

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 29, 2002

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Clifford Moy, Office of Zoning
John Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.

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(703) 522-1226

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

9:42 a.m.

CHAIRPERSON GRIFFIS: Again, my name is Geoff Griffis, Chairperson. Joining me today is Ms. Anne Renshaw who is the Vice Chair. Mr. Curtis Etherly has joined us who is sitting on my right. Representing the National Capital Planning Commission is Mr. Zaidain. Representing the Zoning Commission with us today is Mr. Parsons who will be joining us momentarily.

Copies of today's hearing are available to you. They are located at the table where you entered into the hearing room. If we run out of copies, do let staff know and we can make more available.

Please be aware that these proceedings are being recorded. There are several technical issues that are involved in that. First of all, in order to be on the record, which you must be, you will have to speak into a microphone and that microphone should be on. We will give any direction if we have some complications on how we do that.

When presenting to the Board, all people should fill out two witness cards. Those witness cards are also available on the table where you entered and they are available at the table in front

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1 of us. Two witness cards are fill out by each person
2 giving testimony. Those witness cards go to the
3 recorder. The recorder is sitting to my right.

4 Let me also take this time to ask that
5 everyone turn off their cell phones and beepers so
6 that we don't disrupt the proceedings and anyone
7 giving testimony.

8 The order of special exceptions and
9 variances today will be, first, statements of the
10 witnesses and witnesses of the applicants. Second we
11 have government reports attended to any application.
12 Those may include Office of Planning, Department of
13 Transportation, etc.

14 Third, we will have reports from the
15 Advisory Neighborhood Commission. Fourth, we would
16 have parties or persons in support of the application.
17 Fifth would be parties or persons in opposition.
18 Sixth, we will have rebuttal testimony and closing
19 remarks by the applicant.

20 Cross-examination of witnesses is
21 permitted by the applicant or parties. The ANC within
22 which the property is located is automatically a party
23 in the case. The record will be closed at the
24 conclusion of each case except for any material that
25 the Board specifically outlines.

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1 We will be specific and we will be
2 specific with the time that it should be submitted
3 into the Office of Zoning. After all those
4 submissions are received, clearly the record will then
5 be closed and no other information will be accepted by
6 the Board.

7 The Sunshine Act requires at the public
8 hearing each case be held in the open and before the
9 public. The Board may, however, consistent with its
10 rules of procedure and the Sunshine Act enter
11 executive session during or after the public hearing
12 on a case for purposes of reviewing and/or
13 deliberating on the case.

14 The decision of the Board in contested
15 cases and noncontested cases must be based exclusively
16 on the record and, therefore, we ask in order to avoid
17 an appearance to the contrary, the people present
18 today not engage Board members in conversation.

19 The Board will now consider any
20 preliminary matters. Preliminary matters are those
21 which relate to whether a case will or should be heard
22 today such as postponements, continuances,
23 withdrawals, or whether proper and adequate notice has
24 been given.

25 If you are not prepared to go forward with

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1 a case today, or if you believe the Board should not
2 hear a case today, now is the time to bring up such
3 matter. I would ask anyone that has preliminary
4 matters that they can make their way up to the table.

5 I will also ask staff if they have any preliminary
6 matters for the Board.

7 I first would like to say good morning to
8 the staff. Ms. Bailey, Mr. Moy, Mr. Nyarku, and also
9 Corporation Counsel who is with us, Ms. Monroe.

10 MS. BAILEY: Good morning, Mr. Chairman.
11 Also the other members of the Board. Staff has no
12 preliminary matter, Mr. Chairman and unless there is
13 someone in the audience who does, I can call the first
14 case.

15 CHAIRPERSON GRIFFIS: Indeed. Anyone
16 present today have preliminary matters for the Board?
17 Very well. Let's call the first case.

18 MS. BAILEY: Application No. 16933 of
19 Washington Drama Society, Inc., also known as The
20 Arena Stage, pursuant to 11 DCMR 3103.2, for a
21 variance from height limitations under Section 930, a
22 variance from the floor area ratio requirements under
23 Section 931, a variance from the lot occupancy
24 requirements under Section 932, and a variance from
25 the rear yard requirements under Section 933, to allow

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1 the construction of an addition to an exiting theater
2 located in the W-1 District at premises 1101 6th
3 Street, S.W. (Square 472, Lots 123 and 126).

4 Please stand, gentlemen and ladies, to
5 take the oath. Do you solemnly swear or affirm that
6 the testimony you are about to give in this proceeding
7 will be the truth, the whole truth, and nothing but
8 the truth?

9 WITNESSES: I do.

10 MS. BAILEY: Thank you.

11 CHAIRPERSON GRIFFIS: Good morning, Mr.
12 Chairman and members of the Board. For the record, my
13 name is Norman M. Glasgow, Jr. of the law firm of
14 Holland and Knight appearing on behalf of the
15 applicant, the Washington Drama Society which is doing
16 business as the Arena Stage.

17 We are requesting the Board's approval of
18 four variances in order to implement an exciting
19 redevelopment project for Arena which will give it the
20 necessary facilities to remain in its present location
21 and be a center piece of the long-awaited
22 redevelopment of the southwest waterfront.

23 Appearing here with me today are Mr.
24 Stephen Richard to my immediate right, and Mr. Brian
25 Heller is in the audience of Arena Stage. Mr. Bing

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1 Thom to my far right of Bing Thom Architects for this
2 project. Ms. Emily Eig, Architectural Historian of E.
3 H. T Traceries.

4 Steven Sher, land planning, an expert
5 witness with Holland and Knight. Also here in the
6 audience are Mr. Dennis Hughes of Holland and Knight
7 and Chris Rudashan and Teresa Ward of Concord Partners
8 who are the development consultants for Arena.

9 Before proceeding with the testimony of
10 the witnesses, I would like to offer a brief opening
11 statement. The Arena Stage has undergone an extensive
12 self-analysis and process to determine where and how
13 it should address its needs to modernize its facility
14 while at the same time respecting and enhancing the
15 historic landmarks on its site so that Arena may
16 address the needs of its patrons, modernize its
17 facilities, provide reasonable administrative staff
18 space, and honor the Fichandler and Kreeger historic
19 theaters located on the site.

20 In addition, Arena desires to provide
21 space on site for actors to live while at Arena
22 delivering performances. The result has been a design
23 enthusiastically approved by the Historic Preservation
24 Review Board, the Mayor's Agent, the Commission of
25 Fine Arts, and the ANC.

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1 This design, in effect, encapsulates the
2 historic theater spaces of the Fichandler and Kreeger
3 and preserves those buildings in their entirety while
4 providing an acoustical barrier so necessary for the
5 theater's practical functioning.

6 The result of this undertaking and
7 placement of residential on the site result in a
8 request for four variances, FAR, height, lot
9 occupancy, and rear yard.

10 I also assume that the members of the
11 Board have a copy of the applicant's statement which
12 goes through in some detail.

13 CHAIRPERSON GRIFFIS: Received it and read
14 it.

15 MR. GLASGOW: Wonderful. Then I will not
16 take time to review it.

17 CHAIRPERSON GRIFFIS: You might want to
18 highlight some of the issues in it.

19 MR. GLASGOW: All right. Then just
20 quickly just highlighting on pages where the burden of
21 proof is, we have the exhibits in support of the
22 application. We have a Sandborn map as A and a
23 building platt showing the footprint of the site.
24 You'll see that the site is a large site and has a
25 very unusual shape to it.

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1 We also have a zoning map showing the
2 property located in the W1 zone, photographs of the
3 subject property and surrounding areas, outlines of
4 testimony of the witnesses. Those are Exhibits E
5 through H. A set of the architectural drawings.

6 You will note that there has been a
7 modification to the design of the cradle that's shown
8 in those architectural drawings which were also shown
9 and approved by the Mayor's Agent. That's different
10 than the egg shape.

11 CHAIRPERSON GRIFFIS: And we have the
12 submission of the new design.

13 MR. GLASGOW: Yes, you do.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GLASGOW: Next we have the Exhibit J,
16 the Historic Preservation Review Board Staff Report
17 and Recommendation. We have our recommendation letter
18 from the Commission of Fine Arts as Exhibit K.

19 Exhibit L is the Mayor's Agent order
20 approving demolition to construct project of special
21 merit and noting its exemplary architecture which was
22 issued to us in September of 2002. Next in the
23 statement essentially from pages 7 through 18 we go
24 through the burden of proof and how it is met with
25 respect to this project.

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1 In proceeding before the Board the
2 applicant will be requesting flexibility as it
3 continues through its review processes if there is a
4 modification of the design in the project in
5 accordance with approvals obtained from the Historic
6 Preservation Review Board, Commission of Fine Arts
7 and, if necessary, the Mayor's Agent so long as such
8 design modifications do not increase any of the areas
9 of relief requested in this application.

10 If there are no preliminary questions, I
11 would like to proceed with the testimony of the
12 witnesses, three of whom will be offered as experts,
13 Mr. Sher and Ms. Eig have been accepted as experts in
14 numerous cases before this Board. Mr. Bing Thom we
15 are going to be offered as an expert in architecture,
16 in particular theater architecture. He was accepted
17 as such by the Mayor's Agent and we have copies of his
18 resume.

19 CHAIRPERSON GRIFFIS: Was the information
20 on Ms. Eig and Mr. Sher submitted in this record?

21 MR. GLASGOW: Not in this record. I am
22 relying on previous cases.

23 CHAIRPERSON GRIFFIS: You're relying on
24 our memory?

25 MR. GLASGOW: Yes, sir.

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1 CHAIRPERSON GRIFFIS: I'm not sure how
2 safe that is. Very well.

3 Board members, please take a moment and
4 look at Mr. Thom's experience. They will all avail
5 themselves of any questions from the Board at this
6 point. Any questions or clarifications from the
7 Board? Any objections to any of the offered expert
8 witnesses? That would be a resounding consensus of
9 accepting the expert witnesses this morning for this
10 case so we can proceed.

11 MR. ZAIDAIN: I'm trying to figure out
12 what FRAIC is.

13 CHAIRPERSON GRIFFIS: That's an excellent
14 question. Perhaps someone would like to answer that.

15 MR. ZAIDAIN: Is that Fellow of the --

16 MR. GLASGOW: Fellow of the Canadian
17 Architecture Institute.

18 MR. ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: Equivalent of FAIA,
20 I guess?

21 MR. GLASGOW: Yes.

22 CHAIRPERSON GRIFFIS: Okay. All right.

23 MR. ZAIDAIN: I have no problem with that.
24 I was just curious. That's fine, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Thank you all very

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1 much.

2 Mr. Glasgow.

3 MR. GLASGOW: Thank you. I would also
4 like to note that representatives of Arena have met on
5 several occasions with the community and at its most
6 recent ANC meeting on October 21st the ANC unanimously
7 voted to support this application. With that I would
8 like to call the first witness, Mr. Stephen Richard.

9 Would you please identify yourself for the
10 record and proceed with your testimony.

11 MR. RICHARD: My name is Stephen Richard.

12 I'm the Executive Director at Arena Stage. If you
13 will, I would like to begin with a just a minute or
14 two of history. In about 1990 Arena concluded that it
15 was in the process of outgrowing its current facility
16 for a number of reasons.

17 Certain aspects of the building changed
18 over time, or needs changed over time I should say.
19 The building is no longer as accessible as we would
20 like it to be. Though it still meets the minimum ADA
21 requirements they are minimum.

22 Various of the building's systems are in
23 need of replacement. The acoustical qualities of the
24 Fichandler space have become one of our most enduring
25 problems in keeping audiences interested in the work

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1 in that space. In addition, with a growing audience
2 and growing staff, we had outgrown almost all of the
3 spaces in the building.

4 We took a hard look at our choices. We
5 retained an architectural firm out of New York City
6 well known for theatrical design. They took a first
7 pass at this space on the site and they concluded, or
8 we concluded with them, that it was not possible to
9 achieve the program we thought necessary to remain in
10 the competitive theater in the 21st century on this
11 site.

12 So we concluded that it was necessary to
13 move. You may have noticed in reading the paper a
14 number of years ago that we were on the verge of
15 receiving an award from the GSA to relocate to a site
16 on 7th Street downtown when we had a last moment
17 conversion and decided that we needed to take one more
18 attempt to stay on this site.

19 We are deeply committed to southwest
20 Washington and at that point the redevelopment of
21 southwest waterfront began to seem like a tangible
22 reality. We were working very closely with the
23 Mayor's office, the Office of Planning, and so forth.

24 We withdrew from that process and began an
25 international search for an architect who could take

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1 another look at this site. I think when Bing gives
2 you a look at what he's come up with this site, I hope
3 you'll agree that we made a very good choice.

4 What we concluded that we needed to
5 continue the now 52-year history of Arena Stage in
6 southwest
7 Washington was approximately four times the public
8 space. The one lobby we have is very crowded and
9 uncomfortable. We are going to double the support
10 space for the theaters.

11 We are going to for the first time bring
12 rehearsal rooms on site. We currently have a
13 rehearsal room that is a block and a half away
14 underground in a parking garage, not a very conducive
15 place to spend four and a half weeks rehearsing a
16 show.

17 For the first time we are going to have a
18 classroom on site. We bring 25,000 students a year to
19 the site but we don't have a place to sit them down
20 and actually extend the value of their experience in
21 coming to the theater, as well as expanding office and
22 other limited spaces.

23 As Chip has mentioned, we have been very
24 enthusiastically heard by a variety of groups so far
25 and it's been, frankly, personally very encouraging

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1 that that has been the case.

2 CHAIRPERSON GRIFFIS: We certainly hope to
3 continue that trend perhaps.

4 MR. RICHARD: We hope so. In addition, we
5 are working with the Mayor's office for some support
6 from the city. We have brought a letter from the
7 Mayor to that effect.

8 CHAIRPERSON GRIFFIS: In support of this
9 application?

10 MR. RICHARD: Not in support of the
11 application. Actually, in support of funding for the
12 project.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. RICHARD: Thank you for asking for the
15 clarification.

16 I believe, unless there is some more
17 history, that's it.

18 CHAIRPERSON GRIFFIS: Ms. Renshaw.

19 VICE CHAIR RENSHAW: Mr. Richard, why
20 don't you clarify or elaborate on the need for
21 residential space for your artists.

22 MR. RICHARD: That's a choice more than a
23 need that would be on the site itself, but it's a
24 choice we love, frankly. We currently rent
25 approximately 20 to 25 apartments in the southwest

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1 area for visiting actors, directors, and designers on
2 a periodic basis. The idea of being able to create a
3 community on this site that includes a residential is
4 very appealing to us. Plus, frankly, a cost savings
5 measure in the long run.

6 VICE CHAIR RENSHAW: Thank you.

7 CHAIRPERSON GRIFFIS: The expansion of all
8 the elements that you've touched on and some that were
9 submitted basically go to the Arena continuing and
10 maintaining. Otherwise, you would be looking at a
11 major change if not halting some of your productions
12 and performances. Is that correct?

13 MR. RICHARD: That is correct, yes. I
14 perhaps should have mentioned, if you'll allow me, the
15 one major programmatic change that I didn't mention is
16 the creation of a third small developmental space. We
17 are deeply committed to new work and new artists and
18 currently our smallest theater is 514 seats, much too
19 large for a commercially viable approach to
20 development new work so this third space is a key part
21 of the program.

22 CHAIRPERSON GRIFFIS: So, if I understand
23 you correctly, the third part that you're talking
24 about is smaller in seating?

25 MR. RICHARD: That's correct.

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1 CHAIRPERSON GRIFFIS: And, therefore,
2 would be opened to smaller performance groups that
3 could utilize that?

4 MR. RICHARD: To come degree and by our
5 own staff to develop new work and work with emerging
6 artists.

7 CHAIRPERSON GRIFFIS: I see. Okay. I'm
8 not sure. I don't remember who actually put in for
9 the historic landmark of these structures?

10 MR. RICHARD: The Arena State staff at the
11 time in the early '80s put in for the historic.

12 CHAIRPERSON GRIFFIS: Interesting. Okay.
13 Anything else, Mr. Richard? Thank you.

14 MR. GLASGOW: Next, Ms. Eig, would you
15 identify yourself for the record and we'll proceed
16 with your testimony.

17 MS. EIG: I am Emily Hotaling Eig and I am
18 an architectural historian and preservation consultant
19 with the E. H. T. Traceries. I'm here to go back a
20 little further in history to actually the point in the
21 1950s when the decision was made to redevelop
22 southwest waterfront in a manner that would include a
23 regional theater.

24 The Arena Stage at that time was chosen to
25 be a major element in the redevelopment of the

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1 southwest It was intended to draw an audience not
2 only from a renewed neighborhood, but also from
3 throughout D.C. and the greater region.

4 The theater as we know it today was
5 originally constructed in 1960 as just what is the
6 Fichandler Stage today. It originally comprised only
7 that theater and administrative and service wings. It
8 was an innovative regional theater in the round
9 encased within a quadrilateral form. That introduced
10 Washington, D.C. to dramatic programming that was
11 precedent in the area.

12 In 1969 the Kreeger theater was added to
13 the complex of the N.W. portion of the site along with
14 the old Vat room which is cabaret style theater
15 beneath it, and administrative space in classrooms
16 that connected the two theaters.

17 In 1980 only 20 years after the original
18 construction, the Washington Drama Society, the owners
19 of Arena Stage, sought recognition for the theater in
20 its role as one of the city's unique cultural
21 institutions and as a pioneer in the American regional
22 theater movement.

23 The glass and masonry structures that had
24 been designed by Harry Weese and Associates were
25 recognized for their architectural composition,

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1 structural expressionism, and exposed raw material.

2 The property, barely 20 years old, was
3 listed in the D.C. Inventory of Historic Sites but was
4 not found to be sufficiently significant for listing
5 in the National Register at that time.

6 The institutional memory, actually, of
7 Arena Stage as to the genesis of the landmark
8 application was forgotten by the year 2000. The
9 question was asked of me who brought this designation
10 and, in fact, was the Washington Drama Society itself.

11 It was very much understood at the time
12 that it was to assist the theater in hopes that there
13 would be resources available to it as a landmark that
14 might not be available to it otherwise.

15 CHAIRPERSON GRIFFIS: Little did they know
16 in the future it might become a problem.

17 MS. EIG: They did not recognize it
18 obviously.

19 CHAIRPERSON GRIFFIS: Okay. This is
20 fascinating. I think some of the most important
21 things that you're going to get to is perhaps some of
22 the HPRB issues that were talked about.

23 MS. EIG: The passage of time has led to a
24 clear understanding of Fichandler Stage as a fine
25 example of regional theater innovation of the mid-20th

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1 century. The contrasting Kreeger Theater continues to
2 illustrate the more traditional stage setting that
3 allows the staging of plays beyond the venue of the
4 theater in the round.

5 The understanding of Arena Stage as a
6 monumental expression of regional theater continues to
7 ring true for us today. However, as we heard from Mr.
8 Richard, the facilities did not serve actually the
9 purpose of regional theater as well as they had
10 perhaps anticipated in 1980.

11 When the idea came forward to propose a
12 new scheme, the Arena Stage had to deal with the fact
13 that it was a landmark property. In working with
14 David Maloney of the Historic Preservation Review
15 Board staff, David being the acting manager of the
16 staff, there was an acknowledgement of the importance
17 of regional theater of Arena Stage as embodied in the
18 complex rather than for the more tangible expression
19 of its architectural fabric.

20 As time had gone on, certainly this is a
21 product of the 1960s, the importance of the Arena as
22 an institution has even grown more significant in
23 everyone's eyes. As a result, the design that you
24 will see today has been previously shown to and
25 approved by the Commission of Fine Arts, the D.C.

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1 Historic Preservation Review Board, and the Mayor's
2 Agent on Historic Preservation.

3 Working with David Maloney and presenting
4 to the Review Board that design that was approved was,
5 and I'll quote from the transcript of the Board,
6 Chairman Tersh Boasberg said, "I think we all feel
7 here that this is a wonderful design that adds so much
8 to our city. It's exemplary.

9 I feel the architecture is unique and
10 different and imaginative and forceful and that also
11 because there is the special merit because of the
12 importance of this building and this complex to
13 southwest, to our city, to the waterfront which I know
14 as been a prime concern of the Mayor and Mr. Altman
15 and I'm glad that you're proceeding in that. I think
16 that's necessary and I believe this strongly will
17 quality for special merit. We urge you to make these
18 points before the Mayor's Agent."

19 This was done so and the Mayor's Agent
20 reviewed the overall concept. The Commission of Fine
21 Arts Chairman Harry Robinson stated, "I think we're
22 all in love with this project."

23 Specifically the benefits of this new
24 design, which you have not been totally exposed to yet
25 but you will see in a moment, provide many

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1 contributions that will extend the institution of
2 Arena Stage into the 21st century.

3 First and foremost of the enhancement of
4 Washington as the cultural center, not just of the
5 city or the country, but potentially of the world.
6 Fulfillment of the spacial requirements for
7 performance, back-of-house operations, administrative
8 and education space, and residential accommodations
9 for actors.

10 Creation of a dramatic showcase interior
11 space and exciting exterior design that, in fact,
12 showcases the landmark Fichandler and Kreeger Theater.

13 Critical to this design is the retention of the two
14 main theaters that are part of the landmark nomination
15 and the removal, therefore, of the minor spaces of the
16 lobby and the administrative areas.

17 The retention and restoration of this
18 significant historic fabric was considered to retain,
19 enhance, and adapt for use the landmark property. The
20 Mayor's Agent also saw that there was a fulfillment of
21 the Anacostia waterfront initiative which is one of
22 the city's goals under the comprehensive plan.

23 The Mayor's agent's decision was a
24 resounding support for this exemplary architecture and
25 the contribution it would make to the city. In fact,

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1 what you are about to see is a remarkable expression
2 of a basic concept that has been taken to its greatest
3 meaning.

4 It's the skillful fulfillment of
5 innovative programmatic requirements for contemporary
6 regional theater, a gifted execution of extraordinary
7 design themes, and expert illustration of the use of
8 design as a mechanism that goes beyond improving the
9 theater and goes into the improving of the southwest
10 waterfront as a whole.

11 It is, in fact, I believe a brilliant gift
12 to our city, not just for the institution of the
13 theater but now extending into the architecture of the
14 theater and the architecture of the community which I
15 believe will have tremendous benefits to the vitality
16 of that area.

17 I would be happy to take any questions.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much.

20 Any questions from the Board?

21 MS. EIG: Thank you.

22 CHAIRPERSON GRIFFIS: Were there any
23 elements that came up for particular attention to the
24 Historic Preservation Review Board?

25 MS. EIG: The Review Board was

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1 particularly happy that the Arena Stage itself -- or
2 the Fichandler Stage. We have called it, I think,
3 affectionately Arena Stage, the entire complex -- and
4 the Kreeger were being retained and that there was
5 definitely a design that would enhance those and
6 showcase them, which is exactly the right word. Put
7 them in a situation where they would be more
8 appreciated for their beauty than might even have been
9 discussed before.

10 CHAIRPERSON GRIFFIS: Were there any
11 discussions -- I can see from the model that there is
12 what is appearing in the drawings. I would call it a
13 glass enclosure of the historic and the new. Were
14 there discussions of materials at HPRB?

15 MS. EIG: They were certainly presented to
16 them and they were, I think, unanimously in favor of
17 the approach that was presented.

18 CHAIRPERSON GRIFFIS: Okay. Good. That
19 doesn't mean we will be but, nonetheless, it's good to
20 know what they even think.

21 VICE CHAIR RENSHAW: Mr. Chairman, I just
22 wanted to site the transcript of the Commission on
23 Fine Arts meeting of 18 July 2002 regarding the Arena
24 Stage that is in our booklet. I found that to be very
25 interesting. Especially the chairman's comment about

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1 the wonderful jewel box. Are we going to see slides
2 of the wonderful jewel box? That's good.

3 CHAIRPERSON GRIFFIS: All right then. If
4 there aren't any other questions, we can move on.

5 MR. GLASGOW: Bing, will you please
6 identify yourself for the record and proceed with your
7 testimony.

8 MR. THOM: I'm Bing Thom, President of
9 Bing Thom Architects. It is a pleasure to be here
10 today, Mr. Chairman, members of the Board, to explain
11 to you the concept for Arena Stage.

12 When we were brought onto the project, the
13 Board really asked us to take two tacks. One, look at
14 what they could do on their property itself. There is
15 some question as to whether or not they could fit
16 everything they want onto the site. Then they also
17 said, "Well, at the same time see what we can do about
18 moving to an adjoining sites in other areas."

19 In looking at the study, I felt it was
20 very important to deal with the historic aspect first
21 and see and try everything we can to preserve the
22 Fichandler and the Kreeger and to celebrate what's
23 there rather than moving somewhere else.

24 I really took that challenge quite
25 seriously and initially really looked at the kind of

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1 influences from the neighborhood which really because
2 of the transit station, because of the shopping center
3 nearby, that really meant that the present front door
4 to the Fichandler coming off 6th was very important.

5 At the same time I did take a look at the
6 whole surrounding area of the southwest and really
7 concluded that there was wonderful opportunity for
8 redevelopment on the waterfront here. Indeed, in
9 subsequent meetings with the Mayor and Office of
10 Planning they have asked me to join the waterfront
11 team on the Anacostia waterfront so I've been also
12 working with the team of consultants.

13 I've been working on plans for what could
14 happen on the waterfront and came to the conclusion
15 that it was very important also to allow for an entry
16 from the water. This created this dilemma of how to
17 create now a design that allows us to have potentially
18 really two major entries and in some way linking these
19 two to create a design concept.

20 I also felt it was very important that
21 since we were so close to the water and we are not on
22 the water so why not bring the water to us. The idea
23 came about to try to create a substantial water garden
24 under which I would call it right now the three
25 temples, the Fichandler, the Kreeger, and the new

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1 Cradle would be featured.

2 The idea came about in one of the early
3 discussions I had with Zelda Fichandler when I asked
4 her, "Why is it that the present Arena Stage seems to
5 be built on a little low when the landscape in that
6 area is so flat?" She said, "Well, it's really the
7 Temple on the Acropolis.

8 I took that idea a little further and I
9 said, "Well, it would be wonderful if we could bury
10 all the back of house, all the administrative areas,
11 and really celebrate the three temples as a concept so
12 we created these two entries and really made this
13 journey through the project as almost a shortcut
14 through the neighborhood.

15 Then we will ensure the ability to tie the
16 Arena development to the waterfront and tie the Arena
17 development to the neighborhood and sort of acting as
18 a catalyst, if you like, for the potential
19 redevelopment of the area.

20 This is a concept we developed for the
21 Canada Pavilion in Expo '92 which I was fortunate to
22 be chosen as the architect for representing Canada
23 where we put a stage over water. It is inspired by
24 Superman's case in the movie.

25 Canada is the land of iceberg and snow and

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1 in Spain, where it's 120 degrees in the shade, it was
2 a welcome relief. That idea of being near water and
3 celebrating our water and using water as a theatrical
4 feature was something that I wanted to carry on.

5 Also, in a discussion with Molly Smith,
6 the creative director of Arena Stage, she said, "Bing,
7 coming to drama we call it play. We call it play
8 because there is a play interaction between the
9 audience and the actors.

10 It's very different than going to a
11 symphony or going to a ballet or an opera that there
12 is this very immediate reaction between the audience
13 and the actors. Actually, all people who go to drama
14 are wanting to be on stage themselves."

15 I took that idea a little bit further and
16 I said why not even make the lobby spaces, the public
17 spaces theatrical spaces for the audience so that they
18 can be on stage to look at each other and enjoy each
19 other in the social occasion.

20 In looking at the project in detail, we
21 then developed this idea where we surrounded the site
22 with a water body and brought some water actually into
23 the center of the project. That's the Fichandler,
24 that's the Kreeger, and this was the Cradle as we
25 envisioned it. These are some rehearsal rooms. All

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1 the administration and shops are really buried into
2 this body of the site.

3 Then we encased the whole project with a
4 roof. Now, as you know, in acoustical isolation issue
5 you really have to build the so-called double wall,
6 the violin inside the violin case.

7 In this case what we have done was just
8 very simply put an enclosure over the whole complex
9 and thereby not having to take off the roof of the
10 Fichandler or take off the roof of the Kreeger and,
11 thereby, when you deal with these historic buildings,
12 once you take them apart it's very hard to put them
13 back together.

14 This was a very simple way of solving the
15 acoustical problem and actually creating now
16 immediately a very powerful kind of statement on this
17 very important part of the waterfront. This is about
18 two-thirds the length of the Kennedy Center so it's
19 going to be a major -- not as high but in terms of its
20 power on the waterfront and on Maine Avenue.

21 The entry to the waterfront we created a
22 waterfall here. The stairs that enter into the
23 complex actually is behind the waterfall so there is
24 this idea of walking through water on your way into
25 the complex. Then this area here is the main lobby

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1 which is between the Fichandler, the Kreeger, and the
2 Cradle. There are some wonderful oak trees in this
3 area that we really want to enhance and protect.

4 This is a photo of the project where the
5 oak tree was taken down so you can see the project
6 clearly. That's the Fichandler. That's the Kreeger.

7 This is the common lobby that serves all three. This
8 is the waterfall and the rehearsal spaces. Up here
9 the shops are back here. All of the administration
10 space are underneath in this area.

11 That's a more detailed view of the lobby
12 itself. This is the large window to the
13 administrative areas which is on a mezzanine floor and
14 the lower floor. That's the Fichandler, that's the
15 Kreeger, and that's the Cradle.

16 Then coming around the corner there are
17 trees here but we have taken the trees out just to
18 show how we are really featuring the Fichandler as a
19 jewel in a jewel box, if you like. We are basically
20 preserving the building as it is. These are the
21 existing trees that are coming around the corner. We
22 are intended to supplement some of these trees with
23 new ones on this side.

24 We are hoping to provide a cafe at this
25 corner, this very important junction of 6th Avenue and

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1 Maine Avenue and M. Then coming around to 6th this is
2 the main lobby and main entrance with the Fichandler
3 on this side. Then that was the Cradle design that we
4 had.

5 We've really subsequently had some
6 rethinking about the Cradle. First of all, the Cradle
7 is the smallest of the three theaters. The reason
8 it's large like this is we need this as a structural
9 brace to the big roof for sheer. In doing that we
10 didn't have to create any other major structural
11 components in the center of the project to interfere
12 with the Fichandler and the Kreeger.

13 At the same time because we needed the
14 height there was an opportunity to put on some Garrett
15 Apartments although it was not in the program but we
16 needed the height anyway to brace the roof.

17 The kind of contradiction was that the
18 Cradle was the smallest of the three theaters, and yet
19 it appeared the largest so we didn't really feel very
20 comfortable with that. In the subsequent design what
21 we have done now is to erode what was previously a
22 very uniform shape and really broke it into two pieces
23 to express the experimental theater that is
24 underneath, and yet rising out of that would then be
25 the residential units.

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1 It's a spiral inside a spiral if you like.
2 That's a more detailed discussion of what this would
3 be like. It's also inspired by Richard Serra's spiral
4 sculpture. And also the Calla Lily. That's a very
5 long-stemmed lily that rises up and spins which really
6 gives us the expression of the residential and the
7 expression of the Cradle as a theater.

8 These are just very basic floor plans.
9 The lowest floor, that's the parking. It's a 70-plus
10 stalls that we have here. The basement if the Kreeger
11 which have changing rooms. The lower floor of the
12 Fichandler, administrative areas, some changing rooms
13 in green.

14 Coming up one more floor the shops that
15 will then service all the three theaters on the same
16 level. Some more administrative space in the brown.
17 Some commercial space. This is a little cafe we
18 mentioned. Some bookstores and a lower lobby.

19 Coming up one more floor the common lobby
20 that then services all three theaters. This is the
21 old Cradle as we had it before we developed it. These
22 were the upper levels of the shops because they need
23 higher ceiling.

24 Up one more floor the rehearsal spaces,
25 the classroom space, the top of the Kreeger which were

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1 flooding as a roof garden, donor's lounge, and a very
2 large outdoor patio which really has the access to the
3 Washington Monument. That's why the roof shape is
4 developed as it is.

5 This is the needle in the compass, if you
6 like, pointing to the Washington Monument which we
7 think for an outdoor receptions would be very
8 dramatic. There it is with the roof on with the
9 project as we have it now.

10 We have a model here that we have taken
11 the roof off but, if you want, we can put the roof on
12 later. I can take some questions if you like.

13 CHAIRPERSON GRIFFIS: Thank you very much.

14 It is indeed very impressive. As you've indicated, I
15 think the fluidity of the shape not only address the
16 waterfront but also recreate the waterfront of the set
17 itself. I think it's all very successful.

18 You've indicated one important piece that
19 I think goes to clearly why you're here before us and
20 that's the height. You've indicated that the back
21 portion, the third temple, is also working as a
22 structural element to hold the roof which will cover.

23 One of the important pieces of having that support
24 free as it goes through the site is you have your
25 historic structures. Clearly you can't penetrate

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1 those. Is that correct in my understand?

2 MR. THOM: Yes. I think that's really the
3 fundamental issue is to create this higher volume to
4 brace the roof for sheer forces. Otherwise, we would
5 end up with very large structures through the middle
6 of the project.

7 CHAIRPERSON GRIFFIS: Yes.

8 VICE CHAIR RENSHAW: Just a question. Are
9 you in the flight path to the airport?

10 MR. THOM: We're off to one side of it.

11 VICE CHAIR RENSHAW: I'm just wondering
12 about vibrations.

13 MR. THOM: That's why the double roof is
14 to take the noise from the planes and the ambulances
15 from penetrating the Fichandler and the Kreeger.

16 VICE CHAIR RENSHAW: Striking.

17 CHAIRPERSON GRIFFIS: In fact, as you've
18 indicated in your analogy of the violin in the violin
19 case, that's what you're doing, is encasing this in
20 order to accommodate a better acoustical reading in
21 the theaters themselves.

22 MR. THOM: That's correct.

23 CHAIRPERSON GRIFFIS: The lot occupancy on
24 this clearly goes to the parameter of the glass
25 enclosure. Therefore, one might look at it as

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1 occupying the space we often think of structure but
2 it's your testimony that, in fact, this likeness is
3 actually just the acoustical enclosure that is coming
4 out of the factor trying to preserve, one, the
5 performances but also the historic structures
6 themselves. Is that correct?

7 MR. THOM: That's correct.

8 CHAIRPERSON GRIFFIS: Okay. Other
9 questions?

10 MR. PARSONS: I just wanted to
11 congratulate Mr. Thom on a jewel box. It's just a
12 wonderful solution. I would only caution on this
13 model that you say to your audience that those towers
14 are not part of the project but they exist.

15 MR. THOM: We wanted to put it there for
16 context.

17 MR. ZAIDAIN: Actually, I was going to ask
18 something along those lines. You've mentioned a lot
19 of off-site influences that were taken into account in
20 your design. Have you -- are you aware of the
21 Waterside Mall redevelopment across the street?

22 MR. THOM: Oh, yes.

23 MR. ZAIDAIN: Have you taken that into
24 account?

25 MR. THOM: Oh, yes. We've been speaking

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1 to them for nearly two years now.

2 MR. ZAIDAIN: Good.

3 VICE CHAIR RENSHAW: I'd like you to talk
4 a bit about the parking for this. You have 77 spaces
5 and the theaters can accommodate how many people?

6 MR. THOM: Well, actually, we have a net
7 reduction of seating capacity from what is presently
8 on the site now. Maybe I can ask Chip to elaborate on
9 that.

10 MR. GLASGOW: Stephen. It would be the
11 witness so he would discuss that.

12 MR. RICHARD: The new facility will have
13 1,450 seats in the three spaces. Currently we have
14 1,550 spaces counting our old vat room downstairs.
15 Currently, to speak to your question of parking, we
16 have 70 parking spaces reserved for the public and
17 another 30 reserved for staff.

18 As Bing may have been about to say, part
19 of those discussions we are having with the Waterside
20 Mall folks is to develop a collaborative parking
21 relationship with that facility as it's remodeled.
22 They are very open and supportive of that mutually
23 beneficial arrangement.

24 CHAIRPERSON GRIFFIS: The interesting
25 thing that comes up with parking is you have the

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1 historic structures which may exempt you from parking
2 requirements as they are outlined in the regulations.
3 However, it would not exempt the new construction.
4 Was there any calculations on the residential units?

5 MR. RICHARD: We made an assumption. Our
6 past experience has been that most actors coming from
7 New York City do not come with cars and do not have
8 them. We have not been asked nor have we provided
9 parking for the rental units that we have provided for
10 actors for lo these many years. We did not assume a
11 parking allowance for those residential units.

12 CHAIRPERSON GRIFFIS: Okay. So you didn't
13 outline a parking calculation based on the increased
14 new square footage on the project as per use for
15 residential units.

16 MR. GLASGOW: No. We believe that
17 technically that was accessory. It's a minor, minor
18 part of the FAR. The principal use on the site are
19 the theater uses. One, they have zero parking
20 required. We have dropped seats rather than added
21 seats with the addition so that with the theater you
22 don't do it on an FAR basis. It's on a seat count
23 basis.

24 CHAIRPERSON GRIFFIS: Understandable,
25 except when you have a different use. Your point is

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1 that you have an accessory use to the theater so it
2 all comes under theater which goes to the seating
3 calculation for parking.

4 MR. GLASGOW: Correct.

5 CHAIRPERSON GRIFFIS: Everybody clear on
6 that? Good. Any other questions? I think the Board
7 is stunned by the design. We are usually filled with
8 questions. It is absolutely impressive. It doesn't
9 need to be said again. Let's move on then.

10 MR. GLASGOW: One last witness, Mr. Steven
11 Sher, to cover some of the technical requirements of
12 the regulations.

13 CHAIRPERSON GRIFFIS: Good morning, sir.

14 MR. SHER: Good morning, Mr. Chairman,
15 members of the Board. For the record, my name is
16 Steven E. Sher, the Director of Zoning and Land Use
17 Services with the law firm of Holland and Knight. You
18 have my outline and complete testimony in your book
19 before yo this morning.

20 CHAIRPERSON GRIFFIS: We do.

21 MR. SHER: I think I would just like to
22 cover a couple of points and highlight what that
23 testimony does.

24 CHAIRPERSON GRIFFIS: I would like to
25 cover a few points, too, and I would go right to the

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1 test. You can give a little outline of the
2 surrounding area but I think we are fairly familiar
3 with what has been shown today.

4 MR. SHER: Okay. I wanted to just spend a
5 couple of minutes, maybe one, on the W-1 zoning
6 because it's not a category that you see very much
7 before you. It's not mapped in very wide areas of the
8 city.

9 CHAIRPERSON GRIFFIS: Mostly down near the
10 water.

11 MR. SHER: Mostly down near the water,
12 right. It doesn't include Rock Creek Park or anything
13 else like that. Just in a few places. A theater, of
14 course, is a use permitted as a matter of right in a
15 W-1 zone. The height is normally a maximum of 40
16 feet.

17 The maximum FAR is 2.5 of which 1.0 FAR is
18 the normal limit for nonresidential uses but there is
19 a special provision for properties that are zoned W-1
20 that were formerly in the southwest urban renewal area
21 which allows that nonresidential FAR to go to 2 rather
22 than 1. This is a more limited case as it relates to
23 the W-1 district.

24 Another feature of the W-1 district is
25 that the lot occupancy requirement applies only to

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1 residential uses and is calculated at the plane where
2 the residential uses are located. Rather than
3 calculate it at the ground floor, you calculate it at
4 the lowest plane where you actually have a residential
5 use and that's different from the way lot occupancy is
6 normally calculated, say, in a residential zone.

7 CHAIRPERSON GRIFFIS: One quick
8 clarification on the southwest urban renewal area.
9 That was not a zoning designation. Let's call it a
10 federal overlay that indicated incentives or whatever
11 programs that might happen there. Is that correct?

12 MR. SHER: Yes. Let me spend 30 seconds
13 on that. The southwest urban renewal area was one of
14 the first urban renewal areas designated in the city.
15 It was designated in 1956 at the time that the Zoning
16 Commission was going through the studies leading up to
17 the preparation and adoption of the 1958 zoning
18 regulations.

19 In order so as to not delay the renewal
20 process and to make sure that there was no conflict
21 between the urban renewal plan adopted by the
22 commissioners and the zoning regulations adopted by
23 the Zoning Commission, they designated the southwest
24 area UR and did not include it in any zone category so
25 all of the development that occurred from 1956 through

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1 the late 1990s was not subject to zoning.

2 There was no zoning category that applied
3 to the redevelopment of southwest. Only when the plan
4 expired 40 years after 1956 was zoning ultimately
5 designated for the area and this particular site was
6 designed W-1.

7 CHAIRPERSON GRIFFIS: Right. Okay.

8 MR. SHER: Again, as to parking and all
9 the other requirements of height and setbacks and so
10 forth, none of that was zoning. It was all controlled
11 by the urban renewal plan. That plan has since
12 expired and the property is now zoned W-1.

13 CHAIRPERSON GRIFFIS: And we're all the
14 better for it.

15 MR. SHER: Well --

16 CHAIRPERSON GRIFFIS: You don't have to
17 answer that.

18 MR. SHER: Zoning Commissioners spent a
19 long time with that because it was difficult to fit
20 zoning to areas that weren't developed under Zoning.

21 CHAIRPERSON GRIFFIS: I understand.

22 MR. SHER: Okay. What we have then is
23 skipping to -- you've heard Bing's description of what
24 this is all about. We have four variances that we
25 need, height, FAR, lot occupancy, and rear yard. Let

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1 me deal with the lot occupancy and rear yard first
2 because they are peculiar because, again, they apply
3 only at that plane where you have the residential use
4 located.

5 Because the residential use sits down in
6 the building below the level of that top roof, you
7 then have the lot occupancy of 99 percent which
8 applies to the site as a whole when, in fact, most of
9 that residential component actually sits above that
10 roof line and has a much greater expanse of open space
11 around it. The same is true for the rear yard as
12 well.

13 What drives the variances in this case, of
14 course, is the presence of the historic landmark
15 building. But more than just the presence of the
16 landmark building is the use for which the building
17 was designed and to which it is put. In other words,
18 if this were not a theater, we wouldn't have the same
19 kinds of issues that drove the design that you just
20 heard described.

21 If this were an office building or if this
22 were an apartment house, we wouldn't be encapsulating
23 these buildings. We would be dealing with them in a
24 different way.

25 Because this is a landmark and because it

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1 is a theater, and because those things drive what
2 needs to be accommodated on the site, you then have
3 the design that came up that needs to provide the
4 acoustically satisfactory environment for the theater
5 uses, to address the inefficiencies of administrative
6 space in the layout, to just wrap the existing
7 buildings still making them visible, preserving the
8 view, and accommodating what made them landmarks in
9 the first place.

10 As to the detriment to the public good,
11 again, you have the sort of technical nature of the
12 rear yard and lot occupancy variances. You have the
13 context of the existing high-rise construction;
14 Waterside Towers to the north, Towncenter West to the
15 east, and then the beginning of the Waterside Mall
16 high-rise office building which showed on one of the
17 earlier site plans but doesn't show on the model.
18 There is the board expanse of Maine Avenue separating
19 it from the development across to the southwest.

20 The maintenance of the theater use
21 strongly desired as part of the future goals of what
22 should happen in this neighborhood. You've heard
23 about the Commission of Fine Arts, HPRB, the Mayor's
24 Agent all having found the design to be an appropriate
25 means to accommodate what is desired here.

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1 Based on all of those considerations, it
2 is my belief that the property warrants the granting
3 of the variances requested. There are exceptional and
4 extraordinary situations affecting the site. The
5 strict application of the regulations causes a
6 practical difficulty for Arena as the owner and the
7 application should be granted.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much. Two important points that you did bring
10 up. I think the one you touched on is the use. The
11 unique use of what this was built for and has
12 continued to be and how that is actually part of the
13 fabric of the historic.

14 However, in the written submission there
15 was kind of a chuckfull of uniqueness or special
16 characteristics of the site. Do you see anything with
17 regard to the triangular shape of the site in relation
18 to these variance tests in case?

19 MR. SHER: That's just part of what makes
20 the site what it is. If it were in a different
21 location. If it were a different shape. If it had a
22 different use, there might be a different design
23 solution. I wouldn't begin to suggest to the
24 architects how this could be done differently or
25 better if it were square as opposed to triangular.

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1 CHAIRPERSON GRIFFIS: I see.

2 MR. SHER: But it's all just there and I
3 think it speaks for itself.

4 CHAIRPERSON GRIFFIS: That's a perfect
5 point, I think, and the clarification that I needed in
6 terms of the special condition of the shape, the
7 uniqueness of the shape as triangular, and how it then
8 relates to the solution of solving the problems on the
9 site. That goes a great distance, I think.

10 MR. SHER: The symbolic as well as literal
11 description of the southwest facing length of that
12 triangle as opposed to if it were on the grid of the
13 north, south, east, west streets. It faces the
14 waterfront. It sort of encapsulates the name of the
15 area as well as the direction that it faces.

16 It creates that extraordinary length which
17 is being described as being about two-thirds of the
18 length of the Kennedy Center. All of that goes to how
19 you design the site which then goes back to how high
20 is it, what is the lot occupancy, what is the rear
21 yard, and so forth.

22 CHAIRPERSON GRIFFIS: Indeed. I think
23 that starts to reinforce another particular topic and
24 issue that you bring up in the written submission, and
25 that is the importance of design for this. I think

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1 you have made it very concrete in terms of how it is
2 dealing with not only its site itself, which is fairly
3 unique, but also the context around and how important
4 that is in terms of factoring when we look at the
5 three tests for the variances. I think that is an
6 excellent, excellent point.

7 Okay. Other questions? Mr. Glasgow and
8 Mr. Richards have indicated how parking was dealt with
9 on this site. Do you concur with their opinion that,
10 in fact, there is no parking requirement, or
11 additional parking requirement based on the fact that
12 there's a reduction of seats?

13 MR. SHER: I concur with that as well as
14 with the fact that even if an increase in intensity
15 were determined to require additional parking, because
16 the building is and of itself a landmark, it is
17 specifically exempted from having to provide any
18 additional parking.

19 CHAIRPERSON GRIFFIS: Except this Board
20 has heard previously that is the case. That is very
21 clear in the regulations. There's no question of
22 that. However, when an historic structure is added
23 onto and there is actually new construction that
24 incorporates, there is a decided argument that says
25 that parking requirement would be calculated for that

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1 portion that is new. What is your opinion on that?

2 MR. SHER: I would disagree with that. I
3 think the regulation is pretty clear that it is not
4 only a changing use which would be to say you have a
5 building that is now devoted to theater use, for
6 example, and you wanted to convert it to an office
7 building which isn't going to happen here. But also
8 to additions and increase in intensity of use. The
9 intensity of use is measured either by square footage,
10 number of employees, number of apartment units,
11 whatever the measures are under --

12 CHAIRPERSON GRIFFIS: You are adding
13 square footage that is occupiable square footage but
14 the intensity of use is also increasing?

15 MR. SHER: Yes. And I'm saying that the
16 regulation specifically say that an increase in
17 intensity of use does not engender an additional
18 requirement for parking. It is Section 2100.6.7.8 and
19 .9. "When the intensity of use of a building is
20 increased by an addition of employees dwelling in this
21 gross floor area parking spaces shall be provided for
22 the addition only if it exceeds more than 25 percent
23 in the aggregate," which is 2100.7. Unless you get
24 to the 25 percent threshold, which we do not here, you
25 don't have to provide any increase in intensity. If I

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1 had an apartment building that had 100 units and I re-
2 divided the interior of that building such that I
3 wound up with 124 units, I don't have to provide any
4 additional parking. If I reconfigured that intensity
5 to come up with 126 units, I'm then over the 25
6 percent threshold. That's when I have to provide
7 parking beginning when I'm more than 25 percent. Same
8 would be true of an FAR increase. If I had a building
9 that was 2 FAR and I went to 2.49 FAR I'm still less
10 than 25 percent. If I went to 2.51 I'm more than 25
11 percent and that's when my parking requirement kicks
12 in.

13 CHAIRPERSON GRIFFIS: And as you are
14 looking at an FAR variance of .2, which is equivalent
15 to 10 percent, your testimony today is that you fall
16 under that 25 percent?

17 MR. SHER: Well, again, the measure of
18 parking intensity for this use is not FAR or square
19 feet but seats. Because the number of seats is going
20 downward rather than upward, there's no increase in
21 intensity there.

22 Even if I threw in the increase in the
23 number of spaces required for the apartments if you
24 consider them to be a principal independent use --
25 which they are not, but if you did -- the total

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1 increase in parking intensity still isn't more than 25
2 percent.

3 VICE CHAIR RENSHAW: Mr. Sher, you noted
4 that the ANC in its letter of support, and we'll get
5 to this later on, talks about the need for adequate
6 parking and better traffic design flow. Obviously
7 there is a problem in the neighborhood with a very
8 popular theater. What the ANC is projecting here is
9 inadequate parking.

10 So while what you say is of the
11 regulation, the practical side of this is that there
12 are too few parking spaces for the demand. Mr.
13 Richards has stated that you are going to, or they are
14 looking into this arrangement with the Waterside Mall
15 across the street but it is, again, the need for
16 adequate or more substantial parking on site that we
17 are directing our comments to.

18 MR. GLASGOW: Ms. Renshaw, we may be able
19 to have one of the other witnesses speak, but for
20 those who were in attendance at the ANC meeting, they
21 never said that we have -- I'm proffering this and we
22 can get a witness up here to discuss that was at the
23 ANC meeting -- they never said that we had inadequate
24 parking at the ANC meeting. They just wanted to make
25 sure that we were cognizant that in redeveloping and

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1 moving forward with the project that we were cognizant
2 of potential parking issues.

3 VICE CHAIR RENSHAW: Thank you for that
4 clarification, but it's just to bring to the
5 applicant's attention the fact that parking and
6 traffic flow in the area is a problem and I think
7 you've addressed that with Mr. Richards stating that
8 you are looking at Waterside Mall.

9 Perhaps even a way to get the people from
10 Waterside Mall over to your theater because of the
11 broad expense of Maine Avenue which is going to create
12 a problem for people having to park over there and
13 then walking over to the theater, which I'm sure that
14 in your planning process you are addressing. At
15 least, I would hope so.

16 MR. RICHARD: Yes, we are. We are working
17 to not only create better lit and more secure parking
18 with the owners of Waterside Mall, but also to create
19 signage and a better walk path to the theater.

20 We are also, I should add, working with
21 the city about the creation of a waterfront parking,
22 below grade parking garage. I think that is a little
23 longer term so we don't typically refer to that. It's
24 a little less certain than near but we are also
25 looking there as well.

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1 CHAIRPERSON GRIFFIS: And that would be
2 part of the waterfront development that happens.
3 There will be increased parking. If I can expand on
4 what I think you're saying, that may, in fact,
5 facilitate daytime use in terms of retail and offices
6 in that area and the Arena would be able to utilize it
7 as swing parking in terms of the performance times.

8 MR. RICHARD: That's correct.

9 CHAIRPERSON GRIFFIS: Is that the same
10 type of situation that you're looking at, the adjacent
11 new construction?

12 MR. RICHARD: Yes, exactly. We are
13 looking at this sort of synergy created by different
14 use and times.

15 CHAIRPERSON GRIFFIS: Okay. Including
16 your performances based on people showing up. Is that
17 correct?

18 MR. RICHARD: That's correct.

19 CHAIRPERSON GRIFFIS: Okay. So I'm
20 assuming you would want to facilitate them getting
21 there.

22 MR. RICHARD: That's correct.

23 CHAIRPERSON GRIFFIS: Okay. What are you
24 doing currently in terms of people that are driving
25 in? I should also note, and testimony was pointed

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1 out, that there are the adjacent metro stations. They
2 weren't highlighted perhaps strongly enough as we like
3 to see in terms of utilizing public transportation.
4 What do you do currently to facilitate parking?

5 MR. RICHARD: Currently we provide the 70
6 spaces on site. We provide a map to all ticket buyers
7 indicating other surface lots. We do highlight the
8 Metro and suggest that people take it. We have found
9 through really a great deal of audience research that
10 parking is not currently an issue. However, we are
11 keenly aware that as the waterfront redevelops, that
12 circumstance could change and we need to solve that
13 problem downstream when redevelopment occurs.

14 CHAIRPERSON GRIFFIS: Was there an
15 investigation of any parking on the site?

16 MR. RICHARD: We took a look at it and it
17 is simply cost prohibitive. We have a water table
18 issue at about 16 feet below grade. Once we break
19 into that, we can no longer afford to build on site so
20 we just couldn't fit it on.

21 CHAIRPERSON GRIFFIS: The additional cost
22 of that is that you would have to create essentially
23 water-tight walls that would go below grade. Is that
24 correct?

25 MR. RICHARD: That's correct. And the

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1 excavation and so forth associated with going deeper.

2 CHAIRPERSON GRIFFIS: Was there any impact
3 in terms of the excavation if you did go below grade
4 to the historic structures?

5 MR. RICHARD: I'm not sure I know the
6 answer to that.

7 MR. THOM: From the parking, no. It's
8 just that I think the site is so constrained to get
9 the ramps to go around. We even looked at elevator
10 parking. We've looked at all kinds of mechanical
11 means. I think we've maxed out what we can do.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. THOM: In fact, initially when I came
14 on the project I told Steven we would be lucky to get
15 what we can get. I didn't think we could get the
16 parking in but we were able to get the 70 stalls.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. THOM: So we really have maxed
19 everything.

20 VICE CHAIR RENSHAW: There are a number of
21 on-street parking places along the sides of your
22 building, Maine Avenue and 6th Street is it? Will
23 those parking spots stay?

24 MR. RICHARD: I don't believe we know the
25 answer to that. There is certainly no imminent

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1 removal of those spots but as the waterfront
2 redevelops, there is some discussion about closing
3 Water Street in order to expand the amount of
4 developable land along the waterfront itself. That
5 would certainly eliminate a significant number of
6 current on-street parking places were that to happen
7 downstream.

8 MR. ZAIDAIN: Going back to your statement
9 about coordinating signage and pedestrian paths with
10 the Mall, I would assume that you are going to be
11 doing that not just for the parking spaces but for the
12 Metro station across the street as well. Right?

13 MR. RICHARD: Absolutely. They are
14 essentially in the same place so one set of pedestrian
15 passageway would serve both because the exit spot for
16 the parking is just a few feet from the exit point of
17 the Metro.

18 MR. ZAIDAIN: Okay.

19 MR. ETHERLY: Mr. Chair, if I may, just a
20 couple of quick questions for Mr. Richard. Could you
21 -- I lost my train of thought. Let me pick up this
22 little thread. With respect to the residential -- and
23 this may also conceivably go to Mr. Thom as well.
24 With respect to the residential component of the
25 project, how many units are you looking at?

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1 MR. RICHARD: We currently have 21 units
2 sketched in. We are literally at the end of this week
3 going to be taking another look at whether that is the
4 exact number. It might be a few fewer than that.

5 MR. ETHERLY: Okay. Now, with respect --
6 I already agree. I love the design. I'll say that as
7 low-keyly as I can. Let me talk a little bit or
8 explore a little bit the context of the surrounding
9 neighborhood because, as you are aware, you are in
10 very close proximity to a number of residential
11 developments.

12 Could you speak a little bit to what's
13 happening in particular along, I guess that would be,
14 the northern edge of the property as you near the
15 residential component that I believe is Waterside
16 Towers. Then you also have some low rise in city
17 areas. Could you speak a little bit to what the site
18 lines look like along that parameter?

19 MR. THOM: Yes. In working out the design
20 we have been very conscious of preserving privacy for
21 the residents. We have created a situation where the
22 windows that potentially would be looking into
23 bedrooms we have not allowed for that. We have
24 created windows looking sideways but not directly
25 forward into adjoining units.

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1 MR. ETHERLY: Okay. In terms of -- we had
2 some conversation about parking. Could you also
3 indicate by designation on the model that we have what
4 the traffic flow would look like as you head into the
5 parking component of the structure? Also, provide a
6 little bit of guidance as to where your loading area
7 is.

8 MR. THOM: The parking entry is right here
9 at the edge of the site. It's virtually exactly where
10 it is now, at Arena. The loading is immediately
11 adjacent to that.

12 MR. ETHERLY: Okay. Thank you.

13 Thank you, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Anything else? Any
15 other questions from the Board? Very well. Let's
16 move on then and welcome the Office of Planning and
17 have them review their report for us.

18 First of all, did the applicant receive
19 the Office of Planning's report?

20 MR. GLASGOW: Yes, we have, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Very good.

22 Good morning, sir.

23 MR. McGETTIGAN: Good morning, Mr. Chair,
24 members of the Board. My name is David McGettigan
25 from the Office of Planning.

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1 CHAIRPERSON GRIFFIS: I do believe your
2 report needs to be waived in. Is that correct?

3 MR. McGETTIGAN: That's correct.

4 CHAIRPERSON GRIFFIS: Any objections to
5 waiving the report?

6 VICE CHAIR RENSHAW: No objections. Just
7 a request that the Office of Planning give us a little
8 more time.

9 MR. McGETTIGAN: We're not asking for
10 excuses.

11 VICE CHAIR RENSHAW: This came in last
12 night.

13 CHAIRPERSON GRIFFIS: Written excuses.
14 Let us just say, it goes without saying for those of
15 us who were here last week, you're lucky Mr. Hood is
16 not with us.

17 The Board will waive in the report. Why
18 don't you get to it.

19 MR. McGETTIGAN: Thank you, Mr. Chair. My
20 apologies for the late report.

21 I think we have covered much of the points
22 and concerns that the Office of Planning expressed in
23 the report. I would like to add a few things to the
24 discussion. First, the administrative. As far as the
25 impact of the building for light and air on the shared

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1 property line with the Waterside Towers, the actual
2 building area that's not a glass structure that abuts
3 that line is near 40 feet. The impact, I think, has
4 been minimized as much as possible along there.

5 Also, we didn't discuss that if the glass
6 enclosure was not enclosing these structures and
7 taking up a lot of occupancy, the buildings themselves
8 -- also the FAR attributed to the glass structure --
9 would bring this project under the requirements and
10 would not be necessary for variance, I believe.

11 The extension into the rear yard, as Mr.
12 Sher explained, the rear yard is measured at the
13 horizontal plane of the residential. It's purpose, I
14 think, of the rear yard and lot occupancy in relation
15 to residential is to provide openness for the
16 residents.

17 I think in this case it's a very special
18 targeted type of residence being just for the actors.

19 Also I think the spirit and intent of the lot
20 occupancy and the rear yard is met. I don't think it
21 will be a detriment to those residents that are living
22 there. Also it's a very special class of residents.
23 It's just going to be actors and transitional housing.

24 As far as the height, I would like to just
25 reiterate that the structural need to support this

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1 roof of the Cradle and the purpose it's serving there
2 and the height will not have any detriment, we think,
3 to the neighborhood.

4 Are there any questions?

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Clearly you could state that the Office of Planning
7 is taking this proposed construction into its workings
8 with the rest of the waterfront. Is that correct?

9 MR. McGETTIGAN: That's correct.

10 CHAIRPERSON GRIFFIS: Indeed. So it would
11 look at all the elements that might be impacted in the
12 surrounding area as this has developed.

13 Any other questions from the Board? Very
14 well. Does the applicant have any cross-examination
15 of the Office of Planning?

16 MR. GLASGOW: No, sir.

17 CHAIRPERSON GRIFFIS: Good. Thank you
18 very much, Mr. McGettigan. I appreciate your
19 summation.

20 VICE CHAIR RENSHAW: I have a question for
21 Mr. McGettigan. Under your review of the ANC and
22 community groups, were the surrounding residential
23 units, did persons attend the ANC meeting?

24 MR. McGETTIGAN: I did not attend the ANC
25 meeting but I spoke at length with the chairman of the

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1 ANC about the meeting and what his concerns were. He
2 didn't indicate that to me whether there was any
3 residentials nearby at the ANC meeting.

4 VICE CHAIR RENSHAW: Perhaps Mr. Richard,
5 did you take the model around to the close-in
6 residential high-rise buildings?

7 MR. RICHARD: We made three formal
8 presentations to the community, two ANC meetings.
9 While they were well attended, I could not tell you
10 whether they were from the specific adjacent buildings
11 or others in the nearby neighborhood. We also held an
12 open house at Arena in August.

13 We flied the neighborhood and had about
14 -- I'm guess here -- about 45 neighbors come and see
15 the presentation. Again, we didn't determine whether
16 they were specifically our immediate neighbors or up
17 and down the block so I'm not sure I can speak to that
18 question.

19 VICE CHAIR RENSHAW: All right. That
20 clarification is important. Thank you.

21 CHAIRPERSON GRIFFIS: Very well. Anything
22 else? Indeed, thank you very much.

23 Forgive me if I didn't hear but, Ms.
24 Renshaw, did you ask Office of Planning if they
25 referred to to DDOT?

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1 VICE CHAIR RENSHAW: Thank you for the
2 reminder. Did you refer it to DDOT?

3 MR. McGETTIGAN: No, I didn't.

4 CHAIRPERSON GRIFFIS: I see. Okay.

5 Let's move on then. Ms. Renshaw, do you
6 have the ANC report that is much talked about at this
7 point to be identified for the record?

8 VICE CHAIR RENSHAW: Yes. We have the ANC
9 report from ANC 2-D and it's signed by Andy Litsky,
10 the chairman, dated October 22. He states to the
11 members of the Board that he is informing us that at
12 the regularly scheduled meeting of ANC 2-D on October
13 21st a quorum was present and the Commission voted
14 five to nothing in support of the Arena stage, BZA
15 application 16933.

16 The Commission endorsed the applicant's
17 request for each of the four separate variances.
18 Again, the Commission, though, requested that as the
19 project proceeds the BZA and all government agencies
20 pay strict attention to concerns voiced by the
21 Commission and the community regarding the need for
22 adequate parking and appropriate designs for traffic
23 flow as a result of this and other major projects
24 underway in the rapidly redeveloping neighborhood.

25 CHAIRPERSON GRIFFIS: Good. Bottom line,

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1 they came in recommending approval. Is that correct?

2 VICE CHAIR RENSHAW: Yes, but also the
3 bottom line here is the need for some input by DDOT.

4 CHAIRPERSON GRIFFIS: Perhaps, yes.

5 VICE CHAIR RENSHAW: Indeed.

6 CHAIRPERSON GRIFFIS: We'll take that up
7 as we get there.

8 Let me also note the HPRB, as was
9 indicated, is in tab J of the applicant's submission.
10 This was reviewed by the Board and actually was
11 referred to the Mayor's Agent with recommendations
12 which were in support. Just for clarification, the
13 Mayor's Agent has reviewed it and approved it. Is
14 that correct?

15 MR. GLASGOW: Yes, sir. His order is
16 attached as an exhibit to the prehearing statement.

17 CHAIRPERSON GRIFFIS: Oh, indeed.

18 MR. GLASGOW: Exhibit L.

19 CHAIRPERSON GRIFFIS: Right. Very good.
20 Okay. That is all the notes I have in terms of
21 reports unless others have evidence. Does the
22 applicant know of any other submissions?

