

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 17, 2000

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT A.M.
SESSION:

SHEILA CROSS REID, Chairperson
ROBERT N. SOCKWELL, Vice Chairperson
ANNE RENSHAW, Board Member
WILLIAM LAWSON, Acting Executive
Director, National
Capital Planning Commission

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT P.M.
SESSION:

SHEILA CROSS REID, Chairperson
ROBERT N. SOCKWELL, Vice Chairperson
ANNE RENSHAW, Board Member
RODNEY L. MOULDEN, Board Member
Kwasi Holman, Commissioner

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COMMISSION 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

OTHER AGENCY STAFF PRESENT:

Arthur Jackson, Office of Planning
Ellen McCarthy, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.
David McGettigan

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P R O C E E D I N G S

9:52 A.M.

CHAIRPERSON REED: Good morning. We do apologize for the delay. We ask your indulgence. We did have some matters that we had to address prior to coming out this morning.

The hearing will please come to order.

Ladies and gentlemen, this is the October 17th public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reed, Chairperson. Joining me today are Robert N. Sockwell, and William Lawson, representing the National Capital Planning Commission; Anne Renshaw and unfortunately, John Parsons who represents the National Capital Commission is not with us today. However, he will participate -- the National Park Service, is not here today. I'm sorry, John Parsons also serves on the Zoning Commission. He wears several hats, but on the Foreign Missions BZA, he represents the National Parks Service.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

Please be aware that this proceeding is being recorded electronically, so we must ask you to

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1 refrain from any disruptive noises or actions in the
2 hearing room.

3 If you desire to give any information to
4 the Board, do not speak from the audience but rather
5 come forward to a microphone, state your name and
6 home address and then proceed to make your wish
7 known.

8 All persons planning to testify either in
9 favor of or in opposition of are to fill out two
10 witness cards. These cards are located on each end
11 of the table in front of us. After I finish this
12 statement, please proceed to pick up your witness
13 cards, fill them out and when your case is called you
14 will have them ready to be handed to the reporter.

15 When coming forward to speak to the
16 Board, please give both cards to the reporter who is
17 sitting to my right.

18 When seated at the witness table, please
19 give your name and home address. I repeat, please,
20 give your home address rather than your business
21 address. After this, you may proceed to give your
22 testimony or statement.

23 The agenda for a foreign missions case
24 will proceed as follows: (1) statement and witnesses
25 of the Applicant; (2) government reports, Secretary

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1 of State and the Office of Planning on behalf of the
2 Mayor; (3) reports or recommendations of other public
3 agencies; (4) report of the ANC within which the
4 property is located; (5) parties or persons in
5 support of the application; (6) parties or persons in
6 opposition of the application. The record will be
7 closed at the conclusion of each case, offered to or
8 accepted by the Board. The Board and staff will
9 specify at the end of the hearing exactly what is
10 expected and the date when the persons must submit
11 the evidence to the Office of Zoning. As directed as
12 closed, no other information will be accepted by the
13 Board. The Board has instructed the staff to return
14 any materials received after records closed to
15 persons who submitted it. The decision of the Board
16 in this legislative proceeding must be based
17 exclusively on the public record. To avoid any
18 appearance to the contrary, the Board requests that
19 persons that persons, counsel and witnesses not
20 engage the Members of the Board in conversation
21 during any recess or at the conclusion of this
22 hearing session. While the intended conversation may
23 be entirely unrelated to any of the cases that are
24 before the Board, other persons may not recognize it
25 as such, not about a case. The staff will be

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1 available to discuss procedural questions.

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

5 The Board will now consider any
6 preliminary matters. Preliminary matters are those
7 which relate to whether a case will or should not be
8 heard today such as requests for postponement,
9 continuance or withdrawal or whether proper and
10 adequate notice of hearing has been given. If you
11 are not prepared to go forward with the case today or
12 if you believe that the Board should not proceed, now
13 is the time to raise such a matter.

14 Are there any preliminary matters? Does
15 staff have any preliminary matters?

16 MS. BAILEY: No, Madam Chairman.

17 MS. PRUITT: Madam Chair, actually, we do
18 have some preliminary matters, excuse me.

19 in your file you have two requests for
20 party status. This is a rule making case and the
21 request came from Mr. Scott Harris and a group of
22 neighbors called the Neighborhood Organization of
23 34th Street. Neighbors of 2741 34th Street. And
24 that consist of about 16 people. Both of these
25 groups are entities that requested party status.

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1 However, this is a rule making procedure and there is
2 no party status. So staff did send a letter out to
3 individuals informing them that they would certainly
4 be able to testify, but party status is not granted.

5 This was just a preliminary issue to deal with.

6 CHAIRPERSON REED: Thank you. The two
7 persons who had requested party status are who?

8 MS. PRUITT: There was a couple, Mr.
9 Scott Harris and Barbara Harris.

10 CHAIRPERSON REED: Are they here?

11 MS. PRUITT: And then a group of
12 neighbors which I guess, a coalition, I would call
13 it, the Neighbors of 2741 34th Street.

14 CHAIRPERSON REED: And what party status?
15 Have requested party status?

16 MS. PRUITT: Yes ma'am. And it's --

17 CHAIRPERSON REED: Who is going to
18 represent them?

19 MS. PRUITT: They had four people, I
20 think five people here: Mr. O'Neill, Dr. Ellwood,
21 Snodgrass, is that correct.

22 Sir, can you come up to the mike, please?

23 MS. KRESS: I would just like to say, the
24 staff, inappropriately because we have very few of
25 these kinds of cases sent out our standard package

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1 which did have in it how one becomes a party and so
2 that's why when it came to our attention that we had
3 done that, we sent out follow up letters saying that
4 unfortunately this is a rule making and people cannot
5 have party status. But our staff did make a mistake
6 early on and I apologize to everyone.

7 MR. SNODGRASS: We did receive the letter
8 and our original response was based on the materials
9 we had previously received.

10 CHAIRPERSON REED: Okay, as long as that
11 issue has been clarified to the satisfaction of
12 everyone here, then we can proceed.

13 MS. PRUITT: Your next issue was a
14 request for the refund.

15 CHAIRPERSON REED: Yes.

16 MS. GIORDANO: Yes, good morning, Madam
17 Chair, my name is Cynthia Giordano for the record
18 from Linowes & Blocher law firm representing the
19 Republic of Azerbaijan. We included a request with
20 our application to waive the fee requirement in this
21 case because essentially what we were requesting was
22 a postponement or a continuance. That wasn't
23 permitted under the rules because under the rules for
24 chancery applications, the Board has to make a
25 decision within six months, so we had no choice but

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1 to withdraw our application and then resubmit it.
2 But since it was essentially a continuance which the
3 Board routinely grants upon request and in this case
4 the request was based upon a need for the State
5 Department to work out some trade issues with, I'm
6 sorry, some treaty issues with the Republic of
7 Azerbaijan prior to proceeding with the case, that
8 was the reason for the request and we think it was a
9 reasonable request and if I said the Board routinely
10 grants these continuances so we are requesting a
11 waiver of the fee in this case, essentially we
12 refiled the exact same application.

13 CHAIRPERSON REED: Okay, thank you, Ms.
14 Giordano.

15 Board Members?

16 VICE CHAIRPERSON SOCKWELL: Madam Chair,
17 it is my belief that in a situation of an involuntary
18 withdrawal which was based upon an extenuating
19 circumstance revolving around the federal
20 government's requirements that we would be well
21 served to take that into account and perhaps not
22 treat this as the typical withdrawal which would be a
23 voluntary effort on the part of an applicant and if
24 we can do something in their behalf, I think it would
25 be appropriate.

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1 CHAIRPERSON REED: Is that a motion, Mr.
2 Sockwell?

3 VICE CHAIRPERSON SOCKWELL: That is a
4 motion.

5 MEMBER RENSHAW: Second.

6 VICE CHAIRPERSON SOCKWELL: My motion is
7 that we not impose a second round of fees.

8 CHAIRPERSON REED: That we waive the
9 fees.

10 VICE CHAIRPERSON SOCKWELL: That we waive
11 the fees.

12 CHAIRPERSON REED: And seconded.

13 MEMBER RENSHAW: Yes, seconded.

14 CHAIRPERSON REED: Discussion? I would
15 concur. All in favor?

16 (AYES.)

17 Opposed. Nobody.

18 MEMBER RENSHAW: Madam Chair, before the
19 proceedings begin --

20 CHAIRPERSON REED: Ms. Renshaw, right
21 after they read the vote, then you can speak.

22 MEMBER RENSHAW: Thank you.

23 MS. BAILEY: The vote is 4 to 0. Mr.
24 Sockwell made the motion, seconded by Ms. Renshaw to
25 waive the fee.

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1 CHAIRPERSON REED: Okay, Ms. Renshaw?

2 MEMBER RENSHAW: Yes, I just wanted to
3 state at the outset of this hearing that I am an
4 officer in an nonprofit organization called The
5 Hospitality and Information Service that deals with
6 senior level diplomats and their families here in
7 Washington, but I wanted to state for the record that
8 I have had no personal or professional interaction
9 with the Embassy of the Republic of Azerbaijan and I
10 wanted to have that inserted into the record.

11 CHAIRPERSON REED: Well, thank you for
12 that disclosure, Ms. Renshaw and unless anyone has
13 any objection, I suppose your stating that you don't
14 think your position on that particular in that
15 organization will have any impact in your ability to
16 be impartial in regard to this particular case.

17 MEMBER RENSHAW: That is correct.

18 CHAIRPERSON REED: Okay, thank you very
19 much.

20 MR. LAWSON: Madam Chair, may I?

21 CHAIRPERSON REED: Yes.

22 MR. LAWSON: I also would like to enter
23 for the record that one of our City Commissioners is
24 a member of the neighborhood, however, it's on record
25 with her position on the disposition of this case in

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1 that we too, I have had no contact and we have had no
2 -- I've had no direct discussions with this member of
3 the Commission on the matter and feel that there is
4 no conflict and I can act independently of any
5 Commission Member's opinion.

6 CHAIRPERSON REED: I understand that.
7 Okay. Again, unless there's any objection, I think
8 Mr. Lawson, we have no problem with your
9 participation and on behalf of NCPC irrespective of
10 the fact that a Member may live in that particular
11 ward or that particular area of the city. Seeing no
12 objection, we can now proceed. Thank you.

13 MS. BAILEY: Application No. 16620 of the
14 Republic of Azerbaijan, pursuant to Section 206 of
15 the Foreign Missions Act and 11 DCMR of the Zoning
16 Regulations of the District of Columbia to locate a
17 new chancery in an R-1-A District at premises 2741
18 34th Street, N.W., the Square is 2122 and the Lot is
19 27.

20 All those wishing to testify, would you
21 please stand to take the oath? All those wishing to
22 testify, please stand, raise your right hand.

23 (Witnesses were sworn.)

24 Madam Chair, a couple of matters prior to
25 you proceeding. We do have a report from ANC-3-C.

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1 The ANC is recommending denial of the application.

2 We also have a report from the Office of
3 Planning also recommending denial. The Office of
4 Planning's Report was received late, so you would
5 need to waive that into the record.

6 Madam Chair, would you like to do that
7 now?

8 CHAIRPERSON REED: Two things. One was
9 the Office of Planning Report and we did receive
10 that, was it yesterday? Yesterday.

11 MS. BAILEY: Yes.

12 CHAIRPERSON REED: And the representative
13 from the Office of Planning's name I think is someone
14 new. Sir, could you give us your name?

15 MR. JACKSON: Arthur Jackson, Madam
16 Chair.

17 CHAIRPERSON REED: Right, okay. I
18 remember now. We'll get it right, sooner or later.

19 Mr. Jackson, I received your report
20 yesterday and while it was very informative and
21 instructive, there was some concern by Board Members
22 this morning in regard to the fact that the
23 timeliness of the report made it rather difficult to
24 be able to adequately analyze it and to be able to
25 digest it appropriately to do our work. And one of

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1 the Board Members, specifically didn't receive it
2 until this morning and it was a very involved report.

3 I think that the Office of Planning did, in my
4 opinion, a good job with it, but we certainly would
5 have liked to have had it in a more timely fashion
6 because in order for us to be able to utilize it, you
7 need to have given it to us much earlier. So I'd
8 just like to request that even though today we would
9 be amenable to accommodating you and waiving the
10 record to allow it to enter, that you make an extra
11 attempt to make sure that we receive it in a timely
12 fashion so that we could go out with our packages and
13 we could have the necessary time to give it the
14 appropriate time that we would need to not only for
15 our benefits, but also to be better appreciate the
16 work that you've done when you submit it.

17 MR. JACKSON: Madam Chair, I want to
18 apologize to you and the Members of the Board. We
19 did extensive work on the plan and as such we really
20 didn't go out and walk the property until late last
21 week, so we were gathering information up to the last
22 minute and we do apologize for the delay and will
23 work diligently to eliminate this from future
24 applications.

25 MR. MLOTEK: Madam Chair?

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1 CHAIRPERSON REED: Yes?

2 MR. MLOTEK: Good morning, Madam Chair,
3 for the record I am Ronald Mlotek, Legal Counsel of
4 the Office of Foreign Missions for the U.S.
5 Department of State. This is an unusual case as we
6 will shortly find out when we get into the substance
7 of it. One unusual aspect of it is that I must now
8 on behalf of the Department of State in an
9 unprecedented action, I think, over the 17 years
10 we've been here, we have to object before you
11 actually admit the report. We would ask that you
12 consider further details about it. We must object to
13 the late admission of the OP report and I will tell
14 you why.

15 In the 17 years that the Department of
16 State, it's actually 18 years now, has been
17 participating in these proceedings, the Department of
18 State has never been late, not one time in submitting
19 its report to the Board. This report in this case,
20 the Office of Planning, was not only late, but as you
21 correctly pointed out, it was exceedingly late. You
22 have correctly pointed out the prejudice that the
23 Board incurs by having it be late. But in addition,
24 the Department of State, the federal government, and
25 the Embassy, the Chancery Applicant here, were also

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1 severely prejudiced for the following reasons. This
2 report that ultimately has issued forth from the
3 Office of Planning contains numerous factual and
4 numerous legal errors that we will have to take
5 exception to in the main part of the hearing. This
6 is unfortunate. But had the report been submitted
7 timely, it would have enabled, it would have given
8 the Department of State and the Office of Planning a
9 period of time in which to try to reconcile this, so
10 that we would not be in the difficult position now of
11 having to take issue and having to waste the Board's
12 time in challenging the factual and legal errors that
13 are contained in the OP report. So there's prejudice
14 there.

15 In addition, there is in this case an
16 even more highly unusual episode or incident that
17 occurred in the production of the report that is at
18 issue here. On last Friday, I am informed, the OP
19 representative, without any effort to coordinate this
20 with the Department of State, actually went and paid
21 a site visit to a foreign diplomatic mission, not the
22 one involved here, a neighboring one and sought entry
23 into this foreign diplomatic mission, in order to
24 conduct what he believes is accurate and we challenge
25 as inaccurate, an actual survey, a land use survey of

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1 the interior of a foreign chancery. This is
2 something unprecedented in my experience at the
3 Department of State, that a government official, any
4 government official, even a State Department
5 official, but a local government official would
6 without coordination with the people at the
7 Department of State who are responsible for foreign
8 missions, knock on the door of the Vatican Embassy,
9 the Apostolic Nunciature, as it's called, asked for
10 admittance, have substantive discussions with foreign
11 accredited diplomats about how they use this building
12 without adequately informing these people who are not
13 really informed and are very naive on issues of
14 District of Columbia land use and zoning law, in
15 order to take the information which he gathered from
16 this foreign chancery and embody it in a report which
17 was then going to be introduced and used against the
18 interest of another Foreign Mission and of the
19 federal government, the U.S. Department of State.
20 This is really an extraordinary instance which
21 occurred. I regret it very much. Mr. Jackson and I,
22 along with other members of the Embassy, had a very
23 what I thought was a productive visit several days
24 before and a site visit of the Azerbaijan Embassy.
25 That is how, if Mr. Jackson had a concern, about the

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1 Vatican Embassy it should have been done. The
2 Department of State should have been informed. We
3 should have been there. We should have been able to
4 inform the diplomats at the Vatican Embassy
5 concerning what this was all about and it didn't
6 occur. So in summary, this report is very seriously
7 flawed. It is flawed not only because it came at
8 literally two minutes before midnight on the
9 proceeding time table here, it did not provide us an
10 opportunity to be able to discuss and have dialogue
11 with the Office of Planning about the report. But in
12 addition, it was the information it contained, was
13 obtained in a way which is totally out of bounds,
14 totally unfair and really in a very serious way
15 undermines the entire integrity of this proceeding.
16 So we have to object.

17 Now what I would suggest because this is
18 a very difficult issue that I've just hurled at the
19 Board, I realize this, but what I would suggest is as
20 the proper way to do this subject to consultation
21 with your staff, is to hold in abeyance your decision
22 to accept the report and listen to the entire
23 proceeding, take it under advisement. If necessary,
24 we can submit written -- you can hold the record open
25 at the end. We can submit written argumentation

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1 along the lines that I've just orally argued as to
2 why this report should not be received, and the
3 Office of Planning, if it wishes, can likewise submit
4 written argumentation of why it should be received.
5 But just in summary, this report is flawed not merely
6 because it was late and as we know, OP reports
7 traditionally are late. And we know that. And if it
8 was simply a matter that this was an OP report that
9 came in a couple of days late or three days before
10 the deadline or if it came in as late as it did and
11 there weren't the problems inherent in it that I've
12 identified, we would not be here objecting. But we
13 object because we are compelled to because of this
14 very serious prejudice that it imposes upon the
15 federal government and upon the Foreign Mission
16 concern and the manner in which the information, some
17 of the central information that is contained in it,
18 was obtained from a foreign government without
19 consultation or coordination with us.

20 Thank you.

21 CHAIRPERSON REED: Thank you, Mr. Mlotek.

22 MS. GIORDANO: Madam Chair, Cynthia
23 Giordano again for record. I represent the Republic
24 of Azerbaijan and for the record I also would like to
25 object to the late filing of the Office of Planning

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1 Report. I just wanted to indicate that we had been
2 working very closely with the Office of Planning and
3 it wasn't until I guess Friday morning, last Friday
4 morning that I had called Mr. Jackson, that he
5 informed me that the Office of Planning was changing
6 its position and that it was based, in part, on the
7 conclusion that they had reached that the Vatican
8 Embassy was not a chancery and I indicated, I asked
9 him what the basis for that conclusion was and he
10 said that he had talked to somebody at the Vatican
11 Embassy and that he was going to go there and do a
12 site visit. I suggested that I meet him and that we
13 go together so that that way we could at least both
14 see the same thing and we wouldn't be in a position
15 at the hearing of having a factual dispute as to what
16 exactly was happening inside the building. So we had
17 agreed to meet at the Metro and for whatever reasons,
18 I guess Mr. Jackson said that he didn't see me there,
19 he went ahead on his own and I went to the Embassy
20 afterwards and followed up. So unfortunately, we
21 couldn't see it together, but we both saw the
22 property and we have, unfortunately, differing
23 factual interpretations as to what exactly is going
24 on in the building which will come out later. But
25 again, my objection is based upon the fact that

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1 although I think the visit was
2 well-intentioned, it puts us in a position at the
3 last minute to have facts in dispute which we can't
4 resolve here at the hearing and just further confuse
5 and complicate the proceedings.

6 Thank you.

7 CHAIRPERSON REED: Okay, there are two
8 issues here and let me say this just to kind of
9 clarify my comments prior to your speaking. I was
10 referring to the timeliness of the report and
11 mentioned to Office of Planning that it was a good
12 report. Let me clarify that. My statement was in
13 regard to the fact that we had had reports just
14 reprimanded OP about the fact that some of the
15 reports were not conclusive and they were not as --
16 the format and the information that was submitted to
17 us was not in the proper structure that would be most
18 helpful to us and this instance they had improved on
19 that aspect of the report.

20 Now, contextually, obviously we were not
21 aware of some of the issues that you raised this
22 morning as to the -- not only the timeliness, but the
23 content and the legal aspects of it and the lack of
24 having the necessary time to be able to rebut or to
25 give a legal argument as to the validity of some of

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1 this, the legal positions that were taken and we do
2 accept that graciously because, of course, the staff
3 had also mentioned that it poses problems and I'm
4 glad that you further elucidated for us the kinds of
5 problems that further hampered the position of the
6 Department of State as well as from the Applicant.

7 Now it is my position that given the
8 situation that you just presented to us, we would not
9 make a decision as to the waiving the rules to accept
10 the Office of Planning Report at this time and rather
11 proceed to hearing the case and after having done so,
12 then we can make at a decision accordingly. I don't
13 know how staff and other Board Members feel about it.

14 I'd like to hear some input.

15 MEMBER RENSCHAW: Madam Chair --

16 CHAIRPERSON REED: Just one second,
17 please. Just one second.

18 As to anyone else, other than the actual
19 Applicant and the State Department, there are no
20 parties in the case, so therefore while you will have
21 an opportunity to speak at the designated time, this
22 is a preliminary matter and only parties are allowed
23 to speak during preliminary matters, but you
24 certainly can make your position known or give us
25 your point of view at the time that is designated for

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1 you to do so.

2 MEMBER RENSHAW: Madam Chair, I have a
3 question for Ms. Giordano. You stated that you and
4 Mr. Jackson were going to visit the Vatican Embassy
5 last Friday, but you did not connect?

6 MS. GIORDANO: It was a very, sort of
7 last minute thing. I talked to him and he was really
8 on his way out the door and he told me he was looking
9 for a car to get there and I said well, I'm happy to
10 pick you up at the Metro and take you there so we can
11 both see it together and then we eliminate the
12 confusion, but I went to the Metro, and I waited an
13 hour and he told me subsequently that he didn't see
14 me so he took a cab over.

15 MEMBER RENSHAW: My question is did you
16 notify Mr. Mlotek that you were going to visit the
17 Vatican Embassy?

18 MS. GIORDANO: I did not. I was really
19 running out the door to meet him. Actually, I did.
20 I left him a voice mail message, I think, on my way
21 out. I didn't reach him.

22 MEMBER RENSHAW: You think you did?

23 MS. GIORDANO: I did leave him -- I
24 didn't speak with him, but I left him a voice mail
25 and I told him I was on my way there.

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1 MEMBER RENSHAW: And Mr. Mlotek, were you
2 going to meet them?

3 MR. MLOTEK: It is correct. Yes, I was
4 trying to meet them. It was difficult because I
5 didn't know exactly when they were going to be there,
6 but from the standpoint of the State Department, our
7 concerns which I identified would have been amply
8 addressed if counsel for the Embassy had been there.

9 I mean it would have been preferable had I been
10 there, obviously, that would have been optimal. But
11 it would have been satisfactory and I would not now
12 be complaining if counsel for the Applicant had been
13 there because Mr. O'Donnell is in broad terms,
14 familiar with all of the legal and factual issues in
15 this case and the various legal issues that involve
16 the Vatican Chancery and its role in this case. And
17 so it would have been acceptable to us, even if I
18 could not be there that Mr. O'Donnell be there. The
19 fact that there was nobody there to be able to
20 inform, correctly inform the Vatican Chancery as to
21 the significance of the answers they were giving to
22 Mr. Jackson and to interpret for the Vatican Embassy
23 the questions that Mr. Jackson was asking. You have
24 to
25 understand most diplomats and most embassies do not

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1 understand the first thing about chancery -- they
2 don't even understand the difference between a
3 chancery and an embassy that everyone here
4 understands.

5 So Mr. Jackson asked them a whole series
6 of questions, I understand, and I'm quite convinced
7 that they didn't understand half. Had Mr. O'Donnell
8 been there, I think that harm could have been
9 prevented.

10 MEMBER RENSHAW: But Mr. Mlotek, you did
11 know then through Ms. Giordano's voice mail that Mr.
12 Jackson and Ms. Giordano were planning on going to
13 the Vatican Embassy?

14 MS. GIORDANO: If I could just interrupt,
15 literally, it was -- I had to drop everything. I had
16 a 12:30 meeting I had to cancel. I called him on my
17 cell phone on the way there and I mean from the time
18 Mr. Jackson and I spoke, the time we were supposed to
19 meet was 45 minutes and I barely had enough time to
20 get there. There really wasn't -- he was on his way.

21 So this was my opportunity to go or be left behind.

22 So there really wasn't an opportunity to really
23 track Mr. Mlotek down. I simply left a voice mail
24 message for him.

25 And my intent in meeting him was just to

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1 -- I mean I'm not an expert on international
2 relations issue either, but really to just make sure
3 that we were both seeing the same thing and that we
4 would not be in a position at the hearing of having
5 seen it at different times and having any dispute as
6 to exactly what was going on in the building.

7 CHAIRPERSON REED: Let us not belabor
8 this issue. I think that it's pretty apparent to
9 everyone that something wasn't quite up to snuff in
10 this instance. But nonetheless, be that as it may, I
11 think that the Board and from the comments I've heard
12 so far, is inclined not to waive the rules to accept
13 the Office of Planning Report at this time and we
14 will take it up after we have basically heard the
15 case and then we'll make a decision as to whether or
16 not we will or will not accept the report into the
17 record, unless there's an objection.

18 (Pause.)

19 Okay, now, Mr. -- ready?

20 MS. BAILEY: Madam Chair, the property
21 was properly posted. All legal requirements have
22 been met and the case is now ready to go forward.

23 CHAIRPERSON REED: I'm sorry, Ms. Bailey,
24 you raised two things. The Office of Planning Report
25 being waived, and what was the other?

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1 MS. BAILEY: I just indicated that the
2 report of ANC-3-C was received on time and the ANC is
3 recommending denial of the application.

4 CHAIRPERSON REED: All right. Then we
5 can proceed.

6 Thank you. Ms. Giordano?

7 MS. GIORDANO: Yes, good morning, again.
8 To my left is Ambassador Pashayev who is the
9 Ambassador to this country from the Republic of
10 Azerbaijan. He is our only witness in this case
11 today and he just returned from Baku this weekend for
12 this hearing, so I know he's dealing with some jet
13 lag and also a lot of last minute issues in terms of
14 the current status of the case.

15 So I will be asking him a series of
16 questions and eliciting some answers. I hope you'll
17 bear with us, but first I wanted to just make some
18 introductory remarks. It seems a little silly. I
19 was going to say that this was really a very simple
20 case. And it is simple on the facts. It involves a
21 property that's located outside of the diplomatic
22 overlay, almost immediately adjacent to the existing
23 diplomatic overlay zone at the corner of 34th and
24 Fulton Streets. It is abutted by one single family
25 residence which is owned by the Vatican Embassy and

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1 the Vatican Embassy is on record. There's a letter
2 in the file in support of the proposed chancery use.

3 It does not abut any other single family residential
4 use. It is located in a square with two major
5 chancery uses, the Embassy of Finland which is
6 located -- fronts on Massachusetts Avenue, and then
7 the Vatican Embassy which was just mentioned which
8 for the record is an official chancery use. It's
9 listed and I think Mr. Mlotek will give you a better
10 sense of that as an official chancery by the State
11 Department. There is some residential use in the
12 building. The top floor of the building is the
13 residence of six priests that live in the building.
14 It's a 50,000 square foot building, by the way, a
15 very large building on a large lot, consisting of
16 29,000 square feet. As I indicated, and this is
17 based upon, I'm testifying here and I did take the
18 oath, unfortunately, I'm sort of put in this
19 position, but I did visit the chancery on Friday
20 morning. I had just basically knocked on the door
21 asking for Mr. Jackson, was told that he had just
22 left and asked to be shown around and asked about the
23 uses in the building.

24 We object really and disagree with the
25 Office of Planning's position that because there are

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1 some residences in the building that somehow the
2 whole building becomes residential. It is an
3 official chancery use. The entire square footage of
4 that building may be used as a chancery, but the
5 existing situation is that it contains four levels of
6 improved space. The basement level includes offices.

7 The first floor level, that's the ground floor
8 level, is a combination of offices, reception areas
9 and a small chapel. The second floor are reception
10 areas which are used for diplomatic functions, for
11 entertainment uses and a kitchen that basically
12 serves those areas as well as the dining room for the
13 priests that live in the building and then the top
14 floor are the residences for the priests. So in a
15 nutshell, if we can sort of just get that on the
16 record, that is really what's going on in that
17 building and I guess how we interpret that is a
18 difference of opinion, but in our view our original
19 statement said that it's approximately one third
20 residential, that's the top floor, and two thirds
21 chancery use, but for the purposes of zoning, it is
22 entirely a chancery use and the purposes of the State
23 Department's listing of chanceries, official Foreign
24 Missions, it is 100 percent a chancery use.

25 So that is -- those are two, as I

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1 indicated, existing chancery uses in the square. The
2 other lots in the square include several undeveloped
3 lots owned by the Vatican Embassy. One other lot
4 that contains a garage that serves the Vatican
5 Embassy. Also on Massachusetts Avenue, is a lot that
6 is owned by the U.S. Park Service and is park land.
7 And then turning the corner on the 34th Street is the
8 single family residence which abuts the subject
9 property that I indicated is owned by the Vatican
10 Embassy and then the subject property.

11 The subject property is improved by a
12 single family house which was purchased by the
13 Republic of Azerbaijan in the first quarter of this
14 year. They had no choice, they felt, but to go ahead
15 and purchase the property and then apply to the BZA
16 because given the current residential real estate
17 market in D.C. there was no way to get a contingency
18 which would allow 8 months to prepare a BZA
19 application and then get a BZA approval. So they
20 have purchased this property. They currently own it.

21 They have been maintaining it. They have not been
22 using it. The property is really a lovely property
23 that includes some very ample landscape spaces that
24 have been well-maintained by the Republic of
25 Azerbaijan. The proposal is for a small diplomatic

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1 mission to be housed in the building. They currently
2 use leased office space in the downtown and they have
3 been an independent republic for seven years and they
4 very much would like to secure a signature building
5 as most countries have to represent their presence in
6 Washington. That was the purpose in purchasing this
7 building.

8 The diplomatic mission at the beginning
9 of the application, and as I said in my papers,
10 included 10 employees. They have recently hired two
11 additional employees. Now they have 12 employees.
12 They are willing to agree to a cap of 15 employees
13 because that is really the amount of people that can
14 be comfortably housed in this building. The 15
15 employees would be taken to and from the site with
16 car pool arrangements. Republic of Azerbaijan owns a
17 fleet of four vehicles. Two of them are minivans
18 which currently shuttle their employees to and from
19 work. Their employees' living arrangements are
20 clustered in Silver Spring and the Van Ness area to
21 accommodate that car pool arrangement. So we foresee
22 very little traffic impact associated with this use.

23 In fact, we have represented that the chancery would
24 forego the privilege of reserving diplomatic parking
25 in front of their building on the street so as not to

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1 take street parking in the area.

2 In addition, there is a garage which can
3 house two vehicles in the rear of the property which
4 is accessed from Fulton Street and a parking pad
5 adjacent to the garage which can park an additional
6 three cars, at least. That is where we are proposing
7 top ut the parking associated with the employees and
8 the staff of the Republic and also to accept
9 deliveries.

10 In front of the building is a
11 semi-circular drive. There are two curb cuts on 34th
12 Street that access the semi-circular drive which can
13 accommodate two additional vehicles and we are
14 proposing to use that for short term visitor parking
15 and for the drop off and pick up of visitors. The
16 Republic of Azerbaijan have very little in the way of
17 visitors during the day, at most two to three, and
18 usually those are other diplomats and business
19 persons, the Visa application process and processing
20 is all done by fax and delivery and mail these days.

21 There's really no reason for anybody to come to the
22 site to do that kind of business. So that really
23 cuts down on the amount of trips to the site.

24 In short, we anticipate very little
25 traffic or parking impacts associated with the use.

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1 As far as the appearance of the building, it will
2 remain essentially the way it is now. There will be
3 a small brass plaque which will indicate the presence
4 of the chancery and the national flag. We're not
5 proposing any alterations to the outside of the
6 building. We're not proposing to add any large
7 antennas or satellite dishes on top of the building.

8 There is currently a dish, a TV dish on the building
9 now which will remain.

10 The employees, as I indicated, will be
11 taken to and from the site. The issue of the hours
12 of operation at the chancery will be normal business
13 hours, approximately 8 o'clock to 6 p.m. There will
14 be very little activity at the site on weekends or
15 during the evenings. There will be occasional social
16 functions. There might be functions involving a few
17 people to the site for dinner or cocktails. Any
18 larger functions we have indicated would be
19 restricted to approximately four times a year and by
20 larger functions we're saying in the range of 15 to
21 50 people and a condition was proposed, I think, by
22 the Office of planning and it's certainly something
23 that we can agree to to limit that by condition of
24 our BZA application to four times a year, if
25 necessary.

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1 We were asked what about the parking
2 needs or the parking impacts associated with the
3 larger social function in the range of 15 to 50
4 people and our response is that those people will
5 primarily be parking on the street, but that is no
6 different than any single family residents in the
7 neighborhood. It's entirely conceivable that a
8 single family residence might have a few large
9 functions a year whether it's Thanksgiving or having
10 a class party for your children and that amount of
11 activity is really similar to a single family
12 residence. We think that overall, the amount of
13 parking demand created by this chancery will be less
14 than a single family residence because there will be
15 no parking demand for the most part in the evenings
16 or on the weekends. The parking demand which we
17 think we can adequately address on site, is only
18 during the day time when the residents for the most
19 part are not at home.

20 So we do not foresee an adverse impact
21 with this use. The issue of the diplomatic overlay
22 is one that will be addressed in more detail by the
23 State Department, but just to clarify in our opening
24 remarks, the Foreign Missions Act does not restrict
25 chanceries to locations within the diplomatic overlay

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1 zone. The Foreign Missions Act says that chanceries
2 can locate in areas based upon existing uses which
3 include office and institutional uses. This area
4 does include office and institutional uses. We've
5 submitted a land use map which colors in yellow the
6 various institutional and chancery uses in the
7 surrounding area. We have not limited that map to
8 the subject square, although the subject square is
9 the unit of measurement that was used initially by
10 the National Capital Planning Commission in
11 designating or recommending for designation the
12 overlay zones. We've gone further. We think a
13 reasonable area of impact is the 200 foot property
14 area which is shown on that map. We've included a
15 square to the north, the northeast really, because
16 that's an area of impact. To the west is the Naval
17 Observatory. There is really no other use there and
18 the Vice President's House, but we have moved up 34th
19 Street and shown that just one block away is the
20 Belgium Chancery to across 34th Street, outside the
21 subject square is also the Norwegian Chancery. It's
22 a chancery and an embassy. The embassy fronts of
23 Massachusetts Avenue and the chancery fronts on 34th
24 Street. The entrance to the chancery is on 34th
25 Street, across from the subject square.

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1 So there's been a lot of issue regarding
2 the one third, two thirds use which has been a
3 measurement, as I indicated, by NCPC in the past and
4 we meet that measurement although we don't submit
5 that that is the precise criteria because the Foreign
6 Missions Act does not say one third, two thirds is
7 the standard.

8 But since that has been adopted by NCPC,
9 NCPC took a look at this subject application and
10 wrote a letter which we've submitted in the record
11 which says that the subject site does meet the
12 criteria, the original criteria for mapping of
13 diplomatic overlay zones, because it meets the one
14 third office institutional component and that one
15 third is generated by the Finland Chancery and the
16 Vatican Embassy which I have already indicated and
17 described is a chancery use.

18 In addition, we have submitted our own
19 analysis of the one third, two thirds criteria.
20 We've also indicated that the BZA has considered a
21 chancery outside the de-overlay in the past and
22 there, the BZA used the standard of the subject
23 square and they indicated that it was the
24 residentially zoned properties in the subject square
25 and the presence of the office uses there and of

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1 course, a chancery is an office use, that was
2 indicative and relevant in their mind.

3 But again, the standard, according to the
4 Foreign Missions Act is that the area has to include
5 office and institutional uses. I think the land use
6 map clearly shows those uses in the immediate area.

7 At this point I would like to ask the
8 Ambassador to just answer a series of questions so
9 that you can hear from him directly how the subject
10 property will be used and the nature of his
11 diplomatic mission in this country.

12 Mr. Ambassador, will you state your name
13 for the record?

14 AMBASSADOR PASHAYEV: Yes, my name,
15 Pashayev Hafiz. I'm Ambassador for Azerbaijan to
16 United States.

17 MS. GIORDANO: Mr. Ambassador, could you
18 please describe the number of employees that you
19 anticipate housing at the site and how the site
20 generally will be used?

21 AMBASSADOR PASHAYEV: Yes, first of all,
22 let me also say good morning to all of you and Madam
23 Chair, thank you for this hearing. And during my
24 almost 8 years now in Washington I have had a lot of
25 experience in this city and this is my first

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1 experience with D.C. government and this is -- during
2 all these years we were looking for some opportunity
3 to buy property to install embassy in chancery and it
4 was somehow related to issues of reciprocity and
5 United States government had beautiful building in
6 capitol of my country in Baku. You are welcome to
7 come and to see this beautiful building. But for
8 unknown reasons, it was government always caring
9 about security issues in foreign countries. In our
10 case, actually, after bombing in Tanzania and Kenya,
11 the United States government decided to somehow
12 expand on property and to put some additional --some
13 security fences. It was reason why we were not able
14 to buy earlier years building because as I said, the
15 reciprocity issue was very important between our two
16 countries, but our government did -- it's best to
17 accommodate requirement of United States government
18 and I believe State Department representatives will
19 talk about that.

20 So my point that my experience in
21 Washington, although I did not go far enough with
22 D.C. government to accommodate our property demands,
23 but I know some regulations and many times I tried to
24 check what property would accommodate Azerbaijan and
25 I had some experience. I was just about to buy one

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1 property on diplomatic overlay with all requirements
2 in place. Unfortunately, this same issue of
3 opposition of neighborhood in case of --

4 MS. GIORDANO: Yes, if I could just
5 interject. That was in the neighborhood right near
6 the Benin Chancery case that was heard by this Board
7 earlier this year. And it was the Benin decision
8 that -- not the Benin decision, but the Benin -- the
9 opposition from the neighborhood that persuaded the
10 Ambassador that maybe that wasn't the best site to go
11 ahead and purchase.

