

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 13, 2000

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

KWASI HOLMAN	Commissioner
--------------	--------------

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress,	Director
Sheri Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

<u>AGENDA</u>	<u>PAGE</u>
PRELIMINARY MATTERS	7
RICHARD BOOTE	13
LYLE BLANCHARD	14
VENITA RAY	18

APPEAL OF FAIRVIEW HEIGHTS NEIGHBORHOOD
ASSOCIATION CASE NO 16604 ANC-3C

WITNESSES:

RICHARD BOOTE	31
THOMAS MANN	37
KIRK WHITE	40
THOMAS HOSKEY	45
 VENITA RAY	 71
TOYA BELLO	72
 SATWANT BELL	 95
SHAMSER SINGH	99
 RUTHANNEE MILLER	 110

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

<u>AGENDA</u>	<u>PAGE</u>
PRELIMINARY MATTERS	138

APPLICATION OF THE GEORGE WASHINGTON UNIVERSITY
CASE NO. 16553 ANC-2A

MAUREEN DWYER, ESQ..... 142
Shaw, Pittman, Potts and Trowbridge
2300 N Street, N.W.
Washington, D.C.
(202) 663-8000

WITNESSES

CHARLES BARBER..... 142
CHARLOTTE COSMELA..... 185
LOU SLADE..... 196

DOROTHY MILLER..... 291
BARBARA SPILLINGER..... 311
STEVEN MANDELBAUM..... 327
RICHARD SHEEHEY..... 345

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

(9:40 a.m.)

CHAIRPERSON REID: Good morning. The meeting will please come to order. Ladies and gentlemen, this is the September 13th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson.

Joining me today is Robert N. Sockwell; Ann Renshaw, who will be coming out in just a moment; Rodney Moulden, representing the National Capital Planning Commission; and representing the Zoning Commission is Quasi Hohman.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. On coming forward to speak to the Board, please give both cards to the Reporter, who is sitting to my right.

Order of procedure for appeal cases, those cases on appeal, is: 1) statement of witnesses of the appellant; 2) the Zoning Administrator or other government official; 3) the owner, lessee, or operator

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the property involved, if not the appellant; the
2 ANC within which the property is located; the
3 intervenor's case; and, finally, rebuttal and the
4 closing remarks by the appellant.

5 Order of procedure for a special exception
6 in variance cases is: 1) statement of witnesses of
7 the applicant; 2) government reports, including Office
8 of Planning, Department of Public Works, etcetera;
9 3) report of the ANC; 4) parties or persons in
10 support; 5) parties or persons in opposition; and
11 6) closing remarks by the applicant.

12 Cross examination of witnesses is
13 permitted by the applicant or parties. The ANC within
14 which the party is located is automatically a party in
15 the case.

16 The record will be closed at the
17 conclusion of each case, except for any material
18 specifically requested by the Board, and staff will
19 specify at the end of the hearing exactly what is
20 expected.

21 The decision of the Board in these
22 contested cases must be based exclusively on the
23 public record. To avoid any appearance to the
24 contrary, the Board requests that persons present not
25 engage the members of the Board in conversation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Please turn off all beepers and cell
2 phones at this time, so as not to disrupt these
3 proceedings.

4 The Board will now consider any
5 preliminary matters. Preliminary matters are those
6 which relate to whether a case really should be heard
7 today, such as request for postponement, continuance,
8 or withdrawal, or whether proper and adequate notice
9 of the hearing has been given.

10 If you are not prepared to go forward with
11 the case today, or if you believe that the Board
12 should not proceed, now is the time to raise such a
13 matter. Are there any preliminary matters?

14 MS. BAILEY: Madam Chair, staff does have
15 two preliminary matters concerning the first case, and
16 it's application 16604, appeal of the Fairview Heights
17 Neighborhood Association.

18 Are you the representative, sir, of the
19 first case?

20 MR. BOOTE: Yes, my name is --

21 MS. BAILEY: -- the Fairview Heights
22 Neighborhood Association?

23 MR. BOOTE: That's correct. My name is
24 Richard Boote.

25 MS. BAILEY: Madam Chair, the files

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contain very little information about the Fairview
2 Heights Association. The files do not contain any
3 information about the organization; specifically, how
4 the issues which are before the Board aggrieve the
5 members of the organization. That's the first issue.

6 The second issue is Mr. Brian Vogel signed
7 the appeal on behalf of the Fairview Heights
8 Neighborhood Association. The files do not have any
9 documentation that Mr. Vogel has the authorization of
10 the other members of the association to represent
11 them, and these two issues need to be clarified, Madam
12 Chair, prior to proceeding.

13 CHAIRPERSON REID: Okay.

14 MR. BOOTE: I can clarify that by stating
15 that the other two directors of the association are
16 here as well, Tom Mann and myself, and we, under the
17 rules of the organization, have -- Brian Vogel had
18 authority to file the appeal, and we jointly affirm
19 that authority. Tom Mann is here to speak as well, if
20 that's necessary. He's the other director.

21 CHAIRPERSON REID: Ms. Bailey, is this
22 what you're referring to as being the verification?
23 That would be sufficient?

24 MS. BAILEY: Written verification was not
25 in the file, Madam Chair, and that's something at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Board's discretion -- if you choose to have something
2 submitted in writing from the members of the
3 organization giving Mr. Vogel the authority to
4 represent them.

5 CHAIRPERSON REID: We have no problem with
6 that, if you could just, subsequent to this particular
7 hearing today, make sure that there's something
8 submitted to the record to so designate you to
9 represent them in writing.

10 MR. BOOTE: We will do that right after
11 the hearing.

12 CHAIRPERSON REID: Thank you.

13 Okay. And what was the other?

14 MS. BAILEY: I think corporation counsel
15 has a preliminary matter.

16 MR. BERGSTEIN: No, I don't, actually.

17 CHAIRPERSON REID: Okay.

18 MR. BERGSTEIN: Oh, that corporation
19 counsel. I'm sorry.

20 (Laughter.)

21 Ms. Ray, I apologize.

22 MS. RAY: Good morning, Madam Chair, and
23 members of the Board. My name is Venita Ray. I'm
24 here on behalf of the Zoning Administrator from the
25 Office of the Corporation Counsel, and have one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 matter.

2 I would like, I guess, to request at this
3 point that this appeal is predicated, I guess, on a
4 stop work order or the revocation or withdrawal of a
5 stop work order, to which we don't have a copy of.
6 This appeal is of a decision that was issued -- I
7 mean, a building permit that was issued on July 16,
8 1999, which is -- and it was filed, I guess, June 12,
9 2000, which would raise a timeliness issue, if --
10 unless we could see something about some kind of act
11 that occurred in between then.

12 And what's indicated in the letter of
13 appeal, I guess, is saying that this appeal is
14 predicated on a stop work order issued on May 26,
15 2000. And we just haven't seen a copy of notice of a
16 stop work order and would request it at this time.

17 MR. BOOTE: We would be happy to submit
18 that. Is it not included as part of the --

19 SECRETARY PRUITT: Madam Chair, we have an
20 extra copy right here if you'd like it.

21 CHAIRPERSON REID: We have a copy of it in
22 our records.

23 MS. RAY: Thank you.

24 CHAIRPERSON REID: Okay.

25 SECRETARY PRUITT: Madam Chair, staff --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 if you please, staff would like to go over the time
2 limits, just so we can set out procedurally what's
3 going to happen.

4 CHAIRPERSON REID: All right.

5 SECRETARY PRUITT: In the appeal, we have
6 three interested parties -- the appellant, DCRA, and
7 then the Sikh Temple themselves. We are allotting 15
8 minutes per party to put on your case, and we will go
9 in the order of the appellant, DCRA, and then the Sikh
10 Temple. That's all the preliminary matters that staff
11 has.

12 CHAIRPERSON REID: Okay. There is another
13 preliminary matter, in regard to some of the issues
14 that are raised in the case. And they pertain
15 specifically to -- the Board notes that the appellant
16 has raised issues concerning the constitutionality of
17 the zoning regulations with respect to the religious
18 uses; specifically, that certain sections of the
19 zoning regulations are constitutionally invalid as
20 they favor the establishment of religion; and, two,
21 DCRA's alleged failure to notify the affected ANC of
22 the issuance of the building permit for the Sikh
23 Temple.

24 The Board questions whether these two
25 issues raised by the appellant are within its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 jurisdiction. The sole authority for any amendment of
2 the zoning regulations is the Zoning Commission and
3 not the BZA. The Board must give priority to the
4 zoning regulations that are currently in place, and so
5 it's not the proper forum to consider arguments
6 concerning whether regulations are unconstitutional.

7 The zoning regulations provide for appeals
8 to the Board of Zoning Adjustment by any person
9 aggrieved by any order or decision made in the
10 administration or enforcement of the zoning
11 regulations, 11 DCMR 3112.2. Alleged failure by DCRA
12 to notify an affected ANC of a building permit does
13 not appear to be a decision made in the administration
14 of the zoning regulations, such that the notice given
15 -- such a notice issue should be decided by the Board.

16 Before hearing testimony on these two
17 issues, the Board asks the parties to address whether
18 the Board has jurisdiction to hear and decide -- and
19 your opinion, of course -- to hear and decide either,
20 1) whether the specified sections of the zoning
21 regulations are constitutionally invalid because they
22 favor the establishment of religion; or 2) DCRA's
23 failure to notify the affected ANC of the issuance of
24 the building permit for the Sikh Temple.

25 The parties each have five minutes to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 speak on those two issues.

2 MR. BOOTE: The Fairview Heights
3 Neighborhood Association would acknowledge that the
4 Board does not have jurisdiction over the
5 constitutional issue. We have a strong case, but we
6 won't address that issue this morning.

7 With respect to the ANC issue, I will
8 defer to the ANC on that issue. The Fairview Heights
9 Neighborhood Association doesn't take a position on
10 that.

11 CHAIRPERSON REID: Okay.

12 MR. BOOTE: And I believe there is someone
13 from the ANC here as well.

14 CHAIRPERSON REID: All right. Is the ANC
15 -- excuse me one second, please.

16 Okay. Is there a representative from the
17 ANC who wishes to speak on this particular issue?

18 MS. MILLER: Good morning.

19 MEMBER MOULDEN: Good morning.

20 MS. MILLER: My name is Ruthanne Miller,
21 and I'm Chair of ANC-3C, and I'm here with Mr. Lon
22 Ramseur, who is the single member district --

23 SECRETARY PRUITT: Excuse me. Ma'am,
24 could you turn your mike on, please. Just push the
25 button. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. MILLER: Do you need me to repeat
2 that, or do you have that? I think Mr. Blanchard is
3 going to address this issue first.

4 MR. BLANCHARD: Good morning, Chairperson
5 Reid, and members of the BZA. My name is Lyle
6 Blanchard, and I'm appearing this morning as the ANC
7 Commissioner for ANC-3C, not as a representative of
8 the firm I recently joined, just to clarify for the
9 record.

10 The ANC has voted several times with
11 regard to the issue of notice. D.C. Code 1-261(b)
12 requires that each Advisory Neighborhood Commission
13 receive 30 days' notice of actions or proposed actions
14 by the District of Columbia government. And in this
15 particular case, what had occurred was that the Sikh
16 Cultural Society, who obtained the building permit,
17 had applied for this building permit. And I don't
18 have those dates before me, but I believe it was in
19 November of 1996 that they applied for the building
20 permit.

21 The Department of Consumer and Regulatory
22 Affairs actually issued the building permit I believe
23 in July of 1999. Now, during that entire period --
24 and this predates both Chairperson Miller and my own
25 time on ANC-3C; we both started the beginning of 1999.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 But it predates the period they applied for the
2 permit, and then the issuance of the permit.

3 We were succeeded as ANC Commissioners.
4 We did not receive notice from the Department of DCRA.

5 We became aware of it actually from a printout, but
6 the Department is starting to get a little better.
7 And they've put things online, and we had gotten a
8 printout -- I believe we became aware of it in
9 February -- of a list of permits that had already been
10 issued.

11 And our contention was that since this --
12 and there aren't really any standards for, you know,
13 is a project significant, such that it requires more
14 notice than others. Our opinion is that anything that
15 has a major impact on the neighborhood, such as this
16 particular matter, the ANC should be notified, not
17 only when the permit is applied for but then when the
18 permit is issued.

19 So that we would have an opportunity to
20 hold a hearing and do our -- perform our role as
21 neighborhood representatives, hold a hearing, get
22 comments from the neighborhood and comments from the
23 applicant. So that's our contention, and we've raised
24 it several times. I think we actually wrote to
25 Chairman Reid back in June, and then more recently in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 September, trying to make the Board aware of this
2 issue.

3 CHAIRPERSON REID: Thank you.

4 MS. MILLER: I would also like to add
5 that, had the ANC had notice years ago, then the Sikh
6 Temple would never have invested all that they've
7 invested so far to come this far and then have a
8 hearing. That the process should work -- would work
9 better if the neighborhood has its input right from
10 the start.

11 CHAIRPERSON REID: Thank you.

12 MS. MILLER: We also have copies -- I
13 don't know if you want them -- copies of our
14 resolution and letters to the Board now. I have 10
15 copies.

16 MR. BERGSTEIN: The issue is whether or
17 not any of that information is relevant to the Board's
18 consideration. For the purposes of this discussion,
19 the issue is -- it's not the factual issue -- the
20 Board knows it was give or not give them -- but
21 whether or not, in terms of the Board's jurisdiction,
22 if the failure -- if the alleged failure of DCRA to
23 give notice under the ANC Act related to the
24 administration of the zoning regulations, which is the
25 only jurisdiction the BZA has with respect to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 appeal.

2 CHAIRPERSON REID: Mr. Bergstein, I think
3 that the position of the Board was to allow each
4 entity to speak, and it was incumbent upon them to
5 address the issues.

6 MR. BERGSTEIN: The matter I was referring
7 to is they were going to submit to you materials that
8 related to the factual issue, and the issue before you
9 is whether or not you are going to receive any
10 testimony, any evidence, any materials at all.

11 CHAIRPERSON REID: I see. So --

12 MR. BERGSTEIN: With respect to the
13 factual issues. So before you accept anything that
14 relates to the factual issues --

15 CHAIRPERSON REID: Oh. I see what you're
16 saying.

17 MR. BERGSTEIN: -- you need to resolve the
18 question of whether or not you're going to receive
19 anything.

20 CHAIRPERSON REID: I see. Okay.

21 Has staff received it yet?

22 SECRETARY PRUITT: We have it. We haven't
23 given it out.

24 CHAIRPERSON REID: Okay. We're on hold
25 until such time that we have had an opportunity to act

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 upon the motion. Thank you.

2 All right. Ms. Ray?

3 MS. RAY: On behalf of the government, I
4 would just like to concur with the Board in its
5 interpretation that it doesn't have jurisdiction to
6 consider DCRA's failure to notify the ANC and the
7 issue of constitutionality. And we would refer to I
8 guess the Board's organic statute, D.C. Code 5-426, I
9 believe, which we will reattach here -- 5-424, excuse
10 me -- which gives authority to this Board to interpret
11 the zoning regulations as you stated. So we would
12 concur with that.

13 And also, the fact that this Board doesn't
14 have jurisdiction to hear a challenge of the
15 constitutionality of the zoning regs is more properly
16 before you than the Zoning Commission or in the
17 courts.

18 Lastly, we would also say that the issue
19 of whether or not the issuance of this building permit
20 violates the comprehensive plan is also an issue that
21 this Board does not have jurisdiction to hear or to
22 receive testimony of, because it is also a matter for
23 the Zoning Commission and not this Board.

24 It is the Zoning Commission that
25 interprets or can amend the regulations and decide,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and then promulgates regulations that are consistent
2 with the comprehensive plan. And this Board's charge
3 is only to interpret those regulations, and I would
4 refer the Board to a case, in addition to the Zoning
5 Commission's statute, of 534-23, I believe -- 5-413,
6 excuse me -- of Tenley and Creedon Park Emergency
7 Committee v. D.C. BZA, which we'll attach as a part of
8 our exhibits.

9 CHAIRPERSON REID: Thank you, Ms. Ray.

10 MR. BOOTE: May I respond briefly to the
11 comprehensive plan issue?

12 MS. BAILEY: Sir, can you please turn on
13 your microphone?

14 MR. BOOTE: With respect to corporation
15 counsel's position, the comprehensive plan is not an
16 issue.

17 CHAIRPERSON REID: Can you speak into your
18 mike? We're having trouble hearing you. The people
19 didn't hear you in the back of the room.

20 MR. BOOTE: With respect to the issue that
21 the comprehensive plan is not something that the Board
22 can decide, or with regard to the implementation of
23 the comprehensive plan, the association would
24 represent that the zoning regulations themselves and
25 the D.C. Code, because they insist that those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 provisions of statutes and regulations that are more
2 restrictive in terms of the -- of providing less
3 height and greater open space and greater air, are, in
4 fact, part of the zoning regulations and part of that
5 aspect of the -- those issues that the Board -- that
6 this Board can consider.

7 Under D.C. Code 5-428, there is a
8 provision which says that the -- that any law or
9 regulation that is more restrictive than another law
10 or regulation is the law which must be imposed. And
11 we believe that the Board does have jurisdiction to
12 look to that provision and to impose those more
13 restrictive provisions. And the comprehensive plan is
14 more restrictive than some of the other provisions in
15 the D.C. zoning laws -- zoning regulations.

16 CHAIRPERSON REID: Okay. Thank you very
17 much.

18 All right. In regard to the first two
19 issues, I move that the Board decline to hear
20 testimony on the issues raised by the appellant
21 Fairview Heights Neighborhood Association concerning
22 the constitutionality of the zoning regulations with
23 respect to religious issues, and the effect of DCRA's
24 failure to notify the affected ANC about the building
25 permit, because those issues are outside the scope of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Board's jurisdiction.

2 So I'd like to move accordingly. Could I
3 get a second? Board members?

4 COMMISSIONER HOLMAN: Second.

5 CHAIRPERSON REID: Okay. All right. Any
6 discussion? All in favor?

7 (Chorus of ayes.)

8 Opposed?

9 (No response.)

10 MEMBER RENSHAW: Madam Chair, are we in
11 the midst of a vote here? Because this is not clear
12 to me. Are we in the midst of a -- did we have a
13 second to the motion?

14 CHAIRPERSON REID: Yes.

15 COMMISSIONER HOLMAN: Yes, I seconded it.

16 MEMBER RENSHAW: All right. I think that
17 these issues should be taken separately, voted on
18 separately.

19 CHAIRPERSON REID: Which issues?

20 MEMBER RENSHAW: You have moved, in
21 respect to -- concerning the constitutionality of the
22 zoning regs, and also the failure to notify the
23 affected ANC.

24 CHAIRPERSON REID: Okay. All right.
25 Let's take issue number one in regards to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 constitutional of the zoning regulations, with
2 respect to religious uses. May I have a second?

3 COMMISSIONER HOLMAN: Second.

4 CHAIRPERSON REID: All in favor?

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 All right. In regard to the DCRA's
9 failure to notify the affected ANC about the building
10 permit being outside the scope of the Board's
11 jurisdiction. May I hear a second on that?

12 VICE CHAIRPERSON SOCKWELL: Second.

13 CHAIRPERSON REID: Discussion?

14 MEMBER RENSHAW: Yes. I have asked to see
15 the text of D.C. Code 1-261(b). That was part of
16 Ruthanne Miller's June 26, 2000, letter to the Mayor,
17 and it's in our file. And I would like to read the
18 text of that, please, before voting.

19 CHAIRPERSON REID: You'd like to read it
20 to who?

21 MEMBER RENSHAW: Myself. I would like
22 to --

23 CHAIRPERSON REID: In other words, you
24 don't want to vote right now?

25 MEMBER RENSHAW: I do not want to vote

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 right now on that issue.

2 CHAIRPERSON REID: So will you abstain?

3 MEMBER RENSHAW: I will abstain.

4 CHAIRPERSON REID: Okay. All in favor?

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 All right. You want it recorded as an
9 abstention?

10 MEMBER RENSHAW: Yes, I'll record the
11 abstention. I'll record it as no, because I believe
12 that we haven't examined this -- the text and should
13 not be voting on this motion right at this minute.

14 CHAIRPERSON REID: Okay. All right.
15 Staff?

16 SECRETARY PRUITT: I'd like to read back
17 the votes. On the first motion, to decline testimony
18 on the constitutionality, the motion was made by Ms.
19 Reid, seconded by Mr. Holman, five to zero, to decline
20 testimony.

21 On the second motion, in reference to DCRA
22 and a building permit, motion made by Ms. Reid,
23 seconded by Mr. Holman, four -- oh, I'm sorry, by Mr.
24 Sockwell, four to one, with Ms. Renshaw in opposition.

25 CHAIRPERSON REID: All right. The other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue that was raised by the counsel for DCRA, Ms.
2 Ray, is with regard to the comprehensive plan. And
3 that's -- if we could have some discussion on that
4 before taking the issue up.

5 MR. BERGSTEIN: Madam Chair, could I just
6 give some guidance --

7 CHAIRPERSON REID: Yes.

8 MR. BERGSTEIN: -- with respect to one of
9 the issues that counsel brought up? He's correct in
10 saying that there is a provision, and it's actually in
11 the original 1938 Zoning Act, which says that nothing
12 in the Zoning Act precludes another district agency
13 from promulgating stricter standards.

14 But those stricter standards would not be
15 a zoning regulation, because only the Zoning
16 Commission can promulgate the zoning regulations. And
17 the best example I can give is that the Zoning
18 Commission has a 300-foot setback for salvage
19 facilities. The Council established a 500-foot
20 setback for the salvage facility, for salvage facility
21 permits.

22 If a salvage facility met the 300-foot
23 setback in the zoning regulations, the Zoning
24 Administrator could properly issue a C of O for that
25 facility. But DCRA could not issue a salvage license

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for that facility, because there was a stricter
2 setback with respect to the permitting scheme.

3 So even if there is a law, which I don't
4 believe the comprehensive plan represents, but even if
5 there is a law which is passed by the Council which is
6 part of a permitting scheme that establishes a
7 stricter standard, the Zoning Administrator, with
8 respect to the issuance of a C of O, would not be
9 bound by that or of a building permit.

10 It would have to be a separately stated
11 licensing requirement that relates to that type of
12 setback or area, but could not be a zoning regulation,
13 because the Council cannot promulgate zoning
14 regulations under the charter.

15 And, again, with respect to an appeal, it
16 goes to the administration of the Zoning Act, with
17 respect to the building permit, not separate licensing
18 issues, only those zoning regulations that pertain to
19 the building permit.

20 MR. BOOTE: Madam Chair, may I respond?

21 CHAIRPERSON REID: Yes. Thank you.

22 MR. BOOTE: The zoning regulations
23 themselves, 101.4, incorporate a reference to other
24 municipal regulations and statutes that require that
25 those more restricted statutes or regulations be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 imposed in order to provide greater space, more air,
2 and lower heights.

3 The regulations themselves, therefore,
4 incorporate the comprehensive plan and the other
5 statute; and, therefore, we believe that the Board has
6 authority to make decisions that incorporate other
7 statutes and regulations.

8 And if -- depending on how the Board
9 proceeds, we would note our objection to any decision
10 to not consider the comprehensive plan.

11 VICE CHAIRPERSON SOCKWELL: One thing I
12 want to state is, although 101.4 does state that the
13 provisions of any statute or other municipal
14 regulations shall govern, it doesn't say that this
15 Board, despite even zoning law, would be the one to
16 apply to standard. And I think you are
17 misrepresenting what that provision really means, not
18 that you're trying to, but I believe that your
19 interpretation is somewhat obtuse to the reality.

20 MR. BOOTE: Our objection is noted for the
21 record.

22 CHAIRPERSON REID: Thank you.

23 Mr. Holman, do you have any comments?

24 COMMISSIONER HOLMAN: No.

25 CHAIRPERSON REID: Ms. Renshaw?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER RENSHAW: No.

2 CHAIRPERSON REID: Mr. Moulden?

3 MEMBER MOULDEN: No.

4 CHAIRPERSON REID: Okay. All right. May
5 I have a motion with regard to this particular issue?
6 Go ahead, Mr. Holman. Want me to do it? Okay. All
7 right. Then, I'll do it.

8 In regard to consideration of the
9 comprehensive plan in this particular case, I would
10 move that, due to the fact that the Board is governed
11 by the zoning regulations, and the fact that, as such,
12 the comprehensive plan is not self-executing, we would
13 not, then, consider that aspect of this case as it
14 pertains to the comprehensive plan.

15 COMMISSIONER HOLMAN: Second.

16 CHAIRPERSON REID: All in favor?

17 (Chorus of ayes.)

18 Opposed?

19 MEMBER RENSHAW: Aye.

20 CHAIRPERSON REID: Now, which way are you
21 going? You oppose the motion? Okay.

22 SECRETARY PRUITT: Do you want to record
23 the vote, please, Beverly?

24 MS. BAILEY: Sure. Staff will record the
25 vote as four to one. Motion is passed. Motion by Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Reid, seconded by Mr. Holman, and favored by Mr.
2 Moulden and Mr. Sockwell, and opposed by Ms. Renshaw.

3 Madam Chair, does that end preliminary
4 matters? And are you ready now for the case to be
5 called?

6 CHAIRPERSON REID: Yes, we are. Thank you
7 very much.

8 MS. BAILEY: This is an appeal number
9 16604 of Fairview Heights Neighborhood Association,
10 pursuant to 11 DCMR 3105 and 3106, from the
11 administrative decision of the Zoning Administrator,
12 Department of Consumer and Regulatory Affairs, in the
13 issuance of a building permit, Number B425220, that
14 was issued on July 16, 1999, to the Sikh Cultural
15 Society to permit the construction of a temple in an
16 R-1-B District at premises 3801 Massachusetts Avenue,
17 N.W. That's Square 1816, Lot 45.

18 All those wishing to testify, would you
19 please stand to take the oath. All those wishing to
20 testify, please stand to take the oath.

21 (Whereupon, an oath was administered to
22 those persons and/or parties wishing to
23 testify.)

24 You may proceed.

25 MR. BOOTE: Madam Chair, before we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proceed, may I ask one or two procedural questions?
2 One is, is the association allotted 15 minutes total
3 for --

4 CHAIRPERSON REID: The timeline will be
5 further discussed with my staff. The staff is
6 basically setting that up. And also -- I'm sorry, I
7 was somewhat distracted -- but the particulars of the
8 case should pertain specifically to the zoning -- as
9 it pertains to zoning, and as it pertains to whether
10 or not you feel that the Zoning Administrator erred in
11 regard to its interpretation as far as the building
12 permits is concerned. And all of the other things are
13 not going to be brought into this particular case. I
14 hope that everyone is on the same page with that.

15 Ms. Bailey, just for the clarification of
16 everyone, would you please reiterate timelines,
17 specifically, so that everyone is clear as to what, in
18 fact -- how, in fact, the case will proceed.

19 MS. BAILEY: I think, Madam Chair, the 15
20 minutes were for the issues that we first began with,
21 the preliminary issues. I think each party, at that
22 point --

23 SECRETARY PRUITT: No, no. I'm sorry.
24 You have that wrong. The initial issues were five
25 minutes each. Those have been taken care of. What we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 had said was is that, for the presentation of the
2 case, the appellant, the intervenor, and DCRA would
3 each be given 15 minutes.

4 MS. BAILEY: Okay.

5 SECRETARY PRUITT: And Paul Hart will be
6 handling the timer.

7 MR. BOOTE: That clarifies it. I would
8 request the opportunity perhaps for five more minutes.

9 I think that we can wrap it up in 20 minutes; 15 may
10 be a little short. I would like to, in order to speed
11 things up, provide to the clerk and to the Board
12 copies of the exhibits that we will use at the
13 beginning of the discussion, so that we don't waste
14 time rustling papers, and things like that. If that
15 would be acceptable to the Chair, I'd like to do that.

16 CHAIRPERSON REID: Board members, is
17 that --

18 COMMISSIONER HOLMAN: I have no problem
19 with five extra minutes.

20 CHAIRPERSON REID: All right. Twenty
21 minutes will be afforded to you to make your
22 presentation.

23 MR. BOOTE: Thank you.

24 CHAIRPERSON REID: And then, that will
25 have to be afforded to everybody. So your time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 limited is increased by five minutes each, to 20
2 minutes, rather than the initial timeline that we
3 allocated.

4 MR. BOOTE: May I provide the Board
5 members and the clerk with copies of the -- I have an
6 official set of individual exhibits, Exhibits 1
7 through 11. They're pre-marked, and I have copies for
8 -- and then I have copies for -- here's the second
9 set.

10 I'm ready to proceed, if the Board is
11 ready.

12 CHAIRPERSON REID: Please proceed.

13 MR. BOOTE: My name is Richard Boote. I
14 live on 38th Street, which is near where the proposed
15 temple is going to be built.

16 CHAIRPERSON REID: You need to give your
17 address, sir.

18 MR. BOOTE: I live at 3125 38th Street.

19 CHAIRPERSON REID: Okay.

20 MR. BOOTE: Okay. I represent the
21 Fairview Heights Neighborhood Association.

22 Just a general description of the
23 neighborhood, it's completely residential. There are
24 two churches within a block or so of the residential
25 neighborhood at 38th and Massachusetts Avenue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Our basic objections to the law are laid
2 out in the memorandum. We expect to call three
3 witnesses: Tom Mann, Tom Hosky, and our expert, Kirk
4 White, who is an expert in the field of zoning and has
5 been so for -- worked in that area for about 30 years.

6 Most of the neighborhood found out about
7 the proposed construction of the temple in
8 approximately April or May of this year. We formed a
9 neighborhood association. We started asking for
10 assistance from the City Council members, from the
11 ANC, and from the DCRA. Many letters and calls were
12 exchanged. There was a stop work order issued at one
13 point, and it was rescinded sometime, I believe, in
14 June.

15 The permit was after that recision. We
16 filed our appeal on June 12, 2000. The Sikh Cultural
17 Society did not break ground until sometime towards
18 the end of June. Although this appeal is based on the
19 law, I want to make clear that there is a strong
20 motivation underlying this appeal, which is, simply
21 put, neighborhood outrage that such a building could
22 be built in our neighborhood that so directly destroys
23 the character of the neighborhood.

24 By illustration, I might add that this
25 wall, which is about 30 feet long and about seven or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 eight feet high, the wall next to the sidewalk when
2 it's built will be at least twice as long as this and
3 three times as high. You will walk by it and bump
4 your elbows on the wall.

5 All of the other houses in the
6 neighborhood are set back at least 25 to 30 feet, and
7 I refer you to Exhibit Number 7 -- excuse me, 6, and
8 you will see the footprint of the building. On the
9 right side of Exhibit Number 6, you'll see that there
10 is no setback for the side of the temple from 38th
11 Street. There is a 10-foot area where the city plans
12 to install a sidewalk. You all have Exhibit 6 in
13 front of you.

14 On the west side of the footprint, you'll
15 see a 10-foot setback from the temple to the property
16 line of Mr. Hosky's house at 3811 Mass Avenue. You'll
17 see on the front of the building the steps that are --
18 of the temple which are about three to four feet back
19 from the lot line.

20 It's obvious, because of the height of the
21 temple, including this cupola, which rises to 73 feet
22 above 38th Street, and 83 feet above Massachusetts
23 Avenue, that the mass of the structure and the height
24 of the structure will dramatically affect our
25 neighborhood. The setback -- we insist, as the law

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 requires, that a setback be imposed.

2 With this emotional backdrop, let me turn
3 to the legal arguments. There are a few zoning
4 regulations that apply, and now let me enumerate them
5 briefly -- the definition of the structure; the
6 authorized height of the buildings within District
7 R-1-B; the authorized height of churches under
8 Section 400.6, which is 60 feet; Section 400.3 dealing
9 with architectural embellishment; the setback
10 requirements of Section 400.9; the applicability of
11 the corner lot exception that DCRA has relied on,
12 apparently, of 405.5; D.C. Code Titles 414 and 428;
13 and the comprehensive plan, which I believe I'm not
14 permitted to address in this proceeding.

15 First, our argument is, in part, premised
16 on the definition of "structure." Under the D.C.
17 zoning regulations, the structure includes anything
18 constructed. It includes flagpoles. It includes
19 chimneys. The use of the phrase "anything
20 constructed" means anything attached to the building
21 or on the ground attached to the building. That means
22 the steps in the front, the cupola at the top, and the
23 walls of the building on the side.

24 If you refer to Exhibit 7 of the exhibits
25 that I handed out, you'll see that Exhibit 7 is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 front view of the proposed temple. From point DM to
2 point F rises approximately 83 feet.

3 Now, I was not able to find in the
4 architectural plans the actual height of the temple,
5 including this cupola, from Massachusetts Avenue.
6 However, on the next page, which is Exhibit 8, you'll
7 see from point A on the right to point C, that is
8 approximately 73 feet. And if you refer back to
9 Exhibit 7, you'll also see from D to F is -- there's
10 handwritten notations that I did not put on there. I
11 believe they came from the zoning office -- that
12 indicate the height of the cupola.

13 Now, moving on to the other -- the next
14 provision that relates to the structure, keeping in
15 mind the definition of "structure," Section 400.9 of
16 the regulations require that an institutional building
17 or structure -- and structure is explicitly stated in
18 400.9 -- must be removed from all lot lines one foot
19 for each foot in excess of the authorized height in
20 that district. And we believe that the authorized
21 height for churches is 60 feet.

22 From Massachusetts Avenue, the height of
23 the building, including the cupola, is 83 feet. We
24 believe that the temple must be set back from all lot
25 lines 23 feet. Under 400 -- excuse me. I'm trying to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 skip through this quickly, since I don't have much
2 time.

3 Our expert, Kirk White, has looked at the
4 site. We visited the site yesterday, and he has
5 advised us that, indeed, the measurements for the
6 height of the temple should be from the vantage point
7 of Massachusetts Avenue, and that would be 83 feet.
8 This is footnoted in our memorandum, but we speak
9 about 73 feet from 38th Street, as opposed to 83 feet
10 from Massachusetts Avenue.

11 The reason for that was that the
12 architectural plans -- we didn't have measurements for
13 Massachusetts Avenue, but we looked at the building
14 excavation yesterday.

15 Now, the DCRA says -- and when we met with
16 them, they said, "Well, Section 405.5 of the zoning
17 regulations, which allows a side yard exemption when a
18 building is on a corner lot, allows the temple to be
19 built right up to its lot line on 38th Street." We
20 disagree.

21 A side yard is not the same as a set back.
22 400.9 is the provision that applies when a building
23 exceeds the authorized height. Once it exceeds its
24 authorized height, Section 400.9 comes into play, and
25 you have to have a setback equal to one foot for each

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 foot in excess of the authorized height.

2 Finally, I would like to add that the
3 zoning regulations, under 101 and under D.C. Code
4 5-428, say that whenever lower heights and greater
5 space are provided in any of the provisions of the
6 regulations or statutes, that those regulations or
7 statutes must apply.

8 Therefore, the provision of 405.5 that
9 says that there is a side yard exemption and the
10 temple can be built to the lot line is ineffective if
11 there's ambiguity, with respect to the temple, because
12 it exceeds its authorized height.

13 At this point, I'd first like to ask if
14 there are any questions on the regulatory side of our
15 legal argument, if any of the Board members have
16 questions.

17 At this time, I'd like to call Thomas Mann
18 as a witness.

19 Mr. Mann, could you please state your name
20 and address for the record?

21 MR. MANN: My name is Thomas O. Mann, and
22 I live at 3108 38th Street, N.W.

23 MR. BOOTE: I'm going to move pretty
24 quickly because we don't have too much time. Where is
25 your house in relation to the proposed temple site?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MANN: My house is located on 38th
2 Street right on the opposite side of the alley from
3 the proposed temple.

4 MR. BOOTE: And if you'll -- if the Board
5 members would refer to Exhibit 1 of the photographs.

6 And, Mr. Mann, could you tell us where
7 your house is in A-1 of Exhibit 1?

8 MR. MANN: In Exhibit A-1, my house is the
9 sort of tan brick with the red tile roof.

10 MR. BOOTE: And how far is your house set
11 back from the street?

12 MR. MANN: It's approximately 25 to 30
13 feet.

14 MR. BOOTE: And how far back are the rest
15 of the houses in the neighborhood set back?

16 MR. MANN: All of the houses on the
17 street, on both sides, are set back approximately the
18 same distance; that is, about roughly 30 feet.

19 MR. BOOTE: Okay. When did you first
20 learn of the Sikh Cultural Society's plans to build a
21 temple on this site?

22 MR. MANN: I first learned about it in the
23 winter of 2000. I think that it was in February or
24 March we saw people on the site looking at plans.

25 And then, through the intercession of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ANC Commissioner, Lyle Blanchard, and Cathy
2 Patterson's office, we eventually obtained copies of
3 the plans, which you have as the appellant's Exhibit 5
4 and subsequent numbers before you. We got those in --
5 I think in April of 2000.

6 MR. BOOTE: And could you please tell the
7 Board how you believe that the temple would affect
8 your property and your life on 38th Street?

9 MR. MANN: Yes. Well, I think the temple
10 is going to be a lot taller than my house. At the
11 top, the cupola will be approximately -- more than
12 twice as high as my house, and I think the roof line
13 of the temple will be quite a bit higher than my
14 house.

15 And also, since it will -- it will not be
16 set back more than 10 feet from the curb line, it will
17 blot out the light, and it will blot out air, and it
18 also represents the loss of green space.

19 I'm also concerned that people coming to
20 the temple will be parking in the neighborhood, and
21 parking in the neighborhood is already very tight.

22 I'm also concerned with noise, trash,
23 etcetera, and other types of disruptions.

24 MR. BOOTE: And how would this affect the
25 property value of your home?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MANN: Well, I asked a real estate
2 appraiser how this would affect the value of my house,
3 and she told me that by looking at other houses in the
4 neighborhood that were next to churches, they were
5 worth approximately -- their appraised value was
6 approximately 10 percent to 15 percent less than the
7 houses that were not next to a church.

8 So I believe that the impact on the market
9 value of my house would be comparable or perhaps
10 greater because it would take longer for me to sell
11 the house if I chose to do so. So I think the impact
12 would be from about 15 to 20 percent of its value, and
13 the value of the house I would estimate in today's
14 market as being approximately \$400,000. So if you do
15 the math, the impact to me is going to be a loss of
16 approximately \$60,000 in the value of my house.

17 MR. BOOTE: Okay. No further questions of
18 Mr. Mann.

19 I'd like to call Kirk White at this point.

20 Mr. White, would you please state your
21 name and address for the record?

22 MR. WHITE: Yes. My name is Kirk White,
23 and I live at 935 O Street, N.W., Washington, D.C.
24 20001.

25 MR. BOOTE: And, Mr. White, would you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 please provide the Board with a brief summary of your
2 experience in zoning?

3 MR. WHITE: Yes, I will be brief. In
4 approximately 1970, I joined the D.C. Government and
5 took on the role shortly after that of the supervisor
6 of the zoning staff. And, of course, it was just in
7 the home rule base when the charter was just about to
8 be passed. So I supervised the staff of the zoning
9 office. That meant reports and recommendations,
10 including those to the BZA. After 1978, I practiced
11 law with zoning firms until I retired on disability in
12 1995.

13 MR. BOOTE: With respect to Section 400.9
14 of the zoning regulations, how does 400.9 apply to the
15 proposed temple structure?

16 MR. WHITE: I believe it does apply.
17 Apparently, the staff that issues the building permits
18 either overlooked it or got fixed on the -- this
19 corner lot issue. The provision is not written out.
20 It applies equally to these building plans.

21 In fact, 400.9 is basically the setback
22 we're looking for on 39th Street, 38th Street, and you
23 can see it -- where that's needed. Otherwise, the
24 design is excellent. The Sikh community will be
25 welcome. But it's just too big a building.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BOOTE: And how high would the temple
2 structure be up on Massachusetts Avenue?

3 MR. WHITE: I believe it will be 78 feet,
4 which is substantially taller than any of the
5 buildings surrounding it.

6 MR. BOOTE: And you did make a site visit,
7 is that correct?

8 MR. WHITE: Yes, I did, and also looked at
9 churches, temples, etcetera, in the community. I'd
10 just like to point out, without taking too much time,
11 in the appellant's Exhibit 1 are photographs of
12 several churches and temples -- the Washington Hebrew
13 congregation, the Church of the Annunciation -- and
14 you can see, if you'll page through there, that all of
15 them have setbacks, from the street, from the sides,
16 and even from the rear in the case of Saint Sophia and
17 the Temple Mosha.

18 The area has a lot of churches, a lot of
19 temples, and this one will be an important addition to
20 the Mass Avenue corridor. However, it makes no
21 attempt to meet the requirement of Section 400.9.

22 MR. BOOTE: You mentioned -- I think that
23 you were referring to one of the churches in -- it's
24 Christ Church, which is Exhibit 6, and then Saint
25 Sophia's, and Annunciation is Exhibit 4. I think you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 had mentioned one other church that's not in the
2 photographs.

3 MR. WHITE: Right.

4 MR. BOOTE: Okay.

5 MR. WHITE: Annunciation, I mentioned.

6 MR. BOOTE: And when we made a site visit
7 of these churches, did we confirm that the approximate
8 distances set forth in these exhibits are accurate?

9 MR. WHITE: Yes, we did, and we looked at
10 them carefully and paced them off to determine the
11 degree of setback.

12 MR. BOOTE: Do you believe that Section --
13 D.C. Code, Title 5, Section 428 has applicability, if
14 there's ambiguity, and Section 101 of the D.C. zoning
15 regulations? Do they have applicability?

16 MR. WHITE: Yes, they do. And that's the
17 question of using the more restrictive of two
18 provisions, let's say; that the more restrictive
19 governs. In this case, 400.9 is more restrictive,
20 because it says setback. And the corner lot
21 provision, however, is more permissive and is
22 overruled by the other requirements for 400.9, which
23 applies here.

24 MR. BOOTE: Do you have an opinion as to
25 whether the definition of the term "structure" in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 regulations applies to the proposed Sikh Temple and
2 its people?

3 MR. WHITE: Yes, it does.

4 MR. BOOTE: Would you like to add anything
5 else before I call the next witness?

6 MR. WHITE: No. Basically, just one
7 point, and that is, of course, the zoning regulations
8 permit churches in R-1-A, B, C, and so forth, and that
9 has been a positive provision for many years, that
10 places of worship have been allowed to come in. But
11 it is only with respect to proper observance of the
12 zoning regulations, particularly setbacks.

13 MR. BOOTE: Madam Chair, I don't believe
14 that -- I think we need an additional five minutes so
15 we can complete things. Would that be permissible?

16 CHAIRPERSON REID: Well, what else --

17 MR. BOOTE: Well, I'd like to call Mr.
18 Hosky and Mr. Katania to testify. I believe they will
19 be brief. I believe that Mr. Hosky will take about
20 two minutes at the most, and that Mr. Katania would
21 take no more than five.

22 CHAIRPERSON REID: What did you say?

23 MR. BOOTE: I believe that Mr. Katania
24 would take no more than five and Mr. --

25 CHAIRPERSON REID: That sounds like eight.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BOOTE: Well, I have -- I still have a
2 little time left.

3 CHAIRPERSON REID: You had two.

4 MR. BOOTE: I had two when I started
5 talking.

6 CHAIRPERSON REID: Board members, do you
7 have any objection?

8 COMMISSIONER HOLMAN: That's fine.

9 CHAIRPERSON REID: Okay. That's fine.

10 MR. BOOTE: Mr. Hosky, please state your
11 name and address for the record.

12 MR. HOSKY: My name is Thomas S. Hosky,
13 and I live at 3811 Massachusetts Avenue.

14 MR. BOOTE: And could you please refer to
15 Exhibit 1, the second page? And that would be photos
16 A-4 and A-5. And please tell us where your property
17 is located in this picture.

18 MR. HOSKY: Yes. My property is the one
19 immediately to the left of where the building is going
20 on, adjacent to the construction.

21 MR. BOOTE: And would you please tell the
22 Board how you believe that the proposed temple would
23 affect your house, your home, and your livelihood
24 there?

25 MR. HOSKY: Well, this is going to change

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the neighborhood; no question about it. I live in a
2 very special house. It's actually Norman. It's got a
3 rounded turret in the front. It's going to loom well
4 over what's there now.

5 In the past, this has been a very special
6 place. Tourists come and take pictures, literally, of
7 the place. We see it on the television because they
8 use it to screen shots in between programs, just
9 because it has been so beautiful. All of that is
10 going to go instantaneously.

11 It's been one of the truly picturesque
12 areas along Massachusetts Avenue, and I certainly
13 wouldn't have bought the property had I known anything
14 like this could happen. I can't believe it's
15 happening.

16 MR. BOOTE: Do you feel that this proposed
17 temple will affect your property values?

18 MR. HOSKY: Well, I think that, because of
19 the curb appeal of my house going out the window, I
20 think I'll lose a third of the value on it, I would
21 judge.

22 MR. BOOTE: At this time, I'd like to call
23 Mr. Katania, Council Member Katania.

24 CHAIRPERSON REID: Thank you.

25 COUNCIL MEMBER KATANIA: Thank you, Madam

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Chair.

2 CHAIRPERSON REID: Good morning.

3 COUNCIL MEMBER KATANIA: I appreciate this
4 opportunity to speak, and I know you're beyond your
5 schedule, so let me be very brief and start by, you
6 know, saying how much we would welcome to have the
7 Sikh Temple located in Washington, D.C., but there are
8 caveats here.

9 I had the good fortune when I was an
10 undergraduate at Georgetown to have my next-door
11 neighbor for two years be a Sikh, and to have
12 fulfilled all of my theology requirements at
13 Georgetown studying Hindu, the Bagavadgeeta, 16th
14 century Valibachyad, the great regard for your
15 religion and for you as a people.