23 MR. GLASGOW: No, sir.

24 CHAIRPERSON GRIFFIS: Then let us go to --
25 is anyone here present for this application to give

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1 testimony for support or opposition? Not seeing
2 anyone approach the table, Mr. Glasgow, I can turn to
3 you and ask for closing remarks.

4 MR. GLASGOW: Mr. Chairman, I think we've
5 got a complete record for decision on this
6 application. We have been through a lengthy review
7 process with respect to the historic preservation
8 elements, the Mayor's Agent, the Commission of Fine
9 Arts, and now finally we're here at the Board of
10 Zoning Adjustment after a lot of hard work with the
11 community and with the agencies involved. If the
12 Board feels that we have met our burden of proof,
13 which we submit that we have, we would like to get a
14 bench decision and move on with this important
15 project.

16 CHAIRPERSON GRIFFIS: Very well. Thank
17 you very much, Mr. Glasgow.

18 Any questions or clarifications, Board
19 members? I am perfectly prepared to go forward this
20 morning on this. I think it has been a very strong
21 case and, in fact, a very fascinating and interesting
22 one in looking at it.

23 I would move approval of application 16933
24 for the variance from the height, the variance for
25 area ratio, lot occupancy, rear yard to allow this

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1 unique and, frankly, dramatic addition to the exiting
2 theater premises 1101 6th Street, S.W.

3 MR. PARSONS: Mr. Chairman, I would offer
4 an enthusiastic second.

5 CHAIRPERSON GRIFFIS: Thank you very much,
6 Mr. Parsons.

7 Speaking to the motion, I think it was
8 strongly made and, in fact, even more so with the
9 testimony today. The exceptional situations are
10 extraordinary and, that is, it goes to clearly the
11 historic structures that are evident to us.

12 I thought it was well discovered in terms
13 of the institutional use that is previous and is
14 continuing and how that factors into the exceptional
15 and extraordinary situation.

16 The site shape and size, and I would add
17 location, also I think was successfully argued in
18 terms of being unique in going to the practical
19 difficulties and how it ties the importance of design
20 in making a case before the Board of Zoning
21 Adjustments, the importance of that and how it
22 addresses the solution to the problem on the site that
23 is created by our exceptional situations and, more
24 importantly, in addition how it addresses the context,
25 the city context in its solutions to the problems.

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1 Clearly the practical difficulties raised
2 were accommodating the acoustics which are not a new
3 issue in terms of the use but perhaps had been
4 impacted further by our new technologies and more
5 flights and ambulance traffic and the lovely noises of
6 urban living which we all would not do without.

7 Access was also talked about and in terms
8 of the expanding use of the facility itself in order
9 for it to be successful in continuing in the future at
10 its present overall use as a theater. I think it goes
11 without saying that there would not be any detriment
12 to the zone plan or map with the approval and relief
13 of this. I would hear others speak to the motion if
14 needed.

15 MR. ZAIDAIN: Mr. Chair, I agree with all
16 of your statements. I will say that I do not share
17 the Board's concern with parking as there is a Metro
18 station directly across the street. I would hate to
19 see us focus on encouraging vehicular traffic to this
20 site. That's pretty much I can say. I will vote in
21 support of the motion.

22 VICE CHAIR RENSHAW: I'll vote in support
23 of the motion also, but because it is an absolutely
24 stunning building and we congratulate Mr. Thom for the
25 beauty of his design and the innovative design it is.

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1 I do speak to the parking issue. I
2 disagree with my colleague, Mr. Zaidain, because I
3 have been to Arena Stage in the past and have enjoyed
4 the performances. However, it is always a race to get
5 there early to find a parking space and then while
6 away the time until the curtain.

7 In any case, it's a problem that I believe
8 the Arena Stage, the applicant, is dealing with and is
9 very sensitive to and will find a way to accommodate
10 this building and the wonderful attraction that it is
11 going to be who live in Washington, D.C., from the
12 Metro area, and for our visitors to this international
13 city.

14 But given the increased demand for, shall
15 we say, seats that might be the case at Arena, we have
16 to make sure that those visitors are able to park
17 close by. If there is a way of easing their, shall we
18 say, their walk from the Metro or from Waterside Mall,
19 that is all the better to help them get across the
20 street and safely into the theater and then back to
21 their vehicles or back to the Metro.

22 Again, we look forward to those solutions
23 being advertised in the future.

24 CHAIRPERSON GRIFFIS: Good. I think the
25 important piece to look at in terms of parking

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1 specifically and the overall application and the
2 testimony for today is that the Waterside being
3 redeveloped, first of all, is going to have -- one
4 would anticipate in its planning and development
5 increased uses and increased people coming down. That
6 will, I think, if done successfully, will make the
7 streets safer to be walking and people will be more
8 amenable to taking the Metro as one might not have
9 been in the past going down after dark in that area.
10 Although I did it, I can say on the record. I think
11 as the Arena is able to connect to the waterfront,
12 which the architecture itself is trying to do, and I
13 think what the planning will also do, I think we will
14 be, in fact, what Mr. Zaidain is talking about, the
15 appropriateness of trying to dissuade people from
16 driving into the area and coming in having dinner
17 early enough so you don't have to drive down on the
18 Metro and then move on. With that, I am not overly
19 concerned with it and clearly it's more -- I think, in
20 fact, it's a business decision in many respects and
21 that it will be accommodated if it becomes a problem.
22 With that, I would ask for all those in favor of the
23 motion signify by saying "aye."

24 BOARD MEMBERS: Aye.

25 CHAIRPERSON GRIFFIS: And opposed. Well

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1 done. Thank you very much. We will have staff record
2 the vote.

3 MS. BAILEY: The vote is recorded as five,
4 zero, zero to approve the application. The motion was
5 made by Mr. Griffis, seconded by Mr. Parsons. Mrs.
6 Renshaw, Mr. Zaidain, and Mr. Etherly are in
7 agreement. Is this a summary order, Mr. Chairman?

8 MR. GLASGOW: Yes, sir.

9 CHAIRPERSON GRIFFIS: Mr. Glasgow, do you
10 see any difficulty in the Board doing a summary order
11 on this?

12 MR. GLASGOW: We would like to receive a
13 summary order.

14 CHAIRPERSON GRIFFIS: Indeed. That I
15 understood.

16 MS. BAILEY: Mr. Chairman, is it possible
17 to get the color copies of the slide presentation
18 today? A color set for the file of the slide
19 presentation?

20 CHAIRPERSON GRIFFIS: You can submit that
21 into the record just to fill the record in that you
22 presented today. Okay. I'm not hearing any
23 objections so I think we can do a summary order on
24 this. I do thank you all very much. I do appreciate
25 the presentation and look forward to seeing this come

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1 to fruition.

2 VICE CHAIR RENSHAW: Could we ask what the
3 construction dates are?

4 MR. RICHARD: We are currently
5 anticipating breaking ground in June of '04 with
6 reoccupany in September of '06, although candidly I
7 will tell you the keeping of that is tough and it's
8 possible that the fundraising will obligate us to take
9 an additional year to achieve that. We could slip to
10 '05 for groundbreaking to '07 for occupancy.

11 VICE CHAIR RENSHAW: Will the theaters be
12 in operation?

13 MR. RICHARD: No, they won't.

14 VICE CHAIR RENSHAW: You're closing down?

15 MR. RICHARD: We've looked very hard at
16 the possibility of phasing and we don't think it's
17 economically feasible so we're going to be looking for
18 temporary quarters for a couple of years.

19 VICE CHAIR RENSHAW: On 7th Street?

20 MR. RICHARD: No. That's the only place
21 we haven't looked. We're going to be looking all
22 over.

23 VICE CHAIR RENSHAW: Thank you.

24 MR. RICHARD: Thank you.

25 CHAIRPERSON GRIFFIS: Good. Thank you all

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1 very much.

2 Let us move on and call the next case of
3 the morning.

4 Okay. The Board is going to take five
5 minutes while we transition into the next case.

6 (Whereupon, at 11:08 a.m. off the record
7 until 11:15 a.m.)

8 CHAIRPERSON GRIFFIS: We can call the next
9 case.

10 MS. BAILEY: The next application is No.
11 16931, of 2327 Champlain Street N.W., pursuant to 11
12 DCMR 3104.1, a special exception from the height
13 limitations under Sections 1402, and 1403, and a
14 special exception from the roof structure provisions
15 under Sections 400, and 411, and pursuant to 11 DCMR
16 3103.2, a variance from the floor area ratio
17 requirements under Section 402, and a variance from
18 the lot occupancy requirements under Section 403, to
19 allow the construction of an apartment building in the
20 Reed Cooke/R-5-B District at premises 2327 Champlain
21 Street, N.W. (Square 2563, Lots 101, 879, 883).

22 Please stand to take the oath. Do you
23 solemnly swear or affirm that the testimony you are
24 about to give in this proceeding will be the truth,
25 the whole truth, and nothing but the truth?

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1 WITNESSES: I do.

2 MS. BAILEY: Thank you.

3 CHAIRPERSON GRIFFIS: Thank you all very
4 much. I appreciate your patience this morning. I'm
5 going to start out that I have a lengthy, lengthy
6 opening for this case and I'm going to pare it down
7 which I'll probably ask -- well, I won't ask anything.

8 The situation is this. My Board members
9 and I have discussed this. Clearly this application
10 is coming in with the architect of record being the
11 firm that I am employed with. I had described to my
12 Board the fact of my office has been set up in order
13 to accommodate my position here at the BZA and my
14 involvement in any project that may come for, and does
15 come for, relief is clearly divided and I do not have
16 any involvement in it.

17 However, so that time is not taken up in
18 terms of discussion on this, and also in order to
19 ensure that there is no appearance that there may be
20 some impartiality on my part, I am prepared to, in
21 fact, recuse myself and turn it over to Ms. Renshaw to
22 run this case.

23 I'm sure it will go smoothly and
24 expeditiously. Unless anyone wants to put up a
25 protest about me leaving, I will then leave. Good

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1 luck, have fun, and I'll see you at lunch.

2 VICE CHAIR RENSHAW: Good morning to all
3 of you and welcome again to the BZA. As we have just
4 had Mr. Glasgow present, we are going to enjoy his
5 next presentation. It's like a double feature. Very
6 good.

7 I believe we have a request for party
8 status. That is the first order of business. Is the
9 gentleman who is requesting party status with us, Ron
10 Allan, the owner of the Brass Knob? He's present and
11 we are awaiting Mr. Allan to come to the table.

12 Are there any other persons in the room
13 who are requesting party status? Are you requesting
14 party status? Have you put in a party status request?
15 All right.

16 Is Mr. Allan here? Very good. Would you
17 sit at the table, please.

18 MR. ETHERLY: Madam Vice Chair, while Mr.
19 Allan is coming forward, I'll just note for the record
20 that his party request is contained at Exhibit No. 33.

21 I believe we also had a party request at Exhibit No.
22 32 from a Mr. Dominique Kostelac which has now been
23 withdrawn --

24 VICE CHAIR RENSHAW: Thank you.

25 MR. ETHERLY: -- by virtue of letter dated

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1 October 25 which is noted as Exhibit No. 40.

2 VICE CHAIR RENSHAW: Thank you, Mr.
3 Etherly, for that clarification.

4 Mr. Allan, will you give your reasons for
5 your request for party status.

6 MR. ALLAN: Yes. I went before the ANC
7 meeting, which was discussing this issue, and reviewed
8 the circumstance which I'm in which is I'm a
9 neighboring business to the proposed development site.

10 Recently having lived through the major
11 building of the parking structure that was also put up
12 on the block, I became familiar with the day-to-day
13 difficulties of being basically run over by the
14 process. My appeal to the ANC as a long-term business
15 resident of the neighborhood was that I be included in
16 the process of staging construction plans to give me
17 some sort of protection from unexpected delays and
18 business closures of streets and the hard-to-control
19 process of truck drivers parking wherever they want to
20 park.

21 Presenting to the ANC I got the
22 recognition that I think most of the neighborhood
23 could see going on in the previous process and was
24 asking for something to be worked out with PN Hoffman
25 before the process was fully endorsed by the ANC.

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1 I have fairly successfully come to a point
2 where I think we've reached an understanding of how
3 that can be accomplished and, because of that, I am
4 withdrawing my request and am willing to offer support
5 to the project.

6 VICE CHAIR RENSHAW: All right. Thank you
7 very much. Will you be testifying later on?

8 MR. ALLAN: I don't believe so.

9 VICE CHAIR RENSHAW: But you are putting
10 on the record your support for the project. Just for
11 our record, you are Ron Allan and you're the owner of
12 the Brass Knob and you are a tenant?

13 MR. ALLAN: Correct.

14 VICE CHAIR RENSHAW: Very good. There was
15 some mention in this material that you're doing an
16 addition to your property?

17 MR. ALLAN: Not me. The owner of the
18 building is. That adds to the difficulty of my
19 position as a tenant in the neighborhood being buried
20 by construction projects. Yes, the building that I'm
21 occupying has a variance and is pursuing permits to
22 modify the building.

23 VICE CHAIR RENSHAW: All right. So your
24 complaints are really construction related and you've
25 worked out an arrangement or an agreement with the

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1 applicant so you're withdrawing your party status
2 request.

3 MR. ALLAN: Correct.

4 VICE CHAIR RENSHAW: We thank you for
5 coming before the Board and offering your support. We
6 appreciate your visit with us.

7 MR. ALLAN: Thank you very much.

8 VICE CHAIR RENSHAW: All right. If there
9 are no other requests for party status in the
10 audience, we can proceed with the case, Mr. Glasgow.

11 MR. GLASGOW: Okay. Thank you, Ms.
12 Renshaw.

13 Good morning, members of the Board. For
14 the record, my name is Norman M. Glasgow, Jr. of the
15 law firm of Holland and Knight representing the
16 applicant 2327 Champlain Street, LLC, for special
17 exception and variance relief to construct a
18 residential project in the Reed Cooke Overlay at the
19 corner of Champlain Street and Kalorama Road.

20 The applicant is requesting two variances,
21 one from the lot occupancy and the other from the FAR
22 requirements, and two special exceptions regarding
23 height and roof structures in order to construct a 68-
24 unit apartment building with 56 parking spaces on a
25 long usually shaped lot.

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1 The applicant has met with and received
2 the support of the Reed Cooke Neighborhood
3 Association, the ANC, the Office of Planning that has
4 been working with the community on the design of this
5 project for many months.

6 Before proceeding to the testimony of the
7 witnesses, I would like to first introduce them and
8 then deliver a brief opening statement with the
9 permission of the board.

10 Here with me today are Mr. Monty Hoffman.
11 To my immediate right Mr. John Holmes, the
12 representatives of the applicants. Next seated at the
13 end of the table is Mr. Lawrence Caudle of the
14 architectural firm Hickock, Warner, Fox. In the
15 audience are Mr. Eric Smart of Boll and Smarts
16 Associates, consultant in development feasibility;
17 Mr. Marty Wells, traffic engineer; and Mr. Steven
18 Sher, land planner.

19 Several of these witnesses will be offered
20 as experts. Mr. Hoffman will be offered as an expert
21 in urban residential development. I believe he has
22 been accepted as such a witness before the Board
23 before, Mr. Caudle in architecture, Mr. Smart in
24 development feasibility, Mr. Wells in traffic
25 engineering, and Mr. Sher in land planning.

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1 I believe all of the witnesses --
2 Lawrence, have you been accepted as an expert by the
3 Board before?

4 MR. CAUDLE: Before, yes.

5 MR. GLASGOW: I think all of our experts
6 have been previously accepted as expert witnesses by
7 the Board in the past.

8 VICE CHAIR RENSHAW: Just a moment. I
9 want to confer with my colleagues. Are there any
10 questions up to this point about expert witnesses?
11 No?

12 Please proceed.

13 MR. GLASGOW: Thank you. Once again, I
14 assume that all the Board members have a copy of the
15 Statement of Applicant that was filed in this case.

16 VICE CHAIR RENSHAW: And a very thorough
17 document it is.

18 MR. GLASGOW: Thank you. We have in just
19 briefly reviewing the Statement of Applicant,
20 essentially on pages 3 through 19, we have gone into
21 some extensive discussion as to how the burden of
22 proof is met with respect to the uniqueness of the
23 site, the exceptional situations and conditions, and
24 the practical difficulties with respect to the
25 variances.

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1 Then with respect to the two special
2 exceptions, being for height and roof structure
3 setback, we have also gone through and had a lengthy
4 discussion of those. Those will be summarized by
5 certain of the applicants and Mr. Sher will deal with
6 those issues in detail when it is time for him to
7 testify.

8 Proceeding to the exhibits of the
9 statement, we have outlined in yellow a subject
10 property. It's an angular site at Champlain and
11 Kalorama Roads with an alley to the east of the
12 property and Champlain Street on the west. It's a
13 long narrow site that also has a change in topography
14 in it which impacts the development of the property.

15 Exhibit B is a zoning map of the property
16 showing it being in the Reed Cooke R-5-B overlay. C
17 is the surveyors platt, the building platt for the
18 property showing the project and also the setbacks
19 that have been created along Champlain Street which
20 will be discussed in more detail by the architect. It
21 is noted that those setbacks occurred because of
22 discussions with the community and community
23 representatives that ask that there be some green
24 space provided along Champlain.

25 Exhibit D are the plans for the project.

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1 Exhibit E is a report, the traffic report for the
2 project prepared by Marty Wells and Associates.
3 Exhibit F is a report from Boll and Smart Associates.

4 Exhibit G is geotechnical information that
5 was provided along with Exhibit H which is a summary
6 of that report. Exhibit I, J, K, and L are outline of
7 testimony of the witnesses. Exhibit M is the outline
8 of the testimony of Mr. Sher.

9 It is my understanding as a result of what
10 has transpired here earlier there are now no parties
11 in opposition to the application. In addition to the
12 support of the Reed Cooke Neighborhood Association and
13 the ANC we are pleased to have reports in support of
14 the application from the Office of Planning and from
15 the District Department of Transportation.

16 If there are no preliminary questions, I
17 would like to proceed with the testimony of the
18 witnesses.

19 VICE CHAIR RENSHAW: Please proceed.

20 MR. GLASGOW: All right. Thank you. I
21 would like to first call Mr. Hoffman and then Mr.
22 Holmes.

23 Please identify yourself and proceed with
24 your testimony, Mr. Hoffman.

25 MR. HOFFMAN: Good morning, Ms. Chair and

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1 Board. I'm Monty Hoffman. I'm the principal of PN
2 Hoffman. We are partners with Adams Investment Group
3 on the development of 2327 Champlain Street.

4 As Mr. Allan mentioned earlier, PN Hoffman
5 completed phase one of the lofts just recently
6 underway and we are also now underway on phase two of
7 the lofts at Adams Morgan. Our partners at Adams
8 Investment Group are also very active in the Reed
9 Cooke neighborhood and they recently completed the
10 Grammercy and are underway on the Greenwich. They are
11 also in design development for the Colortone Building
12 and they are very active and vested in the community
13 as we are.

14 My partner, Mr. John Holmes, who will
15 speak after me, took the lead role in a very, we
16 believe, comprehensive outreach to the neighborhood
17 meeting with the ANC and meeting with Reed Cooke and
18 individual neighbors as well. He will speak to that
19 when I'm through.

20 Our team wants to develop this property
21 for residential use and this is indeed what the
22 neighborhood wants as well. I think not only because
23 we have a good project but also because when compared
24 to the current use of the property, it definitely will
25 be a benefit and a help to the neighborhood.

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1 The current uses of this property are a
2 couple of auto repair shops, a parking lot, and a
3 liquor store. And while these uses produce a
4 significant income from a landlord perspective and,
5 indeed, upset the value of the property, they do not
6 contribute to the quality of life in the Reed Cooke
7 neighborhood. In fact, they denigrate the quality of
8 life.

9 Our proposal not only eliminates these
10 uses but adds 68 home ownership residents to the
11 neighborhood along with 56 parking spaces. However,
12 to make this work we need the variance relief we're
13 asking. We believe this is appropriate because the
14 site indeed has extraordinary and exceptional
15 conditions with it.

16 The first and foremost is probably the
17 contamination of the site and this is due to several
18 different sources. Long ago there was a gas station
19 in the center of the site which has been demolished
20 for some time. Also because of the auto repair
21 businesses that have operated there for years, the
22 site is highly contaminated.

23 Also, this site is unique and has an
24 exceptional condition because of its irregular shape
25 and narrowness. If you look on the site plans, you'll

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1 see that it's long and narrow and an odd shape.
2 Conversely, the building we had across the street was
3 nice and rectangular and some of the other projects
4 we've had up and down the street are rectangular as
5 well. This long, narrow shape has created unique
6 shapes to our construction and the architect will go
7 over that in a little bit.

8 Finally, as far as uniqueness, there are
9 some site planning issues that come up, one of which
10 is the street escape and trying to develop a quality
11 project and doing it in a responsible manner. When we
12 met with the neighborhood, the neighborhood expressed
13 interest in pushing our building back.

14 Once again, the architect will go over
15 this in detail with you, but what you'll find is we
16 pushed the building back into the site and in doing so
17 and constructing bays that we normally would build in
18 public space, we now have to build on the private
19 property. This applies pressure to the lot occupancy
20 threshold and we are asking for some relief there as
21 well.

22 With respect to practical difficulty,
23 again we have the lot coverage due to the placement of
24 the building. It is impossible for us to get the
25 footprint and the FAR that we need within the site and

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1 stay within the 60 percent. You will find actually,
2 and I believe it's in the package that we submitted,
3 that a good portion of the lot occupancy relief we're
4 asking is really merely to allow us location so that
5 we can put some of these bays as we push the building
6 back that otherwise would be into the public space.

7 Also, we're having to overcome the
8 remediation of the site. It's current uses, of
9 course, the contamination is not an issue, but to try
10 to develop it for residential use we have to clean a
11 site and this is a substantial impact to us. That
12 clearly is a practical difficulty for us.

13 Finally, the other test of no substantial
14 detriment to the public good. There I think because
15 again of John Holmes' efforts with the neighborhood
16 we've placed several amenities into the building that
17 not only do not deter from the quality of life but add
18 to it for the neighborhood.

19 First and foremost, I think creating the
20 setbacks off the main street on Champlain to put more
21 greenery up front. Also, we're adding moderate income
22 housing into our project. We are also adding
23 additional parking above and beyond what the code
24 requires which I believe is a two-to-one in this case.

25 We are providing 56 spaces. Clearly, we are

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1 providing home ownership which I think benefits the
2 neighborhood and makes it, indeed, safer.

3 Our mix of the units that are going into
4 this neighborhood as well we're canvassing the entire
5 market. In fact, approximately 80 percent in that
6 range of the units will be in the \$300,000's or less.

7 With that in mind, that's just the overall summary of
8 our approach for this project.

9 VICE CHAIR RENSHAW: We have a question
10 from Mr. Zaidain.

11 MR. ZAIDAIN: You mentioned the
12 contamination from a previous owner that was a gas
13 station. Were there any underground storage tanks
14 still on the site that you had to remove?

15 MR. HOFFMAN: There are several. They
16 haven't been removed yet.

17 MR. ZAIDAIN: You have to remove them?

18 MR. HOFFMAN: Yeah. It's not just the gas
19 station. It's also the auto repair shops as well.
20 The sources are really not all that clear right now.

21 MR. ZAIDAIN: I would venture a guess on
22 linking underground storage tanks for one. Okay.

23 VICE CHAIR RENSHAW: How much of a time
24 line does that add on to construction when you have to
25 remove the contaminated soil?

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1 MR. HOFFMAN: It actually does not add
2 that much. It's the burning of the soil which is the
3 big expense to us. Probably, to answer your question,
4 I would guess it would add a month and a half to two
5 months to the overall duration because you have to go
6 at a little slower pace. It has to be inspected as
7 it's excavated out so that does slow down productivity
8 a little bit.

9 VICE CHAIR RENSHAW: You said that 80
10 percent of the units were going to be \$300,000?

11 MR. HOFFMAN: In the \$300,000's. We have
12 across the board. We've got approximately -- these
13 are just approximates right now but to give you an
14 idea, we've got approximately 21 units that are
15 between \$200,000 to \$300,000, 27 units that are
16 between \$300,000 and \$400,000. Then we've got a
17 couple of moderate income priced units, as I mentioned
18 earlier, that are below \$200,000.

19 VICE CHAIR RENSHAW: Right. They are
20 three.

21 MR. HOFFMAN: Yes. And we also have a few
22 units that are above the \$400,000's as well so we have
23 a mix.

24 VICE CHAIR RENSHAW: Is this a condo
25 development?

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1 MR. HOFFMAN: Yes, ma'am.

2 VICE CHAIR RENSHAW: All right, because
3 you stated apartments and I was just confused.

4 MR. HOFFMAN: Apartments I was stating
5 loosely. It's condominiums. These are all
6 condominiums, yes.

7 VICE CHAIR RENSHAW: Any questions? Mr.
8 Parsons.

9 MR. PARSONS: I'm having a little
10 difficulty with the concept of remediation or
11 environmental hazard cleanup being part of our
12 concern. Is that part of your plea to us that the
13 site conditions are such that is why you need relief?
14 Isn't this normally transferred back to the prior
15 owner as part of the purchase price?

16 MR. HOFFMAN: First, this is only part of
17 our concern. There are several. One, with the
18 irregular shaped property, the long and narrowness of
19 the property.

20 MR. PARSONS: Sure.

21 MR. HOFFMAN: The other is the soil itself
22 has a bad layer in it that is an inordinate expense to
23 us and that has to do with bearing capacities of the
24 soil. Not only is it contaminated but there is also
25 other layers, the totality of these that we are asking

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1 for.

2 With respect to the remediation aspect,
3 what we're competing with is the current use of the
4 site which, again, has commercial uses to it. We are
5 trying to overcome that and produce a residential
6 development. In doing so we have to excavate down and
7 clean up the site.

8 MR. PARSONS: But you're not seeking this
9 relief from us because of the cost of that
10 remediation, are you?

11 MR. HOFFMAN: It's only part and parcel to
12 what we're asking for.

13 MR. PARSONS: I'm not familiar with
14 anything in our regulations that would allow us to
15 even consider that.

16 Mr. Glasgow, can you help?

17 MR. GLASGOW: Sure. With respect to that,
18 it is part of the uniqueness with respect to the site
19 and the soils which are referenced in the regulations.
20 It is a part of the development.

21 MR. PARSONS: I would agree. A natural
22 condition of water table which also exist apparently
23 is that.

24 MR. GLASGOW: Right. But also when you
25 look in the regulations, it does not distinguish

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1 between what I'll call manmade and other subsurface
2 conditions which adversely affect the development of
3 the site.

4 I think it goes back into why it is with -
5 - I guess I'll look at it as sort of similar to the
6 original superfund sites, if you will, and then before
7 that when the government said, "You have liability to
8 environmentally clean up a lot of the companies that
9 have those land declared bankruptcy."

10 Then the sites just sat there because the
11 legislation was such that if you got into the chain of
12 ownership, you had to clean up the site. Everyone
13 said, "We can't deal with this." There was no one who
14 had any responsibility to own and clean up the site.

15 Similarly, and obviously in a far
16 different context, here we have a site that does have
17 this subsurface condition. It's a real condition
18 because it cost real dollars to deal with it. It was
19 not anything that was self-imposed by the applicant
20 and that competes economically with what are the other
21 available uses of the property.

22 Because of the way our environmental laws
23 are structured, if you leave it as the parking lots
24 and the existing uses on there, there is no
25 remediation. They have grandfather rights to continue

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1 so those uses continue.

2 The applicant, as a practical matter, has
3 to look at it and this is part of practical
4 difficulty. You have to look at what does it cost
5 once you start to breakup that asphalt and go down in
6 and deal with this piece of property.

7 It is a real cost that ends up being part
8 of the project that has to come into consideration
9 whether you say I'll leave the site as it is, use it
10 as it is, or convert those permitted commercial uses
11 because this was CM zoned property previously and say,
12 "All right, we're going to convert this piece of
13 property from these existing commercial uses and now
14 use it for residential purpose."

15 It's part of the equation. It's not the
16 entire reason why we're asking for the relief. It is
17 a piece of that discussion. I'm looking through here
18 on the variance test. I believe it just says
19 subsurface condition. I don't think that it says in
20 soils. So that's -- and I'll find out as we proceed.

21 VICE CHAIR RENSHAW: So we'll come back to
22 this question anyway. I want to just note, Mr.
23 Parsons, you asked, or you queried whether or not this
24 was tied back to the previous owner. Isn't it the
25 responsibility of the previous owner to clean up that,

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1 or at least get rid of whatever tanks are there?

2 MR. GLASGOW: That's part of the reason
3 why Mr. Hoffman encapsled the question.

4 I now have this variance clause in front
5 of me, Mr. Parsons, so I'll get to that in a second.

6 We have said that there is potential
7 multiple source of this. We found that with the
8 petroleum companies just because there was a gas
9 station on there, that doesn't mean that they run up
10 and say, "Okay, here we are." There's a process for
11 that and there is particularly a process when there
12 are potentially multiple sources of the contamination.

13 I don't want to prejudice anything that is
14 going to have to happen potentially with one of the
15 oil companies later. I mean, we sort of want neither
16 admit nor deny but we know that there are various
17 tanks there from various uses.

18 MR. PARSONS: I guess the point of my
19 question was you state here on page 9 that you got a
20 million dollars to clean this up. I don't work in
21 your circles but if somebody is trying to sell you a
22 piece of property that cost a million dollars to clean
23 up, I would think good negotiation would say, "I'm
24 going to deduct million dollars from the purchase
25 price," and not come here and say, "I need relief

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1 because I've got this additional cost."

2 MR. HOFFMAN: Well, this is why I
3 mentioned that the ongoing commercial use of the
4 property would not justify a lowering of the basis of
5 the property. The rent generated from the auto repair
6 shops and the parking area and the liquor store
7 produces an income on the property which, indeed,
8 creates the value of that property. We are attempting
9 to -- our proposal is to put residents on the property
10 so we need to overcome that.

11 MR. GLASGOW: Mr. Hoffman, approximately
12 what value is that and what cap rate were you using to
13 determine that value?

14 MR. HOFFMAN: The general income producing
15 from the property, ability on that property is about
16 \$150,000 to \$160,000 per year. If you 8.5 cap that,
17 or even 9 cap that, you are hitting in the \$1.6
18 million range and that's a conservative cap. That's
19 based on the potential and ongoing tendency of that
20 property as-is condition without any remediation.

21 MR. PARSONS: So you're better off to
22 leave it there until the value increases to the point
23 that we can get a viable project here without coming
24 to us for relief. Is that the logical brunt of this?

25 MR. HOFFMAN: With all due respect, my

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1 feeling is that the pricing that we have to sell the
2 condominiums at right now is already high. My feeling
3 is that we are on the mature end of a cycle and, if
4 anything, pricing will dip a little bit in the next
5 couple of years. That's what I'm gearing for. For
6 that pricing to overcome this, it could be there for
7 decades.

8 MR. PARSONS: Thank you.

9 VICE CHAIR RENSHAW: All right. Mr.
10 Etherly, do you have any questions at this time? No?
11 Then why don't we move on.

12 Mr. Glasgow, your next witness.

13 MR. GLASGOW: All right. Mr. Parson, did
14 you want any further discussion with respect to
15 Section 31 and 3.2?

16 VICE CHAIR RENSHAW: Could we hold that,
17 Mr. Glasgow, and come back to it?

18 MR. GLASGOW: Certainly.

19 VICE CHAIR RENSHAW: So that we can get
20 through your witnesses.

21 MR. GLASGOW: Next I would like the call
22 the next witness, Mr. John Holmes.

23 MR. HOLMES: Good morning. I'm John
24 Holmes from Addis Investment Group, partners with PN
25 Hoffman on the subject property. We have been through

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1 the process before with the neighborhood in Adams
2 Morgan. Having known that, I went out in early to
3 mid-July and started meeting with the individual and
4 see members of the Executive Committee of the Reed
5 Cooke Neighborhood Association to start getting
6 feedback on what they wanted to see down at the site,
7 how to address the concerns and what the overall
8 issues were through numerous breakfasts and evening
9 meetings and, then again, the regularly scheduled
10 meetings of the full body of both Reed Cooke ANC and
11 the Quality of Life Committees. We came to certain
12 amenities and/or changes to the building, the
13 structure itself to the types of activities that occur
14 around the property, how it would be addressed. Then
15 we brought those individuals items over to the
16 architect and sat down and said, "This is what we need
17 to address and we need to touch as much as possible on
18 every aspect of this as possible." Part of those
19 reasons are, obviously, the setbacks along Champlain
20 Street. The overall concern at one point was creating
21 a canyon effect on the street with the public garage
22 having an exit in one location right on Champlain
23 Street. We currently have four curb cuts on Champlain
24 and none on Kalorama. We have a widened one right by
25 the alley that was originally for delivery.

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1 What we decided to do in that the west
2 side of the street is where the garage is currently
3 located. There is some issue with the children
4 activity walking on the sidewalk, that type of thing.

5 We eliminated all of our curb cuts along Champlain
6 Street and took all vehicular traffic to come in all
7 of the far curb cut on the southeast corner of the
8 building.

9 In addition to that, Champlain sort of --
10 the property's topography goes up as it goes north on
11 the site. In addition to that as part of the overall
12 light and air issue, we took the building at several
13 setbacks. The architect will explain where we are
14 setback with that but that's one of the things.

15 The current liquor store site is down on
16 the corner where the green grass area is and comes all
17 the way up to about 8 to 10 feet off the corner of the
18 alley. We've removed that structure completely,
19 lowered the building down on the corner, and step it
20 up as it goes further up Champlain.

21 Again, the sun being to the south and
22 coming across, but it's more of an issue making sure
23 that what we put down there can grow and that we
24 create some green space, some separate entrances in
25 the front for the units that are terrace level so that

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1 they have their own entrances so we're not funneling
2 people through one doorway all the time making more of
3 a user friendly building with pedestrian access to it
4 with individual accesses as much as possible to spread
5 the neighborhood activities out, if you will.

6 We met on several occasions. Three or
7 four of the meetings were in excess of 50 people. Our
8 final vote at Reed Cooke Neighborhood Association was
9 attended by 103 members of the community. I believe
10 we are at 60 some odd or 70 some odd people at the ANC
11 meeting on the final one.

12 We additionally gave a couple of
13 extensions which is why some of the submission letters
14 were late just so that the Quality of Life Committee
15 could fully explore what they needed to and that Reed
16 Cooke could fully explore any additional questions
17 that they missed with the community.

18 We tried to address a little bit of
19 everything, additional parking, some MPDUs. We
20 actually removed some of the units on the south level
21 to create additional five spots of parking on the
22 northern end which contributed to a small degree to
23 our additional FAR but it was something that the
24 single member ANC district member at the Champlain
25 location felt would be a strong effort for them.

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1 They would like to see more additional
2 parking so we raised it to approximately, I think, 75
3 to 80 percent of the units have a parking spot
4 associated with them. We have surface as well as
5 underground.

6 We've taken the bulk, if not entirely, all
7 of our ugly uses, if you will, compressors and that
8 type of thing, and moved them to the back, shielded
9 them. Some items were also shielding them on top for
10 some of the buildings that are higher than use to the
11 north and across the street so they don't look down on
12 our compressors and that type of thing.

13 We spent a fair amount of time out there
14 trying to make sense of the overall agenda, if you
15 will, trying to touch as much as possible knowing that
16 we can't make everybody happy all the time but at
17 least getting to the heart of the matter with the
18 community. In response to that, they have given us
19 their full support, glowing letters. Individuals have
20 come down from the community to speak on our behalf.

21 Unfortunately for us, one of the
22 individuals took ill this morning and couldn't come
23 down. He left a message and I said I wouldn't play
24 it. The overall question was he just wanted to make
25 sure that his support was well felt. I believe one of

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1 them stopped in earlier this morning to drop a letter
2 off and had to depart as well.

3 VICE CHAIR RENSHAW: We'll get to those in
4 just a bit. We appreciate your review of the
5 community support that you have enjoyed. Is there
6 anything else you wish to bring out?

7 MR. HOLMES: Yes. All the surrounding
8 adjoining properties have offered their support, as
9 well as one probably that doesn't necessarily adjoin
10 ours. It's across the parking lot from us, a church
11 on the corner.

12 While they would like to send a letter,
13 they said some of their members are not within the
14 community so they wanted to reiterate their position.

15 They have no opposition. They also want us to check
16 their site in terms of remediation to make sure and we
17 have agreed to do that.

18 VICE CHAIR RENSHAW: All right. Very
19 good.

20 MR. HOLMES: One quick point as well just
21 to add to the question that Mr. Parsons had asked
22 earlier about site contamination. We are surrounded
23 by garages in that area. To the north of us was
24 another gas station and the building actually to the
25 north of us has 12 monitoring wells in it to prevent

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1 the existing issues that it has, the former Amoco
2 station above it which now belongs to BT.

3 One of the issues that we have is that
4 Amoco was released and now BT has some issues with
5 accepting full liability for that. Knowing that there
6 is contamination, actually identifying which culprit
7 is on which site is the difficulty in the scenario for
8 us.

9 Knowing if we need to be able to make the
10 building viable and be able to sell the units in a
11 decent market, we need to move today and not wait for
12 two to three years of litigation through BT, Amoco,
13 and whomever else is to the north of us.

14 VICE CHAIR RENSHAW: Okay. Any questions
15 from my colleagues?

16 Mr. Etherly.

17 MR. ETHERLY: Yes. Thank you, Madam Vice
18 Chair.

19 Mr. Holmes, could you speak a little bit -
20 - you noted that in order to increase the size of the
21 parking garage you actually eliminated a couple of
22 units. Could you speak to the number of units that
23 you lost by virtue of that increase in the size of the
24 garage?

25 MR. HOLMES: There are some adjustments

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1 made to that plan so I'm going to allow the architect
2 to answer the actual number of square footage.

3 MR. ETHERLY: Okay. Well, what we can do
4 is when we get to the architect --

5 MR. HOLMES: There were two or three units
6 at the time that we lost.

7 MR. ETHERLY: Okay. Okay. With respect
8 to the lot occupancy variance request, there is quite
9 a bit in the applicant's prehearing statement
10 regarding marketability of the units. It notes -- I'm
11 referencing specifically page No. 6 for the benefit of
12 my colleagues.

13 There are a couple of things, of course,
14 that you could do to come within compliance with the
15 zoning regs including, perhaps, narrowing the
16 footprint for the southern portion of the building.
17 For some of the reasons that are noted in the
18 prehearing statement, one of which is the
19 marketability issue, there's a concern with respect to
20 doing that.

21 Could you speak a little bit to that
22 marketability item and whether it relates to is there
23 a particular size of the units that you're looking for
24 and if you go below that size, you're looking at units
25 that just aren't going to fit for what you're looking

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1 at in terms of the area. Could you speak a little bit
2 to that?

3 MR. HOLMES: I'll speak to it in two
4 parts. Initially, and we've seen a lot of development
5 occur particularly in the condominium market, you see
6 a lot of two-bedroom units that have come out. The
7 community was concerned about providing moderately
8 priced units.

9 We wanted to provide some moderately
10 priced units, but we also wanted to make the building
11 viable as it stands on that market. One of the ways
12 to do that is to make sure that you have an across-
13 the-board representation of sales prices, i.e.,
14 studios, one bedrooms, one bedroom/den, two bedrooms
15 and two bedrooms/den.

16 On one side the community felt very
17 strongly that we should make sure that our price
18 points address the issues of the type of person that
19 they -- when I say type of person, the type of people
20 that are looking to move into the Adams Morgan
21 neighborhood which is not necessarily all two-bedroom
22 people looking. There are people looking for studios
23 and one bedroom and one bedroom/den.

24 While there is some additional burden to
25 that with respect to additional kitchens and baths

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1 that normally wouldn't be associated with a two
2 bedroom, let's say, the overall process, again,
3 meeting with the community, it was a better scenario
4 for us to sit down, be across the board with them that
5 way than to look at artificially reducing prices on
6 units that four or five years from now go back to
7 market and that is loss of the community forever. We
8 wanted to create an environment which people of all
9 economic values and standing on their own,
10 particularly in today's market with low interest
11 rates, can move in and move in relatively quickly with
12 a comfortable rate. In fact, in many cases they will
13 be below what they are paying in rent currently in the
14 market place.

15 MR. ETHERLY: Could you speak a little bit
16 to what the current unit mix is in terms of the
17 distribution between the studios, the one bedrooms,
18 what have you.

19 MR. HOLMES: That one I don't have broken
20 down. We have them broken down in thirds. A full
21 third or better of our units were below \$299, another
22 third between \$299 and \$399 mark, and then the
23 additional ones are staggered between the upper and
24 lower. I don't think we have very many even beyond
25 \$500. I think there are three or four of those. I

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1 think we only have a couple of studios.

2 MR. CAUDLE: I think we only have a couple
3 of studios. I would say about a half a dozen one-
4 bedroom units. The majority of the rest of them are
5 two bedrooms which are either really one bedroom plus
6 a den and then a few larger units that are also two
7 bedrooms.

8 MR. HOFFMAN: What I believe Lawrence has
9 successfully done is produced very tight functional
10 two-bedroom units to keep affordability in check.
11 Some of these are actually one bedroom with dens but
12 may have two bathrooms in them so it allows it to be
13 affordable. We were very conscientious on doing that
14 and hitting quite a few of the units that someone
15 could purchase in the \$200,000 range and the \$300,000
16 range.

17 VICE CHAIR RENSHAW: Some of your units
18 are handicapped accessibly formulated.

19 MR. HOFFMAN: Yes, they are. I believe 15
20 percent.

21 VICE CHAIR RENSHAW: That's the
22 requirement?

23 MR. HOFFMAN: That's the requirement which
24 we need.

25 MR. CAUDLE: It's an elevator building so

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1 that is not a problem.

2 VICE CHAIR RENSHAW: If Mr. Holmes has
3 concluded his testimony and there are no other
4 questions, Mr. Etherly, do you have a follow-up?

5 MR. ETHERLY: No. I think that covers it,
6 Madam Chairman. The architect has indicated that
7 he'll speak to kind of the give and take that occurred
8 as far as the parking garage and getting additional
9 spaces. Perhaps what might also be helpful when the
10 architect gives his presentation is some comment
11 towards, once again, if you end up squeezing the
12 property at the southern end of the building, what
13 happens to those units there. What do those units
14 currently configure to serve as and what would you
15 have to do if you ended up squeezing at the southern
16 end. One of the issues is obviously if you try to get
17 within lot occupancy and you start squeezing certain
18 parts of the building, I want to get a sense of what
19 happens. Thank you.

20 VICE CHAIR RENSHAW: With that very good
21 introduction, we will move on to the architectural
22 presentation.

23 MR. CAUDLE: All right. Thank you. It's
24 a pleasure to be here again. My name is Lawrence
25 Caudle. I'm an associate with Hickock, Warner, Fox

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1 Architects. I'm going to do a little bit of reading
2 here which will hopefully make my testimony a little
3 more efficient. I will in a moment go to the boards
4 to help point out points that I'm making here as I
5 read this.

6 Beforehand, I would like to just state for
7 the record that Hickock, Warner, Fox is a local
8 architectural firm that has been around for at least
9 15 years. We are a medium sized firm, about 16
10 employees. Our practice includes a healthy diversity
11 of building types, new and renovations as well as
12 interiors. Much of our work is in the District and we
13 have, as was said earlier, on a number of previous
14 occasions presented to the BZA in the past.

15 Again, I'm an associate with the firm and
16 my role has been overseeing this project. Again, I
17 have also had about 15 years in practicing
18 architecture. This project briefly, and a description
19 of the surrounding area of course, as has been stated,
20 is in the heart of Adams Morgan. I think the
21 testimony previously stated its location but it's
22 bounded, again, on the site by Kalorama to the south,
23 Champlain Street to the west, and the east elevation
24 is bounded by the public alley.

25 The site itself is very long, narrow, and

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1 is quite irregularly shaped. It also slopes
2 dramatically 10 feet from specifically the southwest
3 corner to the northeast corner of the site. The
4 tightest point, as we were just talking about, is the
5 southern end which shrinks to approximately 65 feet.

6 The building design overall briefly is a
7 rather contemporary character but it basically has
8 some classical motifs to it. It's basically a brick
9 building with a cast stone base with a lot of punch
10 brick windows and a little bit of curtain wall to give
11 the building a light feeling.

12 Given our client's program, our principal
13 design requirement was to allow as much relief as
14 possible where the building meets the street and the
15 sidewalk. Our solution was to set the building back
16 three feet from the property line, even though no
17 setback is required along the street, and to create
18 various steps along the length of Champlain and
19 Kalorama Street facades.

20 What I was talking about here is this
21 being Kalorama, this being Champlain Street. We use
22 this site plan to help demonstrate, which is basically
23 roofline of the building, how much we actually set
24 back the building from the property line.

25 Right here is the adjacent existing Brass

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1 Knob building which meets their property line. Again,
2 there is 10-feet of side walk. We from the get-go set
3 back our building line three feet back from the
4 property line which gave us a continuous amount of
5 three-foot wide green space.

6 Then at the southern end of the building
7 we dramatically set the building back with this curved
8 wall. As we said, this is the narrow end of the side.

9 As we were talking about before, this really only
10 exacerbated our problem with our planning efficiencies
11 for the narrowness of the building. But, again,
12 because our clients really wanted to truly begin to
13 get some relief to the street as the community
14 requested, we did do a lot of serious stepping back
15 here.

16 Just to clarify, we're three feet back
17 from the property line. Then to this building face
18 here we are another eight feet back from the property
19 line in total. Then to our main body of the building
20 where our roofline is measured, we are actually 14
21 feet back from the property line.

22 That pattern kind of reiterates. There
23 bays here are three feet back. The glass bays on
24 either side are eight feet back. Then this main body
25 of the building is 14 feet back from the property

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1 line. There are some very open balconies here that
2 also project into that but they are still, I would
3 say, at least eight feet back from the property line.

4 This is the Kalorama Street elevation
5 which this is the opposite corner of that. You can
6 see from the building here that we had stepped the
7 building back quite dramatically this being the 50-
8 foot line that we are requesting in height, this line
9 actually being about 42 feet from the street. Then we
10 stepped the building back once again to 50 feet. And,
11 of course, we have at least one-to-one relationship to
12 our penthouse structure here.

13 On Kalorama Street itself this element
14 wraps the corner, which you can see in the plan to
15 this extent. Then again we have open balconies. Then
16 we only come to our 50-foot height that we are
17 requesting right here at the very tip, the corner
18 where we turn up the alley.

19 Again, the site slopes dramatically 10 feet
20 from here to here. It also slopes up along the alley
21 so this is -- well, it slopes down. This corner may
22 be actually 52 feet. It dramatically starts to slope
23 up again. By the time you get to the middle of the
24 building, you are actually 45 feet above grade, not
25 50.

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1 Actually, just really quickly, this side
2 elevation, the street section, actually shows us the
3 amount of stepbacks that we did. This section is
4 taken through this heavy line here which again is
5 through these main bodies of the building.

6 This outermost line here represents the
7 bay which is three feet back from the property line
8 which is right here. Then this is the edge of the
9 glass bays, being these bays right here, which are set
10 back a total of eight feet, and then again the body of
11 the building which is 14 feet. You can see as opposed
12 to recent develop across the street, which basically
13 there is about eight inches in play along the base of
14 the building, we have dramatically set this back at
15 this point.

16 VICE CHAIR RENSHAW: Mr. Zaidain.

17 MR. ZAIDAIN: Can you describe a little
18 bit more the detail at the Kalorama/Champlain Street
19 corner, what that element is there?

20 MR. CAUDLE: This right here?

21 MR. ZAIDAIN: Yeah. And what the material
22 is.

23 MR. CAUDLE: Actually, this material is
24 basically a curtain wall.

25 MR. ZAIDAIN: Glass curtain wall?

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1 MR. CAUDLE: Glass curtain wall system
2 with a little bit of a base as it comes around the
3 corner, you can see here. It ends on a cast stone
4 base. It's not very wide once it turns the corner you
5 can see in the plan. This is basically the width of
6 the room inside the building. That's how wide this
7 element is. All this right here, this green, this is
8 what we have given up in our design. We could have
9 come out to this property line as a matter of right.

10 MR. ZAIDAIN: Right.

11 MR. CAUDLE: But this is the degree to
12 which we held the building back in an effort to give
13 the whole streetscape.

14 MR. ZAIDAIN: I guess what my question is,
15 and to put it basically, is what is that? Are those
16 units in there or is that the lobby?

17 MR. CAUDLE: Yes, there's a unit. Because
18 the building becomes this narrow at the end, there's a
19 single unit across the back. These are the public
20 living spaces and the bedrooms are along the backside.

21 VICE CHAIR RENSHAW: All right. Mr.
22 Parsons, do you have any questions at this point? Mr.
23 Etherly?

24 MR. PARSONS: We have -- could I pass?
25 I'm trying to find something.

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1 VICE CHAIR RENSHAW: Yes. All right. Mr.
2 Etherly, anything at this point?

3 MR. ETHERLY: With respect to, once again,
4 coming back to the issue of parking spaces that were
5 gained in an effort to add parking to the facility,
6 did you lose any units on that southern end?

7 MR. CAUDLE: Yes, we did. It speaks to
8 what happened when we lost, or had to contribute some
9 of the area to the FAR. Because the building slopes,
10 or the site slopes from this end to this end, what
11 occurred was that at least a quarter, if not more, of
12 our basement area indicating the cellar area and,
13 therefore, it had to be true to the FAR.

14 In that we provide parking access down
15 this single ramp, there is actually some parking level
16 within that cellar area which helped to boost our
17 number of parking spaces. As well as when you take it
18 down, there is a single level of underground parking
19 underneath the entire site. Does that answer your
20 question?

21 MR. ETHERLY: What I'm trying to get a
22 sense of is what did you cut out in order to get
23 additional parking in, and how much additional parking
24 did that create for you?

25 MR. HOLMES: If I could interrupted for

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1 just a second, in the submission it is page A1.03.
2 You'll see there's residential units in the southern
3 part of the building, and then there's a parking
4 section in the middle, and then units pick up again.
5 That is essentially where we could pick up additional
6 spots. And in the rear of the building as well.

7 MR. HOFFMAN: It's approximately 1,667
8 square feet to put an area to it.

9 MR. ETHERLY: That you would gain if you
10 eliminated some parking?

11 MR. HOFFMAN: Yes, sir. Right.

12 MR. ETHERLY: And that would come, once
13 again, in the middle of the footprint, so to speak?

14 MR. HOFFMAN: It's about two-thirds of the
15 way over.

16 MR. ETHERLY: Okay. Thank you.

17 Thank you, Madam Chair. Nothing further.

18 VICE CHAIR RENSHAW: And there are units
19 on the cellar level plan. Correct?

20 MR. CAUDLE: On either side of the
21 parking, yes.

22 VICE CHAIR RENSHAW: On either side of the
23 parking. I would like to have you address the
24 penthouse arrangement and this business about the
25 missing tooth. And also I would like you to talk

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1 about the outdoor parking area off of the alley. I
2 think it's off of the alley.

3 MR. CAUDLE: That's correct. Let me
4 explain that before I move up to the penthouse. What
5 we did, as John was referring to earlier, in our
6 efforts to keep all of the curb cuts and vehicular
7 activity off of Champlain Street to make it more, I
8 would say, a more pedestrian friendly street, is we
9 moved all of our access including our parking access
10 right adjacent to the existing alley. There are some
11 at-grade parking spaces in the back which are
12 accessible off the alley as well.

13 You have also located our required loading
14 dock and off-loading area, as well as a delivery space
15 along this back area as well. This is a back entrance
16 of the building here. That effectively kept from out
17 of sight and off these more public areas all our
18 service and what at-grade parking we do have at the
19 back of the site.

20 VICE CHAIR RENSHAW: Just point again to
21 the parking off of the alley which is --

22 MR. CAUDLE: The parking curb is right
23 here.

24 VICE CHAIR RENSHAW: And it's 11 spaces?

25 MR. CAUDLE: There are a total of 11

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1 spaces in this area. We have one delivery space.
2 There are two entrances to the back of the building
3 I'll point out. This is our loading dock space and
4 off-loading for our loading dock space.

5 VICE CHAIR RENSHAW: But at no time would
6 the loading be pushed into the alley, the loading or
7 off-loading?

8 MR. CAUDLE: It's completely off the
9 public alley as it's required to be.

10 VICE CHAIR RENSHAW: All right.

11 Mr. Etherly, do you have a question?
12 Nothing else?

13 Penthouse.

14 MR. CAUDLE: Penthouse. Again, because
15 the very irregular shape of the site and the fact that
16 our building squeezes a little down here, we basically
17 have two profiles to our penthouse, if I may put it
18 that way. This shaded area, of course, represents the
19 sloped portion. This area represents the flat roof
20 portion which is along the back of the building.

21 The profile essentially shows up in this
22 shaded section right here. This is the difference in
23 the profile. What this allows us to do is -- first of
24 all, I would just like to state that we do need the
25 one-to-one setbacks for the penthouse, but also we are

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1 only at each wall about seven and a half feet in
2 height.

3 The height vertically on these walls is
4 the same. The difference comes in where we put the
5 sloped portion of the roof on it. The reason for that
6 is we felt where you do see it, which we think might
7 be from developments across the street but we do not
8 believe you would see it from the grade from walking
9 down along the building. Your site lines might barely
10 clip this but from this diagram you can see you would
11 barely get a glimpse of it.

12 What it would do is it would begin to
13 screen from the street developments along here any
14 rooftop mechanical equipment that we're going to have
15 that requires to be out in the open. The only reason
16 we don't do it this way, of course, is because we are
17 required to remain out in the open.

18 It essentially drops off here again
19 because of the narrowness of the roof we simply, you
20 might say, just slice this portion of the penthouse
21 off and all you have left is this same extruding
22 piece. The good thing about this is that we do have
23 this continuous profile along the public visible side
24 of the site.

25 VICE CHAIR RENSHAW: Talk about the

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1 missing tooth on the northern end.

2 MR. CAUDLE: The missing tooth really
3 occurs adjacent at the innerblock on the party wall
4 condition of the building. There are no windows and
5 there are no opening here along this side of the site.

6 It just seemed a little bit logical architecturally
7 to go ahead and continue this. Without getting into
8 heavy details, we really envision the whole building
9 as a continuation of the street development. We felt
10 that it would make a little bit more logical sense to
11 simply bring from an architectural and design
12 standpoint the penthouse over to the property line at
13 this point. We understand that the adjacent owner has
14 no opposition to that.

15 VICE CHAIR RENSHAW: Um-hum. All right.
16 Are the top floor apartments, condos, are they a loft
17 arrangement?

18 MR. CAUDLE: They are a loft arrangement.
19 This is the top floor units. The penthouse there is
20 -- they do provide access to these little rooftop
21 terraces that they have.

22 VICE CHAIR RENSHAW: That's what I thought
23 from looking at your plans.

24 MR. CAUDLE: In other words, the top floor
25 units have a little bit of roof terrace along here

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1 along these edges.

2 VICE CHAIR RENSHAW: But they are
3 individual little rooftop terraces?

4 MR. CAUDLE: Correct.

5 VICE CHAIR RENSHAW: All right. Would you
6 also note on the plans your separate entrances to some
7 of these units.

8 MR. CAUDLE: What we would like to do, as
9 Mr. Holmes stated, is that our main building entry is
10 located right here. We do have some basement units
11 here but what we were able to do is be able to give
12 some units individual entrances along Champlain Street
13 so there is going to be some activity along here.

14 There are little stairs that go down and
15 actually feed into, I think, it's four units in each
16 location. Actually this one may actually serve the
17 cellar units that feed off of this way.

18 But there are some lower area ways off
19 this green space. They are separated by the green
20 space from the sidewalk. It allowed us to get some
21 individual entrances to allow some more addresses and
22 activity along the building. We expect to see some
23 activity along there.

24 VICE CHAIR RENSHAW: All right. Mr.
25 Parsons.

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1 MR. PARSONS: Yes. I just wanted to make
2 sure that we got a response to the point of 20 of your
3 neighbors who sent us a letter October 14 suggesting
4 that a 40-foot height be retained in Kalorama back 50
5 feet. Are you familiar with that letter and do you
6 have any response to that?

7 MR. HOLMES: We were first made aware of
8 the letter, I believe, last Wednesday night.

9 MR. PARSONS: Oh.

10 MR. HOLMES: On Thursday I made some phone
11 calls and Friday I went out to individual neighbors
12 and knocked on their door to talk to them about that.

13 The last meeting we had at Reed Cooke was attended by
14 103 people which a substantial amount were not
15 involved in prior meetings because there weren't 103
16 people at those meetings.

17 A lot of people -- there were other
18 programs that were coming through that night as well
19 so a lot of people, I think, didn't necessary get the
20 full explanation of what was going on down there.
21 They are certainly still interested in what occurs
22 down on that side. I don't mean to push that aside.

23 I just think -- I received an e-mail from
24 one of the members who in the past had not supported
25 our projects and this time supports it was concerned

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1 about -- his understanding was the corner would be 66
2 foot high. In fact, the building that's there now
3 will be removed. We're stepping it back. The actual
4 measurement is approximately 41 foot and 4 or 5 inches
5 high where the building starts at the corner.

6 We are almost at that 40-foot mark that
7 they are requesting now. It's the 50 foot up that we
8 tried to immediate in terms of what we're doing with
9 the project and how the units lay out and how far we
10 can do that. I believe -- I'm going to guess and I'll
11 let you give us an explanation of how far from that
12 corner piece up we are.

13 MR. CAUDLE: I would say we are at least
14 20 feet back from this edge. This edge of this curved
15 piece is at 41 feet high. The 50-foot building line
16 is right here. That is set back at least about 20
17 feet from this location. As you can see, it begins to
18 meet back again at this corner. We did --

19 MR. PARSONS: So they would be asking for
20 another 30 feet set back at that second level.

21 MR. CAUDLE: I'm sorry?

22 MR. PARSONS: They would be asking for
23 another 30 feet. Is that right?

24 MR. CAUDLE: I believe what they are
25 getting at is that they would like to see this set

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1 back another 30 feet. Again, it is already set back
2 by 20 feet or so.

3 MR. PARSONS: But they are not complaining
4 about the height of the glass wall at 41?

5 MR. CAUDLE: I don't believe that they
6 are.

7 MR. HOLMES: My understanding is that the
8 concern was they felt that the building would be 50
9 feet or higher at the corner there and block the
10 visual, the light issue. The sun and the southern
11 issue is not as much of a problem, I don't think, as
12 the initial concern was.

13 We tried to mitigate as much as we good by
14 rounding the building and setting it back and making
15 it glass to allow more light through and that type of
16 thing. That was certainly at the beginning of our
17 process with the community and it still remains as one
18 of the things that we worked through with them to
19 accommodate as much as possible what we can do on this
20 site.

21 MR. PARSONS: In order to do this, or
22 respond to their request positively, you would lose a
23 unit there on the end?

24 MR. CAUDLE: You would lose two units.

25 MR. PARSONS: Two units.

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1 MR. CAUDLE: Yes.

2 MR. PARSONS: Not just portions of them
3 but that's an entire unit?

4 MR. CAUDLE: Correct. You would lose a
5 portion of this back unit but because our common
6 corridor is right above here, there is basically no
7 space left. I think, in effect, you would lose that
8 unit as well.

9 MR. PARSONS: Thank you.

10 VICE CHAIR RENSHAW: Mr. Etherly, Mr.
11 Zaidain, anything further?

12 Before we move on, I would just like to go
13 back to the alley situation. You've got a 10-foot
14 alley back there off of Kalorama and it goes into a
15 15-foot alley. That's awfully small, awfully narrow,
16 the old time alley systems we see in play here. Your
17 building is just about flush against the alley.

18 MR. HOLMES: No. Actually, it's about 15
19 feet off the alley. The darker portion down there is
20 the ramp to the garage underneath. We didn't point
21 that out earlier and I apologize for that.

22 MS. BAILEY: Mr. Hoffman, excuse me. We
23 need you on the record.

24 MR. CAUDLE: All right. I apologize about
25 this. The back of the building ends right here which

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1 is 15 feet back from our property line. The public
2 alley is this portion right here which is unrendered.
3 I think the rendering just hit a little of the
4 wording here.

5 VICE CHAIR RENSHAW: I appreciate your
6 pointing that out because from your diagram it looked
7 as though the wall of your building is flush up
8 against the 10-foot alley.

9 MR. CAUDLE: I agree. I agree.

10 VICE CHAIR RENSHAW: So you are 15 feet
11 back from that which is best for public safety and
12 emergencies.

13 MR. CAUDLE: I would point out that is the
14 rear yard requirement we have. We even set back our
15 building even further than what was required back here
16 to get the parking spaces and some outdoor spaces for
17 the basement units on the back of the building as
18 well.

19 Just to clarify, the parking ramp slopes
20 down underneath the building. There is a wall at this
21 point where basically the rest of the on-site area
22 back here is off on-grade off the alley. This is a
23 sloping ramp down with a little bit of wall and
24 guardrail, of course, along this portion right here.

25 VICE CHAIR RENSHAW: Okay. All right.

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1 MR. HOLMES: Again, on that portion, that
2 was part of the negotiations with the neighborhood.
3 They didn't want to see just ramps in the back and
4 vehicular traffic. We tried to drop it down and, in
5 fact, created a little bit of space at the top of the
6 northern portion of the building where there will be
7 surface parking so we can put some landscaping in to
8 block some of that stuff and any compressors or
9 whatever else remains in the rear.

10 VICE CHAIR RENSHAW: All right. No
11 further questions for our architect? With that, Mr.
12 Glasgow, you're moving on to which witness?

13 MR. GLASGOW: Yes. Mr. Smart.

14 VICE CHAIR RENSHAW: And after Mr. Smart
15 is going to be?

16 MR. GLASGOW: Is going to be Mr. Marty
17 Wells, traffic engineer, and Mr. Steve Sher.

18 VICE CHAIR RENSHAW: Maybe those gentlemen
19 could come up to the table now and we'll be ready to
20 go.

21 MR. GLASGOW: Mr. Smart, would you please
22 identify yourself.

23 MR. SMART: Yes. Eric Smart is my name.
24 I'm the principal with Bow and Smart Associates. We
25 are a District based development feasibility company.

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1 We have over 17 years of experience with working with
2 a variety of clients looking at multi-family
3 development in the District.

4 VICE CHAIR RENSHAW: Mr. Glasgow, before
5 Mr. Smart starts, do we have a tabbed reference for
6 Mr. Smart?

7 MR. SMART: There's an Exhibit F is the
8 written testimony that we had prepared.

9 VICE CHAIR RENSHAW: We have a very fat
10 file here and we just want to bring it to the fore.
11 All right, it's F. Thank you.

12 MR. SMART: As you find that, in the
13 tables that are attached there we looked at a number
14 of scenarios. Our principal initial concern and
15 assignment was to look at the buy-right opportunity to
16 develop residential on this site. You've heard Mr.
17 Hoffman introduce some of the economic issues. Not
18 the only issues that is part of the application, but
19 we focused on those.

20 We looked at the buy-right and we looked
21 at a development proposal that would solve for what
22 was identified in our analysis as an economic gap. We
23 used the same economic assumptions in terms of
24 development expenses and market sales at the highest
25 square footage in the second case, table 2 in your

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1 exhibit.

