organization, the
3 comprehensive plan itself. But just briefly, the
4 comprehensive plan is organized hierarchically. There
5 are very general areas which talk about, for instance,
6 grand theme, such as human services, land use. These
7 are divided into objectives. For instance, Ward 6
8 objectives for human services.

9 And finally, at the most specific level, they
10 refer to specific policies or actions in support of
11 specific objectives. For instance, there will be a
12 section titled, Ward 6 Policies in Support of Human
13 Services Objectives.

14 So you're absolutely right, Mr. Etherly,
15 there is a hierarchy in there, and the hierarchy is
16 important. I maintain that it's the statements of
17 specific policy -- those that are most direct, most
18 pertinent -- that bear most directly on the situation
19 that the zoning administrator should take most relevantly
20 into his decisions.

21 The others -- when you get up to human
22 services, when you say -- there's the general statement,
23 "to continue to provide a comprehensive network of public
24 and private health social and economic services." That's
25 wonderful, but that's --

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1 MEMBER ETHERLY: That's a general statement.

2 MR. FURNESS: -- that's almost out of human
3 kin at such a high level.

4 MEMBER ETHERLY: Okay. Let me follow up on
5 that as it relates to one of the general statements of
6 objectives.

7 If there were some demonstration that the
8 proposed facility, or facilities, serviced Ward 6
9 residents in some way, would that change your outcome
10 in terms of reading the comprehensive plan versus the
11 proposal of the project?

12 MR. FURNESS: That would certainly be one
13 of the factors that ought to be introduced in a -- it
14 ought to be relevant to the decision of the zoning
15 administrator because that's also found in the plan.
16 But it should also be one of the factors that would be
17 considered at any hearing that might take place into
18 whether this should be granted some kind of a special
19 exception or the kind of operating permit.

20 MEMBER ETHERLY: Okay. So in and of itself,
21 the fact that there's some service provided to Ward 6
22 youth wouldn't necessarily be dispositive of the entire
23 situation still, as far as the comprehensive plan went.

24 MR. FURNESS: It would not be. It would be
25 a factor because it's a factor in the plan. But it would

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1 not be dispositive. That's right.

2 MEMBER ETHERLY: Okay. Thank you very much,
3 Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Yes? Ms. Renshaw?

5 VICE CHAIRPERSON RENSHAW: Mr. Furness, do
6 you have any example in Ward 6 where the comprehensive
7 plan controlled CBRF development or expansion?

8 MR. FURNESS: Where it controls it directly?

9 VICE CHAIRPERSON RENSHAW: Yes.

10 MR. FURNESS: It does not, to the best of
11 my knowledge, control it directly. That's done through
12 the zoning and through the licensing and permitting
13 processes of the District government. The comprehensive
14 plan should provide a framework in which those are
15 considered.

16 VICE CHAIRPERSON RENSHAW: I was thinking
17 specifically of where the comprehensive plan played a
18 large part in the development -- or the placement of CBRF
19 in Ward 6.

20 MR. FURNESS: I'm not aware of a specific
21 case.

22 CHAIRPERSON GRIFFIS: Just give me a moment
23 for people to collect thoughts in case there's other
24 questions.

25 Has everyone received a copy of 112.6? Were

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1 they not passed out? Do we have additional copies? Did
2 you just give one at the table?

3 MR. FURNESS: This is 112 --

4 CHAIRPERSON GRIFFIS: The others come
5 prepared.

6 Have you had time to review that? My
7 question may be anticlimactic with all this time and
8 preparation.

9 MR. FURNESS: Mr. Chairman, I think your
10 question absolutely goes right to the mark. And I would
11 have to say that it would tend to support the contention
12 that we have here. Let me --

13 CHAIRPERSON GRIFFIS: Well, let me be clear
14 then. My question is in your testimony, you are
15 indicating that the zoning administrator should take into
16 account the comprehensive plan. And your testimony is
17 that by your own reasoning, the zoning administrator may
18 not, did not -- you can fill in what it is -- and is,
19 in fact, required to.

20 MR. FURNESS: We would, indeed, maintain
21 that. In Section C it says, "In issuing or processing
22 any building or construction permit, or any certificate
23 of occupancy, the zoning administrator, Board of Zoning
24 Adjustment and the Zoning Commission, shall evaluate the
25 proposal in conjunction with the applicable sections of

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1 the comprehensive plan and the comprehensive plan maps."

2 CHAIRPERSON GRIFFIS: Are you aware of any
3 remedy if it is determined that the zoning administrator,
4 in fact, did not evaluate the comprehensive plan or how
5 it could be shown that the evaluation did not happen?

6 MR. FURNESS: Mr. Chairman, you mean are
7 there remedies in law or in process that would --

8 CHAIRPERSON GRIFFIS: I may be stretching
9 your testimony, but given your familiarity with the
10 comprehensive plan, are you aware of anything else within
11 it that prescribes that or defines evaluation of the plan?

12 MR. FURNESS: No, I'm not. I'm not
13 familiar.

14 CHAIRPERSON GRIFFIS: Okay.

15 Board members, other questions, issues?

16 Any redirect?

17 MS. FERSTER: No, no redirect.

18 CHAIRPERSON GRIFFIS: Okay.

19 Which case?

20 MS. FERSTER: Our next witness is Rob Nevitt,
21 Capitol Hill Restoration Society.

22 CHAIRPERSON GRIFFIS: Okay. Ms. Ferster,
23 if I'm not mistaken, you are handing out information on
24 your next witness, Mr. Nevitt?

25 MS. FERSTER: This is Mr. Nevitt's written

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1 testimony.

2 CHAIRPERSON GRIFFIS: Oh, I see. Indeed it
3 is. And Mr. Nevitt is not coming before us as an expert
4 witness?

5 MS. FERSTER: No, he's not.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. NEVITT: Mr. Chairman, members of the
8 Board, thank you very much.

9 My name is Robert Nevitt. I reside at
10 1000 South Carolina Avenue, S.E. And I'm here as the
11 president of the Capitol Hill Restoration Society. The
12 Capitol Hill Restoration Society supports Southeast
13 Citizens for Smart Development in Appeal 16791. The
14 Society represents nearly 1,000 members who share a common
15 goal of improving and preserving Capitol Hill as a model,
16 urban residential community.

17 We are concerned that if the Zoning
18 Administration's decision is allowed to stand, large
19 community-based residential facilities, masquerading as
20 a number of small matter-of-right facilities, will
21 adversely affect our community.

