

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

Consolidated PUD & Map Amendment &
Tenleytown Metro Station -
Albemarle Associates.

Case No.
00-03C

Monday,
December 4, 2000

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 00-03C by the
District of Columbia Zoning Commission convened at 7:00 p.m. in
the Office of Zoning Hearing Room at 441 4th Street, Northwest,
Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida,	Secretary, Zoning Commission
Gerald Forsburg,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Ellen McCarthy,	Office of Planning
Jennifer Steingasser,	Office of Planning

OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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(7:05 p.m.)

CHAIRPERSON HOOD: Good evening, ladies and gentlemen. This evening's case is the continuation of Zoning Commission Case No. 003C, heard first on October 19, again on November 2, and further heard of November 27, 2000. The hearing will please come to order.

Will all individuals who have not previously been sworn in and who wish to testify, please rise to take the oath.

(Oath given to witnesses)

CHAIRPERSON HOOD: Thank you, Mr. Bastida. Do we have any preliminary matters?

SECRETARY BASTIDA: No, the staff has no preliminary matters, Mr. Chairman.

CHAIRPERSON HOOD: Okay. I had a preliminary matter. If anyone didn't get the news, the Redskins did lose yesterday, being a Giants fan. So, I know that was cheap.

COMMISSIONER HOLMAN: That's out of order, Mr. Chairman.

CHAIRPERSON HOOD: That's out of order. Anyway, moving on with our witness list, I think what I'll do, if it's okay with everyone, I'll call -- how many seats do we have -- four up at a time. I'm going to ask my colleague, vice-chair to help me out with this.

Let me call first Matthew Pavuk, Chris MacNamara,

1 Tad Debiase.

2 MR. FORSBURG: Mr. Commissioner, I believe Sherry
3 Court and Stuart Schwartz toward the end of that list are going to
4 be testifying tonight.

5 CHAIRPERSON HOOD: Their names are on the list in
6 support.

7 MR. FORSBURG: Right.

8 CHAIRPERSON HOOD: They obviously were not present.

9 SECRETARY BASTIDA: Mr. Chairman --

10 CHAIRPERSON HOOD: Let me just make my statement
11 here.

12 SECRETARY BASTIDA: Sure.

13 CHAIRPERSON HOOD: They obviously were not present
14 when I called for it, so I think in all fairness, they have to
15 come on the back end.

16 SECRETARY BASTIDA: And I made them aware of such a
17 situation. The only person that in opposition that it was not
18 called is Mrs. Gibson. That is on your list. She is maybe a
19 third down on the list.

20 CHAIRPERSON HOOD: Gloria Gibson?

21 SECRETARY BASTIDA: They had Lincoln High School.

22 CHAIRPERSON HOOD: Wilson and she is probably about
23 tenth down the list.

24 SECRETARY BASTIDA: Right, but she's coming really
25 as a person that works at Wilson and is going to address the

1 Wilson School's concern.

2 CHAIRPERSON HOOD: Let me just ask Mr. Bastida. I
3 called Matthew Pavuk because I'm going by the list that I have in
4 front of me, and I've been advised or been told that he has
5 already testified.

6 MR. HITCHCOCK: No, sir. Debiase and MacNamara
7 testified.

8 CHAIRPERSON HOOD: Okay, but let me just say, are
9 they coming back as separate individual -- are they doing it as
10 individuals?

11 SECRETARY BASTIDA: No, Mr. Chairman. That was the
12 list. We kept it running, and some people who were called are on
13 the list, but they already have, in fact, testified out of the
14 group.

15 CHAIRPERSON HOOD: Let me do this since, honestly,
16 I have a faulty list or a list that I don't understand. Matthew
17 Pavuk is going to be testifying?

18 SECRETARY BASTIDA: Yes.

19 CHAIRPERSON HOOD: Richard Levine?

20 MR. HITCHCOCK: Mr. Chairman, perhaps I could help
21 the process.

22 CHAIRPERSON HOOD: Thank you. Conn Hitchcock for
23 Tenleytown Neighbors Association. We have prepared a list with a
24 number of witnesses as part of a unified presentation, including
25 expert and citizen testimony. Some of the people like Mr. Pavuk

1 and Ms. Gunning will testify as part of that. Perhaps to speed
2 the process along, if you wanted to go down the list, and I could
3 tell you who's on our list and then who may come at the end as a
4 person in opposition that might move it along.

5 CHAIRPERSON HOOD: Well, Mr. Hitchcock, I
6 appreciate you all for trying to combine it. That will save us
7 some time. Let's do this. You tell me who's on your list, and
8 I'll look on my list.

9 MR. HITCHCOCK: All right. The witnesses that we
10 have, and I will go in the order of presentation. Mr. Pavuk will
11 begin. He is a party along with Cheryl Browning. They're
12 parties. They live across the street on the Mill Road property.

13 Our next witness would be George Oberlander, who's
14 going to be the planning expert who has been previously qualified.

15 CHAIRPERSON HOOD: Okay, and you're going to take
16 it slow for me, Oberlander?

17 MR. HITCHCOCK: Sure.

18 CHAIRPERSON HOOD: I don't see his name on the
19 list. Okay.

20 MR. HITCHCOCK: The next name I imagine you'll see,
21 which is Catherine Wiss.

22 CHAIRPERSON HOOD: Okay, thank you.

23 MR. HITCHCOCK: The next witness you probably do
24 not have on your list are arborist Keith Pitchford.

25 CHAIRPERSON HOOD: Okay.

1 MR. HITCHCOCK: The next witness probably is not on
2 your list, architectural historian expert July Scott Feldman, who
3 by the way, was out of the room when you were administering the
4 oath, and I believe is the only one of our witnesses who has not
5 been previously qualified. So, we can take that up when she
6 testifies or however you want to handle it.

7 CHAIRPERSON HOOD: Okay.

8 MR. HITCHCOCK: The next is probably not on your
9 list, Mr. Joe Mehra.

10 CHAIRPERSON HOOD: Yes, he's on the list.

11 MR. HITCHCOCK: He is, okay. He is our traffic
12 expert. Two more, John Williams, who's a neighbor who will talk
13 about traffic.

14 CHAIRPERSON HOOD: He's on the list.

15 MR. HITCHCOCK: And the last one is Barbara
16 Gunning, who's another neighbor who was also separately admitted
17 as a party in opposition. Those are all the witnesses who will be
18 part of the Neighbors Association testimony, and I think some
19 others.

20 CHAIRPERSON HOOD: Okay, you have a total of how
21 many? I want to make sure.

22 MR. HITCHCOCK: Eight.

23 CHAIRPERSON HOOD: Eight. Okay, what we'll do,
24 we'll hear from you all first, and we'll divvy up the time. I'm
25 being advised, before Ms. Feldman testifies, we need to make sure

1 that we have her stuff in front of us.

2 MR. HITCHCOCK: Right. Her testimony was --

3 CHAIRPERSON HOOD: Her resume.

4 MR. HITCHCOCK: Right. We have a copy of that
5 which we can pass up now or when she appears.

6 CHAIRPERSON HOOD: Okay, when she appears, just so
7 we can qualify her to see whether or not she's going to be an
8 expert witness.

9 MR. HITCHCOCK: We, consistent with your
10 instructions of the first day, we've attempted to compress all the
11 testimony to under an hour with varying times. In terms of the
12 expertise of the four experts, aside from Ms. Feldman, all have
13 previously been qualified before either the Commission or the BZA.
14 Mr. Oberlander, Mr. Pitchford, Mr. Mehra.

15 CHAIRPERSON HOOD: Okay.

16 VICE CHAIRPERSON MITTEN: Mr. Chair, I might
17 suggest that we might qualify or consider qualifying Ms. Feldman
18 now so that their testimony can go uninterrupted, and then we'll
19 ask our questions at the end.

20 CHAIRPERSON HOOD: Okay. I have no problem with
21 that. Colleagues, any problems?

22 SECRETARY BASTIDA: No problem.

23 MR. HITCHCOCK: Okay, if Ms. Feldman would come up,
24 then. Ms. Feldman has extra copies of her resume, which can be
25 distributed to the Commission. Copies were given to the other.

1 CHAIRPERSON HOOD: Let me also -- it will help me
2 to call this list off a little better. If you hear, we're going
3 to pass this back out in the audience. If you hear your name's on
4 the list, please put your signature so we know that you're here
5 and we can have some chronological order and some type of
6 justification of how we're going to proceed.

7 So, I'm going to give this back to Mr. Bastida, and
8 I'm going to ask if you're here, would you please check off or
9 give me some indication or signature to let me know that you are
10 here so that we can proceed. Okay, we're waiting on the resume.

11 Mr. Hitchcock, if I could ask, I know you all have
12 asked for an hour, and I know the community has been very patient,
13 but if I can just ask that maybe if we could make a happy medium
14 and give us either 50 or 55 minutes. I don't think that's too
15 much.

16 Mr. Hitchcock, I think in all fairness, I know
17 people have come down three, for the fourth time. You asked for
18 an hour. I'm going to ask you to meet me halfway and make it 55
19 minutes or 50 minutes.

20 MR. HITCHCOCK: Okay. I will do my best. Thank
21 you, Mr. Chairman.

22 CHAIRPERSON HOOD: Thank you. Colleagues, if
23 everything's noted, we can proceed.

24 COMMISSIONER HOLMAN: I have passed out and
25 delivered copies of Ms. Feldman's resume or Dr. Feldman, who we
are tendering as a witness to talk about urban design,

1 preservation and landscaping issues. I can go through and examine
2 her on the resume or, if the Commission would like, to examine it
3 themselves, however you wish to proceed.

4 VICE CHAIRPERSON MITTEN: All I have in front of me
5 is the copy of her testimony. I don't have a copy of the resume.

6 MR. HITCHCOCK: I'm sorry, Commissioner Mitten. It
7 was the written statement that was passed out inadvertently.

8 CHAIRPERSON HOOD: Mr. Hitchcock, I know I said 55.
9 You can have the full 60 minutes now that I see the list is now -
10 - I don't want to keep fluctuating, but things have changed up
11 here for me.

12 MR. HITCHCOCK: Okay.

13 CHAIRPERSON HOOD: Okay, with that, colleagues, we
14 have in front of us Mrs. Feldman's resume. I'll give you a few
15 minutes, and we can make a ruling.

16 SECRETARY BASTIDA: Can everybody sign that sheet
17 and return it back to me, please, the one that is being passed
18 around? The ones that were planning to testify, please?

19 CHAIRPERSON HOOD: Okay, colleagues, again we have
20 Ms. Judy Scott Feldman's resume in front of us. Any questions of
21 Ms. Feldman?

22 If not, any comments? I don't see any problem -- I
23 don't have any problems, colleagues. I want to hear from my
24 colleagues. If not, we will declare her as an expert witness.

25 Okay, general consensus?

1 MR. FEOLA: Mr Chairman, Phil Feola for the
2 Applicant. We have no problem with Dr. Feldman being recognized
3 as an expert in art or architectural history. However, Mr.
4 Hitchcock was kind enough to give us a copy of her prepared
5 statement. A goodly part of it has to do with urban design and
6 urban planning, which I don't believe she's qualified to testify
7 as an expert. She's certainly qualified to testify in those
8 areas. So, we would object to that part of her testimony being
9 recognized as expert testimony.

