GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD Of
OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 22, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAN	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
PETER G. MAY	Commissioner
CAROL J. MITTEN	Commissioner

COMMISSION STAFF PRESENT:

Beverley Bailey, Office of Zoning
John K. A. Nyarku, Office of Zoning
Clifford Moy, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Arthur Jackson, Office of Planning
John Moore, Office of Planning
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.

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

2 9:39 a.m.

3 CHAIRMAN GRIFFIS: On the record. Good
4 morning, ladies and gentlemen. Let me call to order
5 the April 22, 2003 public hearing of the Board of
6 Zoning Adjustment of the District of Columbia. My
7 name is Geoff Griffis. I am Chairperson.
8 Joining me today is Mr. Etherly who has
9 graciously gone and gotten us some water so we don?t
10 choke up during the morning. Also with us
11 representing National Capital Planning Commission is
12 Mr. Zaidan and representing the Zoning Commission
13 with us this morning is Mr. Hood.
14 Copies of today?s hearing are available
15 to you. They are located at above the table near the
16 door where you entered into the hearing room. Please
17 take a copy of that and you will see how quickly we
18 progress through our morning schedule. If we do not
19 have enough available, please let Staff know and we
20 will make more.
21 Let me run through a few things that are
22 of upmost importance. First of all, everyone should
23 know that all hearings before the Board of Zoning
24 Adjustment are recorded. Therefore there are several
25 things that you need to do. First you need to fill

1 out two witness cards and given to the reporter who
2 is sitting to my right prior to coming forward to
3 giving testimony. Those witness cards are on the
4 table in front of us and also at the table next to
5 the door where you entered into.
6 Please also note that when you first
7 present to the Board you can introduce yourself for
8 the record with your name and your address. You only
9 need to do it once. Then we can move on from there.
10 Also I would ask that people refrain from any
11 disruptive noises or actions in the hearing room so
12 we do not disturb those giving presentations. Lastly
13 I would ask that people turn off their cell phones or
14 beepers at this time so that we don?t have those
15 going off.
16 The order of procedure today for special
17 exceptions and variances will be first we?ll hear
18 from the applicant their statement and any witnesses.
19 Second would be Government reports attended to the
20 applicant such as Office of Planning and Department
21 of Transportation. Third would be the report from
22 the Advisory Neighborhood Commission. Fourth would
23 be persons or parties in support of the application.
24 Fifth would be persons or parties in opposition.
25 Finally we will have closing remarks and any rebuttal

1 testimony by the applicant.
2 Cross examination of witnesses is
3 permitted by the applicant and parties in the case.
4 The ANC within which the property is located is
5 automatically a party in the case. The record will
6 be closed at the conclusion of each hearing except
7 for any material that the Board specifically requests
8 and we will be very specific on what is to be
9 submitted and when it is to be submitted into the
10 Office of Zoning. After that material is received of
11 course it goes without saying that the record would
12 be then closed. No additional information would be
13 accepted into the record.
14 The Sunshine Act requires that the public
15 hearing on each case be held in the open and before
16 the public. This Board however consistent with its
17 rules of procedures may enter into executive session
18 during or after a public hearing on a case. That
19 would be for purposes of reviewing the record or
20 deliberating on the case.
21 Decisions of this Board in contested
22 cases must be based exclusively on the public record.
23 Therefore we ask that people present today not
24 engage Board members in conversation so that we do
25 not give the incorrect appearance of not basing our

1 deliberation on the public record.
2 The Board will now consider any
3 preliminary matters. Preliminary matters are those
4 which relate to whether a case will or should be
5 heard today such as request for postponements,
6 withdrawal or whether proper and adequate notice has
7 been given to the application. If you are not
8 prepared to go forward this morning with a case that
9 you believe the Board should not proceed, I would ask
10 that you come forward and make that known. I will
11 ask Staff is there are any preliminary matters for
12 the Board at this time and also wish them a very good
13 morning. Ms. Bailey represents the Office of Zoning,
14 also Mr. Moy with the Office of Zoning, Mr. Nyarku
15 with us out here today. Also representing the
16 Corporation counsel is Ms. Monroe. Does the Staff
17 have any preliminary matters for the Board?
18 MS. BAILEY: Members of the Board, good
19 morning. Staff does not have any preliminary
20 matters, Mr. Chairman.
21 CHAIRMAN GRIFFIS: Does anyone in
22 attendance have any preliminary matters for the Board
23 to take up before we call the first case in the
24 morning? You can indicate it by even standing up.
25 Not seeing any indication of that, why don?t we

1 proceed and call the first case of the morning.
2 MS. BAILEY: Applicant No. 17005 of The
3 Studio Theater, Inc. pursuant to 11 DCMR Section
4 3103.2, for a variance from the rear yard
5 requirements under section 774 and 2001.3, and
6 pursuant to 11 DCMR Section 3104.1, a special
7 exception to allow more than one roof structure, one
8 of which provides screening walls that would not be
9 of equal height under section 771 (section 411), and
10 a special exception to allow less than 50 percent of
11 the surface area of the street wall along 14th Street
12 at the ground level to be used for display windows
13 and entrances under section 1903 and 1906, to allow
14 additions to existing buildings to be consolidated
15 into a single building on a single record lot for use
16 as a legitimate theater in the Arts/C-3-A District at
17 premises 1501, 1507 and 1509 14th Street, N.W. The
18 property is located in Square 241, Lots 830, 834,
19 835.
20 All those wishing to testify today, would
21 you please stand to take the oath?
22 (Witnesses sworn in.)
23 CHAIRMAN GRIFFIS: Good morning.
24 MR. PATTON: Good morning, Mr. Chair, and
25 members of the Board and Staff. My name is Doug

1 Patton with the law firm of Holland & Knight. I live
2 at 3237 Ellicott Street, N.W. in the District.
3 We have this morning which Ms. Bailey
4 correctly summarized the opening I would give and I
5 don?t want to be redundant in terms of stating the
6 same request for variances and special exceptions.
7 We have four witnesses this morning to present.
8 We?ve submitted the documents to you. I hope you
9 have all had a chance to review those. I would like
10 to ask Mr. Williams now about additional submissions
11 to the Board.
12 MR. WILLIAMS: Good morning. Mr.
13 Chairman and members, we have at this time four
14 additional submissions, nothing in the nature of a
15 surprise. We believe that by introducing them to you
16 now that as the testimony proceeds, you will have
17 clear set of references for the case today.
18 The first document that I?ll be bringing
19 to Ms. Bailey for distribution to you is a set of
20 plans. You have already seen these plans. What
21 we?ve done on these plans is to bubble them to
22 identify specifically the areas in which the relief
23 we?re seeking is being sought so that it brings your
24 eye to that. We?ll be asking you to approve these
25 plans with the focus on the bubbled areas.

1 Second within the initial application we
2 filed a crafted Form BZA 135. You may remember
3 seeing this document in the original materials. What
4 we?ve done is to highlight in an additional color, a
5 tan, the areas in which the application has been
6 amended so that you can see the very slight changes
7 and the shifts in numbers. It?s just an updating of
8 that chart.
9 CHAIRMAN GRIFFIS: Why don?t we do this?
10 Why don?t you put them into the record and then as
11 you bring them up you can describe them to us? It?s
12 easier to be looking at them. While he?s doing that,
13 I have a couple of clarification questions. First of
14 all, we have two sets of drawings in the record
15 currently. There?s the 02/02/03 and the 04/07/03.
16 My question actually is there any difference between
17 those. But I guess we can just put these aside and
18 use the drawings that are coming in now. Is that
19 correct?
20 MR. PATTON: That?s correct.
21 CHAIRMAN GRIFFIS: So we?ll do that. The
22 other two quick questions I have for clarification
23 before you move on. I?m anticipating that we need
24 about 30 minutes for this so we?re going to get right
25 into it, get to the details and then move on.

1 Secondly, if you want to address this, Mr. Patton or
2 someone, you are coming in for a variance for the
3 rear yard.
4 MR. PATTON: Yes sir.
5 CHAIRMAN GRIFFIS: Under 774.2, isn?t it
6 a special exception?
7 MR. PATTON: I?ll be glad to look at it.
8 CHAIRMAN GRIFFIS: We can get to this
9 very quickly. What I read just looking at this, the
10 774 says the BZA may waive the rear yard requirements
11 of this section pertaining to C-3-A etc in accordance
12 with requirements under special exceptions provided
13 that the standard 774.3 and 774.6 are met. So you
14 are saying you don?t meet the 774.3 and the 774.6, is
15 that correct?
16 MR. PATTON: We believe we do met those,
17 Mr. Griffis. The issue here is that we were
18 uncertain and we took the most conservative approach
19 possible to the question of whether there was a
20 problem in the rear yard as it related to the arch
21 overlay and second to the prohibition against the
22 expansion of a non-conforming use which is at the
23 2100 section. So we felt that the safer course of
24 action was to apply for the variance and make sure
25 that we had asked for all possible relief. The Board

of course has absolute authority to make a determination.

CHAIRMAN GRIFFIS: Good and we appreciate that in taking the most conservative route. Let me see if Ms. Monroe concurs with me. If she does in fact I will bring it to the Board that we actually amend very quickly this application to include a special exception under 774 unless you want to just proceed with the variance. In that case, you are perfectly able to do that. I?ll refer if anyone needs to read that. Ms. Monroe.

MS. MONROE: Yes, I agree with you. A special exception would do it.

CHAIRMAN GRIFFIS: Okay. It seems to be fairly clear to me. It may even expedite some of the things that we need you to do today. Board, any questions on that? Do people need to see the section? In which case, I?ll hear any objections to amending the application.

MR. PATTON: One of the reasons, Mr. Chairman, is the history of the Board. We didn?t want to appear for lack of a better term as saying we?re being ?cute? in terms of trying to go through the special exception as opposed to a tougher standard on the variance.

1 CHAIRMAN GRIFFIS: That?s good although
2 we like ?cute? once in a while. It?s okay. That
3 being said if there is no objection to the Board, why
4 don?t we take that up as a special exception then. I
5 think that?s fairly clear. Good. That?s all I have.
6 MR. PATTON: We will proceed with the
7 same evidence regardless of the exception.
8 CHAIRMAN GRIFFIS: Yes, indeed and that?s
9 perfectly acceptable.
10 MR. WILLIAMS: Mr. Chairman, to continue
11 the additional submissions, first I was reminded by
12 Ms. Bailey that I didn?t follow your directions. My
13 name is Lindsley Williams.
14 CHAIRMAN GRIFFIS: Indeed.
15 MR. WILLIAMS: I live at 3307 Highland
16 Place. I?m affiliated as a land use consultant to
17 the law firm of Holland & Knight. I?m assisting the
18 Applicant in this case.
19 The second document I want to bring in to
20 your attention is the update of our Form BZA 135 as
21 we modified it to conform to the bubbled plans that
22 you have from the immediately previous submission.
23 CHAIRMAN GRIFFIS: Okay, let?s get them
24 all in. Let?s not waste time doing that.
25 MEMBER ZAIDAN: It?s my understanding

1 from your submission materials that it?s part of the
2 special exception that we just amended. It needs to
3 be in the record that you met the standards of 774.3
4 through 774.6. I don?t think that?s in your
5 submission stuff. If you can just touch on those
6 briefly.
7 MR. WILLIAMS: Why don?t we do that when
8 we get to testimony? I?m just trying to get the
9 materials in right now if that?s okay.
10 MEMBER ZAIDAN: Right, I know. It?s just
11 because I?m borrowing his regulations. I wanted to
12 make a note of it before I give it back to him. It?s
13 just so the Board and the record is complete on you
14 meeting those standards.
15 MR. WILLIAMS: The third submission is a
16 document titled ?Studio Theaters Areas of Existing
17 and Proposed Windows and Entrances on the Ground
18 Floor Levels of 1509, 1507 and 1501 14th Street,
19 Washington, D.C.? It?s a single paged chart that
20 summarizes an issue that we will come to be
21 discussing in the course of this.
22 Finally there is a text document
23 submitted to you today but earlier to Mr. Calcott
24 (PH) and Mr. Jackson from the Applicant on the
25 subject of the display windows. Those are the

1 additional submissions that we offer at this time,
2 Mr. Chairman.
3 CHAIRMAN GRIFFIS: Any objection from the
4 Board to accept the additional materials?
5 (Chorus of nos.)
6 CHAIRMAN GRIFFIS: Very well. You can
7 submit those in. Mr. Patton, you are proffering Mr.
8 Williams and others as expert witnesses. Is that
9 correct?
10 MR. PATTON: Yes.
11 CHAIRMAN GRIFFIS: Why don?t we take that
12 up at this point and then we can go ahead unless you
13 have something else that we need to do immediately.
14 MR. PATTON: No.
15 CHAIRMAN GRIFFIS: Board members, we do
16 have in the submission all of the résumés. Mr.
17 Bonstra is being proffered. Let?s go to Tab N. I?ll
18 take any questions on those listed in Exhibit N.
19 MEMBER ZAIDAN: No objection, Mr. Chair.
20 CHAIRMAN GRIFFIS: Any questions? Any
21 objections?
22 (No response.)
23 CHAIRMAN GRIFFIS: Very well. I?ll take
24 it as a consensus and bestow the great honor of
25 expert status to those present. Mr. Patton, we?ll

1 try not to interrupt again.

2 MR. PATTON: Thank you, Mr. Chairman. I

3 would like to proceed with our first witness and

4 introduce Keith Baker who is speaking on behalf of

5 the Applicant, Studio Theater. In light of the

6 Chairman?s 30 minute, take due note of that if you

7 would, Mr. Baker, in terms of summation if you would.

8 MR. BAKER: All right. Good morning, Mr.

9 Chairman and members of the Board and Staff. I?m

10 Keith Alan Baker. I?m the managing director of the

11 Studio Theater and the project director for our

12 current renovation effort. I live at 3420 16th Street

13 in the District.

14 The Studio Theater is the owner of the

15 three subject properties: 1501, 1507 and 1509 14th

16 Street. With me today is the Chair of the Board,

17 Susan Butler and Morey Epstein, the Executive

18 Director of Institutional Development for the Studio

19 Theater. We are here today with our architect,

20 historian and consultants to seek your approval for

21 this project.

22 I hope you are familiar with the Studio

23 Theater and its history. We are celebrating our 25th

24 anniversary this year. The Studio Theater is at 501

25 C-3 not-for-profit professional theater. We produce

a year round season of 10 to 12 plays each season. We have approximately 6500 season subscribers. The Studio Theater employs more than 30 full time personnel and employs many others on a highly variable part-time basis each year.

We?ve been operating within the limited space of our current building for the past decade. We?ve had the opportunity to do acquire the two adjacent buildings and expand our physical facility. The Studio Theater has been a vital part of a tremendous growth of the Washington theater community.

Founded in 1978, the Studio Theater is Washington?s premier venue for contemporary theater. The Theater has gained a regional, national and international reputation. To date, the Studio Theater has produced 130 plays by 116 different playwrights and has received numerous awards and citations including almost 200 Helen Hayes Award nominations for artistic excellence and the Mayor?s Art Award for excellence and service to the Arts.

The Studio Theater has been a pioneer in the Logan Circle area. We have been there for more than 25 years. We participated in the creation of the 14th Street Arts Overlay designed to promote and

protect artists and arts organizations. The Studio Theater has been in the area since the days when the corridor was littered with hypodermic needles, condoms and boarded up buildings. Changes are taking place quickly.

The Theater was founded by director Joy Zinoman and designer Russell Metheny. It began on Rhode Island Avenue between 14th and 15th Streets sharing space with Liz Lerman?s Dance Exchange and Marjorie Goldberg?s Zenith Gallery. In 1980, the Theater moved to its own space at 1401 Church Street. This space was later leased by Wooly Mammoth Theater Company and is now under development by Metropolis Development Corporation.

In 1987, the Theater moved across the street to our current location at the corner of 14th and P Streets, the former Petrovich auto repair shop. We had partial occupancy leasing 40 percent of the building and built the first floor theater with the current entrance on P Street. We then purchased the building from the Petrovich brothers in 1993 and renovated the entire building, opening a second theater on the second floor in 1997.

We now have two theaters, the Mead Theater and the Milton Theater on the second with

1 production support areas and administrative offices
2 on the third floor. This two theater model allows
3 popular shows to extend without disrupting the
4 regular subscription schedule. We hopefully have one
5 or two hits a year.
6 However for the two theater model to work
7 ideally the theaters must be the same size. Due to
8 the physical limitations of the current building, two
9 current theaters are not the same size in terms of
10 seating capacity and mechanics of the space itself,
11 ceiling height, stage dimensions, etc. This makes a
12 huge difference artistically.
13 But the new theater space in 1509 will be
14 able to accommodate the same number of seats and will
15 be equivalent in terms of stage dimensions. The two
16 theater model will switch from the current Mead and
17 Milton theaters to the Mead and its new sister
18 theater in 1509. The current Milton theater will
19 then be used for special event presentations which we
20 do several times a year with limited runs.
21 We do not plan on increasing the number
22 of productions that we do. Our objective is to
23 equalize the two theaters allowing the two theater
24 model to work more effectively in space that is
25 nearly equivalent. The primary purpose of having

1 three working theaters is the flexibility it will
2 allow internally for scheduling and the building of
3 productions.
4 Internally we began planning in 2000 to
5 locate additional spaces as part of the new five-year
6 plan. In 2001, we started a capital campaign. In
7 June 2002, we purchased the two buildings from Albert
8 Cary (PH) properties. We submitted our design plans
9 to the District?s Historic Preservation Review Board
10 last fall and gained approval in December 2002. The
11 concerns of the Historic Preservation Review Board
12 resulted in the need to shift some of our programming
13 needs within the building. Some of these changes
14 coupled with the special heating/air conditioning
15 needs of the theaters and certain requirements within
16 the Arts Overlay regulations created the need to seek
17 the current Zoning review and relief.
18 The project designer for the renovation
19 is Russell Metheny who is one of the co-founders and
20 is our resident set designer who also designed the
21 current theaters. The general contractor for the
22 renovation is Cafory (PH) Construction Group. The
23 project manager is Paul Moore.
24 I would like to introduce the members of
25 the project team that are here today. Bill Bonstra

of Bonstra Architects is the project architect. Emily Eig (PH) is the historic preservation consultant for the project. Doug Patton of Holland & Knight is our representative in this. Lindsley Williams is our land use and zoning consultant.

The schedule for the project will begin with the ground-breaking ceremony on Tuesday, June 3. We would like to have your order in hand. We anticipate construction to take place over a 15 month period on phase timeline. Construction will begin in 1509 during the summer. Construction will begin in 1507 in September after the current tenant?s lease expires. The three buildings will be united into one complex in February 2004. Construction is scheduled to be completed in August 2004 with a grand opening of the new complex in the fall of 2004.

We are ready to begin the construction phase of the project. We are geared up. The trucks are waiting. We?re ready to bring our dream to reality and become an element on 14th Street. With your approval, we are ready to begin. Thank you.

CHAIRMAN GRIFFIS: Good. Let?s see if we can keep you to that schedule.

MR. PATTON: Any questions of the Board?

CHAIRMAN GRIFFIS: Any questions?

(No response.)

MR. PATTON: I would like to introduce Mr. Bonstra. Please state your name.

MR. BONSTRA: My name is William Bonstra. I?m the project architect. I live within two block of the Studio Theater at 1519 Vermont Avenue, N.W. I won?t go back through too much on the functions of the building as Mr. Baker explained. This is additional theaters and an expansion of the existing functions of the building that are located presently in the 1501 14th Street structure. The building directly to the north at 1507, the center building, will have an atrium addition added. That will be the main lobby and the tissue that links the spaces of the building.

We are here today to talk specifically about relief from Zoning requirements for the project. The first area of relief is in the rear yard setback. The project will be consolidated into a single record lot through the subdivision process that is in the works. With that, it allows us to locate a rear yard along the north side of the building. Should I point some things out?

MR. PATTON: I think you should point them out. It might help the Board.

1 MR. BONSTRA: I don?t believe I have a
2 microphone there.
3 CHAIRMAN GRIFFIS: Let me see if I can
4 make one of these work.
5 MR. BONSTRA: Can you hear me? This is
6 the first floor plan. This is the 1509 building.
7 The rear yard setback that is established for the
8 property is here running east-west along the north
9 property line. As I said the buildings will be
10 consolidated as a corner building. That would be our
11 rear yard. The relief that we are seeking ?-
12 MR. PATTON: Mr. Bonstra. It would help
13 for the record if you say the address of the building
14 in terms of the rear yard even though they can see
15 it.
16 MR. BONSTRA: Okay. The rear yard relief
17 that we are asking for is behind the 1509 building at
18 the northeast corner. It would be this area here.
19 The existing building does in fact rise from this
20 level. This dotted line shows where the existing one
21 story portion of the building which is in bad shape
22 will be removed to make way for the new addition.
23 That is the rear yard aspect. This part of the
24 building in fact is two stories tall.
25 CHAIRMAN GRIFFIS: So essentially on 1509

1 we have a portion of which you?ve chosen not to be
2 the rear yard of the consolidation of all of the
3 buildings. It does not exist and is nonconforming at
4 this point so we?re looking at the small rear corner.
5 In fact, Board members, if you look at SP-1 in the
6 new set that was set out, it?s fairly well
7 identified. The small section is there.
8 MR. BONSTRA: Yes. You can also see on
9 the model the heights of the buildings.
10 CHAIRMAN GRIFFIS: We have a model?
11 MR. BONSTRA: Yes. We have a model.
12 CHAIRMAN GRIFFIS: Bring that out now.
13 MR. BONSTRA: That?s probably the best
14 place to show some of it.
15 CHAIRMAN GRIFFIS: This is the fun part.
16 MR. BONSTRA: That?s the first aspect of
17 the project that we?re here today to discuss. The
18 second unless there are any questions on the rear
19 yard.
20 CHAIRMAN GRIFFIS: No.
21 MR. PATTON: Bill, if you can point out
22 for the Board the model as to on P Street versus 14th
23 Street so they keep it in perspective.
24 MR. BONSTRA: This is P Street, N.W.
25 (Witness indicating on model.)

1 CHAIRMAN GRIFFIS: Right.

2 MR. BONSTRA: This is 14th Street. This

3 is due north. We have a 10 foot wide public alley

4 here. The existing 1507 building does in fact come

5 to the face of the alley as does the existing 1509

6 building with a portion of it as shown in the dashed

7 line.

8 CHAIRMAN GRIFFIS: Is the model

9 accurately reflecting the adjacent properties across

10 the alley?

11 MR. BONSTRA: Yes.

12 CHAIRMAN GRIFFIS: So are there vacant

13 lots there or a building close to the street?

14 MR. BONSTRA: No, the buildings that are

15 shown are accurately represented. They have been

16 field measured. The vacant areas are parking and

17 rear yards for the occupants of these buildings.

18 COMMISSIONER HOOD: Mr. Chair, can I just

19 ask?

20 CHAIRMAN GRIFFIS: Yes.

21 COMMISSIONER HOOD: Mr. Bonstra, what is

22 north of the third building which is 1509?

23 MR. BONSTRA: This is an existing

24 building.

25 COMMISSIONER HOOD: Right, but I?m saying

1 what is it? Is it an alley north of this?

2 MR. BONSTRA: North of this, there is

3 actually a smaller one-story building which I believe

4 will be demolish and a vacant parking lot. Then

5 there are other buildings to the north of that.

6 CHAIRMAN GRIFFIS: There is no alley

7 access to 14th Street.

8 MR. BONSTRA: There?s no alley along this

9 block at all. There is no alley that runs east-west

10 in this block.

11 COMMISSIONER HOOD: Let me say this.

12 This is very helpful what you submitted with the

13 diagram. This helps me out a lot with the variance.

14 Thank you.

15 MR. BONSTRA: The second aspect of our

16 discussion today is regarding penthouses. The

17 proposed penthouse on 1509 is shown here. We have

18 been in discussions with the Historic Preservation

19 Review Board on penthouse height. We have inherited

20 some existing penthouses on 1501. This is an

21 existing elevator penthouse. On 1509 this is an

22 existing elevator penthouse. Those will remain.

23 Those are non-complying.

24 In the consolidation of the lot, we run

25 into problems with the laws stating a single

1 penthouse. In this project, we have varying roof
2 heights. So we propose two penthouses. This is a
3 mechanical penthouse which will screen mechanical
4 equipment which as Mr. Baker mentioned is important
5 to bring that out of the theater realm and put the
6 equipment on the roof.
7 As well, we have a penthouse at the rear
8 which is on the third level or the second level roof
9 of 1507 and 1509. That is a screen wall which will
10 screen mechanical equipment behind. That is set off
11 the requisite one-to-one off the roof at variance to
12 the regulations. We have an opening which is not a
13 louver but it is there to allow visibility through
14 from the existing window. The penthouse will have a
15 uniform height but it will have an opening that will
16 be cut in it.
17 CHAIRMAN GRIFFIS: What is the opening?
18 MR. BONSTRA: We anticipate some type of
19 steel mesh that would some visibility, something that
20 we can see through.
21 CHAIRMAN GRIFFIS: How high is that
22 screen wall?
23 MR. BONSTRA: This screen at a one-to-one
24 we?re at about seven and a half feet but we?re going
25 to try to keep that as low as possible.

1 CHAIRMAN GRIFFIS: And the point of that
2 as your submission says is (1) that it?s going to
3 screen the rooftop units that are there but also (2)
4 it?s supposed to somehow deflect the sound of those
5 units.
6 MR. BONSTRA: That?s correct.
7 CHAIRMAN GRIFFIS: Do you think seven
8 feet is adequate to do that?
9 MR. BONSTRA: Yes.
10 CHAIRMAN GRIFFIS: How high are your
11 rooftop units?
12 MR. BONSTRA: The units here are actually
13 in the neighborhood of six to seven feet. Depending
14 on whether they are raised on steel or they are down
15 on a curb on the roof is what we?re exploring now.
16 CHAIRMAN GRIFFIS: Okay.
17 MR. BONSTRA: As I said, we will keep it
18 off the one-to-one and we will keep it as low as
19 possible. That location as you can see is actually
20 above the occupied space of our neighbors in terms of
21 its location. The sound will go up from the screen
22 wall as well this residential building. This is the
23 deck level. We are well above that.
24 The second penthouse which is also a
25 mechanical penthouse it?s screened on 1509. Rather

than conform to the zoning which requires us to be of equal height to our existing penthouse, we would like to keep that as low as possible. In our work with the Historic Preservation Review Board (?HPRB?), we have set it centered on the building. Here again we want to keep this as low as possible. Right now, we?ve shown it at 11 feet.

The requirements for that structure are at equal height off the roof. The present roof slopes about three feet from front to back. It?s a very steeply sloping roof. Rather than conform to that slope, we would like to make our penthouse flat along the top elevation and again as low as possible.

CHAIRMAN GRIFFIS: That?s roughly 11 feet you?re saying.

MR. BONSTRA: Eleven feet, yes. We?re working to keep that down as well.

MEMBER ZAIDAN: Just to make sure I understand on sheet A-1.3 it shows ?- and what I?m confused about is on your model the HVAC units are not there. Am I understanding that correctly?

CHAIRMAN GRIFFIS: Which ones?

MEMBER ZAIDAN: With the screen.

MR. BONSTRA: The model ?-

MEMBER ZAIDAN: No, the other structure.

MR. BONSTRA: Here?

MEMBER ZAIDAN: Yes.

MR. BONSTRA: On the back. The boxes would be within that screen. So they are shown on the drawings.

MEMBER ZAIDAN: Okay. I just wanted to make sure I was following you. I was looking at the model and those HVAC mechanical units are not shown on there. Are you still working on where they?re going to be located?

MR. BONSTRA: Microlevel. We know where they are located.

MEMBER ZAIDAN: Rather than inches.

MR. BONSTRA: Yes.

CHAIRMAN GRIFFIS: What about the number? Is it pretty clear it?s going to be three units?

MR. BONSTRA: We are showing three with an atrium requirement. We have building code requirements for fans, exhausts, smoky vac fans and what have you. We anticipate three at this point.

MEMBER ZAIDAN: Do those units fall within the one unit per roof provision? That?s what we?re discussing is that all those units have to be under one structure, right?

CHAIRMAN GRIFFIS: They have to be

1 screened so yes, we take that and isolate it in that
2 one area. That would be compliant with 411 as far as
3 what I?m hearing in the testimony today because it?s
4 a single enclosure being enclosed by that and it?s a
5 single height. Now the point is obviously they are
6 coming in because they have four penthouses.
7 MEMBER ZAIDAN: Right but in terms of the
8 one on the third floor plan that they were talking
9 about that?s considered one enclosure.
10 CHAIRMAN GRIFFIS: Right. That is.
11 There is not a requirement that you have to put a
12 roof on it. 411 states that you are allowed to keep
13 it open. It obviously makes sense for them.
14 MEMBER ZAIDAN: My point is for example
15 if they would like to add a fourth unit in there it
16 wouldn?t require additional relief.
17 CHAIRMAN GRIFFIS: It wouldn?t but it?s
18 obviously something that we?re looking at in terms of
19 how much space they have and how many units they may
20 put out there because that does go to the impact on
21 the alley side. So it?s something to keep in mind.
22 They are far enough along. Clearly with the atrium
23 there?s a huge load that has to be dealt with there.
24 They are giving the numbers at this point but I
25 would not imagine that it would increase in numbers

1 substantially. Mr. Bonstra, you can correct me if
2 I?m wrong.
3 MR. BONSTRA: No, our goal is to reduce
4 the area of our screen wall and our roof area for
5 these units for a number of reasons.
6 CHAIRMAN GRIFFIS: Right. Let?s go on.
7 Any other questions of the penthouse? Everyone clear
8 on the all the elements under the intriguing 411 that
9 this is before us here? Good. Let?s move on.
10 MR. BONSTRA: Lindsley, the last issue
11 that in fact a zoning issue is the street front
12 requirements with the arts overlay.
13 CHAIRMAN GRIFFIS: Yes.
14 MR. BONSTRA: We have as we described the
15 three buildings. The existing 1501 building
16 presently has solid metal panels --
17 CHAIRMAN GRIFFIS: I?m sorry to interrupt
18 but can you put it up on the easel? We can?t easily
19 see that.
20 MR. BONSTRA: Has solid metal panels
21 which fill long abandoned window openings that have
22 been blocked up. The building to the north, the
23 1507, has garage doors and that?s been filled in over
24 the years. The openings have actually been made
25 smaller. Then the existing 1509 building has windows

1 and doors there.

2 In terms of the 1507, we are actually

3 enlarging the openings and restoring the building to

4 its original aesthetic for historic reasons. As

5 well, we want to open that up. This is the main

6 lobby of the building. So we are creating the

7 maximum opening in the 1507 building that we can

8 possibly obtain.

9 In the 1509 building, we are in fact

10 restoring the existing storefront window and we are

11 restoring the transom windows which you can?t see in

12 this photograph. They are behind these panels. In

13 the model, it?s clear and also on your elevation

14 drawings where that transom window is located across

15 the top of the doors, across the storefront and the

16 door on the other side of the 1509 building.

17 CHAIRMAN GRIFFIS: So you are putting

18 back the transoms but those aren?t going to be vision

19 glass. Is that correct?

20 MR. BONSTRA: In fact there is a theater

21 behind here.

22 CHAIRMAN GRIFFIS: Right.

23 MR. BONSTRA: The intent is that we will

24 have a solid wall which will be a sound wall and the

25 light opaque wall behind.

CHAIRMAN GRIFFIS: A quick clarification because I don?t know about my other Board members but when one says metal panel, I get a little adverse reaction especially when you say the street level. But let?s be very clear on the original one when you are talking about a metal panel. Those are the animated panels, the graphics, that are actually there now.

MR. BONSTRA: Yes.

CHAIRMAN GRIFFIS: And it?s illuminated or not.

MR. BONSTRA: In fact, what we feel is we?re going one step further from the original design. Our intention is to remove these metal panels and replace them with back-lit frosted glass which will give the impression of a window.

CHAIRMAN GRIFFIS: I see.

MR. BONSTRA: It will be more open and more inviting along the street. It will lighten the street here and it will be more animated which is the goal of all parties involved. We feel like we are increasing the animation and the interest along the street trying to bring this back to its original look. We are opening the 1507 building as much as possible with as much glass as possible. The 1509

building we?re restoring all the transoms.

CHAIRMAN GRIFFIS: Then clearly the issue before us under the definition of the display windows is that you?re not exactly meeting that and there is a requirement for not less than 50 percent.

MR. BONSTRA: Yes.

CHAIRMAN GRIFFIS: The intent is fairly clear. This used to be and is trying to be an excellent commercial corridor and you don?t want to have blank areas of large expansive block. So what you are saying if I?m hearing you correctly and in your submissions in order based on the function, you can?t have vision glass. You?re not a retailer so you?re not showing products in the window. But rather you?re making every effort to accommodate the intent and that is to animate and lighten to make it interesting.

In the written submission, it said it?s on the scale of (1) pedestrian but also (2) vehicular which is also an important aspect in terms of the urban design looking at 14th Street. Why don?t we get very specifically this into when you look at the percentage it seems a little extreme? You are going from 50 percent required to 16.8 or whatever it is? How what you are proposing in some of the storefront

areas? We have a new submission that we need to look at too while we do this.

MEMBER ZAIDAN: Before we get into the street front issue, I just have a quick question. Is there an existing curb cut in front of 1507?

MR. BONSTRA: Yes, there is.

MEMBER ZAIDAN: Are you closing that off and consolidating the curb?

MR. BONSTRA: That will be removed.

CHAIRMAN GRIFFIS: And the difference if my understanding is correct for display window base is dimensional and also behind glass. Is that correct?

MR. BONSTRA: I don?t know if I can respond to that question.

MR. PATTON: Why don?t we have Mr. Williams address that?

MR. WILLIAMS: There is no stated requirement in the zoning regulations for the depth of the window. It simply says that it?s to be made of clear glass. In the case of the Applicant here at 1509, the depth will be approximately two feet.

CHAIRMAN GRIFFIS: I see.

MR. WILLIAMS: The other window in 1507, the building we refer to as 1507, will have a varied

depth behind it because there is a wall that forms an angle as part of the entrance. Part of it will taper down to zero and it will be as much as three feet I believe at the southern most point of that window.

CHAIRMAN GRIFFIS: Is everyone clear on that? Excellent.

MR. BONSTRA: Just to step back to the percentages, what you?ll see is a distinction between the consolidation of these two buildings looking at this as a percentage of 1507 and 1509. Then there is a comparison with the whole frontage. Keep in mind that we?ve in this project inherited this condition in some sense. We are trying to make it better.

If you do look at the street frontage of the two buildings, 1507 and 1509, that is more than the 50 percent requirement in itself. If you take out the transom windows, it?s not clear in the code that there is a distinction between transoms and I don?t make a distinction personally. Then you?re down just below the 50 percent mark. We feel like we are in conformance on the 1507 and 1509. Really what skews our number is incorporating an existing condition of the 1501 building which is solid and will be solid.

CHAIRMAN GRIFFIS: Okay.

1 MR. PATTON: We?ll proceed to Mr.
2 Williams if you would state your name and capacity.
3 MR. WILLIAMS: My name is Lindsley
4 Williams. Good morning, Mr. Chairman. You have a
5 report from us on this case. It tried to lay out the
6 excitement of the area as the opening part. To just
7 mention, I want to make sure your attention is
8 focused on the fact that this is really blossoming
9 area of the District of Columbia. It is Arts C-3-A
10 Overlay District. We are now seeing the success of
11 any number of things coming together with close to
12 600 housing units coming on-line ?-
13 CHAIRMAN GRIFFIS: Indeed, I don?t think
14 we need to do that. In fact, we?ve approved a lot of
15 those.
16 MR. WILLIAMS: Yes, you have.
17 CHAIRMAN GRIFFIS: We are darn familiar
18 with that neighborhood.
19 MR. WILLIAMS: This is part of the
20 Theater actually bringing particular life to the
21 meaning of the greater 14th Street historic district.
22 That?s why we?re here in front of you. The Board
23 from time to time asks people in my position how does
24 this relate to the comprehensive plan. The
25 comprehensive plan, land-use element speaks of this

as being an area for mixed retail at a lower density retail along with moderate density housing.

The more significant part of the comprehensive plan is the fact that it is part of the Arts Overlay. I would bring to your attention the specific provisions of the comprehensive plan about the Arts Overlay. I have a submission to you which is simply a recitation of the law if you wish it. This plan that is before you is the embodiment of the principles of that plan not a strict zoning test but it should be something that you should take into your thinking as you formulate your opinion on the case.

CHAIRMAN GRIFFIS: Okay.

MR. WILLIAMS: We went through as Mr. Baker indicated a series of steps with HPRB and an early set of plans had a different array of rooms on the second floor which he could explain in more detail or I can. Suffice it to say that we had to move things around to accommodate the desires and directions of the HPRB.

That?s what brought us to the need to use the space in the northeast corner which we started out as calling the area variance. You may want to have it be looked at as the special exception. We feel that those are the circumstances. We?ve

1 identified the three prongs in our submission as to
2 why we feel that?s satisfied.
3 To address Mr. Chairman?s point and Mr.
4 Zaidan?s point, the building is located directly
5 across alleys from residential uses. The building
6 that is on P Street in your model here has glass
7 block windows only on the alley face. There is no
8 required window providing required light and air into
9 that apartment from the alley that separates it from
10 the building that is before you today.
11 The property on Kingmon Place, the small
12 block building that you saw which again has windows
13 shown in the model, is removed by a distance of
14 approximately 30 feet from the alley so that it is
15 removed a total of about 40 feet from the proposed
16 structure. The third floor windows which is the top
17 floor of that building sits at a level below the
18 level of the proposed roof level above the two
19 stories of the proposed theater complex on which the
20 air conditioning units would be located.
21 The measurements are in the diagram which
22 you have as to the frontage requirement. We believe
23 that we have satisfied every bit of the spirit of
24 this and, Mr. Zaidan, you are right by removing the
25 curb cut. We removed one of the other things that?s

in the regulations which is in effect a requirement that says you should not have driveways and curb cuts going across it.

Now the Regs say to required parking and loading but the spirit of it is let?s not have vehicles crossing sidewalks on 14th Street. With this plan, that will come to an end at this location. I believe that will make this entire frontage from P to Q Streets vehicle free across the pedestrian sidewalk area.

So for any number of reasons, I feel this is an appropriate plan. We have met every test that is required. I believe I have touched on everything in the 774 rules with the possible exception of 774.5 which has to do with adequate off-street functions, parking and loading. That?s brings us to the fact that this addition in the northeast corner which is a very minor amount of square footage is utilitarian, service space. It provides the exits from a required fire stair. We?re not providing activity level back there, the type of sub-use or specific use within the building that would generate any traffic or additional traffic whatsoever.

CHAIRMAN GRIFFIS: Looking at 774.5, it does not go directly to just what you would be

1 impeding into the rear yard. It?s fairly clear that
2 it lays out what the building plan shall include
3 which is provisions. Now parking is an issue in the
4 application that I think we?ll address. My thought
5 in reading 774.5 is the fact that if you
6 satisfactorily address as you have in your written
7 submission the parking aspect of this then that is
8 actually satisfied for the special exception for the
9 rear yard. Let?s not go too much further into that
10 because we?re going to get the detail with the rest
11 of the parking. Does that make sense?
12 MR. WILLIAMS: I do understand you, Mr.
13 Chairman. I believe the position of the Applicant is
14 that we believed that pursuing the variance that we
15 did not have a parking requirement. As the materials
16 submitted indicated, each of these buildings is a
17 contributing building certified to that effect and we
18 believe that the provisions of the Zoning regulations
19 both as to loading and as to parking grant a waiver
20 of the need to satisfy on-sight parking at this
21 location. Indeed as a practical matter, these are
22 buildings that have essentially no basements. To try
23 and put parking on-site would be functionally
24 impossible at this point. It would rip up the fabric
25 of the buildings. As we said, we believe it?s not

1 necessary.

2 Moreover as you know when you took up the

3 question of the Atlantic building in BZA Case No.

4 16892, this issue was debated and discussed. I

5 believe you concluded at that point that the waiver

6 provisions did apply. Now Atlantic was providing

7 parking to some extent but the question is whether or

8 not there is an absolute waiver out as we believe

9 there is.

10 CHAIRMAN GRIFFIS: That?s a good example.

11 The Board probably actually thought about that in

12 looking at this. I don?t think that was definitive.

13 So I would certainly not concur that it was a

14 definitive situation. But here is the logic that I?m

15 hearing from you and in your written testimony is the

16 fact that these are pre ?58 buildings clearly in the

17 non-conforming terms of your requirement say that you

18 would not be required to put the parking in. When

19 you put an addition on to it, there is a parking

20 provision that would get kicked in. Your point is

21 that in fact as a contributing buildings and

22 structures that requirement is then removed.

23 MR. WILLIAMS: Right.

24 CHAIRMAN GRIFFIS: That?s the kind of

25 matrix that you are looking at. I think that?s

clear. Board members, any questions on that? Good.

MR. PATTON: Mr. Chairman, I would like to introduce Emily Eig. Please state your name and position. She?s going to deal with the historic aspects of this very briefly.

CHAIRMAN GRIFFIS: Okay. She needs to be sworn in. Ms. Bailey, can you swear in Ms. Eig?

(Witness sworn.)

MS. EIG: Good morning. My name is Emily Hotaling Eig. I?m an architectural historian and preservation consultant with the HT Traceries. You are aware that we have been to HPRB and that all issues have been resolved with the exception of one which has to do with the display windows along essentially the 1509. Last week after many meetings and considerable discussions, we submitted to HPRB office and to the Office of Planning via that a memo that presented a compromise certainly that we think meets the needs of the Office of Planning.

In speaking with HPRB staff, Steven Calcott (PH), there were four issues that he particularly wanted to express that pedestrian interest, changeability, relevancy of display to occupancy and animation should be part of the windows that were in the entire project. The window proposal

that was at the original 1501 which is now Studio Theater and will remain Studio Theater, there was no issue about that. They were replacing metal with glass and it was very successful as was the 1507 clear glass entry which will become the main lobby.

At 1509, however, we originally proposed an opaque glass that would have an image of a face similar to what was on the windows at 1501. We have changed our proposal. We are proposing now a clear glass that would be decorated with this frosted face so that it would be a reverse thing and open into this two foot space. The space would be accessible for changeability. Any display would be relevant as in related to acting in the theater and to some degree what would be exactly on display is very far in the future for this planning. The animation that might occur with that similarly is something that is in the future.

The idea though is that it should be something that we think then would meet with the clear glass the requirements of zoning and also meet the requirements of the theater that there would be an association between 1509 and the rest of the buildings. That was very important that because we are expanding into these other buildings that have

1 not been associated with the theater that the
2 association be clear and evident to both passer-bys
3 as well as vehicular drivers. We hope that will be
4 satisfactory. We have not heard a response and are
5 waiting for obviously this report. But we think that
6 it does meet the test.
7 CHAIRMAN GRIFFIS: Okay. It seems like
8 the successful resolution to this is that it?s going
9 to be success for the theater. Clearly this was an
10 announcement of where you were going and you can see
11 it from every direction. That?s going to be very
12 important. Then connecting the building as you say
13 will also be important in terms of acclamation but
14 also just in its stature on that corner on 14th
15 Street. There it is. Any other questions? Good.
16 MS. EIG: Thank you.
17 MR. WILLIAMS: Thank you.
18 CHAIRMAN GRIFFIS: Let me follow up with
19 one more piece because this is in flux and in design.
20 We?re not going to get into design on this thing.
21 We?re going to put all full faith in their
22 responsibility of doing it successfully. There is
23 some tension between scale. You testified a little
24 bit and certainly in the written submissions it?s
25 talked about quite a bit. What should this be?

1 Should it be on a scale of pedestrian? When you walk
2 up, it?s something you read in the window. Or is it
3 of the larger scale? In summation, what is the
4 thinking? It will be a mix.
5 MS. EIG: That is correct. In speaking
6 with Steven Calcott, he had talked to the Office of
7 Planning and expressed some ideas of how we might
8 achieve that so it?s something that would be of
9 interest to the pedestrian but not visible
10 necessarily to the vehicular driver. Those faces
11 which are clearly something that can be seen from
12 people walking many blocks away as well as the drive
13 is evidence. So it will be a mix.
14 CHAIRMAN GRIFFIS: It seems to almost
15 trademark for Studio now.
16 MS. EIG: Absolutely.
17 CHAIRMAN GRIFFIS: After all this is a
18 theater so it might as well be theatrical.
19 MS. EIG: In fact the Logan Circle
20 Preservation groups explicitly expressed their
21 interest in retaining the faces because they felt it
22 was the signature of the Studio Theater.
23 CHAIRMAN GRIFFIS: Good. I would
24 absolutely agree with that. I don?t know how other
25 Board members feel. Mr. Hood.

COMMISSIONER HOOD: Mr. Chairman, I?m looking at the submission of the diagram. I was just wondering. Is there another entrance besides on 14th Street? Is there one on P Street?

CHAIRMAN GRIFFIS: Yes, there?s a P Street entrance.

COMMISSIONER HOOD: Okay. Maybe I?m not seeing it.

MR. PATTON: Why don?t you address that.

MS. EIG: Currently there is the existing entrance which is at 1433 P Street. That entrance will not be abandoned but it will not be the main entrance anymore. The main entrance to the theaters will be on 14th Street so that there will be much more liveliness on 14th Street as well as continued use on P Street.

CHAIRMAN GRIFFIS: Is that right? That?s interesting.

COMMISSIONER HOOD: Let me just ask this too, Mr. Chair. When you bring things into the theater, do you go through the public alley? Is that where you unload?

MR. PATTON: Mr. Baker, why don?t you address that?

MR. BAKER: Yes, deliveries are currently

1 made on P Street but they will be made in the new
2 alley.
3 COMMISSIONER HOOD: So currently right
4 now you basically just double park.
5 MR. BAKER: Loading and unloading.
6 COMMISSIONER HOOD: Does that cause any
7 problems?
8 MR. BAKER: It hasn?t.
9 COMMISSIONER HOOD: Thank you. Thank
10 you, Mr. Chair.
11 CHAIRMAN GRIFFIS: Mr. Etherly.
12 MEMBER ETHERLY: Thank you, Mr. Chair. I
13 wanted to simply echo your comment about the
14 animation of the street frontage along 14th Street and
15 remaining true to the current animation that you have
16 at the existing site. It is trademark.
17 What I?m struggling with is a question
18 that we have come up often. I?m trying to get a
19 sense of something. It sounds like you are still in
20 flux in terms of figuring out what?s exactly going to
21 happen with that window frontage on 1509 but the
22 frosted opaque type of glass is the direction in
23 which you are heading. Is that correct?
24 MS. EIG: No, actually on 1509 we will
25 not be doing an opaque glass. It will be a clear

glass that will be decorated. The decoration is the face but that meets the zoning requirements. If I can speak for HPRB with what our understanding was, it was that they did not want to have a situation where it was a solid piece of glass that you could not see through or a metal panel where there had been a display window.

We originally proposed an opaque glass to be placed in there. This change to a clear glass and to the fact that there would be this display space available behind there it more than meets we believe their requirements with these four issues of pedestrian interest, changeability, relevancy of display to occupancy and animation.

Perhaps I can put it in context with this. There is a 7-11 that is on 14th Street. They intended to completely block off their windows with some kind of a film. The neighborhood did not want that. It was a retail establishment. They felt it should be used for display as the regulations require. Any agreement was reached between HPRB and the neighborhood that panels that would display the history of 7th Street would be put up.

MEMBER ETHERLY: Okay.

MS. EIG: In this case, it?s not a retail

1 establishment. Yet we are trying to meet the
2 requirements. Similarly the relevancy issue is that
3 they did not want another display of 7th Street. They
4 wanted to do something related to some aspect of the
5 theater.
6 MEMBER ETHERLY: That?s helpful. That
7 gives me a little bit of a snapshot. I guess what
8 I?m getting at is you?re going to be retaining the
9 existing street frontage elements that you have at
10 the current site.
11 MS. EIG: That is correct.
12 MEMBER ETHERLY: I?m trying to get a
13 sense for essentially the bookend effect on now what
14 will be the main entrance for the new theater. So
15 you?ll have a somewhat different type of treatment
16 from the presentation standpoint at 1509 versus what
17 you currently have at 1501.
18 MS. EIG: It will be different from what
19 is currently at 1501 and it will be slightly
20 different from what will be in the future at 1501.
21 You can see in this illustration that there will be
22 faces at 1501.
23 MEMBER ETHERLY: But there will be
24 slightly a different presentation. Was there any
25 discussion at HPRB about maintaining consistency

1 between the two?