22 Our zoning committee considered this appeal
23 on November 15th and recommended support. As its regular
24 meeting on November 20, the Board adopted the report of
25 the committee and voted unanimously to support the appeal.

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1 And that report is also attached to my written testimony.

2 I will summarize the committee report, which
3 was filed on November 28 for inclusion in the record.

4 Boys Town has acquired a large tract of land
5 at the intersection of Pennsylvania and Potomac Avenue,
6 S.E. Phase 1 of the proposed development involves
7 construction of four youth residential-care homes, each
8 having six residents plus staff. The site has been
9 subdivided so that each of the four homes will be on a
10 separate lot of record. According to the zoning
11 administrator, this makes each home a separate facility
12 with no more than six residents.

13 Since youth residential homes of that size
14 are permitted as a matter of right in all residential
15 and commercial districts, the zoning administrator
16 concludes that no approval from this board is needed.
17 And we believe that that determination is erroneous.

18 We believe that there is only one issue in
19 this appeal-- does Phase 1 of Boys Town constitute four
20 facilities or only one? We believe the facts clearly
21 demonstrate that it is a single facility serving up to
22 24 persons.

23 This case turns on the definition of the term
24 "facility," a term not defined in the regulations. The
25 meaning given in Webster's Unabridged Dictionary, which

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1 is used for terms not defined in regulations is helpful.

2 The definition given there is, and I quote, "something
3 that is built, constructed, installed or established to
4 perform some particular function, or to serve or
5 facilitate some particular need."

6 This definition focuses on performance of
7 a function. We think that the Board can and should find
8 that the four Phase 1 homes perform a common function
9 because they will be owned, operated and supervised by
10 Boys Town and will form part of a single residential
11 compound.

12 Furthermore, the zoning administrator was
13 on notice that the project likely was a single facility.

14 There were simultaneous applications for four separate
15 building permits, construction of the four homes is to
16 occur simultaneously, and the homes are part of a
17 residential compound. These signals should have alerted
18 the zoning administrator to look behind the facade of
19 the separate lots of record to the common function to
20 be served by the buildings.

21 This is not to say that existence on separate
22 lots of records is unimportant. But given the situation
23 presented by this case, the zoning administrator should
24 have looked further.

25 Here there are ample indications that the

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1 four proposed homes are part of a single facility. A
2 finding that the four homes are a single facility will
3 not prevent Boys Town from seeking a special exception
4 for a facility for 24 persons, and that is what they should
5 do.

6 For these reasons we believe that the Board
7 of Zoning Adjustment should grant the appeal and reverse
8 the determination of the zoning administrator that "the
9 subject site is in compliance with current zoning
10 regulations." Thank you for your attention.

11 CHAIRPERSON GRIFFIS: Thank you very much.

12 Cross-examination of Mr. Nevitt?

13 MS. BROWN: The District has none.

14 CHAIRPERSON GRIFFIS: Okay. Thank you,
15 Ms. Brown.

16 Mr. Feola?

17 MR. FEOLA: We have none.

18 CHAIRPERSON GRIFFIS: Okay.

19 Board members, questions?

20 Yes, Mr. Hannaham?

21 COMMISSIONER HANNAHAM: Just a quicky.

22 In your opening statement, your first
23 paragraph, you mentioned that these residential-based
24 facilities will be masquerading as a number of small
25 matter-of-right facilities. And that will adversely

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1 affect the community. Can you explain what you see as
2 adverse impact by that situation?

3 MR. NEVITT: Well, the larger
4 facility -- which we think this is, indeed, what it is,
5 and only in Phase 1 for 24 troubled youths -- is where
6 the adverse effect comes. Neighbors have made their
7 feelings about that clear in many ways, informal and
8 formal ways. And there's also the negative impact of
9 taking up this key piece of ground designated, as
10 Mr. Furness testified, in the Ward 6 plan as appropriate
11 for special treatment. So it is in that respect that
12 will have adverse effect in that it will be large facility
13 for troubled youths in a place where, in our view, it
14 doesn't belong.

15 COMMISSIONER HANNAHAM: The troubled youths
16 is the key here. The fact that they are troubled?

17 MR. NEVITT: Yes.

18 COMMISSIONER HANNAHAM: These
19 circumstances, is that a factor?

20 MR. NEVITT: Yes, certainly.

21 COMMISSIONER HANNAHAM: The condition, the
22 young people's conditions and the needs are peculiar or
23 different --

24 MR. NEVITT: Yes.

25 COMMISSIONER HANNAHAM: -- from the

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1 community generally.

2 MR. NEVITT: Yes.

3 COMMISSIONER HANNAHAM: Okay. Okay,
4 thanks. I understand now.

5 CHAIRPERSON GRIFFIS: Thanks, Mr. Hannaham.

6 Mr. Nevitt, I think you make a bold statement
7 that I want to explore a little bit more. The case turns
8 on the definition of the term "facility." And I think
9 that is a very important thing to spend some time on.

10 Could you give me a quick indication your
11 own personal understanding of how you would see it
12 different as four similar uses joined in separate lots?

13 Would they constitute a facility, or what brings us to
14 the point of which facility is important to define?

15 MR. NEVITT: Well, the attempt here is on
16 the part of Boys Town to represent each of these houses,
17 these buildings, as separate facilities. They are not,
18 by almost any definition. And I submitted the
19 dictionary; that is, one organization has a stated intent
20 of providing a facility for troubled youths on this site
21 in a variety of forms, townhouses as well as larger
22 buildings in subsequent phases of the development -- have
23 stated that contention and those parameters almost from
24 the beginning as to what they plan to do on the state.
25 And that is the facility, a large, however

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1 architecturally diverse -- but a large facility with a
2 single purpose controlled by a single organization.

3 CHAIRPERSON GRIFFIS: Okay. So to that,
4 then, we get to facility because, obviously, we're not
5 arguing about the fact that these are community-based
6 residential facilities not defined in the regulations.

7 And your definition, Webster's tells us that -- what
8 you're saying is that there is a singularity of this that
9 brings it to a singular facility. And the definition
10 says, "something that is built, constructed, installed
11 or established to perform some particular function, or
12 to serve or facilitate some particular need."

13 Help me understand your understanding that
14 you could not have each of these as individual facilities
15 but one facility.