10 CHAIRPERSON HOOD: Let me just say, Mr. Feola, if
11 we see where it ties in, then we will proceed, but if not, we will
12 cut it off.

13 MR. FEOLA: Thank you.

14 CHAIRPERSON HOOD: Okay. Ms. Feldman, you've heard
15 the concern, so I will ask you to keep your remarks to your
16 expertise.

17 MS. FELDMAN: Okay.

18 CHAIRPERSON HOOD: Okay, if everything's in order,
19 colleagues, Mr. Hitchcock, we can proceed.

20 MR. HITCHCOCK: Thank you, Mr. Chairman. On behalf
21 of the Tenley Neighbors Association, it's a pleasure to be
22 presenting our case to you. Let me begin with a comment on the
23 standard here and then provide a brief overview of the testimony
24 that you will hear.

25 In a typical PUD case, the applicant must proffer

1 up to ten listed categories of amenities as set forth in the
2 regulations. In such a typical case, the project may qualify for
3 approval if it is particularly strong on one or a few categories,
4 superior in some, and in any event, acceptable in all.

5 This is not a typical case. The Commission has
6 waived the minimum area requirements, and is proceeding under the
7 exceptional merit standard in these situations. It is our
8 position, therefore, that as a matter of law, the application
9 cannot be approved unless it is truly exceptional in every respect
10 that is being advanced in support of the application. Under that
11 standard, or even the standard applicable in typical PUD cases, we
12 submit the applicant has failed to meet its burden of proof.

13 CHAIRPERSON HOOD: Mr. Hitchcock, I hate to
14 interrupt you, but I'm going to ask the young lady who's passing
15 these exhibits out, if you could give it to our staff, and our
16 staff will -- if you could take these back up, and our staff will
17 give them to us. Thank you. Excuse me, Mr. Hitchcock.

18 MR. HITCHCOCK: No, thank you, Mr. Chairman.

19 We heard during the earlier sessions arguments
20 about some of the alleged exceptional merits such as that this
21 will promote diversity or will attract young people. We heard
22 arguments about the architectural merits of it, but as a practical
23 matter, when you come right down to the essence of the
24 application, this is a garden variety, upper bracket, townhouse
25 development of the sort you will see in other parts of the city,

1 and there's nothing exceptional about this particular proposal
2 that would warrant the Commission saying that it should be
3 approved. We will talk about some of those issues, the housing
4 aspect, the architecture, the environmental impact, and some
5 others.

6 What I'd like to deal with briefly at the outset,
7 too, is the planning issue. The only thing that makes this
8 different, seemingly, is the smart growth aspect that is being
9 advanced and talked about by the Office of Planning and by the
10 Applicant. In our view, and this was the source of some of the
11 frustration with the OP testimony, the current application is
12 inconsistent with the comprehensive plan that already draws a
13 boundary between the commercial areas along Wisconsin Avenue and
14 the residential area. It is the area that Mr. Murphy alluded to
15 last week for the park service, the area along Fort Drive and 40th
16 Street.

17 The community has bought and paid for the current
18 boundary between commercial and residential. It is well supported
19 in terms of the record for it, as Council Member Mendelssohn
20 talked about last week, and as Mr. Oberdorfer, our planning
21 expert, will talk about in further detail.

22 So, we believe that the project cannot be approved
23 on the grounds that it's inconsistent with the comprehensive plan.

24 The smart growth policies, to the extent they're going to be
25 implemented in the city, should proceed by the planning process

1 first before the zoning process, but as I indicated a second ago,
2 you don't have to go that far because of the inconsistency here.

3 Finally, I would note we have also submitted last
4 week a legal memorandum with respect to the Environmental
5 Protection Act in the city, urging that the Commission undertake
6 the environmental review process that is required and given the
7 Commission's position as the first agency to be passing upon this
8 application. I received, when I got back from lunch today, a copy
9 of Mr. Feola's opposition memorandum, which I can address orally
10 when we get to it, or in writing, as the Commission may see fit.

11 With that introduction, let me begin with the first
12 witness, Mr. Matthew Pavuk, who is a party who lives across the
13 street in one of those three houses south of Albemarle, who will
14 provide an overview of the neighborhood testimony.

15 MR. PAVUK: Good evening, Chairman Hood and members
16 of the Zoning Commission. My name is Matthew Pavuk. My family
17 has lived at 4426 Grant Road for 17 years in an 1890 era house.
18 Teddy Roosevelt was a regular visitor at our house, the one thing
19 we've been able to verify about it.

20 We had planned to give you a Power Point
21 presentation, but there was a mix-up in our communications, and
22 apparently the projector was not available for us this evening,
23 but I've passed out exhibits of what you would have seen. There
24 are color photographs with the originals with Mr. Bastida, but the
25 very first photograph in it chose the three houses in the 4400

1 block of Grant.

2 Now, my house has a number on the back of it as
3 well. It's 3926 Albemarle is the number on the back of our house.

4 We're directly across the street from the Applicant's properties.

5 You've seen earlier photos of our hose. It was described as
6 being poorly maintained. Those photos are out of date. There
7 have been extensive exterior repair and painting since those were
8 taken.

9 Now, we oppose the Applicant's project for four
10 different reasons, and that's Exhibit 2 on this list. It's out of
11 character to the neighborhood; represents bad planning rather than
12 smart growth; it relies on false claims that the site is
13 transitional and needs to be stabilized; and it lacks exceptional
14 merit.

15 Seven townhouses would form a continuous line along
16 Albemarle and Nebraska except for that strange gap between the two
17 units in the corner that would be built out the setback with no
18 yards. There is nothing comparable within Tenleytown.

19 The Bregons are staying put. Their small house
20 next to this project will result in an unsightly block which will
21 have an adverse impact on the Fort Circle Park Trail and those who
22 enjoy it. This is neither good urban design nor site planning.

23 The neighborhood agrees they are overwhelmingly
24 opposed. Over 200 local residents living within a quarter mile of
25 the site are members of Tenleytown Neighbors Association which has

1 rejected the project unanimously. Therefore, we believe it should
2 be rejected as out of character with the neighborhood.

3 Now, the developer and the Office of Planning say
4 this project is an example of smart growth around a subway stop,
5 but it really represents bad planning, we believe. We believe
6 that smart growth means increased mixed use, residential, and
7 commercial projects along the Wisconsin Avenue corridor such as
8 the Tenley Hill Project. There's certainly room in the commercial
9 corridor for more development.

10 The area is characterized by small commercial
11 buildings, and the next exhibit is a chart which shows you how
12 small in size the commercial buildings are. There's many vacant
13 lots in that area, including three in the same block as the
14 subway.

15 The next three photographs just show parking lots
16 within a block of the subway. The development along Wisconsin
17 would provide far more housing than the Applicant's proposal.

18 We also favor smart growth on the Applicant's site.
19 We believe the density can be increased from three to five houses
20 without changing the zoning. The comprehensive plan emphasizes
21 that R1B zoned areas are to be protected. Here, Holiday
22 Corporation bought R1B zoned property, had the historic Victorian
23 era chapel house torn down before announcing its plans.

24 My neighbor, the Reverend Ron Conner, remembers the
25 time when it was a magnificent house with beautifully landscaped

1 grounds, and indeed, the Lily Spandorf painting of this house in
2 its glory years is the next exhibit in your list. The last owner
3 neglected it. I was in it not long before it was destroyed and
4 was struck by the potential for restoration to something grand and
5 special.

6 The developer chose to disregard the zoning and
7 comprehensive plan regulation standards regarding historic
8 preservation of private structures. Their approach is the
9 antithesis of planning in advance of development, which is the
10 touchstone of smart growth.

11 Now, you've heard the contention that the site's
12 not appropriate for five more upscale houses. That defies belief.

13 There's a huge demand for housing in the Tenleytown area. Two
14 new houses on a very small plot on Belt Road listed for \$995,000.

15 Each have sold recently. Two of four new row houses on a small
16 plot on Alton Place within two blocks of the site have sold for
17 \$767,000 each. There's no reason why this plot can't be developed
18 either.

19 Therefore, we're asking you to reject the Holiday
20 proposal because it represents bad planning, especially given
21 available alternatives. Mr. Feola said you must decide if this
22 land is zoned correctly before proceeding to approve a PUD.
23 Holiday argues that the site is incorrectly zoned, and it's in a
24 transitional area between adjacent commercial and residential
25 areas.

1 However, as Mr. Murphy so eloquently stated, 40th
2 Street is the line of demarcation between the commercial and the
3 residential area. To the east of 40th Street is Fort Drive and
4 the park, houses, schools, and churches. The next four pictures
5 are taken from the parking lot on 40th Street. You can see the
6 commercial site, but the next three photographs are all pointing
7 towards Fort Drive and beyond. You can see how different this is
8 from the commercial site.

9 The 3900 block begins the residential and R1B area.

10 The 3900 block of Albemarle is bounded on three sides by R1B
11 property and on the fourth by federal park land. Indeed, the
12 Holiday proposal incorrectly says on pages 3 and 6 that it
13 directly abuts the commercial site, ignoring the park land. On
14 page 4 of its proposal, it fails to recognize my house and the
15 other houses to the south of the site. It mischaracterizes two
16 sides of the site in the proposal it gave to the Office of
17 Planning.

18 The 3900 block and my block across the street are
19 part of the oldest intact residential area in Tenleytown. My wife
20 and I were excited to buy an older house with historical resonance
21 at the entrance of the residential community. We don't feel
22 crowded by the commercial area which is not visible from our porch
23 or most of our windows.

24 When we sit on the back porch of our friends, the
25 Bregons, we see what Mr. Murphy described as the green hollow. We

1 see the trees along the creek and the federal park land and not
2 the commercial area or the wall of Wilson High School. This view
3 should also appeal to buyers of single family homes on the
4 Applicant's site.

5 I can't imagine that builders of single family
6 homes would want to denude the area of its trees and vegetation.
7 That would destroy the desirability of the site if all you could
8 look at was the commercial site and the wall.

9 Therefore, it's not a transitional area and it's
10 not unstable, despite the actions of the developer in tearing down
11 the property at the chapel house and 18 to 20 mature trees.

12 Now, this project, we also believe, lacks
13 exceptional merit, and some of these have been talked about
14 already. I had prepared, before knowing what Commissioner
15 Heinrich was going to talk about, two exhibits with regard to the
16 taxes, and you'll see them in your folder. The one of them just
17 buttresses his testimony that there's certainly no \$60,000
18 difference increase in property taxes, and indeed, income taxes
19 paid by more affluent owners of expensive houses could outstrip
20 the income tax yield to the city from owners of townhouses.