2 MS. EIG: They in fact were looking for

3 not maintaining consistency. They bawled on that

4 which was what our original intention was.

5 MEMBER ETHERLY: All right.

6 CHAIRMAN GRIFFIS: Well Mr. Etherly made

7 a comment to me which is why I asked him to talk

8 because it was well said. It is creating a

9 consistency with the bookends could be quite

10 successful. Of course I promise we aren?t going to

11 design this thing and here we are. And then you have

12 the pedestrian element of the entrance. That?s where

13 you are drawing people. You?re not drawing them to

14 read windows.

15 MS. EIG: I dare say that was exactly how

16 we thought it was. Your sentiment is where we hope

17 to be but it is not where we are right now. There is

18 a variation of that.

19 COMMISSIONER HOOD: Mr. Chairman, may we

20 provide HPRB a transcript because I agree with you.

21 CHAIRMAN GRIFFIS: Very well. I think

22 it?s clear on our opinion of that issue.

23 MR. PATTON: Mr. Chairman.

24 CHAIRMAN GRIFFIS: Yes.

25 MR. PATTON: Since Studio Theater has

1 been there just as a historical note, what we find
2 ourselves sometimes as we do in the District of
3 Columbia caught between two entities or governing
4 bodies.
5 CHAIRMAN GRIFFIS: Got to love this city,
6 don?t you?
7 MR. PATTON: Yes. And also this is a
8 changing area where many years ago it was very tough
9 ?to walk? as a pedestrian. That?s evolving changing
10 too. That?s the other issue here we?re trying to
11 deal with.
12 CHAIRMAN GRIFFIS: Okay. I don?t think
13 we?re going to give direction but it?s clear on what
14 this Board supports. As I said, a successful
15 resolution will be successful for the theater.
16 MR. WILLIAMS: Mr. Chairman, it may be
17 useful to look at Section 1903.4(a) of the
18 regulations as a partial additional answer to Mr.
19 Etherly?s question. What that says the window should
20 be is ?The windows shall use clear or low emissivity
21 glass except for decorative or architectural accent.?
22 Applicant here proposes to use clear glass to which
23 there will be applied an image of a face. That?s why
24 you see it in the reverse on the plan diagram in
25 front of you.

1 Unfortunately the model didn?t keep up
2 with that last minute change. But in this sense what
3 you have in the bubbled plans absolutely comports
4 with 100 percent of the requirements of the Zoning
5 regulations to the maximum extent of the of the
6 available rough openings and the historic elements of
7 1509 and 1507.
8 CHAIRMAN GRIFFIS: Okay. Anything else?
9 MR. PATTON: Mr. Chair, that completes
10 our testimony.
11 CHAIRMAN GRIFFIS: Excellent. We?re
12 running a little behind schedule so let?s move on to
13 Government reports. We do have the Office of
14 Planning with us today. Their report is Exhibit 31.
15 Good morning, sir.
16 MR. JACKSON: Good morning, Mr. Chairman
17 and members of the Board. My name is Arthur Jackson
18 of the D.C. Office of Planning. I will briefly go
19 through my report highlighting the issues that we
20 think have been raised by this application.
21 Essentially we?ll go straight to the compliance with
22 the Zoning regulations in regard to the variances and
23 special exception requests.
24 With regard to the variance for the rear
25 yard requirement, we think the variance application

1 has sufficient uniqueness and exceptional conditions.
2 In fact with difficulty that does meet the standards
3 and minimum impacts on the surrounding area, we
4 concur that both variances can be granted without
5 substantial detriment to the public good, without
6 impairment of the intent purpose and integrity of the
7 zoning plan as embodied by the Zoning regulations and
8 map.
9 We also concur with the Applicant?s
10 statement with regard to the standards that are met
11 under 774.4 from the special exception from the rear
12 yard. I would caution that it may be useful to send
13 this to the Zoning Board to follow through with
14 Section 774.6 just to see if there are any other
15 comments from other agencies. I wouldn?t think so
16 but there it is.
17 Now the Office of Planning raised the
18 issue of the parking but only because there?s an
19 indication that there?s an actual increase in the
20 number of theater seats that are on-site. The
21 Applicant explained that their philosophy of how the
22 seats would be used but as an increase and intensity
23 on the site relative to the theater seats would seem
24 to merit a parking requirement. However the
25 Applicant was confident that they didn?t need that.

1 That in itself would not present a problem with them
2 in terms of additional parking requirements. That
3 issue is just raised for your information.
4 Now as to the special exception for the
5 three roof structures and enclosures with different
6 materials, we think that Applicant?s proposal with
7 their presentation and their report and the reasons
8 for that is so we can support it. Based on that
9 information, we think the proposed changes can be
10 provided consistent with Zoning regulations.
11 However with regard to the special
12 exception for display window requirement, we have
13 received and reviewed the Applicant?s additional
14 submittal with regard to addition provisions that
15 they have decided that they would offer and we still
16 find it lacking. Frankly we are still looking for
17 more of an interest and vitality. Maybe I should
18 step back and say why we used these terms.
19 What we are looking for in most cases the
20 display windows in themselves would show the interest
21 and vitality of on-going commerce. That is to say
22 that you would just by virtue of passing by the
23 windows or being in the environment you understand
24 the vitality of what goes on within that shop or
25 operation. For example, the existing garage and the

former lighting store, that would add vitality interest to the street because that?s an on-going activity.

So it?s not that we would like to have a short theater presentation every time you go by the store. It?s just that there would be some indication of the vitality and the activities inside the building that are outside. At this point what we have is a Thespian fortress that?s on the corner that you cannot see or have any feeling for what goes on within the building. What we are asking for is for the Applicant through the limited space that?s left in the way of display windows to reach out to the community and make that connection.

So during the day, it?s just not a marquis panels with faces that a pedestrian is impacted with. But something that?s more integral to the vitality that?s going to be occurring on the other side of the street which is endemic to the additional construction of retail stores, restaurants, offices and other types of uses that are going to be an integral part of the Millennium Building.

With that after going through 30 years of operation and a 130 plays, by this time we should

1 have more than just something that?s in the future.
2 We just want some greater definition of what types of
3 things that they plan to do with this space. At this
4 point we don?t have that.
5 With regard to continuing the theme of
6 the faces on panels, we think it?s a great idea. But
7 why can?t the theme of that face be on the back wall
8 of that display window and their interacting
9 activities such as sets or whatever else they want to
10 put in the front be in front of the glass? This way
11 you have clear glass and they are facing the back
12 which makes no difference to a passing car because
13 they can see it any way. This is just an example.
14 It?s not something that we discussed with the
15 Applicant. In the interim there?s that connection
16 that reaches out to the community and draws them in.
17 These are things that I think should have
18 been resolved some time ago. I?m not sure why it?s
19 so difficult for a theater operation of this
20 significance because they are nationally known. It
21 just takes a little vision. At this point, we just
22 don?t see that we have enough of a package to really
23 go along with the reduction in area that?s been
24 requested.
25 We support the proposal. We support what

1 they are going to bring to the community with regard
2 of increasing the theater?s presence. But if that
3 presence is only for two or three hours in the
4 evening then we think it?s missing opportunity to
5 take over a third of the block and keep it as vital
6 as it is now and make it more so.
7 That?s really only the area where we
8 disagree with the Applicant in terms of their
9 submittal. We just think that at this point their
10 vision and theme for the little display space that
11 they claim that they will provide is incomplete. We
12 would like to see a more complete presentation on
13 that. With that, I will close for comments.
14 I also wanted to highlight one issue of
15 procedure. I would think that depending on what the
16 Board decides to do whatever provisions that are made
17 to meet the requirements that have been addressed or
18 design elements that may be approved as part of the
19 last special exception should be made conditions of
20 the special exception as per the last provision of
21 1901. With that, I will conclude. Any questions?
22 CHAIRMAN GRIFFIS: Thank you, Mr.
23 Jackson. Let me ask you two things. First of all
24 when you talk about how one might animate these
25 windows for the theater, do you pull up a visual

existing condition for yourself? Is there something you can tell us that you?ve seen before that it worked?

MR. JACKSON: Actually, no. We fielded some ideas with the Applicant. Again looking at this being a professional theater, we knew that there were people in their shop that could come up with at least types of themes that they might want to pursue in this display window.

CHAIRMAN GRIFFIS: Okay.

MR. JACKSON: There were some talks about posters but posters are being relegated to another space that?s next to the entrance doors. It?s something we would like to see them propose and we can respond to. Again we don?t want to design it for them.

CHAIRMAN GRIFFIS: Right. I appreciate that and I appreciate the articulation of the issue because that?s always helpful in terms of addressing the problems. Do you not see 1507 giving you adequate street frontage to satisfy the different scales the more interactive piece?

MR. JACKSON: 1507 would be an animated space for the time the theater is in operation which would generally be in the evening.

CHAIRMAN GRIFFIS: Yes but you have the ?- there.

MR. JACKSON: But what we are doing is we?re taking the real display window and what I?m suggesting is turning the real display window, the only true window that?s going to be left into a backdrop rather than being the premier space because even the frosting of the glass to me is still opaque. If they really want to have the image, why not put it on the back wall and keep the front window clear and then put the element that you are going to use to reach out to the community that you are serving.

Remember this area is changing so this is going to be the center of our activities during the day. I can even envision the lobby becoming a coffee shop of some type because people want to come and be a part of the theater. But that?s long term. At least in the interim, we wanted to see them make the most of the real true display space that?s left. The only one that?s really available for the 200 foot frontage that this building will occupy, almost a third of the square. But that?s what we would like to see.

CHAIRMAN GRIFFIS: Good. Any other questions from the Board?

1 COMMISSIONER HOOD: Mr. Chairman.
2 CHAIRMAN GRIFFIS: Yes, Mr. Hood.
3 COMMISSIONER HOOD: Mr. Jackson, if I
4 understand you correctly, you mentioned 774.6. You
5 cautioned us. I?m sitting down on this end and I may
6 not have heard you correctly. So I?m going to ask
7 you to reiterate that. But you cautioned us to do
8 that and I was always under the assumption that it is
9 taken care of prior to coming before the Board. If
10 you can just expound on that to help my
11 understanding.
12 MR. JACKSON: What I was alluding to was
13 the Chairman noted that there?s a provision that
14 allows for special exception. The last provision,
15 section 774.6, says that the Board would refer the
16 application to the agencies for comment. It?s just a
17 follow through with that so if they have any
18 questions or comments they can refer that back to the
19 file.
20 CHAIRMAN GRIFFIS: But this application
21 has been referred to the agencies.
22 MR. JACKSON: Yes, but only for variance,
23 not for special exception.
24 CHAIRMAN GRIFFIS: Right.
25 MR. JACKSON: It?s a lesser standard so I

wouldn?t think there would be a problem. But procedurally you might want to follow through with that.

COMMISSIONER HOOD: Thank you.

MEMBER ZAIDAN: Just to make sure I?m clear on your issue with the street frontage. It?s your position that you feel that the glass is not animated enough if any. It?s too opaque and too static so to speak. You want something more interactive.

MR. JACKSON: Yes, but it?s more than that. We are looking for themes and ideas from the Applicant about how they would address the animation issue in terms of interior glass. Now remember these are basically just going to be shadow boxes. They are only going to be two feet deep so they can?t be but so much. But with the tools available to the Applicant, we think they can come up with what types of themes they would like to emphasize in that space. Beyond that if they are frosting the front of the glass, then you don?t see what?s going on inside.

It would still be worthwhile that if they want to keep the image, throw the face on the back wall. This is a suggestion that we haven?t made to the Applicant. Then you still have at least two feet

in which you can put in those elements that will make a linkage between the pedestrian passing by and the activity and the excitement and the elements that make the Studio Theater what it is.

MEMBER ZAIDAN: So you are saying in the two feet in depth put something in there that would interact with the pedestrian better than these opaque frosted glass windows.

MR. JACKSON: That?s what we are encouraging, yes.

CHAIRMAN GRIFFIS: Good. Any other questions of the Board? Cross examination?

MR. PATTON: Mr. Chairman, thank you. I just think I have one question of Mr. Jackson and perhaps a follow-up depending upon the answer. I realize that your interest in 14th and P Street area, Mr. Jackson. I would just from a zoning perspective and Zoning regulation perspective I?m curious as to what authority is in the Zoning regulations for seeking this type of ?conformance? or input.

MR. JACKSON: What we are basing it on actually is just looking at Section 1906.1(c) which talks about the architectural concept. We?re extending that to include the fenestration that?s put on the building. The use of the glass is part of

1 that fenestration. This is all a discussion about
2 the use of glass and the glass per se is the display
3 windows. We are suggesting that anything that blocks
4 the display window should not be put in place in
5 front of the window but should be behind it on the
6 rear wall. That?s point one.
7 Point two is that the whole idea of the
8 display space as been described by Mr. Williams is
9 really because of the vitality of commerce that would
10 go on a normal store. This is not a normal store.
11 It?s a theater. So how do you display the vitality
12 of the activity as it relates to the theater? We?re
13 leaving that up to the Applicant but we?re saying
14 that if you are not going to do the 50 percent of
15 display space and you are going to do 16, we think
16 that 16 should be of a quality that would be
17 sufficient to carry the load during the day when the
18 theater activities are not going on.
19 Now there may come a time when they have
20 daytime theater. But in the interim we don?t think
21 that a lobby with glass windows that has no activity,
22 glass panels that are really more for vehicles
23 passing by and taking the only true display windows
24 that are left on that facade noting again that the
25 doors there won?t even work and will part of the wall

is sufficient to address the architectural standard as the way we interpret it.

MR. PATTON: Could I ask Mr. Williams for a stated clarification as to one of Mr. Jackson?s statements on the window?

MR. WILLIAMS: Mr. Jackson has several times used a figure of percentage in the 16 or 17 percent area. That was a number that we had supplied earlier that included some mathematical errors that I made. After we recomputed and went through it with the transom exercise and the additional material we submitted just for the record, I think the Board should be aware that we compute this out so that the coverage requirement is at the 30.2 percent mark of a relative standard of 50 percent across the entire building frontage.

As noted earlier, this rises to 53 percent satisfying the requirement if you look only at the two buildings that are the core of renovation plan that is before. It is only by virtue of the necessity which Mr. Bonstra could talk about in more detail to do this a single building of record that brought us to the issue that we?ve been addressing.

CHAIRMAN GRIFFIS: Okay.

MR. WILLIAMS: The second point, Mr.

1 Chairman, is that the impression I get and perhaps
2 Ms. Eig and Mr. Bonstra could clarify but we?re
3 anticipating that only a small proportion of the
4 glass would be frosted. It?s not like it?s going to
5 be made opaque. Rather what we?re trying to do is to
6 bring out as shown in the exhibit before you a
7 reverse of the faces.
8 The rest of it would be clear glass
9 leading to have clear view all the way back through
10 to the entire two foot depth where another face might
11 appear and other things in between. We feel that in
12 order to have it read at the street level by passing
13 cars there has to be something that is on a part of
14 that plane of the glass to provide the thematic
15 coupling even though it?s not a perfect match.
16 MR. JACKSON: Mr. Chairman, I did receive
17 Mr. Williams? recalculation of the area and I
18 acknowledge it at this point. I?m basically still
19 going back to my original report because that?s
20 what?s in the original record.
21 CHAIRMAN GRIFFIS: The percentage has
22 been clarified for us but Mr. Jackson?s point of view
23 and the Office of Planning?s opinion is still
24 articulated whether that fluctuates or not as is this
25 Board?s. Boy, I didn?t think we?d be spending a

whole lot of time on that. Just for additional clarification then at the 1507 you have the entrance there which obviously will be clear glass. But there seems to be a triangle shape that?s been created behind some of this store front. Is that exhibit space? Actually leave that elevation up if you wouldn?t mind, A2.1. Just point to 1507.

MR. BONSTRA: The triangular space you are asking about.

CHAIRMAN GRIFFIS: The small triangle. Clearly you have a foyer. You are entering in the door.

MR. BONSTRA: This here?

CHAIRMAN GRIFFIS: Yes.

MR. BONSTRA: This is clear glass. Keith, help me but this would be the area where the posters.

MR. BAKER: There are display cases on the slanted wall for posters.

CHAIRMAN GRIFFIS: I see.

MR. BONSTRA: And that would change.

CHAIRMAN GRIFFIS: In the elevation, that?s a single bay. It?s fairly distinctive how that happens. It?s the bay. That?s what we would be looking at. There we have a depth of a display area.

MS. EIG: If I might note that it historically was open to that degree. It?s been closed off recently.

CHAIRMAN GRIFFIS: Right and that was stated.

MS. EIG: Then there was a garage door. So there is actually an increase of glass there.

CHAIRMAN GRIFFIS: Excellent.

MEMBER ZAIDAN: But the thing about that wall is that it?s angled. It seems that the display that?s more oriented to people coming in the foyer. How visible would that be to people walking down the street?

CHAIRMAN GRIFFIS: When they are walking down the street, they will be right in front of the glass so it will be pretty visible.

MS. EIG: The intention is that is it visible to the pedestrian walking down the street.

MEMBER ZAIDAN: Somebody walking south down 14th maybe not. I see what you are saying.

CHAIRMAN GRIFFIS: Does the building rotate while people are going?

(Laughter.)

CHAIRMAN GRIFFIS: It?s an interesting provision. It?s a very important provision in the

1 regulation. The Office of Planning hard stance on it
2 is well received in my mind in terms of insuring the
3 intent of the overlay. Clearly how this theater fits
4 into that is an important one. The detail and the
5 specifics we may disagree with.
6 Let?s move on. We have ANC report. Is
7 the ANC representative 2-F here today for this
8 application, Studio Theater 17005? If not, it is
9 Exhibit No. 26. They were recommending approval. It
10 does meet with our regulations and we give them great
11 weight if I?m not mistaken. Are there any questions
12 from the Board regarding that comment? Are there any
13 from the Applicant regarding the ANC report?
14 MR. PATTON: No questions.
15 CHAIRMAN GRIFFIS: Very well. Let?s move
16 on. That?s all I have noted for Government agency
17 reports and submissions unless the Applicant is aware
18 of any other.
19 MR. PATTON: Mr. Chair, you might point
20 out the Logan Circle also submitted a letter for the
21 record.
22 CHAIRMAN GRIFFIS: Right. The Logan
23 Circle Community Association which is Exhibit No. 29
24 in the record was a letter of support. Good. That?s
25 all I have noted in terms of submissions unless you

1 are aware of any others. Very well.
2 Is there anyone else here today to give
3 testimony either in support or in opposition to
4 Application 17005 for the Studio Theater, Inc?
5 Support or opposition or testimony? Not seeing an
6 indication of anybody wanting to speak to this, does
7 anyone have any store front display experience that
8 wants to chime in? Not having that, let?s move on to
9 closing. Mr. Patton, if you have any additional
10 closing remarks or rebuttal testimony.
11 MR. PATTON: In light of the time
12 constraints, I don?t, Mr. Chairman. I just would
13 like to point out for the record that I believe
14 Applicant has met his test for proving even variances
15 as well as special exceptions. Due to the time
16 constraints and the long period that we have been
17 working on this, we would at least seek respectively
18 a decision from the Board as to a decision today if
19 at all possible.
20 CHAIRMAN GRIFFIS: Any last comments or
21 clarifications from the Board? The fact of the
22 matter is that the tests have been made and it?s been
23 well and completely laid out in the oral testimony
24 and also in the written testimony. Clearly the rear
25 yard in terms of the uniqueness of this there are

1 several issues; one just being the existing and then
2 contributing historic structures, the aspect of the
3 work with HPRB moving the mass of this building and
4 then obviously the practical difficulty that?s
5 created in not being able to sufficiently build out
6 to that area which actually had been occupied which
7 also lends itself to another uniqueness for the
8 structure that will be removed and then replaced.
9 The third prong of that is clearly and easily met.
10 Now that of course is the variance laid
11 out. We had changed it to special exception but it
12 is a lesser burden. We did speak to the fact of any
13 sort of negative impact on that. The rest, we go
14 through 411 of course with the penthouses. That?s
15 very well stated and clear about what the issues are
16 there that are existing.
17 There is the requirement for new clearly
18 adding to existing buildings especially in an
19 historic district or in contributing buildings. It?s
20 difficult from a design aspect as it does impact
21 greatly the architectural quality of the buildings.
22 Penthouses not being one haled as some great
23 architectural elements often it?s appropriate to hide
24 them. That?s been successfully done here.
25 Obviously there is still the direction of

limiting the penthouse height on the existing 1509 structure. Again everything else speaks in the record. I don?t need to address it. I am perfectly prepared to move forward today except for one issue. Out of some deference to Office of Planning, I would like to hear from the Board if in fact they wanted to set this for decision for a week to see if there is further resolution.

The Board is fairly clear on what they saw in terms of the store front and the direct jurisdiction that we have for the regulations regarding the arch overlay and the display area. It?s twofold. I?m open for the Board?s opinion to set this for decision making. In my mind, this is a design issue and not a Zoning regulation issue. The difficulty of course is if we release this or approve it or deny it which would take care of itself then the continuing dialogue for the design issues may be stalled essentially. Have you gotten final approval from HPRB?

MR. PATTON: Conceptually.

CHAIRMAN GRIFFIS: Just conceptual. And you are going back for preliminary permit review?

MS. EIG: It?s delegated to the Staff.

CHAIRMAN GRIFFIS: It?s delegated to

Staff which means obviously you are still working on that issue. That?s one of the aspects that the HPRB Staff has brought up which is the treatment of these windows. Is that correct?

MR. PATTON: Yes.

CHAIRMAN GRIFFIS: So, Board members, as I?ve stated before I would love to design this. It?s a fascinating piece and we could spend all afternoon doing it but we really need to step back and look at the intent and the direct regulations state the certain animation of the store front and if you feel that has been satisfied then we can move on.

MEMBER ZAIDAN: I concur with your opinion. It seemed like there was a gray area in terms of the details with the glass. Mr. Williams noted that part of it will be transparent and there are some opportunities to do some animation behind the wall in certain areas. So that?s a detail that can be worked out to get some consensus on the design. I do think that the street frontage is an important part of the arch overlay so it?s appropriate for us to go that route.

As far as the other areas of relief requested, I would feel comfortable moving forward on those aspects today. But it might be better to do

all of the decision making since there are still some additional approvals to be gotten from the Applicant if I understand the HPRB section correctly.

CHAIRMAN GRIFFIS: Right.

MEMBER ZAIDAN: Do we have to issue this order first?

CHAIRMAN GRIFFIS: That?s the more logical sequence as what will happen for HPRB as it?s been delegated to Staff if my understanding is correct. They will work until the permit?s mission, the actual document that?s submitted of which our order would have to be attached if it is successful. Then the Preservation Staff would take one more approval review of the actual permit document. So this is an appropriate sequence if it comes through us and then continues working to permit with the Preservation.

MEMBER ZAIDAN: I?m in concurrence with your position in terms of setting this for decision making and allowing some more time to get the issue of the street front resolved with the Office of Planning.

CHAIRMAN GRIFFIS: I see. Well, let me clarify because that wasn?t my opinion. I was just laying it out.

1 MEMBER ZAIDAN: I?m sorry. I thought it
2 was.
3 MEMBER ETHERLY: Mr. Chair, I?m
4 comfortable moving forward today. I agree with your
5 comment regarding the Office of Planning?s position.
6 It?s an admirable stance to take because it?s
7 important to remain very true especially when you are
8 talking about street frontage. We have an
9 opportunity here. But I think opportunity has been
10 amply taken advantage of by the Applicant based on
11 the presentation that has been made today.
12 I don?t think enough shrift has been
13 given to the significance, the character of the
14 existing street frontage that you have that?s become
15 part of the fabric of that community there. We heard
16 some testimony to the fact that there was an
17 expressed desire on the part of the community through
18 the ANC if I recall. It wasn?t necessarily
19 highlighted in the written submission. But we had
20 testimony that the ANC was very committed to the
21 retention of the existing elements on the space and
22 the continuation of that theme as you incorporate
23 1507 and 1509 into the larger new space. I would be
24 comfortable moving forward on all of the elements
25 that you?ve laid out today.

1 CHAIRMAN GRIFFIS: Others?

2 COMMISSIONER HOOD: Mr. Chairman, I would
3 concur. Sometimes the flexibility is needed. I
4 believe we jump start and this is a model for that
5 community as so eloquently stated earlier. I just
6 want to make sure I understand. Mr. Zaidan?s
7 response to your response confused me even more
8 because your presentation the way I saw it was that
9 we were ready to proceed. I am ready to proceed. I
10 don?t know what another week would do other than to
11 bring me back here for another week. I don?t know
12 how much they would accomplish within that week. If
13 that?s the direction you are going, Mr. Chair, I
14 concur.

15 CHAIRMAN GRIFFIS: Very well and I
16 appreciate everyone?s comments on that. Mr. Etherly,
17 last word.

18 MEMBER ETHERLY: Just last word and I?ll
19 note that the April 18th submission that we had
20 provided by the Applicant demonstrates the course
21 that the dialogue with HPRB is continuing and the
22 opportunity will continue to exist for working out a
23 solution that is going to stay on this project. So
24 I?m prepared to move forward.

25 CHAIRMAN GRIFFIS: I see how the store

1 front relates to the Zoning regulations which allows
2 us to move forward as this. This fundamental aspect
3 of this which is there are the bays and fenestration
4 that have been created or are existing in the
5 buildings. With this application, we are looking at
6 that those will be maintained. Then it sets itself
7 as I indicated that more of a design issue of how
8 those street front bays that originally retail are
9 animated.
10 We will have an opinion. Other boards
11 will have an opinion and Staff and the Applicant will
12 have opinions. We?ve made ours clear but what we
13 ought to do is stick to the regulations. We can move
14 on today then unless there are any last
15 clarifications or questions from the Board.
16 Mr. Jackson, let me just ask you because
17 you have been very passionate about this issue and we
18 absolutely appreciate that. In regard to us moving
19 ahead, your understanding of the fact that we?re in
20 the belief that the dialogue is continuing in terms
21 of the design and in terms of the structure of the
22 store fronts, the fenestration itself. That?s what
23 we are looking at. Are you okay with that?
24 MR. JACKSON: I?ll leave that to the
25 Board. In essence, we thought that the one issue was

one that we needed to get resolved or get a more fully developed understanding of how the Applicant would attack the issue prior to approval of the special exception. Again that?s OP?s recommendation and we understand that the Board takes that and weighs it along with the submittals that are made by the Applicant and other interested parties. Therefore we?re accepting whatever you decide.

CHAIRMAN GRIFFIS: I have a fairly strong opinion that this is more of a design aspect which may appropriately be made with the Preservation Staff person and Office of Planning of which that?s under in that dialogue. They can continue with the Applicant.

Therefore I would move approval of Application 17005 Studio Theater, Inc. That is for as advertised a variance but has been changed by the Board as a special exception for the rear yard requirements under 774. It?s also a special exception to allow more than one roof structure coming under 411 and 771 and for the special exception under 1903 and 1906 regarding the display windows and the overlay requirements. I would ask for a second.

MEMBER ETHERLY: Second, Mr. Chair.

1 CHAIRMAN GRIFFIS: Thank you, Mr.
2 Etherly.
3 MEMBER ZAIDAN: Mr. Chair, I just want to
4 ask. Did you include the rear wall variance in that
5 motion as well as a special exception?
6 CHAIRMAN GRIFFIS: The rear yard? Yes.
7 MEMBER ETHERLY: Second again, Mr. Chair.
8 CHAIRMAN GRIFFIS: Good. Thank you.
9 I?ve spoken to the motion prior to making it but
10 since this is very laid out and well laid out in
11 terms of the written submissions and the testimony
12 that we?ve heard today, I?d have others speak to the
13 motion if they want or I can clarify any of the
14 issues that are before us.
15 MEMBER ZAIDAN: Now that I?m clear on the
16 direction that we?re going, I would just say that I
17 hope that these design issues get worked out during
18 the HPRB process or with the Staff as it moves
19 forward. It?s something that shouldn?t hold up a
20 project like this. It can be worked out with getting
21 consensus with all the parties involved.
22 CHAIRMAN GRIFFIS: Good. Others?
23 MEMBER ETHERLY: And once again just to
24 reiterate very briefly, Mr. Chair, Office of
25 Planning?s report was a very solid one in this case

1 and offered some very crucial points for discussion
2 on the issue of the animation of the street frontage.
3 I will also give kudos to Mr. Jackson for the turn
4 of the phrase to date this morning ?Thespian
5 fortress? which I get great joy in hearing. That was
6 a good one.
7 CHAIRMAN GRIFFIS: You got one up today,
8 Mr. Etherly.
9 MEMBER ETHERLY: I?m going to have to
10 work on that one. Thank you, Mr. Chair.
11 CHAIRMAN GRIFFIS: Thank you. Others?
12 COMMISSIONER HOOD: Mr. Chair, I don?t
13 know how much more I can add but the Applicant laid
14 out a very good case. With that, I?m prepared to
15 vote.
16 CHAIRMAN GRIFFIS: Good. Thank you very
17 much. This has been an intriguing and interesting
18 case. Let me ask for all those in favor of the
19 motion signify by saying aye.
20 (Chorus of ayes.)
21 CHAIRMAN GRIFFIS: Opposed?
22 (No response.)
23 CHAIRMAN GRIFFIS: We can record the
24 vote.
25 MS. BAILEY: The vote is recorded as

1 four, zero, one to approve the application as
2 amended. The motion was made by Mr. Griffis,
3 seconded by Mr. Etherly. Mr. Zaidan and Mr. Hood are
4 in agreement and the third Mayoral appointee is not
5 sitting on the Board at this time. Mr. Chairman, I?m
6 assuming this is a summary order.
7 CHAIRMAN GRIFFIS: Board members, any
8 opinion on summary order or full order? I don?t have
9 any concern in doing a summary order. We don?t have
10 opposition in this case. Does the Applicant have an
11 opinion? Would you like the full order?
12 MR. PATTON: I would like full summary
13 order.
14 CHAIRMAN GRIFFIS: A full summary order.
15 This gets into that hybrid category again.
16 (Laughter.)
17 CHAIRMAN GRIFFIS: Unless there is any
18 objection from the Board, I think summary order would
19 be sufficient. Thank you.
20 MR. PATTON: Mr. Chair.
21 CHAIRMAN GRIFFIS: Yes.
22 MR. PATTON: Just one suggestion, if the
23 order can be attached to the bubble documents which
24 we submitted which are dated 4/22/03.
25 CHAIRMAN GRIFFIS: If it can be attached

1 to that?

2 MR. PATTON: Yes. The question is which

3 set of plans for clarity.

4 CHAIRMAN GRIFFIS: Okay. In fact, it?s

5 an excellent point. We can clarify in the summary

6 order the fact and that is a fact of procedure that

7 the last plan submitted would be ones taken. Okay.

8 Very well. Thank you all very much.

9 MR. PATTON: Thank you, Mr. Chair.

10 CHAIRMAN GRIFFIS: Let?s keep moving. If

11 we can call the next one. We?re going to take two

12 minutes and we?ll have Application 16958, the

13 District Government Department of Public Works

14 (?DPW?) of the Benning Road Solid Waste prepare as

15 the other applicant leaves. We?ll be back in two

16 minutes. Off the record.

17 (Whereupon, the foregoing matter went off

18 the record at 11:19 a.m. and went back on

19 the record at 11:24 a.m.)

20 CHAIRMAN GRIFFIS: On the record. The

21 Board is ready to call the next case for the morning.

22 MS. BAILEY: Application No. 16958 of

23 D.C. Government Department of Public Works pursuant

24 to 11 DCMR Section 3104.1, for special exception to

25 allow improvements, including the addition of a

1 recycling and drop-off center, to an existing solid
2 waste transfer facility under subsection 822.3, at
3 premises 3200 Benning Road, N.E. (Parcel 169/111).
4 The Zoning Commission, Mr. Chairman and members of
5 the Board, rezoned this site. Previously it was
6 unzoned and is now in the M District. Please stand
7 to take the oath.
8 (Witnesses sworn.)
9 MS. BAILEY: Thank you. Members of the
10 Board, what you have in front of you is an affidavit
11 of posting. The Applicant indicated that the
12 property was posted. However the affidavit was not
13 filed until this morning. Copies were handed out to
14 the members of the Board just now.
15 CHAIRMAN GRIFFIS: So it was properly
16 posted.
17 MS. BAILEY: Based on the information
18 that was given, yes, sir.
19 CHAIRMAN GRIFFIS: Thank you. Let us
20 move into this. Good morning. Let me have you
21 introduce yourself and I just want to address the
22 Applicant briefly.
23 MS. DAVIS: Very well. Good morning, Mr.
24 Chairman and members of the Board. My name is
25 Christine Davis and I?m the General Counsel for the

1 Department of Public Works.

2 CHAIRMAN GRIFFIS: And with you?

3 MS. DAVIS: With me, I have Thomas

4 Henderson, the Solid Waste Management Administrator

5 who is overseeing the project and Mr. Greg Vote (PH)

6 who is our consultant in this matter with SES

7 Engineer.

8 CHAIRMAN GRIFFIS: Excellent. Is anyone

9 here this morning to give testimony for 16958 D.C.

10 Government Department of Public Works Benning Road

11 Solid Waste Transfer facility? Testimony either in

12 support or in opposition? Not having any indication

13 of that and not having party status requests, I?m

14 wondering if we want to stand on the record with your

15 application. You can summarize it very briefly for

16 us. The Board has received it and has read the

17 entire application. It seems to be fairly straight

18 forward. Of course you can answer one question for

19 the Board?s edification. Is there a recycling place

20 to drop off currently or are we waiting for this new

21 facility to get built? We will just take Board

22 questions if that is sufficient for your purposes.

23 MS. DAVIS: That is sufficient.

24 MR. HENDERSON: One of the major

25 improvements we think we?re doing as part of this

1 project is building a citizen drop-off area which
2 would include both a place for bulk, for recyclables
3 and for household hazardous waste and chemicals.
4 Currently people east of the river have to travel
5 over to Fort Totten to avail themselves of those
6 services. One of the significant benefits that we
7 feel is part of this project and certainly the ANC
8 and the community felt was that we would be building
9 that kind of a drop-off which does include recyclable
10 materials.
11 CHAIRMAN GRIFFIS: Okay. Anything else?
12 Did you hit the highlights? That?s sufficient if
13 you would like. We can take questions from the
14 Board.
15 MR. HENDERSON: I guess the only thing
16 that I would point out was that during the Zoning
17 Commission hearing, a representative from the Parks
18 Service asked us to get together with their technical
19 staff and review with them our plans for the
20 elevations on the building and any potential
21 screening for some future yet-to-be-determined park
22 redevelopment activity just north of it. We have
23 done that successfully. We are going to make some
24 very minor modifications to the screen that we have
25 provided. I believe we have answered that question.

1 CHAIRMAN GRIFFIS: And modifications, do
2 you mean in terms of materials?
3 MR. HENDERSON: Yes, we?re going to add
4 some additional soil material on the park site and
5 some shrubbery, not any trees but some low level
6 shrubbery that they asked us to add as well.
7 CHAIRMAN GRIFFIS: That wouldn?t impact
8 necessarily a special exception that we are looking
9 at.
10 MR. HENDERSON: No, sir. It was just a
11 coordination activity.
12 CHAIRMAN GRIFFIS: That?s well said. Let
13 me take questions from the Board. Any questions or
14 clarifications?
15 COMMISSIONER HOOD: A couple of
16 clarifications, Mr. Chair. Mr. Henderson, when I was
17 looking through the file one of the things that I saw
18 was that this facility is going to have Sunday hours.
19 MR. HENDERSON: Yes.
20 COMMISSIONER HOOD: Is Fort Totten
21 eventually going to have Sunday hours?
22 MR. HENDERSON: That?s not determined at
23 this time. What we plan to do is to have hours
24 available at Fort Totten and at Benning Road on
25 Saturdays. It?s going to be a full business day

1 which we really don?t have right now. That?s
2 primarily to accommodate residents.
3 COMMISSIONER HOOD: This renovation,
4 everything is going to be enclosed, shipping, putting
5 back into the vehicles that take the solid wastes
6 elsewhere.
7 MR. HENDERSON: All of the transfer
8 operations, yes, sir. The citizen drop-off area is
9 outside.
10 COMMISSIONER HOOD: That?s outside.
11 MR. HENDERSON: All of the storage and
12 materials is all inside. All of the commercial
13 activity which is the large volume of it is all
14 completely enclosed in an area with ventilation.
15 COMMISSIONER HOOD: And the tipping floor
16 is cleaned every day from what I read. I will be
17 spotless every day in the evening.
18 MR. HENDERSON: Yes, sir.
19 COMMISSIONER HOOD: Let me ask you this.
20 I noticed not reference to this case but eventually
21 would the same activity happen, renovations, take
22 place at Fort Totten?
23 MR. HENDERSON: Yes, in fact there is
24 another application very similar to this one for the
25 Fort Totten for largely the same reasons. Any

1 improvement to any solid waste transfer station would
2 require us to go through the special exception
3 process even if there are no special exceptions.
4 COMMISSIONER HOOD: The other question is
5 the truck route. Help me with the truck route. Is
6 Benning Road the only entrance?
7 MR. HENDERSON: Yes.
8 COMMISSIONER HOOD: Going into the
9 facility, there are no residential homes on either
10 side of that?
11 MR. HENDERSON: No, the only access into
12 that area is into the National Parks Service yard and
13 into our yard.
14 COMMISSIONER HOOD: As I stated in the
15 Zoning Commission and this is long overdue, if you
16 can just let me know again how is the dialogue going
17 between Private Solid Waste pickup as opposed to
18 getting into gear towards using these facilities.
19 MR. HENDERSON: One of the major reasons
20 we?re involved in this and the Fort Totten sister
21 project is to allow for what we?ve already done and
22 that?s the closure of the U-line Arena private
23 facility. The reduction in a significant amount of
24 material going into the W Street facility over off of
25 Brentwood Road and to provide capacity will allow

1 for us to eventually have the capacity as a city to
2 work with the private owners and the other transfer
3 stations and hopefully to get them to close as well.
4 That?s been a real blight in a lot of the
5 communities. We?ve been working very hard to try to
6 eliminate that primarily by providing for the
7 service.
8 The situation we?re in is we no longer
9 dispose of any of our own trash here in the city so
10 it has to leave town. We have to make provisions for
11 it to leave in a way that?s the most environmentally
12 sensitive and particularly sensitive to the people
13 who have to live and work around these facilities.
14 COMMISSIONER HOOD: Right. I was just
15 commending the Department of Public Works, Mr. Chair,
16 like I stated earlier. This is long overdue to bring
17 this type of action into the 21st century. Thank you.
18 CHAIRMAN GRIFFIS: Thank you very much.
19 Consolidating for all of this area talking about the
20 commercial, that is what actually brings the capacity
21 for this to about 300 tons per day and the required
22 or anticipated is about 1,000.
23 MR. HENDERSON: Yes, sir. That?s right.
24 CHAIRMAN GRIFFIS: That?s makes a little
25 bit more understanding. I was picturing mounds of

trash piling up everywhere.

MR. HENDERSON: No, actually the idea and the reason for redeveloping the station is you want the material to stay with you as short a period as possible.

CHAIRMAN GRIFFIS: Right.

MR. HENDERSON: We needed to find some ways to more efficiently move the material in a much more rapid manner.

CHAIRMAN GRIFFIS: And this would do it. Any other questions from the Board? Let?s then go quickly to Office of Planning of which did recommend approval. It?s Exhibit No. 29. Good morning, sir.

MR. MOORE: Good morning, Mr. Chair and members of the Board. I?m John Moore, Office of Planning. The Office of Planning will stand in the record in this case.

CHAIRMAN GRIFFIS: Excellent. Any questions from the Board?

MEMBER ZAIDAN: I have just a quick general question. On page 15 of your report, you noted that the DPW will be hiring an exterminator to apply rodenticides and insecticides to control vermin or whatever on the site. Was that at a level that might be of some environmental problems or anything

1 like that or is it just going to be minimally applied
2 and just enough to control the population?
3 MR. MOORE: I would think it was
4 environmentally sensitive. It would be best to ask
5 the Applicant that question.
6 MEMBER ZAIDAN: I didn?t know if that was
7 in your analysis or not. Can the Applicant respond
8 to that?
9 MR. HENDERSON: We use primarily traps
10 which really don?t have an impact. Potentially on
11 occasion they might have to use some others but right
12 now that?s completely confined. The anticipation
13 would be that it would be completely confined in the
14 buildings themselves.
15 MEMBER ZAIDAN: Okay. That?s all, Mr.
16 Chair.
17 CHAIRMAN GRIFFIS: Any other question of
18 the Board to the Office of Planning? Very well.
19 Does the Applicant have any questions for the Office
20 of Planning? You have the Office of Planning report
21 I?m assuming. Is that correct? Yes, you do.
22 Mr. Moore, thank you very much. You gave
23 an excellent report. You just have to acknowledge
24 this aerial photograph that the Office of Planning
25 always attaches. In all seriousness, it?s very

1 helpful in all applications especially in this one to
2 put in the context where this is and what the zoning
3 is on it.
4 Very well, I have no other indications of
5 any other Government agencies putting in reports
6 attendant to this unless the Applicant is aware of
7 anything. We do have a letter submitted by the
8 Applicant regarding ANC 7-D. Obviously you have been
9 through the Commission and then also through us. Did
10 you have separate meetings? It appears that the ANC
11 actually addresses more of the Commission issues than
12 this application.
13 MS. DAVIS: That?s correct, Mr. Chair.
14 We made several attempts to get another letter from
15 this ANC Commissioner. Although he was still in
16 support of the project, we never received a letter.
17 I submitted what we did have for the record.
18 CHAIRMAN GRIFFIS: Okay. But it was
19 pretty clear in terms of the re-zoning that was in
20 front of the Commission that this was what was
21 anticipated.
22 MS. DAVIS: That?s correct.
23 MR. HENDERSON: And the ANC was fully
24 briefed on the entire project. In fact one of our
25 commitments to the community both here and at the

1 Fort Totten neighborhood is on-going. We are having
2 our first meeting on Wednesday this week to
3 participate through this entire process with us as we
4 look at not only this particular project but others
5 around the District.
6 CHAIRMAN GRIFFIS: Excellent. That?s all
7 the submissions that I have in my notes regarding
8 this application unless the Applicant is aware of any
9 other submissions on this. Is there anyone here to
10 give testimony in regards to Application 16958 which
11 is for the D.C. Department of Public Works Benning
12 Road Solid Waste Transfer facility either in support
13 or opposition? Now is the time to give testimony.
14 Not seeing anyone indicate that they are coming
15 forward, let us proceed to any closing remarks the
16 Applicant might have.
17 MS. DAVIS: Mr. Chair, the Department
18 respectfully requests a decision on the order based
19 upon the information rendered here and the record.
20 CHAIRMAN GRIFFIS: Good. Board, last
21 questions or clarifications? If not, I think we can
22 proceed and move ahead to approve the special
23 exception for Application 16958 and that is for the
24 D.C. DPW Benning Road Solid Waste Transfer facility.
25 The record is very full in terms of the written

1 submissions regarding this. The tests for special
2 exception were not talked about today but in the
3 submission how the property itself is being
4 repositioned for more efficient and environmentally
5 friendly and neighborhood friendly aspects of dealing
6 with the trash. I would note with great interest
7 also the including and addition of the recycling and
8 drop-off center which helps the citizens of the city.
9 I would ask for a second.
10 COMMISSIONER HOOD: Second.
11 CHAIRMAN GRIFFIS: Thank you. Any other
12 discussions on the motion?
13 COMMISSIONER HOOD: I would just say, Mr.
14 Chair, the proposed alteration and repairs including
15 a new building and tipping floor expansion will bring
16 needed improvements to the facility as you stated
17 earlier. I don?t see this as opposing any adverse
18 impact to the use of neighboring properties.
19 CHAIRMAN GRIFFIS: Excellent. Thank you,
20 Mr. Hood. Others? Very well. I would ask for all
21 those in favor of the motion signify by saying aye.
22 (Chorus of ayes.)
23 And opposed.
24 (No response.)
25 Then we can record the vote when Ms.

1 Bailey is ready.

2 MS. BAILEY: The vote is recorded as

3 four, zero, one to approve the application. Motion

4 made by Mr. Griffis, seconded by Mr. Hood. Mr.

5 Etherly, Mr. Zaidan are in support. The third

6 Mayoral appointee is not sitting on the Board at this

7 time.

8 CHAIRMAN GRIFFIS: Good and I don?t see

9 any reason why we need a full order on this. We can

10 do a summary order unless any of the Board members

11 disagree. Very well. Thank you all very much. I

12 appreciate your patience this morning. Enjoy the

13 cloudy day.

14 Let?s move right ahead and call the next

15 and last case for the morning. People can come

16 forward and get ready.

17 MS. BAILEY: Application No. 16974 of

18 Tudor Place Foundation, Inc., pursuant to 11 DCMR

19 Section 3104.1, for a special exception to continue

20 the operation of a museum by a non-profit

21 organization. The project was last approved by BZA

22 Order No. 16477, dated January 14, 2000. The project

23 is now advertised under section 217. It?s located in

24 the R-1-B District at premises 1644 31st Street, N.W.

25 and 1670 31st Street, N.W. as well. The property is

1 located in Square 1281 on Lots 827 and 830. Is there
2 anyone who will be testifying today who was not
3 previously sworn in?
4 CHAIRMAN GRIFFIS: Yes, anyone that?s
5 going to give testimony that was not sworn in before
6 you can just stand where you are and give your
7 attention to Ms. Bailey who is at my far right. She
8 is going to swear you in.
9 (Witnesses sworn.)
10 CHAIRMAN GRIFFIS: Are we all set? Let
11 me review where I think we are and those of you who
12 disagree can make that known. In terms of this
13 application, I believe that we left off and we?re
14 going to reconvene today to hear from the ANC for the
15 presentation of their case. Then we were going to
16 hear testimony in support and then we were going to
17 the parties in opposition case and then testimony in
18 opposition. Of course we will have rebuttal and
19 closings. Is that everyone?s understanding?
20 MR. WILSON: That?s correct. We also
21 have as the Board requested some additional
22 submissions last week.
23 CHAIRMAN GRIFFIS: Yes.
24 MR. WILSON: We are prepared to give
25 those right now.

1 CHAIRMAN GRIFFIS: Okay.

2 MR. WILSON: You had requested some

3 information on the tax lot issue.

4 CHAIRMAN GRIFFIS: Let me just have you

5 introduce yourself again for the reporter.

6 MR. WILSON: Gordon Wilson, Hogan &

7 Hartson (PH) representing Tudor Place. The first

8 item we were requested to provide was information on

9 the tax lots. It was brought up last week that our

10 application incorrectly indicated to tax lots 827 and

11 830. Those have in fact been combined to 835 so we

12 will submit our most recent assessment showing that.

13 We?ve also updated the signs on the property to

14 reflect that. We don?t believe that there?s been any

15 confusion or lack of certainty resulting from this

16 error.