16 MR. NEVITT: Because they serve a common
17 purpose. They're under a common administration.

18 CHAIRPERSON GRIFFIS: And you go to that in
19 this definition, "performing some particular function"
20 as singular?

21 MR. NEVITT: Yeah. You take any one of those
22 facilities, present it as a separate entity. And you
23 go the question of what is the function of this separate
24 facility. You do it with any of the other three, and
25 it's exactly the same.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. NEVITT: Be administered by Boys and
3 Girls Town for troubled youths with staff who would come
4 under that common administration of the Boys and Girls
5 Town staff on the site.

6 CHAIRPERSON GRIFFIS: Okay. So if I'm
7 understanding you, it doesn't go to where I was starting
8 with. It doesn't necessarily go to the use; you could
9 have similar uses. But it goes to facility. And that
10 they have similar programs, similar definitions, their
11 proximity, then, brings them together as one facility.

12 MR. NEVITT: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 Anything else? Okay.

15 Ms. Ferster, anything else with your
16 witness?

17 MS. FERSTER: No, I have no questions.
18 Thank you.

19 CHAIRPERSON GRIFFIS: Okay.

20 We thank you very much, Mr. Nevitt.

21 MR. NEVITT: Thank you.

22 MS. FERSTER: Our final witness is Ellen
23 Oppen-Weiner, vice chair of the Southeast Citizens for
24 Smart Development.

25 MS. OPPEN-WEINER: Good afternoon,

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1 Mr. Chair, Board members.

2 First of all, I'd like to mention that I'm
3 an attorney and a professional social worker. Live at
4 223 10th Street, S.E. I've lived in this neighborhood
5 for 24 years. I want to say I feel a little strange today.

6 I'm a member of the Alcoholic Beverage Control Board,
7 and I'm not used to being on this side of the dais.

8 CHAIRPERSON GRIFFIS: It gives you an
9 appreciation, doesn't it?

10 MS. OPPER-WEINER: It sure does. And I must
11 say, this is run very smoothly. And I'm much
12 appreciative. You do operate somewhat differently than
13 we do.

14 My interest in this project came about when
15 this project sort of appeared out of nowhere as
16 essentially a done deal, without notice to the community.

17 CHAIRPERSON GRIFFIS: Can I just stop you
18 briefly?

19 MS. OPPER-WEINER: Yes.

20 CHAIRPERSON GRIFFIS: I just need
21 clarification about what we're getting into in terms of
22 the testimony, and what might -- we're not being
23 presented with an expert witness, okay?

24 Can you just briefly summarize, Ms. Ferster,
25 the witness' pertinent topics of focus?

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1 MS. FERSTER: Yes. Ms. Opper-Weiner is
2 simply here to, again, summarize some of the concerns
3 that have led the neighbors to bring this appeal. She's
4 not here to discuss the issues that they believe should
5 have been presented to the Board upon a special exception
6 review. But she is here to tell you why the neighbors
7 have gone to this trouble and this expense and this much
8 effort to bring this appeal to you. And why it's
9 important to them that BZA review occur.

10 Is that a fair summary?

11 MS. OPPER-WEINER: That's correct. Yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. FERSTER: If nothing else, for standing
14 purposes.

15 CHAIRPERSON GRIFFIS: Okay.

16 I'm just a little concerned about what it
17 will specifically speak to in terms of the relevancy of
18 what we need to do.

19 MS. FERSTER: She'll be brief.

20 CHAIRPERSON GRIFFIS: Okay. And we're
21 happy to hear from you, so let's go ahead.

22 MS. OPPER-WEINER: Okay. And stop me if I'm
23 off the subject here.

24 CHAIRPERSON GRIFFIS: Good. Thank you.

25 MS. OPPER-WEINER: I'd like to begin with

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1 Mr. White's statement that no one cared to look at it,
2 look at the applications, look at the project. The
3 residents really want to be able to -- the issue has
4 always been giving the residents an opportunity to weigh
5 in and express their concerns and interest in what's going
6 on here.

7 I, for one -- by the way, when I got involved
8 in June 2001 -- know it was 2000. It's been that long?

9 I wrote a letter to Girls and Boys Town asking specific
10 questions. Have never received an answer, almost two
11 years ago.

12 In any case, the neighbors want to be able
13 to feel as if they know what's happening in their
14 neighborhood. There are already a large number of CBRFs.

15 Mr. Hill only gave you a very partial list; although,
16 I think we've provided you with a list in our documents.

17 The current needs of the neighborhood. This
18 is at a metro stop. Transit-oriented development is very
19 desired and has occurred probably at every other metro
20 stop in the city. Somehow, this end -- the eastern end
21 of Capitol Hill -- got ignored.

22 There are serious issues of the impact on
23 police and fire services that a program of this nature
24 and of this size, in particular -- the size of the program
25 is really the major issue. We would think that, based

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1 on the kind of neighborhood and the crime statistics that
2 occur, that Boys Town would have wanted a very careful
3 review, and would have wanted to have participated in
4 such.

5 We perceive the four applications, which
6 are -- and I think ample evidence has been presented today
7 that they're going to be operated as a single facility,
8 was merely a contrivance to get around the zoning rules
9 as well as the environmental impact rules. That the
10 threshold for the environmental impact review is
11 \$1.4 million

12 The four projects together, they're each
13 going to be \$625,000 buildings, times four, that's
14 2.4 million. So we see this as an effort to sort of get
15 around the community and not give us a chance to express
16 our opinions.

17 We feel the eastern end of Capitol Hill has
18 been passed by and has been ignored. It's crying out
19 for economic development of all sorts, including
20 particularly retail, small retail, sit-down
21 restaurants-- the same thing that the other end of
22 Pennsylvania Avenue has between 2nd and 4th Street on
23 the southeast side of the Capitol.

24 We think it was very clear that the intent
25 of the zoning regulations was not to have dense

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1 development. But that these community-based residential
2 facilities should be scattered throughout neighborhoods.

3 This neighborhood already has an extraordinary number
4 with future plans for extensive development on the D.C.
5 General site that we keep hearing about.

6 In any case, I just wanted to mention, the
7 lot issue seems to have confused the real issue. The
8 real issue here is that there appears to be an institution
9 that's being placed down in a prime location at a metro
10 stop that's adjacent to large numbers of residential
11 developments; that this is a residential neighborhood,
12 and something of this nature will change the character.

13 And, therefore, we want the opportunity to appear before
14 the Board of Zoning Adjustment because we feel that this
15 project needs to have a special exception in order to
16 proceed. And that really is the extent of my testimony
17 at this point.