16 There is, however, a problem with locating
17 this temple in this neighborhood. And if I could, by
18 illustration, I want to point out that there is
19 another large religious institution on Massachusetts
20 Avenue. It's the Islamic Center that's on the corner
21 of Belmont and Massachusetts. And the similarities
22 are just so unbelievable here. And, in the end, I
23 think should the Sikhs prevail and move there, it will
24 be a decision you will regret.

25 At this point, there are -- for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Islamic Temple, in a residential neighborhood, you
2 have 1,200 worshippers and no parking spaces. It
3 presents many problems, not the least of which is a
4 safety issue.

5 During Ramadan, for instance, you cannot
6 get emergency vehicles in and out. Last year, during
7 Ramadan, the day before, there was a fire next to
8 Chris Wallace's house. Had it happened the day of
9 Ramadan, the entire neighborhood would have gone up in
10 flames.

11 You have issues of trash, because the
12 Islamic Temple, they feed their worshippers. You have
13 just a general issue of noise, and a deconstruction of
14 the whole residential character of the neighborhood.

15 There are ample opportunities to locate
16 this temple in the city, and I, for one, would be the
17 first to help find an alternative site.

18 But in the end, I cannot tell you how my
19 office is consumed with constituent issues. I mean, I
20 can literally name the individuals. I know that on
21 Friday I'll receive a call from Edie Darlington
22 because the police officer, which we have to assign at
23 the corner of Mass and Belmont, at 12:00 isn't there,
24 because without the officer we can't direct the
25 traffic, and all of Mass Ave comes to a stop.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 I know this is going to happen. When you
2 provide no parking spaces, you put up a facility that,
3 while we very much want, is not appropriate for a
4 location, you present undue burdens on the community.

5 You are going to create, should this process move
6 forward, such a burden on the community.

7 I encourage you before you make your
8 decision to go to Belmont and Massachusetts on Friday
9 afternoons at noon, and see what happens when you put
10 a large institution with no parking, with very concise
11 time periods of use, in a residential neighborhood. I
12 mean, the number of -- I can count on -- for instance,
13 on both hands, the number of times Mario Castille has
14 called me to tell me he can't make a business meeting
15 because he can't get his car out of the garage because
16 there is a car parked in his garage.

17 That isn't to suggest that our Muslim
18 worshippers, or that our Sikh worshippers, are any
19 different from our Jewish worshippers and our
20 Christian worshippers in terms of sensitivity. The
21 idea is, though, when it's time to pray, it's time to
22 pray. You do the best you can. And when there are no
23 available spaces, which there are not in this
24 neighborhood -- when St. Albans Towers goes into
25 effect, there will be no empty spaces in this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 neighborhood. Worshippers do what they have to do.

2 And you are just going to create such a
3 catastrophe for future council members to deal with,
4 and I would urge this Commission to postpone this
5 application and let the city, through its Office of
6 Economic Development and through the Office of
7 Planning, to help the Sikhs find an alternative site
8 and to work out an arrangement with the neighborhood
9 to make them whole. We don't want them out any money
10 financially, but this just is not something that bodes
11 well for the community.

12 And, again, this is absolutely nothing
13 against the Sikhs or your temple. As I said, I spent
14 two years of the journey with someone I still consider
15 my friend today. It's a matter of -- if you had to
16 talk with Mr. Durai at the Islamic Temple, I encourage
17 you to do that before you move there.

18 He has on his lists of things not the --
19 the spiritual well being of his worshippers, but he
20 has to worry about whether or not David Hutchison or,
21 again, you know, any number of the constituents
22 calling him complaining about the noise, traffic,
23 trash, and it is -- it creates such a tension. It is
24 not conducive to spirituality.

25 And with that, I -- again, I very much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 appreciate the Chair's indulgence, and thank you for
2 giving me some of your time. Thank you.

3 CHAIRPERSON REID: Thank you very much,
4 Mr. Katania, for coming in.

5 MR. BOOTE: Madam Chair, I'd just like to
6 add two points very quickly. Please look at the
7 exhibits of the churches in your deliberations. Note
8 every church has a substantial setback. The massive
9 wall on 38th Street is completely inconsistent with
10 the neighborhood and with requirements of
11 Section 400.9.

12 CHAIRPERSON REID: What was that exhibit
13 again of the churches?

14 MR. BOOTE: The churches? The photographs
15 are Exhibits 1 through 4, and then there are multiple
16 photographs on each of those specifically.

17 And if the Board has any questions before
18 I --

19 CHAIRPERSON REID: Please stay there one
20 moment. We may have some questions.

21 MEMBER RENSHAW: Madam Chair, I'd just
22 like to verify the distance from the temple to Mr.
23 Mann's property across the alley. Is that a 15-foot
24 alley?

25 MR. BOOTE: That's a 15-foot alley. And,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in fact, the temple will be set back. There would be
2 no exception for the setback on the rear, so that's
3 approximately 15 feet on the alley and 26 feet to the
4 temple proper.

5 MEMBER RENSCHAW: Okay.

6 MR. BOOTE: And it will be -- there will
7 be parking there, however.

8 MEMBER RENSCHAW: Parking off the alley.

9 MR. BOOTE: No. Parking on their 26 feet
10 that is -- abuts the alley. I think it's six parking
11 spaces.

12 MEMBER RENSCHAW: And would you address the
13 parking situation that has been raised by Council
14 Member Katania in regard to this design? Is there
15 underground parking?

16 MR. BOOTE: There is underground parking.
17 There are 21 spaces. There are six spaces outside.
18 I believe there's a total of 27.

19 I would like to note for the record,
20 however, that under 2115 there is a -- the parking
21 structure, the architectural plans, are inconsistent
22 with Section 2115. There is inadequate width for six
23 of the spaces, and that's in the memorandum.

24 MEMBER RENSCHAW: The capacity of the
25 temple is 270?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BOOTE: That's what we've been told.

2 MEMBER RENSHAW: All right.

3 MR. BOOTE: As the temple grows, however,
4 we would -- you know, I don't know much about the Sikh
5 Cultural Society, but I would expect it to grow.

6 VICE CHAIRPERSON SOCKWELL: Mr. --

7 MR. BOOTE: Boote.

8 VICE CHAIRPERSON SOCKWELL: -- Boote, I
9 have just a few questions. One, you chose examples of
10 churches that have setbacks. There are many examples
11 of churches that don't have setbacks.

12 MR. BOOTE: I don't believe that's true.

13 VICE CHAIRPERSON SOCKWELL: I could
14 suggest that Unitarian All Souls Church has no
15 setback.

16 MR. BOOTE: But that's --

17 VICE CHAIRPERSON SOCKWELL: National
18 Memorial Baptist Church has no setback.

19 MR. BOOTE: But those aren't in
20 residential --

21 VICE CHAIRPERSON SOCKWELL: They are in
22 residential neighborhoods. They are not in commercial
23 neighborhoods.

24 MR. BOOTE: But All Souls is on 16th
25 Street.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 VICE CHAIRPERSON SOCKWELL: It certainly
2 is. It also fronts off 15th Street and on Harvard
3 Street.

4 MR. BOOTE: Right. Well, that may --

5 VICE CHAIRPERSON SOCKWELL: And what I'm
6 trying to say is that there are instances where -- you
7 cannot just show instances of churches that have
8 setbacks and say that is the norm. I believe that it
9 helps to show only churches with setbacks, but you've
10 also presented witnesses who state that any church, no
11 matter what, is going to cost 10, 15 percent in lost
12 property value. So there could be a prejudice against
13 religious institutions amongst some of your witnesses.

14 MR. BOOTE: No, that's absolutely false.

15 VICE CHAIRPERSON SOCKWELL: Well, that's
16 what he said.

17 MR. BOOTE: Prejudice among the --

18 VICE CHAIRPERSON SOCKWELL: Prejudice.
19 That is, a church is considered to be a negative
20 influence on the residential community, because of its
21 mass, because of the type of use that it brings as an
22 assembly use, and that could be considered, if it is a
23 principal issue, as one of not wanting churches in the
24 residential neighborhood. I mean, I'm just trying to
25 present what has been testified to as a question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BOOTE: Well, I would say that we
2 welcome the Sikh Cultural Society in the neighborhood,
3 but just comply with the setback requirements.

4 VICE CHAIRPERSON SOCKWELL: And one other
5 thing that I -- your interpretation of regulation is
6 that -- and Mr. White's interpretation of the
7 regulation -- is that churches are bound into the
8 loose category of institutional buildings, while
9 churches are generally defined independently in the
10 ordinance as a building type.

11 MR. BOOTE: If that is correct, then
12 Section 400.5 applies, and the setback is equal to one
13 foot for each foot of height. There are only two
14 categories of buildings and structures, 400.5 and
15 400.9.

16 VICE CHAIRPERSON SOCKWELL: Yes. And
17 there is a difference between buildings and
18 structures. Do you know what that is?

19 MR. BOOTE: Yes. A structure includes
20 anything constructed.

21 VICE CHAIRPERSON SOCKWELL: What does a
22 building include?

23 MR. BOOTE: A building is -- typically
24 goes up to its roof.

25 VICE CHAIRPERSON SOCKWELL: No, that's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 what the definition says at all. I will read it to
2 you, so that it is clarified. I think that you should
3 have that clarification.

4 In the zoning ordinance, "building" is
5 defined as a structure having a roof supported by
6 columns or walls for the shelter, support, or
7 enclosure of persons, animals, or chattel. That is a
8 building as opposed to a structure.

9 And, therefore, many of the definitions
10 which refer to a type of structure refer specifically
11 to the building type of structure, which affects how
12 height is measured, especially in an R-1-A and B
13 District. And those types of definition specificities
14 make the loose definition of structure less applicable
15 and the more specific definition of "building" as a
16 type of structure very applicable.

17 MR. BOOTE: Well, let me point out that in
18 the definition on "building," a building is a
19 structure.

20 VICE CHAIRPERSON SOCKWELL: Yes, it is,
21 and a human is an animal. But there is a difference.

22 MR. BOOTE: Correct. But you have to
23 cross-reference the --

24 VICE CHAIRPERSON SOCKWELL: You had to
25 think about that for a minute, though, didn't you?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(Laughter.)

MR. BOOTE: It went right past me.

You then have to cross-reference the definition of "structure." And the definition of "structure" includes anything constructed, including flagpoles.

Now, perhaps the temple proper, meaning the roof and below, is the building, but that cupola is part of the structure, and there's no question about it --

VICE CHAIRPERSON SOCKWELL: It is, yes.

MR. BOOTE: -- 400.9 is --

VICE CHAIRPERSON SOCKWELL: You are quite right, Mr. Boote, that it's part of the structure, but it is part of the building, which is the more specific structural type, under which embellishments are defined, not structure as an antenna rising from the ground, as a fireman's hose tower separated but not included in the fire station.

Things like this have to be more specifically defined by the ordinance in order for the ordinance to be able to regulate them. That is why the cupola could not be built from the ground up as a non-occupiable element of structure at 150 feet.

However, if one goes to, for example,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Franklin Square, one finds 130-foot towers rising
2 above the roofs of office buildings. Those towers are
3 not occupiable and are not allowed under the zoning
4 ordinance to contain any facilities used within or for
5 the support of the building. They are strictly
6 embellishments.

7 The cupola, in this case -- this, for
8 example, does not have access -- these are additional
9 non-occupiable or unoccupiable aspects of the
10 building, which is defined more tightly than a
11 structure. I'm just trying to bring these definitions
12 into clarity for you, because your interpretation of
13 them is somewhat different from the one that I am used
14 to.

15 MR. BOOTE: Well, we believe that the
16 definition of "structure" is crystal clear and --

17 VICE CHAIRPERSON SOCKWELL: It is very
18 clear what a structure is.

19 MR. BOOTE: Right.

20 VICE CHAIRPERSON SOCKWELL: It is also
21 very clear what a building is as different from a
22 generic structure.

23 MR. BOOTE: Well, the definition of a
24 structure is anything constructed, including a
25 building.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON SOCKWELL: Yes.

2 MR. BOOTE: A building is a structure.

3 VICE CHAIRPERSON SOCKWELL: Exactly. And
4 including a building means that the structure is the
5 general, and building is the specific. Would you not
6 agree?

7 MR. BOOTE: Yes, that's correct.

8 VICE CHAIRPERSON SOCKWELL: Okay, then.

9 MR. BOOTE: But that doesn't mean that the
10 cupola is not part of the structure of the temple.

11 VICE CHAIRPERSON SOCKWELL: Oh, no. I
12 wouldn't say that it is not part of the structure of
13 the temple. But the temple is a building, not a
14 structure, in general terms. Because it is a
15 building, those aspects of the building are defined as
16 they relate to a building, which has a roof, is
17 supported by columns, and is occupiable by humans,
18 animals, or chattel.

19 MR. BOOTE: But 400 foot high, whoever
20 drafted it doesn't just refer to building; they refer
21 to structures as well. So we would disagree. We
22 believe that the temple -- the building and the
23 structures that are connected to it -- are -- come
24 within 400.9, regardless of the definition of
25 "building."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Therefore, the steps in front are
2 constructed and part of the building, part of the
3 structure. Therefore, the setback of those steps has
4 to be 23 feet. Similarly --

5 VICE CHAIRPERSON SOCKWELL: Did you know
6 that steps can protrude into public space? And have
7 no setback at all when they are part of a building or
8 structure?

9 MR. BOOTE: But not when the structure
10 exceeds a certain height in a residential district.

11 VICE CHAIRPERSON SOCKWELL: Well, do you
12 know how height is defined?

13 MR. BOOTE: I do.

14 VICE CHAIRPERSON SOCKWELL: How is height
15 defined in your residential district?

16 MR. BOOTE: Well, you have to look at the
17 definitions, because they are --

18 VICE CHAIRPERSON SOCKWELL: No. What I
19 define as to the roof or ceiling, under side of the
20 ceiling at the top story.

21 MR. BOOTE: Roof or parapet.

22 VICE CHAIRPERSON SOCKWELL: Well, no,
23 under side of the ceiling at the top story.

24 MR. BOOTE: Correct.

25 VICE CHAIRPERSON SOCKWELL: You are not --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it has nothing to do with roof or parapet. Has to do
2 with --

3 MR. BOOTE: You're right.

4 VICE CHAIRPERSON SOCKWELL: -- the
5 ceiling.

6 MR. BOOTE: I'm familiar with that, yes.

7 VICE CHAIRPERSON SOCKWELL: Okay. So that
8 means that if there is a roof rising above the
9 ceiling, and that roof is a pitched roof, that roof
10 could rise 50 feet in the air.

11 MR. BOOTE: But once it's --

12 VICE CHAIRPERSON SOCKWELL: And it would
13 still not contribute to the height as defined in the
14 ordinance.

15 MR. BOOTE: Not the height of the
16 building, but the height of the structure.

17 VICE CHAIRPERSON SOCKWELL: Here again,
18 we're separating -- I'm trying to separate building
19 from structure, and you're trying to combine the two,
20 and they don't work.

21 MR. BOOTE: Okay. Well, let's take
22 building out of the equation.

23 VICE CHAIRPERSON SOCKWELL: And the
24 interpretations of the ordinance from 1958 to today
25 support what I'm talking about.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BOOTE: Well, the determination --

2 VICE CHAIRPERSON SOCKWELL: The buildings
3 that exist in the city are the result of those
4 interpretations. Good, bad, or indifferent, they have
5 been there for that long.

6 MR. BOOTE: Well, there's no difference to
7 interpretation if the statute is crystal clear. These
8 regulations, under 400.9, are clear, as is the
9 definition of "structure."

10 VICE CHAIRPERSON SOCKWELL: Thank you.
11 I'm just giving you my feelings on that.

12 MR. BOOTE: Thank you.

13 CHAIRPERSON REID: Thank you, Mr.
14 Sockwell, for that very -- rather well -- well studied
15 and well -- very specific take on everything as to the
16 correct interpretation of height and building and
17 structure, and also height, which, unfortunately, is
18 the reason why we're here, because of the various ways
19 in which the same regulation can be interpreted by
20 various persons, be they experts or otherwise. And
21 this is what we have to try to ascertain as to who is
22 correct, or how is it best interpreted.

23 MR. BOOTE: Well, the one last point is
24 that, under Section 101, the more restrictive
25 provision has to be applied.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

CHAIRPERSON REID: Then go back to the comprehensive plan.

MR. BOOTE: No, not the comprehensive plan. If you're choosing between two different regulations within the zoning regulations, you have to choose the most restrictive. And the most restrictive is 400.9.

CHAIRPERSON REID: Okay. I do remember that being raised as the issue for the use of the comprehensive plan as well in your -- in the preliminary matters.

Okay. Now, that concludes your --

MR. BOOTE: Yes, I sped up quite a bit, and I think that --

CHAIRPERSON REID: Any other questions?

MR. BOOTE: -- I have -- if no one has other questions --

CHAIRPERSON REID: Are there any other questions?

MR. BOOTE: Okay. Mr. Holman, do you have any questions?

COMMISSIONER HOLMAN: No. No questions.

CHAIRPERSON REID: You were saying, Ms. Pruitt?

SECRETARY PRUITT: Do the parties have any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 questions on cross examination?

2 CHAIRPERSON REID: Okay. Now, cross
3 examination? Do the parties have questions for --
4 okay. Ms. Ray?

5 MS. RAY: Venita Ray again, representing
6 DCRA, from the Office of Corporation Counsel. I have
7 a couple of questions for Mr. White.

8 Mr. White, I read your statement and where
9 you indicated that the building is 73 foot high. And
10 today I guess you indicated that it's 78 foot high.

11 MR. WHITE: It's 78.

12 MS. RAY: It's 78? And can you tell us
13 how you measured -- how you reached 78 foot?

14 MR. WHITE: By scaling the drawings.

15 MS. RAY: Okay. Are you familiar with the
16 definition for measuring building height? I know you
17 are.

18 MR. WHITE: Yes. The principal entrance,
19 the grade in front of the principal entrance, to the
20 roof or parapet.

21 MS. RAY: Can I show you -- to the roof or
22 parapet, not to the ceiling?

23 MR. WHITE: It depends on what's on that -
24 -

25 MS. RAY: Okay. Let me show you -- I hate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to do this. Just a moment. Can I pass this -- I know
2 the government is presenting next, and we -- I would
3 like to refer Mr. White to the building definitions,
4 and I want the Board to be able to follow along. So
5 I'm passing what I was going to have our government
6 witness discuss, which has the definitions, up for
7 you, Mr. --

8 MS. KRESS: This is not the time to
9 present the case, only to do cross.

10 MS. RAY: Right. But I just want you to
11 be able to see what I'm referring to.

12 Can I refer you to what the government
13 will show later as Government's Exhibit 1, on page
14 112, under "Building Height," and ask you what --
15 first of all, which -- is this the District -- the
16 building height limit is 40 feet, correct?

17 MR. WHITE: Yes, ma'am.

18 MS. RAY: Okay. Could you read, then,
19 under "Building Height," how building height is
20 measured?

21 MR. WHITE: The vertical distance measured
22 from the level of the curb, opposite the middle of the
23 front of the building, to the highest point of the
24 roof or parapet.

25 MS. RAY: And can you follow down to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 next paragraph?

2 MR. WHITE: In those districts in which
3 the height of the building is limited to 40 feet, the
4 height of the building may be measured from the
5 finished grade at the middle of the front of the
6 building to the ceiling of the top story.

7 MS. RAY: Okay.

8 MR. WHITE: Of course --

9 MS. RAY: And so, when you -- when you
10 measured, then, to the parapet, is it -- based on the
11 definition, the building height could be measured,
12 based on this, to the ceiling and not to the parapet?

13 MR. WHITE: Well, it could. But the
14 difference would be wider.

15 MS. RAY: So if you -- this building you
16 measured to just the ceiling, based on the definition
17 for a district in which the building heights are
18 limited to 40 feet, do you know what the height of
19 this building would be?

20 MR. WHITE: The building would be 78 feet
21 in its entirety.

22 MS. RAY: So you wouldn't -- the
23 definition, the change in the way that the building is
24 measured, the building height is measured in a
25 district where the building heights are limited to 40

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 feet, would not change your testimony as to how high
2 the building is?

3 MR. WHITE: No, it wouldn't.

4 MS. RAY: Okay. Next question, are you
5 familiar with architectural embellishments?

6 MR. WHITE: Yes, I am.

7 MS. RAY: And is there a limit on the
8 height in architectural embellishments?

9 MR. WHITE: No, there is not.

10 MS. RAY: That's all. Thank you.

11 MR. WHITE: Thank you.

12 CHAIRPERSON REID: Okay. Any other cross
13 examination? All right. Thank you very much.

14 MR. SINGH: I have only one question.

15 CHAIRPERSON REID: I'm sorry?

16 MR. SINGH: I have only one question on
17 cross.

18 CHAIRPERSON REID: Oh, you do? Okay.
19 Sure. Please come forward and identify yourself and
20 give your address, please.

21 MR. SINGH: My name is Juri Singh, and I'd
22 just like to ask a few questions to the homeowner
23 association.

24 CHAIRPERSON REID: Address, please, Mr.
25 Singh?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SINGH: Pardon?

2 CHAIRPERSON REID: Address, please.

3 MR. SINGH: 87167 Locks Road, Bethesda,
4 Maryland.

5 And Mr. Thomas Mann and Mr. Schneiderman,
6 which lived on the -- next to the alley -- they
7 mentioned they do not know the property that is temple
8 property. But for the last 20 years, everybody has
9 been parking on our site. We did not say anything,
10 and everybody knew it --

11 CHAIRPERSON REID: No, no, no. No. This
12 is not -- this is not the time for you to testify.
13 This is the time for cross examination.

14 MR. SINGH: Yes.

15 CHAIRPERSON REID: So you must use this as
16 an opportunity to just ask questions to Mr. Boote, and
17 then you will be given an opportunity to testify.

18 MR. SINGH: Because I don't know so many
19 legal point of views, I am layman at this.

20 CHAIRPERSON REID: Okay.

21 MR. SINGH: So I'd just like to ask Mr.
22 Mann, didn't he know the property belonged to Sikh
23 Cultural Society?

24 MR. MANN: Yes, I did know that the
25 property was owned by the -- not by the Sikh Cultural

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Society. I knew it was owned -- part of it was owned
2 by Dr. Shamsher Singh. And then, that's --
3 eventually, I did know that it was owned by the Sikh
4 Cultural Society, yes, when I learned about the
5 permit. But I thought it was owned by Mr. Singh
6 before, Dr. Singh.

7 MR. SINGH: But you did not know it's
8 temple property?

9 MR. MANN: I did not know that you were
10 going to build a temple on that site until you ordered
11 the permit.

12 MR. SINGH: But you knew it was temple
13 property. What you are thinking they are going to do
14 with this property?

15 MR. MANN: Well, I understand that Dr.
16 Singh tried to sell one of the lots before the
17 property was subdivided. So I didn't really know what
18 was going to happen, but it was certainly a surprise
19 to me to see such a large building planned for such a
20 small piece of land.

21 MR. SINGH: We did hear about the large on
22 a small property. We are not asking large or small.
23 We are simply asking that --

24 CHAIRPERSON REID: You're testifying
25 again.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SINGH: Yes. No, but I'm saying that
2 the large -- well, if it was too large, and it would
3 combine one lot, correct?

4 MR. MANN: Well, that's what I -- that's
5 what I have learned about it. I knew that members of
6 the Sikh community owned the land. Yes, sir, I'm
7 not --

8 MR. SINGH: Thank you very much.

9 MR. MANN: -- I'm not denying that.

10 MR. SINGH: That was only my question was.
11 And Mr. Councilman did mention something.
12 Can I ask just --

13 CHAIRPERSON REID: He's not here.

14 MR. SINGH: Oh, he's gone.

15 CHAIRPERSON REID: Yes. You would have to
16 ask questions specifically to him, and no one else can
17 really answer those questions.

18 MR. SINGH: Thank you, Madam Chairperson.

19 CHAIRPERSON REID: Thank you.

20 Okay. Government? DCRA? Ms. Ray?

21 MS. RAY: Sure.

22 CHAIRPERSON REID: Ms. Ray, do you need 20
23 minutes, or 15?

24 MS. RAY: Twenty at the most. We only
25 have one witness.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Okay.

2 MS. RAY: Good morning, Madam Chairperson,
3 and Board members. Again, I'm Venita Ray,
4 representing DCRA on behalf of Office of Corporation
5 Counsel.

6 I'd like to call your attention to what I
7 handed out already. It's a government's exhibit that
8 we'd like entered into the record, and which our only
9 witness, Mr. Bello, will use in his testimony, and so
10 we wanted you to be able to follow along.

11 It is the District's position that the
12 building permit in question was properly issued, and
13 the key aspect here -- and even though the appellant
14 put on evidence or provided testimony that had to do
15 with property values and things like that, the key
16 aspect in this building is -- solely has to do with
17 the setback requirements, and if the zoning
18 regulations were properly complied with, and,
19 therefore, the building permit properly issued.

20 It's not whether -- the property values
21 and all these other things that have been presented
22 here today. So we want to call your attention to the
23 documents and the exhibits that we submitted for you.

24 The setback requirements, as Mr. Bello was
25 testify, that are referenced at 11 DCMR 400.9, or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 400.5, either one, do not apply because the building
2 in this instance, as measured by the building height
3 in the zoning regulations, is well under the height
4 limit. They have complied with all of the zoning
5 requirements in this instance, and DCRA properly
6 issued the building permit.

7 Okay. Mr. Bello, I guess for the Board
8 and for the people present, can you give your name and
9 your title?

10 MR. BELLO: My name is Toya Bello. I'm
11 with the Zoning Review Branch of DCRA. I'm the zoning
12 technician.

13 MS. RAY: What do you do?

14 MR. BELLO: I interpret the zoning
15 regulations as they apply to the building permit
16 process.

17 MS. RAY: And are you familiar with the
18 building permit in question?

19 MR. BELLO: Yes, I am.

20 MS. RAY: Okay. And are you also familiar
21 with the zoning regulations that are being challenged
22 here; specifically, 11 DCMR -- I believe it's 400.1
23 through 400.9?

24 MR. BELLO: Fairly well, yes.

25 MS. RAY: Okay. And let's start off, is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it the position of DCRA that the building permit was
2 properly issued in this instance?

3 MR. BELLO: Yes, ma'am.

4 MS. RAY: Okay. Then, first, can we go to
5 the exhibits. And can you explain for the Board,
6 then, how the building height is implicated in this
7 case, and why the building permit was properly issued
8 in relation to the setbacks?

9 MR. BELLO: In the underlying zone that
10 this property lies in, which is R-1-B, the height
11 limit is 40 feet.

12 MS. RAY: Can you refer to the zoning regs
13 that you're referring to, Mr. Bello?

14 MR. BELLO: The height limitation I refer
15 to is in accordance with the table under 400.1. And
16 in those districts where the height limitation is 40
17 feet, the definition clearly allows you to take the
18 measurement to the ceiling of the top story. And the
19 plans presented only has a height of barely over 30
20 feet to the ceiling on the top story.

21 MS. RAY: And how did you -- what did you
22 base your decision on -- the method that you used to
23 measure the building height in this instance?

24 MR. BELLO: On the definition that allows
25 you to measure to the ceiling of the top story for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 districts in which the height limitation is 40 feet.

2 MS. RAY: And was that 11 DCRM 199, the
3 section I had Mr. White read?

4 MR. BELLO: That's correct.

5 MS. RAY: Okay. Can you continue?

6 MR. BELLO: Section 400.3 specifically
7 allows architectural embellishments to exceed that
8 height, without any limitation on such.

9 MS. RAY: Okay. Just a second. So in the
10 building permit in question, are they in violation of
11 any setback requirements?

12 MR. BELLO: Not according to the setback
13 sections of -- for side yards. 405.5 allows for a
14 building that's a corner lot not to provide a side
15 yard on either side of the side property lines that
16 abut a major street.

17 MS. RAY: So the side yard is not required
18 on the corner.

19 MR. BELLO: Neither on 38th or Mass
20 Avenue.

21 MS. RAY: Okay. Does the property in
22 question have a side yard?

23 MR. BELLO: Yes. I believe west of the
24 property, where it's required to be eight feet, they
25 provide 10 feet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. RAY: So can you state that? Do they
2 meet the requirements for the side yard requirement?

3 MR. BELLO: They do meet the requirements
4 for the side yard setback requirements under 405.9,
5 and comply under 405.5 with the exemption for corner
6 lots.

7 MS. RAY: And do you know the measurement
8 for the side yard that they do have? I mean, what
9 does it require?

10 MR. BELLO: Eight feet.

11 MS. RAY: And what does the applicant
12 have?

13 MR. BELLO: Ten feet.

14 MS. RAY: Okay. And I think we're kind of
15 way past the building height definition. What is the
16 limitation -- you mentioned, and I don't know if
17 everyone heard you -- what the building height for
18 this building is.

19 MR. BELLO: The building height, as
20 measured to the ceiling of the top story, is about 31
21 feet.

22 MS. RAY: Okay. Are you aware how tall
23 the spires or the architectural embellishments are?

24 MR. BELLO: I believe they would be
25 approximately 40 feet above that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. RAY: Okay. And is it your testimony
2 that there's no limit on the height of architectural
3 embellishments, or the cupola of a temple, the spires?

4 MR. BELLO: As dictated by 400.3, yes.

5 MS. RAY: Okay. Secondly, do churches
6 have special a height requirement? Did you testify to
7 that?

8 MR. BELLO: Under Section 400.6, a church
9 may erect a structure to 60 feet in height.

10 MS. RAY: Okay. And can you explain for
11 the Board, then, why, as brought out by the
12 appellants, that 400.9 does not apply in this
13 instance?

14 MR. BELLO: Well, because, obviously, the
15 Code does not treat the church as an institution.
16 Institutions that choose to go up to 90 feet are then
17 required to set back one foot for every height above
18 the height limit of the zone.

19 MS. RAY: Okay. And then, so church -- a
20 church is not considered an institutional building, is
21 that correct?

22 MR. BELLO: That is correct.

23 MS. RAY: Okay. And, therefore, 400.9
24 would only apply, in this instance, where an
25 institutional building exceeded the height limitation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of 40 feet in this district?

2 MR. BELLO: That's correct.

3 MS. RAY: Could you also testify --
4 provide an explanation of why 400.5 does not apply in
5 this instance?

6 MR. BELLO: Well, 400.5 does not apply in
7 this instance because the church is not seeking to
8 exceed the municipal height that's allowed under
9 400.6. 400.5 applies to any building, single family,
10 any type of building, that chooses to go up to 90
11 feet, provided they can set back a distance of a one
12 to one ratio from all property lines.

13 MS. RAY: So based on the regulations
14 you've just described, the height limitation in this
15 area is 40 feet, churches have 60 feet, the building
16 in question -- the proposed building in question has
17 only an anticipated height of 30 feet.

18 MR. BELLO: That's correct.

19 MS. RAY: And that the extended
20 architectural embellishments above 30 feet, that are
21 approximately 43 feet, have no limitations?

22 MR. BELLO: That's correct.

23 MS. RAY: Okay. Do they meet the backyard
24 requirements for a set back?

25 MR. BELLO: Yes. Yes, they do. Twenty-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 five feet is what's required; they provide 26 feet.

2 MS. RAY: Can you refer the Board to what
3 section of the regulations you're referring to?

4 MR. BELLO: That will be 404.1.

5 MS. RAY: And the regs require 25 feet.
6 Do you know what the proposed building -- what type of
7 a setback for the backyard that the proposed applicant
8 has?

9 MR. BELLO: I believe it's 26 feet.

10 MS. RAY: Okay. And just on another note,
11 the lot occupancy for a church of this zoned district,
12 can you also clarify for the Board, because there has
13 been testimony that the building is just too large,
14 and what the lot occupancy for this building would be?

15 MR. BELLO: 403.2 allows churches or
16 public schools to build up to 60 percent of its lot
17 size. I believe that the proposed percentage here is
18 48 percent.

19 MS. RAY: Thank you. Now, are you aware
20 of issues of non-compliance with respect to parking
21 spaces?

22 MR. BELLO: No, I'm not. The parking
23 requirement under 2101 is one for every 10 seats of
24 sanctuary capacity, and at a capacity of 270, I
25 believe, they are required to provide 27 parking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

spaces, which they do in combination with the garage and outside parking that they have.

MS. RAY: So, then, are there any issues of non-compliance that you're aware of with respect to parking spaces?

MR. BELLO: No, ma'am.

MS. RAY: Thank you. The last question is about the -- and it's mentioned in the statement of the applicant -- the placement of the front steps. Are you aware of other requirements or any issues of non-compliance with respect to the placement of the front steps?

MR. BELLO: No, I'm not. Section 2503.5 - .4, pardon me, allows stairs to occupy area required. In this instance, they only occupy the side properties. There isn't any requirement on that.

MS. RAY: Is there any additional information you would like to give to the Board with respect to this application and the appeal?

MR. BELLO: No, ma'am.

MS. RAY: Okay. That would conclude the government's presentation. Again, we would just remind the Board that the issues that we're here today have to do with the setback requirements, which relate specifically to the actual building height in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 question.

2 And if measured in compliance with the
3 definition section of the zoning regulations, what we
4 measure -- and measured properly, it would be 30 feet,
5 not 43 feet. And in this instance, an R-1-B District,
6 the height of the building is allowed to go up to 40
7 feet, or churches up to 60 feet.

8 And it's only if they exceed the height
9 limitations would the setback requirements of 400.5
10 come into play. Since a church is not an
11 institutional building, as Mr. Bello testified, 400.9
12 does not apply in this instance.

13 The applicant has complied with the zoning
14 regulations. DCRA's other position is it has properly
15 issued the building permits in question and would ask
16 for you to deny the appeal. The applicant has -- oh,
17 we don't have to go there. I'm sorry.

18 Okay. We'd ask for you to deny the appeal
19 and affirm DCRA's decision to issue the building
20 permit. Thank you.

21 CHAIRPERSON REID: Thank you, Ms. Ray.

22 Board members, do you have questions? Do
23 you have questions for Mr. Bello? All right. Cross
24 examination?

25 MR. BOOTE: Yes, I'd like to question him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: All right. Mr. Boote?
2 Of whom? Mr. Bello?

3 MR. BOOTE: I beg your pardon?

4 CHAIRPERSON REID: Who do you want to
5 cross examine?

6 MR. BOOTE: Mr. Bello.

7 CHAIRPERSON REID: Okay.

8 MR. BOOTE: Good morning, Mr. Bello.

9 MR. BELLO: Good morning, sir.

10 MR. BOOTE: Mr. Bello, how long have you
11 been in the zoning office?

12 MR. BELLO: Ten years.

13 MR. BOOTE: Ten years. I'd like to refer
14 you to Section 400.9 of the zoning regulations, and
15 ask you, what types of institutional building
16 structures come within that provision?

17 MR. BELLO: I would surmise hospitals,
18 schools.

19 MR. BOOTE: And have you ever utilized
20 400.9 in any of your reviews in the zoning office?

21 MR. BELLO: Personally, no, I do not know
22 of any institutional buildings that have requested to
23 seek refuge under that section.

24 MR. BOOTE: And are you aware of whether
25 the zoning office has used this particular provision,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 even if you haven't dealt with it yourself?

2 MR. BELLO: Not to my personal knowledge.

3 MR. BOOTE: Okay. And does 400.9 apply to
4 buildings that are, say, 85 feet tall, institutional
5 buildings?

6 MR. BELLO: Yes.

7 MR. BOOTE: Okay. And why do you say that
8 it applies to buildings that are 85 feet tall? Where
9 is the language in 400.9 that suggests that it
10 applies?

11 MR. BELLO: That what applies?

12 MR. BOOTE: That the institutional
13 building 85 feet tall would come within the provisions
14 of 400.9.

15 MR. BELLO: Because it would be exceeding
16 the height limitation under the zone.

17 MR. BOOTE: I see. Now, 400.9, the first
18 clause reads, "An institutional building or structure
19 may be erected to a height not exceeding 90 feet,"
20 correct?

21 MR. BELLO: Correct.

22 MR. BOOTE: Okay. Please refer to Section
23 400.5. It says, "A building or other structure may be
24 erected to a height not exceeding 90 feet." Is there
25 any difference between those two, the application of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 those two clauses to the building?

2 MR. BELLO: Yes, sir. One applies to an
3 institutional building specifically, and 400.5 applies
4 to any building.

5 MR. BOOTE: Okay. Any building.

6 MR. BELLO: Or structure.

7 MR. BOOTE: Any building or structure.
8 And does 400.5 apply to building -- would 400.5 apply
9 to a building that's 85 feet tall?

10 MR. BELLO: That's going to apply.

11 MR. BOOTE: And would it apply to a
12 building in a residential district that is 65 feet
13 tall?

14 MR. BELLO: If it's exceeding the height
15 limitation on a building, on a --

16 MR. BOOTE: Would it apply to a structure
17 that exceeds the authorized limit in that area, in the
18 R-1-B District?

19 MR. BELLO: Yes, it would.

20 MR. BOOTE: So if a structure is, say, 80
21 feet tall, that provision would apply, correct?

22 MR. BELLO: That's correct.

23 MR. BOOTE: And what does that 400.5
24 provide if the building exceeds its authorized height?

25 MR. BELLO: Whether it be removed from all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 lot lines an equal distance to its height.

2 MR. BOOTE: Now, is the proposed Sikh
3 Temple -- if you could refer to our Exhibit 7, do you
4 see the -- what is the height between D on the left
5 and F on the right? Approximately.

6 MR. BELLO: It's 70.

7 MR. BOOTE: It's approximately 70 feet.
8 So, now, is the temple a -- the proposed temple, is
9 that a structure?

10 MR. BELLO: The proposed temple is a
11 building.

12 MR. BOOTE: It's a building.

13 MR. BELLO: Correct.

14 MR. BOOTE: A building is not a structure?

15 CHAIRPERSON REID: I thought we already
16 went through that.

17 MR. BOOTE: We did go through it, but I
18 haven't done it with him.

19 CHAIRPERSON REID: We don't need that. I
20 think that the definition is at it is in the
21 regulations, which have been completely gone over,
22 read, earlier. I don't think we need to have that --
23 revisit that same issue.

24 MR. BELLO: Well, with deference, Madam
25 Chairwoman, if the government is saying that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 believe that the temple structure does not come within
2 400.9, but they're saying that a building or a
3 structure does come within 400.5, we will now argue
4 that 400.5 applies, and the setback for the building
5 or the structure must equal the height of the entire
6 building.

7 CHAIRPERSON REID: Okay. All right. You
8 can answer, Mr. Bello.

9 MR. BOOTE: Is a building a structure?

10 MR. BELLO: A building is a structure that
11 says a specific purpose, as defined under the zoning
12 codes.

13 MR. BOOTE: Okay. And is a structure a
14 building?

15 MR. BELLO: A structure is a building.

16 VICE CHAIRPERSON SOCKWELL: Let me clarify
17 that. Mr. Boote, I know you are rambling, but a
18 structure --

19 MR. BOOTE: I'm not rambling. I am --

20 VICE CHAIRPERSON SOCKWELL: A structure is
21 a building or a structure is not a building, depending
22 upon what the structure is used for. Would you not
23 agree, sir?

24 MR. BOOTE: No, I would not.

25 VICE CHAIRPERSON SOCKWELL: So you would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 say that any structure is a building?

2 MR. BOOTE: Absolutely.

3 VICE CHAIRPERSON SOCKWELL: So let's say
4 that if I build an antenna vertically 500 feet in the
5 air, it's a building.

6 MR. BOOTE: No, I would not --

7 VICE CHAIRPERSON SOCKWELL: That's not
8 what you just said. You just any structure is a
9 building.

10 MR. BOOTE: That's not what I just said.
11 I would --

12 VICE CHAIRPERSON SOCKWELL: Mr. Boote,
13 either it is, or it isn't. You can't bend it to meet
14 your specifications.

15 MR. BOOTE: I'm not trying to bend it.

16 VICE CHAIRPERSON SOCKWELL: Well, then,
17 answer my question, please. Is an antenna a building?

18 MR. BOOTE: No, of course it's not a
19 building.

20 VICE CHAIRPERSON SOCKWELL: Is an antenna
21 a structure?

22 MR. BOOTE: Of course it is.

23 VICE CHAIRPERSON SOCKWELL: All right. So
24 is a structure a building in all cases?

25 MR. BOOTE: Apparently not.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON SOCKWELL: Obviously.
2 Thank you.

3 MR. BOOTE: But there are structures --
4 there are buildings and there are embellishments to
5 buildings that are part of the building structure.
6 That's our position.

7 VICE CHAIRPERSON SOCKWELL: This is a
8 position that is semantics, strictly semantics. Mr.
9 Boote --

10 MR. BOOTE: Yes.

11 VICE CHAIRPERSON SOCKWELL: -- you are
12 very persistent with this. But you can twist it any
13 way you want, reality says you can go to the
14 dictionary. Reality says you can go to the body of
15 law. Reality says you can go to this ordinance. And
16 you will get definitions which specify what is what.

17 Now, this ordinance is not the most well-
18 written document that either of us have read in our
19 lives. And there are times when it is very ambiguous.
20 There are times when it doesn't say much at all. But
21 the point is that, in this case, structure and
22 building seem to have been fairly well defined.

23 MR. BOOTE: But we both agree, do we not,
24 that a building is a structure, is that right?

25 VICE CHAIRPERSON SOCKWELL: We have made

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that statement perfectly clear to one another and to
2 everyone in the room.

3 MR. BOOTE: Okay.

4 VICE CHAIRPERSON SOCKWELL: That buildings
5 and structures can occupy the same space at the same
6 time.

7 MR. BOOTE: No, that's not my question.
8 My question is --

9 VICE CHAIRPERSON SOCKWELL: It's a matter
10 and energy kind of thing, but you wouldn't understand
11 that.

12 MR. BOOTE: Well, my question to the
13 witness, and to you, Mr. Sockwell, is: is a building
14 a structure? And if that's the case, then we would
15 argue that, under 400.5, if any building is a
16 structure, and we would argue that it is, that the
17 church -- excuse me, the temple and the cupola are a
18 part of the entire structure of the building, and that
19 that structure exceeds the height that is permitted --
20 excuse me, is permitted in the district, but it must
21 be set back either under 400.9 or 400.5. And you may
22 think that I'm rambling, but I don't.

23 CHAIRPERSON REID: Okay.

24 VICE CHAIRPERSON SOCKWELL: Let me ask you
25 one more question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Okay.

2 VICE CHAIRPERSON SOCKWELL: What does
3 400.2 say, specifically?

4 MR. BOOTE: Except as provided in
5 Section 2510, the height of buildings or structures,
6 as specified in Section 400.1, may be exceeded in the
7 instances provided in Sections 400.3 through 400.13.

8 VICE CHAIRPERSON SOCKWELL: Right. It
9 does not say cumulatively, does it?

10 MR. BOOTE: Each one -- each section --

11 VICE CHAIRPERSON SOCKWELL: Each section--

12 MR. BOOTE: -- stands on its own.

13 VICE CHAIRPERSON SOCKWELL: -- stands on
14 its own.

15 MR. BOOTE: Correct.

16 VICE CHAIRPERSON SOCKWELL: So 400.6,
17 which says a church may be erected to a height of 60
18 feet, says specifically that and only that. It
19 doesn't say that a church is defined under the general
20 term of building or the specific term of industrial --
21 of institutional building. It defines "church" and
22 says just one thing: the church can be 60 feet, as
23 long as it doesn't exceed the number of stories
24 required in the underlying district. Period.

25 MR. BOOTE: But the church is also a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 structure under the definition of "structure." 400.5,
2 which I haven't focused on, requires a much more
3 substantial setback than 400.9. If your argument is
4 that 400.5 applies, we accept that.

5 CHAIRPERSON REID: All right. I think
6 that we get the gist of it. A building is a
7 structure, but not all structures are buildings. And
8 I think that that is the premise from which we can
9 continue.

10 MR. BOOTE: That's right. So I'll just
11 finish up very quickly.

12 Is a church a structure?

13 MR. BELLO: It is a specific type of
14 structure, yes.

15 MR. BOOTE: Okay. So if a church is a
16 structure, does 400.5 apply to churches?

17 MR. BELLO: Well, it would apply if the
18 church was seeking to exceed the permitted height
19 limit under the underlying zone. But that's not the
20 case here.

21 CHAIRPERSON REID: Okay. Mr. Boote,
22 you've already asked that question, and he has already
23 answered that question. So it makes no sense for any
24 of us to sit here and have you two repeat. I mean,
25 are you asking the same question expecting a different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 answer?

2 MR. BOOTE: No, I believe that was a
3 different question. And I believe he is --

4 CHAIRPERSON REID: No, no, no.

5 MR. BOOTE: Okay. I don't want to repeat
6 myself. Absolutely. And I think that the -- I have
7 no more questions of the witness.

8 CHAIRPERSON REID: Okay. Thank you.

9 No more cross examination?

10 VICE CHAIRPERSON SOCKWELL: May I ask Mr.
11 Boote one quick question, based on his submission of
12 evidence?

13 Mr. Boote, in your submission of churches
14 that show setbacks, you've shown some churches with
15 setbacks of 19 feet, some churches with setbacks of
16 more than that. In most of these cases, the setback
17 to the wall of the church is not equivalent to the
18 height of the church.

19 Therefore, if the church is not -- if the
20 church is 70 or 80 feet tall, and it's not setback 70
21 or 80 feet from the property line, then it is
22 virtually a statement of fact that the application
23 that you're attempting to use for 400.5 does not wash
24 with even your submission of evidence.