21 We've got a written example of that in your packet.

22 Therefore, the claims of exceptional merit aren't compelling.

23 We believe this is just a bad precedent to permit
24 townhouses that are going to be surrounded on three sides by
25 either single family homes or other R1B zoned property. The

1 Office of Planning says it's limiting it to 500 feet, but that's
2 an arbitrary figure. It doesn't cover all of the Applicant's
3 site. The rest of their analysis applies to many other portions
4 of Tenleytown, as well as other residential areas, and developers
5 are looking for properties east of Nebraska Avenue. We've
6 attached a letter that one of our members who lives one further
7 block away has received from a developer, our neighbor, Virginia
8 Singer.

9 Indeed, the Office of Planning has announced the
10 neighborhood coordinators will soon begin developing small area
11 plans with residents. That's the type of community based planning
12 which should occur instead of spot zoning. This proposal is
13 clearly spot zoning and would set a bad precedent. We'd ask that
14 you deny the zoning change sought.

15 Thank you.

16 MR. HITCHCOCK: Our next witness is George
17 Oberlander, who is an expert in urban planning issues who will be
18 testifying on those matters.

19 MR. OBERLANDER: Good evening, Chairman Hood and
20 members of the Commission. I think if Mr. Bastida would pass out
21 the testimony, the ten copies of which I gave, I think all of you
22 except possibly Mr. Hood know me quite well for a long period of
23 time. I served on the National Capitol Planning Commission, and I
24 was involved in the planning of this area many years back in the
25 '80's when the comprehensive planning was first initiated.

1 This evening, I appear on behalf of the Tenley
2 Neighbors Association, and my testimony will deal with why the PUD
3 and the map amendment from R1B to R5B should be rejected or
4 denied.

5 On the first page -- do you all have the testimony?

6 I start with ten major reasons why I take this position. I'd
7 like to highlight, since counsel member Mendelssohn also pointed
8 out very vividly the comprehensive plan issues involved in this
9 case. I don't want to repeat those, which are basically the bulk
10 of my testimony, except to highlight where in the comprehensive
11 plan, specifically the words are which deal with this issue.

12 The comprehensive plan provides policies and
13 objectives for a specific area to conserve and enhance the
14 essentially satisfactory qualities of the District's many stable
15 residential neighborhoods, including those qualities that make
16 them unique. That is Section 1102.1(a) in the comprehensive plan,
17 which directly applies to this neighborhood.

18 On the second page in the second bullet, the
19 Tenleytown Metro Rail Station special treatment area, which a lot
20 has been spoken about, it does not include the subject property
21 since the eastern boundary of the special area ends at 40th
22 Street. You've heard about that from others, but that is clearly
23 identified in Section 1129.1 of the comprehensive plan.

24 The third bullet on that page deals with the
25 Applicant's claim that the site is in the Tenleytown Housing

1 Opportunity Area as identified in the comprehensive plan. That is
2 absolutely wrong. The comprehensive plan calls for residential
3 development, housing opportunity as it's called, along Wisconsin
4 Avenue, N.W. within the existing commercial C2B and C3A. That is
5 in Section 1409.5(a)(1).

6 So, those are the highlights of the ten reasons why
7 the application should be denied. Approving the PUD and a map
8 amendment would make the new zoning inconsistent with the
9 Comprehensive Plan, and you've heard about that from Council
10 Member Mendelssohn, and I won't repeat that except to remind you,
11 and I know you don't need any lecturing on my part, that the
12 regulation shall not be inconsistent with the Comprehensive Plan.

13 In my opinion, if you rezone this area to R1B, that's exactly
14 what you would be doing.

15 Then on the lower part of page 2, I become more
16 specific with regard to the specific provisions of the
17 Comprehensive Plan, and I hope that you will have a chance to read
18 those and become familiar with them if you're not already familiar
19 with them.

20 On the top of page 3, there are other items I'd
21 like to call your attention. Section 1104.1 contains the policy,
22 and I quote, "Develop uniform indicators of neighborhood
23 conditions, establish standards for neighborhood quality, and
24 develop procedures to monitor and assess conditions and trends
25 affecting neighborhood stability." I don't want to read the whole

1 paragraph.

2 The Office of Planning has not done that in its
3 reports. In the second paragraph, I indicate that both the March
4 3 and the October 11 report make no mention of any conditions
5 needing corrections in the neighborhood. So, they're suggesting
6 that they will do a change in the plan, which is fine, and you can
7 always amend the plan, but the zoning should not come before the
8 plan is amended.

9 Going on to page 4, on the top, there is specific
10 provisions dealing with Tenleytown and Friendship Heights, Section
11 1400.2(b)(1) deals with controlling development in Ward 3, and
12 it's especially relevant to the subject application. Again, I
13 don't want to take the time to read the entire section, but that
14 is what Council Member Mendelssohn was talking about. He may have
15 written this himself before he was a Council Member, but I don't
16 recall who specifically wrote that. It deals specifically with
17 Tenley Circle, and in my opinion, the existing zoning around
18 Tenley Circle is exactly what the Comprehensive Plan called for.

19 On page 5 of the testimony, the October 11 Office
20 of Planning report cites Section 1409.2(k) as a test of
21 consistency with the Comprehensive Plan. I quote the section,
22 "Maintain and expand the existing housing stock where feasible and
23 consistent with the Comprehensive Plan." Well, that is exactly
24 applies to this area. This area should be maintained as a one-
25 family housing area.

1 Section 1406.9(a) and (b) provide design policies
2 which deal with the scale and massing. This is another aspect of
3 the application. One particular sentence, paragraph (b) states,
4 and I quote, "Avoid new construction which in height, width, or
5 massing violate the existing scale of the area."

6 Paragraph (c), massing, states, "Break up
7 uninteresting, box-like forms into smaller, varied masses. Box-
8 like facades and forms are intrusive when placed in a streetscape
9 of older buildings which have a varied massing and facade
10 articulation." The older buildings I'm referring to here are
11 across the street, that I've just testified to before.

12 So, the next point I'd like to highlight for you is
13 the smart growth and the Metro station. You've heard a lot about
14 smart growth. To me, smart growth is planning. It happens to be
15 the current popular term in the development field, smart growth,
16 but planning is really supposedly smart in advance of development.

17 The Comprehensive Plan is that planning, and that
18 was done in the '80's when the plan was first formulated and
19 adopted. The part of the plan that deals with this as the Metro
20 system, which was a brain child of the Planning Commission back in
21 the '50's, and suggested in the original planning of a mass
22 transit system, major stations and secondary stations. The
23 identification of the Tenley Circle station is a secondary
24 station. I provide a piece of -- I think it's Appendix A to my
25 testimony -- gives you a copy of the map which shows the Tenley

1 station being designated as a secondary station.

2 I further point out to you, you've heard and you've
3 seen the report of LaMotta, which the Office of Planning and the
4 developer have put a lot of claim to. The Metro report itself
5 deals with corridors of development, not only individual stations,
6 and they very clearly say not every station should have the same
7 type of development around it. The back of my
8 testimony, the last page, 11 reasons why I believe the report that
9 LaMotta has

10 -- it's not a report of LaMotta. It's a report that the Office of
11 Planning and the developer have introduced into the record. Why
12 this report doesn't really apply to this particular site.

13 I see that the time is going very quickly. I have
14 developed an existing land use map to show you on a lot by lot
15 basis what exists out in this area, and if I may, pass that out to
16 you since I wasn't able to duplicate that. It shows that
17 basically, the area is a one-family housing area with a good
18 number of community facilities in the surrounding area, and the
19 commercial strip is on either side of Wisconsin Avenue, both on
20 the east and the west side. That is Appendix B and B(1) of the
21 testimony. It also gives existing land use information for your
22 reference.

23 You've heard the arguments about exceptional merit,
24 and I won't go into that, or the public benefits and project
25 amenities. I'd be happy if you have any questions on that.

1 I'd like to quickly, briefly call your attention to
2 what is being proposed here in zoning terms is, in my opinion, a
3 classic case of spot zoning. The general definition of spot
4 zoning is the granting of a rezoning that will single out a small
5 parcel for a zoning classification different from the surrounding
6 property.

7 Now, that is clearly the case here. If the Bregon
8 property is or is not in the application, and I personally am
9 confused as to whether it's in the application or not. I hear
10 that it's the second phase. I don't understand how you can have
11 an application where there is no contractual agreement between the
12 two adjoining property owners in terms of requesting a rezoning
13 from this Commission, but that is a procedural matter, and I'm a
14 planning. You deal with the procedural matters.

15 In any event, the property, the first stage of
16 which is the design that you're considering, is completely
17 surrounded by one-family housing, and completely surrounded by
18 one-family zoning. I do call your attention to the zoning map,
19 which is Exhibit C in my testimony, which shows that the R1B
20 zoning goes across Westwood, across Tenley Circle, into the
21 western portion of Wisconsin Avenue. So, this is on the edge, but
22 it is not the final edge. The R1B zoning goes considerably
23 westward into very fine, one-family home areas.

24 So, in quick summary, in my opinion, the
25 application should be denied, or at a minimum, held in abeyance

1 until the plan, if it's desirable to change the Comprehensive
2 Plan, is changed to something other than what the zoning currently
3 calls for.

4 Granting the map amendment would be spot zoning.
5 The development proposal is inconsistent with the Comprehensive
6 Plan, as I've indicated. The subject area is not within the
7 Tenley Metro rail station. The subject area is not within the
8 housing opportunity area.

9 The existing zoning boundary along 40th Street has
10 long standing planning and zoning rationale and the R1B
11 classification to the east should not be changed. If the
12 Commission approves a PUD or OP's proposal to repair a clear
13 delineation of the Tenley Housing Opportunity area for the next
14 comprehensive plan review, it would be better to -- that would, in
15 fact, would be after the fact. If you rezone before the plan is
16 changed, that's what you would be doing.

17 Rezoning the subject site to R5B would make the new zoning
18 inconsistent with the Comprehensive Plan.

19 Finally, the Comprehensive Plan with the more
20 specific ward boundary and ward policy provisions should be the
21 development or redevelopment guidance for this area. Do not
22 rezone first and then later conform the Comprehensive Plan.

23 I'd be most happy to answer any questions that
24 Commission members may have.

25 CHAIRPERSON HOOD: I think what we're going to do,

1 colleagues, if that's okay, we're going to ask questions on the
2 back end.

3 MR. HITCHCOCK: Thank you, Mr. Chairman. Our next
4 witness is Ms. Cathy Wiss, who lives on Albemarle Street. She's
5 the president of the Tenleytown Neighbors Association.

6 MS. WISS: Good evening, Chairman Hood,
7 Commissioners. I live at 3810 Albemarle Street, N.W., one-half
8 block from this proposed project and east of Nebraska Avenue.
9 Tonight I will be discussing why the neighbors have opposed this
10 development and why the project is designed is not superior to
11 development as a matter of right, nor does it meet the test of
12 exceptional merit.

13 We believe the site is in part of our neighborhood.
14 Albemarle Street is one of the few connectors between Wisconsin
15 Avenue and the neighborhood to the east. Neighbors from blocks
16 around walk or drive along Albemarle Street daily to get to the
17 stores, Metro, and school. Unlike those who simply drive through
18 on Nebraska Avenue, we experience the intersection of these
19 streets, not as a divider, but as a link joining the 3900 block of
20 Albemarle to the rest of the neighborhood.