18 CHAIRPERSON GRIFFIS: Great. Thank you
19 very much. I'm going to reverse the order here and just,
20 first of all, make a quick statement. And I appreciate
21 you stating from your perspective the real issue. But
22 I also want to just reiterate in terms of the issue for
23 us. I hope you're aware. But, obviously, the issue for
24 us is the appeal of the permits. And so the proposed,
25 or the potential, or even the highest and best use of

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1 this site doesn't factor in unless it crosses this
2 threshold that would point to us where somehow the
3 regulations were not upheld. So that being said, I do
4 appreciate your testimony.

5 You mentioned a piece in terms of the dollar
6 threshold that would throw it into a full-blown,
7 Environmental Impact Statement. And that is, your
8 speculation was that this was split off at 600,000 to
9 keep it under the 1.5 million.

10 To this case, is it your understanding that
11 the zoning administrator would have a control to look
12 at that, and then send it back for a full-blown,
13 Environmental Impact Statement?

14 MS. OPPER-WEINER: I'm not sure exactly how
15 that works. This is not my area of expertise; although,
16 I -- I need the book to tell you what it says in there.
17 I do think, though, that there are real
18 traffic -- pedestrian safety.

19 CHAIRPERSON GRIFFIS: No. And I don't
20 question that. What I'm going to is what was under the
21 zoning administrator's control, purview and direction
22 and what wasn't. So you can't answer that, and I fully
23 appreciate that.

24 Board members, other questions at this time?

25 MEMBER LEVY: Just a quick question.

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1 Ms. Opper-Weiner, you said that you thought
2 that these types of facilities with CBRFs should be
3 scattered, I think is what you said. Is that an opinion
4 or is that based on something in particular that you were
5 referencing?

6 MS. OPFER-WEINER: Well, I think that the
7 intent of zoning was not to have a cluster development
8 of facilities of this type. As a matter of fact, I think
9 Ms. Harden made some very compelling testimony with
10 regard to role models, and our view that the programs
11 ought to be integrated within the community.

12 When you're establishing a large
13 institutional/group-home setting with a fence around it,
14 it strikes me -- and by the way, I have visited the Sargent
15 Road facility, spent a whole day there touring and getting
16 an impression of how it operated. So I think it's been
17 determined by experts -- not myself however -- that the
18 integration within the community is the idea of for CBRFs,
19 that we have them. We have small ones scattered
20 throughout our neighborhood, all of which are good
21 neighbors and don't bring any additional issues because
22 of this very scattered nature. And the residents of those
23 facilities would have a better chance of integrating
24 themselves within the local community.

25 So the answer is -- I think the -- and I will

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1 add, by the way, that we think the zoning administrator
2 made an error in saying that this was a matter-of-right
3 project, based on our reading and understanding of the
4 zoning regulations. So by having divided it into four
5 small projects, when, in fact, it's the same -- you've
6 heard the testimony, and I don't want to repeat it. But
7 that's contrary. The purpose of the zoning was to not
8 allow concentrations of certain kinds of, perhaps, CBRFs.

9 Whatever it may be, what we're asking for
10 is the review of this board, reversing the determination
11 that it was a matter of right, have a good review that
12 includes all or whatever you determine is necessary within
13 your purview. And most importantly, to give the
14 neighbors -- the residents -- the opportunity to weigh
15 in, and to do a full-scale review of the program, of
16 participation, impact on the community, impact on the
17 metro and so forth.

18 CHAIRPERSON GRIFFIS: Good. And we
19 appreciate that. And we'll see where this rolls. We're,
20 obviously, not at that point. So we're not stopping
21 hearing testimony from the community, but we are not able
22 to at this point.

23 Let me go to cross-examination, Ms. Brown,
24 if you have anything.

25 MS. BROWN: I have none.

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1 CHAIRPERSON GRIFFIS: Okay, thank you.

2 Ms. Brown has none.

3 Mr. Feola?

4 MR. FEOLA: I have none.

5 CHAIRPERSON GRIFFIS: Okay, thank you.

6 We must be getting on in the day if we're
7 slowing down.

8 MS. FERSTER: This concludes our case,
9 Mr. Chairman.

10 CHAIRPERSON GRIFFIS: It does, indeed.

11 Okay. Why don't we do this? I will ask my
12 Board members if we need to have a quick break and the
13 participants if you need to have a quick break.
14 Otherwise, I propose that we go to the ANC and hear their
15 testimony at this time. And I think we can reassess where
16 we are in the day. Unless you need five, ten? Let's
17 continue on then. A brave and strong group we have.

18 MR. JARBOE: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes?

20 MR. JARBOE: I will be brief on this.

21 CHAIRPERSON GRIFFIS: Okay. And welcome
22 back, Mr. Jarboe. I know you did come in soon after 2:15.
23 We were taking attendance, so you were marked.

24 MR. JARBOE: Thank you for your diligence
25 in that matter. And thank you for allowing me to rush

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1 out to attend to some business.

2 My name is Kenan Jarboe. I am the chair of
3 Advisory Neighborhood Commission 6B. The proposed
4 project at issue in this case is within the boundaries
5 of ANC-6B; therefore, we are the affected ANC.

6 At its regularly-scheduled and
7 properly-noticed meeting of November 13, 2001, ANC-6B
8 voted 10 in favor, no opposed, and no abstention, seven
9 members making a quorum, to adopt the report of our
10 Planning and Zoning Committee regarding this particular
11 case. That report was forwarded to the Board with a cover
12 letter on November 27, 2001. Rather than simply reading
13 the report, which I believe you have in your files, I
14 would like to just summarize our conclusions.

15 First of all, I should note that the ANC has
16 voted a number of times on issues related to the proposed
17 Boys Town site on Pennsylvania Avenue. In each case,
18 the ANC has focused on the specifics of the issue before
19 it. In the case before us, and specifically on our vote
20 of November 13th, the ANC looked carefully and explicitly
21 at the decision by the zoning administrator and did not
22 engage in any analysis or discussion about the merits
23 of the proposed project. That discussion is properly,
24 we believe, the subject of a hearing on a request for
25 a zoning variance or special exception, as you have

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1 stated, I believe, over and over during this particular
2 hearing.

3 The issue before the Board is the decision
4 by the zoning administrator that the first-phase
5 construction of the proposed community-based residential
6 facility is a matter of right under zoning regulations.

7 This is based on the presumption that this first phase,
8 which consists of four "townhouses" housing a total of
9 24 long-term residents are four separate developments.