25 MR. BOOTE: Well, you're probably

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 referring to Saint Sophia's, which has a tall spire.
2 And the fact is is that I don't know the circumstances
3 of the approval for the building of Saint Sophia's,
4 because I don't know whether a variance was granted.
5 But I do know that there is --

6 VICE CHAIRPERSON SOCKWELL: But you
7 submitted them as evidence without knowing fully what
8 the reference to their relationship is based upon,
9 which means that you can't submit evidence that
10 contradicts your premise without having factual backup
11 to the evidence.

12 MR. BOOTE: It doesn't --

13 VICE CHAIRPERSON SOCKWELL: In this case,
14 you don't have enough information to say anything
15 except these churches have setbacks. But you haven't
16 quantified them in any way that makes it valid to say
17 that these churches are different from that church.

18 And in an R-1 District, where the church
19 is initially defined, it is defined -- just for case
20 in point -- as a place of worship and is not defined
21 as certain other facilities, which could also be
22 considered loosely under the term "church," though
23 "church" is defined very tightly in the ordinance and
24 always at the beginning of whichever section that it
25 first appears.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BOOTE: Yes.

2 VICE CHAIRPERSON SOCKWELL: Which would be
3 the residential section. That's all I have to say.

4 MR. BOOTE: Well, I have to respond that
5 the representation of the pictures of the churches in
6 the neighborhood demonstrate that, at a minimum, the
7 zoning office or the Board that grants variances
8 provided protection to the neighborhoods where the
9 churches were built.

10 Saint Sophia's is surrounded by hundreds
11 of feet of either road or property. The same is true
12 -- the smaller churches are set back 70 -- Christ
13 Church is set back 70 to 100 feet. The Annunciation
14 Church is 60 feet on the front, 23 feet on the sides,
15 which is a school, and they are very low.

16 VICE CHAIRPERSON SOCKWELL: Do you believe
17 that in any of those cases the siting of those
18 churches was a design?

19 MR. BOOTE: Was a design?

20 VICE CHAIRPERSON SOCKWELL: Was design,
21 was by design rather than by requirement of the
22 ordinance. When one has a campus-sized site, one is
23 not necessarily going to stick the building up at the
24 far corner. One is going to take advantage of view,
25 of site locations for various reasons.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 You're making assumptions, sir.

2 MR. BOOTE: I don't submit that I know the
3 history of these buildings, nor could I.

4 VICE CHAIRPERSON SOCKWELL: You could have
5 found out a bit.

6 MR. BOOTE: I have found out a bit. I did
7 the measurements on these churches. I know that the
8 height of the Annunciation Church is relatively low,
9 as is the height of Christ Church. Saint Sophia's is
10 taller, and there's a very substantial space around
11 those churches.

12 The Christ Church I know historically
13 dealt with the community and provided work for the
14 community to provide a circumstance where they would
15 not impose a burden by virtue of the size of their
16 structure on the community. The Sikh Cultural Society
17 has done none of that.

18 VICE CHAIRPERSON SOCKWELL: The Sikh
19 Cultural Society has approached the project as a
20 matter of right. When one approaches as a matter of
21 right, one does not have to appeal to the community.
22 I'm not saying that one should not.

23 MR. BOOTE: Correct.

24 VICE CHAIRPERSON SOCKWELL: But as a
25 matter of right, one approaches a project in a much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 different manner than as one -- than one will if one's
2 project requires a variance, a special exception, or
3 some other instrument of government to approve it
4 outside of the standard matter of right process.

5 MR. BOOTE: Well --

6 CHAIRPERSON REID: All right. Let's
7 please move on, because this could go, you know, back
8 and forth. I'd like to try to get through this, if
9 you don't mind, Mr. Boote and Mr. Sockwell.

10 We'll move now to the case for the
11 owner/intervenor. Please come forward.

12 MS. BELL: Good morning. I'm kind of
13 getting nervous. This is all very new.

14 CHAIRPERSON REID: Well, hopefully, we'll
15 be able to speed along without too much problem.

16 MS. BELL: My name is Satwant Bell, and I
17 live at 5906 Reservoir Heights Avenue, Alexandria,
18 Virginia 22311. And I'm a member of the Sikh Cultural
19 Society, Washington, D.C. I'm an American and very
20 proud of it. We cherish the values and opportunities
21 of this great country, and we come to you very humbly,
22 as citizens dedicated to this public cause.

23 Sikhism is a pure and simple religion.
24 The basic principles of service, humility, and
25 equality are vital in Sikhism, as are doing charity

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 work and community service. We live honest, truthful,
2 hardworking lives, and believe in live and let live.

3 We strive to spread the message of peace,
4 love, and understanding. Welcoming all, we believe in
5 equality, and we do not discriminate against anyone.

6 Some of our neighbors are not familiar
7 with Sikhism. We do ask that you get to know us, and
8 you will be very pleasantly surprised.

9 The Sikh Cultural Society is a nonprofit
10 organization incorporated in 1964. The Sikhs have
11 been celebrating spiritual programs for over 40 years
12 in Washington, D.C. During the past 30 years,
13 services were held at 3911 Military Road in Northwest.

14 This was a busy thoroughfare, with no off-
15 street parking facilities, yet there was never a
16 problem with parking, nor were there any complaints
17 about congestion in the neighborhood. The parking
18 garage in the new temple will accommodate the regular
19 Sunday attendees. We have a very small membership.

20 This is the very first temple that's being
21 built in the nation's capital by the Indian-Americans
22 and their contributors. We are saddened by the fact
23 that the minority community, which has patronized us
24 in the earlier years, now has a section of the
25 community pitted against us.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 We have attended and cooperated in the
2 Advisory Neighborhood Commission meetings. We have
3 voluntarily suspended construction for over 30 days,
4 to allow time for the community to comment and hear
5 our clarifications of issues.

6 The Sikh Cultural Society has owned this
7 property that the neighborhood has enjoyed for over 20
8 years. They have used it for parking, walking their
9 dogs, and various other uses, but we have never
10 complained.

11 We have patiently attempted to work
12 through the system to make this temple a reality. We
13 have met all requirements and building codes. The
14 D.C. Government, Department of Consumer and Regulatory
15 Affairs, took more than three years of thorough and
16 extensive review before the plans were approved and
17 the permit was issued on July 16, 1999.

18 This is an ethnically rich and culturally
19 diverse city. We are all asking for a level playing
20 field and fair and equitable treatment. We have
21 waited for more than 20 years to make this temple a
22 reality.

23 We attended the meetings with the --
24 excuse me -- ANC, where some did not even know who
25 Sikhs were. They wondered if the building was going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 to be a mosque, if prayers would be held several times
2 a day, or call for prayers will be issued from the
3 dome, or we would run a 24-hour soup kitchen.

4 We are happy to explain the basic tenants
5 of the Sikh faith and clarify misunderstandings.

6 As is usually the case in citizens'
7 meetings, facts are sometimes misrepresented, and
8 truth is twisted to substantiate a particular point of
9 view. This is natural, and we are happy to offer
10 clarifications.

11 Our temple is open to any person of any
12 faith, because human equality is our fundamental
13 tenant. We are confident that the Sikh temple's
14 traditional and beautiful architecture will enhance
15 the neighborhood. Over a dozen churches, synagogues,
16 Arabic house of worship, and mosque adorn
17 Massachusetts Avenue. Each has its own distinct
18 architecture and enhances the rich diversity that is
19 America.

20 We thank you for your fair and just
21 considerations. We also have Mr. Gajinder Singh, who
22 is registered in the District of Columbia, and Mr.
23 Nanak Singh Manku, and also Dr. Shamsheer Singh, if you
24 have any further -- to further explain the plans and
25 specifics of the design.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Thank you.

2 CHAIRPERSON REID: Thank you very much.

3 DR. SINGH: My name is Shamsheer Singh. I
4 have been a resident of the District of Columbia for
5 the last 45 years, and I have lived for 30 years, and
6 I continue to be living in D.C. for 30 years only 10
7 minutes walk from the proposed temple.

8 I just have one small comment, and I am
9 sorry Mr. Katania is not here, because he made
10 comparisons with the mosque which is two and a half
11 miles away and did not make any comparisons with the
12 churches nearby.

13 And there are churches three blocks away,
14 which have no parking even, and no side yard. There
15 is a Church of Saint Jesus Christ, and there is the
16 Church of Nicholas Cathedral, which are only three
17 blocks away.

18 Those who are some of the persons in the
19 neighborhood have told us right from the beginning
20 that they are going to oppose us at every step,
21 whatever it takes, to stop us from building a temple
22 there. And this is, again, misrepresentation -- to
23 malign my name, which Mr. Mann and Dr. Schneiderman
24 have pursued from the beginning. He said, "I am the
25 owner of the property." This is absolutely false

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 statement being made before the BZA.

2 And the Sikh Cultural Society bought the
3 lots, bought this lot, from the owner of the next-door
4 -- 3811 -- property holder. And that property was
5 subsequently bought by Mr. Hosky, who testified here
6 before. So this is -- so even the seller of the
7 property, who lived at 3811 Massachusetts Avenue, knew
8 that we were buying the property for building a
9 temple.

10 Thank you very much. And I am yielding
11 time to our applicants, to address the relevant
12 issues.

13 MR. SINGH: I will be very brief and
14 short, and everybody already covered all the aspects,
15 and we met all the requirements of D.C. Government and
16 worked vigorously when D.C. Government was checking
17 our plans, the reviewing of our plans. It took three
18 years to approve it. And, finally, we got the
19 approval.

20 And also, very -- were given very short
21 notice for ANC meetings, just only a few hours'
22 notice. We attended the meetings. We did our best.
23 And I don't know what to say even, because I'm not an
24 attorney; I'm simply an architect.

25 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And Nonik Manku, which is our architect
2 who worked with Mr. White, Kirk White, is a well-known
3 architect. He did work on Pennsylvania Avenue, the --
4 for the Art Commissions, and also the -- he was well
5 known at Howard University, and so I want to introduce
6 Nonik Singh Manku to present the drawings, which we
7 just made some sketches.

8 Thank you very much.

9 CHAIRPERSON REID: Mr. Hassan, are you
10 going to just strictly show us a few of the drawings?

11 Because we have, with our package --

12 MR. SINGH: No. We'd just like to explain
13 it.

14 CHAIRPERSON REID: Okay. Now --

15 MR. SINGH: Just for the benefit of the
16 people that were --

17 SECRETARY PRUITT: Excuse me, sir. Can
18 you either speak from the mike or take the portable
19 mike with you? Which is on the podium.

20 MR. SINGH: Yes. We'd just like to
21 explain it, the height and the relationship with the
22 other buildings.

23 CHAIRPERSON REID: Okay. Bring it
24 forward, so that we can see it better. But also, put
25 it at such an angle that the other persons in the room

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 will be able to see it.

2 Okay. You know that the exhibits will
3 have to be left here.

4 MR. SINGH: Yes.

5 CHAIRPERSON REID: All right. Okay.
6 Okay.

7 MR. SINGH: There are couple of points
8 that we want to make, especially the --

9 SECRETARY PRUITT: Excuse me. You're
10 going to have to use one of the mikes.

11 CHAIRPERSON REID: You can put that in
12 your pocket and turn it on. Flip it on.

13 MR. SINGH: This is just to benefit the
14 people, those who don't know what are we doing.

15 As a matter of fact, Dr. Schneiderman
16 mentioned that the temple which we are building is
17 almost twice the height of that. I want to show you a
18 section which is in relationship to the height of Dr.
19 Schneiderman. This is the property which Dr.
20 Schneiderman owns. This is his house, and this is
21 where we are building the temple.

22 You will see this is a little bit smaller
23 than Dr. Schneiderman's house. The height of his
24 building is approximately 34 feet, plus or minus,
25 whereas the temple height, the height of the wall is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 29 feet. Plus, of course, our roof is tailored back,
2 whereas Dr. Schneiderman's roof is straight. So it
3 makes it approximately 34 feet high, whereas our wall
4 is 29 feet. This is 29 feet.

5 And they are saying this is twice the
6 height of their building. That doesn't make sense. I
7 don't know where they get these figures.

8 And they have mentioned that we will lose
9 light and air and everything. We have added 26 feet
10 to the alley, making it 41 feet. That means it has
11 given the proper light and ventilation.

12 Would you please look at the site plan.
13 You will see that this is the existing alley, and we
14 have a setback of 26 feet, which allows the total open
15 space approximately 41 feet. And on this side, this
16 is 38th Street, we have 50 feet plus 25 feet, which is
17 on the other side. It is 75 feet, plus or minus, open
18 on that side.

19 And on Massachusetts Avenue, from this
20 building, we have green space approximately 130, plus
21 or minus, feet. Our building is only 70 feet long
22 over here.

23 MEMBER RENSHAW: Madam Chairman, I ask,
24 what is the distance from the sidewalk on 38th Street
25 to the wall of the building?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SINGH: From this side, it's 10 feet.

2 MEMBER RENSHAW: Not from the curb, from
3 the sidewalk, from the edge of the sidewalk.

4 MR. SINGH: There is no sidewalk. This is
5 10 feet of space which is available.

6 MEMBER RENSHAW: From the road to the wall
7 is 10 feet.

8 MR. SINGH: This is 10 feet.

9 MEMBER RENSHAW: It shows a sidewalk.

10 MR. SINGH: Right.

11 MEMBER RENSHAW: Is there going to be a
12 sidewalk?

13 MR. SINGH: Yes, there will be a sidewalk.

14 MEMBER RENSHAW: All right. From the edge
15 of the sidewalk that is on your side, what is the
16 dimension to the wall of the building?

17 MR. SINGH: Well, that -- this is -- from
18 here to here is about three and a half feet. We have
19 four feet sidewalk and remaining in the front. We are
20 trying to maintain the existing line of trees. That
21 is three feet.

22 VICE CHAIRPERSON SOCKWELL: Let me
23 understand that correctly.

24 MR. SINGH: Yes, sir.

25 VICE CHAIRPERSON SOCKWELL: From the curb

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 line to your property line is what distance?

2 MR. SINGH: Ten feet.

3 VICE CHAIRPERSON SOCKWELL: Ten feet.

4 MR. SINGH: Right.

5 VICE CHAIRPERSON SOCKWELL: Okay.

6 CHAIRPERSON REID: Okay. Go ahead.

7 MR. SINGH: Here is another thing. The
8 wall on the 38th side is approximately 31, varying
9 from which angle you see, because the road is sloping.
10 It is not 60, 70 feet or something. It is only 31
11 feet.

12 VICE CHAIRPERSON SOCKWELL: Would you go
13 back to the previous drawing, please?

14 MR. SINGH: Yes.

15 VICE CHAIRPERSON SOCKWELL: While your
16 drawing does not show it, and this is just for my own
17 benefit, if the setback of the adjacent house along
18 38th Street, that house, although you show the 26 and
19 15, that house is set back from its property line by
20 what, about 25 feet?

21 MR. SINGH: It is just a guess. It's
22 plus/minus 25 feet.

23 VICE CHAIRPERSON SOCKWELL: Right. Okay.

24 MR. SINGH: Maybe a little less. But for
25 this purpose, we could say 25.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 VICE CHAIRPERSON SOCKWELL: All right.
2 Thank you.

3 MEMBER RENSHAW: Madam Chair, I'd like to
4 ask, since the drawing is up there, you have six
5 spaces along the alley. Now, how are they marked?

6 MR. SINGH: They are handicapped.

7 MEMBER RENSHAW: Those are handicapped
8 parking?

9 MR. SINGH: Not all. One or two spaces
10 will be handicapped; I don't remember. The remaining
11 will be the regular spaces.

12 MEMBER RENSHAW: All right. And the
13 entrance to your garage is off of what street?

14 MR. SINGH: Off of Massachusetts Avenue.

15 MEMBER RENSHAW: Off of Mass Avenue. Is
16 there any entrance to the garage from the alley?

17 MR. SINGH: No, there is no entrance from
18 the alley.

19 MEMBER RENSHAW: How does that work?

20 MS. BELL: This entry is from 38th Street.

21 MS. KRESS: You need a microphone. I'm
22 sorry.

23 MS. BELL: The garage entry is from Mass
24 Avenue to the underground parking, and the handicapped
25 and the other additional spaces are from 38th Street.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SINGH: 38th.

2 MEMBER RENSHAW: Thank you.

3 MR. SINGH: We have left additional five
4 feet, which is dedicated to the alley in order to make
5 it 20 feet, so that the car could be maneuvered
6 easily. So, in reality, all of this space will be
7 part of the alley, so that the cars could be turned
8 back. So this will be about 20 feet, which is why we
9 are using the alley.

10 MEMBER RENSHAW: When are your services?
11 When are you going to -- what is the impact of your
12 activities going to be during the week?

13 MR. SINGH: Well, during the week, there
14 won't be any activity. It is going to be only on
15 Sunday.

16 MEMBER RENSHAW: Only on Sunday.

17 MR. SINGH: Only on Sunday.

18 MEMBER RENSHAW: At what times?

19 MR. SINGH: Usually it will be around
20 about -- it will be varying, depending upon the
21 congregation members, what they want. It will be
22 perhaps 9:00 'til 1:00. We have only about 50 or 60
23 people attending regularly. At the most, we have 100.
24 But as it grows, it may be different.

25 MS. RAY: Excuse me. On behalf of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 government, we would just kind of object to this line
2 of questioning because the issue before us is whether
3 they comply with the setback requirements as it
4 relates to the height of the building. And so the
5 issues for this Board to be determining are whether
6 the building permit was properly issued, according to
7 the regulations on height and setback.

8 So the hours of operation and all of that
9 is not what's before this Board, and so we'd object to
10 anything that pursues that line of questioning and
11 testimony and to any evidence being considered by the
12 Board. It's not relevant.

13 CHAIRPERSON REID: Continue. Does that
14 conclude your presentation?

15 MR. SINGH: This is all we have to say.
16 Otherwise, I think it has been discussed very well.

17 This question has been raised several
18 times about -- the structure question. This is an
19 independent structure by itself. For instance, this
20 is a cupola. Just like this column going out 30 feet
21 or 100 feet high, we won't discuss that any more. It
22 has already been discussed.

23 And this was purely for the presentation
24 for the Board, for the other members, to see the
25 height and the other things.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Thank you very much.

2 MR. SINGH: Thank you very much.

3 CHAIRPERSON REID: Thank you.

4 Is there any cross examination? Mr.

5 Boote?

6 MR. BOOTE: No, I have no cross
7 examination.

8 CHAIRPERSON REID: Questions by the ANC?

9 LC: No, the ANC is not a party.

10 CHAIRPERSON REID: Okay.

11 MS. MILLER: I'm sorry. Did you say the
12 ANC is not a party?

13 CHAIRPERSON REID: No. I did say that --
14 I understand that you don't get to cross examine.

15 LC: You're not a party to this case. Mr.
16 Boote is the person who has filed on behalf of the
17 association.

18 MS. MILLER: For the record, we did file a
19 resolution and a letter, and I believe we are a party
20 to the case. I don't have any cross examination, but
21 I did have some testimony that I thought I would be
22 able to provide at the end, after the other parties
23 have finished. I was told something different, then.

24 CHAIRPERSON REID: Just one moment. Let
25 us --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Ms. Ruthanne Miller, can you please come
2 forward? Did you come prepared to testify today?

3 MS. MILLER: Yes.

4 CHAIRPERSON REID: Is your testimony
5 germane to the issue that we were addressing as it
6 pertains to the regulations and --

7 MS. MILLER: Heights and setback, yes.

8 LC: Is that what your testimony is?

9 MS. MILLER: Yes.

10 CHAIRPERSON REID: Okay. All right.
11 Thank you.

12 MS. MILLER: Good afternoon. I have a few
13 brief comments on behalf of ANC-3C. First of all, I'd
14 like to say that the ANC-3C and the community is not
15 against the Sikh Temple, that we would welcome the
16 Sikh Temple in an appropriate location, or within the
17 appropriate size and setbacks.

18 What's of concern to the ANC is that this
19 structure, as proposed, and this particular property,
20 is not limited to the same setback as the houses on
21 that street. And on its face, and if one just takes a
22 site visit, it's clearly detrimental to the character
23 of the neighborhood.

24 All of the other houses are set back about
25 25 feet, I believe the testimony was. And this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 building, whether it be a church or a school or a
2 home, to come all the way almost to the sidewalk
3 changes, drastically, the character of that
4 neighborhood.

5 We held a few meetings for the record on
6 this issue, where representatives of the Sikh Temple
7 came and representatives of the neighborhood. And we
8 attempted to see if we could forge some kind of
9 compromise.

10 The primary issue of concern is that the
11 structure comes so close to the sidewalk. And at that
12 meeting, we did ask the representative of the Sikh
13 Temple if they would consider scaling back or
14 redesigning the building, so that they could preserve
15 -- so we could preserve more of the character of the
16 neighborhood. And they declined to do that at this
17 stage.

18 I don't have authority to give you my
19 legal opinion on how you should interpret the
20 regulations. The ANC did not reach any legal
21 conclusions, and that's reflected in our resolution.

22 However, we're of the consensus that where
23 there's discretion to interpret regulations in
24 different ways, as it appears that there is here, that
25 they should be interpreted to preserve the character

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the neighborhood and not allow a structure to be
2 built that would be so detrimental to the character.

3 Again, I addressed this before, but we
4 would say that we don't believe that the regulations
5 should be interpreted inconsistently with the
6 comprehensive plan, and that the comprehensive plan
7 should not be ignored. It just appears, on its face,
8 that something is wrong if a building is allowed to go
9 this far to the sidewalk and change a neighborhood
10 this drastically.

11 So we would ask that the regulations be
12 interpreted in a way to preserve the character of this
13 neighborhood. Thank you.

14 CHAIRPERSON REID: All right. Okay. I'm
15 just trying to get clear here. Ms. Miller, I have a
16 letter from ANC-3C, in which basically there was a
17 quorum present and there was a vote taken in regard to
18 the resolution. This is a September 5th letter.

19 MS. MILLER: Yes.

20 CHAIRPERSON REID: And this resolution
21 relates specifically to the issue of the permits being
22 improperly issued due to lack of proper notice.

23 Now, the one that you just referred to, is
24 that another resolution? Is that the one that --

25 MS. MILLER: I believe both issues were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 addressed in that resolution and in my cover letter.
2 In the first paragraph of the cover letter dated
3 September 5th, it said, "The Commission is concerned
4 that the Zoning Administrator's interpretation and" --

5 CHAIRPERSON REID: Where are you reading
6 from? Where on that -- what line?

7 MS. MILLER: Okay. First paragraph, sixth
8 line, in the middle, where it starts, "The Commission
9 is concerned."

10 CHAIRPERSON REID: Yes.

11 MS. MILLER: Would you like me to read
12 that?

13 CHAIRPERSON REID: Yes, please.

14 MS. MILLER: Okay. "The Commission is
15 concerned that the Zoning Administrator's
16 interpretation and application of the zoning
17 regulations governing height and setback limitations
18 in an R-1 District will result in the construction of
19 a building that is out of scale and character with the
20 rest of the neighborhood immediately surrounding it,
21 to the serious detriment of fundamental objectives of
22 zoning policy in the District of Columbia, and the
23 Ward 3 plan, and the comprehensive plan, i.e.
24 preventing the overcrowding of land and preserving
25 light and air."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Okay. I understand
2 that. However, Ms. Miller, do you --

3 MS. MILLER: It's also in the resolution,
4 if you want me to --

5 CHAIRPERSON REID: Okay. I do see it now.

6 MS. MILLER: Okay.

7 CHAIRPERSON REID: I see it in
8 paragraph 3.

9 MS. MILLER: Yes.

10 CHAIRPERSON REID: 3 and 4, specifically.
11 Okay.

12 MS. MILLER: Yes.

13 CHAIRPERSON REID: All right. Did that
14 conclude your presentation?

15 MS. MILLER: Yes.

16 CHAIRPERSON REID: Okay. We'll certainly
17 afford your testimony the weight to which it's
18 entitled.

19 Board members, are there any questions for
20 Ms. Miller? Okay.

21 Are there any questions from Mr. Hassan?
22 Mr. Hassan is, what, the spokesperson for Sikh Temple?
23 Or anyone else who would like to ask Miller any
24 questions.

25 MR. SINGH: I have just one question for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Ms. Miller.

2 CHAIRPERSON REID: Okay.

3 MR. SINGH: Ms. Miller, constantly we've
4 been called at the eleventh hour for the ANC meeting.

5 Was it fair?

6 MS. MILLER: The ANC posted all notices
7 with respect to meetings as required by statute, and I
8 believe we operated in a fair manner, yes. And I'm
9 sorry if --

10 MR. SINGH: Within a few-hour notice, the
11 -- like a meeting --

12 CHAIRPERSON REID: You have to -- you
13 cannot testify, Mr. Hassan. You have to pose your
14 question in the form of a question -- pose your
15 comment in the form of a question.

16 MR. SINGH: My simple question was that
17 the -- is it substantial time you have given to the
18 rest, and been given to us only a few hours' notice
19 that you come to the meeting?

20 MS. MILLER: The notices are posted a week
21 ahead of time and placed in the newspapers. And I'm
22 not sure when you were called. I know Commissioner
23 Blanchard made an attempt to call you. I didn't
24 personally call you.

25 MR. SINGH: And would you tell --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: However, I would like to say
2 that, you know, the ANC is receptive at all times if
3 you wanted to work out a compromise or submit any
4 information.

5 MR. SINGH: For your record, compromise --
6 one time the homeowner association, they'd like to buy
7 the lot --

8 CHAIRPERSON REID: Is this a question?

9 MR. SINGH: -- and we offered them to buy
10 it.

11 CHAIRPERSON REID: Is that a question?

12 MR. SINGH: This is a question, and I'm
13 asking the homeowner, did they offer us to buy the
14 property? Mr. Boote is one of them. Is it true or
15 false?

16 MR. BOOTE: Should I respond?

17 CHAIRPERSON REID: You're asking the ANC a
18 question that you --

19 MR. SINGH: Yes, because the ANC is
20 representing right now --

21 CHAIRPERSON REID: Do you know the answer?

22 MS. MILLER: I do not. I am not
23 representing a neighborhood association.

24 CHAIRPERSON REID: Okay. All right. She
25 doesn't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SINGH: All right. Thank you. That's
2 it.

3 CHAIRPERSON REID: Okay. Thank you.

4 All right. Ms. Ray, do you have
5 questions?

6 MS. RAY: No, no questions.

7 CHAIRPERSON REID: Okay. Thank you very
8 much.

9 MS. MILLER: Okay. Thank you very much.

10 CHAIRPERSON REID: All right. Now we have
11 closing remarks by the applicant, or by the intervenor
12 -- I'm sorry, by the appellant. Closing remarks?

13 MR. BOOTE: Thank you. I'll be very
14 brief.

15 I would encourage the Board to visit the
16 site on 38th Street.

17 CHAIRPERSON REID: Can you speak up?

18 MR. BOOTE: All right.

19 CHAIRPERSON REID: Or is it that the mike
20 is not picking you up?

21 MR. BOOTE: It's not picking me up.

22 I'd encourage the Board to visit the site,
23 on 38th Street especially, in order before they --
24 prior to their deliberations and their decision,
25 because it will demonstrate the impact that this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 structure would have on the neighborhood.

2 I would also amend our memorandum orally
3 at this time to include reference to Section 400.5,
4 which the D.C. Zoning Office, through Mr. Bello,
5 acknowledged -- it appears to me -- to apply to this
6 structure.

7 I would also ask the Board to take into
8 consideration the regulations and the statute, to the
9 extent that you're permitted to do so
10 jurisdictionally, that require that the most
11 conservative interpretation be applied to the zoning
12 regulations. And one regulation restricts height and
13 requires setback, imposes greater distances from the
14 street, that those are the regulations that should
15 apply.

16 And, finally, I'd like to thank the Board
17 for their time.

18 CHAIRPERSON REID: Thank you very much.

19 Board members, do you have any questions?

20 All right.

21 Ms. Ray?

22 MS. RAY: Just one comment. I think the
23 testimony has been presented here for the Board to
24 consider, and that the issue before it is whether the
25 applicant has complied with all of the requirements,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and whether DCRA would have properly issued the
2 building permit in question.

3 And, of course, we want the Board to
4 support and affirm DCRA's issuance of the building
5 permit, that it was proper, that the height
6 requirements to which churches are required to comply
7 with is 60 feet. This church does not reach the
8 height. There is not a limitation on architectural
9 embellishments, which this temple is, the structure on
10 top of the building is; and that they have complied
11 with all of the requirements pursuant to the zoning
12 regulations.

13 In addition, one little side matter that
14 I'm reluctant to bring up, but I want to bring up, is
15 that the due process requires that any witnesses that
16 come before you be subject to cross examination. And
17 to the extent that this Board considers -- once it
18 goes back to consider the evidence, that it not
19 consider any irrelevant testimony, which some was
20 presented.

21 But also, Mr. Katania's testimony,
22 although support of the appellant, he was not present
23 for cross examination. And to the government, that
24 would pose some due process problems, and you may want
25 to consider that when you deliberate, and consider

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 testimony that was relevant in making your decision.

2 Again, we'd ask the Board to support and
3 affirm DCRA's issuance of the building permit, and
4 that it complied with the zoning regs.

5 CHAIRPERSON REID: Okay. Thank you very
6 much.

7 All right. I think, then, that will
8 conclude this particular case. Are there any comments
9 or questions by the Board members?

10 COMMISSIONER HOLMAN: Madam Chair, how are
11 we going to decide this? Are we going to decide it
12 now, or what's your pleasure?

13 CHAIRPERSON REID: I'm sorry. Did you
14 want to say something before I answer? Excuse me.
15 Just one moment.

16 Mr. Holman, in answer to your question,
17 this is a case where there obviously is opposition,
18 and perhaps in that instance, rather than moving
19 forward today, we may want to consider doing it at our
20 next regularly-scheduled meeting, so that we could
21 have a full order and all of the findings of fact and
22 all of the necessary information to be contained
23 therein, unless there's comments from other Board
24 members. And whether we could have the findings of
25 fact and conclusions of law spelled out specifically -

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 - could you speak on the mike, please?

2 VICE CHAIRPERSON SOCKWELL: I believe that
3 we should have the findings of fact and conclusions of
4 law presented to us.

5 CHAIRPERSON REID: Full order.

6 VICE CHAIRPERSON SOCKWELL: Yes, full
7 order.

8 CHAIRPERSON REID: Any disagreement with
9 that? Do you --

10 COMMISSIONER HOLMAN: No, no. I mean,
11 that's fine. I just wanted to know what the Chair's
12 pleasure is. Since I come and go on these hearings, I
13 was just trying to see, for scheduling purposes, and
14 no other --

15 CHAIRPERSON REID: Any other comments?
16 Mr. Moulden, did you have -- what's your feeling about
17 this particular case?

18 MEMBER MOULDEN: I would like to make some
19 general comments to clear up. There was a lot of
20 discussion about what a comprehensive plan does versus
21 the zoning regulations.

22 The District's comprehensive plan is an
23 element of the National Capital Planning Commission's
24 comprehensive plan. And those plans are policies that
25 guide the District and the region in their planning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 efforts.

2 There are not regulatory or specific legal
3 requirements per se in the plan; however, zoning
4 regulations and other regulations are derived from the
5 comprehensive plan. I'd just like to clear that up
6 and make that clear to the audience.

7 Another thing, this case here seems to be
8 an issue of design and location. The church is
9 permitted, as a right, and it's in the zone of this
10 community, and I would like to have seen the folks in
11 opposition and the applicant for the church to work
12 out some issues to design this facility to appease the
13 community.

14 The lot is an irregular lot, so it's
15 probably very difficult to actually locate a facility
16 on there. But it meets all of the regulations,
17 according to the Code identified. I just wanted to
18 point those things out.

19 CHAIRPERSON REID: Okay.

20 MEMBER RENSHAW: Madam Chair, I just
21 wanted to ask Mr. Bello, since he's here with us, are
22 we correct in that you are here today to interpret the
23 zoning regulations concerning this case, but that you
24 did not take part in the review of this application
25 when it was before the DCRA?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BELLO: I was not the reviewer of the
2 application. But the applicant went back, did some
3 intensive preliminary information seeking with us, and
4 I did have numerous contacts with them. So I have a
5 certain degree of familiarity with the application.

6 MEMBER RENSHAW: Would you state for the
7 record who did review this application?

8 MR. BELLO: Edgar Nunley.

9 MEMBER RENSHAW: Edgar Nunley. And his
10 title is?

11 MR. BELLO: He is the Zoning Review Chief.

12 MEMBER RENSHAW: Zoning Review Chief.
13 Thank you.

14 CHAIRPERSON REID: Okay.

15 VICE CHAIRPERSON SOCKWELL: Mr. Bello, in
16 your 10 years of involvement with the zoning
17 ordinance, you have seen projects of a similar type
18 reviewed and approved, both by you and by others,
19 including Mr. Nunley and the other zoning technicians.

20 MR. BELLO: That is correct, yes.

21 VICE CHAIRPERSON SOCKWELL: In the
22 interpretations of the ordinance that you have
23 participated in, or have been particularly
24 knowledgeable of, the issue of side yards and building
25 height are generally a part of many of those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 decisions, is that not correct?

2 MR. BELLO: That is correct.

3 VICE CHAIRPERSON SOCKWELL: And to the
4 best of your knowledge, facilities of a similar type
5 that have been reviewed have met the test of zoning
6 for the issues that were presented today?

7 MR. BELLO: Yes, sir.

8 VICE CHAIRPERSON SOCKWELL: Okay. Thank
9 you.

10 CHAIRPERSON REID: All right. Thank you
11 very much.

12 MS. RAY: Excuse me. One additional
13 matter. Did the Board decide not to make the decision
14 today? Is that the ruling?

15 CHAIRPERSON REID: Right.

16 MS. RAY: Okay.

17 CHAIRPERSON REID: We're going to make the
18 decision at our next regularly-scheduled Board
19 meeting, which will be October 3rd.

20 SECRETARY PRUITT: And, Madam Chair, I
21 believe you did -- you said you were going to do that,
22 so you could get -- so that the appellant, DCRA, and
23 the intervenor can submit draft orders.

24 CHAIRPERSON REID: Yes, we would like to
25 have draft orders.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 SECRETARY PRUITT: Could we have them,
2 then, by September 25th for a decision on October 3rd.

3 If you need some help or understanding of what a
4 draft order is, please see me after the meeting.

5 MS. RAY: One other thing we would need,
6 though, is transcripts. So that --

7 SECRETARY PRUITT: They will be available.

8 MS. RAY: Will the transcripts be
9 available in a timely manner, so that we can --

10 SECRETARY PRUITT: Typically, in two
11 weeks.

12 MS. RAY: Okay. Well, today is the 13th.
13 Two weeks would get us beyond the date that the
14 proposed findings of fact are due. So if we've got to
15 submit proposed findings of fact which -- you know, on
16 behalf of the ZA, I've just been informed, of course,
17 we would -- we don't want to hold up the decision
18 because, you know, this building permit has been
19 issued and there are resources out there that -- but
20 that if we can't get a transcript for two weeks, we
21 have a slight problem, if the Board wants proposed
22 findings of fact. That's all.

23 LC: You could pay for having it
24 expedited. We'll have to look into that, but
25 typically we have the -- whoever wants it expedited

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 pay for the expediting of the transcript. But you're
2 another government agency, so we'll have to look into
3 that.

4 MS. RAY: Yes. So I just need the tapes,
5 then. The government would need to get the tapes,
6 then, and then we --

7 LC: We don't have tapes. We just have
8 the transcript.

9 MS. RAY: Without the tape, I can't
10 expedite it.

11 LC: The transcript.

12 MS. RAY: You would give me a transcript
13 in an expedited manner?

14 LC: Yes. That's right.

15 MS. RAY: Thank you.

16 VICE CHAIRPERSON SOCKWELL: I want to say
17 one thing very briefly. Regardless the direction that
18 this Board may take on its decision with this case,
19 the word "matter of right" or the term "matter of
20 right" does not mean that development interest can
21 invade a neighborhood with a project. It is not a
22 license to invade.

23 It is a license to intrude, because
24 anything that is built that changes the status quo is
25 an intrusion upon those people who preexisted the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proposed development. But an invasion, be it legal or
2 not, is, nonetheless, an invasion and will permanently
3 alter the character of portions of the neighborhood,
4 will alter the perceptions of the residents and the
5 relationship between those who are building and those
6 who existed before the construction.

7 And it is something that any development
8 interest should be aware of and should take note of,
9 and there are certain building types which are
10 uniquely different from what exists around them.

11 And, at times, those building types may
12 wish to be modified, so that their presence within the
13 context of the rest of a neighborhood environment is
14 not such a great change to what has existed before.
15 And I believe that that is a key to making the city
16 what it is supposed to become, and to keeping the
17 city, in many instances, in the character that it has
18 grown accustomed to.

19 Thank you.

20 CHAIRPERSON REID: Thank you, Mr.
21 Sockwell.

22 Okay. Now, finally, I think we can
23 conclude this morning's session. Thank you very much.

24 This is a good -- a great point. We're
25 going to go ahead and break for lunch and return at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 1:00, at which time we will pick up with the George
2 Washington case, the continuation of the George
3 Washington University campus plan.

4 (Whereupon, at 12:20 p.m., the proceedings
5 in the foregoing matter went off the
6 record.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

(1:10 p.m.)

CHAIRPERSON REID: Good afternoon. The Board of Zoning Adjustment will now come to order. Thank you, ladies and gentlemen.

Staff will call the case for George Washington Campus Plan.

MS. BAILEY: This is Application No. 16553 of the George Washington University, pursuant to 11 DCMR 3104.2, for a special exception for the review and approval of the University Foggy Bottom Campus Plan, Years 2000 through 2010 under Sections 210 and 507; the boundaries of the property are as follows: Pennsylvania Avenue on the north, 19th, H, 20th and G Streets on the east; F Street on the south and 23rd, G and 24th Streets on the west, and it also includes a port of Square 122 extending south of F Street along 19th Street, N.W.

Within the campus plan boundaries, the property owned by the University is devoted to a variety of University uses, including but not limited to classroom, dormitory, library, research, office, support, assembly, athletic and hospital purposes. These uses would be continued under the Campus Plan in a variety of existing and new buildings in the R-5-D,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 R-5-E, C-3-C and SP-2 Districts. The Squares and Lots
2 for these boundaries of the George Washington
3 University was advertised in a public hearing notice,
4 was also placed in the D.C. Register and it was placed
5 on the placards that's posted by the Applicant.
6 Therefore, Madam Chair, we won't read them all today.

7 Ms. Pruitt?

8 MS. PRUITT: Madam Chair, I just would
9 like to talk to the audience, inform the audience.
10 Due to the public interest in this, we've already had
11 one hearing, so this is a little different, it's a
12 continuation.

13 In the back of the room there is a little
14 hand out that actually kind of gives you the
15 procedures that we'll be going through today since
16 we're not starting off from scratch. I'll read them
17 off very quickly.

18 We'll do preliminary matters, followed by
19 an update and summary by the Applicant. Cross
20 examination by the Board Members and parties and ANC.
21 Office of Planning Report and Recommendations, ANC
22 Report, persons in support, parties and persons in
23 opposition and closing remarks.

24 However, Madam Chair, we do have a request
25 for change in the testimony sequencing and that is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ANC and parties in opposition would like to go
2 together or one after the other because they have some
3 interlocking information.

4 And OP has requested to go after the ANC,
5 so that would change your sequencing around, but
6 that's up to you to make a determination.

7 (Pause.)

8 CHAIRPERSON REID: Thank you very much.
9 I'm sorry, we had a little sidebar.

10 MS. DWYER: Madam Chair, if I could just
11 respond to that. Maureen Dwyer with Shaw, Pittman and
12 with me is Alison Friends, also of Shaw, Pittman, and
13 we are appearing here on behalf of the Applicant,
14 George Washington University.

15 With respect to the changes in the order
16 of procedure, the Applicant would very much like to
17 have the Office of Planning report in its regular
18 order and that changed, coupled with the change to the
19 ANC is going to influence the timing for those persons
20 in support who are planning on coming down here at a
21 certain time, so it does throw off a lot of the other
22 pieces of hearing presentation.

23 We have no objection to the ANC combining
24 its presentation with the other parties in opposition,
25 but we would like to have the Office of Planning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Report follow your cross examination of our case and
2 precede the other parties.

3 CHAIRPERSON REID: Well, how does that
4 impact upon the persons in support? Do you have them
5 scheduled to come down at a certain time?

6 MS. DWYER: Yes, we do. And we also feel
7 that the Office of Planning Report, there are actually
8 two Office of Planning Reports in the record and this
9 is our first opportunity to cross examine them on
10 their report. Their report is supposed to, in part,
11 set the stage for some of the issues that follow in
12 the hearing and we think it makes much more sense in
13 terms of an ordering hearing to have the Office of
14 Planning Report in its normal time period, followed
15 then by the balance of the opposition and support
16 parties.

17 CHAIRPERSON REID: Well, Ms. Dwyer, I
18 think that the reason why this unusual request was
19 made in the first place was because the Office of
20 Planning Report is rather comprehensive. You have
21 seen it, correct?

22 MS. DWYER: Yes, we have.

23 CHAIRPERSON REID: It's very detailed,
24 very comprehensive. And some of the same issues are
25 raised in the material segment and also by the ANC and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 by the opposition and the idea was that, if in fact,
2 these issues had already been aired, then it would not
3 be necessary for the Office of Planning to be
4 redundant in its entirety with the report and
5 basically to be able to give us the highlights and to
6 truncate much of the report that they would have given
7 earlier.

8 So is it possible that the persons that
9 were supposed to come down, that they be told to come
10 down earlier or what time did you have them scheduled
11 to come down?

12 MS. DWYER: We had tentatively scheduled
13 for them to be here at 4 o'clock.

14 CHAIRPERSON REID: 4? How many people?

15 MS. DWYER: There are three.

16 CHAIRPERSON REID: Just three people?

17 MS. DWYER: Just three. We can try
18 reaching them, and if we can't, then they would be
19 taken out of turn.

20 CHAIRPERSON REID: We appreciate it if you
21 could because what we're trying to do now is to be
22 more -- as efficient as possible and we think that
23 given the fact that the Office of Planning Report, as
24 I said before, typically it's like a few pages. But
25 for now, today the report is substantial, that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would help to cut down on some of the time that it
2 would take and we would like to try to finish today,
3 but --

4 MS. DWYER: Let me also say that while OP
5 may be truncated in its oral presentation, we do have
6 a lot of questions for the Office of Planning because
7 they are two lengthy reports.

8 CHAIRPERSON REID: Yes.

9 MS. DWYER: And this is our first
10 opportunity to cross examine them on their reports and
11 we want to be very careful to have a very strong
12 record. So we do have a fair amount of cross
13 examination for the Office of Planning.

14 CHAIRPERSON REID: Well, that wouldn't
15 have any bearing on whether it was later.

16 MS. DWYER: No, whenever they give their
17 report.

18 CHAIRPERSON REID: Okay, yes.

19 MS. SPILLINGER: Madam Chair, if I may,
20 I'm Barbara Spillinger, Chair of ANC-2A.

21 We have some persons who had planned to
22 testify in opposition who frankly were not able to be
23 here today at all and plan to come on the 26th, so I
24 would just like to let you know about that. They
25 could submit their testimony in writing if this does

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 end up today, but I just would like to add that
2 comment.

3 CHAIRPERSON REID: You have people who
4 will not be present?

5 MS. SPILLINGER: Who will not be present
6 today, who wanted to testify in opposition.

7 CHAIRPERSON REID: Okay, but you have
8 their written testimony?

9 MS. SPILLINGER: I have one with me. I do
10 not have the other.

11 CHAIRPERSON REID: Okay.

12 (Pause.)

13 CHAIRPERSON REID: How many people do we
14 have here in opposition, who will be testifying in
15 opposition today?

16 Two?

17 (Pause.)

18 Are you going to be able to -- can you
19 call your people -- those three people and see if they
20 can come earlier?

21 MS. DWYER: Madam Chair, we're going to
22 try and do that. We're getting their phone numbers
23 and we'll try and do that. I can't guarantee it. I'm
24 assuming the hearing will still be continuing at 4
25 o'clock and perhaps when they arrive at 4 we can take

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 them at that time.

2 CHAIRPERSON REID: Yes, because staff just
3 informed me within our publications it specifies that
4 the order would be changed at the Board's discretion,
5 so that's something that typically we don't do,
6 rarely, but nonetheless, if in fact we felt it would
7 be in our best interest to do so, we do have that
8 discretion, so I appreciate very much if you would
9 call those persons and see if they can come earlier.

10 MS. DWYER: Yes, we will.

11 CHAIRPERSON REID: Do you have anything?

12 MS. DWYER: I would just state again for
13 the record that we would object to the Office of
14 Planning Report coming at the end of the hearing,
15 rather than at its normal point in the hearing
16 process. We think that the normal procedure again is
17 for the Office of Planning to give its report and
18 provide the framework for a lot of the issues that
19 have been given in the testimony and we strongly
20 believe that in this case that report should be given
21 at the beginning of the hearing.

22 We also know that the report was filed
23 late so there has to be a request for the late filing
24 of the Office of Planing Report which the Board
25 presumably would have to deal with at this time as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 well.

2 CHAIRPERSON REID: All right.

3 MS. PRUITT: Actually, if we go back to
4 it, go back to the sequence, I think we will cover
5 all of the issues that have been raised.

6 CHAIRPERSON REID: If we do what now?

7 MS. PRUITT: Go back to the sequence that
8 we had started, instead of dealing with the
9 preliminary issue now, we have some more information
10 to give you before getting into the preliminary
11 matters.