12 AMBASSADOR PASHAYEV: It wasn't on
13 diplomatic overlay, I would mention this once again
14 and I agree with Ms. Giordano, that this case is
15 looks to me to be very easy case because when I have
16 seen this property and location and all features of
17 this building and as Ms. Giordano said, we have
18 small, small embassy. We have not so great
19 activities. So I saw that it would accommodate us
20 and it will not hurt neighborhood concerns and it was
21 reason why I decided to go forward with this
22 property. And now I think if you ask me about what
23 kind of activities we will have, as I said, we don't
24 think that the foreseeable future will have more than
25 15 people in our embassy, in our chancery.

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1 MS. GIORDANO: Mr. Ambassador, yesterday,
2 I went over the conditions that were recommended in
3 the Office of Planning Report and one of those was
4 that the number of mission officials and employees on
5 sight at any one time would not exceed 15. Did you
6 indicate that you were agreeable to any approval or
7 lack of disapproval of the chancery being conditioned
8 on that?

9 AMBASSADOR PASHAYEV: I think we can
10 agree on that, on not more than 15 people will be
11 working there.

12 MS. GIORDANO: And I just want to add, I
13 think Mr. Mlotek can elaborate on this later, that
14 the embassies have to register the names of their
15 employees with the State Department, so there -- this
16 is not a situation where you can easily fudge how
17 many employees you have in a building. There is a
18 record of this and the Ambassador is aware of that.
19 And he's willing to abide by that. It could very
20 easily be determined if that number were exceeded in
21 the future.

22 The second condition that we discussed
23 was that the number of vehicles on site for use by
24 embassy officials and staff should not exceed seven.
25 Could you just describe how your employees get to

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1 work currently and whether you anticipate that that
2 arrangement would change in the future?

3 AMBASSADOR PASHAYEV: I think it's also,
4 currently we have less than seven, much less than
5 seven and I think we agreed that also that we can
6 accommodate our people with less than seven.

7 MS. GIORDANO: Could you just describe
8 for the record how your employees get to work and
9 where they live?

10 AMBASSADOR PASHAYEV: Currently, some
11 group of people live around Van Ness region on
12 Connecticut Avenue and they are coming all together
13 in one van and another group are coming from, also
14 from Virginia, Crystal City, is another van. And I
15 have my personal car, Ambassador's car. And one more
16 car right now, we have all together four cars right
17 now. It accommodates all our needs and in terms of
18 parking, of course, there is as Ms. Giordano said, we
19 have plenty of places, plenty of parking spaces
20 around the building, our property.

21 MS. GIORDANO: Mr. Ambassador, could you
22 describe the kinds of social functions or activities
23 that you would have at the chancery and where you
24 have large functions currently?

25 AMBASSADOR PASHAYEV: Currently, we have

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1 once per year, actually we have big function. It's
2 almost 400, maybe 500 people, a reception and some
3 functions in major hotels of Washington. So some
4 small dinners, of course, we have at the residence
5 and would think that if this property will be
6 chancery, we will have less opportunity to make some
7 social function if this property will stay as
8 Ambassador's residence and I think it's what we
9 proposed and what we agreed upon, that four functions
10 per year, no more than 50 people in each occasion, I
11 think it will accommodate our needs.

12 MS. GIORDANO: Mr. Ambassador, you
13 alluded to the difference in how much social activity
14 would be held at this property if it were an
15 Ambassador's residence. What would you do with the
16 property if the chancery was not able to be
17 established here?

18 AMBASSADOR PASHAYEV: As I understand it,
19 by regulations of D.C. government, I don't think we
20 have restrictions for residential use of this
21 property and in that case, as I said, we could have
22 much more social events because in this case, as you
23 understand, we will not rearrange inside space of
24 this property. It will stay almost as it is right
25 now and will give us more space and more opportunity

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1 to invite more than -- more than 50 people definitely
2 to make some social events. And I believe that as
3 you know, it's major part of diplomatic missions to
4 make social events. In that case, I think this
5 property will stay as residence. I will -- I can
6 promise you that it will have much more social events
7 than four per year.

8 MS. GIORDANO: But if it's chancery you
9 would abide by a restriction of four per year?

10 AMBASSADOR PASHAYEV: Of course, yes. As
11 I said, it physically will not permit me to do more.

12 MS. GIORDANO: I think what the
13 Ambassador is trying to say, as we indicated, the
14 property has already been purchased. It cannot be
15 used for a chancery use. The option is to use it for
16 the Ambassador's residence. That was not the
17 intention here. It's a much larger property than the
18 Republic of Azerbaijan intends for an Ambassador's
19 residence, but that would be one option.

20 Another option would be to try and sell
21 the property again, but --

22 AMBASSADOR PASHAYEV: Yes, let me say
23 that also, because the Republic of Azerbaijan is a
24 relatively new country in Washington, it's my
25 understanding that we need first to accommodate our

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1 chancery necessity. That's the reason why I'm trying
2 to first to get this opportunity because government
3 of Azerbaijan also indicated to me that most
4 important for us now to have in Washington first
5 chancery and then residence. As you know, it's not
6 easy to accommodate both simultaneously, so I would
7 be happy to do that.

8 MS. GIORDANO: Could you comment on the
9 amount of visitors that you would anticipate coming
10 to the site and how they would arrive and depart?

11 AMBASSADOR PASHAYEV: Usually, in
12 embassy, in chancery, we have individual visitors
13 like Ambassadors and some other dignitaries from
14 different missions and this is usually, it's --
15 they're coming by car and sometimes if we have long
16 meeting, they drop the -- the driver drops the guest
17 and then comes back to pick them up. But in the case
18 of Visa application as you rightly indicated, now in
19 technology in the United States it is very easy to
20 accommodate all and we are doing right now in our
21 current chancery through basically mail and just one
22 or two visitors like courier services bringing some
23 passports for getting visa. So I don't think it's
24 also will change the environment in the neighborhood.

25 MS. GIORDANO: I think that that

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1 adequately addresses the overall intention with
2 regard to the subject property.

3 Let me ask one more question. Regarding
4 the possibility for expanding the property or
5 altering it, do you have any intentions along those
6 lines?

7 AMBASSADOR PASHAYEV: The property itself
8 is so beautiful that I don't -- I think that any
9 interference, even though it's good intention, will
10 spoil all this environment. So when I met with
11 neighborhood, it was a half a year ago approximately
12 and I promised that this beauty of property will stay
13 as it is right now and I am doing my best to keep it,
14 when we are not using this property, I am trying to
15 keep this property in very good shape and I don't
16 think that any kind of expanding will demand some
17 funds. If I will have these funds, I will buy
18 another property somewhere in Washington.

19 MS. GIORDANO: So Mr. Ambassador, to be
20 clear, if you have needs beyond 15 people at this
21 site or a need for a larger site, how would you deal
22 with that?

23 AMBASSADOR PASHAYEV: I think I will
24 transform this property back to residential for
25 residence of Ambassador and then maybe I will buy

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1 some bigger property someone else.

2 MS. GIORDANO: So you have no problem
3 with the restriction that would prohibit you from
4 expanding the property or increasing the number of
5 employees beyond 15?

6 AMBASSADOR PASHAYEV: No.

7 MS. GIORDANO: I think that includes the
8 Ambassador's comments. If there are any questions,
9 we're happy to take them at this time.

10 CHAIRPERSON REED: Board Members?

11 VICE CHAIRPERSON SOCKWELL: Yes, I would
12 like to start with a question and this relates to the
13 Ambassador's statement about the use proposed for the
14 property.

15 Now I realize that you are here before
16 the Board to request a chancery use. And that having
17 been in this process to this point you know that the
18 neighborhood has some opposition to the intensity
19 that they believe the property would be put to in
20 terms of that use, yet in stating that there might be
21 an additional utility of the property in the event
22 that it is not approved as a chancery, you stated
23 that it could become a more social center with large
24 parties and more people. And to me, that gave the
25 impression that perhaps the nation of Azerbaijan

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1 would not respect the community's interest in low
2 activity levels unless so required under the
3 restrictions of a chancery use.

4 Can you respond to that?

5 AMBASSADOR PASHAYEV: Yes, my point was
6 that it's physically, will make this chancery, this
7 property will automatically will have some limit on
8 any kind of social activity. Of course, if I -- I
9 gave impression --

10 MS. GIORDANO: I think he's saying that
11 if it's used for office, it's going to have desks in
12 it and office furniture and it's going to limit the
13 amount of space that's available for gatherings.

14 AMBASSADOR PASHAYEV: Yes. So it's my
15 intention absolutely not to disturb neighborhood and
16 I think if I put somehow not in the right way my
17 statement, my point that when I look through
18 arguments of neighborhood, why they are opposing to
19 our request, it was my -- just argument or counter
20 argument that it's in no case will disturb
21 neighborhood because chancery or residence of
22 Ambassador will not make any difference. This was
23 the point.

24 VICE CHAIRPERSON SOCKWELL: All right,
25 Mr. Ambassador, is was just that I wanted to declare

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1 that you were not presenting the alternative use as a
2 sort of veiled threat to utilize the property to a
3 much greater extent as a result of perhaps not
4 receiving an approval for a chancery use and Ms.
5 Giordano, it is not really something that one can
6 factor in whether or not there's office furniture in
7 the space or not because that's up to the discretion
8 of Azerbaijan to use the space and to fill it with
9 whatever they wish. The space could be utilized for
10 anything.

11 Another issue that I would want to raise
12 very quickly is the fact that you mentioned, Ms.
13 Giordano, in your testimony that the State Department
14 maintains records of the number of employees. Having
15 participated on Foreign Missions Board of Zoning
16 Adjustment cases previously, I think that it may have
17 been brought out in testimony that the Department of
18 State does not necessarily enforce, nor monitor, such
19 things even though it might keep records. It might
20 not do anything to prevent Azerbaijan from having a
21 larger contingent of employees than might be desired
22 or even written into an order by the BZA. So I'm
23 just making those statements and you might want to
24 respond to those.

25 MS. GIORDANO: Okay, again, I'm not an

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1 expert on State Department enforcement. I was merely
2 making the point that if someone wanted to determine
3 how many employees, independently determine, a
4 neighbor or whatever, that we were in compliance, the
5 employees have to be registered with the State
6 Department. That's my understanding. So someone
7 could determine, it could be easily determined how
8 many employees were in the building.

9 My understanding is also that the State
10 Department does enforce these conditions, but I'm
11 going to defer and let Mlotek expand upon that issue.

12 VICE CHAIRPERSON SOCKWELL: That would be
13 a good idea.

14 MS. GIORDANO: As far as the issue of the
15 office furniture, I think that it might be helpful
16 for us to submit into the record after the hearing a
17 floor plan of the property and I think you'll get a
18 better sense of what we're trying to say. What I'm
19 saying is that as a chancery use, for instance, the
20 large kitchen will be used. It will basically be
21 disassembled. It's a very large grand kitchen that
22 would serve very well as a staging place for parties,
23 but the embassy with the chancery use intends to make
24 it a galley kitchen and convert it to an office, so
25 the things that they are proposing to do interior in

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1 the building to accommodate the chancery use really
2 make it -- precludes the use for large entertaining
3 functions. So that was the point that we're trying
4 to make and the Ambassador is saying that as far as
5 his options go, he has been told by the neighbors
6 that embassies are welcome in the neighborhood and
7 we're just pointing out an inconsistency. It's not a
8 threat, that there's an inconsistency that embassies
9 can mean large social functions and often do mean
10 large social functions in this type of neighborhood,
11 which have greater traffic impacts than a chancery
12 use.

13 CHAIRPERSON REED: Ms. Renshaw?

14 MEMBER RENSHAW: Yes. Thank you, Madam
15 Chair. I'd like to come, Mr. Ambassador, to the
16 number of employees. You stated that there would be
17 15. Does that include the eight other senior level
18 diplomatic officers, plus yourself, or are those in
19 addition?

20 AMBASSADOR PASHAYEV: Yes, no, all
21 together. All together.

22 MEMBER RENSHAW: All together there are
23 15, including yourself and the 8 senior level
24 diplomatic officers?

25 AMBASSADOR PASHAYEV: Exactly. I can't

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1 count my embassy without myself.

2 (Laughter.)

3 MEMBER RENSHAW: I am not saying that, I
4 am just asking for clarification on the numbers.

5 MS. GIORDANO: Right, you might want to
6 clarify, Mr. Ambassador, that you don't have 15 now.

7 AMBASSADOR PASHAYEV: We have 12 right
8 now. So it's -- as I said, we have limited
9 activities and limited resources and for now our
10 relationship with the United States, though it's very
11 fast growing relationship, but for foreseeable
12 future, 15 limit which is agreed upon, I think it
13 will accommodate us.

14 MEMBER RENSHAW: Ms. Giordano, you said
15 earlier that there would not be more than 15 people
16 on the site at any one time.

17 MS. GIORDANO: That's the Office of
18 Planning suggested, that's the way it was worded and
19 what I'm saying is it says employees and embassy
20 officials. They are employees. That doesn't take
21 into account another Ambassador that might be
22 visiting.

23 MEMBER RENSHAW: All right, now we have
24 talked a little bit about the number of social
25 functions that you may have up to four per year and

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1 including 15 to 50 people, but during any given week,
2 how many visitors to your site would you have? In
3 addition, you've got 15 employees, including yourself
4 and how many other people will be visiting the site
5 per week, can you estimate for us?

6 MS. GIORDANO: And when you answer, Mr.
7 Ambassador, also explain what your employees are
8 doing. Are they usually all on site or are they on
9 the Hill and --

10 AMBASSADOR PASHAYEV: As I said, it's
11 basically visa issue. As I said, we are doing
12 through mail, but today, I would say between 3 and 4,
13 not more visitors.

14 VICE CHAIRPERSON SOCKWELL: Per day?

15 AMBASSADOR PASHAYEV: Per days, yes. And
16 our employees basically we have some -- we divided by
17 obligations, two or three people working with
18 Congress and by the way, these hearings, I would say
19 that I'm much more nervous here now than when I am
20 testifying in Congress.

21 (Laughter.)

22 But people, our employees, going to State
23 Department, visiting State Department to -- and other
24 embassies, to Congress. And of course, depends on
25 time and acclivities. Depends on what kind of issues

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1 we are discussing with U.S. government, some U.S.
2 government representatives coming through embassy.

3 So I once again, if -- let me compare
4 once again with -- if I will be as resident there.
5 My family is big family. I have three grandchildren.

6 I have a son, daughter and son-in-law and
7 daughter-in-law. They have friends. I don't think
8 it will be more than family activities if we will
9 have chancery in this property.

10 So the beauty of this building, we have
11 backside, we have on Fulton Street. We have entrance
12 from back side of building and we have at least four
13 or five car, where can accommodate parking space and
14 we will make sure that mostly visitors will come and
15 drop people in the back side and I don't think -- if
16 you are familiar with this neighborhood, the back
17 side of this property, Cleveland Park -- Rock Creek
18 Park, right?

19 MS. GIORDANO: Normanstone Park.

20 AMBASSADOR PASHAYEV: So it's absolutely
21 no any disturbance for any neighbor.

22 CHAIRPERSON REED: Mr. Lawson?

23 MR. LAWSON: Just one question, Madam
24 Chair. From your testimony, both of your testimony,
25 I'm kind of running a check list on the Office of

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1 Planning Report and am I correct to assume that in
2 the last section where the Office of Planning says,
3 "if the Foreign Missions Board of Zoning Adjustment
4 determines that this request should be approved, then
5 approval should be subject to the following
6 conditions" and there are one, two, three, four,
7 five, six, seven conditions there. Am I reading it
8 correctly that you would agree to those conditions?

9 AMBASSADOR PASHAYEV: Yes.

10 MR. LAWSON: Those seven conditions?

11 AMBASSADOR PASHAYEV: Yes.

12 MR. LAWSON: No further questions.

13 CHAIRPERSON REED: Okay, let's see I had
14 a few questions of my own. During the social
15 activities that you are going to -- that you
16 anticipate having during the course of the year, what
17 provisions are you making for parking for those who
18 attend these social functions?

19 AMBASSADOR PASHAYEV: As usual, as my
20 study shows, as other embassies doing, it's actually
21 parking space on street would be, I think, would be
22 enough. In case of if I will have, let's say, 30
23 Ambassadors all together in this property, they
24 usually drivers, I think, dropping Ambassadors and
25 going back to pick them up, so they are not -- it's

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1 not necessary for them to stay. And some other
2 opportunities, of course, many people coming by taxi
3 and this neighborhood, I think, has no good public
4 transportation, but taxi, of course, is common thing.

5 CHAIRPERSON REED: Well, I find this to
6 be rather a concern to me because am I understanding
7 you to say that the four functions you intend to have
8 will be attended only by Ambassadors?

9 AMBASSADOR PASHAYEV: Not necessarily.
10 Some other functions also might be --

11 CHAIRPERSON REED: Okay, so in the event
12 you have a function that will not be attended by 30
13 some odd Ambassadors with their drivers, then my
14 understanding is that parking on the street is
15 somewhat difficult and I doubt most people who attend
16 those types of functions don't come on a bus, so my
17 question is have you, I guess, have you thought about
18 parking during those times when you do have
19 considerable amount of guests that would be
20 converging on that particular site at one time?

21 MS. GIORDANO: Maybe I can help out here.
22 The Ambassador is saying that generally the
23 functions are going to include Ambassadors,
24 businessmen, other diplomatic individuals. At least
25 some percentage of those people and maybe we can try

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1 and further define that are arriving to the site by
2 driver.

3 CHAIRPERSON REED: Let's give it 50
4 percent.

5 MS. GIORDANO: If you think that's
6 reasonable.

7 CHAIRPERSON REED: Let's say just for
8 purposes of illustration 50 percent.

9 MS. GIORDANO: And we're talking about a
10 maximum number of 50 people.

11 CHAIRPERSON REED: Correct.

12 MS. GIORDANO: Four times a year. Okay,
13 so we're down to 25. And you're right, there is
14 excellent public transportation to this site by bus,
15 but probably these people are not coming by bus.
16 Some of them may come by taxi. So I would say
17 another handful might come by cab. We're down to
18 maybe 20 people and we're talking about four times a
19 year. And we have parking on site. We have seven
20 spaces on site that could be accommodate on site.

21 CHAIRPERSON REED: Wait, wait, wait --

22 MS. GIORDANO: This is in the evening.

23 CHAIRPERSON REED: Wait, but what about
24 the cars that are provided by the chancery already.
25 There's a minivan and two other cars with drivers and

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1 then there's another vehicle. There are four
2 vehicles already on the site. They would have --

3 MS. GIORDANO: They might be on site.
4 They might not be in order to accommodate their
5 guests. I don't know that all the employees would
6 necessarily be at a social function, would they?

7 AMBASSADOR PASHAYEV: Not necessarily.

8 CHAIRPERSON REED: But still, I think,
9 Ms. Giordano, that the fact remains that I think
10 there may be somewhat of a problem with those
11 activities occurring.

12 MS. GIORDANO: So we have a few places on
13 site. So maybe we're down to 15 people coming and
14 parking. Let's say you know, that all those
15 individuals aren't even coming -- we had 50 people.
16 We talked about half maybe coming by driver.

17 CHAIRPERSON REED: Now it's 25.

18 MS. GIORDANO: Maybe an additional 5 by
19 cab. Some people may not come, may come together.
20 So just for the sake of argument, let's say -- just
21 to be generous, let's say 20 people are coming and
22 driving to the site. There is residential permit
23 parking that's in our statement on the streets that
24 give residents a preference to park on the streets,
25 to our residential parking so that a guest can only

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1 park for two hours.

2 There is also ample parking on the
3 streets.

4 CHAIRPERSON REED: Okay, but during that
5 time period you have people who are coming home from
6 work.

7 MS. GIORDANO: Right.

8 CHAIRPERSON REED: And I would think that
9 it would be kind of difficult to find difficult or if
10 these functions occur during the time when people are
11 coming home, then they would occupy some of the
12 spaces that would otherwise be available to the
13 residents and this is a sticky point and where I'm
14 getting to is simply this, do you think that perhaps
15 there could be a traffic management plan developed
16 that would address these problems?

17 Perhaps there could be some alternative
18 arrangements made with -- it's not position to tell
19 you what to do, nonetheless, you see this is a
20 problem area. I would think that whatever you can do
21 to diffuse that problem would be better for your case
22 and that is an issue that needs to be addressed more
23 appropriately than what I'm hearing here right now.

24 MS. GIORDANO: I appreciate that advice
25 and we will take a look at that. But first of all I

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1 just want to say that it hasn't been proven that this
2 is a problem area for parking. There's residential
3 permit parking on the streets. We have been to this
4 site on numerous occasions --

5 CHAIRPERSON REED: I'm going, Ms.
6 Giordano, by -- we have a huge submission of
7 materials that come from not only yourself, but from
8 State Department, NCPC, Office of Planning and also
9 from the residents and since there is no cross
10 examination per se, then I am basically devil's
11 advocate to kind of get these issues on the floor.

12 MS. GIORDANO: And I appreciate that and
13 we'll look into it. But I just want to reiterate
14 that we're talking about four times a year. This is
15 not any different than somebody having 20 people to
16 their house. It's not that unusual. You have
17 children. You have activities. For someone else to
18 have 20 people at their house and not arrange for
19 valet parking or parking at a chancery, these things
20 happen in neighborhoods. And we think that as
21 compared to a single family residence where there
22 might be a daily demand in the evening for parking
23 and an every weekend demand, that four times a year
24 really is not that much of a burden if you think
25 about it.

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1 But we will look at that. There are
2 chanceries in the immediate proximity that have
3 parking and maybe we can make arrangements with one
4 of them.

5 CHAIRPERSON REED: Well, the difference
6 is notwithstanding what you just said, but the fact
7 that the matter is that the persons who may be having
8 or residents may be having a child's party is
9 something, is a little different from the application
10 that's before us that has a considerable amount of
11 opposition. That's what you have to contend with and
12 the other thing is when we have these type of
13 affairs, then there are also issues with cars idling
14 in front of the building or on the street in front of
15 neighbor's houses that may be disruptive and those
16 are the kind of things I like to see you reflect in a
17 management plan.

18 Okay, now the other thing was the
19 signage. In your submission it indicated that there
20 would just be a plaque on the building and it didn't
21 say what size plaque would be. It said small plaque,
22 but what size would that plaque be, a brass plaque
23 that I guess would identify the embassy?

24 MS. GIORDANO: We haven't designed it
25 yet, but we can have a submission for you, if you

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1 like.

2 CHAIRPERSON REED: We would like to know
3 the size, the size of the plaque. We've had here
4 quite a few complaints about embassies in regard to
5 the upkeep and the maintenance.

6 Do you have any plan as far as general
7 maintenance, upkeep, landscaping of that particular
8 site?

9 AMBASSADOR PASHAYEV: I have already
10 tried to address this, though we bought this property
11 in February, I think, March, February and since from
12 first day I already hired special company which is
13 taking care of landscape and watching and I think if
14 you will come and see, this property is in very good
15 shape. So once again I am not leaving -- nobody is
16 there, but still property is in very good shape. Of
17 course, it's our intention to keep in very good --

18 CHAIRPERSON REED: Mr. Ambassador, I did
19 hear you mention that you were going to maintain the
20 property, but we need to have a little bit more
21 explanation as to do you have a contract with a
22 maintenance company that will be taking care of the
23 property on an on-going basis?

24 AMBASSADOR PASHAYEV: Yes.

25 CHAIRPERSON REED: As well as

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1 landscaping.

2 AMBASSADOR PASHAYEV: Yes. I have
3 contract with landscape company, but additional
4 contract with air conditioning facilities and some --

5 CHAIRPERSON REED: Maintenance.

6 AMBASSADOR PASHAYEV: Maintenance, yes.

7 CHAIRPERSON REED: That would be
8 something else we'd like to have, copies submitted to
9 the record.

10 My last question is in some of the other
11 submissions, it came up that there are other
12 properties that were available in a mixed use
13 diplomatic zone that could have been purchased for
14 your use and as such why is it that you opted to
15 choose this particular property rather than one of
16 the other properties that would have caused you less
17 difficulty, there would have been less opposition,
18 perhaps if you had chosen those properties for the
19 use that you desire?

20 MS. GIORDANO: Mr. Mlotek just indicated
21 to me that he's going to address that issue. I think
22 the Ambassador also had addressed it with regard to
23 one property which I think there had been a fair
24 amount of effort made on purchasing, but --

25 CHAIRPERSON REED: That was in the area -

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1 -

2 MS. GIORDANO: That was in the diplomatic
3 overlay.

4 CHAIRPERSON REED: I can understand that
5 one, but there were others --

6 MS. GIORDANO: And the issue there was a
7 concentration of too many chanceries. That was the
8 issue in the neighborhood.

9 CHAIRPERSON REED: But there was a list
10 submitted of several other properties that could have
11 been possibilities for chanceries.

12 MS. GIORDANO: I haven't had a chance to
13 review that list, but we certainly can.

14 CHAIRPERSON REED: Okay. Thank you very
15 much.

16 VICE CHAIRPERSON SOCKWELL: Madam Chair,
17 with regard to two things, one the request for
18 maintenance contracts, I believe that in this case
19 there has been question that I've seen of the ability
20 of Azerbaijan to maintain the property and I don't
21 think that we really need to request that contracts
22 be submitted.

23 If we did not do it in previous cases
24 where the issue was very strong, I don't think that
25 we should subject the Ambassador to that indignity.

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1 CHAIRPERSON REED: Well, Mr. Sockwell,
2 thank you for your concern.

3 VICE CHAIRPERSON SOCKWELL: And let me
4 finish.

5 CHAIRPERSON REED: Sorry.

6 VICE CHAIRPERSON SOCKWELL: I have to
7 speak to the issue of size of events. With a house
8 party with the average family event, there will be
9 people coming certainly and in certain cases there
10 might even be some catering, but it has been stated
11 in testimony by the Applicant that the kitchen which
12 is currently very large will be reduced to a galley
13 sized kitchen and part of that space converted to
14 office use. And I would submit that in my
15 experience, large embassy parties require large food
16 facility preparation areas and in this case there
17 will be catering trucks. In the other situation,
18 these are Ambassadors. These are senior diplomatic
19 officials of sovereign nations. They will have
20 security people who are assigned to them and to them
21 alone. There may be convoys of vehicles, depending
22 upon the nations and their political situations both
23 at home and the conditions within the United States.
24 I do believe that an embassy function of 50 people
25 may present a much large impact on a community for

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1 that time period than would any average party of the
2 same number of individuals given by a resident as a
3 homeowner's party.

4 CHAIRPERSON REED: Okay. Thank you very
5 much for your comments, Mr. Sockwell.

6 In reference to the request for the
7 maintenance contracts, that was in no way an attempt
8 to -- it was not -- I didn't think that it was an
9 indignity to ask for it. I think in previous cases,
10 yes, we have requested it and what I asked, I think,
11 was that if, in fact, he had one to submit that to
12 the record. I didn't request that he obtain one
13 because I think that my opinion the residents who
14 have voiced considerable opposition would be desiring
15 of seeing that type of thing because of the fact that
16 we have had quite a bit of problem previously with
17 the manner in which other embassies have been
18 maintained and this is no reflection on the Applicant
19 whatsoever and if that were interpreted like that and
20 I do apologize for that. That was not the intent.

21 VICE CHAIRPERSON SOCKWELL: Well, my
22 apologies, Madam Chair. I just feel that we should
23 take those things on a case by case basis.

24 CHAIRPERSON REED: Thank you.

25 VICE CHAIRPERSON SOCKWELL: As they are

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1 presented.

2 CHAIRPERSON REED: Thank you very much.

3 MS. GIORDANO: Can we respond to Mr.
4 Sockwell's comments about getting back to the
5 entertaining issue.

6 First of all, I would ask if Mr. Mlotek
7 might address the issue as to sort of what is the
8 common practice in this city for these -- I'm sure he
9 goes to these functions probably more than he cares
10 to admit, it is typical to bring to convoy of people
11 or security people to this kind of function and maybe
12 the Ambassador has comments as well.

13 CHAIRPERSON REED: Mr. Mlotek, do you
14 want to do that now or do you want to do it within
15 the scope of your particular presentation?

16 MR. MLOTEK: That's entirely at the
17 discretion of the chair. If you think it would
18 logically -- the Board Members have expressed an
19 interest, an intense concern, an interest yourself,
20 Mr. Sockwell and Ms. Renshaw, concerning the level of
21 entertainment, so if you would like me to respond to
22 that --

23 CHAIRPERSON REED: Why don't we conclude,
24 since they're wrapping up and then you're next and
25 then segue right into your presentation.

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1 MR. MLOTEK: Well, what about the other
2 parties in support or other persons in support?

3 CHAIRPERSON REED: The sequence of this
4 particular proceeding is the statement and witnesses
5 of the applicant and then the government report, the
6 Secretary of State's report being first.

7 Then we have the ANC reports, then
8 persons in support and then persons in opposition.
9 That's the sequence.

10 MR. MLOTEK: Okay, thank you.

11 MS. GIORDANO: That pretty much concludes
12 our presentation. I just wanted to reiterate that it
13 is not the intention of the Republic of Azerbaijan to
14 purchase this facility for party purposes. That's
15 not what it's about. They are willing to restrict
16 social activities for a year. They currently use,
17 they currently lease space downtown and they have
18 their social activities in hotels, their large social
19 activities. That is what they intend to continue to
20 do. We are just trying to leave a little flexibility
21 for the Ambassador four times a year to have a social
22 activity there and we will look into the issue
23 further of parking if the Board is concerned about
24 that.

25 CHAIRPERSON REED: Thank you very much,

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1 Ms. Giordano.

2 Okay, the report from the Secretary of
3 State, Mr. Mlotek.

4 MS. GIORDANO: Excuse me, will we have an
5 opportunity to address any concerns or issues that
6 are raised later on by the Office of Planning or the
7 neighborhood?

8 CHAIRPERSON REED: Let me check that,
9 because typically that's not a provision for these
10 proceedings, but --

11 (Pause.)

12 Unless there's an objection by any other
13 Board Members, I have no problem with you having an
14 opportunity to rebut or --

15 MS. GIORDANO: We'll be brief.

16 CHAIRPERSON REED: Okay, all right, thank
17 you.

18 MR. MLOTEK: Good morning, Madam Chair,
19 and Members of the Board, may it please this
20 honorable Board. I am, as you know, Ronald Mlotek,
21 Legal Counsel of the Office of Foreign Missions, and
22 it is a pleasure for me once again to appear before
23 this Board, in my official capacity, I think, for the
24 58th time if my calendar is correct. And as the
25 Board knows, I've also appeared in my personal

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1 capacity as a citizen, a proud resident of the
2 District of Columbia.

3 As I said in my preliminary remarks, this
4 is a very unique case in many ways and it's going to
5 depart a little from the way we've handled the State
6 Department end of it at least, the way we have made
7 our presentation in the past.

8 Among other things there is in this case
9 a very important diplomatic relations issue that
10 rises far beyond what this Board has seen in any of
11 the cases it's handled and it's probably one of the
12 most important that we've had in a decade. And to
13 reflect this fact, I'm accompanied today by the
14 Deputy Assistant Secretary of State who is
15 responsible for the area of Foreign Missions
16 activity. He also serves in the statutory capacity
17 as Deputy Director of the Office of Foreign Missions,
18 Deputy Assistant Secretary Ted Strickler. He is also
19 the signatory of the Standards Letter that you all
20 see coming over to, but you actually see him in
21 person, in the flesh before you. And Deputy
22 Assistant Secretary Strickler is here today to
23 describe to you in detail and to impress upon you,
24 the importance of the accommodations that the Nation
25 of Azerbaijan, the government of Azerbaijan had made

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1 for us in very significant issues that favor and
2 benefit our diplomatic mission in Azerbaijan. After
3 Deputy Assistant Secretary Strickler completes that
4 end of the presentation, I would like to then turn to
5 some of the legal and factual issues that are present
6 in this case, most specifically the issue of the
7 diplomatic overlay which as you know is a very
8 complicated issue, both legally and factually. And
9 also address some of the questions that the Board
10 had, the concerns about entertainment, parties, the
11 conditions that the embassy has agreed to which are
12 frankly unprecedented as well, another distinction in
13 this case.

14 If that meets the Board's approval, Madam
15 Chair, could we proceed in that?

16 CHAIRPERSON REED: Please.

17 MR. MLOTEK: Then at this time then I
18 will turn the floor over to Deputy Assistant
19 Secretary Theodore Strickler.

20 MR. STRICKLER: Good morning, Madam
21 Chair, and Members of the Board. For the record, my
22 name is Theodore Strickler. I reside at 10652 John
23 Ayers Drive in Fairfax, Virginia and I am the Deputy
24 Assistant Secretary in the Office of Foreign
25 Missions.

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1 I have some prepared remarks this morning
2 that I'm going to deviate from and not read to you
3 because I feel that this issue is so important that I
4 have to, with your indulgence, go into a little bit
5 of history.

6 I first came to the District of Columbia
7 when Lyndon Johnson was President. I was a student
8 at American University, the School of International
9 Service, and after four wonderful years in that
10 institution I graduated and was very much interested
11 in a foreign service career and within a year of
12 graduation I managed to pass the entry test and
13 examinations and was sworn in as a foreign service
14 officer in the United States of America. And since
15 that time I've been with the Department of State and
16 I've been privileged to serve my country both at home
17 and most abroad in places such as Rome and Geneva,
18 Munich and Bonn, but also places such as Khartoum,
19 Azmera, Cairo and Mogadishu. I can tell you from
20 those experiences and over the years, the world has
21 changed and the world has changed dramatically. You
22 all read about it in the headlines. I don't need to
23 go into details. But having seen and lived that
24 experience overseas, I can tell you that change is
25 real and it affects every one of my colleagues, both

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1 in my service and in our sister services of other
2 countries who serve their governments at home and
3 abroad.

4 The world is a much more dangerous place
5 today. We've all seen that dramatically illustrated
6 with the bombings of our embassies in Nairobi and
7 Tanzania and most recently the tragic bombing of our
8 warship in the Gulf of Aden. When I first joined the
9 Foreign Service, it was not unusual for the Secretary
10 of State to travel abroad with a body guard or two,
11 one or two individuals, just traveling alongside,
12 flying on commercial aircraft. You all know what the
13 Secretary of State does now with the motorcades, the
14 limousines, all of the security protective envelope.

15 It's very much the same treatment that's accorded
16 the President and the Vice President. That in and of
17 itself is an example of how the world has changed.
18 But more importantly the way we operate overseas is
19 no longer in a carefree atmosphere. It is filled
20 with the potential for danger anywhere in the world
21 and we simply can't specify that what we need to be
22 prepared to counter a potential dangerous situations
23 in this area or that area. We have to be prepared
24 everywhere. We can't let our guard down in any given
25 location at any given time. And for that reason, we

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1 have a adopted a very stringent series of guidelines
2 as to how our embassies should be built and
3 constructed and how they should be located. And one
4 of the most important security aspects of our embassy
5 defensive posture is what we refer to as the 100 foot
6 setback. This is a requirement that our embassies
7 must have at least 100 feet from the sidewalk or from
8 the street as a buffer zone, if you will, to minimize
9 the potential damage from any sort of terrorist
10 attack.

11 As you can imagine, many of our embassies
12 do not meet this requirement because they've been in
13 existence for a number of years and you just don't
14 pick up embassies and move them very easily. And
15 we're also confronted with situations where it was
16 not possible to have a wide selection of suitable
17 sites where our embassies could be located, so
18 sometimes compromises had to be made and in those
19 situations we work very closely with the host
20 government to resolve those problems. In the case of
21 Azerbaijan is an illustration of where we have worked
22 very hard, very closely and very cooperatively with
23 the government of Azerbaijan to meet our
24 requirements. I may say that our requirements at
25 times to the government of Azerbaijan probably appear

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1 to be demands, not just requirements, but we had
2 secured a building which was a suitable building for
3 our embassy, but unfortunately it was surrounded by
4 other residential property, right up next to the
5 property line with the embassy, in other words, no
6 100 foot setback. And in order to meet this
7 requirement, the government of Azerbaijan at our
8 urging relocated the residents of these properties
9 and moved them elsewhere, demolished the buildings in
10 order to give us this 100 foot setback which is so
11 essential to our security posture.

12 If you can imagine the disruption that
13 this created, the consternation, the dilemma that the
14 host government faced in doing this it would be as
15 though an embassy here demanded that we clear the
16 site around an embassy on Wyoming Avenue or pick any
17 site in the District of Columbia and physically
18 against their will, move the inhabitants someplace
19 else. That's what happened in Baku. And the
20 government of Azerbaijan really went to a great deal
21 of time and effort and really did something on our
22 behalf that was contrary to the interests of its own
23 citizens.

24 Now we deal in my office and in the
25 Office of Foreign Missions on the basis of

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1 reciprocity. We feel that the government of
2 Azerbaijan in its request to locate its embassy here
3 in the District of Columbia has done far more than we
4 could ever ask them to to meet our requirements and
5 we feel that we should be no less forthcoming in
6 acknowledging their interest and their right, really,
7 to locate in the District of Columbia in a suitable
8 building and that we hope the Board will take into
9 account not only the legitimate and the proper views
10 of the neighborhood, but also the fact that in this
11 world everything is connected to everything else and
12 the issue today is not just an issue of what is best
13 for the District of Columbia, but the issue is also
14 what is best for the United States and its diplomatic
15 relations with the rest of the world.

16 Thank you, Madam Chair. I would now like
17 to turn to my colleague, Mr. Mlotek, who would like
18 to address some other aspects of this issue.

19 CHAIRPERSON REED: Thank you very much,
20 Mr. Strickler.

21 Did Board Members have any questions of
22 Mr. Strickler?

23 VICE CHAIRPERSON SOCKWELL: Mr. Deputy
24 Assistant Secretary, one question. What was the time
25 period of the relocation in order to accommodate your

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1 needs, just how long did that take?

2 MR. STRICKLER: The relocation was under
3 discussion for some time, but the actual relocation,
4 I believe, took a period of six months. If you
5 recall, this hearing was originally scheduled earlier
6 in the year and at that time, the relocation had not
7 taken place and for that reason the request for the
8 delay in the hearing was made. But that relocation
9 now has been completed and the property in terms of
10 the setback is no longer an issue for us.