10 The zoning administrator also ruled that the requirement
11 of 11 DCMR, which limit the number of community-based
12 residential facilities per square and limits the number
13 within 500 feet of each other, do not apply in this case.

14 It is the conclusion of ANC-6B, as
15 represented in our unanimous vote of November 13th that
16 the decision of the zoning administrator was in error
17 and must be reversed in order to avoid setting a dangerous
18 precedent. It is the intent of zoning law to provide
19 for the control of density of certain uses. In this case,
20 community-based residential facilities. It did not
21 anticipate the construction of several contiguous
22 buildings by the same developer for the same use.

23 The genius of our economic and legal system
24 is that it allows for adaptation to unanticipated
25 situations. It is the role of adjudicatory bodies, such

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1 as this board, to make those necessary adaptations as
2 circumstance dictate. This is one of those situations.

3 These contiguous buildings are a unit. They
4 will be administered as a unit. They have always been
5 presented to the community as a whole, not as four separate
6 entities. Allowing the developer to now claim that they
7 are wholly separate would set a dangerous precedent
8 regarding not only the siting of community-based
9 residential facilities but also for any other
10 restrictions placed on a project by zoning law. It would
11 allow developers to circumvent any discussion or decision
12 about a project by circumventing the variance and
13 special-exception process.

14 Let me be clear. The ANC voted to uphold
15 the principle that developers should not be allowed to
16 circumvent the process. We voted that this project
17 should be subject to the special-exception process,
18 particularly since it is part of a larger project.
19 Dealing with the project in atomistic fashion would
20 undermine the existing checks and balances intended to
21 control the density of community-based residential
22 facilities in the District of Columbia.

23 On behalf of ANC-6B, I respectfully request
24 that you overturn this incorrect decision by the zoning
25 administrator.

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1 CHAIRPERSON GRIFFIS: Thank you very much.

2 Ms. Brown, cross-examination.

3 MS. BROWN: Good afternoon, Mr. Jarboe.

4 MR. JARBOE: Good afternoon.

5 MS. BROWN: Had four different applications
6 been submitted by four different homeowners or proposed
7 homeowners, would the result be any different?

8 MR. JARBOE: Had four separate applications
9 for four residential units been submitted?

10 MS. BROWN: Four different properties to be
11 constructed by four independent persons for the same
12 purpose.

13 MR. JARBOE: Four properties not to be used
14 as community-based residential facilities.

15 MS. BROWN: To be used as
16 community-based --

17 MR. JARBOE: To be used as community-based
18 residential facilities.

19 MS. BROWN: That's correct.

20 MR. JARBOE: Had four applications -- it had
21 come to our notice that four applications for construction
22 of facilities, of community-based residential facilities
23 next to each other, we would have raised questions. Yes.

24 MS. BROWN: You would have raised questions.

25 MR. JARBOE: And that is what we are asking

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1 this process to do now, is to go through the process of
2 raising the questions.

3 MS. BROWN: My, perhaps, misunderstanding
4 of the report is that the contention of ANC-6B is that
5 Father Flanagan, through the zoning administrator, has
6 attempted to circumvent the zoning process. And so what
7 I'm trying to do is extract from that personal aspect
8 of that.

9 It's your position that you all would still
10 raise the same issue had there been four different
11 applications by four different, unrelated persons.

12 MR. JARBOE: The issue here is a question
13 of the ability of the zoning laws to control the density
14 of community-based residential facilities.

15 MS. BROWN: Let me ask you this. Had
16 buildings been constructed over a staggered period of
17 time with applications for building permits issued one
18 per year, would there be a difference?

19 CHAIRPERSON GRIFFIS: Let me first figure
20 out whether he could actually answer that. You're asking
21 him to speculate on whether the ANC would support or not
22 support a different development process?

23 MS. BROWN: Well, I guess my concern here
24 is that the tenor of the ANC report seems to be that this
25 is the Boys Town entity in an attempt to circumvent the

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1 system through the zoning administrator's process. And
2 I'm just wondering if we can take that out -- if we can
3 take the personal aspect out, whether or not there is
4 a different result with respect to the zoning
5 administrator.

6 CHAIRPERSON GRIFFIS: Well, isn't that the
7 direct question to ask then?

8 MR. JARBOE: If the direct question to ask
9 is --

10 MS. FERSTER: Excuse me for one minute. I
11 have an objection to that question, because I think it
12 needs a foundation. And that foundation needs to be,
13 did the Advisory Neighborhood Commission consider that
14 possibility. Because he is testifying not individually
15 in his personal opinions but as the Advisory Neighborhood
16 Commission.

17 CHAIRPERSON GRIFFIS: Well said. I think
18 that's what I meant.

19 MR. JARBOE: Let me make clear what the ANC
20 voted on. The ANC voted on whether or not this
21 application for building permits, whether or not the
22 zoning administrator was correct in his or her reading
23 of the zoning law. This was not -- that's why I'm
24 confused when you say take the personal out of it. This
25 was not a vote on the merits of Boys Town. This was not

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1 a vote about Boys Town.

2 CHAIRPERSON GRIFFIS: Does that answer your
3 question?

4 MS. BROWN: And the specific error that was
5 made by the zoning administrator is what?

6 MR. JARBOE: Considering each of these units
7 as separate units and not as an entity.

8 MS. BROWN: Okay.

9 CHAIRPERSON GRIFFIS: Mr. Feola, any
10 questions?

11 MR. FEOLA: I have no questions.

12 CHAIRPERSON GRIFFIS: No questions from
13 Mr. Feola.

14 Do you want to respond to any of those
15 questions, the questions from Ms. Brown?

16 MR. JARBOE: No, Mr. Chair. I think I made
17 the process clear.

18 CHAIRPERSON GRIFFIS: That's fine. I'm
19 going to give you an opportunity to redirect yourself
20 actually.

21 Board members, question of the ANC member?

22 MEMBER ETHERLY: Mr. Chairman, this may
23 follow a little bit of where Ms. Brown was going, but
24 it may also be a slightly different kind of tact.

25 Mr. Jarboe, if you had four separate

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1 facilities -- and this might have been asked and
2 answered, so please help me if I'm being repetitive.
3 But if you had four separate facilities on the lots in
4 question where there is no issue about
5 ownership -- they're each owned by Company A, Company B,
6 Company C, and Company D -- and they each wanted to do
7 a six-person or less CBRF, would we be at the same place?