12 CHAIRPERSON REID: From staff?

13 MS. PRUITT: Yes.

14 CHAIRPERSON REID: From staff?

15 MS. PRUITT: Yes.

16 CHAIRPERSON REID: All right.

17 MS. PRUITT: I just want to clarify then
18 so the sequence will be an update by the Applicant
19 followed by the ANC report --

20 CHAIRPERSON REID: Give time lines too.

21 MS. PRUITT: I will, but I just want to
22 give the sequence first, please.

23 Update by the Applicant, followed by the
24 ANC Report, followed by persons and parties in
25 opposition, then the Office of Planning Report and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 persons in support and closing remarks.

2 And the time frame for those, the
3 Applicant had an hour and 15 minutes on the previous
4 day on the April 26 hearing. I believe they are
5 requesting another 15 to 20 minutes which would put
6 them to an hour and a half total time, which then
7 would give parties in opposition an hour and a half
8 total time to be dispersed among the identified
9 parties. Ms. Bailey will go into a little more detail
10 on that.

11 And organizations will be given 5 minutes
12 and individual testimony will be given three minutes.

13 Ms. Bailey is going to actually indicate, reiterate
14 the parties that were defined at the April 26th
15 meeting, submissions that were requested and whether
16 or not they've got it and some additional information
17 and then we can go to preliminary matters such as the
18 waiver of the filing of the OP Report.

19 Ms. Bailey?

20 MS. BAILEY: Thank you. Madam Chair, a
21 couple of housekeeping chores. Is there anyone in the
22 audience who is going to testify today who has not
23 been sworn in?

24 Will you please stand to take the oath?

25 Please raise your right hand.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Witnesses were sworn.)

2 Members of the Board, no new postings were
3 required for this project. The parties of the case
4 are ANC-2A, Barbara Spillinger, Dorothy Miller, Maria
5 Tyler, Foggy Bottom Neighborhood Association, Steven
6 Mandlebaum, Sarah Maddox and James McLeod. There were
7 submissions that the Board had requested from its last
8 hearing of April 26 as a letter of authorization from
9 the Columbia Tenants Association, the final report of
10 ANC-2A, a copy of the presentation by the Applicant, a
11 report on the number of students. All of the
12 submissions have been made.

13 To give a brief update as to where the
14 hearing will start today, the Applicant has requested
15 15 minutes to update the Board as to what has happened
16 since the last hearing; cross examination by the Board
17 of the Applicant's witnesses; limited cross
18 examination and I emphasize the word limited, cross
19 examine by Michael Thomas. Concerning the materials
20 present, cross examination by other parties, including
21 the community, of course; presentation by ANC-2A;
22 presentation by the Office of Planning. I'm not sure
23 if the Department of Public Works is here, but if so,
24 they would be given an opportunity to testify or
25 present their report. Presentation by opposition and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that would include an hour and a half for the
2 opposition to present its case and rebuttal and
3 closing arguments by the Applicant.

4 That's the sequencing of this afternoon's
5 agenda, Madam Chair.

6 And then the last matter is the ANC report
7 and Office of Planning's report were submitted late.
8 They were required to be submitted 7 days before the
9 hearing. They were not and a waiver would be required
10 for those reports to be accepted into the record.

11 CHAIRPERSON REID: Unless any Board
12 Members have an objection, I will waive the record to
13 allow those reports to come in.

14 MS. PRUITT: Madam Chair, there's one more
15 preliminary matter. I believe Sarah Maddox is not
16 able to be here today and she has sent in a letter
17 authorizing someone else to represent her. She's a
18 party. So that's really more for the record.

19 MS. SPILLINGER: One more question, if I
20 might. We had understood that parties to the case
21 would be allowed 15 minutes each and that the ANC
22 testimony was not specifically limited. I now
23 understand, at least from what you've said that does
24 not appear to be the case.

25 CHAIRPERSON REID: No. The ANC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 specifically not on time, but nonetheless we ask that
2 the ANC act with some discretion and some
3 reasonableness. They can't go on ad infinitum, so the
4 time essentially is to make case, but the nonetheless
5 just to make sure you use some discretion in that,
6 that's all. She didn't give you a limitation, did
7 she?

8 MS. PRUITT: No, Madam Chair, just
9 reasonable time limit. So it's not a --

10 CHAIRPERSON REID: Yes.

11 MS. PRUITT: And the new regulations do
12 require that parties, the time you give the Applicant,
13 you give parties the same amount of time and typically
14 the Board, if there are a number of parties, it's up
15 to them to determine how they'll use that time as a
16 whole.

17 CHAIRPERSON REID: Exactly, equal time.

18 MS. PRUITT: Equal time and that's up to
19 you.

20 CHAIRPERSON REID: So we'll begin with the
21 conclusion of the Applicant's case. I think you have
22 15 or 20 minutes, which one is it -- I mean, how much
23 time do you need Ms. Dwyer?

24 MS. DWYER: I'll try to do it in 15, but
25 we may need 20, but what ever amount of time we take

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 will be given to the opposition parties.

2 MS. PRUITT: They've used an hour and 15
3 minutes so far.

4 CHAIRPERSON REID: Try and wrap it up in
5 15 and if you run over a couple of minutes we're not
6 going to quibble about that.

7 MS. DWYER: Where things ended on April
8 26th is that we completed our case. There was a
9 second hearing day scheduled in May. We all agreed to
10 postpone that in order to permit meetings over the
11 summer between the Office of Planning and the
12 community and what we'd like to do today is provide
13 you with an update of the changes that have been made
14 to the campus plan as a result of those meetings. And
15 the witness to present that is Charles Barber.

16 MR. BARBER: Thank you, Madam Chairman and
17 Members of the Board. My name is Charles Barber. I
18 am senior counsel to the George Washington University.

19 I was attempted to entitle this presentation "How We
20 Spent Our Summer Vacation" because we were quite
21 business meeting with Office of Planning, meeting with
22 representatives of the ANC and Foggy Bottom
23 Association and Office of Planning, playing a bit of
24 shuttle diplomacy.

25 We think it was time well spent. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have been substantive changes, substantial changes to
2 our plan and we are very proud of the changes that we
3 have made to address the specific concerns that were
4 raised.

5 To refresh you, there were three principal
6 items in contention as a result of the first hearing.

7 One, the amount of housing on campus; two, what the
8 University's plans are for Square 54. Square 54, you
9 recall, is the Square where the current hospital is.
10 A new hospital is being built, so that will free up in
11 a couple of years and off campus purchases and
12 development as a matter of right that the University
13 has made.

14 On those three issues what we said on on
15 campus housing is that we would commit to maintain
16 housing for full-time undergraduates for at least 60
17 percent of full-time undergraduates for the life of
18 the campus plan with a goal of 80 percent. Sixty
19 percent was a relatively high figure for us
20 historically. Square 54, we said we really didn't
21 know what our plans were and had identified that
22 square with four University uses, reserving the right
23 to make that decision later. And off campus purchases
24 we said this was an issue that was beyond the
25 jurisdiction of the BZA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 We've made substantial progress on each of
2 these issues. Let me talk about the new housing that
3 we've identified on campus. We've identified three
4 large residential developments totally 1,350 new beds
5 to be built on the campus within five years. I would
6 direct your attention to the board called "Additional
7 Housing." The three red circles, the northern circle
8 with the star, that is the Square 54 site and what we
9 said there is this is directly on Pennsylvania Avenue.

10 We said with a zoning modification to increase the
11 capacity of that site to a mixed use development. We
12 could provide 500 new beds and we would provide those
13 500 new beds either directly on that site or an
14 alternative site on campus which the University would
15 identify and move ahead with at the same time. First,
16 or at least simultaneously with any commercial
17 development on Square 54. The idea of the increased
18 commercial capacity would help finance and help
19 support the new beds. We think that's a win-win for
20 the University and the community and we urge your
21 support of that.

22 The second large residential development
23 would be on Square 80. Currently, this is University
24 property, together with space occupied by the School
25 Without Walls and owned by the District of Columbia.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 What we said we would do if the District would give us
2 this property, we would develop this property, develop
3 new space for the School Without Walls, better space
4 than they have now, as well as develop 650 new beds
5 for undergraduate students. We think that's an
6 exciting project. There's precedent for that. The
7 Oyster School Project on Connecticut Avenue is a
8 similar project. We think that's a win for not only
9 the community and University, but for the School
10 Without Walls as well. The principal of the School
11 Without Walls strongly supports this project and we'd
12 like to go forward with that.

13 The third site would be Square 103. It
14 was previously identified, but we've elaborated on
15 that and there will be 200 beds on that site. With
16 this housing, we could house by 2005, 70 percent of
17 the full-time undergraduate population and this is a
18 significant increase from what we had said last time.

19 We had last time said we would maintain a minimum of
20 60 percent with a goal of 80 percent. Here, we're
21 showing how we get halfway to our goal, halfway
22 through the campus plan. This housing would be
23 provided in the housing opportunity area and let me
24 identify what that means.

25 The housing opportunity area would, of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 course, include all on campus sites. It would include
2 all existing sites off campus as well as four squares
3 immediately to the south. Square 43 is residentially
4 zoned. They're all residentially zoned. We have a
5 project already planned for that square, 350 new beds.

6 Square 122, at the eastern end is the site of a PUD.

7 We have just broken ground on a mixed use development
8 which will yield 200 beds on that site. And it is
9 those 350 and 200 beds added to the new sites we have
10 on campus which will total 2200 beds within this five
11 year time frame.

12 We've also added within the housing
13 opportunity area, Squares 58 and 81. The reason we
14 did that, these are areas contiguous to the
15 University's campus. They're residentially zoned and
16 they're areas where the University already owns much
17 of the property. Square 58, we own about three
18 quarters of the property, the major piece we do not
19 own is a boarding house. We do believe there is a
20 displacement issue there, so we think going forward on
21 a long-term basis that that makes sense as a site to
22 do housing. We don't currently have a project
23 identified for that square, but we think it makes
24 sense to identify that now.

25 Square 81, similarly, that's a mixed use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 square. Of the residential uses in that square, we
2 own about half of the residential uses in that square.

3 Again, we don't have a specific project at this time
4 for that square. We think it makes sense to include
5 it in the housing opportunity area. We were asked
6 where are you going to put your students and we have
7 tried to respond to that by identifying clearly what
8 our long range goals are.

9 We would propose that the BZA review where
10 we have gone in five years. This would still be a 10-
11 year plan, but there would be a five year review on
12 our housing commitment. We think that's appropriate.

13 It gives some check and some comfort that we are on
14 our target that we will have met our commitment, our
15 70 percent commitment.

16 On the third area, the use and development
17 of off-campus properties, recognizing that this is not
18 an area where the BZA has jurisdiction, we have
19 volunteered a moratorium on the University's purchase
20 and use of residential areas, residential properties
21 in Foggy Bottom for University uses. We view this as
22 an act of good faith. It's a big step for the
23 University because we are, in effect, for a period of
24 time relinquishing our rights. The period of time
25 would be for the 5-year period, a 5-year moratorium or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 until we reach the 70 percent commitment, whichever
2 comes first. The idea is when we house 70 percent of
3 our full-time undergraduates, there's less of a need
4 for this restriction. So this would be -- so that's
5 an act of good faith. We think it makes sense with
6 these kinds of conditions or proposals be put on the
7 table and this is something we've been asked to do.

8 I would make it clear that we would
9 reserve the right to make purchases for investment
10 purposes. We always have the right to own property.
11 It's a constitutional right the University has. What
12 we're talking about is not purchasing residential
13 properties in Foggy Bottom for University uses and so
14 with University uses, of course, the properties come
15 off the tax rolls, we change the rental policies to
16 favor students and we turn it into a dormitory.
17 That's what we would not do to convert it to
18 University use.

19 We've also made some other advances which
20 we think will address some concerns. Off-campus
21 conduct by our students. In all of our discussions,
22 this has not been a big issue. It has come up from
23 time to time and of course, if there are a few
24 instances of off-campus misconduct by students, then
25 that's a few too many. What we have said is that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would extend our student code of conduct to off-campus
2 behavior in the Foggy Bottom area. We have faced a
3 practical problem in the past in doing that. Many of
4 the buildings directly off campus are large apartment
5 buildings, who is to identify these G.W. students or
6 not. We have no right to go into those buildings. We
7 have tried to address the practical concerns by saying
8 we will work with the landlords and the tenant
9 associations of these buildings so that if they
10 identify G.W. students who have engaged in misconduct,
11 we will discipline them under the Student Code of
12 Conduct. We'll give them the hearing they're entitled
13 to and impose discipline up to and including
14 suspension or expulsion if that's warranted and in
15 effect, we will treat that misconduct as if it
16 occurred on campus. That is a big step for us. That
17 combined with the previous commitment to house
18 freshmen and sophomores on campus we think will
19 address misconduct even more. We have found that it
20 is the younger students, not surprisingly, who are
21 responsible for most of the misconduct, so bringing
22 them in-house makes more sense.

23 There are several other proposals we put
24 on the table. Let me touch upon them. In terms of
25 parking and transportation, we have said that we will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 encourage the use of Metro by giving our students
2 Metro check passes. We find that already a large
3 number of our students use Metro. We have seen from
4 our best data that of the full-time undergraduate
5 students that we don't house, almost two-thirds of
6 them live outside of Foggy Bottom area and they're
7 coming to this area, to the campus via Metro and
8 that's a good thing. We have a Metro station right on
9 campus. We have another Metro station two blocks from
10 campus. We want to encourage and promote that.

11 On parking, we have said that we will
12 increase the minimum number of parking spaces that we
13 will have for the life of the plan. We have proposed
14 2700. We have increased that to 2800.

15 We've also offered, in terms of parking,
16 some of our facilities. Our parking facilities are
17 used cyclically. I am they're in heavy use during the
18 day, during the middle of the day, but during the
19 evenings and nights, there is not much use. We have
20 offered to make certain spaces available to the
21 community on a rental basis where it makes sense and
22 where there is a desire to do so.

23 Let me touch upon student enrollment. We
24 have proposed not adjusting our cap at all of the
25 total number of students. Since 1985 that cap has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 been 20,000. We are proposing no increase in that
2 number. In point of fact, we have fewer total
3 students today than we did in 1985. In 1985 we had
4 approximately 17,900 students. Today, we have as of
5 last count, approximately 16,500. We've been able to
6 do that because we've expanded in other areas since
7 1985. We have a Virginia campus and various satellite
8 campuses so that means there are thousands of
9 students, approximately 3,000 who are not coming to
10 the Foggy Bottom area. We have in the last two years
11 opened a Mount Vernon campus and we plan to grow that
12 campus within the boundaries of that campus plan to
13 further relieve pressure.

14 So we're not proposing an increase in this
15 cap. What has changed over the years is the make up
16 of those students in terms of undergraduates,
17 graduates, part-time, full-time and that is a function
18 of the market that George Washington University is in.

19 We have found that when the economy is good, graduate
20 student enrollment tends to level off and decrease.
21 That is because graduate students are getting jobs.
22 Conversely, the undergraduate population increases and
23 given the population demographic shifts, we have seen
24 some increase in our undergraduate population. We, as
25 a University, need the flexibility to adjust our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 population within the 20,000 cap to meet those kind of
2 market-driven forces. That is crucial for us. It is
3 the underpinning of our economic viability. We are a
4 tuition driven institution. Seventy percent of our
5 operating budget comes from tuition. If there was an
6 artificially imposed cap on one segment of this
7 student population, that would severely undercut our
8 ability to continue to provide a positive economic
9 impact on the District of Columbia which we are doing.

10 We are one of the foremost employers, private
11 employers in the District of Columbia. More
12 significant, it would undercut our ability to build
13 these new beds. We are talking about a significant
14 increase in student beds in five years. We're talking
15 about tens of millions of dollars and that's a
16 commitment the University is ready to make. But to
17 hamstring us by not being able to adjust our student
18 population within the 20,000 cap would undercut the
19 financial viability of these proposals. There's been
20 proposals that we house -- why not house all of your
21 undergraduates on campus? That makes no sense. Being
22 on the subway we have substantial numbers of people
23 who live in other parts of the District of Columbia,
24 in Maryland and Virginia. They're doing quite well
25 there. To require us to do 100 percent on campus

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 brings those people into Foggy Bottom where they do
2 not need to be. Commuters use our campus and we
3 should encourage that use. We have some proposals in
4 here to encourage that use. That is, as we transition
5 to house freshmen and sophomores on campus and juniors
6 and seniors who are moving off, we will advise them
7 about places outside of Foggy Bottom where they might
8 want to consider living, with the Metro check passes.

9 And also, the University says that where we identify
10 pockets of students that are outside of Foggy Bottom
11 who are congregated, we will institute a shuttle
12 service to make that transportation even easier. So
13 that makes sense, but bringing those people on to
14 campus does not make sense.

15 There's been a proposal that we provide
16 one bed for every full-time undergraduate increase
17 that we have in our population. We're going to do
18 better than that. We're going to add more beds than
19 we add students in five years. But we need the five
20 years. It takes time to build beds, to freeze our
21 population. And in effect, that would be a freeze,
22 would undercut our ability to build the beds. We have
23 an architectural solution here. We think it's an
24 architectural solution that can work. We cannot do it
25 by ourselves. The University is committed to doing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 its part, but we are looking for a partnership with
2 the District of Columbia, with the Office of Planning,
3 with the ANC, with Foggy Bottom, with the citizens of
4 this community around the issue that we all have a
5 joint interest in, increasing our on-campus housing.
6 We will prepare the plans. We will bring these plans
7 forward. We will spend the money and the resources,
8 but there will be approvals that the University will
9 have to get. We need the support of the people in
10 this room behind that plan.

11 I have no doubt that with that support
12 these housing numbers can be achieved. We can build
13 this housing with the support, but we need that
14 support.

15 With any partnership, if we succeed,
16 there's benefits to each of those parties. If we
17 fail, there are risks to each of those parties.
18 There's a risk to G.W., George Washington University,
19 if we are not able to secure the approval to build
20 this housing. The risk is the risk we always face is
21 that this Board will deny us the right to build the
22 other facilities we need. We have academic needs. We
23 have medical education needs. We will be coming back
24 to this Board for approval to build those projects. I
25 fully expect if we have not made the progress that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 should in meeting this 70 percent vote, that we won't
2 get those projects built. That's the sanction, that's
3 the stick that's hanging over our heads and it's
4 driving our commitment.

5 George Washington University is proud of
6 what it has been able to do. It's listened. It's
7 identified the areas of concern and we've put forth a
8 very aggressive plan to address those concerns while
9 preserving the flexibility and the financial
10 feasibility of the operation of the University. And
11 with that, I thank you.

12 CHAIRPERSON REID: Thank you very much.
13 Do Members of the Board have questions?

14 COMMISSIONER MITTEN: I have a few
15 questions. You were doing great, you were talking too
16 fast for me.

17 MR. BARBER: Sorry, time was limited.

18 COMMISSIONER MITTEN: When you were
19 enumerating and maybe I misheard you, but when you
20 were enumerating where new beds could go I understood
21 you to say that there were three different places and
22 that that would total 1350.

23 MR. BARBER: That's correct.

24 COMMISSIONER MITTEN: And then there are
25 two sites that have already been identified for beds

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and that would total another 550?

2 MR. BARBER: That's correct.

3 COMMISSIONER MITTEN: And -- but I
4 understood you to say, give a total of 2200?

5 MR. BARBER: 1350 plus 550, I think -- to
6 get up to 2200, I missed that point. There are some
7 beds on campus that will transition to University use,
8 apartments we have purchased in the last few years,
9 some of those beds will transition to University over
10 the time period.

11 There's also some beds in existing
12 facilities that we will provide more students in.

13 COMMISSIONER MITTEN: Could you be more
14 specific on those -- where are you talking about
15 exactly? Can you enumerate that or can you provide
16 that to us as a follow up?

17 MR. BARBER: Yes. On the transitioning of
18 beds, it's the west end and 2109 F Street, properties
19 that we have purchased and of course, there's no
20 requirement that people move out, but people do move
21 out from time to time, so we have counted a certain
22 number of beds and we've been fairly conservative in
23 our estimate of the number of beds that will
24 transition to University use and those facilities.

25 COMMISSIONER MITTEN: I'm just trying to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 get a sense -- and maybe you've given it to us and
2 there's just a lot of material --

3 MS. DWYER: We can provide that for the
4 record because we had a previous list and included --
5 it was 302 beds in existing facilities on campus and
6 we will provide you with an updated list that shows
7 you item by item where each of these new projects is.

8 COMMISSIONER MITTEN: Okay. The issue
9 about Square 54 and if there were to be 500 new beds
10 on Square 54 that you would need a zoning
11 modification.

12 MR. BARBER: Yes.

13 COMMISSIONER MITTEN: You know that we
14 can't direct the Zoning Commission to do anything.
15 You're saying on that's contingent on if you were to
16 get what you request on Square 54, then you would
17 provide 500 new beds on Square 54?

18 MR. BARBER: Yes, that's correct. And we
19 believe that's doable, again, with the support of our
20 parties, with Office of Planning support, with the ANC
21 support. We recognize that is a Zoning Commission
22 matter, but we think that it's imminently doable with
23 the support.

24 COMMISSIONER MITTEN: Okay, when you talk
25 about the District government giving you the site for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the School Without Walls and then you would undertake
2 to rebuild the School Without Walls, would that be in
3 the same square or someplace else?

4 MR. BARBER: In the very same location.

5 COMMISSIONER MITTEN: I have a general
6 question about these sort of contingency things that
7 seem to me to happen about the zoning with Square 54
8 and the District giving you the site of the School
9 Without Walls and I understand that that's not without
10 an offsetting contribution on the part of the
11 University.

12 In our materials there are -- there are
13 two sites that you've specified where we will have to
14 in the course of -- or you're requesting that we in
15 the course of granting the campus plan grant a special
16 exception for continued use of two parking lots in R-
17 5-D and I can tell you where that is. That's your
18 Appendix N to what you have filed on April 12th. And
19 I'm leading up to my question. I also identified two
20 other parking lots that I don't know if they're in the
21 same -- I know they're in the same zoning category, so
22 I don't know if they're in the same category of
23 meeting the special exception. But what I would like
24 some clarification on is surface parking is a very
25 inefficient use of land, so why is it that you need to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have these -- why is it that you can't accomplish what
2 you want to accomplish on site that you have surface
3 parking on? Why do these other things have to happen?

4 MR. BARBER: We have converted some of our
5 surface parking spaces, places to buildings. We are
6 building two projects now that were formerly surface
7 parking areas, the Health and Wellness Center and the
8 Media and Public Affairs --

9 COMMISSIONER MITTEN: Could you -- I just
10 want to be clear. Health and Wellness is on what
11 square, please?

12 MR. BARBER: 42.

13 COMMISSIONER MITTEN: Okay.

14 MR. BARBER: Media and Public Affairs is
15 on our central campus and I'm unsure of the square. I
16 can get you the square of that.

17 COMMISSIONER MITTEN: Okay.

18 MR. BARBER: These are on-going projects.
19 They should be finished within the year.

20 COMMISSIONER MITTEN: Okay.

21 MR. BARBER: Why we have asked for special
22 exception approval for existing parking lots is --
23 surface parking lots because we planned in the short
24 run to continue to use them as surface parking lots.
25 The question is have we considered -- are we willing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to consider development on those sites? Yes. We are
2 considering it and have considered some development on
3 those sites.

4 It could be that some of these projects
5 could be enlarged to include those surface parking
6 lots.

7 COMMISSIONER MITTEN: I guess my main
8 concern is here we have basically a five year window
9 of time that we're at least -- the goal would be that
10 you would accomplish all these things.

11 MR. BARBER: Right.

12 COMMISSIONER MITTEN: And yet several of
13 them are contingent upon other things happening.

14 MR. BARBER: Yes.

15 COMMISSIONER MITTEN: And given that you
16 have land that's being inefficiently used, why are you
17 making this housing proposal contingent on these other
18 things. Why don't you just use the land that you have
19 that's being inefficiently used?

20 MR. BARBER: Okay, part of this is the
21 location of the housing in the context of other uses,
22 but I think an architecture would probably be the --
23 would be one better to address the location of this
24 housing.

25 COMMISSIONER MITTEN: Okay, you raise

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 another point which I would like to understand better
2 too, the compatibility issue, because Office of
3 Planning raised it and it's obvious an issue for the
4 community. From your perspective, what things go
5 together and what things don't go together? Because I
6 mean we don't want in the course of making our
7 decision do something that you will find inherently
8 unworkable so from your perspective, what things don't
9 go together?

10 MR. BARBER: Again, those kinds of
11 planning issues, I think the architect would probably
12 be better, but let me just say this, in general. The
13 more intense uses are in the central part of our
14 campus. The less intense uses are more on the
15 periphery of our campus. Housing is more of an
16 intermittent use. You have people leaving in the
17 morning and coming back in the afternoon, by and
18 large, as opposed to academic buildings that are used
19 constantly and so we have --

20 COMMISSIONER MITTEN: Is that what you
21 mean when you say intense? You mean an academic use
22 is an intense use?

23 MR. BARBER: Yes.

24 COMMISSIONER MITTEN: Okay.

25 MR. BARBER: The timing, the number of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people, the amount of people coming and going during a
2 period of a day.

3 COMMISSIONER MITTEN: Okay.

4 MR. BARBER: But in terms of other
5 planning principles that have guided our campus plan
6 and the selection of the housing, I'd like to have our
7 architect take a crack at that.

8 COMMISSIONER MITTEN: Okay.

9 MR. BARBER: Do you want to do that now?

10 CHAIRPERSON REID: Let's finish with --

11 COMMISSIONER MITTEN: Okay. In the
12 additional materials that you all had provided, you
13 didn't specifically speak to this, but you gave us a
14 numeration or a formula for how you calculate full-
15 time equivalent students?

16 MR. BARBER: Yes.

17 COMMISSIONER MITTEN: And this is a
18 general question, first of all, because we hear these
19 campus plans from time to time and we want to be sure
20 we're speaking the same language. It seemed very
21 specific about okay, well, there is a certain category
22 and then you divide by 12 and then another category
23 you divide by 9 and another category you divide by 8
24 and so on. So is that your -- George Washington
25 University's definition of full-time equivalent or is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 there actually some generic definition of full-time
2 equivalent?

3 MR. BARBER: My understanding and Craig
4 Linebaugh from Academic Affairs can speak to this more
5 specifically, but my understanding is that it is a
6 fairly standard definition for those groups of
7 students. That is, for undergraduates the full course
8 load is based on 12. For graduates, the full course
9 load is based upon 9 and that is a fairly standard
10 type of measurement. But I would also refer to Craig
11 Linebaugh to answer that more fully.

12 COMMISSIONER MITTEN: Given that we're
13 trying to do the best for everyone and it's important
14 for us to understand how your business works and how
15 it's changed over time so we make sure if we're
16 looking at things like the fact that your full-time
17 equivalent student population has declined, is it
18 possible for you to provide us with that -- the
19 formulas -- you say this is generically how we
20 calculate this number, but to put numbers to that so
21 we can have a sense of well how does the proportion of
22 students shift from actual full-time students. I
23 guess numbers plugged into the formula, that should
24 help us, but if we could have it, I don't know if you
25 can break it down into those categories and then by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 undergraduate and graduate.

2 MR. BARBER: Okay.

3 COMMISSIONER MITTEN: Is that possible?

4 MR. BARBER: Yes, we can.

5 COMMISSIONER MITTEN: And then can you
6 tell me what the definition of a commuter is? How do
7 you put students in that category?

8 MR. BARBER: People who live at home in
9 the sense of home when they apply.

10 COMMISSIONER MITTEN: Okay.

11 MR. BARBER: I may be exceeding my limited
12 knowledge here.

13 COMMISSIONER MITTEN: If we start to look
14 at and this is going to be down the road, but I'm
15 going to anticipate something that the Office of
16 Planning is going to say about counting, counting
17 people and where they live and all of that. When I
18 was in school my parents bought a house and my sister
19 and I lived in this house, but we effectively in the
20 neighborhood of campus, but we could have been
21 classified in any number of ways.

22 MR. BARBER: Right.

23 COMMISSIONER MITTEN: We should be
24 captured for this exercise, in my mind, as not
25 commuters, but students living in the community.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: Okay.

2 COMMISSIONER MITTEN: So I want to be sure
3 that we understand what commuter means since you guys
4 are labeling and putting the numbers in those
5 categories, I want to understand what you mean by
6 that.

7 MR. BARBER: I appreciate that. I think I
8 was using more broadly. We have looked at it. What
9 number of students live outside the Foggy Bottom area.
10 Because if they're not living within Foggy Bottom,
11 then they're not causing a problem. They're not a
12 problem for our neighbors and we've been told that.
13 So we try to identify where our students live and
14 where -- how many live outside of Foggy Bottom, how
15 many live inside of Foggy Bottom.

16 We don't currently have precise data. We
17 have some general ideas. In fact, one of our
18 conditions that we proposed is that we collect that
19 data as we will going forward in the spring prior to
20 registration and have more precise data of exactly
21 where they are and report that regularly to the ANC
22 and to others.

23 But that is the idea of a commuter, that
24 is somebody who lives outside the Foggy Bottom area
25 who then would come here by Metro or some other way.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER MITTEN: So nobody within
2 Foggy Bottom would be captured in that category,
3 regardless of whether they owned a condominium or
4 rented a condominium or whatever.

5 MR. BARBER: Unless they start out there.
6 I mean if their parents live there or that's --
7 they're on their own when they applied, then I think
8 --

9 COMMISSIONER MITTEN: You mean if by some
10 strange coincidence they were residents of Foggy
11 Bottom and then decided to go to G.W.

12 MR. BARBER: Right, and I think that's a
13 very small percentage. By and large, you're right.

14 COMMISSIONER MITTEN: Okay. I just want
15 to be sure that we understand, everybody is speaking
16 the same language.

17 MR. BARBER: That's right.

18 COMMISSIONER MITTEN: You also, I'm not
19 sure that I understood your meaning or if you said
20 what I understood you to say. When you talk about the
21 moratorium on off-campus purchases, then you got into
22 talking about residential purchases. Are you -- I
23 understand the distinction about investment
24 properties, but is the moratorium exclusive to
25 residential properties or is it properties for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 University use?

2 MR. BARBER: No, it's specific to
3 residential properties because this has been the
4 problem that's been raised to us repeatedly in our
5 discussions. It is University's purchase of
6 residential properties whether they be apartment
7 buildings or hotels and then converting them to
8 University use. That has been the problem that's been
9 identified and that's what the moratorium is designed
10 to address.

11 COMMISSIONER MITTEN: Residential only.

12 MR. BARBER: Yes.

13 COMMISSIONER MITTEN: Okay, great.

14 MR. BARBER: And if you think of matter of
15 right uses as I think the term invasion came up in the
16 previous case, this is a cease fire in that context
17 within the term of the moratorium.

18 COMMISSIONER MITTEN: That's all I have
19 right now.

20 MEMBER MOULDEN: I have a general
21 question. You indicated earlier that the student
22 enrollment decreased from approximately 17,000 to
23 16,000?

24 MR. BARBER: Yes, the total number of
25 students is about that amount.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MOULDEN: And that was a result of
2 different locations of campus in the area?

3 MR. BARBER: Yes. I mean if you look our
4 total student population in all areas, yes, we have
5 more students, but they're not in Foggy Bottom. So
6 we've been able to limit the number of students in
7 Foggy Bottom by expanding in other areas.

8 MEMBER MOULDEN: Why is there a need for
9 additional beds there if the campus enrollment has
10 decreased?

11 MR. BARBER: Our number of full-time
12 students, full-time undergraduate students
13 specifically which has been the issue which our
14 community friends have asked us to address, that has
15 varied over time and in the last few, five years or
16 so, it has increased. So full-time undergraduate
17 students as opposed to part-time have increased, and
18 so we've tried to provide more beds to address that
19 population. And if you look at total number of
20 students, grads, part-time, etcetera, that number has
21 decreased. The population within that number has
22 shifted and so we do have more full-time
23 undergraduates in the last few years who have housing
24 needs. So we want to address those housing needs.

25 CHAIRPERSON REID: I have a question. Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Barber, you in your testimony refer to a
2 recommendation for a proposal for a five year review
3 of the campus plan?

4 MR. BARBER: Yes.

5 CHAIRPERSON REID: How do you propose that
6 be accomplished?

7 MR. BARBER: It could be done in a number
8 of ways, but what we have said in our proposed
9 conditions that the ANC could choose to initiate a
10 review and which we would agree to do if we were not
11 in compliance with our -- if we had not met our 70
12 percent goal to address the housing issue. Or if they
13 felt the housing issue needed to be addressed, they
14 could bring us back for a mid-term review and this
15 Board would look at at that time where we were, the
16 population, the numbers and by that time we would have
17 more accurate data about exactly where our students
18 live and we would have progress reports about the
19 number of beds that we've been able to build and I
20 would expect that we are at that 70 percent, but the
21 Board could review that and if the Board were
22 dissatisfied with our progress or felt additional
23 action was warranted, the Board could take additional
24 action at that time.

25 We don't think a five-year campus plan

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 makes sense. It takes three years just to get these
2 things together and get them before the Board, but we
3 think a mid-term review particularly on the housing
4 program makes some sense.

5 CHAIRPERSON REID: On the face of it that
6 does sound good, however, I don't think that we have
7 an apparatus where we could actually do that, do we?
8 I'll talk with Corp. Counsel on this.

9 MS. CORPORATION COUNSEL: I know in the
10 Georgetown campus plan it talked about adding it to
11 their application for further processing, special
12 exceptions, further processing of the plan over the
13 life of the plan?

14 COMMISSIONER MITTEN: We can't hear.

15 CHAIRPERSON REID: You can't hear who?
16 Speak up, please.

17 MS. CORPORATION COUNSEL: I know in the
18 Georgetown campus plan they've talked about adding an
19 update to the special exception, further processing of
20 the plan over the life of the plan, adding a reporting
21 component to that.

22 CHAIRPERSON REID: When a term is
23 classified in the order, there's no mechanism by which
24 we can bring them back for review, as the regulations
25 stand right now, is it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. CORPORATION COUNSEL: You are right.

2 CHAIRPERSON REID: On the face of it, like
3 I said, with something as great rolling around the
4 city like campus plans, in general, but how to
5 facilitate that is a horse of a different color. What
6 orders are written -- we can't bring you back unless
7 there is some type of text amendment from the Zoning
8 Commission that would allow that to be done.

9 Can you speak on that?

10 COMMISSIONER MITTEN: We don't have
11 anything like that yet.

12 CHAIRPERSON REID: Yes.

13 COMMISSIONER MITTEN: One of the things is
14 we could discuss whether or not, and I don't know if
15 -- I don't know legally how it works, but just like
16 this moratorium is, you know, Mr. Barber is correct,
17 we don't have the authority -- we don't have the
18 authority to impose a moratorium on them, but they
19 will voluntarily do that as a condition of the plan so
20 I don't know if by agreement if it becomes integrated
21 into the plan that everybody agrees that there will be
22 this five year review if that sort of then makes it
23 doable.

24 CHAIRPERSON REID: The thing about it,
25 correctly, legally then suppose after five years they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 come back and they have a review and it's determined
2 that it's not working. Then what? Do you revoke the
3 campus plan?

4 COMMISSIONER MITTEN: All that needs to be
5 discussed.

6 CHAIRPERSON REID: Yes. It would be
7 rather involved as to the what if kinds of things?

8 MS. DWYER: If I could just in support of
9 what Corporation Counsel has said, in the 1990
10 Georgetown University campus plan there was a
11 condition that with each further processing, the
12 University would update the Board on the progress of
13 its housing program as well as the progress of its
14 traffic, transportation management program and that
15 allowed the Board to have periodic review since G.W.
16 will have a number of projects coming before you
17 including some of these housing projects, we would --
18 you could have as a condition that as part of that
19 further processing, the University would provide the
20 update and there's certainly precedent for that from
21 the Georgetown University campus plan. And if at that
22 time you felt that the University was not making
23 sufficient progress, then you could impose additional
24 conditions or restrictions on the University to try
25 and accelerate the progress in the housing area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Ms. Dwyer, I am not
2 clear as to how we can facilitate that and I think it
3 warrants some additional scrutiny by Corp. Counsel or
4 the Zoning Commission to determine how we could
5 facilitate that because it appeared that given the
6 current environment, as far as the community is
7 concerned, and these campus plans are concerned, there
8 is a feeling that some type of mechanism wherein
9 there's a monitoring or a review that will take place
10 prior to the expiration of the 10-year campus plan
11 period would be something that would be very good.
12 However, I think that while it's being talked about
13 and perhaps we could look at how to best facilitate it
14 --

15 MS. DWYER: I'd be happy to propose some
16 language, drawing on other cases.

17 CHAIRPERSON REID: That would go a long
18 way in giving the community, I think, some comfort and
19 the ten years seems to be too long and at the same
20 time to ensure that George Washington was not unduly
21 harmed, try to set those time constraints and how to
22 best do that we'd have to look into that.

23 COMMISSIONER MITTEN: Madam Chair?

24 CHAIRPERSON REID: Yes.

25 COMMISSIONER MITTEN: I just want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interject under the current regulations which, you
2 know, may continue to be the regulations or we may end
3 up making some changes, there's been a lot of
4 creativity that's been brought to bear and Ms. Dwyer
5 raises this idea that's been employed for the George
6 Washington University campus plan.

7 So I think any creative ideas that
8 everyone can agree to, we should welcome.

9 CHAIRPERSON REID: yes.

10 COMMISSIONER MITTEN: And so let's at
11 least let things be percolating.

12 CHAIRPERSON REID: I agree. I agree.

13 VICE CHAIRPERSON SOCKWELL: Madam Chair,
14 this might be possible for it to be looked at as the
15 external process that would be bound into the campus
16 plan approval for this particular University whereby
17 the five year review would be between an established
18 community-University relationship group at which time
19 if the University was not meeting its goal and
20 appeared not to be able to meet its goal over the 10
21 year campus plan period, that the group would come
22 together and formulate a method of getting them back
23 on track and if that didn't happen, when they came
24 back around for the next campus plan approval, the
25 lack of performance after a mid-term external review

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would be taken into consideration by the Board, but at
2 this time our regulations don't allow us to do it as a
3 Board action. It would be an external action that
4 would have a set of reporting criteria which if used
5 and then unsuccessful, would be the basis for our
6 review of that portion of the campus plan the next
7 time it came up.

8 CHAIRPERSON REID: I think that all of
9 these things, all of these ideas are warranted for
10 some consideration to come up with something that is
11 workable for all concerned. I also have to commend
12 George Washington for its taking the initiative to
13 even propose something of that nature.

14 Now the other question is with regard to
15 Square 54 where the existing hospital is going to be
16 old hospital is located at this time, you were saying
17 in your written submissions that there has not been
18 really anything definitive -- determined as to what is
19 going to go there. Nonetheless, you are considering
20 putting some housing there, you are or you are not?

21 MR. BARBER: Yes. Let me explain that.
22 What we are proposing for Square 54 once it is vacated
23 is that we, the University, seek a rezoning of the PUD
24 to increase the capacity to do commercial and a mixed
25 use development, commercial and housing, commercial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and academic and this increased space would then
2 facilitate, would support housing, 500 beds of housing
3 and we would put that housing on Square 54 or on an
4 alternative site. The idea is that maybe with the
5 increased capacity some place on campus we've
6 identified as academic would fit on Square 54 and we
7 could switch the sites. Wherever we decide to put it,
8 it would be on campus and we would go forward with the
9 housing prior to or simultaneously of going forward
10 with the commercial development. This proposal was
11 trying to address, we have a mature, older campus and
12 it's getting to be a zero sum kind of gain that if you
13 do academic, you can't do housing. We're trying to
14 get out of that box by increasing the buildable space
15 and also this is prime real estate, the highest and
16 best use, quite frankly, in this area is all
17 commercial, but we think if we get increased
18 commercial, that will support housing and whether we
19 do the housing right there or whether we find a vacant
20 parking lot to do housing, it's going to be housing on
21 campus and we would do it in a time frame that's
22 consistent with development of Square 54. That was
23 the point of that.

24 CHAIRPERSON REID: Okay. Thank you very
25 much and the last question is about Square 80, this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 School Without Walls.

2 MR. BARBER: Yes.

3 CHAIRPERSON REID: Are you proposing to
4 tear down the existing building and build a new school
5 there, School Without Walls, a dormitory on the same
6 site?

7 MR. BARBER: We haven't gotten to the
8 design. I think we may end up keeping the existing
9 structure, or at least the facade of the existing
10 structure and integrating that into this development.

11 We would, of course, have to separate somehow, the
12 housing from the School Without Walls. There's enough
13 space. We have done enough planning to identify --
14 and again, the architect can speak to that. There's
15 enough space to accommodate both the School Without
16 Walls and better and bigger facilities, quite frankly,
17 as well as these 650 undergraduate beds.

18 CHAIRPERSON REID: I have one last
19 question.

20 MR. BARBER: Okay.

21 CHAIRPERSON REID: In regards to bicycles
22 --

23 MR. BARBER: Bicycles?

24 CHAIRPERSON REID: Yes.

25 MR. BARBER: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Transportation-wise is
2 they do want to provide Metro passes to students who
3 commute.

4 MR. BARBER: Yes.

5 CHAIRPERSON REID: And I think I read from
6 the Commission that quite a few students use bicycles?

7 MR. BARBER: Yes.

8 CHAIRPERSON REID: What percentage of the
9 students do you -- can you tell us actually use
10 bicycles back and forth to school, rather than cars?

11 MR. BARBER: I'm sorry, I can't tell you
12 that. I do know, I think we looked at that in the
13 spring in terms of providing more bicycle racks, but I
14 don't think we ever got a number as to the percentage
15 of our students who --

16 CHAIRPERSON REID: Have you all ever done
17 any kind of an encouragement of bicycles rather than
18 cars?

19 MR. BARBER: In the sense of facilitating
20 places to put the bicycles, the racks. We've
21 increased that, right near the academic uses. Could
22 the University do more? I suppose we could. I think
23 we've done some. Certainly in the past year that I've
24 aware of, but we could integrate that into our traffic
25 management plan and that's not a bad idea.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: One of the issues to
2 addressing the parking problem, so --

3 MR. BARBER: yes.

4 CHAIRPERSON REID: Thank you very much.
5 Member Renshaw?

6 MEMBER RENSHAW: Yes, thank you, Mr.
7 Barber, for your presentation. Just a couple of
8 questions for you. First of all, regarding the five
9 year review period, I just want to recommend to the
10 Board and to the University and to the community that
11 the ANC be involved and give us input because I know
12 that the ANC's time is increasingly being taken up by
13 G.W. University's activities and so I would like to
14 hear from the ANC as far as its opinions about a five
15 year review period. I think that that would be very
16 helpful to me, at least, and I assume to the Board
17 also.

18 I'd also like to know if your summary of
19 major conditions proposed by the University or the
20 Foggy Bottom campus plan that we have received to date
21 has been reviewed by the community and by the ANC?
22 Has this paper been reviewed by them?

23 MR. BARBER: This paper is a summary of
24 the more detailed conditions, dated September 11th,
25 which I believe is also in your package, proposed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Board of Zoning Adjustment conditions for the G.W.
2 Foggy Bottom campus plan which has been provided to
3 the Foggy Bottom Association as well as ANC-2A.

4 MEMBER RENSHAW: Have they, for instance,
5 the ANC, has it in public session reviewed this
6 document?

7 MR. BARBER: I cannot speak to that.
8 The ANC would have to speak to that.

9 MEMBER RENSHAW: All right, so just in
10 clarification because the chair brought it up and it
11 was one of my questions, but you are planning on the
12 School Without Walls to use that site and to build
13 over that site, in other words, to put a dormitory on
14 top of the site or adjoining the site? Is that the
15 understanding? Because the way it is worded here, you
16 want to transfer this site to you and my question was
17 why? In other words, are you just going to move the
18 school to another location within Square 80?

19 MR. BARBER: No.

20 MEMBER RENSHAW: Or you're going to keep
21 the school where it is but you're using the air
22 rights, so to speak?

23 MR. BARBER: No. Under this scenario, the
24 land would be and the property would be transferred to
25 G.W. Then G.W. would take this property and develop

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 it and part of that development would be new, better
2 space for the School Without Walls, pretty much right
3 where they are now, as well as part of that
4 development will be housing 650 units of housing for
5 undergraduate students. Am I not making myself clear?

6 MEMBER RENSHAW: You are, but I'm just
7 wondering why the city, for instance, cannot retain
8 that site and just rent it out to you, rather than
9 having to transfer it to the University.

10 MR. BARBER: This, is of course,
11 contingent -- we have not negotiated any deal with the
12 city.

13 MEMBER RENSHAW: Okay, so this is just
14 your proposal?

15 MR. BARBER: This is just our proposal and
16 we certainly would be willing to sit down with the
17 city and work out what is appropriate. I mean my
18 vantage point, the University would be extending a
19 substantial amount of money and what the District gets
20 out of that transfer is a new school, a new facility
21 for one of its schools for which the District won't
22 have to pay a dime for. That's a quid pro quo in my
23 mind.

24 MEMBER RENSHAW: Not to be belabor that, I
25 want to move on to the moratorium on the purchase of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 new residential facilities and just make the comment
2 that this proposal is not a remedy, it's a stay of
3 execution and you know that. In other words, you are
4 going to be after five years resuming your activity of
5 -- well, you have, during this period acquired
6 property and you stated that you're just not going to
7 convert it to University use during that five years?

8 MR. BARBER: We reserve the right to do
9 that. We're not saying that we would necessarily do
10 that.

11 Let me explain why we think it's more than
12 that. The reason we purchased off campus property and
13 convert it to University use is to meet the immediate
14 short term needs to house our undergraduate student
15 body.