2 In table 1 in your exhibit, which is
3 summarized in the narrative, we determined that it was
4 not viable to develop this site for proposed apartment
5 development whether it's by the applicant or someone
6 else for the condominiums that would be able to be
7 marketed at market cost for development. The primary
8 issues which we wanted to test for related to those
9 that had been brought up and it's in my narrative.
10 That's what I'm dwelling on to some extent.

11 There is the key factor of the equation of
12 land value coupled with the risks and responsibilities
13 for mitigating the unusual environmental and soil
14 conditions which are part and parcel to proceeding
15 with the redevelopment rather than leaving the use as
16 is.

17 The analysis introduced a number of
18 scenarios within the buy-right and within the
19 proposed, as you can see, but I'll concentrate on the
20 general observation and conclusion that there was a
21 substantial gap in economic viability. It ranges
22 above and below a million dollars depending on the
23 specifics of those scenarios. Then the question is
24 what are those attributable to without going to the
25 proposed development with the additional units.

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1 It happens that it is consistent in that
2 million dollar range with the cost of the remediation
3 dimension. Maybe it's coincidental. I can't say
4 whether it is or not because it happens that there are
5 land values associated with this and this happens to
6 be what I believe, that they have some documentation
7 is the estimate cost for these remediations.

8 The bottom line to that is that if
9 residential redevelopment is desired on this site
10 whether this applicant does it or someone else, it's
11 not feasible given the current circumstances of the
12 market cost of the land and the requirements if that
13 redevelopment is going to proceed to remediate the
14 environmental and soil conditions.

15 Then we proceeded to take the same
16 analysis assumptions and look at what would it be to
17 close that gap, what would solve for that economic
18 infusibility. From that came what you see as table 2.

19 It is presented as you can close that gap and how is
20 that done.

21 It's pretty straightforward. What are the
22 fixed costs? The fixed costs are the land. The fixed
23 costs are the remediation of both subset categories.
24 When those are fixed and you expand the square
25 footage, at some point you would expect that you could

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1 find a feasible project. Therefore, we did establish
2 that at the higher density the project could become
3 viable and become financiable.

4 It also, I believe, in terms of what
5 square footage does that -- where does that line of
6 infusibility get balanced out with feasibility is
7 approximately in line with what the development
8 envelope that's proposed is able to provide.

9 As you know, these developments need to
10 proceed with certain conformity of number of floors
11 and the like. We were satisfied that in the range of
12 the proposed density you could have, and would have, a
13 feasible project if you wished to be able to see
14 residential redevelopment on that site. Questions?

15 VICE CHAIR RENSHAW: Thank you, Mr. Smart.
16 Any questions from our colleagues? No?

17 MR. PARSONS: Yes.

18 VICE CHAIR RENSHAW: Mr. Parsons.

19 MR. PARSONS: Your tables show an assessed
20 value of a million 98 and current value of a million
21 925. I know you're not an appraiser but is there any
22 comparable land in this area that is not contaminated
23 that you could begin to assess where -- I shouldn't
24 use the word assess -- estimate whether this property
25 has in any way discounted to accommodate this

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1 remediation?

2 MR. SMART: I can't say that there is -- I
3 can say we have not looked at a specific appraisal.
4 We understand there are other properties which have
5 been considered for similar acquisition. The two
6 prices which we put in there, the assessed value that
7 the District has is an illustration of a price that
8 someone has determined is an appropriate valuation for
9 the improved properties.

10 The market value indicated price that we
11 have shown in the column was introduced as a way to
12 determine what would be the price that the willing
13 seller would agree to. The seller, looking at the
14 alternative of \$150,000, \$160,000 a year with respect
15 to income and using conventional practice of
16 translating that annual income into a property value
17 then goes to the value of the property somewhere
18 between \$1.5 and \$2 million. I can't exactly answer
19 your question because of the specific circumstances is
20 what we looked at in this property but we are very
21 satisfied that using the standards of appraisal
22 practice and evaluation, the seller is not otherwise
23 engaged, motivated to themselves take on the
24 responsibilities of these costs, these thresholds to
25 get to redevelopment, because it's in their best

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1 interest to keep it as currently used and where
2 gainful income is part of their consideration.

3 MR. PARSONS: Thank you.

4 VICE CHAIR RENSHAW: Any other questions?

5 No?

6 Thank you very much, Mr. Smart.

7 Moving on to Mr. Wells and a favored
8 subject, traffic. What are you going to do about 16th
9 and Kalorama with the F reading.

10 MR. WELLS: I'll get to that. My notes
11 say good morning but I'll say good afternoon instead.

12 Wells and Associates was retained by PN Hoffman to
13 conduct a transportation analysis of this proposed 68-
14 unit four-story condominium building. I would like to
15 very briefly describe what we found.

16 As you've heard from a previous witness,
17 the subject property is currently served by four
18 driveways on Champlain Street and an alley off of
19 Kalorama Road. Vehicular access to this proposed
20 building would be consolidated at a single full-
21 movement driveway adjacent to the Kalorama alley.

22 Pedestrian access is proposed at the main
23 building lobby on Champlain Street and there are
24 entrances to several individual units also on
25 Champlain. This arrangement will reduce vehicle

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1 pedestrian conflicts. A pedestrian walking along
2 Champlain Street on the east side will no longer be
3 interrupted by vehicular traffic coming out of the
4 driveways.

5 Fifty-six parking spaces are proposed in
6 the one-level underground parking garage in the cellar
7 and adjacent to the alley. This is 22 more spaces
8 than the District requirement of one space for every
9 two units. Compare the proposed parking supply of 56
10 spaces to the District requirement for 34 spaces.

11 As you've heard, a 55-foot loading berth
12 and a 20-foot by 10-foot delivery space are also
13 proposed adjacent to the alley. I have concluded that
14 adequate off-street parking for residents, trucks, and
15 other service vehicles will, indeed, be provided.

16 The project would generate a modest 23
17 vehicle trips in the morning peak hour and 27 vehicle
18 trips in the afternoon peak hour. That's fewer than
19 one trip every two minutes. This amount of traffic
20 would create no adverse or otherwise objectionable
21 traffic conditions at the six intersections we
22 examined in detail and reported in our September 9th
23 report.

24 I'm happy to say Mr. Ken Laden in his
25 October 24th report from DDOT for the Office of

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1 Planning concurs with this conclusion.

2 Ms. Renshaw, to answer your question of
3 the six intersections we looked at, they all performed
4 admirably, level of service C or better with one
5 exception, and that is Kalorama at 16th Street.
6 Kalorama, as you know, is controlled by a stop sign
7 which makes it difficult to turn onto 16th Street
8 particularly for left turns. Right turns are not such
9 a problem

10 I'm happy to say that Euclid Street, which
11 is just north of here, is signalized and it's a rather
12 easy task to get to Euclid Street from this building
13 so that's how one would turn left onto 16th Street
14 from here. Thank you.

15 VICE CHAIR RENSHAW: Questions for Mr.
16 Wells Mr. Etherly? Mr. Parsons? Mr. Zaidain?

17 Very interesting report you had. I was
18 sorry that Mr. Laden didn't give any information
19 regarding what could be done to improve that
20 intersection. You know, slip in a few comments but he
21 didn't do it. In any case, it is a very full report
22 and we thank you for that.

23 Also, to the applicant for taking a very
24 close look at the traffic impact that this development
25 is going to have on the neighborhood and sharing this

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1 information dated October 9th with the community which
2 must have been done at the ANC meeting. Was it done
3 at the ANC meeting?

4 MR. HOLMES: (Off mic.)

5 VICE CHAIR RENSHAW: All right. Fine.
6 Thank you. Those are all the questions or comments I
7 have for you, Mr. Wells. Thank you.

8 MR. WELLS: Thank you very much.

9 VICE CHAIR RENSHAW: Mr. Glasgow.

10 MR. GLASGOW: Thank you, Ms. Renshaw. Mr.
11 Sher. This is out last witness on direct.

12 VICE CHAIR RENSHAW: All right.

13 MR. SHER: As Mr. Wells said, good
14 afternoon Madam Chairperson and members of the Board.
15 For the record, my name is Steven E. Sher, the
16 Director of Zoning and Land Use Services with the law
17 firm of Holland and Knight. I believe you have my
18 outline of my testimony at tab M of your statement.
19 In the interest of brevity, I will not go through
20 every last word on that.

21 As you have already heard, we are here
22 seeking two variances and two special exceptions, the
23 lot occupancy and FAR variances and the special
24 exceptions on roof structure and the height with
25 respect to the Reed Cooke Overlay. Let me just pause

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1 a moment on that.

2 Normally in the R-5-B District, which is
3 the underlying zone here, the normal matter of right
4 height is 50 feet. The overlay reduces that to 40
5 feet but provides for an exception, which I will dwell
6 on a little bit later, which allows you to get back to
7 what the underlying zone is which is 50 feet where we
8 don't need any variance for the height. It is
9 strictly the special exception under the Reed Cooke
10 Overlay.

11 I would also point out that under the Act
12 of 1910 for a residential street of 50 feet wide you
13 are permitted a height of 50 feet so there's no
14 variance or issue with respect to the Act of 1910
15 while Champlain Street and Kalorama Road are 50 feet
16 wide so we are eligible for that height. Under the
17 Act we are eligible to get to that height by special
18 exception under the regulations.

19 With respect to the variance, you've heard
20 a lot of this discussed already. Let me try and draw
21 some of those threads together. As the Board is
22 aware, in order to grant a variance you have to find
23 that there is some set of exceptional or extraordinary
24 situation or condition affecting the property, that
25 those conditions cause a practical difficulty for the

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1 owner, and that if the Board were to grant the relief
2 that there would be no detriment to the public good.

3 We have here a combination or variety of
4 circumstances that create that exceptional or
5 extraordinary situation or condition. To begin with,
6 we front on two 50-foot wide streets. That is not a
7 common situation in the District. These are narrower
8 streets than one ordinarily finds. There are streets
9 that are wider certainly and there are some that are
10 probably narrower.

11 To have two 50-foot streets here resulting
12 in setbacks in order to create some space in the front
13 of the building pushes the bays which would ordinarily
14 project into public space onto private space,
15 therefore, counting in lot occupancy in FAR which
16 would ordinarily not be the case.

17 You have the change in grade as has been
18 described of approximately 10 feet from the north side
19 of the site to the south which creates a level which
20 would be all cellar if the site were flat but it's
21 part basement and, therefore, partially included in
22 FAR because of that change in grade.

23 You have the high water table and the
24 soils which prevent excavation deeper into the site
25 which create costs for developing on a site like this.

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1 Then lastly is but one element. You have the
2 presence of contaminated soil from the former gas
3 station which is not a problem if you leave the site
4 in its present condition.

5 If you leave it in commercial use, you
6 don't have to disturb that. But if you want to
7 develop it, if you want to replace those parking lot,
8 liquor store, former repair garage, etc., with uses
9 which are favored in the Reed Cooke Overlay and, in
10 fact, allowed and provided for under the underlying R-
11 5-B District, you've got to do something about
12 removing that soil.

13 As you have heard some further discussion,
14 that comes at a price. You have that set of
15 circumstances which creates the difficulty in
16 developing the site. The narrow width creates
17 difficulties in designing the parking, the column
18 grid, the cost of the foundation work necessitated by
19 the subsoil conditions.

20 Without the variances the size of the
21 residential building would be substantially smaller
22 and you would have an insufficient number of units to
23 absorb the cost required to ameliorate the site
24 conditions, provide the building core the support
25 services for the building, and to do a feasible

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1 residential development.

2 With respect to the detriment to the
3 public good, you have an apartment building which
4 would be of approximately the same height and building
5 mass as what has been recently built across the street
6 to the west. Of course, residential uses are favored
7 in the Reed Cooke Overlay area.

8 Prior to that all being done some time
9 ago, this site was zoned industrial. It was CM. New
10 residential was not permitted. The Zoning Commission
11 established the policy of trying to ultimately replace
12 those industrial and heavy commercial uses with
13 residential as being the best appropriate use for the
14 city.

15 With respect to the Reed Cooke Overlay, at
16 the bottom of page 7 of the report and continuing onto
17 the top of page 8, I have listed the specific
18 standards that the Board must consider in granting a
19 special exception for the Reed Cooke Overlay.

20 Then on the middle of page 8, IX, gone
21 through one by one and addressed each one of those.
22 Residential is, of course, one of the most favored
23 uses of the overlay. If you allow for the
24 redevelopment, you get rid of the current unattractive
25 conditions. You get rid of a number of curb cuts on

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1 Champlain Street and you replace it with a use which
2 is favored under the regulations.

3 You have the access adjacent to the alley
4 for the parking garage and, in fact, some of the
5 parking and loading comes off of the alley but most of
6 the parking is accessed through that ramp adjacent to
7 the alley. You've got substantially more parking
8 provided than is required by the regulations. You
9 have no issue with the requirement as to C-2-B because
10 this is an R-5-B, not a C-2-B.

11 The apartments themselves don't generate
12 any noise beyond what you would find ordinarily in an
13 apartment house. You have no outdoor storage and you
14 have residential use anchoring the southern half of
15 this square in comparable fashion to the loft
16 apartment buildings across Champlain Street.

17 I conclude that the property is affected
18 by those conditions which warrant granting a variance.

19 That the applicant has demonstrated that the
20 standards of the special exception have been complied
21 with and that, in my opinion, the Board should,
22 therefore, grant the application before it.

23 VICE CHAIR RENSHAW: Thank you for your
24 summary, Mr. Sher.

25 Any questions for Mr. Sher at this point?

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1 No?

2 Not at this point, Mr. Sher. You are so
3 complete, so direct, and to the point as only an
4 expert witness can do. We are glad to have you with
5 us again for a very thorough analysis of the situation
6 and why this application should be, in your opinion,
7 approved.

8 Now moving on, we are going to have
9 reports of government witnesses. We have the Office
10 of Planning followed by the Advisory Neighborhood
11 Commission. Then we will be doing parties or persons
12 in support, parties or persons in opposition. There
13 are no parties. Then we'll have closing remarks by
14 the applicant.

15 First, the Office of Planning.

16 MS. BROWN-ROBERTS: Good afternoon, Madam
17 Chairman and members of the Board. In the interest of
18 time, I will stand on the record that was submitted
19 from the Office of Planning. My analysis also
20 parallels that which was given by Mr. Sher so
21 hopefully I won't repeat that again.

22 The Office of Planning supports the
23 application and thinks that regarding the lot
24 occupancy and the FAR requirements, that the property
25 is unique due to the length and narrowness of the

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1 property.

2 There is an exceptional situation in that
3 the applicant has worked with the community in trying
4 to satisfy some of their desires and has included the
5 set back and the provision of the moderate income
6 housing, the additional parking that is provided in
7 the solar area which increases the overall FAR.
8 Therefore, there is an exceptional situation.

9 The excess in lot occupancy and also in
10 FAR can also be attributed to the script which is
11 dedicated to projections that would have been
12 permitted if the project was built up to the property
13 line.

14 Regarding the special exceptions, the roof
15 structure, the applicant has requested deviations from
16 two provisions relating to roof structure
17 requirements. Under both of these scenarios the
18 proposal is able to meet these requirements but their
19 terms to propose are more aesthetically and
20 architecturally pleasing. These deviations did now
21 allow light and air to adjacent properties and will
22 meet the intent of the zoning regulation test for a
23 special exception.

24 Regarding the height requirement, the
25 applicant has met the conditions that are outlined in

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1 the zoning regulations to allow the additional 50 feet
2 in height to be provided.

3 In summary, the proposed variances and
4 special exception will allow for new residential
5 development that will provide direct amenities to the
6 community and will be compatible to existing proposed
7 developments in the area. The development of this
8 site will allow for the cleanup of contaminated site
9 and will not be detrimental to the neighborhood. In
10 fact, the development will meet and further the goals
11 of the Reed Cooke Overlay.

12 The Office of Planning, therefore,
13 recommends to the Board of Zoning Adjustment to
14 approve the variances and special exception requested
15 with the following conditions. That the applicant
16 provide three moderately priced units and will have a
17 system to ensure that these units will remain
18 moderately priced in perpetuity. Thank you, Madam
19 Chairman.

20 VICE CHAIR RENSHAW: Thank you very much.
21 First of all, on your condition, how do we do that?

22 MS. BROWN-ROBERTS: This is something that
23 I have spoken to Mr. Holmes about. He has promised to
24 look into that because he has had some experience
25 where they have -- where they have provided moderately

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1 priced units. After some time those units have been
2 returned to market price.

3 I think this is one of the community's --
4 one of the things the community has really stressed,
5 that they do want some moderately priced units. If
6 it's been provided, we want to make sure that it is
7 something that is done over a long period of time and,
8 therefore, Mr. Holmes has consented to provide that.

9 VICE CHAIR RENSHAW: I would like to ask
10 Ms. Monroe to have a comment here.

11 MS. MONROE: Yes, Madam Chairman. The
12 applicant can agree with the community to reach some
13 type of settlement on that issue or side agreement but
14 the Board doesn't have authority to impose it as a
15 condition.

16 VICE CHAIR RENSHAW: All right. We take
17 note of that. Also, under community comments your
18 report is dated the 22nd of October. We have 20
19 neighbors who were against on October 22nd. Their
20 petition is dated that. Did you look into -- did you
21 hear from these people?

22 MS. BROWN-ROBERTS: No.

23 VICE CHAIR RENSHAW: All right. And at
24 that time did you talk to the Reed Cooke people?

25 MS. BROWN-ROBERTS: Yes, I did.

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1 VICE CHAIR RENSHAW: All right. Very
2 good.

3 Any questions for Office of Planning?
4 Further questions?

5 All right. Thank you very much.

6 MS. BROWN-ROBERTS: You're welcome.

7 VICE CHAIR RENSHAW: Now we go to the ANC
8 and I'll turn to Mr. Etherly.

9 MR. ETHERLY: Thank you very much.

10 MR. GLASGOW: Madam Chairman, I have one
11 question for Ms. Brooks. I'm sorry, Maxine Brown-
12 Roberts. I'm sorry.

13 Ms. Brown-Roberts, did you attend several
14 of the community meetings, both the Reed Cooke
15 Neighborhood Association and ANC meetings where this
16 project was discussed?

17 MS. BROWN-ROBERTS: I did attend the Reed
18 Cooke Neighborhood. I did not attend the ANC.
19 However, I did speak to the chairman and another
20 member of the ANC.

21 MR. GLASGOW: Thank you.

22 VICE CHAIR RENSHAW: Before we move on,
23 would you also give the DDOT report? We have Exhibit
24 No. 38 from DDOT.

25 MS. BAILEY: Mrs. Renshaw, that report

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1 does need to be waived into the record if I'm not
2 mistaken.

3 VICE CHAIR RENSHAW: All right. This was
4 received when? October 24th. All right. All those
5 in favor of waiving this into the record? I don't see
6 any objections. All right. By consensus it's been
7 waived in.

8 Do you want to address this?

9 MS. BROWN-ROBERTS: I'm sorry. The memo
10 from Ken Laden, Associate Director for Transportation
11 Planning dated October 24, 2002, regarding BZ
12 application No. 16931. I'll read verbatim. "The
13 District Department of Transportation has reviewed the
14 application and other materials submitted by the
15 applicant. This memorandum addresses the
16 transportation elements of the proposal.

17 The applicant is requesting several
18 variances and special exceptions to permit the
19 construction of a six to eight-unit condominium
20 apartment house to be located at 2327 Champlain
21 Street, N.W. The property fronts on both Kalorama
22 Road and Champlain Street.

23 The site has a lot area of 22,602 square
24 feet and is currently improved with a former Amoco gas
25 station, an abandoned auto repair shop, and liquor

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1 store. The project will provide 56 parking spaces
2 consisting of 40 spaces in a below-grade parking
3 garage, five spaces on the cellar level, and 11 outer
4 spaces on the first floor. The project will also
5 provide a 55-foot loading berth and a 20-foot delivery
6 service space adjacent to the 10-foot public alley.

7 DDOT has reviewed the traffic analysis
8 prepared in support of the project. We concur with the
9 applicant's projected vehicular trips of approximately
10 23 vehicle trips in the AM peak hour and 27 vehicle
11 trips in the PM peak period. This amount of traffic
12 generation will not adversely impact traffic
13 conditions on the surrounding street system.

14 With respect to parking, the project will
15 provide 56 parking spaces compared to 23 spaces
16 required by the zoning regulations. In consideration
17 of the shortage of off-street parking in the Adams
18 Morgan area. This parking supply will help to reduce
19 the parking deficit in this part of the city.

20 The project will provide the required
21 loading facility off the public alley adjacent to the
22 subject site. Loading activity may impact traffic
23 circulation along the public alley during maneuvering
24 in and out of the loading area. However, in our
25 estimate the potential impact will be of short

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1 duration.

2 From a transportation standpoint, the
3 Department believes that the project will not have any
4 significant adverse traffic and parking impacts on the
5 neighborhood residential area." Thank you.

6 VICE CHAIR RENSHAW: Thank you very much.

7 Any questions concerning the Department of
8 Transportation's report? Mr. Glasgow, no questions?
9 All right. Thank you very much.

10 Moving on to ANC, Mr. Etherly. Do we have
11 a representative from the ANC with us today? Someone
12 has raised her hand. Would you come to the table,
13 please?

14 MR. ETHERLY: Madam Vice Chair, while the
15 ANC representative is coming forward, I believe that
16 report would also need to be waived into the record.

17 VICE CHAIR RENSHAW: Thank you.

18 MR. ETHERLY: We are in receipt of a
19 letter from the Chair of the ANC dated October 28,
20 2002.

21 VICE CHAIR RENSHAW: Yes. Absolutely
22 waived in.

23 MR. ETHERLY: I have no objection.

24 VICE CHAIR RENSHAW: All right. Anyone
25 have any objections? No? We're in agreement. It's

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1 waived in.

2 Please introduce yourself.

3 MS. BAILEY: I'm sorry, ma'am.

4 MS. JOHNSON: Oh, thank you. Good
5 morning. I'm Eleanor Johnson, Advisory Neighborhood
6 Commissioner of 1-C-06. I am the Chairperson of the
7 Quality of Life Committee and the BZA Committee.

8 I'm here this morning to, one, reaffirm
9 the level of cooperation that Adams Investment has
10 invested in our neighborhood in the Reed Cooke area.
11 But also to talk about and stress the importance of
12 the Reed Cooke Overlay at the District.

13 I will say that -- I'm a little nervous.
14 I have my notes here -- Mr. Holmes has met with the
15 Quality of Life Committee, the Reed Cooke Civic
16 Association, as well as the ANC at large. At our
17 meeting last Tuesday we approved the development of
18 this project.

19 However, there are issues that this Board
20 should look at and that is, one, the -- as Mr. Holmes
21 as done, made a commitment to moderately priced
22 dwellings. The Reed Cooke Overlay was put into place
23 specifically because of the lack of equity in
24 development in the past in Adams Morgan. Where there
25 was income parity in our neighborhood at one time as a

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1 result of redlining and other influences, huge numbers
2 of persons have been displaced in past decades.

3 Mr. Holmes has placed three moderately
4 priced units in this development. We had met with him
5 to adjust issues of height, air, density, and
6 affordability. Issues of affordability in the Reed
7 Cooke Overlay discuss where variances are created,
8 that 50 percent of that space created by those
9 variances be made low and moderate income housing
10 specifically.

11 The other issue that brings me here today
12 is the intersection of 16th and Kalorama Road, as well
13 as Euclid Street. Euclid Street right now needs a
14 calming device. I represent a single member district
15 currently that is made up of 2,180 people in a two-
16 and-a-half-block radius. That includes the 2400 and
17 2600 blocks of 16th Street square going down Mozart to
18 Euclid at Fuller, out Euclid on the south side to
19 Ontario.

20 In that two-and-a-half square blocks we
21 currently have 2,180 people. What we need this Board
22 to do, as well as assisting Mr. Holmes, is to assist
23 the residents in the neighborhood by, one, making sure
24 that a traffic calming device is installed in Euclid
25 Street.

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1 In years past people would use Euclid
2 Street as a shortcut from Columbia Road. But now with
3 increasing density and gentrification and what were
4 single-family homes just a decade ago, these are
5 multi-family dwellings. The current FAR requires that
6 only three parking spaces were unit so we'll see
7 buildings with four apartments that were once single-
8 family housing with maybe two units.

9 We are also seeing getting here today
10 leaving the parking lot of the Dorchester was a near
11 collision because we need a traffic calming device
12 along Kalorama Road currently. It's a now
13 neighborhood. It's a dense neighborhood and we look
14 forward to residential development of this type. We
15 appreciate the fact that these residents will be made
16 into maturity affordable.

17 However, three units as other projects
18 come to this panel because there are 10 developments
19 pending in Reed Cooke, we want this committee and this
20 wonderful Board to be reminded of the importance of
21 the enforcement when you give that 50-foot variance
22 that those units be set aside appropriately.

23 When we talk about -- when we talk about
24 cost, I think Reed Cooke and Adams Morgan is a prime
25 neighborhood to examine cost. This is a prime

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1 neighborhood. I'm sure there are developments all
2 over the city where developers fairly break even, but
3 here the market is often much greater than Mr. Holmes
4 is proposing to sell these units for.

5 However, there are numerous people that
6 currently live in that neighborhood even at this cost
7 that would not be able to afford these units. I think
8 that when we look at prime neighborhoods, we need to
9 encourage housing production trust fund monies be used
10 in Adams Morgan.

11 We need to make sure that COG monies are
12 put in place in Adams Morgan. Now that there is a
13 reform and revitalization of DCHC, we see them as
14 needing to work with our neighborhood. I'll tell you
15 that the Office of Planning has been working closely
16 with us. Mr. Holmes as been in our neighborhood
17 working for a year. He's done the Colortone project
18 as well as other projects. We are happy with those
19 developments.

20 However, again, the issue here, my one
21 concern, is pedestrian safety, traffic calming
22 devices, the intersection of 16th and Kalorama Road.
23 16th and Kalorama Road and Euclid Street are very
24 close because of the configuration of the streets in
25 that area. It is frequent that you can hear,

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1 especially with the entertainment district, not
2 residential, bangs and car accidents at 1:00 and 2:00
3 in the morning.

4 VICE CHAIR RENSHAW: Ms. --

5 MS. JOHNSON: So it is a problem. But,
6 anyway --

7 VICE CHAIR RENSHAW: Ms. Johnson, I want
8 to break in right at this point just to ask -- well,
9 to assume that these matters relating to traffic
10 calming devices and pedestrian safety and a traffic
11 signal have been addressed by your ANC and the
12 appropriate department of the city government is the
13 Department of Transportation.

14 MS. JOHNSON: Yes, they have, and we have
15 passed resolutions.

16 VICE CHAIR RENSHAW: I would suggest that
17 you meet with, if you haven't done so, Mr. Laden and
18 Mr. Tanglioni and work with them to address these
19 needs in your community for these traffic calming
20 measures that you have brought to the attention of the
21 Board.

22 MS. JOHNSON: Okay. Also, Madam Chair,
23 it's the current issue of fixed cost of the land, the
24 environmental remediation, as well as the financial
25 proforma. I would like to encourage the community

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1 because the community is building. It has been
2 transient. Our neighborhood is constantly changing
3 demographically and community concerns that came up as
4 late as a week ago concerning height.

5 Mr. Holmes would have normally addressed
6 these issues if he had known, but the ANC itself has
7 the responsibility according to its bylaws to
8 publicize at least seven days in advance on its
9 stationery meetings of this type.

10 In some ways ANC Commission 1-C, as great
11 a Commission as it is, has failed in that capacity.
12 However, again, do support this project. I am
13 concerned about the limited numbers of affordable
14 units. With the exception of this development there
15 have been done of all the developments in Reed Cooke
16 in the last two years and that this Board be a support
17 for our neighborhood in making sure that it maintains
18 it's income diversity and continues to have some type
19 of inclusionary zoning that Mr. Holmes has fostered by
20 including a community art center in one of his
21 projects so that we get smart growth that supports the
22 health, safety, and quality of life for residents of
23 Reed Cooke and fosters neighborhood stabilization by
24 making sure there are affordable units for its current
25 residents.

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1 VICE CHAIR RENSHAW: We are fortunate to
2 have Mr. Parsons from the Zoning Commission with us
3 and I am sure he is taking notes if there is anything
4 to take back to the Zoning Commission regarding the
5 Reed Cooke Overlay and the matter in your community.
6 We appreciate that and we note that we have a letter
7 from the chairman of you ANC, Andrew James Miscuk. Is
8 that right?

9 MS. JOHNSON: Yes, Andrew Miscuk.

10 VICE CHAIR RENSHAW: Who has sent in and
11 we have waived in an October 28th letter that you had
12 a meeting on the 21st and you voted six to one in
13 support of the project.

14 MS. JOHNSON: That's correct.

15 VICE CHAIR RENSHAW: And that there are
16 eight members of ANC 1-C.

17 MS. JOHNSON: There are currently nine
18 members. As of the redistricting next year there will
19 be eight.

20 VICE CHAIR RENSHAW: Oh, you're up to date
21 on your count. Good for you. And five members
22 constitute a quorum so that would be six if you are
23 into next year. Seven of the Commissioners were
24 present at the meeting.

25 MS. JOHNSON: That's right.

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1 VICE CHAIR RENSHAW: Very good.

2 MS. JOHNSON: And I introduced a
3 resolution to support the project.

4 VICE CHAIR RENSHAW: Very good. We are
5 very pleased that you came down today to indicate your
6 concerns. Many of them, of course, relating to
7 traffic need to be voiced directly to the Department
8 of Transportation. You also brought in some concerns
9 of the Reed Cooke Overlay District which have been
10 noted by our colleague Mr. Parsons and all of us on
11 this Board.

12 MS. JOHNSON: Thank you so much. And,
13 again, height, air, density, and affordability are
14 major concerns as well as traffic management and
15 pedestrian safety. Thank you so much.

16 VICE CHAIR RENSHAW: Well, thank you very
17 much. But don't go away because maybe Mr. Glasgow has
18 a few questions. He doesn't. Any of my colleagues
19 have questions? You're getting off easy today.

20 Thank you so much for giving this report
21 and also making sure that your Commission is on
22 record. We do appreciate that very, very much and the
23 work that you're doing in your community. It's a
24 tough role to hold but you are obviously very
25 competent.

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1 MS. JOHNSON: I try. One last comment.
2 We would ask that developers that come before you for
3 variances when they come with these estimates,
4 proforma estimates, of the fixed cost, that you
5 remember this is a prime market where condos that Mr.
6 Hoffman has built have sold for \$300,000 to \$700,000
7 and \$900,000.

8 VICE CHAIR RENSHAW: We are quite aware of
9 that.

10 MS. JOHNSON: And that the Reed Cooke
11 Overlay is the only protection we have from complete
12 social and economic displacement for many of our
13 residents.

14 VICE CHAIR RENSHAW: Thank you very much.

15 MS. JOHNSON: Thank you.

16 VICE CHAIR RENSHAW: We know that there is
17 a representative from Reed Cooke with us. We have no
18 other government reports and we now have persons in
19 support, our Reed Cooke representative.

20 Are you Mr. Oliver?

21 MR. JACKSON: Good afternoon. I'm Edward
22 G. Jackson, Sr. I can speak on behalf of my wife,
23 Margaret Ann Jackson. I've been a resident of Reed
24 Cooke neighborhood for the past 44 years. I've served
25 on the ANC for a total of 20 years and currently am a

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1 member of the Quality of Life Committee of Reed Cooke
2 Neighborhood Association.

3 This whole project is -- I'm in support of
4 this project and I'm supporting the work that the
5 Hoffman group has been able to do and the Adams group
6 in the Adams Morgan area because I came along doing
7 the urban renewal days when we would pull so many
8 beautiful sites in Adams Morgan area only to come to
9 gain nothing from it.

10 For so long developers would not even look
11 our way but it has been a pleasure to have the quality
12 of developers who come in to the neighborhood and to
13 build and to improve our community. I was Advisory
14 Neighborhood Commissioner at the time the project was
15 approved for Mr. Hoffman at the Champlain Street, the
16 Lofts.

17 I was a Commissioner who supported that
18 and was able to get it approved. Mr. Frank Smith was
19 then the Ward 1 representative. Anyway, it's been a
20 blessing to see that area develop. I was just talking
21 with a long-time neighborhood guy earlier this
22 morning. He was saying how devastating that lot was
23 on Champlain Street.

24 For so many years the crime and the
25 problems we had and to see that crane saying PN

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1 Hoffman in operation I shouted with glee because 40
2 years coming to see these projects. I worked directly
3 in developing the Reed Cooke Overlay.

4 I named the Reed Cooke Organization after
5 Marie Reed Learning Center, as well as the Cooke
6 School and we built the jurisdiction around that
7 development and we sat night after night at the King
8 Emmanuel Baptist Church along with ann Hargrove and
9 many other pioneers to really develop this concept.
10 We wanted to do it because we wanted beautiful housing
11 and we wanted affordable housing. We wanted to
12 improve the landscape.

13 The late Josephine Butler, known as Jo
14 Butler, and I sat down one night and we designed our
15 own plan. We were not getting anywhere with the
16 zoning and Jo Butler and I sat down and we wrote up at
17 least 12 things we wanted to see. We developed the
18 idea of how it would be to see warehouses on Kalorama
19 Road developed into lofts and beautiful homes or
20 apartments which has really come to pass.

21 As head of the CDC we have contemplated
22 the plan on developing Colortone Press. We were not
23 successful but 20 years later I've lived to see this
24 become a reality with Mr. Holmes and the Adams group
25 and then the Hoffman group doing all the things I

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1 wanted to see take place here. These men have done a
2 tremendous thing. They have been God sent. They have
3 added quality of life that we want in the Adams Morgan
4 area.

5 I have always envisioned -- I moved there
6 44 years ago. I looked over the neighborhood and I
7 said this is a potential neighborhood that has great
8 potential but it had some drawbacks. It had an
9 industrial look. We were zoned industrial. We had a
10 transfer company on the low end of my street of
11 Ontario Road and so forth.

12 Anyway, we were fortunate in getting real
13 developments in the area. I was very fortunate to
14 have a chance to be in the development of the Morgan
15 School which now is Marie Reed Learning Center. I
16 head that project and I envisioned the groundbreaking
17 ceremony even before it happened became a reality. I
18 worked with Chelsea Roland of the General Services and
19 the Board of Education and school bishop Reed. We
20 named it after her.

21 VICE CHAIR RENSHAW: Mr. Jackson, you are
22 indeed a pioneer in your neighborhood. The work that
23 you have put into assuring that your neighborhood
24 turns out as you have -- your vision and how you have
25 projected your vision is, indeed, gratifying. I only

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1 wish there were more of you in various neighborhoods
2 because we would have perhaps more overlays. We would
3 also have perhaps more history. You certainly bring
4 history to this project and we are so glad that you
5 are able to give your comments today.

6 MR. JACKSON: Thank you.

7 VICE CHAIR RENSHAW: We have a letter from
8 the Reed Cook. Mr. Etherly.

9 MR. ETHERLY: Thank you, Madam Vice Chair.

10 I would like to note for the record that we also are
11 in receipt of a letter from Mr. Jackson as well in the
12 materials that were distributed to Board members this
13 morning.

14 We are in receipt of an October 25th
15 letter from the Reed Cooke Neighborhood Association
16 under the signature of Thomas Oliver, the president,
17 nothing the Reed Cooke Neighborhood Association
18 support for the project.

19 Without going into detail in the letter, I
20 will note, however, that the letter does include
21 reference to a condition that the Reed Cooke
22 Neighborhood Association would like to see to that
23 support and that condition would be for the
24 development of a construction management and
25 construction materials staging plan to assist in

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1 mitigation of the impact of materials delivery and
2 construction work on adjacent premises.

3 With that, Madam Chair, I will also note
4 for the record that we are in receipt of 15 --
5 counting the Reed Cooke Neighborhood Association 15
6 letters of support from various members of the
7 surrounding community and neighborhood as well. Thank
8 you, Madam Vice Chair.

9 VICE CHAIR RENSHAW: Thank you. And we had
10 received, I believe, three additional letters of
11 support. Are those in your count?

12 MR. ETHERLY: I believe that was included
13 in my count as well.

14 VICE CHAIR RENSHAW: All right. Fine.
15 Thank you.

16 Mr. Jackson, is there anything else that
17 you would like to --

18 MR. JACKSON: I would just like to say
19 that I appreciate your patience in listening to me and
20 my heart goes here. I've seen so many beautiful
21 projects. The late George Friend and I worked
22 together. He's on the business group. You probably
23 remember Mr. Friend.

24 Anyway, just to see the types of things
25 that have happened over the years unfold. For so many

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1 years our neighbors took a negative attitude. After
2 the riots the neighborhood went down.

3 Carl Hess and I, he was living at the
4 time, and we used to talk about the things we wanted
5 to see, the kind of development in Reed Cooke because
6 we were just going down to zero almost. Then see the
7 development of the Marie Reed Learning Center which
8 was a victory for us. That was a \$12 million project
9 there.

10 Then we came on and was able to get a bank
11 development where they were going to put a B&P station
12 on 18th and Clemy Road. We fought that battle with
13 the ANC in the community. We won that and look what
14 is there now, a beautiful bank and the markets.

15 VICE CHAIR RENSHAW: We --

16 MR. JACKSON: I was walking through the
17 neighborhood just the Saturday before last just to see
18 it.

19 VICE CHAIR RENSHAW: We hope that you, and
20 know that you will continue to be very observant to
21 what goes on in your neighborhood and stand up for
22 what you feel the community needs to have for their
23 quality of life. We certainly take note of your
24 comments and those of the ANC for the area and
25 appreciate your enthusiasm, though, for this project

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1 and for coming before us and letting us know. Thank
2 you so much.

3 MR. JACKSON: Then the pluses that we are
4 getting, the new H. B. Cooke School.

5 VICE CHAIR RENSHAW: Very good.

6 MR. JACKSON: We are working on that now.
7 We are meeting -- I mean, we meet all the time. I
8 went to a meeting this morning at 7:30 so we meet all
9 the time.

10 VICE CHAIR RENSHAW: You do better than we
11 did. Thank you again.

12 Mr. Glasgow, do you have any comments?
13 All right. Thank you.

14 Are there any other persons in support who
15 would like to testify at this point?

16 All right. Now we are turning to any
17 persons in opposition. Are there any persons in
18 opposition? Please come forward and introduce
19 yourself. You have three minutes, please.

20 MR. HANCUFF: Hi. My name is Richard
21 Hancuff and I live at 2320 Ontario Road, N.W. which
22 looks directly upon the property in question here. I
23 was one of the signers of the petition that you have
24 before you, the 20 neighbors. I have a copy of that
25 with me here today.

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1 Our main concern is not with the project
2 itself. We like the entire project. We support the
3 entire project. It's rather with the height on the
4 Champlain end of the property.

5 We have heard many different numbers on
6 what the height actually will be. I know today there
7 was discussion that it was 41 feet with a setback of
8 26 feet. However, when pressed that 26 feet becomes -
9 - I don't know what the exact setback becomes at the
10 alley area, but it certainly isn't 26 feet. It comes
11 much closer to that 40-foot shelf so we get a 50 foot
12 at the end regardless.

13 If I could point to the Champlain Street
14 elevation, the top right image, the setback shown from
15 the corner looks like it's 26 feet the whole way but,
16 as you can see from the left-hand side, the 2327
17 Champlain Street, the overhead view, what you actually
18 see is it comes right out and begins to approach the
19 property line as you hit the alley area.

20 What we are looking at basically is 50
21 feet at that edge. What we would like to see is a
22 setback of 50 feet as opposed to zero feet at that
23 corner. Maybe it's 26 feet at its widest but it's
24 zero feet at that corner which directly impacts all of
25 these two-story single resident dwelling houses on

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1 Kalorama Road -- I'm sorry, on Ontario Road.

2 There are some pictures included. Did
3 everyone get a chance to see a copy of the pictures?
4 You can see what the current loft project --I'm
5 referring to this one.

6 MR. ETHERLY: Madam Vice Chair, if I may,
7 Mr. Hancuff is referencing the pictures that were
8 attached to the rear of the October 14th petition. It
9 might be helpful if Mr. Hancuff could identify what
10 the relevant pictures are.

11 MR. HANCUFF: The condominium building on
12 Champlain Street, this picture, which shows the edge
13 of the loft building which has already been built, and
14 how it fits in with the existing structures there, how
15 it dwarfs the existing structures.

16 I heard earlier testimony today that, in
17 fact, the current structure would be -- the proposed
18 structure would be actually at about the same height
19 as the current existing structure. I have also heard,
20 of course, it would be much smaller. Today there was
21 testimony that it would be about the same height.

22 If you look at the bottom diagram over
23 here, you see the height of the loft project, the
24 completed loft project, at 60 feet, I believe it is.
25 Sixty feet something or other. The measurement of the

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1 roof on the right-hand side is at -- I can't see from
2 here but, at any rate, it's about 50, about 10 feet
3 lower. If you'll notice the top of the actual
4 building, which is not where they are measuring from,
5 the top of the actual building, it is about the same
6 height as the loft project. I'm a little concerned
7 about where these measurements are coming from.

8 Just as a point of information, how does
9 the street get measured on Kalorama Road? How do we
10 arrive at a 50-foot wide street on Kalorama?

11 VICE CHAIR RENSHAW: We will question Mr.
12 Wells. The right of way?

13 MR. HANCUFF: So that includes the
14 sidewalk?

15 VICE CHAIR RENSHAW: Yes.

16 MR. HANCUFF: So we're not talking about
17 vehicular traffic on that road because that block
18 between Ontario and Champlain is considerably for
19 vehicles. In fact, on that block and that block alone
20 there is no parking on one side of the street, the
21 north side of the street because of the narrowing of
22 the road.

23 VICE CHAIR RENSHAW: Okay.

24 MR. HANCUFF: I do appreciate the work
25 that John Holmes has done and that PN Hoffman have

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1 done and the architects have done as well in trying to
2 accommodate a lot of the community concerns. Again,
3 we do not -- the signers of this petition and I do not
4 particularly block this project at all on grounds of
5 it being a bad project. It's just the height on the
6 end that is our major concern. As the petition makes
7 clear, we have no opposition to any of the other
8 variances or special exceptions.

9 VICE CHAIR RENSHAW: Just the height.

10 MR. HANCUFF: Just the height.

11 VICE CHAIR RENSHAW: All right. Just the
12 height at the corner.

13 MR. HANCUFF: We are basically asking them
14 to go back and step it down at 50 feet rather than at
15 26 feet away from the corner, which I believe earlier
16 today they said would take up one unit -- two units
17 out of 68 so down to 66 units. I hope the
18 profitability of the project doesn't rely on two
19 units.

20 VICE CHAIR RENSHAW: All right.
21 Commissioners, Board members, do you have any
22 questions for Mr. Hancock?

23 MR. HANCUFF: Hancuff, C-U-F-F.

24 VICE CHAIR RENSHAW: C-U-F-F. Thank you.
25 Now, you have spoken to the applicant about stepping

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1 down the edge of that property?

2 MR. HANCUFF: I spoke with --

3 VICE CHAIR RENSHAW: Mr. Holmes?

4 MR. HANCUFF: -- Mr. Holmes on Friday.

5 VICE CHAIR RENSHAW: And the response from
6 Mr. Holmes?

7 MR. HANCUFF: It was stepped down 26 feet
8 he told me. It was at 26 feet from the corner. That
9 is a starting point, I would agree, but it's a little
10 bit deceptive to say stepped back 26 feet when you are
11 measuring from the widest area and it comes down to
12 zero feet stepped back at the narrowest.

13 VICE CHAIR RENSHAW: So your complaint has
14 not been satisfied?

15 MR. HANCUFF: Mine hasn't. I don't know
16 about if he was able to speak to the other members who
17 had signed the petition but mine has not.

18 VICE CHAIR RENSHAW: All right. And
19 you're appearing as a person in opposition?

20 MR. HANCUFF: I am a person in opposition.

21 VICE CHAIR RENSHAW: You are conveying --
22 do those who have signed the petition, have they
23 organized into any group in opposition?

24 MR. HANCUFF: Not that I'm aware of. I
25 did not circulate the petition. I am one of the

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1 people who signed it.

2 VICE CHAIR RENSHAW: They are just
3 individual signers.

4 MR. HANCUFF: Yes. The person who created
5 and circulated the petition is out of town this week
6 and unable to make it. I don't know if he had talked
7 with any people about forming a group.

8 VICE CHAIR RENSHAW: All right. And you
9 feel that two units -- up to two units could be
10 sacrificed?

11 MR. HANCUFF: I'm not a developer but,
12 yeah.

13 VICE CHAIR RENSHAW: But that's what you
14 would like?

15 MR. HANCUFF: If that is the sacrifice
16 that has to be made to go back 50 feet, then I don't
17 see how that would adversely affect the overall
18 profitability of the project.

19 VICE CHAIR RENSHAW: Have you crunched the
20 numbers?

21 MR. HANCUFF: Only in a really layman's
22 way. I'm not an accountant. I am a computer person
23 so I just did quick math on what \$300,000 per unit
24 would be for 66 units as opposed to 68 units. Around
25 a \$20 million projects becomes \$19.4 million project.

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1 It's actually \$19.5 at \$30,000 at 65. Anyway, just
2 real quick. Like I say, I don't know all the
3 particulars because I don't have all of the data about
4 how much it cost them to get the property, etc.

5 VICE CHAIR RENSHAW: Mr. Zaidian has a
6 question.

7 MR. ZAIDAIN: Just to make sure I'm clear,
8 can you kind of summarily state how the stepping issue
9 affects your property and your road, Ontario?

10 MR. HANCUFF: Sure. I live on Ontario
11 Road and the backyard of my house looks out pretty
12 much onto the corner of Kalorama and Champlain. I
13 live two doors in on Kalorama below -- I'm sorry, on
14 Ontario below Kalorama. Right now --

15 MR. ZAIDAIN: What would be the
16 approximate distance?

17 MR. HANCUFF: Approximate distance?

18 MR. ZAIDAIN: Just generally. I know you
19 can't give me --

20 MR. HANCUFF: Fifty feet.

21 MR. ZAIDAIN: Okay.

22 MR. HANCUFF: Well, from the actual corner
23 of the property probably a little bit less than that.
24 From the corner of our property to the corner of
25 their property about 40 feet.

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1 MR. ZAIDAIN: Okay. I'm sorry. Go ahead.

2 MR. HANCUFF: To the corner probably 50 or
3 60 feet. At any rate, what the lofts did -- what the
4 current loft project did effectively was block out any
5 view that we had of the west of D.C. which, you know,
6 to tell you the truth, was a sacrifice I was quite
7 willing to make to get rid of the vacant lot that was
8 there. Those were also across Champlain Street.

9 Now what we're looking at is building a
10 second building that is going to isolate further the
11 lower end of Adams Morgan. It's going to bring that
12 skyline much closer to us.

13 It's bad enough they are going over double
14 the height of the current structure on that lot, but
15 once we start adding a few more stories, then we're
16 looking at something colossal looming in the backyard,
17 to tell you the truth.

18 MR. ZAIDAIN: So it's blocking your view
19 is what the issue is.

20 MR. HANCUFF: Blocking --

21 MR. ZAIDAIN: I don't mean to downplay
22 that. I just want to make sure I'm clear.

23 MR. HANCUFF: Not that we have much of a
24 view. It's not blocking an esthetic view of a
25 mountaintop or anything like that. What it is doing

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1 is basically in terms of scale what we end up doing is
2 looking into the back of a brick wall. There is glass
3 on the corner, yes. I'm not discounting that. I
4 think it's actually very nice what they've done on the
5 corner. What we are looking at in the driveway area
6 there and in the back of the building is wall.

7 MR. ZAIDAIN: Okay. Thank you. I
8 appreciate it.

9 VICE CHAIR RENSHAW: All right. Thank you
10 very much. Any Board members have questions for Mr.
11 Hancuff? Mr. Parsons.

12 MR. PARSONS: I want to make sure that
13 these are the drawings that you and your neighbors
14 reviewed when you wrote this letter, In other words,
15 there's no change to the corner.

16 MR. HANCUFF: At the time that we wrote
17 this -- I didn't write the letter, as I said. At the
18 time I talked to the person who did write the letter,
19 we were not aware of the particulars of the drawings.
20 We had been to the Reed Cooke meeting that was held
21 in the church about a week before we wrote the letter.

22 MR. PARSONS: So at that time you didn't
23 know the building was 41.5 feet?

24 MR. HANCUFF: There were -- it was kind of
25 confusing at that meeting. I will say at that point I

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1 was not clear on what the actual height on the corner
2 was. At the time that I heard it was 41 feet I
3 thought, okay, that's not so bad. Now I see these
4 drawings and I'm, you know, feeling a little bit
5 misled on what the 41 feet actually is because this
6 setback is not 26 feet if you take a look at the
7 corner.

8 MR. PARSONS: Thanks.

9 VICE CHAIR RENSHAW: All right. Mr.
10 Glasgow, do you have any questions?

11 MR. GLASGOW: I just have one or possibly
12 two questions. I want to show the witness the platt
13 that we have that is attached in the statement because
14 I want to make sure where his house is located. You
15 said that you are south of Kalorama. It's your
16 statement that with respect to this drawing that is
17 part of our Exhibit A, it is the second house in south
18 of Kalorama.

19 MR. HANCUFF: Right.

20 MR. GLASGOW: I just wanted to clarify
21 that. Thank you.

22 VICE CHAIR RENSHAW: Thank you very much.
23 Anyone else in opposition? All right. Closing
24 remarks.

25 MR. GLASGOW: Thank you, Ms. Renshaw, and

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1 members of the Board. We do believe that we have met
2 the burden of proof for all the areas of relief that
3 we have requested. We have gone through a significant
4 process with the community, a very lengthy process
5 with the community, and we believe a very successful
6 process with the community, although it was not
7 unanimous. I think on a project like this in a
8 community like this to have unanimous support for the
9 project, I think, would be unusual.

10 With respect to how we have met our burden
11 of proof, we believe that we have met all the
12 requirements for the granting of this application. I
13 did want to make sure that I understood exactly where
14 the person in opposition lived because with respect to
15 being south of Kalorama Road, I think with respect to
16 any sun angles or anything else, would cast no shadows
17 on the property. That's not possible. I believe that
18 if you were to take a quick look using the Kalorama
19 right of way as 50 foot in width to the rear of the
20 house located on the property appears to be over 100
21 feet away. It is some distance there. We believe
22 that there is no adverse impact with respect to that
23 property. We do have some setback as we get to the
24 Kalorama and Champlain intersection. We would request
25 the Board to grant the application. I appreciate you

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1 taking the time to hear the witnesses and the
2 presentation.

3 VICE CHAIR RENSHAW: Thank you, Mr.
4 Glasgow. Are you requesting anything else?

5 MR. GLASGOW: We would like to receive a
6 bench decision today if that is possible.

7 VICE CHAIR RENSHAW: All right. Now it
8 comes back to the Board. Board members, what is your
9 pleasure?

10 MR. ETHERLY: I am comfortable with the
11 applicant's presentation. I think we have had a very
12 substantial discussion on the record regarding many
13 aspects of the burden of proof here. I would be very
14 comfortable moving forward.

15 Perhaps just for sake of discussion, Madam
16 Chair, I would move for approval of application No.
17 16931 of 2327 Champlain Street pursuant to 11 DCMR
18 3104.1 for special exception from the height
19 limitations under Sections 1402 and 1403, special
20 exception from the roof structure provisions under
21 Sections 400 and 411, and pursuant to 11 DCMR 3103.2 a
22 variance from the floor area ratio requirements, from
23 the lot occupancy requirements to allow the
24 construction of apartment building and premises at
25 2327 Champlain Street, N.W. in the Reed Cooke R-5-B

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1 District. Thank you, Madam Chair. That would be my
2 motion.

3 VICE CHAIR RENSHAW: All right. Do I have
4 a second?

5 MR. ZAIDAIN: I'll second the motion.

6 VICE CHAIR RENSHAW: All right.
7 Discussion and comments.

8 MR. ETHERLY: Yes, Madam Chair. I would
9 be more than happy to at least start us off with
10 discussion because I'm sure we are probably going to
11 have some substantial conversation.

12 Let me deal with the variance as a start.
13 We have discussed, I think, at length the
14 topographical nature, the topography of the particular
15 site. I think we've had some substantial discussion
16 as it relates to some of the subsurface conditions and
17 soil conditions as it relates to the property. I am
18 very sensitive to, I believe, the direction of my
19 colleague, Mr. Parsons', concerns as it related to how
20 do we necessarily deal with that.

21 I want to be very careful in terms of how
22 I talk about that because I believe when you look at
23 the totality of the application, when you take into
24 consideration the subsurface conditions as it relates
25 to some of the remediation that's going to have to

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1 take place with regard to prior uses on the site, when
2 you look at that --

3 We didn't talk at length about the issue
4 of the silt stratum but when you take a look at that
5 and you partner that up with the unusual shape and
6 topography of the site, and also bring into play the
7 -- I don't want to say, concessions that were made by
8 the applicant because I think the applicant did very
9 well to speak with the community at length as we heard
10 both from the ANC and from the Reed Cooke Neighborhood
11 Association.

12 When you take all of those factors
13 together, I think you do have a very compelling case
14 for what qualifies as an extraordinary or exceptional
15 condition with regard to this property.

16 We've talked at some length about, well,
17 if you attempt to address some of these issues and
18 stay within the footprint of what you have, then you
19 begin getting into issues of meeting some of the
20 market objectives of the particular project.

21 I think the arguments that were presented
22 there as it related to testimony we heard from the
23 applicant were also compelling. I want to note that I
24 don't think it's this Board's responsibility or charge
25 to necessarily ensure that any developer reaches a

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1 certain target number when it comes to profit or
2 performance.

3 I believe what is critical here is to help
4 ensure that we are forwarding the objectives of the
5 zoning laws and regulations and overlays broadly
6 speaking but, of course, also working with the
7 community to reach certain objectives.

8 I think we have heard very compelling
9 testimony that there are substantial segments of the
10 community, perhaps not all, but substantial segments
11 of the community that have voiced strong support for
12 this project in light of the current status of the
13 particular site. I think the applicant has done very
14 well to speak with those members of the community that
15 have some concerns and address them wherever possible.

16 Because the applicant has worked so
17 diligently to address some of the concerns regarding
18 setbacks, I wouldn't want to necessarily see those
19 efforts punished in any kind of punitive way by an
20 adverse decision here.

21 As it relates to the detriment of the
22 public good, I'll just simply speak to the fact that,
23 once again, we've had substantial support expressed by
24 members of the community here. When you move toward
25 special exceptions that are sought under the

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1 application here, I am very comfortable with what has
2 been put on the record there with regards to special
3 exception for the roof structures, special exceptions
4 as it relates to the Reed Cooke Overlay we've heard
5 towards the close of the presentations, some
6 substantial concern expressed regarding height. I
7 believe the applicant in terms of the presentations
8 and, in particular, some of the site elevations that
9 were presented demonstrated some substantial efforts
10 to help minimize the visual impact of those roof
11 structures as you view the property from the street
12 and from some adjoining properties. I'll pause right
13 there, Madam Chair, and invite additional discussion
14 but I'm comfortable in moving forward.

15 VICE CHAIR RENSHAW: Thank you, Mr.
16 Etherly.

17 Mr. Parsons.

18 MR. PARSONS: I'm very troubled. Unless
19 you can help me with precedent this Board may have
20 already set with an order that reflects that one of
21 the reasons for our decision is that this site is
22 contaminated.

23 I certainly believe that the water table
24 is unique to this site, but I am very concerned that
25 we start to stray into whether or not this applicant

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1 paid too much for the property and, therefore, we are
2 somehow helping him recover those costs that he has
3 because of prior contamination.

4 I would urge us not to put in our findings
5 that that is a basis for our decision. Otherwise, I
6 support the project and look forward to participating
7 in a bench decision.

8 VICE CHAIR RENSHAW: Mr. Zaidain.

9 MR. ZAIDAIN: I would just simply say I
10 completely concur with Mr. Parsons. I didn't lend a
11 lot of weight into the argument about the
12 contamination for those very reasons, but I do think
13 that the cases were made with the other aspects of the
14 proposal and it did meet the qualifications for the
15 special exception. I'm in favor of the motion,
16 although not on the basis of the contamination.

17 VICE CHAIR RENSHAW: Very good. This
18 application brings to our attention again the
19 importance of overlays and guiding development of
20 special districts in the city. It encourages a
21 marriage almost between the developer and the
22 community. Almost, I think, in some respects a
23 greater level of proof, a greater level of energy that
24 has to go into bringing an application before the
25 Board.

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1 Here the outreach to the community we
2 don't want to minimize this to any degree because we
3 want to make sure that developers in this city work
4 with the community on bringing forward to this Board
5 what should be very successful developments.

6 Here the developer seems to have reached
7 out to the community to a large degree working with
8 the ANC and the Reed Cooke Overlay. Yes, there were
9 persons in opposition. We have heard from Mr. Hancuff
10 today, his opposition about the height, not about the
11 other variances and special exceptions. Just
12 specifically about the height.

13 I am hopeful that the applicant and Mr.
14 Hancuff and those other persons who are in opposition
15 to the height could get together again to see if there
16 cannot be a further accommodation to be made. That
17 would be something that the developer and the
18 community should work out, shall we say, on the
19 sidelines, not in front of the limelight, so to speak.

20 We have certainly heard your comments, Mr.
21 Hancuff, and take note of them. They are in the
22 record, of course. Again, this is rather an
23 interesting project. It certainly is bringing to the
24 Reed Cooke Overlay what the Reed Cooke Overlay is
25 speaking to, residential units. And we look to seeing

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1 a very successful project when it's up and running. I
2 would be voting with the majority, which seems to be
3 all of us, in favor of this project, but take note of
4 Mr. Parsons' concern that our vote does not reflect
5 the site contamination. That is not part of our --
6 what shall we say, a factor that has persuaded our
7 vote.

8 With that, if there is no other comment to
9 be made --

10 MR. ETHERLY: Madam Vice Chair.

11 VICE CHAIR RENSHAW: Yes, Mr. Etherly.

12 MR. ETHERLY: I would note in closing that
13 there were two specific concerns that had been raised.

14 One by the ANC representative who was present, Ms.
15 Johnson, if I recall correctly, and that was the issue
16 of the moderate income availability in terms of units.

17 I will just once again reiterate the
18 opinion that was expressed by Corporation Counsel that
19 that would be something that would be outside of this
20 Board's power to impose and/or enforce. I would note
21 to the applicant that you have indeed set another bar
22 for working with the community.

23 I hope that dialogue around affordability
24 and units that would be accessible to a broad range of
25 income levels would continue to be part of the

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1 discussion. I'll also note that the Reed Cooke
2 Neighborhood Association did request the inclusion of
3 the construction management plan.

4 I didn't include that as a condition in my
5 motion but would definitely encourage the applicant to
6 give every consideration and thought to putting
7 something in place to assist the neighborhood as you
8 transition through construction towards completion of
9 the project. Thank you, Madam Chair.

10 VICE CHAIR RENSHAW: Very good. All
11 right. Are we all ready to vote? All those in favor,
12 aye.

13 BOARD MEMBERS: Aye.

14 VICE CHAIR RENSHAW: If you could record
15 the vote, Ms. Bailey.

16 MS. BAILEY: Thank you, Mrs. Renshaw. The
17 vote is recorded as four, zero, one to approve the
18 application. The motion was made by Mr. Etherly. Mr.
19 Zaidain seconded. Mr. Parsons and Mrs. Renshaw are in
20 agreement. Mr. Griffis is recused from hearing this
21 case. Mrs. Renshaw, staff is recommending a full
22 order for this case.

23 MR. GLASGOW: It's up to you all, Ms.
24 Renshaw, but I think given the issues that were
25 raised, we can go with the summary order.

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1 VICE CHAIR RENSHAW: I think that we will
2 go the route of the full order, Mr. Glasgow.

3 MR. GLASGOW: It's up to you.

4 MS. BAILEY: To facilitate the process,
5 Mr. Glasgow, is it possible for you to give us a draft
6 copy of that?

7 MR. GLASGOW: I would be most happy to.

8 VICE CHAIR RENSHAW: We knew you would say
9 that, and thank you very much.

10 I am allowed to hit the gavel to make note
11 that at almost 1:35 we have ended our morning session.

12 Our thanks to all of you and a good afternoon. Enjoy
13 wet weather.

14 We will now be breaking for lunch. We
15 will be back within 45 minutes so by 2:15 we will be
16 back on the record.

17 (Whereupon, at 1:35 p.m. off the record
18 for lunch to reconvene at 2:15 p.m.)
19
20
21
22
23
24

25 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

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2:30 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. We will call to order the 29th October '02 hearing of the Board of Zoning Adjustments for the District of Columbia. My name is Geoff Griffis, Chairman. Joining me today is the Vice Chair, Ms. Anne Renshaw.

Representing the National Capital Planning Commission is Mr. Zaidain. Also with us today is Mr. Curtis Etherly who will be joining us momentarily. Copies of today's hearing are available for you. They are located at the table where you entered into the hearing room. Please let staff know if we run out of copies.

Couple of quick things. All hearings are recorded and, therefore, there are several things that you need to pay attention to. In coming forward to speak to the Board you must speak into a microphone and that microphone must be on. We would also ask that there not be any disruptive noises or actions in the hearing room so that the proceedings can proceed smoothly.

Also, when coming forward to speak to the Board, you must fill out two witness cards. Witness card are available at the table where you entered

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1 into. They are also at the table in front of us. Two
2 witness cards are to be filled out. Both cards go to
3 the recorder who is sitting to my right.

4 Order of procedure today for special
5 exceptions and variances will be, for the first case,
6 statement and witnesses of the applicant. Second, our
7 government reports attended to the application. Those
8 include Office of Planning, Department of
9 Transportation, and any other submissions that we
10 have. Third, we will hear from the ANC, the Advisory
11 Neighborhood Commission. Fourth, we have parties or
12 persons in support. Fifth will be parties or persons
13 in opposition. Sixth, finally, closing remarks and
14 rebuttal testimony from the applicant.

15 Cross-examination of witnesses is
16 permitted by the applicant and parties. The ANC is
17 automatically a party in the case. That is the ANC
18 within which the property is located.

19 The record will be closed at the
20 conclusion of all hearings except for any material
21 specifically requested by the Board. We will be very
22 specific in what is to be submitted and when it is to
23 be submitted to the Office of Zoning after which the
24 record will be finally closed and no other information
25 would be accepted by the Board.

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1 The Sunshine Act requires that public
2 hearing on each case be held in the open and before
3 the public hearing each case be held in the open and
4 before the public. The Board may, however, consistent
5 with its rules of procedure and the Sunshine Act enter
6 executive session during or after the public hearing
7 on a case for purposes of reviewing and/or
8 deliberating on the case.

9 The decision of the Board in contested
10 cases and noncontested cases must be based exclusively
11 on the record and, therefore, we ask in order to avoid
12 an appearance to the contrary, the people present
13 today not engage Board members in conversation.