8 MR. JARBOE: Mr. Etherly, first of all,
9 congratulations on your appointment. It's good to see
10 a Ward 6 person.

11 CHAIRPERSON GRIFFIS: Thank you very much.
12 I appreciate you holding that congratulations until we
13 just about finished the day, but thank you.

14 MR. JARBOE: In line with my earlier answers
15 and with Ms. Ferster's reminder of my duties, I have to
16 say that that would be speculation. I can't speculate
17 on what the Commission would do because that was not the
18 vote in front of the Commission. And I have been trying
19 to be very careful in all of this in keeping with what
20 the vote of the Commission was in this particular case,
21 because that's what's before us today.

22 MEMBER ETHERLY: And I appreciate that
23 clarification and caution. It's a good one.

24 As our chairman has directed with previous
25 witnesses, you definitely have the opportunity to say

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1 I just don't want to express an opinion on it. But let
2 me rephrase and say, in your opinion, perhaps not speaking
3 as a representative of the ANC, would that change your
4 own thinking or approach vis a vis four separate
5 developments, four separate sets of owners?

6 MR. JARBOE: Without prejudicing what might
7 happen in the future -- because understand that if this
8 appeal is, in fact, granted we will be at the process
9 where this project will come back before the ANC and this
10 board --

11 MEMBER ETHERLY: I understand.

12 MR. JARBOE: -- as part of the
13 special-exception process. My personal concern is, and
14 questions that I would ask in that process have to do
15 with the intent of the zoning law and the intent of the
16 Zoning Commission concerning the density of
17 community-based residential facilities and the
18 clustering effect. I would ask those questions. The
19 answers. Frankly, I cannot tell you right now how that
20 would come out.

21 MEMBER ETHERLY: Okay. That's a fair
22 answer. Thank you.

23 CHAIRPERSON GRIFFIS: One quick question.
24 Can you turn the mike off next to you? We're getting
25 some feedback. Thank you.

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1 Also, can you talk to me about --

2 MR. JARBOE: You mean that wasn't the
3 question.

4 CHAIRPERSON GRIFFIS: That is the correct
5 answer, in fact, to the first question.

6 But the second question is this. In the ANC
7 meeting in which the vote was taken and that report was
8 then produced, you have stated that the intent of the
9 zoning is to provide for control of the density of certain
10 uses. Speak to me a little bit about what the discussion
11 was that established -- or what was the basis of
12 establishing the intent of the zoning laws that was
13 discussed for the ANC to come to that conclusion.

14 MR. JARBOE: That is, frankly, our reading
15 of the intent of the zoning laws. And it is based on
16 testimony from both the attorneys for Citizens for Smart
17 Development -- Southeast Citizens for Smart
18 Development -- and testimony by Mr. Feola. We had both
19 of them at our hearing.

20 CHAIRPERSON GRIFFIS: Okay. And were there
21 any other points of information that helped define for
22 the ANC members and participants any of the zoning law
23 or the intent of?

24 MR. JARBOE: I believe we looked at the
25 regulations having to do -- and I can't quote them because

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1 I'm not an expert. But having to do with the break down
2 by size, that it's zero to 6, 7 to 18. We reviewed those
3 regulations as well.

4 CHAIRPERSON GRIFFIS: Right. Okay. So the
5 specific regulations for the zoning.

6 MR. JARBOE: Specific regulations.

7 CHAIRPERSON GRIFFIS: Okay.

8 Okay. Anything else, Board members, for the
9 ANC?

10 Oh, yes. Mr. Hannaham. Please.

11 COMMISSIONER HANNAHAM: I guess I just want
12 to go back a little bit. I was a former ANC commissioner
13 back when the first group of commissioners came aboard.

14 And one of the things we were always really concerned
15 about is government agencies giving us prior notification
16 when there were programs impacting on our ANC areas.
17 And that's still up for final -- I don't know whether
18 it's been approved in the last 20 years or so. But I
19 suspect that every effort would have been made by people
20 in the communities, probably by the ANC leadership, to
21 get the word about their concerns that we're expressing
22 here with respect to this particular matter.

23 Did you attempt to go to the zoning
24 administrator to let him, in any way, know what these
25 kinds of concerns might be when you first became aware

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1 of the permit?

2 MR. JARBOE: One of the issues that
3 we -- problems we are having is the question about
4 notification of permits. For the record, this board is
5 doing an excellent job of notifying the ANC's of hearings
6 and issues before it. However, we do not always get
7 timely notice of the permit process and when permits are
8 issued.

9 We were specifically contacted by both the
10 Office of Planning and the Department of Health having
11 to do with the proposed Environmental Impact Statement.

12 Frankly, we did not go directly to the zoning
13 administrator because we understood that this appeal had
14 been filed. By the time we knew about this, the appeal
15 was in process. And we felt the best way to, then, follow
16 the process would be to follow the formal appeal process
17 where there was written notification that there would
18 be a hearing, there would be the formal notification to
19 the ANC, the ANC would have its formal vote, rather than
20 have an informal contact with the zoning administrator
21 outside of that appeal process.

22 COMMISSIONER HANNAHAM: I see. So that
23 opportunity was lost because of the timing of your
24 awareness of it. There might have been a possibility
25 had you had an opportunity to sit down and talk with the

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1 zoning administrator or somebody in OP --

2 MR. JARBOE: That's correct.

3 COMMISSIONER HANNAHAM: -- to bring these
4 concerns to the floor.

5 MR. JARBOE: We did bring concerns to the
6 attention of the Office of Planning, and, in fact, had
7 talked informally with the Office of Planning about the
8 possibility of a small-tract review on his particular
9 site. But it was determined that that did not fit the
10 criteria for a small-tract review. That's what we were
11 told by the Office of Planning.

12 COMMISSIONER HANNAHAM: How do you react to
13 earlier testimony of attempts made by individuals in the
14 community to go to Father Flanagan's organization for
15 information were not responded to fully? Are you aware
16 of that? Was that your experience?

17 MR. JARBOE: Again, without trying to
18 prejudice later decisions, let me say there have been
19 problems with communications all around on this
20 particular issue. It has been a very contentious issue
21 in our community, and there have been problems with
22 communications.

23 COMMISSIONER HANNAHAM: So there weren't
24 briefings by the partners or the developers or anybody
25 prior to this?

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1 MR. JARBOE: There have been a couple of
2 attempts at briefings, yes. This was also a subject of
3 a special ANC meeting in the summer of 2000.