16 I mean it's quicker, not necessarily
17 cheaper, but quicker to purchase an existing housing
18 facility and convert it to residential use, University
19 residential use than it is to start from scratch and
20 build. So we have done that, particularly in the last
21 few years, to address a short-term kind of need.

22 We would have less of that need. As we
23 build -- yes?

24 MEMBER RENSHAW: What I want to know, the
25 papers that we've received from the community talks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 about the impact of University acquisitions on the
2 neighborhood.

3 MR. BARBER: Yes.

4 MEMBER RENSHAW: In other words, the
5 neighborhood is shrinking, G.W. University is getting
6 larger. And I want to know, even with these wonderful
7 words about a moratorium, what is the relief for the
8 community? Would you talk to that issue? Where is
9 it?

10 MR. BARBER: We see the relief to the
11 community in two areas. More on-campus beds,
12 significantly more on-campus beds within a five year
13 time frame.

14 Also, I think this moratorium does provide
15 a relief. What, as I understand the issue, it is the
16 conversion of off-campus properties, residential
17 properties to University use which is a problem. I
18 mean University can own property and people live
19 there. We have the right to be a landlord or property
20 owner just like anybody else and that doesn't hurt the
21 community because the same people are living there
22 prior to the University purchase as afterwards. So as
23 an investment, I don't see that being a problem.

24 We are putting a moratorium on the
25 conversion to University use and I think that is very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 significant. It's a right we have and we're giving
2 that up for a period of time.

3 MEMBER RENSHAW: For five years.

4 MR. BARBER: Yes.

5 MEMBER RENSHAW: And then you are going to
6 convert?

7 MR. BARBER: Not necessarily. It's just
8 the moratorium would go away, but after that time we
9 will have less of a need to go off campus and purchase
10 and convert.

11 MEMBER RENSHAW: We'll pick up on this, I
12 am sure, later on in the hearing. And one last thing,
13 based on what Ms. Mitten asked you about commuters and
14 you said persons outside of the Foggy Bottom area
15 would be classified as commuters?

16 MR. BARBER: I think that's correct.

17 MEMBER RENSHAW: So that if he lived one
18 house outside of Foggy Bottom jurisdiction they'd be
19 commuters? Perhaps when you define something you
20 ought to give a distance that is not just within close
21 proximity.

22 MR. BARBER: I appreciate that. What we
23 tried to tie it to is the protection to Foggy Bottom
24 as referenced in the comprehensive plan. If you have
25 a line and to -- and a boundary -- you're always going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to have a situation well, somebody right across the
2 boundary is going to be treated differently, but
3 that's the nature of a boundary. We tried to identify
4 what's in close proximity based on Foggy Bottom.

5 MEMBER RENSHAW: That's all for now.

6 CHAIRPERSON REID: All right, Ms. Dwyer,
7 do you have anything?

8 MS. DWYER: We have other witnesses. I
9 don't know if the Board has questions of the other
10 witnesses? We have the architect here, the traffic
11 consultant?

12 COMMISSIONER MITTEN: I had asked a couple
13 of questions --

14 MS. DWYER: Yes, I'd like to call them up.

15 CHAIRPERSON REID: Thank you, Mr. Barber.

16 MR. BARBER: Thank you.

17 MS. COSMELA: Madam Chair, Members of the
18 Board, I'm Charlotte Cosmela. I'm an architect with
19 the Smith Group. And I'm representing the University
20 as their --

21 AUDIENCE MEMBER: We can't hear you.

22 COMMISSIONER MITTEN: Could you speak into
23 your mike?

24 MS. COSMELA: Madam Chair, Members of the
25 Board, and members of the community that are present

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 here, my name is Charlotte Cosmela. I'm an architect,
2 an urban designer and I represent the University as
3 their campus planner on this campus plan.

4 I wanted to just briefly address the
5 question that came from Carol Mitten regarding
6 compatible land uses and vacant properties that seem
7 to be prime redevelopment sites.

8 On the first issue of compatible land use,
9 in the 1972 plan and 1985 plan, there was an
10 organizational structure and framework for land uses
11 and this plan follows that concept which is to have
12 the concentration of academic uses which are high
13 activity uses in the center of the campus and
14 supporting uses which residential use is at the
15 perimeter as a buffer to the community. That still
16 seems to make a lot of sense.

17 In terms of the vacant lots, I am not sure
18 which vacant lots. There are a number of parking lots
19 and I think that the two that are the largest are on
20 Square 57 which currently has two academic buildings
21 on them. Square 57, the western edge of 57 is along
22 23rd Street and I believe the northern edge is H
23 Street, is that correct? Or I Street? That would be
24 H Street and 23rd Street. There are two major parking
25 lots on that side and just in general I would just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 address the issue of redevelopment sites.

2 In the exhibits in the campus plan and
3 those are exhibits M, N, O and P, we are showing
4 alternative and preferred development sites. The two
5 sites specifically on Square 56, I'm sorry, not 57,
6 56, have been --

7 COMMISSIONER MITTEN: Can you repeat the
8 exhibit?

9 MS. COSMELA: M, Figure M, N, O and P.
10 There are four drawings that speak to preferred and
11 alternative development sites for the four land use
12 categories, on campus, being academic, residential,
13 medical and investment properties.

14 If you turn to Figure M which shows
15 development sites for academic, you'll see that the
16 two parking lots on 56 which I think might be the ones
17 you're referring to since they are so obvious here, in
18 fact, are preferred academic sites.

19 Another part of allocating buildings in
20 the future not only has to do with sort of what's
21 rational in terms of compatibility between land uses,
22 but also what's the need of expansion for existing
23 schools and for instance, for Square 56, currently
24 there is the engineering building and there's the
25 business school at Faver Hall, both of those need more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 space. So they're expanding and there are programs
2 right now and studies being undertaken to expand those
3 two schools.

4 The University has within the last couple
5 of years done a number of studies and they, in fact,
6 have a migration plan which is to co-locate academic
7 functions in either buildings co-located within
8 buildings or in very close proximity within one
9 another to share resources and to make it doable for
10 faculty and students to travel between buildings at
11 the time of changing classrooms.

12 On Square 101 there's another parking lot,
13 just to go through that and that also has been
14 earmarked for academic use. Specifically, 101 is
15 located on H and 21st. That parking lot is dedicated
16 to expansion space for the law school. The law school
17 is located and concentrated on Square 102. So those
18 were just some examples of why those vacant parking
19 lots are not deemed, that while they are good
20 development sites, they're not really good development
21 sites for housing.

22 COMMISSIONER MITTEN: Okay. Let me just
23 and I don't want to mix the campus plans up, but I
24 remember from hearing the St. Mary's Hall for
25 Georgetown was an interim compatibility with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 community and so on is that there was -- the situation
2 was a building that had been partially used as a
3 dormitory and the proposal was to convert it all to
4 offices and classroom space. And the community
5 definitely -- in close proximity to the community that
6 was in close community to this building definitely did
7 not want a dormitory close to them. So I understand
8 that each campus has its own evolution and its own
9 nature, but what about that as a notion where if you
10 put all the dormitories around the periphery that then
11 places them right up against the community and that
12 seems, at least from some people's perspective to be
13 an incompatibility.

14 MS. DWYER: Before she answers that, let
15 me just clarify that in the St. Mary's case, the
16 dormitory was adjacent to a low rise, low density
17 residential which is essential single family townhouse
18 development.

19 In the G.W. situation the peripheral
20 housing development, dormitories is adjacent to very
21 high density residential, so it's apartment buildings
22 as opposed to a low density residential, but I'll let
23 you answer from a planning perspective.

24 MS. COSMELA: From a planning perspective,
25 first of all, what Maureen is saying is definitely

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 appropriate to consider the densities of those land
2 uses, not only the use compatibility, but the height
3 too and types of uses that occur there.

4 I would be all for mixed use developments.

5 If you were starting from scratch, in fact, that is
6 what you might want to consider doing. G.W. is a
7 little bit different because they traditionally have
8 centered their academic uses in the core of the campus
9 and as new needs occur, it's just very logical for the
10 University to colocate those next to the buildings
11 that they're either expanding upon or consolidating.

12 MS. DWYER: Are there any other questions
13 for the architects?

14 CHAIRPERSON REID: Mr. Sockwell?

15 VICE CHAIRPERSON SOCKWELL: Actually, my
16 question is based on the previous hearing. At that
17 time the consulting architect made a statement that
18 the perimeter of the campus would be built to the
19 limits of matter of right development and at that time
20 I thought that represented a lack of any indication of
21 sensitivity to the adjacent community where the
22 perimeter development would be most likely to cause
23 problems. And I wanted someone to speak to the fact
24 that it was no -- what appeared to be no interest in
25 being in moderation in the development concept to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 absolute limits of matter of right development.

2 MR. FLORANCE: Perhaps I could answer
3 that.

4 VICE CHAIRPERSON SOCKWELL: Yes, I've been
5 holding that question for months.

6 (Laughter.)

7 MR. FLORANCE: I am Colden Florance and
8 I'm with the Smith Group.

9 In a sense, we're damned if we do and
10 we're damned if we don't. The goal here is to
11 maximize on campus housing. We also have a
12 traditional diagram for this campus, if you will,
13 which is academic uses which we describe as intense
14 because of the back and forth and the to and for and
15 the active sidewalk and use of the buildings during
16 the course of the day, class time and also into the
17 evening. Because as everyone knows, there's a good
18 deal of evening use of classes.

19 So it's debatable, perhaps, as to whether
20 or not dormitory use is more of an impact than
21 classroom use. Some people think one is more of an
22 impact on a community. Some people think the other is
23 more of an impact. Having had a pre-existing topology
24 with academic uses in the core and residential uses
25 and what we call student life uses like the Smith

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Center around the perimeter, we felt that that was a
2 pattern of use that we should continue to honor and
3 have done so.

4 Insofar as your question about building to
5 the maximum of the matter of right and the underlying
6 zoning is concerned, we probably have very little
7 choice. We need to add housing. We're struggling to
8 find out how much housing we can and the analysis of
9 these sites and it also relates, of course, to the
10 economics of the situation. Mr. Barber commented on
11 the fact that we do need to be able to finance the
12 construction of beds, dormitories with beds and so in
13 the matter of the relationship of cost of land to the
14 production of beds we've sort have pressed into doing
15 what zoning would allow. So that is a long-winded
16 answer to your question, I guess. I hope it's not --
17 I hope it's helpful.

18 VICE CHAIRPERSON SOCKWELL: I'll ask one
19 more and that is with regard to the location of high
20 density residential campus housing, high density
21 campus housing adjacent to high density private
22 development housing, would the intent of the campus
23 planners and their architects be to orient such
24 housing so that its public and common areas would be
25 more projected to the interior of the campus, thus

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 eliminating some of the obviously less desirable
2 student interaction with the outer community, not like
3 putting rusticated walls at the base of your campus
4 buildings like Columbia University in New York, but
5 attempting to make the orientation such that it is
6 less intrusive.

7 MR. FLORANCE: That would be a real goal
8 and almost a no brainer. It's a very sensible idea
9 and considering the next step of design of these
10 facilities. Yes.

11 VICE CHAIRPERSON SOCKWELL: Thank you.

12 MS. DWYER: Are there any other questions
13 of the architects? If not, I'll call the traffic --
14 are there questions of the traffic consultant that any
15 Board Members have? No?

16 COMMISSIONER MITTEN: Can we just have one
17 minute? I don't know. I just need one minute.

18 MS. DWYER: We also have Steve Sher, our
19 land planner, if there are any questions on land
20 planning or traffic issues?

21 (Pause.)

22 CHAIRPERSON REID: I think I have a quick
23 question, something that comes to mind, it's something
24 I had read in a letter of opposition, I think it was,
25 with regard to metered spaces being taken.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. DWYER: I think Charles Barber could
2 respond to that. It was a temporary situation. I
3 think he can explain.

4 MR. BARBER: I didn't hear the question.

5 CHAIRPERSON REID: Can you address that,
6 please? I had forgotten about it and since we had a
7 little lull.

8 There were about a hundred metered spaces
9 that have been taken away from --

10 MR. BARBER: Yes, yes, I'm sorry. Parking
11 spaces. I didn't hear -- I'm sorry, I missed the
12 question.

13 CHAIRPERSON REID: Yes.

14 MR. BARBER: They have not been
15 permanently taken away. There was some accommodation
16 given to the University in moving in HOVA students.

17 CHAIRPERSON REID: Moving in what?

18 MR. BARBER: I'm sorry, HOVA. HOVA is a
19 term, the acronym we've used, Hall of Virginia Avenue,
20 the former Howard Johnson, the motel that we purchased
21 and made into a dormitory. It's on Virginia Avenue.

22 In order for the students not to block
23 traffic as one of the few days that they were moving
24 on, the Metropolitan Police Department cooperated with
25 us and allowed us to use what were otherwise metered

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 spaces during a temporary time period, just to move
2 the students in. My understanding is that that is now
3 over. We worked with the Police Department. They --
4 we worked that out and got that done as quickly as we
5 could.

6 CHAIRPERSON REID: I'm glad you addressed
7 that, Mr. Barber, because it didn't say that and the
8 fact that this was -- my understanding is what you're
9 saying it was done to alleviate another problem.

10 MR. BARBER: Yes.

11 CHAIRPERSON REID: The students moved in
12 and get settled and the meters were returned to the
13 street.

14 MR. BARBER: That's correct.

15 CHAIRPERSON REID: Are you ready,
16 Commissioner Mitten?

17 COMMISSIONER MITTEN: Yes, I have one
18 question for the parking or the traffic expert.

19 CHAIRPERSON REID: All right.

20 COMMISSIONER MITTEN: And this goes to the
21 capacity analysis that was done. I really tried to
22 read this carefully because I'm trying to understand
23 what it is that you guys do.

24 I think I understand all of the categories
25 where you make adjustments for various things like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 grade and buses and right turns and left turns and all
2 of that and in the capacity analysis, given that
3 you're proposing these midblock crossings that are
4 going to maybe this isn't the right word, but impede
5 traffic or affect traffic in a different kind of way,
6 that is typical, how has that been factored into the
7 capacity analysis?

8 MR. SLADE: The midblock crossings are
9 something --

10 MS. DWYER: Would you please identify
11 yourself for the record?

12 MR. SLADE: I'm sorry, this is Lou Slade.
13 At the present time, those crossings are taking
14 place, the students are crossing the street at will,
15 middle block and it's a very high number in the block
16 that we've identified as the first priority. So first
17 of all, the purpose of the midblock crossing is to try
18 to manage that activity that's already going on in an
19 unmanaged way by channeling the students to a safe
20 location, hopefully, and then by warning motorists
21 that this is occurring, so as you're driving down that
22 particular block, you will see this crossing area in
23 advance and it will be well lit and signed and you'll
24 slow down and you'll see the students crossing in
25 front of you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER MITTEN: And I understand
2 that and I think that funneling them and making it
3 safe and all of that is good, but the capacity now
4 leads to conclusions and so whether it's the midblock
5 crossings that are organized or disorganized how is
6 that factored in?

7 MR. SLADE: Here's the way we approached
8 it and there is not a textbook way to do this because
9 midblock crossings are not really addressed in our
10 industry as something that we measure a lot.

11 What we were concerned about is as the
12 motorists are moving down that block, does the
13 movement of the crossing of students cause the cars to
14 back up into the, what we call upstream intersection
15 and mess up that intersection? It really doesn't
16 happen today except very rarely, but when we were
17 looking at alternatives for laying out these midblock
18 crossings we wanted to locate the crossings far enough
19 into the middle of the block so that any back up of
20 cars that did occur waiting for pedestrians to cross
21 would not back up into that intersection. That was
22 what we focused on and we did it through an analytic
23 method that we sort of had to invent for this purpose
24 and Nicole can maybe add to this. I know that we
25 timed gaps in the current stream of pedestrians to see

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that if there were enough gaps for the vehicles to get
2 through so that there wouldn't be a backup and then
3 tried to estimate what that queue would be.

4 Let me just summarize and I'll let Nicole
5 add to it. If you have an intersection today that's
6 operating okay, but you create something downstream
7 from that intersection that backs up into the
8 intersection, you create a problem. We felt the
9 midblock crossings would not cause that backup, so
10 that our analysis of the intersection was still
11 accurate. It did not -- the intersection was not
12 going to be impeded in any way.

13 COMMISSIONER MITTEN: Let me just ask you
14 another question because there's a midblock crossing
15 that I'm supposed to use, it's by Judiciary Square,
16 it's one of those striped crosswalks and my
17 understanding is that when there's a striped crosswalk
18 and maybe you could clarify for me whether this
19 midblock crossing would be in this category, the cars
20 are supposed to stop for the pedestrian as opposed to
21 a midblock crossing that is more like what I do which
22 is random, but I don't -- I'm not going to step in
23 front of a car. So given that now pedestrians have
24 new authority in a midblock crossing situation, what's
25 that -- how's that been considered?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SLADE: If you want to see the
2 authority that's taken by the University students, I
3 invite you over there. We'll show you how it works.

4 COMMISSIONER MITTEN: We're not supposed
5 to go on visits.

6 (Laughter.)

7 MR. SLADE: You remember your college days
8 and I remember a situation on my campus, I can still
9 remember from a million years ago. I don't think that
10 -- these midblock crossings are not going to change
11 that situation. Students are crossing the street and
12 really have the first priority in their mind and when
13 you drive, you as a motorist respect that because the
14 students are -- they're not oblivious, don't get me
15 wrong, they just -- this is around lunch time after
16 classes, and lunch activities. The flow is very, very
17 heavy. That's when this phenomenon is at its highest
18 peak. And the students really are taking over the
19 street.

20 COMMISSIONER MITTEN: Okay. And unless
21 I'm misunderstanding what you said, you feel that the
22 capacity analysis that you've done gives recognition
23 to the existing situation although it's not
24 articulated in any of these adjustments.

25 MR. SLADE: Right, because the software we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all use doesn't accommodate this unusual situation.
2 The software we use to analyze the intersection
3 doesn't really accommodate the unusual situation we
4 have here with --

5 COMMISSIONER MITTEN: So it's not
6 specifically dealt with?

7 MR. SLADE: It's not specifically dealt
8 with except that we were aware of it and we wanted to
9 ensure that, as I said, that the occasion that cars
10 will back up into the intersection would be very rare.

11 COMMISSIONER MITTEN: Okay.

12 MR. SLADE: Nicole, do you have anything
13 you want to add to this? Okay.

14 COMMISSIONER MITTEN: Thank you.

15 VICE CHAIRPERSON SOCKWELL: Mr. Slade, the
16 midblock crossings that you're speaking of would be
17 strictly on H and I?

18 MR. SLADE: Our first priority location,
19 how many? Help me. H between 21st and 22nd, Mr.
20 Sockwell.

21 VICE CHAIRPERSON SOCKWELL: Per the
22 diagram.

23 MR. SLADE: And I between 21st and 22nd as
24 shown in the diagram. There would be no midblock
25 crossings contemplated for streets like 21st or 22nd

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 where one could die in the intersection as easily with
2 the light green for them to cross as they could.

3 The north-south streets really carry a lot
4 of much heavier traffic than the east-west streets.
5 We see this as a demonstration project in that a
6 midblock crossing would be installed and let's see how
7 it works and then think about doing it elsewhere 10
8 years from now when we come back for a new campus
9 plan.

10 VICE CHAIRPERSON SOCKWELL: And the
11 suggestion of midblock crossings on the north-south
12 streets would seem to be inconsistent with good logic
13 based on the fact that at rush hour, the traffic is
14 heavy and fast and I use some of those streets myself
15 and jockeying for position when the light is changing
16 people are darting across the intersection and one
17 would not generally want to subject the offspring of
18 good taxpaying Americans to such potential danger.

19 MR. SLADE: I agree.

20 CHAIRPERSON REID: Let's move on.

21 MEMBER RENSHAW: Just a quick question,
22 has that been -- these midblock crossings, have those
23 been endorsed by the Department of Transportation?

24 MS. DWYER: Ms. Renshaw, if I could
25 address that? In the record is DPW's report and they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have supported the concept and what they have stated
2 is that the final approval rests with DPW and that
3 design and the traffic studies to back it up will be
4 reviewed and approved by them, but they definitely
5 support the concept and that's in their report.

6 MEMBER RENSHAW: The concept of that is
7 only a concept.

8 MS. DWYER: Only a concept and they have
9 the final approval of any midblock crossings.

10 MEMBER RENSHAW: Thank you.

11 CHAIRPERSON REID: Thank you very much.
12 Ms. Dwyer, does that conclude your --

13 MS. DWYER: Unless the Board has further
14 questions, that concludes our presentation.

15 CHAIRPERSON REID: Now cross examination
16 by parties or ANCs? All right. Who has party
17 standing? How many people are going to cross examine?
18 Two. All right.

19 MS. PRUITT: Madam Chair, is Michael
20 Thomas here?

21 MR. THOMAS: Yes.

22 MS. PRUITT: Mr. Thomas, he was to go
23 first.

24 CHAIRPERSON REID: What about the ANC.

25 MS. PRUITT: Nobody else got a chance --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Ms. Bailey should be able to finish this off. I
2 believe everybody else starts from scratch on their
3 cross examination. Is that correct?

4 CHAIRPERSON REID: Correct. All right.

5 MR. THOMAS: Hello again, Mr. Barber.

6 MR. BARBER: Good day, Mr. Thomas.

7 MR. THOMAS: Let me ask you some questions
8 about some of the proposed locations for housing.
9 First, perhaps the easiest ones, Square 103. I think
10 the proposal in the last document that I saw was that
11 there would be 200 beds in the southeast corner
12 provided. Is that right?

13 MR. BARBER: That's correct.

14 MR. THOMAS: Does the University own all
15 of the land necessary to do that project, as we speak?

16 MR. BARBER: No, we do not.

17 MR. THOMAS: Is there a closing about to
18 occur that would accomplish that or do you have any
19 way of projecting when that would occur?

20 MR. BARBER: There were two parcels as of
21 last spring. We have closed on one. I cannot give
22 you a time frame for the final remaining parcel.

23 MR. THOMAS: And so essentially as to
24 Square 103, where we were in April which is that it's
25 a commitment to build a building that would include

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 200 beds if and when you own the property?

2 MR. BARBER: I say we're 50 percent there
3 because we've acquired one of the two remaining
4 parcels.

5 MR. THOMAS: Right, I understand. But as
6 we speak it is not possible for you to commit to any
7 specific date, even 2005, is that right?

8 MR. BARBER: I believe it will happen in
9 2005, but I can't guarantee it, no. But our 70
10 percent commitment I think can still be met.

11 MR. THOMAS: Even without Square 103, you
12 say?

13 MR. BARBER: I believe so.

14 MR. THOMAS: By the way, let me ask you a
15 preliminary question, the last document that I saw
16 from the University was dated September 7th and I
17 haven't had a chance to go through in detail to
18 compare that with the document dated September 11th
19 when I first saw today. Are there any differences you
20 can point out to me so that I can -- for the sake of
21 efficiency here?

22 MR. BARBER: Sure. I'm sorry if you did
23 not get the September 11th. The only difference, the
24 change that we made, it was in the definition on page
25 2 under 3, housing opportunity area. We made it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 clear, we were assuming this all along, but the
2 housing opportunity area includes, of course, on
3 campus. I think we originally defined it as simply
4 existing facilities off campus and these additional
5 properties. We've made it now clear it first and
6 foremost includes areas on campus.

7 So no substantive -- other than that, no.

8 No changes.

9 MR. THOMAS: Well, since we're there at
10 the housing opportunity area, let me ask you a
11 question about that. When you say properties located
12 at Squares 43, 58, 81 and 122 would be included within
13 this term that you're defining, do you or do you not
14 mean properties now owned by the University within
15 those squares?

16 MR. BARBER: No.

17 MR. THOMAS: In other words, you are
18 asking for the Board essentially to bless the
19 University's continued practice of buying and
20 converting to University use property outside the
21 campus?

22 MR. BARBER: No. We are identifying areas
23 that we would consider putting housing in. Of course,
24 first and foremost on the campus existing areas, but
25 also these four areas. 43 and 122, of course, have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 already been acquired and we're moving on those. I'm
2 not asking the Board to bless this, I'm responding to
3 the community's concern as to where are we going to do
4 housing in the future. I think these are logical
5 areas in which we would do housing for the reasons I
6 articulated and our percentage of property ownership
7 in those squares and it's zoned for residential.

8 MR. THOMAS: As I understand how you have
9 proposed the housing opportunity area to work as part
10 of the combination of concepts here, the University
11 would get credit against any ratio if we went with a
12 ratio as opposed to some other approach, it would get
13 credit putting beds in those areas, even if after
14 acquired?

15 MR. BARBER: That's correct.

16 MR. THOMAS: Let's go back on campus to
17 Square 80 and as I understand the proposal there is
18 650 beds on condition that the District transfers the
19 property that now includes the School Without Walls.
20 Is that right?

21 MR. BARBER: That's correct.

22 MR. THOMAS: And I really don't know the
23 answer to this question, do you -- does the University
24 own all the land aside from that that the School
25 Without Walls was on that would be necessary for this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 project?

2 MR. BARBER: Yes, that we've identified
3 for this project, that is correct.

4 MR. THOMAS: What would be built on Square
5 80?

6 MR. BARBER: A mixed use project. A
7 facility for the School Without Walls and University
8 housing.

9 CHAIRPERSON REID: Mr. Thomas, that has
10 been - that question has already been asked and
11 answered.

12 MR. THOMAS: Perhaps I simply wasn't clear
13 as to what the scope of the possible things included
14 within that project.

15 CHAIRPERSON REID: I asked the questions
16 and Ms. Mitten asked the questions and we asked you
17 not to be redundant.

18 MR. THOMAS: I certainly will try not to
19 be.

20 CHAIRPERSON REID: Okay.

21 MR. RANFONE: You've testified that there
22 aren't any plans in existence at this point. Assuming
23 agreement with the District on the basic idea of an
24 Oyster School-like proposal, have you estimated how
25 long it would be before 650 beds would actually come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 on line?

2 MR. BARBER: It depends how quickly the --
3 we've identified this as a five year project. Some of
4 that is within our control, some of it is not. If the
5 District moves -- that's the District's way -- and
6 this go back to the concept of a partnership. If we
7 are all behind increasing housing on campus and we are
8 all supportive of this as a particular site, I think
9 the District can move expeditiously. That would allow
10 us to then go forward with the -- for the processing
11 and the building permit and the building to get this
12 done within five years. It does require the
13 cooperation of others though.

14 MR. THOMAS: You said that you think you
15 can meet the 70 percent ratio even without the Square
16 103 project. Is the University willing to commit to
17 that? In other words, drop 103 as a condition on your
18 proposed 70 percent ratio?

19 MR. BARBER: No, I just think because 103
20 is doable. I think we will acquire that last piece
21 and I think that should be in the mix.

22 MR. THOMAS: But the answer is no, you're
23 not willing to commit to the 70 percent ratio unless
24 you are able to obtain the remaining land?

25 MR. BARBER: No, I wouldn't put it that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 way. The way we have articulated that, how we could
2 get to the 70 percent, I think we have a good chance
3 of getting there without the 103 and I don't see that
4 as an impediment to our 70 percent commitment.

5 MR. THOMAS: Mr. Barber, is 103 a
6 condition or is it not a condition on your proposal to
7 have 70 percent of the full-time undergraduate
8 students housed in qualified University housing by
9 December 31, 2005?

10 MR. BARBER: It is an assumption. I think
11 what the University will have to do by 2005 is move
12 aggressively on these housing projects, monitor its
13 student admissions and try to come in at 70 percent
14 and one of those assumptions is that 103 is where one
15 -- one of the areas we would move aggressively to
16 build housing, but we would have to also monitor our
17 student population.

18 MR. THOMAS: I'm sorry, I didn't
19 understand the answer. Is that a yes or a no?

20 MR. BARBER: I answered it the best I
21 could.

22 MR. THOMAS: I take it then that we should
23 simply read the commitment of the University in the
24 exact words that appear on page 2 of your September 11
25 submission?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: That is what the University
2 proposed.

3 MR. THOMAS: All right, and as to Square
4 80, if for reasons beyond the fault or control of any
5 of the parties that would be involved in those
6 negotiations, it simply doesn't come together to allow
7 you to build these facilities by December of 2005.
8 What is the housing commitment of the University under
9 those circumstances?

10 MR. BARBER: We view this as a good faith
11 attempt to get to the 70 percent. If, for reasons
12 outside of our control that we're not able to build
13 this housing, then we have to reevaluate that and I
14 think we have to reevaluate that with the community
15 and if appropriate with this Board.

16 What we can commit to is what we have
17 control over.

18 MR. THOMAS: I simply want all of us here
19 to understand clearly what the University's commitment
20 is and I take it that your answer means and correct me
21 if I'm wrong, that absent Square 80 having come
22 together and the building having been completed by
23 December 31, 2005, there is no commitment above 60
24 percent?

25 MR. BARBER: No. I'm saying we're going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to increase our housing commitment when we think we
2 can get to 70 percent through a variety of means. Is
3 any one of these proposals critical? Some are more
4 important than others, but through the combination of
5 monitoring our enrollment and also moving aggressively
6 on these plans and as I said, with the support of the
7 community, I think it's a doable commitment.

8 That's why we asked for a five year
9 update. If we're not able to do it for reasons
10 outside of our control, then there's a remedy for
11 that. The remedy is what we have proposed, even the
12 further processing case or the five year term, that
13 the Board can take another look at. Maybe the Board
14 thinks it's our fault, then they block the further
15 processing or they impose other conditions at the five
16 year.

17 If the Board is convinced that we've made
18 good faith efforts and they have an alternative plan
19 to develop this site because we have talked about
20 developing this site, even without the School Without
21 Walls, then they would hear from us on that point.
22 It's that type of flexibility and you want to kind of
23 box me in on something that's going to take efforts
24 outside of the University and which will take place
25 over five years. But there's monitoring and there's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 reporting and there's an opportunity for the Board to
2 step back in.

3 COMMISSIONER MITTEN: Mr. Thomas, if it
4 would be helpful, I understand that you're seeking
5 understanding for yourself, but I think that we've
6 heard precisely what the University is committing to,
7 so if we could go on from here, I'd really appreciate
8 it.

9 MR. THOMAS: Turning to Square 54, when
10 will that square be available for development?

11 MR. BARBER: The new hospital is due to be
12 ready some time early 2002, let's call it spring 2002.
13 That's what I last heard.

14 MR. THOMAS: Are there any plans in
15 existence now for that complex on Square 54?

16 MR. BARBER: No, there's not.

17 MR. THOMAS: If you know, what would be
18 the maximum number of beds that could be fit into
19 Square 54 if it were used for student housing?

20 MR. BARBER: I do not know.

21 MR. THOMAS: Is 500 beds about one third
22 of what's possible?

23 MR. BARBER: I do not know.

24 MR. THOMAS: Do you know if 500 beds is
25 the maximum number that could be fit into Square 54,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consistent with the 900 square feet of high density
2 commercial that you're asking for?

3 MR. BARBER: I think it's a reasonable
4 number. I don't know if it's the maximum.

5 MR. THOMAS: Have you estimated any length
6 of time for completion of this project, starting from
7 the date of PUD is actually approved?

8 MR. BARBER: The answer is no. I think
9 we've looked at the whole process within a 5 year time
10 frame and we haven't broken it down in pieces.

11 MR. THOMAS: In my notes I had you saying
12 in direct examination something to the effect that you
13 were going to be adding more beds than students, is
14 that right?

15 MR. BARBER: Yes.

16 MR. THOMAS: On what did you base that
17 statement?

18 MR. BARBER: I projected enrollment, even
19 using some numbers that others had simply extrapolated
20 from and say well, if you're on this incline, then
21 this is where you might be in 500 years as where it
22 could be. Even with that kind of scenario, our goal
23 is to add more beds than we would additional students.

24 MR. THOMAS: That's your goal, but is that
25 your commitment?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: Yes.

2 MR. THOMAS: Would the University agree to
3 a condition on approval of its plan that guaranteed
4 that more beds would be added than students?

5 MR. BARBER: I would prefer that our
6 proposal would be as stated, that it's at 70 percent.
7 It addresses the need for housing, adds additional
8 housing, while allowing us to retain flexibility. I
9 think that's important. That's how we phrase the
10 proposal in that way.

11 MR. THOMAS: The last numbers I've seen
12 were from fall 1999 and I think you and I talked about
13 these, full time undergraduate enrollment was 6846?

14 MR. BARBER: That's correct.

15 MR. THOMAS: And the beds at that time and
16 I guess presently were 4666? I'm sorry 4466?

17 MR. BARBER: They've adjusted some.

18 MR. THOMAS: But approximately what, 4500?

19 MR. BARBER: 4575, I believe.

20 MR. THOMAS: So there's something like
21 2300 students as of fall 1999 that were full-time
22 undergraduates and were not offered housing or there
23 was not housing available to them?

24 MR. BARBER: That's correct.

25 MR. THOMAS: Dr. Linebaugh testified in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 April that the expectation for this fall was 7,000
2 full-time undergraduates. If you know, what is the
3 number?

4 MS. DWYER: Madam Chair, I'm going to
5 object. I think this goes beyond the scope of his
6 testimony.

7 CHAIRPERSON REID: I don't think that -- I
8 think your questions should be directly to what he
9 testified to today.

10 From the last hearing you were able to do
11 cross examination?

12 So your particular line of questioning
13 should be germane specifically to the testimony that
14 we heard today and that would not be in keeping with
15 that. So I would sustain that.

16 MR. THOMAS: With all respect, Madam
17 Chair, what I'm trying to do is test the statements
18 and the proposals that this witness has made today.

19 CHAIRPERSON REID: I didn't hear anything
20 about agreeing to a calculation of full-time
21 undergraduate --

22 MR. THOMAS: That wasn't my question. My
23 question was how many full-time undergraduate students
24 are housed and I need to have that foundation.

25 CHAIRPERSON REID: I'm sorry, but that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 goes to that calculation and again, still, there was
2 no testimony to that.

3 MS. DWYER: Madam Chair, perhaps if Mr.
4 Thomas could maybe cut to the end question and which
5 is relevant to something here today and if he needs to
6 ferret out some additional information, instead of
7 leading up to it, why don't you get to it and then if
8 we need to back off of it.

9 CHAIRPERSON REID: All right.

10 MR. THOMAS: Something that has happened
11 since the spring was Mr. Chernoff, the Vice President
12 saying that the plan is to get the 8,000 full-time
13 undergraduates by 2005. Is that your understanding of
14 University policy?

15 MS. DWYER: Again, Madam Chair, i think
16 this goes beyond the scope of the testimony that Mr.
17 Barber gave today. It is maybe a point that Mr.
18 Thomas wants to bring out in his own presentation --

19 CHAIRPERSON REID: Right, right, I
20 understand. Mr. Thomas, so as not to continue to
21 disrupt you, understand your questioning should be
22 germane to the testimony that you heard here today,
23 not about what the President said in the summer or
24 anything like that was prior to today's hearing. And
25 if you want to bring out things as Ms. Dwyer said

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 during your opportunity to testify you can do so, but
2 not at this time.

3 MR. THOMAS: Very well.

4 VICE CHAIRPERSON SOCKWELL: I think Mr.
5 Thomas is trying to extrapolate. I think that in
6 doing so he's covering territory that isn't really
7 part of today's hearing.

8 MR. THOMAS: My problem -- and I will go
9 on, but my problem is this is my only opportunity,
10 frankly, to test whether the proposals will or will
11 not result in more student renters in the Foggy Bottom
12 area or more students renting some place, they could
13 be in the Foggy Bottom area. And I don't know how to
14 do that unless we step it through their enrollment
15 estimates and what they're planning to house.

16 VICE CHAIRPERSON SOCKWELL: You might now
17 have the witnesses available to answer the questions
18 that you're proposing at this point since we're really
19 dealing with the housing component and not with the
20 enrollment component. The enrollment component is
21 quite complex as we all are trying to understand.

22 MR. THOMAS: Yes, Mr. Sockwell, but the
23 housing component that they are proposing is not a
24 direct control on numbers of students renting in the
25 Foggy Bottom area which is our sort of core issue in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 addition to the acquisition issue.

2 They intend to do it by ratio and the
3 ratio is enrollment to housing, so there are two parts
4 of that equation every time.

5 VICE CHAIRPERSON SOCKWELL: Well, you
6 might want to ask the question in context of what
7 enrollment figures are used to base the 70 percent,
8 etcetera, etcetera, etcetera and let him back into the
9 numbers.

10 MR. THOMAS: That's fine. When you say
11 that you expect, conditionally, at least, to house 70
12 percent of full-time undergraduates at the end of
13 2005, how many students does that mean that you commit
14 to housing?

15 MR. BARBER: We are committing to the 70
16 percent. We think we can make the 70 percent. We
17 have for planning purposes looked at a number of
18 assumptions as to what the enrollment would be and we
19 are comfortable with the beds that we have committed
20 to that that 70 percent is an achievable commitment
21 and we'll represent then an improvement over the
22 current situation.

23 MR. THOMAS: Recent increases in
24 enrollment have averaged, over the last couple of
25 years, 5 percent. If they continue to do that could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you meet the 70 percent in 2005?

2 MR. BARBER: I haven't done that
3 calculation. I have seen some Office of Planning
4 calculations which extrapolated that. I haven't gone
5 over their numbers, but I think even with their
6 numbers we could agree to 70 percent commitment, yes.

7 MR. THOMAS: Is there any commitment on
8 the part of the University to go above 70 percent
9 after 2005 if enrollment continues to increase?

10 MR. BARBER: Well, one, I can't assume --
11 I don't accept your assumption that enrollment
12 continues to increase.

13 Two, we do still have this long-range goal
14 of 80 percent. We have not -- we want to take it five
15 years at a time. We've gotten some specifics in the
16 next five years. We have a goal of 80 percent in 10
17 years. We haven't done any planning beyond that.

18 CHAIRPERSON REID: Let me understand
19 something, I'm kind of getting confused here. It was
20 my understanding that Mr. Barber had stated there
21 would no increase in students, there will be a cap on
22 student enrollment.

23 MR. BARBER: We were talking -- the cap on
24 student enrollment -- that you're correct is the cap
25 that has existed since 1985, 20,000. We are not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proposing any increase.

2 CHAIRPERSON REID: That's what I thought
3 you said. What increase are you referring to?

4 MR. THOMAS: When I said what? I'm sorry,
5 I didn't understand the question.

6 COMMISSIONER MITTEN: Maybe I could help
7 clarify. There's this cap and the cap -- and correct
8 me if I'm wrong -- but I think this is right, the cap
9 is on full-time equivalent students and the
10 conversation they're having at the moment and the
11 housing issue and all that is driven by full-time
12 students which is a component of full-time students.

13 MR. BARBER: Excuse me, that's partially
14 correct. Good try.

15 (Laughter.)

16 There are two caps, really. There's a
17 full-time equivalent cap and there's a head count cap.
18 When I talk about 20,000, that is the head count cap.
19 Bodies.

20 Now what Mr. Thomas, I think, is trying to
21 get to and he can correct me if I'm wrong, is the
22 number of full-time undergraduates and that number has
23 varied over the years, the recent trend has gone up
24 and that has triggered the University's response to
25 provide more housing for that population. But no, our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 student population will not go over the cap. We are
2 still adhering to the cap.

3 CHAIRPERSON REID: My understanding again
4 was that the cap was 20,000 and that it was just not
5 written in stone as to how many would be allocated to
6 undergrads and how many would be allocated to
7 graduates.

8 MR. BARBER: That's correct.

9 CHAIRPERSON REID: That it would
10 fluctuate.

11 COMMISSIONER MITTEN: That's correct.

12 CHAIRPERSON REID: Depending on various
13 circumstances or what have you. That was my
14 understanding.

15 MR. BARBER: That's correct.

16 COMMISSIONER MITTEN: Could I just, since
17 we're on this subject get a clarification. You said,
18 Mr. Barber, you just said head count. It's 20,000
19 head count.

20 MR. BARBER: Right.

21 COMMISSIONER MITTEN: And is there a cap
22 on full-time equivalent students?

23 MR. BARBER: Yes, there is.

24 COMMISSIONER MITTEN: And that's what?

25 MR. BARBER: As in Appendix C, 13,786.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I'm sorry, no, no, that's current. I'm sorry, the
2 head count cap is 16,553. That goes -- did I say that
3 wrong? Let me say it again. The head count cap is
4 20,000. The FTE cap is 16,553 on Appendix C. That is
5 still our cap.

6 COMMISSIONER MITTEN: And are there any
7 more caps related to enrollment?

8 MR. BARBER: No.

9 COMMISSIONER MITTEN: So there's no
10 full-time student cap?

11 MR. BARBER: No. There's no undergraduate
12 cap, nor should there be. I'm stating the
13 University's position on this. I think that should be
14 clear.

15 MR. THOMAS: Mr. Barber, is George
16 Washington willing, voluntarily, to assure that there
17 will be no pertinent growth of student renters in
18 Foggy Bottom West End as a condition on this plan?

19 MR. BARBER: No, we do not have the
20 authority to do so.

21 MR. THOMAS: And why is it that you say
22 you don't have the authority to do so?

23 MR. BARBER: Well, one of the reasons is
24 that the D.C. Human Rights Act would be -- would
25 prohibit that. It would be an act of discrimination

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 based on matriculation of place of residence. We've
2 had two legal opinions to that effect.

3 MR. THOMAS: So it is your understanding
4 of the law and you are senior counsel at the
5 University that it is a violation of the Human Rights
6 Act to provide incentives to influence a student's
7 choice of residence?

8 MS. DWYER: Madam Chairman, I would
9 object. Number one, it's beyond the scope of the
10 testimony that Mr. Barber presented this morning and
11 the question does not accurately reflect the answer
12 that Mr. Barber gave.

13 If you would repeat your question?

14 MR. THOMAS: All right, do you believe
15 that consistent with the D.C. Human Rights Act, the
16 University can provide incentives to influence a
17 student's choice of residence?

18 MS. DWYER: And Madam Chair, I'm going to
19 object on the basis that it goes beyond Mr. Barber's
20 testimony.

21 MR. THOMAS: Madam Chair, I understand and
22 I've heard several times that we're limited to the
23 scope of the direct. As a practical matter, the
24 proposals that are before this Board from OP and from
25 us, represent negotiating concepts that have been on-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 going for some time and from which the University
2 withdrew. We need to understand, since they are --
3 that baseline concept is the favored way of going at
4 this by both OP and the community groups. We need to
5 understand from the University why they don't believe
6 they can do it.

7 CHAIRPERSON REID: But Mr. Thomas, I think
8 that the objection goes to the structure of the
9 question when you asked would it be a violation of the
10 Human Rights Act to -- for George Washington to offer
11 incentives. There's been no testimony to that effect
12 as far as George Washington offering incentives to
13 their students for off-campus housing. So I think
14 that's where the problem is. If you can just
15 structure your question in such a way that it is
16 germane to the testimony that's here today, that's not
17 a problem. If you go outside that scope, that's when
18 it becomes problematic.

19 VICE CHAIRPERSON SOCKWELL: Actually,
20 Madam Chair, based on the way the question was
21 phrased, I don't think that such a question would even
22 fall under the context of a Human Rights Act statutory
23 requirement because incentives are incentives. If I
24 ask you not to move into my neighborhood and I pay
25 you, there's nothing illegal about that. If you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 choose to take the money and run, that's fine. Am I
2 not correct?

3 MR. THOMAS: Mr. Sockwell, I completely
4 agree with you and what I was trying to get on the
5 record is that the University does not agree with you.

6 And therein is a very significant difference between
7 it would be much preferable to measure directly the
8 impacts that we're talking about in the nearby Foggy
9 Bottom West End community and have the University
10 influence student choices in order to get those
11 numbers where the Board determines they should be.
12 And when they say no, we won't do that, we need to
13 test why and your conclusion about a common sense
14 reading of the law is the same as mine.

15 CHAIRPERSON REID: Well, Mr. Thomas, I
16 think that that discussion should be reserved for when
17 you testify and if, in fact, there are subsequent
18 negotiations that may be something you want to raise,
19 but I don't think that that's an appropriate question
20 at this time.

21 Now talking about the incentives from the
22 school to students as far as off-campus housing is
23 concerned, there's no testimony to that effect. And
24 that was a loaded question, so you have to ask
25 questions specifically that are germane to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 testimony that you heard here today and I think that's
2 the fifth time I've cautioned you on it and again your
3 cross examination has gone on now for almost 30
4 minutes. How many more questions do you have to ask?

5 MR. THOMAS: The list has gotten shorter
6 and I don't mean to be facetious. I have very few
7 questions left, Madam Chair.

8 CHAIRPERSON REID: How many?

9 MR. THOMAS: I never tell that because
10 every time you write one down there could be three
11 follow ups, but I have about five written down.

12 CHAIRPERSON REID: Possibly five more
13 minutes?

14 MR. THOMAS: If we can go quickly.

15 CHAIRPERSON REID: Please. Because there
16 are other people who want to ask questions.

17 MR. THOMAS: I would like to ask him,
18 however, if I might and I don't want to get sideways
19 with the chair of the Board, but what other incentive
20 programs they already had in place for housing choices
21 for students.

22 CHAIRPERSON REID: Did he say he had some?

23 MR. THOMAS: I believe they do.

24 CHAIRPERSON REID: Mr. Barber did you
25 testify --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: I didn't talk about
2 incentives for housing.

3 CHAIRPERSON REID: Do you have any
4 incentives, that will be the question.

5 MR. THOMAS: Are there incentives now
6 available for students who choose to live, for
7 example, and take part in the program at Mount Vernon
8 College, for students --

9 CHAIRPERSON REID: You can't go to Mount
10 Vernon. It has to be strictly to this particular
11 site, Foggy Bottom campus only.