14 I would ask that everyone turn off their
15 cell phones and beepers at this time as we go into
16 this afternoon's hearing. We will make every effort
17 to conclude this sometime today. Before 6:00 I have
18 my doubts. I do want to say we really appreciate
19 everybody's patience today and being here this
20 afternoon. We had large cases this morning that went
21 longer than we thought and, therefore, we are a little
22 bit behind schedule but we hope to make it up very
23 quickly.

24 At this time we will entertain preliminary
25 matters. Preliminary matters are those which tell us

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1 whether a case will or should be heard today such as
2 request for postponements, withdrawals, or
3 continuances or whether adequate notice of the case
4 has been provided. If you are not prepared to go
5 forward with a case today, or if you believe the Board
6 should not proceed, now is the time to raise such a
7 matter. Do we have any preliminary matters?

8 Yes, sir. Why don't you come forward.
9 Let me also ask while you're coming to the table if
10 staff has any preliminary matters and also wish a good
11 afternoon to our able Office of Zoning Staff Ms.
12 Bailey and Mr. Moy who are joining us today. Any
13 preliminary matters now?

14 MS. BAILEY: Mr. Chairman, thank you.
15 Good afternoon, sir. We do and it has to do with a
16 case that was scheduled but has been withdrawn,
17 Application No. 16735 of Beverly J. Anderson. That
18 case was withdrawn, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Good. Thank you
20 very much. We are lucky.

21 Yes, sir.

22 MR. HILL: My name is Gil Hill. I'm the
23 Chair of the Zoning Committee of the Dupont Circle
24 Civic Association. I came here this afternoon
25 prepared to testify on BZA Case 16823. Unfortunately,

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1 I thought it was going to be heard at 1:00 and I have
2 an obligation to leave here at 4:00. I would like to
3 request that I be allowed to submit a letter to the
4 record in lieu of the testimony that I was going to
5 give because I don't think you're going to get to it
6 by 4:00.

7 CHAIRPERSON GRIFFIS: Certainly not the
8 testimony. Absolutely. I see no problem with that.
9 I doubt I have any objection from my Board members. I
10 think that would be perfectly appropriate. Do you
11 have a written submission for today?

12 MR. HILL: Well, I just have an outline so
13 I have to convert it to a letter.

14 CHAIRPERSON GRIFFIS: What kind of time
15 frame are you looking at in terms of submitting it?

16 MR. HILL: I could do it tonight and send
17 it off tomorrow. Or, if you have a fax number, I
18 could fax it to you tonight.

19 VICE CHAIR RENSHAW: Is Dupont Circle a
20 party in the case?

21 MR. HILL: Yes, we are.

22 VICE CHAIR RENSHAW: All right. So we
23 would need to cross-examine. In other words, you
24 could cross-examine or if he cross-examined.

25 CHAIRPERSON GRIFFIS: Right. Indeed. I

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1 think what we'll do is we'll take your submission by
2 the close of business tomorrow.

3 MR. HILL: Okay.

4 CHAIRPERSON GRIFFIS: We will have -- as
5 we get through today that case, we will set the
6 schedule that it reflects time for response to your
7 written submission so the record would be filled.

8 MR. HILL: I will hand carry a copy to
9 this office tomorrow.

10 CHAIRPERSON GRIFFIS: Okay. I think the
11 fax is pretty reliable also. Is it not?

12 VICE CHAIR RENSHAW: But we need a hard
13 copy also.

14 MR. HILL: I don't mind. I'm retired.

15 CHAIRPERSON GRIFFIS: Of course, of
16 importance to note is that you will serve all the
17 parties and the applicant on the case.

18 MR. HILL: Right.

19 CHAIRPERSON GRIFFIS: Good. So everyone
20 will receive that tomorrow. We do appreciate you
21 being here and sorry we couldn't accommodate you first
22 thing in the afternoon.

23 MR. HILL: I know.

24 CHAIRPERSON GRIFFIS: Enjoy the rainy cold
25 afternoon.

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1 Any other preliminary matters at this
2 time? Indeed.

3 MR. POLIVY: My name is Margot Polivy. I
4 represent the Riggs Place neighbors in the next case.

5 CHAIRPERSON GRIFFIS: Time frame.

6 MS. POLIVY: Yes. I was supposed to make
7 a call to the rest of them. That doesn't mean they
8 won't arrive beforehand but could you give us some
9 idea as to when you're aiming for in that case?

10 CHAIRPERSON GRIFFIS: This is what I
11 foresee. Again, this is my limited opinion in looking
12 at what we have to do. We have a request for party
13 status. I would imagine that we actually get into
14 this case on or about 3:00. I think this case is a
15 special exception, although there is a lot of people
16 involved.

17 I will say this once. I was going to say
18 this at the opening of the first case in the
19 afternoon. The Board is going to be very diligent in
20 focusing people's testimony and information to the
21 specific substance of the case. There are -- we want
22 to hear everybody but we do want to stick to the facts
23 of the matter.

24 I would imagine that we will take about an
25 hour and a half on the Bass case inclusive of half an

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1 hour doing party status and preliminary matters, a
2 total of two hours which would put us to starting the
3 afternoon case at around 4:30.

4 MS. POLIVY: Thank you.

5 CHAIRPERSON GRIFFIS: That will change by
6 the minute. Good. That being said, anything else?
7 Any other preliminary matters for either case in the
8 afternoon?

9 Yes, sir. You'll need to come up and
10 speak into the mike. Could you turn that on for me
11 and just give me your name.

12 MR. HURTEAU: I'm Vincent Hurteau.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. HURTEAU: Last name H-U-R-T-E-A-U.
15 One of the persons who has party status to the Bass
16 case could not stay here and he left a letter. What
17 shall I do with the letter? Give you the letter or
18 copy it?

19 CHAIRPERSON GRIFFIS: Okay. First
20 clarification, no one has party status yet.

21 MR. HURTEAU: Oh, okay. Potential party
22 status.

23 CHAIRPERSON GRIFFIS: Request for party
24 status. The application is in. So you have a letter
25 and that's outlining the testimony of someone that's

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1 made an application for party status?

2 MR. HURTEAU: That's correct.

3 CHAIRPERSON GRIFFIS: Okay. Either way,
4 frankly, it's probably going to be best -- let's pick
5 it up when we we're going through the applications and
6 you can indicate who it is in terms of the party.
7 Then it would be appropriate at the point of testimony
8 that you would submit that on behalf of that person or
9 party.

10 Very well then. Anything else? Good.
11 Why don't we call the first case of the afternoon, Ms.
12 Bailey. Thank you.

13 MS. BAILEY: Application No. 16920 of
14 William Bass, pursuant to 11 DCMR 3104.1, for a
15 special exception to establish an art gallery (1st
16 floor and a portion of the 2nd floor) with an existing
17 apartment house under Section 361, in the Dupont
18 Circle D/R-5-B District at premises 1629 21st Street,
19 N.W. (Square 93, Lot 122).

20 All those wishing to testify in this case
21 please stand to take the oath. Please raise your
22 right hand. Do you solemnly swear or affirm that the
23 testimony you are about to give in this proceeding
24 will be the truth, the whole truth, and nothing but
25 the truth?

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1 WITNESSES: I do.

2 MS. BAILEY: Thank you. Mr. Chairman, as
3 you had indicated, there are several requests for
4 party status in this case.

5 CHAIRPERSON GRIFFIS: I would like you to
6 take a moment to look at these. I would like to have
7 Mr. Saltzberg, Stephen Saltzberg, at the table. I
8 would also like to have Ms. Carol Ridker, and also Mr.
9 Martin Schussheim. Very good.

10 MR. HURTEAU: I had requested party status
11 several months ago. I'm Vincent Hurteau.

12 CHAIRPERSON GRIFFIS: Yes, indeed. I have
13 yours.

14 MR. HURTEAU: Great. And I have --

15 CHAIRPERSON GRIFFIS: Yours is complete
16 which is why you're not being asked to the table.

17 MR. HURTEAU: Gotcha. I have a letter
18 also from Stephen Saltzberg. He is not here.

19 CHAIRPERSON GRIFFIS: Okay. Is that
20 different than what is submitted on October 1?

21 MR. HURTEAU: I believe it is. He just
22 literally faxed this a few moments ago.

23 CHAIRPERSON GRIFFIS: Okay. Why don't you
24 be up here, too.

25 MR. HURTEAU: Okay.

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1 CHAIRPERSON GRIFFIS: Oh, please.

2 Everyone be comfortable. Have a seat.

3 MR. SUISMAN: I would just like to request
4 party status also.

5 CHAIRPERSON GRIFFIS: Have you submitted a
6 request for party status?

7 MR. SUISMAN: No, I was out of the country
8 at the prior hearing.

9 CHAIRPERSON GRIFFIS: Okay. Have a seat.

10 If you want to repeat what she said, she
11 can be on the record.

12 MR. SUISMAN: Those that requested by
13 filling out a sheet, what is their status at this
14 moment?

15 CHAIRPERSON GRIFFIS: That's what we're
16 determining right now.

17 MR. SUISMAN: Okay.

18 CHAIRPERSON GRIFFIS: Let me run through a
19 couple of things.

20 MS. MULLER-MACARTHUR: (Inaudible).

21 CHAIRPERSON GRIFFIS: Ma'am, if you're
22 going to talk, you have to be on the record.

23 MR. ZAIDAIN: No, she said it right.
24 There were two that were filled out completely. We're
25 going to deal with those after we deal with these.

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1 Right?

2 CHAIRPERSON GRIFFIS: I've called
3 everybody that I have on my list.

4 What's your name, ma'am?

5 MS. MULLER-MACARTHUR: Solange MacArthur-
6 Muller or Muller-MacArthur.

7 MR. ZAIDAIN: Mr. Chair, perhaps it might
8 be useful that in the folder we have a number of party
9 requests. Maybe I can run through that list very
10 quickly.

11 CHAIRPERSON GRIFFIS: That would be great.

12 MR. ZAIDAIN: We definitely obviously
13 probably won't get everyone up at the table at one
14 time just to confirm that we have everything in hand.

15 Exhibit No. 40, Solange Muller-MacArthur.

16 Exhibit No. 39 is Vincent Hurteau. Exhibit 38 is
17 Stephen Saltzberg. We also have a letter from Stephen
18 Saltzberg at Exhibit No. 33. Exhibit 37, Carol Ann
19 Ridker. Exhibit No. 36, Morton Schussheim. That
20 covers everything that I have in my folder, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Okay. First of all,
22 just to give you a basic outline of the difference
23 between giving testimony as a person and being granted
24 party status, party status comes with great
25 responsibility. You are a participant in the case.

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1 You are availed the ability to cross-examine all
2 witnesses who are also burdened with the
3 responsibility of submitting documents that the Board
4 would request. That may include issues such as
5 findings of facts and conclusions of law, rebuttal of
6 written testimony, putting together any sort of
7 additional information that's requested by the Board
8 that the applicant will also be obligated to do.

9 It is important to note and take a few
10 seconds here. There's a couple of things that we will
11 ask. First of all, I need to make sure that each and
12 everyone of you requesting party status actually want
13 to avail yourself to the responsibility of being a
14 party and not just give testimony. Testimony is not
15 limited. All persons can testify no matter what and
16 we will allow that. Again, as I say, party status is
17 a more elevated responsibility in the case.

18 Secondly, we did call up most of you. We
19 should be able to -- this Board should be able to look
20 at a party status application on face of what was
21 submitted and decide whether party status is granted
22 or not.

23 Right now we have the full jurisdiction to
24 throw out most of these because we do not have full
25 explanation or, one might say, a strong case for

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1 granting party status. I will also say that this
2 Board errs more on the side of caution and availing
3 themselves to hearing all the information so that we
4 might make appropriate and proper responses. Maybe we
5 won't number them because I've lost count. Another
6 important issue with party status is the last question
7 of which numerous applications today did not respond
8 to, and that is, "Explain how the person's interest
9 will be more significantly, distinctively, or uniquely
10 affected in character or kind by the proposed zoning
11 action than that of other persons in the general
12 public." You can all think about that. If you don't
13 have it in front of you, we will give you that
14 question because it will need to be responded to very
15 quickly and very briefly.

16 I will also have you think about the
17 answer, and that is if you have four neighbors that
18 are applying for party status, might your
19 distinctiveness and significance and uniqueness be
20 questioned by the Board.

21 The other point of that is it may well be
22 better served if the issues are similar that the
23 parties join in one party status and not have four to
24 five. With that, that is all of the directions and
25 instructions that I have. Other on my Board can

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1 gladly add to that if needed.

2 MR. ETHERLY: I don't know if it would be
3 pertinent to note that there might be one or more
4 individuals who are interested in making the
5 application for party status today. It might be
6 helpful to speak to that, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Well, why don't you.

8 MR. ETHERLY: If only to say that in
9 addition to what the Chairman laid out with regard to
10 party status applications, the day of a hearing
11 typically I would say, putting it quite frankly, are
12 somewhat frowned upon. Clearly there is a filing time
13 by which you have to bring that party status request
14 forward.

15 The Board does have the ability to waive
16 its rules. It is done rarely but it does happen from
17 time to time, so if you are present and desire to
18 bring an application for party status today, be
19 prepared not only to speak to the issues that are at
20 hand here but understand that the Board would, of
21 course, have to take up the matter of whether or not
22 it would waive its rules to even hear that request
23 today just for those individuals who may be interested
24 in bringing forward an application today that had not
25 already submitted something in writing.

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1 CHAIRPERSON GRIFFIS: Good. Okay. We
2 will hear that request for a waiving of the rules.

3 What I'm going to do is start on, first of
4 all, is there anyone that has been so moved by my
5 speaking that is actually withdrawing party status
6 application at this time? I was pretty persuasive,
7 wasn't I? Okay.

8 MR. SCHUSSHEIM: Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Yes, sir.

10 MR. SCHUSSHEIM: May I say that Carol
11 Ridker is not here yet. She was listed as requesting
12 party status. Mr. Saltzberg has sent a fax today
13 which is addressed to you.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SCHUSSHEIM: But he cannot be here.
16 He's teaching classes at George Washington University.

17 CHAIRPERSON GRIFFIS: And your name is,
18 sir?

19 MR. SCHUSSHEIM: Morton Schussheim.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. ZAIDAIN: Mr. Schussheim -- this is a
22 question for anybody. On Stephen Saltzberg
23 application he has in the corner ANC-2B. Is he
24 involved with the ANC at all?

25 MR. SCHUSSHEIM: Yes.

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1 MR. ZAIDAIN: I have one saying yes and
2 one saying no. What do you mean by involved? Is he
3 an elected ANC member?

4 MR. HURTEAU: Oh, no. He's acting on
5 behalf of himself.

6 MR. ZAIDAIN: He's probably just noting
7 what ANC he's located in.

8 MR. HURTEAU: I would say so.

9 CHAIRPERSON GRIFFIS: Okay. Thank you.

10 Mr. Schussheim, as you have started
11 talking, do you want to address the sixth question of
12 the party status application? I can reread it to you.
13 Do you have it in front of you?

14 MR. SCHUSSHEIM: No, I don't.

15 CHAIRPERSON GRIFFIS: Do we have an
16 additional copy?

17 While that's going out to you, you have
18 listed increased traffic, congestion of people and the
19 lacking of space for loading and unloading. You do
20 live within 100 feet. We are going to ask you just to
21 describe the adjacency of your property. We're going
22 to ask you to look at 5 and 6.

23 MR. SCHUSSHEIM: Okay. As to 5 and 6, I
24 want to say that I have lived in my property at 1619
25 21st Street for 27 years as an owner and a friend of

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1 many people including the applicant.

2 My special interest is in housing. I have
3 been a professional in the field of housing and urban
4 affairs for many years with the Library of Congress.
5 I was deeply concerned when --

6 CHAIRPERSON GRIFFIS: We're going a little
7 bit into testimony which is important but not
8 answering the direct question. No. 6 just talks about
9 how are you as an individual uniquely or significantly
10 affected as opposed to others in the general
11 population.

12 MR. SCHUSSHEIM: If by the general
13 population we mean everyone in the District of
14 Columbia, obviously I am quite close to that property.

15 I am concerned that we will see the area become
16 commercialized to the detriment of the few of the
17 residents who currently live in that neighborhood.

18 CHAIRPERSON GRIFFIS: So you yourself
19 would be distinctively affected as opposed to --
20 general population probably doesn't go to the entire
21 Washington, D.C., the general neighborhood.

22 MR. SCHUSSHEIM: In addition to people who
23 might live three, four, or five blocks away.

24 CHAIRPERSON GRIFFIS: Okay. But you're
25 unique affect from traffic if there was increased

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1 traffic on the block.

2 MR. SCHUSSHEIM: We are already surfeited
3 with traffic and we could not really accept additional
4 on that street there. There is no off-loading space
5 and no specific parking space for potential visitors
6 to the proposed gallery.

7 VICE CHAIR RENSHAW: Mr. Schussheim,
8 exactly where is your property in relation to the
9 applicant's?

10 MR. SCHUSSHEIM: I'm on the same side.

11 VICE CHAIR RENSHAW: Same side of the
12 street.

13 MR. SCHUSSHEIM: There on the corner they
14 own an entire property. They rent out part of it.
15 There's an alley. Then begins another gallery, the
16 Pinto Gallery, and then my house.

17 VICE CHAIR RENSHAW: All right. So you
18 are about three properties away. You're the third
19 property away.

20 MR. SCHUSSHEIM: Two properties.

21 VICE CHAIR RENSHAW: Two properties away.

22 MR. SCHUSSHEIM: Second property from the
23 house.

24 CHAIRPERSON GRIFFIS: And you are along
25 21st Street which is why you have the separation of

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1 the alley, a property, and your town house. I would
2 refer the Board to any of the aerial photographs which
3 may help focus one's location and we can make marks of
4 it up here. Very well. Thank you.

5 MR. SCHUSSHEIM: You're welcome.

6 CHAIRPERSON GRIFFIS: Yes, sir. Your
7 name, please.

8 MR. HURTEAU: I'm Vincent Hurteau. I
9 could first read to you Stephen Saltzberg's
10 application or I'll read you my own, whichever you
11 prefer. I don't want to speak on behalf of Stephen
12 Saltzberg but I can read what he wrote.

13 CHAIRPERSON GRIFFIS: In his application?

14 MR. HURTEAU: Yes.

15 CHAIRPERSON GRIFFIS: We have that.

16 MR. HURTEAU: Okay.

17 CHAIRPERSON GRIFFIS: What I need from Mr.
18 Saltzberg is the answer to No. 6.

19 MR. HURTEAU: Okay.

20 CHAIRPERSON GRIFFIS: Does he address that
21 in his letter?

22 MR. HURTEAU: He does but in four pages.
23 I could read the whole thing.

24 CHAIRPERSON GRIFFIS: There's a new letter
25 from Mr. Saltzberg that has not been submitted to the

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1 record.

2 MR. HURTEAU: It was literally just faxed
3 here and I have a copy with me and I can make copies
4 for everybody if you would like.

5 CHAIRPERSON GRIFFIS: Okay. How well do
6 you know that letter? Can you answer it before we
7 make copies?

8 MR. HURTEAU: Uh --

9 CHAIRPERSON GRIFFIS: No? Okay. Hand
10 that to staff and we'll get copies made. We're going
11 to move on.

12 Ma'am, your name.

13 MS. MULLER-MACARTHUR: My name is Solange
14 Muller-MacArthur.

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. MULLER-MACARTHUR: I had written down
17 in my 5 and 6 all in a group that it's a residential
18 neighborhood. I live in very, very close proximity
19 being across the street. As far as I know, I'm the
20 only person in this group and there are very few
21 people with children who live there.

22 CHAIRPERSON GRIFFIS: How would have a
23 child uniquely affect you?

24 MS. MULLER-MACARTHUR: Because I have --
25 because the neighborhood has a dearth of families.

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1 There are galleries, older adults.

2 CHAIRPERSON GRIFFIS: If we grant the
3 relief on this application, how does that uniquely
4 affect you because you have a child?

5 MS. MULLER-MACARTHUR: Well, we used to
6 have a family with three children and now we'll have a
7 gallery. The place becomes depopulated at night.
8 It's not as safe. There are no kids on the block to
9 play with. It's residential. It's supposed to be for
10 people to live in. That's what I moved into and I
11 have a family with children, a child.

12 CHAIRPERSON GRIFFIS: So your point is
13 that if this goes through it actually goes to the
14 negative impact of reducing a family environment on
15 the block.

16 MS. MULLER-MACARTHUR: Yes, it does.

17 CHAIRPERSON GRIFFIS: Well, said.

18 MR. ZAIDAIN: Mr. Chair, I have a
19 question.

20 CHAIRPERSON GRIFFIS: Yes. Hold on. The
21 first sentence, though, in No. 5 gives me pause. In
22 answer No. 6 you say, "My agreement is simply the same
23 as that of D.C. Government."

24 MS. MULLER-MACARTHUR: Okay. I wrote this
25 in a hurry because I would like to do something else.

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1 On No. 2 I said, "No legal interest," when, in fact,
2 I do have a legal interest. It's just that I did this
3 in a hurry on a day that we were scribbling these
4 things out. I apologize for that.

5 When I say my agreement is the same, just
6 skip to, "The neighborhood is zoned residential but
7 has slid to the brink of collapsing under galleries
8 due to lax law enforcement. I live in proximity and
9 it's zoned residential." The fact is the rules say
10 one thing and they don't mean anything. It's zoned
11 residential but it doesn't matter.

12 CHAIRPERSON GRIFFIS: Let's clarify
13 because this may come up again.

14 MS. MULLER-MACARTHUR: Well, anyway --

15 CHAIRPERSON GRIFFIS: No, this is my time
16 to clarify.

17 MS. MULLER-MACARTHUR: Sorry.

18 CHAIRPERSON GRIFFIS: On a special
19 exception it is by definition a use that is compatible
20 with the zoning. We're not looking to break the law
21 here.

22 MS. MULLER-MACARTHUR: Why is a gallery --

23 CHAIRPERSON GRIFFIS: That question we
24 cannot answer and that's something that can be taken
25 to the Commission. We just enforce the zoning

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1 regulations.

2 MS. MULLER-MACARTHUR: You summarized my
3 position very succinctly.

4 CHAIRPERSON GRIFFIS: Probably worth
5 standing on.

6 MR. ZAIDAIN: Actually, you started to
7 clarify your answer to No. 2 which says you have no
8 legal interest, only interest in Washington, D.C.
9 What exactly does that mean?

10 MS. MULLER-MACARTHUR: I do have a legal
11 interest in Washington, D.C. in that I'm a signatory
12 to the Phillips Agreement.

13 CHAIRPERSON GRIFFIS: Perhaps these
14 questions aren't written very well.

15 MR. ZAIDAIN: I have no idea what that
16 means. Do you own your house or do you rent your
17 house?

18 MS. MULLER-MACARTHUR: Yes, I own my
19 house.

20 MR. ZAIDAIN: Okay. That's your legal
21 interest in the property.

22 MS. MULLER-MACARTHUR: Oh. I also own the
23 alley in the back partly.

24 CHAIRPERSON GRIFFIS: You own an alley?

25 MS. MULLER-MACARTHUR: Part of it.

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1 CHAIRPERSON GRIFFIS: I'll have to send
2 that to some commissioner. Okay. That's clear.
3 Let's move on then.

4 MR. HURTEAU: I'm Vincent Hurteau. I
5 wrote in there on No. 5 if the Board approves the
6 application this part of the property statistically is
7 likely to never go back to residential use.

8 CHAIRPERSON GRIFFIS: Okay. That's
9 getting a little bit into testimony. You're speaking
10 for Mr. Saltzberg now, correct?

11 MR. HURTEAU: No, no. I'm speaking for
12 myself now.

13 CHAIRPERSON GRIFFIS: Oh, sorry. Indeed.

14 MR. HURTEAU: I wrote also on No. 6 and I
15 used the reference of the 1700 block of N Street is
16 almost entirely nonresidential. Although residents
17 can live there, commercial sells for more.

18 CHAIRPERSON GRIFFIS: Okay. Do you
19 understand what you're trying to answer? You're
20 trying to answer why that -- you just described the
21 impact on the entire street. How are you uniquely
22 affected by that?

23 MR. HURTEAU: I'm uniquely affected in
24 that if the changes to commercial and it becomes more
25 commercial, there are less neighbors, less residents

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1 and it becomes not the neighborhood that I had planned
2 on living in of residential character.

3 CHAIRPERSON GRIFFIS: Okay. You
4 understand the generalized impact that you're
5 describing now?

6 MR. HURTEAU: Yes.

7 CHAIRPERSON GRIFFIS: Okay. Is that
8 Saltzberg's letter?

9 MR. HURTEAU: Yes, it is.

10 CHAIRPERSON GRIFFIS: Fabulous. Great.
11 Fairly timely. Thank you.

12 MR. HURTEAU: I could perhaps give a
13 summary as I go through it.

14 CHAIRPERSON GRIFFIS: No. Actually, we
15 have it in front of us so give me a moment.

16 All right. Mr. Saltzberg has submitted
17 this letter and, clearly, I have just gotten it but
18 there are a few things that I want to voice to
19 everyone participating here. His final paragraph
20 says, "In the end there is no hardship that warrants a
21 special exception." We won't be hearing anything
22 about hardship as it doesn't go anything to the case
23 for a special exception. There are safety reasons he
24 issues and that is only one exit from the house, also
25 not part of our jurisdiction. We all have very

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1 specific

2 -- well, we'll let that go.

3 I'm not seeing -- Board members, you can
4 help me out -- the specific answer to question 6 which
5 speaks to the distinctivity of Mr. Saltzberg's impact
6 if this is granted.

7 MS. MULLER-MACARTHUR: He is the closest
8 in proximity, if I can say something.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. MULLER-MACARTHUR: He literally lives
11 --

12 CHAIRPERSON GRIFFIS: How would that
13 impact him?

14 MS. MULLER-MACARTHUR: Noise, lights,
15 traffic. Probably the most of anybody.

16 CHAIRPERSON GRIFFIS: Do you see him being
17 uniquely affected?

18 MS. MULLER-MACARTHUR: As far as the
19 person who will be most affected by activity in that
20 building it would be Mr. Saltzman.

21 CHAIRPERSON GRIFFIS: Good. I'm going to
22 ask you all the same question and you can be first.

23 MS. MULLER-MACARTHUR: Saltzberg.

24 CHAIRPERSON GRIFFIS: If he is uniquely
25 affected, are you uniquely affected?

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1 MS. MULLER-MACARTHUR: I'm the only person
2 with a family with kids.

3 CHAIRPERSON GRIFFIS: Good. Sir.

4 MR. HURTEAU: I'm uniquely affected by the
5 same reasons of congestion, noise, etc.

6 CHAIRPERSON GRIFFIS: That is somewhat
7 contradictory. Is it not?

8 MR. HURTEAU: I don't understand how.

9 CHAIRPERSON GRIFFIS: You are uniquely
10 affected by the same reasons that he is?

11 MR. HURTEAU: Oh, I see what you're
12 saying. So your question is how am I uniquely
13 affected?

14 CHAIRPERSON GRIFFIS: Correct.

15 MR. HURTEAU: Still, as I said before, I
16 want to be in a residential neighborhood and it is
17 becoming less so. I would have moved to a commercial
18 area had I --

19 CHAIRPERSON GRIFFIS: Okay. Would that
20 also be an issue for Mr. Saltzberg?

21 MR. HURTEAU: I cannot speak for him. I
22 assume it would be.

23 CHAIRPERSON GRIFFIS: Okay.

24 VICE CHAIR RENSHAW: Could I just ask Mr.
25 Hurteau where does he live in connection to the

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1 property to the applicant.

2 MR. HURTEAU: Yes. The applicant is on
3 the corner of R and 21st. I'm on the same side of
4 21st Street across the street, across R Street. I'm
5 the third house.

6 VICE CHAIR RENSHAW: Third house. So
7 you're two down from Mr. Saltzberg.

8 MR. HURTEAU: From the applicant, Mr.
9 Bass.

10 VICE CHAIR RENSHAW: Mr. Bass. All right.

11 MR. SCHUSSHEIM: Limited parking. We
12 already have galleries in the Phillips Collection
13 which have long lines and create difficulties for any
14 resident within 100 feet.

15 CHAIRPERSON GRIFFIS: Mr. Hurteau, would
16 limited parking affect you?

17 MR. HURTEAU: Limited parking would affect
18 me.

19 CHAIRPERSON GRIFFIS: And also, Ms.
20 Solange, would limited parking affect you?

21 MS. MULLER-MACARTHUR: It affects me. I
22 would like to add something that happened just this
23 morning. There was an illegal --

24 CHAIRPERSON GRIFFIS: Just answer the
25 question at this point. We'll have plenty of time for

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1 testimony. Do you realize that you have all answered
2 the same question the same way?

3 MS. MULLER-MACARTHUR: No, no, no. I am
4 not personally affected by parking. Mr. Schussheim is
5 because when an illegal parker parks in front of the
6 no parking space in front of my driveway, it blocks
7 the entrance to the alley next to his house. He
8 crashed his car into my car because of the blockage of
9 that alley.

10 CHAIRPERSON GRIFFIS: It sounds like you
11 are affected. Okay. Is Ms. Ridker here yet? All
12 right. I'm going to ask two of you to step back. I'm
13 going to ask if you wouldn't mind talking to each
14 other. Clearly what I'm seeing is that you could
15 combine in a single party status which, one, would at
16 least grant you a party status. At this point I, and
17 I haven't heard from the rest of my Board, don't find
18 a strong standing. I think you can actually be more
19 influential in terms of combining in a party status.
20 I'm going to give you a moment and I'll allow you to
21 address the Board with that in mind. I'm going to ask
22 the gentleman that had said he was going to request
23 party status because he was out of the country to come
24 forward and speak to the Board.

25 MR. SUISMAN: I withdraw my request.

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1 VICE CHAIR RENSHAW: Would you give your
2 name, please?

3 MR. SUISMAN: Richard Schussheim and I
4 withdraw my request.

5 VICE CHAIR RENSHAW: Thank you.

6 MS. MULLER-MACARTHUR: I'm sorry. Did you
7 say it's either one person or none?

8 CHAIRPERSON GRIFFIS: No. I haven't made
9 a decision at all.

10 MR. HURTEAU: Or is it an option that
11 you're considering?

12 CHAIRPERSON GRIFFIS: It is an option. I
13 think there's a strong application for one party in
14 this case.

15 MS. MULLER-MACARTHUR: In the absence of
16 Mr. Saltzberg, I would withdraw him from party status.

17 CHAIRPERSON GRIFFIS: You can't but I can.

18 MS. MULLER-MACARTHUR: I think Mr.
19 Schussheim has done all the work and can really do the
20 work. I feel that I deserve party status for reasons
21 that are special to me specifically and could help and
22 continue if need be.

23 MR. HURTEAU: If it's going to come to
24 having none of us be given party status as opposed to
25 one of us --

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1 CHAIRPERSON GRIFFIS: No, that's not the
2 option.

3 MR. HURTEAU: Okay. I just wanted to make
4 sure that wasn't in the cards.

5 CHAIRPERSON GRIFFIS: Well, it could be in
6 the cards.

7 MR. HURTEAU: Okay.

8 CHAIRPERSON GRIFFIS: But it's not the
9 only option.

10 MR. HURTEAU: If it were to come to that,
11 ultimately then, of course, we would like to have one
12 person represent all.

13 MR. SCHUSSHEIM: May I speak for a moment?
14 I wish to withdraw my request for special status. I
15 held to Mr. Hurteau.

16 CHAIRPERSON GRIFFIS: Okay. Now let me --
17 actually, before we get to hasty here, I do want to
18 make sure that people -- first of all, I'm trying to
19 be very direct with people and I'm trying to get you
20 to answer the question succinctly and definitively

21 Sir, if you wouldn't mind coming back up
22 here. Are you asking that you can combine actually
23 and work with Mr. Hurteau in party status? It does
24 make a difference than withdrawing yours.

25 MR. SCHUSSHEIM: Exactly.

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1 CHAIRPERSON GRIFFIS: You would like to do
2 that?

3 MR. SCHUSSHEIM: We have already
4 consulted.

5 CHAIRPERSON GRIFFIS: Mr. Hurteau, you are
6 amenable to that?

7 MR. HURTEAU: Absolutely.

8 CHAIRPERSON GRIFFIS: I think that makes
9 for a very strong application and certainly I will
10 have my Board deliberate on that.

11 MS. MULLER-MACARTHUR: What does it mean
12 to be a combined party? What rights does the party
13 get?

14 MR. HURTEAU: In other words, should I be
15 the only spokesperson?

16 CHAIRPERSON GRIFFIS: What we will do is
17 define a spokesperson for the party.

18 MR. HURTEAU: Okay.

19 CHAIRPERSON GRIFFIS: If you decide
20 there's an expertise within your group or party, for
21 instance, if you have a traffic engineer as part of
22 your party consolidated, they can certainly come up.
23 What we will do at any one time, one person will speak
24 for the party so that you can have several people
25 speaking for the party but they will -- it will only

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1 be one person in front the Board at the same time.

2 MS. MULLER-MACARTHUR: Can he consult with
3 the other parties while he speaks or can we whisper in
4 his ear or any of that stuff?

5 CHAIRPERSON GRIFFIS: Within reason. As
6 long as it's not disruptive. I mean, clearly you can
7 come in together. If you are putting together cross-
8 examination or a case, you should be prepared to be
9 doing that when you are in front of the Board. If
10 you're not prepared, then we can take a recess or we
11 can deal with it at that point. Yes, if you combine
12 in a party we fully anticipate that everyone is
13 working together to make one case, do one cross-
14 examination of each of the witnesses. First of all,
15 it makes the case for party status, not to mention it
16 makes for a very strong case. I take it that we have
17 two that are joined here now. I think that is very
18 strong. I will hear from Mr. Gell as soon as we deal
19 with the rest. I would move that we do not approve
20 Mr. Saltzberg for party status at this time based on
21 the face of the application. I am not compelled with
22 the answers to 6 that show him uniquely affected in
23 character. The issues that have been brought up are,
24 in fact, issues brought up in other parties of people
25 present here today. I'll ask for a second.

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1 MR. ZAIDAIN: I'll second that.

2 CHAIRPERSON GRIFFIS: Thank you.

3 VICE CHAIR RENSHAW: Discussion.

4 MR. ZAIDAIN: I'm seconding that because
5 reading his letter it seems this is pretty much all
6 testimony related to opposing the application but
7 there's no real factual basis that makes him unique.
8 Furthermore, I mean, I can't imagine his interest in
9 not being represented by other parties.

10 CHAIRPERSON GRIFFIS: Very well. Ms.
11 Renshaw.

12 VICE CHAIR RENSHAW: Well, I just wanted
13 to point out that Mr. Saltzberg is inconvenienced
14 because he is not here today to go through the answers
15 to these questions as the Chair has led the other
16 potential parties through these questions. That does
17 not help Mr. Saltzberg on his case for party status.

18 He is the closest person to the applicant
19 living directly across the street and I think that his
20 party status request should be taken seriously and he
21 should be allowed the chance to direct some comments
22 to the Board in person. If he cannot do so, I mean,
23 if we do continue this case and if he cannot be here
24 at the next meeting, then we, of course, would have to
25 remove him from party status.

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1 CHAIRPERSON GRIFFIS: Good. I think we
2 should all take that under advisement. Let me just
3 reiterate the fact that we are to be able to
4 deliberate on granting party status or denying party
5 status based upon the written submission. I'm going a
6 little bit beyond what would be our normal procedure
7 and we don't do this in every case. I appreciate the
8 fact that Mr. Saltzberg won't be afforded the
9 opportunity to orally answer the question. However,
10 that is not part of our standard procedures so it is
11 not, as I see it, prejudicial. With that being said,
12 there is a motion that has been seconded and spoke to.
13 Does anyone else want to speak to the motion? Any
14 other comments? Very well. Then all those in favor
15 -- the motion is to deny party status to Mr.
16 Saltzberg. All those in favor signify by saying
17 "aye."

18 BOARD MEMBERS: Aye.

19 CHAIRPERSON GRIFFIS: Opposed?

20 VICE CHAIR RENSHAW: Opposed.

21 CHAIRPERSON GRIFFIS: Thank you. Okay.
22 What are we looking at here? Ridker we're going to
23 delay to see if she shows, although depending on what
24 happens now may affect her.

25 Mr. Gell. Would you like to respond? We

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1 have two applications for party status that the Board
2 is now entertaining -- that is, the one party status
3 which you're going to have to name your party. No,
4 you don't have to do that -- one for Mr. Hurteau and
5 Mr. Schussheim. The second is for Ms. Solange.

6 MS. MULLER-MACARTHUR: Muller. You can
7 just say Muller. It's easier.

8 CHAIRPERSON GRIFFIS: I'm sorry. I'm not
9 sure why I'm doing that. Forgive me, Ms. Muller.

10 MS. MULLER-MACARTHUR: Is it possible --

11 CHAIRPERSON GRIFFIS: That's a great name.

12 MS. MULLER-MACARTHUR: -- to ask one more
13 question?

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. MULLER-MACARTHUR: If a party joins as
16 one party, you know, if I were to join this party,
17 does that mean I still him under the obligations of
18 producing documents and all that business?

19 CHAIRPERSON GRIFFIS: You are a party.

20 MS. MULLER-MACARTHUR: Can I follow this
21 through?

22 CHAIRPERSON GRIFFIS: You are the one
23 party. If the three of you are joined, yes, then the
24 three of you have that responsibility.

25 MS. MULLER-MACARTHUR: What if two drop

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1 out and one wants to carry on? Is the party
2 destroyed?

3 CHAIRPERSON GRIFFIS: If the party is
4 represented, the party is represented.

5 MS. MULLER-MACARTHUR: I'll join their
6 party.

7 CHAIRPERSON GRIFFIS: It's all one big
8 party. See where we're going here? This is grand.

9 Mr. Gell, I will hear from you on the
10 single party request.

11 MR. GELL: Thank you, Mr. Chairman. I'm
12 Stephen Gell. I'm representing Andrea Marinkovich,
13 Bill Bass, and the Gallery in seeking the special
14 exception.

15 I have reviewed all the papers as well and
16 I think a very strong case could be made that none of
17 the parties really has shown anything unique about the
18 affect on them of this gallery.

19 I think a case could also be made that
20 perhaps if they joined together, those that are
21 closest to the gallery, that it may not -- it may be
22 the right decision to make.

23 I think Mr. Hurteau is much too far away
24 to be given party status. Of course, he can work with
25 the group if he wants and represent them or whatever,

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1 but to give him party status, it seems to me, would go
2 against many of the Board's previous decisions on the
3 plan.

4 CHAIRPERSON GRIFFIS: Why don't we speak
5 specifically then.

6 MR. GELL: I can show you where he is in
7 relation to the others.

8 CHAIRPERSON GRIFFIS: That's fine except
9 take under advisement that they have now joined.
10 There is a single party request of all three of them
11 together. Why don't you address that and that's fine.
12 If you want to make your case based on picking apart
13 the individuals, we'll take that under advisement.

14 MR. GELL: Yes. I would not have an
15 objection to Ms. Muller and Mr. Schussheim being
16 parties and joining together as one party but I would
17 have an objection to Mr. Hurteau being singled out as
18 being a party or part of that party group. I think
19 there is a slight distinction that can be made as to
20 whether somebody is in the group or not in the group,
21 notwithstanding the fact that he has the ability to
22 work with them as well.

23 CHAIRPERSON GRIFFIS: Okay. And you were
24 going to point out?

25 MR. GELL: In other words, I would not

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1 object if the two were made a group.

2 MR. HURTEAU: Could I ask on what basis?
3 I'm Vincent Hurteau. Could I ask what basis you're
4 saying that I should not be a -- I should not have
5 status?

6 CHAIRPERSON GRIFFIS: Actually, this is
7 what we're going to do. Mr. Gell is making an
8 objection to us on your application. I will allow you
9 to respond to the Board. Communication now is for --
10 everything comes to the Board and then goes out. At
11 some point you guys can actually kick each other
12 around but we're not going to get to that yet.

13 MR. GELL: I can be more specific, Mr.
14 Chairman, if you like.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. GELL: I think all of the parties have
17 talked about traffic which really affects everybody in
18 the neighborhood. They've talked about parking which
19 affects everybody. None of them really have shown
20 that they have any unique interest. Even Mr.
21 Schussheim has not alleged that he has some -- that
22 somehow this gallery is going to affect him in a very
23 special way. There is a gallery in between him and --
24 a gallery and an alley in between him and the building
25 that we're talking about. People across the street

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1 may be affected by light, although I don't think
2 that's going to be any kind of a problem. We're not
3 proposing neon signs. Conceivably there might be some
4 unique affect by that. That's why I just think Mr.
5 Hurteau --

6 CHAIRPERSON GRIFFIS: Interesting point.

7 MR. GELL: I would be happy to show you
8 the map where people are.

9 CHAIRPERSON GRIFFIS: Do you have that?

10 MR. GELL: Yes.

11 CHAIRPERSON GRIFFIS: Do you have them
12 marked?

13 MR. GELL: Yes.

14 CHAIRPERSON GRIFFIS: All right. We'll
15 put that into staff. What I'm going to do is have --
16 who is going to be speaking for this combined party?

17 MR. HURTEAU: I would still like it to be
18 me.

19 CHAIRPERSON GRIFFIS: Indeed. I would
20 like you to respond to what Mr. Gell's point was, and
21 that is how is the uniqueness of the relief granted
22 for a gallery going to affect your party?

23 MR. HURTEAU: Well, for several reasons in
24 addition to the congestion. Are you talking about how
25 it uniquely affects us as a group?

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. HURTEAU: The traffic, the congestion,
3 the noise. In fact, Solange, who is sitting next to
4 me, had a person -- a truck that was --

5 CHAIRPERSON GRIFFIS: Again, no anecdotes.

6 MR. HURTEAU: Okay. Okay.

7 CHAIRPERSON GRIFFIS: Just bullet points
8 here. Big issues.

9 MR. HURTEAU: Also the evaporation of the
10 residential character of the neighborhood.

11 CHAIRPERSON GRIFFIS: Indeed. Mr. Gell's
12 point, an objection, is the fact that how is it unique
13 that just with this gallery of which there are other
14 galleries in the neighborhood? The one point that I
15 think is strong was your response.

16 Ms. Muller, I'm going to set this out from
17 the very beginning so we don't run into too much
18 problem. Animating your displeasure with what I say,
19 or your excitement of what I say, may be premature.
20 I'll tell you one thing about my personality and that
21 is this, I will go through everything. I will be as
22 hard as you on you as I will be on the applicant.
23 That is what will elicit fairness and substance in
24 this case so if you could reframe because it, in fact,
25 is just more distracting than anything else. As the

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1 day goes on, it is easy for me to lose my train of
2 thought which only means that all of you sit here for
3 a heck of a lot longer than you may need to so we can
4 all get through this very quickly. The point being I
5 think the strong issue that you just brought up is, in
6 fact, a saturation, I will say. Not your words but a
7 saturation or the losing of the residential. That, in
8 fact, is what you're saying would adding a gallery
9 actually impacts that and it's an adverse impact to
10 your party which is uniquely affected because it
11 surrounds the instant application which is for this
12 gallery.

13 MR. HURTEAU: Yes.

14 CHAIRPERSON GRIFFIS: Okay. Mr. Gell.

15 MR. GELL: I was going to speak to Ms.
16 Ridker if I might. Carol Ridker does not live
17 anywhere near. She doesn't live within three blocks
18 of this neighborhood but she does own some apartments
19 in the same building that Mr. Suisman is in.

20 CHAIRPERSON GRIFFIS: Okay. We're not
21 focused on that one yet but we'll get there. Let me
22 take you back. You've handed us a map. In fact,
23 let's locate the properties on this and this will be
24 Exhibit 46. Let's start with 1705 21st Street. Mr.
25 Hurteau, can you describe where your property is?

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1 MR. HURTEAU: Oh, 1705 21st Street.

2 CHAIRPERSON GRIFFIS: I'm sorry. What did
3 I say? See what happens?

4 MR. HURTEAU: My property is to the north
5 and I'm the third town house on the north side.

6 CHAIRPERSON GRIFFIS: Is that counting the
7 corner town house?

8 MR. HURTEAU: Counting the corner.

9 CHAIRPERSON GRIFFIS: And your lot is No.
10 45?

11 MR. HURTEAU: Yes.

12 CHAIRPERSON GRIFFIS: Very well. Oh,
13 indeed. I'm sorry, Mr. Gell. You've already written
14 the names on this. That makes it easy.

15 MR. ETHERLY: Perhaps it might be helpful,
16 Mr. Hurteau and Ms. Muller, do you have a copy of the
17 map with the names denoted on it?

18 MR. HURTEAU: Yes.

19 MS. MULLER-MACARTHUR: We're sharing it.

20 MR. ETHERLY: Okay. Does that appear to
21 the best of your knowledge to accurately reflect the
22 placement of your individual residences?

23 MR. HURTEAU: Yes.

24 MR. ETHERLY: Okay. I'm not certain that
25 Mr. Schussheim was made a copy. He's indicating that

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1 he does, indeed, have a copy. It would appear that
2 your property is also accurately reflected on that map
3 as well. As far as anyone may know for the Saltzberg
4 residence and the Ridker residences, do those appear
5 to be accurate representations of where they are also
6 situated?

7 MR. HURTEAU: Yes.

8 MR. ETHERLY: Okay. Thank you.

9 Thank you, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Okay. Mr. Gell, did
11 you have a response to the party response?

12 MR. GELL: All I've said is that this is
13 correct. I think the allegations simply are very
14 general allegations. They don't go to the substance
15 of what the Board has asked for and, indeed, what the
16 Zoning Commission insist on, that is, to show that to
17 be a party the person has clearly demonstrated their
18 interest will be more significantly, distinctively, or
19 uniquely affected in character or kind than those of
20 people in the general public.

21 I think consistent with the way the Board
22 has ruled in the past, that Ms. Ridker and Mr. Hurteau
23 would not be even within that zone. As I said, they
24 have not demonstrated anything unique. I'm sorry to
25 mention Ms. Ridker. You wanted to wait on that.

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1 CHAIRPERSON GRIFFIS: That's right. Is
2 that it?

3 MR. GELL: Yeah. As I said, we will not
4 interpose an objection to Mr. Schussheim and Ms.
5 Muller, although certainly an argument could be made.

6 MR. ETHERLY: Mr. Chair, I'm prepared to
7 move forward. We've had a substantial amount of
8 discussion, all of which I think has been very
9 critical today on this particular issue. It's
10 probably going to be helpful to talk through it
11 perhaps a little more slowly than we usually do with
12 party status.

13 Let me try to be a little methodical about
14 this because I think it's important. Who knows?
15 Perhaps the case law is not as developed on party
16 status as we would like it to be.

17 As the Chairman noted, party status is a
18 very crucial, crucial part of any case for us. Let's
19 start with who is already here, okay? You know that
20 the ANC, of course, is present. You know, of course,
21 that the applicant is present. The ANC is viewed as a
22 government agency so we would hear a report from the
23 ANC. If that report adheres to certain guidelines,
24 it's given great weight.

25 The ANC, of course, is viewed as a

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1 representative of the general public in the vicinity
2 of the proposed application. One of the things that I
3 think gets us to why that question No. 6 is very
4 important, and you've heard the Chairman focus on it
5 so much, is that because the ANC is here, that gives
6 the community a very active and a very grassroots
7 hands-on voice in the proceeding so we take great care
8 to not be duplicative in our efforts. Also at the
9 same time trying to be as administratively efficient
10 as possible.

11 Mr. Gell's objection on its face is a very
12 persuasive one because for this particular Board
13 member, many of the rationales that have been
14 proffered by you strike me as being also very
15 consistent with what might otherwise affect the
16 general public.

17 Or, to put it more bluntly, I think we're
18 going to hear the same things from the ANC that we are
19 hearing from you. Quite honestly, some of the
20 references that you've made are already highlighted in
21 the written report that we have from the ANC and, to
22 an extent, are also replicated in what we are going to
23 hear potentially from another testimony in the person
24 of the Dupont Circle Citizens Association.

25 There's a "but" and I think that "but"

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1 would gravitate towards me probably supporting the
2 party request in this regard. The "but" is it is
3 somewhat unique, however, when you have a number of
4 members from the adjacent or surrounding community
5 come together as a group and stand up to say that we
6 are concerned in sufficient enough numbers that we are
7 willing to take the time to shoulder the additional
8 burden of acting as parties in a particular
9 proceeding.

10 As you heard the Chairman mention, being a
11 party means that you are not simply giving testimony
12 as you already have the right and the opportunity to
13 do in any case, but that you have responsibility to
14 receive the filing of documents. You have
15 responsibility to submit documents, documents on the
16 party, documents to the Board, documents to other
17 members of your coalition.

18 Mr. Chairman, because of the fact that we
19 have a number of members of the community here, and
20 I'm not going to suggest that there is some hard and
21 fast bright line number that has to be met in order
22 for a community to justify itself as a party.

23 What I'm simply saying is that I'm
24 somewhat compelled that we do have a number of members
25 from the surrounding community who have some

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1 objections that they want to bring forward and are
2 willing to take on the added responsibility and are
3 willing to do it in an organized and structured
4 fashion.

5 I would be inclined to support the motion
6 of this newly formed entity to serve as a party in
7 this matter and would not have any specific concerns
8 with regard to Mr. Hurteau serving as the informal or
9 formal spokesperson for that organization.

10 Once again, Mr. Gells' objection not
11 withstanding, I believe once you take that step and
12 accept the fact that a group of members in the
13 community can come together to further press their
14 issues, I don't want to get so specific as to tell
15 them who they should designate as a spokesperson.

16 VICE CHAIR RENSHAW: Second. If that's a
17 motion, I second it.

18 MR. ETHERLY: That would be a motion, Ms.
19 Renshaw.

20 CHAIRPERSON GRIFFIS: Actually, I'm going
21 to ask just to table the motion because we did not
22 hear from the ANC in terms of the party request. We
23 need to afford them as a party.

24 MR. ETHERLY: I will voluntarily withdraw
25 that motion, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Not withdraw. Let's
2 just table it and then come back to it.

3 VICE CHAIR RENSHAW: Just postponed, not
4 tabled. Postponed.

5 MR. ETHERLY: So tabled, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Mr. Micone.

7 MR. MICONE: Vince Micone, Chair of the
8 Dupont Circle ANC. We have no objection to the
9 request for party status.

10 CHAIRPERSON GRIFFIS: Excellent.

11 Mr. Etherly, you had something to say?

12 MR. ETHERLY: Nothing further, Mr.
13 Chairman. I would, in fact, just reaffirm that would
14 be a motion to accept this -- we can work it out. I
15 got some assistance from the audience that I think
16 would be useful. I would be inclined to make a motion
17 to grant party status to the opponents of application
18 No. 16920 as a party in this case, Mr. Chairman, and
19 we invite a second.

20 VICE CHAIR RENSHAW: Again, I second.

21 CHAIRPERSON GRIFFIS: Indeed. For
22 clarification, this is the combined Schussheim, Muller
23 household. Very well. Anything else?

24 MR. ETHERLY: I also note, Mr. Chairman,
25 that even though we did dispose of the party request

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1 for Mr. Saltzberg, I would not see this motion as
2 necessarily preventing this group from having whoever
3 wants to participate in it. I don't think the Board
4 goes into that level of detail here. What we are
5 focusing on is there would be one person, unless you
6 have specific areas of expertise that need to get
7 explored by other individuals as necessary.
8 Otherwise, it would be one individual who would be
9 responsible for receiving service of documents from
10 Mr. Gell and/or the ANC and would be responsible for
11 disseminating documents to those bodies as well.

12 CHAIRPERSON GRIFFIS: Good. All those in
13 favor?

14 BOARD MEMBERS: Aye.

15 CHAIRPERSON GRIFFIS: And opposed? Let me
16 clarify, Mr. Etherly, what you just said. The Board
17 can't keep open naming households. What we've done is
18 just approved the party status for these named
19 households.

20 I think we can entertain if there are
21 motions to have to add names to it but I think we're
22 going to have to take some formal action in order to
23 add the names to it. Participation within the party I
24 don't think is precluded at all by anybody in the
25 neighborhood that wants to help --

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1 MR. ETHERLY: Understood, Mr. Chairman.
2 My remarks were entirely consistent with your
3 clarification.

4 CHAIRPERSON GRIFFIS: Good. Is Ms. Ridker
5 here?

6 PARTICIPANT: No.

7 CHAIRPERSON GRIFFIS: I would move to not
8 approve party status for Ms. Ridker on face of the
9 application and that is indicating that the loss of
10 residence housing in R-5-B does not, in fact, show
11 significant, distinct, or unique affect of character
12 of her household.

13 MR. ETHERLY: Seconded, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Thank you very much.
15 All in favor?

16 BOARD MEMBERS: Aye.

17 CHAIRPERSON GRIFFIS: And opposed? Very
18 well, folks. That gets us up to the point where we
19 can start this. I thank you all for your patience.
20 You can have a seat and get comfortable.

21 Mr. Gell, when you're ready, you can
22 begin.

23 MR. GELL: Thank you, Mr. Chairman.
24 Usually I don't like to spend any time on
25 preliminaries. I realize that the Board has another

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1 case after this one. I'm not quite sure how to deal
2 with personal attacks on me. It's happened now twice
3 from Mr. Saltzberg and quite unfounded. I would be
4 happy to respond to all of his points. I think it's
5 kind of outrageous that he --

6 CHAIRPERSON GRIFFIS: Are you talking
7 about the letter that was just submitted?

8 MR. GELL: I'm talking about both letters,
9 the letter that he submitted before the last hearing
10 where he accused me of unethical behavior.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. GELL: And this one where he compounds
13 the felony by going even further and claiming I don't
14 even have a right to represent the gallery.

15 CHAIRPERSON GRIFFIS: I would suggest
16 this. We can take these up and address them very
17 briefly when we look to the letters formally in the
18 proper course of the hearing. I think that will give
19 us some time actually to fully read the letter that
20 was just submitted today. Although I must say Mr.
21 Saltzberg is not representing the George Washington
22 University. Is that correct?

23 PARTICIPANT: Yes, that is correct.

24 CHAIRPERSON GRIFFIS: Okay. It would be
25 noted that he submitted on George Washington

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1 University letterhead which gives me some pause.
2 That's all we need to talk about in terms of this at
3 this point, Mr. Gell. I would not -- well, there it
4 is.

5 MR. GELL: Well, then let me simply make
6 one statement, and that is at the time that I
7 requested a postponement of the hearing, Mr. Micone
8 and I had discussed it. This was a few days before we
9 actually submitted the letter.

10 At the ANC hearing Mr. Micone as part of
11 the resolution was given the authority to mediate and,
12 in fact, was urged to try to mediate an agreement
13 between us and the neighbors. He had not yet had a
14 chance to meet with the neighbors. My anticipation
15 that that could very well have an effect even though
16 Mr. Saltzberg felt that he had finished any
17 negotiations led me to believe that it was not
18 unreasonable to try to get some additional time so
19 that we could go that route.

20 Additionally, Ms. Ridker -- I'm sorry
21 she's not here to confirm it -- she also told me that
22 at the meeting of the neighbors at which the small
23 group that had met had decided that they wanted --
24 that they didn't want to meet with me.

25 The reason she gave was that they felt

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1 they didn't have time because they had to prepare for
2 a hearing on October 1st and that was additional time
3 we could have a meeting and perhaps something would
4 come of it. On that score I just simply wanted to put
5 that on the record. I'm sure the Board will take the
6 charges in the light that it should be.

7 I'm very happy to bring before you a
8 request for a special exception for a gallery at 1629
9 21st Street. I will have some comments at a later
10 time but I would like Ms. Andrea Marinkovich to come
11 forward and talk about her gallery. She owns the
12 gallery that is moving into this space. Just to
13 clarify for you, Mr. Bass owns the building and has
14 rented it to Ms. Marinkovich. Her partner, Royce
15 Burton, is also here, but she is the one who owns the
16 gallery and will be operating it and, of course,
17 responsible for what goes on there and the most
18 knowledgeable about the kind of operation they have.
19 Let me ask Ms. Marinkovich to talk to you a bit about
20 her gallery.

21 MS. MARINKOVICH: I'm Andrea Marinkovich
22 and the owner of Burton and Marinkovich Fine Art. In
23 1987 I became -- I started training as an apprentice
24 in learning about modern and contemporary works of art
25 on paper.

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1 Nine years ago in 1993 I started a
2 gallery, The Little Engine that Could, in a very small
3 space, 475 square feet. It's a charming space but I
4 realized over the last couple years that I've outgrown
5 it.

6 CHAIRPERSON GRIFFIS: Where is it located?

7 MS. MARINKOVICH: Two blocks currently
8 from the space south at 1506 21st. I made plans. I
9 do things very thoroughly and passionately and looked
10 in the neighborhood and met Bill Bass. He checked
11 into who I am and what I do and we struck up a
12 relationship. I wanted to go about doing this the
13 right way and wanted to apply for this certificate of
14 occupancy.

15 I just want to tell you a little bit about
16 it. I need more space. I'm not leaving under any --
17 for any other reason. I have a good relationship with
18 my landlady who represents the corporation that owns
19 the building. Excellent relationship with the
20 tenants, the restaurants, neighbors. There's a family
21 with kids on the block. Everyone.

22 The space that I'll move into is almost
23 3,000 square feet but the space that will be used for
24 art gallery purposes is about double what we have now.

25 I lived in Dupont Circle for about seven years and

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1 live about two miles from it now.

2 I have planned to move into the top floor
3 of the space. It's at least the same size as the part
4 that would be used for the gallery. Actually, it's
5 larger. Then we plan to use the first floor and a
6 room above the first floor which we have defined as a
7 portion of the second floor for gallery space.

8 What I like about it is that there would
9 be not a lot of expense to make this space into a
10 gallery. All we would do is change lights for the
11 space and put a few lights in the ceiling. If it
12 didn't work out down the road, it could be easily
13 converted back to a regular use.

14 We don't put bars on our windows. We
15 don't have bars currently on our windows. We use low
16 lighting. Just like some people's homes, you like
17 light on your space. We have a very small sign
18 currently on our space and two very nice sculptures.

19 We're an extremely full service gallery.
20 We have really low overhead. We have really low gross
21 profits. I don't live off of this money but I'm very
22 passionate. I was a collector when I was in college.
23 I'm passionate about what I do.

24 The man who works with me, Royce Burton,
25 is a scholar. We sell to museums and to regular

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1 people. Some of the people in the neighborhood before
2 we got together with them didn't even know we were
3 there and we were two blocks away. We're not even
4 like a lot of galleries.

5 Someone said what about catering trucks.
6 I think all of this is from the fears of the Phillips
7 Collection being right there and possibly what they
8 had presented to these people. The day I could afford
9 a caterer I probably wouldn't do this the way that I
10 do it. We don't cater anything. We have a delivery
11 once a week for art that comes by a van from a framer.

12 I don't ever get a big supply of art. I don't borrow
13 art. I go out and I hunt and I find stuff at an
14 auction or I find stuff in someone's collection or
15 someone brings me one piece. It's just a whole --

16 CHAIRPERSON GRIFFIS: Is the one-time a
17 week art delivery scheduled? Do you know
18 approximately what time it usually happens?

19 MS. MARINKOVICH: Wednesdays between 1:00
20 and 3:00. It's Frames by Rebecca by Silver Spring.
21 By the way, they don't double park and they don't --
22 currently they don't double park and currently they
23 don't use loading zones. They find a space, park.
24 The owner of the company bring it to us. He frames
25 for the Phillips Collection, too.

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1 He frames for the galleries and he parks
2 legally. He's a physically fit man who carries the
3 piece to us, or picks up what we have in a sleeve that
4 we are going to have framed. I understand those fears
5 but, you know, I wanted to address them.

6 CHAIRPERSON GRIFFIS: What is an average
7 amount of drop-off of material? How many times is he
8 making trips back and forth?

9 MS. MARINKOVICH: From the van?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. MARINKOVICH: Once a week he comes and
12 he comes maybe two or three times.

13 CHAIRPERSON GRIFFIS: And these are framed
14 two-dimensional pieces of art?

15 MS. MARINKOVICH: Correct.

16 CHAIRPERSON GRIFFIS: So they've got to
17 fit through a door?

18 MS. MARINKOVICH: Yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. MARINKOVICH: That's almost
21 exclusively what we do. So I also want to explain
22 that we don't make a sale every week, even when times
23 are great. I am personally connected to a telephone
24 at all times. I have clients who are very serious
25 historical collectors of art or financial collectors

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1 of art or have other passionate reasons for
2 collecting. When they call me they usually have 10
3 minutes to talk to me. I provide information or,
4 hopefully, I provide a sale to them.

5 CHAIRPERSON GRIFFIS: If they purchase
6 something, how do they get it?

7 MS. MARINKOVICH: I pack it up and I take
8 it to Fed-Ex or Fed-Ex comes to pick it up.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. MARINKOVICH: All this is recorded in
11 our sales a couple times a month. We like to walk up
12 to Fed-Ex because we save \$3.00 in shipping -- \$3.00
13 to \$5.00. Anyway, it's a little bit higher-end art
14 sometimes but we also have things starting at \$50.

15 When I say we're full service, you come in
16 and it's very private. We have celebrities. We have
17 museums. Some of our best clients came in with
18 backpacks for three years and then they told us they
19 inherited this money and wanted us to help provide a
20 plan for them of how they could collect things.

21 People come in and will say what is a
22 lithograph or what is an etching. We will provide all
23 that information. I go to their homes and not just in
24 Washington. I travel around the world. I like doing
25 this. I have other means of income.

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1 I would like to let Solange know that I
2 babysit for money and can play like an eight-year-old.

3 I do often do things like that. I have a great life
4 in my opinion. I travel and I have this small
5 business. I also tutor.

6 Okay. So then the events that we have, we
7 went about addressing events as what would happen if
8 things got a little bit busy or something. It's
9 really saying these events that are open to the
10 public, the only ones that we participate in are these
11 Friday afternoons. They are from 6:00 to 8:00, Friday
12 early evenings. The galleries already have these
13 events. We have participated in them in the past but,
14 to be really honest, we look at each other and say,
15 "Who wants to stay tonight?" If it's Friday night and
16 it's after dark and Royce doesn't want to stay, I
17 can't get -- we have one intern who works with us. If
18 I can't get him to stay, I'm not going to stay by
19 myself.

20 CHAIRPERSON GRIFFIS: You want to describe
21 what these events are?

22 MS. MARINKOVICH: They have been going on
23 for at least eight to 10 years. People from the
24 public are welcome to come into the galleries. Some
25 galleries serve liquor. They come and they look

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1 around. It's a very social event.

2 CHAIRPERSON GRIFFIS: It's a gallery walk.

3 All the galleries are open on 6:00 to 8:00 on Fridays
4 so people can walk down the street and go in and out?

5 MS. MARINKOVICH: Right. None of them are
6 clients but occasionally we choose to be open like,
7 say, before Christmas somebody might come in a buy
8 something.