4 COMMISSIONER HANNAHAM: Were they attended
5 and briefed?

6 MR. JARBOE: My understanding is -- I was
7 not chair at that time. My understanding was that they
8 were invited. They had said that they could not attend
9 because of the amount of notice. Whether or not that
10 is true, I don't know. The issue was that there was a
11 special meeting, and they were not in attendance.

12 COMMISSIONER HANNAHAM: Okay. Thank you.

13 CHAIRPERSON GRIFFIS: All set? Great.

14 I'll give you time to follow up on any of
15 the cross-examination questions if you have any.

16 Ms. Ferster? Yeah?

17 MS. FERSTER: Yeah. I have just one recross
18 question --

19 CHAIRPERSON GRIFFIS: Sure.

20 MS. FERSTER: -- that was raised by
21 Mr. Hannaham's questions.

22 I was just a little confused. Is it correct
23 that the ANC did not get notice of the permits until after
24 they were issued?

25 MR. JARBOE: It is my recollection that the

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1 first time we learned about that the fact that permits
2 had been issued was a communication to myself from members
3 of Southeast Citizens, mentioning that they were asking
4 the zoning administrator to reverse his decision. There
5 is always an issue about has notice been sent versus has
6 notice been received, as former ANC commissioners will
7 understand.

8 Whether or not in the process there was some
9 sort of broad area announcement that permits had been
10 granted is actually irrelevant. There may have been such
11 announcement or not. The first time that it came to my
12 attention as chair was after the administrator had made
13 his decision.

14 CHAIRPERSON GRIFFIS: Is it your
15 understanding that notification of permits that are
16 awarded are required to go to ANC?

17 MR. JARBOE: There -- I am unclear as to the
18 actual requirement for permits. We do get notified by
19 a list of permits that go to us for actions taken in the
20 historic district, under that set of regulations.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. JARBOE: Concerning other permits, it
23 seems to be -- and again, I can only speak from my
24 experience. It seems to be a haphazard notification.
25 And I don't know if there is any specific requirement

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1 for the ANC's to be notified of permits.

2 CHAIRPERSON GRIFFIS: Okay.

3 Any recross? Very well.

4 MEMBER ETHERLY: Mr. Chair?

5 CHAIRPERSON GRIFFIS: Yeah?

6 MEMBER ETHERLY: If I may. I apologize.
7 I wanted to send one final question to the direction of
8 the ANC.

9 Once again, Mr. Jarboe, being very sensitive
10 and considering the fact that you're not testifying as
11 an attorney or anyone versed in the legal practice, but
12 I'm just curious. Based on your recollection, was there
13 any discussion during the ANC proceedings regarding the
14 issue of Zoning Commission Order 725? There was a little
15 bit of testimony -- actually, a little bit of an exchange
16 on cross earlier with one of the previous witnesses
17 regarding Zoning Commission Order 725 and the issue of
18 disparate treatment between CBRF housing under six
19 individuals and unrelated persons living in dwellings
20 six and under.

21 Was there any discussion about that in the
22 ANC?

23 MR. JARBOE: There was some discussion of
24 that issue in the Planning and Zoning Committee. And
25 then, subsequently, in the full ANC, again, concerning

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1 this issue of the control of the density of such
2 facilities.

3 MEMBER ETHERLY: Okay. So was there a
4 resolution of that issue? By resolution, I mean did the
5 ANC make a determination that we understand that argument,
6 but we're still not swayed or compelled in any
7 overwhelming way, or it just was simply raised?

8 And the reason why I'm inquiring -- I'm not
9 attempting, endeavoring to put you on the spot there,
10 but I would hazard a guess that we'll hear some extensive
11 conversation about that in later portions of this
12 proceeding. So I'm just trying to get my ducks in a row
13 in terms of that argument.

14 MR. JARBOE: I think I would have to say it
15 was raised.

16 MEMBER ETHERLY: Okay.

17 MR. JARBOE: I'm not in a position of saying
18 which factors influenced whose vote on -- I can simply
19 give you the ultimate vote.

20 MEMBER ETHERLY: That's fine.

21 MR. JARBOE: I can't give you the thinking
22 of each individual commissioner behind that ultimate
23 vote. I can tell you what we talked about, but that's
24 as far as I can go.

25 MEMBER ETHERLY: No problem. It's very

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1 helpful to know that it was raised. Thank you.

2 MS. FERSTER: I have one recross
3 clarification, because I'm just not quite sure what the
4 "it" was. And I would ask that the witness clarify.

5 What was the it that was raised?

6 MR. JARBOE: The it was the -- and I believe
7 this is the same -- that's a good question because I want
8 to make sure that I understand the question. The "it"
9 was having to do with the Zoning Commission's orders
10 concerning the size of community-based residential
11 facilities and the break down of the three different sizes
12 of community-based residential facilities, and the
13 regulations pertaining to each of those various sized
14 facilities.

15 MEMBER ETHERLY: And just by way of
16 clarification, we were talking about that component of
17 the regulations that deal with facilities at number six
18 or less. And 725 -- and I don't want to get too deeply
19 into it just here -- attempted to address some perceived
20 concern about incompatibility as far as the Fair Housing
21 Amendment acts go.

22 MR. JARBOE: Correct. That's my
23 understanding of the "it" as well.

24 MEMBER ETHERLY: Okay. Thank you. That
25 was a useful clarification. Thank you, Counsel. Thank

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1 you, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Okay. We have made
3 it through to the ANC. I am going to take a 10-minute
4 recess. And we will be back and establish the next steps.
5 My anticipation is we will not go beyond 6:00 tonight.
6 And so we will reassess whether we begin in the last
7 couple of minutes or we move and pick a new date for
8 continuing of this. So we shall be back shortly.

9 (Whereupon, the foregoing matter went off
10 the record at 5:35 p.m. and went back on the
11 record at 5:55 p.m.)

12 CHAIRPERSON GRIFFIS: Okay. If I can have
13 all of the representatives up to the table again while
14 we go through this last piece.

15 Obviously, we have the zoning
16 administrator's case to get through. Also, Father
17 Flanagan's, and the rest of the closings, et cetera.

18 It is my grand assumption that you don't want
19 to start right now; is that correct? Yeah. Okay, good.

20 This is what I propose. First of all, we
21 will give you another date right now. In that date, we're
22 frankly squeezing into our schedule to continue this as
23 close as possible to this date as we can. I want to open
24 up with questions from the Board to Ms. Ferster in terms
25 of the legal argument that was involved and heard today.