21 In August, 1999 when we first heard about this
22 proposed development, we went to the public library to research
23 the zoning regulations and the Comprehensive Plan, and that's
24 where we found out that the Tenleytown housing opportunity area
25 clearly does not apply to this site, but to the commercial

1 district along Wisconsin Avenue.

2 We also found that the Comprehensive Plan generally
3 and the Ward 3 Plan specifically seek to preserve low density
4 neighborhoods like ours from redevelopment. These protections are
5 important to us as citizens of the city. We view with alarm the
6 posture of the Office of Planning that the housing opportunity
7 area should be extended to this site in our neighborhood.

8 From the engineering and wetlands reports in the
9 application, it is clear that the work on this project began at
10 least a year-and-a-half before the chapel house was demolished and
11 the neighborhood learned about it. In fact, even after we learned
12 about it, Holiday delayed its general meeting with the
13 neighborhood until September 27, 1999 so that its plans could be
14 finalized. The plans we were shown in September were the same as
15 were submitted in the January, 2000 application with the addition
16 of the units on the Bregon's property, which increased the PUD.

17 In March, 2000, this Commission asked Holiday to
18 reduce the density of this project substantially. They've
19 reduced the number of units by taking out dividing walls, but
20 except for shifting the rear townhouses forward a bit, no
21 perceivable changes were made to the overall size, scale, height,
22 and number of floors until the Office of Planning recommended
23 removing the center townhouse in the rear row and the wedge at the
24 corner.

25 Holiday claims a significant reduction in gross

1 floor area, however, This is not the case. In the first plan by
2 a different architect, all interior spaces for all four floors was
3 counted. In the current plan, however, part of the ground floor
4 is being excluded. This is being done, even though in the October
5 27 plans, the entire ground floor is 4-1/2 feet above grade,
6 enough for this floor to be considered a basement.

7 Holiday proposes to cram 13 townhouses up to the
8 edges of this small site and to utilize adjacent properties for
9 its green space. This development would be like a small, crowded
10 island unto itself, a poor replacement for a historic house that
11 had been important to our community.

12 Unlike most of the houses in the 3800 and 3900
13 blocks of Albemarle Street, long rows of townhouses would be built
14 out to the property lines along the street with the steps and
15 porches in public space. This would create a disjunctive
16 streetscape with a closed-in feel, very different from the current
17 design of the neighborhood, where the houses are set well back
18 from the property line. My house, which was shown by Holiday as a
19 small red house, and it's 16 feet back from the property line.

20 These townhouses would be higher than the other
21 houses in the neighborhood, as well as most of our commercial
22 district, including the former Hechinger's and Fresh Fields, which
23 averages just under 32 feet in height without berms or roof.

24 In the rear, although two townhouses have been
25 moved away from Fort Drive Park, two more would be built only a

1 couple feet from the property line along the stream. Under matter
2 of right zoning, larger and more sensitive side yards and rear
3 yards would be required that could protect both of these areas.

4 Matter of right zoning would also allow more
5 sensitive treatment of the unusual shape of the site. Unusually
6 shaped side and rear yards would lend themselves to interesting
7 landscaping as outdoor rooms.

8 Early in the morning of December 27, 1999, the
9 first work day after Christmas, neighbors woke to chain saws
10 felling all the trees in the interior of Holiday site, including a
11 magnificent walnut and beech. This area would now be paved except
12 for a few dividers between the garages that could accommodate only
13 small plants. Landscaping along the street would replace a
14 variety of mature trees with monotonous rows of maples.

15 This overbuilding would not be more beneficial than
16 yards, which could surround each house and which would provide a
17 natural link between the park, stream valley, and other green
18 spaces of the neighborhood.

19 A significant feature of Tenleytown is its large
20 number and diversity of mature trees that attract a wide variety
21 of birds. This very large intrusion of impervious surfaces would
22 break up that single ecosystem.

23 The desire to build so many townhouses on the site
24 leads to crowded interior spaces, making movement within the
25 project difficult. The driveway is only 13 feet wide, too small

1 for cars to pass each other. It would be even more difficult for
2 large service vehicles like garbage trucks, moving vans, fire and
3 emergency trucks to negotiate this site, especially with only one
4 access point. It would be hard to get all the equipment in to
5 fight a fire, especially in one of the rear buildings.

6 The mobility of the residents would also be
7 limited. Consider the plight of someone who has to get to an
8 appointment but who gets blocked in by the garbage truck. A
9 better arrangement would be to provide a second access point onto
10 Nebraska Avenue. Currently, there are two curb cuts onto Nebraska
11 Avenue, the driveway into 3901 Albemarle and a small staff parking
12 lot into Wilson High School.

13 The ten parking spaces are also odd. They require
14 a good deal of pavement, and reduce the driveway to one lane, but
15 they're rather too short for vans and station wagons.

16 Cramped spaces also extend into the interior of the
17 houses. Although some changes have been made to the Unit B floor
18 plans, the garages are still inadequate to accommodate the two
19 cars intended.

20 Holiday claims that it's single driveway is an
21 amenity that would be better than five separate driveways, but
22 because of the corner, it's unlikely that that would ever occur.
23 Funneling all of the traffic for this project on a single point on
24 Albemarle Street would complicate already congested and confusing
25 traffic. Accidents occur here frequently, and I have some

1 pictures of an accident and Mr. Bregon trying to get out of his
2 driveway.

3 I'm certified as a water quality monitor through
4 the Audobon Naturalist Society. In the summer of 1999 during the
5 drought, a group of us went to investigate the headwaters of
6 Soapstone Creek. We found springs and a perennial wetland despite
7 the drought, which had left other streams in the Washington area
8 dry. Although the stream along Fort Drive Park is intermittent,
9 water starts to flow where it approaches the northwest corner of
10 Holiday's property, about 225 feet from Nebraska Avenue.

11 We've found aquatic life in the stream, native
12 clams and salamanders, indicators of the stream's good health.
13 The school uses the creek as an outdoor classroom and is having it
14 certified as a schoolyard habitat in the National Wildlife
15 Federation's Nature Link program.

16 Science teachers and students have signed a
17 petition asking this Commission not to approve this project.
18 Holiday plans to build townhouses only about 30 feet away from the
19 stream. This would not allow an adequate forest buffer between
20 the townhouses and the creek.

21 Riparian forest buffers provide significant
22 benefits to streams, and I've provided you a copy of the EPA
23 standards which I use in my work, as well as the forestry work
24 group's document, the forestry work group from the Chesapeake Bay
25 Agreement, which would have a goal of 100 feet riparian forest

1 buffer from the stream. The EPA's buffer would be 60 feet.

2 Requiring this buffer would help protect the white
3 oak and the quality of the water and stream valley. If this PUD
4 is approved, a buffer zone at least as wide as the EPA guideline
5 should be established. No townhouses should be built in it, and
6 if possible, the storm water system in the northwest corner should
7 be moved back. Trees should be replanted. If the Zoning
8 Commission were to allow existing zoning to stand, a buffer
9 similar to the EPA guidelines would be attained, simply by
10 applying the zoning standards.

11 Holiday has not discussed its proposed amenities
12 with the community, so we have no idea what is really planned.
13 One proposal is to clean up and restore the creek. Clean-up is
14 worthwhile, but already being done by students in the community.
15 We held a joint trash clean-up in March last year, and we plan to
16 do it again. It taught the students stewardship of natural
17 resources, and fostered a good relationship with the community.
18 Trash clean-up will always be necessary, but it doesn't take much
19 time.

20 The proposal to stabilize the storm water outfalls
21 is also worthwhile, but it costs only about \$500 per storm pipe.
22 A student club could accomplish it by placing logs there.

23 Restoring the creek raises more questions. If the
24 Applicant plans to remove non-native vegetation, they will have to
25 do so very carefully and with the permission of the school, and

1 I've discussed one of the major non-native plants in the stream
2 and it difficulties.

3 Finally, much has been said about the bioretention
4 storm water system. It's proclaimed it's an amenity, but it's
5 necessitated by the excessive amount of impervious surface, and
6 would perform the same function as an increased buffer of
7 vegetation.

8 This planned unit development is not superior to
9 matter of right development. I would say that even though an EIS
10 would not be required, development of this property would still
11 have to meet the water quality standards of 21 D.C.M.R. 1102.4(b).
12 Denying this application will respect the community's right to an
13 orderly and well considered planning process.

14 Finally, Commissioner Mitten has asked about the
15 map designation to decided it's institutional. It may just well
16 be that the best use of this site is institutional. Wilson High
17 School with 1600 students from all over the city has very limited
18 land for playing fields. The girls' softball team must travel to
19 Duke Ellington to practice. The football teams have to take turns
20 practicing. Teachers, coaches, students, and
21 parents would be delighted with more space for these activities.
22 Of course, students would have to avoid playing near the oak tree,
23 but it would unite the tree and its roots under single ownership.

24 Thank you.

25 MR. HITCHCOCK: Mr. Chairman, our next witness is

1 Keith Pitchford of Pitchford & Associates, our arborist whose
2 report was previously submitted in the record.

3 MR. PITCHFORD: Good evening, Commissioners, My
4 name is Keith Pitchford. I'm a certified arborist here in
5 Washington, D.C. I've been practicing in Washington for 12 years.

6 At present, I'm doing specimen tree preservation work for the
7 Washington National Cathedral, Dumbarton Oaks, and the U.S.
8 Capitol grounds, so I've had some recent experience with specimen
9 tree issues.

10 I have surveyed the proposed building site on two
11 separate occasions to evaluate the health of a large white oak and
12 its chances for survival based upon the proposed building plans.
13 Tonight I just wanted to give you in hopefully a few minutes a
14 little bit of tree biology and root development and why I feel
15 that the proposed plan would detrimentally impact this tree.

16 The tree is in good to excellent condition. I feel
17 if it's left undisturbed, would remain a critical component of the
18 landscape for many years to come. In fact, this is a fairly young
19 tree that has perhaps 100 plus years left in it if it were left
20 undisturbed.

21 A root zone protection area has been established on
22 the site that is approximately 20 feet from the trunk. Usually,
23 we use a formula for root zone protection that is about one foot
24 to one-and-a-half feet for every diameter inch of the tree. Now,
25 the tree measures 41 inches in diameter, so if I were to do this

1 without any plans in front of me, I would want a 40-foot tree
2 preservation zone at a minimum to preserve this tree. Otherwise,
3 you're losing a large amount of the critical roots that support
4 this tree.

5 This is a formula that, as I said, is widely used
6 in arborculture, and as well accepted throughout the country as
7 root zone protection criteria. I feel that the zone as it is
8 established right now represents only half of what I feel is a
9 base minimum, and I feel that is the wrong approach, and much less
10 than this tree will need to survive.

11 You have some photos, I believe, that would have
12 been on Power Point. I don't know if they're clear or not. If
13 they're not, I have the actual photos here, but photo one is a
14 photo of the tree, which is a real beautiful specimen for this
15 species.

16 I think it's important to note the value of forests
17 in the urban setting. Washington is very lucky to have the canopy
18 that it does, but we are losing it. There was an article in the
19 Post not long ago that said we have lost somewhere in the amount
20 of 64 percent of our canopy over the last 20 years.