17 Next you have asked us to go ahead and

18 maintain all the posting. We?ve done that and we?ve

19 included photos of those postings. We were requested

20 to provide letters of complaint and records that we

21 have concerning that. We submitted last Wednesday

22 letters that we were able to find in our files. We

23 since found some additional ones. We?ll submit those

24 today. We?ll also submit minutes that Ms. Bueller

25 (PH) prepared from the Liaison Committee meetings

1 which will provide some information on that matter.
2 Fourth, we were asked to provide
3 information on the valet parking and the capacity of
4 valet parking. We will provide a letter from
5 Atlantic Parking which has provided services to Tudor
6 Place in the past indicating the number of spaces and
7 basically their system of how they work as well as
8 two letters from other properties in the area
9 allowing us to use their facilities. They are Chevy
10 Chase Bank and The Boys and Girls Club.
11 Fifth, we were asked to provide a site
12 plan and in particular some more detail on the
13 service entrance that we have. We will be providing
14 that as well. Finally, we have some additional
15 letters of support that included with this.
16 CHAIRMAN GRIFFIS: You are submitting
17 that now and you have served that on the parties
18 also. Is that correct?
19 MR. WILSON: Yes, we will provide that to
20 the parties right now.
21 CHAIRMAN GRIFFIS: So we will look for
22 those submissions coming down the way. Anything else
23 then?
24 MR. WILSON: No, that?s it.
25 CHAIRMAN GRIFFIS: Then let?s proceed

with ANC.

MR. TICE: For the record, my name is Richard Tice. I live across from Tudor Place. I?ve been recognized as a party. I just have a question about the documents we were just handed. I believe you said that there was some information about parking in here. I just didn?t see that. That?s all. I saw the letters and all.

MR. WILSON: What you have there is a letter from Atlantic Parking concerning the services they provide in their capacity.

MR. TICE: So you don?t have a written submission. You just have the letters.

MR. WILSON: Yes, the letters.

MR. TICE: Thank you. That?s all.

CHAIRMAN GRIFFIS: Good. Let?s make some room for the ANC member to give their presentation and then we?re going to have people coming up to give testimony in support. So directly said, do you want to have a seat? Thank you. Let me just get an indication while we are doing this. How many people are here to give testimony in support? Please raise your hands so I?ll have an idea of how we are doing on time. Excellent. See that. We?re going to need all those chairs. Good morning.

1 MR. BIRCH: Good morning. My name is Tom
2 Birch. I live at 1240 29th Street. I represent ANC
3 2-E-06. I chair the ANC 2-E. I appreciate the
4 opportunity to be here. I?ll be brief because I know
5 it might be appreciated.
6 We considered this application at our
7 February 4th regularly scheduled public meeting and
8 heard from neighbors opposing the application and
9 heard from neighbors supporting the application. We
10 also received correspondence from neighbors and
11 others in the community representing both sides of
12 the issue.
13 You have our letter which contains the
14 resolution passed unanimously by the Commission in
15 support of Tudor Place?s application. I believe that
16 all of us in Georgetown share an affection for Tudor
17 Place. We want to see the property preserved and
18 made available for the enjoyment and edification of
19 all. This is a very special treasure in our
20 community and our city and for the nation.
21 I have just three points I?d like to make
22 this morning. First in approving the application
23 from Tudor Place, the Commission supports the premise
24 that Tudor Place like other museums and historic
25 houses, non-profit organizations like it around the

1 country, should have the flexibility to develop
2 funding from a variety of resources including the
3 rental of space for special events as proposed by the
4 Applicant.
5 Second, I would say that the
6 Commissioners felt satisfied that the administration
7 at Tudor Place in preparing its application consulted
8 with neighbors in addressing issues of noise, traffic
9 and parking. We saw there in a demonstrated concern
10 for arriving at the means of addressing problems in a
11 way that was mutually acceptable to Tudor Place and
12 to those neighbors who participated in the
13 discussions. I should add Tudor Place demonstrated a
14 desire to us to be a good neighbor.
15 Third, we were persuaded by the
16 expression of intent offered by the director of Tudor
17 Place to concentrate activities on the preservation
18 and presentation of this historic property and not to
19 be consumed with developing an extensive schedule of
20 special events. It seemed clear to us that the
21 purpose of the program at Tudor Place is the
22 interpretation of this historic property and its
23 contents and its history that any special events are
24 to be ancillary and in support of that program.
25 Finally I would simply add that all of us

1 at this hearing I believe are intent on ensuring that
2 Tudor Place remain the good neighbor it wants to be.
3 Thank you very much.
4 CHAIRMAN GRIFFIS: Good. Thank you very
5 much, Mr. Birch. Questions from the Board? I
6 appreciate the testimony that you have given and also
7 in the written report in terms of special events
8 should be secondary or accessory to the museum
9 itself? Was there any discussion on this?
10 MR. BIRCH: Yes.
11 CHAIRMAN GRIFFIS: That Tudor as
12 functioning and as projected will be a good neighbor.
13 Are there any sort of elements of insurance at that
14 was talked about in the community to make sure that
15 it actually continues?
16 MR. BIRCH: In our conversations with the
17 director which were part of our consideration in
18 which we took a site visit to Tudor Place, the
19 director made it very clear to us that staff is
20 limited in number and their time is rightly taken up
21 by the program of interpretation and presentation of
22 the property. They really would rather not have to
23 take on the demands of an endless kind of schedule of
24 special events. But they are there for the work of
25 preserving and presenting to Tudor Place and not to

be a convention center or a hospitality house.

CHAIRMAN GRIFFIS: Good. Anything else from the Board? Does the Applicant have cross examination of the ANC? Parties in opposition, we?ve set up an order.

MR. CROCKETT: Yes, sir. I do. I have a few questions.

CHAIRMAN GRIFFIS: Okay.

MR. CROCKETT: Tom, I would first like to ask you a question about the ANC?s treatment of two similar ?-

CHAIRMAN GRIFFIS: I?m sorry to interrupt you but could just introduce yourself for the recorder. It?s just for the recorder so we can get the transcripts correctly.

MR. CROCKETT: I forgot that we have different people here. My name is Don Crockett. I live 3070 Q Street, N.W. I?d like to ask you a question about two similar exception applications that were considered by the ANC in January and February of this year. The first involved the Evermay Estate and the second involved Tudor Place.

Now at the Evermay Estate meeting on January 7th, many nearby neighbors complained about the noise and traffic and that sort of thing from the

1 wedding receptions and the parties that were being
2 held there. After that meeting, the ANC responded to
3 those complaints with the following and I quote ?The
4 proposed fundraising events outlined by the Applicant
5 would generate unacceptable levels of noise, traffic,
6 parking problems and congestion thereby imposing a
7 major negative impact on the peace and quiet of the
8 surrounding residential neighborhood.? Did I read
9 that correctly?
10 MR. BIRCH: Yes.
11 MR. CROCKETT: Now a month later, we had
12 the Tudor Place hearing. The ANC heard similar
13 complaints by nearby neighbors such as me and some of
14 the people here in this room about noise, traffic and
15 parking. This time the ANC did not make any
16 recommendations with respect to noise, traffic and
17 parking. Is that correct?
18 MR. BIRCH: That?s not correct. We felt
19 that there were accommodations that were made by the
20 Applicant to address those issues.
21 MR. CROCKETT: Let me give you a
22 hypothetical. Let?s suppose that the IMF is in town
23 for its annual meeting and it?s reserved both Evermay
24 and Tudor Place for events involving 500 people.
25 Both parties will have valet parking services and

1 have bands to entertain the customers. Now given
2 those assumptions, wouldn?t you agree that those of
3 us who live near Tudor Place would suffer the same if
4 not more serious adverse effects than those who live
5 near Evermay?
6 MR. BIRCH: No, I would not. First of
7 all, the application for Tudor Place prohibits any
8 music outdoors which I presume is ?-
9 MR. CROCKETT: That?s not correct.
10 MR. BIRCH: That?s not what you are
11 suggesting. But to differentiate between those two
12 if I might, we heard no support, none whatsoever,
13 from neighbors or members of the community in support
14 of Evermay?s application.
15 Our experience with the consideration of
16 the Tudor Place application was obviously very
17 different from that. There are large numbers of
18 neighbors including those who live on Q Street and
19 the 3100 block and those who live on 31st and 32nd
20 Streets in the blocks facing Tudor Place who support
21 the Applicant. When we considered Evermay?s
22 application there were no residents, no neighbors,
23 who came forward. Secondly, the schedule if you can
24 call it that of the Evermay?s proposal was so
25 extensive as to be out of control.

1 MR. CROCKETT: Thank you. Now after the
2 last BZA hearing was postponed, I wrote you a letter
3 since we have the time asking for the ANC to
4 reconsider, didn?t I?
5 MR. BIRCH: Yes, you did.
6 MR. CROCKETT: Isn?t it a fact that at
7 the original ANC meeting those of us who were in
8 opposition attempted to give the ANC a petition
9 signed by 56 neighbors on 31st and Q Streets and 32nd
10 which we wanted to present and that the ANC refused
11 to accept it?
12 MR. BIRCH: I don?t know that the ANC
13 refused to accept that. I thought it was turned over
14 to the ANC.
15 MR. CROCKETT: We attempted to proffer it
16 and it was rejected.
17 MR. BIRCH: I wasn?t aware of that
18 happening.
19 MR. CROCKETT: You didn?t have those
20 before you though when you voted, did you?
21 MR. BIRCH: No, we didn?t. A member of
22 the community had them in the audience at the
23 meeting.
24 MR. CROCKETT: Now when I wrote and asked
25 for you to reconsider, you wrote me back and you said

1 that ?-

2 CHAIRMAN GRIFFIS: Mr. Crockett, let me

3 just step in here because I?m a little concerned that

4 we are going a bit far afield. I understand the

5 notion that you are trying to present.

6 MR. CROCKETT: I just have one question

7 and then I?ll tie it up.

8 CHAIRMAN GRIFFIS: Okay, because we need

9 to clearly divide from testimony and also ANC

10 procedure.

11 MR. CROCKETT: That has to do with the

12 testimony.

13 CHAIRMAN GRIFFIS: We don?t want a

14 testimony now. We want cross examination but go

15 ahead.

16 MR. CROCKETT: Okay. With his testimony.

17 You wrote to inform me that the ANC will not be

18 revisiting the issue.

19 MR. BIRCH: That?s right I did.

20 MR. CROCKETT: Then you said ?When the

21 Tudor Place application comes before the BZA on April

22 15, there should be ample opportunity for all

23 interested parties to put forth positions and

24 information for review. The ANC believes that the

25 BZA hearing is the appropriate venue for further

consideration of this issue.? Correct?

MR. BIRCH: Yes, that?s what I said in my letter to you and here we are.

MR. CROCKETT: Then would you agree that when the ANC passed its resolution it didn?t have all of the relevant evidence before it?

MR. BIRCH: No, I would not agree with that assumption.

MR. CROCKETT: No further questions. Thank you.

CHAIRMAN GRIFFIS: Okay.

MR. SNYDER: My name is Ronald Snyder. I reside at 1607 31st Street, N.W. I am a party. I represent other parties.

In your direct examination, you said that there was not to be an extensive schedule of events. Is that correct?

MR. BIRCH: At Tudor Place.

MR. SNYDER: And what did you base that one?

MR. BIRCH: On the application and conversations with the executive director.

MR. SNYDER: Are you aware that there are an unlimited number of events though less than 200?

MR. BIRCH: I am aware of that.

1 MR. SNYDER: Are you aware that at 1670
2 there may be up to four weddings per month?
3 MR. BIRCH: I am aware of that.
4 MR. SNYDER: Are you aware that at 1670
5 that there may be other events unlimited throughout
6 the month?
7 MR. BIRCH: I believe so.
8 MR. SNYDER: And you do not consider that
9 extensive.
10 MR. BIRCH: I don?t consider it a
11 schedule that will be unacceptable to be called
12 extensive in the way that it has been presented to us
13 through conversations with the director.
14 MR. SNYDER: The way it was presented to
15 you as I understand it Ms. Bueller says they would
16 not be extensive. Is that correct?
17 MR. BIRCH: No, that was my own judgment
18 based on the information we got from her.
19 MR. SNYDER: Now Mr. Crockett a moment
20 ago mentioned some 56 letters that were present at
21 the ANC meeting. Did you ever read one of those
22 letters?
23 MR. BIRCH: I have not seen them, no.
24 MR. SNYDER: Thank you. That concludes
25 my cross examination.

1 CHAIRMAN GRIFFIS: Do 32nd Street
2 Neighbors have cross examination questions?
3 PARTICIPANT: No sir.
4 CHAIRMAN GRIFFIS: Then that takes care
5 of our party.
6 COMMISSIONER MITTON: Could I just ask
7 one follow-up question before you let Mr. Birch go?
8 CHAIRMAN GRIFFIS: Yes.
9 COMMISSIONER MITTON: On the frequency of
10 the events and your understanding of the frequency as
11 Mr. Snyder was trying to point out, there is a
12 certain maximum frequency that would be permitted by
13 the conditions that have been proposed for the order.
14 Then there is the representations by Ms. Bueller and
15 others from Tudor Place. Did you take your position
16 based on the understanding that Tudor Place would not
17 avail themselves of the maximum opportunity to
18 conduct events?
19 MR. BIRCH: I think it?s accurate to say
20 that, yes.
21 COMMISSIONER MITTON: Thank you.
22 CHAIRMAN GRIFFIS: Any other questions of
23 the Board? Very well. Thank you very much.
24 MR. BIRCH: Thank you.
25 CHAIRMAN GRIFFIS: Let?s go then to some

1 logical order of testimony for support. I think we
2 can bring up one more chair and let?s have five
3 people at a time. We?re going to go through. Let me
4 say while people are getting ready and taking their
5 own initiative to come to give testimony, there are
6 three minutes provided to persons given testimony.
7 You will note that there are clocks on
8 each side of my left and right. They will tick down
9 and then there?s this awful sound at the end of three
10 minutes which I hope we don?t have to hear today.
11 But also very seriously, we appreciate everybody
12 giving testimony today either in support or in
13 opposition.
14 The critical piece for us is obviously to
15 get substantive issues addressed for our deliberation
16 so I want people to stick to the Zoning issues that
17 are at hand. Also if you are hearing testimony
18 that?s actually redundant to yours as you are sitting
19 there preparing your own testimony, it is appropriate
20 and in fact I would ask that you just say that you
21 agree with the aspect as stated.
22 I am hoping that people will provide the
23 Board with written submissions. If they don?t have
24 it today, we will keep the record open and those
25 written submissions are there. All in all, don?t be

1 concerned if you are not saying everything you
2 absolutely have to. I can guarantee that this Board
3 reads absolutely everything that is submitted to the
4 record. It is often our pleasure but we do it all.
5 So it will get read if not said today.
6 With that, I will have you start on my
7 right and we?ll continue down. Of course you need to
8 introduce yourself with your name and your address
9 for the record.
10 MR. DOWNE: Can we go the other way
11 around? I have to leave in ten minutes.
12 CHAIRMAN GRIFFIS: Then let?s switch over
13 if it?s not difficult. We?ll start on this end to
14 the left and then go to the right.
15 MR. DOWNE: Mr. Chair, members of the
16 Board. I?m a long term resident of 32nd Street. In
17 fact I?ve been there more than 25 years. At no time
18 during those 25 years have I heard any disruption,
19 every untoward noise, any confusion on 32nd Street as
20 a result of Tudor Place. I am not deaf. I am a
21 profession musician. I count myself privileged to
22 have members of my friends on the Board of Tudor
23 Place, noteably Bucky Black (PH) and Bill Rogers.
24 I consider myself privileged to enjoy the
25 cultural enhancement that Tudor Place provides for

our community. I cannot answer the questions about traffic. I own no car. I think cars are disruptive. I don?t own one.

Finally I would like to say that the one point of possible tension between Tudor Place and myself on the question of the tall trees that were potentially dangerous. Tudor Place?s response was immediate, was rational, was courteous and effective. Offending trees were inspected by an arborist and appropriately dealt with. I have nothing further to say except to offer Tudor Place my felicitations and salutations for their long life and enjoyment of that magnificent property. Thank you.

CHAIRMAN GRIFFIS: Thank you and would you state your name and address for the record?

MR. DOWNE: My name is Graham Downe and my address is 1650 32nd Street. I abut on the west side of Tudor Place.

CHAIRMAN GRIFFIS: Very good. Also for everyone?s information, what we will do is go through this entire panel and then you are all going to be cross examined by the parties in opposition and also the Applicant. We will proceed very quickly and that should go very timely. Yes, ma?am.

MS. OWEN: My name is Georgina Owen. I

live with my husband at 1632 32nd Street directly across the street from Tudor Place. We have both lived in Georgetown for over 30 years and I?ve lived there all my life. Tudor Place is virtually unique in the world of house museums as it portrays a generational spectrum of an American family which was closely connected to a founder of the Republic.

The collections at Tudor Place include gardens, buildings, paintings, furniture, books, letters and textiles all belonging to the Peter family. Together these items represent an exceedingly valuable cross section of family life and the social development of our country. Few properties of this stature can boast such a complete collection original to the family that built the house and inhabit it for 180 years.

A superb example of Federal architecture, Tudor Place is without question the most significant 19th century house in Washington. In its architectural simplicity, sophistication and originality so carefully maintained by the Peter family and now by the Foundation, Tudor Place merits the national stature attained by houses such as Mount Vernon and Gunston Hall. It is the only large Federal house in Georgetown designed by an architect,

Dr. William Thorton, who designed the Octagon at 18th and New York Avenue and the original U.S. Capitol.

In his time, Mr. Peter maintained Tudor Place to the high standards appropriate for such as structure but the great expense of preservation is well beyond that for which his endowment provides. As time passes, more parts of the house need restoration. More pieces in the collection require conservation. More items in the archives need better storage facilities. These kinds of services require craftsmen of the highest expertise and the costs to provide these services continue to rise. The small staff at Tudor Place led by Leslie Bueller (PH) does a remarkable job of operating and maintaining the gardens, house and collections with limited funds and has earned the respect and trust of the Georgetown community.

I think the question before you is one of balance. Are the essential needs of this most valuable and unique institution and the permission it seeks to host occasional events balanced with the needs of the surrounding neighborhood residents and their rights to enjoy their property? I believe the current proposal submitted by Tudor Place does achieve such a balance.

When compared to the bucolic silence which the five acres of Tudor Place provides, morning, day, evening and night to the dense surrounding neighborhood, the occasional sound of parties and non-amplified music seems certainly within reason. The inconvenience of event night parking and congestion seems well in balance when compared to the year around availability to residents of 32 public parking spaces along the east side of the property. Frankly, the inconvenience to neighbors forced to spend valuable time and to come here two weeks in a row to defend Tudor Place?s application against opposition is a far greater inconvenience and burden than that caused by any special event.

The Advisory Neighborhood Commission 2-E voted unanimously to support the current Tudor Place application. I hope you will do that same.

CHAIRMAN GRIFFIS: Thank you.

MR. SAGALAN: My name is Arnold Sagalan. I and my wife, Louise, live at 1248 30th Street, N.W. in Georgetown. We have been living there for nearly 20 years. Both of us are members of the Georgetown Citizens Association Advisory Board. During many of these years, I have been chairman of the Crime and

1 Public Safety Committee of the Citizens Association
2 and I?ve also served as 1st Vice President and then
3 Director of the Association.
4 My wife and I feel deeply that Tudor
5 Place is a unique, historical inheritance. It is not
6 only a national treasure but a priceless Georgetown
7 treasure as well that is shared generously with and
8 enjoyed by all community residents. We strongly
9 support its application for a special exemption.
10 We believe that those parties who seek to
11 impose unreasonable and unnecessary restrictions on
12 its activities do not represent the vast majority of
13 Georgetown citizens. When we move to Georgetown
14 nearly 20 years ago, we were attracted by its
15 distinction ambiance as a neighborhood. Its historic
16 district and the parks and accessible gardens and
17 buildings of historic estates like Dumbarton Oaks and
18 Tudor Place had and continue to provide an enriching
19 community cultural resource.
20 But like most residents we also knew that
21 along with its many advantages, Georgetown had some
22 drawbacks. Georgetown?s mix of commercial and
23 entertainment, tourist and university and a
24 residential community have made traffic parking and
25 noise problems inescapable. But most residents

1 appreciate that these irritations come with the
2 territory. Over the years working together with
3 District official and proprietors of offending
4 establishments and institutions, our Citizens
5 Association and the ANC have managed to ameliorate
6 significantly the worst offenses and problems. That
7 has been true of the relatively few and minor
8 disagreements Georgetown residents have experienced
9 with the management of Tudor Place.
10 There is always a small group of
11 individuals in every community who want to impose
12 their personal views or claim to represent those of
13 the community. Georgetown is no exception. My wife
14 and I know Tudor Place has been a very good and
15 greatly valued neighbor as the enthusiastic support
16 of Georgetown?s Advisory Neighborhood Commission for
17 its application for a special exemption attests. We
18 believe that Tudor Place?s application as presented
19 to you by Leslie Bueller merits the Board?s approval.
20 It is unfortunate that the letter with
21 provisos presented to you by Barbara Zartman of the
22 Citizens Association of Georgetown (?CAG?) had not
23 been presented to CAG?s membership for its approval
24 as required by its bylaws. I am confident that the
25 membership of the CAG will vote its full, unequivocal

support for Tudor Place?s application at its next meeting. Thank you.

CHAIRMAN GRIFFIS: Thank you very much. Of course, we give you that additional 30 seconds as the representative from the Citizens Association. Yes. I?m sorry. A bad joke.

MS. SAXE: Hi, I?m Ruth Saxe. I live at 1524 31st Street, N.W. in a place that?s one-half block from Tudor. I?ve lived in this location of one-half block from Tudor for over 30 years. During all that time, I have never had any problems or negative feelings whatsoever about the way they conduct their affairs.

On the contrary, I consider Tudor Place to be a great asset to the neighborhood, the city and the country. I have never in all these 30 years had any complaints at all to make about noise or parking. For your information I do not have central air conditioning. I live here almost all summer. My windows are often open. Like my friend here, I?m not deaf.

Despite the fact that I park on the street because I have no space or garage, I have not had any problems with Tudor Place about that issue either. Please grant Tudor Place the permissions

1 outlined by Ms. Bueller. I think they are quite
2 reasonable. Thank you.
3 CHAIRMAN GRIFFIS: Thank you very much.
4 MR. MILWE: Good morning. My name is
5 Frank Milwe. My address is 2112 M Street, N.W. I
6 have a business in Georgetown at which I sell fine
7 antiques, notably silver. Also since the Appraisal
8 Studies Program is organized in Washington with the
9 American Societies of Appraisers about eight years
10 ago, I have been the lecturer on silver.
11 When that program began, we had to travel
12 to museums in other cities to see any significant
13 collection of antique silver. Now at Tudor Place,
14 Washington possesses a large collection of superb
15 quality silver that was assembled over five
16 generations by one family, six if you count its Mount
17 Vernon inheritance. Visitors see the silver not in
18 some artfully-contrived model room but to that great
19 educational benefit, the silver is seen in its
20 original setting surrounded by all the china, linens,
21 furniture and personal objects that it was always
22 associated with.
23 Shaped as it was by the evolving needs of
24 an historically important family, their sometimes
25 dramatically changing economic fortunes, their

travels, changeable American domestic fashions and very importantly five generations of personal gift exchanges, the Tudor Place silver collection is absolutely unique in the United States without exaggeration, a national treasure. In the broader sense because the people at Tudor Place with both members of George Washington?s family and prominent Washingtonians every stage of this city?s development, the gift of Tudor Place as a museum has resulted in the opening of a unique window through which to view this city?s history.

Since 1967, the most consistently available open parking condition I have ever found in Georgetown is the one created by the Tudor Place footprint not so convenient as private garage and driveway parking of course but very favorable as street parking in Georgetown comes. Operated as a museum, Tudor Place permanently lessens the number of people in that area who will rely on public street parking instead of driveways.

This observed at least passing thought is also due to what could have happened to traffic and parking if the estate had not been established as a museum. If instead it had been sold and then made into a school or townhouse development. By any fair

standard the continued operation of Tudor Place as a museum is very beneficial.

While I am sympathetic about the periodic inconveniences felt by some Tudor Place neighbors, I am sure that each has and always will receive the thoughtful attention of present and future museum managers. As compared with benefits however, it?s difficult to see that the level of burden for the neighborhood actually rises even to a level to cause concern to a would-be buyer of real estate in that area still less to a seller.

Clearly Tudor Place is a permanent part of the Washington scene and it is not going to go away. I urge this Board allow terms for its operation as a museum that are as flexible, as generous and as practical as it has allowed for any other museum in this City. Thank you.

CHAIRMAN GRIFFIS: Thank you very much. With just seconds to spare. With that, we?re going to go right into cross examination. It shouldn?t take that long. I?m going to have a chair put up on this side. You folks can stay. We?re going to start with the cross examination by the Applicant and go through the parties in opposition. Let me just state as we go through this I don?t want to hear a lot of

1 cross examination or controversy about majority.
2 Specifically and directly put, we look at
3 substance in the facts and issues that can be
4 evidenced for us whether it?s one person against 100
5 or visa versa. It will be the issue and that?s what
6 we?ll have to deliberate on. That being said, does
7 the Applicant have any cross examination of the
8 witnesses? None. Let?s go first to the 31st Street
9 Neighbors representative. Do you have any cross
10 examination? No cross examination. The 32nd Street
11 Neighbors? Q Street? Does the ANC have any cross
12 examination? You guys got away easy.
13 But before you go, let me just ask if the
14 Board has any questions from the testimony heard?
15 Very well. We thank you all very much. We
16 appreciate your patience and continuing involvement
17 in this case. Let?s get the next panel forward.
18 Just to keep this in order, we?re still noting people
19 in support testimony if they could fill the next
20 seats.
21 Can I just have a show of hands of people
22 with testimony in support that need to come after
23 this group? All right. So we?ll have another panel
24 after this. Excellent. Let?s start on this side
25 again. If you would, I?m going to have you move a

microphone towards you. You can press the base and the light will come and you can introduce yourself for the record.

MR. KUKULSKI: For record, my name is Ray Kukulski. I?m the President of the Citizens Association of Georgetown. I live at 1021 30th N.W. for the last 35 years. And if cross examined, I forgot to stand up at the swearing in but I do swear to the oath.

CHAIRMAN GRIFFIS: I?ll have to check with Ms. Bailey to see if that?s good enough. Ms. Bailey, does that satisfy you?

MS. BAILEY: Normally, sir, when testimony is being given, the person is sworn in.

CHAIRMAN GRIFFIS: Why don?t we just be official? Anyone else that has not been sworn in at this point. Good, we have others that will join you. If you wouldn?t mind standing giving your attention to Ms. Bailey sitting at my far right, she will swear you in.

(Witnesses sworn.)

CHAIRMAN GRIFFIS: Good. Thank you very much.

MS. ZARTMAN: This is a joint presentation. My name is Barbara Zartman. I chair

1 the Zoning Planning and Historic Preservation
2 Committee for the Citizens Association of Georgetown.
3 You have the letter that I prepared at our Board?s
4 direction outlining our concerns. I will not repeat
5 the glowing things that appropriately are said about
6 Tudor Place and the fine professional skills that
7 Leslie Bueller has brought to the directorship.
8 Our letter really if anything was a
9 criticism of the order that was last written by the
10 BZA. The order established that what would otherwise
11 apparently be called commercial events as appropriate
12 for museum operation which included a reference to
13 limiting the number of special events. But the
14 conditions in the order did not provide limits. We
15 were concerned that there needed to be such limits
16 for all of the special exceptions that affect our
17 community because of the replication factor because
18 there at the time were considered to be 98 events at
19 Evermay although that application has been withdrawn
20 because of community opposition.
21 You will have an application next month
22 before the Zoning Commission for Dumbarton Oaks to
23 rent a private home for ?receptions and seminars.?
24 The alumni at Georgetown University now proposes to
25 use townhouses for 95 events a year. We would simply

ask that the Board in writing its order consider the impact of multiple sources of similar events and how a single community has to absorb them. The parking for Tudor Place is not available should there be an event at Dumbarton Oaks.

It was purely that kind of an issue that we wanted to bring to your attention so that when the order is written supporting I?m sure the special exception for Tudor Place that it include real protections that in fact do provide limits on the number of special events. We have suggested some but even in our suggestion, we?re up to almost 40 some events a year as suggested minimum on our part.

These are the rental events. These are not the events related to the museum operations itself. We would just ask that you consider those things as you prepare your order and arrive at some enforceable standard. It is not as some have suggested that there is any lack of trust in the operators of Tudor Place but rather the fact that you know too well the only enforcement is what?s in the order and sometimes not even that.

CHAIRMAN GRIFFIS: Thank you. Anything else?

MS. ZARTMAN: If there were any questions

about circumstances under which our letter was prepared, Ray Kukulski is here to clarify that.

CHAIRMAN GRIFFIS: I see. Let me just clarify your stance then. As the Citizens Association, you are in support of the special exception approval in support of the application with conditions.

MS. ZARTMAN: Yes.

CHAIRMAN GRIFFIS: And that is as laid out in your letter limiting some of the events and also qualifying the size and number of those events.

MS. ZARTMAN: Correct.

CHAIRMAN GRIFFIS: Very well.

MS. MOFFETT: Hi, my name is Myra Moffett. I live at 1319 30th Street, N.W. I had this written last week so until 12 days ago we lived at 1644 Avon Place, N.W. which is 100 yards from the entrance to Tudor Place, just around the corner. I promise you our recent move had nothing to do with the issues here today. In fact with our five children, two dogs, basketball court, trampoline, no doubt we were far more disturbing to that neighborhood than anything Tudor Place could ever come up with.

Our family?s feeling about Tudor Place is

totally positive. It?s provided us living that close to it with a sense of history in our neighborhood and an important sense of participating in critical preservation in education. As myself and our family have attended events at Tudor Place from history, architecture, gardening lectures and exhibits to the candlelight Christmas tours they have, the fall pumpkin painting days and the annual garden parties. With the exception of the latter, these events have all been small affairs in terms of attendance.

Yes, we have been present at events when there has been musical entertainment. When we lived on Avon Place from time to time we would hear music emanating from Tudor Place grounds but never was it loud or offensive. On the contrary, I think the sound of the bagpipes or violins on a summer night is a pretty lovely thing.

I sincerely hope as does my family that nothing is done in any way that would diminish what Tudor Place currently offers or could potentially provide as a museum, a cultural institution, a historic site and a neighborhood treasure for all to enjoy. My family and I oppose placing any new and/or unreasonable restrictions on what can take place there and we applaud and encourage Leslie Bueller and

her wonderful staff in their dedicated and creative efforts to share Tudor Place with the neighborhood. Thank you.

CHAIRMAN GRIFFIS: Thank you very much.

MS. COSTAN: My name is Margaret Costan. I live at 2900 N Street, N.W. I really just wanted to add my word to what others have said of appreciation as a neighbor of Tudor Place and appreciation that it?s there for us to enjoy. It?s an incredible historical and cultural asset. We need to do whatever it takes to preserve it. It?s amazing that a place like that exists in the middle of Georgetown.

I was asked to chair the annual garden party this year and through that have gotten a little bit involved with the staff of Tudor Place. I just wanted to say how impressed I am at the carefulness that they have of approaching these events.

When I took over the job I was briefed with how to do things and we will have some music. We have a jazz trio but it was explained to me that there should be no amplification. The music will be such a low volume that probably no neighbors will hear it. We have sufficient catering help that clean up will be done quickly after the time that the event

ends. So everything is put together in a way to minimize the effect on the neighbors.

Also when I put together a committee to help with the party, I called a lot of friends and people who I knew lived on 32nd Street and Q Street who lived right adjacent to Tudor Place. Many of them basically gave me statements similar to what Myra has just said that they appreciated so much and they hoped nothing will happen to limit the flexibility to allow Tudor Place to continue to exist and be what it has been. Thanks.

CHAIRMAN GRIFFIS: Thank you.

MS. HANDWERGER: I?m Gretchen Handwerger. I live at 1670 31st Street, N.W. across from and slightly north of Tudor Place. I?ve been there for seven years this coming summer.

During that time I have never had any problem with Tudor Place. I endorse their mission. I?m not troubled by their activities either those that are museum related or those open to the outside groups. I do not have off street parking. I do park on the street. When I moved in there, I was somewhat concerned whether there would be space. Having Tudor Place actually makes it easier for neighbors to park than not.

1 I as well as all the nearby neighbors and
2 ANC and the Citizens Association was invited to
3 attend the meetings last fall to consider the zoning
4 application under which Tudor Place is now operating
5 and to formulate the new application which is now
6 before the Board. As was stated last week by Ms.
7 Bueller, we operated by consensus and the application
8 which is now to be considered incorporates the views
9 expressed at those meetings.
10 I have heard the terms ?expand? and
11 ?extend? the current application but that is not how
12 I recollect it. We took the existing application and
13 we narrowed it considerably in response to various
14 opinions which were made at those meetings. I?m a
15 firm believer in the dictate that if it?s ain?t broke
16 don?t fix it. I can?t see that anything has been
17 broken in Tudor Place certainly from the time I?ve
18 been there. Any questions that have been raised have
19 been dealt with very responsibly. I haven?t raised
20 any myself but I?ve looked into other reservations
21 people have had. I?m simply here today to endorse
22 the application as it now stands. Thank you.
23 CHAIRMAN GRIFFIS: Thank you very much.
24 Cross examination by the Applicant? The parties?
25 Question? Okay. Any questions from the Board?

Good. Thank you all very much. We appreciate you being down here today.

(Pause.)

CHAIRMAN GRIFFIS: Good afternoon.

MR. HORSEY: Good afternoon. Mr. Chair, if I could a point of order. I have with me a letter that is signed by 16 people who are members of the Advisory Committee of the Citizens Association of Georgetown. Four of them are here to testify on their own behalf. The others have asked that I take their time to read this letter into the record and their names.

My name is Outerbridge Horsey. I live at 1632 32nd Street. The letter will take approximately eight minutes to read. It contains valuable information both about Tudor Place and it?s not redundant and also about the other properties in Georgetown.

CHAIRMAN GRIFFIS: I don?t know that it?s necessary to read it into the record. As we have it, we will read it. There?s no additional substance that gets it written in the record. It?s part of the submission in the record. If you want to summarize some of the issues with this.

MR. HORSEY: Sure.

1 CHAIRMAN GRIFFIS: Did you bring
2 additional copies for the parties?
3 MR. HORSEY: I brought additional copies.
4 CHAIRMAN GRIFFIS: If you wouldn?t mind
5 it, give it to them and the Applicant so everyone
6 will get the same thing at the same time. I think
7 highlighting it would probably be best.
8 MR. HORSEY: All right. I will do that.
9 Essentially like the Advisory Neighborhood
10 Commission we support the application of Tudor Place
11 without conditions. We believe the letter submitted
12 by the Citizens Association written by Barbara
13 Zartman is fundamentally flawed in its premise of
14 single, transparent and easily understood standard by
15 which the Board has judged Tudor Place. It?s
16 regrettable in its conclusion of supporting the Tudor
17 Place application with specific provisos.
18 We believe that it does not represent the
19 opinion of the membership of the Citizens Association
20 of Georgetown. The subject has never been noticed at
21 a meeting of the Association, discussed at a meeting
22 nor has a vote been taken by the Association despite
23 the fact that there was a membership meeting held on
24 April 14 after the CAG Board met and before the last
25 BZA hearing.

1 We have a couple of specific complaints
2 which we feel are important. We think the following
3 key sentence in the letter is basically disingenuous
4 and unnecessarily alarmist which says ?We bring to
5 the BZA?s attention our concern that residents in the
6 portion of Georgetown are impacted by the collective
7 functions of the Great Houses. If extended to other
8 Great Houses for example the standards and the
9 current order tend very large evening events,
10 permissible thrice months would make for a very
11 different quality of life in Georgetown. Consider
12 three big June weddings at Tudor, at Evermay, at
13 Dumbarton House and Dumbarton Oaks and Halcyon House.
14 Consider an unlimited 200 person events occurring at
15 several Great Houses simultaneously and the
16 collective burden this would place on the community.?
17 We all know that this can and will not
18 happen. Paragraph seven of Tudor Place?s application
19 specifically limits rental functions for the purpose
20 of weddings to less than 75 guests. ?Very large
21 evening events? are limited to rental functions per
22 year.
23 Furthermore in the first page of her
24 letter, Ms. Zartman states that all of the 10 large
25 events contained in the Tudor Place application need

have no connection with Tudor Place. This is simply incorrect. Only two are allowed to be rental events and the other non-rental events will be directly connected with Tudor Place. If CAG was confused on this simple matter, I simply call to Leslie would have clarified it.

Finally the attempt to set a single transparent easily understood standard is a fundamentally flawed premise. The letter refers to the Great Houses of Georgetown as if to place them all on the same level and incorporates reference to several, Tudor Place, Dumbarton Oaks, Dumbarton House, Halcyon House and Evermay.

I?ll skip over the description of Tudor Place but let?s get to Dumbarton Oaks which essentially it?s the largest property. It?s owned by Harvard University which has the largest endowment of any university anywhere in the world. It clearly does not need to host events to raise money to work on the property. Furthermore, it?s clearly stated on their website that it?s not available for events. It?s operated as a non-profit institution. As far as I know, unlike Tudor Place, it has no scenic open space easement. Dumbarton Oaks already has a permanent special exemption from the BZA.

Evermay which you have heard about is the second largest at about 11 acres. It is a privately held house. It?s been owned by the same family for almost 100 years and they?ve done extensive work. Very little of what?s left dates to the original date of the house. It?s been extensively remodeled in the early 20th century. It is rented out for events and the owners also hold charity events at no cost. Events there do not impact the residents in the same portion of Georgetown as Tudor Place. It is not a non-profit institution. As far as I know, there is no scenic open space easement.

Dumbarton House is owned by the National Society of Colonial Dames. It?s not in its original position. It is not nearly as historic in its fabric. It was heavily remodeled in the mid 20th century. It is not as historic as Tudor Place. A significant addition mostly underground was built in 1991 to hold public programs and rental events. It has benefitted from a gift by Mary Bielan of Evermay of a lot of open space at the eastern end of the property which I believe is under easement but the rest of the property is not. It also is operated as a non-profit institution. Dumbarton House already has a permanent special exception from the BZA.

Finally Halcyon House is also privately owned. It is not open to the public. It is not operated as a museum or holds public programs. It is rented out and the owners also hold charity events at no cost. While the exterior of the original Georgetown house is still original, the interior is beautifully renovated in the period style of the late 20th century. It is not located near Tudor Place. It is not a non-profit institution. As far as I know, there is no scenic easement.

All of this is really to say that Tudor Place is undeniably in a class of its own. You?ve heard about how it?s the only house to be designed by an architect. I won?t go into that.

Let me just summarize by saying in short Tudor Place is unique in Georgetown, in Washington and probably in the United States for its incredible combination of rich heritage, the highest quality of architectural preserved open space in a dense urban environment and educational purpose benefitting the public. We believe that CAG Board should be more sensitive to the unique stature of Tudor Place and more discriminating in its own honorable pursuit to protect the interests of community residents.

In summary we request that at a minimum

1 the BZA regard the April 15th letter as simply the
2 opinion of the CAG Board and not that of the
3 membership. We respectfully also request that the
4 BZA evaluate this application in the context of Tudor
5 Place?s unique stature in the neighborhood and that
6 it will accept and follow the publicly debated and
7 unanimous Advisory Neighborhood Commission 2-E
8 approval of the application without conditions.
9 Thank you very much.
10 CHAIRMAN GRIFFIS: Thank you.
11 MR. HORSEY: Would you like me to read
12 the names of the signers or not?
13 CHAIRMAN GRIFFIS: Do you have one that
14 has all of them?
15 MR. HORSEY: Let me just read them
16 because I?ll be quick. The first one is mine
17 Outerbridge Horsey. The second one is Huntington
18 Block. The third on is Louise Sagalan (PH). The
19 fourth one is Arnold Sagalan (PH). Clyde Shorey
20 (PH), Joanne Shorey (PH), Frederick Prince, Maude
21 Brown, Richard Brown, Marquerite Foster, Lucy
22 Morehead, Lou Saks, Terry Collins, John Hedden and
23 John McCumber. Thank you, Mr. Chairman.
24 CHAIRMAN GRIFFIS: Good. You have that
25 written in one of the submissions that came in. Our

copies don?t have any signature on it.

MR. HORSEY: I?ll write on the main copy.

CHAIRMAN GRIFFIS: Okay, as long as we have that in the record.

MR. HORSEY: Thank you.

CHAIRMAN GRIFFIS: Very well. Yes?

MS. SMITH: My name is Niente Smith. I live at 3116 P Street, one block as the crow flies directly south of Tudor Place. I have lived there for 20 years and in Georgetown for 35 years and have spent many of those years trying to preserve and protect our historic village.

I have been a member of the Citizens Association of Georgetown since 1970. I owned an antique business throughout the ?70's and early ?80's on O Street near Wisconsin and during those years belonged to the Professional and Business Association. I served for many years on the Foundation for the Preservation of Historic Georgetown, Historical Society of Washington and in 1983 I gave an open space and historic facade easement on our 1830 Home that will prevent the development in perpetuity of otherwise developable side lot.

In short, I love Georgetown. The gift of

Tudor Place with its easement, the beautiful and very historic house museum is one of the finest things to ever happen to Georgetown. Only the family who had built the house and witnessed the nearly 200 years of historic events that took place there could understand the magnitude of such a gift.

On my first visit to Tudor Place, I picked up photographs from Mr. Peter for the City of Washington. That was in 1977. Since then I have had much association with Tudor Place on and off. When Mr. Peter died, I served on the first committee for the long range plan of collections before the museum opened and have since then served on many committees, chaired the garden party, served on the Board, all of which I consider a great privilege.

They have left me in a position I feel to understand the intentions and goals of Tudor Place. The neighbors and the larger constituency of Georgetown are the most important constituency to Tudor Place. As they were to the Peters in 1806, they are to the Foundation in 2003 and they will be for all the many years ahead.

Currently and historically anywhere from a third to half of our Board members come from Georgetown. There is a very active program to

1 communicate and cooperate with neighbors. When
2 complaints are received, immediate action is taken to
3 try to correct the problem. The neighbors are
4 welcome in the gardens at any time free of charge in
5 the daytime in the hours when it?s open. Neighbors
6 are invited to participate in events and in fact some
7 events like our fall garden day are specifically
8 planned with the neighbors and their families in
9 mind.
10 There was a time some years ago many of
11 the opponents? view points relate to that time period
12 when Tudor Place found the case for rental events
13 very compelling not only for the income the rentals
14 brought but there were other benefits. Hosts of
15 those events were often friends of Tudor Place.
16 Guests of those events often became
17 supporters of Tudor Place. Tent paid for and erected
18 by weddings was left up for the benefit of the garden
19 party. Caterers who profited from those events gave
20 Tudor Place favorable rates for use in their
21 functions. In short, it did not take long for the
22 negatives from the rentals to far overwhelm the
23 benefits.
24 CHAIRMAN GRIFFIS: I?m sorry to interrupt
25 you. Could you just move your microphone closer to

1 you? Good.

2 MS. SMITH: But it did not take long at

3 all for the negatives from the rentals to far

4 overwhelm the benefits. We were beginning to receive

5 complaints from our neighbors. Our small staff was

6 sorely put upon to manage their busy jobs with

7 increasing competition from events. And most

8 importantly we were beginning to feel the wear and

9 tear on the property which was our number one

10 priority. With the director?s change and a change in

11 the direction of the Board, the primary purpose of

12 Tudor Place was regained, the stewardship of the

13 historic house and museum education.

14 In closing I would like to draw an

15 analogy. My home is across the street from

16 Georgetown Presbyterian Church where there is a

17 wedding complete with limos, no parking signs,

18 bagpipe pipes, nearly every Saturday of the year.

19 The Church is also home to a preschool where the wee

20 students are loaded and unloaded in front of my house

21 and in my driveway twice a day, five days a week.

22 Would I seek to alter the Church?s practices or

23 prevent it from functioning as a church/school? Not

24 on your life. The churches, the house museums, the

25 green spaces, the gardens and the schools are the

1 life blood of our community.
2 I believe Tudor Place is an important
3 asset to Georgetown. Its loss would be devastating.
4 I hope with better cooperation and understanding
5 that the neighbors and the institution can work
6 together for the long term success of Tudor Place and
7 for the benefit of its immediate neighbors as well as
8 all of Georgetown. Thank you.
9 CHAIRMAN GRIFFIS: Thank you. Yes, sir.
10 MR. HEDDEN: I will be very brief. Mine
11 is more a question of numbers than words. I?m
12 currently the treasurer of Tudor Place Foundation and
13 on their Executive Committee.
14 COMMISSIONER MITTON: Sir, could you
15 state your name for the record please?
16 MR. HEDDEN: I?m sorry. John Hedden. ?-
17 is our secretary and we?re both on the Board of Tudor
18 Place Foundation. Thank you. I live at 2914 P
19 Street in Georgetown. I met my wife in Georgetown 50
20 years ago and we have enjoyed living in Georgetown
21 over a span of 40 years and found it the most
22 delightful place we could possibly be.
23 I have investment property on Q Street
24 very close to Tudor Place Foundation and they are
25 populated by young professionals who volunteer at

Tudor Place and attend the events. Yes, there are seven units and since those buildings were not built when the automobile was significant, there is street parking. I?m sure second to only the 28 unit apartment building across the street from us a lot of them take advantage of parking on 31st Street along side Tudor Place?s marvelous five acres.

The important thing is to study the opportunities that were left to us through the Armistead Peter grants and through his will. One of the things for Tudor Place he wanted to have the Georgetown Garden Club always have an opportunity to participate there. My wife is presently president of the Georgetown Garden Club. They are hosting the Garden Clubs of America meeting here next year. It is just something that we feel, my wife Eleanor and I, very strongly about in support of Tudor Place.

I was here last week and there were references made, it seemed to me, to events that took place prior to 2000. I think since Leslie Bueller has arrived as our executive director we have adhered much more with a sensitivity for the neighbors and are trying very hard to make sure that we don?t offend anyone but at the same time again we need additional funds. Here is the treasurer speaking.

Occasionally we need events to help out with the monies that now are no longer sufficient from the endowment and membership fees to carry the opportunities that we have to present the community at Tudor Place.

CHAIRMAN GRIFFIS: If you could summarize.

MR. HEDDEN: That?s pretty much what I have to say. Thank you.

CHAIRMAN GRIFFIS: Thank you very much.

MS. SCHLEFER: My name is Marion Schlefer. I live at 1537 30th Street. I have lived in the District for over 50 years. I have been involved with planning and urban design. I have served on the boards of the Washington Housing and Planning Association. I have been on the board of the Committee of 100 and served as chairman of that organization. I wrote the written documentation for the Meridian Hill Park and I worked on the Dumbarton Oaks Park as opposed to Garden also.

I now live at the corner of 30th and Q where I have lived for two and a half years within a five minute walk of Tudor Place. I am a volunteer gardener so I look at it both from the overall point of view and from the closest point of view. As a

volunteer gardener, gardeners you know learn a lot about what goes on. I have found that it?s a very competently run establishment by very serious professionals. It makes an enormous contribution not only to Georgetown but to the City of Washington. There are school groups who come in as I have observed.

Yes, I also think it?s one of the few places that still illustrates the relationship between the Georgetown Harbor and the development of Georgetown up the Hill and Georgetown Heights. Of course there are parties which are a part of Georgetown. When Kathryn Graham who lived a block from us had the President there, it was evident that there was a big party but I found that it?s just life.

As you know, community organizations such as Tudor Place do not so easily get government or foundation funding as they used to. It?s essential that they take care of themselves financially. I would urge the exception that?s been presented. Thank you.

CHAIRMAN GRIFFIS: Thank you very much.

MR. BUBES: My name is Alan Bubes. I live at 1601 31st Street. I?m new to all this. Maybe

I?m just plain missing something because I just don?t understand the vociferousness of so many people and friends and neighbors and people that I so respect and admire to put so effort into fighting something like Tudor Place. I would love to get all these people who again I just don?t understand it who I respect and admire and to put this same time and efforts with our city. There are so many other problems in our city today and our country and to take this same thing and help intercity youths or to get these same people onto a committee who could devote this kind of time and attention instead of worrying about Tudor Place having three parties or two or 75 people or 50 and help build fields and to help our schools and to help this city and take this time and attention. It would be lot better off. I guess maybe I?m missing something. We?re all so fortunate to live in Georgetown. We?re all so fortunate in our lives. We?re fortunate to have Tudor Place across the street instead of 50 townhomes.