11 VICE CHAIRPERSON SOCKWELL: Thank you.

12 CHAIRPERSON REED: I have one very quick
13 questions and that's in regards to the 100 foot
14 setback. Is that a requirement -- that's a
15 relatively new requirement, you said?

16 MR. STRICKLER: We've had requirements of
17 various distances before, but this is now established
18 as the iron clad requirement for embassy property.

19 CHAIRPERSON REED: As of when?

20 MR. STRICKLER: I don't recall the exact
21 date, but we can get --

22 CHAIRPERSON REED: Approximately.

23 MR. STRICKLER: Within the last year or
24 so, subsequent to the bombings in Dar es Salaam, yes,
25 it was subsequent to the bombings.

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1 CHAIRPERSON REED: And this is a
2 requirement, I wasn't sure if you say this was
3 world-wide or in certain areas of the world?

4 MR. STRICKLER: The threat is global.
5 This is a global requirement.

6 CHAIRPERSON REED: Okay, thank you.

7 MR. STRICKLER: Just to clarify, Madam
8 Chair, it would be for new embassies. In the middle
9 of London, for example, we're not going to --

10 CHAIRPERSON REED: I understand that. I
11 was -- I understood that. I was just wondering if it
12 was only germane to certain localities or if it was
13 across the Board requirement now. Thank you.

14 Ms. Renshaw?

15 MEMBER RENSHAW: Yes, Madam Chair, a
16 question for the Deputy Assistant Secretary of State,
17 Mr. Strickler, thank you. You mentioned in your
18 commentary that the world is more dangerous and you
19 talked about the worldwide threat. I would like to
20 know what you are advancing to the neighborhood in
21 the way of the neighborhood security because
22 embassies as we know, are often targets in this
23 country. Chancery buildings can attract attention,
24 unwanted attention. And this puts the neighborhood
25 in a bit of a security bind and I'd like to know what

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1 you are offering in the way of security to the
2 neighborhood.

3 MR. STRICKLER: First of all I would note
4 that in terms of actual attacks, we've had far more
5 attacks on U.S. government installations, Oklahoma
6 being a prime example than we have had on embassies.

7 I don't recall that any embassies being blown up in
8 recent years. But it's a fair question. The
9 question about security in general. Security for
10 diplomatic establishments is handled with a
11 combination and cooperation of various police
12 elements in the District with the Uniformed Division
13 of the Secret Service, with the Metropolitan Police
14 and with the Bureau of Diplomatic Security. And
15 based on current threat information, additional
16 assets and resources are provided to embassies to
17 counter any perceived threat.

18 CHAIRPERSON REED: Thank you very much.
19 Mr. Mlotek?

20 MR. MLOTEK: If I could just amplify for
21 Ms. Renshaw, there has not, in fact, been any attack
22 on a foreign embassy or a foreign diplomatic mission
23 in the United States going back as far as we know.
24 Nevertheless, some missions we evaluate as being more
25 threatened than others, the Israeli Embassy would be

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1 one, for example, and that has a very high level of
2 physical security placed around it. In fact, on a
3 24-hour day basis.

4 At various times other missions -- the
5 Chinese Embassy attracts some attention so there is
6 around the clock, 24-hour, what is called a fixed
7 post security there.

8 Every foreign embassy in this city and
9 every proposed new location for a chancery in this
10 city is reviewed by our security professionals in the
11 Department of State, our colleagues in the Diplomatic
12 Security Service. Every time a foreign government
13 comes to us, the Office of Foreign Missions as they
14 are legally required to do, we refer this request to
15 numerous parties, including the National Capital
16 Planning Commission and others and our security
17 people who send a security officer out there and the
18 security officer evaluates the site and the security
19 officer also goes into the files of the Department of
20 State, what is called the threat analysis data and
21 talks to the threat analysis professionals who are
22 basically intelligence analysts and evaluates what
23 degree of threat Azerbaijan is under.

24 Now notwithstanding the comment that was
25 made by one Board Member about the security of body

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1 guards who would accompany Ambassadors to various
2 social functions, I hope it will be noticed and made
3 a mention in the record that Ambassador Pashayev from
4 Azerbaijan is here today without any security
5 protection and I have met with Ambassador Pashayev on
6 many occasions, at least 20 occasions since this case
7 first arose, both in the Department of State, in
8 various other locations, the site in question. He
9 has never been accompanied by a security guard. So
10 the government of Azerbaijan as a government,
11 Ambassador Pashayev as an individual, and the United
12 States government as a government, all agree that
13 there is no major or any threat, any significant
14 threat that would warrant any sort of professional or
15 special security protection for Azerbaijan that would
16 set it apart from the 183 other or so embassies in
17 this city that do not have a security problem,
18 leaving aside about five or so that do. But
19 Azerbaijan is not one. And just for the record, we
20 so certified in Mr. Strickler's formal submission to
21 the Board that in fact there is no special security
22 need that applies to this site, so there is no
23 special security need that would apply here, Ms.
24 Renshaw. There's no specific threat or special
25 threat that deserves attention. And the embassy, the

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1 chancery if it were permitted to locate, they would
2 receive the ordinary, routine, Secret Service
3 Uniformed Division protection that all other Foreign
4 Mission locations in the District have which is a
5 roving patrol every couple of hours or so, 24 hours a
6 day.

7 CHAIRPERSON REED: Thank you, Mr. Mlotek,
8 now for your presentation.

9 MR. MLOTEK: Right. I would just like to
10 begin by noting that everything that Mr. Strickler
11 testified to is also summarized for the record in his
12 written submission to the Board which the State
13 Department did file in a timely fashion, according to
14 the rules of the Board of Zoning Adjustment.

15 Let me begin my part of the presentation
16 by stating this, a concern has been expressed here or
17 a question was raised here about how it was that the
18 Embassy of Azerbaijan came to fix upon this property.

19 I think this is a very critical and central issue in
20 this Board's deliberation. The Board should know
21 that this embassy, Azerbaijan, conducted its search
22 for this building in a way which was absolutely
23 exemplary. It was a model of how a Foreign Mission
24 should look for a property. They coordinated with us
25 at the Department of State in the Office of Foreign

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1 Missions every step of the way. They were
2 inordinately sensitive to the concerns of the
3 residential communities in which they might locate
4 and as was mentioned and I would like highlight very
5 strongly because I think it's very relevant to the
6 Board's consideration, their original site, this was
7 their second choice, their first choice which they
8 much preferred was a location which was within the
9 diplomatic overlay, so we wouldn't have had that
10 problem as an extraneous issue to deal with, was in
11 the diplomatic overlay, but was almost immediately
12 behind the now famous property which the Chancery of
13 Benin purchases and received approval from this Board
14 to occupy as a chancery. And this embassy,
15 Azerbaijan, closely observed the progress of the
16 Benin case and even though they believed and we
17 believed that they would have a very good chance of
18 getting approval in that site, based upon the fact
19 that it was in the D-overlay and based upon this fact
20 that it was an embassy not much greater in size than
21 Benin and based upon the fact that the building that
22 they wanted to occupy was bigger than the property
23 that Benin ultimately occupied and had more parking
24 and based upon, notwithstanding the fact that this
25 Board had approved it, which would have increased the

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1 chances, nonetheless the Ambassador because he was
2 sensitive to the concerns of that community which
3 regarded saturation, if the Board will recall, that
4 was the issue in the Benin case, that the opposition
5 brought to the Board, that the area in Sheridan
6 Kalorama was quote over saturated, if that's not a
7 redundancy, saturated with chanceries as it was.

8 So the Ambassador withdrew from the deal.

9 He withdrew and began a search in other parts of the
10 city in consultation with us. And what we emphasized
11 was what we emphasized to all chanceries, if they're
12 good enough to come to us and consult with us
13 beforehand, not every chancery does that, but this
14 chancery did. We emphasize the fact that it is
15 important to find a location that does not have -- if
16 it is in a residential area, that does not have
17 private, residential homes in close proximity,
18 particularly not abutting the chancery, that are so
19 configured that they could allege, rightly or
20 wrongly, that they could allege the private
21 homeowners could allege some detrimental harm to come
22 from the embassy. That's number one. And number
23 two, we urged them then to look beyond the immediate
24 abutting properties, to properties that are 50 feet,
25 100 feet, 200 feet away and analyze, along with us,

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1 whether any specific harm or any specific detriment
2 could be said to fall upon those private residential
3 property owners from the presence of the embassy.
4 And then the third step is that we look around both
5 at the zoning square itself which is the D-overlay
6 analysis, the famous one third, two thirds test about
7 which you will hear and we also look within the
8 general 100 foot, 200 foot, 200 foot being the BZA
9 regulatory notice zone, 300 foot, 400 foot, to
10 analyze what else is in the neighborhood. Obviously,
11 the Department of State would not countenance and my
12 boss, Mr. Strickler would not countenance a foreign
13 chancery seeking to locate in an area which was
14 pristinely residential and which would interject for
15 the first time an office presence in an area that
16 didn't have any. So that goes out of the question.

17 This particular site met all of the
18 search criteria that I've just described. There is
19 no private resident that lives on either side of this
20 embassy, front, rear or side. The one private
21 residence that does exist on -- it would be I think
22 the east, no the west of this building, toward
23 Massachusetts Avenue, is a residence, but it houses
24 diplomats of a foreign country, the Vatican. And we
25 checked with the Vatican to find out whether they

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1 would have any opposition to an institutional use
2 such as a chancery located next to them. They said
3 no. Incidentally, I believe that they had sent a
4 letter of support, as residents to the file in this
5 case supporting the Application of Azerbaijan as has
6 the Ambassador of Norway.

7 In addition to that, we noted that there
8 were foreign chancery institutional uses elsewhere
9 throughout this neighborhood. This would not be the
10 first one. In fact, in the zoning square itself we
11 calculated that even though for some strange and
12 bizarre reason of how the D-overlay was mapped, this
13 particular site did not get mapped into the D-
14 overlay. We felt that if it were mapped again today,
15 it would fall into the D-overlay.

16 Now that in itself is not a critical
17 issue for us, but it's an important consideration
18 because in this zoning square you have a chancery of
19 Finland, a chancery of the Vatican representation
20 here and their residential facilities. So in other
21 words, in this zoning square, precise zoning square,
22 there is no, I repeat, no private civilian use.
23 There is only diplomatic use and the preponderance of
24 this diplomatic use is chanceries. So that met the
25 criteria.

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1 In addition, almost directly across the
2 street from this site you have the Chancery of
3 Norway, which is a fairly large operation. And down
4 the street from it, in the other direction toward the
5 National Cathedral, you have the Chancery of
6 Belgium, which is a very large operation. Then, of
7 course, you have the National Cathedral itself which
8 is an institutional use and the Chancery of Cape
9 Verde a couple blocks north of the site.

10 So in other words, when we looked at this
11 site and when the Ambassador of Azerbaijan looked at
12 this site, he saw a neighborhood that was
13 residential, but not pristinely residential, not
14 solely residential. There's a lot of institutional
15 uses there.

16 And this fact, combined with the fact
17 that this embassy is so small in comparison to other
18 -- the other embassies in the area, for example, it's
19 much smaller than the Norwegian, the Belgian or the
20 Finish, combined with the fact that it had a lot of
21 parking on its grounds, combined with the fact that
22 the parking situation in this neighborhood itself is
23 not a very difficult situation and I will say more
24 about that later, those factors all combined, led us
25 to the conclusion that this was an appropriate site

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1 and the Ambassador proceeded on the basis of this.

2 But then even further, it's very
3 essential for the Board to note that the Ambassador
4 followed each of the steps that we commended to him,
5 with respect to dealing sensitively and openly and
6 transparently with the neighborhood. Almost
7 immediately after purchasing the property, the
8 Ambassador held a reception which he invited all of
9 the neighbors within about a 200 to 300 foot radius.

10 Many of them are sitting here today in opposition.
11 They all were given a tour of the facility. They
12 were all shown how the facility was going to be
13 carved up into individual offices and were able to
14 see with their own eyes that once this was done,
15 there would be virtually no room left for
16 entertaining. I mean they could see from the evening
17 that they came to the chancery, that just 40 or so
18 neighbors who were invited there, it was extremely
19 jammed and that it would be even more so after the
20 internal renovations that the Embassy wants to do to
21 convert it to office use. So that regardless of what
22 the Embassy's intentions would be, it's just
23 physically impossible and the neighbors could all see
24 this for themselves, it's just physically impossible
25 for them to hold any large scale social function in

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1 this property at any time.

2 But then perhaps the most important event
3 in this sequence of events is that the Embassy agreed
4 as you heard, in an unprecedented fashion to a whole
5 list of conditions which no chancery has ever agreed
6 to before and some of which frankly make the State
7 Department a little uneasy. We've never had any
8 chancery case in this city where a chancery has
9 agreed to limit the number of social events that it
10 holds. No American embassy would ever agree to that
11 overseas and that's what makes us uncomfortable about
12 a chancery doing it here because they could later
13 come to us and say well, look in our country you can
14 hold as many as you want and here you made us accept
15 these conditions, so we have to make it very clear to
16 them that we're not making them do it. If they want
17 to do it on their own volition, all right, but they
18 have to understand that we would never agree to this
19 in their country and yet they have agreed to it. And
20 that's a very material condition.

21 In addition, they've agreed to a
22 limitation of how many people would inhabit the
23 building. That's also a first. We've never had that
24 before in any chancery case. A very major concession
25 which again makes us somewhat uneasy because we don't

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1 accept any limitations on how many American diplomats
2 can be present in an American embassy overseas.

3 And then last of all, the Embassy
4 attempted on repeated occasion, both directly and as
5 a result of recommendations that were made by the
6 Office of Planning representative, Mr. Jackson,
7 attempted repeatedly to negotiate with the community,
8 the people who were in opposition and ask them what
9 conditions they wanted to see, whether there was any
10 room for compromise at all. This is something, of
11 course, that this Board in all cases historically
12 urges that the parties to such land use disputes try
13 to reach an accommodation and try to negotiate in
14 good faith to reach a compromise and the Embassy did
15 this on repeated occasion and were given a cold
16 shoulder and an absolute stone wall and an absolute
17 refusal to discuss any of this. So the opposition
18 simply said that their opposition was absolute and
19 uncompromisable.

20 When you take all of those things that I
21 just listed and combined them in total, you see that
22 the Embassy did what I think this Board would want a
23 chancery to do in seeking to locate and I think that
24 effort should be recognized.

25 CHAIRPERSON REED: Mr. Mlotek, if I

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1 understand you correctly what you're saying is the
2 decision to purchase that particular site, that
3 particular building at that site was predicated upon
4 the application of a great deal of criteria that
5 would not be the case in the other sites that would
6 have been to some other observer appropriate for this
7 particular applicant?

8 MR. MLOTEK: I would say yes.

9 CHAIRPERSON REED: Uh-huh.

10 MR. MLOTEK: They had a very competent
11 professional real estate broker who brought them all
12 sorts of properties all over the city and I think
13 they went down the list and discussed these with me
14 and crossed one of them off the list after another.

15 CHAIRPERSON REED: In other words, it
16 wasn't so much the building itself that was being
17 considered, it was the siting of that particular
18 location.

19 MR. MLOTEK: Absolutely.

20 CHAIRPERSON REED: Or that particular --
21 it was a siting of the strategic siting of that
22 particular building that was of paramount importance
23 over and above just a building that would have been
24 in the mixed use diplomatic overlay.

25 MR. MLOTEK: Absolutely correct.

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1 CHAIRPERSON REED: Okay.

2 MR. MLOTEK: Absolutely correct.
3 Strategic in the sense of land use. Strategic land
4 use analysis which we do in all cases and we did
5 here.

6 That is correct.

7 CHAIRPERSON REED: Thank you very much.

8 MR. MLOTEK: Now with respect to several
9 issues that were raised by the Members of the Board
10 in response to the presentation of the applicant, I'd
11 like to point out the following. With respect to
12 security I think I responded concerning the security
13 of most Ambassadors here. They do not -- the
14 overwhelming majority of foreign Ambassadors do not
15 go about accompanied by body guards. There are a few
16 that do, but the vast majority of the 185 or 186 that
17 we have do not.

18 It should not escape the Board's
19 attention and I want to make sure that the Board
20 heard this correctly, that what we are speaking about
21 here is four events a year. The Embassy of
22 Azerbaijan, like many other small embassies, this is
23 a very typical pattern that you see with every
24 embassy from the United Arab Emirates to Benin, to
25 Togo, they cannot accommodate large social functions

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1 in their chancery facilities. And what they do for
2 these large social functions such as when they have a
3 visiting President or a visiting Foreign Minister, or
4 their National Day or their Armed Forces Day or any
5 of the other host of representational events that
6 they have, they rent space downtown. The National
7 Day of Azerbaijan this year was at the Willard. I am
8 sure that the Willard Hotel must host at least seven
9 or eight or nine functions a year and the other
10 hotels likewise. Nigeria which does have a large
11 chancery and is a fairly large diplomatic mission
12 here hosts its National Day every year at the
13 Shoreham Hotel. That is the typical pattern. That
14 is what we are talking about.

15 Now other missions which have been built
16 to spec, so to speak, the French Embassy, the German
17 Embassy, the new Italian Embassy, these types of
18 facilities that are built with the intention of
19 having large entertaining space, they do, it is true,
20 hold the vast majority of their functions and a large
21 number of them in their chancery space. But that is
22 not the typical pattern at all and it's certainly not
23 the typical pattern for small sized chanceries and
24 certainly not the typical pattern for small sized
25 chanceries that are located in buildings that were

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1 essentially built as residences.

2 So to try to ease your concern somewhat
3 about what the level of activity might be here, might
4 emanate from here, from this property, if it were a
5 chancery, that could inflict harm or detriment to the
6 community, that has to be kept in perspective. Four
7 functions a year that they are committing themselves
8 to limit themselves to, none of which would be very
9 large in a relative sense to other chanceries, even
10 in this area, larger chanceries.

11 And in that conjunction also, we come to
12 the issue of parking which is, of course, at the
13 heart of all neighborhood concerns when it comes to
14 congestion and to institutional impact. It should be
15 understood that in this neighborhood the parking
16 situation is not an impacted one. I personally
17 commute on this street, 34th Street at least four to
18 six times a day. My offices are at the International
19 Center, near UDC at Connecticut and Van Ness. I go
20 up and down 34th Street coming from my house and
21 going back. Every day, almost, I visit the main
22 Department of State facility and I commute on 34th
23 Street to Mass. Avenue and get on Rock Creek Parkway.
24 Sometimes in the middle of the day I will go home
25 for lunch or run an errand and I'm on this street as

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1 much as any of the -- I would dare say of the
2 neighborhood residents who are here today and I have
3 made a point of looking at the parking situation and
4 I have gone to at least six or seven meetings with
5 the Embassy at the site and parked my car there
6 during the day and never had the slightest
7 difficulty. And in this regard I would merely cite
8 in conclusion on the issue of parking that when I
9 went to our last meeting yesterday, which concluded
10 about 2:15 in the afternoon, as I was pulling out my
11 parking space, immediately in front of the embassy,
12 one of the opponents in this case, Dr. Ellwood was
13 pulling in to park in front of her house. She had no
14 difficulty at all finding a parking space. She
15 sidled her car right into a space directly across
16 from her house in the middle of the day when the peak
17 of activity of the other chanceries in the
18 neighborhood would occur. And as you've heard the
19 testimony indicate, the Embassy of Azerbaijan is not
20 going to bring to this site any significant, any
21 measurable even, additional measure of parking, since
22 their parking for their employees will be
23 accommodated on site, and their visits are very few.

24 Now let me come then -- if there's any
25 question on the issue of parties or entertainment or

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1 parking?

2 CHAIRPERSON REED: Yes. Whatever social
3 activities that will occur there will occur before 5
4 o'clock? That was one of the conditions, I think
5 that was proffered.

6 MR. MLOTEK: No, I don't think that's --

7 CHAIRPERSON REED: Before 5 or after 5?

8 MR. MLOTEK: I don't think, no, I don't
9 think in the conditions that -- the conditions I
10 think that they're willing to agree to are the ones
11 that were listed by the Office of Planning in its
12 report. And I don't think that they committed in
13 that to the four social functions.

14 CHAIRPERSON REED: On page 12 of that
15 report, Mr. Mlotek it does say that, number 2, "No
16 social events should be permitted at the chancery
17 whatsoever after 5 o'clock p.m."

18 MR. MLOTEK: That, I think, is something
19 -- I think those are a separate set of conditions
20 which were opposed, proposed rather, by the opponents
21 and they were proposed to Mr. Jackson.

22 CHAIRPERSON REED: Right, I see now.
23 That was -- I had just glanced at it. That was from
24 the community that had been included in their report.
25 They were just basically mentioning that.

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1 MR. MLOTEK: Correct. Those aren't the
2 ones that were --

3 CHAIRPERSON REED: That were being
4 proposed by the Office of Planning. I see now.

5 MR. MLOTEK: Right. The ones that the
6 chancery has agreed to are the ones that were
7 proposed by the Office of Planning.

8 CHAIRPERSON REED: On page 14.

9 MR. MLOTEK: Yes, right. Well, it's
10 repeated twice. It's both the Office of Planning
11 included it on page 2 --

12 CHAIRPERSON REED: 2 and 14. They
13 repeated it.

14 MR. MLOTEK: Right.

15 CHAIRPERSON REED: I think that they're
16 the same, aren't they?

17 MR. MLOTEK: And it should be noted in
18 this regard, I've already discussed the difficulties
19 we have with the way the OP report was prepared. It
20 should be really highlighted the Office of Planning
21 has had two bites at this apple. There was a very
22 extensive Office of Planning land use analysis of
23 this proposal done in June by a predecessor to Mr.
24 Jackson, Mary Vogel whom you all remember because she
25 sat here on the dais with you. She came to the site.

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1 She had extensive conversations with them. She
2 discussed the idea of various conditions, so that
3 whole discussion was held at that time and she went
4 back to her office and began preparing a report. Now
5 in the interim, of course, she left, but Mr. Jackson
6 then sort of reinvented the wheel here and studied
7 everything again from the beginning.

8 But the main thrust of what I'm saying is
9 that the chancery, the Embassy was exceedingly
10 cooperative with the Office of Planning, in enabling
11 them to see the site and to discuss it with them and
12 to discuss the issue of conditions with them, as they
13 would have been prepared to discuss it with the
14 neighborhood itself, had the neighborhood been
15 willing.

16 CHAIRPERSON REED: In regard to the --
17 you say that in your opinion parking is not a
18 problem, would not be a problem with these additional
19 -- the four social activities. Nonetheless, are you
20 saying that you would object to a parking management
21 plan?

22 MR. MLOTEK: No. No.

23 CHAIRPERSON REED: Or looking at the map,
24 the traffic going into this particular site would
25 enter on 34th Street or Fulton?

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1 MR. MLOTEK: I think the majority of
2 people would come from Massachusetts Avenue on to
3 34th Street.

4 CHAIRPERSON REED: The entrance is on
5 34th Street?

6 MR. MLOTEK: The front entrance to the
7 building is on 34th.

8 CHAIRPERSON REED: Okay, then behind the
9 building where the park land area is?

10 MR. MLOTEK: There is no parking there to
11 my knowledge. It's a very narrow -- Fulton is very
12 narrow where it goes into Normanstone.

13 CHAIRPERSON REED: There's no parking
14 allowed on Fulton.

15 MR. MLOTEK: I don't believe. Someone
16 from the neighborhood I'm sure can verify this, but
17 as I recall.

18 CHAIRPERSON REED: So the accommodating
19 parking would be along 34th Street and -- just 34th
20 Street. I don't think there's too much on Mass.
21 Avenue.

22 MR. MLOTEK: No, I think the majority of
23 parking would be on 34th Street on those four
24 occasions.

25 CHAIRPERSON REED: I think that a parking

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1 contingency plan in the event, just to address or
2 perhaps diffuse or alleviate any perceived congestion
3 would be good now. If you have a contingency plan
4 and you don't need it, fine, but if in fact it does
5 come to the point that there is a need for it, then
6 you have a plan in place to address that and that
7 would diffuse the opposition greatly as to parking
8 problems.

9 MR. MLOTEK: The State Department
10 certainly would have no objection to leaving the
11 record open to do a parking management plan. In that
12 event though, I would urge that at some point,
13 perhaps if that were what the Board had in mind, it
14 would give some signal or some indication to the
15 Applicant about what kinds of things it would like to
16 see in the parking plan to make sure that they
17 address the needs. But with respect to parking, I
18 would beg the Board, please to consider one final
19 issue that affects parking for all of us in
20 Northwest, where I live in Georgetown where the
21 parking is much worse, as you know.

22 We benefit, all of us, the residents of
23 Northwest, we benefit from the District of Columbia's
24 residential parking permit program. No foreigner, if
25 you will, no outsider, no interloper who would dare

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1 come on to the streets of the residential areas of
2 the District of Columbia who does not have a
3 residential sticker for that zone, for that ward in
4 this case, Zone 3, I'll get to the diplomatic license
5 plates --

6 CHAIRPERSON REED: Wait a minute, wait
7 one second. Now I've kind of been lenient as far as
8 decorum is concerned in this particular hearing room.

9 Now I ask that there be no speaking out or speaking
10 from the audience. If you have something to say then
11 I ask that you wait until the appointed time that you
12 will be given an opportunity to speak and in the
13 event there is any further disruption with that
14 speaking out, I will have no alternative but to ask
15 you to leave.

16 Thank you.

17 Okay, Mr. Mlotek?

18 MR. MLOTEK: The residential parking
19 permit program prohibits anyone from parking on the
20 street for more than two hours or else you get a
21 ticket. Now, I think in this particular street, in
22 these particular blocks, the limit may only go until
23 6:30 or 8:30, I'm not sure. But what is clear is
24 that the neighbors, the residents of this community
25 have the right to ask the District to extend this

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1 until 10 o'clock at night and make it go 6 days of
2 the week as I understand it. That's what we have on
3 my street. Paradoxically I also live on 34th Street.

4 Same street, but a little -- on the other side of
5 Observatory Circle in Georgetown. That's what we
6 have there. Nobody can come. So if you have a party
7 and I mean frankly although some people just come in
8 and out, a lot of people stay for more than two
9 hours. They're going to get a ticket and the
10 embassy, if it's going to be responsible, act
11 responsibly towards its invited guests, is probably
12 going to tell its invited guests in the invitation,
13 as I've seen in many invitations that I've received
14 from embassies, you know, please be advised that
15 parking is available in the surrounding residential
16 streets, but you are subject to a two-hour limit and
17 I think when those kinds of things are taken into
18 account, and what I have seen, and I want the Board
19 to accept this as personal testimony, the opposition
20 is certainly free to enter conflicting testimony, but
21 based on what I have seen traversing this street at
22 all times of the day and night, because I go to many
23 embassy functions also in that area at the Embassy of
24 Finland, for example, I have never had the slightest
25 difficulty finding a parking space on 34th Street.

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1 And I can't imagine that the residents do now or that
2 they would at a chancery the size, the small size of
3 Azerbaijan if they moved in there. But as regards to
4 the parking plan, we don't have a problem with it.

5 CHAIRPERSON REED: Thank you, Mr. Mlotek.

6 I think that we will definitely hear from the
7 residents and they're the ones who live right there.

8 They will definitely give us an update as to what
9 the parking situation is around that particular area.

10 MR. MLOTEK: I have to cover one issue,
11 I'm sorry, but it's been raised in this case. I know
12 the time is of the essence, and I don't want to have
13 to address it, but it has been raised and that issue
14 concerns the diplomatic overlay.

15 As I hope the Board is aware, there is
16 nothing that is more misunderstood in the zoning law
17 in the District of Columbia than the so-called
18 diplomatic overlay. And it has been unfortunately
19 raised in this case in a way that sort of obfuscates
20 what is the role and the duty of the Board to perform
21 here and ultimately adjudicating the case.

22 Specifically, there are some individuals
23 or persons including, it seems the Office of Planning
24 from reading its report, that believe that the fact
25 that a mere fact that a property is not in the

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1 diplomatic overlay is in and of itself a grounds for
2 denying an application. I think the Board is aware
3 of the State Department's position in this matter.
4 The State Department's position which we have
5 incidentally noted very carefully in our written
6 submission and I would flag the Board's attention to
7 it. It is covered in our written submission.

8 The diplomatic overlay has no formal
9 role, I want to emphasize, it has no formal role in
10 the statutory process that is created by the Foreign
11 Missions Act. That is the process that you, the
12 Board Members, participate in. The diplomatic
13 overlay, for example, is never even mentioned once in
14 the Foreign Missions Act. The diplomatic overlay
15 exercise was an attempt by the District government,
16 in conjunction with the National Capital Planning
17 Commission to try to map areas of the city,
18 residential areas of the city, to take an inventory
19 or a census, if you will, of the extent to which
20 nonresidential uses had intruded into various
21 residential neighborhoods. And then to say that this
22 could act, I repeat, it could act -- it doesn't have
23 to act legally, but it could act as a general guide
24 to the Board in deciding whether "an area of the
25 District was appropriate or not appropriate for

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1 chancery location."

2 Now as I have already indicated, we feel
3 very strongly and the staff of the National Capital
4 Planning Commission agreed with us in the letter
5 which I think you have seen, that if this area,
6 meaning the zoning square, were mapped today under
7 the same criteria that was used in the diplomatic
8 overlay exercise, that is one third nonresidential to
9 two thirds residential and if exceeded one third
10 nonresidential, it would be included. That this site
11 or this zoning square would today qualify as being in
12 the D-overlay.

13 The Office of Planning took exception to
14 this based on the visit that I described to you which
15 we took exception to because the Office of Planning
16 representative spoke to someone, I don't know whom,
17 in the Vatican Embassy. I'm not sure that this
18 person was even qualified to speak on these issues,
19 but spoke to someone there and inferred or deduced
20 from what this person said that, in fact, the Vatican
21 chancery and it is a chancery, has a considerable
22 amount of residential use there. And that is true.
23 They do have people living there. But that is beside
24 the point I want to emphasize, for two reasons. One,
25 even if it is important for the result in this case

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1 that the site be in the D-overlay, even if it is
2 important, then it should be understood that it is
3 irrelevant from the standpoint of D-overlay analysis
4 whether there are, in fact, some people living in
5 what is a chancery. The Vatican property is carried
6 on the books of the Department of State as a
7 chancery. Under the Foreign Missions Act, it is a
8 chancery. Why? Because it was in chancery use as of
9 October 1, 1982 and therefore is grandfathered as a
10 chancery for all eternity, I guess which is important
11 to people in the Vatican, issues of eternity, but the
12 key fact that has to be understood is that even if,
13 let's say 50 percent, let's take a figure, 50 percent
14 of the gross area of the Vatican chancery were today
15 being used for residential purposes, they have a
16 perfect legal right under the Foreign Missions Act
17 tomorrow morning to change that to 100 percent. They
18 are a chancery. They don't require any further
19 zoning approval with respect to the use of their
20 existing buildings, not new construction, but their
21 existing buildings. So tomorrow morning they could
22 find houses for, residences for all of the people who
23 are living there now, either in the District or
24 elsewhere, and turn that building 100 percent into
25 chancery use without anybody having anything to say

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1 about it. It's their absolute right. And therefore,
2 it makes no sense legally and no sense from a land
3 use policy perspective to say that we are going to
4 fine tune, we're going to conduct a census of the
5 Vatican property that goes room by room, floor by
6 floor, and calculate whether this proportion is
7 residence or this proportion institutional. It just
8 doesn't work.

9 Having been in that building myself, I
10 can tell you that the vast preponderance of it is
11 nonresidential and one failure or error that Mr.
12 Jackson made in his study is that he counted as
13 residential very large areas that are meant for
14 entertaining visitors, official visitors, not
15 residential visitors. But secondly, the diplomatic
16 overlay is not the alpha and omega here. It is not
17 the end all and be all. The Board has to exercise
18 under the Foreign Missions Act the Board is intended
19 to exercise its own independent analysis of what the
20 character of this neighborhood is, whether it is in
21 the D-overlay or outside the D-overlay.

22 And in this regard, I point the following
23 out as I've pointed out in all the other cases that
24 I've been involved in. Chanceries are a part of
25 Washington. Washington is the seat of government.

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1 Chanceries have been here from the beginning, they
2 always will be. It is essential that we find a place
3 for them. Like police stations, like fire stations,
4 like schools, nobody particularly wants to have one
5 immediately next door to them, but the common good,
6 the common public good both for the District as an
7 entity as well as for the government of the United
8 States is that they have to be sited somewhere.

9 So then the question becomes where?
10 Where should they be sited. In the Benin case, we
11 all recall, even though the area was in the
12 diplomatic overlay, the site was objected to because
13 there were too many there already. And I said in
14 that case the difficulty was going to come before the
15 Board sooner or later that we were going to find a
16 location in response to the concern that the Board
17 felt about impact and saturation, that the State
18 Department and a foreign chancery might find a
19 location that was not in the D-overlay and then the
20 objection would be well, there are not enough
21 chanceries here, in other words, a chancery cannot
22 locate where there are too many chanceries and a
23 chancery cannot locate where there aren't enough
24 chanceries and in the end where could they locate?

25 The final spin on this is that we have

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1 been avidly, the State Department that is, we have
2 been avidly now investigating and have decided
3 internally that we should, in fact, proceed to allow
4 chanceries to leave the District of Columbia for the
5 first time in our history. There's been a policy in
6 place, we no longer fill this policy. It's
7 justified. We are in consultations now with the
8 National Capital Planning Commission to see how we
9 can amend the comprehensive plan so that that will be
10 in sync with what we want our policy to be.

11 But even there, I want to emphasize,
12 ladies and gentlemen, even when it comes to the
13 subject of allowing chanceries to leave the District
14 which many people in the District would feel very --
15 they would shout hallelujah about, even there there
16 is opposition. To our people, to our great surprise
17 and shock, there are a lot of people about who
18 believe the chancery shouldn't be allowed, the State
19 Department should not allow chanceries to leave the
20 District.

21 So now behold the situation that we have.

22 Chanceries should not be permitted to locate where
23 there are too many chanceries already. Chanceries
24 should not be permitted to locate where there aren't
25 enough chanceries already. And chanceries should not

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1 even be allowed, if they can't find a place within
2 the District, to move outside the District.

3 There will be opposition, my point is.
4 There will be opposition of chancery location in each
5 and every case. But we count on the Board to try to
6 analyze the specific land use configuration that we
7 analyzed before asking, before recommending the
8 chancery to proceed and that the chancery analyzed
9 and that its zoning council analyzed and not to
10 conclude the adjudication on the basis of some
11 artificial distinction such as the diplomatic
12 overlay. It is merely a guide.

13 Before concluding I wanted to ask Mr.
14 Sockwell if he wanted me to address the issue of
15 enforcement of conditions, I know that you had
16 raised.

17 VICE CHAIRPERSON SOCKWELL: You might
18 want to do that, just briefly.

19 MR. MLOTEK: Conditions are enforceable.
20 They're enforceable by the Department of State. We
21 have a specific -- in the Foreign Missions Act, a
22 specific statutory directive that says that the
23 Secretary of State shall require substantial
24 compliance with D.C. building and related codes.
25 That includes in our interpretation, that includes

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1 zoning, Board of Zoning Adjustment orders that
2 contain conditions. So chancery would be required to
3 comply with it. Now with respect to the number of
4 people whom they would have employed there, that is a
5 matter of public record.

6 In most cases, Mr. Sockwell, the cases
7 that you refer to, we don't monitor this on an on-
8 going basis because as I said, this is the first case
9 ever that a numerical limit had been imposed. So you
10 are correct, but correct in sort of a backhanded way.

11 We don't check how many people are employed by each
12 and every embassy because no other embassy has a
13 limit except the old Soviet Embassy did when we had -
14 - during the Cold War and those you better believe we
15 did check. And incidentally, I think the Cubans
16 also, we do check the Cubans because there is a
17 numerical limit there for bilateral reasons.

18 But no other -- for land use reasons,
19 there isn't any. This would be a first and if it
20 would make the Board feel more comfortable that we
21 would maintain some on-going or regular check as to
22 how many employees were employed there, that
23 certainly is something that we could consider doing
24 and I think we would. But the bottom line is that
25 any member of the community can obtain that

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1 information. It's public information, can go to the
2 Office of Protocol and ask how many -- or the Office
3 of Foreign Missions now, I guess, with the
4 transition, we have that information as well. And
5 ask how many accredited employees are there at the
6 Embassy of Azerbaijan. It's public record. It can't
7 be concealed.

8 CHAIRPERSON REED: Okay. Thank you very
9 much, Mr. Mlotek.

10 Now this certainly has taken up a lot
11 more time than what we had anticipated. I guess I
12 should announce that -- how many people are here for
13 the Catholic University case? Okay, obviously, we
14 didn't get to that this morning.

15 (Laughter.)

16 And we have still to complete this case
17 which will include the Office of Planning Report and
18 the folks in opposition and support.

19 There are no other people in support of
20 the case, Mr. Mlotek?

21 MR. MLOTEK: I'm informed that there are
22 two citizens of the District of Columbia here who are
23 in support.

24 CHAIRPERSON REED: All right.

25 MR. MLOTEK: In addition to the letters

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1 you received in support.

2 CHAIRPERSON REED: All right, thank you.

3 So those who are here for the Catholic University
4 case that will not be, unfortunately, be heard until
5 after lunch and we do apologize for that, but there's
6 just no way that we can anticipate how long a
7 particular case is going to take, so rather than your
8 having to sit here and endure this hearing, you can
9 go ahead and come back. We will probably break for
10 lunch at approximately -- what do you think, around
11 1, 1 o'clock and we'll come back around 1:30. That's
12 all we can tell you at this point. At least you can
13 go get lunch or do something else if you'd like.

14 Now in regard to this particular case, we
15 come now to the Office of Planning Report and we have
16 to address that and have to take an assessment as to
17 whether or not we need to take a break, a short break
18 before we -- a short recess, Ms. Renshaw?

19 MEMBER RENSHAW: Yes. A short recess
20 would be appreciated.

21 CHAIRPERSON REED: They're asking for a
22 short recess because we've been here since just
23 before 10 o'clock this morning and we're going to
24 take just a 5 minute recess and we'll return and then
25 we'll go into the Office of Planning Report or how

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1 we're going to address that.