21 So, it is very important to keep these large trees
22 intact, particularly in residential areas, and along stream beds.

23 I should not that this tree will provide a tremendous amount of
24 bank stability for Soapstone Creek throughout the years.

25 Photographs three and four of the hand-out show --

1 or, I should go back to photograph two shows the two root flares
2 that come out from the tree into the existing lot that's proposed
3 for development. There is a stone wall that abuts the tree. It
4 looks like a very old stone wall, and I suspect that the root
5 flare that is behind that tree has probably been deflected by that
6 wall and does not go into that open lot. I do feel quite strongly
7 that the two root flares that you see on the other side of that
8 wall do have quite a few roots associated with it that have
9 extended into this lot.

10 Now, I understand that fill had been added to this
11 site some time ago, perhaps 40 or 50 years ago, although I should
12 say that my understanding from the engineering tests was that the
13 compaction numbers on this soil are not enough in my opinion to
14 restrict root development into this soil. White oaks are very
15 aggressive roots, not as aggressive as some, but certainly, as you
16 probably have seen, some trees pushing up sidewalks, breaking
17 foundations and so forth. They will go into areas that you don't
18 expect they would go.

19 As long as there's porosity for air and water and
20 available nutrients, the roots will extend into this soil. I feel
21 that if this was 40 or 50 years ago that quite a bit of organic
22 material has been added to the top of this fill and that's the
23 kind of medium that these roots will grow into. So, I have every
24 reason to believe that these roots have grown into that area, as
25 it was a lawned area for some 40 years.

1 Now, I understand that an air spading operation had
2 been conducted on the site to determine if there were white oak
3 roots near the tree. I understand that there were two sites
4 approximately 12 feet from the trunk and to a depth of about eight
5 to ten inches. Although I do commend the approach of using the
6 air spade, which is a very nice tool to find these roots, I don't
7 feel that the test was conclusive. I don't think it was deep
8 enough. I think most in this field know that white oak roots are
9 some of the more deeply rooted trees in the area, and there's
10 every reason to believe that these roots are going to be found
11 below that ten inch depth.

12 I also took a visit to the site on November 22, and
13 I actually tried to find the air spading sites. I used a compass
14 and a tape measure, using Mr. Millhouse's description in his
15 reports, and quite frankly, I dug below the chips, and I could not
16 find any indication that these trenches were dug.

17 Now, I don't go on to say that they weren't dug. I
18 just wonder where they were dug. In fact, I found a bottle in
19 one, and it's really just, I raise these issues only to say that
20 they're not particularly conclusive in my mind. I really think
21 that if they were to be conclusive, they should have been left
22 open so that I or someone else at the opponent's hire could look
23 at it and could conclude that there weren't actually roots in
24 those trenches.

25 This is a very valuable tree in our area, perhaps

1 one of the best trees in the area, and I really feel that to
2 construct this project the way it is designed, at only 20 feet
3 tree preservation from the trunk of that tree would ultimately
4 stress this tree considerably, bring on insects such as bores that
5 would kill this tree ultimately. The unfortunate thing, and this
6 is a really important part, is that this doesn't happen overnight.

7
8 When you do this kind of construction and you
9 damage the roots, it generally takes three to five years for the
10 serious decline to show up. By that time, the developer has moved
11 on.

12 So, I feel that they need to be responsible for
13 this tree if they're going to go ahead with this for at least five
14 years. If it dies in that time, I feel that reasonably they may
15 be responsible for somehow replacing that tree, but it will take
16 three to five years for that damage to occur.

17 Thank you.

18 MR. HITCHCOCK: Ms. Feldman is prepared to testify.
19 I don't believe she was sworn earlier.

20 MS. FELDMAN: No, I wasn't.

21 CHAIRPERSON HOOD: You weren't?

22 MS. FELDMAN: No.

23 CHAIRPERSON HOOD: Mr. Bastida, can we swear her
24 in, please?

25 MS. FELDMAN: Good evening, Commissioners. My name

1 is Judy Scott Feldman. I'm an art and architectural historian and
2 until last year, taught Washington art and architectural to
3 American University's Tenleytown campus, just a couple of blocks
4 from the site under discussion.

5 This evening, I will focus my comments on the PUD
6 requirements with regard to architecture. I have three main
7 points.

8 First, the current townhouse plan would have the
9 effect of breaking up the architectural character of the
10 established neighborhood. Second, the Holiday design concept
11 fights the lot in its place in the urban neighborhood instead of
12 responding to it. Third, the architectural elements dress up the
13 massive project with a townhouse typology that contrasts with
14 instead of compliments the neighboring single family detached
15 houses.

16 First, the Office of Planning's decision at
17 Nebraska Avenue marked the neighborhood boundary and that the lot
18 is therefore a transitional area is perhaps understandable, given
19 the forlorn appearance of the site today, after Holiday property
20 stripped it of its old houses and tree cover. However, it
21 disregards the architectural integrity of the neighborhood.

22 This corner lot is an integral part of the
23 architecturally unified neighborhood that spans both sides of
24 Nebraska Avenue and Albemarle Street. It is one of six corner
25 lots at the intersection of Nebraska, Albemarle, 39th Street, and

1 Grant Street, with houses that pivot around the central triangular
2 island of land carved out by their intersecting streets.

3 The old chapel house on the property, now
4 demolished, faced that intersection and so emphasized the
5 architectural relationship of this lot to the rest of the
6 neighborhood across these streets. Rezoning the site for the
7 proposed townhouses would break up this relationship and raise the
8 very real threat that the houses on Grant Road west of Nebraska
9 could be the next victims, further jeopardizing the single family
10 architectural character on both sides of the street.

11 If the Commissioners do choose to rezone the lot as
12 transitional zone, every attempt should be made to assure that
13 whatever architectural design is approved would maintain the
14 existing character of the relationship of the lot to the detached
15 houses and their landscaped yards and to the open space of the
16 adjacent Fort Drive Park.

17 However, the Holiday plan would turn its back on
18 the street, park land and neighborhood. This is my second point.

19 Its enclave of tall townhouses lining the street, enclosed around
20 a central paved courtyard, an access by way of a single drive on
21 Albemarle is more suburban design than urban.

22 The Office of Planning's suggestion to mitigate the
23 massive appearance and scale of the architecture by adopting the
24 alternate site plan and cutting out the corner unit, however,
25 raises as many problems as it solves. The resulting awkward

1 design gives the appearance of two buildings having been pushed
2 together with no architectural or design forethought and no
3 attention to the importance of the corner as an urban design
4 element.

5 If the Commission decides to approve this project,
6 a preferable alternative would be to remove the corner unit from
7 the original site plan. This would open a space at the corner and
8 between the units on Albemarle and Nebraska Avenue for pedestrian
9 access and views. It would reduce the mass and scale of the
10 project along the street. However, none of the proposed alternate
11 solutions that attempt to fix the inadequate original concept by
12 subtracting obtrusive elements would produce architecture that
13 meets the definition of exceptional merit.

14 Third, the architecture of the individual townhouse
15 units incorporates elements and some materials used in the
16 neighborhood, but because they are repeated with very little
17 variation along Albemarle and Nebraska Avenue, they tend to
18 reinforce rather than diminish the mass of the project. The
19 resulting uniformity of this repetitive townhouse typology is at
20 odds with the variety found in the older detached homes nearby.

21 It is instructive to note that examples of attached
22 single family dwellings illustrated by Holiday as sources for
23 their design may work well on narrow residential streets, but they
24 are ill suited to prominent sites like this corner lot, which
25 demands a creative solution not found in standardized formulas.

1 If the Commission decides to approve this project,
2 a better approach, one that would be more in keeping with the
3 neighborhood might be to disguise the townhouse typology of
4 multiple units, each with its separate roofline porch and window
5 pattern, with an architecture that consolidates multiple units
6 into a design resembling a large house.

7 In conclusion the Tenleytown neighbors are
8 justifiably concerned that the Holiday townhouse project would
9 damage and diminish the neighborhood's existing residential
10 architectural character and its open spaces. A better solution
11 than that proposed by Holiday would be to retain the existing
12 zoning and to design homes that take advantage of the irregular
13 lot shape, its proximity to public park land at Fort Drive Park,
14 and its special character as a gateway into and out of the
15 Tenleytown neighborhood.

16 If the Commission, however, chooses to approve the
17 rezoning of this parcel as transitional, every attempt should be
18 made to better integrate its design and architecture into the
19 fabric of the existing neighborhood. One successful example is
20 Wilson High School, just a few hundred feet up Nebraska Avenue,
21 whose massive facade is set far back from Nebraska Avenue, while
22 the flanking natatorium and other adjoining buildings are angled
23 away from the street so that their mass and scale are offset by
24 space and do not overwhelm the street or the neighborhood.

25 Thank you.

1 MR. HITCHCOCK: Our next witness is Mr. Joe Mehra,
2 who is the Association's traffic expert.

3 MR. MEHRA: Good evening. My name is Joe Mehra.
4 I'm President of MCV Associates. I have submitted my return
5 report, and I'm presenting a summary of the findings.

6 I disagree with the conclusions of the traffic
7 study conducted by Wells & Associates for the following reasons.
8 The traffic data was collected in September, October of 1999. The
9 traffic data used in the analysis is over one year old.

10 New data was collected for Albemarle Street but
11 should have been collected on Nebraska Avenue as well and utilized
12 to represent existing conditions in the year 2000. Growth and
13 traffic on Nebraska Avenue would have a negative impact on
14 Albemarle Street approaches to Nebraska Avenue.

15 The figure one in the Wells traffic report shows
16 the existing lane use in the area. The lane uses shown here were
17 utilized to estimate the existing and future levels of service at
18 the intersections. There are several errors in the figure. Due
19 to these errors, the level of service that are computed are not
20 correct.

21 The levels of service analysis was conducted
22 assuming that each intersection operates independently of the
23 adjacent intersections. Due to the close proximity of the
24 intersections analyzed and the definite impact of the
25 intersections on each other, the highway capacity manual is not

1 the correct technique to estimate delays and levels of service.

2 The Corsi model is one of the techniques that can
3 be used for such a road analysis. The results based on the
4 highway capacity manual analysis will not reflect real world
5 conditions. Assuming for a moment that the highway capacity
6 manual is the correct technique for estimating levels of service,
7 Wells conducted the analysis using release 2.4.

8 In CS-3, the highway capacity release three was
9 released in early 1999. Therefore, it would be more appropriate
10 to use the current version of the highway capacity manual. The
11 newer release is the state of the art in levels of service
12 analysis. In order to see the impact of the newer release, the
13 signalized intersection of Nebraska Avenue and Albemarle Street
14 was analyzed for the A&P car by me. This short level of service F
15 on the eastbound Albemarle Street approach was a level of service
16 D that was estimated by Wells in their analysis.

17 In order to project the future traffic volumes, the
18 traffic on the adjacent roadways were not increased to reflect the
19 growth in through traffic. This is not in conformance with the
20 recommended practice of the Institute of Transportation Engineers.