12 MR. THOMAS: The point would be if they
13 choose to go there, they're not living at Foggy
14 Bottom, that's the point.

15 CHAIRPERSON REID: Or anywhere else.

16 MR. THOMAS: Are there incentive programs
17 in place that affect students' choices as to where to
18 live?

19 MR. BARBER: Not that I'm aware of.

20 MR. THOMAS: In your proposal you said
21 that you will undertake to identify students in a
22 census beginning in the spring of 2001. Is there any
23 reason that you can think of either mechanically or
24 legally that the census data could not be gathered on
25 all full-time students, not just undergraduates?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: It's more work. And quite
2 frankly our efforts have been focused at the request
3 of the community in any joint discussions on full-time
4 undergraduates. Is it possible? Yes, it's possible.

5 Is it possible in that time frame, I'm not certain
6 because it involves substantially more work. But it
7 is possible, yes.

8 MR. THOMAS: And if it was done, is there
9 any reason that the data couldn't be shared with OP
10 and the Advisory Committee assuming that it was set up
11 under this plan?

12 MR. BARBER: No, there's no reason.

13 MR. THOMAS: All right, and as to the
14 Advisory Committee, you've set out the willingness of
15 the University to get involved in that and you and I
16 talked about the desirability of that. Does G.W. have
17 any objection to providing that the BZA will determine
18 the composition and structure of the Advisory
19 Committee or some other outside body? It could be
20 Director of Planning, it could be anybody, as far as
21 I'm concerned, I think, if the parties cannot agree
22 with the composition of the Advisory Committee?

23 MR. BARBER: I don't think it's necessary
24 for the BZA. I think they should give some general
25 guidance and leave it through us adults to go work

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that out.

2 MR. THOMAS: And if one or more of the
3 adults don't agree with the position of the other
4 adult, then there is no Advisory Committee that --

5 MR. BARBER: Well, quite frankly, it's the
6 University that has the obligation. No one else. No
7 one in the community has an obligation to participate
8 in the Advisory Committee. So I think there's a
9 willingness to do so, and that's what I've heard. I'm
10 hoping that there's that willingness and with that
11 willingness I'm sure we can work that out. But I can
12 speak for the University, the University's commitment
13 to participate with the Advisory Committee under some
14 broad parameters set forth by the BZA. I just don't
15 think I need to get into the details.

16 MR. THOMAS: Well, you can understand that
17 my question was intended to make sure there was an
18 Advisory Committee, because it's so important. Would
19 you agree?

20 MR. BARBER: It is important.

21 MR. THOMAS: Thank you. That's all I
22 have.

23 CHAIRPERSON REID: Thank you, Mr. Thomas.
24 All right.

25 MS. PRUITT: Next is cross examination of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ANC. I just wanted to reiterate because we went out
2 of sequence and then we --

3 CHAIRPERSON REID: Right. Mr. Thomas was
4 finishing up. And on the part of everyone else who is
5 cross examining, they can cross examine on the entire
6 testimony, including that which occurred at the last
7 hearing.

8 MS. PRUITT: Correct. Madam Chair, if I
9 can just ask whether any of the opposition parties
10 will have questions for Steve Sher? He has a time
11 commitment and needs to leave. If there are any
12 questions of him could they be done first.

13 CHAIRPERSON REID: Do you have questions
14 of Steve Sher? Mr. Thomas? Mrs. Miller?

15 MS. MILLER: Can you give me one minute
16 because I was concentrating on what they've been
17 saying and he's saying it very fast.

18 (Pause.)

19 MR. THOMAS: I'll have some a few
20 architectural land use questions --

21 CHAIRPERSON REID: The architect is here.

22 MR. THOMAS: I don't know if they'll be
23 answered or someone who does. What is Mr. Sher's
24 capacity or role?

25 MS. PRUITT: Mr. Sher presented testimony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 as a land planner on copies of the plan and general
2 zoning and land use issues.

3 MR. THOMAS: So if I'm going to ask a
4 question in the nature of why this site other than
5 site that goes to the architect?

6 MS. PRUITT: That's correct.

7 COMMISSIONER MITTEN: Very well, I think
8 we're still trying to find out if Ms. Miller had any
9 questions for Steve Sher, Mr. Sher.

10 MS. MILLER: Just one. One of the things
11 that bothered us was that the current campus that was
12 presented -- I'm Dorothy Miller, ANC 2A05 and a party
13 to the case.

14 CHAIRPERSON REID: Your address, please.

15 MS. MILLER: 2440 Virginia Avenue, N.W.,
16 Washington, D.C. 20037. The campus plan as it was
17 presented stops at the current borders and I think you
18 know that's only on the paper and I would appreciate
19 if Mr. Sher could give us the additional information
20 --

21 CHAIRPERSON REID: You're talking to Mr.
22 Sher, right?

23 MS. MILLER: Yes. I'll talk to him. That
24 we have some information on all of the properties that
25 are being used by G.W. that are not within the current

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 approved campus borders because that's far more
2 excessive than what you have within the campus
3 borders. We need some information on that which the
4 campus plan did not provide. It only provided on the
5 material inside of the campus borders and it only
6 provided on the traffic inside the campus borders.
7 The cars just disappear when they reach the border.

8 MR. SHER: There has been -- for the
9 record, my name is Steven E. Sher. I'm the Director
10 of Zoning and Land Use Services for the law firm of
11 Holland & Knight, LLP.

12 MS. MILLER: That's a change.

13 (Laughter.)

14 MR. SHER: It is, but I don't know whether
15 that impacts my ability to sit up here and say
16 anything or not. There has been a considerable amount
17 of discussion about what uses happen outside the
18 boundaries of the campus and this Board has had at
19 least one appeal which it decided in favor of the
20 University in which is pending in the Court of Appeals
21 on the question of those uses. It is my position in
22 reading the zoning regulations that those uses which
23 are permitted as a matter of right are permitted as a
24 matter of right. That's a very good statement. If an
25 apartment house as a use permitted is a matter of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 right in an R-5 district, then it is not subject to
2 the requirements of Section 210 of the zoning
3 regulations. The same is true of a dormitory or an
4 office building in a C-3-C zone or something similar
5 to that.

6 Other people have different views about
7 that issue, but that's my view and I think that's the
8 view that the Board has up to this point agreed with.

9 I do not have specific information in my capacity as
10 to the number of square feet, the number of students
11 living in those or people living in those buildings.
12 I don't necessarily think it's germane to what the
13 Board has to decide in approving a campus plan for the
14 property that is included within the boundaries of the
15 campus.

16 MS. MILLER: The law requires, the
17 regulations require, as it's written now, that the BZA
18 take up the total part of the campus plan, not the
19 whole campus plan, not just what's inside, but the
20 whole campus area which you all certainly consider
21 Foggy Bottom your campus.

22 CHAIRPERSON REID: That's a question?

23 MS. MILLER: That's a question. You're
24 saying it doesn't belong here. I'm saying that the
25 regulations require that the questions that I ask be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 before the Board because the Board is suppose to
2 consider the campus as a whole, the plan as a whole.

3 CHAIRPERSON REID: But you're testifying,
4 Mrs. Miller.

5 Mr. Sher, I gave you an answer to your
6 question. It may not have been -- it was his answer,
7 so do you have another quick question?

8 MS. MILLER: One more.

9 CHAIRPERSON REID: Okay.

10 MS. MILLER: This deals with Square 54. I
11 don't know whether you're the one who's supposed to
12 answer this or not, but the EIS scanning that was done
13 put definite limitations on what you could do with
14 that building and what I'm hearing today is that
15 you're asking to do almost unlimited things with that
16 building and I think that you should tell the Board
17 what the restrictions are as to what that area can be
18 used for, because it is spelled out by the scanning
19 process of what you can use it, and it's very limited.

20 MS. DWYER: Madam Chair, this is not the
21 witness to answer that question and I'm not sure
22 whether any of the witnesses would be able to answer
23 that question.

24 MS. MILLER: Well, it's land use one thing
25 and another thing that's dealt with it covers your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 housing area. You're asking to change that block to
2 commercial and they're asking you to rezone it.

3 CHAIRPERSON REID: This is getting a
4 little bit overboard. Mr. Sher can't answer that
5 question. What she wants to know is -- well, Mr.
6 Barber said earlier they weren't sure yet what they
7 were going to use that particular square for.

8 MS. MILLER: Yes, but they had limits
9 placed on them. That's what I want them to understand
10 that they're misleading you.

11 MS. PRUITT: Madam Chair, if I can just
12 say I think Ms. Miller is testifying that if there are
13 limits on the site any limit, any restraints or
14 restrictions would be considered as part of the
15 further processing second stage application.

16 MS. MILLER: Right.

17 MS. PRUITT: And the specific design and
18 construction of that building is before you.

19 CHAIRPERSON REID: Is that the question
20 that you're asking, that they know their limitations
21 on the site or are you --

22 MS. MILLER: No, he's saying that he is
23 giving you land use. What I'm talking about is the
24 land use --

25 MS. DWYER: Madam Chair, it may be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 probably easier if Mrs. Miller brings up this issue in
2 her testimony because then you can give testimony on
3 what you believe is and isn't true.

4 MS. MILLER: I want them to tell you all.
5 I want them to tell you all. I want them to tell you
6 all.

7 MS. DWYER: I believe Mr. Sher answer it
8 to the best of his ability.

9 MS. MILLER: No, he didn't because if he's
10 land use, he knows he can't use it for what they're
11 recommending it to be used.

12 MS. DWYER: Ms. Miller, you're testifying.
13 Put that please in your testimony part.

14 MS. MILLER: All right.

15 CHAIRPERSON REID: But you did ask if, in
16 fact, the use that they're proposing, no matter what
17 it is, is within Office of Land Use Regulations. Is
18 that what you're asking?

19 MS. MILLER: Well, they stated they wanted
20 a zoning change. They stated they wanted commercial.

21 CHAIRPERSON REID: Just ask the question
22 that you want to ask.

23 MS. MILLER: I want to know how they can
24 even think of that, or proposing it when they know the
25 limitations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. DWYER: And Madam Chair, I would
2 object again. The scope of Mr. Sher's testimony at
3 the last hearing was on the compliance of this campus
4 plan in terms of the zoning regulations, the materials
5 that were filed and the comprehensive plan goals.

6 CHAIRPERSON REID: Okay, but I asked Mr.
7 Barber to come back.

8 MS. DWYER: If we can finish with Mr. Sher
9 and I can let him leave.

10 CHAIRPERSON REID: She's finished with Mr.
11 Sher.

12 MS. SPILLINGER: Perhaps it might help if
13 I identify the limitation that Commissioner Miller is
14 referring to.

15 MS. DWYER: You can't do that.

16 CHAIRPERSON REID: You can't do that right
17 now.

18 MS. SPILLINGER: Okay.

19 MS. MILLER: See, they know it and they're
20 not being honest with you.

21 CHAIRPERSON REID: Don't testify because
22 that might prejudice your particular segment.

23 Mr. Barber, will you please respond to
24 that question.

25 MS. PRUITT: Excuse me, Madam Chair,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 before Mr. Sher leaves I just want to verify that
2 there's nobody else who wants to cross examine? I
3 thought Mr. McLeod -- would you please come forward?

4 CHAIRPERSON REID: Are you Mr. McLeod?

5 MS. PRUITT: He wants to cross examine Mr.
6 Sher.

7 MR. McLEOD: Yes, I'm James McLeod, a
8 party in the matter.

9 Mr. Sher, I just have one question
10 regarding the commercial property on campus. What
11 function does that serve if the purpose of the
12 commercial property is to generate money for the
13 University, can't that be anywhere, either in the city
14 or elsewhere? Why does it have to be on campus?

15 And I've only identified Squares -- I
16 think it's 75, 101 and 119. There may be other
17 squares. It's kind of hard to tell from that border,
18 the red kind of blends with the administrative and
19 academic colors as well.

20 MR. SHER: There are four different zoning
21 categories that apply to the property that are within
22 the boundaries of the campus, R-5-D, R-5-E, SP-2 and
23 C-3-C. They are as shown on the zoning map and that
24 map that you're looking at, I believe is a depiction
25 of the existing zoning categories as they apply to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 property.

2 Those properties that are in the R-5-D and
3 E and SP districts may be used for a college or
4 university use only with the approval of the Board of
5 Zoning Adjustment as a special exception. Those
6 properties that are in a C-3-C district, a college or
7 university use as well as office, retail, residential,
8 hospital, hotel are all matter of right uses. The
9 University owns those properties and has owned them
10 for some time. They are within the area that has
11 traditionally be delimited as the boundary of the
12 campus, but the uses that are on-going on those
13 properties are permitted as a matter of right.

14 MR. McLEOD: So they could have
15 alternative uses, but you're just saying the
16 University has a right to use them as commercial
17 property.

18 MR. SHER: And has traditionally used them
19 that way.

20 MR. McLEOD: Okay, that's the only
21 question I had.

22 COMMISSIONER MITTEN: Could I follow up
23 because this little exchange has brought something to
24 mind and it's for Mr. Sher since the issue was raised
25 about the boundary of the campus and then Mr. McLeod's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 question is well, you've drawn the boundary of the
2 campus to include these commercial properties which
3 you just testified that are being used by right and
4 they're not subject to the special exception that the
5 campus plan is meant to address and yet, they're
6 within the boundaries of the campus.

7 So how is it that you decided to draw the
8 line to include certain properties that are not
9 subject to this special exception control and then
10 there are other properties that would be in the same
11 sort of status, but they're outside the boundary?

12 MR. SHER: I believe that in this
13 application as in the 1985 application, the University
14 did not propose to change the boundaries. The
15 boundaries are as they have been.

16 The effect of that as to those two office
17 buildings, the one at 2100 Pennsylvania Avenue and the
18 one at 1900 Pennsylvania Avenue and there are a couple
19 of other buildings, that's not the only ones,
20 basically along Pennsylvania Avenue. The development
21 that has occurred there has all been a matter of
22 right, further processing before this Board was not
23 and is not now required.

24 COMMISSIONER MITTEN: And I understand
25 that. I guess what I'm getting at is basically when

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you all, the University draws the line that's a
2 boundary, that's what you're proposing to us be the
3 boundary effectively.

4 Well, within that you've included
5 properties that you otherwise would not have to
6 include and the community says to you well, how come
7 you don't include all the properties so we understand
8 that some are subject to special exception and some
9 are not, but how is it that you can argue what you're
10 recommending to us that we include some properties
11 that are not subject to special exception control
12 within the boundaries of the campus? How do you
13 respond to the community when they say draw the
14 boundaries bigger because you have an inconsistency
15 then? How do you respond to that?

16 MR. SHER: I don't know that I heard
17 anybody say draw the boundaries bigger. One of the --

18 COMMISSIONER MITTEN: They might not have
19 said those exact words, but that is the sense --

20 MR. SHER: Okay. There are a couple of
21 things that happened versus properties inside the
22 boundaries and outside the boundaries particularly as
23 they relate to residential properties. Under that
24 Section 210 of the regulations, the aggregation of FAR
25 is permitted for properties included within the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 boundaries. What that means is whereas the normal
2 boundary, normal FAR is either 3.5 or 6 FAR on each --
3 calculated on each individual site. When you put that
4 within the campus as a whole you aggregate that FAR
5 and it may be higher over here and lower over there.

6 If the property is not in the boundaries
7 of the campus, you don't aggregate the FAR. It's not
8 included within that total area. Each site has to
9 satisfy the zoning requirements on its own individual
10 property. That's point number one.

11 Point number two, expanding the boundaries
12 of the campus in theory would allow University uses
13 other than the matter of right uses which are allowed
14 in those R-5 districts to come before the Board for
15 whatever purpose the Board were to determine was
16 appropriate within the campus boundary, classroom
17 student center, administrative offices, convocation
18 center, whatever. The University has taken the
19 position that it will use those properties only for
20 use or can use those properties only for uses which
21 are permitted in those districts as a matter of right.

22 So if it's a residential usage permit, if it's other
23 than residential use, you are beginning to open that
24 process up beyond the boundaries that are delineated
25 at the moment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Third thing is that as to the parking
2 requirements, again, those are satisfied on a campus-
3 wide basis if it's property within the campus. If
4 it's outside the campus as with all the other
5 requirements of the zone, it's got to be satisfied on
6 the site.

7 I don't believe that the University is
8 seeking to gain any of those extra added attractions,
9 if you will, by expanding the boundaries of the
10 campus. If it would somehow make people feel better
11 to take the commercial properties out of the campus,
12 we don't get any benefit from that either. That FAR
13 isn't aggregated. It isn't zoned residential. Only
14 the properties zoned residential can aggregate the
15 FAR. And if someone wanted to take that line and draw
16 it around the backs of those properties, I don't think
17 that hurts or helps anything at all, frankly, but we
18 can do it if it's desired.

19 COMMISSIONER MITTEN: The hurts or the
20 helps is not my -- that's not my question. My
21 question is how do you respond, given that you have
22 recommend where the line be drawn. The University has
23 recommended where the line be drawn and they've
24 included properties that they -- I have to use the
25 word status, have the same status as properties

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 outside the campus boundary that the community is
2 urging be included and you're saying well, they don't
3 have to. There's an inconsistency there.

4 Do you see the inconsistency?

5 MR. SHER: I see a distinction between
6 adding residential properties on the south and either
7 adding or not adding the commercial properties on the
8 north and I tried to tell you what I felt the
9 difference was with a piece of property that's zones
10 R-5-D or E, putting it in the campus versus not
11 putting it in the campus.

12 The commercial property, I don't think it
13 makes any difference whether it's in the campus or
14 outside the campus. You can't aggregate the FAR, you
15 can't aggregate the parking. The uses are already
16 permitted. So in my mind, whether you took those
17 properties in or took them out or left them in, it
18 doesn't make any difference to the substance of the
19 campus plan or what happens on those properties.
20 Adding the properties on the south and west that are
21 now zoned residential would make a difference and
22 that's why I don't think that we suggested changing
23 those boundaries as they were approved in 1985.

24 COMMISSIONER MITTEN: I'm done.

25 MS. MILLER: I would like to ask him one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 more question. Wasn't it the University's idea on the
2 Potomac Electric building to originally been to have
3 it paid for to start using that for use for the
4 University and wasn't it just recently sold?

5 MS. DWYER: Madam Chair, I would object.
6 I don't think that's a question for this witness.

7 MS. MILLER: Well, it's land use. And --

8 CHAIRPERSON REID: Who would you
9 recommend?

10 MS. DWYER: If any, it would be Charles
11 Barber.

12 (Pause.)

13 MS. MILLER: His position is land use,
14 right?

15 CHAIRPERSON REID: Yes.

16 MS. MILLER: That's what I thought I was
17 asking.

18 CHAIRPERSON REID: Now Mr. Sher, thank you
19 very much.

20 MS. MILLER: Mr. Barber is not land use.
21 He's the legal guy.

22 MS. PRUITT: Madam Chair, are you going to
23 maybe go back to the normal sequence?

24 CHAIRPERSON REID: Normal sequence --

25 MS. PRUITT: Which would be the ANC.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: The ANC. However, Ms.
2 Miller had a question on the floor. And I told her
3 earlier that I would allow Mr. Barber would answer the
4 question since Mr. Sher couldn't.

5 MS. MILLER: Mr. Barber, what I'd like to
6 know is what is your understanding of the limitations
7 on Square 54 that were put into place by the
8 University to be allowed a screening instead of a EIS?

9 MR. BARBER: There are none, Ms. Miller.
10 There are no limitations to Square 54. You're talking
11 about environmental?

12 MS. MILLER: Yes.

13 MR. BARBER: The environmental review of
14 the new hospital site on the adjacent square, there
15 was an environmental review on that site. There has
16 not been an environmental review on Square 54.

17 MS. MILLER: But the problem is the report
18 stated, as I understand it --

19 MS. DWYER: Madam Chair, I believe she's
20 testifying as opposed to asking questions.

21 MS. MILLER: I'm trying to find out from
22 him something I know to be a fact. I want him to
23 state it.

24 CHAIRPERSON REID: You can't testify. He
25 answered the question. This particular site has had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 no EIS.

2 MS. MILLER: I said Square 54, not the new
3 hospital, the old hospital.

4 CHAIRPERSON REID: That's what he said,
5 that the new hospital did have an EIS study. This one
6 has not.

7 MS. MILLER: But they acquiesced in the
8 screening rather than an EIS.

9 MS. DWYER: Objection, it's testimony.

10 CHAIRPERSON REID: All right, Ms. Miller,
11 thank you.

12 Okay, now we'll go to the ANC. Thank you
13 very much, Mr. Barber.

14 MS. SPILLINGER: Mr. Barber, good
15 afternoon.

16 MR. BARBER: Good afternoon.

17 MS. SPILLINGER: I'm Barbara Spillinger,
18 2500 Virginia Avenue, N.W.

19 I just have a few brief questions and I'm
20 trying to clarify a couple of things. In your
21 testimony today, one more time we go back to this --

22 CHAIRPERSON REID: Did you give your
23 address?

24 MS. SPILLINGER: 2500 Virginia Avenue. We
25 go back to the 70 percent in 2005. You have a cap of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 20,000 head count. Your current head count as listed
2 in Appendix C is 16,657 which gives a theoretical
3 increase of 3,343 students.

4 If, theoretically, all of those were
5 undergraduates, and were added within the next five
6 years, by the time you hit 70 percent in 2005, there
7 would be even an increase of those students living
8 off-campus instead of the other way around. Am I
9 missing something there? Is that possible?

10 MR. BARBER: Is it possible? I don't
11 think it's possible. I understand your math. But no,
12 I'm sorry, you're assuming -- your question -- I want
13 to get your question straight. As we go up to the max
14 --

15 MS. SPILLINGER: If you went up to the
16 cap.

17 MR. BARBER: Are we talking about all
18 students?

19 MS. SPILLINGER: Yes.

20 MR. BARBER: And the question is what now?

21 MS. SPILLINGER: And then if you had 70
22 percent on campus you would still have more off campus
23 than you have off campus now.

24 MR. BARBER: Well, we're kind of mixing
25 apples and oranges. The 70 percent is a percent of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 full-time undergraduates. The head count cap is all
2 students.

3 Our best evidence shows that graduate
4 students by and large don't live in this area because
5 they can't afford it. That's not true for everyone,
6 but that is the general rule.

7 So if you said by some miraculous
8 occurrence we went up in five years and added 3,000
9 students, could we still meet the 70 percent cap?
10 Well, it depends on what those students are. That's
11 certainly not something that the University is geared
12 towards doing.

13 MS. SPILLINGER: I'm not so much concerned
14 with whether you meet the cap, I'm concerned with
15 additional students that would be forced to live off
16 campus.

17 MR. BARBER: Well, the question is where
18 would those additional students live if we brought on
19 3,000 additional students and that's not our plan in
20 the next five years. We may never get there. But if
21 we do, we are certainly adding beds in the five years.

22 Where the additional students live, we have a program
23 to encourage them to -- if they're not going to live
24 in University housing, to live outside of Foggy
25 Bottom. The Metro check program, the encouragement of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 students and information about off-campus areas, the
2 willingness to provide a shuttle service. So even if
3 were by some miraculous occurrence to add 3,000
4 students in five years, I would not expect the bulk of
5 them to end up to end up in Foggy Bottom.

6 MS. SPILLINGER: Thank you. I'll go on to
7 the next question. And again, I'm skipping around
8 here, but would you interpret the hospital as -- the
9 new hospital as high density use?

10 MR. BARBER: The new hospital? I suppose,
11 yes, I think I would. I'm not sure -- I think the
12 architects can better answer that, but it has a lot of
13 use and it's relatively frequent during the day.

14 MS. SPILLINGER: And obviously, the hole
15 is there, but it is on the periphery of the campus
16 rather than on the inside as has been in the BZA
17 order.

18 MR. BARBER: Yes, we dealt with that on a
19 special exception process for that hospital and the
20 reasons why it was placed there and I think the Board
21 accepted the University's reasons in that case.

22 MS. SPILLINGER: And why the voting
23 documents in the space in the community?

24 MR. BARBER: That was in that case as
25 well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. SPILLINGER: Very well. On these new
2 beds that you are proposing, are they -- do you see
3 those for new students or for -- I mean new enrollment
4 or for current enrollment?

5 MR. BARBER: I think I understand your
6 question. The current numbers because our current
7 students will be moving. I see it as a mixture.

8 As I said, we will add more beds than
9 we're projecting adding more students in this five
10 year time frame, so that means that it will be for the
11 new students plus a portion of this existing number
12 that we have.

13 MS. SPILLINGER: All right, and just one
14 other point I want to make, in your testimony that you
15 gave in April you submitted a list of community
16 meetings. In checking through those, we don't agree
17 with all the dates, but to me it's not important,
18 really, whether it was February 10th or February 14th.

19 There were a number of community meetings. What is
20 important is that we, the community felt that it did
21 not get the information it needed or required and
22 therefore the meetings ended at that time.

23 MS. DWYER: Is there a question?

24 MS. SPILLINGER: No, not really. Thank
25 you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. MANDLEBAUM: Steven Mandlebaum. I
2 have a couple of questions for Mr. Barber.

3 MR. BARBER: Yes.

4 MR. MANDLEBAUM: Address, 231 E Street.
5 You mentioned incentive programs, two different types
6 of incentive programs.

7 MR. BARBER: No, I did not.

8 MR. MANDLEBAUM: You did say that there
9 were --

10 MR. BARBER: I'm sorry, I'm sorry. I
11 apologize for interrupting you. Please ask your
12 question.

13 MR. MANDLEBAUM: Did you say that there
14 would be incentives or strategies to keep students on
15 campus or retain sophomores who are thinking of
16 leaving the system? I believe that's in your
17 September 11th document.

18 MR. BARBER: i didn't mention that, but it
19 is in that document so I would be happy to -- it's in
20 the document under --

21 MR. MANDLEBAUM: Well, we'll agree that
22 it's in the document.

23 MR. BARBER: Yes.

24 MR. MANDLEBAUM: So my question is as a
25 recent graduate of your fine institution, and trying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to understand what would encourage me to continue to
2 live on campus, what new incentives are you planning
3 to offer?

4 MR. BARBER: As the document says, the
5 University has an interest in maximizing utilization
6 of its resident halls and we have a strong financial
7 interest. We want to fill these beds. And what we
8 said the University will identify strategies to
9 increase retention rates of undergraduate students in
10 its residence halls. The strategy will focus on at
11 least initially our sophomores.

12 Of course, as we move to a mandatory
13 requirement for freshmen and sophomores then we will
14 begin to focus more on juniors. Now if you're asking
15 me exactly what those strategies will be, I can't tell
16 you that. We're going to identify and see what works.

17 The point is, I think, it's in our own interest to
18 fill these beds.

19 MR. MANDLEBAUM: Well, what if nothing
20 works? What if you come up with programs and the
21 students say you know, we don't care, we want to go
22 party in the streets.

23 What happens --

24 MR. BARBER: Our students don't party in
25 the streets.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

(Laughter.)

CHAIRPERSON REID: Order, order, please.

MR. BARBER: Again, the point is --

MR. MANDLEBAUM: What is your commitment?

MR. BARBER: Our commitment is to make it work and to fill these beds as much as we can. If we find certain strategies don't work, we change the strategies. If we find certain amenities don't work, we have to consider lowering the price. We have to come up with a set of strategies to fill the beds. Again, it's in our interest to do so. I just can't identify what will work now, but that's what we're committed to doing.

MR. MANDLEBAUM: My second question is the strategies to encourage students to live outside of Foggy Bottom or on campus, do you have any of those strategies outlined?

MR. BARBER: What we have said in this submission, how you would sort of convince the students do that, we are not going to coerce. We said in number 5 of our September 11th submission that we want the encourage students to live outside of Foggy Bottom. We'll provide information on off-campus housing opportunities and we will -- as I say, we'll provide the Metro check program and we said where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 those -- where we identify a concentration of G.W.
2 students that is not Metro accessible, we'll consider
3 instituting a shuttle bus service, where there's a
4 critical mass.

5 Information, Metro check, shuttle, those
6 are the efforts we've identified.

7 MR. MANDLEBAUM: Is it true at one point
8 the University had an Office of Off-Campus Housing
9 that provided assistance to students looking for
10 off-campus housing or listings?

11 MR. BARBER: I'm not aware of such an
12 office existed. We certainly have talked about it
13 going forward, but I'm not aware of one existing in
14 the past.

15 MR. MANDLEBAUM: You're not aware of one
16 existing and one possibly closing down at one point?

17 MR. BARBER: No, I'm not aware of that.

18 MR. MANDLEBAUM: Okay, and one other
19 question. You said you're going to add more beds than
20 students, so if you take your current enrollment and
21 add to that number of beds you're going to build,
22 would you be willing to meet that a cap?

23 MR. BARBER: No.

24 MR. MANDLEBAUM: Why not? If you're
25 adding more beds than students, we're saying everyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you've got off campus, keep off of -- that's okay.
2 Just for everyone you're going to plug in, build a
3 bed. Why would that now not be okay?

4 MR. BARBER: I'm sorry. Will you repeat
5 the question?

6 MR. MANDLEBAUM: The question is let's say
7 you've got 7,000 students and you're committing to
8 build 1350 beds. If I took that 7,000 and made it
9 1350 which gave me 8350, why won't you make that the
10 cap knowing that you said you won't increase by 1350,
11 why can't that be the cap?

12 MR. BARBER: Because if we're able to
13 build more beds, I mean we stated some minimums here.

14 There are some of these development sites because we
15 want to be conservative. There's some of these
16 development sites that may be able to, when we get
17 into the design stage, accommodate more beds. If
18 we're able to provide more beds, we should be able to
19 increase the number of students.

20 The 70 percent commitment acts as a kind
21 of soft cap on full-time undergraduate students, in
22 addition, of course, to the existing cap which we're
23 not changing of the 20,000 head count and the 16,553
24 on FTE.

25 The 70,000 is an additional measure acting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 as a kind of soft cap on full-time undergraduates, but
2 it's soft, it's flexible because it allows us some
3 maneuvering room. As we add more beds, we can also
4 adjust the student population. A hard fixed cap
5 doesn't allow that flexibility and that flexibility is
6 what the University needs.

7 MR. MANDLEBAUM: How's this? What if I
8 say for every bed that you build, you can add one to
9 your current enrollment?

10 MR. BARBER: No, that is --

11 MR. MANDLEBAUM: That is the question.
12 I'm asking is that okay?

13 MR. BARBER: No, it's not.

14 MR. MANDLEBAUM: But isn't that what you
15 just said? If we end up building more than 1350, then
16 we should be allowed to have more than 1350? Is that
17 what you said?

18 MR. BARBER: I told you, in my testimony,
19 I said we need time to build beds and we need
20 resources to build beds. This one to one which comes
21 up in the OP report, in effect, freezes us now. It
22 does not give us the resources, does not give us the
23 time to build the beds.

24 MR. MANDLEBAUM: What if I give you a
25 catch up zone of let's --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MITTEN: Mr. Mandlebaum, you
2 guys get to negotiate all day long. Just because you
3 can put it in the form of a question doesn't mean that
4 that's worthwhile right now.

5 I think we understand where the University
6 stands and you can put forward any creative ideas you
7 have about how they can handle it and we'll go from
8 there.

9 MR. MANDLEBAUM: Okay, I think the point
10 is made.

11 COMMISSIONER MITTEN: Thanks.

12 CHAIRPERSON REID: Thank you, Mr.
13 Mandlebaum. Ms. Miller, this is the last time to
14 cross examine. How may other people? Mr. McLeod,
15 that's the last one?

16 Let's have a show of hands of how many
17 more people we have. I think I see two. Two other
18 people. Okay. And then we'll --

19 MS. PRUITT: Are you a party? Have you
20 been granted party status at the last hearing? Okay,
21 if I could get your name, and maybe I can help.

22 You can come to testify, but not ask
23 questions. Okay.

24 CHAIRPERSON REID: Okay, so just one other
25 person after Ms. Miller. Okay?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. MILLER: Mr. Barber?

2 MR. BARBER: Yes, Ms. Miller.

3 MS. MILLER: Do I recall your testimony on
4 April 28th correctly that you were unable to estimate
5 the number of full-time G.W. students and where they
6 lived and what private rental in the District? Isn't
7 that what you said?

8 MR. BARBER: We have some good gross
9 numbers in terms of Foggy Bottom area as opposed to
10 Maryland and Virginia and other parts of the District.
11 We don't have specific data that's good on specific
12 residences, no.

13 MS. MILLER: Are you familiar with --

14 MR. BARBER: I'm sorry, we are committed,
15 of course, to doing that and gathering that data going
16 forward.

17 MS. MILLER: Okay. Now page 10 of Dr.
18 Fuller's report, he states that it's established that
19 3,439 other full-time students at G.W. live in private
20 housing within the District.

21 Do you dispute that estimate? Because it
22 seems to me today you quoted a higher figure.

23 MR. BARBER: I'm sorry, you pulled out a
24 figure and I'm not --

25 MS. MILLER: It's in Mr. Fuller's report.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: I'd have to look at his
2 report and see what context that was made and I can do
3 that.

4 MS. MILLER: Okay. One of the
5 requirements of 210 which are the support facilities,
6 I'd like to know because they're not included in the
7 report, the following services, the cafeteria and food
8 services, you don't spell out how that's going to be
9 handled in your report?

10 MR. BARBER: I really didn't think that
11 was a campus plan issue.

12 We will continue to feed our students.

13 MS. MILLER: I know that, but how do you
14 do it and how much support staff because I notice that
15 the support staff has gone down.

16 MR. BARBER: Yes.

17 MS. MILLER: Since the last one by a
18 considerable number. So is it that you're contracting
19 these services out to make your figures look better?

20 MR. BARBER: No, we have contracted out, I
21 think there were three services, but where those
22 employees perform these services on the University's
23 campus we have included those numbers within our
24 current count of staff. We were pretty meticulous
25 about doing that. We thought that was the only fair

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 thing to do.

2 MS. MILLER: Also, you mentioned building
3 security that you're working on and yet there's been a
4 number of occasions of buildings that you maintain and
5 own that have students in them have been robbed and a
6 considerable number.

7 MR. BARBER: I would not agree that it's a
8 considerable number.

9 MS. MILLER: I can give you the clippings.

10 MR. BARBER: Clippings don't establish
11 numbers, but what is your question.

12 MS. MILLER: My question is security in
13 buildings when 35 apartments in one of your buildings,
14 managed by you with students can be robbed in one
15 weekend doesn't seem like very good security.

16 MR. BARBER: One, I didn't testify on
17 that, but certainly we have a commitment to providing
18 a safe environment for our University's residences and
19 students. We'll do what we need to do to increase
20 security where it is warranted. I'm not the security
21 expert. I didn't testify on security and I don't
22 really know what specific instances you're talking
23 about.

24 MS. MILLER: Let's put it this way, you've
25 been stating that you want to be kind and generous to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the community and help police the students in the
2 community. But if that's the kind of policing they
3 do, I don't think --

4 MS. DWYER: Madam Chair, I don't know that
5 there's a question there as much as a statement.

6 MS. MILLER: Well --

7 MR. BARBER: It's not policing we're
8 talking about. We're talking about bringing students
9 that have been reported to us within our student code
10 of conduct and disciplining them. Our officers are
11 limited to their jurisdiction in terms of where they
12 can go. They're limited to campus boundaries.

13 MS. MILLER: Don't you think the residents
14 would find it objectionable that G.W. wants to police
15 their residential community?

16 MR. BARBER: We don't.

17 MS. MILLER: That's what you're offering.

18 MR. BARBER: No, no. No ma'am.

19 MS. MILLER: You're offering to police the
20 students and the police -- most of your students are
21 living in our residential community, right?

22 MR. BARBER: Policing is the wrong term.
23 What -- and it's not a term that I used. I do not
24 think it's a good idea for University police officers
25 to go into private buildings. They have no authority

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to do so. I know there was a problem about
2 controlling off-campus student behavior, that very
3 limitation. I agree with you. That's a limitation
4 that should be a limitation. What we have proposed to
5 do is when it's been reported to us by a reputable
6 figure in that building, the landlord, the tenant
7 association, that (a) it's a G.W. student and (b) this
8 G.W. student misbehaved in very specific ways and they
9 can document that to us we will take action to
10 discipline that student. That doesn't mean we're
11 going to send UPD out there. We're going to call the
12 student in to hold that student accountable for their
13 actions. That's what we said.

14 MS. MILLER: Well, what's bothering me and
15 I want to try to ask this in a question form, where
16 you are part ownership of a building and the majority
17 of the building is filled with your students, you
18 can't go into that building or come into that building
19 and do something about the students and you say the
20 feeling is -- let's put it this way, you're suggesting
21 that work with the management. That's what you're
22 suggesting.

23 MS. DWYER: Madam Chair, I think this is
24 testimony as opposed to a question for the witness.

25 MS. MILLER: Well, he has testified that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they want to -- he wants to work with management, but
2 it seems to me we got to this condition because they
3 were working with management. That's been the problem
4 in the community.

5 CHAIRPERSON REID: Okay, Ms. Miller, did
6 you get the answer to the question that you were
7 asking?

8 I think by this time we're all getting a
9 little confused.

10 MR. BARBER: I'd be happy to try to answer
11 it.

12 MS. MILLER: They bought --

13 CHAIRPERSON REID: No, no, what is the
14 question.

15 MS. MILLER: The question is where they're
16 an owner of a building and the building is almost
17 totally occupied by their students, and they are
18 supposed to give it protection and they're supposed to
19 protect the neighborhood and he says he can't send the
20 police down there, so I don't know how he plans to do
21 it.

22 MR. BARBER: Let me address that --

23 MS. MILLER: How they plan to because it
24 makes us nervous.

25 CHAIRPERSON REID: All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BARBER: Let me try to make this
2 clear. Where the University owns a building,
3 regardless of its location and our students are in
4 there, we police our students. UPD can go into that
5 building because we own the building. We have
6 resident advisors in that building. Hall of Virginia
7 Avenue is a perfect example.

8 What you said was "part owner." And
9 that's a little bit different. Where we are not the
10 general partner and I think you have a very specific
11 case in mind. I understand that case. Where we are
12 not the general partner and we do not manage the
13 building, but we are simply an investor, we do not
14 have the authority to send people in there, send the
15 University police in there. But the off-campus -- the
16 extension of the code of conduct would extend to that
17 property since the property you and I are both
18 thinking of is in Foggy Bottom and we will hold
19 students accountable to the extent that those students
20 are identified by the landlord, the general partner
21 operating that building or the property manager of
22 that general partner is hired, neither of which is
23 George Washington University or the tenant
24 association. If they can identify students and
25 specifically what they have done, then we will hold

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 those students accountable.

2 CHAIRPERSON REID: Thank you. Next
3 question.

4 MS. MILLER: Can I ask one more question?

5 CHAIRPERSON REID: Sure.

6 MS. MILLER: Now in that same vein, how
7 did you get into the building to be the owner and to
8 put your students --

9 MR. BARBER: I never testified about that,
10 Ms. Miller.

11 MS. MILLER: But you have.

12 CHAIRPERSON REID: Ms. Miller, he didn't
13 testify to that extent.

14 MS. MILLER: He testified that he owned --
15 oh, wait a minute, I know the point I'm trying to
16 make. Now wait a minute, he was saying that they want
17 to work with the managers to control their students,
18 but that's how they got in the building in the first
19 place.

20 CHAIRPERSON REID: No, no, Ms. Miller, I
21 think he said they'll work with the management, the
22 tenants, the students, the dorm advisors, whoever is
23 involved there to try to come to some resolution of a
24 problem, if in fact a problem emerges.

25 Do you have a next question?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: The point I was trying to
2 make with him --

3 CHAIRPERSON REID: You're testifying. Do
4 you have a question right now?

5 MS. MILLER: Fine, thank you.

6 CHAIRPERSON REID: All right, thank you
7 very much.

8 MEMBER RENSHAW: Madam Chair, could I ask
9 a question please of Mr. Barber related to this
10 policing of students?

11 MR. BARBER: Yes.

12 MEMBER RENSHAW: You said earlier to Ms.
13 Miller that our offices are limited to the campus
14 boundaries. So if a University building is outside of
15 your campus buildings, are your campus police allowed
16 to cover those buildings?

17 MR. BARBER: I misspoke. They can go to
18 University properties that are off campus.

19 CHAIRPERSON REID: You said that.

20 MR. BARBER: But I also said it was
21 limited to campus boundaries.

22 CHAIRPERSON REID: If the property is
23 owned by the University, they do have the right to go
24 into the property.

25 MEMBER RENSHAW: But they also said -- he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 also said our officers are limited to the campus
2 boundary.

3 MR. BARBER: Yes, I did say that.

4 MEMBER RENSHAW: I wanted it clarified.

5 MR. BARBER: I should clarify. The campus
6 boundaries as well as properties owned, fully owned by
7 the University.

8 CHAIRPERSON REID: Thank you, Mr. Barber.
9 James McLeod.

10 MR. McLEOD: James McLeod, a party. I
11 live at 2424 Penn. Avenue, N.W., No. 407. Mr. Barber,
12 you indicated that some beds will become available on
13 campus and I believe from the reports some of those
14 will be from the graduate students leaving those beds,
15 is that correct?

16 MR. BARBER: No, not by a large -- existing
17 tenants, non-University people as some beds become
18 freed up, they'll be available for the University
19 students and we will put undergraduates in there.

20 I think there wre some graduate students
21 in our beds, but we converted them to undergraduate
22 already.

23 MR. McLEOD: So the 3,519 beds you have
24 currently, they're all occupied by undergraduates,
25 sir?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. BARBER: Yes.

2 MR. McLEOD: And how many students -- you
3 indicated that it wouldn't make sense --

4 MR. BARBER: 3,519, is that the number
5 you've got?

6 MR. McLEOD: That's the number I got from
7 the report, sir.

8 MR. BARBER: I think that's approximately
9 right. I think it's 3,549, but that's the ballpark
10 and yes, they're occupied by undergraduates.

11 MR. McLEOD: You indicated that a lot of
12 students live outside of the immediate area and it
13 wouldn't make sense to have all on-campus housing, but
14 how many students do you currently house in G.W.-owned
15 property off-campus in the immediate area?

16 MR. BARBER: Approximately, 947.

17 MR. McLEOD: Okay, and in your report the
18 thing that I received today entitled "Commitment to
19 Foggy Bottom Area" it blocks off a Foggy Bottom which
20 includes the building where I live at 2424 Penn.

21 Now in the earlier submission there is a
22 reference to being able to house students in your
23 identified owned properties, plus any commercial
24 district in the District of Columbia.

25 So am I to understand that the new version

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would exclude the block that I live on which is the
2 2400 block south of Pennsylvania Avenue?

3 MR. BARBER: It includes residential
4 properties within the boundary that we've identified
5 in that map as spelled out and the proposed
6 conditions. The boundaries are Pennsylvania Avenue on
7 the north, 19th Street on the west, Rock Creek Park on
8 the east and E Street on the south.

9 MR. McLEOD: If my area zone C-2-C, it is
10 a residential apartment building, but it is in a
11 commercial district, I think as defined by the DCMR.

12 From reading this, it sounds like you're
13 not going to purchase my building except for purely
14 investment purposes. Am I misinterpreting what this
15 thing I received today is?

16 MR. BARBER: Just one second.

17 (Pause.)

18 It is residentially zoned properties
19 within this area.

20 MR. McLEOD: So I guess my question then
21 is that leaves open the possibility for you to
22 purchase --

23 MR. BARBER: Yes, you have a residential
24 property in the commercial zone, is that what you're
25 saying?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. McLEOD: It's still in the C-2-C.
2 From my understanding, I'm not an expert in this area,
3 but from my understanding that is identified as a
4 commercial district.

5 We have some experts here.

6 MR. BARBER: I will tell you that the way
7 we were approaching this for the residentially zoned
8 properties in that area, if there are specific
9 properties, residential properties that are outside of
10 the residential zone within this Foggy Bottom area we
11 define, I think we'd be willing to take a look at
12 that. It wasn't, I don't think we had that in mind,
13 really, in coming up with this definition. We thought
14 we would include -- it would capture all of the
15 residential properties within that area.

16 MR. McLEOD: In terms of --

17 MR. BARBER: I'm sorry, your address is?

18 MR. McLEOD: 2424 Pennsylvania Avenue.
19 It's in this area that you've lined off here.

20 MR. BARBER: I understand.

21 MR. McLEOD: Now even assuming from what
22 you've said I'm not sure that you're not going to buy
23 the building to house your students, but even if you
24 accept this statement that you made here that says
25 you'd only purchase it for investment purposes, if you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 purchased the building, is there anything to prevent
2 you from renting the units to students, either
3 graduate or undergraduates from the University from
4 your commitment here? I'm not sure what's your
5 commitment.

6 MR. BARBER: The commitment is not to
7 purchase residential properties in residential zones
8 in Foggy Bottom for the University use.

9 What University use means is two aspects
10 of that. It's a tax consequence. It doesn't come off
11 the tax role. But for your purposes, more
12 significantly it means we don't change the rental
13 policies to favor, to discriminate against
14 non-students as we would if we were buying for
15 University use. We would not kick people out if we
16 were buying for University use, but as a place became
17 available we would put students in there. That's what
18 we will not do.

19 Now, I assume there may be students in
20 there now. And you have students and non-students
21 living in a building. That's not unusual. If we were
22 to purchase and I'm not saying that we would, but our
23 commitment is there wouldn't be a change in that. The
24 same situation you have now, the same rental policies
25 would be observed. The difference is you have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 somebody else as the landlord.