2 Thank you.

3 (Off the record.)

4 CHAIRPERSON REED: The hearing will
5 please come back to order.

6 Mr. Mlotek and Ms. Giordano, can you
7 please come up to the table. We're going to address
8 the issue of the Office of Planning Report and
9 waiving the record. And basically, we think that
10 having discussed this during the break with Corp.
11 Counsel that because the Office of Planning Report is
12 the representation from the District of Columbia's
13 Office of the Mayor, that we cannot not hear their
14 report, not take their report. However, given the
15 fact that it was late is an issue we have to address,
16 so that you would have the opportunity to be able to
17 respond to that report as well as the opposition. It
18 was determined that it would probably be better to
19 continue this case to a date certain to allow the
20 Office of Planning to make any changes that they deem
21 necessary and to get the report to the Applicant and
22 to the State Department and the opposition so that
23 everyone can be on the same page as to the report and
24 the report being submitted in a timely and correct
25 manner.

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1 There were two dates that were given and
2 they were --

3 MS. KRESS: October 24th in the morning,
4 about 10'ish, you've got two preliminary matters so
5 you could --

6 CHAIRPERSON REED: Next week.

7 MS. KRESS: A week from today at 10
8 o'clock or December 5th at 1 p.m.

9 MR. MLOTEK: Just to clarify, this would
10 be in the nature of a hearing or --

11 MS. KRESS: A continuance of this
12 hearing.

13 CHAIRPERSON REED: In other words, we
14 would stop the hearing at this point.

15 MS. GIORDANO: I think they are because I
16 think we submitted July 26th. We need to make sure
17 that the 6-month time period gives you enough time.

18 CHAIRPERSON REED: If it's a week --

19 MR. MLOTEK: I'm confused. Are we
20 talking about two separate things here? We started
21 off talking about the Office of Planning Report. Is
22 the
23 --

24 CHAIRPERSON REED: This is all about the
25 Office of Planning Report.

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1 MR. MLOTEK: So this is an additional
2 hearing to address the issues of the Office of
3 Planning Report?

4 CHAIRPERSON REED: Well, it's a
5 continuation of the same hearing because you have not
6 heard any -- you will not hear -- we will not hear
7 the Office of Planning Report today.

8 MR. MLOTEK: I see, but we'll go forward
9 with the rest of the case.

10 CHAIRPERSON REED: Of course.

11 MR. MLOTEK: I misunderstood completely.
12 I'm sorry.

13 CHAIRPERSON REED: This is the segment
14 now where the Office of Planning would give their
15 report. However, given the fact that they was such
16 strong objection to their report, then we had to kind
17 of caucus a little bit and decide how to address the
18 problem because of the fact and there was a dilemma
19 because they have to give a report. And the other
20 thing is if that would be okay, we could decide on a
21 date certain, preferably next week that we could then
22 move forward with the Office of Planning Report, but
23 also in deference to anyone who is here today who
24 cannot come next week, we would then allow those
25 persons to testify, the persons in support, Ms.

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1 Giordano, if you have persons in support who may wish
2 to give their testimony while they're here today we
3 would be willing to allow them to do so or the
4 persons, people in opposition, however, we would
5 think that the Office of Planning Report being so
6 crucial to that position, that you may want to wait
7 until the Office of Planning can give their report,
8 if it's next week, can do so. Yes sir, come up to
9 the mike, please.

10 MR. SNODGRASS: I realize -- Francis R.
11 Snodgrass. I reside at 2804 34th Street which is
12 diagonally across the street from the subject
13 property. I realize you do not have any wonderful
14 solution to your current problem that you have an
15 agenda for the afternoon. I think it might be
16 appropriate if you would permit us just a few minutes
17 before you adjourn this, if that's what you decide to
18 do to make a couple of remarks on some factual
19 statements that have been just been made this
20 morning. I don't know my schedule for next week at
21 the moment, but I will do my best to come back then
22 or the 5th of December or whatever date it is that's
23 decided upon.

24 CHAIRPERSON REED: Okay, let me address
25 that for just a couple of minutes, Mr. Snodgrass?

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1 MR. SNODGRASS: Yes, Madam Chairman.

2 CHAIRPERSON REED: What I was trying to
3 ascertain was if, in fact, you'd like to give your
4 remarks today you can do so, or next week, but you
5 can't do both, one or the other. It's up to you,
6 it's your choice.

7 MR. SNODGRASS: There were some of the
8 factual statements that were made today that I
9 hesitate to leave unchallenged for a week, but I
10 wouldn't want to take the time. For example, it was
11 stated that the --

12 CHAIRPERSON REED: No, no, no, no. But
13 why do that? It doesn't matter. Exactly where we
14 stop is where we're going to stop. We're not going
15 to in any way address anything else that pertains to
16 this particular case if we continue it. So we would
17 pick up just as if we were still doing it today and
18 you would have the opportunity to address it at that
19 time.

20 MR. SNODGRASS: Well, I don't know
21 whether Ms. Doggett has any difference. We will do
22 whatever you think appropriate.

23 CHAIRPERSON REED: All right.

24 VICE CHAIRPERSON SOCKWELL: I think it
25 would probably be more coherent for you to wait until

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1 the following hearing to bring all the issues up
2 together.

3 CHAIRPERSON REED: Are you all going to
4 make a decision as to whether or not the persons in
5 support wanted to go ahead with their testimony
6 today?

7 (Pause.)

8 MR. MLOTEK: It's just the issue of the
9 date.

10 CHAIRPERSON REED: The 5th of December?
11 So it would have to be next week, if that's okay.

12 (Pause.)

13 MR. MLOTEK: All right, we can go for the
14 October 24th.

15 CHAIRPERSON REED: That includes any
16 persons in support who want to speak at that time
17 too?

18 MR. MLOTEK: Inasmuch as they came here
19 and took time off and --

20 CHAIRPERSON REED: I proffered that to
21 them as an alternative to coming back next week.
22 They have three minutes apiece and we can do that
23 today.

24 MR. MLOTEK: I think they would prefer to
25 do it. I'm not speaking for them, but since they're

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1 here.

2 CHAIRPERSON REED: Then let's do that,
3 the three minutes apiece for those persons in support
4 and then everyone else from this point on, it's the
5 Office of Planning Report or any other government
6 report and then persons in opposition and then the
7 Applicant will have closing remarks.

8 MS. BAILEY: Madam Chair, you forgot the
9 ANC.

10 CHAIRPERSON REED: I'm sorry, you're
11 right. That's extremely important. The Office of
12 Planning and any other government reports which would
13 be the ANC -- of course, the ANC would have an
14 opportunity to speak as well.

15 Can you come forward and to the mike,
16 please. Name, address.

17 MS. DOGGETT: Rosalyn Doggett, I'm with
18 the ANC, 2702 36th Street, N.W. I just wanted to
19 know what time you had indicated on the 24th.

20 MS. KRESS: I think 10 o'clock. They
21 have two preliminary motions that the Board needs to
22 handle and I would guess about 10 o'clock to 10:15 is
23 when the hearing would begin, a week from today.

24 MS. DOGGETT: Okay.

25 CHAIRPERSON REED: Be here at 10 o'clock

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1 and we will take it up at that time. Okay, persons
2 in support. I think there are three people. Would
3 you like to come up to the table at this time, and
4 give us your testimony.

5 All three at the same time, please.
6 There are only two people, okay, sure.

7 MR. FRANKLIN: Good afternoon, Madam
8 Chair and Members of the Board. Thank you very much
9 for this opportunity. I appreciate your fitting us
10 in.

11 My name is Shai Franklin. I'm a resident
12 at 2555 Pennsylvania Avenue, N.W. And I vote in the
13 District in Ward 2.

14 I feel when Mr. Mlotek said that no one
15 wants to have an embassy next door I would actually
16 take issue with that. I live across the street from
17 a facility that's being built for the Egyptian
18 Defense Office. As I understand it, there was no
19 opposition to that being constructed. Many people
20 who live in the District of Columbia, especially in
21 this part of Northwest where I live and up to where
22 the Naval Observatory is, I think live here because
23 of the world class nature of this city, much of which
24 depends on the cultural and business opportunities
25 that are brought to us by having embassies in the

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1 District of Columbia. I think it would be very
2 unfortunate if embassies started to leave the
3 District as businesses have been leaving the
4 District.

5 Mr. Strickler said that it's not a matter
6 of what is best for the District of Columbia. I
7 would take issue with that. I think that this is
8 best for the District of Columbia. I think this is
9 very good. I wish that we could have more embassies
10 engaged in the kinds of cultural and political
11 activities that the Embassy of Azerbaijan has been
12 engaged in, even from their currently temporary
13 facility.

14 The people of Azerbaijan and the
15 government of Azerbaijan are known for their
16 hospitality, culture, independence, tolerance and
17 pride. They lean to the West. They've been
18 conducting outreach to the American people and if
19 they are here in the District of Columbia it makes it
20 much easier for them to do that.

21 Ambassador Pashayev who I know personally
22 and I also know by reputation is a man of honor, who
23 acts in good faith. He's widely respected in the
24 D.C. community and he seeks to outreach to people
25 like us who live in the District of Columbia.

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1 Our own next door neighbor at home
2 happens to be in charge of all State Department
3 properties overseas and I should mention that I'm not
4 an employee or past employee of the U.S. government
5 or the Embassy of Azerbaijan or the government of
6 Azerbaijan.

7 I spoke of my next door neighbor,
8 however. Upon returning from a visit to Baku in
9 Azerbaijan last year, before I knew of this situation
10 here with the embassy in the District, I talked to
11 her about the situation of our embassy in Baku
12 because I could see that it was a very precarious
13 siting, given the events that were happening last
14 summer, as you will recall. And she confirmed to me
15 that this was a very serious, very difficult
16 situation, politically as well as physically and I'm
17 very gratified that I was able to come here today to
18 speak to you as a D.C. resident, as somebody who
19 understands the importance of having this embassy
20 here.

21 Thank you.

22 CHAIRPERSON REED: Thank you very much
23 for your testimony.

24 MR. WOOD: Good afternoon, Madam Chairman
25 and Members of the Board. My name is James Wood and

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1 I'm a resident of the District. I live in Georgetown
2 on 33rd Street between P and Volta. And indeed, I am
3 aware of various intrusions in neighborhoods that
4 parking can create because we live right around the
5 corner, my wife and daughter and I from the
6 Georgetown Club and on a continuing basis both day
7 and night when they're open, their valet parkers come
8 and take our parking spots. And this is something we
9 resent a great deal and which we think is probably
10 dangerous.

11 In any event, it is an intrusion and if
12 people were living there, it would be much more of an
13 intrusion, but we seem to live with it because no one
14 will do anything about it.

15 But I want to talk more about the
16 reciprocity issues involving Azerbaijan and the
17 United States from the perspective of having worked
18 in the private sector and for a number of years I
19 represented the New York Stock Exchange on opening
20 doors to foreign markets, predominantly countries
21 such as China, the former Soviet Union and of course,
22 Azerbaijan is part of the -- was part of the Soviet
23 Union, and Central and Eastern Europe.

24 I think there's no question but in the
25 private sector as well as in the government sector

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1 that these issues of reciprocity are extremely
2 important to our country and I know I can tell from
3 the comments that this Board is very sensitive to
4 that and I don't want to belabor the point. I just
5 want to give a different perspective from say outside
6 of government, that I can tell you from dealing with
7 the Peoples Republic of China, with Russia, with
8 other countries that are part -- that formed a part
9 of the former Soviet Union and various countries in
10 Central and Eastern Europe, these are important
11 issues and I ask the Board to continue to be
12 sensitive to these issues and bear these in mind as
13 you reach a decision.

14 And also bear in mind the great
15 importance that the country of Azerbaijan will have
16 to the United States, not just because of what was
17 mentioned by the first speaker because of their
18 culture and their friendship, but realistically
19 because of their tremendous amount of oil which
20 probably exceeds \$1 trillion by today's market or
21 maybe \$1.5 trillion with inflated prices, so it's a
22 tremendously important relationship to the United
23 States on a number of different levels and I simply
24 ask the Board to keep that in mind as they proceed.

25 Thank you very much.

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1 CHAIRPERSON REED: That's amazing.

2 (Laughter.)

3 That's amazing that you both finished
4 right on the buzzer. Thank you.

5 VICE CHAIRPERSON SOCKWELL: We'll let you
6 do witness training courses in the future.

7 (Laughter.)

8 CHAIRPERSON REED: Thank you so much for
9 your very insightful testimony here today. We
10 appreciate your time to come in and to testify before
11 us.

12 Any other comments from Board Members?
13 Okay, well this will conclude this morning's hearing
14 as to Azerbaijan -- I'm getting used to it coming off
15 my tongue. I'm sure I'm going to be saying it quite
16 a bit in the future.

17 MS. BAILEY: Madam Chair, can I please
18 ask something. There were several things that were
19 discussed during the course of the hearing and I just
20 wanted to remind you or ask you if you would like to
21 have those things submitted prior to next week. And
22 that is the floor plan of the building, possibly a
23 traffic management plan, the specification for the
24 signage, those were some things that you had
25 indicated an interest in getting a copy of and I just

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1 wanted to notify the Applicant, if you wanted to
2 provide those prior to next week.

3 MS. GIORDANO: Sure. We can submit the
4 floor plan right away and I can send one to some of
5 the neighbors too.

6 CHAIRPERSON REED: And also, I'd ask for
7 a copy of your existing maintenance and landscaping
8 contracts that you have.

9 MS. GIORDANO: Yes.

10 CHAIRPERSON REED: That would be great.
11 Those are the only things?

12 MS. BAILEY: The signage, specification
13 for signage and a traffic management -- possibly a
14 traffic management --

15 CHAIRPERSON REED: Well, you had already
16 mentioned those two things. But in addition to those
17 things and the maintenance and landscaping contract,
18 was there anything else?

19 MS. BAILEY: No.

20 CHAIRPERSON REED: Board Members, is
21 there anything else you can think of?

22 MS. SANSONE: Madam Chair, I had
23 discussed with the Applicant's attorney, there seems
24 to be a little discrepancy in the maps that were
25 submitted.

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1 MS. GIORDANO: It looks like a couple of
2 lots were not colored and I can submit a new set of
3 those and share one with the neighbors, if you'd
4 like.

5 CHAIRPERSON REED: I had a question about
6 that myself --

7 MS. GIORDANO: I don't know what
8 happened. I didn't color them myself.

9 CHAIRPERSON REED: And also the parcel on
10 the corner, 34th and Mass. that particular parcel is
11 orange. It's supposed to be pink.

12 MS. GIORDANO: I wrote on it residential.

13 CHAIRPERSON REED: I see that.

14 MS. GIORDANO: It's supposed to be pink.

15 CHAIRPERSON REED: I thought that was
16 some kind of special category that you were trying to
17 depict for us.

18 MEMBER RENSHAW: Pink over yellow equals
19 orange. On my map there are two properties across
20 the street that were not colored in and could someone
21 tell me what they are?

22 CHAIRPERSON REED: She just told you
23 that, Ms. Renshaw.

24 MEMBER RENSHAW: Did she?

25 CHAIRPERSON REED: She was just saying --

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1 MEMBER RENSCHAW: Is it yellow and pink?

2 CHAIRPERSON REED: She just said that she
3 inadvertently left that out and I had the same
4 question. That will be determined when it's
5 submitted and if you have a --

6 MS. GIORDANO: I had intended one to be
7 yellow and one to be pink and --

8 CHAIRPERSON REED: Again, we'll go by
9 what Ms. Giordano submits to us and if the opposition
10 has any differences of opinion then of course I know
11 that your coloring, your legend is a little different
12 and you can submit yours accordingly.

13 Thank you. All right, if there's nothing
14 else, then we will then adjourn until next week at 10
15 o'clock which we will continue this case and we'll
16 return around 1:30'ish after lunch. Thank you.

17 (Whereupon, at 1:04 p.m., the hearing was
18 recessed, to reconvene at 1:30 p.m., Tuesday, October
19 17, 2000.)

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

1:58 P.M.

CHAIRPERSON REED: Thank you. The meeting will now continue with the second case of the morning that we're now just taking up and we do apologize for the delay, however, the case this morning took a tremendous amount of time, much more than what we thought.

Ms. Bailey.

MS. BAILEY: Thank you, Madam Chair. Application No. 16613 of Catholic University of America, pursuant to 11 DCMR 3104.1 for a special exception under Section 210 to permit a modification to and further processing of an existing campus plan

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1 and to allow the construction of a student center in
2 an R-5-A District at premises 620 Michigan Avenue,
3 N.E., the property is located in Square 3821, Lot 44.

4 All those wishing to testify would you
5 please stand to take the oath.

6 (Witnesses are sworn.)

7 Madam Chair, the Office of Planning
8 Report was filed late, so a waiver is needed there.
9 In addition to that, the Zoning Office inadvertently
10 advertised this case for the wrong ANC. Notice was
11 sent to 5-C, however, the project site is located in
12 ANC-5-A06 and we do have a report from the Single
13 Member District Commissioner from that area.

14 The required affidavit of posting has
15 been filed. The campus plan is for the Years 1990 to
16 2002. Your indulgence in accepting the Office of
17 Planning Report is now before you for consideration.

18 CHAIRPERSON REED: All right. I think we
19 got the report, what, yesterday?

20 Board Members, have you had an
21 opportunity to be able to have read over this Office
22 of Planning Report?

23 VICE CHAIRPERSON SOCKWELL: Yes.

24 CHAIRPERSON REED: What did you say, Mr.
25 Sockwell? I didn't pick that up.

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1 All right, then this report is very
2 extensive and very detailed. I have had an
3 opportunity to read over it myself and I found it to
4 be very instructive. So are there any comments on
5 whether or not the record should be waived to allow
6 the report to come in at this time?

7 VICE CHAIRPERSON SOCKWELL: I move it.

8 CHAIRPERSON REED: No objections? Okay.
9 You want to make a motion? We can do it by
10 consensus.

11 All right, unless there's any objection
12 from anyone, then we would -- then we would waive the
13 record to allow the Office of Planning Report to
14 come into the record.

15 MS. BAILEY: With that said, Madam Chair,
16 the case is now ready for you to hear.

17 CHAIRPERSON REED: Ms. Prince, this case
18 appears to be rather straight forward. As far as I
19 know, I didn't see any opposition to it and it seems
20 to have the support of the Office of Planning and of
21 the ANC, so essentially you can just kind of expedite
22 it, give us the highlights and we can probably get
23 you out of here pretty quickly.

24 MS. PRINCE: That's terrific.

25 (Laughter.)

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1 Good afternoon. The shorter, the better.

2 CHAIRPERSON REED: Well, the thing about
3 it is, it's up to you. If you want -- we have the
4 submission on the record and we basically have read
5 materials that have been submitted, so whatever you
6 want to give us or add to that, then you can do so or
7 not, however you'd best think you'd like to handle
8 it.

9 VICE CHAIRPERSON SOCKWELL: If you could
10 concentrate on certain things like the siting issues,
11 in particular --

12 CHAIRPERSON REED: And how you comply
13 with the Section 210 and the adverse impact,
14 basically.

15 MS. PRINCE: We'll be brief. We only
16 have two witnesses, Sue Pervi from Catholic
17 University and Frank Grauman from Bollins, Swinsky,
18 Jackson, the architecture firm and my opening
19 statement will be brief.

20 Good afternoon, Members of the Board.
21 I'm Allison Prince of Shaw Pittman. I'm here today
22 on behalf of Catholic University. We're seeking
23 approval for a new student center, a university
24 center, actually is what we're calling it, in the
25 center of the campus. It will provide a greatly

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1 needed gathering place for students that does not now
2 exist. It will be located opposite the law school
3 and along the lawn that will separate the two
4 buildings. The building location is very slightly
5 different from the location as shown in the approved
6 campus plan. The location is shifted slightly to the
7 west of the originally proposed location on the site
8 of a building that is no longer planned by the
9 University.

10 In terms of impact, the building is
11 barely visible, if at all, from all adjacent rights
12 of way, Michigan Avenue, Taylor Street, McCormack and
13 Harrowood Road. There is no change of enrollment
14 proposed and I should note, unlike many of the other
15 universities that are before you in campus plan cases
16 right now, Catholic University is well below the cap
17 of enrollment that was set in 1989 in connection with
18 the campus plan. In fact, there's quite a lot of
19 room of growth for the University. The cap is 7500
20 and the current enrollment is more than 2000 students
21 below that.

22 The proposed building is well under the
23 height limit of 90 feet. And in terms of FAR, when
24 this building is built, the campus will still be at
25 1/5th the density permitted under the zoning

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1 regulations for a campus. That's the 1.8 FAR limit.

2 From a noise standpoint, the presence of
3 a student center in the middle of the campus can only
4 benefit the community because it will give the
5 students a reason to stay on the campus, rather than
6 leave the campus. The project enjoys the support of
7 the subject ANC, as well as the Michigan Park
8 Citizens Association so ANC-5A, ANC-5C and the
9 Michigan Park Citizens Association have all expressed
10 support.

11 Before I proceed with the testimony of
12 the witnesses, a few things I'd like to note. We do
13 require some level of flexibility in the plans.
14 Although the building height, massing and sitting
15 have been determined, the exact ratio of brick to
16 glass in the exterior facades of the building has not
17 been finally determined. As the architect will
18 describe, it's the goal to create a very transparent
19 building with a very substantial amount of glass and
20 that amount of glass may be reduced, depending on
21 budgetary constraints although there will be a
22 minimum of one third glass in the exterior facade.
23 So we would like flexibility in that regard.

24 There was one very important benefit of
25 this morning's delay. While you were all working on

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1 that chancery case, we were in the hall talking to
2 Mr. McGettigan from the Office of Planning to make
3 sure that he was comfortable with the plans because
4 there were some issues raised in the Office of
5 Planning Report that was filed recently and Mr.
6 McGettigan is here today so he can share this recent
7 thoughts with you, but we believe we had a beneficial
8 discussion with him that removes the concern that he
9 had expressed in the way of a third condition in the
10 Office of Planning Report requesting the ability --
11 requiring the University to go back to the Office of
12 Planning for a final approval. I think he achieved a
13 comfort level that will make that condition
14 unnecessary.

15 CHAIRPERSON REED: Okay.

16 MS. PRINCE: So if the Board has no
17 questions, I can proceed with Sue Pervi's testimony
18 and thereafter, we'll proceed with the testimony of
19 Frank Grauman.

20 CHAIRPERSON REED: Mr. Sockwell was
21 asking, I think everyone was sworn in, were they not,
22 Ms. Bailey?

23 MS. BAILEY: Yes, Madam Chair.

24 CHAIRPERSON REED: Okay.

25 MS. PERVI: Good afternoon. I'm Sue

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1 Pervi. I'm the Vice President for Administration at
2 Catholic University. It's nice to be back and see
3 everybody again. My colleagues from Student Life and
4 Facilities Planning and Construction are here today
5 with me and I'll shorten my testimony. Many of you
6 already know the many outreach programs that the
7 University does and I'll just touch on some of the
8 highlights that this particular project will bring to
9 the campus.

10 The University actually is requesting
11 this approval for the construction of a University
12 Center and it is a University Center to serve the
13 entire campus community, but especially the students
14 beginning the fall of 2002. The project has been
15 identified as the next priority in the collaborative
16 planning efforts of the University and the local
17 community.

18 The Center will help strengthen the
19 ability for the University to enroll and retain a
20 diverse student population which includes graduate,
21 professional, nontraditional and undergraduate
22 students. We remain focused on stabilizing our
23 enrollment cycles, but through the performance of
24 responsible enrollment management. I know that's an
25 issue for the community, but responsible enrollment

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1 management and coordinating our facility construction
2 and renovation projects in partnership with our
3 admissions process managers, our student life leaders
4 and then also with the community.

5 The Catholic University seeks to provide
6 facilities that actually support the intellectual,
7 cultural and spiritual life of the campus community
8 but through improvements that are also respective of
9 our neighborhood environment. The University has a
10 strong tradition of collaborative efforts on facility
11 issues, of common concern to both the campus and the
12 local community. I would like to mention that our
13 current master plan which is approved on May 22, 1992
14 which has provided the framework for our
15 institutional preservation and change also respects
16 and supports the local neighborhood and it was
17 developed through a campus and community partnership
18 that included neighborhood representation on the core
19 planning group at the earliest stages. In other
20 words, we preferred to do campus planning by
21 including everybody in the beginning and then
22 developing the plan as we go along, versus developing
23 a plan and bringing it to the community and having
24 them react to that. And we will continue that for
25 our next series, our update of our campus master

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1 plan. It's also a process we've already begun with
2 the community.

3 We have provided regular briefings to the
4 community and we do continue to focus on the projects
5 of mutual concern and benefit to our local
6 neighborhood. A quality well-placed University
7 Center is a critical element of the student life
8 program. This facility is more than a social center.

9 I think many people think of a student center or
10 University Center as "social center". It will help
11 us better accommodate our expanded educational
12 symposiums, sponsor more meaningful co-curricular
13 events and provide a place for essential mentorship
14 opportunities for our students.

15 We have been aggressively completing the
16 design phase of the Center in anticipation of a very
17 critical construction schedule to coincide with our
18 academic schedule. The architectural professionals
19 whom you'll hear from very soon, we have partnered
20 with, are really chosen for their talents, experience
21 and demonstrated sensitivity, so essential for us to
22 accomplish the institutional goals for this project,
23 but within the context of the broader community
24 environment. We look very carefully at the selection
25 of people we partner with because we think it's very,

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1 very important to partner with the right folks.

2 I want to assure you and I've been at the
3 University 18 years and been before this Board many
4 times, that this project is also being designed to
5 respect our existing facilities in the area, to
6 preserve and enhance our green space on campus, to
7 establish an inviting, functional and safe activity
8 complex, to provide greater links to our other
9 essential programs and services that are also in the
10 project area. I want to mention that the site, the
11 Center is being sited literally in the heart of the
12 expanded on-campus housing cluster which is under
13 construction right now, nearby worship areas and
14 adjacent to generous existing parking facilities.
15 The University also has developed a public
16 transportation management plan through our last
17 master plan process and as part of that initiative,
18 we continue to work with the Metropolitan Council of
19 Governments to reduce vehicular traffic in the area
20 and actually take advantage of the Metro site which
21 is located literally less than a block away from this
22 facility.

23 It's also -- the new Center is also very
24 close to our new section of the Metropolitan Bike
25 Trail and as I said, the Brookland CUA Metro Rail

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1 Station is already being served very well by our
2 campus.

3 I'm trying to skip over most of the
4 context here. The University Center project is
5 actually very time sensitive as it directly impacts
6 the next critical phase of our coordination of
7 enrollment and student life initiatives. It's
8 actually being very closely watched and directly
9 supported by a faithful alumnus who is praying it can
10 be constructed in his lifetime. He will be 95 years
11 old in a few weeks and I might add he called me
12 yesterday and he's anxiously awaiting a call from me
13 after the hearing this afternoon, and he will be here
14 on November 3rd to see how we're doing and that is
15 also his birthday. So he tells me he'll be 96 on
16 November 3rd and wants to know how we're doing.

17 The project represents very intensive
18 efforts to ensure that we do have the appropriate
19 student life facilities on campus, once again another
20 concern by our community.

21 I want to thank you. That's all I have.

22 I'd be happy to entertain any questions. I want to
23 thank you and let you know that the entire University
24 community believes that this Center has been planned
25 in a consistent manner and also with lots of input

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1 from both the campus community and the neighborhood
2 community and we would appreciate a favorable
3 response to our presentation.

4 Thank you.

5 CHAIRPERSON REED: Thank you very much.
6 Board Members, questions? Okay, next witness?

7 MEMBER RENSHAW: Madam Chair, I have for
8 Ms. Pervi just some questions. Catholic University
9 has been in the press lately, not particularly good
10 press, I must say, because it has to do with student
11 drinking in the neighborhood, but one of the articles
12 mentioned the fact that yours is a wet campus and
13 that you allow drinking on campus and I wondered if
14 this student union building, this new University
15 Center was going to allow any kind of drinking?

16 MS. PERVI: I'll respond and I don't know
17 if our Student Life officials might want to augment
18 that. I think that there has been, in fact, what you
19 might be referring to is on Saturday, particularly on
20 Saturday, August 26th our students on Michigan Avenue
21 had a party and it made the news. The University is
22 taking a series of steps. One, the University does
23 have an alcohol awareness program, very aggressive
24 student life program in terms of alcohol awareness.
25 It's a nationwide problem. We've instituted the CARE

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1 effort, it's a model where we've brought the local,
2 other local communities in, Metropolitan Police,
3 Student Life leaders and also student leaders in
4 terms of trying to address this very serious national
5 problem of alcohol abuse.

6 The University campus is naturally we are
7 more than half graduate students, so one of the
8 issues becomes having facilities for graduate
9 students, but we don't permit underage drinking on
10 campus. We certainly have worked, I'll use an
11 example of an initiative we took, local
12 establishments in our area, one used to be called
13 Kitty O'Sheas. It's now Johnny K's -- you know,
14 these thing reinvent themselves under different
15 names. The University, in fact, the Vice President
16 for Student Life who is here today, Father Friday,
17 and our Public Safety Department took the initiative
18 to work when this was being transitioned to come up
19 with a memorandum of understanding to reduce the, for
20 example, March opening up at 6 a.m. for St. Patrick's
21 Day, that sort of thing, and to take the initiative
22 to develop a memorandum of understanding on behalf of
23 the neighborhood, to try to control the kind of
24 establishments that develop around the University and
25 we have, as I said, very aggressive on campus -- it's

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1 a combination of discipline initiatives and
2 educational initiatives. I'll use an example of that
3 August 26th incident, the University identified three
4 student houses and we took action and we have what's
5 called a discipline property policy which was
6 developed I believe in California. It's a model
7 that's out in California. We looked at this and
8 looked at a means that we can institute further
9 policies and procedures off campus in order to help
10 control the few student behavior problems we have.
11 We have 5500 other students and many of them are back
12 on campus saying why does the neighborhood always
13 judge us, based on a few and we're working with our
14 student leaders, I think, to be sure that the
15 community is exposed to the other students that do
16 good. But I want to assure you that we've taken
17 action on our student houses. We continue to do
18 that. We also have CUA student expectations,
19 expectations of a CUA student. We also took the
20 initiative and have been taking the initiative to
21 present these sorts of things to the parents. Our
22 President was very clear at orientation that the
23 University will not permit and will not tolerate so
24 that they can expected to come and pick up their
25 students if this kind of behavior continues. I think

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1 what we're doing is we're trying to address those
2 very pointed cases very carefully, trying to get the
3 word out to other students that it's not tolerated
4 and trying to develop the role model of other
5 students and have those students put the peer
6 pressure on students.

7 I might add, as a point of information,
8 CUA has met with the students. We've met with
9 involved ANC. We've go to many meeting and work this
10 out, but since August there have been no major
11 incidents reported, that Student Life has addressed
12 any individual concerns with both neighbors and
13 students, so we're trying to keep a handle of it, so
14 nothing erupts into these wild parties again. But
15 nothing has happened since August 26th in a major
16 way.

17 MEMBER RENSHAW: But back to my original
18 question, are the students who are 21 years and above
19 going to be allowed to drink on campus at this
20 Student Center?

21 MS. PERVI: I believe that that would be
22 the case, right, there will be a limited, just like
23 we have right now, there's a Rathskeller on campus,
24 but the persons of age are permitted and if there are
25 activities, for example, our Graduate Student

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1 Association, those are controlled by carding and also
2 by public safety by every --

3 MEMBER RENSHAW: But your campus
4 university police would have jurisdiction?

5 MS. PERVI: Correct. Our campus
6 university police, our special police commissioned
7 officers with full powers could take action, correct.

8 MEMBER RENSHAW: And what is this
9 disciplined property policy that you spoke about?

10 MS. PERVI: Okay, basically a discipline
11 property policy -- can I have Father Friday explain
12 it since it's his policy? Is that permitted?

13 FATHER FRIDAY: And I swear to tell the
14 truth.

15 (Laughter.)

16 We instituted the Discipline Property --

17 CHAIRPERSON REED: Give your name and
18 your address.

19 FATHER FRIDAY: My name is Father Robert
20 Friday. I'm Vice President of Student Life at the
21 Catholic University of America.

22

23 The Discipline Property Policy is one
24 that when we have a disruption in the community by
25 students that brings about concern from the neighbors

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1 and/or the police, if the police report there, I will
2 designate that particular property which is usually a
3 rental, as a discipline property which puts all
4 tenants on notice that if there is a repeat
5 occurrence that they will be disciplined anywhere
6 from a warning to suspension from the University. So
7 it stays with them for a minimum of four academic
8 months. It can be removed if they will petition to
9 me or through the ANC, which I prefer, and also if
10 the owner of the property, the landlord, petitions
11 through the ANC. Part of our intention there is to
12 involve the landlords in these situations. Too
13 often, they are absentee landlords and we can't reach
14 them.

15 We've had tremendous cooperation from the
16 D.C. Consumer and Regulatory Commission on this too.
17 It's been very good.

18 CHAIRPERSON REED: I think that -- I very
19 much appreciate your giving us the information.
20 However, I would like other universities that have
21 come before us, when there is an overwhelming problem
22 in regard to student misconduct off campus, the room
23 is full and by virtue of the fact that we have not
24 even had a letter in opposition to this case, nor
25 anyone here appearing in opposition, it's rather

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1 apparent to us that that particular incident also
2 appeared to be rather isolated and not something that
3 is rampant within that community which I really
4 commend you for. Obviously, your policies have been
5 very effective.

6 FATHER FRIDAY: Thank you.

7 MEMBER RENSHAW: And I might add that the
8 value of the question and response is that your
9 policies have come to light in greater detail and I
10 appreciate that because you have certainly tackled a
11 problem that was in the press and it sounds like you
12 have it on course.

13 FATHER FRIDAY: Thanks.

14 CHAIRPERSON REED: Thank you.

15 MEMBER RENSHAW: Thank you.

16 CHAIRPERSON REED: Next witness.

17 MS. PRINCE: Our next witness is Mr.
18 Frank Grumbart -- did I mispronounce your name?

19 MR. GRAUMAN: You did. I am Frank
20 Grauman.

21 MS. PRINCE: I'm sorry. From Bollings,
22 Swinsky, Jackson. I would like to have him qualified
23 as an expert in architecture and since he's not
24 testified before this Board before --

25 CHAIRPERSON REED: He has or has not.

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1 MS. PRINCE: Has not.

2 CHAIRPERSON REED: Uh-huh.

3 MS. PRINCE: I just wanted you to
4 summarize very briefly your educational background,
5 years of experience and significant projects.

6 CHAIRPERSON REED: No résumé?

7 MS. PRINCE: No résumé.

8 MEMBER RENSHAW: Would you spell your
9 last name, please?

10 MR. GRAUMAN: I'll be glad to. I spell
11 it G-R-A-U-M-A-N.

12 Do you need the particulars on my firm or
13 that would be in your packet, I would think. I'm a
14 partner with Bollings, Swinsky, Jackson, whom I
15 joined in 1976. I might introduce my partner, Russ
16 Roberts behind me with whom I've worked for that
17 entire period. We happen to both be educated at the
18 School of Architecture at Rensselaer Polytechnic
19 Institute. I've been registered in my case since
20 1975.

21 Our practice which constitutes about 100
22 people at five locations, three of them in
23 Pennsylvania, is quite broad in what we do. We're a
24 national practice and are now working out of two
25 offices on the West Coast.

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1 About half of our work currently and
2 historically has been with colleges and universities.

3 The other half is quite broad, ranging from things
4 like federal courthouse, recently, to corporate work,
5 for instance, a studio for Pixar in San Francisco.
6 But the half that's more germane is college and
7 university work, including many names you've
8 recognized, certainly up and down the East Coast such
9 as recent work at Princeton, at the University of
10 Pennsylvania. We're currently working on a master
11 plan at Syracuse University where we've done a dozen
12 projects that have specifically the focus of Mr.
13 Roberts and my career and have worked at institutions
14 of all sizes. For instance, we're interviewing at
15 Elmira College which is a small college in upstate
16 New York for what would be our third project there,
17 this Friday.

18 We therefore know quite a bit about this
19 type of project and this type of institution and
20 what's of special interest to us in these cases often
21 is how buildings relate to a master plan.

22 Are there any other particulars you'd
23 like of a biographical nature before I segue into
24 that?

25 One technical question is I have the

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1 usual architect's handicap that I need drawings to
2 communicate. And I notice this is a fixed
3 microphone.

4 CHAIRPERSON REED: Well, before you
5 continue, then the Board would then have to decide
6 whether or not they will, in fact, accept you as an
7 expert witness.

8 MR. GRAUMAN: I may not need the
9 microphone then.

10 (Laughter.)

11 CHAIRPERSON REED: You're right. You're
12 right.

13 MEMBER RENSHAW: Do you need a motion?

14 VICE CHAIRPERSON SOCKWELL: I've been
15 around since 1975. I believe he's been around long
16 enough.

17 (Laughter.)

18 CHAIRPERSON REED: Well, then we will
19 accept -- what's your full name?

20 MR. GRAUMAN: Frank Grauman.

21 CHAIRPERSON REED: Frank Grauman.

22 MS. PRINCE: G-R-A-U-M-A-N.

23 CHAIRPERSON REED: Okay.

24 VICE CHAIRPERSON SOCKWELL: And if the
25 microphone doesn't work, we'll call him Silent Frank.

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1 (Laughter.)

2 (Pause.)

3 MR. GRAUMAN: Sue, maybe if you slide
4 yours over, I won't knock the table over.

5 How's this? First, I thought just to
6 give all of you a very quick sense of what this
7 building will be, where it will be and what it will
8 be. For your reference, here's Michigan Avenue.
9 Here's Harrowood Road and McCormack. The Metro
10 Station is here on this particular map and the Shrine
11 should be recognizable to you.

12 In this drawing we've colored the
13 proposed building red. And as you can see, it's very
14 much at the center of the campus. The building
15 represented is about 102,000 square feet on three
16 levels and while dealing with sort of the basic facts
17 about it, it's an average of 50 feet high as measured
18 from grade to the midpoint of the roof.