9 CHAIRPERSON GRIFFIS: I see.

10 MS. MARINKOVICH: But we didn't want to
11 make a rule. We offered a set of rules to the
12 neighborhood and we offer it to the Board. We've got
13 50 some signatures of people who support this that we
14 would say we won't participate in more than 12 of
15 these 6:00 to 8:00 p.m. things on Friday when the
16 traffic is already flowing. I can tell you right now
17 I'm not going to give up 12 of my -- I'm sorry, there
18 are 10 of them per year. I'm not going to give up 10
19 of my Friday nights to do this. I can't. Yet, at the
20 same time, we are asking for that because that's what
21 the neighborhood does.

22 CHAIRPERSON GRIFFIS: So these events are
23 Friday 6:00 to 8:00 one a month?

24 MS. MARINKOVICH: The first Friday of the
25 month.

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1 CHAIRPERSON GRIFFIS: First Friday of the
2 month.

3 MS. MARINKOVICH: They've been going on
4 for a long time and I've talked to other galleries.
5 I've asked if there have been complaints from the
6 neighbors about these events and they said no.

7 CHAIRPERSON GRIFFIS: And you don't
8 anticipate any other special events attended to your
9 specific gallery?

10 MS. MARINKOVICH: Private events.

11 CHAIRPERSON GRIFFIS: Private events.

12 MS. MARINKOVICH: By invitation only. We
13 work best that way. We work best in small groups.
14 Right now we physically could only do that. We could
15 only have eight to 10 people in at a time in order to
16 talk with people. It's how we work better. I work
17 better when I can talk directly with someone about the
18 art.

19 CHAIRPERSON GRIFFIS: So your point is
20 your private events are more in the matter of course
21 of the business day which are --

22 MS. MARINKOVICH: No, they would be at
23 night.

24 CHAIRPERSON GRIFFIS: Oh, they would be at
25 night?

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1 MS. MARINKOVICH: Yeah. This would be a
2 special event with a maximum of --

3 CHAIRPERSON GRIFFIS: Are you saying
4 realistically eight to 10 people?

5 MS. MARINKOVICH: Currently it's eight to
6 10 but looking to the future if we had more space,
7 there could possibly be 30 to 40 people. A hundred
8 people getting invited, 30 to 40 people over several
9 hours in an evening, 6:00 to 8:00 or 7:00 to 9:00.
10 Last year I can tell you we had maybe four of these
11 events. It's not something we do every week this way.
12 It's not our clients --

13 VICE CHAIR RENSHAW: How many are you
14 projecting?

15 MS. MARINKOVICH: I think I asked for
16 eight of them just to say -- it takes effort, money,
17 and time, and energy to put all of this together.
18 There's no way I could even do that many.

19 MR. GELL: We did want to provide some
20 flexibility for Ms. Marinkovich in the future but keep
21 it to what we thought was a very low level of
22 activity.

23 MS. MARINKOVICH: And people don't come to
24 us to expect to have something to drink or food but I
25 think it's socially polite, we think it is, that we

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1 offer crackers and sometimes cheese and fruit and
2 things. A lot of what we have is paper so I really --
3 by the way, we have never served alcohol at the first
4 Fridays currently.

5 CHAIRPERSON GRIFFIS: There's no question
6 whether beer and wine or alcohol so you might want to
7 clarify.

8 MS. MARINKOVICH: Yeah, beer and wine are
9 --

10 MR. GELL: I can clarify that.

11 CHAIRPERSON GRIFFIS: I think we can too.
12 Let's be clear. Beer and wine and alcohol. You're
13 saying like a full bar.

14 MS. MARINKOVICH: No, no, no.

15 CHAIRPERSON GRIFFIS: You're not going to
16 be serving beer or wine at all?

17 MS. MARINKOVICH: I would like to be able
18 to serve beer and wine.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. MARINKOVICH: I wanted you to know
21 that to date I have never done that.

22 CHAIRPERSON GRIFFIS: I see.

23 MS. MARINKOVICH: People come to our
24 gallery currently for these first Friday events to
25 breeze through our gallery and then use our bathrooms

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1 after they've had the beer and wine at other
2 galleries.

3 MR. GELL: Let me just say in our initial
4 discussions we drew a distinction between the private
5 invited groups and those events that would be open to
6 the public. What we promised the neighbors was that
7 we would not have any alcohol at those events that
8 were opened to the public including the first Fridays.

9 If we had events that were closed and by invitation
10 only, we would also restrict ourselves just to beer
11 and wine.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. MARINKOVICH: And we would also
14 responsibly serve crackers and cheese and fruit to our
15 private events. These are all things that we run down
16 to a couple local stores and pick up and come back
17 with two bags.

18 MR. ETHERLY: So, Ms. Marinkovich, you
19 don't anticipate any catering?

20 MS. MARINKOVICH: Absolutely none
21 whatsoever.

22 MR. ETHERLY: Same for the public events
23 as well?

24 MS. MARINKOVICH: Absolutely none
25 whatsoever.

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1 MR. ETHERLY: Okay.

2 MS. MARINKOVICH: We also have always
3 encouraged people to use Metro. People stay at hotels
4 and take taxis to come and visit us. We have clients
5 who -- my partner speaks German and lived in Japan.
6 We have clients from a lot of different countries and
7 it's flattering to me that they will come here to the
8 United States, have some business possibly with the
9 government or something, and then they will make an
10 appointment just to see us. That usually happens
11 during the day. We are en route to wherever else
12 they're going in the United States and they will come
13 and stop and see us.

14 MR. ETHERLY: Ms. Marinkovich, quick
15 question for you just in terms of employees or
16 personnel that you use on site. Yourself, Mr. Burton,
17 if I recollect, and then a volunteer intern.

18 MS. MARINKOVICH: He's a paid intern. He
19 works anywhere from 20 hours to 32 hours a week. I am
20 not always in the gallery. Obviously if I lived there
21 I would be more. Our space is so small that I set up
22 a little place at my house to have a private telephone
23 to make calls and work on my computer.

24 We do encourage people to use the Metro.
25 It hasn't been a problem. It's a big thrill for us.

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1 This space does include three parking spots. One is a
2 garage spot that has two parking spots adjacent to it
3 so I can tell you now for sure I have never offered
4 the garage spot to someone but I have two spots to
5 offer to clients. Royce has a paid parking spot in
6 the neighborhood. I have zone 2 parking so I park on
7 the street.

8 In a typical day we might have two to five
9 visitors and that would be a busy day. Some days we
10 have no visitors, only phone calls and faxes. On a
11 weekend, Saturdays, Royce works on Saturdays and he
12 has four to 12 people. Royce and I are typically not
13 there at the same time but Royce is usually there most
14 of the time. I work inside the gallery currently
15 about 10 hours a week.

16 MR. ETHERLY: Ms. Marinkovich, just to
17 clarify on the parking, the three parking spaces were
18 for the current site that you're presently in?

19 MS. MARINKOVICH: Right.

20 MR. ETHERLY: Okay.

21 MS. MARINKOVICH: They are not for -- oh,
22 no. I'm sorry. They are for the new space.

23 MR. ETHERLY: For the new proposed site.

24 CHAIRPERSON GRIFFIS: But if you move into
25 this, if you live upstairs you would utilize one of

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1 those parking spots?

2 MS. MARINKOVICH: I wouldn't have to. I
3 can keep my car --

4 CHAIRPERSON GRIFFIS: Are they designated
5 at all in your lease on who -- you have total control
6 of all three?

7 MS. MARINKOVICH: Yes, sir.

8 CHAIRPERSON GRIFFIS: The basement gallery
9 has no control and no parking attended to it?

10 MS. MARINKOVICH: No one else does.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. MARINKOVICH: I'm paying --

13 CHAIRPERSON GRIFFIS: Is it -- are you
14 going to be living there? That's affirmed?

15 MS. MARINKOVICH: Yes.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. MARINKOVICH: And then, let's see,
18 Metro. I also offer to clients -- I don't offer to
19 pay but I offer to help them park their car.
20 Sometimes our intern parks the car for them and they
21 will park at the west end which is equidistance
22 between the old gallery and the new gallery. That's
23 \$15 a day and you can come in and out all day long.
24 Other neighbors have told me about other spots in the
25 neighborhood, too, to be able to park at. Most people

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1 don't have any problem with parking.

2 CHAIRPERSON GRIFFIS: That's a bold
3 statement for Dupont Circle.

4 MS. MARINKOVICH: Paying for parking.

5 CHAIRPERSON GRIFFIS: I see. That's a
6 clarification.

7 MS. MARINKOVICH: Our clients don't have a
8 problem paying for parking.

9 CHAIRPERSON GRIFFIS: I see.

10 MS. MARINKOVICH: And then, let's see,
11 trash. I would like to say we are careful about
12 wrapping up what we've used. We are now because we're
13 in the same neighborhood and it usually amounts to one
14 bag of trash after an opening. Normally during the
15 week I think our trash would be mostly paperwork.
16 That's what it is currently, lot's of junk mail.

17 CHAIRPERSON GRIFFIS: Do you have
18 commercial pickup now?

19 MS. MARINKOVICH: Yes, we do. I want to
20 stress for security that we would not put bars on the
21 windows but we would consider putting up security
22 lighting. This is soft light that is directed at the
23 building. It's what some people already have in the
24 neighborhood. We have a front porch light right now.

25 CHAIRPERSON GRIFFIS: Do you have

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1 specifications on what you are anticipating for
2 fixtures?

3 MS. MARINKOVICH: No, I don't. I haven't
4 talked to an electrician yet about it. Currently we
5 have a sign and we would follow the guidelines of what
6 the signs could be -- we are really trying to be
7 flexible and work with the neighbors. A sign that we
8 have right now is a bronze sign with gold lettering
9 and one square foot.

10 CHAIRPERSON GRIFFIS: In terms of the
11 sign, clearly I'm sure you are being advised. There
12 will be two pieces. One we could get into but that
13 sounds like it fits within our regulation. Second, of
14 course, it would go through HPRB for application of
15 the second building.

16 MS. MARINKOVICH: Sure.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. MARINKOVICH: And then we are willing
19 to work in any way to assure people. There has been a
20 lot of questions about, "Can we trust you that you
21 wouldn't have big parties or that you would have big
22 lights or big signs or anything?"

23 Our petition with the 51 signatures shows
24 that people read and talked about the last agreement
25 that we made with the neighbors and we never got to it

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1 with the few neighbors who are strongly opposed. With
2 the attempts we made even in the last week just to
3 talk with them, they weren't comfortable doing that.

4 That's what I want to say. We really made
5 a lot of efforts to talk with people. We did make a
6 mistake, I think, in my opinion, of just trying to
7 work with one person who, Steve Saltzberg, because he
8 was going to work -- he said to us that he would
9 represent the other neighbors and read over what we
10 would have for a proposal. Then after him having that
11 for a couple days and going back and forth with some
12 things that he wanted to suggest for it, we found out
13 at the ANC that they had not even seen it. Mort came
14 to the meeting and he said, "I never saw any
15 agreement." He directed his anger towards us. Here
16 we were doing what we thought was right by working
17 with the person that they had appointed so it's turned
18 into this thing that we didn't take care of it
19 properly. There was some negotiation at the beginning
20 and things like that.

21 CHAIRPERSON GRIFFIS: I think we
22 understand how these things often get miscommunicated.

23 MS. MARINKOVICH: We just want to give
24 assurances that we can work within these guidelines.
25 In this situation we are a different -- as a gallery

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1 we are very small potatoes in our budget and our staff
2 and who we are, but it works out perfectly fine. I'm
3 just trying to represent us as we are.

4 Steve has helped me shape what could be
5 guidelines that we can agree to and help show the
6 neighbors. From the past nine years there's no reason
7 for anyone to doubt our business could be this way, or
8 that I want to go anywhere else. I was there for nine
9 years and it's a big deal for me to move to this
10 place.

11 MR. GELL: If I may paraphrase, we are
12 willing to accept conditions on the grant of the
13 special exception in line with the promises that we
14 make.

15 MS. MARINKOVICH: Okay. All of which we
16 can address after we hear all the case. There's one
17 more issue that my partner is going to talk about.

18 CHAIRPERSON GRIFFIS: Let me ask you
19 before you go, though, just to address quickly you
20 feel that opening up this gallery wouldn't create any
21 objectionable noise, pedestrian, or vehicular traffic
22 or anything that might be objectionable based on the
23 hours of operation or any other objectionable elements
24 to the adjoining neighbors?

25 MS. MARINKOVICH: Absolutely not.

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1 CHAIRPERSON GRIFFIS: Okay.

2 VICE CHAIR RENSHAW: A question for Ms.
3 Marinkovich. Just to ask, is it still your plan to
4 periodically float a two-foot by six-foot banner on
5 special events?

6 MS. MARINKOVICH: No. I would like to do
7 it but I was advised not to even try to ask for that
8 so I'm not asking for it.

9 VICE CHAIR RENSHAW: All right. So that's
10 out of your proposal. Thank you.

11 MS. MARINKOVICH: Thanks.

12 MR. BURTON: I'm Andrea's partner, Royce
13 Burton. My job is sales and research and scholarship.
14 I want you all to know that we are a scholarly
15 gallery. We specialize in rare works on paper, mostly
16 contemporary art. We don't have a lot of clients.
17 It's not a terribly lucrative business. When I look
18 at the list of the other galleries in Dupont Circle,
19 we're not like that. Sometimes I wish we were wildly
20 popular but we're not. The kind of work we deal with
21 is pretty esoteric. It's not for everybody. We have
22 clients from all over the world. They come during the
23 day. They come at random. It's not a scene. I think
24 our neighbors are maybe afraid it will be a scene like
25 Baumgartner Gallery was. Baumgartner managed to take

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1 over a couple of parking places and make a loading
2 zone. I'm afraid it created a bad feeling. We're
3 nothing like that. We are very quiet. We have
4 limited clientele. The general populous wouldn't have
5 very much interest in us at all. Most of them
6 wouldn't know what a woodcut by Helen Frankenthaler
7 was or an etching by Robert Motherwell. We entered
8 into this thing thinking we would be welcomed with
9 open arms. We had a meeting with the neighbors and we
10 were really shocked that they were so opposed to us.

11 CHAIRPERSON GRIFFIS: You anticipate that
12 your niche in the market would change and you would
13 become --

14 MR. BURTON: We hope it will get a little
15 bit better, we do, but it can never be wildly
16 successful like some galleries are. There's always
17 going to be a limit to the kind of people who buy the
18 kind of art that we care about.

19 CHAIRPERSON GRIFFIS: I see.

20 MR. BURTON: We offer a lot of
21 scholarship, research, appraisals. A whole lot of our
22 business is that kind of thing. I thought for a long
23 time about our place in the galleries of Dupont
24 Circle.

25 We used to be a member of the Galleries of

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1 Dupont Circle, the organization, until we noticed
2 about two years ago that there was a sign on the
3 corner of 21st and Massachusetts pointing toward our
4 street saying, "Galleries this way." We were the
5 other way. We kind of dropped out.

6 It's true that we don't even feel like we
7 get our little market share that we wish now. It's
8 nothing like say -- I was downtown the other night on
9 a Friday night just to look and, man, there were
10 people pouring in and out of Euro Pinto and places
11 like that, just hundreds of 20 somethings carrying
12 wine. We have nothing to do with this. They are not
13 invited. They are not our clients. Sometimes we
14 might be open for clients who work during the day and
15 need to come on a Friday night, but not even every
16 first Friday. I've had a lot to do and I've been
17 asked by the other people in this to do some kind of
18 survey of the history of the galleries of Dupont
19 Circle. I've done a pretty simple one. I think you
20 may have -- do they have copies of these things?

21 MR. GELL: There was a two-page list of
22 the galleries that had opened and closed that was
23 attached to our prehearing submission.

24 MR. BURTON: We moved in in 1993. I found
25 a copy of the very first gallery guide, the local

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1 little magazine that tells about the galleries. We
2 had an ad in there that we were very proud of opening
3 up. We did this on a shoestring, by the way.

4 Unlike some galleries, we don't operate
5 from a big money base. There's no family money. It's
6 just me and Andrea and whatever we can scrape
7 together. We've done pretty well. I mean, we've
8 managed to almost support ourselves, although both of
9 us have to work outside of this to make it work.

10 According to the gallery guides, gee, in
11 1993 they listed 30 galleries in Dupont Circle. Then
12 the most recent one in October they listed 16. I went
13 around from gallery to gallery and I talked to my
14 friends who had come and gone.

15 I found out not only are galleries not
16 creeping into the residential neighborhood, there's
17 been a net loss of galleries. There's been a net loss
18 of at least four galleries in this immediate
19 neighborhood in the last nine years. There's been a
20 net loss of something like 11 galleries in Dupont
21 Circle in that same period of time. The galleries are
22 disappearing.

23 We're not trying to run anybody out of
24 their residence. As a matter of fact, we have the
25 same number of residents in the building with the

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1 gallery as were there before. We just want a quiet
2 little place where we have a chance to do our
3 business.

4 Where we are now is next door to -- the
5 neighbors have been great and everybody likes us but
6 it's next door to a leather shop and a nail salon and
7 people don't go down there very much. We don't even
8 get a shot at the R Street people.

9 We thought if we could have a nice place
10 in a nice house like Bill Bass' that we might have a
11 chance to be there and be quiet and do our business
12 for a long time. We didn't intent to threaten
13 anybody. Certainly we're not going to generate enough
14 traffic for anybody to notice, noise, or anything
15 else.

16 I've got the information here about the
17 rise and falls of the galleries in Dupont Circle.
18 I've got copies of the galleries' magazines. I've
19 also checked with the Art in America Annual Guide that
20 list the galleries.

21 I'm sure I haven't missed anybody. A lot
22 of galleries have gone and been replaced. For
23 example, Euro Pinto used to be Kimberly Gallery so
24 there's not a net loss one way or the other. Over all
25 it's provable that there are a lot fewer galleries

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1 then ever were there before.

2 We just want -- some people have suggested
3 at the ANC meeting -- which was a lot more hostile
4 than I expected. I thought people were going to say,
5 "Oh, a nice little gallery is coming." All of a
6 sudden we're in with Madame Zorga and all of these
7 people. They were talking about people throwing up on
8 the street and the traffic running down their kids.
9 It's nothing like that at all.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. MARINKOVICH: I wanted to address the
12 question you asked about is it possible if we moved if
13 we would go into a bigger business. The only way I
14 think that would happen is from time to time we get
15 requests from people, "Hey, I've got money. You've
16 got knowledge about art. Let's put these two
17 together."

18 Well, in the past the previous gallery I
19 worked at this happened occasionally and we didn't
20 like it. If you take an investor, then you've got
21 another person in the kitchen cooking with you trying
22 to make decisions, trying to tell you how to spend the
23 money so we've learned. I also have someone who is
24 extremely unusual at working with me. He doesn't take
25 very much money from the gallery. His wife has a

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1 business that supports them more than the gallery
2 does. Then I have my life and we have a student who
3 works with us. In order for us to become a big New
4 York style of gallery, many changes would have to
5 occur. The biggest one for Royce and me is that we
6 couldn't run the business the way that we do currently
7 and have forever. It's a very low-key operation.

8 MR. BURTON: I want to just add one more
9 thing about the rise and fall of galleries. It was
10 suggest at the ANC that we go for commercial space
11 along Connecticut Avenue. It's an awful lot more
12 expensive than getting a share of Bill Bass' place in
13 the neighborhood.

14 We couldn't afford it. We couldn't exist
15 that way. We're not terribly profitable and our gross
16 isn't even that big. Plus we're the kind of gallery
17 that you would expect to find in a mixed neighborhood
18 like Dupont Circle.

19 It's the kind of art you would find in a
20 nice home. I just want you to understand that we're
21 not an aggressive commercial gallery. We don't plan
22 to -- there's no way we can create a lot of traffic or
23 noise or anything else objectionable.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GELL: I might just add if you look at

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1 the picture of the building, you have to go up some
2 stairs in order to get to the front door which
3 militates against the kind of Connecticut Avenue
4 traffic and activity that you would expect of a
5 gallery that would attract many people. This one
6 almost defies you to come in. I think that, too,
7 militates against being that big.

8 I would like at this point to ask the
9 Board if it would recognize Lindsley Williams as an
10 expert in planning because we would like to have him
11 testify.

12 CHAIRPERSON GRIFFIS: Any objection from
13 the Board members if his information was submitted to
14 the record?

15 VICE CHAIR RENSHAW: Mr. Williams'
16 material is very, very complete and I wonder if he
17 could just give a condensed version.

18 CHAIRPERSON GRIFFIS: Let's hear from the
19 parties first if they have any objection and then
20 we'll give Mr. Williams instruction.

21 Does the ANC have any objection to
22 granting expert status to Mr. Williams?

23 MR. MICONE: No objection.

24 CHAIRPERSON GRIFFIS: That was no
25 objection voice by the ANC.

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1 Does the party? Have you had an
2 opportunity to look at Mr. Williams --

3 MR. HURTEAU: I literally just got it. I
4 have no information about him and have not prepared
5 to --

6 CHAIRPERSON GRIFFIS: Do you need five
7 minutes?

8 MR. HURTEAU: A few minutes would be
9 great.

10 VICE CHAIR RENSHAW: Do you have Mr.
11 Williams' submission?

12 MR. HURTEAU: I just received this
13 literally seconds ago.

14 VICE CHAIR RENSHAW: Is that a one page?

15 MR. HURTEAU: It's a two page. It looks
16 like a bio.

17 CHAIRPERSON GRIFFIS: I think what she's
18 asking is you have the bio or whatever but do you have
19 his actual submission of the substance of the case?

20 MR. HURTEAU: I do not.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. GELL: It was delivered to the ANC.

23 CHAIRPERSON GRIFFIS: Indeed.

24 MR. GELL: The assumption was that it
25 would be shared.

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1 CHAIRPERSON GRIFFIS: We're going to take
2 five minutes and give him that. When I come back I'm
3 going to have you either object or not say anything
4 about Mr. Williams being an expert witness. It also
5 gives you a couple of minutes to take a look at what
6 he is about to present to the Board.

7 MR. HURTEAU: Thank you.

8 (Whereupon, at 4:10 p.m. off the record
9 until 4:22 p.m.)

10 CHAIRPERSON GRIFFIS: If I can have
11 everyone take their seats please.

12 MR. GELL: Mr. Burton wanted to add
13 something to his testimony.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GELL: Actually, just a clarification.

16 MR. BURTON: About our average sale, it's
17 quite high. Our general merchandise runs between
18 about \$2,000 or maybe \$100,000. An average sale is
19 any place from \$6,000 to \$8,000 or even \$10,000.
20 Andrea mentioned something about making a \$50 sale
21 here and there. Yeah, we do that. We work really
22 hard when an art student comes in and wants a real
23 piece of art instead of a reproduction to hang on his
24 wall in the dorm. We have drawers for this kind of
25 thing and we work very hard to accommodate people that

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1 have a limited income but want to commit to art
2 collecting. I didn't want to suggest that our average
3 sale is \$50.

4 CHAIRPERSON GRIFFIS: But the significance
5 to the Board on the sale price is what?

6 MR. BURTON: It's that we have many fewer
7 buyers than we would have to have if we were selling
8 things regularly for \$50 or \$100.

9 CHAIRPERSON GRIFFIS: I see. So you're
10 saying that at a price of \$2,000 to \$80,000 you're not
11 having people walk off the street doing impulse
12 buying.

13 MR. BURTON: Exactly.

14 CHAIRPERSON GRIFFIS: I see. Okay. Thank
15 you for that clarification.

16 MR. HURTEAU: I have no objection to their
17 witness testimony.

18 CHAIRPERSON GRIFFIS: No. You are to
19 object or not object to whether we grant expert status
20 to Mr. Williams.

21 MR. HURTEAU: I do not object.

22 CHAIRPERSON GRIFFIS: Okay. Very good.
23 Thank you.

24 Mr. Williams.

25 MR. WILLIAMS: Mr. Chairman, I await your

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1 instruction.

2 CHAIRPERSON GRIFFIS: Oh, indeed. First
3 of all, I think the Board has relayed to me and
4 clearly we've had your submission and read it and it
5 is very complete. I would suggest that you summarize
6 and highlight some of the points in your report and
7 have Mr. Gell, of course, direct you where you need to
8 be but I don't think we need to run through the entire
9 piece indeed.

10 MR. WILLIAMS: Thank you, Mr. Chairman.
11 I'll do my best to heed your advice. Let me tell you
12 in a few words in an introductory nature why I'm here.
13 It's a little different than my resume. I moved to
14 the city in 1970. I became involved with the
15 community.

16 I was a charter member of the ANCs when
17 they first were established in 1976. I chaired ANC 3-
18 C. I led zoning reviews and discussions out of that
19 community. They went to issues of concern of the
20 neighborhood. I very much appreciate the work and
21 role of ANCs and community organizations.

22 I presided over one and I welcome the fact
23 that we have with us today people from the immediate
24 area who are concerned about this project because
25 they, as I, as we and you and the Board, are all

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1 looking for a better and solid area for our community
2 to live in and work in and to basically thrive.

3 We don't appear to be agreeing at this
4 point. That's why they're here in opposition and I'm
5 here in support. Part of it is that background.
6 Later in my professional life I became a member of the
7 Zoning Commission. During the '80s I simply want to
8 remind the Commission that there were three cases that
9 were heard or initiated during that era, one of which
10 is particularly germane to this case, case No. 86-8.
11 It is accompanied by Zoning Commission Order No. 558.

12 This is a case that dealt with artist
13 studios and art galleries and it was done in the same
14 era as the Commission heard from the counsel and heard
15 from the citizens about the importance of arts and
16 cultural institutions in our city and, ultimately, in
17 our zoning regulations.

18 These led to changes, the case that is
19 before us today, and that shaped the behaviors that
20 others have had about these kinds of things.
21 Particularly pivotal here is the fact that until the
22 adoption of order 558 art galleries were permitted to
23 be established as a matter of right in R-4 and R-5
24 zone districts.

25 The Commission in studying the issue of

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1 art began to do things to better accommodate the needs
2 of artists for studios to accompany their living
3 space. They addressed the needs for an arts district
4 that was in a separate order.

5 In this order they studied the question of
6 whether or not art galleries should be changed from
7 the matter of right status they had enjoyed. The
8 Commission determined yes, they should. They then set
9 about to establish the criteria for what's in the case
10 right now, what test must be shown for an art gallery
11 to be established as a special exception. They also
12 defined what an art gallery is. I find it useful in
13 this context to go back to the question of what is an
14 art gallery. It is a place in which more than 50
15 percent of the revenues derive from the sale of art.
16 That's what this case is about. It's about
17 establishing an art gallery and about establishing
18 that this particular application can be done in a
19 manner that meets the standards of the special
20 exception.

21 I want to thank the Board for accepting me
22 as an expert and I want to turn now and have you just
23 note that Ms. Hubbard is sitting here. She's not here
24 for this case but she said to me earlier, and we've
25 known each other for a long time, "Lindsley, how could

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1 you do this? How could you be doing something that
2 would be in favor of taking away housing stock for
3 another one of these things?" I asked her, "Please
4 wait." She's an expert, too, in her own way and I
5 think we should all recognize that.

6 The answer is this is a case about
7 establishing an art gallery in a part of a single unit
8 residential space in a building. It is not taking
9 away a residence. It is about adding an art gallery
10 into a space so that there will be two uses going on
11 within the same space.

12 Now, you do have my testimony, the report.

13 I have tried to walk through any number of the tests.

14 I could just sort of say I will stand on it and
15 answer your questions or I can try to give you just a
16 few highlights. I'm looking to you for a nod as to
17 which you would prefer.

18 CHAIRPERSON GRIFFIS: I would suggest you
19 go through and highlight the salient points.

20 MR. WILLIAMS: Well, what I tried to do
21 then against the definition and context is to remind
22 the board of what the tests are. We have tried to
23 establish through my report and their testimony and
24 other information that's come in that the gallery is
25 going to be located and operated so that it's not

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1 likely to become objectionable to adjourning and
2 nearby property because there has been no evidence
3 that there is any noise created by artwork.

4 Pedestrian and vehicular traffic. What
5 we've said is that in comparison to the other
6 generators of traffic in the area, generators that are
7 exquisitely well known to the Board -- a museum
8 permitted as a matter of right directly down the
9 street, among other things -- that the traffic that
10 would be marginally added to the already busy streets
11 by this is imperceptible. Imperceptible.

12 You've heard from Royce about the daily
13 visitors. You've heard that many of them come by
14 Metro. You have from the Phillips report, and Mr.
15 Gell can submit it to the record again here if you
16 wish, information that the Phillips daily visitors on
17 weekdays is 400 and almost double that on weekends.

18 We have talked about their peak weekend
19 traffic being 20 people -- 12. Excuse me. This is
20 nothing. If you had children in the house, and I'm
21 not against children, you would have more times that
22 the door would be open and shut creating pedestrian
23 traffic with kids going in and out than you have from
24 customers.

25 This is a case in which there will be no

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1 objectionable condition because of noise, pedestrian
2 traffic, vehicular traffic, the hours of operation.
3 We haven't gone over that specifically. They open
4 10:00 in the morning and ordinarily close later on in
5 the afternoon and sometimes extending when they have
6 the special events that they have talked about. In
7 general they close up at 6:00.

8 I am unable to find in anything that I've
9 seen of her gallery as it exist now, of others that
10 exist in the area, and I've walked around particularly
11 the area within 500 feet. Along R Street in
12 particular there's a kind of cluster of galleries. I
13 cannot see anything that rises to the level of
14 creating an other objectionable condition whatsoever.

15 This is what I do, I make an effort to
16 look at what is troublesome about an application. If
17 there is trouble, it's my duty to tell the client,
18 "You've got problem here." I couldn't find a problem
19 in this application. If I did I would be discussing
20 the problem with you right now. Instead, I'm
21 asserting that there are going to be no objectionable
22 conditions that are created here.

23 You've heard from Ms. Marinkovich about
24 the frequency, perhaps eight a year, and the number of
25 attendees, as many as 30 to 40 sometimes in a really

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1 big one, of special events and occasionally
2 participating in other activities that are related to
3 the cluster of galleries that serves Dupont Circle.
4 These do not create a situation that I believe creates
5 a problem under 361.3.

6 Ms. Marinkovich has identified that she
7 has control of the parking areas as a function of her
8 lease. This provides even though no parking is
9 required because it's an historic building we could
10 achieve a waiver but it provides a way to provide
11 discrete adjacent relief on the same property for
12 those that choose to drive to the premises to come and
13 visit.

14 She's also able to tell you if she hasn't
15 already through other written submissions that when
16 people are coming to see her, sometimes it's because
17 they have an appointment and they are coming to see
18 her or her partner and a particular piece of art.

19 Other times they are doing a variety of
20 things that are a function of what else is in the
21 neighborhood. The big one, the Phillips. And where
22 are the other galleries in relation to the Phillips?
23 They're all clustered around it. She was the stray,
24 if you will, located south of Massachusetts Avenue.
25 The others are located north of Mass. in a district

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1 which is a mix of residential and institutional uses.

2 It is not exclusively a residential area.

3 The effect that would be generated on the residential
4 community compared to what has already happened is
5 inperceptable. As I've indicated, a portion of the
6 property is to be retained in residential use.

7 I do not find anyway under 361.5 the
8 proposed use would adversely affect the present
9 character or future development of the surrounding
10 area. We have provided you, and I helped work with
11 Mr. Gell and Ms. Marinkovich, a series of conditions
12 that we believe would adequately form a set of
13 guarantees that would show that she can operate in a
14 manner that will be respectful to the community and
15 respectful to the Board.

16 One other point I would like to make about
17 the regulations adopted by the Zoning Commission. It
18 compliments in a way the testimony her partner, Mr.
19 Burton, gave. He talked about a loss of art
20 galleries. I'm sure you remember that.

21 I went at it a little differently in my
22 work. What I did was try to go back through the case
23 records of the Board to find out how many cases have
24 come about. The intent of the Commission in order No.
25 558 was to permit art galleries under a special

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1 exception.

2 What's happened since those regulations
3 were adopted? Well, as you know, the state of our
4 records in the Office of Zoning is greatly improved
5 over what it used to be. That's the good news. It
6 remains something less than precise.

7 What I was able to determine is that there
8 has been one application filed since the time these
9 regulations were adopted to permit this type of use.
10 It was an application on the upper end of 21st Street
11 on the east side. It was an application that went
12 under the name of Tyler.

13 What it was was an application heard about
14 1990 in which they sought to have a change of use or,
15 in the alternative, to establish an art gallery. What
16 the Board did at that point after looking at the
17 record in the case was to deny the use variance and
18 approve the art gallery. I do not know if that art
19 gallery came to be established. What I can tell you
20 is that it's not there now. It was -- I think it is
21 singularly instructive that what you have in this
22 application is a person who came to find out that
23 there were rules to be followed and followed them.
24 That's why she's here. She is seeking your approval
25 to be allowed to carry out the type of business she

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1 has described, the type of business that is permitted
2 by special exception, the type of use that is
3 compatible with the residential district in which it
4 is located.

5 A few words out of the report of the
6 Zoning Commission in 558. "While it is necessary to
7 protect residential from the impact of business
8 traffic whether pedestrian -- I'm sorry. I picked up
9 at the wrong point.

10 "The overall thrust of written and oral
11 statements and material persuasively supports the
12 benefit to the District providing the maximum
13 reasonable number and kinds and locations for the
14 creation, display, and sell of art. At the same time
15 it is necessary to protect residential communities
16 from the impact of business traffic, whether
17 pedestrian or vehicular, and discourage diversion of
18 housing stock to other uses."

19 Those are what my testimony and my report
20 is all about. We do not have a diversion of housing
21 stock. We have the deployment of a portion of a space
22 to the art use. We do not have the vehicular traffic
23 that is going to be troublesome.

24 Later on in the same order the Commission
25 wrote, "Some concern was expressed during the hearings

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1 about protecting residential zones from the intrusion
2 of nonresidential uses. This concern is reasonable
3 but taken too far would deprive the District of the
4 diversity which inheres in and enriches the life of
5 the city. Art is one element of this diversity that
6 should be encouraged with reasonable controls."

7 Ladies and gentlemen, I have gone through
8 the standards to which the Board is required to face
9 in considering a case like this. I am almost reaching
10 the conclusion that while the Commission may have
11 thought it was allowing art galleries to be
12 established by special exception, the nature of these
13 small businesses sets up such a threshold that few
14 have ventured as far as this bench.

15 On the basis of that, I submit they have
16 met their burden conclusively on each and every point
17 and the application should be granted. I rest.

18 CHAIRPERSON GRIFFIS: Thank you, Mr.
19 Williams.

20 MR. GELL: For the Board's information,
21 the number of the case that he referred to, the Tyler
22 case is No. 15343.

23 MR. WILLIAMS: Of course, I would be
24 pleased to answer anything about my extemporaneous
25 remarks or the written report.

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1 CHAIRPERSON GRIFFIS: Board, questions?

2 VICE CHAIR RENSHAW: Mr. Williams, you
3 quoted at the end from this submission I'm holding up.
4 I don't have an exhibit number for this.

5 CHAIRPERSON GRIFFIS: ZC Order 558 which
6 would be Exhibit No. 49, I believe.

7 VICE CHAIR RENSHAW: All right. We're
8 thinking that it's No. 49 exhibit. Where is the quote
9 that you -- I wanted to mark it if it hasn't been
10 marked.

11 MR. WILLIAMS: Well, I read from two
12 places, Mrs. Renshaw. On page 1, the bottom of the
13 paragraph that begins with, "Pursuant to." I read
14 from the third paragraph on page 2 as well.

15 VICE CHAIR RENSHAW: Um-hum. Thank you.

16 MR. GELL: Ms. Renshaw, we have also
17 marked two other paragraphs that we think --

18 VICE CHAIR RENSHAW: I noted that.

19 MR. GELL: -- are relevant for your
20 consideration.

21 CHAIRPERSON GRIFFIS: Okay. Other
22 questions from the Board about any of Mr. Williams'
23 testimony?

24 Are you in receipt of the Office of
25 Planning supplemental report?

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1 MR. WILLIAMS: Yes.

2 CHAIRPERSON GRIFFIS: Okay. To your
3 comment, I want to address that I don't think anyone
4 is being fooled that artwork makes noise. However, I
5 think you are well aware that, in fact, the pedestrian
6 and vehicular traffic go to those who come to see and
7 purchase the artwork.

8 MR. WILLIAMS: Sure.

9 CHAIRPERSON GRIFFIS: Does the ANC have
10 any cross-examination of the witnesses at this point?

11 MR. MICONE: Not at this time, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Okay.

13 Mr. Gell, are you calling other witnesses?

14 MR. GELL: Yes, we do have one more
15 witness. It will be very brief.

16 CHAIRPERSON GRIFFIS: Okay. What are they
17 addressing?

18 MR. GELL: We are going to ask Mr. Bass
19 who owns the building and who has been seeking people
20 to sign a petition and to sign onto an agreement.
21 He's going to tell you what he found and explain it.

22 CHAIRPERSON GRIFFIS: Not a problem. I
23 was just trying to assess whether it's a good breaking
24 point to do cross-examination of all the witnesses.
25 You finish your case and then we can entertain that.

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1 MR. WILLIAMS: I wanted to emphasize one
2 more thing, Mr. Griffis, and that is that the nature
3 of the activity that is planned, and Mr. Bass can
4 speak to this as well, is to allow a use, the art
5 gallery to take place within the space. It will not
6 be making any changes in the space that would be such
7 as to curtail its ability to flow back into use as
8 housing thereafter. We're not changing interior walls
9 so living room, dining room, and so on in one
10 configuration remain intact.

11 CHAIRPERSON GRIFFIS: Okay. It's in the
12 written submission also that there is no exterior
13 changes being made and that, of course, would come
14 under the oversight of another Board.

15 Yes, sir.

16 MR. HURTEAU: Would I be able to cross-
17 examine their special witness now or will it occur at
18 a later time?

19 CHAIRPERSON GRIFFIS: That's what I was
20 trying to assess. What I would like to do is just
21 have Mr. Bass up and that will complete their
22 witnesses. Then you can take them and I'll have them
23 all be up here and we'll take them one at a time for
24 cross-examination.

25 MR. HURTEAU: Thank you.

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1 MR. GELL: Also, Mr. Chairman, Mr. Michael
2 Frame has a short statement he wants to read into the
3 record as well. He's a very close neighbor to the
4 building.

5 CHAIRPERSON GRIFFIS: You're calling him
6 as a witness?

7 MR. GELL: Yes.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. GELL: So there's two people.

10 MR. HURTEAU: I would like to object to
11 that.

12 CHAIRPERSON GRIFFIS: Actually, let's get
13 to Mr. Bass because he keeps getting up and down and
14 we're making him uncomfortable.

15 If you could come up to the table when
16 you're ready, Mr. Gell, and then when you present your
17 next witness, clearly we will entertain the objection.

18 MR. BASS: Thank you, Mr. Chairman,
19 members of the Board.

20 CHAIRPERSON GRIFFIS: I'm going to ask you
21 to turn on your mike.

22 MR. BASS: Can you hear me now?

23 CHAIRPERSON GRIFFIS: Yes. Not to mention
24 so can the record.

25 MR. BASS: When we first invited some of

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1 the neighbors for an open house on the 5th of
2 September to put forth our proposal and to listen to
3 any concerns that they might have, I was quite shocked
4 by the rather militant reaction that I perceived from
5 some of these neighbors who just seemed to be totally
6 opposed to any kind of nonresidential use even though
7 it were inside an existing dwelling that continued to
8 be a dwelling.

9 We attempted to negotiate through Mr.
10 Saltzberg for a period of time, as has already been
11 explained. Those negotiations broke down and it
12 became apparent to us that there was no further
13 interest in continuing a dialogue.

14 We decided to take the agreement that we
15 had put forth to these few neighbors and take it to
16 the rest of the neighborhood because we had only
17 really gotten feedback from roughly six or eight
18 neighbors. Then at the October 1st hearing a petition
19 was submitted that was signed by these neighbors and
20 some others opposing the application.

21 I realized that if this is the only thing
22 that the Board and others are aware of, they could
23 have the impression that the entire neighborhood is
24 opposed to our application. I took it upon myself to
25 take the agreement that we had of the draft and

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1 another petition of just general support and start
2 going door to door throughout 21st Street and R
3 Street.

4 I covered the 1600 block of 21st Street
5 and the 1700 block of 21st Street, the 2000 block of R
6 and the 2100 block of R as far west as Florida Avenue.

7 Those parameters I felt were all properties,
8 residences that were within eyesight of my house on
9 the corner of 21st and R. I also started on the 2000
10 block of Hillier but time ran out and I was not able
11 to finish all of Hillier.

12 I also was unable to have time to go
13 through all of the multi-family apartment houses. I
14 have mainly concentrated on single family dwellings or
15 flats that were in those dwellings. I was very
16 surprised at the reaction that I got from the
17 neighbors. In fact, there are 56 signatures which I
18 have obtained from these neighbors.

19 CHAIRPERSON GRIFFIS: Are you going to
20 submit that petition?

21 MR. BASS: Yes, I would like to.

22 CHAIRPERSON GRIFFIS: Okay. I think we
23 can consolidate all of the information that we need.
24 Clearly we have noticed you have canvassed. If you
25 want to submit that petition, what we'll need to do is

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1 read what the petition says and we can look at the
2 address. Petitions for what they're worth, and I
3 won't address that to the Board, they pretty much
4 stand on their own.

5 MR. BASS: Okay. Well, this is not just a
6 petition. It is also a neighborhood cooperation
7 agreement.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. BASS: And we had asked for a
10 continuance on this case to allow time to reach an
11 agreement.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. BASS: We had difficulty reaching an
14 agreement with the few neighbors --

15 CHAIRPERSON GRIFFIS: That's on the
16 record.

17 MR. BASS: -- that had voiced their
18 concerns so we took the agreement to the rest of the
19 neighborhood. I also have a map in which I have
20 shaded all of the properties from whom I gathered
21 these signatures of support on a petition and
22 signatures on the agreement.

23 There were a total of 37 addresses. That
24 consisted of 34 households and three small businesses.

25 Of the total number, the 56 people who signed, 15

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1 were tenants. The remainder property owners or their
2 partners.

3 CHAIRPERSON GRIFFIS: You're submitting
4 this and the signatures on this are actually
5 signifying that they will join in this neighborhood
6 cooperation agreement?

7 MR. BASS: Correct.

8 CHAIRPERSON GRIFFIS: Okay. There are two
9 letters, if I'm not mistaken. When was this
10 completed?

11 MR. GELL: Mr. Chairman, the package you
12 have contains both the agreement with the signatures
13 on the agreement, and it contains several pages of a
14 separate petition.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. GELL: Those people that didn't want
17 to take part in the agreement signed the petition.

18 CHAIRPERSON GRIFFIS: Excellent
19 clarification.

20 MR. BASS: Actually, everybody with the
21 exception of two individuals who signed the agreement
22 also signed the petition.

23 CHAIRPERSON GRIFFIS: I see. So there may
24 be similar names on each of these.

25 MR. BASS: The petition has all the names

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1 that are on the agreement except for two.

2 CHAIRPERSON GRIFFIS: Okay. And when was
3 this completed and submitted into the record? I mean,
4 in the record is right now but when was it completed
5 and circulated?

6 MR. BASS: Well, I started around the
7 15th.

8 CHAIRPERSON GRIFFIS: I see. When was it
9 completed is what I care about.

10 MR. BASS: Today at about 12:30.

11 CHAIRPERSON GRIFFIS: Okay. There's
12 letters in the record that we will get to which I want
13 to address briefly from counsel members. Were they in
14 receipt of these?

15 MR. BASS: No, they were not. I was very
16 surprised to learn that the two council members had
17 submitted letters. I would ask that the record be
18 left open to allow those council members an
19 opportunity to review the neighborhood agreement and
20 the petition so that they may be afforded a chance to
21 submit further opinion on the case.

22 CHAIRPERSON GRIFFIS: Okay. We'll take it
23 under advisement.

24 MR. BASS: I also have a graphic display
25 here, a map showing the location of all of the houses

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1 from whom I gathered the signatures, as well as the
2 subject site. It's merely to show a pattern of the
3 neighborhood of where the support for our application
4 is coming from.

5 CHAIRPERSON GRIFFIS: Okay. Let me just
6 say as this is getting circulated that clearly this
7 isn't a popularity contest. We don't count votes and
8 have an election here. What we look to is the
9 substance and the factual substance that the Board can
10 take and weigh and that's what we weigh.

11 I think this is -- I don't discourage
12 this. I think it's excellent and I think you made
13 your point. We need to take the time to look through
14 these as we will to look at the submitted petition in
15 opposition and that we look clearly to the substance
16 of what we need to evaluate this application with.

17 MR. BASS: One other point. I understand
18 your point about this not being a popularity contest
19 but there were also three individuals who signed the
20 agreement who had previously signed the petition in
21 opposition.

22 CHAIRPERSON GRIFFIS: Okay. You have
23 requested that we keep the record open to have
24 responses from council members that may have submitted
25 letters with this new information. You are prepared

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1 to present this to the council members then?

2 MR. BASS: Absolutely.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GELL: It's also possible that some
5 people who have copies of the agreement who have not
6 yet gotten back to Bill would like to sign. Other may
7 want to sign. We would like to be able to submit any
8 of those to you if we can.

9 CHAIRPERSON GRIFFIS: We'll consider that.

10 MR. GELL: I would also add that you'll
11 note that there are some differences between the
12 agreement and what we have assured the Board of, some
13 of the factors that we have given to the Board.

14 Indeed, we do intend to adhere to those
15 stronger more controlling promises that we've made.
16 This has been an evolving process in trying to find
17 the right formula that would assure neighborhood
18 support and also assure the neighborhood that it would
19 not be affected adversely.

20 CHAIRPERSON GRIFFIS: Okay. Clearly, as
21 you well know, Mr. Gell, but others may not, this
22 Board can condition it's orders but it's only
23 conditions that, in fact, go directly to the
24 regulations for the relief sought and, in fact,
25 conditions that can, in fact, we enforced.

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1 We encourage if it's needed in the
2 community that some cooperative agreements be made but
3 they may, in fact, have elements and agreements well
4 beyond any conditions that come into a BZA order. So
5 your point being you have a lot in this that may not
6 be as proffered to the Board as unimportant.

7 MR. GELL: What I'm saying is what we've
8 proffered is stronger than what's in the agreement.

9 CHAIRPERSON GRIFFIS: Yes. I was trying
10 to make a bigger point actually. There it is.

11 Okay, Mr. Bass. Anything further?

12 MR. BASS: Well, I only want to say that
13 I've owned my home at 21st and R for 26 years. Over
14 those years this particular unit, 1629, where I've
15 lived myself has been a group house. It is not then a
16 particularly neighborly friendly experience at times
17 when you have four separate individuals living in a
18 home, none of whom are individually accountable to the
19 group. They have parties and they generate noise. I
20 got to know this rather intimately living in the unit
21 directly adjacent. I really didn't want to rent my
22 home to a group which is one of the options that was
23 before me. When I met Andrea and Royce and we talked
24 over what they proposed to do, it seemed to me that
25 this was a perfect fit. It was compatible and that

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1 they would be good neighbors. There was no loss of
2 housing stock. We weren't changing anything. We were
3 merely adding a use in the downstairs of the home.
4 The facts are that they will be good neighbors. I
5 wouldn't have entered into this or gone to this effort
6 to try to back up the application if I didn't believe
7 it. I have a commitment to this neighborhood. I've
8 been in the neighborhood for a long time. I intend to
9 remain in the neighborhood for the rest of my life.
10 Some day I will be back living there again. I just
11 feel that some of these individuals who are opposing
12 this application are misinformed or else they are
13 simply being arbitrary about it. That's an opinion
14 but I wanted to make that known.

15 CHAIRPERSON GRIFFIS: Good. Thank you.
16 In terms of misinformation, I think that is what
17 public hearings are actually for and hopefully we can
18 get the information out for everyone's review and
19 comment. Thank you very much, Mr. Bass.

20 MR. GELL: If we could ask Mr. Frame to
21 speak now. If there is objection --

22 PARTICIPANT: I will object to that.

23 MR. GELL: -- we can have him speak later.

24 CHAIRPERSON GRIFFIS: Let's hear the
25 objection then.

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1 MR. HURTEAU: I would like to object. It
2 seems that at the end of this period people are
3 allowed to come him and give their presentations as
4 are people who come here just today and that we are
5 aware of today and not before that.

6 As a substance, and this is the first I've
7 heard of this, I would like him to be able to voice
8 but at a time when everybody else is able to voice at
9 the end of this proceeding.

10 CHAIRPERSON GRIFFIS: I don't think there
11 is any restriction. Perhaps I could be advised if I'm
12 incorrect but restrictions for witnesses that Mr. Gell
13 can call. We can have him --

14 MR. HURTEAU: I don't understand the
15 witness part, I guess, Mr. Gell, if you could clarify
16 how he is a witness.

17 MR. GELL: He would not be an expert
18 witness. He is simply being called as a witness and
19 neighbor.

20 CHAIRPERSON GRIFFIS: I understand now.
21 There are two levels. They offered Mr. Williams as an
22 expert witness which has a higher standing and
23 certainly has a higher standing when it goes to the
24 Court of Appeals if that course is taken. Then there
25 are witnesses that substantiate the case.

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1 Mr. Gell is representing the applicant but
2 has to present the case. Mr. Gell cannot testify and,
3 therefore, has to bring witnesses forward to present
4 his case that do give testimony.

5 If Mr. Gell is indicating that he wants to
6 call another witness, I'm not sure I can stop him from
7 doing that. I can have him outline what it is that
8 they are going to address and how it's pertinent to
9 his case and we can assess it that way.

10 MR. HURTEAU: That would be great.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. GELL: Mr. Frame is a very close
13 neighbor. He wants to talk about the impact that he
14 sees of the gallery use of this property on his
15 property and on him and his family. I believe it's
16 going to be very short testimony.

17 CHAIRPERSON GRIFFIS: Okay.

18 Do you have any objection?

19 MR. HURTEAU: Why don't we proceed.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. FRAME: Thank you. My name is Michael
22 Frame and I'm speaking on behalf of my wife, Linda,
23 and myself. We live directly across the street from
24 the entrance to the proposed Burton Marinkovich
25 gallery.

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1 CHAIRPERSON GRIFFIS: Could you clarify
2 across the street?

3 MR. FRAME: We are directly across 21st
4 Street. The entrance to the gallery is almost exactly
5 opposite our entrance.

6 CHAIRPERSON GRIFFIS: And the address?

7 MR. FRAME: 1642 21st Street.

8 CHAIRPERSON GRIFFIS: Are you between the
9 Muller and Saltzberg sites?

10 MR. FRAME: That's right.

11 CHAIRPERSON GRIFFIS: I see.

12 MR. FRAME: Closer to the corner. I know
13 some of our neighbors are opposed to the change that
14 is being discussed here. We feel in this case they
15 are mistaken. We lived at our current address since
16 1990 and before that lived two blocks away for over
17 five years.

18 One of the things that attracted us to the
19 area around 21st and R was the mix of galleries and
20 homes and the proximity to the activity on Connecticut
21 Avenue. Since we've lived on 21st Street we've seen
22 turnover in galleries and we've seen galleries
23 converted to residences. Just some examples, what was
24 once a gallery is now Teatism. The gallery next to the
25 proposed gallery became a private residence within the

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1 last year or two. The Tart Gallery on Q Street is now
2 a residence.

3 Part of the attraction of living in a
4 vibrant part of the city is the constant change. Even
5 though we have seen galleries go, we have assumed that
6 others would come and that things would essentially
7 balance out.

8 We see the addition of this new gallery as
9 simply part of that balance. In fact, the move of the
10 gallery from 21st and P to 21st and R is not a
11 significant change in the makeup of our neighborhood.

12 We have lived across the street from the building
13 owners, the Basses, for 11 years. We know they love
14 the neighborhood and plan to come back to it. They
15 have retained ownership of their house, even in the
16 current property market. In talking to them we have
17 become convinced that they continue to care about the
18 neighborhood.

19 We're part of the five town house
20 condominium whose name is Gallery Town House
21 Condominiums, an acknowledgement of the role galleries
22 play in our neighborhood. The president of our condo
23 association is Steve Saltzberg.

24 Linda and I feel the galleries, including
25 the Phillips Collection, are an important feature of

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1 our city life. Almost without exception the galleries
2 are great neighbors and, in that spirit, we welcome
3 and support the proposed gallery.

4 CHAIRPERSON GRIFFIS: Thank you very much.

5 Questions from the Board?

6 MR. ETHERLY: Mr. Frame, just as a
7 clarification so I understand a little bit of the
8 context. You are here, of course, speaking in your
9 own individual capacity and that of your wife's.
10 You're not here representing the Condo Association.
11 Correct?

12 MR. FRAME: That's correct. I didn't mean
13 to imply that.

14 MR. ETHERLY: No implication taken. Was
15 there any discussion -- I'm just curious. Was there
16 any discussion at the Condo Association regarding the
17 project?

18 MR. FRAME: We haven't had a meeting.
19 There are five units in the Condo Association so we
20 don't have very formal meetings but I'm not aware of a
21 meeting among the other members. We were contacted by
22 Steve Saltzberg wife, Susan Lee, to ask our opinion
23 about the gallery. We told her at that time, and this
24 was very early on in September, that we could see no
25 objection to it. We weren't really contacted after

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1 that and didn't really expect to be.

2 MR. ETHERLY: Okay.

3 MR. FRAME: I think one additional thing I
4 would like to say is that while I don't represent the
5 people who sign the petition supporting the gallery, I
6 think I am representative of the people who basically
7 don't object. I understand that some of our neighbors
8 feel very strongly in opposition to this and have gone
9 to a lot of trouble to make themselves known. We are
10 probably remiss in not making ourselves more known
11 that we support -- basically I guess what I'm trying
12 to say is our neighborhood is exactly what I bargained
13 for when I moved into it. It's active. It changes.
14 I wouldn't live anywhere else.

15 MR. ETHERLY: Okay. Could you speak very
16 briefly, if you could, to any of the concerns that
17 have been alleged around a gallery activity in terms
18 of -- clearly you're saying you don't have any concern
19 about --

20 MR. FRAME: No. We're basically home
21 every first Friday when the most obvious activity
22 related to the galleries takes place and you'll see a
23 plastic cup here and there after Friday night is over
24 with. Often gallery owners will go out and pick those
25 things up on their own to minimize the effect of it.

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1 I just can't imagine a better sort of neighbor than an
2 art gallery. It's just very inoffensive.

3 MR. ETHERLY: Okay. In terms of the
4 proximity of your unit, presumably you have some
5 windows that face outward onto R Street and some of
6 the surrounding area, of course. Any noise or any
7 other deleterious affects from that standpoint?

8 MR. FRAME: No, not really. We would say
9 we are affected by street lights and the clubs and
10 bars on Connecticut Avenue letting out at 2:00 a.m. or
11 so as far as noise is concerned more than we are by
12 our neighbors whether they are galleries or whether
13 they are residents.

14 MR. ETHERLY: Thank you.

15 Thank you, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Others?

17 VICE CHAIR RENSHAW: Mr. Frame, good
18 afternoon.

19 MR. FRAME: Good afternoon.

20 VICE CHAIR RENSHAW: Mr. Burton testified
21 earlier about an incident the other night where I
22 gather there were young people coming out of Pintos
23 carrying wine. Pintos is a gallery. Are you bothered
24 by that at all? Is that a frequent occurrence in your
25 neighborhood?

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1 MR. FRAME: I would say no.

2 VICE CHAIR RENSHAW: Is that a first
3 Friday occurrence?

4 MR. FRAME: I'm not familiar with the
5 particular incident he's talking about. People do
6 walk around the neighborhood with wine glasses --
7 plastic wine glasses in their hands going from gallery
8 to gallery.

9 CHAIRPERSON GRIFFIS: Of course, that's
10 not legal.

11 MR. FRAME: Correct. Correct. We find
12 empty beer bottles sitting in front of our house from
13 the people leaving the bars which is not legal either
14 and more bothersome, I think.

15 I mean, obviously some of the people that
16 are attending these things do break the law in that
17 regard. The couple of gallery owners that I know well
18 enough to talk to, I am convinced that they don't
19 condone it. It's just pretty hard to stop.

20 VICE CHAIR RENSHAW: All right. We will
21 be asking Mr. Micone about this when he testifies. Do
22 you -- and you don't have any objection to the number
23 of events that the applicant is proposing?

24 MR. FRAME: No, I don't.

25 VICE CHAIR RENSHAW: And you don't feel

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1 that there will be any parking problems in your
2 neighborhood?

3 MR. FRAME: Well, no. I don't think we'll
4 have significantly different parking problems than we
5 have already. A lot of our neighbors have parties of
6 their own and they have to deal with the problem of
7 having people come by subway or taxis or figuring out
8 a way to park or whatever. Some of the parties are
9 quite large and they get handled. We've had a lot of
10 disruptive things happen in our neighborhood in
11 regards like that. President Clinton visited the
12 house two doors down from that. That was extremely
13 disruptive, of course, but nobody objected. We all
14 thoroughly enjoyed it. To me it's all part of living
15 in this part of the city. It's just not a bother. I
16 speak, of course, for myself and my wife.

17 VICE CHAIR RENSHAW: Did you take your
18 comments and those of your wife to the ANC meeting?

19 MR. FRAME: No, I didn't. I think we were
20 out of the country when the ANC meeting took place. I
21 can't say for sure I would have gone anyway but I
22 didn't, in fact.

23 VICE CHAIR RENSHAW: All right. Thank
24 you.

25 CHAIRPERSON GRIFFIS: Others? Very well.

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1 I'm going to ask all the witnesses if we can -- well,
2 we have one, two, three, four, five. Let's pull up
3 chairs on this end.

4 MR. HURTEAU: Okay. And we can just begin
5 and ask each one the questions.

6 CHAIRPERSON GRIFFIS: That's exactly
7 right. I'm sorry, Mr. Gell. Were you finished?

8 MR. GELL: Should Mr. Williams stay?

9 CHAIRPERSON GRIFFIS: Should he? Is that
10 your question?

11 MR. GELL: Yes.

12 CHAIRPERSON GRIFFIS: Absolutely. I may
13 have you just take over that corner. I'm going to
14 have the ANC member first come up. I would anticipate
15 the party that has the three households joining,
16 you've been writing questions and are going to give
17 them to somebody that will come up so just be prepared
18 clearly after the ANC.

19 I will call you up to do cross-
20 examination. Cross-examination is questions that
21 relate directly to the testimony that was submitted or
22 that you've heard today. They are questions that go
23 directly to the witness and that witness directly
24 answers you and we move on. The purpose of cross-
25 examination is to poke holes in the case, to elicit

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1 information that was not perhaps in your view
2 correctly stated to make corrections.

3 The audience in this realm is the Board.
4 All the questions and all the answers are for our
5 benefit. I will ask you to be succinct in questions
6 and also in answers. If I find that things are being
7 repetitive or I'm not understanding where they're
8 going, I will interrupt you. I'm sure I don't have to
9 do that for you, sir.

10 MR. MICONE: Thank you, Mr. Chair. I with
11 the ANC would have one question. I think the
12 Commissions comments will best be laid out in our
13 testimony before you. One question that I have is to
14 the expert witness. I first would like to thank all
15 of those people who were here and certainly wish we
16 would have had more individuals speaking on behalf of
17 this case at the ANC.

18 To the expert witness, you had indicated
19 in your testimony that there would be two uses within
20 the same space. How can you then -- I do agree with
21 you in that there will still be the same number of
22 residential units in the space but there will be yet
23 another commercial-like entrance on 21st Street. How
24 can you sort of measure those two different concerns
25 together when you say that there would be no impact on

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1 the block in that area.

2 MR. WILLIAMS: Mr. Micone, thank you for
3 the question. I believe I'm going to answer it as
4 follows. First of all, there will be a common
5 doorway. There is no proposed architectural change to
6 the structure so that the entire premises that is
7 under the lease will have one doorway.

8 Part of the art gallery is on the first
9 floor and part of the art gallery will be on the
10 second floor. The second floor also includes a
11 kitchen which is not related to the art gallery. The
12 third floor contains living space which is in the
13 nature of the normal residents. I suspect it is where
14 some of the people that Mr. Bass spoke of actually
15 slept. I don't know if they also slept at other
16 locations through the property.

17 The impact is we will have a diminished
18 amount but still retain a residential use that will be
19 -- which maybe Ms. Marinkovich will be able to speak
20 to and Mr. Bass more than I. But the concern I got
21 out of the reading of the materials from the
22 community, your organization and others, was that this
23 was going to take something out of the housing stock.

24 It is not taking something. It's changing it from
25 being a unit that is wholly dedicated to housing over

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1 its entire extent to a reduced scope. There would be
2 a diminished amount of residential activity as a
3 function of being fewer square feet. It would have
4 additional amount of traffic coming in. Additional
5 meaning those great hordes that they get every day up
6 to as many as a dozen on the weekends. This is not a
7 Bruntanos art store. It is not the type of thing that
8 is at ground level that induces people to come in and
9 say, "Let's go in and see what stuff they have."
10 There are others along R Street which are, frankly,
11 more inviting and I suspect do divert more passersby
12 to come in.

13 CHAIRPERSON GRIFFIS: Excuse me. Does
14 that answer your question?

15 MR. MICONE: Yes. I think you provided
16 additional information which I certainly can comment
17 during my testimony because I think I was trying to
18 elicit --

19 CHAIRPERSON GRIFFIS: You have a follow-up
20 question

21 MR. MICONE: The concern is, which the ANC
22 and others have indicated, a net loss in the
23 neighborhood on the available housing stock, so if you
24 convert one portion of an existing residence, even if
25 you don't change the number of units, it would be

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1 inconsistent for you to provide testimony here saying
2 that there is not a loss of housing space because
3 there will be should this application be --

4 MR. WILLIAMS: I did not say, Mr. Micone,
5 that there would --

6 MR. MICONE: Excuse me. I asked the
7 witness.

8 MR. WILLIAMS: My testimony was to the
9 number of places that would have the use, not to the
10 square footage.

11 CHAIRPERSON GRIFFIS: Is that clear?

12 MR. MICONE: That is clear.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. MICONE: And I will defer other
15 questions.

16 CHAIRPERSON GRIFFIS: Until when?

17 MR. MICONE: Well, I don't have any other
18 questions.

19 CHAIRPERSON GRIFFIS: Oh, okay. Very
20 well.

21 MR. HURTEAU: Okay. I brought my
22 questions in various forms.

23 Mr. Frame, do you have parking space where
24 you live?

25 MR. FRAME: Yes, I do.

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1 MR. HURTEAU: Okay. So you do not have to
2 park in the street?

3 MR. FRAME: Correct.

4 MR. HURTEAU: So what happens at the
5 galleries and events would not affect where you park
6 your car?

7 MR. FRAME: Correct.

8 MR. HURTEAU: Okay. Second thing was
9 discussed about several galleries that are no longer
10 galleries. One was -- this would be for Mr. Williams.
11 You mentioned one on 21st Street where there used to
12 be a gallery. Do you remember where that is?

13 MR. WILLIAMS: That's identified in the
14 order that Mr. Gell identified. It was called the
15 Tyler application and it was the property that is
16 immediately to the south of the northern alley along
17 the east side of 21st Street. It's a building that
18 bespeaks --

19 CHAIRPERSON GRIFFIS: Okay. Just give us
20 the address.

21 MR. BASS: 1727.

22 CHAIRPERSON GRIFFIS: 1727 21st Street?

23 MR. HURTEAU: Right. The other thing was
24 about -- I'm just going to go through a few things
25 just because I have sort of notes all over the place.