21 The use of growth in through traffic will result in greater
22 delays, and both levels of service at intersections than estimated
23 by Wells.

24 Further, the Wells report indicates that a queue of
25 11 vehicles was observed on eastbound Albemarle Street during the

1 a.m. and p.m. peak hours. This means that the driveway to the
2 proposed residential development will be blocked by the vehicles
3 on eastbound Albemarle Street. The left turn vehicles exiting
4 from the development will not be able to make the maneuver in less
5 than ten seconds, which is the standard for level of service A.
6 The conclusion in Wells report that Albemarle Street side access
7 drive intersection will operate at level of service A is
8 erroneous.

9 The Wells analysis also shows that the eastbound
10 approach of Albemarle Street and Nebraska Avenue would operate at
11 level of service E during the a.m. curve at the site developed.
12 The existing conditions analysis without the site during the a.m.
13 curve shows a level of service D. Therefore, the proposed
14 residential development would worsen the existing acceptable level
15 of service D to an unacceptable level of service E.

16 In terms of on site circulation, it shows a travel
17 way of 13 feet to access the parking areas. This width is not
18 adequate and safe for two-way regular traffic. A delivery truck
19 or a moving van will not be able to exit the site unless they back
20 out or back into the site. Further the on site circulation plan
21 will not provide safe and easy access to emergency vehicles such
22 as fire and rescue. The ladder trucks are 56 feet long and eight
23 feet, four inches wide. These ladder trucks can back into their
24 driveway to service the units near the driveway, but cannot get to
25 the units located north and east of the driveway.

1 In conclusion, the proposed development will have a
2 traffic impact on the adjacent roadways. Thank you.

3 MR. HITCHCOCK: Ms. Barbara Gunning is a neighbor
4 of the project and has a brief statement.

5 MS. GUNNING: My name is Barbara Gunning, and I
6 live at 3822 Albemarle Street, N.W. I live directly across the
7 street from the proposed townhouses. In fact, the developer's
8 photographs of the site in question were taken from my sidewalk.
9 I am ground zero.

10 You have heard a lot of testimony chock full of
11 facts and figures. Now, I am asking you to take a step back and
12 look at the big picture here. I want you to look at this proposed
13 project through the eyes of me and my Tenleytown neighbors.

14 First, I start with pictures of developable
15 property along Wisconsin Avenue, in close proximity to Metro. The
16 developer and Office of Planning maintain that the lack of
17 development on Wisconsin Avenue is not relevant. I disagree.
18 Good planning and zoning require us to analyze this project as
19 part of the immediate community it is joining, both commercial
20 and residential.

21 The proposed development is ideal for Wisconsin
22 Avenue and would be smart growth. At the joint ANC meeting, Ms.
23 Manberger stated that the only property owner contacted by the
24 developer was Mr. Pettis. As you see, these pictures show many
25 one and two-story dilapidated structures, some of which are

1 boarded up or vacant. These properties are all located within two
2 blocks of Metro.

3 Finally, I have included a picture of the
4 Tenleytown skyline, which has not enjoyed the benefit of good
5 urban planning. Next, I turn to pictures of the site in question
6 and the immediate neighborhood. The first picture is the U.S.
7 Park Service. It's the second board here on the right. It's the
8 Park Service land that separates the Bregon property from Metro.
9 Please note that the Park Service land is much bigger than has
10 been described.

11 Next is a photograph of the Bregon house. I remind
12 you that this house will remain standing as a single family
13 dwelling after the townhouses are built. Thus, the bucolic Park
14 Service land and Bregon property will be sandwiched between Fort
15 Drive and the proposed development. The developer's application
16 is misleading because all the land measurements for the project,
17 including the acreage and density, includes the Bregon property.
18 However, there is no concrete plan before us that insures the
19 Bregon property will be developed as suggested by the developer.
20 This scares me as a nearby homeowner.

21 This is a picture of the proposed site. It's at
22 the bottom left here, and that is from my property. When the
23 trees are removed, the Tenleytown antennas and commercial district
24 will be readily visible. The following four photographs show
25 townhouses on 43rd Street that will be similar, and those in

1 Bethesda. Observe the two houses. It's the first picture on the
2 top, second row. It shows a small house sandwiched between the
3 commercial district and the townhouses. This picture depicts the
4 future plate of the Bregon home.

5 Note the absence of green and limited parking and
6 access. I mention that because they're going to be parking in
7 front of my house, and there's not much parking now.

8 In contrast, the remaining pictures show all the
9 houses that directly face the proposed development. As you can
10 see, the townhouses are completely inappropriate and incongruous
11 with the single family homes that surround the site. I emphasize
12 to you that I and my neighbors bought our houses relying on the R1
13 zoning. Now, because a developer has chosen to leapfrog into the
14 neighborhood to develop higher density housing, we are in fear of
15 losing our homes to future development. As a result, many of us
16 will not be making capital improvements.

17 The last picture is an example of infill by another
18 developer that is permitted under the current R1 zoning. Such
19 development is more appropriate for the site.

20 You have asked why we Tenleytown residents have
21 been so concerned and vocal about the project. First, Tenleytown
22 is vulnerable. Tenleytown is a small area comprised of
23 comfortable homes but not wealthy people. If this developer wins
24 this zoning change and acreage waiver, we will not be able to
25 continue fighting each future attempt at spot zoning. I assure

1 you there will be more attempts at spot zoning unless you send a
2 clear message.

3 Second, Tenleytown has its own distinct character.

4 Yes, we are not as manicured as AU Park, but we are a unique
5 blend of long term D.C. residents who fiercely believe in
6 preserving some of Washington's history along with Tenleytown's
7 unique fabric.

8 I believe that four single family homes will be a
9 part of the Tenleytown community, but the townhouses will not.
10 Thank you very much.

11 MR. HITCHCOCK: Mr. Chairman, we had one additional
12 witness who, through an oversight on my part, John Williams, I
13 omitted to qualify as a transportation expert. His biography was
14 provided to the Commission previously. He had a three-minute
15 statement, I believe. We have 30 seconds left. I was wondering
16 if Mr. Williams could be heard.

17 CHAIRPERSON HOOD: Sure, that's no problem. Mr.
18 Hitchcock, let me ask, do you have any other witnesses besides --

19 MR. HITCHCOCK: No, sir.

20 CHAIRPERSON HOOD: And you want him to be an
21 expert?

22 MR. HITCHCOCK: Yes, on traffic and transportation.
23 He is a transportation, environmental and management specialist
24 at the Transportation Research Board of the National Academy of
25 Sciences. I can summarize the biography while he's setting up.

1 Mr. Hitchcock, will you bear with us while we
2 review this?

3 MR. HITCHCOCK: Sure, I appreciate it. I apologize
4 for the throwing off the schedule.

5 MR. WILLIAMS: May I begin?

6 CHAIRPERSON HOOD: We're just reviewing your
7 qualifications, Mr. Williams.

8 Okay, colleagues, we have in front of us a request
9 that Mr. Williams be considered an expert witness. Are there any
10 problems, any concerns, any questions? Hearing none, so ordered.

11
12 Mr. Williams, you're an expert witness. You may
13 proceed.

14 MR. WILLIAMS: Thank you very much. I live at 4537
15 Grant Road. I'm a transportation professional with 28 years
16 experience, and my comments basically go to the issue of the
17 driveway and in support of the comments from our traffic
18 engineering consultant, Mr. Mehra.

19 We have known for some time, because of Mr.
20 Bregon's own statements at our meetings that exiting the driveway
21 onto Albemarle Street is a very difficult traffic maneuver. We
22 made an attempt to perform a traffic engineering study to put some
23 bounds on how difficult that problem was.

24 On October 17, during the morning peak hour, we
25 made ten trial exits from a driveway that's approximately where

1 the driveway will be at this development, if it is built. We did
2 basically do a left turn onto Albemarle Street, which is the
3 predominant direction the traffic would wish to go to, heading
4 toward the downtown.

5 We videotaped each of these trials. We did this
6 between eight and nine in the morning, which is the peak hour of
7 traffic. I was the driver, and I've conducted many traffic
8 studies like this. In many cases, it took two minutes or more to
9 get out of the driveway. The average exit time from the driveway
10 was 53 seconds. These problems were caused by conflicts with
11 pedestrians, buses, and traffic coming from all directions.

12 The average of 53 seconds according to the highway
13 capacity manual is level of service F for the driveway. So, I'm
14 basically offering to you testimony that this driveway is at least
15 a very difficult one for a single family house, and perhaps an
16 unsuitable one in terms of its operations for a multi-family
17 dwelling such as proposed here. We have a videotape which we also
18 will submit in testimony, so that what we're telling you is
19 absolutely transparent, and anyone can examine it.

20 Those are my remarks.

21 I wouldn't show you the whole videotape, but just
22 one of the trials. There's about two minutes where you can see
23 for yourself what's going on.

24 CHAIRPERSON HOOD: Colleagues, if we --

25 COMMISSIONER FRANKLIN: I'm prepared to take Mr.

1 Williams' word for what he's experienced.

2 CHAIRPERSON HOOD: Right. I guess I would have to,
3 but I would be interested in seeing it, unless of course maybe I
4 could take it home and watch it.

5 MR. WILLIAMS. It should be at the right point.

6 CHAIRPERSON HOOD: I've been advised that I guess
7 we need to go ahead and proceed, and if we get that in the next
8 couple of minutes, we'll go back to it.

9 MR. WILLIAMS: Thank you very much. I will leave
10 the videotape with you for your viewing.

11 CHAIRPERSON HOOD: Okay, thank you.

12 MR. HITCHCOCK: That concludes the Neighbors
13 Association presentation, Mr. Chairman.

14 CHAIRPERSON HOOD: Okay. Colleagues, do we have
15 any questions of any of the Tenleytown Neighborhood Association's
16 members who testified thus far? Do we have any questions of any
17 of the witnesses?

18 COMMISSIONER HOLMAN: Just one, Mr. Chairman, and
19 it's hopefully not a major issue. There was -- I think my papers
20 are a little spread out here, but the traffic consultant that they
21 brought on talked about some software that wasn't current,
22 something about a version two point something as opposed to
23 another version, and I didn't quite catch the relevance of that.

24 MR. MEHRA: This is Joe Mehra. The relevance of
25 the software is that the Transportation Research Board have

1 developed the highway capacity manual, and then the software was
2 developed to kind of make it easier to execute all the
3 calculations. The software that was used by Wells & Associates is
4 the older version, and in the newer version, they've made a lot of
5 changes.

6 One of the things that I did mention was that I
7 kind of ran through the A&P car for that same signalized
8 intersection of Nebraska and Albemarle to see what it would show
9 with the newer version. The newer version showed a level of
10 service F, whereas the older one showed a level of service D.

11 COMMISSIONER HOLMAN: Okay, thank you.

12 COMMISSIONER FRANKLIN: Mr. Chairman, I have
13 another question for Mr. Mehra. You stated that the travel way of
14 13 feet to access the parking areas is inadequate for two-way
15 traffic and safety purposes. What, in your opinion, would be
16 adequate?