If I?m inconvenienced which I don?t think I am because they have one more party a year or one less and I don?t know all the rules and regulations, it just doesn?t seem to matter in the whole scheme of

1 things. I just think there are so many better things
2 we can worry about and fight. Thank you.
3 CHAIRMAN GRIFFIS: Thank you very much.
4 Cross examination by the Applicant? Parties, any
5 questions? ANC? Very well. Thank you all very much
6 for being here today. What we have left in the
7 hearing to accomplish is the parties in opposition
8 case. Let me address this briefly and perhaps you
9 all need to just come up here.
10 As indicated as we started the hearing on
11 this, you are afforded equal time to that given to
12 the Applicant for the presentation of their case.
13 They used all of about seven and a half minutes. I
14 rounded it out to 15 minutes of course. Are you
15 prepared to construct your case today and give me how
16 you are actually dividing that time between the
17 parties? Mr. Crockett, do you want to answer that?
18 MR. CROCKETT: I was under the impression
19 that we had 45 minutes.
20 CHAIRMAN GRIFFIS: Well, where did that
21 impression come from?
22 MR. CROCKETT: From their presentation
23 yesterday and their further presentation here today.
24 I think you said 45 minutes.
25 CHAIRMAN GRIFFIS: No, I said equal time

to the Applicant. The time starts at the presentation of it and does not include the cross examination or questions from the Board. So all of the actual presentation if you recall was very short.

MR. CROCKETT: So how many minutes do we have?

CHAIRMAN GRIFFIS: Fifteen.

MR. CROCKETT: Okay.

CHAIRMAN GRIFFIS: Between all of you. And that?s split three ways. It depends how you do it. What we are faced with of course it?s 12:50 p.m. We have a full afternoon session. We can proceed with the presentations. This is what I would like to do.

First let me see a show of hands of people giving testimony in opposition to the application today not parties. Any testimony by persons. You are giving testimony as a person and presenting as a party. We?ll see how redundant that gets. We only have two people giving testimony.

Very well. This is what I would propose and I?m open to your opinions. We should proceed and we get through this. What we may end up doing is not hearing closing today. We?ll assess of any sort of information that we need and we would go and ask the

1 Applicant to come back and give closing so that we
2 might get through this by 1:15 p.m. or so. I will
3 have to end this at 1:15 p.m. just based on the fact
4 that we need 10 minutes to eat some lunch and then go
5 right into a long afternoon session of which we?ll
6 probably be here quite late this evening. If that?s
7 amenable.
8 I am also open to suggestions that we can
9 pick another date and you can do your presentations
10 then. What I would do then is to have people that
11 are here giving testimony to give testimony today so
12 that they may not necessarily have to come back for
13 the presentation. That?s all the options laid out as
14 succinctly as I could. Yes?
15 MR. TICE: I believe that the option of
16 having the people here to testify, testify would be
17 the best so we don?t inconvenience them for the third
18 time.
19 CHAIRMAN GRIFFIS: And set your case
20 presentations and closing for another time.
21 MR. CROCKETT: I agree. We have lost
22 three witnesses because we?re not to the point that
23 we thought we would be and they had to leave because
24 they have other commitments.
25 CHAIRMAN GRIFFIS: Excellent. I?m

1 perfectly able to accommodate that. Let?s change
2 course here. Persons giving testimony can come up
3 forward. In the time that they are doing that, we
4 will visit the schedule and see when we can set this.
5 MR. TICE: As I stated previously, I have
6 personal testimony. I would like to give that next
7 week and get these witnesses out of here. Then I can
8 give my testimony next week.
9 CHAIRMAN GRIFFIS: How is your personal
10 testimony different than the presentation of the
11 party in opposition case?
12 MR. TICE: I am a party in opposition but
13 I also have personal evidence some of which was
14 submitted to you yesterday in the form of Exhibit No.
15 74. This is evidence of my own in addition to being
16 a lawyer. I am pro se too.
17 CHAIRMAN GRIFFIS: And you are not
18 prepared to do that now?
19 MR. TICE: I can do that now.
20 CHAIRMAN GRIFFIS: Okay, that?s what
21 we?re going to do.
22 MR. TICE: Take the other witnesses
23 first.
24 CHAIRMAN GRIFFIS: No, indeed. Let?s
25 start on my right here. If you wouldn?t mind

1 introducing yourself. Turn on the mike just by
2 touching the base. Excellent.
3 MR. WELLS: My name is Steven Wells. I
4 live at 1677 31st Street, N.W. just across the street
5 from 1670 31st Street and a short distance from Tudor
6 Place. I too am in favor of Tudor Place. Who isn?t?
7 Clearly you can see that everyone is.
8 I do object however to what I view as the
9 unbusinesslike way in which Tudor Place has sought
10 their exception. They consistently state in the
11 public meetings and so forth and in their application
12 that they need only an occasional event. But their
13 request is extraordinarily broad.
14 They have asserted economic necessity but
15 to my knowledge they have made no attempt to provide
16 an factual support for that assertion. I believe the
17 Board require Tudor Place to first substantiate the
18 level of financial need that they have asserted and
19 secondly to provide a detailed plan to satisfy that
20 need and to satisfy whatever other needs they may
21 have perhaps to satisfy their exempt purpose while
22 minimizing the impact on the neighborhood.
23 I would like to believe that Tudor
24 Place?s plans will not become more expansive than
25 their public statements suggest. But this doesn?t

1 have to be left to chance. It?s not unreasonable for
2 Tudor Place to be required to present its business
3 plan. It probably has one and if it doesn?t, it
4 should and to limit its request to what is reasonably
5 necessary to execute that plan. That?s what the
6 Board should require.
7 This isn?t a question of trust. It?s a
8 legal proceeding with legal consequences. I believe
9 those are the minimum requirements that the Board
10 should require of Tudor Place. I believe a number of
11 people here who have made statements to the effect or
12 at least one in particular that it isn?t realistic to
13 try to put limitations on an organization like this.
14 I?m not sure why.
15 In fact I don?t think the Board should
16 try to put limitations on Tudor Place. I believe
17 Tudor Place should be required to show what they need
18 and to show a plan to achieve those needs. That?s
19 what the exception should be limited to.
20 CHAIRMAN GRIFFIS: Good. Thank you, Mr.
21 Wells. Let me just clarify one point in terms of
22 whether the Board may walk down this way in terms of
23 requiring a business plan or a financial hardship
24 argument or evidence to such. That is not in fact
25 what?s being asked in a special exception case per

our regulations. Per our regulations, the special exception just needs to make the fact that if we grant the relief that it would be in harmony with the zone plan and map, basically the Zoning regulations and would not tend to adversely affect the neighboring areas.

I know there?s been a lot of conversation about economics and all that. You?ll note in our history of this Board that it would be a fairly difficult argument to make if you are trying to make a practical hardship or hardship case on the economics. Again I don?t think that?s in fact what?s being told us why this application is before us nor is it required for a special exception.

MR. WELLS: It is asserted in their application.

CHAIRMAN GRIFFIS: It?s discussed, yes.

MR. WELLS: If that isn?t something that the Board goes into and the question is one of negative impact on the neighborhood, then surely the Board would have to assume that they will do the maximum that they have requested in their application because otherwise how could you determine the degree of impact that it will have or that it could have.

CHAIRMAN GRIFFIS: Indeed and that is

1 well said. In the prior hearing the Board addressed
2 that as a fact that we can trust and we may have
3 personnel and the dynamic of it changes.
4 When the Board looks at this application,
5 we will look specifically to the impact and
6 specifically to the level of events that would impact
7 the neighborhood. Our conditions if this is approved
8 and goes forward will be very articulated and very
9 specific. So we take that with great note your
10 concerns. Yes. Go ahead.
11 MS. TICE: My name is Roberta Tice. I
12 live at 3102 Q Street. I am opposed to this request.
13 The request before the Commission centers on a
14 request that grants one neighbor specific zoning
15 adjustments that interfere with the rights of other
16 neighbors in the residential neighborhood and C-2-E.
17 The request before the Board begs the
18 Commission to grant more rights to one neighbor,
19 Tudor Place, at the expense and discontent of the
20 majority of other property owners. This majority is
21 demonstrated by the voices of 82 neighbors who
22 submitted letters in opposition as compared with the
23 smaller response of numbers of neighbors who support
24 the request. Thus the proposed increase of
25 commercial activity at Tudor Place seems inconsistent

with the preservation of the neighborhood and the collective enjoyment of private neighboring homes.

The request to expand non-museum operations is without merit on the explicit message conveyed to us in the Tudor Place mission statement. I quote from their public website. ?Tudor Place operates as a 501 C-3 non-profit museum with a mission of preservation of the buildings and grounds on its five and a half acres and education.?

Nowhere in this mission statement do I read an reference to the explicit request by Tudor to increase its source of revenues attributed to expanded commercial operations. Yet expanded commercial operations are the very request before this Board today.

Other neighbors in opposition presented arguments that addressed the hideous parking, noise and traffic problems that result from bringing more people into the neighborhood. I too have arrived home from work unable to find parking within a four or five block radius of my home during such events.

Further the parking valet kiosk obstructs the normal north and south flow of traffic on 31st Street. This means I have to sit behind other honking frustrated motorists while the valets

1 obstruct the street. At times, the Metropolitan
2 Police need to come to the area and mediate and/or
3 monitor the gridlock situation. Is this an
4 appropriate use of city funds? Do we also sign up
5 for free police services for Tudor Place? Past
6 performance of Tudor Place personnel to abate
7 inappropriate noise, control traffic flows and
8 eliminate parking chaos failed to assure me that
9 expanded us of the facility as a party and meeting
10 venue will preserve my property rights.
11 In conclusion I see conflict between the
12 so-called preservation of a historic home and the
13 preservation of a historic neighborhood. I submit to
14 the BZA that they reject and hold the Tudor Place
15 request based on the following: overwhelming
16 opposition by neighbors as evidenced by letters and
17 presentations as compared with the smaller response
18 in favor of the request; a blatant attempt to intrude
19 on the private property of neighbors without respect
20 or protection to our rights to quiet enjoyment; and
21 no added value to the neighbors or general public for
22 granting expanded commercial operations in a
23 residential neighborhood.
24 In conclusion, this request is not a win-
25 win-win. The neighborhood suffers the added burden

of increased traffic, noise and intrusion of the party goers. The city bears the added expense of policing traffic and monitoring parking chaos. The Tudor Place representatives fail their commitment to achieve the core mission.

So where do we go from here? I have a few suggestions: (1) Deny any requests to expand operations; (2) Monitor improved remedial actions to address concerns with current variances for a minimum of two years upon which time all public agencies can properly assess traffic flow and parking allocation during non-peak and party peak time; (3) BZA should commission a study that would study the impact of other present and future requests for increased party activity from homes like Dumbarton Oaks, Evermay, Dumbarton House, the Graham Estate, the Severar (PH) House along with parties hosted by private citizens who need not appear before this Board.

This one request needs to be part of the BZA master plan for zoning variances in the upper Georgetown neighborhood, ANC 2-E. This may take the form of a commission study to address a five to ten year impact of commercial events that can be tolerated in our residential neighborhood.

I am scared to death the result of this

hearing will result in dangerous escalation of event activity in Georgetown. However I thank the BZA for hearing my statement.

CHAIRMAN GRIFFIS: Thank you very much.

MEMBER ZAIDAN: I actually have a question. I?m sorry, ma?am. I didn?t catch your name.

MS. TICE: Roberta Tice.

MEMBER ZAIDAN: You described coming home and there being parking chaos and police activity. Can you give the Board some indication of the frequency of that in terms of how many times you?ve come home? Is it like that all the time? Has it been a couple of times a year?

MS. TICE: Because I travel and I work out of the city, when I do arrive home the frequency might be mostly in the spring and summer but also in the winter too. As I alluded to in the context of the whole of Georgetown, this traffic can be attributed to parties at Tudor but we have other competing events going on in the neighborhood. There?s a gallery on 31st Street that is just a half a block away from Tudor Place. Neighbors have parties.

It?s a very political neighborhood. So there are a lot of political events that go on all of

which compete for scarce resources in parking and also they employ additional valets. There are times when the police actually close off a street. So your question to me directly was how many times does this happen. I would suggest that more in the summer, the fall and the springtime.

MEMBER ZAIDAN: Okay. Also maybe I just need some clarification. It seems that everybody up here at the table is a member of the party in opposition. Am I correct?

CHAIRMAN GRIFFIS: Mr. Tice, are you represented in a party in this matter?

MEMBER ZAIDAN: I believe Mr. Tice and the gentleman at the end are all represented by the party in opposition. I thought we were taking testimony from general people in opposition and we were going to hear the party?s case in opposition at the next meeting.

MR. TICE: If I may. As a party, are we excluded from giving testimony?

MEMBER ZAIDAN: That?s actually my question.

CHAIRMAN GRIFFIS: It flies in the face of the purpose of presentation of parties?s cases. I think it?s more appropriate to do at that point

rather than giving testimony and then presenting a party case. I appreciate Mr. Wells being here but it?s even further redundant and this is a little bit specific. Mr. Wells is being represented in the party so he should by Mr. Snyder have his essential testimony or be called as a witness or his whole case being presented. Rather than belaboring the point, I think we should move on.

MEMBER ZAIDAN: It?s just a point of order question I didn?t know.

CHAIRMAN GRIFFIS: You are wanting to give testimony right now.

MR. TICE: From the comments you made earlier, I thought if we did not give testimony as neighbors because I do live across the street from Tudor Place that I would be precluded from entering any information about my own response to the Tudor Place application. That?s what it sounded like you were saying earlier.

CHAIRMAN GRIFFIS: I said that today?

MR. TICE: That?s what sounded like to me.

CHAIRMAN GRIFFIS: No, I don?t think I?d ever preclude anybody. The point was there is a difference between a party and party status and the

party presentation of the case and also conducting cross examination and those that are not joined in party to give testimony as persons in the community. You are asking to do both, all and everything.

MR. TICE: Well, I think because I live there I can talk about what happens at Tudor Place and my response to it. I just didn?t want to be precluded from doing that.

CHAIRMAN GRIFFIS: As a party you can do that? That?s my question.

MR. TICE: If as a party I can do that, I will be glad to postpone my comments now and do them as a party later.

CHAIRMAN GRIFFIS: I can?t understand why you wouldn?t do that in the presentation of your case as a party. You will have limited but ?-

MEMBER ZAIDAN: Are you all represented by Mr. Snyder?

MR. TICE: No.

MEMBER ZAIDAN: I have a hard time keeping track of who is who.

CHAIRMAN GRIFFIS: Let?s go. You have three minutes and then, Mr. Snyder, I?m not sure what you are going to say but we?ll address that shortly.

MR. TICE: I just wanted to talk about

the parking issue. My name again is Richard Tice. I live at 3102 Q Street. Handed out to you just now is a document that I?m going to refer to.

CHAIRMAN GRIFFIS: It needs to go down to Staff on the far right.

MR. TICE: It?s already been down there. Thank you. I have given copies to opposing counsel.

CHAIRMAN GRIFFIS: I can?t see things at the Board. Can you take these back to the table please? Go ahead.

MR. TICE: When events happen at Tudor Place whether they are events for 50 people, 100 people, 200 or 400 or 500 people, we have parking problems in our neighborhood. I wanted to tell you about one simple event right now.

Back in April 2000, an event was held at Tudor Place for 260 people. It?s important because it?s about half the size of the large events that Tudor Place wants to hold under this application. That event was written up in ?Washington Life.? You have some of that underneath you. The important facts of ?Washington Life? are is that was an event for 260 guests where a 21 piece swing band played.

Tudor Place made all the concessions it could for the neighborhood when this event was held.

Valet parking was provided. You have a picture at the top of the document there of the valet parking person walking back and forth in front of the gate of Tudor Place. Not only was valet parking provided which is consistent with this application but consistent with the last application, Tudor Place hired a traffic ?police person.? I?m going to call it that. I?m not saying it?s a District of Columbia officer but someone to manage traffic. That?s what you have in the second picture there.

Despite these precautions which are more precautions than are in the current application, traffic was simply murderous. Because 31st Street is narrow, cars backed up five, six, seven in a row as the valets held the doors open for people to get out of their cars, disembark and go into Tudor Place. This went on for the better part of an hour. With six or seven cars stopped in a row, any other car trying to use 31st Street was also required to stop because you can?t pass on 31st Street.

After about an hour, the police were called to the event. The police evidently closed northbound traffic on 31st Street in its entirety. I came home at around 8:30 p.m. that night. I was not allowed to drive up 31st Street.

I started searching for parking. It?s something we do whether the event is 50 people and there are 25 extra people looking for parking spaces on our streets or if there?s a 100 people or in this case 260. I drove around for 20 minutes that night. I parked at 34th and Q Streets. It?s about five blocks and it?s two blocks west of Wisconsin. We live east of Wisconsin where Tudor Place is.

This is problematic. This is also characteristic of what you can expect to happen. In this application, Tudor Place has asked to hold up to 52 night time tours, an unlimited number of events for up to 200 people. I?ll finish real quickly. It?s just 60 less than attended this event. They also want to hold as we all know events at Dower House for up to 50 people and there?s virtually no limit on those.

There is nothing in the current application that makes Tudor Place provide parking for anything less than the largest events, weddings over 75 and Tudor Place hosted events over 100. For the other events which could literally almost be hundreds, 50 here, 50 there, 100 here, there is no parking provided. I think we are going to see this problem over and over again. Thank you.

1 CHAIRMAN GRIFFIS: Thank you very much.
2 Mr. Snyder, you had submissions that you put in
3 today. Can you turn on a mike?
4 MR. SNYDER: Yes, I would like to bring
5 to your attention Exhibit No. 74 which is now in the
6 record. 74 was filed yesterday. You probably
7 haven?t had a chance to read it. The exhibit
8 includes four items and I have no idea what order
9 they are in your records. So I will refer to them.
10 The first, I would like to refer to, is a comment ?-
11 CHAIRMAN GRIFFIS: What I?m going to do
12 is this. We haven?t looked at it.
13 MR. SNYDER: I know you haven?t. I?m
14 going to tell you what they are very quickly so we
15 know where we?re coming from.
16 CHAIRMAN GRIFFIS: That?s what we?re
17 going to do and that will be it.
18 MR. SNYDER: That?s it, yes. The first
19 one was with respect to Tudor Place refusal to comply
20 with your request for complaint letters. We have
21 submitted in Exhibit 74 a copy of my letter dated
22 July 7, 2000. Tudor Place has now submitted with
23 their submission today a copy of this letter of July
24 7, 2000. The significance of this letter is as
25 follows. It describes the events on May 6th and again

on May 20th. Those events are the ones that Mr. Tice was referring to primarily May 6th which is the famous Glickman (PH) wedding.

Noise has been a problem as you?ve heard. I have recorded this noise. I only have one copy of the recording. I?m going to play you a little bit of it.

CHAIRMAN GRIFFIS: No, you are not actually.

MR. SNYDER: Okay.

CHAIRMAN GRIFFIS: Let?s continue on and tell us what else is in this submission and then we are finished here.

MR. SNYDER: I?ll tell you what else is in the group of materials here. The next one is an exhibit which says the BZA order must prohibit the construction of tents on the south place of the Tudor lawn. Within that exhibit is a copy of the scenic easement covering Tudor Place and on page five of that scenic easement, paragraph 1(c), it states that ?There shall be no construction which would interfere with the view of the main house from Q Street or the view of Q Street from the main house.? It?s our position that indeed these tents do exactly that.

Document two attached to this same item

is a building permit for a tent. This building permit is the one for the May 2000 tent. The size of that tent as shown by the attachments to the building permit which were obtained under FOIA from the Building Permit?s Office shows that this tent had a size at almost as large as or maybe larger than the entire Tudor Place mansion.

I did some rough calculations which showed that the size of tent was 5,044 square feet. Those dimensions are based upon the dimensions shown. We have one big tent here. That?s how you get 250 or 500 people in this place. With respect to blockage of the view to Q Street, I have photographs showing the tent on May 6, 200 in place and further photographs showing the same scene without the tent.

Next I have an extremely important legal issue for the Board. That is the height of Dower House. Dower House which is this property addressed as 1670 31st Street, that building is at least 30 feet high. If you look at the exhibit, it says the official land survey and photograph. It shows Dower House exceeds size allowed by law and regulation for accessory use. This brings into play Section 2500.4 and 2500.5 of the Zoning regulations.

This building is a 30 footer which is

1 higher than anything allowed for an accessory.
2 Normally an accessory is allowed 15 feet. This one
3 is 30. In an R-1, you can go as high as 20 feet if
4 it?s a garage. This is not a garage. It?s a house.
5 Attached with this same exhibit is a copy
6 of the survey which shows the house as a two story
7 structure. It shows the garage on the back end of
8 the lot. This is a serious issue. I believe that
9 they simply are not entitled to any accessory use on
10 1670 because of this provision of the law. I don?t
11 believe it comes within the preview of the BZA to
12 grant an exception for this type of thing.
13 Lastly I would like to refer to the paper
14 which was marked ?request for three year period
15 statement of facts.? You can read it later. It
16 speaks for itself. Thank you.
17 CHAIRMAN GRIFFIS: Good. Thank you very
18 much. You bring up an interesting point on 1670. If
19 you would like us to further consider it, the Board
20 would like to ask you to brief that issue. The
21 important and exciting piece of that, the legal term,
22 is ?brief.? If it could be short and obviously it?s
23 going to need to be given to the parties and the
24 Applicant, then we?ll have responses to that. I
25 thank you all very much. Are there cross

1 examinations out there for the testimony that?s just
2 been given?
3 MR. SNYDER: One question. What?s the
4 briefing schedule?
5 CHAIRMAN GRIFFIS: We?ll get to it.
6 Don?t worry about schedule. Let?s get substance and
7 all this process through and then we?ll end up with
8 that. No cross examination?
9 COMMISSIONER MITTON: I have one when you
10 get to us.
11 CHAIRMAN GRIFFIS: Good. Cross
12 examination from the parties? Any ANC? Board
13 questions?
14 COMMISSIONER MITTON: I just wanted to
15 ask Mr. Snyder if he has brought the issue of the
16 tents to the attention of the National Parks Service.
17 MR. SNYDER: Yes, I have. I?ve brought
18 it to the attention of the National Parks Service
19 back in the year 2000. I then put a FOIA on the
20 National Parks Service where I received a copy of a
21 letter that Ms. Bueller wrote back to the National
22 Parks Service explaining that the tent was a
23 temporary structure and that you couldn?t see it
24 anyway because there were other bushes along Q
25 Street. That hasn?t been resolved with National

Parks Service in my opinion.

COMMISSIONER MITTON: Thank you.

CHAIRMAN GRIFFIS: Any other questions from the Board? Very well. Thank you all very much. With that, we have two minutes to satisfy the schedule for the continuation of this hearing. When we pick up we will hear of course the cases in opposition. Then we will have closing and rebuttal. Ms. Bailey, what is the availability of schedule?

MS. BAILEY: Mr. Chairman, do you have a copy of the schedule with you? We can perhaps look at it together.

CHAIRMAN GRIFFIS: I did in fact. Thank you.

MS. BAILEY: May 13th seems like a possibility.

CHAIRMAN GRIFFIS: Ms. Bailey, let me run this by you if we look at a date. I don?t anticipate that we have a lot of time left for this based on of course the unlimited cross examination questions from the parties? presentation. I would imagine we could finish that in about 30 minutes. Then we?ll have closing. Does Applicant have an estimate of what amount of time they have for closing and whether they are calling rebuttal witnesses at this point?

1 MR. VON SALZEN: Eric Von Salzen for the
2 Applicant. We do not at the moment anticipate
3 calling any rebuttal witnesses but obviously we
4 haven?t heard the parties in opposition yet. So we
5 reserve that right. But it undoubtedly would be
6 brief and focused. The closing remarks would
7 probably be on the order of 10 to 15 minutes.
8 CHAIRMAN GRIFFIS: All right. We need an
9 hour. I would like to check the availability of
10 everybody. The Board would like to continue this on
11 April 29th at 1:00 p.m., first in the afternoon. We
12 will only give an hour to this. We have an extensive
13 afternoon planned so I cannot be flexible that
14 afternoon.
15 I can give 60 minutes. I?m hoping that
16 we can conclude everything in that time. We will
17 obviously be able to assess if there is additional
18 written submissions that would be required by the
19 Board. We can always be open to that. Ms. Bailey,
20 am I getting into large amount of trouble suggesting
21 that?
22 MS. BAILEY: No, sir. Just a reminder
23 that you have ?-
24 CHAIRMAN GRIFFIS: No need to remind.
25 Very well. If we can limit it to 60 minutes, I think

we can call that case at 2:00 p.m. It seems like we can control the morning better than we did today. All right. So I need the Applicant?s April 29th, 1:00 p.m. availability.

MR. VON SALZEN: That?s satisfactory for the Applicant.

CHAIRMAN GRIFFIS: Indeed. The parties are available or if there are issues that need to be addressed from the Board for next Tuesday, April 29th at 1:00 p.m. Is it acceptable? Yes? Not seeing anyone approach that has difficulty with it, then there it is. We?ll see you all at 1:00 p.m. on April 29th for a maximum of 60 minutes. Let?s plan accordingly there. With that, I can adjourn the morning session of the April 22, 2003.

If I can have people?s attention while they are leaving, we do have the afternoon session to go to. We will be calling the afternoon session at 2:00 p.m. Off the record.

(Whereupon, at 1:23 p.m., the above-entitled matter recessed to reconvene at 2:05 p.m. the same day.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:05 p.m.

CHAIRMAN GRIFFIS: On the record. Good afternoon, ladies and gentlemen. Let me call to order the 22nd of April, 2003 Public Hearing for the Board of Zoning Adjustments for the District of Columbia. My name is Geoff Griffis. I am Chairperson. Joining me today is Mr. Etherly on my right.

Representing the National Capital Planning Commission is Mr. Zaidan. Representing the Zoning Commission on the first case today is Mr. May. We will have new representatives as the cases flip. Hopefully they will start flipping quickly. I appreciate everyone?s patience with us and staying. We did have a morning session that went well over. We have taken a brief lunch and so we are here now fully focused.

Let me run through a couple of things that are very important for everyone to understand who is here for a hearing today. First of all, we have agendas available to you. They are located at the door where you entered into the hearing room.

Secondly, please be aware that all hearings are being recorded. Therefore there are

1 several things important to understand. First of
2 all, when coming forward to speak to the Board to
3 give testimony, you must fill out two witness cards.
4 Witness cards are available at the table in front of
5 us and also at the table close to the door. The two
6 witness cards go to the recorder who is sitting on
7 the floor to my right. That is so that you can be
8 properly given credit for the important and very
9 influential things that you will be saying to us.
10 Also in coming forward to speak to the
11 Board, we would ask that you state your name and
12 address for the record. You only need to do that
13 once when you first approach. Of course anything
14 said to the Board needs to be said into a microphone
15 and that microphone needs to be on.
16 With that, let me run through again very
17 important things. I would ask that we do not disrupt
18 the proceedings this afternoon by any inappropriate
19 actions or noises. I would also ask that everyone
20 turn off all their cell phones, beepers and any other
21 transmitting satellite locating devices so that we
22 don?t have interruptions to people that are trying to
23 give information to this Board.
24 The order of procedure today will be for
25 special exceptions and variances. First we will have

1 the applicant presenting their case. That is the
2 statement and witnesses. Second we would have
3 Government reports such as the Office of Planning and
4 any other Government reports attending to the
5 application. Third would be the report from the ANC.
6 Fourth would be persons or parties if granted in
7 support of the application. Fifth would be persons
8 or parties in opposition and finally we will have
9 rebuttal testimony and closing by the applicant.
10 Cross examination of witnesses is
11 permitted by the applicant and parties in the case.
12 The ANC in which the property is located is
13 automatically a party in the case. The record will
14 be closed at the conclusion of each hearing except
15 for any information that this Board specifically
16 requests. We will be very specific on what is to be
17 submitted and when it is to be submitted into the
18 Office of Zoning. This is important because you must
19 understand that no other information will be accepted
20 into the public record once the record has been
21 closed.
22 The Sunshine Act requires that all public
23 hearings on each case be held in the open and before
24 the public. This Board however may as is consistent
25 with its rules of procedure enter into executive

1 sessions in order to review the record or to
2 deliberate on the case. Decisions of this Board in
3 contested cases must be based exclusively on the
4 public record. That?s why it is so important to get
5 the information into the record before it gets
6 closed. Also importantly we ask that people present
7 today not engage Board members in conversation so
8 that we do not give the appearance of not
9 deliberating solely on the public record.
10 This is the part of the afternoon record
11 that I most often like in that I say we will be
12 ending this session at 6:00 p.m. today. However, I?m
13 not sure I can say that today. We are going to go
14 through the first case. I think it?s going to be
15 very quick. We are going to call a second case.
16 As we approach the 6:00 hour I will
17 assess people?s schedules and this Board?s schedule
18 to make sure we maintain a quorum and see how long
19 that we go. I do not anticipate being absolutely
20 crazy in going past a late hour in the evening. As I
21 say as we get close to 6:00 p.m. we will assess the
22 schedule in order to try and make up the time that we
23 took for our morning session.
24 At this time, the Board will entertain
25 any preliminary matters. Preliminary matters are

1 those which relate to whether a case will or should
2 be heard today such as request for postponements,
3 withdrawal, continuances, any problems or reasons why
4 a board should not hear a case. If you believe that
5 the Board should not proceed with a case that?s on
6 schedule for this afternoon or you believe that you
7 are not prepared to hear a case this afternoon, I
8 would ask that you approach and have a seat at the
9 table in front of us as an indication that you have a
10 preliminary matter.
11 Let me first go to Staff to see if Staff
12 is aware of any preliminary matters for the Board?s
13 attention at this time. Also we wish you a very good
14 afternoon to Ms. Bailey who is sitting at my very far
15 right from the Office of Zoning. Mr. Moy also
16 representing the Office of Zoning and Ms. Monroe
17 between them, Corporation Counsel.
18 MS. BAILEY: Mr. Chairman and members of
19 the Board, good afternoon. Staff does not have any
20 preliminary matters.
21 CHAIRMAN GRIFFIS: Good, thank you. Yes,
22 ma?am.
23 MS. JAMES: Good afternoon. My name is
24 Regina James. I?m chair of ANC 5-B. The case that
25 is before us 15th and West Virginia Avenue, I

1 submitted a letter to the Board February 10th. Mr.
2 Chair, if you don?t have a copy, I can provide you
3 with this copy.
4 The Government failed to show up before
5 the ANC Commission. The first time we came the Board
6 was generous enough to give us a continuance so that
7 the Government could address the concerns of the
8 Commission and the community. In our February ANC
9 meeting, the Government failed to show up. So sadly
10 I would like this time for the Board to allow the ANC
11 Commission to weigh in on the matter.
12 CHAIRMAN GRIFFIS: Let?s start from the
13 very beginning. This is Case No. 16967, is that
14 correct? This is the first case in the afternoon.
15 MS. JAMES: Yes, sir.
16 CHAIRMAN GRIFFIS: And your issue is the
17 fact that who from D.C. Government were you
18 anticipating to show up?
19 MS. JAMES: Sid Shayesi and Michael ?-
20 CHAIRMAN GRIFFIS: With who?
21 MS. JAMES: Department of Transportation.
22 This is regarding the variance on 15th and West
23 Virginia Avenues.
24 CHAIRMAN GRIFFIS: Right.
25 MS. JAMES: We came before you the first

time in January. The Board was gracious enough to give us a continuance for our ANC meeting in February. I met with the Mayor?s people that afternoon at lunch and they assured me that the Department of Transportation would be at our ANC meeting.

CHAIRMAN GRIFFIS: What other Government agencies met with the ANC?

MS. JAMES: No Government agency.

CHAIRMAN GRIFFIS: DPW didn?t come out?

MS. JAMES: No, sir. The only representative was Mr. Spriggs and he is the architect.

CHAIRMAN GRIFFIS: Which is no small thing but not a Government agency.

MS. JAMES: I know but he could not address the questions of the Commission or the community.

CHAIRMAN GRIFFIS: I see. So what you are asking us to do is postpone this.

MS. JAMES: The ANC would like an opportunity to weigh in, sir.

CHAIRMAN GRIFFIS: I see. I think we could proceed today. We have limited issues and that is we actually ask the Office of Planning to be here

1 and to bring agencies. I think there were some
2 simple questions of which you can avail yourself to
3 cross examine that information. Then we could assess
4 in terms of the timing that we set this for decision.
5 There it is. Board members, Mr. May.
6 COMMISSIONER MAY: No, it?s fine. This
7 is exactly one of the things I was looking for which
8 was finding out the rest of the story from the ANC
9 which was not apparent from what we had in the
10 record.
11 CHAIRMAN GRIFFIS: Okay. I think we are
12 perfectly amenable to doing this. I?m a little
13 concerned about granting continuance previously and
14 having not had the meetings happen. I?m not sure how
15 long we have to wait to get that done. Do you know?
16 Did you invite them?
17 MS. JAMES: Yes, sir. It was properly
18 agenized in our February meeting. The Mayor?s people
19 assured me that they would be present at our ANC
20 meeting because I met with them at lunch.
21 CHAIRMAN GRIFFIS: Right.
22 MS. JAMES: But the Government still
23 failed to show before the ANC.
24 CHAIRMAN GRIFFIS: When is your next
25 meeting?

MS. JAMES: Our next meeting is in May. It?s May 1 but, Mr. Griffis, our agenda is quite full. If you would like the Government to appear at our May meeting, I?m sure we can make the necessary adjustments.

MEMBER ETHERLY: Mr. Chair, if I understand correctly, I don?t think Ms. James is asking for a continuance today but just an opportunity to provide the ANC?s perspective which I?m comfortable with. I do understand your caution. If I understand correctly, Ms. James, the ANC has yet to vote on the actual issue.

MS. JAMES: This is true. We had not had an opportunity to weigh in on this project.

MEMBER ETHERLY: Okay. Without going into too much detail, what?s been the extent of the discussion that the ANC has had on the proposal on the application?

MS. JAMES: Well, not very much, sir, because the Government failed to show up at our January meeting. When they came in under announcement there were concerns.

MEMBER ETHERLY: Understood.

MS. JAMES: Since then I have been wrapped up in the next case that we are about to

1 proceed with.

2 MEMBER ETHERLY: Thank you, Mr. Chair.

3 CHAIRMAN GRIFFIS: Well let?s continue

4 then and then we?ll assess if we decide this today or

5 we move this for a decision in order to get an ANC

6 report in. If I?m not mistaken we are at the point

7 of which we would go to Office of Planning. We did

8 go through their report. I welcome them this

9 afternoon and perhaps they could ?- I?m sorry. Did

10 you have a preliminary matter?

11 MR. QUIN: Yes, Mr. Chairman. I had

12 filed a Motion to Postpone the 16998 case. I want to

13 briefly be heard on that. I didn?t know whether you

14 wanted me to do it now or you want to do it after as

15 we proceed on the next.

16 CHAIRMAN GRIFFIS: We?re going to wait on

17 that only for the fact that there?s a different

18 Zoning Commissioner that?s sitting on that case. The

19 three of us never agree so it would be problematic.

20 With that, let?s note that we have several motions

21 but a very preliminary motion in the next case. I

22 think we can go through this very quickly. So why

23 don?t we have the Office of Planning representative

24 introduce themselves and set the stage for this one.

25 MS. STEINGASSER: I?m with the Office of

Planning. Our report is on file. We do recommend approval of both ?-

CHAIRMAN GRIFFIS: I?m sorry to interrupt you. I?m getting way ahead of myself because we haven?t called the case. So why don?t we do that and then we can actually be official in getting all this done. Thank you.

MS. BAILEY: Application No. 16967. This is a case of the Government of the District of Columbia pursuant to 11 DCMR Section 3103.2, for a special exception from the penthouse set-back provisions under section 411 and a variance from the building height requirements under section 840, to allow the construction of a two-story building used for trash truck storage and administrative office space. The property is located in C-?1 District at premises on West Virginia Avenue and 15th Street, N.E. (Square 4092, Lot 5). Mr. Chairman, if I?m not mistaken, all of the witnesses except for Ms. Regina James were sworn in previously.

CHAIRMAN GRIFFIS: That?s my understanding.

MS. BAILEY: Ms. James, would you stand to take the oath? Is there anyone else associated with 16967?

(Witness sworn.)

CHAIRMAN GRIFFIS: Now we can proceed.

MS. STEINGASSER: Yes, sir. Our report does explain that the Office of Planning recommends approval of both the special exception for the roof penthouse enclosures and also for the variance relief for the building height restrictions in the C-M zone.

Regarding the roof penthouse structures, the special exception applies to the two stairwells, one proposed at either end of the building to allow access from the rooftop parking down. It?s impractical to require the two stairwell penthouses to be adjacent and provide this creating a 400 foot expanse to get from one parking space to the end of the stairwell. It goes to the issue of life safety to allow two stairwells to allow ingress and egress to that floor.

With regard to the variance, the Office of Planning found that the property is unique. It?s a hexagonally pie shaped lot. The new structure is being constructed to house a fleet of packer trucks. The packer trucks have a taller than standard height. Therefore their floor-to-ceiling is a lot taller than a standard parking garage. They estimate approximately 20 feet for each floor.

The necessary garage floor requires that the two structures then exceed the building restriction of 40 feet for this zone by a few feet based on the fact that there is roof structure necessary to cover the exit ramp as it enters onto the roof structure. We found that it did create a practical difficulty. We recommended approval of the variance because it is in keeping with the intention and purpose of the Zone plan. The property is zoned C-1 which is a heavy commercial light industrial zone and it anticipates these type of uses including heavy presence of employees and excessive truck traffic.

The ramp roof is located so its impact is focused at the center of the lot not adversely affecting neighboring properties and away from the street frontage. The building remains in only two stories while the area requirements for the C-M zone anticipate up to three stories. So it doesn?t hit that bulk intent as well.

The public good is also served because the proposed facility reduces parking and congestion on contiguous streets and allows for the on-site parking of both employees and utility vehicles. It ultimately saves taxpayer dollars by increasing the life span and operating costs of these vehicles.

1 Therefore the Office of Planning did recommend
2 approval.
3 CHAIRMAN GRIFFIS: Good, thank you.
4 Questions from the Board. Mr. May.
5 COMMISSIONER MAY: I would like to know
6 more about the parking situation. It was apparent
7 from our discussions in the case last time that there
8 is more parking on the roof than is probably needed
9 to accommodate the employees who are actually working
10 in this building or are working in the trucks. The
11 question that immediately arises up is who else is
12 parking there and why do they need to park there as
13 opposed to somewhere else. This all goes to the need
14 to park on the roof as opposed to parking somewhere
15 else.
16 MS. STEINGASSER: Mr. Ralph Cyrus with
17 the Office of Property Management is here at the
18 table and will be able to testify to the operational
19 issues of the parking.
20 MR. SPRIGGS: Austin Spriggs, architect
21 for the project. The rooftop parking in essence
22 replaces existing surface parking. That area in
23 which the packer storage facility will be located is
24 currently utilized for parking and it?s very full.
25 In essence we are relocating a surface parking to the

roof of the structure. We are really not increasing the amount of parking. There?s a tremendous amount of parking going on in that particular area at the present time.

COMMISSIONER MAY: My question didn?t have anything to do with the increase in parking. It has to do with the capacity of the building and the parking lot associated with it. It looks like there is more parking on this building than there needs to be to accommodate that use of that building itself. Whether it?s an increase or whether it?s replacing what?s already parking there, I just want to know who else is parking there. That?s all.

MEMBER ZAIDAN: Who is parking in the parking lot now?

MR. CYRUS: Ralph Cyrus from the Office of Property and Management. When I talked to my colleagues earlier, they indicated that the only one that?s going to be parking there will be the workers assigned to that facility, the packer storage people.

COMMISSIONER MAY: So the entire parking.

MR. CYRUS: Is going to be for their personal vehicle where their trucks and other vehicles will be under the first level.

MR. SPRIGGS: Austin Spriggs again. We

are providing locker space for approximately 270 drivers and staffers who staff the packers. That locker space is provided for those staffers and we are providing approximately 162 parking spaces on the roof. We are actually providing 271 lockers within the building for the employees who work on the packers as they collect trash throughout the city.

COMMISSIONER MAY: That was the information that I was trying to get at which is who is actually parking there and are they associated. Last time when we met as I recall when I asked who was parking there, there was some indication that it wasn?t just the employees associated with this facility. You are saying however definitively that everybody who is parking on this rooftop parking lot is working in the building.

MR. SPRIGGS: Working directly with the packer facility.

COMMISSIONER MAY: Okay, there was indication that it had to do with other fleet management uses that were occurring in the neighborhood. I would ask that question directly of OP. Are you aware of anything like that involves properties in the surrounding areas that share this parking?

1 MS. STEINGASSER: We are not. It is our
2 understanding that the elevated roof parking as shown
3 is to just elevate the parking that?s on the ground
4 now currently used by the employees of this facility.
5 There was no leasing or extended services at the
6 site.
7 COMMISSIONER MAY: Then my next question
8 for OP is has there been any attempt to study the
9 transportation issues surrounding this particularly
10 both the trash packers and the personal vehicles
11 coming and going and the impact on neighborhood
12 streets understanding that this is an existing use.
13 But building a new facility for an existing use
14 doesn?t give you a free ride on transportation issues
15 when you are planning things around the city
16 generally speaking. I?m wondering if there was any
17 attention to that here.
18 MS. STEINGASSER: There was not a traffic
19 management plan or traffic circulation plan provided.
20 MR. SPRIGGS: Austin Spriggs again if I
21 may add. Approximately I suppose it has been maybe
22 two years ago that we did make an assessment of that
23 entire facility. In making that assessment, one of
24 the things that we made sure we did was to separate
25 the egress and ingress for vehicles that park on the

roof and for the packers that park within the building. The design accommodates both the packers and automobiles in a fashion so that they do not conflict within the facility or without.

Just to go into it very quickly, all of the packers will enter the facility coming off of West Virginia Avenue and 15th Street at night when they come in at the end of the day. The packers will come in at West Virginia Avenue and Fenwick Street at night. They will egress in the morning from West Virginia Avenue and 15th Street. Of course in the morning the automobiles will be entering on the Fenwick Street side. I believe we have effectively separated those two different types of vehicles within the facility and as they egress onto the streets.

COMMISSIONER MAY: It?s apparent that it?s been thoughtfully designed. It?s not clear to me what?s data it?s based on. That?s why I have a concern. I just would have thought seeing a major facility like this come in that it would have been nice to see some sort of traffic study.

MS. JAMES: Excuse me. I?m sorry.

COMMISSIONER MAY: You?ll have a chance a little bit later unless you are aware of a traffic

1 study. I guess that?s it for my questions for OP.
2 CHAIRMAN GRIFFIS: Any other Board
3 questions of the Office of Planning? Does the
4 Applicant have any questions of the Office of
5 Planning?
6 CHAIRMAN GRIFFIS: ANC, do you have cross
7 examination of the Office of Planning?
8 MS. JAMES: Just the fact that I share
9 Commissioner May?s concern with regards to the
10 traffic flow. If we are talking about heavy truck
11 use, there are houses in that surrounding area. With
12 regards to air quality and emissions, has that been
13 considered in the design because we need to protect
14 the overall well-being of the residents of that
15 community?
16 CHAIRMAN GRIFFIS: Understandable.
17 Cutting off a little bit because it?s cross
18 examination means you need to ask questions and not
19 testify.
20 MS. JAMES: I?m sorry.
21 CHAIRMAN GRIFFIS: Plus the fact that
22 we?re going to have an opportunity to hear officially
23 from the ANC. Some ideas have been evidenced here.
24 I think that covers it for what we needed to deal
25 with in terms of the hearing on this case. I would

suggest ?- I?m sorry.

MS. STEINGASSER: Mr. Chair, if I could respond to the traffic study issue just ever so slightly. The reason OP didn?t push for a traffic study in this particular case is the use itself is a matter of right use which would not require a traffic study. The variance requested being a height actually has no traffic impact. If the floor-to-ceiling were just a few feet lower, the project would be a matter of right project and under such circumstances a traffic study wouldn?t have been required. That?s why in a height variance case it?s unusual for us to push for a traffic impact study.

CHAIRMAN GRIFFIS: I think that?s an excellent point. What Mr. May be preparing to say is that ?-

COMMISSIONER MAY: ?- is that it?s an excellent point.

CHAIRMAN GRIFFIS: Right. Excellent point. The idea is if we have an opportunity if there is a transportation issue that we can remedy with that kind of knowledge, let?s take advantage of the opportunity. I think everyone would be in agreement that ?- Well, there it is. It?s straight forward enough. It doesn?t hurt to have the

1 information. With that, anything else that we need?
2 COMMISSIONER MAY: I do want to say more
3 officially that I think that is a very good point. I
4 guess part of it is just being accustomed to when
5 anything special is required that a lot of people
6 will raise issues that may or may not be related to
7 this. I?m just so accustomed to hearing them that
8 maybe I?m just bringing them up automatically.
9 The major concern I had particularly with
10 regard to transportation had to do with this other
11 use that was implied or at least I had assumed on the
12 previous hearing where we talked about who would
13 actually be parking there. It seemed to me that what
14 we were building was not just a trash packer facility
15 but also a parking facility for other uses in the
16 neighborhood. At least again that was my own
17 assessment of what was coming from that. It seemed
18 to me that it went beyond the simple case of what we
19 were looking at in terms of the height variance.
20 Thanks.
21 CHAIRMAN GRIFFIS: Very well. We?re left
22 with scheduling. ANC is meeting on May 1st. Is that
23 correct?
24 MS. JAMES: Yes, sir.
25 CHAIRMAN GRIFFIS: What I would like to

do is have you request that the agency that you would like to speak with if that?s DDOT that you request and put them on the agenda. Put them last. You can make them hang out all day if you want to.

MS. JAMES: Okay.

CHAIRMAN GRIFFIS: No, don?t do that.

(Laughter.)

CHAIRMAN GRIFFIS: Hopefully Office of Planning can help coordinate that and get that done. Any issues that you have, we will keep the record open. How long will it take you to have an official action in a letter from the ANC?

MS. JAMES: With regards, our meeting is on May 1st. I believe according to your procedures I have seven days.

CHAIRMAN GRIFFIS: No, the record is staying open to receive your letter so when can you produce it?

MS. JAMES: Okay. Thursday, give me the weekend. I can fax it to you Monday.

CHAIRMAN GRIFFIS: So Monday following the first.

MS. JAMES: Monday and then send you a hard copy via mail.

CHAIRMAN GRIFFIS: So May 5th, we would be

1 looking for that.

2 MS. JAMES: Yes, sir.

3 CHAIRMAN GRIFFIS: So we set it for

4 decision on the 13th. Ms. Bailey, am I getting into

5 any trouble there? That?s doable.

6 MS. BAILEY: This is a special public

7 meeting, Mr. Chairman.

8 CHAIRMAN GRIFFIS: Right. May 13th, 9:00

9 a.m. we will have a special meeting of which just to

10 be clear for everyone here, there is no testimony at

11 that point. We will have all the information in that

12 we need. Your letter then should be very

13 comprehensive.

14 MS. JAMES: Yes.

15 CHAIRMAN GRIFFIS: You need to give it to

16 us. You need to serve it to the Applicant also.

17 Excellent. We?ll leave the record open for the

18 Applicant if they want to address or submit

19 addressing the ANC?s report. In which case on May

20 13th, the first thing in the morning, you will hear

21 our deliberation. You are absolutely welcome to come

22 but as I say there is no public participation in that

23 aspect of the case. Anything else? Is everyone

24 clear? Mr. May?

25 COMMISSIONER MAY: No, I just want to

thank the rest of the Board for bearing with me on getting more information on this. I want to thank OP for coming down and OPM as well and the Applicant so that we could satisfy these questions.

CHAIRMAN GRIFFIS: Great, you can throw us a party after this long afternoon. Any questions from the Applicant or ANC? Anyone else here tending to this application? You are clear on what?s happening and the dates.

MS. JAMES: Yes.

CHAIRMAN GRIFFIS: Very good. If you are not or you find yourself not, you can always call the Office of Zoning and they will be able to assist you. Thank you very much.

MS. JAMES: Thank you, Mr. Chairman.