19 The building is organized so that it sits
20 into the side of a hill. Just for your reference,
21 for those of you who don't know the campus, we've
22 brought a few photographs that are over here which I
23 think are also found in our submission, but as you
24 can see, the campus goes up this series of sort of
25 terraces that were created through the long history

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1 and evolution of that piece of real estate.

2 In this building, we're actually
3 reinforcing that terracing character of the campus by
4 dealing with a gently sloping site and creating a
5 pair of terraces, this portion being filled and this
6 portion being cut. That gives us a building that
7 appears to be a two-story building from its western
8 face and a three-story building from its eastern
9 face, as you can see.

10 For those of you who know the campus
11 would understand that this is the underground parking
12 structure that was built in connection with the law
13 school construction in 1992, so as seen from the law
14 school, you see three levels and on this side you see
15 two. It makes an elegant transition then, between
16 those two levels.

17 This particular cross section is cut
18 right through the middle of the building, the
19 location that's indicated in blue on my site plan.
20 And it's an atrium and the reason for that is the
21 entire building is spoken of within this community as
22 the University's living room. It's that place where
23 the entire family can come together. And the heart
24 of that idea is this atrium that organizes the
25 building and that allows people to commune in all

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1 sorts of ways.

2 This happens to be the upper level floor
3 plan, but it's as useful as an other plan to give you
4 the broad sense of how the building is organized.
5 There's an entrance on the west side which is located
6 there, off of this new space. And that enters a
7 multi-height 3-story high atrium space and connects
8 as well through a second entrance to the lower level.

9 On this plan, the portion on the right
10 hand side of the drawing represents a multipurpose
11 room which is also called the Ball Room. It's a
12 divisible room for a broad range of activities and
13 the portion on the left represents a dining hall.
14 But typical of this building, large spaces that are
15 divisible on either side of the atrium, that focus
16 inward on that atrium.

17 So were I to show you the floor below, I
18 think you'll see it later, this is a different dining
19 venue and this is an environment for the Student Life
20 Program. The portion that extends this way houses
21 the book store on the lower two levels, typical upper
22 level, lower level bookstore and then the offices of
23 Vice President of Student Affairs and Dean of
24 Students, Father Friday's office above.

25 One the principal design intentions here

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1 is this, we very much believe that in a mature
2 university environment, an older university such as
3 Catholic University, the greatest responsibility in
4 designing a building is designing the public green
5 spaces and if you think about a quadrangle as an
6 outdoor room, that has a great deal to do with
7 unifying an environment or organizing an environment.

8 One of the central purposes of the
9 building massing is to make good walls for that room
10 and we are able in the case of this building to
11 complete a pair of spaces. This formal space that
12 was initiated in 1992 is completed by the
13 construction of this building and the new space that
14 we're calling the Commons, that people can't imagine
15 right now because it doesn't exist, will emerge as a
16 result of this plan.

17 As a way of understanding that, we've
18 brought along a drawing that is sort of a quick
19 sketch of the current condition of the campus, the
20 area where this building will go is this white area
21 here, that is somewhat the sloping landscape you see
22 there. It's essentially undeveloped landscape at the
23 heart of the University.

24 And it's instructive to think a bit about
25 the way this University came about. You know there

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1 are some campuses and a regional one that's a great
2 example is Johns Hopkins in Baltimore, that are
3 characterized by an extraordinary uniformity as a
4 central vision about building design that was then
5 implemented very consistently over the years. And
6 there are many other great universities that are
7 quite diverse and quite eclectic. One that we've all
8 heard of is Harvard, for instance. The buildings are
9 all different. It's the landscape that makes it a
10 singular place.

11 This University is very eclectic and
12 historically one of the reasons is that it was formed
13 through the joining of various properties that had
14 been seminaries and so one of the characteristics of
15 the University is that as indicated by the yellow
16 arrow, many of the buildings don't front each other
17 in a kind of classic, organized way. Many of them
18 try to be self-sufficient buildings such as in this
19 case McMahan Hall fronting on its own lawn or these
20 buildings each fronting on their own lawns. And so
21 that's one odd character of this University. There's
22 plenty of land there, as you've heard, the FAR is
23 indicative of it. And that's why that works. The
24 buildings have traditionally enfronted greens.

25 The other eclectic aspect of it is what

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1 buildings are made of and we've indicated in this
2 bluish color the range of buildings that are stone
3 buildings. Clearly, they're the older buildings from
4 the time when that craft was more affordable. We've
5 indicated in red, red brick buildings and had we
6 extended the drawing to the left, you'd find that the
7 preponderance of the buildings to the north are red
8 brick.

9 On the other hand here, we have the
10 Architecture School, the Engineering Complex, the
11 Science Building, Hannon, from the 1960s which is the
12 building, very sort of modern building you see there.

13 And the law school, all of which I characterize as
14 buildings that wish they were stone and some of them
15 are very successful. The law school is a beautiful
16 building, but chose a gray brick and then chose an
17 ornamental pattern on the brick that increased the
18 scale of the unit to something more closely
19 approximating stone.

20 These are beige and yellow because they
21 didn't want to be red brick and this is precast which
22 sort of matches stone. It's not stone. And the
23 School of Architecture in the Kroge Building had been
24 an Army Surplus building. It had been a gymnasium
25 that's been very creatively recycled as a really

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1 interesting School of Architecture. And you get a
2 sense of that diversity from those panels. So
3 you have very diverse buildings, very diverse times,
4 each built on their own.

5 In 1992, in designing the law college,
6 the University did a very careful sector plan, master
7 plan working by the way with Michael Ferguson with
8 whom my firm works often and is working on this
9 project and that building is the first building at
10 the Catholic University that is clearly planned to
11 deliberately create a new public space. And that
12 space is the one that we're currently completing. So
13 clearly it's an obligation of this particular design
14 effort to honor that plan and complete it.

15 In some ways, that's not difficult. The
16 row of trees that is part of the front of the law
17 school has been duplicated and at the same time
18 they've planted this row. When you look at this
19 graphic and think that these trees are to be part of
20 the project that I've representing today, but they
21 actually exist, so they've been maturing at the same
22 rate.

23 And so it is our task here to provide a
24 building that's a suitable backdrop behind those
25 trees and certainly are tasked to reinforce this

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1 axial relationship that had been so thoughtfully
2 created or implied by the law college.

3 On the other hand, this is the University
4 Center which as Sue Pervi said is for everyone at the
5 University. That includes the lawyers, but actually
6 because the law school is the most comfortable
7 building on campus, has a wonderful atrium in it if
8 you know the building and very pleasant dining
9 facilities and involves a largely, almost exclusively
10 graduate students who do not live on campus. The law
11 college does not represent one of the more major
12 constituent groups for whom the building is being
13 created. They are a group who are certainly welcome
14 and part of the community.

15 And so while this relationship is very
16 compelling and very strong, it was the University's
17 wish to make sure that the building not be perceived
18 as an annex to the law school or as a natural twin
19 sister for the law school. It needs to be part of
20 that master plan, but be its own thing.

21 We observe that the greater portion of
22 the community is on this side and that making a new
23 space here, a space that will be at least the equal
24 of the space created in the law school project is
25 really one of the most important design objectives in

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1 shaping and massing the building and that is what
2 we've done.

3 This is the place where the two axes that
4 are set up by the grid come together, so you can
5 imagine the space here that is surrounded by the
6 visual presence of many of the fine buildings,
7 including the library, McMahan Hall and the Shrine
8 which is not technically part of the University, but
9 certainly part of people's image of the place that is
10 visible through this gap.

11 And our desire is to make a place, the
12 University's desire that embraces that environment
13 and is therefore kind of touchstone for the
14 University.

15 In doing so, as I've emphasized this is
16 very much a kind of landscape solution. Do you have
17 the large board?

18 (Pause.)

19 As has already been testified, this
20 diagram illustrates that we're dealing with a
21 building that is practically invisible from any of
22 the public streets. But it also gives a sense of a
23 scale relationship. Here is the law college. Here
24 is the 50-foot tall building set into the hill that
25 I've just described. Here's McMahan Hall and we've

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1 fudged the drawing a bit just to give a sense of the
2 size of the height of the dome on the Shrine beyond.

3 And we're orienting this building towards
4 that environment, to participate in it. And so an
5 interesting design question for us is how to make a
6 very strong lively building that attracts the
7 attention that it needs to be the community living
8 room, when it's surrounded by things that are of
9 greater height and heft. We have 50 feet here, but
10 it's only 35 there. It's about 70 plus here and it's
11 way over 100 at the Shrine.

12 And the less than friendly elevation of
13 the Hannon Science Building is more on the 90 foot
14 height level. And so given the humanizing nature of
15 this building, given that it's a family living room,
16 and given that it is -- it's great thrust will be its
17 participation in the landscape, we've all come to
18 look at the project as one that desires a great deal
19 of transparency, so that when you approach the
20 building, you get the strong sense of the life of the
21 building inside and of people and when you're in the
22 building, you get a sense of the landscape, rather
23 than making a building which was a kind of self-
24 sufficient object of its own. Were we to do that,
25 it's hard to know which of these precedents one would

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1 pick up on.

2 So here again, a floor plan, but to give
3 you a sense of that, this dining space is all glass
4 here and extends right out to the new green. We
5 imagine as well as that the entrance which has a
6 number of plateaus could be a venue for people to
7 simply sit or for events.

8 That gives you a sense of the height
9 relationships. Again, the program is ballroom,
10 dining, Student Life offices, another dining venue
11 and on the side that has windows, student
12 organizations on the lowest level and kitchens on the
13 other side.

14 Let me see, maybe I'll switch to those
15 two. Let me mention that these graphics are really
16 color enhanced versions of the technical drawings we
17 submitted in our submission, colored them over so you
18 could see them better here today. That's why they're
19 not part of this set.

20 This gives you a sense of the building as
21 seen from the law college. We're intending that
22 these horizontal bands be largely glass, punctuated
23 by masonry or concrete columns and sort of a
24 traditional device like that. What you're seeing up
25 at the top, as you know, the building has a slightly

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1 inverted roof. In meetings yesterday, someone very
2 flatteringly likened it to the Dulles Airport, that
3 the top floor of the building is sort of concourse
4 with the two big spaces that opens upward towards the
5 sky.

6 While this is colored blue and shadowed
7 because if the sun were in that position you'd see it
8 as a shadow line, at night -- or ceiling like that
9 which is indirectly lit, can become a great glowing
10 beacon to let people know about the activity inside.

11 So that's what you're seeing there. That beacon
12 would modify, in a subtle way at the middle where the
13 atrium is to mark the position to the forecourt of
14 the law school.

15 Unfortunately, for us, in coloring this
16 drawing, the truth is all the trees are behind you.
17 So we can't show you -- it's a very green space.
18 It's, in fact, a -- it's drawn right here looking at
19 the building. So it's a space that is surrounded on
20 two sides by this building. The third side by a
21 grove of trees and then looks up to St. Thomas hill
22 and these other buildings. We're regrading the hill
23 in such a way that all the buildings will be visible
24 from that point. If you were to visit the campus
25 right now, you wouldn't have that experience, because

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1 the lumpy landscape would impede the view. So know
2 that what you're seeing here, cut through the earth,
3 is that green.

4 This drop, where the heavy shadow is, is
5 that difference in elevation and it allows a service
6 yard here that presently serves Hannon, I think it's
7 somewhere on the photo, but right now that service
8 yard is very exposed. We're able to contain it and
9 serve both buildings there. And so the left hand
10 side of this drawing is really down into the service
11 yard. The portion that people experience is that.

12 And on this side, the side from the
13 middle of the building which is again marked in that
14 manner, one of the really great experiences will be a
15 gallery that's running -- pardon me while I shuffle.

16 A gallery space that's indicated in pale blue here.

17 This again is the multi-purpose room. And this is a
18 kind of gallery or foyer that allows people to enter
19 that room or the multiple rooms you get if you
20 subdivide it through a series of doors like that.

21 One of the problems of placing a big
22 space like that in a fine campus like this, similar
23 to a hotel, is if you just do the proverbial
24 conference center meeting room in the most obvious
25 way, you get a big dull windowless box and because it

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1 has to be darkenable and while you can darken things
2 like clear stories, it's an interesting thing to
3 maintain a human scale and to put people in touch
4 with out of doors.

5 The feeling here was if you're coming to
6 an event, in this space, you're going to want to know
7 you're at the Catholic University of America if you
8 haven't gone and gotten space just anywhere and so
9 you can leave that space through a series of doors
10 into a kind of continuous porch behind this curving
11 wall that participates in the experience of the new
12 commons we're making and has you looking at those
13 things. And that's a very human scaled porch. It's
14 not very tall. It's like almost a residential scale
15 because it's one story in height and being a simple
16 porch it doesn't need this sort of lay in ceiling and
17 all the services we have above us.

18 The other thing it does is it gives us an
19 arcade below which is just a very nice way in climate
20 like this when people suffer from heat in the summer,
21 to bring people into the building, make an arcade
22 around the green. That gives you a sense of the
23 character of the building we're developing and why.
24 It has very much to do how we're feathering it into
25 the greater environment.

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1 As Allison mentioned, this set of
2 drawings is definitive in terms of the massing, the
3 height, the position of things and the arrangement of
4 the building. We're presently going through fine
5 tuning process with the budget which is the usual
6 interesting concern and we've identified that one of
7 the more constructive variables we can deal with as
8 we fine tune the budget is the exterior skin of the
9 building. We intend for the building to be extremely
10 transparent for reasons I've mentioned, but if the
11 budget suggests we need to do it -- oh, thank you so
12 much.

13 (Pause.)

14 You must have gone through gallons this
15 morning.

16 (Laughter.)

17 If it serve the budget well, we may
18 increase the amount of masonry that we use on the
19 building, partly to get the openings down from the
20 sides. We'd use a curtain wall system to the sides
21 where you can use a window system and if that occurs,
22 our intention is to apply that somewhat unevenly so
23 that the great degree of welcoming opening that I
24 have spoken of continues to be extremely prominent at
25 the heart of the building, at the atrium, along the

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1 commons where that gallery and arcade are, but I
2 think you would agree that it would not be
3 inappropriate if we did add masonry to the building
4 to start to add the masonry on the side that faces
5 the law college.

6 We are just in the next several weeks
7 going to be dealing with whether we're making that
8 adjustment. And so it's the one point on which I
9 would advise you that we would beg for some
10 flexibility so that we're able to do that if we need
11 to.

12 I think that concludes my presentation.
13 Thank you.

14 CHAIRPERSON REED: Questions? Ms.
15 Renshaw?

16 MEMBER RENSHAW: Yes, thank you for a
17 very complete presentation. The statement of the
18 Applicant talked about the fact that this was a
19 slight modification and slightly shifted to the west.
20 On your drawing, could you show me where it was
21 originally planned, if it's been slightly shifted to
22 the west?

23 MR. GRAUMAN: Well, do know that we were
24 not authors of that master plan, but there had been a
25 student union intended where Mr. Roberts is

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1 indicating and an academic building had been foreseen
2 for the site where we're putting the University
3 Center.

4 And so we've actually broadened the
5 purpose of the building. It's now a University
6 Center and we're developing a site that had been set
7 aside for that purpose in the master plan. The
8 master plan is foregoing putting a building in that
9 other location, you see.

10 Two buildings have been foreseen. One is
11 being proposed.

12 CHAIRPERSON REED: Mr. Sockwell?

13 VICE CHAIRPERSON SOCKWELL: Mr. Grauman,
14 I must say that the description of the building as a
15 beacon on the campus was very well received on my
16 part and when one looks at the adjacent structures
17 that will basically frame the hillside around your
18 building, if you want to call it that perimeter. And
19 that perimeter is one of traditional buildings with
20 traditional walls and windows, some punched, some
21 otherwise provided.

22 I would hope that the University and in
23 looking at its budgets and endowments and its future
24 would be able to extend to you the freedom to
25 maintain as much of that transparency as possible

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1 because one of the things that will occur from this
2 building is that from all vista points between other
3 buildings and from any horizon points that are
4 visible to pedestrians and people in cars and even
5 just the fact that as a beacon that building can
6 either be a torch or it can be a small flame in the
7 darkness. And with the solid facades that surround
8 it, the more transparent it can remain the more
9 impressive it will be to all who perceive that campus
10 as passersby or as users. And when you start adding
11 more masonry, you take away that more exciting aspect
12 of the building and especially the fact that it will
13 bleed light out to the campus and it will become a
14 focal point and you really do not want to lose that
15 at all costs.

16 MR. GRAUMAN: Thank you so much for
17 making that point.

18 (Laughter.)

19 CHAIRPERSON REED: Thank you. Board
20 Members, any other questions? Okay.

21 MEMBER RENSHAW: Just one comment. You
22 spoke about the ballroom and I was interested in your
23 use of that word because do I remember correctly, I
24 see the Father shaking his head, there is no
25 ballroom.

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1 FATHER FRIDAY: Multi-purpose room.

2 MEMBER RENSHAW: Multi-purpose room. And
3 I just brought it up because I thought that Catholic
4 University had a competitive ballroom dancing team
5 and so I thought how appropriate that you are
6 building this room just for that team. Thank you.

7 (Laughter.)

8 CHAIRPERSON REED: Okay, thank you very
9 much. Ms. Prince, does that conclude your
10 presentation?

11 MS. PRINCE: That concludes our
12 presentation. I would simply ask for the Board's
13 rapid disposal of this case and I would please to
14 submit a summary order since we do have that one
15 condition that we're seeking regarding the
16 flexibility on the exterior facade.

17 CHAIRPERSON REED: Okay, thank you. Now
18 is there anyone here from the ANC? Okay, we do have
19 an ANC report. And actually, I had a question about
20 that because it was not -- it was not the full ANC.
21 It may have something to do with it having been sent
22 to the wrong ANC. Ms. Pruitt?

23 We did get a letter from Ms. Currey of
24 ANC-5A06 as a single member district representative.

25 MS. PRINCE: I can help with the ANC

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1 reports if you need guidance on that. ANC-5A is not
2 subject to ANC. The campus is located in 5C. 5C did
3 file a report yesterday that was --

4 CHAIRPERSON REED: It did?

5 MEMBER RENSHAW: Does anyone have a copy?

6 MS. PRINCE: We have a copy of it.

7 CHAIRPERSON REED: Do we have it, Ms.
8 Pruitt? Do we have the copy of the 5C report?

9 MS. PRUITT: I'm just checking with John
10 now.

11 CHAIRPERSON REED: Okay.

12 MS. BAILEY: Madam Chair, there seems to
13 be some confusion.

14 Ms. Prince, I was told that the ANC is
15 5A06 and Mary Byrd is the Commissioner for that area.
16 Is that not correct?

17 MS. PRINCE: I neglected to bring my ANC
18 map with me. The campus used to be in 5A. I think
19 it is now in 5C with the redistricting. Sue is more
20 familiar, but we've heard from both ANCs.

21 MS. PERVI: Yes. Just as a point of
22 information, in 1990 when they did the census, they
23 moved us from 5A to 5C. As a point of information,
24 however, I have the dates and the approvals from both
25 5A and 5C so rather than getting in the great ANC

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1 battle we go to both. It's easier.

2 CHAIRPERSON REED: They're sent out to
3 both ANCs.

4 MS. PERVI: Right.

5 CHAIRPERSON REED: And you said we did
6 receive a letter from 5C?

7 MS. BAILEY: Yes. He's passing it out.
8 Yes.

9 CHAIRPERSON REED: My question is did we
10 receive it or did it come from Ms. Prince?

11 MS. BAILEY: This is the first time I'm
12 seeing the one from 5C. What we have in the file is
13 a report from the single member district
14 commissioner, 5A06, Mary Byrd Currie, but this is the
15 first time I'm seeing one from 5C.

16 CHAIRPERSON REED: We'll have to waive
17 the record to permit 5B.

18 MS. PERVI: I received a call from Mr.
19 Barry yesterday.

20 CHAIRPERSON REED: Thank you. Did they
21 not submit it to this office?

22 MS. PRUITT: It appears that way unless
23 it's still at the front with someone who hasn't
24 actually made it to the file, but I asked John to
25 check.

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1 MS. PERVI: Just as a -- he called me
2 when he filed it, so we also just to double check, I
3 had my administrative assistant send -- he faxed it
4 to us when he faxed it to you and we had it sent
5 again just in case. When we received the fax we were
6 concerned because he indicated to us he has no
7 support staff, so he was all worried. And so what we
8 did is we also faxed it, I believe you might have my
9 copy, but he did indicate and call that it was faxed
10 yesterday, I believe.

11 MS. PRUITT: Our fax machine has been
12 down.

13 MS. PERVI: He called to confirm and then
14 I also brought the copy with me, but I also had my
15 administrative assistant fax it just to be safe. He
16 said he did, but --

17 CHAIRPERSON REED: Okay.

18 MS. PRUITT: He may well have. It just
19 didn't come through.

20 MS. PERVI: Yes.

21 CHAIRPERSON REED: All right. I guess it
22 should be forthcoming and then we'll have the Office
23 of Planning Report.

24 Do we have any other government reports
25 other than Office of Planning? I don't think so.

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1 There was a DPW or anything like that.

2 MR. McGETTIGAN: No, Office of Planning.

3 VICE CHAIRPERSON SOCKWELL: Madam Chair,
4 the map confirms that it's in 5-C12. 5A06 actually
5 stops on the east side of McCormack.

6 CHAIRPERSON REED: That's fine. We've
7 got reports from both. So no conflict there.

8 (Laughter.)

9 Give us a minute so we can get this
10 report.

11 (Pause.)

12 Is that it? Is that is, Ms. Sansone? Is
13 that the report from 5C?

14 Are there any other questions? Why don't
15 we just take this moment to get the report in.

16 MEMBER RENSHAW: When do you expect to
17 finish the building, next week?

18 (Laughter.)

19 MR. GRAUMAN: We're expecting to occupy
20 it in the fall of 2002.

21 MEMBER RENSHAW: Have you worked out or
22 are you planning to work out with the neighborhood
23 the truck distribution plan for the neighborhood so
24 the truck traffic does not burden one particular
25 street or couple of streets?

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1 MR. GRAUMAN: Richard Wheel was kind
2 enough to step out to get me a coke or something, but
3 he's with the Facilities Office. Oh, you want to
4 answer?

5 MS. PERVI: I can address that. We are
6 currently constructing the new residence hall and we
7 are in the midst of that construction right now. We
8 do work that out locally. Generally, we have some
9 natural boundaries, certainly, with the Metro and the
10 railroad tracks on that side and that's basically
11 where the temporary and the construction vehicle
12 traffic would be and it would be similar to what
13 we're doing right now. We coordinate that also with
14 the community.

15 I have an initiative also. We have a
16 dumping problem. We've had a dumping problem in the
17 neighborhood and I coordinate that. I don't know if
18 you're aware, straight up that street is the trash
19 transfer center, yes. So the neighborhood prior to
20 any construction on that area, in fact, one of the
21 nice comments from the neighborhood was that our
22 construction on that end will actually help and it
23 helps us control the more activity we put in that
24 area, the more I think we can control some of the
25 illegal dumping that happens in the community, but I

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1 have public safety -- I have a whole host of things
2 that report to me. I actually have all the things
3 that everybody usually complains about reporting to
4 the Vice President for Administration. But what
5 we've done with the neighborhood is instituted, they
6 can call our public safety if they see illegal
7 dumping, even in the neighborhood. We try to work
8 out having somebody assigned, get license numbers and
9 work with the regulatory agencies to decrease the
10 dumping that's around in the neighborhood. So we'll
11 do that. And also service to the building, typically
12 the prior master plans, when I came to this campus,
13 the concept of master planning was if you want to do
14 a building, figure out where you can put it, versus
15 let's figure out what kind of services. I have all
16 the services under me, so it would be very -- we
17 wanted to carefully plan how you access a building
18 like this that would require heavy services, so we
19 have coordinated that and we do have a service
20 entrance right now. A parking facility enabled us to
21 develop a better service. Since 1992, we've actually
22 taken problematic trucks off the neighborhood streets
23 and developed it and this will tie into that --
24 already that service area that serves the science
25 building and service roads, so -- and we've worked

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1 with the fire and the public works and looked at the
2 traffic impacts, all of that, in this building. This
3 will not have an adverse impact on anything
4 currently, but we've improved that since 1992. I
5 would say the 1992 effort has improved the traffic
6 issues in that area.

7 CHAIRPERSON REED: Thank you. We have
8 the ANC report from ANC-5A which is Commissioner Mary
9 Byrd Currie who expresses support of the application
10 and then have you had a chance to look at it, Ms.
11 Renshaw?

12 MEMBER RENSHAW: Yes.

13 CHAIRPERSON REED: The ANC report from
14 5C?

15 MEMBER RENSHAW: Yes. We have now a
16 letter from 5C, ANC-5C to Chairperson Reid and it is
17 dated October 16th. All right. Thank you. It's
18 dated October 16, 2000 regarding BZA application
19 16613 and it extends its unanimous support for the
20 Applicant's request for special exception to
21 construct -- these are two new dormitories so this is
22 -- to be used as residences -- oh, it's all purpose.
23 And reaffirmed its support for the University's
24 master plan which included the eventual construction
25 of a University Center.

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1 And let's see -- I'm just looking back
2 since it's the first reading of this letter. They
3 met on December 21, 1999 to consider the issues and
4 does it say that we have a -- it has a quorum?

5 CHAIRPERSON REED: Yes, toward the end of
6 that paragraph and the third line from the bottom of
7 that paragraph.

8 MEMBER RENSHAW: Indicated a quorum of
9 our membership who was present at the time that this
10 issue was discussed with Ms. Sue Pervi, Vice
11 President of Administration for the Catholic
12 University of America and subsequently voted upon by
13 the body.

14 CHAIRPERSON REED: And the next line?

15 MEMBER RENSHAW: The next line I have
16 read in brief. ANC-5C extended its unanimous support
17 for the Applicant's request which included -- it
18 reaffirmed its support for the University's master
19 plan which included the eventual construction of a
20 University Center.

21 CHAIRPERSON REED: Okay.

22 MEMBER RENSHAW: And it's signed by James
23 D. Barrie, Jr., Chairperson.

24 CHAIRPERSON REED: Thank you very much.
25 And the ANC-5C will then be --

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1 MS. PRUITT: Madam Chair, just
2 procedurally, you just need to waive this into the
3 record.

4 CHAIRPERSON REED: I'm sorry, there was a
5 request for the report to be -- for the record to be
6 waived --

7 MS. PRUITT: The filing time.

8 CHAIRPERSON REED: And to accept into the
9 record and due to the fact that it was submitted
10 late.

11 Now, it will be afforded -- ANC-5C will
12 be afforded the great weight to which you're entitled
13 as such.

14 Now, the Office of Planning Report?

15 MS. PRUITT: If you do it through a
16 motion, usually you waive it through a motion.

17 CHAIRPERSON REED: Hold one second.

18 (Pause.)

19 VICE CHAIRPERSON SOCKWELL: Just a
20 question for Sue Pervi. The Advisory Neighborhood
21 Commission has seen the current design as planned
22 with -- because since their unanimous support seems
23 to speak more specifically toward the dormitories, I
24 just wanted to make sure that they know what is truly
25 being planned as a student center?

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1 MS. PERVI: Yes. Maybe I can clarify two
2 very quick points. One is that on ANC-5C actually
3 initially voted on the construction on June 15, 1999
4 and then that part of the issue they had assumed they
5 already approved that along with the residence halls.

6 Then on September 18th they reviewed the
7 plan on September 18th. Mr. Barry called to confirm,
8 actually last Thursday that they, in fact, had all
9 the updated plans so they received that in my letter
10 of September 18th, just as a matter of update. And
11 at that time they had mistakenly believed we were at
12 the BZA on November 7th, I think was the original
13 time table. So what I did was get a reaffirmation
14 that what they approved on June 15th and the
15 subsequent updates which have been presented and then
16 also on Saturday at an economic summit they were
17 there and we reconfirmed that we were here today and
18 the plans as I sent to them in September, the most up
19 to date plans were September 18th and that's the
20 conversation I had yesterday. So their generation of
21 that letter was based on that.

22 VICE CHAIRPERSON SOCKWELL: So you've
23 been having so much fun with the Advisory
24 Neighborhood Commissions that they've just approved
25 everything.

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1 (Laughter.)

2 CHAIRPERSON REED: Thank you. In regard
3 to the waiver issue, Ms. Pruitt, by consensus we
4 agreed to waive the record.

5 MS. PRUITT: Previously, we had done it
6 by motion so I thought we were continuing that way.

7 CHAIRPERSON REED: What previous?

8 MS. PRUITT: Previous case. We have --
9 we can do it by consensus, in the past and we have
10 been doing it through motions to keep the votes
11 straight.

12 VICE CHAIRPERSON SOCKWELL: I move that
13 we accept the ANC response outside of the 10-day
14 period.

15 MEMBER RENSHAW: Second.

16 CHAIRPERSON REED: All in favor?

17 (AYES.)

18 Opposed?

19 MS. PRUITT: Thank you. Staff will
20 record the vote as 5 to 0.

21 CHAIRPERSON REED: Okay. Now Office of
22 Planning Report? The Office of Planning also --
23 wasn't there a request for waiver of this report?
24 Yes. And I think that we -- did we already take this
25 up?

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1 MS. PRUITT: No, you haven't.

2 CHAIRPERSON REED: Okay, then -- now.
3 This is the same problem that we had before in that -
4 - Ms. Renshaw did you receive it yesterday?

5 MEMBER RENSHAW: No, I received it this
6 morning.

7 CHAIRPERSON REED: Due to the lateness of
8 the report, we have not -- some of the Board Members
9 have not had a chance to really read it. I received
10 it yesterday, so I did have a chance to read over it.
11 Did you all -- did the other Board Members receive
12 it?

13 VICE CHAIRPERSON SOCKWELL: Yes.

14 CHAIRPERSON REED: But it doesn't give us
15 the time to be able to properly be able to absorb it,
16 digest it, to be able to have the benefit of
17 utilizing it and making decisions or to be able to
18 make assessments of this particular case and ask
19 appropriate questions. So again we ask that you try
20 to make more of an effort to get it to us in a timely
21 fashion even though the report itself, I felt was a
22 very good report and it was very instructive, but we
23 need it in a more timely fashion. Okay? All right.

24 MR. McGETTIGAN: My apologies for it
25 being late. It should slow down. We have more

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1 people on staff now so these reports should be more
2 timely as we get everybody up to speed.

3 CHAIRPERSON REED: We appreciate getting
4 reports because there was a lull, one time we weren't
5 even getting reports, so now we are I guess just
6 basically making these adjustments and with the new
7 people on staff, starting to get the reports out and
8 then also getting the right format and getting
9 everything tweaked just like so. Hopefully in the
10 next few weeks or so we won't have those kinds of
11 problems any more.

12 VICE CHAIRPERSON SOCKWELL: Madam Chair,
13 I would like to say that I understand that Mr.
14 McGettigan is very busy. He's reviewing work for me
15 outside of BZA and we like to get that done too.

16 (Laughter.)

17 CHAIRPERSON REED: That's very important.
18 Give your name for us, please.

19 MR. McGETTIGAN: Yes, David McGettigan
20 and I previously worked for the City of Fairfax and
21 have extensive experience in the public sector and
22 I've been with the Office of Planning since August
23 21st and this is my first report to the BZA. I had
24 my first report to the Zoning Commission yesterday.

25 MR. HOLMAN: Madam Chair, are we going to

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1 waive the report in?

2 CHAIRPERSON REED: Okay, do you want to
3 make a motion?

4 MR. HOLMAN: Yes, I move that we accept
5 the report.

6 VICE CHAIRPERSON SOCKWELL: Second.

7 CHAIRPERSON REED: Waive the record to
8 accept the record. All right. All in favor.

9 (AYES.)

10 Go ahead.

11 MR. McGETTIGAN: This building is I guess
12 very well represented today by the architect which I
13 encouraged him to make this presentation that he did
14 because of my concern of how the architecture fit
15 into the rest of campus and I think he did a fine
16 job. I think this building will fit on the campus
17 and will be a good focal point for the campus.

18 I don't see any negative impacts that it
19 will have on the campus. I don't think that there's
20 any problem with the siting change and I passed out
21 the existing campus plan and indicated where the
22 student center was on the original campus plan with
23 the magenta dot. And the building that it was sort
24 of in that space with the red dot that was the
25 humanities building they were proposing, so we do

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1 have a slight change to the plan, but you're also
2 looking at today as well as approval of further
3 processing of this building.

4 And we want to make sure that this is
5 conformance with the plan so we offer three
6 conditions, suggest three conditions that we would
7 put on the plan. One is that the University Center
8 will primarily be used as a meeting and recreation
9 space for the campus which is a proposed use and we
10 want to make sure it's in that guideline.

11 Also, that the University Center will be
12 developed in substantial accordance with the plans
13 that they've shown us today and shown us in our
14 packet.

15 And the third -- we had initially wanted
16 to have some direct review of it because the plans
17 weren't fully developed, but after the presentation I
18 feel that they're headed in the right direction.
19 They know what they need to do and we can just change
20 my last recommendation to take out everything after
21 "subject to review" and just ask that the University
22 Center be sensitive to the architecture of the
23 premiere buildings on campus.

24 VICE CHAIRPERSON SOCKWELL: In the
25 immediate absence of the chair, I would call for any

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1 questions that the Board Members may have on the OP's
2 report?

3 Mr. McGettigan, from my point of view,
4 with regard to question 3, would you repeat exactly
5 what your proposed modification to your
6 recommendation was?

7 MR. McGETTIGAN: The architecture of the
8 University Center shall be sensitive to the
9 architecture of the premiere buildings on campus.
10 Period.

11 VICE CHAIRPERSON SOCKWELL: So basically,
12 the Office of Planning is in consideration of what
13 has been seen today, the Office of Planning would
14 allow the architects the flexibility that they need
15 to complete the design as has been described at this
16 point without Office of Planning review authority
17 necessary.

18 MR. McGETTIGAN: Right, they've shown us
19 enough detail today and design concept to date that
20 we're comfortable with the architecture and feel that
21 we needn't further burden them with the review of the
22 architecture as long as it's consistent with what
23 they've done.

24 VICE CHAIRPERSON SOCKWELL: All right.
25 Thank you.

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1 Do any other Board Members have questions
2 of the Office of Planning?

3 MR. HOLMAN: No.

4 VICE CHAIRPERSON SOCKWELL: Then that
5 should -- we have no reports from DPW and no other
6 agency reports that I can think of, so I believe that
7 it would be consistent to request closing remarks by
8 the Applicant.

9 Oh, are there persons and parties in
10 support? In opposition? Then we would go to closing
11 remarks.

12 MS. PRINCE: I would simply like to thank
13 you for your time and in light of the fact that I
14 feel we meet the burden of proof in all respects
15 regarding the standards under Section 210 and have no
16 opposition whatsoever and the support of the Office
17 of Planning, we would ask for a bench decision and a
18 summary order. Thank you.

19 CHAIRPERSON REED: There are no other
20 questions from Board Members?

21 VICE CHAIRPERSON SOCKWELL: I just would
22 reiterate the issue of openness and transparency to
23 the building being of paramount importance based on
24 what surrounds the building and that this would be I
25 think necessary as a departure from the traditional

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1 architecture of the campus in order to create the
2 focal point that it really wants to be.

3 MEMBER RENSHAW: Madam Chair, I'm just a
4 little bit sensitive to Ms. Pervi's statement. I
5 understand budgetary constraints but where you talk
6 about the amount of glass may be reduced, that's kind
7 of flag to me that there is going to be a
8 substantial, rather than a minimum reduction and I
9 would hate to see it based on the architect's very
10 fine presentation and the fact that this is not only
11 going to be a torch, but a major flashlight in the
12 dark of the University campus, so I hope it's kept as
13 Mr. Sockwell has said as open as possible. And I
14 would hate to read all about it in the paper that
15 it's much more masonry than glass.

16 MS. PRINCE: I think we could put a
17 minimum percentage in the flexibility language in the
18 order, minimum percentage of masonry or minimum
19 percentage of glass which we had discussed yesterday.

20 If the architect could step in?

21 MR. GRAUMAN: We haven't really
22 calculated such a percentage, certainly, but if we
23 need to do one, Ross, maybe you can be thinking.

24 Let me mention that often in our practice
25 when we deal with as we always do with the question

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1 of resources versus intentions, two things happen.
2 One, sometimes is the pressure to think again causes
3 things to get better sometimes. That's worth
4 knowing. The other is that we very much believe in
5 such cases that it makes sense to apply resources
6 unevenly, so that rather than taking a given idea and
7 making it a little paler or just a little less strong
8 all over that one keep true to one's intentions, what
9 really matters and afford that by overcompensating
10 elsewhere.

11 In this case where it absolutely really
12 matters is right in the middle where the atrium is
13 and along the entire perimeter where we're creating
14 the new commons. We believe the portions where it
15 matters less, but is nonetheless important are on the
16 two flanking positions. Maybe if we could have the
17 large elevation.

18 Have you come up with a percentage yet?

19 (Laughter.)

20 This middle of the building will be
21 extremely visible from the law school, but because of
22 the forecourt of the law school, for those of you who
23 know the building, there's an illustration of the
24 upper right of the left hand thing, my colleague
25 Michael is pointing to -- stepping out of the law

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1 school, you look across that court, along that center
2 line of the building we're designing, just the nature
3 of that court will edit -- will occlude the view from
4 where my hand is to the north and from where my hand
5 now is to the south. So the transparency in the
6 middle here is of much greater value than
7 transparency here and here, notwithstanding that it's
8 important in those two locations.

9 In regard to the other side of the
10 building on the commons, we believe it's important
11 along that entire perimeter, so as we speak about the
12 change, we're speaking about an uneven treatment that
13 we wouldn't just suddenly turn the whole thing into
14 brick, but that we would make things less transparent
15 on the end and then perhaps work even harder at the
16 middle, to heighten that sense of openness there.

17 So it will be a matter of applying it with that
18 kind of I'll call it uneven philosophy.

19 Beyond that we will tend, for instance,
20 to take a room like a dining room and do continuing
21 ribbon window on that, but maybe not downstairs where
22 it's an office.

23 So that would be the underlying strategy
24 and can we put a number on that and if it's necessary
25 we will just to have the data.