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1 I'm not an attorney and I've tried to make this
2 concise.

3 CHAIRPERSON GRIFFIS: Take your time.
4 I'll direct you when you are straying from what we
5 need to hear.

6 MR. HURTEAU: Okay. One thought was, if I
7 can go to Mr. Bass, you said you were surprised by the
8 militancy of the neighbors. Were you surprised about
9 that? When we came in there you explained to us that
10 you had already signed the lease for the gallery. You
11 also explained that your renter has the right to have
12 a home office as a gallery in case we should not be
13 able to -- should you not be successful at BZA.

14 Second question was also you seem to hint
15 at the group house form of how it could be back into a
16 group house. I'm just saying this as a comment. I
17 would like for you to answer this first question but
18 we found that as sort of a failed threat if we do not
19 approve this for BZA that you're going to turn it back
20 into a group house.

21 CHAIRPERSON GRIFFIS: Let me give you two
22 pieces of advice. First of all, I'm going to need you
23 to quickly explain to me the relevancy of your first
24 question. Secondly, you have ample time for testimony
25 and I cannot have comments.

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1 MR. HURTEAU: Okay.

2 CHAIRPERSON GRIFFIS: In fact -- well,
3 there it is.

4 MR. HURTEAU: The relevancy of that was
5 when he had the meeting he stated that he was
6 surprised by the militancy of the neighbors. I was
7 just asking him to acknowledge that did you already
8 sign the lease with your person before that meeting?

9 CHAIRPERSON GRIFFIS: But the relevancy
10 for us in a special exception -- I'm not sure what you
11 are trying to elicit if whether he had a signed lease
12 or not.

13 MR. HURTEAU: Okay.

14 CHAIRPERSON GRIFFIS: Does it make any
15 difference to us.

16 MR. HURTEAU: All right. Let me go to
17 another -- I'll go to some other questions here. I
18 apologize. I'm learning the ropes on all this.

19 CHAIRPERSON GRIFFIS: That's fine. I'm
20 very patience but I will be direct.

21 MR. HURTEAU: Certainly. I guess this
22 will -- Ms. Marinkovich, if I may ask you, what other
23 spaces did you look at perhaps before you found this
24 space?

25 CHAIRPERSON GRIFFIS: There's an

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1 objection. Can you explain the relevancy?

2 MR. HURTEAU: I would like to just go
3 through this first, please. The objection is I heard
4 in the testimony that Connecticut Avenue was more
5 expensive. I guess the relevancy of this is that did
6 you find it less expensive to go into a residential
7 neighborhood to change to go to BZA as opposed to
8 renting a commercial space? You did not decide to
9 rent on Connecticut Avenue because it's too expensive
10 so --

11 CHAIRPERSON GRIFFIS: Okay. So the point
12 of the relevancy goes to the fact that they made a
13 comparison of other spaces and types of spaces and so
14 you're trying to elicit where, in fact, else they
15 might have looked?

16 MR. HURTEAU: That's right.

17 CHAIRPERSON GRIFFIS: Mr. Gell, do you
18 have a response?

19 MR. GELL: That's really outside what the
20 Board needs to look at which is the effect of this
21 particular gallery, the use of this particular space
22 as a gallery on the rest of the neighborhood.

23 CHAIRPERSON GRIFFIS: I would agree. I
24 think, though, that the testimony was open when there
25 was a commercial space on Connecticut Avenue. I would

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1 have you succinctly ask the question again and then
2 just a very succinct answer.

3 MR. HURTEAU: Okay. I assume you did not
4 -- I seem to understand, and do I understand
5 correctly, that you did not get the space on
6 Connecticut Avenue because it was more expensive?

7 MS. MARINKOVICH: It was a whole group of
8 factors. I would like to live in the space and I
9 couldn't do that on Connecticut. And having parking
10 and being in a neighborhood. I have dogs. My nieces
11 and nephews visit me for the summers, every summer,
12 and work with me in the gallery. Many, many reasons
13 that I also wanted the neighborhood.

14 CHAIRPERSON GRIFFIS: Are we talking about
15 a specific piece that you looked at on Connecticut
16 Avenue?

17 MS. MARINKOVICH: I looked at several
18 places.

19 CHAIRPERSON GRIFFIS: I see. Okay.

20 MS. MARINKOVICH: On P Street and
21 Connecticut.

22 MR. HURTEAU: They were all, I assume,
23 more expensive than the space per square foot.

24 MS. MARINKOVICH: You know what? You
25 could answer that better than I could because you get

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1 a price and then there's build-out plus this thing
2 called triple net where you pay taxes and this and
3 that. It just depends on the situation.

4 Sometimes they would offer you a special
5 deal, three months free if you do this and that. I
6 honestly cannot explain exactly how the rates
7 compared. It was more the fit of looking. I looked
8 for about six months to nine months before coming to
9 this --

10 CHAIRPERSON GRIFFIS: So it was often a
11 combination of your program requirements.

12 MS. MARINKOVICH: Who we are.

13 CHAIRPERSON GRIFFIS: Right. That would
14 be included in that.

15 Does that sufficiently answer it?

16 MR. HURTEAU: Yes, that answers it.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. HURTEAU: I would like to also -- Dick
19 Suisman, who is here, I would like to bring him to ask
20 a question because Dick Suisman sat on the Housing
21 Commission for eight years in another city and I would
22 like to have him ask a few questions of their expert
23 witness, Mr. Williams, if I may. Since Dick Suisman
24 was part of our --

25 CHAIRPERSON GRIFFIS: Yes, indeed.

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1 MR. HURTEAU: -- he could ask them better
2 than I could.

3 CHAIRPERSON GRIFFIS: Okay. Are you
4 finished with your questions?

5 MR. HURTEAU: Let me just go through here.
6 I have one more thing.

7 Ms. Marinkovich, the lease you have signed
8 for the space, is that a residential lease?

9 MS. MARINKOVICH: Yes.

10 MR. HURTEAU: And do you have any business
11 or anything from your business in that residential
12 space?

13 MS. MARINKOVICH: Currently I have
14 something stored there. I have some pieces of art
15 stored there.

16 MR. HURTEAU: Okay. Is your gallery open
17 at that space?

18 MS. MARINKOVICH: There is no gallery at
19 that space. You mean at 1629?

20 MR. HURTEAU: At 1629.

21 MS. MARINKOVICH: No, sir.

22 MS. MULLER-MACARTHUR: We were there when
23 you announced it.

24 MS. MARINKOVICH: Announced what?

25 MS. MULLER-MACARTHUR: That the gallery

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1 was open.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. MARINKOVICH: No, there's no gallery
4 open at that space, Solange. Absolutely not.

5 MR. HURTEAU: I'd like to have Dick
6 Suisman come up. Let me just check to see if I have
7 any other further questions.

8 Oh, regarding the signatures, I guess if I
9 have comments I can present those later regarding the
10 signatures?

11 CHAIRPERSON GRIFFIS: If you have
12 comments?

13 MR. HURTEAU: Comments.

14 CHAIRPERSON GRIFFIS: Absolutely.

15 MR. HURTEAU: Okay. This is not the time
16 for any comments about --

17 CHAIRPERSON GRIFFIS: That's correct.

18 MR. ZAIDAIN: Just to make sure that I'm
19 clear on what's going on, you do know that you'll have
20 an opportunity to present your own case and call your
21 own witnesses.

22 MR. HURTEAU: Yes.

23 MR. ZAIDAIN: I don't know if calling the
24 gentleman you are calling now is something you can do
25 when you put on your case.

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1 MR. HURTEAU: Okay.

2 MR. ZAIDAIN: That's what I'm asking. Are
3 you calling this person up to prove points?

4 MR. HURTEAU: No. Actually I would like
5 to call him up for cross-examination because he has
6 the expertise in housing being that he served on the
7 Housing Commission as I did not.

8 CHAIRPERSON GRIFFIS: We will have cross-
9 examination with his questions.

10 MR. HURTEAU: Great.

11 CHAIRPERSON GRIFFIS: Mr. Gell, your
12 objection?

13 MR. GELL: Yes. It really gives Mr.
14 Suisman party status that he was not given by the
15 Board. I think the Board normally would have
16 questions funneled through the representative of the
17 parties.

18 CHAIRPERSON GRIFFIS: If I'm not mistaken,
19 he is part of the three that were granted party
20 status.

21 MR. GELL: That's Mr. Schussheim.

22 CHAIRPERSON GRIFFIS: Oh, I'm sorry.
23 Indeed. To make this clean, Mr. Gell's objection I
24 think I would uphold if he could just give you the
25 questions to ask as you are the spokesman.

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1 There's two points that are getting
2 difficulty here and I don't want to take a lot of time
3 because it was supposed to be set up for efficiency
4 that we have one spokesperson for the party that
5 conducts all the cross-examination questions.

6 If there was, in fact, experts within the
7 party that were called to do cross-examination we
8 would accommodate that. If you want to take a minute
9 to get the questions, you could certainly ask them.
10 Otherwise, it may, in fact, be very substantial in
11 your case presentation which you could clearly put
12 together.

13 MR. WILLIAMS: Mr. Chairman, I gather the
14 questions are going to be coming to me. My throat is
15 about ready to expire. I would like to get some
16 water. Can I do that?

17 CHAIRPERSON GRIFFIS: Let's take a minute.

18 (Whereupon, at 5:22 p.m. off the record
19 until 5:24 p.m.)

20 CHAIRPERSON GRIFFIS: Okay. I see that
21 Mr. Williams is back in the room meaning his throat
22 has been hydrated. Let us resume the cross-
23 examination. At the end of cross-examination I am
24 going to update everybody in the hearing room.

25 Is the party ready?

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1 MR. HURTEAU: I would like to just make
2 one more request and this is a special exception for
3 Mr. Suisman to ask the questions of Mr. Williams
4 himself just because we already had the witness
5 brought up at the last minute. I thought we would
6 have Mr. Suisman just be able to ask. He'll be less
7 than five minutes to ask Mr. Williams directly.

8 MR. GELL: Actually, Mr. Williams was not
9 a last-minute witness.

10 MR. HURTEAU: Not Mr. Williams. Mr. Frame
11 was the last minute witness.

12 CHAIRPERSON GRIFFIS: Indeed.

13 MR. GELL: Mr. Frame. I'm sorry.

14 CHAIRPERSON GRIFFIS: Mr. Gell, how strong
15 is your objection to this?

16 MR. GELL: I would really like to see us
17 get through this as quickly as possible. If it would
18 please the Board, then I'll withdraw any objection.

19 CHAIRPERSON GRIFFIS: Okay. Let's go.

20 MR. SUISMAN: Mr. Williams, we did not
21 object to his credentials. They certainly are well-
22 known to you all.

23 CHAIRPERSON GRIFFIS: We know.

24 MR. SUISMAN: On your map on page 13 of 14
25 you list six categories, or you show the residential

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1 and then you show gallery, museum, chancery, club,
2 institution, and restaurant.

3 MR. WILLIAMS: Yes, sir.

4 MR. SUISMAN: Would you object to call all
5 five of those at the bottom nonresidential uses for
6 clarity sake?

7 MR. WILLIAMS: I would object to
8 assembling them all together under a single banner.
9 Some of the uses are nonconforming uses. Some of them
10 are uses that are permitted as a matter of right.
11 Others are uses that are permitted as a special
12 exception. They add to the diversity of the
13 neighborhood --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SUISMAN: I didn't find that
16 responsive in the sense that --

17 CHAIRPERSON GRIFFIS: His answer is no as
18 I understand it.

19 MR. SUISMAN: All right. And the zone is
20 -- what zone is this?

21 MR. WILLIAMS: The outlined area -- the
22 Board in the original record, I might say, have a
23 color copy of this map. I'm running with a black and
24 white copy as I believe is Mr. Suisman.

25 In the original record the highlighted

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1 line, which I believe is in red, outlines an area that
2 has common zoning as follows: D for Diplomatic
3 Overlay; DC for Dupont Circle Overlay; and R-5-B which
4 is lower density residential -- lower density
5 apartment residential zone.

6 MR. SUISMAN: If a neighbor or an
7 interested party took your map and colored in all the
8 nonresidential uses, which includes the Cosmos Club,
9 The Phillips, and the galleries as you've shown them,
10 professionally how would you react to that if somebody
11 did that just to show the difference between the
12 existing residential and the nonresidential uses?

13 MR. WILLIAMS: The contrast is apparent to
14 me whether it is made as you have suggested or in the
15 manner that I have depicted it.

16 MR. SUISMAN: And do you have a percentage
17 available for the Zoning -- for the Board here of the
18 nonresidential uses compared to the residential uses
19 in that rough triangle that you have there?

20 MR. WILLIAMS: I did not calculate it.
21 I'm going to say that I have the impression that it is
22 approximately 50/50. That's the best I can do. I did
23 not do area measurements. I just didn't do them.

24 MR. SUISMAN: I think that's a fair
25 estimate and I appreciate it. You made mention, I

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1 think, that you had no objection in your professional
2 opinion to this gallery going in because it would have
3 a nominal impact on the neighborhood. Is that
4 correct?

5 MR. WILLIAMS: Diminimus.

6 MR. SUISMAN: All right. If a client came
7 to you next year and wanted to open a gallery on
8 Hillier Place, for example, with exactly the same
9 program as the Marinkovich Gallery has, how would you
10 respond to that?

11 CHAIRPERSON GRIFFIS: I'm not sure of the
12 relevance for us today on that.

13 MR. SUISMAN: The relevance is that this
14 neighborhood is a residential neighborhood and
15 already --

16 CHAIRPERSON GRIFFIS: I understand where
17 you're going but you're asking him to speculate if he
18 got another case would he take it?

19 MR. SUISMAN: Well, he made a very strong
20 statement that this has no impact on the neighborhood.
21 I want to know --

22 CHAIRPERSON GRIFFIS: I'm not sure that I
23 could deliberate on the fact of whether Mr. Williams
24 would take a case in the future or not.

25 MR. SUISMAN: Well, this is an expert. He

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1 certainly should be able to answer that question. If
2 one or ten more galleries came in, how would he
3 respond to their requests?

4 CHAIRPERSON GRIFFIS: My point is how does
5 that help the Board? What is the information that the
6 Board is supposed to glean from that? That he's going
7 to tell you he wouldn't take it because this is
8 tipping the saturation point?

9 MR. SUISMAN: Maybe I should rephrase the
10 question. I shouldn't ask him professionally whether
11 he would take it or not. He certainly is entitled to
12 take any case that he wishes.

13 In your opinion, would one, five, or 10
14 more galleries coming into this neighborhood with
15 exactly the same number of employees, the same hours,
16 the same restrictions, would that have any impact on
17 the residential units and the people living in that
18 triangle?

19 MR. WILLIAMS: Obviously it would have an
20 impact on the residents in the area in the sense that
21 if an additional unit or art gallery were proposed to
22 come in and if it were proposed to be located in a
23 place that is currently residential, then if that
24 residential stock were eliminated, it would be an
25 elimination and the art gallery would supplant it.

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1 As to its affect, that would depend on
2 location. I can see some locations here where I
3 believe a similar case could be made to that of the
4 application in question and others where I would
5 probably expect considerably different conclusions to
6 be reached by myself as a professional decision.

7 MR. SUISMAN: In your zoning experience,
8 do corner properties tend to set a limit and send a
9 message for what remains in the balance of the street,
10 the balance of the block?

11 MR. WILLIAMS: Corner properties can have
12 an affect on both faces depending upon the way in
13 which they are treated. A gasoline service station
14 with big signs depicting the name of the fuel vendor
15 sets a standard that flows down or up each of the
16 streets on which it corners.

17 This gallery is proposed to have a single
18 entrance where the entrance already exist with a
19 single static sign of small size and I do not feel
20 that type of corner property is going to radiate
21 anything that will be adverse to the community in
22 which it is set in this case.

23 MR. SUISMAN: Looking at the map again, on
24 the corner of Q Street and 21st we have the Moroccan
25 embassy.

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1 MR. WILLIAMS: Yes.

2 MR. SUISMAN: On the corner of R and 21st
3 you have the proposed art gallery. Then abutting that
4 another art gallery, the Pinto gallery. Is that
5 correct?

6 MR. WILLIAMS: That's correct. Actually,
7 I have colored in on this map in purple on the
8 original, and whatever color it is on the gray that
9 you have, the entire outline of the property that has
10 been adverse in the case. In fact, the property that
11 is before the Board today is the portion known as
12 1629.

13 Immediately to the south of that property
14 I will call it a stub of the entire building which is
15 addressed as 1527. In a certain sense, maybe I have
16 over -- 1627 so I may have over colored it but I show
17 the colors to the extent of the property limits and
18 not to the unit limits.

19 MR. SUISMAN: I think you stated earlier
20 that the property now is considered mixed use. Is
21 that correct?

22 MR. WILLIAMS: I consider it mixed use.

23 MR. SUISMAN: On the records down here it
24 would be mixed use. Is that correct? It is housing
25 and a gallery both?

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1 MR. WILLIAMS: I don't know what the
2 records are down here.

3 MR. SUISMAN: Well, all right. In your
4 opinion you think it is mixed use?

5 MR. WILLIAMS: There is an art gallery in
6 the lower level. There is a residence in 1627 and it
7 had been a residence in its entirety in 1629, a
8 portion of which is proposed to be the art gallery.
9 That's the case.

10 MR. SUISMAN: Okay. You spoke about the
11 mixed use and there still being remaining residential
12 units in the building. Is that correct?

13 MR. WILLIAMS: There would be space left
14 for residential use to continue.

15 MR. SUISMAN: How many people were living
16 -- do you know how many people were living in the
17 building when Mr. Bass and his family were there?

18 MR. WILLIAMS: I offered no testimony on
19 that and I do not know.

20 MR. SUISMAN: But I think some of your
21 testimony said this did not have any negative impact
22 on the residential nature of the area. Is that
23 correct?

24 MR. WILLIAMS: That is correct.

25 MR. SUISMAN: But if we reduce the number

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1 of people living in the building from nine to two or
2 nine to three, would that not have an impact?

3 MR. BASS: There were never nine people in
4 there, Dick.

5 CHAIRPERSON GRIFFIS: First of all, let's
6 get a clarification.

7 MR. BASS: Me and my wife --

8 CHAIRPERSON GRIFFIS: Hold on, please.
9 Just a second, sir.

10 Mr. Williams talked about, as I recall his
11 testimony, square footage and then use. He mostly
12 focused on use. If you wanted to ask Mr. Bass the
13 questions of population, you may want to do that,
14 although I would stress focusing on the relevancy for
15 us in terms of whether there are 10 people in a unit
16 or five people in a unit does not necessarily reduce
17 the residential use of the property, if you follow
18 what I'm saying.

19 MR. SUISMAN: I don't follow entirely. If
20 you have 1,000 people living in a block or four, yes,
21 they are both residential but the complexion, the
22 neighborhood, is changed radically.

23 CHAIRPERSON GRIFFIS: Right. But we're
24 talking about a specific unit. For our designation
25 and the zoning designation there was one single unit

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1 there. Whether they were overcrowded or undercrowded
2 wouldn't necessarily have an impact.

3 MR. SUISMAN: For clarification could I
4 ask Mr. Bass when he was living there how many people
5 were living in the building because he made reference
6 to a group home where there were four people.

7 CHAIRPERSON GRIFFIS: Do you have any
8 other questions for Mr. Williams?

9 MR. SUISMAN: I may, yes, but they won't
10 be long.

11 CHAIRPERSON GRIFFIS: Why don't you finish
12 with Mr. Williams and then move on to Mr. Bass.

13 MR. SUISMAN: All right. No, I have no
14 further questions of Mr. Williams. For clarification,
15 could Mr. Bass respond to the maximum number of people
16 that have lived in that building at any one time?

17 CHAIRPERSON GRIFFIS: In the 27 years of
18 ownership?

19 MR. SUISMAN: Yes, and recently, whatever
20 he wants to answer.

21 CHAIRPERSON GRIFFIS: I mean, it's your
22 question. I'm just trying to get a specific question
23 there.

24 MR. BASS: When it was a group house and I
25 lived in 1627 21st street there were four or five

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1 individuals living there. It was leased as four but
2 occasionally they would have a fifth. When I lived
3 there it was myself, my wife, and my three children.
4 That's five.

5 MR. SUISMAN: And did you rent the right-
6 hand part of your property at that time?

7 MR. BASS: What do you mean?

8 MR. SUISMAN: The separate unit.

9 MR. BASS: 1627. Yeah, I moved from 1627,
10 which is the unit in the rear to 1629 which is the
11 unit in the center of the house.

12 MR. SUISMAN: And how many people were
13 living in 1627 at that time when you moved?

14 MR. BASS: Oh, you mean how many moved in
15 after I moved out?

16 MR. SUISMAN: Yes.

17 MR. BASS: Two. Same as what was there
18 before.

19 MR. SUISMAN: So you had a maximum of
20 seven people at one time.

21 MR. BASS: Right. And there's been no
22 change. No change proposed in the number of
23 occupants.

24 MR. SUISMAN: Well, how many people occupy
25 at this moment?

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1 MR. BASS: At this very moment?

2 MR. SUISMAN: Yes.

3 MR. BASS: There are two in 1629 and two
4 in 1627.

5 MR. SUISMAN: Residents of the building?

6 MR. BASS: I'm sorry. There's one right
7 now in 1627. That's your former neighbor, Ellen
8 Ambrose. She doesn't happen to be married. There are
9 two tenants in 1629 right now on the top floor
10 occupying two of the three bedrooms. We have three
11 bedrooms on the third floor and my wife and I were in
12 one room and we had the three kids in another room.
13 Does that answer your question?

14 MR. SUISMAN: It does. Thank you.

15 CHAIRPERSON GRIFFIS: Thank you all very
16 much.

17 Okay. We have come to the 5:30 hour. The
18 Board has one more case to do today. We normally end
19 at 6:00 as we start at 8:00 or 8:30 in the morning.
20 Being volunteers and having full-time jobs we need to
21 get to work tomorrow morning. However, we are calling
22 the next case and will finish it today. Therefore, I
23 would like to continue this case and set a date. We
24 are at a stopping point. Cross-examination has been
25 conducted. When we pick up again, we would start with

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1 the government reports, Office of Planning and
2 anything else attended to it and go to the parties.
3 I'll remind you all when we get there. I am going to
4 finish the second case in the afternoon today.

5 MR. GELL: Mr. Chairman, I did want to
6 reserve, I believe I mentioned at the very beginning,
7 an opportunity just to make a statement and summation
8 and providing a legal setting. I can do that now or I
9 can do it later.

10 CHAIRPERSON GRIFFIS: In your closing or
11 you want to do it --

12 MR. GELL: I can do it at closing when
13 everything is finished.

14 CHAIRPERSON GRIFFIS: Well, yeah. I think
15 we've heard what we can today and I think it would be
16 appropriate to do it then. I, in fact, have lost
17 touch with my notes on when we are --

18 MR. HURTEAU: If I may ask, is it possible
19 for Mr. Saltzberg who could not be here to be able to
20 cross-examine at the next meeting?

21 CHAIRPERSON GRIFFIS: No.

22 MR. HURTEAU: Would it be possible for me
23 to cross-examine the next time?

24 CHAIRPERSON GRIFFIS: Cross-examine what?

25 MR. HURTEAU: The witnesses.

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1 CHAIRPERSON GRIFFIS: No. You just
2 conducted cross-examination.

3 MR. HURTEAU: Okay.

4 CHAIRPERSON GRIFFIS: You will cross-
5 examine any new testimony that comes in. If a witness
6 comes up again on any sort of issue, if the Board
7 calls up a witness and there is new testimony, then
8 cross-examination is conducted on new testimony and
9 new testimony only.

10 MR. HURTEAU: Okay.

11 CHAIRPERSON GRIFFIS: You've been afforded
12 the opportunity to cross-examine. Now, we may, in
13 fact, have written submissions at the end of this and
14 get responses. If I may, my opinion would be your
15 direct focus right now is the presentation of your
16 case.

17 MR. HURTEAU: Thank you.

18 MR. GELL: Mr. Chairman, do I understand
19 that the record is still open for new submissions?

20 CHAIRPERSON GRIFFIS: That hasn't been
21 decided. Let's get a date first and then I want to
22 talk about what we may have submitted in. I am going
23 to schedule this for -- we're going to be scheduling
24 on the afternoon of the 12th. The schedule will be
25 published. It is now tentatively the second case --

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1 rather the third case of the afternoon.

2 VICE CHAIR RENSHAW: What date?

3 MR. MICONE: Mr. Chair?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. MICONE: I'm sorry. The Commission
6 will not be able to present its case on that date as
7 this is in my single member district and I'm leaving
8 for Australia within about 12 hours from this point
9 right now and won't be returning until the 18th.

10 CHAIRPERSON GRIFFIS: I don't think the
11 Board can be packed by then. The 18th?

12 VICE CHAIR RENSHAW: Wonderful trip.

13 CHAIRPERSON GRIFFIS: Is there anyone that
14 can present the ANC case?

15 MR. MICONE: Not accurately. It's in my
16 single member district so other commissioners have not
17 been involved in the details of the case or meeting
18 with either party.

19 MR. GELL: Mr. Chairman, if Mr. Micone has
20 brief testimony to provide, perhaps it could be done
21 very quickly now and give him an opportunity not to be
22 here at the remainder.

23 CHAIRPERSON GRIFFIS: Two questions. Are
24 you prepared to give your case right now?

25 MR. MICONE: I'm prepared to make remarks

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1 at this time, yes.

2 CHAIRPERSON GRIFFIS: Second is how long
3 is it going to take?

4 MR. MICONE: Would I also be cross-
5 examined based on my testimony should I give it at
6 this point?

7 CHAIRPERSON GRIFFIS: Don't estimate that.

8 MR. MICONE: Okay. Ten minutes.

9 CHAIRPERSON GRIFFIS: Okay. Would you
10 feel prejudiced if I had you submit your remarks in
11 writing?

12 MR. MICONE: I could not do that by the
13 12th.

14 CHAIRPERSON GRIFFIS: Submit your remarks
15 in writing?

16 MR. MICONE: To the Board?

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. MICONE: I will be out of the country.
19 It will be impossible for me.

20 CHAIRPERSON GRIFFIS: I see. Well, we
21 probably will not decide it on the 12th and would set
22 it and keep the record open for your written remarks.

23 MR. MICONE: That doesn't seem fair to the
24 Commission to be able to verbally provide testimony to
25 the Board and it places a greater burden on us now to

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1 go back and develop a report and forward it to the
2 Board.

3 CHAIRPERSON GRIFFIS: Okay. Very well.
4 Let's do this. November 12th afternoon. Mr. Gell,
5 availability?

6 MR. GELL: I've got a case on the 12th so
7 I would say that the Board is a glutton for punishment
8 having to hear me twice, but I have no problem with
9 the 12th. I think any delays more than we've had are
10 going to do a great disservice to my client who is
11 paying rent on property she can't use and is paying
12 actually rent on two properties. One that she's got
13 her gallery in and the other one she wants to move to.
14 The sooner we can resolve this the better.1

15 MR. HURTEAU: It is a residential rent.
16 She signed a lease before the agreement.

17 CHAIRPERSON GRIFFIS: I don't need any
18 rebuttal on that. Let me say in my opinion, and
19 that's what matters frankly, it's more advantageous
20 for this Board to continue as closely as possible.

21 Clearly I will have somebody in every case
22 that wants to do it immediately and those that want to
23 postpone it. I take that under advisement but it
24 actually facilitates the Board and not losing track of
25 cases when we continue them.

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1 Let me throw out one more thing because I
2 don't want to spend a lot more time on this. 26th of
3 November. It would be in the morning. There was an
4 overall groan in the room. However, Mr. Gell.

5 MR. GELL: I have to object on the part of
6 my clients and I'm going to be out of town as well.

7 CHAIRPERSON GRIFFIS: That does seem to be
8 a bit more problematic nothing the date.M

9 MR. MICONE: Mr. Chair, if I could offer
10 for expedience sake, I could simply give my testimony
11 at this point.

12 CHAIRPERSON GRIFFIS: I think that's what
13 we're going to do. We'll hear you right now. We are
14 going to conduct cross-examination immediately and,
15 therefore, we can get that out of the way this
16 afternoon. In that time I am going to be listening
17 intently and also organizing what the record is going
18 to be kept open for the 12th. Very well. When you're
19 ready.

20 MR. MICONE: Thank you, Mr. Chair, for the
21 opportunity to present on this case. Certainly this
22 is an issue which has in our neighborhood in Dupont
23 Circle raised a lot of issues and concerns and
24 feelings on both sides of this issue. First, I wish
25 to clarify very briefly the record. In prior

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1 testimony it was mentioned that there were some
2 concerns about disorderly conduct. Those were not
3 related to this particular matter. They were related
4 to another matter on the ANC's agenda that night. I
5 wish the Board to understand that there were
6 differences in what we were talking about and
7 certainly the current gallery, and even the location
8 where it's proposed to, we don't see that many bands
9 of happy people on Friday night urinating around the
10 neighborhood or getting too excessively drunk on the
11 wine that they get at the galleries. I wanted to
12 clarify that for the record.

13 Further, I wanted to just note that the
14 first version of the neighborhood cooperative
15 agreement was presented to the ANC just a few minutes
16 before we considered the original action that the ANC
17 considered. It may have been presented to Mr.
18 Saltzberg prior to that but it was not presented to
19 the Commission before that time. Certainly had we
20 received it before that time, we may have considered
21 it in a different format.

22 Also, I received yesterday from Mr. Bass
23 the information that he had pulled together with the
24 neighborhood cooperative agreement. Again, certainly
25 in a timely manner, I would put either of these items

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1 on our agenda for full consideration by the Commission
2 in making it a policy decision related to those.

3 The issue that the Commission is most
4 concerned about, and I think we knew coming in that
5 this would be a tougher case, my letters to the BZA
6 usually are stock format and this one I indicated in
7 the letter that, yes, although our Commission always
8 allows for negotiations and encourages it, this one
9 was just a little bit tougher of a case because of the
10 land use issues that were involved.

11 Our concern and the Commission's concern
12 is that when we look at these sort of land use
13 changes, particularly in an area like that block of
14 21st Street, where it is so close to a tipping point
15 with the Phillips Collection, with the process that we
16 went through last year, the loss of an apartment
17 building, it makes that particular block more delegate
18 and closer to a tipping point than other blocks in the
19 similar area.

20 Our concern really has less to do with the
21 gallery that would go in. It's more to the change
22 from residential property to a nonresidential use and
23 the permanent, or potential permanence of that.

24 We have been, I think, in my opinion
25 fortunate to see some gallery space reconvert to

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1 residential space. That's a good thing. Often times,
2 though, in our neighborhood when we see a conversion
3 occur to a nonresidential use it's highly unlikely
4 that we would ever see that use come back to
5 residential use so we look at these things not so much
6 saying that gallery is good or bad but we really look
7 at the land use issues, the permanence, and the way
8 they could change the reflection of our neighborhood.

9 We often talk in our ANC about one
10 particular block that used to be all residential.
11 It's a block of N Street N.W. just north of St.
12 Matthews Cathedral. No residences, no people live on
13 that block anymore on either side. It's been
14 completely converted slowly through time to
15 nonresidential use.

16 We are very concerned with the Phillips
17 Collection on this particular block that we could have
18 that same encroachment if we were here before you
19 again in a year for another portion of another
20 residence to convert to nonresidential use. What
21 would the net impact be over time on this very fragile
22 block?

23 I say that because when we were here
24 before with the Phillips Collection we talked about
25 the vision of Duncan Phillips and the Phillips

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1 Collection really anchors that whole neighborhood.
2 The vision that Mr. Phillips has was that he was going
3 to open a museum, probably at that time more thought
4 of as a gallery, where people could come and enjoy art
5 in the setting of a home in a neighborhood.

6 Our concern, the Commission's concern, is
7 that if we continue to have the small shipping away at
8 the residential stock in that particularly area of the
9 block, eventually we could face a situation where
10 there is less and less residents and more and more
11 nonresidential uses. Even though they might not be
12 "offensive" to the neighborhood, it's just a change
13 and I'm not certain if it's a change that we would
14 want to see.

15 Of course, with any galleries or any
16 nonresidential use we are always concerned about
17 accessory use for special events. However, I always
18 feel these are negotiable issues. Certainly we would
19 look favorably upon conditions which would limit if
20 this were to be approved. I'm not saying that we are
21 supporting it in any way but limits on the number of
22 events and accessory uses that could go in because
23 that does impact neighborhood further.

24 This issue has split the neighborhood. We
25 heard from parties in opposition at the ANC meeting.

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1 We did not hear from parties in favor. Believe me,
2 the neighbors on -- of course, we heard from Mr. Gell
3 and from the applicant.

4 There are neighbors on both sides of this
5 issue that I have a great deal of respect for that I
6 have talked to that I know. It becomes difficult when
7 you have petitions with 30 and 40 people signing on
8 both sides to figure out what the best thing is to do.

9 Certainly what the Commission is not
10 trying to do is place judgment on what is going, or
11 proposed to go, into the space, simply looking at the
12 space itself and looking at the neighborhood and
13 looking at how we can protect the residential portion
14 in the balance of the neighborhood into the future.

15 We very much support the OP report. I
16 know that you all received testimony on that before.
17 The Office of Planning is opposed to this because they
18 conclude that the character of future development of
19 the surrounding area could be adversely affected by
20 the relocation of yet another gallery to this area.
21 We concur with that and that really states our
22 position and our concern related to the matter.

23 CHAIRPERSON GRIFFIS: Thank you very much.

24 Questions from the Board? Mr. Zaidain?

25 MR. ZAIDAIN: Yes. You stated early in

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1 the testimony, and I want to make sure I understand,
2 that you're going to take the agreement that was
3 passed to us and to your ANC for reaction? Did I
4 understand you correctly?

5 MR. MICONE: Well, we certainly could.
6 Again, the agreement that the Board received today I
7 received yesterday and that was the first time that I
8 had seen that agreement. I did see a prior version of
9 the agreement. After our first hearing I agreed to
10 meet with the neighbors. I met with the neighbors who
11 I know have concerns.

12 I wasn't aware of strong feelings on the
13 other side, although in the last week or so there have
14 been neighbors who have contacted me saying that they
15 support the application. It's unfortunate that they
16 weren't at the ANC meeting to express their opinions
17 as well because we vote and we are bound by the vote
18 to represent those concerns. I would certainly be
19 willing to take this or any agreement as I have in the
20 past to the ANC for our consideration.

21 CHAIRPERSON GRIFFIS: When is the next
22 opportunity to do that?

23 MR. MICONE: November 20th.

24 CHAIRPERSON GRIFFIS: Can you leave
25 instructions before you fly to Australia for that

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1 vacation we're all longing to go to? You will present
2 it on the 20th and you don't need to give it to them
3 before you go?

4 MR. MICONE: No.

5 CHAIRPERSON GRIFFIS: Okay. We'll take
6 that under consideration.

7 MR. ZAIDAIN: It sounds like you've
8 gathered a lot of new information in the last week. I
9 didn't know if this was going to come back up before
10 your ANC. I take it it will.

11 MR. MICONE: With zoning cases, I mean, it
12 really depends on the disposition. If the Board
13 completes its action on this before that time, it
14 might be irrelevant for it to come up because we would
15 be petitioning the Board to take certain action.

16 MR. ZAIDAIN: Right. I don't see that
17 happening.

18 CHAIRPERSON GRIFFIS: But does it have to
19 be -- I don't want to get into -- if we got to a point
20 where we are looking for the ANC remarks after the
21 20th and they haven't advertised it, is there anything
22 that you need to do before you leave that you may not
23 be able to do or you should focus on doing?

24 MR. MICONE: Well, this matter since it's
25 already been placated certainly I would make sure that

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1 neighbors in that area knew what was going on. I
2 would let the applicant know and those neighbors who
3 are protestants.

4 CHAIRPERSON GRIFFIS: I am assuming on
5 your statements right now that you will do everything
6 it will take to make this -- to put this on the agenda
7 for the 20th of November of the ANC.

8 MR. MICONE: It's on.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. MICONE: It comes under old business
11 so we don't need to readvertise it.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. MICONE: That's not to say it would
14 change any positions but we will consider it --

15 MR. ZAIDAIN: I understand that.

16 CHAIRPERSON GRIFFIS: Okay. Other
17 questions?

18 MR. ZAIDAIN: No.

19 CHAIRPERSON GRIFFIS: Mr. Gell, cross-
20 examination.

21 MR. GELL: Yes, very quickly. Mr. Micone,
22 how many people spoke at the ANC meeting in opposition
23 to the gallery?

24 MR. MICONE: Well, to answer that question
25 accurately, I would need to look back on my records.

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1 I would certainly say that there were other matters in
2 that meeting that drew a lot more people and there
3 were fewer neighbors who provided testimony on this
4 particular matter.

5 MR. GELL: How wrong would I be if I said
6 that two people spoke against it? I mean, how wrong?
7 Maybe three?

8 CHAIRPERSON GRIFFIS: If you don't recall,
9 you don't recall.

10 MR. MICONE: I don't recall exactly. I
11 would say it was probably in the neighborhood of more
12 than two and less than a dozen. Probably less than
13 six so somewhere in there.

14 CHAIRPERSON GRIFFIS: That narrows it
15 down.

16 MR. MICONE: Then also I did receive e-
17 mails and phone calls which commissioners do count
18 those as information that is received on a particular
19 case.

20 MR. GELL: You mentioned M Street which is
21 between 18th and 17th Street. I believe that's the
22 block you are referring to.

23 MR. MICONE: Yes.

24 MR. GELL: A very long block. Would you
25 say there are differences between the two major

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1 commercial streets of 17th and Connecticut Avenue that
2 are different from the situation near the Phillips
3 where you have boundaries of R Street and Hillier
4 Place?

5 MR. MICONE: Well, it would seem that you
6 could say that there are differences. Certainly every
7 part of our neighborhood is unique but R Street, for
8 all practical purposes, is a residential street but
9 it's a major thoroughfare in our neighborhood.
10 Although it is not exactly alike, I would say that
11 17th Street and R Street at a given time, R Street
12 would have less traffic but certainly a good amount of
13 traffic.

14 Of course, Connecticut Avenue,
15 Massachusetts Avenue, Florida Avenue, those are all
16 major, major arteries which there are three major
17 arteries versus the area that I was referring to as an
18 example where there are simply not that many major
19 arteries. We use it as an example.

20 MR. GELL: Do you know the zoning on N
21 Street?

22 MR. MICONE: I don't.

23 MR. GELL: Is it possible that it's SP?

24 MR. MICONE: It is possible.

25 MR. GELL: One other question. I know

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1 this information was not available to us or to the ANC
2 at the time but what affect do you think it would have
3 on the decision or the considerations of the members
4 to know that there's been a net loss of galleries in
5 the last nine years, of four galleries?

6 MR. MICONE: In not knowing that
7 information, it would be hard for me to speculate. I
8 mean, certainly I can only speak on my own block where
9 we lost one gallery and gained another one in the last
10 year or so but those were also home use occupations
11 that there was not a zoning change required for those.

12 MR. GELL: Thank you very much.

13 CHAIRPERSON GRIFFIS: Nothing further?
14 Does the party in opposition have any cross-
15 examination of the ANC? No? Okay. Very well then.
16 Thank you all very much. Let's reiterate 12 November.
17 We are the third case in the afternoon, I believe.
18 We are keeping the record open.

19 Ms. Bailey, you can help me with this. We
20 are keeping the record open for --

21 If I could have everyone's attention,
22 please.

23 MS. BAILEY: Mr. Chairman --

24 CHAIRPERSON GRIFFIS: This is very
25 important for your case. I'm only going to say it

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1 once unless it needs total clarification.

2 MS. BAILEY: There was some discussion
3 about the record being left open to receive comments
4 from the city council per members who submitted
5 reports today. The applicant, I think, indicated that
6 he would be contacting those city council members to
7 get their reaction concerning the petition and the
8 agreement that was submitted today.

9 CHAIRPERSON GRIFFIS: Good. We have also
10 requested, Board members, to keep the record open if
11 there were more signatures on those petitions and
12 letters. Is there any objection to that?

13 When I refer to the petitions, it is
14 clearly in opposition and also in support. We will
15 keep the record open tentatively to receive an updated
16 report from the ANC based on the 12th's hearing. It
17 is with all likelihood that this will conclude the
18 public hearing on the 12th and it is potential that it
19 could be decided on the bench. If not, it may well be
20 set for the first meeting in December for decision.
21 That being understood, if there's any questions on
22 dates, submissions, times for submissions.

23 MR. GELL: How many days is the record
24 going to be open?

25 CHAIRPERSON GRIFFIS: Well, I'm going to

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1 keep the record open until the 12th unless there's an
2 objection to that. If you want me to close it closer
3 to that, I don't have any problem with it. My point
4 of keeping it open until the -- actually, let's make
5 it clear. It would be the 11th. No, no, no. I'm
6 sorry. We're going to need to set that for Thursday.
7 What is the date on the Thursday before, Ms. Bailey?

8 MS. BAILEY: It's the 7th of November.

9 CHAIRPERSON GRIFFIS: 7th of November the
10 submission should be in by.

11 MR. GELL: That's fine.

12 CHAIRPERSON GRIFFIS: Any concerns? The
13 7th of November. It's the Thursday before the Tuesday
14 hearing. Good. I thank you all. Have a pleasant
15 evening. We are going to take 10 minutes and let the
16 next group come up and get organized.

17 MS. HUBBARD: Mr. Griffis, please don't
18 take 10 minutes. Let me make my little speech here
19 right now about not hearing this case tonight.

20 CHAIRPERSON GRIFFIS: With all due
21 respect, two things.

22 MS. HUBBARD: It is now 6:00.

23 CHAIRPERSON GRIFFIS: Indeed it is.

24 MS. HUBBARD: The government -- the case
25 cannot be concluded tonight.

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1 CHAIRPERSON GRIFFIS: The case will be
2 concluded tonight.

3 MS. HUBBARD: How can it be, Mr. Griffis?

4 CHAIRPERSON GRIFFIS: You know, I'm going
5 to stop you here because I've had my Board members
6 here --

7 MS. HUBBARD: You let them go on and on
8 and on and on and on.

9 CHAIRPERSON GRIFFIS: Indeed. The Board
10 has been here for 10 hours if my math is correct. I
11 think it would be appropriate for them to get up once
12 in a while and stretch their legs so that we might be
13 better off listening to what you're going to tell us
14 when we return. We'll see you at 6:10.

15 (Whereupon, at 6:02 p.m. off the record
16 until 6:23 p.m.)
17
18
19
20
21
22
23
24

25 E-V-E-N-I-N-G S-E-S-S-I-O-N

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(6:32 p.m.)

CHAIRPERSON GRIFFIS: Okay. If everyone is here we are ready to resume. I would ask for everyone to take their seats and we can call the last case of the day.

MS. BAILEY: Application No. 16823 of Humberto Gonzalez, pursuant to 11 DCMR 3103.2 for a variance from the use provisions to allow the expansion of an existing bed and breakfast (home occupation) from 6 sleeping rooms to 11 sleeping rooms under subsection 203.8. The property is located in the Dupont Circle Overlay District R-5-D at premises 1720 16th Street, N.W. (Square 178, Lot 800).

Mr. Chairman, all of the witnesses were sworn previously.

Is there anyone who will be testifying today who was not previously sworn in?

CHAIRPERSON GRIFFIS: If you could stand.

MS. BAILEY: Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

MS. BAILEY: Thank you.

CHAIRPERSON GRIFFIS: Ms. Hubbard, you had

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1 a brief comment?

2 MS. HUBBARD: Yes, I do.

3 CHAIRPERSON GRIFFIS: Could you turn that
4 on, please?

5 MS. HUBBARD: My name is Harriet B.
6 Hubbard representing the Residential Action Coalition
7 in opposition in this case. I would like to ask, Mr.
8 Griffis, that this case be dismissed with prejudice.
9 The record after all of these hearings is still
10 incomplete.

11 I examined the record just before last
12 week when I was down here. There was no report from
13 the Historic Preservation People and no report from
14 OPD supplemental, and no report from the Department of
15 Transportation as requested.

16 I still feel that the material submitted
17 by the applicant is so confusing and contradictory
18 that this case should be after all of this time. Now,
19 Mr. Griffis, I know you're not going to agree to what
20 I ask, although I believe that --

21 CHAIRPERSON GRIFFIS: Why do you ask then?

22 MS. HUBBARD: That this case be dismissed
23 with prejudice.

24 CHAIRPERSON GRIFFIS: I understand what
25 you asked.

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1 MS. HUBBARD: I do want to point this out.
2 I know you are not going to agree to that.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. HUBBARD: All right. We do have an
5 expert witness here tonight, Mr. Schwartz --

6 CHAIRPERSON GRIFFIS: Very good.

7 MS. HUBBARD: -- appearing on our side of
8 the case. We want the opportunity for the hearing to
9 last long enough so that he can be heard in full. On
10 the other hand, it is now 6:30. All right. I think
11 that we should learn right now when you're going to
12 stop the case. What time.

13 CHAIRPERSON GRIFFIS: We're going to
14 finish the hearing tonight.

15 MS. HUBBARD: You mean if we have to stay
16 until 10:00?

17 CHAIRPERSON GRIFFIS: Indeed.

18 MS. HUBBARD: Don't tell me. Well, I'm
19 not going to stay.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. HUBBARD: We're in opposition.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. HUBBARD: You see, we won't come on
24 until after they finish.

25 CHAIRPERSON GRIFFIS: Let me put this to

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1 you. Two things. One, the quicker we start the
2 quicker we finish. I would ask you to take your seat
3 at this point. I appreciate your motion. I will
4 present it to my Board to see if we want to entertain
5 the motion to dismiss with prejudice at this point.

6 Ms. Hubbard, you can have a seat, please.

7 Does anyone avail themselves to entertain
8 the motion? In which case the Board will not
9 entertain the motion at this time. My notes indicate
10 that we were to start with addressing any relevant
11 government agencies that may have submitted -- okay.
12 What I'm going to do is start with the ANC and then I
13 will address briefly what was submitted. As far as I
14 understand from my notes, and I will take
15 clarification for parties if they do not agree, we are
16 having the ANC's presentation and the ANC's
17 presentation is not timed. We then go to the party --
18 actually we can -- well, the way I would like to do it
19 then is we would go forward to the presentation of the
20 parties in opposition case. We have 65 minutes in our
21 record that are to be allotted for that presentation
22 of the case of all parties. That time, of course,
23 does not need to be fully utilized but can be and then
24 I will assess after that what is left and what we need
25 to take up.

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1 Ms. Hubbard.

2 MS. HUBBARD: Mr. Griffis, as parties in
3 opposition we are entitled to cross-examine --

4 CHAIRPERSON GRIFFIS: Yes.

5 MS. HUBBARD: -- the applicant on the
6 material that he has submitted since the last
7 hearing.

8 CHAIRPERSON GRIFFIS: Thank you for the
9 reminder.

10 MS. HUBBARD: If the ANC is presenting its
11 case now isn't that slightly out of order?

12 CHAIRPERSON GRIFFIS: Well --

13 MS. HUBBARD: Isn't it somewhat out of
14 order?

15 CHAIRPERSON GRIFFIS: It is somewhat out
16 of order.

17 MS. HUBBARD: All right.

18 CHAIRPERSON GRIFFIS: We have the ANC
19 member here now at the table. It is my preference,
20 and I don't find it prejudicial to anybody present
21 today or a party in the case, to take a little bit out
22 of order so that we hear the presentation of the ANC
23 now. The ANC will then be available for cross-
24 examination and then we will go for the written
25 submissions into the record and any sort of cross-

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1 examination that may happen in regards to that.

2 Very well. When you are ready, sir.

3 MR. MICONE: Mr. Chair, thank you very
4 much. My presentation will be brief. It will be
5 extremely brief. This particular application is
6 something that our ANC has been living with, working
7 on, however you would term it, really since about this
8 time last year, I believe, is when we first began
9 discussions about this.

10 The ANC's concerns are similar in many
11 respects to the other protestants but different in
12 other respects. The Commission was very clear that
13 the use for a bed and breakfast, or the expanded use
14 from six to 11 rooms, was not the most significant
15 issue before the ANC.

16 Of greater concern to the ANC was the
17 special event or accessory use. That has always been
18 the issue that we have focused on, as well as
19 expansion and issues related to that. It's our belief
20 still that issues related to noise, trash, parking are
21 very significant issues and the neighbors' concern
22 with respect to those issues is significant, but those
23 are easier issues to deal with as they relate to the
24 B&B then as they relate to the special events. I want
25 to just reemphasize where the Commission's concerns

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1 are.

2 I think it would be useful for us, or at
3 least for me, to comment upon the proposed conditions
4 that were submitted because if this should go to
5 something where the Board would make some
6 determinations, I think it would be important for the
7 Board to hear what the ANC thinks about the proposed
8 conditions specifically.

9 The portion of my testimony, because I
10 don't want to repeat issues that I brought before the
11 Board previously or submitted in writing. I think
12 we've been pretty clear about those.

13 What we are most concerned about, and I
14 will orally go through it very quickly and then
15 provide written copies for the Board and for the other
16 parties, is just a quick comment on the proposed
17 conditions that were submitted by the applicant for
18 the variance.

19 We support and actually applaud the
20 proposal for historic preservation of the interior of
21 the facility. Certainly that is something that will
22 benefit the historical relevance of the building to
23 the historic nature of the Dupont Circle area.

24 We support that the applicant has
25 indicated that they will have a maximum of 10 guest

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1 rooms. This is one fewer than the application is for
2 based on their conditions. We also support that the
3 applicant has indicated they will have no more than
4 four nonresident employees. This number is less than
5 what we have talked about before.

6 What I'm using as a guideline when I
7 reviewed this information was prior agreements that we
8 were in negotiations on. There is some fundamental
9 relevance to those issues that the Commission talked
10 about and what the thinking was when we negotiated at
11 various times.

12 There are some changes that I would
13 recommend to the times when events would occur.
14 Again, I'll submit this in writing. On weekdays the
15 applicant had indicated that they would condition from
16 8:30 a.m. to 9:30 p.m. The Advisory Neighborhood
17 Commission would prefer to see that an hour earlier.
18 And on weekends as well the applicant indicated that
19 they would support condition at 10:30 and the ANC
20 would be more happy with 9:30.

21 Also, in our discussions prior to this
22 point with the applicant, there was a discussion that
23 there would be no events in the facility other than
24 those that the guests of the bed and breakfast should
25 organize or coordinate with the applicant should the

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1 Board grant this relief and we would want that
2 specified.

3 The Commission remains concerned about
4 courtyard usage. We respect that the applicant has
5 submitted that with the exception of ceremonies, no
6 events would be scheduled in the courtyard. The
7 Commission would want additional protection for the
8 neighborhood and that there would be no amplified
9 music or speeches in the courtyard other than for
10 wedding ceremonies and very specifically saying that
11 in the courtyard basically you can do the ceremony and
12 then you go inside.

13 We would wish to comment on the Department
14 of Transportation management plan. We have not seen
15 that. I received a phone call from Ken Laden, the
16 Associate Director for Transportation Policy, asking
17 me very briefly what the ANC's position was. I
18 understand that there are some DDOT approval for a
19 transportation plan that's going to be reviewed. We
20 would want to have comment on that.

21 We would submit two potential additional
22 conditions. One is that as long -- one concern that
23 the ANC has is with expansion. We would want to
24 assure that the B&B and any event usage should that be
25 approved remain within the confines of the building

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1 right now so that the building does not grow or expand
2 into other adjacent properties and then have the
3 business expand.

4 As well as the ANC -- this one has been of
5 great concern to us all the way along. This would be
6 something that the applicant would need to agree to
7 for our support, would be that the applicant would
8 agree not to seek or obtain an ABC license other than
9 one-day licenses.

10 Our concern is the use change would occur
11 with zoning to allow the events. Because the Board of
12 Zoning Adjustments can grant that, it would allow the
13 applicant the opportunity to then apply for a liquor
14 license and that is of greatest concern to the ANC.

15 I would say our two biggest issues from
16 the beginning have been nonexpansion if this is going
17 to be a B&B with a limited number of events, those
18 should occur within the mansion itself and the
19 neighborhood should not have to worry that the mansion
20 will grow and grow as we have seen in other parts of
21 the neighborhood. We don't want to see liquor service
22 other than one-day permits for use on that property.

23 I will submit this to the parties and to
24 the Board as a record for your convenience of our
25 comments.

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1 Just in conclusion, if I may, the ANC very
2 much respects the position of the neighbors. There
3 are differences of opinion on whether or not this sort
4 of zoning relief should be granted in this particular
5 neighborhood. Those are legitimate concerns. There
6 is a legitimate debate that neighbors have about those
7 issues.

8 Certainly I think one thing that we all
9 have in common in Dupont is we want to protect the
10 historic nature of the Toutorsky Mansion. It is one
11 of the gems in our neighborhood. I believe that the
12 applicant and the neighbors are on the same point on
13 that. We want to see that historic mansion remain.
14 The neighbors' concerns are very legitimate and we
15 support those concerns. It's just the ANC looks at
16 the long term and reflects upon some of the issues
17 that we have had in the neighborhood which is a direct
18 reflection of where we really stand on these
19 particular issues.

20 This has not been the easiest case.
21 Certainly there have been very challenging cases that
22 we've had in Dupont. This will rank highest among
23 those. I was hoping that we could come to an
24 agreement that I could bring to this Board on behalf
25 of the neighborhood, the Commission, and the applicant

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1 saying that we resolved our issues.

2 However, this application, and the issues
3 that surround it, became a number of issues that were
4 too great for the Commission to handle. Neighbors and
5 the applicant seem to become stuck in their positions
6 and it became not possible for the ANC to try and
7 mediate or negotiate an agreement as we've been able
8 to do in other similar cases.

9 We throw this volley up to the Board for
10 your determination. We would ask that you provide
11 great weight to our concerns, particularly about
12 expansion, particularly about use, and for our comment
13 -- although we are opposed, but for our comment on the
14 proposed conditions. I offer this now in particular
15 as I will need to depart the proceedings.

16 CHAIRPERSON GRIFFIS: Indeed. Thank you
17 very much. We appreciate you staying to do this.
18 Just for reiteration, you have just stated that, in
19 fact, the official ANC position is in nonsupport of
20 the application. Is that correct?

21 MR. MICONE: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Also, a
23 comment in terms of the expansion of the use including
24 expansion of use within the structure would be
25 reviewed by either us or other purveying boards, the

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1 expansion to other properties. I think the Board has
2 heard strongly your concern of that. However, that
3 would not be a condition that this Board could impose
4 but we will take it under advisement.

5 Board members, other questions of the ANC
6 at this time? Does the applicant have cross-
7 examination?

8 APPLICANT: No cross-examination.

9 CHAIRPERSON GRIFFIS: No cross-examination
10 by the applicant. Do any of the parties have cross-
11 examination? Why don't you guys come on up. Let's
12 just make a note that the ANC Commissioner is going to
13 need to pack to get on a plane to Australia.

14 MS. HUBBARD: Oh, that may be. May I ask
15 you -- this is Harriet B. Hubbard. May I ask you is
16 there any sworn testimony ever given at your ANC?

17 MR. MICONE: The ANC doesn't receive sworn
18 testimony. It's not been our tradition. We consider
19 all testimony be truthful. We have not sworn any
20 testimony since I've been chair.

21 MS. HUBBARD: May I ask you what is the
22 legal situation with regard to your efforts to make a
23 cooperative agreement? Is that part of your charter
24 that you are supposed to reconcile applicants in
25 opposition in zoning cases?

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1 CHAIRPERSON GRIFFIS: Ms. Hubbard, the
2 relevancy for us?

3 MS. HUBBARD: Yes, because I thought they
4 were just supposed to vote on it. I had never heard
5 of an ANC trying to engineer a neighborhood agreement.
6 It would seem to me that's ridiculous.

7 CHAIRPERSON GRIFFIS: Okay. I think we'll
8 take your comment as noted. The Board does have
9 experience of having ANCs actually act as mediators.

10 MS. HUBBARD: I do not see that is in the
11 ANC charter. Whether you have experience or not, you
12 should know it's not legal.

13 CHAIRPERSON GRIFFIS: We'll take note of
14 that. It's not legal.

15 MS. HUBBARD: That's right.

16 CHAIRPERSON GRIFFIS: Okay. Any other
17 questions?

18 MS. HUBBARD: I just want you to know --

19 CHAIRPERSON GRIFFIS: Questions of the ANC
20 member. Thank you very much.

21 MR. JADIN: I just want --

22 CHAIRPERSON GRIFFIS: I'm sorry. You need
23 to turn your mike on.

24 MR. JADIN: I would like clarification on
25 your support of the application in regards to historic

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1 preservation? I take it to mean that you support
2 historic preservation of the Toutorsky Mansion. Would
3 the ANC equally support another use of the building if
4 it could be demonstrated that it could be saved by
5 using it differently than the proposal allowance.

6 MS. BAILEY: Excuse me for interrupting
7 but, sir, for the record, we just need for you to
8 identify yourself.

9 MR. JADIN: Okay. My name is Ken Jadin.

10 MR. MICONE: Mr. Jadin, thank you. It's
11 certainly possible that the Commission would support
12 an alternate use that would also involve historic
13 preservation.

14 MR. JADIN: Would you support, in fact, a
15 conversion to multiple dwellings which is within
16 allowable use within the existing zoning?

17 CHAIRPERSON GRIFFIS: That's a little
18 beyond. I'm not sure I want the ANC to speculate on
19 what they would or would not support.

20 MR. JADIN: The main point I was trying to
21 get across is that he supports the historic
22 preservation, not this specific proposal of the
23 mechanism --

24 CHAIRPERSON GRIFFIS: Hold on a second.

25 MR. MICONE: Well, the position of the ANC

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1 is to oppose this application and to also -- well --

2 CHAIRPERSON GRIFFIS: Is that clear?

3 MR. JADIN: Well, in his testimony he said
4 they --

5 CHAIRPERSON GRIFFIS: He did indeed.

6 MR. JADIN: -- supported historic
7 preservation.

8 CHAIRPERSON GRIFFIS: Right. He noted
9 aspects that they supported, and that's why I had him
10 clarify now two times that the official position,
11 which will be given great weight by the Board, is in
12 opposition to the application. I don't think we need
13 to tear them apart on the specifics unless there are
14 things that we can, in fact, elicit that will be
15 helpful. I'm clear on it.

16 Board members, are you clear on the
17 testimony? Good. Other questions? Anything else?

18 MS. POLIVY: My name is Margot Polivy.
19 Mr. Micone, you testified that you supported no more
20 than four nonresident employees. The applicant has
21 proposed that there would be no more than four at any
22 one time employees. Is that what you're supporting or
23 are you supporting a total of four?

24 MR. MICONE: In reviewing the proposed
25 condition which I commented upon that we generally

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1 supported -- let me specifically look at that
2 provision. It is my understanding by reading this,
3 and this support was for no more than four nonresident
4 employees on site at any one time.

5 MS. POLIVY: And you are supporting that
6 or was that discussed by the ANC?

7 MR. MICONE: The ANC did discuss this and
8 did negotiate on this item. There were at some point
9 far more than four that were discussed so I was
10 pleased to see that the number was reduced to four on
11 site at one time. Of course, the understanding is
12 this is a home occupation so there would be also one
13 or two people who by home occupation would be living
14 there bringing the total number up to six employees.

15 MS. POLIVY: Or possibly up to 12 if you
16 had eight-hour shifts.

17 MR. MICONE: One could presume from a
18 direct reading of that you are correct.

19 MS. POLIVY: All right. When did the ANC
20 negotiate this?

21 MR. MICONE: We negotiated through, I
22 believe, March, April, and May, I believe, we worked
23 on this. We need to look through this to find out the
24 day that we actually stopped. We have actually had
25 discussions with the applicant. I wouldn't consider

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1 them negotiations.

2 We have been kept up to date from the
3 various protestants and the applicants on the state of
4 the case but there have been no formal negotiations
5 since that time and that's the barometer I need to use
6 because that's the barometer that I shared with the
7 commissioners.

8 MS. POLIVY: So you're saying at your last
9 negotiation they were already proposing four at any
10 one time?

11 MR. MICONE: I believe it was more. I
12 would need to check to give you a very specific answer
13 on that.

14 MS. POLIVY: Okay. And the submission
15 that you made today is to your support and the things
16 you oppose. Was this formally adopted by the ANC at
17 any meeting?

18 MR. MICONE: This is comment on the
19 proposed conditions so it was not, but I have the
20 authority to represent the Commission's position which
21 is we are still in opposition but we wanted the
22 opportunity to be afforded to comment on the proposed
23 conditions that were forwarded. I'm looking to see if
24 I can find the answer here.

25 MS. POLIVY: So the "we" in the comments

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1 is you?

2 MR. MICONE: As authorized by the
3 Commission.

4 MS. POLIVY: When did you speak to Kenneth
5 Laden? When is the last time you spoke to Kenneth
6 Laden?

7 MR. MICONE: I can't recall the exact date
8 the last time I spoke to Mr. Laden.

9 MS. POLIVY: Do you know if it was before
10 or after he had distributed something called the
11 traffic report?

12 MR. MICONE: I didn't receive a traffic
13 report.

14 MS. POLIVY: I have no further questions.

15 MR. MICONE: I am still looking for the
16 answer to your question on the number of employees and
17 I simply can't find it.

18 CHAIRPERSON GRIFFIS: Okay. Is there a
19 representative from the Dupont Circle Citizens
20 Association here?

21 MS. POLIVY: I think he had to depart?

22 CHAIRPERSON GRIFFIS: Mr. Hill?

23 MS. POLIVY: Yes.

24 CHAIRPERSON GRIFFIS: Very well. Thank
25 you very much.

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1 MR. MICONE: Thank you.

2 CHAIRPERSON GRIFFIS: Are all parties in
3 receipt of the memorandum from Ken Laden from the
4 Department of Transportation? It was received by this
5 office on September 26. It is Exhibit No. 83. Does
6 the applicant have this? Do the parties have this?

7 MS. POLIVY: Some of the parties have it.

8 MS. HUBBARD: I don't have it.

9 MS. POLIVY: Not all of the parties. Mr.
10 Chairman, there was subsequent discussion with Mr.
11 Laden. I requested the representative from DOT be
12 available in the letter I sent you. I wonder if you
13 would permit us to have Mr. Santucci, who spoke to Mr.
14 Laden, recite what his understanding of the present
15 circumstances with that traffic report.

16 CHAIRPERSON GRIFFIS: Maybe. Let's get to
17 the bottom of this. Board members, do you have the
18 transportation management plan that is talked about
19 here? Is the applicant represented that they could
20 come up? If you could come up. Can you give me some
21 clarification if you do know and, if not, maybe Mr.
22 McGettigan can help me. The applicant has proposed a
23 transportation management plan. That goes to your
24 submission.

25 MS. GIORDANO: That was submitted to the

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1 Board and the parties.