MS. BAILEY: Application No. 16998. This is an Appeal of Advisory Neighborhood Commission 5B pursuant to 11 DCRA Sections 100 and 3101 from the Administrative Decision of David Clark, Director, Department of Consumer and Regulatory Affairs for the issuance of Building Permit No. B425438 for the renovation of a warehouse for use by Community Correction Center. The Appellant is alleging that DCRA erred by issuing a building permit as the proposed use for will allegedly be operated as a

1 community-based residential facility also referred to
2 as a halfway house and therefore in violation of the
3 prohibition of new residential use in a CM District
4 pursuant to Section 801.
5 The property is located in the CM2
6 District at premises 2210 Adams Place, NE, Square
7 4259, Parcel 154/81. All those persons wishing to
8 testify would be please stand to take the oath.
9 (Witnesses sworn.)
10 Mr. Chairman, as was alluded to
11 previously, there are some preliminary matters
12 associated with this case.
13 CHAIRMAN GRIFFIS: Indeed. We also want
14 to welcome this afternoon Mr. Hood who is joining us
15 representing the Zoning Commission on this appeal.
16 COMMISSIONER HOOD: Thank you.
17 CHAIRMAN GRIFFIS: Let's move right into
18 the first motion for consideration.
19 MR. QUIN: Mr. Chairman.
20 CHAIRMAN GRIFFIS: Yes.
21 MR. QUIN: My name is Whayne Quin with
22 Caroline Brown of Holland and Knight. We represent
23 Bannum, Inc., the Lessee of the property at 2110
24 Adams Place, NE and also the operator of the proposed
25 temporary correctional institution. I filed several

1 things. The first is a Motion to Continue which I
2 would like to argue first which seems logical.
3 Then the second is a Motion to Dismiss if
4 we reach that today. Then I also filed for
5 information a pleading on the merits. You should
6 have all three of those documents. I just want to
7 make certain that the record reflects that you have
8 those. If I may, I will proceed with the Motion to
9 Continue.
10 CHAIRMAN GRIFFIS: Just give me one
11 second.
12 COMMISSIONER HOOD: Mr. Chairman, I have
13 a question.
14 CHAIRMAN GRIFFIS: Yes.
15 COMMISSIONER HOOD: I believe this case
16 is against the District Government. I just want to
17 know Mr. Quin's role. Is he appealing or who does he
18 represent?
19 MR. QUIN: I represent in effect the
20 Appellee but it's not the same as the Government. I
21 represent the Lessee who is Bannum, Inc. Under the
22 definition of "party" it's an automatic party but
23 I'll be proceeding on the basis of representing
24 Bannum, Inc.
25 COMMISSIONER HOOD: Mr. Chair, I would

1 just ask that we look at 3112.15. Maybe I need some
2 guidance but I believe the interest will be affected
3 by the action of the appeal to intervene in the
4 appeal for the such general amendative purpose as the
5 Board may specify. I believe that the motion
6 basically should come from the District Government if
7 there are any motions according to 3112.15. However,
8 I do stand to be corrected.
9 MR. RUSHKOFF: Mr. Chair, my name is
10 Bennett Rushkoff. I represent the Department of
11 Consumer and Regulatory Affairs for this appeal. We
12 don't have a position one way or another on these
13 motions. These particular motions are brought by the
14 company that would propose to proceed with the
15 building permit. We would leave it up to them to
16 pursue it.
17 MR. TEMPLE: May I be heard briefly on
18 this?
19 CHAIRMAN GRIFFIS: Yes.
20 MR. TEMPLE: Good afternoon. My name is
21 Donald Temple. I'm counsel to ANC 5B. I take
22 particular note that each step of this process in
23 terms of the ANC has been challenged in terms of our
24 compliance with procedures. I'm concerned that there
25 is no motion before this Board that has been

1 submitted to intervene in this case. The District
2 cannot yield or waive or assign its right to do so
3 because it has no position.
4 CHAIRMAN GRIFFIS: Right.
5 MR. TEMPLE: To that extent, I believe
6 that the Board should follow those procedures. Each
7 of those motions should be stricken, the Motion to
8 Dismiss which did not come from the District which is
9 a party and the Motion to Continue which did not come
10 from the District which is a party on procedural
11 grounds. They should be stricken and should not be
12 heard by this Board.
13 CHAIRMAN GRIFFIS: And you are saying
14 that in what Mr. Hood has brought up in 3112.15. You
15 brought up another interesting issue about whether
16 intervener status has been granted. Ms. Monroe can
17 correct me who is our Corporation counsel that the
18 owner is automatically a party in this. Am I
19 correct?
20 MS. MONROE: Mr. Chairman, as Mr. Hood
21 noted, 3112.15 says "At the time of the hearing on
22 the appeal, the Board may permit persons who have a
23 specific right or interest to intervene." So I don't
24 think it was necessary to make a motion to intervene
25 beforehand. However, the Board needs to determine

1 whether or not they will allow Bannum to be an
2 intervener. Once you make that decision, you can act
3 on their motions.
4 MR. TEMPLE: We won't have any objection
5 to them intervening as of today. We would still
6 retain our objection to their motions.
7 CHAIRMAN GRIFFIS: Right.
8 MR. QUIN: Mr. Chairman.
9 CHAIRMAN GRIFFIS: Actually hold on one
10 second. We're going to set the stage because this is
11 going to be a very dynamic afternoon. What I'm going
12 to ask as we proceed is let's stick to one issue.
13 We'll solve it. Then we're going to move on. That's
14 what I'm hopefully going to help to facilitate. As
15 we go, we're first going to decide on the property
16 owner status in the appeal case. Mr. Quin, do you
17 want to address that?
18 MR. QUIN: Yes, I'm not sure why we are
19 even talking about intervention because the rules on
20 page 31-40 specific "party" as the following as
21 indicated in subparagraph (a)on appeals to the Board
22 pursuant to 3100.2 and 3200.2 and under subparagraph
23 (3), it says "the owner, lessee, operator or contract
24 purchaser of the property involved in the
25 administrative decision, if not the appellant." From

1 my standpoint, we are automatically a party.
2 Therefore there is no need to intervene.
3 COMMISSIONER HOOD: Mr. Chairman, if I
4 may I would go back to what Ms. Monroe said and I'll
5 go back to what I cited 3112.15. I'm not saying they
6 cannot participate. I'm just looking at our
7 regulation in the Zoning Orders.
8 CHAIRMAN GRIFFIS: But we're not there
9 yet. Let's go over the first hurdle.
10 COMMISSIONER HOOD: Here's my problem and
11 my concern. I want to hear from the District. They
12 are the ones who basically in question. I don't
13 necessarily want to see Mr. Quin take over and
14 forgive me, Mr. Quin. I want to hear from the City
15 but how the Board chooses to proceed, I'll deal with
16 it.
17 MR. QUIN: Mr. Chairman, I would like to
18 be heard on that specifically if I could. The Court
19 cases are very clear that where there is a
20 preliminary motion such as aggrievement, timeliness,
21 estoppel and laches that they are to be raised in
22 advance and that those must be disposed of before you
23 reach the merits. As far as I know, there is no
24 argument to the contrary ever. That's always been
25 what we've done for the BZA. We're under the same

1 section as a party as the ANC.

2 I could just as well say that the ANC has

3 not filed to intervene or the appellant has not filed

4 to intervene or anybody else has not filed to

5 intervene. The rules specifically define who is a

6 party under Section 31-40.

7 CHAIRMAN GRIFFIS: Right, I think we're

8 dealing with two issues at the same time and

9 therefore not necessarily speaking directly at each

10 other. Mr. Hood, do you have any disagreement with

11 Section 3199.1, a definition that establishes without

12 action by the Board the property owner as a party in

13 this case?

14 COMMISSIONER HOOD: I don't have any

15 disagreement with that. But, Mr. Chairman, it says

16 at the time of the hearing and if my colleagues can

17 help me through this, then that will be fine. I just

18 don't want to see Mr. Quin defending the case for the

19 City. That's where I am.

20 CHAIRMAN GRIFFIS: I think that's an

21 excellent point and we can take that as direction.

22 However, we need to be very clear on what we're

23 talking about. We can satisfy in terms of the owner

24 the owner's participation in this. I don't think

25 we're going to be able to preclude them from how they

1 participate or what they do. But we can certainly
2 direct as things go. If, Mr. Hood, we're not hearing
3 enough from the District Government or their
4 representative, we can certainly request additional
5 information.
6 MR. TEMPLE: May I be heard too?
7 COMMISSIONER HOOD: Mr. Chairman, let me
8 just cut to the chase. I will withdraw my statement.
9 CHAIRMAN GRIFFIS: There's no need to
10 withdraw. We're going to have to decide it.
11 COMMISSIONER HOOD: At the appropriate
12 time, I'll bring it back up.
13 CHAIRMAN GRIFFIS: Okay. Mr. Zaidan.
14 MEMBER ZAIDAN: One thing I'm confused
15 with and I would like to hear from Court counsel if
16 that's possible. On the definition of "party" as Mr.
17 Quin has cited, we look at two different versions of
18 party. One is automatic party to the case and the
19 other is party bestowed by the Board. I know in
20 other appeals that we've deal with the property owner
21 is usually ?- Is there any indication of the way of
22 what this definition means is automatically a party
23 to an appeal or something that we have to deal with
24 from a motion from the Board?
25 MS. MONROE: Mr. Zaidan, it appears from

1 the definition that the property owner would be an
2 automatic party as Mr. Quin said because it's in the
3 same listing as the ANC which we know is an automatic
4 party. It appears that other people would be
5 interveners and would be allowed party status but
6 that would have to go to the Board first.
7 MEMBER ZAIDAN: Right.
8 CHAIRMAN GRIFFIS: We've had that in
9 other appeals where we've had adjacent property
10 owners that want to intervene in the appeal and they
11 have been denied and they have been granted that.
12 MEMBER ZAIDAN: I guess the point of
13 clarification is it's the fact that it's subsection
14 (a) and states "on appeals". It's not every
15 proceeding that comes before us and we have to
16 operate that way.
17 CHAIRMAN GRIFFIS: Applications is right
18 below that so clearly they are making a distinction
19 between the two.
20 MEMBER ZAIDAN: Absolutely.
21 MR. TEMPLE: We have no objection to them
22 being determined a party with this issue.
23 CHAIRMAN GRIFFIS: Am I wearing everyone
24 down? Is that why that one's pretty easy?
25 MR. TEMPLE: We think the merits of the

1 case.

2 CHAIRMAN GRIFFIS: Indeed. My issue is

3 not to argue it but rather to get down to the base

4 fact. If we have two different sections of

5 regulations, it tells two different things. I take

6 it that there's a consensus if we are in agreement

7 that clearly 3199.1 establishes the participation in

8 this. We do not have any applications or requests

9 for intervener. That being said, the direction and

10 the comment from Board members also should be heeded

11 as we continue with this. Then we're back to the

12 first motion. Is that correct?

13 MR. QUIN: Yes.

14 CHAIRMAN GRIFFIS: Board members, what I

15 would like to do is take up the first motion to

16 continue that was submitted with discussion among the

17 Board. It is Exhibit No.20. If we can proceed with

18 these motions without having them argued, it may be

19 more efficient.

20 MEMBER ZAIDAN: I guess one thing I'm

21 struggling with is the claim that Bannum's been

22 prejudice to properly prepare for and defend against

23 this appeal but we have a full submission of

24 pleadings on the merits. I guess I don't have a full

25 understanding of what's been prejudiced.

1 CHAIRMAN GRIFFIS: Other comments? Other
2 questions? Discussion on this first motion?
3 MR. QUIN: Mr. Chairman, I don't want to
4 argue the motion but I do want to point out that I
5 was only handed today the Appellant's statement at
6 1:30 p.m.
7 CHAIRMAN GRIFFIS: Okay. This is what
8 I'm going to do now that we've had time to digest it
9 and talk amongst ourselves. I'm just going to allow
10 brief comment to the motion and then obviously
11 everyone is allowed to respond. Again as concise and
12 direct we can be the more efficient we are in moving
13 along. You were delivered the statement today.
14 MR. QUIN: I had filed a motion to
15 dismiss and just to point out that there are several
16 things that have not been completed which I think are
17 obligations of an appellant. First there is no
18 written report of the ANC which is a requirement.
19 Secondly, we did not get the Statement of Appellant
20 until today at 1:30 p.m. I haven't read that. The
21 clients haven't read it. Then there are two parts of
22 the filings that occurred sometime around April 11
23 that said that there would be a videotape to be used.
24 We do not have a copy of that. There were two
25 references to the videotapes and to a transcript of

1 the proceedings.

2 Sure, we are going to protect everything

3 we can protect. That's why we filed our motions and

4 filed on the merits as well because we want to say as

5 much as we can that we know of. But if there is

6 something that's new that hasn't been discussed, I

7 think that's prejudicial to our preparation to the

8 case.

9 CHAIRMAN GRIFFIS: You've heard Mr.

10 Zaidan's comment about the fact that there is a

11 substantial amount of submissions from you that would

12 obviously lead us to believe that there's been some

13 preparation.

14 MR. QUIN: Yes.

15 CHAIRMAN GRIFFIS: I don't want to be too

16 sarcastic. Do you feel that it in fact is absolutely

17 to the level of prejudicing you in continuing this

18 case to proceed today and see what comes in that you

19 may not have heard or seen? Then we can allow for

20 additional time to either rebut that or to address it

21 or however we want to deal with it depending on what

22 that information is.

23 To be very direct, we have limited time

24 today. It doesn't look like we'll get through

25 everything necessarily that we have to. So we'll see

1 you again. Should we not utilize the time today?
2 MR. QUIN: That's within the Board's
3 discretion if that's the way you want to handle it.
4 CHAIRMAN GRIFFIS: I know it's in our
5 discretion.
6 MR. QUIN: What I wanted to point out is
7 that I have not read the material that was just
8 filed. I haven't had a chance to review it with the
9 client. If there is something in there that is
10 different from what we understood. Basically a boat
11 load of exhibits were filed but no real argument that
12 goes to a lot of the issues here was set forth until
13 I got them today. Maybe Corporation counsel should
14 address that because I don't know when he got his
15 copy either.
16 MR. TEMPLE: May I be heard please?
17 CHAIRMAN GRIFFIS: You don't need to
18 address. Believe me, I'm going to run it and make
19 sure everyone gets to talk. Let me ask you again
20 then directly, Mr. Quin, because I know we have the
21 decision to make. You are saying that you could not
22 without great prejudice continue today.
23 MR. QUIN: No, I don't want to say that.
24 I would say that I'm prejudice because we have not
25 been able to review it. I can't tell at this point

1 how I would be prejudice without knowing what the
2 pleading says.
3 CHAIRMAN GRIFFIS: That makes sense. I
4 just wanted to have clarity. Do you want to address
5 first of all when you received it? I'm taking it in
6 order just so it makes it logical. Obviously there
7 was a motion and then we have the Government. Then
8 I'm going to have you at the end. Yes?
9 MR. RUSHKOFF: On behalf of DCRA, I
10 received a copy of the memorandum just a few minutes
11 ago from counsel for Bannum. We were prepared to
12 defend this case on the merits today. Generally our
13 view is that in borderline cases we try to give the
14 ANC every opportunity to participate and make its
15 case. That's the reason why in this case we're not
16 asserting every possible argument we can and we're
17 not joining in the Motion to Dismiss.
18 On the other hand, ANC needs to provide
19 proper notice of its arguments. We would be in favor
20 of perhaps accomplishing what we can today but then
21 continuing it so that we can have a chance to read,
22 digest this memorandum and determine how we would
23 respond to it on the record.
24 MEMBER ZAIDAN: I have a question because
25 this is something that's come up in the past. In our

1 regulations - I'm not saying this rhetorically -
2 where does it state that the arguments and filings of
3 the application once it's filed has to be served on
4 any parties before the hearing? That's something
5 we've struggled with. Is that in the regulations?
6 I see it once the hearing starts parties
7 are determined. That's when the service requirements
8 kick in. But I've never been aware of any actual
9 servicing of parties other than notice before the
10 hearing starts. Please correct me and point me to
11 where that is.
12 MR. QUIN: The question of service does
13 not need to be reached. This was not filed. We have
14 people down as you may know every day to review
15 records. If they are not in the record, we can't
16 have them because they are not there. In this
17 particular case, the information which I have
18 outlined before is not in the record and we just
19 received at 1:30 p.m. the Statement of the ANC.
20 MEMBER ZAIDAN: Okay. In that respect I
21 assume that you have seen some filings because that's
22 what allowed you to file your pleadings. Would you
23 say that you would still be prejudice if you had the
24 ability to respond to those filings in a subsequent
25 public hearing or in writing as the process moves

1 along?

2 MR. QUIN: Mr. Zaidan, I really don't

3 know until I have a chance to exam what has been

4 filed. I don't know whether new issues are being

5 raised. I do not know. When you ask me if I'm

6 prejudiced, certainly we know generally what this is

7 about. That's why we filed our pleadings. We have

8 done that. I don't know what has been argued and you

9 have a rule that is there for a reason.

10 MEMBER ZAIDAN: What rule is that?

11 MR. QUIN: The rule is that you have no

12 later than 14 days before the date of the hearing

13 when the appellant still file with the Board

14 additional statements, etc. That was not done. You

15 also have a separate rule that deals with ANC that

16 says no later than seven days the ANC shall submit.

17 That's at 315.1.

18 MEMBER ZAIDAN: I'm not going to get into

19 an argument about it regarding what exactly has been

20 filed. We're talking about documents in addition to

21 the actual appeal. Correct?

22 MR. QUIN: Yes.

23 CHAIRMAN GRIFFIS: Yes.

24 MR. RONALD: Thank you, sir. First of

25 all, I think that Mr. Quin's motion is disingenuous.

1 This case does not come before this Board upon some
2 first glance. This case has been significantly
3 litigated in the District of Columbia Superior Court.
4 Additionally, Mr. Quin sought to have this hearing
5 heard. It was reported to the judge that the Court
6 did not have jurisdiction until this Board had the
7 opportunity to consider the case. Additionally
8 Bannum sued Ms. James.
9 CHAIRMAN GRIFFIS: I don't want to go too
10 far into this.
11 MR. RONALD: You let the gentleman talk.
12 CHAIRMAN GRIFFIS: Our minds get so full.
13 MR. RONALD: I understand.
14 CHAIRMAN GRIFFIS: Stick to what's at
15 hand because we don't have any jurisdiction.
16 MR. RONALD: I appreciate what you are
17 saying but he wasn't interrupted. I didn't speak but
18 for 30 seconds.
19 CHAIRMAN GRIFFIS: Let me make something
20 very clear. I will interrupt when I have to
21 interrupt. My role of many is to make sure that we
22 stay on point and that I get direct information.
23 Talking about what's happening outside of this room
24 and in the Court of Appeals or whatever court you are
25 in doesn't help us.

1 MR. RONALD: Mr. Griffis.

2 CHAIRMAN GRIFFIS: In fact, it's probably

3 going to confuse me.

4 MR. RONALD: With all due respect, Mr.

5 Griffis, the only point that I was making was that

6 there has been extensive documentation exchanged and

7 that there is no prejudice. Nothing more. I'm not

8 trying to incorporate those cases. Only to say that

9 the issue that we are arguing today is no different

10 than the issue that has been before these courts.

11 It's a very simple legal question.

12 CHAIRMAN GRIFFIS: So there is an

13 assumption on your client's part that they didn't

14 need to give this information because it was known.

15 MR. RONALD: Not at all. In fact when we

16 were asked to represent Ms. James pro bono, we

17 immediately submitted the documents. You might note

18 that they were filed April 11. That means that they

19 are down here checking the records every day. Though

20 they didn't get them 14 days ahead of time, they did

21 have ample time to review the exhibits.

22 As to the actual pleading, the pleading

23 that we submitted was to provide you an outline of

24 the arguments. We could strike the pleading if it

25 would allow this matter to end. There is no

1 requirement that we file that particular document.
2 We filed that particular document. That document
3 merely repeats the same issues that Ms. James raised
4 in filing this appeal. The only legal questions that
5 have been argued throughout this process is nothing
6 new. I submit to you that there is nothing
7 prejudicial to the other side.
8 MR. QUIN: Mr. Chairman, I can see right
9 now by skimming this that there is a new issue that
10 has never been raised before.
11 CHAIRMAN GRIFFIS: Excellent. Let's do
12 this then. We're going to take 30 minutes. I'm
13 going to let you go through the documents. You're
14 going to prepare for what we can today. We're going
15 to utilize the time that we have today. You can
16 identify the things that you think that you cannot
17 address. I'm going to have DCRA do the same. If you
18 take 10 minutes, that's fabulous. I would ask that
19 you perhaps make that known so we are all on the same
20 page here. Is that satisfactory to you?
21 MR. RONALD: No objection.
22 CHAIRMAN GRIFFIS: Excellent.
23 COMMISSIONER HOOD: Mr. Chairman, before
24 you do that, can I ask Mr. Quin a question about the
25 Motion to Continue? How many days late was the ANC's

filings?

MR. QUIN: The ANC's filing didn't occur until today. They filed exhibits but no statement. There is no written report of the ANC. There is no authorization as to who should appear. None of those are even in the record.

COMMISSIONER HOOD: I don't know if I necessarily agree with that.

MR. QUIN: If you are right, I will withdraw that.

COMMISSIONER HOOD: I'm sorry that it wasn't in the file but I believe I have something a little different and I stand to be corrected.

MR. QUIN: I don't know how you got it then because it was not in the record as far as I am concerned. This memorandum says ANC 5B's memorandum on the merits of the appeal which I just got at 1:30 p.m. today. I suspect it wasn't filed until 1:30 p.m. today or maybe it hasn't been filed yet.

COMMISSIONER HOOD: I just want to make sure that you understand. This letter we have in front of us is dated April 10 which designates Mr. Donald Temple, Esquire to represent ANC 5B at the BZA hearing. It's dated April 10.

MR. QUIN: That one authorizes counsel.

I have no objection to ANC having counsel but it does not comply with what the rules say.

COMMISSIONER HOOD: But I'm saying that was three days late. I think I read in one of your motions that it was one or two days.

MR. QUIN: That particular pleading was three days late. I didn't object to that particular statement.

COMMISSIONER HOOD: So you are not objecting to that.

MR. QUIN: Not to that statement.

COMMISSIONER HOOD: All right. I stand to be corrected.

MR. RONALD: Mr. Griffis.

CHAIRMAN GRIFFIS: Yes.

MR. RONALD: Just one other point. I have been provided with a public meeting minutes for ANC 5B. I would like to give a copy to you. It memorializes the resolution of the ANC 5B's appeal. I think it corrects the issue. It certainly is untimely. But it's certainly cures the issue as to the resolution and the fact that it did occur.

CHAIRMAN GRIFFIS: Can you hand one to the two participants and then bring it up to staff and let's get that to the Board.

1 COMMISSIONER HOOD: Mr. Chairman, is this
2 what he is speaking of?
3 CHAIRMAN GRIFFIS: Yes.
4 MEMBER ETHERLY: Just to be clear, I
5 think there are a couple of things at work here.
6 There is no disagreement about the authorization
7 action on the part of the ANC authorizing Mr. Temple
8 to represent you. I'm clear that from Mr. Quin's
9 standpoint and from the District Government's
10 standpoint that there is no issue. There is two
11 issues as it relates to timeliness I believe Mr. Quin
12 is trying to highlight. One is in terms of the
13 exhibits that were presented to counsel for Bannum
14 and conceivably the counsel for the District of
15 Columbia. Those exhibits were presented on April 11,
16 three days less than was required.
17 MR. RONALD: They were filed with the
18 Board.
19 MEMBER ETHERLY: That's correct. Now you
20 also have the submission of the ANC 5B's memorandum
21 on the merits of the appeal which was provided today
22 to the Board. It's not stamped in but that of course
23 is also part of the grounds for Mr. Quin's concerns
24 here. My perspective on this, Mr. Chairman, is I'm
25 inclined given the fact that clearly we've had notice

1 here and we have a number of people who are prepared
2 to go forward and given the fact that there's
3 probably going to be a limited amount of what we're
4 going to be able to do today to move forward in a way
5 that's not going to be overwhelmingly prejudicial to
6 Bannum or to the Department of Consumer and
7 Regulatory Affairs.
8 Mr. Quin's point is important regarding
9 the importance of notice and service here but I don't
10 see the prejudicial nature of the lateness of the
11 exhibits being provided on April 11 as being an
12 overwhelming issue. I might perhaps be a little more
13 concerned with the memorandum on the merits of the
14 appeal. But the practical effect of this is given
15 the amount of material we're going to have to go
16 through to sort out the issues in this case that
17 there is going to be ample time going forward for all
18 of the parties to get up to speed on the issues that
19 are being raised here.
20 CHAIRMAN GRIFFIS: Okay. But I don't see
21 any reason why we can't take a little bit of time.
22 In fact we should take time and read this before we
23 proceed.
24 MR. TEMPLE: Mr. Griffis, I'm not trying
25 to be picky but we said 30 minutes. If it's

1 possible, I think is a 15 minute exercise. Time is
2 really critical here.
3 CHAIRMAN GRIFFIS: Sounds good to me.
4 MR. TEMPLE: Thank you.
5 CHAIRMAN GRIFFIS: We'll come back in 15
6 minutes. If we're not ready, then we'll go from
7 there. Okay, 15 minutes. It's about 3:15 p.m. from
8 the clock in the hearing room. Off the record.
9 (Whereupon, the foregoing matter went off
10 the record at 3:04 p.m. and went back on
11 the record at 3:20 p.m.)
12 CHAIRMAN GRIFFIS: Let's go back on the
13 record. I think we've had a brief time but certainly
14 to surmise and review this submission. From this
15 point, I would like to continue with this unless
16 there are continuing strong objection. As we
17 evidence new information of which we fully anticipate
18 that all participants would be giving in perhaps new
19 testimony or information that we will act accordingly
20 as a board to give ample time either for written
21 submissions or for time during the hearing to address
22 these submissions. Mr. Quin, you have had time to
23 look this over. Is that correct?
24 MR. QUIN: Yes, sir. Do you want me to
25 state my position?

1 CHAIRMAN GRIFFIS: Yes, that would be
2 fine.
3 MR. QUIN: We don't want to slow up the
4 process so we would reserve the opportunity to
5 respond to some of the statements that are in there.
6 I do want to call to your attention which I think
7 probably is within your bailiwick as it is in
8 anybody's else that the ANC has not complied with
9 Section 3115.1 with a written report. It's not in
10 the record.
11 It doesn't have those items that are
12 required under 3115.1 nor does it comply with the
13 statute relating to ANC. But if the ANC wants to
14 stipulate that they are not going to do this or did
15 not do it, I don't know quite how to deal with that
16 because it simply is a requirement of the regs. As
17 far as I know, it has not been met.
18 MEMBER ETHERLY: Just to clarify, Mr.
19 Chair, if I may, that's with respect to the statement
20 that was submitted on behalf of the ANC.
21 MR. QUIN: Yes, there is a memorandum
22 that's called the ANC's memorandum. I'm not
23 objecting to that with the right to reserve. What I
24 am stating is that I understand the ANC law as
25 incorporated in the Zoning Commission's regulations,

1 it requires a written report of the ANC and forget
2 about the day of submission for the moment. It tells
3 you all the things that it is supposed to contain.
4 To the best of my knowledge, that has not been filed.
5 CHAIRMAN GRIFFIS: That's correct. For
6 any appeals or application, this is what is meant to
7 satisfy the requirements or for the Agency to be
8 given great weight. Is that your point?
9 MR. QUIN: That's my point except I think
10 you as a Board probably have to determine whether you
11 are in the position to proceed without that at all.
12 CHAIRMAN GRIFFIS: That's correct. Let
13 me hear from Mr. Temple if he has information on
14 that, why or where that report might be.
15 MR. TEMPLE: It's my understanding from
16 the ANC that they did not understand that such a
17 report was required essentially because it's a very
18 narrow issue. As the chair of the ANC 5B, Ms. James
19 suggested that the filing of the document along with
20 resolution that you have basically complies with this
21 particular report requirement. Even to the extent
22 that it might not with consent of opposing counsel,
23 such report can be prepared. But because of the
24 filing and the outlining of the legal issues, the
25 resolution and the memorialization of the resolution,

1 we think that all the different issues that are
2 stated here are complied with.
3 CHAIRMAN GRIFFIS: What I would like to
4 do is hear from the Board. We were handed these
5 minutes. First of all, I don't think we could move
6 away from gaining that report. We obviously don't
7 have that report. Let me make the analogy on the
8 flip side. If Mr. Quin had showed up today without a
9 letter of authorization, I don't imagine we could
10 proceed without knowing that he actually had the
11 authority to be here.
12 I know it's frustrating on everyone's
13 level that this seems to be such a small technicality
14 of sorts but I think it does have some as we are
15 bound by the regulations. It does have some
16 monumentally to the issue. Let me hear from Board
17 members and see. What we are being asked is in fact
18 to proceed with the understanding or confidence that
19 perhaps this would not be controversial in getting
20 that report.
21 MR. TEMPLE: Actually I think that
22 there's not a clear communication here. The memo
23 that you have with the minutes actually constitutes
24 evidence of the Board's ratification that the ANC 5B
25 would bring in this matter.

1 CHAIRMAN GRIFFIS: That's where I was
2 going in instructing the Board is that we have some
3 evidence that action was taken. The problem is that
4 we don't have the as you might say letter of the law
5 report that's in. What I need the Board to determine
6 is whether it is sufficient evidence that it would
7 not be controversial or it would not be difficult to
8 gain that report.
9 MEMBER ETHERLY: If I understand our
10 conversation correctly, Mr. Chair, there is no
11 question in my mind that we have the appropriate
12 authorization document for Mr. Temple's
13 representation of the ANC. That's evidenced by the
14 April 10 letter at Exhibit No. 15. I don't think
15 that's an issue.
16 I think perhaps where Mr. Quin was
17 heading was just with respect to what's reflected as
18 ANC 5B's memorandum on the merits of the appeal.
19 Without in the absence of the ANC resolution, is
20 there some question or lack of clarity with regard to
21 where the ANC's position might accurately be? I
22 understand where Mr. Quin is trying to go with that
23 but I don't find that to be too much of compelling
24 argument. I'll just leave it at that, Mr. Chair.
25 I'm comfortable proceeding. I'm happy

1 that counsel for Bannum has agreed to move forward of
2 course with the understanding that the right will be
3 reserved to respond in writing to any additional
4 issues that are raised on the merits. Once again,
5 I'm prepared to move forward, Mr. Chair. I think we
6 have the appropriate representation and
7 documentation. For the most part that letter of
8 April 10 complies with our requirements as it relates
9 to accurately reflecting what the ANC action was at
10 its April 3 meeting. We are ready to move.
11 CHAIRMAN GRIFFIS: Others?
12 COMMISSIONER HOOD: Mr. Chairman, I'm
13 totally confused. I mentioned the April 10 letter
14 earlier. I was total that he didn't have a problem
15 with it. I'm really confused. But I will say that,
16 Mr. Quin, you and I have said this on many occasions
17 that as far as your neighborhood commission you
18 stated that you came down every day. As far as your
19 neighborhood commission and I've said this and I'm
20 starting to sound like a broken record, they are not
21 paid. They don't have the luxury to come down here
22 every day and look and see for files. So I'm
23 inclined as my colleague just so eloquently described
24 a moment, ANC commission is not paid and they don't
25 do land-use council every day. I'm inclined to move

1 forward with what we have. The information in front
2 of me, the minutes from ANC 5B, will suffice. Mr.
3 Chair, I'm ready to move forward.
4 CHAIRMAN GRIFFIS: Okay. Others? I
5 would tend to agree that there is evidence in the
6 record at this point that shows that there was
7 official actions by the ANC. It is not as clean as
8 it should be. Whether we can discuss about the exact
9 form or whether the entire 3115.1 needs to be
10 complied with for an appeal or not, there is just the
11 initial set-off of the ANC's proper authority to
12 pursue the appeal.
13 But with the minutes we have and the
14 official letter of which Mr. Quin does not have a
15 problem and there are two separate issues here, the
16 representation of the ANC, clearly that indicates
17 that the ANC was noting that they were noting to an
18 appeal and obviously getting representation to it.
19 Then let me take that as the overall opinion of the
20 Board to continue with this noting the fact that we
21 will have a submission of the official ANC's position
22 on the appeal. We will put it in that form that will
23 have to be put into the record. Mr. Zaidan, are you
24 okay with that?
25 MEMBER ZAIDAN: Yes, as typical when we

are hearing appeals, I'm constantly trying to shuttle through our regulations as these technicalities get brought up. I agree with your statement and think we should move forward.

COMMISSIONER HOOD: Mr. Chairman, I agree with your statement. I want to make sure I understand. They have provided us their February 6 minutes and I agree that it's not as clean. So what are we asking them for?

CHAIRMAN GRIFFIS: We're asking them for a report from the ANC that indicates the date in which the meeting was held, that it was properly noted that in fact there was a quorum present, the issues that were discussed, the motion that was before it, and then the vote on the motion that would have moved them to go to an appeal.

COMMISSIONER HOOD: Okay, I would just note that as you said it is not clean but it is on page three of their minutes. I agree it needs to come back to us in a more cleaner format but it is on page three of their minutes.

CHAIRMAN GRIFFIS: Very well. The other piece is of course we would have it signed if we are getting all the technicalities lined up. Is that it?

MR. QUIN: No.

1 CHAIRMAN GRIFFIS: Perhaps not. We have
2 more to do today in which case let's move on. What
3 we need to do if I can give an idea of what we're
4 going to have to go through, clearly we have formal
5 motions that are put in writing before the Board.
6 Let me just make sure that first of all DCRA, Mr.
7 Temple, are in receipt of all the motions that we're
8 about to entertain.
9 MR. RUSHKOFF: Yes, DCRA is.
10 CHAIRMAN GRIFFIS: Okay.
11 MEMBER ZAIDAN: I may have to ask this as
12 we go through this but where are we? What motion are
13 we on?
14 CHAIRMAN GRIFFIS: I think the best way
15 to do it is that we have one larger motion and that's
16 the Motion to Dismiss of which has numerous elements
17 in it. It's probably best if we referred to an
18 exhibit number but we can take them one at a time.
19 First of all, there is a Motion for Lack of
20 Jurisdiction. We have gone through essentially all
21 the elements of meeting the basic statutory and
22 regulatory requirements. We have somewhat of a
23 subsection but it's a standalone issue as to whether
24 the ANC actually has standing to bring the appeal as
25 an aggrieved party. We have timeliness. Always our

1 favorite laches and estoppel.

2 MR. QUIN: Mr. Chairman, the first

3 argument which we put in there in our motion, you

4 probably have already dealt with that. That was the

5 first point. I don't think we need to go into that

6 one again to try to preserve time. We obviously do

7 have the right to file something. But in the

8 interest of moving this along, I would just move

9 forward with the balance of the Motion to Dismiss if

10 that is what the Board would like to do.

11 CHAIRMAN GRIFFIS: Okay. That makes some

12 sense.

13 MEMBER ETHERLY: I'm in agreement, Mr.

14 Chair.

15 CHAIRMAN GRIFFIS: Does anyone want to

16 pick up the first issue first for a brief discussion?

17 MR. TEMPLE: If I may, Mr. Griffis, to

18 accelerate things, the submission has been made to

19 the Board and could probably very quickly summarize

20 our opposition to each of those elements and at the

21 same time capturing the issue for you.

22 CHAIRMAN GRIFFIS: Very well. We're

23 going to start with Mr. Quin outlying his motion.

24 MR. TEMPLE: Thank you.

25 MR. QUIN: Mr. Chairman, as I said there

1 were originally four parts of the motion. The first
2 one we will not go into. The other ones were
3 aggrievement, timeliness and laches and estoppel.
4 Going quickly to aggrievement, what I propose to do
5 is to try to go very quickly rather than to break
6 those down each one, I could go through the three
7 arguments fairly quickly to conserve the time of the
8 Board. Then I have two witnesses that I would call
9 on those issues.
10 CHAIRMAN GRIFFIS: On the motion issues?
11 MR. QUIN: Yes. If you need to.
12 CHAIRMAN GRIFFIS: I would say take it as
13 you want to. If we're going to argue it, we're going
14 to argue it.
15 MR. QUIN: All right. The ANC of course
16 is a party to this appeal. But by virtue of being a
17 party it does not give them the rights of a aggrieved
18 party. We set that forth in our motion on pages
19 seven to ten and we have cited cases there. The law
20 specifically is as you all are aware of that an
21 appellant must demonstrate a special injury different
22 in character and kind from the general public. Those
23 cases as I said are cited on pages seven and eight.
24 There are essentially two points here
25 which I think go to that issue of aggrievement and

1 form the basis for our motion. The first is the
2 location of the facility. We are quite aware
3 speaking for the appellant of the reaction of people
4 within a community when they hear that a corrections
5 facility is coming. There is a lot of concern and no
6 one is trying to play down the concern. But that's
7 not sufficient for aggrievement.
8 As I said earlier if you look at the
9 quote from Judge Kravitz at the bottom of page eight
10 in a case that we've referenced in this very matter
11 against Bannum, the plaintiffs understandably are
12 worried about the influx of pre-released inmates into
13 their neighborhood. He goes through that discussion.
14 Then he says "However there is no evidence that the
15 plaintiffs' fear are based on anything more than a
16 reaction to the opening of the facility." Then they
17 go on to say "Nor have the plaintiffs mounted a
18 serious challenge to the testimony presented by
19 Bannum's executive director that the company runs its
20 halfway houses with significant controls and that
21 it's under the jurisdiction."
22 So the point here is if you look at the
23 pleadings that have been filed, there is nothing in
24 our view that goes to the issue of aggrievement as it
25 is required under law, some specific allegation that

is different in injury. What you have in front of you is an aerial photograph on the left matched with the Zoning map on the right. That's in the record at Exhibits J and K.

New York Avenue is on the corner to the right. Just above that are railroad tracks. Then the site, Adams Place, is in this isolated area where the arrow is. That is where the site is. So the west of that is also a railroad track. So you can see that this area is surrounded by railroad tracks and arteries that isolate it. That's backed up by the Zoning map in the area because you have CM2 in those areas. Then even to the west of the railroad track there is more industrial zoning before you get to a residential area.

So our point is just basically it's isolated. That is the first point. That site is not likely to have any adverse effect. There is no allegation of it.

The second part of that is the controlled use of the proposal. That's set forth at pages 9 and 10 of our argument where we point out the strong supervision. That's in our exhibits if you've had a chance to read the exhibits. The supervision, the controlled environment, the specific rules that

1 apply.

2 CHAIRMAN GRIFFIS: Without going too far

3 into it, let me just first make note that we have not

4 only reviewed but read the entire record and any

5 submissions that are in. I know I can say it for

6 myself and the entire Board. Secondly, can you speak

7 more clearly on your statement of the fact that ANC

8 is a party participant in the appeal but is not

9 aggrieved.

10 MR. QUIN: Yes.

11 CHAIRMAN GRIFFIS: What is the

12 monumentality of having that aggrievement?

13 MEMBER ETHERLY: If I could, Mr. Chair,

14 once again I hear where you are going, Mr. Quin, but

15 I don't even think you get to the Chairman's

16 question. You are setting up an aggrievement

17 standard for an ANC which I don't think is in the

18 regulations.

19 MR. QUIN: Yes.

20 MEMBER ETHERLY: The regulations provide

21 you a definition of a person, provide you a

22 definition of a party but you also have a definition

23 for ANC which basically leads me to say that on two

24 counts an ANC is not a party. An ANC is an ANC and

25 because it is automatically a party, there needs to

1 be no demonstration of aggrievement.

2 MR. QUIN: I would not agree with that

3 assessment. There very clearly is a right to

4 participate as a party. But under the statute, the

5 Zoning Enabling Act, which has been embodied and

6 embraced within the Zoning regulations, there is an

7 absolute requirement to establish aggrievement before

8 you can proceed with an appeal. It says any person

9 that takes that appeal must establish aggrievement.

10 MEMBER ETHERLY: But my argument is that

11 an ANC is not a person.

12 MR. QUIN: I believe they are for the

13 purpose of an appeal. If they are not a person, then

14 they cannot take an appeal then. What are they if

15 they are not a person?

16 MEMBER ETHERLY: They are an ANC.

17 MR. QUIN: But an ANC is an entity. I

18 don't want to argue this.

19 MEMBER ETHERLY: It's circular but I

20 think it's an important distinction here. You are

21 imparting an aggrievement standard that the

22 regulations don't support. I just don't know if you

23 are going to get me there. Help me if you can. Just

24 so you understand my reasoning, if you look at 3112.2

25 as you noted, any person aggrieved by any order, etc.

1 may file a timely appeal. But if you go to your
2 definitions under 3199.1, once again we have a
3 definition of ANC. We've already talked about the
4 definition of party. You also have the definition of
5 person. Without even going to the person definition,
6 it's my contention that because an ANC is a party
7 there is no standard of aggrievement which is
8 attached there.
9 MR. QUIN: I think maybe the best way to
10 answer that, Mr. Etherly, is to refer to the court
11 cases. The Goto case, the Wieck case and by the way
12 the cite in there that said like is really Wieck. On
13 the Goto case, it really talks about what is required
14 whether it's a citizens association, whether it's an
15 ANC, whether it's an individual or whatever it is.
16 The rationale for it is that unless
17 someone really has standing in the sense of being
18 hurt in some way that palpable then they should not
19 be allowed to take the appeal. It's not just a
20 situation where oh, I happen to be a party and is
21 automatically a party and therefore I can proceed. I
22 don't think that's what the law says. I think the
23 law is very clear that in appeals that challenge a
24 Zoning decision, there has to be a showing of
25 specific injury different in character and kind from

1 the general public. I believe that's what the law
2 says.
3 CHAIRMAN GRIFFIS: Let's clear Board
4 questions and then we'll go to others.
5 MR. QUIN: By the way, person is defined
6 as another legal entity in the Zoning regs.
7 MEMBER ETHERLY: There is no disagreement
8 there. I agree with you. But again it's my
9 contention because you have party set aside
10 separately under the definition section and person
11 set aside separately as well as ANC and then you find
12 ANC again under the definition of party. I just
13 don't see how we are getting to that aggrievement
14 standard that you are highlighting when you go back
15 to 3112.2. Do you recall if the Goto case
16 specifically referenced ANC or was it simply a
17 neighborhood association or individual?
18 MR. QUIN: It was both a civic
19 association and a person who lived next to it. I
20 handled that case. Both of those were allowed as a
21 party though. The key here it seems to me is that
22 anybody can be a party that's spelled out in the
23 regulations. That doesn't mean that they are
24 aggrieved. Just because you are a party doesn't mean
25 you're aggrieved.

1 For example, if a person came in that
2 lived near as we've had a recent case they would have
3 to establish aggrievement. You may find that they
4 are aggrieved based on the testimony but they still
5 have to meet that standard. I believe that's what
6 the law says.
7 MEMBER ETHERLY: But my concern is there
8 is the spirit of the regs here which clearly grant
9 the ANC a significance in our proceedings that is
10 somewhat higher and more weighty than what we would
11 afford other parties. That's why they are
12 automatically brought before us in pretty much all of
13 our proceedings.
14 When you look at the definition of party,
15 the fact that you have under that definition an A(4)
16 the ANC within which the property is located viewed
17 as a party, I don't see aggrievement there. So I'm
18 concerned about the imputation of an aggrievement
19 standard by virtue of the definition of person that
20 you find under 3112.2. I think perhaps we're going
21 to agree to disagree on this one. Once again I see
22 where you are going but I'm not hearing anything that
23 helps resolve that conflict for me. I'm more
24 inclined to side on the side of being certain that
25 the ANC has a voice in this proceeding.

1 MR. QUIN: I understand. I guess the
2 only other point I would want to add is that the
3 statute, the Zoning Enabling Act, which set up this
4 whole process for aggrievement and the BZA's
5 jurisdiction came in 1938. The rationale which we
6 can furnish for the record if necessary for the
7 aggrievement was to set into place a mechanism where
8 you gentlemen or ladies as members of the BZA review
9 in essence a decision in zoning.
10 The law has become absolutely clear what
11 the word aggrievement means. We are here by virtue
12 of that statute. We're not here by virtue of the ANC
13 law. What gives jurisdiction to this Board is not
14 the ANC law. What gives jurisdiction to the Board is
15 the statute of the Zoning Enabling Act which has been
16 written into the Zoning regulations. The only reason
17 that people can come to this Board including the ANC
18 on an appeal from a Zoning decision is by virtue of a
19 Zoning Enabling statute not be virtue of being an ANC
20 member or being an ANC. I don't know whether that's
21 helpful or not but that's the way I see it.
22 MS. MONROE: Mr. Chairman, can I weigh in
23 for a second?
24 CHAIRMAN GRIFFIS: Yes, Ms. Monroe.
25 MS. MONROE: I think that we can maybe

1 bring the 1938 Act and the regs together by looking
2 at the traditional interpretation of the regs as
3 saying that an ANC is automatically aggrieved by
4 virtue of the fact. But it represents this entire
5 area and this site is in this area. Any impacts that
6 the site might have would affect the area that the
7 ANC is representing. Therefore it brings you to the
8 place where possibly the ANC is an aggrieved party.
9 It's also a party. So you have an automatic
10 aggrievement which then would not do any damage to
11 the Zoning Enabling Act. That is traditionally the
12 way that the regulations have been interpreted.
13 MEMBER ZAIDAN: I actually was going to
14 state something. Even if we were going to get to
15 that standard, what would be the standard of
16 aggrievement for an ANC? Development in an area such
17 as an ANC that has specific geographic jurisdiction
18 doesn't happen in a vacuum. If I follow Mr. Quin's
19 argument through and the motion, he is saying that
20 it's not aggrieved because there's no housing around
21 this property. There's no people living around
22 there.
23 Well, development doesn't happen in a
24 vacuum. Development can have impact surrounding
25 jurisdictions. I strongly agree with Corporation

1 counsel to say that there is a standard for ANC to be
2 aggrieved. It's just too much of a stretch.
3 CHAIRMAN GRIFFIS: Mr. Temple.
4 MR. TEMPLE: Thank you. First of all, I
5 think the regulations are very clear. What we are
6 contending here is that what Bannum is doing is
7 illegible. They circumvented the ANC's right as the
8 representative entity in their community to protect
9 the citizens from illegal rules and regulations.
10 I would direct your attention to your own
11 regulations at 3100.2 which says that you have
12 jurisdiction over any order and decision that may be
13 illegally made affecting zoning when read in
14 conjunction with 3112.2. What that section does you
15 can move way past the issue whether a party is
16 aggrieved. 3112.2 essentially says that "any person
17 aggrieved by any order, requirement, decision,
18 determination or refusal made by an administrative
19 officer or body including the mayor" - this is the
20 key language - "in the administration or enforcement
21 of the zoning regulations." That's what we are
22 talking about here.
23 We're talking about a zoning regulation
24 and something that we think is illegal in two
25 respects. One is that Bannum has violated the law

1 and second is that the District of Columbia and the
2 Department of Consumer Regulations have sanctioned
3 their violation of the law. That is what this issue
4 is about. It's the enforcement of the law.
5 If the ANC can't bring that and the City
6 is violating the law and you don't have the authority
7 to sua sponte bring a case then what would happen
8 otherwise is that when there is violations of the law
9 they would go unenforced. If this organization on
10 behalf of the people, the citizens in this district,
11 this is nothing to do with the issue. It's the
12 question of whether or not the law is being violated.
13 That is the issue and this body has that right.
14 CHAIRMAN GRIFFIS: Right. But for total
15 clarity the appeal that's before us is based on an
16 administrative decision that the ANC is contending is
17 in error. Not that there was an illegal act here and
18 one was then substantiated.
19 MR. TEMPLE: That's not correct. In fact
20 if you look at this issue, the permit issue is
21 specifically rooted its neck and head in the question
22 of whether or not there is a community based
23 residential facility at issue here versus a detention
24 facility. That is a question of legality.
25 CHAIRMAN GRIFFIS: I understand the

1 issue. I just wanted to clarify how you position the
2 issue. Because if you reread 3112.2, we can appeal
3 an administrative or an official decision not an
4 illegal act, not the substantiation or the
5 partnership of that act. It's always good to keep
6 these things clear.
7 MR. QUIN: Mr. Chairman, I think there's
8 one point that seems to be missing from our
9 discussion and this is my last statement of this one
10 anyway. The whole reason for aggrievement is
11 specificity of injury. Because otherwise, anyone can
12 file an appeal because it doesn't like something.
13 ANC could file an appeal any time it wanted to. I
14 don't think that's what the law is. There has to be
15 proof and a showing that there's a specificity of
16 injury to the representation of the ANC. Maybe
17 that's as clearly as I can state it. If that doesn't
18 work, it doesn't work but I think that's what the law
19 is.
20 CHAIRMAN GRIFFIS: It is an interesting
21 point. The Board would attend to agree unfortunately
22 on both sides with certain points and that is yes,
23 there has to be an agreement. Something would have
24 to have happened that would impact. But why does one
25 need to go beyond the level of the mere fact that the

1 regulations were not complied with or that there was
2 a simple error made by an administrative body? Is
3 that not level of aggrievement enough?
4 MR. QUIN: No.
5 CHAIRMAN GRIFFIS: You would not agree.
6 MR. QUIN: Absolutely not because the
7 case law says that it's not. Because if it said it
8 was then there would not be the whole law of
9 aggrievement where the court said in this
10 jurisdiction and in other jurisdictions you can't
11 proceed unless you show that you are aggrieved. That
12 means the allegation of something that is specific
13 and different from what would be the general public.
14 The ANC properly represents its
15 constituency. No doubt about that. I would never
16 argue that they don't. I have an ANC and I hope it
17 represents me properly. In order to challenge
18 something, there has to be some showing of
19 specificity. Is something going to happen that is
20 going to hurt, devalue property? Judge Kravitz was
21 very clear on the same issue. I hope I'm
22 articulating what I'm saying.
23 CHAIRMAN GRIFFIS: I think you are.
24 MR. QUIN: As long as what I'm
25 articulating that you understand what I'm saying,

1 that's all I can ask.