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1 VICE CHAIRPERSON SOCKWELL: It might be
2 too restrictive to put number on things like that in
3 this not so technical situation, but I would want to
4 ask you what your site lighting plans are because
5 that, along with the building, will create the true
6 environment by which people will find the campus
7 inviting and fun and safe and bright.

8 MR. GRAUMAN: As you'd appreciate it
9 without having designed it in detail, we have thought
10 about a unifying design theme, if you will, around
11 the perimeter of this space because it's an unevenly
12 shaped space and it will be very useful to
13 essentially put a sort of necklace around it that
14 causes people -- that frames it, causes people to
15 understand it as an entity and so it would be our
16 intention to do ornamental lighting of some nature
17 that has not been determined, at a low level around
18 the perimeter.

19 We're also expecting a great deal of
20 light to emanate from the building so that the
21 treatment of gallery space to which I refer would be
22 that we would put light against this wall, the ones
23 that are shown and shaded in gray because this, after
24 all, is transparent and also on that ceiling. So
25 rather than what happens if you look into a building

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1 like this one at night where you're looking up into a
2 light fixture and the iris in your eye adjusts, you
3 see a black ceiling, is that you look into a bright
4 surface. And that would be true along here and along
5 here so that essentially the building is something of
6 a light fixture.

7 That principle may be a little more
8 subdued on the law college side because the way the
9 building is set back and the way that third story
10 roof is higher and further removed from the ground,
11 but on that side those types of landscape
12 improvements are already in place and will continue
13 to be very much as they are right now at the law
14 college.

15 VICE CHAIRPERSON SOCKWELL: All right,
16 thank you.

17 MEMBER RENSHAW: Madam Chair, I would
18 like to ask what is going on top of the building, any
19 roof top structures, antennas, towers, anything of
20 that nature?

21 MR. GRAUMAN: None of the things you
22 mentioned. However, there will certainly be rooftop
23 cooling equipment and if -- let me use this, an
24 elevation, Russ -- the other one. Sorry.

25 Yes, that one. Thanks. I had mentioned

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1 that the building as seen from the lower level is
2 three stories in height and from the upper level is
3 two stories in height. However, here is that
4 entrance court and if you count them, service court,
5 it's one, two, three, four levels and this element
6 which is the one that you see at the end of that
7 space will appear to be nearly three stories from
8 that side and the reason is that just above the book
9 store there will be a good deal of roof top equipment
10 surrounded by a parapet. So this element will appear
11 to be taller than the body of the building here as
12 well as from the service court. That actually is a
13 benefit because it allows the building to mass itself
14 up more in relationship to the ductwork that you see
15 on the back of the science building. I'll just walk
16 over there and point to that.

17 (Pause.)

18 Were we not doing that, as it approached
19 this building, we'd be about this tall. This wing of
20 the building, the book store wing is the one I'm
21 talking about, gets quite close to Hannon and it's a
22 sort of backdrop seen from a great distance as you
23 approach that way and without the mechanical
24 equipment, it would be only about as tall as maybe 40
25 percent the height of Hannon. That wing will be --

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1 appear to be about 9 feet taller than its actual roof
2 height because it will be a parapet concealing
3 equipment, so most of the equipment is being put
4 there. There are a few other places right at the
5 middle of the building where we have sunken areas of
6 concealed equipment.

7 But we're not expecting any of that to
8 protrude above the visible roof line.

9 VICE CHAIRPERSON SOCKWELL: So you're not
10 using the full 18 foot 6 penthouse available height
11 under the District zoning regulations?

12 MR. GRAUMAN: No, we're not.

13 VICE CHAIRPERSON SOCKWELL: Thank you.

14 CHAIRPERSON REED: I think that that just
15 about takes care of it. There was -- I heard you
16 mention earlier that you would ask the Board's
17 indulgence in some flexibility of one particular
18 aspect and I can't remember now what it was. Did we
19 cover that?

20 MR. GRAUMAN: It was in regard to the
21 masonry and the transparency of the building.

22 CHAIRPERSON REED: Okay.

23 MR. GRAUMAN: We emphasized how
24 transparent it would be. We said we might dial it
25 down a bit if we have to.

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1 CHAIRPERSON REED: Right.

2 MR. GRAUMAN: But we'll be true to the
3 idea.

4 CHAIRPERSON REED: And you're not able to
5 give us any specific percentage of --

6 MR. GRAUMAN: In lieu of that I gave you
7 a sense of our philosophy as we do it.

8 CHAIRPERSON REED: You responded to that
9 and I think that the Board was comfortable with that
10 response.

11 All right, I just want to make sure --

12 VICE CHAIRPERSON SOCKWELL: I believe
13 that the only other flexibility that was requested
14 was with regard to the slight relocation of the
15 siting from the original campus plan approved
16 location for the center and the slightly west and re-
17 adjusted position of the proposed building.

18 CHAIRPERSON REED: But that's on the
19 plans.

20 MS. PRINCE: Actually, that was a
21 modification of the plan. We didn't need any
22 flexibility on that.

23 VICE CHAIRPERSON SOCKWELL: Those are the
24 only two things I remember you mentioned and that was
25 because you said that it was relocated to a position

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1 of another building that was no longer required and -

2 -

3 CHAIRPERSON REED: Okay. Board Members,
4 disposition. May I have a motion?

5 MEMBER MOULDEN: I make a motion that we
6 approve the special exception to permit a slight
7 modification and further processing of the Catholic
8 University of America master plan to allow for the
9 construction of a new University Center on the
10 campus.

11 MR. HOLMAN: Second.

12 CHAIRPERSON REED: And the Applicant
13 appears to have complied with Section 210 of the
14 zoning regulations and there does not appear to be
15 any opposition or adverse impact as a result of this
16 application being approved, nor does it seem to
17 impair the intent and integrity of the zoning map or
18 the plan, the zoning plans.

19 Comments?

20 VICE CHAIRPERSON SOCKWELL: The only
21 comment is that we are not conditioning the
22 application on the basis of value engineered
23 adjustments to the design, facade materials.

24 CHAIRPERSON REED: All in favor.

25 (AYES.)

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1 Opposed?

2 MS. BAILEY: The staff will record the
3 vote as 5 to 0, motion made by Mr. Sockwell, seconded
4 by -- motion made by Mr. Moulden, seconded by Mr.
5 Kwasi Holman; Sheila Cross Reid, Robert Sockwell and
6 Anne Renshaw to approve the application.

7 MS. PRINCE: Thank you very much. It
8 will make my phone call to Mr. Prisbow a lot easier.

9 MEMBER RENSHAW: We certainly hope that
10 this becomes an award winning building and we're
11 going to look for it in some architectural magazine,
12 first place.

13 CHAIRPERSON REED: Ms. Prince, you did
14 say something about your submitting a summary order?

15 MS. PRINCE: I'd be happy to submit a
16 summary order if it would help to get that
17 flexibility language written for you and I think the
18 staff is nodding in appreciation.

19 CHAIRPERSON REED: Ms. Pruitt? You would
20 like her to submit that for us.

21 MS. PRINCE: Draft summary order?

22 CHAIRPERSON REED: Sure, a draft summary
23 order. It will work.

24 VICE CHAIRPERSON SOCKWELL: I think you
25 will know if the building is successful when you

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1 can't keep the students off the campus.

2 (Laughter.)

3 CHAIRPERSON REED: Thank you very much.

4 MS. BAILEY: Madam Chair, are you ready
5 for the next case or are you going to take a slight
6 break?

7 CHAIRPERSON REED: Board Members, do you
8 want to break before we take the next case? Five
9 minute break?

10 VICE CHAIRPERSON SOCKWELL: Yes.

11 CHAIRPERSON REED: Okay, five minute
12 break and then we'll proceed with the last case of
13 the day. Thank you.

14 (Off the record.)

15 CHAIRPERSON REED: Ms. Bailey?

16 MS. BAILEY: Application No. 16521 of
17 Charles A. Sisson, pursuant to 11 DCMR 3103.2, for a
18 variance from the front yard setback requirements
19 under Subsections 1543.4 and 1543.2 from the
20 allowable percentage of lot occupancy of a dwelling
21 for the construction of a front porch, rear addition
22 and accessory garage in the Wesley Heights Overlay
23 District/R-1-A at premises 3020 43rd Street,
24 Northwest, Square 1621, Lot 70.

25 All those wishing to testify, would you

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1 please stand to take the oath?

2 (Witnesses sworn.)

3 Thank you. You may be seated.

4 Members of the Board, this particular
5 case has been continued from several hearings that
6 had been held previously, the last being June 20,
7 2000 of this year. At that time the Board requested
8 two pieces of information. One was a report from
9 ANC-3-D and the other was correspondence from the
10 Zoning Administrator concerning the correct zoning
11 relief that's required for this project.

12 We have received the ANC report, that's
13 ANC-3-D. The ANC is opposed to granting of this
14 application. We have not received the correspondence
15 as of today from the Zoning Administrator's Office.

16 Lastly, Members of the Board, this
17 application or facts of the case were discussed
18 previously in an appeal, Appeal No. 16405. The Board
19 has a copy of the order on that appeal. That is a
20 result of a court case which is now pending before
21 the District of Columbia Court of Appeals. That
22 decision has not been rendered as yet. The case is
23 now ready to be heard by the Board.

24 CHAIRPERSON REED: Just one second, give
25 me one second. There's something here.

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1 MS. BAILEY: Madam Chair, Ms. Pruitt has
2 a comment to add, please.

3 CHAIRPERSON REED: Okay.

4 MS. PRUITT: Madam Chair, previously also
5 Mr. Brown submitted a Motion to Dismiss that you
6 still have to deal with.

7 CHAIRPERSON REED: Okay. That's right.

8 MR. BROWN: Madam Chair?

9 CHAIRPERSON REED: Yes. Who called me?
10 Mr. Brown?

11 MR. BROWN: Mr. Brown. When you're
12 ready, following up on Ms. Pruitt's remark about the
13 pending motion to dismiss the application or in the
14 alternative to deny the application.

15 We are here, and by the way, for the
16 record my name is Patrick Brown from Greenstein,
17 Delorme and Luchs. I'm counsel for Ms. Mildred Crary
18 who is the Appellant in the underlying appeal case
19 which invalidated the five building permits issued to
20 Mr. Sisson for this project. Behind me today is Ms.
21 Crary, George Watson, the President of the Wesley
22 Heights Historical Society and Mr. Steven Griswold
23 who is a Single Member District Commissioner for ANC-
24 3-D which has been involved in the project for going
25 on two and a half years now.

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1 As to the Motion to Dismiss, very much in
2 line with what's been filed previously and
3 discussions that occur, on several fronts this
4 application is either premature or in fact, not ready
5 for hearing by the Board. The Board, in its original
6 order which is -- lays out a very detailed finding of
7 fact and conclusions of law, spelled out the facts of
8 this case which are compelling, and (2) in
9 specificity provided the zoning relief that was, in
10 fact, required or lacking in the project.

11 The application currently before you,
12 this is our sixth hearing date, starting back one
13 year ago, as of Thursday, and the Applicant who bears
14 the burden of going forward still has not managed to
15 put together an application that (1) is consistent
16 with the Board's rather detailed order; and (2)
17 consistent with the facts of the property as we've --
18 the Board, and others have had to almost forcefully
19 draw out of the Applicant as to critical elements
20 about the property. I name specific issues. We went
21 through several iterations and finally determined
22 that in fact, the property as it relates to Ms.
23 Crary's boundary does not have the requisite minimum
24 5 foot side yard so that, in fact, that property
25 requires a variance not only for any construction,

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1 but the construction of the rear addition. That is
2 not currently listed as part of the application,
3 although in the zoning computations finally prepared
4 by the Zoning Administrator which I provided to you,
5 indicate that is, in fact, less than 5 feet on Ms.
6 Crary's side of the property.

7 In addition, the Board's order is very
8 clear that the driveway, private driveway to the rear
9 of the structure had to be of a minimum width. The
10 record is also clear that the width of that private
11 driveway is 8 feet, not the requisite 12 feet for one
12 way circulation or 14 feet for two-way circulation as
13 I believe is the case here. So on its face, again,
14 inconsistent with the order, that variance has not
15 been requested. It also has a domino effect because
16 failure to meet the required access requirements on a
17 driveway renders the parking provided, the off street
18 parking provided not in compliance with the zoning
19 regulations, so in addition, a variance from the off
20 street parking requirements is also appropriately
21 required and referenced in again the Board's order in
22 the appeal case.

23 Of an important issue is this matter as
24 Ms. Bailey presented before the D.C. Court of Appeals
25 by Mr. Sisson. I think it's premature and if the

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1 Board runs the risk of having different decisions
2 going forth in different manners by proceeding while
3 the Court of Appeals matter is being challenged, but
4 certainly no stay of the Board's appeal order was
5 requested or granted, so that order as it relates to
6 this matter is conclusive as to the findings of fact
7 and conclusions of law reached and should be binding
8 on this Board as to the required zoning relief so
9 that the Applicant always bears the burden of
10 prosecuting an application and has not done so and
11 this is our sixth visit. It's been very costly for
12 my client. Very costly, quite frankly, for Mr.
13 Sisson and very costly in time and energy and missed
14 opportunities for the Board. And so I'd ask that six
15 hearings is enough and we ought to dismiss the matter
16 as -- or deny it with the requisite bar from
17 reapplying for one year.

18 CHAIRPERSON REED: Thank you, Mr. Brown.

19 Mr. Sisson, did you wish to speak on this matter?

20 MR. SISSON: Sure, thank you very much.

21 For the record, my name is Charles Sisson and it is
22 my home at 3020 43rd Street, Northwest. As Madam
23 Chairman, you're well aware, this has had some
24 history. I think your other Board Members have not
25 been fully familiar with the sequence of events that

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1 have been transpiring. I'm sure you're only too
2 painfully aware of the events, but if you'll bear
3 with me, I'll try to summarize a couple of things
4 very briefly. And I might mention that I do
5 appreciate the difficult job that you have. I work
6 for an institution that has a Board of Directors and
7 I've sat in on their meetings and at first I thought
8 it was a great job, but I have since concluded it's a
9 very, very tiring and difficult job.

10 Mr. Brown is, of course, quite right.
11 I've been trying to get this to hearing for about a
12 year now. I thought that we would do it. Mr. Brown
13 has successfully been able to postpone, delay and
14 otherwise obstruct this hearing from going forward
15 and I take this as another in his long series of
16 events.

17 Initially, we did ask the requirements
18 are that the District's required self-certification
19 at Mr. Brown's request, we went beyond that and we
20 had a survey done by an architect. We came back.
21 That was determined to be insufficient, so we went
22 back and got a survey by a surveyor that is
23 registered at the Board. We had a series of meetings
24 with the Director of Zoning, Mr. Johnson. At that
25 time it's my understanding that Mr. Nunley who was

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1 involved in the case from the beginning and you
2 recall he testified some time ago when the original
3 case came forward, and he certified that the variance
4 that we were requesting was satisfactory and was
5 complete and the only variance that would be required
6 to perform the -- to verify or to validate the
7 construction that had taken place.

8 That is my understanding. Is there some
9 mistake on this?

10 There were some other issues that Mr.
11 Johnson took under his discretion as Director of
12 Zoning to waive as requirements and that the only two
13 that are outstanding are the lot occupancy and the
14 setback from the front yard.

15 That is my understanding.

16 MR. BROWN: Madam Chair, if I could add
17 briefly. I think one, the facts as we've drawn out
18 over time indicated a much different circumstances
19 than any of us were aware, particularly as to the
20 side yard issues and the nature of these variances,
21 the size and the impact of them has grown as more and
22 more reliable information has been presented.

23 This has not been an exercise in
24 obstruction. It's been an exercise in one defining
25 the nature of the application we have. I'm not so

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1 sure the Board, given even all its experience, is in
2 a position to gauge the exact relief required, but
3 that just highlights the fallacy or the
4 incompleteness of this application. Again, it's the
5 applicant's role to bring this forward. There are
6 ample facts to indicate both in the Board's appeal
7 order and the facts as they're before you indicate
8 that the appropriate zoning relief hasn't been
9 requested. And I think again that's Mr. Sisson. He
10 has been represented by extremely qualified counsel
11 and a very good friend of mine, so he's not been
12 lacking in advice or assistance. So I think it's at
13 this point incumbent upon the Board to deny this
14 application and if, in fact, Mr. Sisson chooses to
15 refile after the cooling off period, that's fine.
16 But he'll certainly do so in an appropriate manner.

17 CHAIRPERSON REED: Okay, now what we have
18 to do is determine whether or not, number one, we're
19 going to act on -- did you actually submit a motion
20 to dismiss?

21 MR. BROWN: That was filed, yes, and it
22 was probably back, I mean again, I think it was in
23 the April time frame.

24 CHAIRPERSON REED: At that time we voted
25 on it and decided that we would not act on that

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1 motion until -- I think we agreed to go ahead and
2 hear the case and then we continued the case.

3 MR. BROWN: Can I draw a somewhat
4 important distinction? One of the problems back in
5 the process and certainly in April and in fact, even
6 in the June time frame in April, May and June was the
7 Board was clearly of the view that it did not have
8 adequate information and in fact, instructed Mr.
9 Sisson to go out and hire a certified land surveyor
10 to provide the Board information; one, what was first
11 submitted turned out to be incorrect. It was
12 resubmitted. And in fact, that information turned
13 out to highlight what had long been my suspicion that
14 additional side yard variances were required.

15 The Board never acted. It deferred
16 action specifically is my recollection on the Motion
17 to Dismiss and quite frankly in fairness to Mr.
18 Sisson and so no action was taken. You were still
19 very much in a fact-finding "we need to know" mode.
20 I think we know as much as we're going to know in
21 this case as to the physical attributes of this --
22 what was built illegally and he still hasn't asked
23 for the right relief.

24 CHAIRPERSON REED: All right, thank you
25 very much, Mr. Brown, but I think that without saying

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1 is that you did submit a Motion to Dismiss and we had
2 acted on that and the decision was that we would hear
3 the case before we would actually entertain that
4 motion. I think that's what we said. And we
5 continued the case. Nonetheless, we're at this
6 juncture now and we continued the case because of the
7 fact that we needed additional information, one of
8 which was input from the Zoning Administrator and the
9 Zoning Administrator, it is my understanding, has
10 still not submitted to us what we thought we needed.

11 And so my question to you, Ms. Pruitt,
12 and also Ms. Kress, is the agenda reflects the relief
13 that is needed, but where was that listed from, the
14 actual relief that's being requested as being needed
15 came not from the Zoning Administrator, was that from
16 the
17 self-certification?

18 And because of this controversy, we ask
19 the Zoning Administrator to verify if, in fact, that
20 was the correct relief. So now do we know if that's
21 the correct relief or what?

22 MS. KRESS: The Zoning Administrator did
23 not answer it. Right now, I was just conferring with
24 Board Member Sockwell to --

25 CHAIRPERSON REID: Determine --

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1 MS. KRESS: To determine or to help
2 advise you. As you know, it's up to the Zoning
3 Administrator to determine. I mean no matter what
4 you vote, when they accept this as already built, the
5 Zoning Administrator is the one who does the
6 interpretation then of what really can be built. But
7 I understand this is already built.

8 MR. SISSON: Madam Chair, I have some
9 information that I think may clear up all of this.
10 Mr. Brown had made a great deal in the last hearing
11 about how this piecemeal approach to the building
12 permit that I had obtained and in fact, I did
13 ultimately obtain five building permits, two of which
14 were a direct result of Mr. Brown's intervention, but
15 nonetheless, five all together. And he was arguing
16 that this was a pattern of deception, that I was
17 somehow trying to deceive the District of Columbia
18 from knowing my ultimate objectives.

19 So as an aftermath of my discussions with
20 the Zoning Administrator at which time he confirmed
21 that everything was in accordance with the required
22 applicable law, I asked him if he would -- if we
23 could get a building permit that would verify under
24 one permit all the improvements that have taken place
25 at my property which has been granted.

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1 So the only issues that are still
2 outstanding as a result of this final, sixth building
3 permit which is a remedial building permit is
4 relating to the setback to the porch and the lot
5 occupancy.

6 CHAIRPERSON REID: Okay, wait a minute --

7 MR. SISSON: I would be glad to give you
8 a copy of --

9 MR. BROWN: Madam Chair, I don't know
10 anything about a sixth building permit.

11 CHAIRPERSON REID: Okay, wait a minute,
12 Mr. Brown. You'll have an opportunity to speak.
13 This is -- let me just say this, this is very
14 complicated for us. Remember now, most of the Board
15 Members here were not here when this case first
16 initiated, so what we're trying to do now is kind of
17 sort out exactly what, in fact, we're doing and as
18 such, the first thing is to determine if, in fact,
19 the relief that is requested on the agenda is the
20 relief that's needed or if it's not and one thing
21 that we'd asked for is for the Zoning Administrator
22 to weigh in and to give us further direction. He
23 didn't. So you're saying now, Mr. Sisson is saying
24 that he has a building permit that reflects the
25 relief that was requested and you're saying that you

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1 haven't seen it?

2 MR. BROWN: And I would object to it
3 being entered at this point. He's got a filing
4 deadline to do that. I can't imagine, and Mr.
5 Sockwell, the Vice Chairman Sockwell, could probably
6 weigh in on this, but I can't imagine that
7 appropriately that a permit being issued in this case
8 without this matter being before the Board.

9 CHAIRPERSON REID: But before we even go
10 there, I need to understand what, in fact, is the
11 remedial building permit?

12 MR. BROWN: Madam Chair, can I add one
13 other thing that I think --

14 CHAIRPERSON REID: Let me get my question
15 on the floor.

16 What in fact -- Mr. Sisson said he has a
17 remedial building permit. What is that?

18 MS. KRESS: There's no such thing,
19 really. It sounds like a permit to fix something
20 that's wrong.

21 CHAIRPERSON REID: Is that what it is?
22 What is it?

23 MR. SISSON: It is a permit to build an
24 addition to the back of my house, to erect a garage
25 on the back of my property and to erect a deck on the

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1 front of my property.

2 CHAIRPERSON REID: What does remedial --

3 MR. SISSON: The building exists --

4 CHAIRPERSON REID: Does it mean after the
5 fact?

6 MR. SISSON: It is after the fact. They
7 took an as-built blueprint of the property and they
8 confirmed that as a matter of right it is my right to
9 build these -- put these improvements on the
10 property.

11 CHAIRPERSON REID: And when was that
12 issued?

13 MR. SISSON: It was issued after the
14 Zoning Administrator had thoroughly reviewed the
15 case, after Mr. Nunley who was the zoning
16 representative, who testified here and reviewed the
17 matter at the Board's insistence.

18 CHAIRPERSON REID: My question is, Mr.
19 Sisson, is what's the date?

20 MR. SISSON: They issued it let's see the
21 11th of October.

22 CHAIRPERSON REID: What year?

23 MR. SISSON: This year.

24 VICE CHAIRPERSON SOCKWELL: Mr. Sisson,
25 who signed off on the zoning portion of that?

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1 MR. Sisson: Mr. Nunley.

2 VICE CHAIRPERSON SOCKWELL: He couldn't
3 have. He retired prior to the --

4 MR. Sisson: Sorry, I --

5 VICE CHAIRPERSON SOCKWELL: When was it
6 applied for, let me ask you that?

7 MR. Sisson: When was it applied for? It
8 was applied for about five weeks ago.

9 VICE CHAIRPERSON SOCKWELL: All right, so
10 it was applied for during this pre-retirement.

11 MR. Sisson: He did sign it.

12 CHAIRPERSON REID: What was the date?

13 MR. Sisson: The effective date is the
14 11th of October.

15 VICE CHAIRPERSON SOCKWELL: That was
16 issue date.

17 MR. BROWN: Madam Chair, I mean that's
18 totally inconsistent with everything the Zoning
19 Administrator has said. It's totally inconsistent
20 with us being here. I think again it just goes to
21 the heart about this Board has -- I mean what Mr.
22 Sisson is saying, he hasn't shown it to any of us is,
23 that I don't even need to be here. Well, then I
24 think that's implausible at best. And I'd ask him to
25 share a copy with myself and the Board.

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1 But certainly under his view, he doesn't
2 even need to be here. If, in fact, he's gotten a
3 building permit to build what is already there, I
4 mean that's inconsistent with the Board's order in
5 the appeal case and inconsistent with everything that
6 the Zoning Administrator has said in the last two
7 years.

8 So I mean I think we're in worse shape
9 than we were ten minutes ago in this case.

10 CHAIRPERSON REID: Wait a minute --

11 MR. BROWN: Could I ask that we share
12 that building permit with the --

13 CHAIRPERSON REID: Wait one second. Wait
14 one second. Let me get some clarification, legal
15 clarification.

16 Ms. Sansone, this is obviously highly
17 irregular and unusual. I really do need you to weigh
18 in on this because for one, the building permit that
19 Mr. Sisson says he has is one that none of us has
20 seen, was not submitted in order for both Mr. Brown
21 and for us to have had a chance to look at, one.
22 Two, it's signed off, he says by Mr. Nunley who left
23 mid-September and also the remedial aspect of it for
24 something that has already been built. I am rather
25 troubled as to what, in fact, the Board needs to or

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1 should do in this situation.

2 MS. KRESS: Do we have a copy of this
3 permit and what was permitted?

4 CHAIRPERSON REID: It was suggested that
5 he provide us with a copy, but my question is given
6 all the history on this case, is that permissible for
7 us to now accept it into the record and to --

8 MS. SANSONE: I believe we could accept
9 it into the record, but I don't think we have a copy
10 here today. Isn't that the problem?

11 CHAIRPERSON REID: He has a copy.

12 MS. KRESS: The thing is, do you have
13 drawings as well, because if we don't know what was
14 permitted, because what we have in front of us that
15 was handed to us by Mr. Brown from Ed Nunley is the
16 computations from 6/20/00 this summer and it shows
17 that there are three variances that are needed and
18 this is from Nunley.

19 CHAIRPERSON REID: Why don't we take a
20 look at -- if it's permissible, we can take a look at
21 what Mr. Sisson has --

22 MS. KRESS: Yes.

23 CHAIRPERSON REID: But my question is is
24 there such a thing as a remedial building permit to
25 give approval for something after it's already built.

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1 MS. KRESS: That I can answer, yes. You
2 can get permits for something that is built
3 afterwards.

4 CHAIRPERSON REID: Okay.

5 MR. SISSON: Could I intervene. The
6 point that I was trying to make with bringing this
7 building permit up at this time is that it responds
8 directly to Mr. Brown's challenge. He says how do we
9 know that I am seeking the required relief? I know I
10 am seeking the required relief because I have a
11 building permit for everything except the front porch
12 which requires a lot overlay variance and a setback
13 variance and that's why I'm here today.

14 CHAIRPERSON REID: Okay, I have you.

15 VICE CHAIRPERSON SOCKWELL: Madam Chair,
16 let me say this if I might before we go into this,
17 the existence of a building permit does not in itself
18 mean that all of the tests have been met. It just
19 means that a building permit has been issued.

20 CHAIRPERSON REID: Okay, Mr. Brown.

21 MR. BROWN: I think the point Vice
22 Chairman Sockwell has made is well taken and then Mr.
23 Sisson, I don't believe -- he essentially wants to
24 have it both ways and I think quite frankly take
25 advantage once again of this Board. He's got -- he

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1 has built certain improvements. The Board has in
2 great length in the previous order indicated what was
3 wrong with those and the zoning relief required.

4 Mr. Johnson and Mr. Nunley have attempted
5 the best they can, but they've both stated their view
6 that the Board's decision is binding on them and it
7 should be, particularly in this case. So the Board
8 was very clear about the failings of this as far as
9 the requirements for variances and to come in and now
10 say well something different is required. For the
11 Zoning Administrator to say something less than what
12 the Board said previously gets us in a cycle that
13 never ends.

14 CHAIRPERSON REID: Well, Mr. Brown, I
15 think that where we are, and correct me if I'm
16 mistaken, is he has a building permit, remedial, for
17 the other things that he was required to have it for,
18 but it still remains that the relief that is
19 reflected on the agenda, the variance on the front
20 yard setback and for the allowable percentage of lot
21 occupancy is what -- is the only thing that we're
22 dealing with here today. I mean are we only facing
23 that?

24 MS. KRESS: Wait a minute, that's all
25 that's been advertised, but it appears that he also

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1 needs a variance for his side yard.

2 CHAIRPERSON REID: Okay, wait a minute --

3 MS. KRESS: And that has not been
4 advertised.

5 CHAIRPERSON REID: The side -- oh, not
6 wait a minute. This came from Mr. Johnson's office,
7 right?

8 MR. SISSON: That's correct.

9 CHAIRPERSON REID: Now this is -- now Ms.
10 Kress, this is in the form of a comp. sheet.

11 MS. KRESS: You get these. This what the
12 --

13 CHAIRPERSON REID: Usually, this is
14 attached to a letter to us that tells us what the
15 relief is.

16 MS. KRESS: Uh-huh.

17 CHAIRPERSON REID: So how do we handle
18 this in that we don't have the letter?

19 MS. KRESS: That is up to you, but I am
20 just telling you the way you read this and I would
21 ask Mr. Sockwell his knowledge as well. But on all
22 of these, what they put in the variance column are
23 the things that you need a variance or a special
24 exception for. And it is showing here, unless
25 something different has happened, a side yard that is

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1 not in conformance.

2 CHAIRPERSON REID: A side yard -- okay.

3 The side yard and the --

4 MS. KRESS: The front yard --

5 CHAIRPERSON REID: The front yard --

6 MS. KRESS: What you mentioned.

7 CHAIRPERSON REID: The front yard, the
8 side yard and the lot occupancy.

9 MS. KRESS: Right. And what has been
10 advertised deals only with two out of the three, the
11 way I look at this.

12 MR. BROWN: And can I add further and I
13 mentioned this in my introductory remarks is that in
14 coming out directly out of the Board's order and
15 their finding of facts and conclusions of law,
16 additional variance relief is required beyond those
17 three elements, one of which has not been advertised.

18 The first is the driveway access where the Board
19 indicated what the required access was. The finding
20 of facts found that the access was not in keeping
21 with that standard and then the domino effect is
22 because that access private driveway access was too,
23 required offstreet parking, he no longer meets that.

24 So we've got a situation, one where we haven't
25 advertised for what the Zoning Administrator thinks

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1 as to the side yard variance.

2 Also, we haven't advertised in compliance
3 with the Board's findings of fact in the original
4 appeal order. So we're now missing three variances
5 from this case and putting aside Mr. Sisson's
6 remedial permit which I still haven't seen, we're not
7 ready to go forward and we're even more not ready to
8 go forward with him showing up here with the permit
9 that was issued last week which I have no way of
10 knowing and staff and the Board Members have no way
11 of knowing what that means.

12 CHAIRPERSON REID: You said that there
13 was another one with regard to the garage. Where is
14 that? In the previous order?

15 MR. BROWN: Yes. If I could -- the
16 Board's order --

17 CHAIRPERSON REID: Page 4?

18 MR. BROWN: Well, let's see.

19 CHAIRPERSON REID: Now it says on page 4,
20 number 3, that there was a building permit for a
21 garage.

22 MR. BROWN: It says here in page 3 and
23 actually can I bounce you around? I'll start first
24 with on page 4 and this is the driveway access issue,
25 page 4, paragraph 13. "The zoning regulations

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1 require that offstreet parking space must be
2 accessible at all times directly from the improved
3 streets or alleys or accessible from improved streets
4 and alleys via graded and unobstructed private
5 driveways." And then it cites to the code section.

6 And then paragraph 14, "A driveway
7 providing access to required parking spaces must meet
8 certain standards including that a driveway serving
9 more than one parking space must be at least 12 feet
10 wide, if designed for one way circulation or at least
11 14 feet wide if designed for two way circulation."
12 And in this case it cites again to the section.

13 Paragraph 15 on the next page says, "A
14 private easement extends from Hawthorne Street along
15 the rear of four neighboring properties and
16 terminates at the end of either Mr. Sisson's
17 property. Following construction of a new garage,
18 the easement is 8 feet wide." So you have a
19 requirement that he's got to have appropriate access
20 for his off-street parking. The Board has found that
21 it's got to be either 12 or 14 feet and the Board has
22 also found in this case that the easement is only 8
23 feet wide which indicates clearly that an additional
24 variance is needed, both for the driveway access and
25 the fact that his offstreet parking is no longer in

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1 compliance, so again, coming right out of the Board's
2 order as to that issue.

3 If the Zoning Administrator chooses to
4 ignore that, I can't speak to that, but certainly the
5 sense and direction of the Board in this matter, and
6 we can't -- we've gotten ourselves in enough trouble
7 in this case. The Board can't start making other
8 findings. They've made findings. We were here for
9 and Ms. Reed, you recall we were here for the better
10 part of 8 hours in a very intense fact finding
11 session and this is what the Board found and wrote
12 and this order is binding on the Board and in my
13 view, binding on the Zoning Administrator.

14 So it's very clear that just on those
15 three paragraphs, three additional -- I mean two
16 additional variances from parking and driveway access
17 are required which are not advertised this morning,
18 which have not been corrected, as best as I can tell
19 by Mr. Sisson's permit, even though I haven't seen
20 it. So again, we're back to -- we still don't
21 have the appropriate case advertised and before the
22 Board, notwithstanding what Mr. Sisson has done last
23 week.

24 CHAIRPERSON REID: Okay, this was very
25 convoluted, as you recall. The issues also went to

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1 the fact that some of these permits were issued
2 incorrectly and it reflected the wrong zoning
3 district in a couple of them and then they were
4 permits to correct the incorrect permits and as a
5 result of that things got to be really complicated.

6 If you ask me, quite frankly, I can't see
7 that it's any less complicated. It seems that the
8 areas that we need clarity in have -- we've not
9 gotten the support we need from DCRA to allow us to
10 know what, in fact, we're supposed to do.

11 Now, knowing that they did not give us
12 any clear direction in the form of a letter, but also
13 they gave us a comp sheet that says something
14 different than what's advertised and in that sense,
15 something different than what was reflected in the
16 previous Board order.

17 So at this point in time I really do need
18 to have some guidance to give us some idea as to
19 what, in fact, we're supposed to be doing here.

20 Mr. Sisson?

21 MR. SISSON: Thank you very much, Madam
22 Chair. Let me just again, I was hoping to clarify
23 things by putting forward this permit. And that, in
24 fact, was my intention when I applied for it a month
25 ago and received it. I said we need to clarify the

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1 issues that are still being discussed here so that it
2 will be easy enough to go straight forward and to
3 resolve the matter one way or the other.

4 Mr. Brown has raised a number of other
5 objections. The zoning authorities -- by the way,
6 and I should mention in response to Mr. Sockwell, I'm
7 sure you're quite right, that the fact that I've
8 gotten a permit doesn't necessarily mean that the
9 other issues have been addressed, but let me assure
10 you, in this case this zoning -- this building
11 application, building permit was very intensely
12 scrutinized.

13 CHAIRPERSON REID: Do we have it?

14 MR. SISSON: I did submit a copy, yeah.

15 MR. BROWN: Madam Chair, I still object,
16 I haven't seen it.

17 MR. SISSON: Excuse me -- am I speaking?
18 I'm sorry.

19 CHAIRPERSON REID: Mr. Brown, Mr. Sisson
20 did not interrupt you, so can we please have mutual
21 respect here.

22 MR. BROWN: Absolutely, my apologies.

23 MR. SISSON: So anyway, I just want to
24 assure you, Mr. Sockwell, that they have really
25 looked this over. But the conclusion is that they

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1 have decided that the claims that Mr. Brown has made
2 regarding parking and access do not apply, that
3 because it is not an alley, not a public alley, but a
4 dedicated right of way, the right of way may be as
5 little as 8 feet which is the right of way that has
6 been provided to this property, so that that is no
7 longer an issue.

8 That's why, again -- and a second thing,
9 there was an issue relating to the side yard. The
10 original side yard was 5 feet. About 30 years ago
11 someone renovated the building and put on aluminum
12 siding on the wall and underneath that, put on a
13 strip of styrofoam for insulation, so that the side
14 yard as measured from the wall decreased from 5 feet
15 to 4.96 feet. And the Zoning Administrator
16 determined as -- due to his discretion, at his
17 discretion, he would waive that as a variance
18 requirement.

19 CHAIRPERSON REID: Where do we have that?

20 Where do we have that in writing?

21 MR. SISSON: Well, I'm sorry, I wouldn't
22 have gotten that permit, if it hadn't been --

23 CHAIRPERSON REID: Okay, okay.

24 MS. PRUITT: Madam Chair, this may
25 hopefully help.

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1 CHAIRPERSON REID: Okay.

2 MS. PRUITT: The discrepancy from what we
3 advertised to this is because Mr. Sisson
4 self-certified. He took it upon himself to determine
5 what zoning relief he wanted. In doing so, our
6 office is obliged to advertise it that way. We did
7 do so. However, at the hearing this issue came up
8 that there was not -- not all the zoning relief
9 needed was requested. That is what generated this
10 which now has one, two, three, I believe five or so
11 requests for variance based on the computation.
12 That's where the difference between those two come
13 in.

14 CHAIRPERSON REID: Okay, but I thought
15 that Mr. Sisson just said that the side yard
16 requirement --

17 MS. PRUITT: This is a new wrinkle --
18 this is something new because based on this which my
19 understanding is from the Zoning Administrator, it
20 does say it meets the side yard. So I'm not sure.

21 CHAIRPERSON REID: Thank you very much,
22 Ms. Pruitt. That's what we're looking at. That's
23 the main reason why I was asking the question I was
24 asking.

25 MS. PRUITT: Mr. Brown, you provided this

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1 to us?

2 MR. BROWN: Yes.

3 CHAIRPERSON REID: Just a moment, I think
4 I was talking.

5 MS. PRUITT: I'm sorry.

6 CHAIRPERSON REID: Mr. Sisson said that
7 he had a waiver of the side yard setback. Where is
8 that in writing? Who gave you that?

9 MR. SISSON: It is implicit in the fact
10 that a permit was issued for the building, for the
11 addition to the property which would require that as
12 a variance.

13 CHAIRPERSON REID: Okay, Mr. Sockwell,
14 you want to try to clarify for us?

15 VICE CHAIRPERSON SOCKWELL: Yes. There
16 is, I think it's in Section 223, is that correct,
17 that the Zoning Administrator's discretionary powers
18 are enumerated and he does have a right within 2
19 percent on area variances, I think it is, or whatever
20 it is, exactly how it's written I don't have it
21 turned to that section, but I assume that that is the
22 regulation that Mr. Sisson approached zoning with
23 regard to.