2 CHAIRPERSON GRIFFIS: Right. Okay,
3 previously. That's what this, in fact, memo is
4 referring to.

5 MS. GIORDANO: And to DPW. Right. DOT.

6 CHAIRPERSON GRIFFIS: Right. Okay. If my
7 records show, this would have been -- this is a new
8 government report submitted into the record. In terms
9 of cross-examination purposes, it is kind of
10 interesting how we cross-examine a memo but I would
11 like to allow a couple of minutes for each participant
12 to give comments on it. We can start with the
13 applicant if they have any comments on the memo. Then
14 we can have the parties up.

15 MS. POLIVY: Mr. Chairman, the ANC did not
16 receive a copy of the transportation report which was
17 what Mr. Micone was just saying to you.

18 CHAIRPERSON GRIFFIS: The ANC didn't?

19 MS. GIORDANO: No. He said he had never
20 seen it.

21 MS. GIORDANO: Mr. Micone testified that
22 he hadn't received it. We did deliver it to him and
23 perhaps he overlooked it.

24 CHAIRPERSON GRIFFIS: I think there is
25 some confusion about what it was being referred to. I

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1 should have brought it up.

2 MR. ZAIDAIN: When was that submitted to
3 us?

4 MS. GIORDANO: You're talking about our
5 plan? He said he didn't get the DOT report.

6 MS. POLIVY: Yes. That's what we're
7 talking about.

8 MS. GIORDANO: He got our plan.

9 MS. POLIVY: The DOT report. That's what
10 Ms. Hubbard she didn't get either. We did get it.

11 MS. GIORDANO: It was in the record but I
12 don't think it was distributed to the parties.

13 MS. POLIVY: Oh, that's why he didn't get
14 it.

15 CHAIRPERSON GRIFFIS: It would have been
16 distributed to the ANC I would hope.

17 MS. POLIVY: No, he did not get it.

18 MS. GIORDANO: If I could just note, I
19 think that the Board provided a deadline for DOT to
20 submit this record which was part of a letter which
21 was noted in the letter that all the parties received.
22 I think the parties had an expectation that it was
23 coming in and could have simply checked the file.

24 CHAIRPERSON GRIFFIS: Indeed.

25 Mr. McGettigan, you received the report.

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1 Is that correct?

2 MR. McGETTIGAN: Yes.

3 CHAIRPERSON GRIFFIS: Did you instruct the
4 distribution to the parties?

5 MR. McGETTIGAN: No, I did not.

6 CHAIRPERSON GRIFFIS: Okay. It's clearly
7 not in my notes. In fact, in the letter which is part
8 of the record also, the dates of when things were
9 resubmitted. There it is. We can take a moment if
10 people need -- if the parties need to review it. It's
11 only a page long. Do you want to address it first?

12 MS. POLIVY: Yes, Chairman. We have asked
13 that the person with knowledge of the material in this
14 report be present so we can cross-examine them. Since
15 then we have spoken to Mr. Laden which is why I asked
16 Mr. Micone when he spoke to him. Mr. Laden told Mr.
17 Santucci. If you would like Mr. Santucci to tell you
18 directly what he said, I won't try to paraphrase it.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. SANTUCCI: I called Mr. Laden and
21 asked him if he actually wrote the letter and he said
22 he signed the letter. I asked him if he visited the
23 property. He said he did not visit the property. A
24 staff member visited the property. He then had the
25 staff member call me. We had a discussion about the

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1 inadequacy of his letter. Mr. Laden then called me
2 back and said he was going to take that person off the
3 case, send another person to look at the property, and
4 he himself would go on Friday to look at the property.

5 CHAIRPERSON GRIFFIS: What Friday?

6 MR. SANTUCCI: This past Friday.

7 CHAIRPERSON GRIFFIS: When did you talk to
8 him?

9 MR. SANTUCCI: I talked to him on Tuesday
10 or Wednesday. As soon as we got the letter. It was
11 last week. He told me he and whoever he sent to do a
12 re-review would be at the hearing. He promised us
13 that he would be there because I indicated that we
14 were going to be writing a letter asking for his
15 presence here. That's basically what he told me.

16 CHAIRPERSON GRIFFIS: Okay. So you think
17 there may be a potential for a supplemental report?

18 MR. SANTUCCI: Yes. That's the feeling
19 that he gave me because when we had an initial
20 discussion on the inadequacies of the report, he
21 basically called me back and said he had then taken a
22 look at the file and admitted that he had not looked
23 at the file. He had just merely signed the letter and
24 that he had some problems with the file.

25 MS. GIORDANO: Mr. Chair, I received two

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1 voicemail messages from Mr. Laden. One last night and
2 one this morning that I would like to share the
3 content with the Board. I received a voicemail
4 message yesterday afternoon about 5:30 or so. Mr.
5 Laden said he was looking at -- that he had received
6 some phone calls from the neighbors about the case and
7 he wanted to review our proposed conditions on the
8 transportation issue and asked if I could fax or e-
9 mail those to him. I tried to call him back after
10 that and left a message for him saying that I had been
11 at the Zoning Commission in the afternoon and had gone
12 straight home from the Zoning Commission meeting. I
13 didn't have those materials with me at home but that I
14 would send it to him first thing in the morning. Then
15 before I could send I had gotten another message from
16 him in the morning saying that he didn't need them.
17 That he had talked to the OP staff and the BZA staff
18 and that he was going to stand on his report and he
19 probably would not come to the meeting but he was
20 satisfied that his report was adequate.

21 CHAIRPERSON GRIFFIS: What day was that
22 phone call?

23 MS. GIORDANO: That was this morning.

24 CHAIRPERSON GRIFFIS: That would be the
25 29th if it's still today.

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1 MS. HUBBARD: May I say something?

2 CHAIRPERSON GRIFFIS: Just a second.
3 Let's resolve one issue at a time.

4 Mr. McGettigan, did you talk to Mr. Laden?

5 MR. McGETTIGAN: Yes, I did. He asked for
6 some additional information which I sent to him
7 yesterday. He also told me that he went out to the
8 site. Actually, I think he said he went out to the
9 site twice and looked at it and looked to see if there
10 were any changes that were necessary. He said he was
11 going to stand on the report.

12 CHAIRPERSON GRIFFIS: Very good. We
13 should have started with you.

14 MS. HUBBARD: Mr. Griffis.

15 CHAIRPERSON GRIFFIS: Yes. Well, first,
16 let me clarify the fact of what we have in submission.

17 MR. ZAIDAIN: I just wanted to see if
18 anybody on our staff had talked to Mr. Laden just to
19 make sure. Let me just throw the question to see if
20 anybody says yes or not.

21 CHAIRPERSON GRIFFIS: Did the Office of
22 Zoning talk to Mr. Laden?

23 MS. BAILEY: I did not, Mr. Chairman.

24 MR. MOY: Neither did I.

25 CHAIRPERSON GRIFFIS: It could possibly

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1 have been someone in the office. Let me just
2 reiterate so the facts for the record is clear. We
3 are not looking for according to the information we
4 just received a supplemental report from the
5 Department of Transportation. Therefore, we should
6 take this as the final filing which is Exhibit No. 83.

7 Ms. Hubbard.

8 MS. HUBBARD: Mr. Griffis, may I tell you
9 second-hand information about what somebody else said
10 is not acceptable at this hearing.

11 CHAIRPERSON GRIFFIS: No.

12 MS. HUBBARD: It would not be if I just
13 said it about somebody, what they told me. You would
14 ask for a direct corroboration as to what the person
15 said. Let me tell you one reason why I mentioned
16 this.

17 CHAIRPERSON GRIFFIS: What are we talking
18 about?

19 MS. HUBBARD: This letter from Mr. Laden.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. HUBBARD: In this letter from Mr.
22 Laden there's reference to a parking garage at 1776
23 Massachusetts Avenue. Then you further heard that
24 this gentleman visited this site and so forth. Now,
25 1776 Massachusetts Avenue is on the south side of

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1 Massachusetts Avenue. It is not on the north side.
2 That's where the Atlantic Parking Garage is supposed
3 to be.

4 The map that was submitted by the
5 applicant shows the location of the parking garage on
6 the north side of Massachusetts Avenue, not the south
7 side. As a matter of fact, they show two locations in
8 their submission for this particular parking outfit.

9 It would seem to me if Mr. Laden had
10 actually visited this site and compared it with the
11 submission, that one of the first thing that would
12 have come to his head is that this could not be right.

13 I mean to say that regardless of the many
14 other shortcomings in this letter in being applicable
15 to this particular case, that one is so glaring that,
16 I mean, I'm sure it stuck you right away the minute
17 you saw it that you examined the parking submission by
18 the applicant and you saw this letter.

19 It must have struck you right away that
20 couldn't be right because the location is wrong. I
21 mean to say, if he knows where the Atlantic Parking
22 Garage is and actually visited the location as he
23 said. I'm just say, Mr. Griffis --

24 CHAIRPERSON GRIFFIS: Ms. Hubbard --

25 MS. HUBBARD: -- that you must require

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1 another inspection.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. HUBBARD: Or have this pointed out.

4 CHAIRPERSON GRIFFIS: Anything further?

5 MS. HUBBARD: I would say that you are
6 taking this as an official recommendation by an agency
7 of the District of Columbia in favor of this
8 application. Really, Mr. Griffis, how can you say
9 that you are going to take this as an official
10 recommendation by the District of Columbia.

11 CHAIRPERSON GRIFFIS: You're telling me
12 not to accept it. Okay.

13 MS. HUBBARD: I tell you not to accept it
14 into the record as the official thing. Make your
15 decision right now that this is ridiculous.

16 CHAIRPERSON GRIFFIS: Okay. Are you ready
17 to move on?

18 MS. HUBBARD: Yes.

19 CHAIRPERSON GRIFFIS: Okay. First of all,
20 Mr. Laden, I understand that your point of this not
21 coordinating with perhaps a map that was submitted
22 locating the parking garage.

23 MS. HUBBARD: That was the written
24 material. It says Atlantic Parking Garage. Look it
25 up in the telephone book.

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1 CHAIRPERSON GRIFFIS: Okay. Ms. Hubbard,
2 do you have any interest in what I'm going to say?

3 MS. HUBBARD: I don't know.

4 CHAIRPERSON GRIFFIS: Why don't you take a
5 seat then.

6 Board members, any other comments on the
7 Office of Transportation? Good. It is clear to me in
8 the sentence that, in fact, addresses the parking
9 garage that there is no directional indication which
10 would need for cross-comparison of the applicant's
11 submission. In fact, the exact words are the Atlantic
12 Parking Garage located 1776 Massachusetts Avenue as a
13 few blocks from the site. Clearly Mr. Laden was well
14 aware of the proximity and perhaps even the capacity
15 for use. This is in the record and I think we can
16 continue.

17 MS. HUBBARD: Even though the north side
18 of the street is all even?

19 CHAIRPERSON GRIFFIS: Ms. Hubbard, you're
20 speaking for your own benefit because you're not on
21 the record, ma'am.

22 MS. POLIVY: Mr. Chairman, on October 22nd
23 I sent you a letter asking that the person with actual
24 knowledge of the material in that transportation
25 report be available for cross-examination.

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1 CHAIRPERSON GRIFFIS: Yes. What should we
2 do with that?

3 MS. POLIVY: Yes, what should we do with
4 that? I think we should have them available for
5 cross-examination. I also note that Mr. Laden has
6 told three people three different things subsequent to
7 this DOT.

8 CHAIRPERSON GRIFFIS: What action are you
9 asking the Board to make?

10 MS. POLIVY: I'm asking that they be
11 available for cross-examination.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. POLIVY: And if it's to be accepted
14 then we have an opportunity to question them.

15 CHAIRPERSON GRIFFIS: In that the hearing
16 was advertised, there was notice to DDOT to have a
17 representative here, what course of action do I have?

18 MS. POLIVY: Well, Mr. Chairman, I'm not
19 going to try to tell you your business but the fact is
20 that if you're telling me that DDOT would have had an
21 opportunity to appear had they chosen to and they
22 didn't, if it were any other witness, you would
23 exclude his testimony.

24 CHAIRPERSON GRIFFIS: That's not true.

25 MS. POLIVY: You would not permit a

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1 witness to testify without being made available for
2 cross-examination. If you would, it's a rather
3 strange proceeding.

4 CHAIRPERSON GRIFFIS: That's also not
5 correct.

6 MS. POLIVY: Earlier today you told Mr.
7 Gell that you were concerned because he was not going
8 to be available for cross-examination.

9 CHAIRPERSON GRIFFIS: Yes.

10 MS. POLIVY: I'm sorry, Mr. Hill. You are
11 now telling -- the question is not whether or not Mr.
12 Laden should have the benefit of having his opinion
13 given. The question is whether the parties should
14 have the opportunity to demonstrate whether or not his
15 opinion is worthy of being credited or not.

16 CHAIRPERSON GRIFFIS: I totally agree. It
17 is a huge concern when either testimony or a party
18 can't be present for physical oral cross-examination.

19 However, this Board does make combinations based on
20 schedule. I can ask DDOT to be here. I cannot compel
21 them to be here. Frankly, we also work through Office
22 of Planning to try and compel them to be here. I'm
23 not sure whether they were here this afternoon and
24 didn't stay. I do not know the circumstances. I will
25 do this. The record will be kept open. We will set a

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1 date for the time where we will have rebuttal
2 submissions, cross-examination in writing into the
3 record by parties that would like to avail themselves
4 to do that. We can put those in. We'll schedule that
5 as we go and then we can have responses to the
6 submissions. That's all I can do with it at this
7 point.

8 Board members, anything else we need to
9 cover?

10 MS. POLIVY: Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Yes?

12 MS. POLIVY: If you would enlighten me as
13 to the methodology for cross-examining written cross-
14 examination. Are you suggesting that we direct
15 questions to Mr. Laden and have him submit written
16 answers? Are you suggesting that we submit questions
17 to the Board and have them put into the record for
18 whatever benefit may be to the Board in their
19 deliberations? I'm not quite sure I understand the
20 methodology you have in mind.

21 CHAIRPERSON GRIFFIS: That's an excellent
22 question.

23 MS. POLIVY: May I have an excellent
24 answer?

25 CHAIRPERSON GRIFFIS: I don't know about

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1 that.

2 MR. ZAIDAIN: Can you repeat the question?

3 CHAIRPERSON GRIFFIS: The question is how
4 do --

5 MS. POLIVY: Would you like me to ask
6 again?

7 CHAIRPERSON GRIFFIS: She asked me how to
8 cross-examine in writing. I think my --

9 MR. ZAIDAIN: I think we've done that
10 before.

11 CHAIRPERSON GRIFFIS: We have indeed.

12 MR. ZAIDAIN: The whole purpose of cross-
13 examination is to show certain errors or flaws that
14 you see in the report and instead of having a Q&A
15 session where you are trying to bring it out, just
16 state it clearly in a written submission to us. We
17 are intelligent enough to read it.

18 CHAIRPERSON GRIFFIS: Right. It does, in
19 fact. As I stated, it goes more towards the rebuttal
20 testimony so we are allowing you the ability to write
21 in facts that correspond to this.

22 As I say, we will have responses and the
23 Board will review these. If questions are raised that
24 cannot be answered, we'll take it up at that time. I
25 would think this would be fairly straightforward in

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1 terms of refuting the presentation by the
2 Transportation Department.

3 MS. POLIVY: That would be so, Mr.
4 Chairman, if I were primarily concerned with whether
5 the Atlantic Garage is on the northwest or the
6 southwest corner. Frankly, I am not. I am concerned
7 with the methodology that the Transportation
8 Department is using in determining the transportation
9 affect or the traffic affect of given things.

10 Now, I can, of course, make statements to
11 you. I cannot give you answers. I would at this
12 point formally ask that the transportation report be
13 excluded from the record.

14 CHAIRPERSON GRIFFIS: Okay. I think to
15 mitigate that, let's revise. Why don't we have
16 submissions of questions based on the report that was
17 submitted to the DDOT and have them reply. I don't
18 think Mr. Laden will not be unavailable for doing that
19 and they can do it in writing or they can bring
20 someone here to do it. Let's keep that under
21 advisement in terms of schedule.

22 MR. ZAIDAIN: One thing, and I don't know
23 if it will narrow the scope at all, but the point of
24 the methodologies is the fact that Mr. Laden
25 originally did not go out to the site on his own and

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1 write the report on his own. He signed it. That's
2 pretty common.

3 MS. POLIVY: It is not.

4 MR. ZAIDAIN: Well, last time I checked --

5 CHAIRPERSON GRIFFIS: Let's not try and
6 speculate.

7 MR. ZAIDAIN: I want to make sure that
8 this written cross-examination is focused on something
9 that we can actually deal with.

10 CHAIRPERSON GRIFFIS: Good point. I think
11 that is excellent direction.

12 Okay. Right. My notes indicate that we
13 are ready for -- well, this is what I think we should
14 do. As far as my records show, we haven't had any
15 testimony.

16 MS. POLIVY: Mr. Chairman, would you
17 please rule on my motion to exclude?

18 CHAIRPERSON GRIFFIS: To exclude the
19 record -- to exclude the report?

20 MS. POLIVY: Yes.

21 MR. ZAIDAIN: I move to deny the motion to
22 exclude the report.

23 MR. ETHERLY: Second it, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Thank you. All
25 those in favor?

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1 BOARD MEMBERS: Aye.

2 CHAIRPERSON GRIFFIS: Opposed?

3 MS. HUBBARD: Mr. Griffis, there's one
4 other little argument about what is missing from this
5 hearing.

6 CHAIRPERSON GRIFFIS: Are you wanting to
7 be on the record, Ms. Hubbard?

8 MS. HUBBARD: Yes, I am. There was to be
9 a written report from the Historic Preservation group
10 in connection with the submission by the applicant of
11 all the pictures and so forth and so on about how they
12 were going to enforce this preservation effort. I
13 didn't see any report of that kind of the record.

14 CHAIRPERSON GRIFFIS: These indicate that
15 the preservation review staff was going to advise the
16 Board whether sufficient documentation had been
17 received from the applicant documenting the interior
18 portions of the building that were to be preserved. I
19 was aware of that and I'm still aware of that.

20 MS. HUBBARD: We would like a chance to
21 cross-examine the person with regard to this matter.

22 CHAIRPERSON GRIFFIS:

23 CHAIRPERSON GRIFFIS: Okay. I take that
24 under advisement. This Board has thought seriously
25 about this issue and I think we will need to

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reevaluate the relevancy of how far in the building this Board can and should go. Therefore, I don't find it compelling to stop what we're doing at this point to wait on that. We'll bring that up at the end as we set schedule and finish this hearing to see whether we, in fact, need to call Mr. Calcot or not. I would ask the Board members to keep that in mind and let us proceed.

I would note that -- well, first of all, can I have an indication of who here is giving testimony tonight in support of the application and hands for people giving testimony in opposition?

Ms. Hubbard, your hand should not be up.

MS. HUBBARD: I am.

CHAIRPERSON GRIFFIS: That would go without question. Very well. What I would like to do is have the parties present their case and then we'll get to the testimony of the persons.

MS. POLIVY: Mr. Chairman --

CHAIRPERSON GRIFFIS: Just a second, please. Just looking quickly at my notes, I'm indicating that on the time line of the 10 September that the applicant submitted something to DDOT. Is that correct?

MS. GIORDANO: We did. We hand delivered

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1 it.

2 CHAIRPERSON GRIFFIS: And that was the
3 same transportation plan that was in the record
4 previously. Correct?

5 MS. GIORDANO: Yes.

6 CHAIRPERSON GRIFFIS: So then on the first
7 we were to have a response from DDOT and that's what
8 we have. On the 8th the applicant's submission of all
9 materials was requested. That is what we have in the
10 record now which is including the photographs.

11 MS. GIORDANO: Right.

12 CHAIRPERSON GRIFFIS: Okay. On the 22nd
13 we were having responses from all the parties, any
14 supplemental report that we might have had from OP.
15 We left the record open for supplemental from HPRB if
16 required. That gets us to today.

17 To answer the question about whether there
18 is cross-examination now of the transportation
19 management plan from the applicant, the answer is no.
20 It was, in fact --

21 MS. HUBBARD: Excuse me, Mr. Griffis. May
22 I say this? There is new material that has been
23 submitted by the applicant in response to the Board's
24 request.

25 CHAIRPERSON GRIFFIS: Can I ask you one

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1 question?

2 MS. HUBBARD: Yes.

3 CHAIRPERSON GRIFFIS: What did I just say?

4 MS. HUBBARD: You just said that there
5 would be -- that the answer is no, that we couldn't
6 cross question her.

7 CHAIRPERSON GRIFFIS: You clearly didn't
8 hear what I said so I will repeat myself. There will
9 be no cross-examination of the submission from the
10 applicant of the Transportation Management Plan. I am
11 now looking at --

12 MS. HUBBARD: Why?

13 CHAIRPERSON GRIFFIS: Ms. Hubbard --

14 MS. HUBBARD: It was submitted after the
15 last hearing and is not the same material. They had
16 to submit a --

17 MS. GIORDANO: Mr. Griffis, we would be
18 happy to entertain cross-examination questions on the
19 transportation materials and the historic materials
20 that we submitted after the last hearing.

21 MS. POLIVY: Mr. Griffis, I thought that
22 earlier in the session you set out a procedure whereby
23 we were going to proceed with the opposition case and
24 then come back to the additional material if there was
25 any.

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1 CHAIRPERSON GRIFFIS: Yeah. It's like I
2 changed my mind.

3 MS. POLIVY: If you have, I would like to
4 advise you then that perhaps you would reconsider for
5 at least one witness. Mr. Robert Schwartz is an
6 architectural consultant who is here today and he's
7 been here for some hours. We would like --

8 CHAIRPERSON GRIFFIS: He doesn't get a lot
9 of sympathy from us, but go ahead.

10 MS. POLIVY: Well, I understand that. He
11 doesn't have a dog in the show. We would like to be
12 able to put on his testimony.

13 CHAIRPERSON GRIFFIS: Good point.

14 MS. POLIVY: If it means taking it out of
15 order, we would ask that you --

16 MS. HUBBARD: I would agree to that.

17 CHAIRPERSON GRIFFIS: That's exactly what
18 we're going to do. One quick question in terms of the
19 new material of the transportation plan that was
20 submitted by the applicant. What are you referring
21 to? Is it under the proposed conditions that were
22 submitted?

23 MS. GIORDANO: No, it was the details of
24 how we are going to manage the valet.

25 CHAIRPERSON GRIFFIS: So Attachment E?

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1 MS. GIORDANO: Yes.

2 MS. HUBBARD: There's a whole big section
3 there.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. HUBBARD: There's a whole big section
6 there. There's a letter from Atlantic Garage. Didn't
7 you read it?

8 CHAIRPERSON GRIFFIS: Oh, yeah. I read
9 it. It happened to be months ago. We do have a
10 consistent order for this in which case do you have
11 the division of time for the parties and we will
12 accommodate you with the clock so that you can be
13 self-monitored.

14 MR. JADIN: Mr. Chairman, when I called
15 the office I spoke to Ms. Pruitt and she advised me
16 that she thought we had 75 minutes. Tonight I think I
17 heard you say the total opposition is 65 so I've lost
18 10 minutes from what we were expecting.

19 CHAIRPERSON GRIFFIS: Well, there it is.
20 Do you have a division of time that you are splitting
21 between the parties? Are we going out of order? What
22 is the presentation order then?

23 MR. JADIN: Could we suggest that we go
24 out of order and I present first and have Mr. Schwartz
25 and then Ms. Polivy and then close with Ms. Hubbard?

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1 CHAIRPERSON GRIFFIS: I'm amenable. Are
2 you guys amenable.

3 MR. JADIN: Twenty-five minutes. Seventy-
4 five minutes divided by three is 25 minutes each or
5 are you going to stick with 65?

6 MS. HUBBARD: Excuse me, Mr. Griffis. May
7 I interrupt one more time with regard to another
8 little unresolved difficulty? Originally in the
9 earlier days of this hearing there was a question as
10 to the amount of square footage and where it is
11 located on this property. The question was never
12 resolved by the Office of Planning or by the
13 applicant. You do not know now how much square
14 footage there is and that is very pertinent to the use
15 variance.

16 CHAIRPERSON GRIFFIS: Sounds like part of
17 your case, Ms. Hubbard.

18 MS. HUBBARD: No, it's not. It seems to
19 me that is a matter of fact which should be determined
20 by you before the case goes -- before we have to
21 present our case. I mean to say how many hearings
22 have we had since this started? Mr. Griffis, please.

23
24 CHAIRPERSON GRIFFIS: I think that's fine
25 back there. We have a cordless that we can give you

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1 so you stay on the record if you go up to the Board.
2 Clearly the applicant needs to view these.

3 Ms. Giordano, let me ask you a very quick
4 question in regards to Ms. Hubbard's question
5 regarding the square footage. There was documentation
6 that was submitted. Do you recall -- I'm sorry. My
7 file is quite substantial.

8 MS. GIORDANO: I'm sorry, too. I don't
9 recall the exact number but I know that we submitted
10 documentation on that in a number of ways including, I
11 believe, the listing for the property. It had a
12 number on it and there were other sources. I can
13 resubmit that or identify for you where that is. I
14 don't think I brought everything with me to the
15 hearing.

16 CHAIRPERSON GRIFFIS: What we are going to
17 do is identify the exhibits.

18 MS. HUBBARD: Mr. Griffis --

19 CHAIRPERSON GRIFFIS: Holy smokes. Hold
20 on.

21 MS. HUBBARD: I object to what she just
22 said.

23 CHAIRPERSON GRIFFIS: Okay. Good. One
24 objection.

25 MS. POLIVY: We have three different

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1 numbers for the square footage. The assessor's office
2 says that it's 9,600 square feet. We have 12,000
3 square feet and 14,000 square feet. I think frankly -
4 -

5 MS. HUBBARD: 12,000 is from Lusk.

6 MS. POLIVY: That's the listing that's in
7 the record.

8 MS. HUBBARD: And then I don't know where
9 any 14,000 comes from. The thing is the Lusk is not a
10 government record.

11 CHAIRPERSON GRIFFIS: Okay. All right.

12 MS. HUBBARD: And there are --

13 CHAIRPERSON GRIFFIS: That's fine. That's
14 enough. I don't want to hear anymore.

15 MS. HUBBARD: I think you should accept
16 the government record.

17 CHAIRPERSON GRIFFIS: Have a seat. It
18 looks like we need to find that before we go on. Are
19 you going to help us find it? Do you know the
20 exhibit, Ms. Hubbard?

21 MS. HUBBARD: Yes.

22 CHAIRPERSON GRIFFIS: What's the exhibit
23 number?

24 MS. HUBBARD: I have it right here. I
25 don't know the number but I've got the exhibit.

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1 CHAIRPERSON GRIFFIS: Okay. Yes.

2 MS. HUBBARD: I'll show you what the
3 exhibit looks like.

4 MS. WEST: I was just going to say that
5 one possibility for the reason that there is a
6 discrepancy is because it has come up before that the
7 walls are actually 22 inches thick in some places and
8 30 inches thick in another. When you have that amount
9 of square footage, you may have had somebody measure
10 the inside as opposed to the outside so you would have
11 a huge variation.

12 CHAIRPERSON GRIFFIS: I think that is
13 understandable. What we would clearly look at is who
14 and how it was calculated.

15 MS. HUBBARD: May I say the exhibit in
16 question -- my name is Harriet Hubbard -- is the one
17 that starts, "Exceptional historic property,"
18 submitted by the applicant. That's got the 12,000
19 square feet in it.

20 CHAIRPERSON GRIFFIS: Let me find that.

21 MS. HUBBARD: From Lusk.

22 CHAIRPERSON GRIFFIS: Got it. This is
23 Exhibit No. 68.

24 MS. HUBBARD: That is the one from Lusk.
25 That is not a government record.

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1 CHAIRPERSON GRIFFIS: We're not arguing.
2 I'm just going to find the documents.

3 MS. HUBBARD: This is one.

4 CHAIRPERSON GRIFFIS: Got it. Thank you
5 very much. Do you have the understanding that it's
6 12,000 square feet? Pardon me. You're not the
7 applicant.

8 MS. GIORDANO: I think that is
9 approximately right. There also was an exhibit that
10 we submitted where we scaled it room by room. Mr.
11 Gonzalez did that computation himself. That was the
12 interior walls. We submitted that, I know, before --
13 I don't remember whether it was before the last
14 hearing or the one before that.

15 CHAIRPERSON GRIFFIS: It was an 8 1/2 by
16 11, if I recall. Is that correct?

17 MS. GIORDANO: I believe that's correct.

18 CHAIRPERSON GRIFFIS: Do you recall the
19 square footage that was indicated?

20 MR. GONZALEZ: This is Humberto Gonzalez,
21 the applicant. We raised this question before and I
22 did submit both Lusk information and measurements,
23 specific measurements throughout the whole interior of
24 the house for the file. I do not remember what the
25 item number was.

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1 CHAIRPERSON GRIFFIS: No, but do you
2 remember what the square footage was?

3 Ms. Hubbard, let him have the mike,
4 please.

5 MR. GONZALEZ: Yes. I do recall that the
6 square footage was very much the same in the Lusk
7 book. It was basically off by maybe -- it was 12,000
8 some.

9 CHAIRPERSON GRIFFIS: So the applicant is
10 standing on the fact that it is approximately 12,000
11 depending on -- we're looking at approximately 12,000
12 square feet.

13 Ms. Hubbard, don't touch the mike.

14 MS. HUBBARD: Excuse me.

15 MS. GIORDANO: That's correct.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. POLIVY: Mr. Chairman, this is a copy
18 of the District of Columbia property detail which
19 shows the building square footage is 9,690.

20 MS. HUBBARD: Mr. Griffis, may I say one
21 additional thing? This is Harriet B. Hubbard
22 speaking. No plans have ever been submitted with
23 regard to the property on Riggs Street as it extends
24 westward which includes the building height and the
25 use of the room and, for example, whether or not

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1 there's a basement underneath in that section or not
2 and that part of the property has not been shown on
3 the architectural plans. The attic section, whether
4 or not it is possible to stand up straight up there.
5 The Lusk entry says the attic is unfinished. Yet, Mr.
6 Gonzalez here on some plans he includes it and on some
7 plans he doesn't.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. HUBBARD: They are not made by a
10 professional architect and not subject to cross-
11 examination.

12 CHAIRPERSON GRIFFIS: Excellent. I think
13 those are pertinent points to bring up in your case
14 presentation.

15 MS. HUBBARD: I think myself you should
16 resolve them before we go any further.

17 CHAIRPERSON GRIFFIS: This is not new
18 information. We have asked and there are numerous
19 submissions of drawings and I think we need to
20 continue. With that, we are going to show, so we
21 don't end up arguing about it, 75 minutes for the
22 total so you can watch the clock clearly. You have
23 three so it would be 25 each. When you are ready, we
24 will set that. Please proceed.

25 MR. JADIN: Mr. Chairman, I would like to

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1 call a witness that I think is pertinent to the issues
2 at hand since it deals with the historic preservation
3 and reasonable uses for the building.

4 The applicant has suggested that this
5 building could be -- aspects of the building could be
6 preserved better with his proposal than others so I
7 would like to introduce Mr. Robert Schwartz, an
8 architect, and have him speak to architectural issues
9 in the building. Mr. Schwartz, would you just begin
10 with a description of your education, professional
11 credentials, and experience in the work of adaptive
12 reuse.

13 MR. ZAIDAIN: Excuse me. Are you offering
14 him as an expert witness or regular witness?

15 MR. JADIN: Yes, an expert witness.

16 MR. ZAIDAIN: Do you have a resume?

17 CHAIRPERSON GRIFFIS: Well, throwing out
18 most rules in procedures, let's hear quickly
19 background and the Board will decide. We can stop the
20 clock on this.

21 MR. SCHWARTZ: Well, I have gone to three
22 universities, the University of Cincinnati, Harvard,
23 and MIT. I have a degree in architecture and city
24 planning. I've been practicing in the District of
25 Columbia for over 30 years. I've done quite a few

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1 adaptive reuse projects in the city.

2 CHAIRPERSON GRIFFIS: Such as?

3 MR. SCHWARTZ: Well, a number of
4 condominium conversions so one would be Grace Church
5 Condominiums. It's in Capitol Hill. Our firm won an
6 award for it. It has 25 units, I think. It was two
7 adjacent churches which were built at different times
8 which incorporated into one complex. We've converted
9 several schools to condominiums. Usually they have 16
10 to 20 condominium units in them. We've converted a
11 Masonic Temple. We've done old buildings in
12 Georgetown.

13 CHAIRPERSON GRIFFIS: All to condos?

14 MR. SCHWARTZ: Yeah.

15 CHAIRPERSON GRIFFIS: Were there any
16 adaptive reuses that were not condos?

17 MR. SCHWARTZ: We've done many clinics,
18 restaurants, and other things like that that were
19 adaptive reuse but condos is what I was going to talk
20 about now.

21 CHAIRPERSON GRIFFIS: Indeed.

22 MR. SCHWARTZ: That's why I was listing
23 those.

24 CHAIRPERSON GRIFFIS: Okay. Have you done
25 a project that has utilized tax credits?

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1 MR. SCHWARTZ: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Any other
3 questions from the Board?

4 Did you state the name of your firm?

5 MR. SCHWARTZ: Schwartz and Peoples
6 Architects.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. ZAIDAIN: And you're AIA?

9 MR. SCHWARTZ: Yes. And I'm a registered
10 architect in the District of Columbia and Maryland and
11 Virginia. I'm a fellow in the American Institute of
12 Architects, as a matter of fact.

13 VICE CHAIR RENSHAW: Where is your firm
14 located?

15 MR. SCHWARTZ: 1811 18th Street, N.W.

16 CHAIRPERSON GRIFFIS: Any objections from
17 the parties in accepting him as an expert witness? I
18 see no indication. I think the Board can take it -- I
19 can take it as uncontested by the Board if there are
20 no objections to accept him as an expert witness in
21 architecture.

22 MR. JADIN: Yes.

23 CHAIRPERSON GRIFFIS: Yes? Is that what
24 you're offering him for?

25 MR. JADIN: Yes.

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1 CHAIRPERSON GRIFFIS: Very well.

2 MR. SCHWARTZ: Thank you, Mr. Chairman.

3 MR. JADIN: Mr. Schwartz, you've had a
4 chance to just review the plans submitted by the
5 applicant of the Toutorsky Mansion. From your review
6 of these, would you say that this building is suitable
7 to conversion to multiple residential dwelling units,
8 either condo or rental?

9 MR. SCHWARTZ: Yes.

10 MR. JADIN: Could you discuss what are the
11 characteristics of it that make it particularly
12 suitable or describe how you think it could be
13 converted, particularly with reference to what aspects
14 would be -- what historical features would be saved on
15 the interior and exterior.

16 MR. SCHWARTZ: Is this working?

17 CHAIRPERSON GRIFFIS: Um-hum.

18 MR. SCHWARTZ: First off, anytime you do a
19 project like this, no matter what kind of use when
20 developers have a building like this, you want to
21 exploit the resources of the building. That's why you
22 got it. If you bought beachfront property you would
23 be buying it so you could exploit that resource.

24 This building does have a lot of resources
25 and I appreciate that the developer is trying to

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1 exploit those in some way. I would maintain that any
2 developer would want to do that. Now I'm going to try
3 to illustrate how a developer who is doing
4 condominiums here would proceed with a project like
5 this. Now, if you take the first floor, this is their
6 plan. First off, anyone doing --

7 PARTICIPANT: Sorry. Could you step back
8 a little bit? I would like to see the proposal.

9 MR. SCHWARTZ: Okay. First off, I think a
10 developer would want to keep the stair and this
11 entrance reception area. You need to have a space
12 like that anytime you have a multiple use dwelling.
13 If you have a beautiful space that you're coming into,
14 of course, that's all the better.

15 Second thing is that if you try to change
16 the structure of where a stair is, especially an
17 historic building like this, it becomes very
18 expensive. Here you would be throwing away a great
19 resource to do that. I think that anybody doing this
20 would probably preserve this area as the entry,
21 reception area. There would be mailboxes, of course,
22 or something like that. Then that would be the way up
23 to your unit.

24 Now, probably a condominium developer
25 would not want to keep this all open. What you would

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1 probably do here is take this square footage for one
2 unit and then this square footage for another unit
3 just looking at the amount of square feet and the
4 disposition of these.

5 I've done similar jobs like this and you
6 can have a -- you can at least have -- if you take the
7 square footage here it would be a very large one
8 bedroom. Someone might try to make more out of it.
9 The same thing here. This is enough square footage to
10 have a very good unit, especially if you use the space
11 over here.

12 Now, if you are doing this as an event
13 space, if you say that you are going to repeatedly
14 have, let's say, 100 people here, you would have to do
15 something besides this. You would have to put in
16 quite a few more bathrooms. You don't have 100 people
17 in a congregation like this without having the right
18 number of bathrooms.

19 Now, you can get this through the Building
20 Department by saying that this is not going to be an
21 assembly use and then you may not be required to have
22 the bathrooms. The fact is that if you say this is
23 going to be an assembly use that's going to have 100
24 people on it a number of times during the year, then
25 you have to have by code a certain number of

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1 bathrooms.

2 Once you start looking at that, you have
3 to break it up as much in the sense that you don't
4 know

5 -- I don't know exactly where you would put it. I'm
6 sure there's a way to get it in but it wouldn't be
7 like this.

8 The other thing, by the way, about this
9 plan is I've also done many commercial kitchens that
10 are catering kitchens. I've also done restaurants but
11 in an assembly use like a religious building, a church
12 or a synagogue, they have kitchens which are designed
13 for a caterer to come and then warm up the stuff and
14 serve it to 100 people or maybe more.

15 This kitchen is more like a residential
16 kitchen. If you have 100 h'ordurvs or more -- you
17 know, if you have 100 people, usually you don't have
18 one h'ordurv per person. You have to warm those up.
19 They come in a truck but they don't come -- you know,
20 they drive there and they have to warm it up. Usually
21 in kitchens like this there are two commercial ranges,
22 usually two ovens.

23 There's usually a dishwasher -- commercial
24 dishwasher. All this equipment requires massive
25 mechanical equipment. You're going to have to have a

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1 hood for these ranges and the hood is going to have to
2 have a very large exhaust on it. I think there is
3 some question about this plan.

4 Admittedly I know when you are submitting
5 things to the Zoning Board they are preliminary.
6 Everything isn't there but I think there is something
7 deceptive about that.

8 CHAIRPERSON GRIFFIS: You are aware,
9 however, of the regulations of what meals are
10 presented in a bed and breakfast. Are you not? This
11 isn't a full preparation kitchen.

12 MR. SCHWARTZ: No, I wasn't talking B&B.
13 I'm talking about special events. If you have a
14 wedding of 100 people --

15 CHAIRPERSON GRIFFIS: I see. When you
16 start saying large commercial hoods, that's more of
17 food preparation and not the whole kitchen.

18 MR. SCHWARTZ: No. That is a prep kitchen
19 for serving 100 people. If you have an event with 100
20 people, you're not going to make the stuff here.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. SCHWARTZ: The caterer is going to
23 bring it.

24 CHAIRPERSON GRIFFIS: Right. Okay.

25 MR. SCHWARTZ: The caterer has to have

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1 facility that has a hood. You can't have two Viking
2 ranges and not have a commercial hood. You can't do
3 this on a residential scale kitchen.

4 CHAIRPERSON GRIFFIS: Right. You are
5 anticipating that the food prep would have two Viking
6 ranges. Okay. I get your point.

7 MR. SCHWARTZ: It's a commercial kitchen
8 anyway. I'm not sure exactly what it will be.
9 Anyway, downstairs you could have -- you could also
10 take these and have two units downstairs and have
11 plenty of storage and mechanical space. Upstairs you
12 could get three units on this floor. You would take
13 one unit going across here, one unit going across
14 here, and one unit here.

15 Believe me, I do this all the time and
16 that seems to me to be completely feasible. You would
17 have to do things like put these bathrooms in. It
18 would have a kitchen which isn't on this. You would
19 be keeping the basic structure and you would try to
20 keep anything of value in there that you could. I
21 think it would be similar.

22 These spaces if you just look at this you
23 have to relate to the existing windows. When you're
24 in an historic building, you can't just say, "Okay. I
25 want an apartment and I want the wall to be here." It

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1 wouldn't work. You have to make the walls line up so
2 they work with the windows. That's part of the nature
3 of the job and every condo conversion that's in an
4 historic building works that way including these
5 churches.

6 When we had a great huge window there, we
7 have to make an apartment that had a living room that
8 was in relation to that window. Otherwise, it would
9 not pass through historic review. The same thing is
10 true up on this third floor. You could divide this up
11 into three units. Some of this depends on how big you
12 want to make the units. You could do two units a
13 floor if you wanted to have very big units. Three
14 units is, I think, responsible size for this.

15 I don't know what else to say about just
16 how you would break it down. I haven't tried to do a
17 plan of it obviously. I just looked at these plans to
18 see whether -- frequently a developer will take me to
19 a project or show me plans and say, "I'm thinking of
20 buying this. Is this reasonable? Is this something
21 we can work with?"

22 It is repeatedly my job to look at these
23 things and try to evaluate them for developers. If a
24 developer brought me this, I would say, "Yes, this is
25 definitely feasible for condominiums.

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1 MR. JADIN: And you have no -- you are
2 convinced that significant architectural features, you
3 have identified the chairs and other things, could be
4 preserved. Typically from the market point of view
5 they would be attempted to be preserved even going to
6 condos.

7 MR. SCHWARTZ: Yes. If you had a
8 beautiful fireplace, for instance, in a room you would
9 try to design the building to take advantage of that
10 because you're buying this building because it has all
11 these things and you don't want to throw them away.

12 MR. JADIN: Would there be any special
13 accessibility issues, ADA regulations, that would be
14 different from a bed and breakfast with event facility
15 and convergence to condominiums?

16 MR. SCHWARTZ: In both cases there are ADA
17 requirements but you can also get around them when you
18 have a historic building by pleading hardship. In
19 general the rule for a B&B, I think, is if you have
20 more than five rooms that you're renting out. Then
21 you have to have at least one which is an accessible
22 room.

23 If you're doing condominiums, then the
24 ground floor -- what is called the ground floor would
25 need to be accessible. As I said, I think you can get

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1 around that. If you have an assembly use with a lot
2 of people coming into it, again you might be able to
3 get out of that but you should have -- if you have a
4 bathroom that has a number of stalls in it, you are
5 supposed to have at least one handicapped. They are
6 supposed to be accessible.

7 On this plan it doesn't show any way but
8 there probably is a way to get people to one of these
9 floors so that handicapped people can get to it. The
10 intent of ADA is that people should have this access.

11 I realize that in some old buildings you can get
12 around it.

13 I think it's possible to do it here for
14 both uses, but I think they're equal. It isn't that
15 it's so much harder with a condominium than it is with
16 B&B. I think the issue is the same. You can probably
17 get around it in both but you probably should provide
18 it in both if you want to conform with the spirit of
19 the law.

20 MR. JADIN: I have no further questions.
21 Is there anything else that you wish to add that you
22 think would be pertinent?

23 MR. SCHWARTZ: No.

24 MR. JADIN: Okay. Thank you.

25 Does the Board -- this is a procedural

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1 question now. Does the Board have any questions of
2 the expert witness and does it come off our clock?

3 CHAIRPERSON GRIFFIS: Ms. Bailey, if we
4 could just hit the clock for a second, I'll explain.
5 At the end of your presentation of the case we'll take
6 Board questions. Those questions do not go to the
7 time in the case presentation. Then we'll go to the
8 next and move on. Then I'm going to have cross-
9 examination of the witnesses and the testimony given.

10 We're going to do cross-examination all at once so
11 the Board will interrupt you at 25 minute intervals
12 unless it's pertinent during the presentation.

13 MR. JADIN: So you would cross-examine him
14 now?

15 CHAIRPERSON GRIFFIS: Well, the Board asks
16 questions. We don't cross-examine necessarily. We're
17 much more delicate than that. Yes, frankly, we can do
18 it anytime we want. What I'm going to try to do is
19 keep it to the 25 minute intervals so that when you
20 finish your entire case, we will ask questions of you
21 in your presentation, the second segment, the third
22 segment, and then we'll have the applicant cross-
23 examine the entire case.

24 MR. JADIN: Is it possible that you could
25 at least examine or question the expert witness and he

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1 would be able to leave?

2 CHAIRPERSON GRIFFIS: Yeah. Let's go.
3 You can stay there if you'd like. I'm going to ask
4 the applicant's representative to come up to conduct
5 the cross-examination. I have the first question.

6 Are you familiar with the floors above the
7 first floor of this building? Have you ever walked
8 through it at all?

9 MR. SCHWARTZ: No, but I've seen pictures.

10 CHAIRPERSON GRIFFIS: You've seen pictures
11 of the upper floors, though? The details and the
12 architectural details? I was struck by your testimony
13 about carving our spaces. Clearly there would be
14 separation between units. Is it your testimony and
15 your understanding that, in fact, the condo which is
16 proposed in front of you is similar in architectural
17 nature in preserving the interior of the historic
18 structure?

19 MR. SCHWARTZ: Yes, especially on the
20 upper floors.

21 MS. BAILEY: Excuse me, sir. Is that
22 microphone on? The microphone in your hand, is it on?

23 CHAIRPERSON GRIFFIS: Why don't we have
24 you sit. I don't think we have to look at the
25 drawings.

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1 MR. SCHWARTZ: Yes. My feeling is that
2 they would be very similar. In other words, you have
3 to divide this up to make bedrooms for a B&B.

4 CHAIRPERSON GRIFFIS: Aren't these
5 currently bedrooms?

6 MR. SCHWARTZ: Yeah, but you see where
7 he's got the black partitions?

8 CHAIRPERSON GRIFFIS: Yeah.

9 MR. SCHWARTZ: Well, it would be similar.
10 The structure, the shape of the rooms is very usable.

11 CHAIRPERSON GRIFFIS: Okay. So you don't
12 see any difference between the layout of bedrooms on
13 the upper floors and residential units on the upper
14 floors which would add bathrooms in each of the
15 quarters and kitchen facilities?

16 MR. SCHWARTZ: Well, can I show you, for
17 instance --

18 CHAIRPERSON GRIFFIS: Hold on. We're
19 going to need to keep you on. It's not for us to
20 hear. It's so that you're on the record which is why
21 you need a mike. I don't think that's working. Do we
22 still have a pointer over here?

23 MR. SCHWARTZ: Here's a pointer. Just
24 take, for instance, this set up here. You can imagine
25 doing -- first of all, this is kind of large for a

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1 bathroom. You can imagine doing a living, dining,
2 kitchen here and a bedroom here and then reconfiguring
3 this part so it's a bathroom and kitchen. You would
4 basically be keeping the spaces in a similar
5 configuration. You may have to do more work so there
6 might be more that look like this and less that look
7 like this. You wouldn't have to knock out any of
8 these walls or change things radically. As I said,
9 you couldn't anyway because these are logical places
10 in relation to the windows so you would have to figure
11 that out.

12 CHAIRPERSON GRIFFIS: In your experience
13 you told us that you've done projects that actually
14 have applied for tax credits -- historic tax credits.

15 MR. SCHWARTZ: Yes.

16 CHAIRPERSON GRIFFIS: A condo version that
17 you're describing here, and I understand you haven't
18 gone through plans or anything of that nature, do you
19 think it would be appropriate for an application for
20 tax credit?

21 MR. SCHWARTZ: The way developers usually
22 do that for tax credits is they hold on to it and they
23 rent the apartment for a while until they get the
24 benefits of the tax credit and then they sell it as
25 condo or they make it regular apartments.

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1 CHAIRPERSON GRIFFIS: It wouldn't
2 necessarily go from rental to condo. Do you think the
3 work that would be involved in order to put units on
4 the upper floors would avail itself to a successful
5 application for tax credits?

6 MR. SCHWARTZ: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 Board questions?

9 VICE CHAIR RENSHAW: Mr. Schwartz, it's
10 not actually in your field but I wondered since you're
11 talking about condos and you've done condos in
12 historic buildings, how have you handled parking for
13 condos?

14 MR. SCHWARTZ: That's a difficult problem.
15 When you have a school, the ones I've done have had
16 parking lots so we've had to do that. In some cases
17 we've had to get a variance. We've come to the BZA in
18 order to get approval because we couldn't do it.

19 In that church we actually made an opening
20 which didn't look like a garage door but was a garage
21 door and we took a whole floor and made it parking
22 inside the building. In many different cases it's
23 worked out in different ways. Some of them there's
24 been no ability to have parking and they had parking
25 down the street which was available to the tenants.

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1 CHAIRPERSON GRIFFIS: In your look of this
2 in terms of layout, how many condo units do you think
3 you could fit in this building?

4 MR. SCHWARTZ: Let's see. If you took
5 three units for the second and third floor, that's
6 six, two on the first floor and two in the basement.
7 That's another four so you would have 10.

8 CHAIRPERSON GRIFFIS: Ten condo units.

9 MR. SCHWARTZ: Yes.

10 CHAIRPERSON GRIFFIS: And being an
11 historic structure you wouldn't be obligated to
12 provide parking in your understanding of the zoning
13 regulations? Is that correct?

14 MR. SCHWARTZ: I didn't look that up but I
15 would --

16 CHAIRPERSON GRIFFIS: You can take my word
17 for it.

18 MR. SCHWARTZ: Yeah.

19 CHAIRPERSON GRIFFIS: Then you're saying
20 that in the past experience in your projects you've
21 utilized clearly the site and the structure to
22 accommodate parking as you could.

23 MR. SCHWARTZ: Yeah.

24 CHAIRPERSON GRIFFIS: In reviewing this
25 site plan, going to Ms. Renshaw's question, do you see

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1 it being able to accommodate a number of parking
2 spaces?

3 MR. SCHWARTZ: Well, you can obviously get
4 a couple of cars in that garage there but I don't know
5 whether it's more than two.

6 CHAIRPERSON GRIFFIS: I mean, logically
7 common sense you're probably looking at two or three
8 cars. Right?

9 MR. SCHWARTZ: Right.

10 CHAIRPERSON GRIFFIS: Okay.

11 Any other questions?

12 MS. GIORDANO: Members of the Board, Mr.
13 Gonzalez has some experience. He's a real estate
14 agent and he specializes in condominiums in this area
15 so he has some questions of his own that he would like
16 to ask. I just have a couple of questions. First of
17 all, I just wanted to ask if you've looked at this
18 from an economic feasibility standpoint, a marketing
19 standpoint?

20 MR. SCHWARTZ: No.

21 MS. GIORDANO: When you say it's feasible,
22 you mean from just a purely architectural standpoint.
23 Right?

24 MR. SCHWARTZ: That's right.

25 MS. GIORDANO: As far as the first floor

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1 goes, could you show me where the kitchens are going
2 to go in those units on the first floor?

3 MR. SCHWARTZ: Okay. I think it's obvious
4 that if you were doing a unit over here that you would
5 try to get the kitchen to be in this area where the
6 kitchen is. You probably wouldn't have a kitchen this
7 big in a condominium obviously. You would have a
8 smaller kitchen and it probably would have the
9 bathroom in there, too.

10 This unit, you know, it depends but what
11 sometimes you do is something that's a free floating
12 island that's just sitting out there like furniture
13 that's a kitchen. If you had -- let's say this was a
14 beautiful space here and you wanted to preserve the
15 sense of the space, which again is part of the value,
16 you would build something small within it that was
17 floating just like a couch would be only it would be
18 two counters. That's probably what you'd do here.

19 MS. GIORDANO: As far as preserving the
20 sense of space on the first floor, how do the
21 condominium units preserve the sense of the space of a
22 single grand mansion?

23 MR. SCHWARTZ: I'm not sure about the
24 single grand mansion but what you would do is if you
25 had this much space within a private unit, it wouldn't

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1 be a public space. You would have that segment of it,
2 that part of it that you would sense was part of this
3 big mansion and part of the sales appeal, I would
4 think, for someone who would be getting a condo here
5 is to feel a part of this mansion and to be able to
6 see it as much as possible.

7 I think it would work that way. For the
8 other residents the stair and the entry, you would be
9 trying to make that a place where you could sense what
10 the building was all about as you went through the
11 building.

12 Just as if you had a B&B and you were in
13 one room, you may not sense the whole grandness of the
14 place, but if you walk through the space and felt that
15 you were in one room of this space, then you're
16 getting some sense of that grand place. This would be
17 similar to that.

18 MS. GIORDANO: Thank you.

19 MR. GONZALEZ: This is Humberto Gonzalez.
20 The applicant and -- I'm sorry?

21 MR. SCHWARTZ: Bob Schwartz.

22 MR. GONZALEZ: Mr. Schwartz, yes. When
23 you pointed out this one unit, or the first floor,
24 dividing it into, let's say, at least two units, could
25 you point on the diagram exactly where the dividing

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1 wall would be for this unit?

2 MR. SCHWARTZ: This unit would be right
3 here.

4 MR. GONZALEZ: Okay.

5 MR. SCHWARTZ: The next unit would be
6 here.

7 MR. GONZALEZ: Do you know what exactly is
8 in that blank space in between those two corridors?
9 Do you know what's in between there?

10 MR. SCHWARTZ: You mean here?

11 MR. GONZALEZ: Exactly. In between those
12 entry spaces.

13 MR. SCHWARTZ: Pocket doors.

14 MR. GONZALEZ: Pocket doors. And are you
15 familiar what would happen to those pocket doors were
16 you to build that in in order to complete and make
17 that a complete total unit?

18 MR. SCHWARTZ: You know, there are several
19 things you could do. One is if the pocket doors are
20 operating well, you could leave them there and then
21 build a little wall behind them with a door with a
22 lock in it.

23 You could decide, okay, I'm going to make
24 one of these pocket doors, the actual door to the
25 unit, and do an astrigal lock so that it goes up and

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1 down and the other one is fixed. You could have them
2 both have astrigal locks so you could unlock it and go
3 into your unit in a grand way.

4 Just like in every architectural problem
5 there's a multitude of different things you could do.

6 As I said, know, if those doors are still in good
7 condition and beautiful, you try to keep them somehow.

8 MR. GONZALEZ: Would those doors show to
9 anyone else except for the people inside the unit
10 itself?

11 MR. SCHWARTZ: Yeah. You'd see them from
12 the outside.

13 MR. GONZALEZ: From the outside as well?
14 So those doors would remain locked but basically shut.
15 Is that what you're saying?

16 MR. SCHWARTZ: Well, as I said, one way to
17 do it if you had pocket doors would be to have a key
18 system so that each one could slide open if you wanted
19 them to.

20 CHAIRPERSON GRIFFIS: Let me interrupt
21 you. I think without going into a lot of detail, what
22 he's stating is the fact that there may be numerous
23 ways to make those operable for entrances to the unit
24 if the dividing is there. You may fix them and
25 preserve them like a piece that is preserved or make

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1 them operable for the unit itself.

2 MR. GONZALEZ: Correct, but what I'm
3 getting at is that in order to form any type of noise
4 reduction between the two units --

5 CHAIRPERSON GRIFFIS: He's not the person
6 to answer that.

7 MR. GONZALEZ: Okay.

8 CHAIRPERSON GRIFFIS: If you want -- I
9 mean, clearly, could you seal it for --

10 MR. SCHWARTZ: I do face that problem all
11 the time. I've done classrooms and thing like that.
12 You're never going to get these units, or even the
13 things upstairs, to be perfectly sound proof, that's
14 for sure. By weather stripping the doors in a way,
15 you can make less noise go through. We'll still have
16 noise. No matter what you do there would be noise
17 anyway.

18 MR. GONZALEZ: As an architect do you
19 think that will affect the integrity of the history of
20 those doors or the house on the first floor as people
21 will view the house?

22 MR. SCHWARTZ: I think it's possible to
23 come in here and to have these doors in the closed
24 position when a person is not -- you know, doesn't
25 leave them open and to have it up here just the way it

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1 would appear normally.

2 Obviously if you do this, you're adapting
3 and changing things somewhat. There's going to be a
4 point where somebody opens their door or maybe you
5 decide to do a different system than that so there
6 would be some alteration. Certainly, you know, they
7 are not going to be left open all the time if that's
8 what your question is.

9 MR. GONZALEZ: Have you ever done any
10 conversion where this has been done before?

11 MR. SCHWARTZ: Yes, I have.

12 MR. GONZALEZ: Where pocket doors were
13 used as regular walls where nobody enters?

14 MR. SCHWARTZ: No. I've done jobs where
15 we preserved the pocket doors and made something so
16 that you could open them up and go through.

17 MR. GONZALEZ: Exactly, but as a dividing
18 wall, let's say, between two units where there is
19 supposed to be a firewall, is that a firewall, a
20 pocket door, if you actually leave it as a pocket
21 door?

22 MR. SCHWARTZ: No.

23 MR. GONZALEZ: Okay. The other thing is
24 when you actually add a kitchen or bathroom to that
25 first floor, are you aware of how old those floors

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1 are?

2 MR. SCHWARTZ: No, I don't exactly know.

3 MR. GONZALEZ: Do you know the type of
4 floors that they are? What type of wood?

5 MR. SCHWARTZ: No, I don't know what type
6 of wood.

7 MR. GONZALEZ: Do you know the formation
8 or the actual design of the floor itself?

9 MR. SCHWARTZ: No.

10 CHAIRPERSON GRIFFIS: Consolidate all the
11 questions.

12 MR. GONZALEZ: What I'm trying to get at,
13 Mr. Chairman, is that --

14 CHAIRPERSON GRIFFIS: I know what you're
15 trying to get at. Why don't you ask him if there's a
16 pattern in the wooden floor that is unique to the
17 house.

18 MR. GONZALEZ: That's my point. There is
19 a pattern that is unique to the house and by actually
20 adding a kitchen --

21 CHAIRPERSON GRIFFIS: No statements. I
22 need a question. Have him answer the question.

23 MR. GONZALEZ: Okay.

24 MR. SCHWARTZ: Yes, you would cover up
25 part of it.

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1 MR. GONZALEZ: Okay. You would cover up
2 part of it. Not only cover it but when you actually
3 work on having a kitchen and a bathroom in that
4 section, would you have to tear up part of the floor
5 in order to add any kind of plumbing or kitchen?

6 MR. SCHWARTZ: Yeah, just like you would
7 have to put in plumbing for a sprinkler system if you
8 had a B&B or if you have condos. There are going to
9 be some things like that that have to be done in this
10 building whatever the use is. It's not contingent
11 upon one use or the other. You are going to have to
12 do something like that. Where is the mechanical
13 equipment going to go?

14 MR. GONZALEZ: There is a mechanical room
15 in the basement.

16 CHAIRPERSON GRIFFIS: He's not asking the
17 questions. Actually you are.

18 MR. GONZALEZ: Okay. Let me see. Are you
19 aware of the rules for historic house regulations on
20 handicapped for commercial businesses?

21 MR. SCHWARTZ: The rules for handicapped
22 accessibility in historic buildings?

23 MR. GONZALEZ: Exactly.

24 MR. SCHWARTZ: I know you can get an
25 exception if that's what you mean.

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1 MR. GONZALEZ: Okay. I wasn't aware if
2 you knew that. Do you know why that is made an
3 exemption?

4 MR. SCHWARTZ: Why it's made an exemption?

5 MR. GONZALEZ: Yes.

6 MR. SCHWARTZ: Because they feel that in
7 some cases this accessibility would mar the character
8 of the historic structure.

9 MR. GONZALEZ: Okay. You mentioned having
10 to add additional bathrooms on the first floor due to
11 events. Now, this house actually before me has had
12 many events held there and there's a half bathroom on
13 the first floor. Were you aware there's a half
14 bathroom on the first floor?

15 MR. SCHWARTZ: Yeah, it's down four steps,
16 though, isn't it?

17 MR. GONZALEZ: It is down four steps from
18 the first floor. I have attended events at this
19 property before and there hasn't been any --

20 CHAIRPERSON GRIFFIS: What's the question?

21 MR. GONZALEZ: Okay. I should just be
22 asking questions and not making statements?

23 CHAIRPERSON GRIFFIS: Oh, yeah.

24 MR. GONZALEZ: Okay. There's actually
25 also going to be an additional -- well, you know what?

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1 That's not a question. Thank you. I guess we're
2 done.

3 CHAIRPERSON GRIFFIS: Don't let me rush
4 you. Take your time. I'm very serious. If you have
5 other questions, this is your opportunity for cross-
6 examination.

7 MR. GONZALEZ: Okay.

8 CHAIRPERSON GRIFFIS: My comment and
9 perhaps my gesture to the table -- hold on a moment.

10 MR. GONZALEZ: I do have another question.

11 CHAIRPERSON GRIFFIS: Hold on and let me
12 finish. It seems that somebody in your party has
13 questions and all I'm trying to do is focus that there
14 will be one person, you, as the applicant. Your
15 representative and your attorney can ask questions.
16 If there are other questions from representatives with
17 you, they should provide you with the questions for it
18 to be asked.

19 MR. GONZALEZ: Okay.

20 CHAIRPERSON GRIFFIS: Also, let me take
21 the moment, too, to say I'm thoroughly impressed with
22 the expert witness before us and his breathe of
23 knowledge. I have allowed some latitude and direction
24 of where we're going with that. Clearly, we are not
25 getting into ADA issues unless they pertain directly

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1 to what we are looking at. We're not a code review
2 board or anything of that nature but it is fascinating
3 to know that there are those out there that know it so
4 well. That being said, yes sir.

5 MR. GONZALEZ: Okay, Mr. Schwartz, are you
6 aware that in an event of let's say 110 people that
7 the entire B&B would be accessible to the guests so
8 that there's a bathroom in every room, and that in
9 case of an event all the bathrooms in the rooms may be
10 accessed as well because it's being run by the guests
11 in the house?

12 MR. SCHWARTZ: That's a programmatic
13 thing. Just as an architect, I probably wouldn't
14 propose that to any client but if that's what you plan
15 to do, you know, I don't know what to say. What you
16 should do, though, and maybe you have done this, you
17 should check the WSSC requirements for the number of
18 toilets you need for men and women in a facility that
19 has 110 people in an assembly use.

20 MR. GONZALEZ: Would you say that 14
21 bathrooms would be more than enough for 110 people?

22 MR. SCHWARTZ: I really don't know. I
23 would have to go look up the code. The one thing I do
24 know is that when you have more than a certain number
25 of stalls, you do have to have some handicapped

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1 accessible things. I realize that's not an issue but
2 it is a space issue and a planning issue that relates
3 to what you're talking about.

4 MR. GONZALEZ: You mentioned that you have
5 done tax credits before with the condominium
6 conversions. Have you spoken to -- when you've done
7 this have you spoken to the historic preservation
8 about these before?

9 MR. SCHWARTZ: Yeah. Yeah. There were
10 things that were reviewed.

11 MR. GONZALEZ: In the church that you
12 actually made a renovation, did you have to take any
13 at all -- any at all, even one, ornate item or
14 anything that was original to the building out in
15 order to make accommodations for the conversion?

16 MR. SCHWARTZ: Yes, we did.

17 MR. GONZALEZ: Do you feel by taking that
18 one ornate piece out, that it in anyway changed the
19 integrity of what that building was originally set out
20 to be and what it meant as a single unit itself?