2 CHAIRMAN GRIFFIS: Right.

3 MR. TEMPLE: May I make one final point

4 on this?

5 CHAIRMAN GRIFFIS: Yes, we're going to do

6 you, Mr. Temple, and then Ms. Monroe gets the last

7 word.

8 MR. TEMPLE: First of all, I think

9 counsel is confusing the issue of standing. The

10 cases that he cited speak about judicial standing

11 versus the rights of an ANC as is indicated in the

12 statute to bring this particular claim. There is a

13 distinction between the civic association under your

14 regulations and an ANC. Secondly, under D.C. Code

15 Section 5-420, appeals to this Board may be taken by

16 any person aggrieved or organization authorized to

17 represent such person. ANC is clearly authorized.

18 Lastly, relative to the issue of

19 standing, according to its Raft-Kauffman Law of

20 Zoning and Planning Section 37.03, administrative

21 appeals do not necessarily depend on elements of

22 standing that judicial review would require. I think

23 that we clearly are an aggrieved party.

24 CHAIRMAN GRIFFIS: Okay. Ms. Monroe, did

25 you have anything to add on that?

1 MS. MONROE: I'll try. First I don't
2 think there's an aggrieved standard for ANCs. I tend
3 to disagree. If you want to find aggrievement, you
4 can partly in that the jurisdiction of this
5 particular ANC includes the site. Another ANC 2B or
6 7D could not bring this appeal. They would not be
7 aggrieved. In that sense, this one is more specific
8 to the site where the impacts may occur.
9 The other thing on this is this is a
10 motion to dismiss. If you decide there's an
11 aggrievement standard, we don't know whether or not
12 they are aggrieved. It's a factual issue and you
13 really can't dismiss on that issue anyway.
14 CHAIRMAN GRIFFIS: Right.
15 MS. MONROE: You have to make a
16 determination factually whether or not aggrieved and
17 then decide the motion.
18 CHAIRMAN GRIFFIS: Exactly. That brings
19 us to where I wanted to be and that is to put to
20 Board whether they think they are able to proceed in
21 this or in fact we need to get into the case. We
22 hold this in abeyance and gather the facts and then
23 see if we can determine aggrievement or pick the
24 motion up later. That's two choices that we have. I
25 will hear briefly from you all if so moved.

MEMBER ETHERLY: I'll opt for what I think is a cleared and tighter response and would simply deny the motion to dismiss on this particular count, Mr. Chair.

MEMBER ZAIDAN: I'll second.

COMMISSIONER HOOD: If that's a motion, Mr. Chair, I'll second it.

MEMBER ETHERLY: In anticipation of my colleagues, Mr. Chair, I would move that we deny the motion to dismiss based on the lack of aggrievement.

MEMBER ZAIDAN: Second.

MEMBER ETHERLY: I would move denial of the motion to dismiss based on the grounds that ANC 5B is not an aggrieved party and invite a second.

MEMBER ZAIDAN: I'll second it for a second time.

CHAIRMAN GRIFFIS: Mr. Etherly, do you want to briefly speak on this?

MEMBER ETHERLY: No need to further speak, Mr. Chair. I think we have exhausted commentary from Corporation counsel.

CHAIRMAN GRIFFIS: Let me just ask them for clarification of the motion and the dismissal are you finding that ANC is aggrieved or that as Ms. Monroe has stated that there may not be a standard

1 for which the ANC needs to be aggrieved?
2 MEMBER ETHERLY: It would my inclination,
3 Mr. Chair, that the motion would reflect a finding
4 that there is no requirement for aggrievement on the
5 part of the ANC as it relates to the filing of an
6 appeal. Now whether we want to get that detailed.
7 MEMBER ZAIDAN: My position that I think
8 that an ANC is a proper organization to bring an
9 appeal because they can be potentially aggrieved.
10 Finding out whether or not they are aggrieved or not
11 is probably going to have to get into being the
12 merits of the appeal and discussing that. But the
13 harder the issue we're debating is whether or not an
14 ANC can bring this appeal. It's my opinion that they
15 can. That's where I'm coming from.
16 CHAIRMAN GRIFFIS: Okay. Mr. Etherly, do
17 you want to add to that?
18 MEMBER ETHERLY: My only concern is that
19 the Chairman's question took us there. The meat of
20 Mr. Quin's motion is this issue of aggrievement.
21 That's a very important question to resolve. My
22 contention is that there is no aggrievement standard
23 necessary for an ANC based on my reading of the
24 definition section. Keep in mind Mr. Quin's rebuttal
25 to that was well then any ANC could conceivably bring

1 an appeal on this particular case.

2 MEMBER ZAIDAN: I don't agree with that

3 but go ahead.

4 MEMBER ETHERLY: Ms. Monroe's suggestion

5 was even if you do go towards finding an aggrievement

6 standard being necessary this ANC clearly would be

7 able to satisfy that. I would just assume say let's

8 deny the motion without necessarily putting the meat

9 on the bone. But if it's necessary to go that far

10 once again it would be my contention that there is no

11 aggrievement standard necessary here. So the ANC 5B

12 does not have to demonstrate aggrievement.

13 MEMBER ZAIDAN: I would generally agree

14 with that.

15 CHAIRMAN GRIFFIS: Anybody else?

16 (No response.)

17 Okay, we have a motion and it's been

18 seconded. I am prepared to stand with my Board. Let

19 me ask for all those in favor of the motion signify

20 by saying aye.

21 (Chorus of ayes.)

22 And opposed.

23 (No response.)

24 MR. QUIN: Mr. Chairman, I'll proceed to

25 the second point. I would just like to note for the

1 record disagreement with the decision of the Board
2 and to indicate that what I had intended to do is as
3 part of the aggrievement standard which apparently we
4 don't reach because of your ruling is I had two
5 witnesses who would deal with the nature of the
6 activity to show that there is no adverse impact or
7 likely adverse impact. I just want to state that for
8 the record.
9 CHAIRMAN GRIFFIS: I appreciate that and
10 I know we moved quickly ahead. I had it in mind that
11 I do not think it's inappropriate to have as
12 witnesses as part of the overall appeal. That may
13 lend itself to great substance.
14 MR. QUIN: Okay.
15 COMMISSIONER HOOD: Mr. Chairman, looking
16 through the motion to dismiss you said you had two
17 witnesses. I'm looking here and it seems as though
18 you have three.
19 MR. QUIN: I may not call the other one,
20 Mr. Hood.
21 COMMISSIONER HOOD: Can you identify for
22 the record who those three witnesses are?
23 MR. QUIN: Yes. There were several
24 issues, Mr. Hood, aggrievement, timeliness and then
25 estoppel and laches were the three points in the

1 motion. I intended to call Mr. David Lowery who is
2 executive director of Bannum and who I would have
3 submitted him and will submit him as an expert as we
4 get into the timeliness issue. Rhonda Chapelle, an
5 ANC 5B member, and former chairperson of ANC 5B. The
6 third person I would call on these motions would be
7 if I were going to call one Hulon Willis who will be
8 the operator of this facility and who has been an
9 operator of another facility in the past in close
10 proximity.
11 COMMISSIONER HOOD: So as the Chair
12 stated you still may have time to call these three
13 witnesses.
14 MR. QUIN: Yes, sir.
15 MR. TEMPLE: Mr. Griffis.
16 MR. QUIN: But only as it would go those
17 issues so I may not have to call the other two since
18 you've already ruled that I can't on aggrievement. I
19 wouldn't reach the evidentiary part.
20 CHAIRMAN GRIFFIS: Yes. Mr. Temple.
21 MR. TEMPLE: I have to express our
22 concern about this particular approach. The issue as
23 to whether there are safety issues, whether there are
24 control issues are irrelevant to what's before this
25 Board. What's before this Board is very simple. We

phrased it in our memo. Whether this institution is in fact a halfway house or not and if so, what are the implications under the Zoning law?

I would hope that the Board controls where Mr. Quin is attempting to take this hearing. These peripheral issues about safety and the types of people coming in here are absolutely irrelevant. There's a very narrow question before you. We think that if it's properly directed we can get to the substance of our claim.

CHAIRMAN GRIFFIS: I appreciate that. It's well said. Yes, we will direct any sort of testimony to the specifics.

MR. TEMPLE: Can I ask? I need to use the restroom. I just got back from Africa yesterday.

CHAIRMAN GRIFFIS: Yes, let's take five minutes. Off the record.

(Whereupon, the foregoing matter went off the record at 4:02 p.m. and went back on the record at 4:09 p.m.)

CHAIRMAN GRIFFIS: On the record. Let us move on then. Mr. Quin, I think it is your mike to speak to the next issue.

MR. QUIN: Yes, may I just to make sure that you all have the latest requirements for

1 timeliness. I don't know that you have the order of
2 the Zoning Commission. But just to make sure that
3 you have it.
4 CHAIRMAN GRIFFIS: Is this the known
5 should have known 60 days order?
6 MR. QUIN: Yes, and it also has a ten day
7 requirement.
8 CHAIRMAN GRIFFIS: We have reviewed it
9 but it would be handy to have it right in front of
10 us.
11 MR. QUIN: This argument will not take
12 long except it does require in order to deal with the
13 factual part of it witness taking. So I would call a
14 couple of witnesses on this particular one but only
15 going to the issue of timeliness. The general
16 requirement as you know in the new law that's been
17 passed is an appeal shall be filed within 60 days
18 from the date the person appealing the administrative
19 decision had notice or knowledge of the decision or
20 reasonably should have had notice or knowledge of the
21 decision complained of whichever is earlier.
22 The ANC 5B which we can show by testimony
23 and it's also in our Statement of Facts in the
24 affidavit that is at Exhibit Q and also in the
25 chronology that is filed with you has known for the

1 approval of this use for over a year. There was a
2 meeting which as the record shows on April 18, 2002
3 at which the Bannum people made a full presentation.
4 That's nine months before the appeal was filed well
5 after Bannum had signed which when that appeal was
6 filed it was filed well after Bannum had signed its
7 contract with BOP, had undertaken reconstruction
8 conversion, alteration of the building.
9 Now I do want to note for the Board's
10 consideration that there is also a separate provision
11 here which appears to be applicable. Frankly I'm not
12 sure that it is but I would argue that it probably is
13 which is under Section B. It says "If the decision
14 complained of involved the erection, construction,
15 reconstruction, conversion or alteration of a
16 structure the following subparagraphs shall establish
17 the latest date." That says "No appeal shall be
18 filed later than ten days after the date upon which
19 the structure or a part thereof in question is under
20 roof."
21 Now whether that's applicable or not, I
22 would have to tell you that this is a new provision.
23 I don't know but it clearly is there for a reason.
24 In this case, we don't have to reach that because the
25 facts will show that the ANC 5B was aware of the

1 approval and of the entire use as early as February
2 2002 but clearly April 18, 2002. To that extent, I
3 would like to call witness on that point. I have two
4 witnesses and both will be fairly brief.
5 MEMBER ZAIDAN: Before you do that, Mr.
6 Quin, really quick.
7 MR. QUIN: Yes, sir.
8 MEMBER ZAIDAN: Just because I have a ton
9 of paper up here and I couldn't read the copy. When
10 was the permit issued? Was it December 2?
11 MR. QUIN: There were two permits, one in
12 December and January 2003.
13 MEMBER ZAIDAN: The first one was in 2002
14 and the second one was in January 2003.
15 MR. QUIN: Yes, sir. That's the building
16 permit. The ruling which gave the approval goes back
17 and there are two.
18 MEMBER ZAIDAN: This is the countersigned
19 letter you are talking about.
20 MR. QUIN: Yes, Michael Johnson, Zoning
21 Administrator.
22 MEMBER ZAIDAN: What exactly do those
23 letters mean? Can that be used as an assurance for a
24 contract on a piece of property when you see a letter
25 like that? What kind of weight do those types of

letters have?

MR. QUIN: We have used that all the time for satisfaction of the lenders due diligence. It's a question of signature. If he didn't agree, he couldn't sign.

MEMBER ZAIDAN: But is it binding? Is somebody were to revise general aspects of a plan so they changed the side yard or something like that? Would that letter still be binding to that?

MR. QUIN: It would only be applicable to the law that existed as of the date of the ruling.

CHAIRMAN GRIFFIS: Or to the law that it actually addresses in the letter.

MR. QUIN: Yes, it couldn't bind anyone with regard to something that happened afterwards.

CHAIRMAN GRIFFIS: If I understand your question directly, is that the official administrative decision that should be appealed?

MR. QUIN: Absolutely. We have appealed many decisions. In fact this Board has heard many cases and I will gladly furnish for the record if we need to do that copies of decisions by the Board that related to rulings in the same form that this is used. We routinely give opinions to lending institutions for millions of dollars. What do they

ask for? They ask for a countersigned letter by the Zoning Administrator or an official of the building.

MEMBER ZAIDAN: Right but the problem that I'm struggling on that is a countersigned letter could deal with yeah generally you can build a bank in this zoning district but it doesn't get into more specific design details like sideyard height, court requirements that often get appealed to this Board. I'm a little concerned to judge this kind of general approval letters as something that we're going to accept as an official decision when we get appeals based on very minute details of plans all the time.

MR. QUIN: I understand. The specific use here is the only question. This was an existing building. I can understand exactly what you are saying. If there were approval of one part of it and it didn't approve the other part, you would be absolutely correct.

But that's not what we have here. What we have is the question of use in the CM2 district of a temporary correctional facility on leased property not to exceed a period of three years.

MEMBER ZAIDAN: I'm glad we discussed that but I don't want to hold up your case.

CHAIRMAN GRIFFIS: Mr. Hood.

1 COMMISSIONER HOOD: Mr. Chair, I'm
2 looking here at the appeal which the ANC is
3 appealing which is dated December 12. They obviously
4 filed this on January 24, 2003. First of all, I'm
5 going back to my statement again, Mr. Quin. I have a
6 problem with you basically down here defending the
7 Government's case. I want to make sure to put that
8 on for the record. I don't think we need to go back
9 personally, Mr. Chair, to a letter signed by Michael
10 Johnson December 11, 2000 and another countersigned
11 letter November 21, 2001. The ANC has made it clear
12 in the applications to this office that they are
13 appealing the decision which was dated December 12,
14 2002 which is perfectly within the regulations of the
15 Zoning Commission.
16 CHAIRMAN GRIFFIS: It has been
17 articulated. Mr. Quin understands the hurtle he has
18 to get over by these comments. We still need to have
19 the argument because Mr. Quin is setting up the
20 argument that it's not the permit that is the
21 official administrative decision but rather these
22 letters from the Zoning Administrator that said that
23 it was allowable. Whether you agree or not, why
24 don't we just let them explore it and then we can
25 have arguments on both sides and then we can act.

COMMISSIONER HOOD: Let me ask this, Mr. Chair. Should Mr. Quin be defending?

CHAIRMAN GRIFFIS: It's his motion.

COMMISSIONER HOOD: I just have a problem with that to be honest.

CHAIRMAN GRIFFIS: I understand.

COMMISSIONER HOOD: I don't know where to go for it but I have a problem with him defending this.

MR. TEMPLE: A point of information. Is it possible because we know that we can limit these arguments to ten minutes or so just to quantify the arguments so we can move forward? To spend a half hour or 45 minutes on each argument does a disservice to what we need to discuss. We can articulate our position in five minutes quite frankly.

CHAIRMAN GRIFFIS: I wish it was that clear. My concern mostly is that we have an understanding from the Board of exactly what we are being asked to do and what we're moving ahead on doing. Yes, we can try and pick up the speed but there is a lot of complication.

Mr. Hood is bringing up an interesting point. An appeal is different than a public hearing of what we do most and the majority of what we do.

1 The dynamic of appeal is totally different in the
2 rules and all that we need to look at. It is much
3 more legal as we are not attorneys up here for one.
4 I don't mind having a little bit of error of time to
5 make sure that the Board members are clear on the
6 issues.
7 MR. TEMPLE: In that respect, the only
8 reason I underscore that is because ultimately before
9 we leave here today apparently we're not going to
10 reach the substantive questions because of the
11 procedural arguments. There is a significant
12 question here looming relative to the opening of this
13 facility which is vested in this Board. To the
14 extent that we spend this kind of time I would only
15 hope because this community is waiting two months,
16 now three months and there are a couple of courts
17 waiting for this Board to rule that you might
18 consider that in terms of when you schedule the next
19 hearing. That's all.
20 CHAIRMAN GRIFFIS: Now you made it all
21 the more important knowing now there are courts
22 waiting on us. We have to take more time to make
23 sure we're doing everything absolutely correctly.
24 The pressure is on, gentlemen. Mr. Quin, let's do
25 this expeditiously.

MR. QUIN: I really am trying. Mr. Hood, I'm defending Bannum's position. Bannum is the lessee of property who has expended lots of money and effort to this.

MR. TEMPLE: I would object to this. This is extraneous. We don't need to get to this.

MR. QUIN: I think I have to respond to Mr. Hood. I'm not defending in a sense the District as a district. I'm defending the ruling that allowed us to proceed. I think I have every right.

COMMISSIONER HOOD: Point well taken.

MR. QUIN: Just as the ANC.

COMMISSIONER HOOD: You won't hear me mention that anymore. Your point is well taken. We can move on.

CHAIRMAN GRIFFIS: Okay. I will have us aware of that in terms of this is not irregular in terms of appeals that in fact the property owner representative is often the more vocal. So why don't we continue?

MR. RUSHKOFF: On behalf of DCRA, I just want to say that we've made a tactical decision to address this appeal on the merits. I don't want this to be taken as lack of vigorous representation of the District's position. We can vigorously represent our

1 position without attacking the ANC's ability to even
2 raise the issue to the BZA and that's a choice that
3 we've made.
4 CHAIRMAN GRIFFIS: Well said. Then there
5 are different strategies for all those in
6 participation. There it is. Let's move forward.
7 MR. QUIN: I have a question for the
8 Chair procedurally. I want to be as efficient as
9 possible. I finished arguing and outlying this
10 argument. I have not called a witness. Rather than
11 calling a witness for this one and then calling a
12 witness back again for the last argument, why don't I
13 just go ahead and outline the last argument and then
14 the witness on estoppels and laches. That why at one
15 point I can get that before the Board and don't have
16 to call him back twice.
17 CHAIRMAN GRIFFIS: That's perfectly fine.
18 Let's do that.
19 MR. QUIN: Okay.
20 MR. TEMPLE: Excuse me, please. I don't
21 think that this motion requires an witness. I'm
22 going to underscore that. The issues here based on
23 their submission and once we have the opportunity
24 before a witness is called that we would have the
25 opportunity I do not think that it's fair to the ANC

1 on a procedural question that they have a sub-hearing
2 on the question which is going to further delay this
3 issue. Before that decision is made, I would just
4 briefly hope that we have an opportunity to be heard.
5 CHAIRMAN GRIFFIS: You absolutely will
6 have an opportunity. The point bringing up actually
7 if he calls witnesses, they are open to cross
8 examination. If we can combine it all together,
9 unless you have burning questions immediately on the
10 issue and the information that's coming forward, what
11 I would like to do is just have him continue and then
12 we go to you in terms of the trial.
13 MR. TEMPLE: That's fine. No objection.
14 CHAIRMAN GRIFFIS: There is an objection
15 to the witness being called but let's proceed through
16 your overview and then we'll get to that.
17 MR. QUIN: If we do object, I would ask
18 for a stipulation. If he stipulates, I won't call
19 the witness.
20 CHAIRMAN GRIFFIS: Okay.
21 MR. QUIN: The fourth and final basis of
22 the motion to dismiss is estoppel and laches as set
23 forth in our brief at pages 11 through 13. I want
24 you to look specifically at the affidavit that's at
25 Exhibit Q attached. The elements of estoppel to be

1 very specific as outlined are (1) the applicant
2 proceeded in good faith; (2) the affirmative acts of
3 the District here, the rulings: (3) the reliance upon
4 the actions with substantial change in position and
5 expensive improvements; and (4) the equities favor
6 the claimant.
7 We believe that we meet all those tests.
8 The process is clear. The rulings are clear. The
9 expenses are carried out in Mr. Lowry's affidavit so
10 I don't need to get too much in detail on that as far
11 as his testimony. The public benefits to society are
12 very strong as Judge Kravitz stated. This is very
13 interesting. I hope you all have digested the
14 Brawner case which is my first exposure to this type
15 of activity where I was on the other side trying to
16 stop a facility where the Court of Appeals ultimately
17 said it was the BZA's responsibility.
18 In that opinion, they talk about the
19 importance of having correctional institutions like
20 this. Then Judge Kravitz quoted that provision out
21 of the Brawner decision which of course is an exhibit
22 that we've attached and then said these benefits are
23 even greater importance now due to the recent
24 federalization of the District's criminal justice
25 system and the results of incarceration of our

1 convicted felons in Federal prisons around the city.
2 Then I put in which I think is true here
3 everybody wants them but nobody wants them around
4 them. That's one of the issues the Zoning Commission
5 has done and if we do get to the merits we will cover
6 that point. Now I've outlined the estoppel. I
7 haven't reached laches. I will just summarily deal
8 with that.
9 Laches is a species of estoppel that
10 deals with the omission to assert a right for
11 unreasonable length of time with prejudice to the
12 party who asserts laches. We think that's clear here
13 that both these doctrines, estoppel and laches, apply
14 to Appellant as they would to the Government if they
15 were taking a position to revoke our permit. But
16 they have not take that position and you've seen
17 their filings. I won't argue that.
18 But the Appellant had a clear opportunity
19 to file a BZA appeal a year ago and did not do so.
20 Bannum proceeded with its lease, its contract and its
21 construction and all the expenses that are laid out
22 in the affidavit and changed its position. For these
23 reasons, we believe that the appeal should be
24 dismissed. We are now on the two issues. You've
25 ruled on the first one, namely aggrievement. But

1 timeliness and estoppel and laches are the last two.
2 CHAIRMAN GRIFFIS: Are you finished?
3 MR. QUIN: Yes, I'm ready to call the
4 first witness.
5 CHAIRMAN GRIFFIS: Going to the witness
6 then in terms of speaking of timeliness, they are
7 going to talk about how there was an administrative
8 decision brought before the ANC of which they would
9 have had clear and present knowledge of in order to
10 proceed with an appeal.
11 MR. QUIN: Yes, and I'll also call the
12 ANC chairman of 5B that was a previous chairman.
13 CHAIRMAN GRIFFIS: Okay, Mr. Temple.
14 MR. TEMPLE: First of all, if I can just
15 address the substantive question because it relates
16 to the need to call the witness. There are two
17 issues before you which I think the record clearly
18 shows. One is timeliness. The issue before you is
19 the permit that was issued on December 12.
20 CHAIRMAN GRIFFIS: That's what we're
21 trying to decide.
22 MR. TEMPLE: The point of what happened
23 in November 2000 or December 2001 is not relevant.
24 CHAIRMAN GRIFFIS: Why?
25 MR. TEMPLE: Because if for example there

1 wasn't any permit there wouldn't be any hearing.
2 There are two reasons. Let me try to distinguish
3 them. I think this gentleman has had ample time.
4 Let me just try and do it a little bit more
5 succinctly.
6 First, the November 2000 letter and the
7 December 2001 letter did not address the question of
8 a halfway house. Those were one and one-quarter page
9 submissions where the District of Columbia Government
10 a position which it will ultimately adopt when it is
11 sued by Bannum which the District of Columbia
12 Government basically agreed that under 801.7(k) you
13 can have a community correction center. Nothing
14 more. It agreed with that particular interpretation.
15 Bannum did not disclose unlike in the letter dated
16 April 21, 2001 to Vincent Orange that it was building
17 a halfway house. Bannum did not disclose that the
18 halfway house could accommodate up to 260 people.
19 There were lots of details that Bannum did not
20 disclose and submit it was intentional. That is not
21 the kind of letter that this Board operated on.
22 The permit that was issued in December
23 based on an application from Bannum further did not
24 state as part of their theory that it was a halfway
25 house which is what's's at issue here. We have every

1 right to challenge the permit. Anybody can challenge
2 anything. This is specifically challenging a
3 particular decision of the Department of Consumer and
4 Regulatory Affairs. We are not challenging those
5 opinions. Those are not rulings in our view. To the
6 extent that they are rulings they are limited and not
7 specific. We're specifically challenging a permit
8 that was requested and that was issued. We did it in
9 a timely fashion.
10 CHAIRMAN GRIFFIS: But the letters go
11 directly to what our jurisdiction is and that's
12 zoning. It's a letter from the Zoning Administrator
13 that says as this was presented to the Zoning
14 Administrator this is allowable for the place,
15 location and property of which is being proposed. So
16 it is an administrative action.
17 MR. TEMPLE: Well assume that it is and
18 assume that you're right. It's of no moment because
19 we're not challenging those letters.
20 CHAIRMAN GRIFFIS: But that's what's at
21 issue is whether you should have.
22 MR. TEMPLE: Actually it's not at issue.
23 I respect your point. But to the extent that we
24 should have challenged those letters, those letters
25 should have been given publicly and distributed and

1 to ANC 5 and say this is what we're doing. Now there
2 are some dealings which you will hear about when this
3 matter is litigated on the substantive questions
4 about the relationship between Ms. Chapelle who they
5 are calling ?-
6 CHAIRMAN GRIFFIS: Do you mean in another
7 court?
8 MR. TEMPLE: In this hearing. But the
9 point is if in the process of what they are
10 attempting to do there are several actions taken by
11 DCRA.
12 CHAIRMAN GRIFFIS: What I need you to do
13 is talk to me and I'm setting you up to do this. You
14 need to tell me why this isn't the official
15 administrative decision that the ANC would have known
16 about and would have appealed. Why is it that they
17 moved to the permit? If you want to hold the rest of
18 the argument, I am interested in hearing how they can
19 substantiate that by their witness and how they can
20 show me that prior to the permit that this was the
21 administrative decision that should have been
22 appealed.
23 MR. TEMPLE: I go back to the point that
24 I made. If one were to look at the letters of the
25 November 2000 and December 2001 respectively, those

letters at no point discuss the fact that this is a halfway house.

CHAIRMAN GRIFFIS: I understand that.

MR. TEMPLE: To the extent that it discusses that it is a community correction center, the District would agree and has testified that under 801.7(k) they are right. There was no basis or reason to challenge those particular letters at that time because it was not disclosed to the public that it was a halfway house just as in the pleadings before you. It is nowhere mentioned by Bannum that it's a halfway house.

CHAIRMAN GRIFFIS: Obviously the appeal itself is the argument of halfway house or not.

MR. TEMPLE: But that's significant as to the question that you posed to me.

CHAIRMAN GRIFFIS: It's very significant.

MR. TEMPLE: The question is why would they not be prejudice by not having addressed those two letters. The first point is that those letters are general letters and not specific. The second point is that along the way of the administrative process there is a permit. There is a C of O.

The ANC could raise an issue on the C of O without raising an issue on the permit. The point

1 being is that the fact or the stuff that you buy into
2 their argument that fact that they did not raise
3 appeals does not waive their rights to bring
4 challenges to the permit or subsequent C of O
5 process. It's any order. That's what your rules that
6 you have jurisdiction and they can be aggrieved by
7 any order. To that extent it is almost simplistic
8 that they filed their appeal within 60 days of the
9 December 12 permit.
10 CHAIRMAN GRIFFIS: I understand your
11 point. Let me correct one because I disagree with
12 it. An ANC or anybody can appeal any order. The
13 issue is and especially with now the new codification
14 of the Commission on timeliness, there is now a
15 timeline of which appeals are timely. Say for
16 whatever reason - I'll just use it as hypothetical
17 but to make it very clear - this appeal fails. You
18 don't have recourse to go and now appeal the
19 certificate of occupancy based on the same facts that
20 are presented in this appeal. I may be mistaken on
21 this. It's very aside issue which we probably don't
22 need to argue but there it is.
23 MR. TEMPLE: Can I add because he
24 mentioned two other questions that are also very
25 important, this notion of estoppel and part of it is

1 laches and part of it is equitable estoppel? He
2 repeatedly references Judge Kravitz and without any
3 response from anyone. Judge Kravitz's order was on a
4 preliminary injunction and was an emergency hearing.
5 That case is still pending before Judge Kravitz.
6 What Judge Kravitz said in his decision is not
7 outcome determinative. Judge Kravitz has not issued
8 a final decision and it's pending what happens here.
9 And we'll be back before Judge Kravitz.
10 There are two issues. One is on
11 estoppel. There are two elements of estoppel and
12 counsel pointed them out to you. One is good faith.
13 The other is that there is an equitable favor in
14 their interest. Let me just say to you that part of
15 our claim here is that they are not bringing this in
16 good faith. The District of Columbia and its
17 citizens and possibly the other agency and the other
18 individuals in this case have been ?- This is an
19 intentional action designed to amend the law de
20 facto.
21 No halfway house in this city, no
22 community based residential facility can as a matter
23 of right locate in a CM2 zone. They attempted to
24 find a loophole which we think we can refute and in
25 the process their claim is not based in good faith.

1 If ultimately it went to the highest court in this
2 jurisdiction and they have to hear this, this is our
3 position.
4 The second point is that I can't rob a
5 bank to feed my baby. If I rob a bank to feed my
6 baby though it's in the public interest that my baby
7 be fed the laws of this country say that I can't do
8 something illegal to achieve something that's legal.
9 CHAIRMAN GRIFFIS: Understood.
10 MR. TEMPLE: This entity can't come into
11 the District of Columbia and violate our laws mind
12 you at its own peril. The citizens of the District
13 of Columbia had nothing to do with the fact that
14 Bannum submitted two letters that were very general
15 and elicited a concurrence while at the same time
16 knowing that it was doing a halfway house and failing
17 to disclose that to the District of Columbia.
18 Then come before maybe a court of law
19 down the road and say listen we made a mistake here
20 and now. We've spent all this money. The equity
21 here, the interest is with the people and the law.
22 The laws of the District of Columbia should be
23 followed by anyone despite their money, despite their
24 politics. So if you decide that the law was
25 violated, you should not rule with Bannum because

they spend money.

CHAIRMAN GRIFFIS: Well it brings up an interesting point about whether this is strongly in Claimant's favor. First of all, I would have to take issue because you are taking a direction that I don't agree with. When we look at estoppel, we do look at whether an applicant or the party acted in good faith. It is based on good faith in terms of the procedure, not that they are good people or they have the best things.

MR. TEMPLE: I'm not dealing with that.

CHAIRMAN GRIFFIS: That's my humor.

MR. TEMPLE: I'm dealing with the procedure.

CHAIRMAN GRIFFIS: Then in terms of acting in good faith on the affirmative actions of the District, those letters are affirmative actions. That doesn't go to the time that is. Those are affirmative actions by the Zoning Administrator. Buildings are designed and produced based on those interpretations or rulings and then permits are filed. So I am convinced of the two first arguments of estoppel. The fourth you bring some question to which I think we can get to. There is obviously expense that went into renovation.

1 MR. TEMPLE: Mr. Griffis, with all due
2 respect, with regard to the fact that you disagree
3 with me if you look at those letters and you don't
4 see the word halfway house, there is no submission.
5 CHAIRMAN GRIFFIS: That's what's under
6 appeal.
7 MR. TEMPLE: But the point I'm making to
8 you is that you're buying into an argument and you're
9 telling me that the District of Columbia can write a
10 general ?-
11 CHAIRMAN GRIFFIS: I'll stop you there.
12 I'm not buying into any argument. I'm reading an
13 official letter from the Zoning Administrator of the
14 District of Columbia that gave his ruling on the
15 zoning that based on whatever was presented to him
16 said that this was allowable and you can proceed.
17 MR. TEMPLE: What I'm saying to you, I'm
18 not disagreeing with that. That letter is general
19 and it does not state that we are building a halfway
20 house or community based residential facility. It
21 says we're building a ?-
22 CHAIRMAN GRIFFIS: There is another
23 argument you can get to and you haven't.
24 MR. TEMPLE: Okay.
25 CHAIRMAN GRIFFIS: Don't keep throwing

1 halfway house at me because we haven't established
2 that subject to definition.
3 MR. TEMPLE: But that goes to the very
4 issue of good faith. If they would have said for
5 example, sir, in the December and November letters,
6 gentlemen, ladies, we're building a halfway house.
7 We also think it's a community correction center.
8 Now you tell us what you think. In the submission
9 that when we have an opportunity to address
10 preliminary issues there were two people in Zoning,
11 Mr. Denzel Nobel and Mr. Kelly, who is no longer with
12 the city, both of them have given sworn statements ?-
13 MR. QUIN: Mr. Chairman, I think we are
14 going into speculation now.
15 MR. TEMPLE: Excuse me. May I finish?
16 MR. QUIN: I think we can't cite
17 something.
18 MR. TEMPLE: May I finish and then can he
19 object?
20 MR. QUIN: I object to what you're
21 talking about.
22 MR. TEMPLE: I didn't finish. You didn't
23 let me finish. I never interrupted you.
24 CHAIRMAN GRIFFIS: Actually you have.
25 But let's not banter about that. I note the

1 objection and just conclude on that.
2 MR. TEMPLE: I will. There is sworn
3 testimony from Government officials that the District
4 of Columbia if they would known that this was a
5 halfway house that those letters would not have been
6 issued as they were.
7 CHAIRMAN GRIFFIS: Right. And you bring
8 up the names and those are the new Zoning
9 Administrators that were not the ones that made those
10 letters. That's in the record actually.
11 MR. TEMPLE: Actually one of them did
12 give an opinion on it on February 21.
13 CHAIRMAN GRIFFIS: Mr. Nobel, is that
14 correct?
15 MR. TEMPLE: That's correct. But I can
16 proceed with the argument of the unreasonable delay.
17 We're talking about citizens in the District of
18 Columbia. The Board as you've noted and as they've
19 argued has a process to follow and it's based on
20 information. You have their minutes. They had a
21 meeting and at their meeting they discussed the
22 permit. They decided that at that particular point
23 in time there is no unreasonable delay. They have a
24 benefit of information. Ms. James as is indicated in
25 her letters and certainly in the court record learned

about this permit at a January 21 hearing. She filed an appeal on January 22.

CHAIRMAN GRIFFIS: Very well.

MR. QUIN: Mr. Chairman, I would like to proceed if I could.

CHAIRMAN GRIFFIS: Yes.

MR. QUIN: I just want to say we're getting into an semantic game.

CHAIRMAN GRIFFIS: I'll say.

MR. QUIN: Halfway house is not a permitted use in the District of Columbia Zoning regulations today except under adult rehabilitation home and temporary correctional facility. That's what the regulations say. I'm not making that up.

But beyond that, zoning is about use. I submit to you that if the ANC 5B knew one year ago of the nature of the facility and that it had zoning approval and did not take an appeal and then takes an appeal nine months later, that it is barred from doing so and that's not a timely appeal. That's what my witnesses will show.

CHAIRMAN GRIFFIS: Let's get to that then.

MR. QUIN: I would like to call Mr. David Lowry. How do you want me to set this up because

there are people here.

COMMISSIONER HOOD: I keep hearing the substantial investment has been made. I think it needs to be clear and I don't want to get too far into that just in case we're going to hear the case. But I think it needs to be clear that the substantial investment that has already been made is a moot point because the applicant takes that on their own risk.

CHAIRMAN GRIFFIS: Let me disagree just briefly on that in terms of estoppel. If there was a permit under the issues of looking at estoppel that there was an action based on confidence in administrative, the issuance of permit would give you the confidence to start building. Once the appeal is filed, you are at your own risk. But there is the notion of if there was expensive or permanent improvements based on the reliance, based on the decision.

COMMISSIONER HOOD: Let me say this, Mr. Chair, we can agree to disagree. About these two letters, I'm very interested and I don't know what point that these two letters will come out because one of them says residential community correction center and the other says residential community

1 correction center. I guess my point is I would
2 really like to find out how anybody is supposed to
3 find out about this. I didn't see it in the
4 District.
5 CHAIRMAN GRIFFIS: If I can interrupt you
6 for a minute, let's elicit that point.
7 COMMISSIONER HOOD: I want to finish that
8 point because I want the answer. I don't want to ask
9 for it again.
10 MEMBER ETHERLY: Mr. Chair, let me
11 piggyback on Mr. Hood's question because my concern
12 with the testimony is this. Let's keep in mind how
13 this all is being set out. One is you have an issue
14 of timeliness. If you don't accept the issue of
15 timeliness, then you have estoppel and laches as the
16 next step in this analysis. I'll give this as an
17 indication of what I need to hear as we go through
18 the witness even though I don't think we're quite
19 there yet.
20 My concern which starts where Mr. Hood
21 was just heading is if you go back to the regulations
22 and you talk about this issue of the order,
23 requirement, decision, determination or refusal as
24 being the subject of what would be timely appealed,
25 Mr. Hood's comment is really the crux of this issue

1 here.

2 I'm a big fan of clarity and concrete

3 parameters here. Regarding Mr. Hood's observation

4 about if the decision, order or requirement, etc. is

5 represented by these letters, I'm worried about where

6 the clarity is in terms of the notice going to the

7 community. Now we'll hear some testimony about of

8 course subsequent activities that have happened which

9 should fill in the gaps on the notice. But my

10 concern there is it creates in my mind a very almost

11 too fungible standard for decision, requirement or

12 order.

13 I like the clarity of knowing that

14 there's a permit out there. Boom, it was issued on

15 12/12/02. The permit got appealed on January 24.

16 Boom. That's clear for me. The standard that I

17 hear you arguing in terms of what constitutes that

18 order, requirement or decision I'm worried that it

19 gets us into quick sand where we then have to look at

20 totality of the circumstances which is a wonderful

21 phrase that all of us lorries are familiar with from

22 that first year in law school. That strikes me as

23 being somewhat unworkable.

24 So that's the concern that I'm dealing

25 with. Hopefully the witnesses will help me get there

1 but part of my concern is I don't know if I even need
2 to hear from the witnesses yet on that as opposed to
3 that question of let's just deal with the basic of
4 what is the order or the decision that is being
5 appealed here. Mr. Hood said based on the
6 application that the appeal was the 12/12/02 permit.
7 The argument is no that's not it. It was
8 the sequence of letters and then subsequent events
9 that when you take them in their totality should have
10 put the ANC on notice that this was going to happen.
11 I'm worried about once again that quick sand.
12 MEMBER ZAIDAN: Mr. Etherly, so which
13 direction are you going in? Do you want to rule on
14 the timeliness issue now and let Mr. Quin put on
15 witnesses in regards to the laches and estoppel?
16 Which direction are you looking to go in? I have to
17 admit and I would be interested in hearing the
18 testimony that he is going to put on but I have a
19 pretty strong opinion about the timeliness issue.
20 CHAIRMAN GRIFFIS: Let's hear the
21 witness.
22 MEMBER ZAIDAN: Why don't we go to the
23 witnesses first?
24 MEMBER ETHERLY: I'm willing to follow
25 the Chair's lead on this but I'm only to go so far.

1 CHAIRMAN GRIFFIS: We're not going to
2 take a lot of time. A lot of what we get into is our
3 own deliberation. As I stated, I told Mr. Quin and
4 he's obviously aware that there is a high threshold
5 that he has to overcome and the witness is going to
6 direct us to that. But the faster we get through
7 that then we can move on.
8 MEMBER ETHERLY: I want to be very clear
9 here, Mr. Chairman, in our rush to get to the
10 witnesses. It's my contention that I don't think
11 this inquiry goes to the witnesses yet because the
12 argument of the Applicant is that you have to look at
13 the sum and total of the events that took place
14 throughout 2002 or 2001 that should have put the
15 community on notice.
16 MR. QUIN: No.
17 MEMBER ETHERLY: Let me pause here and
18 we'll listen to the witnesses and then go.
19 MR. QUIN: The very specific point is if
20 you look at the new legislation that relates to
21 appeals. It says that the decision or knowledge or
22 knowledge of the decision they reasonably should have
23 had notice of the knowledge. By our witnesses in a
24 nutshell what we are going to try to show with two
25 witnesses is that in early 2002, the ANC 5B knew of

1 the Zoning approval and knew of the nature of the
2 facility. At that time if they had a problem, they
3 could have taken an appeal. That's my point.
4 MEMBER ETHERLY: And that approval is
5 evidenced by the letters.
6 MR. QUIN: Yes.
7 MR. TEMPLE: Excuse me. Can I just say
8 as a caveat? We'll hear the witness but I just want
9 to say to the Board. It's our view that once you get
10 into this pseudo substantive issue you're ultimately
11 getting into an issue that you're going to hear down
12 the road. You ultimately have to make a
13 determination on the substantive question to get to
14 the procedural question.
15 Ultimately and it's just a suggestion
16 that to the extent that you could decide to dismiss
17 it now, once you open this door because there is some
18 issues here about notice that are very inflammable
19 and that are going to be a little bit more
20 protractive than you think. We're going to get into
21 a sub-hearing. That's one of the things that we
22 wanted to avoid.
23 CHAIRMAN GRIFFIS: Okay.
24 MS. MOORE: Mr. Chairman, can I say
25 something on that? A motion to dismiss is a

1 dispositive motion. So it is essentially a sub-
2 hearing if it's necessary. It may end the case.
3 There are states where they have motions judges and
4 that's all they do is hear motions, hear arguments on
5 motions, essentially hearings on motions. If that's
6 what's necessary to decide the motion, that's what's
7 necessary. I think we need to go with it.
8 MR. TEMPLE: That's fine.
9 CHAIRMAN GRIFFIS: Okay.
10 WHEREUPON,
11 DAVID LOWRY
12 having previously been duly sworn, assumed the
13 witness stand, was examined and testified as follow:
14 DIRECT EXAMINATION
15 BY MR. QUIN:
16 Q Mr. Lowry, would you state your name,
17 address and occupation?
18 A David Lowry, Executive Director of
19 Bannum, Inc. I live at 2701 Gulf Boulevard, Bel Air
20 Beach, Florida.
21 Q Would you describe to the Board just
22 telling your familiarity with the corrections
23 Facilities? Would you just describe briefly your
24 experience? I would like to submit to the Board a
25 copy of Mr. Lowry's résumé so you know that.

1 A I have a Bachelor's degree from the
2 University of Louisville, a Baccalaureate degree from
3 Spaulding College and a Master's degree from the
4 University of Louisville. I've been contracting with
5 the Bureau of Prisons, Department of Justice for 24
6 years.
7 MR. QUIN: Do you have copies of that
8 yet? At some point, I'd like to offer Mr. Lowry as a
9 expert in correction facilities.
10 CHAIRMAN GRIFFIS: Let's take a minute
11 and we'll just review this.
12 (Pause.)
13 Is there any objection from the District
14 Government from granting Mr. Lowry expert status in
15 Correctional facilities?
16 MR. TEMPLE: Yes, there is.
17 CHAIRMAN GRIFFIS: Wait.
18 MR. TEMPLE: I thought you were asking
19 us.
20 CHAIRMAN GRIFFIS: I'm sorry.
21 MR. RUSHKOFF: I'm not sure the relevance
22 of his expert status to this motion. It might be
23 relevant later on. Is the idea to consolidate this
24 with the merits?
25 MR. QUIN: I was trying to be efficient

1 and if it comes to the point that we get to the
2 merits then I would want to have him an expert.
3 CHAIRMAN GRIFFIS: Why don't we take it
4 up with the merits so we don't confuse him.
5 MR. QUIN: Thank you. Mr. Lowry, would
6 you describe to the Board what Bannum Inc. is?
7 THE WITNESS: Bannum operates community
8 correction centers under contract with the Department
9 of Justice, Bureau of Prisons. Currently we have 17
10 contracts in nine different states.
11 BY MR. QUIN:
12 Q How did you get involved with the
13 proposed contract for BOP at 2210 Adams Place?
14 A The Bureau of Prisons puts out RFPs for
15 almost every city in the country. They have a need
16 to provide community correction center services to
17 persons who have been released from Federal prisons
18 and who are serving their last four to six months of
19 their sentence in the community. The Government put
20 out such an RFP for Washington, D.C.
21 COMMISSIONER HOOD: Mr. Chairman, excuse
22 me. I'm confused. What are we doing? Are we having
23 a hearing?
24 CHAIRMAN GRIFFIS: I think I understand
25 what Mr. Hood is saying.

1 MEMBER ETHERLY: I do too.
2 CHAIRMAN GRIFFIS: First of all, all of
3 that is in the written record which we all read.
4 That's important and we'll get to it. But I think
5 obviously, Mr. Quin, what you're about to do I hope
6 is direct him immediately to this specific dates that
7 are actually on your schedule.
8 MR. QUIN: I'm going to do two things
9 which I think is where the Board wants us to go. One
10 is to the timeliness and the second is estoppel and
11 laches.
12 CHAIRMAN GRIFFIS: Right.
13 MR. QUIN: Those are the only two. Did
14 there come a time, Mr. Lowry, that you were required
15 or you proceeded to notify the community of the
16 nature of the facility in order to proceed with the
17 contract?
18 THE WITNESS: When I bid on the contract,
19 the Government requires that I provide notice by
20 certified mail return receipt requested to the Mayor,
21 Chief of Police and City Council person. On November
22 30, I sent a certified letter return receipt
23 requested to Mayor Williams, his Chief of Staff and
24 the Chief of Police of Bannum's intention to operate
25 a community correction center at 2210 Adams Place.