24 I also was looking at a copy of West
25 Consulting Group's location survey which dates back

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1 to my June files or my May files.

2 CHAIRPERSON REID: Excuse me --

3 VICE CHAIRPERSON SOCKWELL: And those
4 numbers that were professed weren't on that survey.

5 CHAIRPERSON REID: Wait a minute, Mr.
6 Sockwell, please. Indulge me. The issue of the side
7 yard setback, are you saying that that is in your
8 opinion also a matter of discretion by the Zoning
9 Administrator and is that waived?

10 VICE CHAIRPERSON SOCKWELL: It depends
11 upon whether there is considered to be a conflict
12 between the ordinance in the minimum side yard
13 requirements under grandfathered properties, if the
14 side yard existed prior to the 1958 zoning code
15 enactment and/or whether or not a nonconforming side
16 yard that was created after that time could be waived
17 in by some action of the Zoning Administrator. Some
18 of these things leave me to believe that maybe
19 there's a conflict, but I don't have enough
20 information to say that.

21 I mean apparently there was, as Mr.
22 Sisson states, there was an insulation issue and the
23 insulation reduced the side yard to 4 point something
24 something feet at this point --

25 MR. BROWN: But Mr. Sockwell, can -- you

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1 raised an important point. One is we don't know
2 where we are in this case. Two, the whole adding
3 insulation would not create the result that he's
4 claiming. I mean basically, and we went through this
5 in June. When the measurement was taken properly
6 which was to the underlying wall of the building,
7 because the insulation and the siding was added on
8 top, but to go to the wall itself which was the
9 correct measurement which is shown in the latest West
10 drawing is less than 5 feet.

11 Now what the Zoning Administrator did, we
12 are left to guess and we're left to guess with a lot
13 of things here. But I think the Board's order is
14 clear as to there is no distinction here between a
15 public alley and this private easement. The statute
16 talks in terms of a private driveway which this is
17 and it makes very specific requirements which he just
18 doesn't meet and the Board found that.

19 VICE CHAIRPERSON SOCKWELL: Now the
20 question of the private easement which is shown in
21 general descriptive in the drawing that's on the
22 board which is -- well, maybe it isn't.

23 MR. BROWN: It's not.

24 VICE CHAIRPERSON SOCKWELL: Use the
25 microphone so that the recorder --

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1 MR. BROWN: I don't think we have, at
2 least I don't believe we have an accurate drawing,
3 but the easement comes up and again Ms. Crary here
4 for definition purposes is here. The driveway,
5 private driveway comes up from Hawthorne down here.
6 It's very steep and it comes up and it's 8 feet wide
7 and it comes up somewhere in here and it goes about -
8 - Mr. Sisson, 25 feet in depth into your property.

9 MR. SISSON: That's right.

10 MR. BROWN: His property is 52.5 feet.
11 So it goes up halfway. But again, there's no -- and
12 he provided the documents and they're in the record
13 in the appeal case. It's still only 8 feet side.

14 VICE CHAIRPERSON SOCKWELL: But that's
15 the area that is taken from Mr. Sisson's property?
16 Or it is -- in other words, it does not cross Mr.
17 Sisson's property line, it is a private driveway that
18 was probably taken from all the properties between
19 the street and the terminus and a portion from them
20 to create an 8 foot access to all of the properties
21 that border it on both sides.

22 MR. BROWN: Well, if I could clarify.
23 It's 8 feet deep in Mr. Sisson's property and then
24 because there are four or five properties running
25 down this way, so that 8 feet crosses the rear of all

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1 those properties.

2 VICE CHAIRPERSON SOCKWELL: Right.

3 MR. BROWN: But it's still a private
4 driveway that's 8 feet wide as it's set forth in the
5 regulations.

6 VICE CHAIRPERSON SOCKWELL: I'm just
7 trying to determine that it's not mapped on to Mr.
8 Sisson's property. It is just mapped between the
9 properties that border it as an 8 foot right of way,
10 call it private because it is of those lots as
11 opposed to a city owned easement.

12 MR. BROWN: That's right.

13 VICE CHAIRPERSON SOCKWELL: There are
14 numerous easements dating back to the early 1800s on
15 the books for various access to various pieces of
16 property and I just want to make sure that I
17 understand what it is and where it is, because it is
18 not -- it is a private driveway. It is only an
19 easement if it is mapped over Mr. Sisson's property
20 line to my understanding.

21 If Mr. Sisson's property deed does not
22 reflect a portion of that driveway being in his
23 property within this property, then it is more of a
24 private driveway and far less of an easement.

25 The access cannot be blocked by any of

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1 the bordering property owners if it shows up on the
2 description of land as a private driveway.

3 MR. BROWN: It was a reciprocal easement
4 created between the joining property owners and Mr.
5 Sisson submitted the documents.

6 VICE CHAIRPERSON SOCKWELL: Yeah, and I
7 don't know exactly what it looks like.

8 MR. BROWN: But it's there. It's an
9 encumbrance on his property for his benefit and for
10 the reciprocal benefit of the other --

11 VICE CHAIRPERSON SOCKWELL: Exactly, that
12 much I do understand.

13 MR. BROWN: But we're talking zoning now
14 and now title work. An easement was how it was
15 created, but what it physically is, in fact, a
16 private driveway. That's what it looks like. That's
17 what it serves. It actually -- it looks like a
18 private alley or it looks like an alley, very steep,
19 running up. In fact, I might be able to show the
20 Board a picture if that helps.

21 (Mr. Brown submits photos to Board.)

22 If you'll bear with me here --

23 Mr. Sockwell, may I approach?

24 VICE CHAIRPERSON SOCKWELL: Yes. Pass
25 these to staff.

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1 (Pause.)

2 MR. BROWN: Madam Chair, and you've heard
3 plenty from me. Mr Griswold is here on behalf of the
4 ANC-3-D. They took up this issue specifically both
5 as to the alley access and also in fact, the general
6 nature of the premature and incomplete nature of the
7 relief being sought. So he is entitled to great
8 weight on behalf of the ANC and perhaps that would
9 help the Board and he is available.

10 MR. SISSON: Madam Chair, wouldn't that
11 be a little premature here? I mean haven't we got to
12 resolve whether we're going to try this case and then
13 he would be entitled to speak?

14 CHAIRPERSON REID: Thank you. Mr. Brown,
15 sequentially, the ANC will have an opportunity to
16 speak, but first we have other issues that we're
17 trying to iron out here and then we will proceed in
18 the correct order. And thank you.

19 MR. BROWN: Madam Chair, and I don't mean
20 to be argumentative, but on this specific issue, the
21 Commission took a position in nature with the
22 discussion we're having now as a preliminary matter.
23 Their view was that the matter was not right to go
24 forward because of the deficiencies that we're
25 discussing now.

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1 So I just add that. It's certainly in
2 their record and it will come up again, but that's a
3 position that they've taken.

4 CHAIRPERSON REID: Thank you. Bear with
5 us just a -- we need a little time to sort things
6 out.

7 (Pause.)

8 VICE CHAIRPERSON SOCKWELL: Mr. Sisson,
9 it is impossible for me to ask you any questions that
10 I can get relevant answers from because I don't have
11 access to Mr. Nunley who apparently signed off on
12 this. But I will make the assumption that when you
13 approached Mr. Nunley with your site drawing, you
14 showed him the 5.13 feet and the 4.96 feet and
15 explained to him that in some way the 4.96 feet was
16 not a significant deficiency and he said, "Mr.
17 Sisson, I agree with you" and he signed off on that
18 or something.

19 I don't know. But because he had to have
20 signed off on it by saying that the 4.96 feet was not
21 a significant deficiency, either through his powers
22 under Section 223 or because he was retiring and
23 didn't care any more. But I don't mean it that way.

24 MR. BROWN: Mr. Sockwell, can I add
25 something?

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1 VICE CHAIRPERSON SOCKWELL: Yes.

2 MR. BROWN: In the plans, he's got a
3 miniaturized version of the latest evolution of what
4 the Board had seen previous of the survey. He's
5 labeling this document differently than that
6 document?

7 CHAIRPERSON REID: How so?

8 MR. BROWN: Here, he is -- he seems to be
9 making a distinction between the foundation and the
10 stones and he calls it facing and siding. It doesn't
11 seem to bear up and be consistent with this. It
12 looks like he's used different terms and I'm just
13 looking at this the first time.

14 VICE CHAIRPERSON SOCKWELL: Well, that
15 was part of what I was getting at. If you read it
16 all, there are things there that one would have to
17 either imagine or he showed a documentation of some
18 sort.

19 The other thing is that if you have 8
20 feet and you have provided your own additional 5 feet
21 of paving, at least, it appears that if there is an 8
22 foot easement, you have provided an additional paving
23 on your property of about 5 feet that reduces down to
24 what looks like about zero as it goes down past
25 adjacent properties, not belonging to you. And I

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1 don't know exactly how all that came about, but it
2 appears that there is paving initiated by someone
3 which looks like it was part of the construction of
4 your garage and its access that intrudes upon private
5 property that extends beyond your property line.

6 I'm looking at this picture.

7 MR. SISSON: To directly respond to your
8 question, there is -- could I -- perhaps it would be
9 best if I gave this in evidence and this is the
10 latest plat from West Surveyors who are a well
11 recognized surveying --

12 VICE CHAIRPERSON SOCKWELL: It would be
13 consistent with the fact that West provided the other
14 surveys which are different from the one you're going
15 to give us now?

16 MR. BROWN: And Mr. Sockwell makes the
17 point that we keep hearing, we're getting into
18 evidence --

19 MR. SISSON: Excuse me, was I responding
20 or not?

21 MR. BROWN: Well, I was trying to follow
22 up a comment made by Mr. Sockwell. I'll hold my
23 peace, but I think the point he made was very --

24 CHAIRPERSON REID: One at a time, let him
25 finish.

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1 VICE CHAIRPERSON SOCKWELL: My comments
2 are more questions in an attempt to understand what
3 I'm looking at. The file on this particular project
4 is voluminous because I am the Board Member who was
5 here for all of the hearings and I made a lot of
6 notes on this, but it got continued to the point that
7 even my memory of the notes that I've made is not as
8 clear as it was.

9 CHAIRPERSON REID: I don't think that you
10 were here in the beginning?

11 VICE CHAIRPERSON SOCKWELL: I was here.

12 CHAIRPERSON REID: I think Mr. Clarens --

13 VICE CHAIRPERSON SOCKWELL: Maybe not the
14 beginning. I've been here for --

15 CHAIRPERSON REID: For a year.

16 MR. SISSON: Excuse me, but to respond to
17 your question directly, yes, there is an 8 foot
18 concrete driveway that comes up the hill and widens
19 to provide a concrete pad for the garage itself and
20 then there is a narrow strip of about 5 feet wide
21 that extends past the driveway and terminates at the
22 base of the end of the garage and that concrete was
23 in there, it's been in there for as long as I know.

24 If I could just make one comment though,
25 regarding your earlier suggestions about Mr. Nunley

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1 and the zoning variance that would be required for
2 any short fall from the 5 foot side yard, that was
3 not determined by Mr. Nunley. That was determined by
4 the Administrator and Mr. Brown knows this very well.

5 There was a series of meetings this summer at which
6 this was discussed, at which he was a participant and
7 the Zoning Administrator told him that he was going
8 to use his authority as given under the regulations
9 to provide -- to provide, to determine that this was
10 not an issue for a variance. And Mr. Brown had made
11 a couple of points in public at the ANC meeting that
12 it wasn't in writing, but I think the fact that this
13 permit has been issued should vindicate the fact that
14 he has made that determination.

15 MR. BROWN: It's inconsistent with what
16 he provided me and unfortunately not the Board in
17 writing and I don't want to have the Board put too
18 much weight in the permit that was issued because I
19 haven't had a chance to look at it. We haven't seen
20 the drawings.

21 I think Mr. Sockwell has raised the point
22 that's critical here. We don't know. We have all
23 these questions and I think this is probably the most
24 difficult place to try to resolve those, particularly
25 in the absence of timely information and

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1 participation by the Zoning Administrator.

2 CHAIRPERSON REID: Just a moment.

3 (Pause.)

4 Okay, on this --

5 VICE CHAIRPERSON SOCKWELL: Let me ask --
6 Mr. Sisson, this is the \$24 question, what is the
7 height from the finished grade at your front porch to
8 the top of the porch floor as determined under the
9 issued building permit?

10 MR. SISSON: I would suggest that it's
11 about 2.5 feet. I'm sorry, I don't have a -- that's
12 pretty approximate, it's three steps up.

13 VICE CHAIRPERSON SOCKWELL: Okay.

14 MR. SISSON: It's three steps up.

15 VICE CHAIRPERSON SOCKWELL: All right.
16 And that was -- because all of these elements were
17 existing at the time that these permits were
18 initiated, these --

19 MR. SISSON: I'm sorry. It is a very
20 complicated situation. I bought this house in
21 November 1997. I bought with a view to try to make
22 improvements and renovations comparable to the ones
23 that had been done already to the other houses in the
24 block to the south of this property. I did not
25 realize, nor did anybody that I hired realized that

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1 in the meantime from the time that these houses were
2 improved to the south of me, that there had been the
3 Wesley Heights overlay installed. So that we looked
4 at it as it would be consistent with what has been
5 done before.

6 So I went and got a permit to put an
7 addition to the back of my house, to renovate the
8 existing one car garage and make it into a two car
9 garage and to add a front porch. The problem has
10 been that in doing so I did, inadvertently, with no
11 knowledge to myself at the time, I did break or
12 infringe on the Wesley Heights overview in the sense
13 that I did exceed my lot occupancy level and I did
14 exceed my setback, even though the front porch itself
15 is further back from the street than any of my
16 neighbors to the south, it is still infringing on the
17 setback that is required under the Wesley Heights
18 overlay and that is the nature of my request here to
19 get a variance for those two issues.

20 Believe me, over the last six months, the
21 staff of Zoning and Building has scrutinized this
22 work ad nauseam. I mean they have gone through it 25
23 times and Mr. Brown has been a party to those
24 meetings.

25 And they have, after all, this concluded

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1 that there was an issue, yes, but it resolved down to
2 the two variances that I am requesting at this time.

3 I'm sorry, and to try to expedite things I got this
4 permit which verifies everything that has been built
5 to this point in time under one permit after
6 exhaustive review by everybody in the Planning
7 Department, but that there are two problems. And
8 that is that if the porch -- if a roof is put on that
9 porch, then I exceed the lot occupancy requirement
10 under the Wesley Heights overlay and that the setback
11 is exceed by some 3.5 feet. That's why I'm here
12 today.

13 VICE CHAIRPERSON SOCKWELL: Thank you.

14 MR. BROWN: I think, Madam Chair, and
15 Members, one, Mr. Sisson would like to rewrite the
16 Board's original order which was fairly detailed and
17 placed kind of circumstances -- they characterized
18 his permits as piecemeal, inconsistent, misleading.
19 Mr. Nunley testified, I quote, "that he was
20 knowledgeably misled." So it angers my client to no
21 end, but we're stuck with the record that's pretty
22 clear that this was not approached just by virtue of
23 the fact that thee were five permits issued. The
24 permits that were issued were exceeded, stop work
25 orders were issued and in fact, two of the permits

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1 were for work that was already completed as to the
2 front deck. So again, context is important. It's in
3 the order. The Board was polite, but very firm and
4 where they found fault in this matter and that's
5 where we are today. We're still having the same
6 credibility problems. And it pains the Board, I can
7 tell, one, that we're still involved in this case and
8 that you're still being forced to try to figure out
9 what this case is about.

10 I don't think this permit that he comes
11 up with, which isn't, quite frankly, for what it
12 there. It's for something less than what is there.
13 So we're still in the agonizing position and in no
14 basis to go forward today. I look at my clock and
15 it's 5 minutes to 5.

16 VICE CHAIRPERSON SOCKWELL: Well, let's
17 forget about the time for the moment, because it is
18 only 5 minutes to 5. The issue that I see right now
19 is that the percentage of lot occupancy, based upon
20 previous statements in the record is that with the
21 garage and the two story addition on the rear of the
22 house, the percentage of lot occupancy came out to
23 approximately the 2,000 square foot maximum. And
24 that the porch, whether it was by my calculations
25 which were the front porch, my calculation was that

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1 it was 338 feet. The most recent calculation is that
2 it was 322.65 feet in the -- in our documentation
3 here. But I was doing mine without having -- I used
4 what dimensions I had here and that's what they
5 pretty much worked out to be. But the point is that
6 if the porch goes away because the roof of the porch
7 has now been removed under a consolidation permit and
8 part of the reason for the consolidation, whatever
9 permit this thing is, part of the reason was to take
10 the roof off. That way, it brought the percentage of
11 lot occupancy into conformance with the regulation.
12 So if that goes away, based on performance under the
13 permit, then we are looking at a front yard and a
14 side yard issue, I presume.

15 CHAIRPERSON REID: Okay, now --

16 MS. KRESS: The front yard goes away with
17 the porch.

18 VICE CHAIRPERSON SOCKWELL: The front
19 yard goes away with the porch, okay, so the front
20 yard goes away.

21 MS. KRESS: And the side yard, I think
22 we've already answered.

23 CHAIRPERSON REID: Is that what your
24 understanding was when you had this permit to remove
25 the roof over the front porch?

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1 MR. SISSON: That's correct. That if I
2 do -- if I do remove the roof over the existing
3 porch, which I would be loathe to do, but it may be
4 something that I have to consider. I would prefer
5 not to, that's why I'm here today, but if I do remove
6 the roof off of the front porch, then I go back --
7 everything that I have done is as a matter of right
8 and as I say, the Zoning Administrator, the zoning
9 people, they're all in accordance that that is the
10 case.

11 And Mr. Brown has made a lot of nice
12 statements about my duplicity and how I've been
13 deceiving people, but I think the fact that it's all
14 under one permit kind of defeats that rhetoric.

15 CHAIRPERSON REID: Okay, but you said
16 here that your permit does indicate removal of the
17 roof over the front porch and that's what you applied
18 for.

19 MR. SISSON: No. I'm saying that if I do
20 not get a variance, I have to remove the roof over
21 the front porch, yes ma'am. That's why I'm here
22 today, is that I would like to have a variance that
23 would allow me to keep the roof over the front porch.

24 CHAIRPERSON REID: The roof over the
25 front porch and the front porch.

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1 MR. SISSON: And the front porch itself
2 is three and a half feet.

3 MS. KRESS: And I would just like to add,
4 then what was advertised was correct relating to the
5 front yard and the lot occupancy because if he puts
6 the porch, leaves the porch on, now as you've looked
7 at everything, I believe he is correct and that is
8 all he would need.

9 CHAIRPERSON REID: What about the garage?

10 MR. BROWN: The driveway access is in the
11 Board's order and I do take exception on the side
12 yard issue and again, we're guessing. That's the
13 problem and Ms. Kress and Ms. Pruitt and every one of
14 the Board Members is working very hard, but
15 ultimately we're guessing and supposing and assuming
16 --

17 CHAIRPERSON REID: Well, Mr. Brown, under
18 these circumstances all we can do is the best we can
19 do given the submission of this particular
20 application and what is before us now and we have Ms.
21 Kress here and Mr. Sockwell who are very well -- very
22 competent and very well learned in the permitting
23 process and also very highly regarded architects and
24 we're looking to them and we also have Ms. Pruitt,
25 who is also an architect, looking to them to give us

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1 guidance and they're -- as you can see, eyeing out
2 these issues and kind of framing them for us to
3 assist us in trying to dispose of this. In my
4 opinion it's just been going on for entirely too
5 long. So we're going to have to just do the best
6 that we can do. We don't have the letter from the
7 Zoning Administrator like we need. We don't have --
8 Mr. Nunley is not here any more. Mr. Johnson --
9 what's the title?

10 MS. KRESS: Well, not only that. It may
11 be that it's not needed because they filed for this
12 other permit. Maybe that's why the remaining few
13 zoning folks didn't find the time to do this because
14 they have in their possession the proofed set of
15 permits that if built the way this is approved, there
16 are no zoning variances required.

17 CHAIRPERSON REID: Okay. Except for just
18 what's advertised, back to what's advertised.

19 MS. KRESS: No. Right now this -- in my
20 opinion and I think Board Member Sockwell will agree,
21 and from what we know and from what we can see, what
22 he has got permitted here he can do as a matter of
23 right. And the reason it's remedial is he has to
24 take the roof of the porch off to be allowed to do
25 all the rest of the things he's done.

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1 CHAIRPERSON REID: What I was asking was
2 Mr. Sisson is saying, as I understand, that be that
3 as it may, yes, he has permits for those things, but
4 the reason why he's here today is to ask for the
5 variance --

6 MS. KRESS: To keep the porch on, porch
7 roof on.

8 CHAIRPERSON REID: Yes.

9 MS. KRESS: Yes. And I believe that the
10 two things that he has advertised that he
11 self-certified and advertised --

12 CHAIRPERSON REID: Is correct.

13 MS. KRESS: Is correct.

14 CHAIRPERSON REID: My question was what
15 about -- it says rear addition from the allowable
16 percentage of lot occupancy of a dwelling -- front
17 porch, rear addition and accessory garage. All that
18 is contained therein?

19 MS. KRESS: Yes.

20 CHAIRPERSON REID: Okay.

21 VICE CHAIRPERSON SOCKWELL: Let me say
22 this, if I might, Madam Chair, and I am concerned
23 because the volume of my files on this seemingly
24 simple construction is one of the largest files that
25 I have secured outside of the campus plan process.

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1 And let us say that under the circumstances now, the
2 Applicant has a valid permit to have a porch and to
3 have a two story addition and this garage thing I'm
4 still not quite sure about with regard to the access,
5 but on those other issues, it would seem quite simple
6 for the Board to process the roof on a porch which he
7 can have by a matter of right, simply as a minor
8 structural modification to something that's already
9 going to be on the front of his house and we ought to
10 do that. But I am not really comfortable with that
11 only because of the torturous process by which this
12 has come about. It is not the action of an -- how
13 can I say this, of an uninformed homeowner with
14 little knowledge of the process working his way
15 through the system which may sometimes be onerous and
16 sometimes ineffective. It is more a sophisticated
17 motivated well designed, well executed, but complex
18 process by which we have wound up with something that
19 might be either a simple execution of our powers or
20 perhaps a miscarriage of justice on our part and I'm
21 asking my fellow Board Members to very carefully
22 consider how we got to where we are today.

23 After saying that I want to make sure I
24 understand exactly where we stand on the alley, on
25 the private easement portion of this with regard to

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1 garage.

2 CHAIRPERSON REID: Aren't you going to
3 finish?

4 VICE CHAIRPERSON SOCKWELL: Well, I'm not
5 making a statement of where we should go with this.
6 I'm just making the statement because not every Board
7 Member has this and this --

8 CHAIRPERSON REID: Okay, but --

9 VICE CHAIRPERSON SOCKWELL: To guide them
10 through how the process has evolved.

11 CHAIRPERSON REID: But you opened up a
12 whole other spin on this, so can you give us some
13 more input as to what you feel or you think?

14 VICE CHAIRPERSON SOCKWELL: I sort of
15 think that this has been calculated to leave us with
16 no way to go but to say do it. And I'm not sure I'm
17 there. I don't like the way this has evolved. I
18 think that as one who wants to be helpful and lenient
19 and certainly assist applicants who have problems
20 with the process to get from Point A to Point B, this
21 troubles me. And it has all to do with the way it
22 has come about.

23 So my question is first of all, if we
24 have to move on this in various directions or break
25 this down into components, I want to make sure that

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1 everything that we are dealing with is within those
2 components.

3 MS. KRESS: Have you dealt with the
4 proofing, the variance? We've just walked about that
5 as an option. We're still kind of in the motion
6 stage. But if, in fact, this goes ahead, you have
7 the standards which are quite tough to prove to get a
8 variance like this. And I think that that's a good
9 part of the rest of the case as well.

10 CHAIRPERSON REID: Okay, why don't we
11 just move forward and see where we get? I think that
12 we've established now what relief, that the relief
13 that has been advertised is, in fact, the relief that
14 we kind of agree is needed.

15 MS. KRESS: I have to agree with Robert.
16 I'm not sure about the driveway. As it relates to
17 all of the other things, I'm feeling comfortable.

18 CHAIRPERSON REID: Where does it say
19 something about a driveway?

20 MS. KRESS: It's back on page --

21 CHAIRPERSON REID: No, no, where was it
22 advertised on the agenda?

23 MS. KRESS: Nothing. That's what I mean.
24 It wouldn't be enough if there was something that
25 needed to be done for the driveway. I'd like to just

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1 take a few more minutes to look at the driveway --

2 CHAIRPERSON REID: Okay, let's move to
3 the driveway issue and try to put that to rest.

4 VICE CHAIRPERSON SOCKWELL: Let me say
5 one thing. As I look at the most recent survey, one
6 of the things that might trouble me about the survey
7 is that it has been asserted that the difference
8 between the 5.13, the foundation; the 4.96 stone face
9 thing of the house is based on insulation and -- or
10 the siding, it's based on insulation. And then the
11 garage has very similar characteristics for a
12 building that would not have had to be insulated.
13 And I don't know that I can really believe in all of
14 that, when it seems to be painting a pattern of
15 fairly consistent side yards to work for the
16 application, but it doesn't necessarily hold water
17 from an architectural standpoint to me.

18 CHAIRPERSON REID: Okay, well, thank you
19 very much, Mr. Sockwell.

20 VICE CHAIRPERSON SOCKWELL: Because we
21 started at 5.03 everywhere and we're winding up --

22 CHAIRPERSON REID: I don't know if that
23 has cleared things up for us or if that has kind of
24 added a new element.

25 MS. KRESS: Madam Chair, may I suggest

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1 there's a couple of ways you can go. As you know,
2 with these self-certifications our stand has been
3 that the applicant takes the risk and it's when they
4 go to the zoning -- to get their permit that they
5 might be turned down and have to come back to us. In
6 fact, what has happened here, including the driveway,
7 the permit people have accepted the driveway as well
8 as the addition and the garage and in order to
9 approve this, they're making them take off the porch.

10 So I think you would be comfortable if you wanted to
11 go ahead and hear the case like you normally would
12 and see if the Applicant can prove the variance
13 standards that it would have been advertised
14 correctly based on this permit that we have in front
15 of us.

16 CHAIRPERSON REID: That makes a lot of
17 sense. That's what I was trying to ascertain as to
18 whether or not the relief that was being advertised
19 was what we should be dealing with and your point is
20 well taken that if we go ahead with the case and in
21 the event, subject to the review of the Zoning
22 Administrator and if, in fact, he deems that
23 additional relief is necessary, then it will have to
24 come back at the risk of Mr. Sisson, right?

25 MS. KRESS: Right.

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1 CHAIRPERSON REID: Okay.

2 MR. BROWN: Madam Chair, it troubles in
3 two points. There is a risk for my client. There's
4 a risk for the Board, and you sat on the appeal case
5 and four other individuals worked very hard on it.
6 And staff went to great lengths to very specifically
7 point out a deficiency in this project. And to go
8 forward on something that's contrary to that, I think
9 is a mistake for the Board, and I don't mean that
10 personally, but it basically is we're relitigating
11 what has already been decided and it's a risk for the
12 Board, for Mr. Sisson, for my client. There is
13 already an appeal of the Zoning Administrator's
14 decision that's been filed. It has not been
15 docketed. So the likelihood is that unfortunately
16 this matter is going to be litigated again in the
17 context of this case.

18 I think it behooves all of us to decide
19 the appropriate variances and go forward because the
20 uneasy feeling Mr. Sockwell has is not going to go
21 away, I don't believe.

22 CHAIRPERSON REID: Mr. Brown, thank you
23 very much. However, what was before us was the
24 motion was to dismiss the appeal based on timeliness
25 and laches.

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1 MR. BROWN: That was the appeal case.

2 MS. PRUITT: That was the appeal case.

3 CHAIRPERSON REID: That was the what?

4 MS. PRUITT: The appeal.

5 CHAIRPERSON REID: That's what I'm
6 saying. This is the order and when we address that -
7 -

8 MS. PRUITT: Right, but there's also a
9 motion from Mr. Brown to dismiss this existing --

10 CHAIRPERSON REID: I'm not referring to
11 that. We already said, I prefaced my remarks earlier
12 with the fact that we have already ruled on the fact
13 that we're not going to take that matter up until
14 such time that we have heard the case. We've already
15 ruled on that. But what I was referring to was the
16 order and just trying to refresh my memory on that. I
17 think that it looks like the position the Board took
18 was that the appeal was dismissed based on timeliness
19 and laches, that the Motion to Dismiss was denied
20 based on timeliness and laches.

21 What is before us right now is the actual
22 variance case, is it not?

23 MS. PRUITT: Yes.

24 CHAIRPERSON REID: All right. So that's
25 what we're doing today. Why don't we just go ahead

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1 and proceed and see if, in fact, see where we get
2 with this.

3 Okay. Who is going to start with this?

4 MS. KRESS: Typically, your Applicant
5 makes the presentation for his reasons to prove his
6 case for a variance.

7 CHAIRPERSON REID: Yes. I had gotten
8 kind of confused, if you want to know the truth.

9 Okay, Mr. Sisson, please.

10 MR. SISSON: Okay, I think that a lot of
11 my presentation is going to be redundant because I
12 think we've raised a lot of the issues and I'll try
13 to be brief. I'll try to summarize as best I can.

14 CHAIRPERSON REID: Okay.

15 MR. SISSON: You already know that my
16 name is Charles Sisson, that I own the home at --

17 CHAIRPERSON REID: Don't be redundant
18 now.

19 MR. SISSON: All right, I will try. I
20 should mention that I'm a white collar worker, I'm
21 not a professional builder. I bought this home as I
22 said to try to remodel it to put it into context with
23 what my neighbors had already done, the neighbors to
24 the south.

25 As we discussed this renovation has had a

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1 long and troubled history because of the appeals
2 filed by my neighbor to the north, Ms. Crary.

3 I want to repeat because it is very
4 important and it goes to the point that Mr. Sockwell
5 raised and perhaps I should elaborate on this, that
6 at no point did I attempt to do anything that was
7 illegal. I at each stage attempted to get a permit
8 for the work that was to be undertaken. I had hired
9 an architect. I had hired a contractor. I consulted
10 with the District. No one picked up the fact that
11 there were any issues here.

12 It's true that there were five permits
13 issued. And in fact, I only planned to get three
14 permits. I planned to get a separate permit for the
15 addition, for the garage and for the porch. I had to
16 get five because of Mr. Brown's intervention. He at
17 one point when I started construction on the garage,
18 the original permit was for renovation of an existing
19 garage. My contrary ripped out the foundation for
20 the old garage and all of a sudden I couldn't
21 renovate my existing garage. He was quite right. I
22 need to have a permit for a new garage which I
23 subsequently did get. He did get the stop work
24 order. He did intervene to make sure that a stop
25 work order was issued and in fact, work was stopped.

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1 I did get another permit and work proceeded.

2 I would mention that Mr. Nunley was the
3 person who testified at the original hearing. Mr.
4 Nunley is also the man who reviewed all the work
5 subsequent to that and in fact, before he retired,
6 when he signed off on the permit, Mr. Nunley
7 apologized to me for any allegations that he might
8 have made about my character. So I did
9 appreciate that.

10 This application meets the three part
11 test for a variance. The first part is that the
12 subject site is affected by extraordinary or
13 exceptional conditions. I believe that two main
14 factors cause my property to meet the first part of
15 this test. The site is affected by extraordinary
16 circumstances which are inherent in the history and
17 events affecting the property. The five building
18 permits, which I relied on in completing the
19 improvements.

20 Second, my house, as originally
21 constructed, was set back from the lot, a greater
22 distance than the three houses to the immediate
23 south. In this aspect it was different from these
24 houses. By removing the original covering over the
25 entryway which existing and replacing it with a porch

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1 along the entire facade of the house, my house is
2 made more similar to the properties to the south in
3 terms of its distance from the street.

4 Secondly, I have no doubt but the strict
5 application of the zoning regulations will cause me
6 practical difficulties. As the facts in the case
7 clearly indicate, I acted in good faith throughout
8 this entire process and reasonably relied on the
9 District's records, issuance of permits, statements
10 of District officials and the inspection of the
11 property by those officials. All the inspections
12 were undertaken.

13 I have never made any attempt in any
14 stage of the construction process to subvert the
15 legal process. But I am not faced with the situation
16 where I have a porch which causes my house to exceed
17 the lot occupancy ratio and it infringes on the
18 setback, front setback. In the event that the
19 requested variance relief is not granted, I will be
20 forced to rip off the entire front porch and redesign
21 the entrance to the house. The porch was constructed
22 at substantial expense because it involved not only
23 the porch upstairs, the porch structure itself, but
24 the addition of stone to the front of the house to
25 enhance the design of the porch. The removal of the

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1 porch will require an entirely new design approach to
2 the front of the house.

3 Finally, I strongly believe that the
4 requested variance relief can be granted without
5 detriment to the public good and without
6 substantially impairing the intent, purpose and
7 integrity of the zone plan. My purchase and
8 renovation of the property has been a vast
9 improvement over the prior condition of the site.
10 The addition is, as I said, similar to many other
11 additions in the immediate area. Many of the
12 existing houses have front yards that are less than
13 the 25 feet now required.

14 What I did was extend the overhang, the
15 covered entry to the front door of my house over the
16 full length. It actually from Ms. Crary's house, I
17 cannot believe that she has any different view than
18 she had before because her house is set back, since
19 it's not on 43rd Street, it's actually on New Mexico
20 Avenue, it is set back further than my property by
21 substantial measure and the only corner of the house
22 that she can see is the corner that has the front
23 door which had a covered entryway over it before. So
24 as far as her view of the street, I do not think that
25 there has been any impact whatsoever.

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1 So now I would like to make one point and
2 that is to respond to Mr. Sockwell's question about -
3 - which he's concerned why has there been the process
4 and why have -- why do we have a file of the
5 magnitude that we now have on this application which
6 I must tell you I am really impressed by myself.

7 I would make two points. One is that
8 when the Board heard the original appeal on the
9 zoning -- on the building permits, Mr. Gilreath, who
10 I think is Mr. Sockwell's predecessor to this Board,
11 specifically stated in the decision this is from a
12 transcript of June 6, 1999, he said, "I would like to
13 say first of all I did not see any kind of ill or
14 deceptive intent on the part of the Intervenor" and
15 that would be myself in this case. "There is no
16 question that the District, in my judgment, made
17 horrific mistakes. Generally speaking, the citizens
18 of this city and any community have a right to rely
19 on reasonable common sense of their organizations and
20 so forth. I have misgivings on that, but dealing on
21 a strictly technical level, I support the motion. As
22 I understand it, the Intervenor will have recourse to
23 subsequently apply for a variance. That's up to him
24 if that's what he wants to do." And that's exactly
25 what I'm doing at this point in time. I'm following

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1 Mr. Gilreath's recommendations.

2 And secondly, I would just like to ask
3 the question that Mr. Sockwell raised from a
4 different perspective. Yes, it's true. I did get
5 five permits in this building process. I only
6 intended to get three, but I did get five. My
7 question is this. Why, if Mr. Brown, who I can
8 assure you was there on a continual basis, we know
9 that he intervened at the time I got a second
10 building permit because he was instrumental in
11 getting the stop work order. Why didn't he stop me
12 at an earlier stage in my process? Why did he wait
13 until the building was entirely complete before he
14 intervened, before he filed a legal objection? I
15 think that's really very much to the point of this
16 case.

17 The only other time I've ever had
18 experience, personal experience with the building
19 permit process in the District of Columbia was about
20 15 years ago when I had a townhouse down on Capitol
21 Hill and I petitioned to have a small deck put
22 outside my property. And I did get a building permit
23 and I did start and within 15 minutes my neighbors
24 had called the police and gotten me to stop work on
25 that building because they objected to my

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1 construction. Fifteen minutes.

2 Mr. Brown waited 8 months. He waited
3 until everything was completely done, until I had all
4 of my inspections, until I had gotten my final
5 inspection and then he raised formal objection. Why
6 would he wait that long if he was so aware of all the
7 -- the pattern of negligence and duplicity I was
8 undertaking? Why would he do that?

9 MR. BROWN: I object. The Board made
10 specific findings on that case that because of the
11 piecemeal nature of the permits that were sought, the
12 work that was done beyond the scope of those permits,
13 that in fact, myself and my client, Ms. Crary could
14 not have been reasonably --

15 CHAIRPERSON REID: Mr. Brown, wait --

16 MR. BROWN: Mr. Sisson, if we're going to
17 go down that path and relitigate this case, we're
18 going to relitigate it fully.

19 CHAIRPERSON REID: Okay, Mr. Brown.
20 Thank you very much. Mr. Sisson has already made the
21 point and you can address those issues at the
22 designated time. You can do that at the designated
23 time.

24 Thank you. Mr. Sisson, you kind of beat
25 that to death.

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1 MR. SISSON: I'm just about done.

2 CHAIRPERSON REID: All right.

3 MR. SISSON: In summary, I would say yes,
4 errors were made which I'm more than painfully aware
5 of and I really very much regret that there were
6 errors, but it appears to me that in light of the
7 building permit that was issued through the approval
8 of the Zoning Administrator, that errors related to
9 the final permit which was the porch.

10 MR. BROWN: I object. He's making
11 conclusions that are not borne out in the record on
12 the appeal and we're going to be here -- this is
13 exactly the concern I had is that we're now going to
14 be forced because I can't leave these unanswered,
15 we're going to be forced to relitigate the appeal
16 case because the credibility of Mr. Sisson, the
17 credibility of my client, the credibility of the
18 process are now being put before you and as a result
19 to that, we're going to have to -- because he's
20 raised the issues, we're going to have to relitigate
21 that and this Board, because it's a critical element
22 of the case, is going to have to make an assessment
23 about whether, in fact, Mr. Sisson's hardship is
24 self-created.