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1 And then move on in the process from the zoning
2 administrator's and Father Flanagan's, on down.

3 We are proposing next week, February 12th.

4 That would be in the morning. And just to let everyone
5 know, we have three other cases in the morning. Well,
6 without going into details there, we think we will have
7 time. It is not certain, depending on, obviously, how
8 things roll, that we will actually finish in that morning.

9 But we will give that as much priority and time as
10 possible, and then move on from there.

11 Just give me quick comments on dates, if that
12 is doable.

13 MR. JARBOE: Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Yeah?

15 MR. JARBOE: I cannot be here that morning.

16 However, our representative, our executive secretary
17 can be here for any motions or questions that you have.

18 As long as you don't need to recall me as a witness --

19 CHAIRPERSON GRIFFIS: Great. Okay.

20 MR. JARBOE: -- that's fine.

21 CHAIRPERSON GRIFFIS: Thank you. And if
22 that case arises, then we'll have to deal with it, whether
23 it be another time or not.

24 Mr. Feola?

25 MR. FEOLA: Mr. Chairman, given your

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1 schedule for next Tuesday -- and, actually, we talked
2 about this informally with staff. It would have been
3 appropriate, but we weren't aware that there were three
4 other cases.

5 The zoning administrator's case and Father
6 Flanagan's case go hand-in-hand. And to do it together
7 would make some sense logically. And I guess the question
8 is, when would be that date, if we were unable or chose
9 not to collectively come next Tuesday morning.

10 Best intentions are, I would be very
11 surprised that we would finish the case next Tuesday
12 morning. And that's not even talking about rebuttal or
13 closing remarks, just the two.

14 CHAIRPERSON GRIFFIS: Is your question,
15 would you have to be your entire cast?

16 MR. FEOLA: No. I think it would serve the
17 Board better, the appellants better, and this side of
18 the table better if you could take the zoning
19 administrator's case and Father Flanagan's case in the
20 same block of time.

21 CHAIRPERSON GRIFFIS: I see.

22 MR. FEOLA: Questions I would expect from
23 Ms. Ferster are going to be similar to both. I think
24 there will be an overlap.

25 CHAIRPERSON GRIFFIS: Well, the next

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1 available date to do that with great certainty --

2 MR. FEOLA: We're not really interested in
3 extending this. And I don't mean to suggest that at all.

4 CHAIRPERSON GRIFFIS: No. I understand
5 your point. And that is that --

6 MS. BAILEY: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: -- it's abrupt to
8 separate you two in terms of the testimony.

9 Yeah?

10 MS. BAILEY: The next available full
11 afternoon would be April 9th. And that afternoon is open
12 starting at 1:00.

13 CHAIRPERSON GRIFFIS: April?

14 MS. BAILEY: April 9th.

15 CHAIRPERSON GRIFFIS: I don't think my pages
16 even go that far.

17 (Pause)

18 Okay. Well, this is what I propose.
19 Frankly, from the Board's perspective, I don't want this
20 going much further because we have to re-review this
21 entire piece. And it's much easier for us to keep it
22 fresh in our minds. As you know, we go through numerous
23 cases every week and try and fit in other jobs on the
24 side.

25 I want to put this forward. To the best of

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1 my ability, as chair of the Board, I will have both of
2 you heard on the 12th. I mean, I'm not familiar with
3 the case, so I can't speak to them. But there may be
4 ample time on the morning of the 12th. And what I'm
5 proposing is that we will run it through to, at a minimum,
6 get to the three items that I've talked about. One will
7 start with our questions, and then we'll go ZA and Father
8 Flanagan.

9 What may end up being rescheduled and,
10 perhaps, would be easy to fit in, would be closings and
11 such. In that case, we may have requests for further
12 information from any or all of the participants, in which
13 case we'd need to give time anyway for responses. So
14 that may ease off on the schedule.

15 So that being said, is that acceptable?
16 Okay.

17 MR. FEOLA: It is for Father Flanagan.

18 CHAIRPERSON GRIFFIS: Okay. And just know
19 we won't see our families that day probably based on this,
20 but that's what we give up.

21 MR. FEOLA: 9:30? 9:00, 9:30?

22 CHAIRPERSON GRIFFIS: Well, yeah. I would
23 say 10:30 at the earliest. Well, I would say 10:30.
24 What we're going to do, I will be calling the first two
25 cases, and we'll get through those. So this is

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1 conceivably third or fourth on the schedule. And I'll
2 have to figure that out as we get close to that day.

3 Is that acceptable to the ANC?

4 MR. JARBOE: That's acceptable.

5 CHAIRPERSON GRIFFIS: Ms. Ferster?

6 MS. FERSTER: That is acceptable.

7 CHAIRPERSON GRIFFIS: Okay, great.

8 And Ms. Brown?

9 MS. BROWN: For the District it is.

10 CHAIRPERSON GRIFFIS: Okay. Thank you.

11 All right. The last item, what I want to
12 do and let the participants know, I'm going to be
13 requesting a report from the Office of Planning. I think
14 we have had an awful lot of information that has come
15 up in regards to the comprehensive plan, the work plan.

16 There is some rationale for the Board members to hear
17 from them on this appeal. And so I will be making the
18 request for a report. We will not have that by the 12th.

19 MR. FEOLA: Mr. Chairman, I'm going to object
20 to that. This is not a role for the Office of Planning.

21 This is an appeal of the zoning administrator's decision.

22 And this board has ruled that that's inappropriate as
23 recently as a few months ago in the Sunrise case. So
24 I don't think it's appropriate to ask the Office of
25 Planning to comment on this appeal of the zoning

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1 administrator's decision. And so, for the record,
2 anyway, we object to that.

3 CHAIRPERSON GRIFFIS: Okay.

4 And, Ms. Brown, do you also have a --

5 MS. BROWN: The District would likewise
6 object to that.

7 CHAIRPERSON GRIFFIS: Okay.

8 Any other participants have an opinion on
9 that?

10 Okay. Knowing full well we won't have a
11 report if I decide to proceed in that manner by the 12th,
12 what I would request from the two opposing participants
13 is a brief paragraph just stating your opposition to the
14 Office of Planning report being submitted on this case.

15 Other items I need to attend to? In which
16 case, I would.

17 Thank you all for coming today, sitting
18 through all this, and would adjourn the February 5, 2002
19 hearing.

20 (Whereupon, the hearing was adjourned at 6:06
21 p.m.)

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