1 On December 11, we obtained Zoning
2 approval. On March 12, the BOP informed me that I
3 neglected to notify Councilman Orange so I sent
4 Councilman Orange a certified letter explaining what
5 Bannum does. The explanation is taken from the BOP
6 RFP. They give me specific directions as to what to
7 tell a community that I'm all about. We follow those
8 directions to the teeth.
9 On April 10, the BOP strongly suggested I
10 once again notify Mayor Williams, Councilman Orange
11 and the Chief of Police. I didn't ask why. I just
12 did it. On October 31, we met with a company who
13 also operates a daycare center in our building,
14 Holistic Services. We explained our program over a
15 three hour lunch.
16 Then on November 26, we obtained Zoning
17 approval again after we had been awarded the
18 contract. We just wanted to shore up and make sure
19 everything was legal and we could proceed. By the
20 way we were awarded the contract on November 16.
21 Then after contract award and after all these
22 notifications where we explained exactly to all the
23 political officials what we did as required by the
24 Government, we were involved with the services of a
25 community organizer, Mr. James Crawford, who said he

1 walked the neighborhood door to door and he organized
2 some meetings. Those meetings took place on April
3 18.
4 CHAIRMAN GRIFFIS: What year?
5 THE WITNESS: 2002. We had four meetings
6 on April 18. We met with the Senior Citizens at the
7 Model Cities Wellness Center after issuance of a
8 public notice. The Bureau of Prisons was in
9 attendance. We explained our programs. We answered
10 any questions anybody had about the program.
11 On April 18, we also had a meeting with
12 three ANC leaders and Mr. Rahim Jenkins representing
13 the Mayor's office at the Washington Center for Aging
14 Services.
15 BY MR. QUIN:
16 Q Can you explain to the Board or identify
17 who was present at that meeting?
18 A Rhonda Chapelle was there. Mr. Bowser
19 was there. I don't recall the third ANC. The BOP
20 representative was there. Another representative of
21 Bannum and Rahim Jenkins who said he was there on
22 behalf of the Mayor's office.
23 Q Was ANC 5B included?
24 A I believe so, yes.
25 Q You can continue. First why don't you

1 describe to the Board what you told them and what the
2 presentation was by Bannum at that meeting on April
3 18, 2002?
4 A We explained to the ANC leaders that we
5 were awarded a Government contract and we had Zoning
6 as a matter of right. We were going to proceed. We
7 wanted to meet and work out any concerns or address
8 any issues that anybody in the community may have.
9 So the meeting was set up. At the meeting the
10 Mayor's representative suggested that some of the ANC
11 persons go tour one of Bannum's facilities.
12 Again the reason this was recommended was
13 because we informed the ANC we already had a contract
14 and we already had zoning. Before I can receive a
15 contract, I have to prove zoning. The Department of
16 Justice accepted those Zoning letters as proof of
17 zoning. They awarded the contract on that basis and
18 I proceeded. I explained it very clearly to the ANC.
19 They also wanted to develop a memorandum of
20 understanding because they knew I was coming. We
21 wanted to get along and work with everybody.
22 Now, the trip to Orlando, we flew two ANC
23 members down there. The ticket was $250 per ANC,
24 round-trip, one day. One of them stayed over. We
25 had nothing to do with that. We just said we were

1 going to fly you down in the morning and fly you back
2 in the afternoon. We bought two $250 tickets. That
3 was the extent of it. No other money changed hands.
4 Q Would you proceed then with regard to
5 Exhibit --
6 A Then we had another meeting on April 18.
7 We met the community organizer after a public
8 announcement. We met with the PTA and parents at
9 Langdon Elementary School. The BOP was in
10 attendance. They had three persons there to answer
11 questions, to address any concerns anybody had. Then
12 on the evening of April 18, we also met at Harbor
13 Light after a public announcement. That was with the
14 general members of the community and some ANC
15 members.
16 CHAIRMAN GRIFFIS: Okay. Actually, if
17 you don't mind, we'll cut directly to it. Did you
18 hand out copies of letters of the Zoning
19 Administrator during your public presentations?
20 MR. LOWRY: No, I don't recall that.
21 CHAIRMAN GRIFFIS: You made the statement
22 that you were proceeding as a matter of right.
23 MR. LOWRY: Yes.
24 CHAIRMAN GRIFFIS: Did you indicate even
25 the specifics of you having a signed agreement or

concurrence with the Zoning Administrator that this is their right?

MR. LOWRY: Yes, I discussed the letters. I didn't hand them out though.

CHAIRMAN GRIFFIS: I see.

MR. LOWRY: Again, that's the trip to Orlando. Why would they go down there? We flew them down because they knew we were coming. Everybody was trying to get along. We were developing a memorandum of understanding.

CHAIRMAN GRIFFIS: Right.

COMMISSIONER HOOD: Excuse me, Mr. Chairman. Mr. Lowry?

MR. LOWRY: Yes.

COMMISSIONER HOOD: This trip to Orlando, I have some problems with that.

MR. LOWRY: What is your problem?

COMMISSIONER HOOD: My problem with the trip to Orlando is first of all you are doing business with ANC Commissioners. Mr. Chairman, I know I may be going off on the wrong end because we are going to have a hearing. But I would like to say I have some serious concerns about your doing business in the city --

MR. LOWRY: The Mayor's representative

suggested the trip.

COMMISSIONER HOOD: It doesn't make any difference.

MR. LOWRY: I didn't suggest the trip.

COMMISSIONER HOOD: But still. I would hope --

MR. LOWRY: It was the Mayor's representative.

COMMISSIONER HOOD: Let me just finish, Mr. Lowry. I would hope that maybe the ANC Commissioners would have done like I did some years ago when they asked me to go somewhere as a Commissioner on this Zoning Commission and turn it down.

(Applause.)

CHAIRMAN GRIFFIS: All right.

COMMISSIONER HOOD: I just say that because I have some serious problems with this agenda I see in front of me.

MR. LOWRY: What, may I ask, is the problem?

COMMISSIONER HOOD: First of all, the trip to Orlando.

MR. LOWRY: You don't think I notified the community.

1 COMMISSIONER HOOD: No, I didn't say
2 that. Don't tell on yourself. I didn't say that.
3 I'm just concerned about ANC Commission --
4 MR. LOWRY: Mr. Hood, the Mayor's
5 representative suggested that I fly people to
6 Orlando. I bought two $250 tickets.
7 COMMISSIONER HOOD: Let me just ask my
8 question. On April 18, 2002, you said you met with
9 three leaders of ANC. You only named two.
10 MR. LOWRY: I don't recall the third one.
11 Mr. Bowser, who went to Orlando, Rhonda Chapelle,
12 and I don't recall the third one. Rahim Jenkins
13 representing the Mayor, who was at the meeting,
14 suggested they go to Orlando. I flew them down to
15 Orlando. We started developing a memorandum of
16 understanding. That's how far along it got.
17 COMMISSIONER HOOD: Mr. Chairman, I don't
18 want to continue. I'll continue my line of
19 questioning if we proceed.
20 CHAIRMAN GRIFFIS: Right.
21 COMMISSIONER HOOD: I'm sorry.
22 CHAIRMAN GRIFFIS: We should obviously be
23 clear. Unless this is going somewhere, we have no
24 jurisdiction over actions or what was taken on before
25 and whether it was in good intention or not. Anyway,

it's good to know it all out there, but let's not get bogged down.

MEMBER ZAIDAIN: Actually, I have a brief question. When you were at these meetings, did you show any plans or did you show them anything that you were planning that you were doing with the site? I know you stated that you were reusing an existing building. But did you discuss the letter that you were given from the Zoning Administrator? Was there anything else shown to the community?

MR. LOWRY: Yes, we had some handouts. The BOP passed out some information. We informed them we had a contract, we had zoning, and we wanted to work with the community. Again, that's why they started developing a memorandum of understanding with that ANC.

MEMBER ZAIDAIN: Right. Obviously, zoning does apply to things like building plans and what you are going to build and uses, so I'm just trying to get what information related to that you dispersed to the community. MOUs and trips to Orlando and all that stuff really isn't involved in the Zoning Regulations. That's just what I'm trying to glean from you.

DIRECT EXAMINATION (cont.)

1 BY MR. QUIN:
2 Q Let me ask Mr. Lowry to respond to Mr.
3 Zaidain's question. How did you describe the use
4 that you would be making of 2210 Adams Place, N.E.?
5 Were you talking about the nature of the residence or
6 what your controls were? What did you describe to
7 the ANC specifically?
8 A I described the layout of the facility.
9 We had proposed one big dormitory to hold up to 150
10 persons. The government has many standards. The
11 Department of Justice Bureau Prisons has many
12 standards on health facilities. You have to have one
13 wash basin for every six persons.
14 MEMBER ZAIDAIN: They have program
15 requirements that you have to maintain.
16 MR. LOWRY: Yes, in fact, we have about
17 200 pages of program requirements. I explained all
18 of that. I believe there was a schematic that we
19 passed out showing just a draft of the layout of the
20 facility because we had applied for our building
21 permit if I recall.
22 DIRECT EXAMINATION (cont.)
23 BY MR. QUIN:
24 Q Did anyone at any time ask you for a copy
25 of any ruling?

1 A No.
2 Q But you described that you did get
3 approval.
4 A Yes.
5 COMMISSIONER HOOD: Approval from whom?
6 DIRECT EXAMINATION (cont.)
7 BY MR. QUIN:
8 Q Did you say approval from the Zoning
9 Administrator?
10 A Yes.
11 MR. QUIN: Mr. Chairman, I'm trying to
12 truncate this.
13 CHAIRMAN GRIFFIS: I understand.
14 MR. QUIN: I do have a procedural
15 question which I want the Board to guide me on. I
16 could ask Mr. Lowry about some of the issues that
17 would relate to the merits, but I'm afraid if I do
18 that now it gets it off kilter.
19 CHAIRMAN GRIFFIS: I would agree.
20 MR. QUIN: All right.
21 CHAIRMAN GRIFFIS: We are very
22 specifically looking for --
23 MR. QUIN: The time in this issue.
24 CHAIRMAN GRIFFIS: Right, timing it.
25 MR. QUIN: Now I would like to ask to go

1 to the estoppel latches questions if I may.
2 CHAIRMAN GRIFFIS: Okay.
3 DIRECT EXAMINATION (cont.)
4 BY MR. QUIN:
5 Q Mr. Lowry, based upon the rulings by the
6 Zoning Administrator, the first one, Mr. Johnson, did
7 you enter into a contract with the Bureau of Prisons?
8 A Yes I did.
9 Q Was that letter a requirement for that
10 contract?
11 A Yes, I had to prove zoning. Before the
12 Department of Justice will award a contract, you have
13 to provide proof of zoning. I submitted the letter.
14 They awarded the contract based on that letter.
15 Q Then why did you go back to get a second
16 ruling from the Zoning Administrator?
17 A Just to reverify and make sure there were
18 no problems because once we had the contract we
19 wanted to make sure we went forward as quickly as
20 possible.
21 Q So the second ruling was subsequent to
22 the contract but before construction.
23 A Yes.
24 Q Did you apply for building permits?
25 A Yes.

1 Q Did you enter into a lease?
2 A Yes.
3 Q What is the cost of the lease?
4 A The lease is $5,200 a month plus CAM
5 charges. The CAM charges so far have averaged about
6 $1,500 to $1,800 a month.
7 Q Did you proceed with construction?
8 A Yes.
9 Q How much has the construction cost you?
10 A As I sit here today, it's probably close
11 to $450,000.
12 Q Have you paid taxes?
13 A Yes.
14 Q Paid for utilities?
15 A Yes.
16 Q What are your operating costs per day or
17 was that the number you gave?
18 A Well, as we sit here, I have about
19 $450,000 into it. I haven't made a final payment. I
20 believe it's $150 to the general contractor when we
21 get our Certificate of Occupancy. We have a lot more
22 that's going to happen between now and May 1.
23 Q If the ANC had filed an appeal in Spring
24 2002, would you have proceeded with your obligations?
25 A No.

1 Q What would occur if you were not able to
2 proceed at this point with the contract?
3 A The government could find me in default.
4 CHAIRMAN GRIFFIS: Let's see if we can
5 keep it one person talking.
6 MR. LOWRY: If I don't perform a
7 government contract, I can be held in default. If
8 I'm defaulted, that can eventually lead to debarment
9 from doing business with the Department of Justice.
10 They are my only customer.
11 MR. QUIN: Thank you, Mr. Lowry. That
12 may be all because the other points you covered in
13 the affidavit. That completes my direct examination.
14 CHAIRMAN GRIFFIS: Okay. Cross
15 examination.
16 CROSS EXAMINATION
17 BY MR. RUSHKOFF:
18 Q On behalf of DCRA, you described various
19 elements of reliance. Could you just distinguish
20 between the ones that were incurred prior to the
21 building permit being issued on December 12 and those
22 that were incurred afterwards?
23 A You are talking about financial.
24 Q You mentioned various types of reliance.
25 You mentioned financial. You mentioned entering

1 into a lease. You mentioned entering into a
2 government contract. I just want to clarify how much
3 of it was before December 2 and how much was after
4 December 2.
5 MR. QUIN: Of which year? 2001?
6 MR. RUSHKOFF: Of 2002. The issuance of
7 the building permit.
8 MR. QUIN: His testimony went to the
9 ruling as opposed to the permit.
10 MR. RUSHKOFF: I know that. That's why
11 I'm asking about the permit.
12 CHAIRMAN GRIFFIS: So what were the
13 expenses and permanent improvements that were made
14 before the permit and after the permit?
15 CROSS EXAMINATION (cont.)
16 BY MR. RUSHKOFF:
17 Q And any other aspect of reliance that you
18 would say would result in harm to the company if you
19 couldn't go through on the arrangement.
20 A Before December 12.
21 Q I would like you to just lay it out
22 before December 12 and after December 12, 2002. What
23 was before? What was after?
24 A Before December 12, we had a lease.
25 Obviously I didn't do any work to the building until

1 I was issued a building permit. We had spent money
2 on travel and the community meetings doing our
3 proposal, our proposal preparation work, and those
4 kinds of things. I don't have a dollar figure right
5 now. I'm sure I could break it down later.
6 Q Prior to December 2, you had the contract
7 with Bureau of Prisons.
8 A Yes.
9 Q If you hadn't gotten a building permit --
10 MR. TEMPLE: December 2 of what year
11 please?
12 MR. RUSHKOFF: 2002.
13 MR. TEMPLE: December 12.
14 CROSS EXAMINATION (cont.)
15 BY MR. RUSHKOFF:
16 Q I'm sorry, December 12, 2002. Prior to
17 December 12, 2002, I take it you entered into the
18 contract with Bureau of Prisons. If you hadn't been
19 able to get a permit, would you have been in default
20 of your contract with the Bureau of Prisons?
21 A A building permit?
22 Q That's right.
23 A Yes because I had Zoning and they relied
24 on the Zoning.
25 Q You are saying that under the contract if

1 you failed to get a building permit then you would
2 have been not only in default but subject to possible
3 debarment.
4 A If I failed to perform the contract.
5 Q Under the contract, there's nothing in
6 there to protect you in the event that the government
7 decided for whatever reason not to issue a building
8 permit.
9 A No, once I sign a contract and based on
10 that Zoning, I had to perform the contract.
11 MR. RUSHKOFF: No further questions.
12 CHAIRMAN GRIFFIS: Mr. Temple.
13 MR. TEMPLE: Thank you.
14 CROSS EXAMINATION
15 BY MR. TEMPLE:
16 Q Would you tell this panel again what the
17 date of your contract was please?
18 A I believe it was November 16, 2001.
19 Q You indicated that you had the lease for
20 the building.
21 A Yes.
22 Q What is the date of the lease please?
23 A I don't recall the date. We've been in
24 there for quite a while now.
25 Q In fact, wasn't that lease in litigation

in the District of Columbia Superior Court?

A I'm not sure what it was. It was in litigation, yes.

Q What was the date of litigation please?

A I don't recall the date.

Q That case was settled. Isn't that true?

A Yes, it was settled.

Q You couldn't do your contract until the lease issues were resolved. Isn't that correct?

A Not that I couldn't do my contract. I had to get into the building and do some work.

Q You couldn't do the contract at that site until the lease issues were resolved.

A Yes, we hadn't resolved our lease issues.

Q There was a settlement in that case. Is that correct?

A I believe so.

Q You don't know.

A Well, I'm in the property, yes.

Q There was a settlement. Isn't that correct?

A Okay.

Q Does "okay" mean yes?

A Yes.

Q What was the date of that settlement?

1 A That I don't recall.
2 Q In fact, how long is your lease for, sir?
3 A The lease runs concurrent with the
4 government contract.
5 Q The question is how long is your lease
6 for, sir.
7 A I'm answering it runs concurrent with the
8 government contract.
9 Q How long is the government contract, sir?
10 A It's a two year base period and three
11 one-year options.
12 Q So are you telling us that your lease is
13 for two years with one year options?
14 A If I don't have the contract, my lease is
15 null and void, yes.
16 Q Can you explain please is your lease for
17 more than a three year period?
18 A My lease runs concurrent with the
19 government contract. As long as I have the
20 government contract --
21 Q I'm asking you a simple question, sir.
22 A I've answered it.
23 Q Are you saying your lease is for two
24 years with continued one-year options?
25 A Yes, it runs concurrent with the

1 government contract.

2 Q You said that you met with the ANC. Is

3 that correct?

4 A Yes.

5 Q Did you ever give any information to any

6 ANC member which would have indicated that this

7 particular site is a halfway house?

8 A I explained what the program was.

9 Q The question is very basic, sir.

10 CHAIRMAN GRIFFIS: Actually, we're going

11 to cross examination of the testimony. I didn't hear

12 a lot of testimony about a halfway house.

13 MR. TEMPLE: It goes to the issue. We

14 can't not discuss that issue because that goes to the

15 issue of --

16 CHAIRMAN GRIFFIS: You are getting into

17 the merits of the appeal. You need to separate what

18 the motion is. The witness is being called to show

19 how the administrative decision was the letter and

20 that the community should have known that was the

21 official district letter.

22 MR. TEMPLE: No, that's incorrect with

23 all due respect. You put our hands --

24 CHAIRMAN GRIFFIS: What do you mean

25 "that's incorrect?"

1 MR. TEMPLE: Well, it's incorrect. You
2 put our hands behind our backs. You tell the
3 community that --
4 CHAIRMAN GRIFFIS: For this motion, your
5 hands are tied in terms of addressing this specific
6 motion and the testimony. How are you going to cross
7 this witness when he didn't bring up halfway houses
8 at all?
9 MR. TEMPLE: With your indulgence, it is
10 impossible. If he is telling us that he met with the
11 community, had these communications with the
12 community, and that the community should have known
13 what we are challenging today that it's a halfway
14 house, then we should have every right to ask him
15 whether he ever told the community it was a halfway
16 house.
17 CHAIRMAN GRIFFIS: I didn't hear him
18 testify to that. I heard him say --
19 MR. TEMPLE: We haven't heard what he
20 said. That's why I want to know.
21 CHAIRMAN GRIFFIS: Let me reiterate what
22 he said. His testimony was that he presented to the
23 community that they were moving ahead as a matter of
24 right in terms of Zoning and that they were relying
25 on the decision of the Zoning Administrator that this

1 was a matter of right.

2 MR. TEMPLE: However, the question is did

3 he tell the community. He said he relied on

4 something. The question is what that something was.

5 CHAIRMAN GRIFFIS: He was explicit. We

6 asked him three times from the Board.

7 MR. TEMPLE: He was explicit but he was

8 not detailed. If for example his answer is I did not

9 tell the community that it was a halfway house, then

10 their argument falls like a rock. Then our argument

11 is that we didn't know it was a halfway house and

12 when we found out we filed this appeal. There's no

13 latches issue. There's no delay issue.

14 CHAIRMAN GRIFFIS: So make that argument.

15 MR. TEMPLE: Well, that's the question.

16 MR. QUIN: Mr. Chairman, I want to object

17 to this whole characterization as something as a

18 halfway house. The use was described. Zoning deals

19 with use. That's what is really important to the

20 Zoning Commission. They want to know what the use

21 is, what the nature of it is. Unfortunately, we're

22 getting into the merits.

23 MR. TEMPLE: That is absolutely

24 preposterous. We might as well walk out of here if

25 we can't ask that very basic question.

1 CHAIRMAN GRIFFIS: You can't ask it if
2 the testimony isn't there under a simple motion.
3 MR. TEMPLE: Unfortunately, I warn this
4 Board that when you open the door if I can't ask this
5 man whether he told these people he met with whether
6 it was a halfway house and get an answer, then --
7 CHAIRMAN GRIFFIS: Ask that question.
8 CROSS EXAMINATION (cont.)
9 BY MR. TEMPLE:
10 Q Mr. Lowry, did you tell the ANC
11 Commissioners when you met with them on April 18 that
12 what you were doing was a halfway house?
13 A I explained to them that it was a
14 community correction center and we had previously --
15 CHAIRMAN GRIFFIS: I'm sorry, Mr. Lowry.
16 I can't have comments from the audience while I'm
17 having testimony. It only distracts me which means I
18 have to stop and I'm going to have to ask again that
19 people reiterate their statement. So it's just a
20 waste of all of our times. Mr. Lowry, please go
21 ahead.
22 MR. LOWRY: At several meetings, I
23 provided excerpts from the statement of work exactly
24 what we were. We're called a community correction
25 center.

1 CROSS EXAMINATION (cont.)
2 BY MR. TEMPLE:
3 Q Mr. Lowry, I asked you a specific
4 question, sir.
5 A I've answered it the best I can.
6 Q Can you answer it yes or no? Did you
7 tell the ANC Commissioners when you met with them on
8 April 18 that what you were doing is a halfway house?
9 A I explained the program and I called it a
10 community correction center.
11 Q Did you tell them that what you were
12 doing was a community-based residential facility?
13 A I explained the program and said that it
14 was a community correction center.
15 Q You referenced a letter to Mr. Johnson.
16 You said that was a ruling. That letter is dated
17 November 2000 I believe. It's in your exhibits. Is
18 that correct?
19 A I'm sorry. What letter are you talking
20 about?
21 Q The letter dated December 2000. It's
22 your Exhibit A. Your attorney asked you about this
23 particular letter. Do you recall?
24 A Yes.
25 Q Did you ever meet with Michael Johnson,

1 sir?
2 A No I did not.
3 Q In fact, you don't know what happened
4 when Ms. Brown met with Michael Johnson. Isn't that
5 correct?
6 A I know what I provided to Ms. Brown to
7 provide to Mr. Johnson.
8 Q What did you provide to Ms. Brown?
9 A Excerpts from the statement of work.
10 Q Do you know whether she gave it to Mr.
11 Johnson?
12 A I assume she did.
13 Q Do you know?
14 A She told me she did.
15 Q Are you familiar with D.C. Zoning
16 Regulations?
17 A No I'm not.
18 Q Did you at any point know before this
19 letter was sent what a community-based residential
20 facility was?
21 A No I did not.
22 Q Did you know what a halfway house was?
23 A No I did not.
24 Q Excuse me. Let me make sure. You said
25 that before this letter you did not know what a

1 halfway house was.

2 A In relation to Zoning, they call --

3 Q That wasn't my question, in relationship

4 to Zoning. My question was do you know what a

5 halfway house was.

6 CHAIRMAN GRIFFIS: Well, it is in

7 relation to Zoning. You just asked him if he knew

8 the D.C. Zoning Regulations.

9 MR. TEMPLE: That wasn't my question,

10 sir. I know what my question was. My question was

11 for a particular reason. And I'm going to ask the

12 second question.

13 MR. QUIN: Mr. Chairman, I'd like to

14 object to this line of questioning because there's no

15 basis that's been laid that shows what a halfway

16 house is in the District of Columbia. If that's

17 going to be the arguments on the merits, then we'll

18 get to that.

19 CHAIRMAN GRIFFIS: Right.

20 MR. QUIN: But it's not a question now.

21 MR. TEMPLE: That's our point. We should

22 get to it. The case shouldn't be dismissed because

23 there's no latches. We're bringing a --

24 CHAIRMAN GRIFFIS: So when are you going

25 to rest.

1 MR. TEMPLE: He asked 50 questions. I
2 asked seven.
3 CHAIRMAN GRIFFIS: We don't have to match
4 questions for questions at this time.
5 MR. TEMPLE: My questions go the same --
6 CHAIRMAN GRIFFIS: Mr. Temple, your cross
7 examination questions ought to be pinpointed so it
8 informs the Board and pokes a little bit of holes and
9 starts making somewhat of your point.
10 MS. MONROE: Mr. Chairman, can I --
11 CHAIRMAN GRIFFIS: Running down this
12 direction is --
13 MS. MONROE: Can I interrupt for a
14 moment? If I am reading this correctly, I think what
15 Mr. Temple is trying to get at is under the new
16 Zoning Commission 60 day rule that his client did not
17 know and reasonably could not have known of the type
18 of facility.
19 MR. TEMPLE: Absolutely.
20 MS. MONROE: But the way he's asking it
21 is going way off. You are cross examining. You have
22 to talk about what he's already spoken about.
23 CHAIRMAN GRIFFIS: I am very clear on
24 what your point is, Mr. Temple, so we don't need to
25 keep hitting it home.

1 MR. LOWRY: I can respond to that.
2 MR. TEMPLE: Can I finish my questions?
3 CHAIRMAN GRIFFIS: Mr. Lowry, she is not
4 cross examining you right now. Mr. Temple, other
5 questions.
6 MR. TEMPLE: Yes. First of all, I need
7 some guidance from you because I have a problem.
8 CHAIRMAN GRIFFIS: Okay.
9 MR. TEMPLE: My problem is if he asked
10 him about a letter and the letter is supposed to be a
11 ruling then the question of the very ruling and what
12 that ruling is on is at issue even for procedural
13 purposes. If you are saying don't ask the pointed
14 question what was submitted to Mr. Johnson, what was
15 submitted to Mr. -- which is at issue what did they
16 know at that time, that's what this whole case is
17 about. I think that's fair game. He asked a lot of
18 questions suggesting that there was some notice.
19 What we are saying is there was no notice, not the
20 kind of notice that brings us here today.
21 MR. QUIN: Mr. Chair, I think the record
22 clearly shows what he testified. He told the
23 neighbors at ANC-5B what the operation was.
24 CHAIRMAN GRIFFIS: Right.
25 MR. QUIN: What else can he do?

1 CHAIRMAN GRIFFIS: Mr. Temple, the point
2 in my mind and the question is whether the community,
3 specifically the ANC, could have relied on those
4 letters as the formal administrative decision.
5 MR. TEMPLE: If that's the question, you
6 don't need any testimony. That's the point that I
7 make. To the extent that the door is opened and you
8 allow the door to be opened on those questions, it's
9 fair game. I have every right to ask him about the
10 questions that he opened the door on; the letters,
11 the meetings, the trip to Florida, et cetera.
12 CHAIRMAN GRIFFIS: Yes, the letters, as
13 it was testified, stand on their own, and how they
14 were dealt with in the community is of issue, not
15 what was the actual interpretation or how the Zoning
16 Administrator arrived at that decision. It is the
17 letter is standing and now what was the community
18 supposed to do with it. It seems fairly clear to me.
19 MR. TEMPLE: All right. I'll try to be
20 as direct as I can.
21 CHAIRMAN GRIFFIS: Okay.
22 CROSS EXAMINATION (cont.)
23 BY MR. TEMPLE:
24 Q Mr. Lowry, did you at any point in time
25 give copies of the November or December letters to

1 any ANC member?
2 CHAIRMAN GRIFFIS: I asked that question.
3 CROSS EXAMINATION (cont.)
4 BY MR. TEMPLE:
5 Q Can you clarify that please?
6 A I don't believe I did.
7 Q Did you at any point in time specifically
8 discuss - I said "specifically discuss" - the
9 November or December letters with any ANC-5B member?
10 A Yes, I discussed that we had zoning as a
11 matter of right and I was awarded a contract on that
12 basis.
13 Q That wasn't my question.
14 A Okay.
15 Q My question was did you at any point
16 specifically discuss the letters and their content
17 with any ANC-5B members.
18 A I said we had zoning that was a matter of
19 right. That's what I said.
20 Q In the process of saying that to the ANC
21 members, did you say I got a letter approving it as a
22 matter of right and here's a copy of the letter?
23 A In fact, I think I even said I had two
24 letters.
25 Q Did you tell them who the letters were

1 from?

2 A No.

3 Q Are you aware, sir, that the Bureau of

4 Prisons uses the terms "halfway house" and "community

5 correction center" interchangeably?

6 MR. QUIN: Objection on the basis that no

7 predicate has been set by that. If you want him to

8 answer it, it's fine.

9 CHAIRMAN GRIFFIS: No.

10 MR. QUIN: I just don't think it's there.

11 CHAIRMAN GRIFFIS: Mr. Temple, your

12 position is well known. Your position is strong

13 enough unless Board Members believe that needs to be

14 elicited to establish Mr. Temple's position.

15 MEMBER ETHERLY: Mr. Chair, we're at the

16 point where there's a comfort level with moving

17 forward on this particular question.

18 MEMBER ZAIDAIN: Actually if I could just

19 chime in here. I would be curious to hear what

20 direction the rest of the Board wants to go in. The

21 confusion and the conflicts that we're seeing here

22 are indicative of the quicksand that we're going to

23 fall into if we start getting into these types of

24 actions as an official action of the Zoning

25 Administrator.

1 CHAIRMAN GRIFFIS: Okay.

2 MEMBER ZAIDAIN: If you want to debate

3 this, we can. I just don't see how this is getting

4 us anywhere.

5 CHAIRMAN GRIFFIS: Okay. I would suggest

6 this. Let's dispense of the timeliness. There's a

7 motion to dismiss based on timeliness. I will

8 reiterate --

9 MR. QUIN: Mr. Chairman, I'm sorry. I

10 have one redirect question.

11 MR. TEMPLE: I'm not even finished my

12 cross. This gentleman had a chance to do it. I

13 don't mind stopping, but I like to have the benefit

14 of there are other questions or let me know where I

15 am. We have some questions that we're raising. If

16 the Board is saying that we're ruling on the issue

17 based on what has been submitted, I have no problem.

18 But to that extent, there are other lines of

19 questions that we --

20 CHAIRMAN GRIFFIS: Right. Mr. Quin and

21 Mr. Temple, I will but you both off because we're

22 exhausting what is a fairly clear issue for the

23 Board. I'd like to put it to the Board right now.

24 If I feel that the Board in its fairly brief

25 deliberation is obviously floundering for additional

1 information, we will reopen up this issue.
2 MR. QUIN: I'm sorry. I had Rhonda
3 Chapelle, the ANC-5B Chairman, which I would ask
4 specific questions as to what she understood, what
5 was said herself as the ANC-5B Chairman.
6 CHAIRMAN GRIFFIS: I see.
7 MR. QUIN: That to me is germane
8 specifically to the understanding.
9 CHAIRMAN GRIFFIS: Okay. Let's do that.
10 COMMISSIONER HOOD: Before we go to that,
11 Mr. Chairman, let me just ask Mr. Lowry a question.
12 You stated earlier that you should have gotten
13 notification from the ANC earlier. I understand all
14 of that. But I'm looking through the file. You
15 received a letter. Who is Stewart Rolls?
16 MR. LOWRY: Stewart Rolls is the
17 Administrator of Community Corrections for the Bureau
18 of Prisons. He works for the Bureau of Prisons.
19 COMMISSIONER HOOD: Who is Kathy Ballou?
20 MR. LOWRY: Kathy Ballou is one of
21 Bannum's operations directors.
22 COMMISSIONER HOOD: So you had
23 notification in this November 5, 2001 letter that the
24 Ward Five council member had some issues who
25 represents the ward as a whole. Mr. Chairman, I'm

pointing directly to his testimony.

CHAIRMAN GRIFFIS: Okay.

COMMISSIONER HOOD: Your testimony was that you didn't know for so long that the community had issues or that there were issues out there. Unless I need glasses, this letter is dated November 5, 2001. So you knew far in advance, Mr. Quin, of what you just alluded to this morning. This is in the file. It's here for the record. I don't necessarily need a comment. I just wanted you to know that it's here.

MR. LOWRY: Who is the letter addressed to?

COMMISSIONER HOOD: It's addressed to Stewart Rolls --

MR. LOWRY: He doesn't work for me.

COMMISSIONER HOOD: And it's copied to your organization, Bannum, Incorporated. But you just testified that you didn't find out -- Anyway, I don't want to belabor the point.

MR. LOWRY: I testified to what?

COMMISSIONER HOOD: Your testimony was that you did not have any prior notice until whatever dates were and forgive me for not --

MR. LOWRY: I don't recall saying that.

1 COMMISSIONER HOOD: Well, I'm pretty sure
2 that I recollect it.
3 MR. QUIN: Mr. Hood, what I was trying to
4 elicit from Mr. Lowry was ANC-5B specific action.
5 They are the Appellant in this case. That's what I
6 was trying to bring out.
7 COMMISSIONER HOOD: But your question,
8 Mr. Quin, went to the general community even having
9 notice.
10 MR. LOWRY: Notice.
11 COMMISSIONER HOOD: That was where you
12 went. I guess what I'm saying to you is there is
13 something in the file that states that the Ward Five
14 council member who represents the ward --
15 MR. QUIN: Had notice, yes.
16 COMMISSIONER HOOD: Definitely had notice
17 because you sent him a letter and he responded back
18 officially on behalf of Ward Five.
19 MR. QUIN: Yes.
20 MR. LOWRY: I sent him a letter in
21 November 2000. I'm sorry, in March 2001.
22 COMMISSIONER HOOD: Okay.
23 MR. LOWRY: But I never said Councilman
24 Orange supported the program or didn't support it. I
25 just went through a chronology on what we did. I

never represented that anybody supported --

COMMISSIONER HOOD: Mr. Lowry, let me cut you off so that we can cut to the chase. I'm just going by what I heard. It's from this one Board Member's perspective. That's what I heard that the notice was so far apart, but you were responded to in a reasonable time. Anyway, Mr. Chair, we can proceed.

MEMBER ETHERLY: Mr. Chair, that conversation notwithstanding, here's where I am. I understand where you are going, Mr. Quin, with this witness. It's been somewhat helpful. I'm just not convinced. I'm not convinced we're going to get further with the ANC. It would be my position, Mr. Chair, to move denial of this motion as it relates to lack of timeliness for the appeal. I would invite a second for that motion.

MEMBER ZAIDAIN: I'll second. I'm seconding the motion because as I started to say hearing all of this dialogue about what was going on before the permit was issued and the problems that causes is indicitive of the short plank we're going to walk if we get into this situation. I appreciate everything we're hearing here.

Obviously there was a dialogue. There

may have been miscommunications, this trip to Orlando, everything like that. I can appreciate all of those problems, but there's a broader problem that we have to deal with here. What was the official administrative action that was definite and appealable? In my mind, nothing is definite until that permit is issued.

I disagree wholeheartedly with what Mr. Quin said about zoning being just about use. It's not just about use. We hear things about side yards, about penthouses, about courts. We had a case today about the glass windows of -- and I know those things aren't relevant to this case. But they did not become irrelevant to this case until that permit was issued saying you are going to rehab this building and here's the use you are going to use it for.

We have problems with timeliness as it is. As a matter of fact, we got into an interesting case that dealt with an appeal that Holland and Knight was involved in with regard to letters being sent that said the permit has been issued, when are you going to file. But the difference there is the permit was issued. That official decision was made. Permits were officially permitted. Plans were on record that someone could go and see exactly what was

1 going on. All of this dealing with letters and
2 whatever may be relevant in some other court but not
3 here.
4 CHAIRMAN GRIFFIS: Okay. Others?
5 MEMBER ETHERLY: Mr. Chair, just to piggy
6 back on Mr. Zaidain's comment. The reason why I took
7 this step, and I want to be very clear with the
8 Applicant and Counsel for Bannum as well as all of
9 the parties here. My concern with the interpretation
10 on the timeliness issue was that it does create a
11 quicksand type of analysis that really brings in a
12 lot of different circumstances and events that don't
13 get us the clarity of, as Mr. Zaidain said, what is
14 the actual firm point or decision or order.
15 From my standpoint, the interpretation or
16 the clarity that needs to be in existence here, not
17 simply from the standpoint of the community having
18 notice or the ANC having notice, but clearly I can
19 see the context work in the same way from the
20 standpoint of any applicant that comes before this
21 Board with an appeal. The issuance of that permit is
22 a very clear, concrete, bright line event that can be
23 marked on a calendar.
24 The workability of a rule that says we
25 had these additional letters of communications that

1 were counter-signed -- When I first started going
2 through the file, the first thing I tried to look for
3 was the DCRA letters. Then I had to realize, you had
4 counter-signatures here. It's just not clean enough
5 for me. I don't want to speak for the Zoning
6 Commission here, but with that timeliness rule we're
7 looking for clarity and we're looking for a point in
8 which all parties involved can say I am in the safe
9 harbor now, I can now move forward with this project.
10 The counter-signatures, the exchange of
11 documents, the meetings, the conversations that took
12 place over the course of a couple of months doesn't
13 give us that clarity. What we're struggling with is
14 where do you cut it off. Where do you say this is
15 it, this is the end, this was the last conversation
16 in which the ANC should have been aware?
17 I understand that there was some
18 additional testimony that you wanted to bring
19 forward. It was my opinion, Mr. Chair, that it
20 wasn't going to inform this Board further. Once
21 again, it's not a step that I take lightly, Mr. Quin.
22 I typically want to hear as much of an Applicant's
23 oral or as much of a moveance argument as possible.
24 But I just didn't feel that it was going to take us
25 to a definitive point here. That's why I moved

1 forward when I did, Mr. Chair, and I appreciate the
2 second of my colleague, Mr. Zaidain.
3 MR. QUIN: Mr. Chairman, I would like to
4 make a proffer though.
5 CHAIRMAN GRIFFIS: Mr. Quin, if I can
6 just cut you off because we do have a motion that's
7 been seconded so it's deliberation on a motion. It
8 wouldn't be appropriate to have interjections at this
9 time. Let me know, Mr. Hood, if we can table the
10 motion.
11 COMMISSIONER HOOD: I think we want to
12 proceed in the fashion we're going. Let me just
13 apologize to my colleagues for going back to the
14 Orlando trip. When I look at people who are making
15 decisions for communities and cities, sometime -- and
16 sometime make it cloudy. That's why I said what I
17 said about the Orlando trip. Anyway, I'm ready to
18 proceed, Mr. Chair.
19 MR. QUIN: Mr. Chairman, could I just
20 note an objection for the record? We wanted to
21 proffer a witness on the specific issue of whether
22 the ANC had notice of the nature of this facility and
23 whether they had notice of the zoning approval.
24 CHAIRMAN GRIFFIS: Okay.
25 MR. QUIN: If they did, I understand that

1 you may disagree with that. But I proffer that's
2 what the witness would say.
3 MEMBER ZAIDAIN: Would this testimony be
4 based after the permit was issued or prior to the
5 permit being issued?
6 MR. QUIN: Prior to the permit.
7 CHAIRMAN GRIFFIS: Let's do this. I will
8 stop this discussion as the motion is on the table.
9 Mr. Quin, obviously you are allowed to bring a
10 renewed motion or a reconsideration of our action.
11 But we are in deliberation. Although we have only a
12 few rules and procedures to uphold, it's nice to hold
13 some of them somewhat sacred and that is now with
14 this motion seconded and having been spoke to.
15 Gentlemen, we are missing a more
16 fundamental issue of this aspect of the Zoning
17 Administrator's letter. That is what was actually
18 the outcome that could happen if this letter stood on
19 its own. For me, this letter takes a further action.
20 That is the submission of a permit. It needs to be
21 part of a whole that then would in fact create a
22 project. If an appeal came on just the basis of the
23 Zoning Administrator letter, it would almost be mute
24 on the face because it only exists on paper so long
25 as it can progress with an actual construction

1 project or development project.
2 The other issue that I have that gives me
3 some pause. Mr. Quin has said it numerous times and
4 there's two issues to it. There may be publicity of
5 the nature of the facility, but as this Board and as
6 community members we know there is always great
7 descriptions of the natures of facilities. We don't
8 know and perhaps the developers don't know exactly
9 what it is until it has been totally approved by the
10 District. That would mean a permit and a permit
11 approval.
12 In fact, the letter substantiated the
13 issue of a matter of right development. How was one
14 to appeal the matter of right aspect of the
15 development process without a stronger administrative
16 or an actual administrative action that created the
17 construction project? Also, in addition, I would
18 have great concern if we did have the only
19 appealability as the time starting with the Zoning
20 Administrator's letter.
21 Although this building owner, Bannum, has
22 done great steps in meeting with the community and
23 being out there from their testimony and from their
24 written submission, the Zoning Administrator's
25 letter, I am not aware that there is a public forum

for them to be researched or to be known. I find that basing a timeliness argument on the Zoning Administrator's letter I am not in agreement with. With that, let me talk --

MEMBER ZAIDAIN: Just to speak really quickly on one other point I wanted to make. You brought up something that's definitely pertinent. Somebody can take draft plans to a Zoning Administrator, get that letter, take it to the community, whatever and then completely change the plans and submit them for a permit. That would be very easy to do. There's nothing to prevent them from doing that.

Then everybody thinks that something completely opposite is going to be built until after that permit is issued. Once that permit is issued, if there are going to be plans that are changed, you have to get a new permit. So there's just no real official decision until that permit is on record. We have some support on the motion. I just can't make it clear enough that we would be walking a really tight rope if we heard it this way.

CHAIRMAN GRIFFIS: Okay. Anybody else? Then let me ask for all of those in favor of the motion to deny the motion to dismiss on the basis of

1 timeliness signify by saying aye.
2 (Chorus of ayes.)
3 CHAIRMAN GRIFFIS: Opposed.
4 (No response.)
5 CHAIRMAN GRIFFIS: Why don't we record
6 that vote? Let me just say one thing. All appeals
7 are difficult. There is so much at stake, this not
8 being unique in that aspect but certainly of utmost
9 importance. That's something obviously that this
10 Board weighs from the property owner and also from
11 the community. If I could ask everyone's indulgence,
12 why don't we take five minutes.
13 MR. QUIN: Could I just something note
14 for the record?
15 CHAIRMAN GRIFFIS: Yes.
16 MR. QUIN: It's very important to make
17 the point for our case that we would have called a
18 witness that would have said that the ANC-5B had
19 actual notice of the nature of this project, meaning
20 what it involved, the how it was operated, as well as
21 the fact that it had been approved by the Zoning
22 Administrator, at least by a city official. It had
23 been approved. Secondly, if you cannot rely upon a
24 decision like that, you can't proceed to drawings to
25 get a building permit.

1 MR. TEMPLE: Objection.

2 MR. QUIN: I think I have a right to put

3 the proffer on it so please do not interrupt me.

4 MR. TEMPLE: Very well.

5 MR. QUIN: If a builder comes in and they

6 want to build a building in the city and they want to

7 confirm that they can build it as a matter of right,

8 they go to the Zoning Administrator and say can we

9 build this building as a matter of right. That's not

10 building a permit process at all at that point.

11 That is a confirmation by the Zoning

12 Administrator in writing upon which they rely, expend

13 monies, proceed to building permit, expending

14 millions of dollars on plans and process and

15 obligations to purchase property perhaps or to lease.

16 That's why it is important to rely upon the Zoning

17 Administrator's ruling. To just say I'm sorry we

18 can't measure it from that point makes a mockery out

19 of the process.

20 You have to have the ability to go to the

21 Zoning Administrator and confirm that this use is

22 okay so that I can then proceed to take the steps;

23 lease, operate, contract, build, and proceed with the

24 building permit. Under what I'm hearing, a ruling is

25 not effective but a permit is.

1 CHAIRMAN GRIFFIS: No. I understand
2 that, Mr. Quin.
3 MR. QUIN: If I'm misstating this, I hope
4 I am because I don't think it's right.
5 CHAIRMAN GRIFFIS: I don't disagree that
6 there is great reliance on the Zoning Administrator's
7 letter and there should be. That is what you proceed
8 with to permit. Then there is a difference as to
9 when we look at an appeal is timely and what starts
10 the clock. Although this is new, the Board has some
11 experience with it. It has to be --
12 MEMBER ZAIDAIN: Mr. Chair, I hate to
13 indulge this argument because the decision has
14 already been made. I don't think what Mr. Quin just
15 said is what we just ruled on. We're talking about
16 when it is supposed to be file. Under your scenario,
17 if a ZA issues a letter saying we're fine with this,
18 then your fictitious company starts developing
19 drawings and all of that stuff and developing real
20 estate, under your theory that you just stated, then
21 a community or whomever can file an appeal and stop
22 you at that point and you are not going to be able to
23 go any farther.
24 MR. QUIN: That's not what I'm saying.
25 MEMBER ZAIDAIN: That's what I'm hearing

1 you say.

2 MR. QUIN: I'm saying that if the ANC or

3 the organization knows of that ruling, which the

4 rules themselves say if they had reason to know of a

5 ruling then they must take the appeal from that

6 point. Reasonably speaking, that ANC could have

7 taken an appeal in April or May 2002. It did not do

8 so. That's what the regulations say.

9 MEMBER ZAIDAIN: No, I knew I shouldn't

10 have said anything. We'll agree to disagree, Mr.

11 Chair.

12 MR. TEMPLE: Since he made a point for

13 the record, it's important that we respond. If he

14 would have put on Ms. Chapelle, we would have argued

15 two things.

16 CHAIRMAN GRIFFIS: Oh gosh.

17 MR. TEMPLE: One is that --

18 CHAIRMAN GRIFFIS: I thought we saved

19 time not having that witness.

20 MR. TEMPLE: Since he made it for the

21 record and if it goes up on appeal, it's important

22 that the record show that she and Bannum violated

23 District of Columbia election laws relative to --

24 CHAIRMAN GRIFFIS: That's out of our

25 jurisdiction.

1 MR. TEMPLE: But it goes to bias.
2 CHAIRMAN GRIFFIS: There's nothing we can
3 do with that.
4 MR. TEMPLE: Excuse me. It goes to bias
5 in terms of our notice. And we would have also shown
6 by way of a separate document that the bias goes far
7 deeper than that. That goes to whether the ANC knew.
8 There is documentation that the ANC was not given
9 information that they had given to Ms. Chapelle.
10 CHAIRMAN GRIFFIS: Okay.
11 MR. TEMPLE: Nothing further in that
12 regard.
13 CHAIRMAN GRIFFIS: Where I was --
14 MR. QUIN: We still have the motion on
15 estoppel --
16 CHAIRMAN GRIFFIS: Yes, we have the
17 estoppel.
18 MR. QUIN: Reliance upon the approval
19 that allowed us to proceed to building permit.
20 CHAIRMAN GRIFFIS: Indeed.
21 MR. QUIN: I've taken testimony on that.
22 It's in the affidavit. If there are questions about
23 the affidavit which clearly shows that he relied upon
24 the ruling and if there had been an appeal that he
25 would not have proceeded.

1 CHAIRMAN GRIFFIS: Right.

2 MR. TEMPLE: Are we going to argue that

3 issue when we come back?

4 CHAIRMAN GRIFFIS: Yes.

5 MR. TEMPLE: Thank you.

6 CHAIRMAN GRIFFIS: Just give me the

7 section of the affidavit, Mr. Quin.

8 MR. QUIN: It's Attachment Q of the

9 motion to dismiss.

10 CHAIRMAN GRIFFIS: Okay.

11 MR. QUIN: The last exhibit.

12 CHAIRMAN GRIFFIS: Exactly. Let's take

13 five minutes and stretch our legs. Off the record.

14 (Whereupon, the foregoing matter went off the record

15 at 5:40 p.m. and went back on the record at 6:01

16 p.m.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:01 p.m.)

CHAIRMAN GRIFFIS: On the record. Very well. Let's reconvene. We have one more section of the motion to dismiss before us.

MR. QUIN: Mr. Chairman, I have one question for the Board. Mr. Hood referred to a letter addressed to Stewart Rolls at BOP. I can't find it in the record. I don't know where it is. I wonder if he could tell me where it is in the record.

COMMISSIONER HOOD: To save time, Mr. Chair, proceed and once I find it again I will let you know because I held it up.

MR. QUIN: I know you did. I'm just trying to find it. I couldn't find it in either --

COMMISSIONER HOOD: Let's go ahead and proceed. I'll look through this material and try to find it for you.

CHAIRMAN GRIFFIS: Okay. Mr. Quin, do you have additional argument to estoppel and latches?

MR. QUIN: Yes, I have been over most of it.

CHAIRMAN GRIFFIS: Right.

MR. QUIN: I don't want to belabor this. The elements of estoppel and latches are very clear.