2 MR. McLEOD: And using the Aston as an
3 example, does the University own that building now?

4 MR. BARBER: Yes.

5 MR. McLEOD: Did that use to be an
6 apartment building?

7 MR. BARBER: It was a short-term use --
8 not quite an apartment building. It was more short-
9 term. But yes, that's a good example. We've
10 converted that and are in the process of -- to
11 University use in terms of as the units become
12 available, we're putting students in there.

13 MEMBER RENSHAW: What's the name of that
14 place?

15 MR. BARBER: The Aston.

16 MR. McLEOD: It's on New Hampshire Avenue.
17 It's far north of the campus boundary. I'm not even
18 sure it shows up on -- it shows up, actually, on this
19 --

20 MR. BARBER: We've listed our off-campus
21 housing uses in our campus plan document and that is
22 one of them. We list them by address and we can
23 identify that for you. It's in the campus plan.

24 MR. McLEOD: Do you know how many students
25 live in that building and how many units there are in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the building?

2 MR. BARBER: Not offhand. I can get you
3 that information.

4 MR. McLEOD: I'd appreciate that. My last
5 question, Square 39 --

6 MR. BARBER: I'm sorry, on page 25, I
7 believe, we talk about the location of our student
8 residences off campus.

9 MR. McLEOD: Square 33 is designated for
10 medical health purposes and that's right on the corner
11 of 24th and K and right next to Washington Circle,
12 bordering the residential neighborhood. There is St.
13 Paul's, I believe is across the street from this.

14 Wouldn't it be better to use that as a
15 dorm area since that would be bordering the
16 residential community than to -- why does it need to
17 be designated for that purpose, I guess is my
18 question?

19 MR. BARBER: The site is adjacent to the
20 hospital and we've looked at that quadrant of the
21 campus as a kind of medical quadrant. You recall
22 there's a new hospital directly south of that.
23 There's Ross Hall, a medical school building. I mean,
24 you talk to some of your neighbors and they'll say,
25 look it's adjacent to the community and should not be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 residences and we've had that discussion earlier.
2 That particular quadrant, we believe is more
3 appropriate for medical because it goes with the
4 hospital. I don't think that's a change from the
5 previous campus plan. It's always been designated
6 medical. That whole quadrant.

7 MR. McLEOD: Thank you.

8 CHAIRPERSON REID: Now --

9 MS. MILLER: Can I ask him one more
10 question?

11 CHAIRPERSON REID: Uh-uh.

12 MS. DWYER: Does that complete the cross
13 examination of all of our witnesses including the
14 architect and traffic?

15 CHAIRPERSON REID: That completes the
16 cross examination. The architect. All right. And
17 that's the -- final -- oh.

18 MR. MANDLEBAUM: Two quick questions. We
19 were identifying sites with parking lots, surface lots
20 and I believe we identified Square 101 and 56.

21 Did you say that the one surface left on
22 101 was for a law school extension?

23 MS. COSMELA: That is one of the
24 considerations for that site, yes.

25 MR. MANDLEBAUM: Is it true that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 University just broke ground on a new International
2 Affairs School just south of the campus?

3 MS. COSMELA: The Elliott School?

4 MR. MANDLEBAUM: Yes, the Elliott School.

5 MS. COSMELA: Yes, that's true.

6 MR. MANDLEBAUM: And is it true that the
7 University is now -- I hesitate to say the word
8 renovating, but working with the President's house
9 that's adjacent to the law school and the current
10 International Affairs School to make additional room
11 for the law school?

12 MS. COSMELA: That's correct, too.

13 MR. MANDLEBAUM: So that Service Item 101
14 would be in addition to the current expansion plans of
15 the law school, so that's in addition to it expanding
16 into Stuart Hall. That's yet another site.

17 MS. COSMELA: Just briefly, I'm somewhat
18 aware of what's going on with the law school. They do
19 have some significant, they do have plans for
20 expansion. They are currently renovating the building
21 that Mr. Mandlebaum is referring to. It may not meet
22 all their needs, future needs and requirements for
23 renovation, and additional classroom space. The
24 University has not committed to anything yet, but the
25 site on 101 is a site that has the potential to become

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 law school expansion. I think at this point it's
2 probably speculative. It's what I know.

3 MR. MANDLEBAUM: Okay.

4 CHAIRPERSON REID: Your last question?

5 MR. MANDLEBAUM: I think that's it.

6 CHAIRPERSON REID: Thank you very much.
7 There was another person who wanted to question the
8 architect. No? Okay. Then that would conclude your
9 presentation and cross examination.

10 I think that Ms. Pruitt, refresh us now
11 because we did have a change in the sequence and we
12 want to keep everybody on the same page. Where are
13 we?

14 MS. PRUITT: Next we go to the ANC's
15 presentation.

16 MS. SPILLINGER: Excuse me, but there has
17 been no cross examination of the traffic report or of
18 Dr. Linebaugh.

19 MS. PRUITT: Is he here?

20 MS. SPILLINGER: Yes.

21 CHAIRPERSON REID: Based on the questions
22 I asked, was there any other cross examination, okay.
23 All right.

24 MS. DWYER: We're going to call Craig
25 Linebaugh to answer any questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. SPILLINGER: I just have one question,
2 thank you. In 1999, it's my understanding that G.W.
3 found itself with 400 additional students that it had
4 not anticipated and as a result, it purchased the
5 Howard Johnson and moved the 400 students there. And
6 then in 2000 it found itself with 200 additional
7 students it had not anticipated and it is putting them
8 in various study halls and what have you around town
9 as well as in the State Plaza Hotel.

10 Can you tell me how you anticipate or how
11 you draw up your figures, on what basis do you -- in
12 other words, future figures from here, how can we
13 depend on them or should we just automatically add 10
14 percent to each one? Where are we?

15 MR. LINEBAUGH: Well, I think what you're
16 asking me is about the art of enrollment management.

17 MS. SPILLINGER: Thank you.

18 MR. LINEBAUGH: And I use the word "art"
19 specifically. We do what I think any other
20 organization attempts to do to make predictions. We
21 use the history we have. We may look back three
22 years. We may look back five years, trend lines. The
23 trend lines we're looking at, the factors we look at,
24 one is referred to as yield. Yield is the percentage
25 of students whom you admit to your University who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 actually matriculate. That number inevitably changes
2 over the course of the summer. Under certain
3 circumstances it may be higher than the historical
4 figure. In other years, it will be lower. There are
5 factors that we try and anticipate to adjust those
6 figures on an annual basis.

7 You may recall a number of years ago and I
8 can't recall if it was the magazine Time or Newsweek
9 did a feature called the "Tale of Two Cities" in which
10 they published a map that put a red dot where every
11 murder had occurred in the District Columbia for each
12 preceding calendar year. That year our yield
13 plummeted.

14 This past year in the face of the IMF
15 demonstrations we anticipated that we could face a
16 similar problem. However, we balanced that against
17 the fact that it's an election year when our yields
18 tend to peak. So it is, in fact, an arch and it's one
19 that is very difficult to get within a very precise
20 number.

21 The other factor that plays into the total
22 number of students is the retention of current
23 students who don't graduate. I mentioned back in
24 April, I allow myself a certain amount of personal
25 pride in that our retention rate hit an all time high

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 last year because I was one of the co-authors of the
2 plan that achieved that. It appears that we have done
3 very well with retention again next year, this coming
4 year. We don't have those figures. We will not have
5 them until our census.

6 But we couldn't plot a trend line based on
7 one point of that. No one would be presumptuous
8 enough to do that.

9 If in fact our retention has topped out
10 our historical number or equivalent to the peak of
11 1999, then we will be able to make adjustments in the
12 number of students we admit, predicting yield and have
13 a reasonable estimate of what the number of students
14 will be in the fall of 2001.

15 MS. SPILLINGER: Thank you very much. And
16 one quick question I had forgotten, but Commissioner
17 Miller had referred to Dr. Fuller's report and the
18 fact that he had said 3,439 other full-time G.W.
19 students live in private housing within the District.
20 Do you have any idea where that figure came from?

21 MR. LINEBAUGH: I did not write the Fuller
22 report.

23 MS. SPILLINGER: You did not give him that
24 figure?

25 MR. LINEBAUGH: I -- what he didn't say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was full-time undergraduate students.

2 MS. SPILLINGER: Full-time G.W. students.
3 He doesn't say undergraduate.

4 MR. LINEBAUGH: He does not. He could be
5 talking about residents of the District of Columbia
6 who are full-time graduate --

7 MS. SPILLINGER: We don't know where he
8 got it. Thank you very much.

9 CHAIRPERSON REID: I think that this the
10 course we would ask any questions of Mr. Slade?

11 MS. DWYER: No, that was Craig Linebaugh
12 answering enrollment academic questions. We do have
13 the traffic consultants to call back.

14 CHAIRPERSON REID: I'm sorry. Who has
15 questions of Mr. Slade? Ms. Miller? Okay.

16 Please, Ms. Miller.

17 MS. MILLER: The first question I'd like
18 to ask you, wouldn't you agree that Pennsylvania
19 Avenue is a major east-west traffic route?

20 MR. SLADE: Yes.

21 MS. MILLER: And wouldn't you agree that
22 Pennsylvania Avenue and Washington Circle comprise the
23 northern border of the Foggy Bottom campus?

24 MR. SLADE: Yes.

25 MS. MILLER: But your report, your traffic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 report did not include an analysis of traffic on
2 either Pennsylvania Avenue or Washington Circle. Is
3 that correct?

4 MR. SLADE: Correct.

5 MS. MILLER: Do you contend that the
6 impact of G.W. generated traffic is limited to the
7 portions of the streets that are completely within the
8 campus boundaries?

9 MR. SLADE: No, we don't contend it's
10 limited to only those streets.

11 MS. MILLER: Would you also agree that
12 Virginia Avenue is a major east-west traffic route?

13 MR. SLADE: Yes.

14 MS. MILLER: And you earlier today said
15 that crossing streets was just fun and easy and safe.
16 Have you tried going down E Street recently?

17 MR. SLADE: I don't recall the last time I
18 went down E Street.

19 MS. MILLER: Well, I suggest you try it.
20 The problem there is that cars --

21 COMMISSIONER MITTEN: You want to be sure
22 to be asking a question.

23 MS. MILLER: I'm sorry. I'm doing that
24 again. I'll try to stick to my script.

25 But when you said that today -- okay, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can't testify. All right.

2 Would you agree that Virginia Avenue runs
3 within one or two blocks of the most southern border
4 of Foggy Bottom campus?

5 MR. SLADE: Yes, I do.

6 MS. MILLER: However, your traffic report
7 did not include an analysis of traffic on Virginia
8 Avenue, either?

9 MR. SLADE: That's correct.

10 MS. MILLER: Who conducted the
11 transportation mode choice survey referred to on page
12 10 of your traffic study?

13 MR. SLADE: I affirmed it.

14 MS. MILLER: Your report indicates that
15 the survey was conducted over a three-day period in
16 April of 1999, correct?

17 MR. SLADE: Correct.

18 MS. MILLER: Your report indicates that
19 the survey was conducted at only two locations,
20 namely, the Marvin Center and the Law Library,
21 correct?

22 MR. SLADE: I don't remember that. I know
23 we selected locations where we could randomly
24 interview a variety of people, employees, students and
25 visitors and those certainly would have been two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 locations.

2 MS. MILLER: Did the construction going on
3 for the Law School factor in at all into the traffic?

4 MR. SLADE: These were interview surveys
5 of people who were walking, either had parked or
6 arrived by Metro rail.

7 MS. MILLER: And you didn't talk to
8 anybody in cars?

9 MR. SLADE: We talked to people who were
10 walking who would have left their cars in parking
11 locations.

12 MS. MILLER: Okay. Your report also
13 indicates that the survey was conducted during time
14 periods throughout the day, is that correct?

15 MR. SLADE: Yes.

16 MS. MILLER: What time periods throughout
17 the day was the survey conducted for each location?

18 MR. SLADE: I'll ask Nicole to answer that
19 if she can.

20 MS. WHITE: I don't recall exactly, but I
21 think they were like between 7:30 and 9, 9 and 11 and
22 3 to 5, 5:30, around those times.

23 MS. MILLER: Okay. Your report indicates
24 that over 1,000 people were surveyed, is that correct?

25 MR. SLADE: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: How do you choose the people
2 to do the survey?

3 MR. SLADE: To be surveyed?

4 MS. MILLER: In other words, the people
5 you're going to survey, are they trained to do that
6 type of thing and they're given the questions to ask?

7 MR. SLADE: Yes.

8 MS. MILLER: How many students
9 participated in the survey?

10 MR. SLADE: As persons who we interviewed?

11 MS. MILLER: Right.

12 MR. SLADE: I don't remember the exact
13 figure, but it was a pretty significant proportion of
14 that 1,000.

15 Nicole, do you have those numbers?

16 (Pause.)

17 MS. MILLER: And the report didn't
18 ascertain the status of the student, full-time,
19 part-time or what year?

20 MR. SLADE: Right. I don't think we asked
21 that question. We just determined whether they were a
22 student or not.

23 We did ask them whether they were
24 undergrad or grad.

25 MS. MILLER: Okay, and was that included

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in your report?

2 MR. SLADE: I don't recall if it was in
3 the report, but we do have that data and if the Board
4 would like and you would like, we could give you more
5 detail, backup information.

6 MS. MILLER: The traffic concerns us very
7 much, you know.

8 If the majority of students who
9 participated in this survey were full-time graduates,
10 undergraduates, living at G.W. housing on or near the
11 campus, would that not sort of screw the results of
12 the survey making it appear that most students --
13 skew, excuse me, I didn't say it right. Vowels are a
14 problem for me. Isn't it clear that most students
15 walk to and from the campus than actually did?

16 MR. SLADE: Well, we -- the sampling was
17 random and what we were trying to do was take
18 snapshots of different times of the day by capturing a
19 random sample of the people on campus, so we were
20 trying to find out, of those students who were on
21 campus, how many got there by walking, driving and
22 other modes as an estimate of the way people got to
23 campus. If they happened to live on or near campus
24 and were walking because of that, that was a valid
25 conclusion we wanted to discover.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 So it didn't really skew it, it really
2 gave, we thought an accurate picture of how students
3 were getting to campus.

4 CHAIRPERSON REID: Ms. Miller, how many
5 more questions?

6 MS. MILLER: Just a few more. Maybe five.
7 I'm making them short and quick and fast.

8 CHAIRPERSON REID: All right.

9 MS. MILLER: How many visitors were
10 included?

11 MR. SLADE: I don't think we have that in
12 front of us, do we Nicole?

13 MS. MILLER: You didn't check whether or
14 not they were visitors?

15 MR. SLADE: We asked if they were visitors
16 and we can enumerate that.

17 MS. MILLER: I'd like to know that, too,
18 because that makes a difference.

19 Was the G.W. transportation survey
20 designed and conducted to support G.W.'s application
21 for approval of the campus plan? In other words,
22 given special areas of --

23 MR. SLADE: The intent of the survey was
24 to determine how the people who were on campus at
25 different times of the day got to the campus because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 we thought that was valid information that was useful
2 to the Board. So that was the purpose of conducting
3 the survey and that's how we designed it.

4 MS. MILLER: If G.W. constructs the
5 planned mid-base pedestrian crossings, to some extent
6 would that not in effect create additional de facto
7 intersanctions of those locations? That's what I was
8 trying to say.

9 MR. SLADE: We don't think so because, as
10 I said earlier, these crossings are currently taking
11 place and our objective is to manage the way that
12 happens rather than let it happen in an unmanaged way.

13 MS. MILLER: Isn't that illegal?

14 MR. SLADE: No, I don't believe so.

15 MS. MILLER: My impression is it is.
16 There I go again, all right.

17 One other thing, let me see, are you aware
18 that in 1997 on 22nd Street that six of the students
19 were hit by cars in less than 6 months crossing
20 randomly at the street, walking in the street?

21 MR. SLADE: I wasn't aware of that.

22 CHAIRPERSON REID: This will be your last
23 question, right?

24 MS. MILLER: Let me choose the best one.
25 Based on the 2010 projection, the parking space ratio

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for the Foggy Bottom campus will be reduced even
2 further, isn't that correct?

3 I mean the plan mentions only 100 being
4 added.

5 CHAIRPERSON REID: I don't understand the
6 question.

7 MS. MILLER: The question is you're
8 increasing the students. You're increasing the staff
9 and you're staying within the campus quotas, but
10 you're only going to add 100 cars.

11 MS. DWYER: Is the question whether the
12 parking under the plan is sufficient?

13 MS. MILLER: Right.

14 MS. DWYER: Nicole, can you answer the
15 question as to whether the parking under the plan is
16 sufficient?

17 MS. WHITE: Yes, the parking is adequate
18 to accommodate the future population projections.

19 MS. MILLER: And you don't get any
20 complaints from the residents about students parking
21 in the local area?

22 MS. WHITE: I have not gotten any
23 complaints.

24 MS. MILLER: Thank you.

25 CHAIRPERSON REID: Thank you. We're going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to take a 10 minute recess at this time and when we
2 return we'll commence with the ANC report --

3 MS. DWYER: Madam Chair, if I could just
4 -- we have called our supporters and they are here, so
5 could we when we get back, have our supporters testify
6 and then they can leave?

7 CHAIRPERSON REID: If the Board Members
8 have no objection to persons in support, then the ANC,
9 persons in opposition and then we'll have the report
10 from OP and closing remarks.

11 I don't think -- obviously we will have
12 reserved the 25th to finish up. So hopefully, by
13 today we can at least get to the ANC portion and
14 persons in support and then we'll take an assessment
15 then as to where we are.

16 Thank you.

17 (Off the record.)

18 CHAIRPERSON REID: The meeting will please
19 come to order. Thank you.

20 MS. DWYER: Madam Chair, our supporters
21 have told us that they are willing to come back for
22 the next hearing so that we can stay with the order of
23 proceeding and in talking with the ANC, they would
24 like to be able to go forward at this time and present
25 their case. So if you're in agreement, we're going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 go back to the original order.

2 CHAIRPERSON REID: I have no problem with
3 it as long as the other Board Members -- okay, that's
4 fine. Thank you.

5 MS. DWYER: Thank you. Ms. Spillinger,
6 are you ready?

7 MS. SPILLINGER: I thought I was and
8 apparently not. If I could just have one moment,
9 please.

10 (Pause.)

11 CHAIRPERSON REID: Are you ready now?

12 MS. SPILLINGER: Madam Chair, I am Barbara
13 Spillinger, chair of ANC-2A and I'm here to testify as
14 the authorized representative of the ANC. However, we
15 would like to reverse the order of today and ask
16 Commissioner Miller to speak first for her single
17 member district.

18 MS. MILLER: Good afternoon, I'm Dorothy
19 Miller, Chair of ANC-2A and I have copies of my
20 statement and I'd like to call your attention to the
21 good reading material attached to the back, the
22 questions I wanted to ask, but was testifying.

23 I live at 2440 Virginia Avenue and I've
24 lived in Washington since 1940 and in the Columbia
25 Plaza Project for the last 25 years. This testimony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is made in my elected capacity because my President
2 asked to speak.

3 I oppose the above application as found
4 for many reasons, mainly because it fails miserably to
5 meet the requirements of 11 DCR 210 and the provisions
6 of the comprehensive plan covering this University.

7 I would like to express my appreciation to
8 the Office of Planning, to its new Director, Mr.
9 Altman, to staff for comprehending that this
10 application governed a college campus and not at all
11 with the basic intent, does not. The D.C. Act 12-609,
12 the Comprehensive Plan Act of 1998.

13 OP's report shows an understanding of the
14 enormity of the destruction of this once beautiful and
15 once desirable neighborhood caused by G.W.'s violation
16 of the last campus plan and the District government's
17 lack of enforcement of the current zoning regulations
18 and District laws.

19 As stated in my request for party status
20 that I would be speaking as the Vice President of
21 CPGA, but that has changed, their President asked and
22 was granted the right to speak.

23 However, because of the many grievous
24 violations of the D.C. laws, D.C. rent control
25 regulations taking place at Columbia Plaza since

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 G.W.'s purchase of 28.55 percent and an occupancy of
2 almost 85 percent now, they have an ownership of this
3 real estate apartment complex, the Association decided
4 the President would better speak.

5 Marilyn Ruben is the President and she
6 will be speaking to you later.

7 In my statement I would like to cover some
8 of the violations by GWU inside and outside of the
9 approved campus boundaries since the approval of the
10 last campus plan and some issues that need to be
11 addressed before the Board gives approval to this
12 application for a new campus plan.

13 These areas should be clearly spelled out
14 in the approval of this application with penalties for
15 enforcement to correct and prevent a repeat of the
16 present situation. I'm in agreement with most of what
17 ANC-2A and Foggy Bottom Association recommends. G.W.
18 stated in 1985 campus plan that the student increase
19 over the next 15 years, the life of the plan, were
20 expected to be 1 percent a year. However, in the
21 early 1990s, even before the BZA issued the order,
22 G.W. started an intense and very successful campaign
23 to increase the student enrollment without increasing
24 on-campus housing. To house this increased student
25 enrollment, the University began placing the overflow

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in off-campus residential properties, decreasing
2 affordable housing and forcing long-term residents to
3 leave the District.

4 In 1992, ANC-2A formed a committee to try
5 to find a solution to cope with this increased
6 enrollment and G.W.'s adverse impact on the Foggy
7 Bottom West End residential neighborhood. A
8 resolution formulated by this committee resulted in
9 G.W.'s agreeing to build New Hall, the first dormitory
10 built by the University on campus since 1935 to house
11 only 455 students. And I'd like to add, 59 parking
12 spaces and none of them for the people living there.

13 The 1990 census count setting the
14 boundaries for my single member district places 2,000
15 persons in my single member district mainly in
16 Columbia Plaza apartment complex which has
17 approximately 800 rental units, housing over 1,000
18 students and Thurstin Hall located at 1900 F Street, a
19 G.W. dormitory built to house 800 students and staff.

20 This dormitory, however, in the fall semester of 1999
21 was stuffed with 1200 students. This year G.W.'s
22 freshmen enrollment is 2400 said The Hatchet, the
23 school paper. And they have again stuck Thurstin Hall
24 with 1200 students with as many as 4 students housed
25 in each study hall and an overflow of 60 students

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 being housed in the State Plaza Hotel. And those
2 articles verifying this are attached and that you go
3 in the class, you sit on the floor.

4 My opposition to this is the omission in
5 the current application to request special exceptions
6 by GWU for its new campus plan that is before you and
7 because of the violations committed in the last plan
8 as follows: the plan before you is inconsistent,
9 inaccurate, misleading, and is an incomplete
10 presentation of information necessary for you, the
11 Board Members of the BZA to take action in making a
12 decision regarding as the regulations state, the
13 campus plan as a whole, inside, outside in its
14 presently approved boundaries and its effects on the
15 surrounding residential neighborhood. And both of
16 these need to be included to know the effect.

17 GWU's excessive enrollment has resulted in
18 the eroding of residential housing and the loss of
19 community by transit renters such as students and the
20 University's failure to address the measures to
21 correct its housing shortage as suggested in the
22 previous campus plan, BZA application 14455.

23 Under the plans, modified condition number
24 7 shows one site -- they were to choose one site for
25 residential use and one alternative site. The second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 site designated in that plan was Square 44, the Health
2 and Wellness Center is now being built on this site
3 and violates all of the conditions suggested in the
4 previous plan for whatever the University wanted to
5 build on it.

6 The BZA number 14455 condition 17F having
7 athletics negates condition number 32 which states
8 "that all athletic activities would be confined to the
9 Smith Center with all other athletic and recreational
10 program in public areas off campus." Of course, that
11 changed with the Health and Wellness Center.

12 GWU's continued acquisition and
13 destruction of properties that give Foggy Bottom its
14 character and charm making it a desirable community in
15 which to live, reference BZA application No. 14455
16 Section G4, covering Square 43 which states "the
17 townhouses were to maintained and to be a buffer
18 between the institution and the residential area."
19 The Board's conditions were completely violated since
20 that order was written GWU has purchased and
21 demolished 33 of the 36 townhouses. This was done by
22 the University with a notice to ANC-2A and before it
23 was published in the D.C. Register by DCRA.

24 The draft of the campus plan as before the
25 Board fails to address the community's concerns with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 respect to the violations of the present campus plan.

2 These violations should be addressed in the hearing
3 of this request. The previous plan omitted penalties
4 for violations of the BZA order to help enforce
5 compliance and prevent violations of the conditions
6 the Board had put in the order in an effort to
7 prohibit the University from expanding into the
8 residential neighborhood as suggested by the
9 comprehensive plan.

10 A greater Washington consumer survey
11 showed that after the 1990 census that in the
12 District's eight wards the greatest decrease in
13 residency was in Ward 2 with a loss of 6,052
14 residents. It is estimated that the 2000 census will
15 about double or triple the aforementioned loss, in
16 part, because the University's violation to stay
17 within its approved campus boundaries and its
18 estimated student enrollment of 1 percent per year are
19 12 percent for the life of the plan, the 15-year plan,
20 the current one, the enrollment increased over the
21 estimate without adequate campus housing, and forced
22 students to find housing in the residential area
23 displacing local, permanent residents.

24 GW did this by entering into a partnership
25 agreement with owners and managers of residential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 properties, acting as a lessor, landlord and using
2 questionable tactics to get rid of senior citizens to
3 vacate apartments replacing permanent residents with
4 nontaxpaying students. This large influx of students
5 decreased the available moderate income housing and
6 increased the rents which is allowed under the
7 District's rent control law that accelerated the exit
8 of permanent taxpaying citizens, a practice that
9 erodes the financial stability of the District. And
10 note my attachments. This will give you some more
11 information.

12 The previous campus plan was outdated
13 before it was approved and the many violations in the
14 plan have created the current, unacceptable situation.

15 These violations need to be addressed by the Board
16 before approving the current application.

17 The following violations have occurred:

18 1. Condition 13F, the BZA order of 14455
19 states, "buildings requiring the greatest level of
20 access will be given the most central location with
21 good access and interior circulation." The violation
22 of this provision was most injurious of all the
23 violations of the current campus. The new hospital
24 was approved for Square 40, Lot 36 with no on site
25 parking, open 24 hours a day with a loading dock next

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to the residential community. GWU eliminated 265
2 parking spaces when they put that up. GWU's list of
3 current projects submitted to the Department of Health
4 regarding ANC-2A's request for the need for an
5 environmental impact study, the EIS, omitted the
6 doubling of the size of its law school. DOH denied
7 ANC-2A's request. Had that been included, by the way,
8 we would have gotten it, but placed a limit on what
9 GWU could use -- use could make of the old hospital
10 site and I'm getting a copy of that and I would like
11 to have permission to attach it to my statement.

12 Regarding 11 DCMR 210.2, the basis of the
13 Board's uses for approval of University special
14 exceptions, the Board needs to set a standard of
15 judgment for questions that the Board Members should
16 ask themselves before making a decision. Define what
17 is an acceptable level of disruption to residential
18 neighborhoods. Provide a shorter period of time for
19 campus implementation in order to be able to measure
20 impacts and take necessary corrective action.

21 What is a positive impact? What is a
22 negative impact? What is a more negative impact? In
23 other words, what is unacceptable?

24 Provide sufficient time for BZA to make
25 decisions on facts that can be verified because a lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 cannot in this current presentation.

2 ANC-2A and DCRA did a parking count of
3 GW's current on-campus off-street parking spaces.
4 Another copy of that is attached. GW's six new
5 projects currently under construction eliminated six
6 parking lots, the parking included in the new
7 construction for the off-campus, off street parking
8 does not seem to be adequate to place the lots
9 removed. The suggested increase of 100 parking spaces
10 is woefully inadequate for its current student faculty
11 and staff.

12 GWU's appendix C, the population summary
13 for the Foggy Bottom campus states that the current
14 student head count is 16,657; faculty, 1,934; staff,
15 7,799 for a total of 26,389 and a projection count is
16 for 20,000 students to 2,237 faculty and a staff of
17 10,293 for a total of 32,529. It's not believable
18 that 3,000 spaces with 100 more added, parking, are
19 adequate for 32,529 people.

20 Let me give you an example from my
21 personal experiences encountered at a precinct polling
22 place yesterday. Over 100 students tried to park in
23 the 700 block of 24th Street in an area reserved for
24 polling people primarily or at least trying to be kept
25 open. When it was mentioned that GW had stated that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 it had more than enough parking spaces to accommodate
2 its current total, one person said, "they lied."

3 Another student who had received a parking
4 ticket told me he would rather pay the parking ticket
5 than the price of parking on campus and I want you to
6 know that I have attached copies of their parking
7 rates and the information on that statement.

8 Moreover, there must be stronger historic
9 preservation aerology so that the University will take
10 care to preserve all structure of historic
11 significance, not just the ones that can't have
12 historic protection to help maintain the residential
13 neighborhood of the community. The recent violations
14 of the current plan by the demolition of the
15 President's house, that's the area where the law
16 school is going in, without approval of the Mayor's
17 agent, as required, has us very upset.

18 Campus boundaries must be set that are
19 meaningful with severe, enforceable penalties for
20 violations. All purchases of property outside of the
21 approved campus boundary must have BZA zoning
22 permission whichever approval is covering the campus
23 plan. No matter of right purchases should be allowed
24 by large tax exempt institutions. This makes planning
25 by OP to prevent destruction of residential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 neighborhoods meaningless. The purchase by tax exempt
2 institutions that do not clear the zoning system puts
3 an undue strain on the city's services and finances
4 and an increased burden on taxpaying citizens. The
5 burden of the District's financial health and
6 stability should be of concern to all who live and
7 work here.

8 Provide for and reinforce severe penalties
9 for violations including immediate withdrawal of a
10 certificate of occupancy for willful perpetrated
11 violations and the right of individual residents of
12 the District to petition to DCRA to enforce the
13 conditions of the approved campus plan and I thank you
14 for the opportunity.

15 CHAIRPERSON REID: Thank you very much,
16 Ms. Miller. Are there any questions to Ms. Miller
17 from Board Members? All right. Cross examination,
18 Ms. Dwyer?

19 MS. DWYER: I just have a couple of
20 questions.

21 MS. MILLER: Which page?

22 MS. DWYER: Ms. Miller, on page 3 of your
23 testimony, you discuss the construction of the Health
24 and Wellness Center and suggest that that was a
25 violation of the prior campus plan. Was not that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 project reviewed and approved by the Board of Zoning
2 Adjustment?

3 MS. MILLER: It was --

4 MS. DWYER: Thank you.

5 MS. MILLER: May I continue on that for
6 just a minute? The big question was it was zoned in
7 the last campus plan or marked to be residential,
8 mixed use and it was the alternative for residential
9 housing which went out the window when they brought it
10 before you to put something else there.

11 MS. DWYER: But one of the findings of the
12 Board would have to make in any further processing
13 application is that the project was in accordance with
14 the campus plan, would it not?

15 MS. MILLER: Well, that argument was with
16 the word "'with" -- no, I'm sorry, should be yes.

17 MS. DWYER: On page 4 in the second
18 paragraph you reference a partnership agreement
19 between George Washington University and owners and
20 managers of residential properties in which the
21 University acted as a shadow landlord.

22 Do you have any documentation to support
23 this statement?

24 MS. MILLER: Yes, the court rulings in the
25 West End apartments and what's going on right now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 because we filed a case too. They took over 28.55
2 percent of Columbia Plaza. They are refusing to rent
3 to the residents and if you are a student and only
4 when you go through G.W. can you get in. Eighty-five
5 percent now is occupied. There was a building totally
6 occupied by residents. It's now occupied 85 percent
7 by students and that was some of the cross examination
8 I was trying to do today.

9 MS. DWYER: The court record that you
10 referred to, that includes a copy of this partnership
11 agreement?

12 MS. MILLER: It includes the lessor type
13 of agreement that they worked out with the West End
14 because the citizens had first right of refusal. G.W.
15 took over the leasing of the apartment, started
16 getting the students in, moving the other people out
17 and after 10 years they finally bought it.

18 MS. DWYER: All right, thank you. At the
19 bottom of that page you reference and make some
20 statements about the new hospital building. Was that
21 not also a project that was reviewed and approved by
22 this Board?

23 MS. MILLER: Unfortunately.

24 MS. DWYER: Thank you, thank you, thank
25 you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 On page 5 you make reference to six new
2 projects under construction and suggest that these
3 projects eliminated six parking lots. Can you
4 identify what projects and what parking lots you're
5 referring to?

6 MS. MILLER: The law school had a little.
7 The hospital had 265. The media center had about 65.
8 Your health and wellness center, we counted I think
9 110 and -- I had a list, but I didn't put them in my
10 statement. I can attest to that. I had a list of all
11 the projects and I can refer you to 16309 which I
12 questioned the judgment of the BZA and asked for a sua
13 sponte and of course the Zoning Commission did not
14 respond and I had it reopened and reconsidered because
15 those campus parking lots, by the way, were never
16 fully approved and they knew those lots were going to
17 be disappearing, yet they put them in their request to
18 be continued. And that was one of the things Mrs.
19 King wrote the very strong report in opposition and I
20 highly recommend that the Board take a look at 16309.

21 MS. DWYER: Ms. Miller, with respect to
22 the law school building, isn't it true that there was
23 not a parking lot that was displaced by construction
24 of that project?

25 MS. MILLER: I think there was a little.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. DWYER: And with respect to the media
2 and health and wellness buildings --

3 MS. MILLER: Sixty-five spaces.

4 MS. DWYER: -- aren't those projects
5 replacing the parking with a --

6 MS. MILLER: It's not as many spaces
7 because what you all did you said 59 spaces for the
8 New Hall. We counted 110 there. When you park on a
9 flat lot you can get a lot more cars there and it
10 takes a quicker time than to go down into a building.

11 MS. DWYER: Let me just ask you a couple
12 of final questions --

13 MS. MILLER: You eliminated almost 600
14 spaces by the way with the lots I'm referring to.

15 MS. DWYER: Can you go through those
16 numbers again on this?

17 MS. MILLER: Which ones?

18 MS. DWYER: The law school, you said a
19 couple of spaces.

20 MS. MILLER: I'd like to bring you the
21 paper from my studies and my testimonies concerning
22 all of the six applications that are going on, the
23 parking spaces that were available at that time and
24 the amount that's being replaced and it does not total
25 the number that has been removed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Ms. Miller, that report
2 needs to be submitted for the record so that we can
3 all see it.

4 MS. MILLER: I'd be happy to, along with
5 the report on the EIS scam.

6 CHAIRPERSON REID: The EIS what?

7 MS. MILLER: It's a scamming. We couldn't
8 get an EIS because G.W. didn't tell the truth. They
9 didn't mention they were doubling the size of the
10 hospital. I'm sorry, but that's what happened.
11 That's what the man told me.

12 CHAIRPERSON REID: Okay.

13 MS. DWYER: Ms. Miller, one final
14 question. Do you support the University's proposal to
15 add 1350 new beds on campus?

16 MS. MILLER: I would suggest 16,000 and
17 some.

18 MS. DWYER: Do you support at least 1350?

19 MS. MILLER: That's a start, but barely a
20 start.

21 MS. DWYER: Thank you.

22 MS. MILLER: It's a start. It's a
23 beginning because keep in mind we have more than that
24 in our apartment building.

25 CHAIRPERSON REID: Right, but the question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 was do you support it?

2 MS. DWYER: Well, I would support it if
3 they would do what you all are asking Georgetown to
4 do.

5 CHAIRPERSON REID: Qualified.

6 MS. MILLER: Qualified and the
7 qualification is as you've asked Georgetown within two
8 weeks after the semester registration closes, that
9 they have the students select their current
10 residential addresses or their IDs are revoked and
11 then we would finally know how many students they
12 have, where they're living and how many live in
13 Columbia Plaza.

14 MS. DWYER: Thank you.

15 VICE CHAIRPERSON SOCKWELL: Ms. Miller,
16 the parking lots that you spoke of, were those lots
17 lots that would have carried a certificate of
18 occupancy from the District?

19 MS. MILLER: For parking?

20 VICE CHAIRPERSON SOCKWELL: Yes.

21 MS. MILLER: In fact, that's how they got
22 the Presbyterian Church. They would have had to have
23 more parking spaces for the church, but they explained
24 how wonderful George Washington was to let them park
25 on that lot knowing they were going to build a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 dormitory. So now we have the church's cars all over
2 the place too.

3 VICE CHAIRPERSON SOCKWELL: The reason I
4 raise the question was if those lots have certificates
5 of occupancy, the certificates of occupancy would have
6 specified the number of spaces, legally, to be
7 provided if they are self-park lots and those would be
8 the numbers that one would want to use as opposed to
9 the overfilling of lots less the lots that were
10 designated as attendant parking and then parking would
11 have been determined on a square footage basis.

12 MS. MILLER: Mr. Sockwell, I am sure GWU
13 used the fees that were allowed, but when we counted
14 them we came up with a lot higher number. And the
15 number they're giving for what's replacing them is a
16 lot smaller.

17 VICE CHAIRPERSON SOCKWELL: Unfortunately,
18 the zoning issue and the real realities don't ever add
19 up.

20 MS. MILLER: I know.

21 VICE CHAIRPERSON SOCKWELL: So --

22 MS. MILLER: But we have to live with
23 that.

24 CHAIRPERSON REID: Ms. Dwyer, once Ms.
25 Miller submits the information that she referred to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and I'd like to see a response from George Washington,
2 an explanation as to what their contention, their
3 allegation is, I'd like to see a response from George
4 Washington.

5 MS. DWYER: We would be happy to.

6 MS. MILLER: We've been trying to get that
7 We asked them at the time they told us, they brought
8 it the 4th of December, by the way --

9 CHAIRPERSON REID: Okay, but you said --

10 MS. MILLER: And we asked for that.

11 CHAIRPERSON REID: But you testified --
12 you will submit for our --

13 MS. MILLER: We'd love to see it. Thank
14 you.

15 CHAIRPERSON REID: And Ms. Dwyer, on
16 behalf of George Washington, will submit also their
17 response to the report. Thank you.

18 MS. MILLER: Thank you.

19 VICE CHAIRPERSON SOCKWELL: Quick question
20 on the EIS.

21 MS. MILLER: Sure.

22 VICE CHAIRPERSON SOCKWELL: Ms. Miller,
23 the building in question with regard to the EIS, is it
24 located outside of the central employment area as
25 designated in the report?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: Yes, it is.

2 CHAIRPERSON REID: All right.

3 MS. SPILLINGER: Madam Chair, Members of
4 the Board, I am Barbara Spillinger again, chair of
5 ANC-2A. And members of ANC-2A, the boundaries of
6 which totally encompass George Washington University's
7 campus appreciate the opportunity to appear before you
8 today and to plead our case.

9 As was pointed out in our filing of
10 September 8th, ANC-2A held a special public meeting on
11 Wednesday, August 30th in which it confirmed its
12 support of its previously filed resolutions. The
13 specifics of our case are spelled out in the report of
14 the Advisory Neighborhood Commission 2A to the BZA
15 dated April 17th prepared by James Draude and filed
16 with the BZA with my letter of April 18th. The
17 report, as will be the case with so many who testify
18 today fortifies its opposition to the campus plan by
19 citing 11 DCMR 210 and the city's comprehensive plan
20 which includes new specific provisions regarding the
21 University and its impact on the Foggy Bottom West End
22 residential neighborhood.

23 The comprehensive plan recognizes the
24 deleterious effects of housing large numbers of G.W.
25 students in residential areas outside G.W.'s campus

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 plan boundaries. For example, Section 1325.3, loss of
2 housing stock is also a critical problem in Foggy
3 Bottom West End aggravated by the lack of dormitory
4 construction in the George Washington University
5 campus. Conversions of housing units, particularly
6 apartments to transient use, hotels, de facto hotels
7 and corporate apartments to University dormitories and
8 offices and to medical offices and clinics is a major
9 cause of depletion of the housing stock. And most
10 telling of all is Section 1358.1 which I quote only in
11 part, "intense student pressure on Foggy Bottom's
12 housing stock outside the campus combined with the
13 impact of University generated traffic has had a
14 negative effect on residential Foggy Bottom." The
15 University must continue to construct student
16 dormitories to alleviate the pressure on the housing
17 stock outside the boundaries of the campus plan. The
18 University must be sensitive to the surrounding
19 residential neighborhood."

20 In addition to these statutory
21 requirements, one of the primary goals addressed in
22 the Mayor's Neighborhood Initiative Program is the
23 stabilization and preservation of neighborhoods with
24 special emphasis and an emphasis upon enhancing and
25 protecting established residential neighborhoods in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the ring around the central employment district. As
2 cited and footnoted in our April 17 report, the
3 District of Columbia Court of Appeals has stated that
4 the thrust of the zoning regulations is to keep the
5 Universities from expanding into residential
6 neighborhoods without control. The purpose of the
7 Board's review of the campus plan is to evaluate the
8 effect of the campus plan as a whole on the
9 surrounding neighborhoods.

10 The community's major concerns are three.

11 First, the unregulated and uncontrolled use of land
12 by the University in the surrounding area outside the
13 currently approved campus plan boundaries; second, the
14 failure of the University to build sufficient
15 dormitories to house its students without the campus
16 plan boundaries, thus forcing large segments of the
17 student population to find housing elsewhere; and
18 three, the failure of the University to provide
19 sufficient on-campus, off-street parking or to even
20 attempt to address traffic and parking impacts on
21 neighboring residential areas outside the campus plan
22 boundaries.

23 I might add here that in the traffic
24 report that was given by G.W. it restricted the
25 overview to what was within the campus boundaries

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 while obviously traffic and parking affect areas
2 outside.

3 At this time I'd like to give particular
4 recognition to the supplemental recommendations on the
5 G.W. campus plan filed September 8th by the Office of
6 Planning which give a thorough analysis of the impacts
7 that threaten the continued viability of the
8 University's adjacent neighborhoods. The incremental
9 steps that have brought us to the current impasse and
10 recommendations for change that would alleviate
11 current negative conditions. It is a thoroughly
12 professional, thoughtful and constructive document.

13 I would also call your attention to the
14 September 8th filing of the Foggy Bottom Association.

15 This statement is especially relevant in that its
16 author, Michael Thomas, was the lead spokesman for the
17 community in the recent negotiations held by the
18 Office of Planning, the community and the University.

19 He gives a detailed, cogent critique of the
20 community- G.W. campus plan controversy including its
21 history, current status and options available.

22 Both of these documents addressed in some
23 detail, the September draft of the University titled
24 "Proposed Conditions for G.W. Foggy Bottom Campus
25 Plan." And of course, the September 11th document

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 which was just distributed today, we had not seen
2 before.

3 The ANC obviously has been unable to
4 address G.W.'s latest submission in a public meeting.

5 However, at its August 30th special meeting, the ANC
6 approved in concept the Office of Planning location
7 based recommendation. I venture to say that we are in
8 concert with the conclusions reached by both the
9 Office of Planning and Mr. Thomas.

10 ANC-2A does, however, stand by its April
11 12 resolution passed with all six Commissioners
12 present which concludes "ANC-2A finds G.W.'s campus
13 plan as submitted unacceptable and asks particularly
14 that student enrollment be curtailed until adequate on
15 campus housing, parking and other facilities are made
16 available and result in a quantifiable decrease in the
17 number of students forced to live in the surrounding
18 off-campus residential neighborhood."

19 In commenting on ANC actions I should also
20 point out in its April 17 report, ANC included the
21 following conditions: the full-time undergraduate
22 student population be capped at the current level; no
23 further nonresidential development be approved within
24 the campus plan boundaries until GWU constructs
25 sufficient dormitories to house full-time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 undergraduate students under conditions that will
2 assure that no full-time undergraduate students reside
3 in the areas of Foggy Bottom West End by the end of
4 the academic year being the fall of 2000 and every
5 year thereafter. As a condition of approval of the
6 campus plan G.W. will not acquire any further property
7 directly or indirectly in residentially zoned areas
8 within the boundaries of the ANC.

9 In a footnote at page 20, the Office of
10 Planning report referred to this proposal but does not
11 offer support "because of the virtual impossibility of
12 compliance."

13 I personally am in agreement with OP's
14 assessment, but these stipulations were adopted at a
15 time when the community could see little progress in
16 negotiation or offers to compromise on the part of
17 G.W. A hard line on our side seem the best way to
18 address what we perceive as equally imperious demands
19 by G.W. in its campus plan. For example, page 23,
20 G.W. "will continue as it has historically done to use
21 property outside the campus plan boundary. A student
22 cap of 20,000 with no reference to
23 graduate-undergraduate ratios, along with respect to
24 the future use of hospital Square 54, etcetera."

25 Granted, in its September 7th statement,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 some of these conditions had been ameliorated and as a
2 result in the negotiation effort, it was generally
3 agreed that over a two-year period freshmen and
4 sophomores would be required to live on campus. The
5 code of student conduct will apply to students living
6 off campus. The verifiable census of undergraduate
7 students in Foggy Bottom West End will be conducted
8 and a transportation management program will encourage
9 Metro use by G.W. students, faculty and staff and an
10 advisory counsel of community G.W. representatives
11 will be established.

12 However, on the substantive issues that
13 divide us, we did not reach accord. Our concerns and
14 recommendations are recounted in some detail in our
15 filing of September 8th and we continue to ask that
16 the Board deny this application.

17 Rather than go through the items listed in
18 our filing of September 8th which put forth what we
19 want, I'm just not going to repeat them at this point.

20 You have been given copies of that, but I would like
21 to refer to two particular points. In response to Ms.
22 Renshaw's request on how the ANC would feel about a
23 10-year campus plan, item 13 reads, "With the recent
24 excessive growth of enrollment, support staff and
25 faculty and the proposed increases cited above" a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 10-year plan does not allow adequate flexibility in
2 dealing with issues such as enrollment, student
3 behavior, parking and enforcement. A five-year time
4 period would serve far better to reassess compliance
5 with this order and with the comprehensive plan and to
6 readdress the University impact upon the surrounding
7 residential neighborhood."