21 MR. SCHWARTZ: Well, in response to your
22 question, first off, I would like to say that a church
23 is very unique and completely different than the
24 structure of the condominiums, whereas let's say when
25 we did schools, we did not take anything out so church

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1 is a very unique setting. Now, in the church, this
2 particular church that I refer to, the nave had a
3 sloping floor and there were pews on it. You can't
4 build an apartment that has sloping floors so we had
5 to take out that floor. When you said, "Have you
6 gotten rid of any items of value," all the pews.
7 There was no use for the pews so we had to get rid of
8 all those. Really that whole floor where the nave was
9 we changed the floor and we changed where the pews
10 were. We sold the pews is what happened.

11 MR. GONZALEZ: How old was this church?

12 MR. SCHWARTZ: There were two churches. I
13 think one was something like 1890 and the other was
14 1910 or 1913 or something like that.

15 MR. GONZALEZ: Are you aware of any other
16 single family detached homes in the Dupont -- in any
17 of the historic district of D.C. that are still left
18 standing and that have held their integrity as what
19 they were originally set out to be in order to --

20 MR. SCHWARTZ: I haven't even begun to try
21 to make a survey of the entire city of Washington.

22 MR. GONZALEZ: Just one. Can you think of
23 just one?

24 CHAIRPERSON GRIFFIS: Can you answer the
25 question?

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1 MR. SCHWARTZ: No. I don't know the
2 answer to the question.

3 CHAIRPERSON GRIFFIS: Any other parties
4 cross-examining the witness?

5 MR. JADIN: Could I ask one question?

6 MR. SCHWARTZ: They have one more
7 question, I think.

8 MR. GONZALEZ: Are you aware, Mr.
9 Schwartz, that in the tax credit you can't paint
10 unpainted surfaces? In order to get the tax credit
11 you cannot paint unpainted surfaces.

12 MR. SCHWARTZ: I know on the exterior
13 you're not supposed to do that sort of thing but on
14 the interior, I think in some of our jobs we have done
15 that and it's been accept. I don't know. You're
16 talking about if you have wood paneling?

17 MR. GONZALEZ: Yes.

18 MR. SCHWARTZ: Anyone if the wood paneling
19 is in good shape would try to preserve it so I don't
20 think anyone would want to paint it. They might want
21 to refinish it in a way that preserved it better but I
22 don't think anyone would want to do that.

23 My personal experience is that on some
24 jobs we actually have painted some trim and they
25 thought it was okay depending on the situation. Some

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1 places we've had to keep it. In my mind it isn't
2 black and white which I think it is in yours.

3 MR. GONZALEZ: One last question. Do you
4 feel that with this house if it were to be turned into
5 condominiums if you went to enter into this house
6 never having seen it before as a single family home or
7 as it was originally intended to be, which is what is
8 a bed and breakfast I'm hoping to keep it as, would
9 you know what original detail pertained to the house
10 before if you turned it into a condominium?

11 MR. SCHWARTZ: What do you mean by detail?
12 You mean architectural detail?

13 MR. GONZALEZ: Not just the architectural
14 but the entire feeling of the property itself. Would
15 it change for you?

16 MR. SCHWARTZ: Yes, it would change
17 whether you made it into a B&B or into a condo. What
18 happens in these things is when people approach Grace
19 Church condominium do you think they don't know it was
20 a church? When they approach a school that's been
21 converted to condominiums, do you think they don't
22 know it was a school?

23 In this case, when you look at this
24 building it was a big old mansion and I think people
25 will recognize it was a big old mansion. When you go

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1 in and see the entry stair, I think you'll have a
2 sense of what the grandeur was.

3 You will not see everything the way it
4 was, nor will you do it if it's any other use. I
5 mean, I think the question here is -- my feeling is
6 that I'm trying to make clear is that both these
7 things involve some compromises and they are similar.

8 There's no real difference that I can see.

9 MR. GONZALEZ: In your opinion, as a B&B
10 if you enter the property, are you able to see the
11 property complete as it is now, or differentiating it
12 from a condominium when you enter it as a condominium,
13 are you able to see it any different? Would you
14 definitely say that you have to enter into every
15 single unit in order to even try to get an idea of
16 what it looked like before?

17 MR. SCHWARTZ: I think on the other floors
18 besides the main floor there's no difference. You
19 would have to go into the B&B rooms to see the full
20 extent of the building just like you would have to go
21 into the condo. On the first floor, yes, the way your
22 plan is drawn the whole floor would be open and if you
23 did a condominium, the whole floor would not be open.
24 That's true.

25 MR. GONZALEZ: And are you familiar with

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1 what each -- it's the last one. I swear. Are you
2 familiar with what each one of the -- where each one
3 of the bathrooms is going to be and each one of the
4 bedrooms as a B&B? Have you studied the plans for the
5 B&B?

6 MR. SCHWARTZ: Yeah, I've looked at them
7 and gone over them.

8 MR. GONZALEZ: Could you point out to me
9 exactly -- let's see. Could you point out to me where
10 the -- let's see. Hold on just a second.

11 MR. SCHWARTZ: Do you have a hidden
12 bathroom you're going to check me on?

13 MR. GONZALEZ: No. I'm trying to focus my
14 vision because it's hard for me to see even with my
15 glasses from here.

16 MR. SCHWARTZ: This is a bathroom. This
17 is a huge monster bathroom.

18 MR. GONZALEZ: Are you aware what that was
19 before?

20 MR. SCHWARTZ: This space here?

21 MR. GONZALEZ: Yes.

22 MR. SCHWARTZ: No. I don't know what it
23 was.

24 MR. GONZALEZ: You know what? No further
25 questions. That's fine.

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1 CHAIRPERSON GRIFFIS: Thank you.

2 Ms. Hubbard, you had a cross-examination
3 question of the expert witness?

4 MS. HUBBARD: My name is Harriet B.
5 Hubbard. On the Riggs Street side of the building
6 there is a round structure that is between the dining
7 room and the main staircase on the Riggs Street side.
8 That is a place where the service staircase is now.

9 Would it be possible using the entrance
10 from Riggs Place to put an elevator into that place
11 where the service staircase is and get a separate
12 entrance to the upstairs bedrooms or upstairs
13 apartments? What I thought is that you could make --

14 CHAIRPERSON GRIFFIS: Okay. You asked a
15 question.

16 MR. SCHWARTZ: Let me check something out.
17 You could get a residential scale elevator in there
18 but it would also require some structural work in
19 terms of the penthouse.

20 MS. HUBBARD: I would like to ask you if
21 it would be possible to make one unit of the ground
22 floor putting the kitchen and the bathroom back where
23 the kitchen is now and just make that one unit?

24 MR. SCHWARTZ: There are many ways to
25 break up this building. Yes, you probably could do

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1 something like that.

2 MS. HUBBARD: And then make the entrance
3 to the upstairs ones through that side door off Riggs
4 Place with the elevator.

5 MR. SCHWARTZ: That's possible but I wasn't
6 trying to redesign the building for them. I was just
7 looking at two options.

8 CHAIRPERSON GRIFFIS: I think we need to
9 explore redesigning. I think the testimony that's
10 been heard today is based on the fact of whether this
11 can be converted to residential use. It's your own
12 testimony that it can be converted numerous ways. In
13 fact, you could do each floor as a single unit.

14 MR. SCHWARTZ: Right, if you wanted it to
15 be.

16 CHAIRPERSON GRIFFIS: You testified, in
17 fact, that you could possibly fit 10, or up to 10
18 condo units in it.

19 Other questions, Ms. Hubbard?

20 MS. HUBBARD: Yeah, one more question.
21 Did you examine the western side of the property where
22 the garage is and where the -- there was an apartment.
23 Wasn't there an apartment over the garage?

24 MR. SCHWARTZ: I saw something on the plan
25 but I don't know whether it was actually used as an

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1 apartment.

2 MS. HUBBARD: You didn't look at that?

3 MR. SCHWARTZ: I looked at it only on the
4 plan

5 MS. HUBBARD: You didn't go and look at
6 the --

7 MR. SCHWARTZ: I've seen the building from
8 the outside.

9 MS. HUBBARD: I know, and you can't tell
10 from that what is up there.

11 MR. SCHWARTZ: No, I don't know for sure.

12 MS. HUBBARD: And what is in the part that
13 separates the garage from the main structure? Above
14 the garage doors there is something like a little hall
15 with windows. What is the use of that structure? Do
16 you know?

17 MR. SCHWARTZ: No, I don't.

18 MS. HUBBARD: I just want to know. Nobody
19 knows what that is in the record.

20 CHAIRPERSON GRIFFIS: Indeed. It's been
21 pointed out to me, in fact, that the plans that we are
22 reviewing, which we'll take note of for the record,
23 are the plans that you looked at and the only plans
24 you looked at. Correct?

25 MR. SCHWARTZ: Right.

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1 CHAIRPERSON GRIFFIS: Okay. That makes
2 some sense. Very well. We appreciate your testimony
3 today. I think you've been cross-examined by
4 everybody.

5 MR. SCHWARTZ: Thank you very much for
6 accommodating me. I appreciate it.

7 CHAIRPERSON GRIFFIS: Most certainly. We
8 try and get to all of our expert witnesses before 9:00
9 in the evening.

10 MS. HUBBARD: Can we go home now?

11 CHAIRPERSON GRIFFIS: This is what I
12 propose to do. From your statement you're using 25
13 minutes and you have 12 minutes left in which case we
14 will break at that point and then we'll come back, but
15 we are going to take a short break.

16 PARTICIPANT: What time does the building
17 close?

18 CHAIRPERSON GRIFFIS: The building is
19 closed.

20 MS. HUBBARD: Can't we go home?

21 PARTICIPANT: You mean we can't go until
22 morning?

23 CHAIRPERSON GRIFFIS: No, we can stay in.
24 That's not a problem.

25 Do you have further testimony?

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1 MR. JADIN: Yes, I do have further
2 comments.

3 CHAIRPERSON GRIFFIS: Let's go.

4 MR. JADIN: The applicant's proposal for a
5 bed and breakfast and events facility does not warrant
6 granting a variance for several reasons. First, the
7 applicant does not adequately demonstrate as required
8 by Section 3107 that the strict application of
9 existing zoning regulations would result in undo
10 hardship upon the owner of the property.

11 Secondly, if granted, the relief requested
12 would result in substantial detriment to the public
13 good. Thirdly, if granted the relief requested would
14 substantially impair intent, purpose, and integrity of
15 the zone plan as embodied in the zoning regulations.

16 First, dealing with hardship. I have here
17 a photograph of other buildings in the immediate
18 neighborhood within three blocks, New Hampshire and S
19 Street, N.W. These two buildings right here clearly
20 demonstrate that large residences can be preserved and
21 adaptively reused within existing zoning regulations.

22 The mansion at 1740 here, the mansion at
23 1751 at 14,000, and the other one at 10,000 square
24 feet are comparable to the applicant's property of
25 bout 12,000 square feet.

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1 CHAIRPERSON GRIFFIS: And those are condos
2 as noted in your drawings. Correct?

3 MR. JADIN: These are now condos.

4 CHAIRPERSON GRIFFIS: I see.

5 MR. JADIN: They once were mansions. The
6 property at 1740 now contains 14 dwelling units. What
7 they propose tax assessment for the year 2002 of
8 \$2,496,740. The property at 1751 has eight dwelling
9 units and a proposed assessment of \$2,107,620. Both
10 buildings continue to contribute to the historic
11 character of the neighborhood and provide very
12 desirable housing for tax paying citizens of the
13 District.

14 Now, you have heard testimony from an
15 architect experienced in adaptive reuse, that the
16 applicant's property, the Toutorsky Mansion, can also
17 be converted to multiple dwellings while preserving
18 significant architectural and historic features on
19 both the exterior and the interior.

20 Now, the applicant dismisses conversion to
21 multiple dwellings with the contention that his
22 proposed change in use would permit the preservation
23 of more of the first floor interior spaces and that
24 they would be more accessible to the public. Now, of
25 course, the public here means somebody who can afford

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1 \$300 to \$500 a night for a room or be the guest of
2 such a person.

3 Now, the Toutorsky Mansion has been
4 certified by the Historic Preservation Board as one of
5 112 buildings contributing to the historic character
6 of 16th Street historic district. There's 119
7 buildings in the District so this is one of 112 that
8 contribute.

9 As designated as a contributing historic
10 building, the preservation of the building's exterior
11 is subject to city regulations. However, no such
12 regulations exist for the building's interior. Yet,
13 it is the proposed preservation of the first floor
14 interior spaces that serves as the base of the
15 applicant's claim of undo hardship.

16 The applicant's desire to preserve some of
17 the building's interior features in a particular
18 manner stems more from a personal preference than from
19 strict application of any adopted city regulation,
20 zoning or otherwise and, therefore, does not meet the
21 undo hardship test required for granting the variance.

22 Now, however, the change in use that is of
23 the property and the upgrading does subject it to
24 other regulations, safety and ADA regulations. The
25 plans submitted to date do not indicate how public

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1 accommodations of accessibility and toilets and so
2 forth would be addressed.

3 Meeting these requirements may be tracked
4 from the interior spaces more than the applicant
5 envisions. That would tend to diminish the perceived
6 advantages that he sees of his proposal over
7 conversion to multiple dwellings.

8 I think the first thing that he doesn't
9 meet the fundamental criteria of granting of variances
10 that he hasn't demonstrated undue hardship that stems
11 from the nature of the building, the nature of the
12 property. It's his personal preference that is
13 causing him to make the decisions that he's doing.

14 Now, as to the second aspect, detriment to
15 the public good, it seems apparent that the goals of
16 historic preservation of an individual piece of
17 property are being forwarded and are tending to
18 override the goals and the needs of the historic
19 neighborhood.

20 The uses proposed here are clearly a
21 change in use, more of a business use outside and
22 normally not permitted in a residential neighborhood.

23 And that the preservation of this building in the
24 manner proposed by the applicant is putting the
25 historic neighborhood at risk.

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1 Some of the public good is expressed in
2 the comprehensive plan and there were several elements
3 of the comprehensive plan that were omitted in the
4 Office of Planning's report that I think are
5 expressions of the public good. Primarily they have
6 to do with promoting housing and enhancing our
7 residential neighborhoods, particularly Section 102.2
8 and Section 300.2 which moves to protect existing
9 housing stock from demolition and conversion to
10 nonhousing uses.

11 Public Action Section 306, again, list an
12 objective of promoting public action to provide
13 regulatory enforcement, to maintain and enhance the
14 District's housing supply, and to strengthen private
15 and public neighborhoods.

16 Within that section a specific
17 recommendation 306.2P, control the conversion of
18 residential housing to nonresident and transient use
19 which a bed and breakfast I see suggested as a
20 transient use. And further objectives in residential
21 neighborhoods, again, attempting to revitalize or to
22 protect and enhance existing residential
23 neighborhoods.

24 Item 1104.1R specifically states control
25 the conversion of residential housing to guest houses,

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1 bed and breakfast establishments, clinics, and other
2 nonresidential or transient uses. I think that's a
3 clear on the record of city policy that the proposal
4 is a detriment to the public good.

5 Likewise in the zoning of the Dupont
6 Circle Overlay District, there are several objectives
7 that this plan conflicts with. One is to enhance the
8 residential character of the area by maintaining
9 exiting residential uses and controlling the scale and
10 location and density of commercial and residential
11 developments. I suggest that his proposed use is a
12 commercial use. The scale of it is up and beyond a
13 bed and breakfast that I think is anticipated in the
14 zoning regulations.

15 Another one is to ensure the compatibility
16 within the comprehensive plan. I don't think it does
17 that. And to encourage the free circulation of
18 vehicles through public streets and alleys. I don't
19 think his proposal does that. In fact, I think it
20 violates that.

21 One of the characteristics of the property
22 is that it does have no place for a very important
23 thing for a bed and breakfast, and particularly an
24 events thing, for vehicles to drop off and pick up
25 people going to the event as the Swann House, a house

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1 nearby.

2 I have a set of photos -- here we go -- of
3 the Swann House which is a different bed and breakfast
4 in the area. It is configured differently. It has
5 room for a drive in front of the house. You can see
6 here on a typical weekend there are two parking spaces
7 plus three cars in the driveway and, in fact, one
8 parked out over the sidewalk. At least they do have a
9 driveway to accommodate this transfer of people in and
10 out of the business. This property has none.

11 They've gone through a series. Initially
12 they were going to do it on 16th Street. There's a
13 photograph of 16th Street that shows there's only one
14 lane of moving traffic and then parking and a bus stop
15 out front. They can't unload there.

16 Where all of this transfer is going to
17 take place is on the small residential street, Riggs
18 Place. It's only 30 feet wide. One person stopping
19 to let people out is going to impede traffic.
20 Deliveries they say are going to take place in the
21 garage.

22 Here is the garage. Here is an automobile
23 parked in the access to the garage. These brick peers
24 are eight feet and 10 inches apart at the bottom.
25 There's some stuff at the top that leans in a little

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1 bit. It might be even less. I think it shows that
2 the characteristics of this building do not lend
3 itself to a type of activity that the intensity of
4 events of 100 people would entail.

5 The transfer of people is going to take
6 place out in the street and it's going to cause
7 congestion. Traffic is going to back up. It's going
8 to cause additional noise. It's not only the blocking
9 of traffic but also the general frustration of people
10 who usually use the street that also is a generation
11 of noise. It seems that the intensity of use here is
12 beyond residential use and would be a public
13 detriment.

14 The final one that impairs the intent of
15 the purpose and integrity of zoning is that the home
16 occupation section clearly describes the purposes and
17 intent of allowing home occupations in a residential
18 zone as an assessory use. It has very specific
19 regulatory conditions.

20 The extent of these sort of indicates
21 Zoning's concern about such uses in a residential
22 zone. They are very extensive. They are very long.
23 It seems there must have been some thought that went
24 into that before those were adopted.

25 Reading those and comparing it with the

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1 proposal of the applicant, it is very clear that the
2 proposed uses are incompatible with residential use.
3 It does not comply with the home occupancy
4 requirements in the broadest sense, or in the details
5 of the specific regulation.

6 Now, I think it really start with the
7 first document that the applicant submitted to the
8 Zoning Board, a letter which started out by saying, "I
9 bought a house to turn into a bed and breakfast." I
10 think that is sort of an indication that this was a
11 business interest from the start and the business
12 interest through long times of negotiating with the
13 applicant have only increased as time went on and have
14 made the intended uses of it further and further away
15 from residential.

16 Now, some of the specific conditions that
17 it does not meet under Section 203.8. It very clearly
18 says that as a home occupation you can operate a bed
19 and breakfast offering rooms and breakfast. Then a
20 second item under that is breakfast is the only meal
21 served. No exception for events or for other things.
22 It's the only meal served.

23 The applicant proposes to have special
24 events and offer meals at these. They use a decision
25 on the Swann case as a precedent for that but I think

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1 there are significant differences. The Board should
2 recognize the differences. That was a special
3 exception. It did have driveways. It's physical
4 condition is different. It was a different set of
5 circumstances. There weren't opposition to it and
6 other things.

7 Plus, I would hope the Board would allow
8 that perhaps previous boards can just also make a
9 mistake. I think it was a bad decision. It seems in
10 that case the board ignored obvious regulations and
11 applied an obscure interpretation of another part to
12 allow that special exception use. This is a variance,
13 not a special exception.

14 Is my time up?

15 CHAIRPERSON GRIFFIS: It's all your time.

16 I put the clock on for your convenience. At the end
17 when it's at zero is my time.

18 MR. JADIN: The Section C of 203.8 does
19 offer an incentive for historic preservation to allow
20 six units. Like many developers they take incentives
21 as a starting point. It seems the applicant just
22 wants to push from there even further and push it way
23 beyond the level that is considered home occupation.

24 Now, looking at the specific requirements
25 of Section 203.4, I think the applicant doesn't meet

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1 or comply with eight of those recommendations. I
2 could read each one. I'm sure you're familiar with
3 the code, with Section A, D, G, I, J, K, L, and M.
4 All of these -- if his proposed use is put into use as
5 indicated, that this would have an adverse impact on
6 the neighborhood.

7 I would refer you to the letters by nearby
8 resident Russell Stevenson about his experience about
9 when a building on the corner of R and 16th was an
10 entertainment facility, a place where they had
11 parties, transient use.

12 That their alley was frequently blocked
13 with people parking there, overflow from such events,
14 what we would expect that at times of large events the
15 streets are going to be filled with people coming to
16 pick people up.

17 I think their notion of their
18 transportation plan, of people going down to a garage
19 and then taking the bus back and forth defies common
20 sense of how people really operate in the city. They
21 are going to come to this place. They are going to
22 drop as many passengers off. They are going to look
23 for a place to park. Then, as a last resort, they are
24 going to go to this garage. Their suggestions, I
25 don't think, are going to work in reality because the

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1 traffic of people coming and going to this is going to
2 cause congestion on the street and the service
3 vehicles, I think, into this garage.

4 His transportation plan calls for the use
5 of this garage for so many different functions that
6 he's going to need an employee just to be opening and
7 closing the garage door and sort of trying to regulate
8 time, who is coming when and where which I think is
9 too heavy of a burden.

10 If he's going to try to have events using
11 that as the service for the catering vans I don't
12 think is reasonable. I don't think you can get two
13 vehicles in there and one of them is going to be out
14 on the street or double parked in the alley.

15 I also would refer you to the letter in
16 the files from Ms. Eastman of her experience on the O
17 Street bed and breakfast and the difficulties that
18 they have had and activities generated from that use
19 being disruptive to the neighborhood. We think the
20 activities that would come from the use of the
21 building as proposed by the applicant would degrade
22 residential life.

23 There are some photos also of some of the
24 properties of the courtyard of the Toutorsky Mansion
25 actually from my third floor window overlooking Ms.

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1 Alvarez' deck. They can see the property across the
2 alley and Ms. Polivy's property over. The noise
3 generated from activity in the courtyard is -- well,
4 we know from experience it goes up and down the alley.

5 CHAIRPERSON GRIFFIS: I'll just note that
6 all of these need to be submitted into the record.

7 MR. JADIN: We know from previous
8 experience -- well, the neighbor that lived there
9 before would always tell us when he would have his
10 party and the noise just travels down that alley 10
11 houses down. That is one of the reasons we are very
12 concerned about activity in the courtyard. Again, one
13 of the home occupation conditions or regulatory
14 conditions is no activities outside of a structure.

15 I think that very clearly the applicant
16 does impair the intent, purpose, and integrity of the
17 zoning regulations. While historic preservation is
18 laudatory, and we support historic preservation of
19 property, we think it can be done with other uses.

20 However, we do not think that it is so
21 important that historic preservation of an interior of
22 a property for which the city has no regulations, that
23 is important enough to supplant the various obvious
24 and extensive regulations on home occupations in a
25 residential zone.

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1 CHAIRPERSON GRIFFIS: We have roughly 38
2 minutes left for the presentation of the entire case.
3 I'm taking your pause as you are finished with your
4 presentation?

5 MR. JADIN: Yes.

6 CHAIRPERSON GRIFFIS: Good. Okay. Well
7 done. As we like to take a break every three or four
8 hours, I would suggest that we take a break. Come
9 back and two additional parties have 38 minutes to
10 split to finish off their case and we'll do that. I
11 think 10 minutes will be sufficient.

12 (Whereupon, at 8:42 p.m. off the record
13 until 9:00 p.m.)

14 CHAIRPERSON GRIFFIS: Are you ready?

15 MS. POLIVY: Yes.

16 CHAIRPERSON GRIFFIS: Very good.

17 MS. HUBBARD: Should I go first or what?

18 MS. POLIVY: Would you like to go first?

19 MS. HUBBARD: My name is Harriet B.
20 Hubbard and, generally speaking, I support the
21 testimony of the previous witness. I would like to
22 add some more reasons why this case is not suitable
23 for granting of a variance.

24 This particular application is a self-
25 created hardship. Mr. Gonzalez paid an enormous price

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1 for this house, about a million dollars more than the
2 asking price, and he was the agent. Let me just show
3 you in the material that he presented to this Board.
4 This is in part of the application called Exceptional
5 Historic Property.

6 In the back there are the sales things.
7 This is from the Metropolitan Regional Information
8 Systems, page 1. This is part of an exhibit that
9 starts out, "Exceptional Historic Property" in big
10 black letters on the first page. It's in your file.

11 List price, \$1,850,000. Then we come to
12 61202, which is the page before this, and it says list
13 price \$2,200,000. Remember he was the real estate
14 agent in the company that was selling this property so
15 he certainly ought to know about what it could be
16 bought for a couple of days before. All of a sudden
17 the price goes up. There was never any explanation at
18 this hearing as to why that is so.

19 Now, this is an historic property and it
20 is very expensive to remodel, isn't it? At this
21 hearing he has complained that he has difficulty with
22 his lender. Now, his lender -- I will show you the
23 part of the testimony that deals with this. It's the
24 submission where it is Mrs. Giordano, not Mr.
25 Gonzalez.

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1 She says she has been to the lender and
2 persuaded him to go on lending to Mr. Gonzalez for the
3 renovations, but that he very much objects to the
4 historic designation and going ahead with the federal
5 tax relief application. Do you see that in the files?

6 I hope you remember it. I had it right here. So
7 that's what he says. So the fact is he claims, on the
8 one hand, that his lender does not want him to go
9 ahead with the federal designation.

10 Then in another submission Ms. Giordano
11 says that oh, no, no, they are going to go forward
12 with some kind of historic designation involving are
13 local historic preservation office and claiming that
14 this historic preservation office will have the right
15 through the zoning administrator to enforce this
16 whatever restrictions, for example, you might put on
17 the granting of a variance. But just where the legal
18 authority for this exist, or what the legal length is
19 is absolutely unenforceable.

20 For one thing, if you violate a provision
21 of the historic preservation law, for example, suppose
22 you take off an historic doorway and you go down there
23 and somebody complains to Ms. Cherry and she goes down
24 there, you get fined \$100 with a civil complaint.

25 Now, he could take out everything there is

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1 in the building and only be fined \$100 per each if he
2 goes through this route on the exterior.

3 I mean, Mr. Griffis and all the rest of
4 the Board, please remember this. I wrote the
5 application for this area being made an historic
6 district back in the 1970s. I wrote it myself in my
7 apartment using other people's research. Now this
8 entire area has been done but I did that.

9 I am very, very experienced with the
10 operation of all of our laws. I have even been called
11 a zoning expert by a previous zoning commission in
12 connection with various cases I've testified in. I
13 have years of experience. I am telling you that
14 anything that is guaranteed by our Department of
15 Historic Preservation is ridiculous. There is no
16 guarantee. Probably the lender knows that just as
17 well as anybody.

18 Anything that you put in there where you
19 say that there is a hardship in the house because of
20 this wonderful historic interior and you depend on
21 them to rely on it or to enforce the law, that is
22 unenforceable. If you doubt my word, ask the legal
23 corporation counsel to come here and explain to you
24 exactly how this works, who makes the complaint, what
25 the process is, how much the fines have been.

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1 I have followed the fines, \$100 for taking
2 off an entrance on an historic building. Even if they
3 ever bothered to go out and look at it there is no
4 enforcement. I'm just saying that this is so.

5 Now, so much for this business of on the
6 one hand saying my lender has difficulty with my going
7 through the federal process to try to get this thing
8 because in the federal process they would come up and
9 inspect the house at every step of the way of the
10 renovation from start to finish to see that they are
11 doing everything right.

12 I think that is still our local
13 preservation office that is involved but I did talk to
14 the woman in the federal office about this building
15 and she knows that there was supposed to be an
16 application made to do it.

17 I do know that they inspect to see that
18 things are done, whereas our little office does not.
19 They don't inspect every building permit that is put
20 in. They don't know every truck on Saturday morning
21 that is going around there hauling things out.

22 Now, I will say to do this building, the
23 historic preservation, that's going to cost a whole
24 lot more money. You have never heard a word from Mr.
25 Gonzalez about how much money he is spending on the

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1 building.

2 You notice he has not hired an architect
3 who has come down here to the hearings to testify
4 about how much this is going to cost and how much that
5 is going to cost and what they are going to do there.

6 It's all his word. He is not an architect. You do
7 not know what building permits have been applied for
8 and what have not been applied for.

9 Anyhow, I don't want to go on with this.
10 As to the worthlessness of the transportation plan, I
11 think that our previous witness testified to that and
12 I hope you will disregard any favorable opinion by the
13 government.

14 Also, with regard to the petitions that
15 have been referred to, this is a document that has a
16 lot of petitions with people's names circulated that
17 live nearby. As a matter of law, let me tell you that
18 back in the 1940s when we had Georgetown down zoned
19 petitions were legal and we were required to get 75
20 percent of all the property owners to sign the
21 petition in favor of the rezoning in order to show
22 that we could win the case, which we did.

23 However, the court of appeals turned down
24 petitions because they said they didn't know what the
25 people were told when they signed the petition. I

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1 believe that's right. I have a great deal of
2 experience with petitions and signed agreements in the
3 neighborhood and all that type of thing. You don't
4 know what was said to get the person to sign.

5 The ANC commissioner today admitted that
6 they have no sworn testimony at the ANC meetings. I
7 have been a member of citizens organizations for
8 years. The stuff you -- the reason we have the
9 Administrative Procedures Act is so we get at the
10 truth and that is down here. It's not at an ANC
11 meeting and it's not in a neighborhood meeting where
12 they all get together in somebody's living room, have
13 a glass of wine, and talk over what's wrong with this
14 person. You know, what they're not going to do. I
15 mean, you just waste your time that way. I wish, Mr.
16 Griffis, that you would tell your clients to come here
17 and not waste their time on that kind of thing.

18 Hundreds of hours have been spent on this
19 case. One person I know before the second to last
20 meeting that we had has spent 50 hours in meetings.
21 Can you imagine? Well, anyway, the previous witness
22 went over the number of exceptions in the use
23 regulation.

24 I mean, this absolutely should not be
25 granted. You are completely changing the character of

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1 the neighborhood this way and hurting the historic
2 district really, as well as the possibility for this
3 place to be an apartment. I'm not architect and I did
4 have an architect that knows this building well. I
5 have been through this building myself over and over
6 when it was first put up for sale after the Toutorsky
7 sale I went over every inch of it.

8 I have been in there many times since. I
9 know this building well. You could put an elevator in
10 there and get wonderful apartments. Or you could have
11 a cooperative in there. That is big enough for a
12 small cooperative. There's many a cooperative in
13 Washington that has only 11 units. It doesn't have to
14 be condominiums.

15 The prices in our neighborhood, let me
16 tell you, are well worth the consideration of any
17 serious property owner at this time. I'm all through.
18 They only have two minutes. That's not fair to them.
19 Let them talk. I'm sorry I took up so much time.

20 CHAIRPERSON GRIFFIS: It's your time.

21 MS. HUBBARD: I want to put something into
22 the record and that is the tax records from the
23 District of Columbia. By the way, this man is getting
24 the homestead exemption and paying residential single
25 family property taxes.

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1 CHAIRPERSON GRIFFIS: You can just give
2 them to staff.

3 MS. POLIVY: Mr. Chairman, the document
4 that Ms. Hubbard just put into the record is the same
5 document that contains that 90 square footage so I
6 won't put it in.

7 Mr. Chairman, I would like to call Mr. Lou
8 Santucci as a witness. Mr. Santucci has been sworn
9 in.

10 Mr. Santucci, before we proceed, could you
11 explain your association with the pictures on the
12 left? You've got to take the microphone or take the
13 pictures.

14 MR. SANTUCCI: This is my car which I
15 parked in the driveway of the Toutorsky Mansion where
16 theoretically at some point Mr. Gonzalez said they
17 would be doing transfers of cars. Basically the car
18 is pulled right up to the garage. My front bumper is
19 hitting the garage door.

20 You can't see it here but you can see in
21 this picture that basically the car hangs over the
22 sidewalk and actually almost takes up the whole
23 sidewalk area. You can see that that part of their
24 plan really would cause there to be an obvious
25 violation of the law.

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1 Down here we have a picture of Riggs Place
2 with one car parked here just to show you that
3 basically if you have two cars passing each other and
4 they are going to be coming in there and people
5 jumping out of their cars and so forth, that basically
6 there really isn't any room and very quickly you would
7 have quite a bit of congestion there.

8 This is the back alley which you saw in
9 some of the other pictures. This is the Toutorsky
10 wall here. This is the neighbor's building here on
11 this corner. Basically you can see how narrow this
12 alley is. This is a very major egress because you
13 have the alley coming down here behind S Street.

14 Then basically all the people with their
15 garages down here if they want to basically utilize
16 the alley, which most people do, you have to come down
17 here and then swing around here to go out. Again, you
18 can see that the distance here -- I mean, it's quite
19 obvious that the distance here is insufficient for two
20 cars to pass safely. Basically our concern is that
21 what happens in the normal course of events. We have
22 all been in the neighborhood when other events are
23 taking place.

24 Basically what happens is depending on how
25 many valet parkers you hire or people who want to sort

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1 of get -- if it's raining or whatever and they want to
2 unload their people and then go drive to find a
3 parking place, what can happen is basically people
4 start pulling in the alley because they are getting
5 out of the traffic and into the alley.

6 I mean, you can make your own conclusions
7 but basically if you look at these pictures you'll see
8 how much space there is. Also here, just for your
9 knowledge, this is a no parking area which makes it
10 quite hazardous to see when people are coming out of
11 the alley.

12 As you can see, people park here all the
13 time whether it's evening or daytime. They do get
14 tickets sometimes but this car was actually parked
15 there several hours and didn't get a ticket. A lot of
16 people use this as a free parking space if you want to
17 take a look at the pictures closer.

18 The point is that basically part of their
19 plan is to utilize that little pullman area and it's
20 just not going to work because in order to do it, they
21 are going to be violating the parking law of the
22 District of Columbia. They have already testified
23 that was part of their parking plan.

24 MS. POLIVY: You've had experience with
25 bed and breakfasts, have you not?

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1 MR. SANTUCCI: Yes, I've --

2 MS. POLIVY: Could you explain your
3 background?

4 MR. SANTUCCI: Okay. I owned and operated
5 a bed and breakfast in historic Charlestown, West
6 Virginia. The house was an 18th century house and I
7 ran it as a bed and breakfast for about seven years.

8 MS. POLIVY: You have also been present
9 for all the testimony in this case?

10 MR. SANTUCCI: Yes, I have.

11 MS. POLIVY: Could you share with us some
12 of your observations about the proposed operation of
13 the bed and breakfast at the Toutorsky Mansion?

14 MR. SANTUCCI: Well, there's a couple of
15 things that struck me about Mr. Gonzalez' presentation
16 and also his expert's presentation. Mr. Gonzalez has
17 indicated that he would be charging anywhere from \$350
18 to \$500 a night for a bed and breakfast.

19 It has been my experience the type of
20 people that stay in a bed and breakfast, but in
21 particular the types of bed and breakfast that command
22 \$350 to \$500 a night are not going to attract the kind
23 of people who will put up with, if you will, basically
24 arriving at the bed and breakfast, waiting for
25 somebody to come down to get them because at some

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1 point they are going to have to hop out of their car,
2 go ring the doorbell, run down to the backside
3 entrance, open a three-panel door, and pull their car
4 into the area, get their luggage out, and then have
5 their car taken to a parking lot and either have to go
6 -- to a parking area several blocks away and either
7 have to go when they want to use their car and pay to
8 get their car out or to wait for somebody to go and
9 get their car.

10 This is not the kind of thing that people
11 expect in a bed and breakfast, nor is it the kind of
12 thing that people will pay \$500 a night to do.

13 The other thing that strikes me about Mr.
14 Gonzalez' plan, he indicated that he was going to give
15 a few pastries to the people and that would be the
16 extent of the breakfast that he would be offering
17 these people.

18 I have to be honest with you. I have
19 stayed in bed and breakfasts all over the world and I
20 can tell you he made a reference to the Ralayon
21 Chateau was the type of inn that he would like to run.

22 The Ralayon Chateau Inns basically require something
23 more than a few pastries.

24 I can tell you that even if you look --
25 and I have here copies of some of the bed and

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1 breakfasts in the Washington area -- most of them
2 offer a heck of a lot more than some dry pastries that
3 he's going to pick up at 5:00 in the morning.

4 My point basically is that Mr. Gonzalez
5 has, I think, indicated in a lot of the different
6 areas about running this bed and breakfast basically a
7 misunderstanding, if you will, or whatever, of how a
8 bed and breakfast is really to be run when you are
9 commanding rates of \$350 to \$500 a night. Those are
10 just two aspects of it that jump out at me
11 immediately.

12 MS. POLIVY: Have you had any experience
13 in the kind of rates that are charged in the bed and
14 breakfasts in the surrounding area of Washington?

15 MR. SANTUCCI: Well, I did review -- I
16 went on the website and did review the rates and most
17 of the rates are between \$100 and \$165. I mean,
18 there's a few depending on what room you get in a
19 couple of the places, there's a few that are around
20 \$200 but none of them that I have found have rates in
21 excess of \$250. Most of them are \$150 or so.

22 MS. POLIVY: Do you have any information
23 about the use of bed and breakfasts as event sites?

24 MR. SANTUCCI: Well, again, I went on the
25 website for the Washington, D.C. bed and breakfasts

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1 and most of them do not indicate on their website that
2 they do host events. There were one or two, and the
3 Swann House being one, that basically on their website
4 says they are willing to host events but most of them
5 do not indicate in their website that they host
6 events.

7 MS. POLIVY: Thank you.

8 I would like to call Anne Alvarez.

9 MS. ALVAREZ: My name is Anne Alvarez. I
10 live at 1612 S Street, N.W. I was the neighborhood
11 coordinator when we first came together to try to come
12 up with an agreement. I organized a meeting at the
13 Toutorsky Mansion with the applicant which took place
14 on the 29th of January, 2002. After that I met on
15 every occasion for negotiations with the applicant,
16 his lawyer, and other neighborhood parties prior to
17 the March 19th hearing.

18 I think that would probably be about at
19 least a total of five meetings. I estimate that since
20 the first January meeting I have probably have spent
21 about 80 hours of time in connection with this case.
22 Probably more than the 50 that was referred to
23 earlier.

24 I put together this chart today to try to
25 just show how the negotiations or the proposals

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1 evolved over time. The top of the chart starts with
2 our session with Mr. Gonzalez on the 29th of January,
3 a February proposal that was submitted by Mr. Gell at
4 the 3/19 hearing, other proposals that are dated
5 6/7/02, 7/30/02, 8/5/02, and the last, which I came up
6 with from the final letter, 10/9/02.

7 Then going down I picked out a few things
8 that we were dealing with such as definition of
9 events, trash, use of the courtyard, parking for
10 events and parking for B&B, number of employees,
11 expansion, liquor license, and so on. I tried to just
12 show how things evolved over this almost 10 months or
13 so that we have been working on this.

14 Just a couple of examples where things
15 radically changed. As you can see, you can look at it
16 yourself and see some of them. On the courtyard
17 originally when we met with Mr. Gonzalez he said that
18 the only thing that would take place in the courtyard
19 would be weddings and possibly pictures.

20 During some of the other proposals he
21 agreed to prevent people from going outside and he
22 actually said that he would ask them to return to the
23 house should they venture outdoors. That was later
24 when he was going to have more events, more than
25 weddings.

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1 His final position on October 9th as we go
2 into this hearing is a complete about face. Guests
3 will not be permitted to use the outdoors, though a
4 sign would be posted that the guests should be mindful
5 of the neighbors' peace and quiet.

6 Expansion. He promised that he would not
7 expand in anyway and not the final thing is he limits
8 the building expansion but he does not limit other
9 expansion in his last proposal and he wants the right
10 to ask for a larger number of events, larger number of
11 rooms, and more employees after five years.

12 This is, again, a modification over this
13 10 months of what he was asking for and what he wanted
14 and what he would accept, to sign the agreement with
15 the neighbors themselves.

16 Number of employees. He went from being
17 the manager of the property to hiring an assistant
18 manager and six employees plus two part-time
19 employees. Started out events were going to be fund
20 raisers for good causes such as breast cancer and
21 local charities.

22 It wasn't going to be any kind of profit
23 to him. It was just proceeds for these local
24 charities would go to the charities. Now we are up to
25 24 profit making events and he's got 110 people coming

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1 to those and limitless small events.

2 Parking for events. He went from valet
3 parking, drop off on 16th, to parking at the Scottish
4 Right Temple, later on to other commercial arts, and
5 now he's got a plan, as far as I can tell in the
6 parking management plan, which valet parkers would now
7 be dropping cars for 50 guests or fewer onto the
8 street. There is no commercial garage parking unless
9 they exceed 50 guests.

10 After 10 months of the various proposals,
11 and there were many more than are demonstrated here, I
12 think I can speak for the neighbors who are party to
13 this case to say that we have reached our limits both
14 as to our time and to our patience. The proposals
15 seem to be an amorphous mass which change with the
16 whim of the applicant and his current lawyer.

17 I should be surprised that the applicant
18 has not made an attempt at a fair and consistent
19 negotiation with the neighbors, but then nothing
20 surprises me about this case.

21 MS. POLIVY: Ms. Alvarez, have you on the
22 basis of your experience made any conclusions about
23 the possibility of an agreement in this case between
24 the neighbors and the applicant?

25 MS. ALVAREZ: I originally went into

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1 negotiations with very, very, very high hopes. We all
2 worked very, very hard. It didn't come to be signed
3 at the March 19th hearing, whatever we had tentatively
4 agreed to, and I felt like we probably should for our
5 own protection agree to something. Then pretty much
6 after that things didn't ever go right with us with
7 negotiations. I'm not very hopeful at all about it.

8 MS. POLIVY: What is your present
9 position? Would you be willing to enter into an
10 agreement?

11 MS. ALVAREZ: I just feel that the level
12 of trust between the neighbors and Mr. Gonzalez is not
13 high enough to enter into an agreement.

14 MS. POLIVY: Do you believe an agreement
15 would be adhered to if you did enter into one?

16 MS. ALVAREZ: No.

17 MS. POLIVY: Is there anything else you
18 would like to say?

19 MS. ALVAREZ: No.

20 MS. POLIVY: Mr. Chairman, I am a resident
21 of Riggs Place for 32 years. I also have my office
22 and own one of those other contributing buildings on
23 16th Street so I am well familiar with the
24 neighborhood. I would just like to spend a little bit
25 of time talking about what is not involved in this

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1 case.

2 A great deal of time has been taken
3 discussing historic preservation, whether there is or
4 whether there isn't, what should be done and who will
5 do it best, and what the proposals are. This is not a
6 case about historic preservation. No one -- no one
7 has ever suggested that the Toutorsky Mansion should
8 be destroyed.

9 I lived on Riggs Place when it's twin was
10 destroyed and for many years we had a vacant lot
11 before Winston Mews was built. There is no question
12 that times have changed. Nobody is taking down the
13 Toutorsky Mansion.

14 The neighborhood has changed considerably.

15 The use of older buildings on what Mr. Schwartz calls
16 adaptive use has become very common. In fact, the
17 building on the corner of S and 16th is now being
18 renovated, the Ambassador, into apartments. The
19 building superintendent of that job tells us that the
20 apartment on the top floor, which is the largest one,
21 will be sold for \$2 million.

22 These are not derelict buildings. These
23 are buildings in very, very high demand. Buildings
24 that I recall acquiring for clients for \$17,000 on
25 Swann Street are being sold for \$650,000. You can

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1 pick up the N.W. Current or anything else every week
2 and read the prices that are being paid for
3 condominiums in the area. It's astounding.

4 The only reason that I mention that is
5 because we are talking here about a residential area
6 that has withstood a long series of difficult times
7 that is now being rediscovered as a residential area.

8 I understand that Mr. Gonzalez has a
9 vision and I don't doubt that it is a very sincerely
10 held vision, but it is a vision that would threaten
11 the neighborhood. It would introduce the first
12 commercial venture into that area. We have apartment
13 houses. We have the Chastleton across the street. We
14 are certainly going to have the Ambassador. We do not
15 have any commercial ventures in the area.

16 The Toutorsky Mansion bounds on Riggs
17 Place which is a very fragile street. It is a one-
18 block street between 16th and 17th. It does not go
19 through. There is a Riggs Place on the other side of
20 New Hampshire Avenue but Riggs Place stops at 17th
21 Street.

22 There is no place to park and you are being asked to
23 accept a fantasy as to how the parking would be done.

24 The zoning regulations give this Board the
25 authority to grant variances from the strict

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1 application of zoning regulations where there are
2 particular reasons, exceptional narrowness,
3 shallowness, the shape of the property, all by reason
4 of topographical conditions. None of those things are
5 present here.

6 What you have here is you have here is the
7 desire of someone to have a bed and breakfast. In
8 Exhibit 7 Mr. Gonzalez told this Board, "Dear
9 Director. I bought a house to turn into a bed and
10 breakfast." He then went on to explain that the
11 commercial loan which the purchase was given to me
12 with a projected business plan and requirement of 11
13 rooms. He bought that house. Now, this is a real
14 estate agent. He bought that house without ever doing
15 any research as to whether or not he could have 11
16 rooms, whether he could have any events, what he would
17 have to do. He just bought it. When he testified he
18 said he didn't do any of that research until
19 afterwards. He didn't know.

20 He then comes and the only other reason
21 for variance is that he has a personal hardship. You
22 eloquently ruled in the Stuart Building hearing, which
23 you decided on April 2nd, that self-inflicted hardship
24 -- I don't know the number. It's application No.
25 16827. For your information, Mr. Griffis, you were

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1 there. Ms. Curtis and Mr. Etherly, you're on it also.

2 CHAIRPERSON GRIFFIS: We are remembering
3 it fondly at this time.

4 MS. POLIVY: I thought perhaps you were
5 forgetting. I was going to read from it to remind
6 you. To grant a variance, the applicant must show,
7 and you went on to explain. But then you went on to
8 discuss the self-created hardship. The rule precludes
9 the grant of a variance when the peculiar
10 circumstances which render the property incapable of
11 being used in accordance with the restrictions
12 contained in the zoning regulations have themselves
13 been caused or created by the property owner because
14 the essential basis of the variance, that is, the
15 hardship, because solely through the manner of
16 operation of the zoning regulations upon the property
17 is lacking.

18 MS. BAILEY: Excuse me, Ms. Polivy. We
19 have a technical --

20 (Whereupon, off the record.)

21 MS. POLIVY: Anyway, in the Stewart case
22 you noted the self-created hardship rule applies to
23 owners who purchase property with actual constructive
24 knowledge of the zoning restrictions from which they
25 intend to seek administrative relief. That is a

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1 carbon copy in that sense of this case.

2 You cannot buy a piece of property and try
3 to turn it into something and then say the reason I
4 should be given a variance is because I want to turn
5 it into something when it violates the zoning rules.

6 Mr. Schwartz, I think, has demonstrated
7 eloquently that this property is quintessential
8 susceptible to condominium conversion. Regardless of
9 what the Planning Board seems to think, in this city
10 under these zoning regulations established residential
11 use is a higher use than transience. The zoning
12 regulations prefer residential dwelling units in
13 residential areas.

14 The last thing I would like to note is
15 that the zoning regulations that we are now operating
16 under are home occupancy variances. It is clear
17 beyond the venture of a doubt that the primary use of
18 this building that Mr. Gonzalez proposes is either as
19 an event venue or bed and breakfast. It is not as a
20 residence. The residence is clearly secondary or
21 tertiary. He wants to use this as a business
22 operation.

23 I think the zoning regulations are clear.
24 I think it would exceed your authority to grant them
25 a variance. Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 Why don't we have all the people who just presented
3 the case up and let's do cross-examination. We're
4 going to need to pull up an extra chair. Can all of
5 you scoot down a little bit? I'm going to have you
6 three share the three mikes here. We're going to have
7 a dedicated mike for the person conducting cross-
8 examination on the corner. We have to wait just a
9 minute while we get the recording devices back up and
10 running.

11 Whenever you're ready.

12 MS. GIORDANO: Yes, I just had two short
13 questions. First of all, Ms. Hubbard, I guess you
14 were talking a little bit about interior preservation
15 and how the laws of the city don't provide for that,
16 etc.

17 CHAIRPERSON GRIFFIS: Let her ask you the
18 question.

19 MS. GIORDANO: Are you aware of a recent
20 easement that was donated to the Dupont Circle
21 conservancy on the Henrich Mansion for the interior
22 preservation of that?

23 CHAIRPERSON GRIFFIS: You need to turn
24 your mike on.

25 MS. HUBBARD: I am very interested in that

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1 case. I understand it was heard last Thursday. Were
2 you there?

3 MS. GIORDANO: No.

4 MS. HUBBARD: Well, I haven't followed it
5 but one of the things is that I understood that the
6 conservancy was going to apply to have the furniture
7 made into historic objects, too, which is something I
8 would like to see because the furnishings from a house
9 of that period is really, really very good. For
10 example, the interior of my building --

11 CHAIRPERSON GRIFFIS: Okay. She asked you
12 a specific question.

13 MS. GIORDANO: I was just asking are you
14 familiar with that? Do you think that is a good
15 creative solution by your neighborhood to get the
16 interior --

17 MS. HUBBARD: It depends. For example, I
18 have it in my building. We have the whole lobby as
19 part of the historic designation.

20 MS. GIORDANO: Right, but this isn't a
21 designation. This is an easement, a grant to the
22 Dupont Circle conservancy.

23 MS. HUBBARD: No. That has nothing to do
24 with that. That is because of the enforcement
25 problems. Just ask them down there.

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1 MS. GIORDANO: Well, this is not an
2 enforcement problem because the Dupont Circle
3 conservancy holds the easement.

4 MS. HUBBARD: Well, what of it?

5 MS. GIORDANO: That's your neighborhood
6 organization.

7 MS. HUBBARD: Well, what of it?

8 CHAIRPERSON GRIFFIS: Is that something
9 you are familiar with?

10 MS. GIORDANO: So you had a problem with
11 the city, I guess the historic --

12 MS. HUBBARD: The thing is they are not
13 going to go down there and enforce the law. They have
14 no way to arrest a person or take them to jail, fine
15 them. They can't do that. They know the whole court.
16 Who does the enforcement for the conservancy? Let me
17 ask you something.

18 CHAIRPERSON GRIFFIS: Okay. Ms. Hubbard,
19 the questions are one directional here.

20 MS. GIORDANO: I have a question for Ms.
21 Polivy.

22 Ms. Polivy, do you own a previously
23 residential building basically on 16th Street just
24 three blocks south of the Toutorsky Mansion on the
25 same side of the block that you use for an office

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1 building?

2 MS. POLIVY: I own 1532 16th Street which
3 is an SP zoned building. It was an office building
4 before I bought it. Dr. Moran had his office. I
5 guess if you go back to 1914 when the Secretary of the
6 Army lived there --

7 CHAIRPERSON GRIFFIS: How about answering
8 the question.

9 MS. GIORDANO: You think the effects of
10 that building being commercially used are vastly
11 different from this building three blocks away?

12 MS. HUBBARD: The zoning is different.

13 CHAIRPERSON GRIFFIS: Ms. Hubbard, will
14 you turn off the mike, please?

15 MS. GIORDANO: The impacts of that
16 commercial --

17 (Whereupon, off the record.)

18 MS. GIORDANO: I understand what the
19 zoning is. I'm just asking about the impacts.

20 MS. POLIVY: It's SP.

21 (Whereupon, off the record.)

22 MS. GIORDANO: -- have a serious impact on
23 the residential area. I'm just curious if you think
24 your building as any impact just three blocks away
25 being commercially used on the adjoining residential

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1 neighborhood?

2 MS. POLIVY: Well, yes. I mean,
3 everything south of Q Street is office. The building
4 on the corner of 16th and Q is rebuilding america.

5 MS. GIORDANO: So the answer is yes?

6 MS. POLIVY: Well, it is not -- sure.

7 MS. GIORDANO: Thank you. That's it.

8 MS. HUBBARD: We asked for it to be R-5-B,
9 you know.

10 CHAIRPERSON GRIFFIS: Okay. That seems to
11 be more of a commission issue anyway.

12 MS. HUBBARD: What?

13 CHAIRPERSON GRIFFIS: That seems to be
14 more of a commission issue in terms of rezoning.

15 MS. HUBBARD: But they didn't give it to
16 us.

17 CHAIRPERSON GRIFFIS: I know. It looks
18 like we are left with testimony which I would like to
19 proceed with now. Anyone here left to give testimony
20 can come forward at this time.

21 MS. SALAS: Good evening. I'm Vickie
22 Bruff Salas and I reside at 1610 Riggs Place. That's
23 across the street from the mansion. I want to go on
24 record that I oppose the variance application. We
25 bought the house seven years ago and what really

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1 appealed to us was the very quiet tree-lined street.
2 In fact, it had even been written up in the
3 Washingtonian magazine as the most desirable street,
4 or one of the most desirable streets around Dupont
5 Circle.

6 I feel that turning it into an event and
7 bed and breakfast, and especially the event, will
8 really impact the parking issue. As it is now, it has
9 gotten so much worse over the seven years that I have
10 lived there that when I call repairmen to come, and we
11 always seem to need a repairman in those old houses,
12 they want me to secure the fact that there is parking
13 for them before they will come to the District. I
14 have had them come even from Sears and turn around and
15 leave because there's no parking.

16 We have friends in Bethesda that don't
17 want to come and visit because they can never find a
18 parking spot in the evening. I feel that this is
19 going to increase the problem.

20 I feel that it's going to draw predators
21 to the area. They are going to want to do their
22 panhandling with a lot of guests coming in and anybody
23 that they can hit up. I have seen people in the seven
24 years out front using my hose as a shower. They sit
25 on my front porch and they drink. They do -- this is

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1 the nice quiet street. They sell drugs.

2 That has gotten so much better over the
3 past two and a half years. I feel if they know
4 there's people there that they can hit on coming to
5 parties or have money, they are going to be out there
6 and they are going to come back to the neighborhood
7 again.

8 I also am concerned that if it does become
9 the event place and if there is a real parking issue,
10 which I can't imagine that there wouldn't be if you
11 could have up to 110 guests every other weekend, and
12 the only place that they have to load or unload mostly
13 is going to take place on Riggs Place right across
14 from my front door, that if I decide to sell, it's not
15 going to be a very desirable piece of property and it
16 could lower my property value. That concerns me
17 greatly.

18 I certainly am not going to want now if I
19 go in knowing that there is a problem and is an area
20 that you can't have friends over, you can't get
21 repairmen to, to want to pay much for that house. I
22 do feel that this is going to impact me directly and
23 not in a good way. I do feel that I am opposed to
24 this as any homeowner would be, as you would be as a
25 homeowner.

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1 Respectfully I ask the Board do you care
2 about the people on Riggs Place who have paid over a
3 half a million dollars for their homes and paid very
4 high taxes, or do you care about a gentleman who has
5 bought a piece of property to make money off of? I
6 beg of you please do not pass this variance. Thank
7 you.

8 CHAIRPERSON GRIFFIS: Thank you very much.
9 Anybody else? We still have a few more
10 hours left in this day, folks. It would appear to me
11 that we have closings to do.

12 PARTICIPANT: What about Mr. McKay?

13 MS. HUBBARD: We didn't get a supplemental
14 report from him either. Where is all this stuff?

15 CHAIRPERSON GRIFFIS: My records show that
16 we have had the presentation by the Office of
17 Planning. I don't see any indication that there was
18 supplemental reports. It doesn't seem to me that we
19 have additional stages in this.

20 However, what I would like to do rather
21 than go through rebuttal witnesses and closings
22 tonight is to set it very closely in our schedule and
23 take up closings at that time unless anyone would
24 absolutely object to that and would like to stay for
25 closing tonight.

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1 Are you planning on calling rebuttal
2 witnesses? Yes? Okay. I mean, it would take some
3 time and I think we've been here long enough. It is
4 10 of 10:00 and I think we would all be better off
5 refreshed.

6 This is what we're going to do with the
7 remainder of our time together this evening. First,
8 we are going to run through what is going to be
9 submitted in the time line. Second, we will schedule
10 when we will actually have closing and rebuttal
11 witnesses.

12 At this time do you have an idea of which
13 witnesses will be called? Okay. Why don't you come
14 up and I'm going to have her indicate what rebuttal
15 witnesses will be called. It is for this reason the
16 parties are able to cross-examine rebuttal witnesses
17 based on the rebuttal testimony. If you feel that
18 there are witnesses being called that you do not need
19 to cross, then you wouldn't need to be present.
20 Otherwise, you will need to be present in order to
21 have your cross-examination.

22 MS. GIORDANO: Yes, my rebuttal witnesses
23 are my same witnesses, Mr. Gonzalez and Ms. West.

24 CHAIRPERSON GRIFFIS: Okay. Very good.
25 The amount of time that you would anticipate for

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1 closings?

2 MS. GIORDANO: I would say without cross-
3 examination probably 30 to 40 minutes.

4 CHAIRPERSON GRIFFIS: Okay. Very good.
5 Okay. I would like to do it on November 12th, the
6 first item in the morning, unless staff has some major
7 apprehensions with that.

8 MS. BAILEY: Mr. Chairman, as a reminder,
9 there is a case scheduled for the special public
10 meeting. Did you want to add this one to it as well?

11 CHAIRPERSON GRIFFIS: No, I think we would
12 call it at 9:30 in the hearing. Okay.

13 MS. HUBBARD: This isn't going to be
14 anything like today?

15 CHAIRPERSON GRIFFIS: This is a normal day
16 for us. I can tell you that your chances of going
17 until 10:00 at night are lesser starting at 9:30 in
18 the morning.

19 MR. MOY: Pardon me, Mr. Chair. I want to
20 remind you that we added the Bass case to the same day
21 that afternoon. This would be an additional case.

22 CHAIRPERSON GRIFFIS: To be clear, the
23 Bass is in the afternoon. We had three cases
24 scheduled for that morning. I'm putting you on first
25 in the morning. We have a special public meeting that

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1 starts at 9:00 a.m. That's our decision making. That
2 may run 15 minutes over on a normal day.

3 That still starts us at 9:45 where we will
4 go to rebuttal witnesses, cross-examination, and
5 closing. Then it is our responsibility for the rest
6 of the cases in the day and you all can go and enjoy
7 your day. It doesn't seem insurmountable to me
8 knowing already a little bit about each of these
9 cases.

10 So, with that being said, let's go to what
11 is being submitted.

12 MS. BAILEY: Mr. Chairman, the only thing
13 that I have to be submitted, and I'm not sure there's
14 going to be time enough, but there was some discussion
15 concerning the opposition submitting questions to DDOT
16 concerning the supplemental report. I'm not sure if
17 that's what the community or the Board still wants but
18 that was the discussion.

19 CHAIRPERSON GRIFFIS: Absolutely.

20 MS. HUBBARD: Why don't you just throw the
21 report out?

22 CHAIRPERSON GRIFFIS: You have two
23 options. One is to submit questions that we will
24 submit to DDOT. The other is not to submit questions
25 that we will not submit to DDOT.

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1 MS. HUBBARD: The thing is --

2 CHAIRPERSON GRIFFIS: What is the date we
3 want those submitted by?

4 MS. BAILEY: Mr. Chairman, if we are going
5 to continue this on November 12th, there's not a lot
6 of time.

7 CHAIRPERSON GRIFFIS: That's true.

8 MS. BAILEY: What are we doing, Mr.
9 Chairman? We are asking the residents to submit
10 questions to us or are they going to be submitting it
11 directly to DDOT?

12 CHAIRPERSON GRIFFIS: I think we submit
13 them to OP into the record and OP can distribute it to
14 DDOT. I would like to give you three days to get your
15 questions in. Is that feasible?

16 MS. POLIVY: Not really.

17 CHAIRPERSON GRIFFIS: How much time do you
18 need to get your questions in?

19 MS. POLIVY: I was going to suggest that
20 we will -- if we are having rebuttal, we are prepared
21 to speak to Mr. Laden and see if he will appear for
22 that hearing. Frankly, for us to submit questions is
23 not a very helpful thing.

24 CHAIRPERSON GRIFFIS: It might facilitate
25 things all during the day, but clearly at the end of

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1 the day if you hear my question and answer it and then
2 we can move on to the next issue. How much time would
3 it take you to prepare your questions for the DDOT?

4 MS. POLIVY: I don't know, sir.

5 CHAIRPERSON GRIFFIS: Okay. I don't know
6 a time period. We have two weeks. If this is
7 something that you would like to have, how much time
8 will it take you to get questions into the Department?

9 MS. POLIVY: Well, perhaps -- I know it's
10 not going to amuse you to have a question answered
11 with a question but I'll try anyway. I am unclear,
12 and I was unclear when we discussed this the last
13 time, what the function of the question is. Is the
14 function of the question to ask some rhetorical --

15 CHAIRPERSON GRIFFIS: No, the function of
16 the question is the same as you would in cross-
17 examination. It's to --

18 MS. POLIVY: But with no answers what I
19 would ask in cross-examination is irrelevant.

20 CHAIRPERSON GRIFFIS: You are going to get
21 answers. How much time will it take you to prepare
22 the questions you want answered?

23 MS. POLIVY: We will try to get them in
24 three days. We may be as long as Monday.

25 CHAIRPERSON GRIFFIS: Have them in my

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1 close of business Monday and then we'll get them over
2 to the Department of Transportation. In the meantime,
3 with those written questions that are going to OP, I
4 think we would request that Mr. Laden might show up to
5 answer the questions at the time prior to closing,
6 noting we won't have a lot of time on that day, and
7 then we will go to rebuttal testimony and then we will
8 go to closing.

9 MS. HUBBARD: Mr. Griffis, maybe I can
10 save you a little trouble here. The applicant in this
11 case has submitted at least three traffic plans since
12 the start of this hearing. Remember starting out in
13 the Hilton Hotel?

14 CHAIRPERSON GRIFFIS: Don't recount it for
15 me. Just ask me the question.

16 MS. HUBBARD: We go to the trouble to hear
17 about this and then -- I mean, suppose he got the
18 variance? What is to prevent him from changing it? I
19 mean, who is going to enforce the law? Is Mr. Laden
20 going to go down there and say, "You're not keeping to
21 your parking plan."

22 CHAIRPERSON GRIFFIS: Okay. Let's focus
23 on getting through the hearing and then, Ms. Hubbard,
24 I would gladly take the time. In fact, we will
25 instruct a specific authoritative staff member to go

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1 through the new procedures for enforcement of our
2 orders but I cannot take --

3 MS. HUBBARD: I've been through them and
4 I've never seen anything being done.

5 CHAIRPERSON GRIFFIS: It's a new era, a
6 new day. What else?

7 MS. BAILEY: I just need to repeat, Mr.
8 Chairman, so that we are all on the same page with
9 this, and that is November 4th questions are to be
10 submitted to the Office of Planning and those
11 questions will be forwarded to DDOT.

12 It is anticipated that DDOT will be
13 available on November 12th when this hearing continues
14 at 9:30 a.m. At that time we will also have the
15 applicant's attorney, Ms. Giordano, to present
16 rebuttal testimony, cross-examination, and closing

17 CHAIRPERSON GRIFFIS: Very well. Is
18 everyone clear? Dates? Submissions? Excellent.

19 Then it is my pleasure to adjourn.

20 (Whereupon, at 10:02 p.m. the hearing was
21 adjourned.)
22

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