17 MR. MEHRA: Well, the actual typical vehicle as the
18 American Association of State Highway and Transportation officials
19 say that the average width of a vehicle is six-and-a-half feet.
20 So, if you have two vehicles passing each other, six-and-a-half
21 times six-and-a-half is 13 feet. So, there's kind of no room to
22 really, let's say, maneuver. So, you need slightly more distance
23 in terms of the width to have two vehicles pass each other on the
24 driveway.

25 COMMISSIONER FRANKLIN: Sixteen feet?

1 MR. MEHRA: Sixteen would be minimum, I guess.

2 COMMISSIONER FRANKLIN: Thank you.

3 CHAIRPERSON HOOD: Any other colleagues of Mr.
4 Mehra? I mean, any other questions of Mr. Mehra? Any other
5 questions, colleagues?

6 COMMISSIONER FRANKLIN: Mr. Pitchford, the
7 arborist. Do you have an opinion, sir, as to the competence of
8 the Tree Division of the District of Columbia?

9 MR. PITCHFORD: I work with them weekly. I think
10 they have been quite diminished in the past because of budget
11 cuts, and I've worked quite hard to help get their budget
12 reinstated, but I think they are certainly coming back
13 considerably. I have a lot of respect for Bill Beck, the
14 horticulturist there.

15 COMMISSIONER FRANKLIN: Thank you.

16 COMMISSIONER HOLMAN: Since Mr. Pitchford is there,
17 I think you mentioned that when the Applicant did their air
18 spading, you had wished that they had left that area open. I was
19 just wondering, and I admit, I know nothing about how this works,
20 but would leaving that area open cause any damage to the tree, or
21 is that a normal practice, to leave it open?

22 MR. PITCHFORD: Well, if it was left open for, you
23 know, several days, no, it wouldn't really do any damage at all.
24 I mean, a long period of time, sure, it could dry out those roots
25 and they could die back, but a short period of time, no.

1 COMMISSIONER HOLMAN: Okay. Was that request made?

2 MR. PITCHFORD: Not that I'm aware of. I was never
3 asked to go look at them, no.

4 COMMISSIONER HOLMAN: Okay, thank you.

5 CHAIRPERSON HOOD: Mr. Pitchford, also I think you
6 heard me ask this question earlier of Mr. Murphy of the National
7 Park Service. I notice in the Applicant, the Applicant has said
8 that they will guarantee the life of the oak for one year. What
9 would be your response to that?

10 MR. PITCHFORD: It's much too short a period of
11 time. As I said, I mean, these trees are very capable of going on
12 for three to five years with the stored reserves that they have in
13 their trunk and so forth, and masking any kind of decline. They
14 will just draw on those reserves over typically three to five
15 years, and then they start to peter out and insects take over.
16 One year is not at all enough.

17 CHAIRPERSON HOOD: Okay, thank you. I'm going to
18 ask Ms. Gunning if she could come back. If somebody could just
19 pull the pictures back that you had earlier because I want to make
20 sure that understood exactly where the Bregon's house was in
21 relationship to yours, and also, I wanted to know when you made
22 the statement they would be parking in front of your house, who
23 would be parking in front of your house?

24 MS. GUNNING: I believe that inadequate parking is
25 provided under the proposed plan I have seen. If I could go up to

1 the picture? May I approach?

2 CHAIRPERSON HOOD: Right, just turn the mike. You
3 may have to speak a little louder.

4 MS. GUNNING: This is the back of the Bregon house.
5 This is the National Park Service, and it goes off on a slant and
6 then enlarges. This is the opposite view. This is the back of
7 the Bregon house. This is the view that I have facing the
8 property. In fact, I have a picture of the white oak in the
9 Kinko's bag there, which I see.

10 This is the Bregon house right here. That will
11 remain standing, as I understand it. This is my house. I just
12 thought this would be of interest. Since we spent 12 hours, this
13 is the tree we're talking about.

14 I am along 39th Street, and that is where most of
15 the people will probably park, I presume, because you cannot park
16 on Albemarle or Nebraska. So, they have to park somewhere. It's
17 not going to be at the Metro stop, and I am the next logical
18 place. I have difficulty parking now and bringing in my
19 groceries.

20 CHAIRPERSON HOOD: Okay, again, when you say the
21 people, who are the people that are going to be parking there?

22 MS. GUNNING: Well, I assume they will have
23 visitors. They will have trades people servicing the property,
24 their homes. I know on holidays, for example, I may have six cars
25 in the front of my house, and I assume every unit would have

1 friends and relatives. I expect that, and I don't know of any
2 household that has no cars.

3 CHAIRPERSON HOOD: Okay, let me ask you, right now,
4 do you have a parking problem?

5 MS. GUNNING: Yes.

6 CHAIRPERSON HOOD: Oh, you do, okay.

7 MS. GUNNING: I periodically request that the
8 parking be enforced.

9 CHAIRPERSON HOOD: Okay. Do have a -- is it zone
10 parking?

11 MS. GUNNING: It is zone parking, yes.

12 CHAIRPERSON HOOD: Okay.

13 MS. GUNNING: But this is a really unusual
14 intersection. It's a confluence of five roads, and it's most
15 unique. I call it the seven corners of Washington, D.C.

16 CHAIRPERSON HOOD: Okay.

17 COMMISSIONER FRANKLIN: Ms. Gunning, if there were
18 five single family homes, would you have a parking problem?

19 MS. GUNNING: I would assume it would be less. I'm
20 not saying it would be terrific, but I would assume it would be
21 less.

22 VICE CHAIRPERSON MITTEN: Will you leave the
23 picture of the white oak for us?

24 MS. GUNNING: Sure. I'll contrast it with the
25 concrete village.

1 CHAIRPERSON HOOD: Okay. I have no further
2 questions. Any further questions, colleagues?

3 Okay, Mr. Hitchcock, I think that will do it.
4 Again, I want to thank you for coordinating that effort. Before
5 Mr. Hitchcock leaves the table, Mr. Feola, do you want to make a
6 statement?

7 MR. FEOLA: No, cross examine.

8 CHAIRPERSON HOOD: Oh, cross examination. How
9 quick we forget when we're trying to move forward. Okay, Mr.
10 Feola.

11 MR. FEOLA: I promise to be mercifully brief. I
12 just have one or two questions for a number of the experts, and
13 maybe if they all came up here, it would be easier. Maybe Mr.
14 Pitchford first.

15 MR. HITCHCOCK: Perhaps if you want, since there's
16 only three chairs here, if you wanted to sort of pick the first
17 three, and we could go in stages.

18 MR. FEOLA: Sure.

19 MR. HITCHCOCK: Who would you like first?

20 MR. FEOLA: Mr. Pitchford is here. I'll start with
21 him. Then I guess Mr. Mehra.

22 Actually, I only have -- Mr. Pitchford, if I might,
23 you stated that a rule of thumb for saving a tree this size would
24 be 40 feet. That was your testimony, was it not?

25 MR. PITCHFORD: Yes. While the rule of thumb is a

1 foot to a foot-and-a-half of protection for every dime, so in this
2 case it would be 40 feet, correct.

3 MR. FEOLA: Is it appropriate to use a rule of
4 thumb if there were no roots where the construction is going to
5 occur?

6 MR. PITCHFORD: Well, obviously if there were no
7 roots, it wouldn't be an issue.

8 MR. FEOLA: Thus, if the Applicant were to use an
9 air spade at the depth of the proposed foundation where that
10 foundation is going to go and there are no roots there, with your
11 observation, that rule of thumb, 40 feet, would not hold, is that
12 correct?

13 MR. PITCHFORD: If that could be proved, if I
14 could see that there were no roots down -- I mean, these are very
15 deeply rooted trees. So, eight to ten inches is not going to cut
16 it.

17 MR. FEOLA: I understand. That's the only
18 questions I have for Mr. Pitchford.

19 Mr. Mehra, have you analyzed in your re-running of
20 the correct model, as you put it, for this development, the
21 difference in the level of service is caused at these
22 intersections by the proposal 13 units versus the five units that
23 are permitted on this site as a matter of right?

24 MR. MEHRA: No, I did not.

25 MR. FEOLA: So, you don't know whether or not this

1 development will create an adverse impact above and beyond the
2 matter of right development?

3 MR. MEHRA: No, I have not looked at it.

4 MR. FEOLA: Is it your opinion, is it your
5 testimony, that the single driveway that's proposed in this
6 application is not as appropriate as multiple driveways that the
7 individual lots could have, the five lots could have?

8 MR. MEHRA: No, I have not analyzed multiple
9 driveways as such.

10 MR. FEOLA: Well, in your professional opinion on
11 an intersection on this roadway that you've looked at, would five
12 driveways be a safer or a less safe condition than a single
13 driveway?

14 MR. MEHRA: Well, in general, consolidation of
15 driveways are generally beneficial here.

16 MR. FEOLA: You indicated that the service drive,
17 the driveway into the units as 13 feet is not an acceptable
18 distance, and I think you, in response to Mr. Franklin's question,
19 you indicated that 16 feet was more appropriate. Is that what I
20 heard you say?

21 MR. MEHRA: Yes.

22 MR. FEOLA: Are you aware that the fire department
23 has written a letter in this matter to the file?

24 MR. MEHRA: No.

25 MR. FEOLA: I have no further question of Mr.

1 Mehra.

2 I guess Mr. Oberlander. Mr. Oberlander, you said
3 that the five detached units that would be
4 -- this was in your written statement. I don't think you read
5 this tonight, but it was in your written statement which you
6 provided to the Commission, page six, the five detached units, and
7 I'll quote you, "as permitted under existing zoning would provide
8 more protection to the environment and decrease the amount of
9 impervious cover."

10 MR. OBERLANDER: I didn't -- that's not
11 -- I didn't talk about impervious cover.

12 MR. FEOLA: I can show you a copy of that to
13 refresh your recollection.

14 MR. OBERLANDER: That's somebody else. I did not
15 use the term impervious cover. I've never done that.

16 MR. FEOLA: Is this the statement prepared by you,
17 sir?

18 MR. OBERLANDER: Yes, the first page.

19 MR. FEOLA: Can you read that section?

20 MR. OBERLANDER: Well, you're right. It says
21 impervious cover. It's so long ago that I prepared this that I
22 don't remember.

23 MR. FEOLA: I wasn't trying to trick you on it. I
24 just wanted to make sure --

25 MR. OBERLANDER: Okay.

1 CHAIRPERSON HOOD: Excuse me, Mr. Feola, could you
2 tell me what page that's on?

3 MR. FEOLA: It's on page six, sir, of Mr.
4 Oberlander's statement.

5 CHAIRPERSON HOOD: Okay, thank you.

6 MR. FEOLA: Where in the zoning regulations does it
7 provide for a minimum or a maximum amount of pervious or
8 impervious surface?

9 MR. OBERLANDER: It doesn't, to my knowledge,
10 doesn't talk about that at all.

11 MR. FEOLA: So, it is conceivable that if someone
12 were to build a single family house here or five, they could build
13 a tennis court, basketball court, a five-car driveway, a patio
14 made out of slate, and effectively cover as much of the surface as
15 they so desire?