8 I might also refer to item 12, the future
9 use of Square 54, since that also came up this
10 afternoon. The question there is that the Department
11 of Health in performing an environmental impact
12 screening approved the construction of the new
13 hospital, but said that there was only a very narrow
14 window of air quality before the threshold would be
15 reached and they would take a very careful look at any
16 future construction in that area and that is one of
17 our concerns.

18 In closing, I would like to quote a part
19 from a letter written by Council Member Phil
20 Mendelsohn to President Trachtenberg. "I wrote
21 November 11 that the plan should define the
22 neighborhood and then state how it will be protected.

23 Zoning is not just about the geometric aspects or
24 architecture. It is also about use. Use is about
25 relationship and campus planning is especially about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the relationship of a University with other uses, that
2 is, residence around the campus. The campus plan can
3 start from the premise what does the University want
4 to be in 2010 or it can start from the premise how
5 will the University relate to Foggy Bottom in 2010.
6 Instead, the plan is still focused on bricks and
7 mortar and G.W.'s programs. Meanwhile, since last
8 fall the neighborhood has gotten all the more agitated
9 over G.W.'s acquisition of Columbia Plaza and the
10 razing of townhouses. Whether these actions are right
11 has nothing to do with the need for the University to
12 improve its relations as Foggy Bottom residents. A
13 campus plan is about much more than just facilities
14 planning."

15 Thank you for your attention and the
16 opportunity to appear before you.

17 CHAIRPERSON REID: Thank you very much,
18 Ms. Spillinger.

19 Cross examination, Ms. Dwyer?

20 MS. DWYER: Just a couple of questions. I
21 just want to make clear you mention at the top of page
22 4 that as a result of negotiations that have taken
23 place over the summer, some of the conditions
24 mentioned earlier by the ANC have been ameliorated and
25 that as a result of a negotiation effort I just want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to confirm with you it's your understanding that the
2 University has agreed to house freshmen and sophomores
3 on campus and the ANC supports that.

4 MS. SPILLINGER: The ANC has not taken a
5 position on this formally in an open meeting, so I
6 cannot say that officially we support it. But there
7 was general agreement in discussions that that was
8 desirable.

9 MS. DWYER: All right, was there general
10 agreement that the ANC would support the extension of
11 the student code of conduct to students living off
12 campus?

13 MS. SPILLINGER: It's the same answer.
14 There's no formal acceptance on any of this at this
15 point, but we -- I would say we would lean favorably
16 towards it at this point and I hope we will be able to
17 consider that as things fall into place.

18 MS. DWYER: And just to list the other
19 things that you mention there, things that the
20 University has agreed to do, the census of students,
21 the transportation management program and the creation
22 of the advisory council.

23 MS. SPILLINGER: Yes.

24 MS. DWYER: All right, turning back to
25 page 3, one of the conditions that the ANC is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recommending, condition number C, that as a condition
2 of approval the University will not acquire any
3 further property in residentially zoned areas within
4 the boundaries of ANC-2A. Do you recall whether a
5 similar condition was proposed by the ANC at the time
6 of the 1985 campus plan?

7 MS. SPILLINGER: No. I was not involved
8 at that point.

9 MS. DWYER: All right, so you don't know
10 whether the ANC at that time made the suggestion and
11 the Board didn't include it. You have no knowledge of
12 that?

13 MS. SPILLINGER: I suspect it was in
14 there, but I do not know that.

15 MS. DWYER: All right, and just a couple
16 more questions. Does the ANC and again I know there's
17 no formal vote, but is there a general agreement that
18 the ANC supports the relaxation of FAR on campus in
19 order to promote more on campus housing?

20 MS. SPILLINGER: We have discussed that
21 and I would say there has -- the concept has been
22 favorably received.

23 MS. DWYER: And finally, does -- is there
24 general agreement again that the ANC would support the
25 rezoning of Square 54 in order to promote student

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 housing on that site?

2 MS. SPILLINGER: We would certainly take a
3 careful look at that. One of the things we have asked
4 for is that 500 units be placed, residential units be
5 placed in Square 54 instead of just 500 beds, units
6 means rooms which could mean two students to a room,
7 so we would prefer 500 units to 500 beds, but we would
8 consider the proposal.

9 MS. DWYER: Great. Thank you. Can I ask
10 one final question? There was also a lot of
11 discussion earlier about the School Without Walls site
12 and the University's plans. Is there general
13 agreement that the University would work with the --
14 that the community would work with the University in
15 putting together the redevelopment of that site for
16 student housing?

17 MS. SPILLINGER: Frankly, we haven't
18 discussed that at all. It just is something that was
19 not brought up.

20 MS. DWYER: Thank you.

21 MS. SPILLINGER: Thank you. As part of
22 our presentation, I would now like to call on
23 Commissioner Mandlebaum who has another presentation.

24 CHAIRPERSON REID: Ms. Spillinger, how
25 many persons do you have for your presentation, how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 many witnesses?

2 MS. SPILLINGER: Mr. Thomas and I don't --
3 Commissioner Tyler is not here. Excuse me, I don't
4 know who is replacing Sarah Maddox. There are other
5 members of the community who want to speak.

6 CHAIRPERSON REID: No, no. This is the
7 ANC. This is the portion for the ANC and then members
8 of the community will have an opportunity to speak
9 either in opposition to or in support of the
10 application.

11 Mr. Mendelsohn, you're speaking as part of
12 the ANC?

13 MR. MANDLEBAUM: That's correct. I won't
14 do anything except that.

15 CHAIRPERSON REID: Okay.

16 MS. SPILLINGER: Madam Chair, the question
17 has come up when the agenda, today's agenda was
18 reworked that the ANC and the people who are in
19 opposition would speak together.

20 CHAIRPERSON REID: This is very true,
21 however, we had said earlier that we would try and
22 conclude it around 6 o'clock because we do have the
23 26th. A good break point would probably be after the
24 ANC, then the persons in opposition -- no, the persons
25 in support -- the persons in opposition, then the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 persons in support in that order and then the Office
2 of Planning Report and then final remarks.

3 MS. SPILLINGER: Yes.

4 CHAIRPERSON REID: So when this portion is
5 concluded would be a good break point.

6 MS. PRUITT: Because, well, ANC has no
7 time limit, parties will have some time limit and
8 that's when we need to break it.

9 CHAIRPERSON REID: Yes.

10 MS. SPILLINGER: Now we'll now have the
11 power point presentation and then Michael Thomas.

12 CHAIRPERSON REID: These two then
13 concludes your --

14 MS. SPILLINGER: Then Richard Sheehey.

15 CHAIRPERSON REID: Okay, three people.
16 All right now, how long is your presentation, Mr.
17 Mandlebaum?

18 MR. MANDLEBAUM: Hopefully no more than
19 five minutes. I'll go directly.

20 CHAIRPERSON REID: The presentation is
21 going to be things that are entirely new and different
22 from what we've already heard?

23 MR. MANDLEBAUM: Hopefully, it will be
24 visualized a little differently.

25 CHAIRPERSON REID: All right, and then how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 long do you need? Three minutes? And then Mr.
2 Thomas?

3 MS. PRUITT: I have a question. Mr.
4 Thomas are you speaking for the ANC or for the Foggy
5 Bottom Association?

6 MR. THOMAS: Uh --

7 MS. PRUITT: We have you down for Foggy
8 Bottom.

9 MR. THOMAS: That's right. And the
10 question I thought that was raised earlier --

11 MS. PRUITT: You need to come to the mike.

12 MR. THOMAS: There were discussions
13 because of the fact that the community was represented
14 by two ANC Commissioners and myself for the Foggy
15 Bottom Association in negotiations that we were going
16 to put it on seriatim. I mean the Commissioners and
17 myself.

18 Why don't we see where we are, but --

19 MS. PRUITT: I would suggest that after
20 Mr. Mandlebaum, we break and then we can allow cross
21 examination, whether you want to do it today or not
22 and then we go directly after the cross examination,
23 go directly into -- or the Board may choose not to
24 cross examine Mr. Mandlebaum and then go directly into
25 the parties' case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Not today.

2 MS. PRUITT: I'm not saying today, but the
3 sequencing.

4 CHAIRPERSON REID: Yes.

5 MS. PRUITT: Whenever you choose to do it.

6 CHAIRPERSON REID: Yes. I think that the
7 logical progression would be to conclude after the ANC
8 report today and then pick up with the parties in
9 opposition on the 26th if that's okay with everyone.

10 MR. THOMAS: May I inquire and by that you
11 mean pick up with me on the 26th?

12 CHAIRPERSON REID: Exactly.

13 MS. PRUITT: Correct.

14 MR. THOMAS: That's fine.

15 CHAIRPERSON REID: Thank you.

16 MR. MANDLEBAUM: I have copies of the
17 presentation, but it's changed since -- slightly
18 changed since we printed them.

19 CHAIRPERSON REID: I think you need to
20 give us what exactly you present to us so you may want
21 to --

22 MR. MANDLEBAUM: I'll submit that to you
23 at a later date.

24 CHAIRPERSON REID: Is that okay, Ms.
25 Pruitt?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. PRUITT: Yes.

2 CHAIRPERSON REID: Whatever it is you
3 present is what you should submit.

4 MR. MANDLEBAUM: Okay, and this is the
5 response of the ANC to the George Washington
6 University campus plan.

7 I guess our problem is summed up best by
8 this photo. And this is from last week, this is
9 President Trachtenberg of George Washington University
10 in his academic regalia with a shovel in his hand
11 breaking ground on an academic building which is off
12 campus and this building did not come before the ANC
13 because it doesn't have to. It's outside the
14 boundaries and they are able to do that as a matter of
15 right.

16 G.W. has never been responsive to ANC or
17 community concerns. We've had a lot of meetings.
18 They've listened to us, but they've never actually
19 responded to it or come up with any helpful solutions.

20 They avoid presenting their plans to the ANC or
21 community groups as seen by what their doing in the
22 new International Affairs School, that's seen by their
23 razing of townhouses on Square 43 to put up new
24 housing, any place outside of the boundary, that's why
25 they went outside the boundary because they don't have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to come to us.

2 And they don't recognize a true campus
3 boundary. I know the University highlighted some of
4 their points of the dialogue process. We'll give you
5 our version. As one of the negotiators, we spent over
6 50 hours in negotiations with the University
7 considering a number of options and in the end G.W.
8 failed to address what we would consider to be the
9 community's major concerns. We reached agreement on
10 some minor issues, but major issues, particularly
11 campus boundaries, enrollment, housing, those were not
12 addressed.

13 That being said, we're still willing to
14 talk. We have come to the table. We're willing to
15 come to the table again and I'm going to say this here
16 in front of the Board, we want to peacefully coexist
17 with the University for the next 10 years and we just
18 want the University to realize some of their business
19 plans to work with the community for the next 10
20 years.

21 As you can see, there is an increasing
22 enrollment from 1993, the last time the plan was
23 presented and the University has pretty much not
24 exactly told us but through different methods of
25 communications, student newspaper, said they want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 increase about 3 percent a year. And if you project
2 that out to 2010 that's 9500 undergraduate students.
3 I'm going to concentrate mainly on the undergraduate
4 full-time students because I think that's a major
5 concern here.

6 Between 1993 and 1999, the number of
7 undergraduate students increased by 1800 and that's 5
8 percent more than the 12 percent they projected and
9 they account for nearly 84 percent of the growth over
10 the last 7 years.

11 But don't just listen to us. The student
12 newspaper has repeatedly went over all the increases,
13 housing, overstuffed University, G.W. faces overflow
14 on freshman housing, G.W. ranks in second tier for two
15 years in a roll, this relating directly or at least
16 the student newspaper feels that it's directly related
17 to their increase in enrollment, packing them in, law
18 school expansion, G.W. looking to crowd classrooms,
19 westward ho in relation to the acquisition of the
20 Howard Johnson's, I believe, students say they're
21 dissatisfied with G.W., and housing x files. And all
22 of these were found by going into the student
23 newspaper's on-line website and typing in the word
24 "overcrowded" and letting the search come up. And
25 this is just in the past three years.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

(Laughter.)

So the question is asked what is a campus boundary? To the community, a campus boundary is defined as an area which contains the core academic, residential and other institutional uses of the University will operate in its entirety. However, to the University, it is an area which is subject to review and regulation. Outside the area is where we can build and change as a matter of right.

So we'll take a look at what the campus is. G.W. defines the campus boundary as this red -- everything that's in red. They don't own PEPCO any more or they don't consider it and they don't have the World Bank, but pretty much everything else is what they consider the campus. However, if you add on what they actually own and use for institutional use, you'd find the National Association of Life Underwriters, the offices, the Elliot School they're building, the CODA, the townhouses, Riverside Towers, Square 43 where they took out the townhouses. This is the G.W. Inn, Hall on Virginia Avenue and way up north the Aston. But that's not it.

You take it one step further and you capture all the apartment buildings with 50 percent or more students as we've been able to determine and I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not going to assert that this is perfect data because
2 obviously a census haven't been done. But from the
3 data that we've been able to compile you have all of
4 these apartments and it gets even larger.

5 Then you add on the townhomes which are in
6 yellow in the Foggy Bottom community. Bigger yet
7 again. And then you add on what they've tried to buy
8 which is particularly One Washington Circle and this
9 is based upon news articles and the Atterly down on
10 the south. Add on Columbia Plaza on the south which
11 is the blue and this is George Washington University's
12 campus. It is essentially the Foggy Bottom community.

13 And the result is that G.W. and the
14 students are essentially taking over the Foggy Bottom
15 and West End community and while G.W. claims that they
16 spend a lot of time and money on the campus plan, they
17 really don't pay attention to its boundaries or what
18 it says.

19 And so we're going to do a little lesson
20 here and this lesson is how to take over a complex and
21 essentially when you run out of space in your own
22 area, you need to move to others, so the first thing
23 that you want to do is identify your target. In this
24 cases, the target, Columbia Plaza. There's five
25 distinct building, about 800 units in there and it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 approximately already 50 percent students.

2 First, you want to find an owner who is
3 willing to sell, but you don't need to own 50 percent
4 of it. You only need to own a portion enough to
5 control who goes in and out of it. So even if you
6 own, let's say 20.55 percent, you could make a deal
7 with the management that you control when these units
8 turn over who gets to go in them. Then you have to
9 figure out how you're going to sell it. So the
10 neighborhood comes running over and you tell the
11 neighborhood this is fantastic. We can finally
12 control our students, by owning a piece of this and
13 controlling who goes in and who goes out of it we'll
14 finally be able to extend our code of conduct, whereas
15 before we weren't able to.

16 Then they set up a deal with the
17 management that allows you one week to fill any unit
18 before it goes on the market and there's actually been
19 a vice president's quote in the student newspaper
20 saying that's the way it works. You set yourself up
21 as the master lessor of these units and you sublet it,
22 essentially sublet whenever you want in this case,
23 students. Increase the rent so that those who are
24 living there will get out and finally, put the units
25 in your spring on campus housing lottery which they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 intend to do this year. The long term strategy is
2 they want to -- essentially gain those 800 units or
3 what could be 2500 beds and they will increase their
4 housing capacity by more than 50 percent overnight.
5 They'll displace a thousand residents and they'll use
6 this newly found increase in housing as a basis for
7 why the enrollment can go up again. So they're not
8 actually solving a problem. They're just increasing
9 their capacity to churn out more students.

10 Let's face it. They're out of room. They
11 have more students than they would ever hope. Every
12 classroom and every time spot is filled. Classes have
13 been held in the student union and even in dorms and
14 classes don't have enough seats. Some students are
15 sitting on the floor. And with all that, they want to
16 increase their enrollment.

17 You've heard a lot about the ANC's
18 position. G.W. should build more housing within the
19 campus boundaries. I won't bore you with all this.
20 And decrease the number of students in the Foggy
21 Bottom area. Enrollment should be frozen until they
22 can provide a sufficient level of housing for its
23 students. You should not allow them to increase their
24 enrollment until there's a decrease in the number of
25 students living in the Foggy Bottom community. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 community feels that it's unacceptable the number they
2 have already. They're not looking for an increase.
3 They're actually looking for a decrease and once
4 that's achieved, that's when the University should be
5 able to go up. And they should have a meaningful cap
6 on what that enrollment is, not what they know will
7 never be attainable.

8 I guess in 1993 they thought 20,000 would
9 give them enough room. I truly believe that's what
10 they're doing again. It's not a true cap of what they
11 actually can hold or where they want it to go.

12 G.W. should be barred from purchasing
13 property of outside the campus and converting it to
14 matter of right, specifically Columbia Plaza. And
15 G.W.'s strategy is not only detrimental to the
16 neighborhood, but it's been detrimental to students.
17 Students have not been able to get into classes,
18 sitting on the floors, this is not helpful to anyone
19 but G.W.'s bottom line.

20 G.W. -- sorry, the ANC supports the Office
21 of Planning's recommendation, specifically, we support
22 the counting with a baseline of students. Currently,
23 they house about 50 percent of students, so if you
24 take the 7200 as quoted in the newspaper, that's about
25 2880 that live off campus. We think at least 75

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 percent of those undergraduates live in the community
2 and even if they were to house a high percentage, like
3 70 percent as they're proposing, although we don't
4 think that's high enough, if they had 15,000
5 undergrads, they would still be able to put more into
6 the community. Nothing stops them from getting up to
7 that number.

8 We're asking now for meaningful campus
9 boundaries which will prevent the University from
10 expanding into our community and ordering a moratorium
11 of controlling properties outside of the campus and
12 that includes returning Columbia Plaza back to its
13 normal rental status instead of where it's essentially
14 a dorm in transition.

15 Our conclusion, obviously, we oppose the
16 plan and this plan is bound to demonstrate how it will
17 not have a general concern of the neighborhood and
18 allows G.W. essentially to just continue what they've
19 been doing and controlling the entire neighborhood.

20 (Applause.)

21 CHAIRPERSON REID: Order. Cross
22 examination.

23 MR. MANDLEBAUM: Hi.

24 MS. DWYER: Hi. I just have a couple of
25 questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Mr. Mandlebaum, in the -- one of the first
2 slides that you showed this evening, you had -- you
3 reference a groundbreaking ceremony for a project off
4 campus. Isn't the site that was the subject of that
5 groundbreaking an approved plan unit development by
6 the Zoning Commission?

7 MR. MANDLEBAUM: According to the
8 University, yes. According to the community, not
9 necessarily. It was a PUD under a different set of
10 circumstances and so whether that actually transferred
11 to the University is debatable.

12 That's -- the point that I was making is
13 that you didn't come to the community at all. Whether
14 it was approved before or not, you avoided coming to
15 the community with what would be a major development.

16 MS. DWYER: Does that project also include
17 a provision of housing for students as part of the
18 project?

19 MR. MANDLEBAUM: It may. It may not.
20 We've heard rumors, yes; but it's never been presented
21 to us.

22 MS. DWYER: Have you reviewed the Zoning
23 Commission as to what kind of development can take
24 place on that site?

25 MR. MANDLEBAUM: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. DWYER: And doesn't that order require
2 that a certain portion of that project be devoted to
3 residential use?

4 MR. MANDLEBAUM: Yes, it does.

5 MS. DWYER: Thank you. You mention in
6 your slides or make a large statement to the effect
7 that the University in all these negotiations has
8 failed to address the major issues.

9 Do you consider the provision of 1350 beds
10 on campus a minor issue?

11 MR. MANDLEBAUM: Yes. In comparison to
12 the overall number. If you had -- I don't want to
13 foul this with other hypotheticals, but if you had a
14 University with 16,000 students and you were adding
15 just 1300 which would give I don't know, still less
16 than a third for your total enrollment, then yes, it's
17 minor.

18 MS. DWYER: And your hypothetical is based
19 on an undergraduate enrollment of 13,000?

20 MR. MANDLEBAUM: I'm giving you -- giving
21 your total enrollment around 16,000.

22 MS. DWYER: For graduate and
23 undergraduate?

24 MR. MANDLEBAUM: Correct. I guess the
25 answer to your question is no. I don't necessary

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 consider 1300 to be a remarkable improvement.

2 MS. DWYER: All right, you had another
3 slide that seemed to show what the University views as
4 the campus boundary. Have you reviewed the zoning
5 regulations to know what properties are required to be
6 included within the campus boundary?

7 MR. MANDLEBAUM: I'm aware of what types
8 of properties should be included in the campus
9 boundary, yes.

10 MS. DWYER: And is it your understanding
11 that the University makes that decision or that
12 Section 210 of the regulations tells the Board what
13 properties must come before it?

14 MR. MANDLEBAUM: I'm not a zoning
15 attorney. I do not exactly know what goes in it. The
16 point that my slide is making is that G.W. actually
17 uses more than the land that they claim, not only
18 uses, but they also build for co-academic purposes
19 outside of the land that they claim.

20 MS. DWYER: Are you familiar at all with
21 the 1985 BZA order approving the last campus plan?

22 MR. MANDLEBAUM: No, I would have been 7.

23 (Laughter.)

24 MS. DWYER: I didn't realize that. Did
25 you review that in preparation for today's hearing in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 order to understand some of the background of the
2 University and community?

3 MR. MANDLEBAUM: I studied some of the
4 background, but I can't speak to extensive specifics
5 of that. This has been a major undertaking in itself
6 and to do two campus plans would be insurmountable, I
7 would think.

8 MS. DWYER: I'm just wondering whether you
9 had the opportunity to even review the 1985 order?

10 MR. MANDLEBAUM: Yes, I've read portions
11 of it.

12 MS. DWYER: And do you know whether the
13 whole issue of de facto expansion and off-campus uses
14 was brought up in that case and decided by the Board?

15 MR. MANDLEBAUM: I believe those issues
16 were brought up. I believe the Board did take a
17 position on that, but that was 15 years ago and the
18 circumstances were different.

19 MS. DWYER: And at that time did the Board
20 say that it had no jurisdiction to control what
21 happened off campus?

22 MR. MANDLEBAUM: I'm not sure.

23 MS. DWYER: Do you know whether the
24 regulations have changed since 1985 to the present?

25 MR. MANDLEBAUM: Unfortunately, I believe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not.

2 MS. DWYER: So the same regulations
3 applied today as in 1985?

4 MR. MANDLEBAUM: Not necessarily, because
5 now we have a comprehensive plan which outlines
6 certain things and G.W. in the Foggy Bottom area is
7 one of those areas.

8 MS. DWYER: And have those regulations
9 been changed as a result of the comprehensive plan?
10 Are you aware of any campus plan regulation that has
11 changed in response to any amendments of the
12 comprehensive plan?

13 MR. MANDLEBAUM: I don't know. I would
14 have to guess no, but I really don't know.

15 MS. DWYER: You also make the statement
16 that you think at least 75 percent of the
17 undergraduates live in the Foggy Bottom neighborhood.
18 Do you have any data to support that statement?

19 MR. MANDLEBAUM: No, that is my statement
20 I'm making from observations, from being a student,
21 from talking to friends. If you have better data,
22 we'd love to see it. I mean I'd love for you to prove
23 me wrong.

24 Actually, people, when I said to them I'm
25 going to use 75 percent, what do you think? They said

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 easy, probably 80, 85.

2 MS. DWYER: And thee individuals you were
3 talking to were other students?

4 MR. MANDLEBAUM: That's correct.

5 MS. DWYER: Thank you. One other
6 question. You mentioned the number of students you
7 believe live in Columbia Plaza and what was that?

8 MR. MANDLEBAUM: I don't have an actual
9 number. I believe it's easily 50 percent, but I'm not
10 going to assert 85 or something like that. I would
11 just say it's greater than 50 percent from units
12 occupied by students.

13 MS. DWYER: And do you base this on your
14 personal knowledge as a resident of Columbia Plaza?

15 MR. MANDLEBAUM: I based it on my personal
16 knowledge of friends and other residents in the
17 building.

18 MS. DWYER: But have you asked the
19 building management for an actual list of the number
20 of students who live there compared to other
21 residents?

22 MR. MANDLEBAUM: No. And it is my
23 impression and I don't know this for a fact, that
24 there is no list compiled of who are students and who
25 are not.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. DWYER: So again, it's just based on
2 conversations you have with other students who may
3 live in Columbia Plaza?

4 MR. MANDLEBAUM: Correct. I'd love to
5 have better data. We're hoping the University will be
6 able to assist us with that.

7 MS. DWYER: And is it your understanding
8 the University has agreed to collect that data
9 beginning in the spring of next year?

10 MR. MANDLEBAUM: Yes, I am aware of that,
11 but you also are proposing to collect it and have the
12 plan at the same time. We would like to use that data
13 as the formulation for a plan and that is the core
14 difference.

15 MS. DWYER: And under your proposal what
16 you would like to do is count the number of students
17 who live in Foggy Bottom and then require the
18 University to reduce that number over time?

19 MR. MANDLEBAUM: Correct.

20 MS. DWYER: And if those students have
21 long-term leases for properties in Foggy Bottom would
22 the University be required to buy out the remaining
23 term on those leases in order to get the students out?

24 MR. MANDLEBAUM: I think that's unlikely. I
25 think most students are renters in the area. I mean

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 if that turns out to be the case that we do a study
2 and they all live in Foggy Bottom and they all own
3 these houses, then I guess that's something that would
4 have to be dealt with, but I find that it's very hard
5 for that to be the case.

6 MS. DWYER: And you don't see any legal
7 issues or other impediments to the University forcing
8 students out of one neighborhood and requiring them to
9 live in another?

10 MR. MANDLEBAUM: I don't think the
11 University would be forcing. They would merely be
12 giving incentives for it.

13 And so -- I mean, they're not forcing.
14 They're not saying to their students you can't live in
15 this area. You're just facilitating the process and
16 encouraging them to go elsewhere.

17 MS. DWYER: But if the number of students
18 living in that area reaches a certain number, whatever
19 number you on the ANC feel is the number and then
20 additional students move in, what would be the effect
21 on the University? Would it have to freeze its
22 enrollment until it was able to get those students out
23 of the neighborhood?

24 MR. MANDLEBAUM: Sure. It would have to
25 manage what it has before it can increase its base,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 its capacity.

2

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MS. DWYER: And suppose one of the students that cause that number to go above this magic number, whatever it is, happened to be a family living in Foggy Bottom where the student decided to attend G.W. Would that student then be required to move out of the neighborhood or live on campus?

MR. MANDLEBAUM: I believe we've somewhat addressed that earlier when Ms. Mitten asked the question of who is a commuter and who is not and I believe we would sort of carve out those types of students.

MS. DWYER: Thank you.

MR. MANDLEBAUM: But the concept is still something we support.

(Pause.)

MS. DWYER: I have one more question for Mr. Mandlebaum.

As a member of the ANC, were you provided a copy of the legal opinion that the University gave the ANC on the D.C. Human Rights Act issue?

MR. MANDLEBAUM: Yes, I was.

MS. DWYER: All right, thank you.

MR. MANDLEBAUM: But we don't necessarily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 subscribe to it, an opinion which was rendered by one
2 of your attorneys.

3 MS. DWYER: One of my attorneys?

4 MR. MANDLEBAUM: Well, one of the
5 University's, I guess, legal counsel, but we have
6 reason to believe that it may apply otherwise.

7 MS. DWYER: Have you obtained an
8 independent legal opinion as to the legality?

9 MR. MANDLEBAUM: Not yet, but we intend
10 to.

11 MS. DWYER: Thank you.

12 CHAIRPERSON REID: Okay, thank you.

13 MR. SHEEHEY: I will be brief.

14 Madam Chairman Cross Reid and Members of
15 the Board, I thank you for allowing me to speak. I
16 donot have a written testimony at this time. I will
17 provide it for you. The reason I do not have that is
18 because in reading the campus plan application --

19 MS. PRUITT: You need to identify
20 yourself.

21 MR. SHEEHEY: I'm sorry, I am Richard
22 Sheehey. I'm Advisory Neighborhood Commissioner in
23 2-A01. I live at 2000 F Street, N.W.

24 In reading the application for their
25 campus plan, if you read the very page, they list

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 their goals, strategies and principles. Their number
2 one goal is to move George Washington University
3 solidly into the ranks of the first tier educational
4 institutions. Well, what does that mean?

5 U.S. News and World Report ranks
6 universities in this country. They have four tiers.
7 The first tier consists of 50 universities. Last
8 week, they came out with their new report. I have it
9 here. It's very interesting. It provides information
10 which is why the U.S. News and World Report put these
11 50 schools into the top 50. Thirty-five of these
12 schools are private universities. They do list the
13 undergraduate population which includes full-time and
14 part-time undergraduate populations. At the 35
15 schools there are 219,740 students. If you divide
16 that by 35 schools you get a population according to
17 the U.S. News and World Report is 8,691. I'm not here
18 to argue the statistics with the University. I'm here
19 to tell you that the vehicle that the University
20 states as their number reason for this application
21 lists that and that give this report credence if
22 George Washington University is going to state that
23 the U.S. News and World Report is their number vehicle
24 for achieving their number one goal.

25 There's another statistic in here that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 very interesting. The U.S. News and World Report also
2 lists the percentage of students living off campus.
3 Of the 35 schools, 32 reported percentages. The
4 average percentage is 27 percent. G.W.'s off campus
5 total population off campus is 43 percent.

6 Finally, if you look at the top six
7 schools in the report, five of them list the
8 percentage of students, the undergraduate students
9 that live off campus. The number one school is
10 Princeton, 3 percent. The number two school is
11 Harvard, 3 percent. The number three school is Yale,
12 17 percent, a whopping number. The number five school
13 is Massachusetts Institute of Technology, 4 percent.
14 And then Stanford University comes at number 6, 1
15 percent.

16 The reason I've read you these statistics
17 is because I believe G.W. is able to achieve its
18 number one goal is moving in the wrong direction. It
19 is obvious that to become a top tier school, it must
20 reduce its undergraduate population. It must
21 concentrate on its student-teacher ratios. It must
22 concentrate on the housing opportunities it gives its
23 students. It must concentrate, basically, on
24 providing the academics that the students demand and
25 need. Having students sit on the floor, not being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 able to find housing, having to move every year,
2 having rents go up in the neighborhood is not what a
3 top 50 school should be about.

4 I thank you for your time.

5 CHAIRPERSON REID: Thank you very much.
6 Ms. Dwyer, do you wish to cross examine?

7 Cross examine from Board Members?

8 VICE CHAIRPERSON SOCKWELL: Mr. Sheehey?

9 MR. SHEEHEY: Yes.

10 VICE CHAIRPERSON SOCKWELL: G.W. falls on
11 the second tier?

12 MR. SHEEHEY: It does fall on the second
13 tier. They do not list in order a number when you are
14 on the second tier, just that you're not in the first
15 tier.

16 (Laughter.)

17 VICE CHAIRPERSON SOCKWELL: In comparing
18 the first tier off campus/on campus numbers what not,
19 there are a couple of things that are not quite clear,
20 would not be clear in those general descriptions of
21 numbers and one would be whether or not the
22 universities are similar in urban character or whether
23 they are inclusive of suburban or large single land
24 tract campus environment, etcetera, etcetera.

25 Some of those things are very important in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 determining how a university can be compared to
2 another. I just wanted to make that statement.

3 MR. SHEEHEY: May I address that?

4 VICE CHAIRPERSON SOCKWELL: Yes.

5 MR. SHEEHEY: There are four schools which
6 I have listed that are within the District of Columbia
7 that I have their statistics for. That would be
8 George Washington, American University, Georgetown
9 University and Catholic University. Georgetown, much
10 to my chagrin, since I'm a G.W. graduate from 1995,
11 and knew very well with the life of a student at the
12 University, is ranked number 23 and we are not ranked
13 in the top 50. At American University, 39 percent of
14 the students live off campus. At Catholic University,
15 36 percent of their students live off campus. At
16 Georgetown University, 33 percent live off campus. I
17 do believe that I remember the BZA was very clear to
18 Georgetown University in their current campus
19 application that they are not allowed or that they
20 should not be increasing their enrollment because they
21 are building a dormitory of that size. That dormitory
22 should be used to house the students who are currently
23 living in primarily Burleaf and other areas
24 surrounding the campus.

25 So it appears that Georgetown's statistic,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 their number should the BZA rule on that application
2 with the way the residents and the ANC of Georgetown
3 wish, their number will be dropping dramatically. I
4 believe that is something that you should be dealing
5 with on this application as well.

6 VICE CHAIRPERSON SOCKWELL: It does show
7 that the three universities which you compared all
8 have a true campus environment as opposed to -- a true
9 campus, in other words, they have a piece of land that
10 is a tract assigned to the campus.

11 CHAIRPERSON REID: Right, right, right.

12 VICE CHAIRPERSON SOCKWELL: George
13 Washington is an anomaly which is really not a campus,
14 typical campus proportions and that's one of the
15 issues that makes the University and the way that it
16 has actually acquired the land that is its physical
17 campus block by block, property by property, they have
18 an unusual character in that particular family of
19 universities.

20 MR. SHEEHEY: That's true. And yes, we do
21 recognize that. But for some reason Zoning and BZA
22 assigned a campus boundary and since there is a campus
23 boundary, we believe on the ANC that the campus
24 boundary should be a campus boundary.

25 There is also one other thing. There is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 well-defined Foggy Bottom and West End community. And
2 if the University expands, then one of the oldest
3 neighborhoods in our District goes away.

4 VICE CHAIRPERSON SOCKWELL: If we could
5 use imminent domain, close all the streets between all
6 the buildings and make that the campus, then there
7 might be more land available because the cars wouldn't
8 be there any more.

9 MR. SHEEHEY: Or, you can follow what the
10 U.S. News and World Report says that if you do not
11 grow so aggressively, and maintain the student
12 population which is smaller and easier to control, you
13 do not need to expand.

14 VICE CHAIRPERSON SOCKWELL: But do you
15 feel that the University itself can be hamstrung,
16 regardless of their policies, but just in general
17 concept, should a university be hamstrung because of
18 the character of its campus in ways that are in some
19 respects out of its control and in other ways can be
20 managed more effectively?

21 MR. SHEEHEY: Well, that's why the BZA
22 exists is to examine an application like this and
23 that's why the campus plan process does exist. The
24 answer to your question is yes, and with proper
25 long-term goals for expansion which includes the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 residential neighborhood, the University can achieve
2 its goals. What we have presented today is the fact
3 that, in our opinion, the University has not included
4 the residential component, the residential
5 neighborhood. And it appears at times that the
6 student population is not even included in the
7 discussion. And so why does the University have to
8 expand so greatly to achieve the goal of being a top
9 tier school when most of the schools in the top tier
10 fall below that. I understand that a lot of schools
11 are not in the -- in such a dense, urban area, but the
12 University knew where it was going.

13 I graduated from G.W. I can use my
14 personal experience. The number one reason I came to
15 G.W., the number one reason is because it was in
16 Washington, D.C., in Washington, D.C. If it was to
17 move outside of the city, which it sometimes claims
18 and I kind of think that's economic blackmail, I don't
19 think it will because you will lose a number of the
20 students who want to come to Washington, D.C. Some
21 other school, in my opinion, would fill that void.
22 Georgetown would probably buy up a lot of Foggy Bottom
23 and expand their campus that much closer to the State
24 Department and the White House. So I donot believe
25 that their argument that our hands are tied and that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 we need to expand is really an argument that is in the
2 benefit of the academic environment at G.W. I just
3 don't see that.

4 The second reason why people go to G.W. is
5 because they couldn't get into Georgetown. And
6 Georgetown is a smaller school. So you have a higher
7 ranked school with a smaller population which is
8 working with, in my opinion, better with their
9 neighborhood because their neighbors have been that
10 much more focused in drawing the attention to
11 University expansion a little bit better than we have
12 in Foggy Bottom have been, you have a better academic
13 environment.

14 And G.W. is almost 180 years old. It's
15 been around for quite a time. It knows how to educate
16 people. It should know how with its own business
17 school how to expand its campus. And I believe that
18 it is expanding too quickly. We are losing our
19 residential components and with the downtown housing
20 requirement in the comprehensive plan, I just don't
21 see why it has to expand south and west.

22 VICE CHAIRPERSON SOCKWELL: We understand
23 that George Washington was a colonist before he was
24 President and George Washington University is
25 colonizing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Laughter.)

2 CHAIRPERSON REID: Moving on. Thank you
3 very much.

4 MR. SHEEHEY: Thank you very much.

5 MEMBER RENSHAW: I just got some material
6 that a representative just gave us. Are you
7 presenting that to the Board?

8 CHAIRPERSON REID: Who was the
9 representative?

10 MEMBER RENSHAW: The ANC representative.

11 MR. SHEEHEY: Yes, like I said, I will be
12 writing this information and providing it to the
13 Board. I apologize. I downloaded it today while I
14 was work. And it came on Monday.

15 MEMBER RENSHAW: What is the date of the
16 U.S. News and World Report?

17 MR. SHEEHEY: I got it off their internet
18 website. And their website is usnews.com.

19 CHAIRPERSON REID: But you're going to
20 submit that --

21 MR. SHEEHEY: I will be submitting it.

22 MS. DWYER: Madam Chair, I have one follow
23 up question after the discussion on this whole U.S.
24 New and World Report issue and in looking at other
25 universities, even in the District of Columbia, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 mentioned Georgetown and American University, do
2 either of those have a Metro stop in the middle of
3 their campus?

4 CHAIRPERSON REID: Have a what?

5 MS. DWYER: A Metro stop.

6 MR. SHEEHEY: Catholic University does.
7 American University has a shuttle bus service from
8 their Metro stop. And Georgetown University provides
9 a shuttle service from the Foggy Bottom and Roslyn
10 Metros.

11 MS. DWYER: Right.

12 MR. SHEEHEY: The Metro to Georgetown is
13 about one mile directly across Key Bridge and when
14 you're 17 and 18 and 19 years old, a mile is not that
15 hard to travel.

16 MS. DWYER: But does the U.S. News and
17 World Report take into account those issues in
18 reaching its rankings?

19 MR. SHEEHEY: Well, I don't work for U.S.
20 News and World Report and I don't see it as a
21 statistic here, but I do see that George Washington
22 University as its number one goal wants to be a top
23 tier school and the U.S. News and World Report is the
24 organization that provides that statistic and
25 therefore, since the University wants to be a top tier

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 school, I would say that you have validated their
2 survey by having it -- by saying that's your number
3 one reason for presenting this application.

4 MS. DWYER: And do you think the
5 components of this campus plan which called for the
6 creation of these new academic buildings as well as
7 residential buildings on campus is in furtherance of
8 that goal?

9 MR. SHEEHEY: No, I do not, because I
10 believe the fact that you are not putting any type of
11 enrollment cap, you are not even stating how high your
12 undergraduate population will increase, does not
13 provide any benefit to the residential community. If
14 you can increase your -- if you go 1400 beds, I think
15 it's a good idea if they don't increase enrollment.
16 But increase your enrollment by 3,000, you're putting
17 1600 more people in the community.

18 You're not providing the check for the
19 balance.

20 MS. DWYER: You don't think that the
21 University's commitment to house 70 percent of its
22 undergraduates operates as the check?

23 MR. SHEEHEY: No, because you do not say
24 what -- you don't say what the population of the
25 undergraduates is. So if I tell you, if I'm applying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for a job and you offer me a salary of \$5,000 and I
2 say I say no, I want more. And you say I'll double it
3 to \$10,000, that's still below the poverty line. So I
4 just don't see how saying 60 percent, 70 percent, 80
5 percent of what? The University has not said of what,
6 what is. And unless you ask the question, Commission,
7 please ask that question. Seventy percent of what?

8 MS. DWYER: Hasn't the University
9 committed to provide and doesn't it provide and
10 include in this campus plan information on its
11 enrollment and if 70 percent -- if it's committed to
12 provide beds for 70 percent of that enrollment,
13 doesn't that operate as a cap?

14 MR. SHEEHEY: No, because you do not
15 provide what percentage of 20,000 will be
16 undergraduate. So theoretically, if we want to use
17 that 20 percent or your -- or 20,000 students become
18 undergraduates, you have no graduate programs. That's
19 not going to happen. What if it did? Seventy percent
20 of that is 14,000 beds. That's still 6,000 people who
21 live in the community. That is an extreme example of
22 what happens, but unless the University states 70
23 percent of what then we can come up with these
24 hypotheticals because you've not given us any numbers.

25 MS. DWYER: One final question and you've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 referenced Georgetown University and American
2 University. Do you have any information on the number
3 of the off-campus students for those universities that
4 live in Maryland and Virginia as compared with G.W.?

5 MR. SHEEHEY: No.

6 MS. DWYER: All right, thank you.

7 CHAIRPERSON REID: All right, now on the
8 26th we will reconvene this particular case and
9 hopefully we'll be able to conclude it at that time.
10 We'll begin with the opposition and then have the
11 persons and parties in support -- no the opposition
12 first, persons and parties in opposition, then persons
13 and parties in support and the Office of Planning
14 Report and closing remarks.

15 In the interim I would strongly suggest
16 that over the summer I understand there was quite a
17 bit of meeting to try to come to some type of
18 resolution of the problems. I think that you've come
19 a very long way and I don't think that the issues that
20 you have raised are insurmountable, on the one hand
21 from the community, on the other hand from George
22 Washington, it appears to me that the University is
23 trying to reach out and to make concession and I think
24 that that being the case if we're to have a win-win
25 situation on both sides, then there has to be some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 concessions or compromises made both ways and I don't
2 think you're that far apart. So hopefully by that
3 time when we come back on the 26th you'll at least to
4 have been able to mitigate more of the areas in which
5 there is still some discord and come to some type of
6 meeting of the minds that would bring us closer to us
7 not having to make all the decisions, but tell us what
8 you feel would be appropriate for both entities. I
9 don't think that that's too hard to do. I do see the
10 community and the University, both putting forth the
11 effort and that to me, as the Chairman is very
12 important to see.

13 Any comments by any of the Board Members
14 prior to closing?

15 MS. PRUITT: Excuse me, Madam Chair, Ms.
16 Bailey would like to go over what was requested for
17 the next hearing just so that everybody is on the same
18 page.

19 MS. BAILEY: The first thing I have is
20 that the applicant is to provide an updated listing of
21 where the new beds would be located within the campus
22 plan boundaries.

23 The University is to plug numbers into the
24 formula used for full-time equivalent students and
25 identify -- okay, let's start over.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The applicant is to provide an updated
2 listing of where new beds would be located within the
3 campus plan boundaries.

4 The second thing, the University is to
5 plug numbers into the formula for full-time equivalent
6 students and identify how the numbers have changed
7 over the past several years.

8 Thirdly, the applicant is to provide
9 written language discussing an interim review period
10 for the Board's consideration of its campus plan; a
11 five year review period. The mechanism for such a
12 proposal and the mechanism for how such a proposal
13 would work, the ANC is also to comment on this
14 proposal.

15 The University is to provide information
16 on the Aston apartment building, how many students
17 live in that building.

18 Submissions from Mr. Lou Slade, I think he
19 has left, concerning the survey that was done in
20 preparation for the University's traffic study.

21 Report from Ms. Miller, two reports on the
22 EIS scamming and parking space count. And that
23 information is to be submitted to the applicant as
24 well with the applicant's response.

25 And then there was a last thing, by Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Richard Sheehey, what were you supposed to provide?

2 MR. SHEEHEY: I will provide the figures
3 that I quoted today from the U.S. News and World
4 Report.

5 MS. BAILEY: Okay. Madam Chair, the last
6 thing is did we want these submissions prior to the
7 next hearing or before the record is closed on this
8 case?

9 CHAIRPERSON REID: We want what?

10 MS. BAILEY: The submissions that I have
11 just mentioned --

12 CHAIRPERSON REID: They have to be prior
13 to the record being closed.

14 MS. PRUITT: Right, but the question is do
15 you want to have them so that you can discuss them at
16 the next hearing or just at the end of the hearing so
17 before your decision?

18 CHAIRPERSON REID: All right, now would
19 that allow time enough?

20 MS. PRUITT: The question would be we
21 would need to have them in-house by September 20th. I
22 know that's a very short turnaround, but that will
23 allow us to -- that would allow us to provide you all
24 with copies.

25 CHAIRPERSON REID: Right. Can they do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that?

2 MS. PRUITT: That's what --

3 MS. DWYER: Yes, we can.

4 MS. PRUITT: I wanted to add one other
5 thing to the list, a copy of the power point
6 presentation by Mr. Mandlebaum.

7 CHAIRPERSON REID: Right, we would like to
8 have them prior to the next hearing so that if we have
9 any questions or further discussion, Mr. Bailey,
10 please.

11 MS. BAILEY: Yes, Madam Chair. September
12 20th all items are due and then September 26th at 9:30
13 the hearing will continue.

14 Madam Chair, I guess the very, very last
15 thing is you have not mentioned that the applicant was
16 going to present three witnesses in support when the
17 hearing starts on the 26th. That was my
18 understanding.

19 CHAIRPERSON REID: Well, Ms. Dwyer changed
20 that and requested that we go back to the original
21 sequence since the witnesses were not testifying today
22 and then at the conclusion when I went over the
23 sequence, maybe I should do that again so that we'll
24 be sure to be on the same page.

25 Persons and parties in opposition, then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 persons and parties in support. Then the Office of
2 Planning Report and then closing remarks by the
3 applicant.

4 MS. DWYER: I'd like to clarify, we
5 actually had five persons in support that were down
6 here today, so if we could have those five on the
7 26th.

8 MEMBER RENSHAW: All right, thank you.
9 That will conclude today's hearing.

10 (Whereupon, at 6:30 p.m., the hearing was
11 recessed to reconvene Tuesday, September 26, 2000.)
12
13
14
15
16
17
18
19
20
21
22
23
24

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com