25 CHAIRPERSON REID: Mr. Brown, Mr. Brown,

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1 thank you very much and your objection -- I'll
2 sustain your objection and notwithstanding the fact
3 that something that Mr. Sisson said was not in
4 keeping with -- was more germane to the appeal case,
5 remember that we understand fully our obligation and
6 our responsibility and that is to hear and to
7 deliberate on a variance case only today. So if
8 other things happen to come in, we have to refocus on
9 what our responsibility is. Thank you.

10 MR. SISSON: But yes, I didn't make any
11 statements. I just raised the question, as you will
12 recall.

13 CHAIRPERSON REID: Right.

14 MR. SISSON: But anyway, Mr. Sockwell,
15 and I only raised it because you had raised that
16 question earlier and I wanted to try to respond to
17 it.

18 But anyway, I think I've said as much as
19 I can and probably more than I should, but anyway, I
20 would urge you to act expeditiously in approving the
21 requested variance and I do appreciate your time
22 today.

23 CHAIRPERSON REID: Okay, thank you. And
24 Mr. Brown, some of the things that were said, even
25 though it was more germane to the appeal, really kind

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1 of refreshed my memory, because I remember distinctly
2 that we did, in fact, we ordered that the appeal be
3 granted. We dismissed the aspect of it -- we denied
4 the Motion to Dismiss based on laches and on
5 timeliness. However, we did grant the appeal and we
6 did so for this reason. Mr. Gilreath, the Board
7 Member that he referred to, felt very strongly that
8 while this was such a mess, it would only be fair to
9 not grant -- to grant the appeal and require the
10 Applicant to go back through the process correctly
11 and come back before this Board at which time we
12 would then look at the merits of the relief that was
13 germane to the variance only and make a decision
14 accordingly and that's why we're here.

15 MR. BROWN: Madam Chair, to an extent,
16 you're right. If this was a project that hadn't been
17 built, then we'd be talking and we could look at the
18 variance case.

19 We've got a somewhat different
20 circumstances, one, because it's there. And the
21 typical give and take in a variance case isn't there.

22 CHAIRPERSON REID: Mr. Brown, thank you
23 very much. However, I think that there's been far
24 too much extraneous discussion with regards as to how
25 you feel, what your take on this is. The fact of the

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1 matter is per the instruction of this Board, Mr.
2 Sisson is now complying with that and that decision
3 is what we will make and right now, we're going to go
4 ahead and proceed with this case, as I said before.
5 Thank you very much. Any points that you want to
6 make you'll be given an opportunity to do that. But
7 right now we need to try to proceed through this
8 case, and as such, Board Members do you have
9 questions for Mr. Sisson, any more questions?

10 VICE CHAIRPERSON SOCKWELL: Just one, the
11 Advisory Neighborhood Commission's response to this
12 original case -- I won't even ask the question. I
13 will leave this alone.

14 CHAIRPERSON REID: Thank you. Now we
15 move to Office of Planning Report?

16 MS. PRUITT: Madam Chair, you've got to
17 offer Mr. Brown the opportunity to cross examine.

18 CHAIRPERSON REID: I'm sorry, I'm sorry.
19 Mr. Brown, cross examination.

20 MR. BROWN: Mr. Sisson, at the appeal
21 hearing you testified on direct and on cross
22 examination that prior to filing the first permit in
23 January of 1998 that you were aware of the overlay
24 restriction --

25 CHAIRPERSON REID: Uh, uh, uh, wait a

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1 minute. We're supposed to be -- this case is on the
2 variance case, not on the appeal. Now you just
3 raised that objection yourself and I sustained you.
4 These questions you're asking are in regards to that
5 appeal case. This should only be germane to the
6 variance case that we are actually hearing today, Mr.
7 Brown.

8 MS. KRESS: And I might add the variance
9 is for the roof on the front porch, that's what the
10 variances are for and it's not about the parking. I
11 just wanted to clarify that. It's not about anything
12 else because basically at this point he has a permit
13 as a matter of right for all of those things. So
14 we're only talking about the roof on the porch which
15 he does not have a permit for.

16 MR. BROWN: I disagree. I mean number
17 one, Mr. Sisson --

18 CHAIRPERSON REID: Mr. Brown, Mr. Brown,
19 we are not going to accommodate you any further.
20 You've been objecting the entire time. If, in fact,
21 you want to ask questions for cross examination we
22 will afford you that opportunity. If not, we're
23 going to move right on past you.

24 MR. BROWN: I need to clarify a point
25 which the staff raised because part of -- we've got

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1 an application here for a front yard variance and a
2 lot occupancy variance for the improvements that were
3 constructed in toto. I think we need to consider
4 that separate from what Mr. Sisson has a permit to
5 build a roofless porch because what he's asking for
6 is something different. He's asking to be able to
7 keep everything that's there now which as is which
8 includes a garage, a porch --

9 MS. KRESS: He's doing that as a matter
10 of right according to this permit he has right now.
11 He's got all of that as a matter of right. The only
12 thing he does not have as a matter of right is the
13 roof on the front porch.

14 VICE CHAIRPERSON SOCKWELL: Which equates
15 to a lot occupancy issue.

16 MS. KRESS: And a front yard issue.

17 VICE CHAIRPERSON SOCKWELL: And a front
18 yard issue.

19 CHAIRPERSON REID: Mr. Brown, Mr. Brown,
20 if, in fact, you do have some other questions --

21 MR. BROWN: I disagree with that.

22 CHAIRPERSON REID: Fine, we understand
23 that and we respect that. If you have some cross
24 examination questions germane to the variance, you
25 can do so, but if not, we're going to the Office of

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1 Planning Report and the ANC report.

2 MR. BROWN: Can I ask the chair so I can
3 tailor my cross examination, Mr. Sisson has raised as
4 part of his hardship, his practical difficulty is the
5 fact that these improvements exist --

6 CHAIRPERSON REID: If you have a
7 question, ask him, not asking me. I'm not -- this is
8 not my case. You should be asking the Applicant.

9 MR. BROWN: Mr. Sisson, is a practical
10 condition or extraordinary condition affecting this
11 property, the fact that you've completed these
12 improvements? Yes or no?

13 MR. SISSON: I have put stone facing on
14 the front of my building which is one story high. If
15 I have to remove the porch roof, then it's going to
16 look very bizarre, I will have to say, yes.

17 CHAIRPERSON REID: And also, just to
18 remind the Board Members, we're hearing this case as
19 if the addition were not there, okay? So -- I know
20 it's difficult to do, but you have to kind of block
21 it out of your mind, the fact that it's there. We're
22 hearing it, the case that has to be made is a case
23 for a variance without taking into consideration the
24 fact that this is already built, okay? All right.

25 MR. BROWN: And pretending that -- and

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1 I'm asking the Board for clarification, because I
2 want to tailor my questions, because we're dealing
3 with more than just the fact that the front porch is
4 there.

5 CHAIRPERSON REID: Mr. Brown, are you
6 still going into that?

7 MR. BROWN: I'm asking the question.

8 CHAIRPERSON REID: We -- I would like to
9 say, I thought that was pretty clear. We have to
10 hear this case as if the addition that has been built
11 were not there. That's how we have to look at it.

12 MR. BROWN: Strictly the front porch?

13 MS. KRESS: Strictly the front porch.
14 You're not looking at the other addition or the other
15 things. Those were all built as a matter of right
16 according to the approved permits set. The only
17 thing that is not a matter of right is that porch.

18 CHAIRPERSON REID: Okay.

19 MS. PRUITT: Madam Chair, staff is ready
20 to give Mr. Brown a copy of what exactly was
21 advertised which is the front porch.

22 MR. BROWN: I have a follow up question.

23 CHAIRPERSON REID: To Mr. Sisson?

24 MR. BROWN: No, to the Board, because I
25 don't want to be here all night and I don't want to

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1 belabor the point, but if, in fact, my confusion is
2 that if, in fact, by eliminating our inquiry here
3 today to strictly whether the front porch is --

4 MS. KRESS: That's all he's asked for
5 right now. He's only asked for that variance.
6 You're making it other things.

7 CHAIRPERSON REID: Variance relief.

8 MS. KRESS: He's only asking for that.

9 MR. BROWN: See, I think the way it was
10 advertised was for improvements made to it so that we
11 have a situation where there may be an ability to
12 have part of the front porch and part of the garage -
13 -

14 CHAIRPERSON REID: That's not what it
15 says, Mr. Brown. Staff has provided you with a copy
16 of the relief that's advertised.

17 MR. BROWN: The --

18 MS. KRESS: I think it's clear. It
19 doesn't matter what was advertised. This Board has
20 decided to hear as a part of its new evidence whether
21 or not the front porch can be there and that roof can
22 be on it.

23 CHAIRPERSON REID: That goes to lot
24 occupancy.

25 MS. KRESS: Exactly.

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1 CHAIRPERSON REID: Which is what was
2 advertised.

3 MS. KRESS: Exactly. But what I'm
4 saying, even if the advertisement didn't match -- you
5 don't have to hear what was advertised. You hear
6 what is needed. What I'm saying is even if contended
7 that more was advertised, it doesn't mean you have to
8 hear more. You only have to hear what needs to have
9 a variance.

10 MR. BROWN: So in essence, and I think
11 this will resolve it. The Board has essentially --
12 what was advertised is a variance for lot occupancy
13 and front yard for the construction of a front porch,
14 rear addition and accessory garage. It is now being
15 handled as a variance for lot occupancy and front
16 yard for the construction of a covered front porch.

17 MS. KRESS: Exactly.

18 MR. BROWN: That's all we're dealing
19 with.

20 CHAIRPERSON REID: And do you have any
21 cross examination, questions for Mr. Sisson?

22 MR. BROWN: Yes. Mr. Sisson, you got
23 five building permits, the original five, six now?

24 MR. SISSON: Is this germane to the
25 request?

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1 CHAIRPERSON REID: No. Mr. Brown, Mr.
2 Brown, I've warned you three times. This is -- I
3 can't allow you to continue doing that. Of course,
4 your being a very learned attorney and you've been
5 here many times before. We all know you. We know
6 that you understand what we're saying. And in
7 deference to all the Board Members and everyone here,
8 we would have to -- we have no alternative but to
9 move on to the ANC Report, if in fact, you continue
10 with that line of questioning.

11 MR. BROWN: And I'll stop, but my
12 question is because I think it is critical to this
13 that Mr. Sisson proceeded to build this porch which
14 he's now presenting to us and asking for a variance
15 in such a way that he built it before he asked
16 permission for it and I think based on what his
17 testimony is and the questions raised by Mr. Sockwell
18 that that's relevant. But I think perhaps I've made
19 that point or I could recommend that the Board read
20 its original order which made it very clear.

21 Because my concern is that --

22 CHAIRPERSON REID: That order was for the
23 appeal which we granted the appeal. Now we're
24 dealing with the variance. That's all.

25 MR. BROWN: But I don't think you can

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1 take the application particularly as to the front
2 porch in isolation and I'm just recommending the
3 Board do that. I will allow the BZA, I
4 mean the ANC, Mr. Griswold, we've been waiting -- to
5 continue.

6 CHAIRPERSON REID: Thank you very much.
7 There's no Office of Planning Report?

8 MS. MCCARTHY: No ma'am.

9 CHAIRPERSON REID: No other government
10 reports?

11 MS. MCCARTHY: No.

12 CHAIRPERSON REID: Okay, then Mr.
13 Griswold, the ANC representative. Did you have any
14 questions of Mr. Sisson?

15 MR. GRISWOLD: I have no questions of Mr.
16 Sisson.

17 CHAIRPERSON REID: Okay, then please come
18 up and give us your presentation.

19 MR. GRISWOLD: Madam Chair, ladies and
20 gentlemen of the Board, my name is Stephen Griswold.
21 I'm ANC Commissioner for ANC-3-D01. I was
22 authorized by the ANC to come and speak to you today
23 by way of explanation of our letters in this matter.

24 I had a prepared statement which I would
25 still like to go through to reflect our letter, but

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1 let me begin by saying as someone who is not versed
2 in the zoning stuff, I am very confused. I'll keep
3 it short because everyone else is getting as tired as
4 I am, but what the ANC -- and I raise this as
5 relevance, not just my personal thing here. I raise
6 this because I think it's relevant to the
7 recommendations that the ANC has made in this matter.

8 The variance that was advertised here was
9 for a variance from the front yard setback
10 requirements from the allowable percentage of lot
11 occupancy of a dwelling for the construction of a
12 front porch, rear addition and accessory garage. So
13 we have looked at this whole property, everything
14 that's happened here as a package. And again, I'm
15 not sure I understand what's going on here, but
16 suddenly I'm hearing that this only has to do with
17 the roof over the front porch and I don't get it.
18 I'm sorry. I don't get it. Maybe it's because I'm
19 ignorant in this stuff, but something feels very off
20 to me here and I just throw that out as a premise.

21 CHAIRPERSON REID: Ms. Kress, would you -

22 -

23 MS. KRESS: Let me take a stab at that
24 again. We got new evidence today and the evidence is
25 a permit that has now been acquired by Mr. Sisson and

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1 as a part of that permit, from the people who issue
2 permits and from the Zoning Administrator, all of
3 those things, the garage, the addition, they all say
4 he can do as a matter of right. So things that are
5 done as a matter of right don't come to the BZA. The
6 only things that come to the BZA are things you can't
7 do as a matter of right. And so that's why he cannot
8 put the porch on as a matter of right, so that comes
9 to the BZA.

10 Now that doesn't mean that you couldn't
11 appeal the DCRA, the Zoning Administrator's decision.

12 That's a different case. Right now, they're looking
13 at granting a variance that's being asked for. Did I
14 help at all? No.

15 MR. GRISWOLD: It helps. I mean I guess
16 it makes sense in theory, but I guess what that
17 brings up to my mind is the ANC has been working on
18 this, as have you all, for several years now. I've
19 only been involved for 9 months as an ANC
20 Commissioner. Even in that 9 months this matter has
21 come up I think it's three times. Each time it comes
22 up, the target keeps changing. What are we talking
23 about here? The survey wasn't there, the survey
24 wasn't there, the survey wasn't there. Finally,
25 there was a survey. And it said something different

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1 than we had all been working on before. Now, okay,
2 we got the survey. We know what we're looking at.
3 And today I arrive at the hearing to find out well,
4 no, that's actually not the issue, it's something
5 else. This permit has just appeared. Maybe that's
6 normal for this process. Again, I'm not an expert in
7 this stuff, but as a layman, that strikes me as a
8 very strange way and I would say unfair to the
9 neighborhood that I represent. It strikes me as an
10 unfair way to proceed because we don't know what
11 we're talking about. What are we supposed to be
12 objecting to?

13 MS. KRESS: Again, you have the option to
14 -- if, for example, today they turn this down and
15 they don't feel Mr. Sisson has proved his case, then
16 he will have to rip off this front porch because
17 that's part of these plans approve. And then you as
18 the ANC, if he does win, and he gets the front porch,
19 then you can come back and you can appeal the Zoning
20 Administrator's opinion as it relates to the garage
21 or to the addition and then you can also ask for a
22 reconsideration from this Board if they approve it
23 for the porch. There are several more steps you can
24 do.

25 CHAIRPERSON REID: Ms. Kress, could we

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1 not make a decision today and leave the record open
2 for the ANC to take into consideration the new
3 evidence that's been submitted and --

4 MS. KRESS: Oh, absolutely.

5 CHAIRPERSON REID: And put in writing,
6 get a position on it before we deliberate or
7 something like that?

8 MS. KRESS: Sure. I'm sorry. I didn't
9 mean to say that you all were going to deliberate
10 today.

11 CHAIRPERSON REID: No, no, no. I didn't
12 think that you were saying that. I was just looking
13 at alternatives, given the fact that the ANC
14 representative, Mr. Griswold, is not clear and I
15 think that it's important that he be clear because
16 what he's prepared to testify on, looking at your
17 letter is different from what is actually happening.

18 And that puts you in a rather difficult position
19 even to try to explain it to the ANC as to what
20 happened.

21 MS. KRESS: The big thing is we have new
22 evidence today. We didn't know ourselves when we
23 started this case.

24 CHAIRPERSON REID: Right, but given the
25 fact that we do have the new evidence and it has

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1 taken a different twist, then perhaps before we do
2 anything, make any determination that the ANC be
3 given the additional new evidence and be able to act
4 on it, revise it, or whatever they want to do at
5 their next meeting and then we can act on the case.
6 That's what I think would be the most fair thing to
7 do, in consideration that the ANC is -- as we were
8 too, Mr. Griswold. We were rather taken aback
9 ourselves and as you saw us trying to iron things out
10 and going through the papers and regulations and I
11 can understand that you're going back to the ANC and
12 saying well, I don't know what in heck happened would
13 put you at a disadvantage and I just want to make
14 sure that you are given every opportunity to be able
15 to respond appropriately, your ANC to respond
16 appropriately, given the new information that we
17 have. I have no problem with that. We can do that.

18 MEMBER RENSHAW: Madam Chair, I would
19 recommend that if Mr. Griswold takes this back to his
20 ANC for further consideration, that he is going to
21 have to have some written guidelines from the BZA as
22 to what he's taking back to the ANC so that there is
23 no more confusion.

24 CHAIRPERSON REID: Ms. Kress, is it
25 possible to have staff be in attendance at the ANC

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1 meeting to explain what happened?

2 Is that possible?

3 MS. KRESS: Sure, or something in
4 writing. We'll be in touch. We'll put something
5 together --

6 CHAIRPERSON REID: No, no, no. I wasn't
7 saying in writing. I was saying to have someone, not
8 only in writing, but someone to explain and to answer
9 questions because I am sure that when they receive --
10 this is -- the manner in which this whole thing is --
11 how everything --

12 MS. KRESS: I don't think I should be out
13 speaking in the community, until you've made a
14 decision.

15 CHAIRPERSON REID: Not you --

16 MS. KRESS: I've been told before that
17 staff should not really be speaking to the community
18 before a decision is made.

19 CHAIRPERSON REID: Okay, okay.

20 MS. KRESS: Afterwards, we can, but not
21 before.

22 CHAIRPERSON REID: Just in writing.

23 MS. KRESS: But I think certainly
24 something in writing that clarifies the new
25 information that we got today --

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1 CHAIRPERSON REID: And what happened and
2 why it happened.

3 MS. KRESS: And why it happened.

4 CHAIRPERSON REID: Would that be all right
5 with you, Mr. Griswold?

6 MS. KRESS: And what the issue of the
7 variance is, this roof on a porch, then so that you
8 can then formulate your response to that one item
9 which is the variance he's asking for.

10 MR. GRISWOLD: So you're saying that you
11 would not be proceeding then at this point?

12 CHAIRPERSON REID: No, no, what we're
13 saying is that we would not make a decision today.
14 We will leave the record open to give the ANC the
15 time to meet and to receive the information so that
16 they would be able to vote predicated upon the new
17 information they received today and be able to act
18 accordingly. So we're not going to -- in other
19 words, there will be no closure today. Would that be
20 something that you find --

21 MS. KRESS: And you tell us how much time
22 you need us to keep our record open for you to meet
23 and respond to us.

24 MR. GRISWOLD: Right.

25 MS. PRUITT: When is your next meeting,

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1 sir?

2 MR. GRISWOLD: I don't remember the
3 actual date, but it would be the first or second
4 Wednesday in November. I think it's the --

5 MS. PRUITT: So that would be the 9th --

6 MR. GRISWOLD: I believe so.

7 MS. PRUITT: The 8th or the 3rd.

8 MR. GRISWOLD: I don't have this
9 memorized.

10 MS. PRUITT: We could put that then on
11 for December meeting because you do need to leave
12 time for Mr. Sisson and the party to respond.

13 MS. KRESS: So our suggestion then of
14 staff would be that the decision be made at the
15 public meeting in December after receiving the
16 information from the ANC and allowing for Mr.
17 Sisson's response.

18 MS. PRUITT: Would that be -- would you
19 be amenable to that?

20 MR. GRISWOLD: It seems the least that we
21 can do for the neighbors that I represent.
22 Otherwise, they really haven't been heard and I can't
23 go back to them like that.

24 CHAIRPERSON REID: Mr. Sisson, would you
25 be amenable to --

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1 MR. SISSON: You have to understand that
2 this has been on-going for nearly a year now.

3 CHAIRPERSON REID: We understand that.

4 MR. SISSON: And I was hoping that we
5 could get a decision rapidly.

6 CHAIRPERSON REID: We understand that.

7 MR. SISSON: But I understand your
8 position and I concur.

9 CHAIRPERSON REID: We have to be fair.

10 MR. SISSON: I understand.

11 CHAIRPERSON REID: Look how long it took
12 us to understand it and given the fact that it's been
13 going on for so long and there have been delays and
14 you have to kind of go back and recount what happened
15 before and why it happened and how we got to this
16 point and what we're doing and all of that. It is
17 very convoluted.

18 MR. SISSON: I'm just very grateful we're
19 hearing it today. Thank you very much.

20 CHAIRPERSON REID: Thank you very much.
21 Now, so that's what we'll do for you. So we won't do
22 an ANC report. We'll have a report from you in
23 writing once everything has been clarified to your
24 satisfaction?

25 MR. GRISWOLD: I'm not sure that -- first

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1 of all, let me ask so I understand what the picture
2 is. Will the next meeting of this Board simply be a
3 decisional meeting?

4 CHAIRPERSON REID: Yes.

5 MR. GRISWOLD: In which case could I be
6 afforded the opportunity to make a statement now at
7 least reflecting the ANC's general understanding of
8 this whole matter and what our position is on it?

9 CHAIRPERSON REID: Can we? Well,
10 typically, Mr. Griswold, there is no input, however,
11 I'm getting nods from the Board Members as to making
12 an exception in this case only to allow you to speak,
13 no?

14 VICE CHAIRPERSON SOCKWELL: Madam Chair,
15 just as you wouldn't want Mr. Brown to testify
16 regarding things that are not germane, I don't think
17 it might be such a good idea for the ANC to do it.

18 CHAIRPERSON REID: No, no. Not things
19 that are not germane. He was asking -- he's now
20 prepared to testify today and he'd like to be able to
21 be heard and I thought I saw the Board Members
22 nodding saying that they --

23 VICE CHAIRPERSON SOCKWELL: Oh yes,
24 absolutely. That's fine. I misunderstood.

25 CHAIRPERSON REID: At the time that we

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1 have our meeting which we don't usually allow anyone
2 to testify --

3 MS. KRESS: Or Madam Chair, we can
4 actually continue the hearing, here's another -- to
5 another date in time certain. You don't have to do
6 it during your public meeting and then you're not
7 setting a different precedent. What you're doing is
8 just continuing the case --

9 MS. PRUITT: Because if he does testify,
10 you do need to allow for cross examination.

11 MS. KRESS: Exactly.

12 CHAIRPERSON REID: Okay, right. So what
13 should we do, continue it?

14 MS. KRESS: Yes.

15 CHAIRPERSON REID: Continue the case.
16 Board Members? To my left?

17 MS. KRESS: You can continue it actually
18 to next Tuesday, but I don't think that's enough time
19 for the ANC to get their position. So your next
20 date, as you know, is still December 5th. We still
21 have some potential time there, if you want to move
22 it.

23 CHAIRPERSON REID: Would December 5th be
24 satisfactory?

25 VICE CHAIRPERSON SOCKWELL: Before we go

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1 forward with this line, I am concerned that
2 understanding Mr. Griswold's confusion and my own and
3 all the things that have happened, if we take this
4 case down the road on a continuance, regardless what
5 happens with that continuance, if the Board decided
6 to deny the variance, Mr. Sisson is still going to
7 have his garage. He is still going to have his two
8 story addition, and he is still going to have a
9 projection into his front yard and he will still be
10 occupying although not by code, he will be occupying
11 a percentage of the lot that he has so desired and
12 has fought so hard to get.

13 The only thing that will not occur,
14 should the Board deny the variance, is that there
15 would be no roof on the front porch and by zoning's
16 standpoint, because the front porch is less than four
17 feet above the adjacent finished grade, for zoning's
18 purposes it doesn't exist. And therefore, the only
19 thing that will be gained by pushing the case down
20 the road, understanding your having represented the
21 ANC on positions which are much more cloudy now
22 because of the permit that Mr. Sisson has received,
23 it is a very limited relief that will be granted by
24 this Board under the circumstance that we don't
25 approve the variance. And my question is one that

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1 really goes to Ms. Crary who has not spoken in these
2 hearings to the true effect of a victory versus
3 another decision by this Board based upon what Mr.
4 Sisson has done. That is excluding any other relief
5 that might be sought outside of the Board's area of
6 purview. And it is very important that we not push
7 this case on ad nauseam in a circumstance where there
8 is really a very limited win factor and a very
9 limited lose factor.

10 CHAIRPERSON REID: Is there a question in
11 it?

12 VICE CHAIRPERSON SOCKWELL: Yeah, the
13 question is do we really want to do that? I realize
14 the ANC can go back and meet on this. The ANC's
15 position of win-loss was much different before this
16 permit was issued. And you as the representative of
17 the ANC must realize what you're going to take back
18 to them and I want you to be fully aware of what it
19 is that you can gain or not gain from the additional
20 ANC effort.

21 CHAIRPERSON REID: The question is?

22 VICE CHAIRPERSON SOCKWELL: And what we
23 will gain. The question is do you really want to go
24 back and push this case down the road?

25 CHAIRPERSON REID: That's the question?

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1 VICE CHAIRPERSON SOCKWELL: Do you have
2 to do that?

3 CHAIRPERSON REID: That's the question to
4 the ANC? I thought you said you had a question to
5 Ms. Crary?

6 VICE CHAIRPERSON SOCKWELL: The question
7 to Ms. Crary as well. She knows where we are now.
8 And it's taken a while to figure it out, but that's
9 really where we are. We're just talking about a
10 roof. We're not talking about a porch. We're not
11 talking about a garage. We're not talking about a
12 two story addition. We're not talking about pushing
13 Mr. Sisson's as-built back to his front wall. We are
14 talking about a roof on it which might be more
15 appropriate than a non-roofed porch sticking out like
16 that, based on the quality of the neighborhood homes
17 adjacent to it.

18 He has left us with a very limited
19 parameter for our decision making. As much work has
20 gone into this case, as much as we've agonized over
21 it, that's what it is. I just want everybody to make
22 some -- take a minute or two to think about this and
23 where we are.

24 I don't like, as a citizen, I don't like
25 not getting where I want to go with something,

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1 especially after a lot of effort. I don't like not
2 having a position to review after having gone through
3 mounds of information. But this is what has
4 happened. There may be other relief available, but
5 it's gone a long way and we've sort of had the case
6 gutted. And that's why I raise this question this
7 way.

8 CHAIRPERSON REID: So the question is are
9 you asking Mr. Griswold whether or not he thinks that
10 we should continue the case or what?

11 VICE CHAIRPERSON SOCKWELL: I'm asking
12 Ms. Crary whether or not she would want to pursue the
13 porch as a nonroofed porch if the porch is going to
14 exist under any circumstance, unless other relief is
15 sought outside of this Board.

16 Would it be more appropriate to withdraw
17 the objection and have a porch with a roof, knowing
18 that the other items are no longer on the table. The
19 garage isn't going to go away, based on what he has
20 from DCRA, unless other relief is sought. The two
21 story addition isn't going to go away either. And
22 that is a tough -- it's a tough question to raise,
23 but it's -- we're really talking about a roof that
24 might make the porch, if it has to be there, more
25 appropriate in its environment, in that neighborhood.

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1 We are not talking about anything else, but reality
2 now and we're all facing the fact that we cannot at
3 this Board level, I do not believe we can do anything
4 other than say yeah or nay to a roof. ANC can set --
5 can be opposed to the roof, but is it really the way
6 we want to go? I'll do whatever, and I'm sure the
7 rest of the Board Members will do whatever is deemed
8 appropriate, but I just don't know where to tell you
9 to go, except I know what I think and I can't tell
10 you what to think.

11 MR. HOLMAN: Madam Chair, even though
12 it's really late, if they want to consider what he
13 said, maybe we should take a little break and see if
14 they want to reconsider.

15 VICE CHAIRPERSON SOCKWELL: Can we give
16 you five minutes to think about it?

17 CHAIRPERSON REID: I think -- let me just
18 add also in here, that I think that what Mr. Sockwell
19 raised is a very pertinent issue because we've gotten
20 down to the, as they say, the nitty gritty of this
21 whole issue. And there was a proffer of an offer
22 that was submitted through Ms. Prince as maybe
23 perhaps another way of going at this, as a settlement
24 perhaps, and was an issue about a fence, erecting a
25 fence that would camouflage the unsightliness that

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1 Ms. Crary may have regarding that particular
2 structure next to her property and a couple of other
3 things. In the interest of time and just to kind of
4 bring some closure to this, perhaps as Mr. Holman
5 just indicated, perhaps we just recess for a few
6 minutes and allow the participants to try to see if
7 they can come to some resolution because when it gets
8 right down to it, it's really negligible and that's
9 what Mr. Sockwell is trying to point out to us. It
10 now almost gets to the point of being nonsensical.

11 So perhaps putting on our grown up hats,
12 maybe we can come to some resolution.

13 Ms. Renshaw, you were going to say
14 something?

15 MEMBER RENSHAW: Yes, I was going to make
16 a comment here that first of all, I resent very much
17 the fact that the Applicant, Mr. Sisson, brought to
18 our attention a permit that is dated 10/11 and we get
19 it on 10/17 and it hasn't been shared with everyone
20 else to help all of us prepare. Our time is
21 valuable, to help all of us prepare for this meeting.
22 That in itself is absolutely wrong.

23 I think insofar as the ANC goes, Mr.
24 Griswold is probably feeling what I would feel as an
25 ANC Commissioner, that I have a duty to go back to my

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1 ANC with information in writing from the BZA that
2 expresses what has happened to this case up to this
3 point and have him explain it to his ANC and ask for
4 the guidance of the Commissioners as to whether or
5 not they want to vote a position to bring back to
6 this Board.

7 I think that so much effort and money has
8 gone into Ms. Crary's case that she is going to want
9 to have more than just a breather, in quotes, to
10 confer with her attorney. That is unfair to her and
11 to Mr. Brown for us to say, hey, make a decision
12 because everything seems to be nonsensical and
13 negligible and do it in 5 minutes. And we also have
14 the issue of the Wesley Heights overlay to consider
15 which has not been brought to this Board at this
16 point.

17 So we have other matters to hear about.
18 And I just want to say that a quick breath is not
19 going to do it for me.

20 And I will want to hear back from the
21 ANC. I'll want to hear back from Mr. Brown and Ms.
22 Crary and the Wesley Heights citizens as far as what
23 they feel. I think we owe it to them.

24 CHAIRPERSON REID: Thank you, Ms.
25 Renshaw. I think what we had on the floor was simply

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1 a suggestion and this was not a mandate, nor was it a
2 command to persons here. It was a suggestion
3 proffered in that in the event they were desirous of
4 having such a conversation we would afford them that
5 and we've done that before with other applicants and
6 opponents and it worked out.

7 So if, in fact, they would like us to
8 give you that, we can. However, of course, if you
9 don't want to try to come to some resolution at this
10 time, then we will do the next best thing which will
11 be to continue it and then allow you additional time
12 to try to work it out with the ANC and all those
13 other things.

14 Mr. Brown?

15 MR. BROWN: Can we take five minutes?

16 CHAIRPERSON REID: Yes, 5 minutes.

17 VICE CHAIRPERSON SOCKWELL: And just to
18 say in every great war, there have been pieces of
19 property that were fought for over and over and it
20 never was necessarily a major gain from either side's
21 point of view, but a lot of blood was left on the
22 field.

23 CHAIRPERSON REID: Okay, Mr. Moulden, do
24 you want to make the announcement?

25 (Off the record.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

CHAIRPERSON REID: Are we ready to go?

MR. BROWN: I've taken the opportunity, which I appreciate, to talk to Ms. Crary, the ANC and George Watson from Wesley Heights. Sparing the details, they're desirous of going forward in this matter to protest the variance. I suspect that you know that you now that it's much more than just a roof on the issue and want to go forward.

Their ability to do so today, given the kind of surprise last minute issue, has severely handicapped them. Mr Griswold is statutorily limited because of the way the ANC works. Mr. Watson is unprepared, as perhaps I am, and I think it's fair to say that Ms. Crary is in shock about this matter.

CHAIRPERSON REID: And who is Mr. Watson?

MR. BROWN: Mr. Watson is the president of the Wesley Heights Historical Society.

CHAIRPERSON REID: Oh, okay.

MR. BROWN: And an active participant in the creation of the care and feeding of the Wesley Heights Overlay District.

So that that's the dilemma we're left, but my instructions from my client and the people in

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1 support is they take great exception to this variance
2 and these proceeding and they want to proceed
3 forward, but are really handicapped by the way things
4 have developed with this ambush with the new permit
5 and the issues and what not. We would ask for a
6 continuance, one I think that will allow for calm,
7 cooler heads from my side.

8 CHAIRPERSON REID: Okay.

9 MR. BROWN: And also allow us to focus in
10 on what has now been defined before the Board. As
11 much as we disagree with that, I think we're not
12 prepared to deal with the issues as they're currently
13 framed. And it's also 6:15 and I think it's a good
14 time to take advantage of this opportunity. I think
15 the end result will be better for everybody.

16 CHAIRPERSON REID: Thank you, Mr. Brown.

17 Mr. Sisson?

18 MR. SISSON: Well, two points. First of
19 all, if I could address Ms. Renshaw's comment or
20 criticism of me. I never had any intention to bring
21 this permit out today. I had expected that the
22 Zoning Administrator would have a statement and that
23 we would proceed on that basis. And it was only in
24 the absence of that and the apparent lack of
25 direction in terms of what were the issues that I

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1 attempted to clarify things by introducing the permit
2 and that's why the permit was interjected at a late
3 date.

4 Notwithstanding the fact that I only got
5 it a week ago, but the second point is I have some
6 sympathy for Mr. Brown's point of view, but you have
7 to understand that this has been going for a year now
8 and every time he asks for a continuance. Every
9 time. It's not that I ask for a continuance. He
10 asks for a continuance. It's been a year. This sort
11 of thing is not -- again, it comes to my detriment.
12 I would like to have a resolution as soon as
13 possible?

14 VICE CHAIRPERSON SOCKWELL: May I make a
15 statement to you, sir. First and foremost, you
16 appeared in this hearing room today armed with a
17 permit that was at least 7 days old. That permit had
18 not been submitted to the Board, nor to the
19 opposition, nor to the ANC for any review. You
20 pulled that out of your pocket as a grand stand
21 effort to have an ace in the hole --

22 CHAIRPERSON REID: Just one second --

23 VICE CHAIRPERSON SOCKWELL: Let me not
24 say it that way. Let me say it this way --

25 CHAIRPERSON REID: Mr. Sockwell, Mr.

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1 Sockwell.

2 VICE CHAIRPERSON SOCKWELL: Let me change
3 that. Let me finish --

4 CHAIRPERSON REID: Let's be very careful
5 about any allegations --

6 VICE CHAIRPERSON SOCKWELL: That was not
7 an allegation of wrong doing, it was merely an
8 allegation of strategy and let's say there was
9 obviously an opportunity for you to have presented
10 this permit to the Board in advance of the meeting,
11 in advance of this hearing. That was not done.

12 CHAIRPERSON REID: Mr. Sisson did say
13 that he expected to have reports from the Zoning
14 Administrator.

15 VICE CHAIRPERSON SOCKWELL: That does not
16 have anything to do with the permit. The permit was
17 evidence. The evidence was provided at the last
18 minute. The evidence changed the entire nature of
19 the case. That evidence should have been presented
20 to the Board in time for us to react to it. Things
21 of that nature are generally provided in advance.

22 The fact that you expected a Zoning
23 Administrator ruling surprises me that it wasn't
24 there because I would have expected you to follow the
25 Zoning Administrator, perhaps even to the grave to

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1 make sure you had that when you came in here. But
2 that may not have been possible under the
3 circumstances of DCRA at this point. But I am very
4 concerned that such evidence was not provided to the
5 Board in advance and yet what has to happen now is
6 that we will go forward and we will respond as
7 whatever the Board decides to do with regard to a
8 request for continuance.

9 CHAIRPERSON REID: All right, thank you
10 very much.

11 Let's move forward. We're not going to
12 have any resolution today, so the alternative is a
13 continuance. The date for continuance would be?

14 MS. PRUITT: December 5th in the
15 afternoon.

16 CHAIRPERSON REID: December 5th in the
17 afternoon, at what time, 1 o'clock?

18 MS. PRUITT: Yes.

19 CHAIRPERSON REID: 1 o'clock, at which
20 time we will give the ANC -- there was a question.
21 Ms. Renshaw, why don't you just ask on the record.

22 MEMBER RENSHAW: I'm asking Madam Chair
23 about that afternoon's agenda. We have 16649 and ANC
24 appeal of a digital television transmission tower.
25 Is that still on the agenda?

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1 MS. PRUITT: We haven't officially
2 received the letter. As you know, the Mayor -- this
3 was an appeal of the Zoning Administrator's issuance
4 of a building permit for the tower. The community
5 was appealing the Zoning Administrator. The Mayor
6 rescinded that, so they don't have anything to appeal
7 right now, but the tower people are taking it to
8 federal court and so what I believe the ANC is going
9 to request is that we continue this until after the
10 federal court has made their decision because they
11 may take it back here. So the bottom line is we will
12 not hear it on that day.

13 CHAIRPERSON REID: All right, so then
14 that afternoon, December 5th at 1 o'clock is the
15 designated continuance date of all parties concerned
16 is okay? All right. Can I have a motion?

17 MR. HOLMAN: I move that we continue this
18 case until December 5th.

19 VICE CHAIRPERSON SOCKWELL: Second.

20 CHAIRPERSON REID: All right, all in
21 favor? Opposed.

22 Mr. Rodney Moulden has said that -- he
23 had to leave. We will read the record for the
24 remainder of the hearing and we will so notify him as
25 well.

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1 MR. BROWN: Thank you, Madam Chair, and
2 Members of the Board.

3 CHAIRPERSON REID: Okay, then that will
4 then conclude the hearing today. But let me also say
5 to you, Mr. Sisson, comments that have been made by
6 this Board, by Board Members today do not necessarily
7 the reflect the position or the feelings of all the
8 Board Members. And I want to be very clear about
9 that.

10 Thank you very much.

11 (Whereupon, at 6:18 p.m., the proceedings
12 were concluded.)
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