1 CHAIRMAN GRIFFIS: Right. Before you
2 proceed, I'm laying it out here. We're at 6:00.
3 This is what I would anticipate. I am going to hear
4 closing arguments on the motion for estoppel from Mr.
5 Quin. Then we will hear arguments either in favor or
6 in opposition of course of that motion aspect. Then
7 the Board will entertain action at that point.
8 My anticipation is that will finalize our
9 proceedings today. We can change that idea, but
10 depending on the outcome of that, we would then
11 assess on what the next step would be. Mr. Hood, do
12 you have the letter?
13 COMMISSIONER HOOD: Mr. Chairman, yes,
14 it's Exhibit 21. As I stated earlier, it was
15 addressed to Mr. Rolls and it was copied to Ms. Kathy
16 Ballou, Senior Operation Director, Bannum, Inc.
17 MR. QUIN: I'm sorry, 21 to what? I only
18 have 20.
19 CHAIRMAN GRIFFIS: That's actually our
20 file.
21 MEMBER ZAIDAIN: It's a separate exhibit
22 number 21.
23 COMMISSIONER HOOD: It's a little packet
24 like this that's in the file.
25 MR. QUIN: Okay. Thank you.

1 CHAIRMAN GRIFFIS: When was it stamped
2 in, Mr. Hood?
3 MEMBER ETHERLY: It's part of a
4 submission that was dated April 21, 2003 in terms of
5 being received. The cover letter is a letter from
6 Council Member Orange to the Office of Zoning dated
7 April 17, 2003. That's a one-pager. Then after that
8 letter you will find the November 5 Stewart Rolls
9 letter.
10 MR. QUIN: So it came in yesterday.
11 CHAIRMAN GRIFFIS: That's correct.
12 COMMISSIONER HOOD: It came in yesterday,
13 but the letter was received sometime around November
14 5, 2001.
15 MR. QUIN: All right. Mr. Griffis, as I
16 said, I don't want to belabor this. What you are
17 really talking about overall in estoppel is two
18 different things. You are talking about good faith
19 reliance upon an approval given by a district
20 official and action upon that in terms of substantial
21 improvements or obligations. The last part of it is
22 the equities support are in favor of the Claimant.
23 That goes to estoppel.
24 In this case, we believe that it applies
25 for a number of reasons. The process was clear. We

1 understand what was before the Zoning Administrator.
2 We know that the ruling was relied upon and that it
3 was those two letters. While there's been some
4 discussion as to the nature of a letter as opposed to
5 a permit, the fact of the matter is that it is a
6 confirmation of the right to use that property as a
7 temporary correctional facility in a CM-2 zone.
8 There's no two ways about that. That's
9 what Bannum relied upon. In reliance upon it, as you
10 have heard, they entered into a contract, a lease,
11 capital costs, all of that which is in the affidavit.
12 I don't want to belabor that, but that's over a half
13 million dollars. In terms of loss of contract, as
14 the affidavit says, we're talking upwards of $13
15 million.
16 On the public benefits, that is the
17 relationship to society and the favor of it, what is
18 so interesting to me in this case is that we're
19 talking about an industrial zone. We're talking
20 about a CM zone to be more accurate. What zone in
21 the city is better suited for some use, that is that
22 residential neighbors might have a problem with.
23 There's not any other zone. This is permitted as a
24 matter of right in the CM and M zones.
25 We're not talking about a residential

zone. Even an adult rehabilitation center or home is permitted in a C-3, C-4, and C-5 as a matter of right. We're talking about a temporary facility. If we get to the merits, which I hope we don't, the point is that the public needs these facilities. We put two cases in the pleadings, in our motion to dismiss.

We also filed the Brawner decision. We quoted Judge Kravitz. The point here is this is a necessary method of reintroducing those who have committed crimes and albeit those that are limited in scope in terms of what they put back in the community. There has to be some way to deal with this to let people come back into our society. That's in the public interest I would submit. All the court decisions that we have cited have said the same thing. So those are the four elements. We think we have met all of those.

I want to make it clear that the estoppel argument is going to two points. One is the vesting of the right on the basis of the rulings as we have proceeded and the permits. The other goes against the ANC for not having taken some action earlier than it did. That's not the same as timeliness. This is in latches. We'll move into latches.

1 Latches is a species of estoppel where
2 you can consider the chain of events. Mr. Etherly
3 referenced something that he called "quicksand" or
4 something like that. When you got into an area, it
5 was not that precise for him. But in latches, that's
6 what you deal with. You deal with the entire pattern
7 of what has happened from beginning to end and see if
8 there is a reason that a challenge should have been
9 made or something should have been done in the
10 opposite way prior to the reliance.
11 In this case, clearly Bannum relied upon
12 a permit over a period of time. There was no
13 challenge to that until after the permit was issued.
14 At that point, there was already the commitment to
15 all of the other capital expenses that I have talked
16 about. As I said before - and this does tie in a
17 little bit with timeliness - the Appellant had an
18 opportunity earlier.
19 In fact, Caroline, we could give to the
20 Board copies of the Goto decision and the Wieck
21 decision especially on latches. Those cases are very
22 clear. They are saying that the biggest point of
23 latches is the expenses and the change of position
24 that the Claimant has made on the basis of a ruling.
25 That's the way we see the case.

We think that the city has been appropriately in their process and that we could rely upon that in good faith. The ANC-5B clearly knew about this process. No matter what you say, whether it was timeliness in terms of the appeal, they clearly knew about the nature of this facility back in April 2002, a year ago.

As Mr. Lowry said under oath, if he had known at that point that there was a challenge by ANC-5B, then he could have at least tried to address that and not invest the other funds which he did because there was no challenge until February of this year. For those reasons, we believe that both estoppel and latches are applicable and that this case should be dismissed.

MEMBER ZAIDAIN: Mr. Chair, I have a question for Mr. Quin.

CHAIRMAN GRIFFIS: Yes.

MEMBER ZAIDAIN: The estoppel issue is definitely an interesting one. I guess we're looking at somebody who came in and got permits which has the good faith reliance and moving forward with something. I don't think we're here to debate on whether or not they moved on in good faith. The operation came on-line.

1 But one thing that I struggle with is
2 being able to determine estoppel without determining
3 whether or not DCRA was right or wrong. DCRA has not
4 admitted that they were wrong yet or maybe they
5 won't. I didn't mean to say yet, excuse me. I
6 apologize for that slip. Could you give us some
7 guidance on whether or not we can even deal with
8 estoppel at this point without determining whether or
9 not DCRA is wrong?
10 MR. QUIN: Yes, absolutely. In fact, you
11 could make the assumption either way and estoppel
12 would apply.
13 MEMBER ZAIDAIN: "Any assumption."
14 MR. QUIN: The assumption that either it
15 was invalid or valid.
16 MEMBER ZAIDAIN: We would have to assume
17 that DCRA was right or wrong.
18 MR. QUIN: Let's assume for the moment
19 that the rulings were appropriate and the permits
20 were issued properly. That's one assumption. And we
21 relied upon it. We have proceeded in good faith with
22 all of these expenses, with the contract, and the
23 things that follow from that contract. We have a
24 right to rely on it. The equitable doctrine says
25 protect us so that someone else can't take that right

1 away from us. That's what equity is all about.
2 The second assumption is let's assume
3 that there's a situation where the Board would find
4 that this was not properly granted. Estoppel still
5 lies. For example, there's --
6 MEMBER ZAIDAIN: But what could we do
7 with it at that point?
8 MR. QUIN: You would dismiss the case.
9 For example, the leading case in the District of
10 Columbia is the Cahill decision. The Cahill decision
11 is a case where the permit was issued, building was
12 constructed. Then the city came in, which they
13 haven't done in this case, and said we made a mistake
14 and we shouldn't have issued that permit.
15 MEMBER ZAIDAIN: Right.
16 MR. QUIN: The building was up. The
17 court said that estoppel applied.
18 MEMBER ZAIDAIN: Well, I can clearly see
19 that. That's a much clearer case than this.
20 MR. QUIN: I guess my argument --
21 MEMBER ZAIDAIN: Their C of O revoked I
22 guess.
23 MR. QUIN: Right. So my theory of the
24 case on estoppel is you couldn't reverse it if it is
25 appropriate any more than you could reverse it if it

1 were not appropriate. Do you follow? In other
2 words, the rights have vested. They relied upon --
3 MEMBER ZAIDAIN: I understand that.
4 MR. QUIN: If you were to try to say to
5 us the Board said we think there was a
6 misinterpretation of the regulations --
7 MEMBER ZAIDAIN: Which we would have to
8 decide during the merits of the case.
9 MR. QUIN: No, you don't have to reach
10 that point though because you can assume for purposes
11 of estoppel that it could apply. The whole thing is
12 a question of reliance and good faith upon a ruling.
13 MEMBER ZAIDAIN: I can understand that.
14 Then the estoppel issue could be used to dismiss
15 every single appeal we hear because everybody acts on
16 good faith once a permit is issued.
17 MR. QUIN: I'm not sure that's always
18 true but sometimes it is. Most of the time it
19 probably is.
20 MEMBER ZAIDAIN: Well, I'm not clear on
21 where my position on it is yet. I want to hear from
22 the Board and the other parties. So I appreciate
23 your indulgence on that.
24 MR. QUIN: Okay.
25 CHAIRMAN GRIFFIS: Any other questions

from the Board to Mr. Quin at this time? Let's proceed then.

MR. RUSHKOFF: Bennett Rushkoff on behalf of DCRA. Rather than taking a position one way or the other on the ultimate question, I just want to go over two points in terms of how the Board reaches its decision. There's been assumption in some of these arguments that a choice has to be made with respect to these letters. Either there can't be an appeal with such a letter or there must be an appeal, if there's going to be an appeal, and the clock starts running immediately.

I'm not sure that there's a dichotomy there. To give an example, if Bannum had sought an interpretation from DCRA before proceeding and DCRA gave them an interpretation they did not like, I don't think they then have to proceed, get a building permit, and then appeal. They should be able to appeal our interpretive letter and say we have to be allowed to do this and you are wrong in telling us that we can't.

CHAIRMAN GRIFFIS: There is a remedy for that within DCRA.

PARTICIPANT: Or BZA for zoning.

MR. RUSHKOFF: I guess what I'm saying is

1 that it should be possible to go up on that.
2 CHAIRMAN GRIFFIS: I see.
3 MR. RUSHKOFF: On the other hand, if you
4 have a situation where we issue a letter - and in
5 this case we couldn't even find our copies of the
6 letter from our own file. We're not disputing the
7 authenticity of the letters. But when you have a
8 situation, as the Chair mentioned, where we don't
9 keep a file of these in an office for people to
10 review, there is a whole separate question of whether
11 or not the clock should start running as to third
12 parties.
13 Also on this issue of reliance, without
14 seeing exactly when there is estoppel and when there
15 isn't, clearly there should be one standard
16 applicable to the District government. When we issue
17 a letter, there's a certain standard for determining
18 whether or not we are estopped from taking action
19 contrary to that. There might be a completely
20 different standard that would apply to third parties.
21 To what degree do we, by issuing this letter, estop
22 the ANC from taking a contrary position? I just
23 think there are different issues.
24 CHAIRMAN GRIFFIS: Okay. Well said.
25 Thank you. Mr. Temple.

1 MR. TEMPLE: Before you is a motion to
2 dismiss. That context all inferences have to be made
3 in the non-moving party, our favor. In that respect,
4 I want to direct your attention. Counsel is
5 proposing an estoppel argument, but in the very case
6 that it cites which is in Wieck versus D.C. Board of
7 Zoning Appeals the court said this on page three of
8 the printed text which sides with Mr. Zaidain's
9 statement.
10 The court states, "Due to the important
11 general public interest in the integrity and the
12 enforcement of zoning regulations, the affirmative
13 defenses of estoppel and latches are not judicially
14 favored." That should govern how you view this case.
15 In addition to that, if I can direct your attention
16 to three exhibits in the Appellant's submissions,
17 Exhibit 6 which is a letter dated January 13, 2003
18 from Vincent Orange to Mr. Clark urging a stop work
19 order and indicating to him that the ANC commissions
20 have not had a vote by the entire bodies which goes
21 back somewhat to the time issue.
22 He met with ANC chairpersons, but they
23 never had a vote on the entire issue. As further
24 evidence of that, Mr. Quin is being disingenuous. We
25 have in our possession a letter on this issue. It's

1 not submitted. We have a letter where he was told
2 that by his community person that the ANC person that
3 he had a relationship with, one of three
4 chairpersons, was not communicating with his body so
5 he should not expect that the ANC knew. You have to
6 keep in mind that ANC-5A was re --
7 CHAIRMAN GRIFFIS: Districted.
8 MR. TEMPLE: Districted and became ANC-
9 5B.
10 CHAIRMAN GRIFFIS: Right.
11 MR. TEMPLE: If I may submit to you
12 documents.
13 CHAIRMAN GRIFFIS: You need to now
14 because you referenced it.
15 MR. TEMPLE: Mr. Quin suggests good
16 faith-bad faith. This document evidences
17 significantly that this community - and it raises the
18 kinds of questions I pointed out - did not have the
19 integrity and quality of information. It also raises
20 an issue about the bias on the part of Ms. Chapelle
21 with whom he has relied to say that the community
22 should have known. I'll give you a second to read
23 the letter.
24 CHAIRMAN GRIFFIS: Who is Mr. Crawford?
25 MR. TEMPLE: The community person that

1 was retained by Mr. Lowry to work with ANC
2 commissions. This letter is redacted, but
3 nonetheless it states definitively our concern.
4 COMMISSIONER HOOD: Mr. Chairman, if I
5 may. Mr. Temple, there are two blank spots there.
6 Are those names?
7 MR. TEMPLE: Those are names of
8 individuals. We do not know the names. The letter
9 went to Mr. Lowry. He would know what names are in
10 that particular correspondence I presume since it was
11 addressed to him.
12 MR. QUIN: Mr. Chairman, I don't even
13 know what this letter is supposed to do. I don't
14 think you can just throw a letter out that's an
15 unsigned letter that's been redacted and have the
16 Board put any weight in it. I don't know how you can
17 do that.
18 MR. TEMPLE: If I may respond, we are not
19 relying exclusively on this letter. The question
20 here is the good faith - bad faith issue. I would
21 also direct the Board to Exhibit 10 and Exhibit 12.
22 Mr. Quin is the agent of Mr. Bannum. Excuse me, your
23 indulgence please for a second. That's Exhibit 9 and
24 Exhibit 12.
25 This community is not bringing this case

1 in bad faith. On the other hand, what we see here in
2 Exhibit 9 is Mr. Quin knows the limitations of
3 community-based residential facilities in CM-2 zones.
4 This is not an accidental, incidental claim here.
5 We insist and we will show you it's a very strategic,
6 deliberate, circumvention of existing law.
7 This very issue is a different form was
8 presented to this very Board in 2002. More over,
9 they withdrew this particular amendment. But what
10 this amendment shows you is their knowledge of this
11 particular issue and that you cannot due a community-
12 based residential facility even at the lower level in
13 a CM-2 zone. We submit that one of the reasons why
14 this was retracted is because if you look at Exhibit
15 12 Mr. Graham spoke to that issue. This is a very
16 important issue to the entire city, nonetheless to
17 Ward Five.
18 MR. QUIN: Mr. Chairman, this goes to the
19 merits.
20 MR. TEMPLE: I'm not finished.
21 CHAIRMAN GRIFFIS: I don't understand
22 what he's arguing.
23 MR. TEMPLE: The point is that he's
24 saying we're bringing this case in bad faith. We're
25 bringing this case -- That's the element of latches

1 that we're challenging.

2 MR. QUIN: We proceeded in good faith.

3 MR. TEMPLE: And we're challenging that.

4 We're saying that they didn't proceed in good faith.

5 We're saying that they proceeded very deliberately.

6 That's only one aspect of latches.

7 CHAIRMAN GRIFFIS: Okay. You are losing

8 me on some of these things.

9 COMMISSIONER HOOD: Mr. Chairman, there

10 needs to be clarification. Mr. Temple, what you are

11 referring to actually was an emergency - I forgot who

12 the applicant was at the time - in front of the

13 Zoning Commission which was dated December 2002 which

14 was postponed in December 2002. It didn't actually

15 came in front of the Board of Zoning Adjustments. It

16 came in front of the Zoning Commission.

17 CHAIRMAN GRIFFIS: Right.

18 COMMISSIONER HOOD: As a representative,

19 I want to make sure that we have that clear.

20 CHAIRMAN GRIFFIS: That's right. Then

21 you indicated that there was a letter from Mr.

22 Graham.

23 MR. TEMPLE: Yes.

24 CHAIRMAN GRIFFIS: That was retracted.

25 MR. TEMPLE: No, not retracted. He

1 speaks about the merits. The gentleman is correct.
2 He does speak about the merits in question. Our
3 point is that if there is merit to our position and
4 if they know the issue then for them to pursue this
5 veiled argument on a very simple question is not good
6 faith. It's bad faith.
7 CHAIRMAN GRIFFIS: Okay. Are you talking
8 about Council Member Graham?
9 MR. TEMPLE: Yes, sir.
10 CHAIRMAN GRIFFIS: And his letter in the
11 record talking about the sharing of facilities across
12 the city. Is that correct?
13 MR. TEMPLE: No, he says specifically
14 that District Zone CM and M may become grounds for
15 CBRF.
16 CHAIRMAN GRIFFIS: You are talking about
17 the Zoning Commission.
18 MR. TEMPLE: That's right.
19 CHAIRMAN GRIFFIS: I understand. Okay.
20 MR. TEMPLE: Let me add further to that.
21 They continued to rely on these letters dated
22 November and December, 2000 and 2001. We reiterate
23 our point that they are nonspecific. In that
24 context, they are also talking about the economic
25 implications of the reliance. The problem here is

that their reliance on those letters is at their own peril.

Just so you will take judicial notice, the court referenced that and said that in both of the hearings where this is an issue. Just because they operate on the premise of these letters and they go on and the build something, they may have a lawsuit against the District of Columbia, but it doesn't mean that you have to decide that their claim is being brought in good faith.

CHAIRMAN GRIFFIS: You are losing me again. The courts are dealing with this specific case and they have referenced those letters.

MR. TEMPLE: Absolutely.

CHAIRMAN GRIFFIS: Okay. Have they decided anything?

MR. TEMPLE: They decided that you should decide the issue.

CHAIRMAN GRIFFIS: Right. In which case, the references are going to confuse me.

MR. TEMPLE: I won't do that any further then. I apologize and I understand.

CHAIRMAN GRIFFIS: Okay.

MR. TEMPLE: But I go back to the point that under the issue of estoppel there is no way

1 based upon this record with the inferences being made
2 in our favor that you could rule without ruling on
3 the merits that their claim has good faith or that
4 the equities favor one side or the other. So in that
5 respect, on the estoppel issue, we think that you
6 should rule in our favor and against them.
7 The issue of latches, the issue of delay.
8 I would point out that they continually cite
9 Brawner. Brawner is interested because Brawner says
10 that those lower level rulings - and we cited it in
11 our memorandum - don't mean anything. What means
12 something is your ruling. You are not guided by what
13 those lower levels mean. That's what the courts of
14 the District of Columbia say.
15 So the fact that they have these low
16 level rulings and they have operated on the basis of
17 those rulings are of no moment relative to the
18 ability of ANC-5B in a situation where there's not
19 been one vote by one ANC commission or any support by
20 the elected official for this ward, Ward Five, in
21 support of what they are saying. It's obviously a
22 question at issue here before you to rule on as to
23 what they are doing is wrong or right. I stop by
24 saying I underscore the public interest point.
25 They say we spent all this money and so

1 forth and therefore you have to rule with us. The
2 problem is that the law is the law. If they spent
3 that money and it's illegal, you can't buy the law.
4 The law is not for sale. We said it in court. We
5 will say it even if we lose. The public interest is
6 in the law being followed. That's what these cases
7 say.
8 CHAIRMAN GRIFFIS: Good. Thank you, Mr.
9 Temple. I appreciate your analogy. Before the
10 analogy was robbing the bank to feed your child.
11 Clearly estoppel lays out the elements. As far as I
12 understand it from my limited experience with
13 estoppel, it does make sense that we're not
14 necessarily deciding whether there was an error
15 created or not which Mr. Temple would argue with, an
16 illegality or not.
17 But the fact of the matter is that good
18 faith action, and it was based on an affirmative
19 action from the government. The letters do form the
20 affirmation of the District's position in regards to
21 the matter of right development as it was proposed to
22 the Zoning Administrator. I don't think it's been
23 disputed that there was permanent improvements.
24 Now, we have had estoppel where we have
25 actually gone into the levels of what makes it

1 expensive or not. I don't think we're at that point
2 with this one. I'm going to let the last go for now
3 and ask other Board Members if they have questions on
4 the positions that we have just heard.
5 MR. QUIN: I'm sorry. There was one
6 thing that I didn't quite understand, Mr. Temple. I
7 think he was referring to an earlier Zoning
8 Commission case.
9 MR. TEMPLE: That's correct.
10 MR. QUIN: That case dealt with the
11 Central Union Mission. It was an entirely different
12 use. There that specifically was identified as a
13 CBRF. Here if you look at the regulations you can
14 clearly see in the CM-2 zone there is a temporary
15 correctional facility on leased property for a period
16 not to exceed three years. That's there. That's in
17 the regulations. That's the question as to whether
18 our use fit in there. That's why we proceeded in
19 good faith.
20 But to argue that somehow through -- we
21 somehow are saying it's a CBRF that's not permitted,
22 all you have to do as a Board in a Zoning Commission
23 is to look at how it is set up in the CM-2 district.
24 It specifically says "a CBRF shall not be considered
25 in commercial use and therefore permitted under the

normal cumulative setting." Then it says "the following additional uses shall be permitted." That's the section under which we come. I just want to make sure that the record is clear that there's every reason to believe that is the use there and no one has even challenged or come close to saying that what the nature of this facility is does not fit in that definition.

CHAIRMAN GRIFFIS: Well, Mr. Temple will take issue with that.

MR. QUIN: No, he argues it differently. He calls it a halfway house which technically is not there.

CHAIRMAN GRIFFIS: Right.

MR. QUIN: And therefore you can't permit it.

CHAIRMAN GRIFFIS: Okay.

MR. TEMPLE: Mr. Griffis, may I just briefly be heard?

CHAIRMAN GRIFFIS: Sure.

MR. TEMPLE: Because I think that we are all intelligent people. In part, it's a very simple --

CHAIRMAN GRIFFIS: I hope you count us in that.

1 MR. TEMPLE: Absolutely.
2 CHAIRMAN GRIFFIS: Okay.
3 MR. TEMPLE: It's a very simplistic
4 issue. The issue here is being clouded and
5 exaggerated, overintellectually so. The people who
6 know the issue, including the gentleman here who
7 testified on the record in sworn testimony, we are
8 not crazy. What we are saying is very basic. You
9 can call it a community correction center. You can
10 call it a community correction confinement center.
11 But it is a halfway house. It is a
12 community-based residential facility. In that
13 respect, under your own laws, at DC Municipal
14 Regulations 199, when you talk about the community-
15 based regulation facilities, one thing that it does
16 is says that you can't consider it for multiple uses.
17 The law was very clear for a reason because it
18 didn't want community-based residential facilities to
19 be located in CM-2 districts all over the city; 12th
20 and G, Connecticut and L, et cetera. That's exactly
21 the implication of that.
22 I'll finish by making one other point.
23 You stated earlier on the good faith issue and the
24 equities favoring the Appellant or the Movent here.
25 That issue cannot be decided at this point. I

1 respectfully disagree with Mr. Quin. If you were to
2 decide that we were right, then he's wrong on this
3 issue of estoppel. You can't reach that issue
4 without hearing the evidence.
5 CHAIRMAN GRIFFIS: Thank you, Mr. Temple.
6 Questions from the Board? All right. We have heard
7 it argued and we have submissions on it. I would
8 hear Board Members if they are ready to proceed on a
9 motion to address the motion to dismiss on estoppel
10 and latches. As Mr. Temple has very timely brought
11 up, we have two options; to move ahead with this
12 motion or in fact to hold it in advance not being
13 able to decide parts of it. That would mean we could
14 pick it up at any time we wanted to, but it would
15 also move us into a full appeal and start of a
16 hearing.
17 COMMISSIONER HOOD: Mr. Chairman, I would
18 agree with the latter. If we hold this motion in
19 advance, then we move forward with getting to the
20 merits of this case.
21 CHAIRMAN GRIFFIS: Any others? Mr.
22 Etherly, do you have an opinion?
23 COMMISSIONER HOOD: I will put that in
24 the form of a motion, Mr. Chair, if I can get a
25 second.

CHAIRMAN GRIFFIS: Actually, we don't need a motion if you are going to hold it.

COMMISSIONER HOOD: Or a general consensus.

CHAIRMAN GRIFFIS: Yes. Any other comments on that? Do I have a consensus of the Board to proceed in that fashion?

PARTICIPANT: Yes.

CHAIRMAN GRIFFIS: Okay. That lends itself to some logic. In which case, it looks as though we are going ahead knowing that we have that motion before us. We can introduce that back before the Board based on action by a Board Member or that can be brought to us by a party or participant in the case.

We are at 6:30 at this point. Unless people are getting great second and third winds, it may well be appropriate to set this for a new date to begin the appeal. We can give some instruction as we go into that. Perhaps we can come in with clear minds and be very expeditious on this. I'd like to do schedule first. Then we'll go through what we're anticipating is --

MR. TEMPLE: I have a brief preliminary matter.

1 CHAIRMAN GRIFFIS: Preliminary?
2 MR. TEMPLE: Very.
3 CHAIRMAN GRIFFIS: All right. Maybe we
4 will all take a deep breath because that means we're
5 starting fresh. Doesn't it?
6 MR. TEMPLE: No, it's not complicated.
7 CHAIRMAN GRIFFIS: No.
8 MR. TEMPLE: We indicated in our exhibit
9 submissions that we wanted to file with you the
10 transcript from the DC Superior Court because it has
11 sworn testimony of a number of witnesses. We think
12 rather than having to call them the testimony will
13 speak for itself. We would like to submit that out
14 of time because we didn't have it at the time. We
15 had to order it and find the money to get it.
16 CHAIRMAN GRIFFIS: What does it go to?
17 MR. TEMPLE: There are some significant
18 admissions on the record. In particular --
19 CHAIRMAN GRIFFIS: There is no record
20 yet.
21 MR. TEMPLE: That's the point. We're
22 creating a record. That would be part of the record.
23 It has the testimony of two individuals; Mr. Kelly
24 and Mr. Denzel Noble. We think that their sworn
25 testimony is critical.

1 CHAIRMAN GRIFFIS: How would you
2 anticipate that testimony could be cross examined?
3 MR. TEMPLE: Well, it was cross examined.
4 CHAIRMAN GRIFFIS: In the context of
5 another proceeding.
6 MR. TEMPLE: The issue is exactly the
7 same. The issue that is discussed by these two
8 individuals is exactly the issue of whether or not
9 this is a halfway house and whether or not a halfway
10 house or a CBRF could be located in a CM-2 zone.
11 That is the testimony of the government of the
12 District of Columbia at that hearing. It would be
13 very helpful to you to have that testimony.
14 CHAIRMAN GRIFFIS: What's the hearing it
15 was given in?
16 MR. TEMPLE: That was the motion that we
17 filed for a preliminary injunction stopping them from
18 opening that facility as it is presently being used.
19 CHAIRMAN GRIFFIS: In D.C. Superior.
20 MR. TEMPLE: That's correct.
21 CHAIRMAN GRIFFIS: Ms. Monroe, oh shoot,
22 we lost our Corporation Counsel.
23 PARTICIPANT: Do you want me to call her?
24 MR. QUIN: Mr. Chairman, I would object
25 to that for a number of reasons. One is we're

1 talking here about primary jurisdiction of the Board.
2 You have the right to make a decision on the basis
3 of the regulations. The two rulings that were before
4 you, if you count them as I think you are, as
5 rulings, by the two Zoning Administrators in the
6 office, one was acting and one was the Zoning
7 Administrator, they are the rulings that are being
8 appealed.
9 Other testimony, if he wants to bring in
10 something else, he has a right to do so, to
11 challenge, to make his arguments. But I don't think
12 that a transcript of a court proceeding that was on a
13 preliminary injunction is appropriate.
14 MEMBER ZAIDAIN: I apologize. I left the
15 room. What's the problem with the submission?
16 CHAIRMAN GRIFFIS: The question is the
17 submission of the transcripts from a hearing in D.C.
18 Superior Court based on this issue where some of the
19 D.C. officials and perhaps Zoning Administrators at
20 that time gave testimony. So we're being asked to
21 receive the transcript from the court proceeding.
22 MR. TEMPLE: Can I help you out --
23 MEMBER ZAIDAIN: We have had crazier
24 stuff submitted.
25 CHAIRMAN GRIFFIS: That's a new level.

1 MR. TEMPLE: Can I help you out? The
2 gentleman said that it was irrelevant. What I would
3 offer in compromise is I would like to give it to you
4 and let you read it. If you decide that it's
5 irrelevant, then --
6 MEMBER ZAIDAIN: Well, that's my take.
7 What's the problem? Maybe I shouldn't have left the
8 room. I apologize. What do you want from us on
9 this?
10 CHAIRMAN GRIFFIS: I see some great
11 concerns with accepting a transcript from a
12 proceeding outside of this hearing first of all and
13 in another court's setting. With that transcript,
14 how is that witness going to be crossed? The answer
15 to that was they were crossed in D.C. Superior Court.
16 But their testimony wasn't crossed for our purposes
17 for this case.
18 MEMBER ZAIDAIN: Right.
19 MR. QUIN: If he wants to call them as
20 witnesses, I don't have a problem.
21 MR. TEMPLE: The question becomes --
22 CHAIRMAN GRIFFIS: That's an interesting
23 point. I can say the same thing but I'm not sure
24 where Mr. Kelly is these days. We can't subpoena
25 anybody to show up before us. The issue then goes to

1 not that the administrative rule or the legality of
2 DCRA doesn't flow with the individual. It flows with
3 the government and the agency.
4 The key to it is going to be if you make
5 the case of the point at which the decision was made
6 or in fact the current if you have a new
7 interpretation. If we talk about opening doors, I
8 have problems first of all accepting testimony that's
9 written and can't be crossed. Second is what would
10 stop anybody in continuing this to recall every
11 Zoning Administrator ever to get their
12 interpretation. In fact, we might as well include
13 land use and past Board Members, et cetera. I see
14 that it would be very limited in its use, not to
15 mention we may get a --
16 MR. TEMPLE: Quite frankly, if I may be
17 heard, I understand the general concern. However,
18 the individuals who testified are directly involved
19 in this case. If you were to call the -- that would
20 be a problem. However, there is testimony by a
21 Zoning Administrator and testimony by Denzel Noble
22 who has letters in this file. He is a witness in
23 this case. So they are critical witnesses. Secondly
24 --
25 CHAIRMAN GRIFFIS: But you were going to

1 call Mr. Noble or have the ability to call Mr. Noble.
2 MR. TEMPLE: Well, we don't have subpoena
3 authority to call anybody. Unless the government
4 indicated they would offer Mr. Noble, what we would
5 submit to you is the testimony, again, after you read
6 Mr. Noble's testimony because Mr. Noble's testimony
7 is effectively, even for purposes of this proceeding,
8 an admission that the Appellant is correct. He is an
9 agent of the government. He is the director of
10 building and lands issues permitted here. Mr. Noble
11 is also responsible for the C of O.
12 CHAIRMAN GRIFFIS: Okay. Do you have a
13 problem calling Mr. Noble? Has he said he won't --
14 MEMBER ZAIDAIN: He was here earlier. I
15 saw him.
16 MR. QUIN: We are willing to make Mr.
17 Noble available for questioning by Mr. Temple. At
18 that time, Mr. Temple could use the transcript of
19 this other hearing.
20 CHAIRMAN GRIFFIS: He could ask
21 questions.
22 MR. QUIN: He could perhaps use it for
23 impeachment if he wanted to.
24 CHAIRMAN GRIFFIS: That's an interesting
25 strategy. If there is strong feeling about the

1 transcript, if there's no way that you can get it
2 anywhere else, what I'm going to ask is that you make
3 copies available. I'm going to take written
4 submissions on why it should be or why it shouldn't
5 be accepted.
6 I'm going to have the transcript go to
7 Corporation Counsel. It will not be distributed to
8 the Board. It defeats the purpose if we read the
9 entire thing and then find it useless or find that we
10 shouldn't look at it. So my Corporation Counsel will
11 review it before the Board sees it. We will not see
12 it unless we take an official action by the next
13 hearing date. Let's start that process. We will
14 clearly be able to see the submissions based on
15 objections. You know what I mean.
16 MR. TEMPLE: I appreciate that. Thank
17 you. The second point is this. Perhaps you may or
18 may not disagree, but obviously this is a very
19 serious issue, as you said, the featured case of the
20 day. We would urge the Board to schedule a hearing
21 immediately, as soon as possible, and also to the
22 extent that the issue is so right, and because there
23 has been such a delay today, the Board rule that the
24 facility cannot open until you rule.
25 CHAIRMAN GRIFFIS: I don't think we have

the jurisdiction to do that.

MR. TEMPLE: Very well.

CHAIRMAN GRIFFIS: I can get an opinion on that. I know it's been asked of us in several cases. I know that we can't even entertain it just based on the jurisdiction. First of all, well, I don't want to go into it. We don't have the basis to make a ruling that would stop, and we don't issue stop work orders. DCRA has the jurisdiction to do that.

MR. TEMPLE: Can I ask you a question?

CHAIRMAN GRIFFIS: Yes.

MR. TEMPLE: Just so that we'll understand this. I don't do this. Mr. Quin has a breadth of this experience. You can rule that this is a community-based residential facility.

CHAIRMAN GRIFFIS: Well, I imagine that's part of what we'll get into in the hearing. Is it not?

MR. TEMPLE: That's fine. I have no other issues.

CHAIRMAN GRIFFIS: Okay. Did you have something?

MR. RUSHKOFF: No.

CHAIRMAN GRIFFIS: Very well. What dates

are we looking at? Mr. Temple brings up a point, and believe me, this is what we always do. I like to continue things as close to the date that we are today. I do not like to push this off for any reason, especially appeals. Obviously there's a great deal in jeopardy here.

But also for more importantly for the Board's preparation. It's always difficult to revisit this entire file and be prepared. So as quickly as we can, knowing our schedule is very full, let's see what we can come up with. How about May 6 in the afternoon? I'm kidding actually. Let's not get our hopes up there. It looks as though we have May 20 in the afternoon.

MR. TEMPLE: Excuse me.

CHAIRMAN GRIFFIS: Yes.

MR. TEMPLE: Our understanding is the halfway house is scheduled to open on May 1 or near that point in time. A lot of the issues, very strong in that regard, have legal implications outside of this room. I don't know your schedules and I certainly appreciate what you do, but the issue is very overwhelming in terms of its legal significance if we wait that long.

CHAIRMAN GRIFFIS: Let me say there's no

way we're making it by May 1 even if we wanted to accommodate.

MR. TEMPLE: Sure, I understand that.

CHAIRMAN GRIFFIS: Secondly, May 6 right now we have 15 cases in one day. May 13 we have a huge appeal that makes this one look simple as well as another case. On May 20, we're actually squeezing it in. One absurdity would be to schedule you and then as we hit 7:00 if we haven't called you then we would set a new date. That's the potential for May 6 and May 13.

MR. TEMPLE: I understand. So am I clear that under your schedule you couldn't reach this any time sooner than May 20?

CHAIRMAN GRIFFIS: Yes.

MR. TEMPLE: Okay.

CHAIRMAN GRIFFIS: That's absolutely correct.

MR. TEMPLE: Thank you.

CHAIRMAN GRIFFIS: Just for clarity for everybody, the issue is if I had flexibility to move cases off of those days I would do that. I cannot because they have been advertised. So clearly we would go against our own rules and all of our work would get thrown out. Again, May 20 is squeezing you

in. If I put you on May 13, people are going to be more angry with us than anything because we'll probably have an hour to deal with between 9:00 and 10:00.

MR. TEMPLE: In that respect, when you say May 20 is squeezing this in, how much time will we have on May 20?

CHAIRMAN GRIFFIS: Let me show you the options. If we do May 20, we have two cases in the afternoon. I have not reviewed the entire record. From my understanding of those, they are not controversial. Our morning seems to be okay also meaning we can be fairly timely. So in the afternoon, we have two cases. That may start us off roughly at 3:00 to start the appeal which would give us a good three to four hours to get into the case and maybe finish it that day.

Another option is we pick a day that has not been advertised which means it's totally open. That goes to June 24. Wait, I think I have June 17. On June 17, I could set this for the entire afternoon. One of the positive aspects in doing that is that you would be secure to have most of the afternoon, if all of the afternoon. Conceivably we could wrap things up in one day.

MR. TEMPLE: I think I'm in trial at that day.

CHAIRMAN GRIFFIS: On the --

MR. TEMPLE: June 17.

CHAIRMAN GRIFFIS: We go from there. Absolutely open, June 17, June 24, July 1.

MR. TEMPLE: We have no objection to May 20. That would start about 3:00.

CHAIRMAN GRIFFIS: Well, our afternoon session is scheduled to start at 1:00. I hesitate to give times because I don't know.

MR. TEMPLE: So we would need to be ready at 1:00.

CHAIRMAN GRIFFIS: Two cases could call in for withdrawal and we are ready to go at 1:00. The reality is regarding those cases probably for everyone in participation it might be well worth calling in to see where we are if you are five minutes away or what have you. I would certainly expect that the representatives of everybody be here.

That being said, under utmost caution, I'm going to also set aside the afternoon of June 17 in case we have time that spills over. That way we won't have June 17 fill up and by the time we get to May 20 we'll be scheduling in September for the next

date. We'll take note of that and put it again first in the afternoon. If we don't use it, then we get a short afternoon for once.

MR. TEMPLE: As a point of information, after it receives its evidence, the Board will have some time before it actually renders a decision.

CHAIRMAN GRIFFIS: That's an excellent question in terms of our procedure. It is unlikely that there will be a bench decision at the end of a hearing, especially in a controversial case and most importantly in an appeal case. A lot of what we do in appeal is gather information. Then there is a long time of deliberation for the Board and how it organizes its information. So we're in gathering now. I would be surprised if the Board was so moved to make a bench decision on that.

MR. TEMPLE: Sure. I apologize for belaboring the point. In that context, it's Appellant's view that the case does not require experts and a lot of discussion. It's a very simple issue here. I would ask the Board to look at that issue because if the case is protracted that's one thing.

But it shouldn't necessarily be protracted because the legal issues are very simple;

either we're right or wrong on the basic questions. Is a CCC a halfway house or not? Can it have multiple uses or not? Can a halfway house also be a CCC?

CHAIRMAN GRIFFIS: What are you asking now?

MR. TEMPLE: Pardon me.

CHAIRMAN GRIFFIS: Are you asking me to limit --

MR. TEMPLE: I'm just saying if we can limit the questions because the issues are much more legal than factual.

CHAIRMAN GRIFFIS: Okay.

MR. TEMPLE: In terms of the presentation of argument, we can probably argue the case without calling witnesses. The fact that the community supports it or opposes it is not the issue here.

CHAIRMAN GRIFFIS: That's true.

MR. TEMPLE: I don't know whether they would stipulate to that, but the Board could command that of us. This is a case of first impression before you. It has significant implications. It can be further briefed. We can argue this case without the need to present evidence quite frankly.

CHAIRMAN GRIFFIS: Argue without

presenting evidence. Do you want --

MR. RUSHKOFF: One possibility might be to go ahead and argue it and see if the Board still wants to take evidence. Maybe we can go ahead and see if we can do it summary judgement style. Then if there are open issues that the Board wants resolved we can then just focus the hearing on those issues.

MR. TEMPLE: I would agree.

CHAIRMAN GRIFFIS: We could do that in writing.

MR. TEMPLE: Yes.

MR. RUSHKOFF: Yes.

CHAIRMAN GRIFFIS: Now we're getting somewhere.

MR. QUIN: I'm not sure that's the right way to go.

CHAIRMAN GRIFFIS: Okay.

MR. QUIN: I have no problem trying to shorten the whole process, but what is being argued here is a relationship between a "CBRF" in the CM zone and the temporary facility with logic running if it's one it can't be the other. That's where common sense has to apply and what everybody understands a correctional facility is. That has to be open. I may want to call an expert on that. That would be

1 the only type of person that I would intend to call.
2 CHAIRMAN GRIFFIS: Okay. Let's do this
3 as a hybrid. Mr. Temple, I appreciate that.
4 Frankly, I appreciate everyone's effort to make this
5 as expeditious as possible. Certainly we don't get
6 anything out of prolonging this. But as you have
7 noted several times in the proceedings, several
8 courts perhaps are looking at this. I would not want
9 to make the mistake of limiting something that might
10 set us up for appealable issues.
11 That being said, it may well expedite us
12 the next time we meet if you wanted to do brief
13 submissions on arguments above what we have. Clearly
14 there's an awful lot in there. Again, if you wanted
15 to bring in new or formulate what is going to be
16 presented, obviously serve it to everybody.
17 As I say numerous times during the day on
18 Tuesdays down here, this Board reads everything that
19 we receive. There's two notions to that. (1) Make
20 it small. (2) Make it very direct. Maybe that will
21 cut some time out of the next hearing.
22 MR. TEMPLE: Mr. Griffis, I had the
23 opportunity to chair one of these commissions for
24 three years in a very convoluted substantive area
25 here in the District of Columbia and I'm sensitive to

1 that. In terms of our focus - and I don't think
2 Counsel would have a problem - for April 22 and this
3 hearing is scheduled for May 20, if we could agree
4 that a week before that time, May 13 or May 14, that
5 we would give you a submission.
6 If we had an opportunity there to have an
7 expert and if we would have some idea what that
8 expert said, we would submit to you that all of these
9 learned counsels over here could probably give you a
10 submission. That would really crystallize the legal
11 issues before you. Then when we meet on May 20 and
12 they want to call a witness -- I doubt other than Mr.
13 Noble that we will want to call a witness. We will
14 not be more than 30 minutes. We can probably -- the
15 case to probably two hours on that day.
16 CHAIRMAN GRIFFIS: Well, okay. I'm not
17 sure I can compel people to do that.
18 MR. TEMPLE: I say we do it by consensus,
19 by stipulation.
20 CHAIRMAN GRIFFIS: And that's fine. I
21 don't see any difference between what we ask for in
22 terms of submissions or the availability of
23 submissions.
24 MR. TEMPLE: I'm just putting timeliness
25 on it.

1 CHAIRMAN GRIFFIS: Yes, I understand.
2 Well, it's open. Certainly it can happen.
3 MR. QUIN: I'm not prepared to stipulate
4 to that right now. I'm as interested as anyone in
5 getting this thing resolved. Mr. Temple may be right
6 at least in one area. That is I don't think it's
7 overly complicated.
8 CHAIRMAN GRIFFIS: Right.
9 MR. QUIN: But what's happened if you
10 read the briefs, and I would submit especially Mr.
11 Temple's, you will find a lot of factual issues in
12 there that have to be rebutted. That's where I'm
13 coming from. If we were clearly on the law, I can
14 open the Zoning Regulations and give you the
15 legislative history and it's over.
16 CHAIRMAN GRIFFIS: Okay. Therein lies
17 the complication. Again, Mr. Temple's notion to
18 expedite this and to focus it is well said. We do
19 know where we need to be with this, but I am not of
20 the feeling that I'm going to compel that to happen.
21 We're fairly clear. I hope we are anyway. Let me
22 take last questions on that. We have the next date
23 set for -- Ms. Bailey, if you wouldn't mind
24 reiterating that.
25 MS. BAILEY: May 20, Mr. Chairman, the

1 third case in the afternoon. Also we have reserved
2 the afternoon of June 17. The record is still open
3 as far as I can tell. Just a reminder to the ANC
4 that they need to submit a statement, the official
5 position of the ANC as stipulated under Section
6 3115.1 of the regulation.
7 MR. QUIN: Are we not also supposed to
8 brief the issue of whether the transcript should come
9 in or not?
10 CHAIRMAN GRIFFIS: Right. Indeed. I'm
11 sorry. We may have missed that. There's a brief
12 coming in to the Board about the transcript which
13 will be in the possession of Corporation Counsel.
14 They will review it. We'll take up that as the first
15 preliminary matter when we reconvene on May 20.
16 Anything else?
17 COMMISSIONER HOOD: Mr. Chairman, in
18 thinking back on this transcript issue that's going
19 to Corporation Counsel, first of all, I concur. I
20 was just thinking that if Corporation Counsel has a
21 ruling at that time I'm just trying to find out when
22 us, as Board Members, will have time to read and deal
23 with it if it goes ahead. I hate coming to the board
24 meetings and have to sit here and try to read through
25 stuff that I haven't had ample time to go through.

1 CHAIRMAN GRIFFIS: Good point. Let's set
2 a date for the briefing on accepting that. That
3 shouldn't take that long. We're not obviously asking
4 for long-winded briefs. Mr. Temple, when can you
5 submit that?
6 MR. TEMPLE: I'm a little confused. I
7 thought that you were asking Corporation Counsel for
8 an opinion on that issue. I didn't know you wanted
9 us to brief the issue.
10 CHAIRMAN GRIFFIS: Well, I'm allowing.
11 You don't have to.
12 MR. TEMPLE: To that extent that we brief
13 the issue, we can have something to you in seven
14 days. To that extent, I would only ask that
15 preliminary issue, for the exact reason that the
16 gentleman just mentioned, that we have that issue
17 ruled on in advance of May 20.
18 CHAIRMAN GRIFFIS: That's what I'm going
19 to try to facilitate.
20 MR. TEMPLE: So that we can come before
21 you.
22 CHAIRMAN GRIFFIS: Right. I'm just going
23 to get timing. We're at April 22. If the briefing
24 is submitted in seven days, is that enough time for
25 the other two participants?

1 (No response.)

2 CHAIRMAN GRIFFIS: Yes, okay. In which

3 case, once that's done, we'll have Corporation turn

4 it around. We will hear from them. That's something

5 we can decide in an executive session in which case

6 we will. Then we'll make somehow known the decision

7 if it's made in executive session by letter to all

8 the participants. That way we'll come in May 20

9 knowing whether that's in or out of the record.

10 MR. TEMPLE: Thank you for your time.

11 MR. QUIN: I guess I will need to get a

12 copy of the transcript.

13 CHAIRMAN GRIFFIS: I thought that was --

14 MR. QUIN: And I need to have the seven

15 days.

16 CHAIRMAN GRIFFIS: Do you not have

17 additional copies of the transcript?

18 MR. TEMPLE: I told him that I would

19 provide pages 22 to 66 which I gave to you.

20 CHAIRMAN GRIFFIS: What was delivered to

21 Corporation Counsel?

22 MR. TEMPLE: Pages 22 to 66 which is

23 Denzel Noble's testimony.

24 CHAIRMAN GRIFFIS: Okay.

25 MS. BAILEY: Mr. Quin, if you would like,

we can make a copy for you before you leave.

MR. QUIN: Okay. I'll pick it up tomorrow. We have to look at that because if that comes in there may be other portions that we want to put in. I just don't know what --

MR. TEMPLE: I believe that's his entire testimony.

MR. QUIN: Yes, but there may be some other stuff that has to go in.

CHAIRMAN GRIFFIS: Right.

MR. TEMPLE: Very well.

CHAIRMAN GRIFFIS: This is what I don't want to be walking down is somehow being the arbiter of another proceeding.

MR. TEMPLE: Sure.

CHAIRMAN GRIFFIS: Hopefully we'll get that resolved.

MR. TEMPLE: I wanted to note I will provide also a copy of Mr. Kelly's testimony. I just don't have it at this point in time. Those are the two people that we referenced that we wanted.

CHAIRMAN GRIFFIS: When are we getting that?

MR. TEMPLE: Tomorrow.

CHAIRMAN GRIFFIS: All right. So by

1 close of business tomorrow, that's going to be served
2 and in the Office of Zoning.
3 MR. TEMPLE: Yes.
4 CHAIRMAN GRIFFIS: In which case, we will
5 have Corporation Counsel take a look at that. There
6 it is. Any other questions or concerns?
7 MR. TEMPLE: No, sir.
8 CHAIRMAN GRIFFIS: Anything else from
9 Staff that we need to do today?
10 MS. BAILEY: No.
11 CHAIRMAN GRIFFIS: Very well. Thank you
12 all very much. We are adjourned on April 22, 2003.
13 (Whereupon, the above-entitled matter
14 concluded at 7:03 p.m.)
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