16 MR. OBERLANDER: It's conceivable, but in practice,
17 and if you look at the properties in this area which are basically
18 the same width and depth of land area, you don't find that
19 condition prevailing.

20 MR. FEOLA: But one of your clients testified that
21 this would be an appropriate site for a million dollar house, 900
22 and some thousand dollar house. That individual might like a
23 tennis court, no?

24 MR. OBERLANDER: It's possible, sure.

25 MR. FEOLA: Thank you.

1 MR. OBERLANDER: You can also put a tennis court,
2 you know, six inches or eight inches above grade, you know, and
3 have grass underneath, and so when the rain pours through the
4 tennis court --

5 MR. FEOLA: There's nothing in the zoning
6 regulations that controls pervious versus impervious surface?

7 MR. OBERLANDER: No.

8 MR. FEOLA: Thank you.

9 MR. OBERLANDER: I was referring to, if I may
10 elaborate, the decreasing impervious cover, the application shows
11 a considerable amount of paved area, and my thought here was that
12 five detached units would, in fact, in practice decrease the
13 amount of impervious surface.

14 MR. FEOLA: Or in theory because we don't know what
15 the practice would be.

16 MR. OBERLANDER: Theory and practice, yes.

17 MR. FEOLA: Are you aware of other uses that are
18 permitted in the R1B zone as a matter of right besides single
19 family houses?

20 MR. OBERLANDER: Yes.

21 MR. FEOLA: Such as?

22 MR. OBERLANDER: Churches, schools, and there are
23 an onslaught of other, you know none purely residential uses.

24 MR. FEOLA: And what would be the height
25 restriction of those uses, do you know?

1 MR. OBERLANDER: The height would be the same
2 restriction as, you know, four stories, or 30 feet.

3 MR. FEOLA: Well, I think you got it --

4 MR. OBERLANDER: Forty feet, I'm sorry, the other
5 way around, 40 feet and three stories for residential buildings.

6 MR. FEOLA: Or churches or other permitted uses?

7 MR. OBERLANDER: And there are a good number of
8 those in the R1B zone, including the big high school.

9 MR. FEOLA: I'm going to show you an excerpt from
10 the map two of the comprehensive plan, and if I might for the
11 Commission. Your recollection, is that an accurate depiction of
12 that?

13 MR. OBERLANDER: This is in different colors than
14 it appears in the -- but it's a black and white version of it,
15 yes, but there are no boundaries shown for this housing
16 opportunity area. There's a symbol, but there are no boundaries.

17 MR. FEOLA: Is any part of that symbol within the
18 special treatment area, as it's defined in the Comprehensive Plan?

19 MR. OBERLANDER: The special treatment area, or the
20 Metro treatment area, ends at 40th Street. This symbol is
21 approximately put, but it's not -- none of the symbols on the
22 master plan are exactly in the right spot because of the size of
23 the symbol, and you ought to really ask the Office of Planning
24 those questions. In my experience with these maps, they are
25 generalized. There's a generalized map both in land use and in

1 the location of symbols on this, but there is text. There is
2 words in the comprehensive plan which deals with the Metro impact
3 area, which draws the boundaries --

4 MR. FEOLA: And that's the special treatment area.

5 MR. OBERLANDER: That's the special treatment area
6 which draws the boundary, the eastern boundary, at 40th Street.

7 MR. FEOLA: And can you point to a specific
8 provision in the Comprehensive Plan that places the entire housing
9 opportunity area in that special treatment area?

10 MR. OBERLANDER: Only in terms of the intent along
11 commercial areas. As I indicated in my testimony, I gave a
12 citation.

13 It's Section 1409.5(a)(1). The Comprehensive Plan
14 calls for residential development housing opportunity along
15 Wisconsin Avenue within the existing commercial district C2B and
16 C3A.

17 MR. FEOLA: But that doesn't say that the entire
18 housing opportunity area as defined by the Act must be in that
19 special treatment area.

20 MR. OBERLANDER: Well, it's not precise to that,
21 no. But again, I reiterate, there are no specific boundaries for
22 the housing opportunity area. The Metro impact, or special
23 treatment area has a boundary which is 40th Street. The eastern
24 boundary is 40th Street. This subject property is not within
25 either of those two areas.

1 MR. FEOLA: I'm not disagreeing with you, sir. I
2 believe it is not in the special treatment area. That wasn't the
3 purpose of my question.

4 Is any part of the symbol east of Wisconsin Avenue,
5 as was testified to, as the intent of that symbol?

6 MR. OBERLANDER: I don't understand the question.
7 The symbol is to the east of Wisconsin Avenue, yes.

8 MR. FEOLA: Okay. Is any part of it on top of or
9 located in a commercial zone?

10 MR. OBERLANDER: Well, you have to look at this map
11 in relation to the scale of the zoning map. I would say that this
12 -- it might touch it, or it may just miss it by, you know, an
13 eighth of an inch.

14 MR. FEOLA: The definition, the placement of the
15 housing opportunity area in Tenleytown happened in the 1989
16 amendments of the plan, and I'll quote it for you. It says the
17 housing opportunity area symbol is added at the Tenleytown Metro
18 Station area, and in the vicinity of Albemarle Street, N.W. and
19 Wisconsin Avenue, N.W.

20 MR. OBERLANDER: Right.

21 MR. FEOLA: Is it your opinion, or did you state
22 that this property is not in the vicinity of Albemarle and
23 Wisconsin?

24 MR. OBERLANDER: It depends on what you mean by
25 vicinity. The closest, as I recall is --

1 MR. FEOLA: Well, it is on Albemarle, is it not?

2 MR. OBERLANDER: It's on Albemarle, but the --

3 MR. FEOLA: And it's how far from Wisconsin Avenue?

4 MR. OBERLANDER: From the Metro station to the
5 eastern edge of the Bregon property is about 450 feet. That's
6 what I remember measuring.

7 MR. FEOLA: And in your planning expertise, that is
8 not in the vicinity?

9 MR. OBERLANDER: Oh, certainly it is. So is Grant
10 Street, which is further east and so are other streets, the entire
11 intersection of Albemarle and Nebraska is in the vicinity of
12 Wisconsin Avenue. It's a matter of how close you consider
13 vicinity. What is intended by that language, as I interpret it,
14 is that they housing opportunity was in the vicinity, meaning
15 Albemarle and Wisconsin Avenue, around that intersection. How far
16 eastward or northward or southward or westward, that was not
17 described.

18 MR. FEOLA: You stated in your statement that the
19 property is surrounded by single family housing. Is that what you
20 meant?

21 MR. OBERLANDER: And the school to the north of the
22 site.

23 MR. FEOLA: And to the west?

24 MR. OBERLANDER: To the west is, again, as I see
25 the PUD, as far as I'm concerned, it only covers the Holiday

1 proposition. It doesn't cover the Bregon property, but be that as
2 it may, the zoning goes to the east side of 40th Street, as I
3 recall. The boundary of the zoning district between the
4 commercial zone and the one-family zone is the east side of 40th
5 Street.

6 So, from my way of looking at the zoning map, and I
7 hope the Zoning Commission members will look at it that way, too,
8 is that the zoning of this property is surrounded by one-family,
9 R1B zoning.

10 MR. FEOLA: By zoning but not use, necessarily?

11 MR. OBERLANDER: I didn't say that. I said zoning.

12 MR. FEOLA: Well, I just wanted to make sure.

13 MR. OBERLANDER: The surrounding uses to this
14 particular property are all one-family homes except the school,
15 which is permitted in the R1B zone.

16 MR. FEOLA: Thank you.

17 MR. OBERLANDER: That's what the map that I
18 presented the Zoning Commission shows.

19 MR. FEOLA: And you said that existing zoning
20 boundary was established in 1958, is that correct?

21 MR. OBERLANDER: To the best of my knowledge, it
22 was established back then, if not earlier. You may know, and I
23 don't want to philosophize here, but since you've given me the
24 chance to say this, much of the planning that was done in the 50's
25 and 60's was to preserve the existing neighborhoods. So, when the

1 zoning was done before the planning, when the planning came along,
2 it tried to sort of legalize the existing zoning at that time in
3 these neighborhood areas.

4 MR. FEOLA: And in 1958, there wasn't a Metro rail
5 station at Albemarle and Wisconsin?

6 MR. OBERLANDER: No. There was planning for it
7 starting in 1955.

8 MR. FEOLA: Okay. I have no further questions for
9 Mr. Oberlander.

10 I do have one more question, maybe a couple for Mr.
11 Williams, and then I'll be finished.

12 Mr. Williams, your analysis of the turning
13 movements that you provided to us and the Commission, was that a
14 left turn only movement?

15 MR. WILLIAMS: Yes, from the driveway left out into
16 Albemarle Street.

17 MR. FEOLA: Would your analysis be different if
18 there was only one house on that property coming out of that
19 driveway versus 13 as proposed?

20 MR. WILLIAMS: My assumption would be that there
21 would be only one car, perhaps two.

22 MR. FEOLA: No, but your analysis?

23 MR. WILLIAMS: We're assuming ten exits during the
24 peak hour.

25 MR. FEOLA: You're assuming ten exits at peak hour,

1 that's why the times are that much?

2 MR. WILLIAMS: Yes, but if you were to assume one
3 house and then a ten-day period, then the analysis would be the
4 same. As I indicated in my comments, it's not a very good
5 location either for a single family driveway. Mr. Breton has
6 pointed that out to us.

7 MR. FEOLA: And you're assuming those ten trips
8 would all be making left-hand turns onto Albemarle?

9 MR. WILLIAMS: For the purposes of this study.

10 MR. FEOLA: Thank you.

11 MR. WILLIAMS: It was a sample.

12 MR. FEOLA: Is it your opinion, and you didn't
13 testify this, as a transportation expert that it would be better
14 to have multiple driveways around the perimeter of this property
15 on Nebraska and Albemarle than a single driveway, putting aside
16 the number of units?

17 CHAIRPERSON HOOD: Mr. Feola, did he testify to
18 that?

19 MR. FEOLA: No, but he testified as an expert, sir.

20 CHAIRPERSON HOOD: But did he testify to this
21 specific issue that you asked?

22 MR. FEOLA: Well, he testified to the impact of
23 cars coming in and out of a driveway on this property.

24 CHAIRPERSON HOOD: I didn't hear him testify to
25 multiple driveways.

1 MR. FEOLA: No, I'm asking him as an expert whether
2 it's his opinion that one is better than or worse than five. I
3 think that's a reasonable question.

4 CHAIRPERSON HOOD: Okay.

5 MR. WILLIAMS: And with Mr. Mehra, I will say that
6 a consolidated driveway would be a better situation. I also see
7 no reason why if there were four or five houses there would need
8 to be four or five driveways.

9 MR. FEOLA: I have no further questions.

10 CHAIRPERSON HOOD: Thank you. Let me make sure I
11 get all the parties. ANC3-E, cross examination. Okay, ANC3-F,
12 cross examination.

13 MR. BARDIN: I have a question or two for Mr.
14 Pitchford. Mr. Pitchford, when you were asked to undertake this
15 assignment of examining the existing trees, was the point of
16 departure the assumption that the proposed development would take
17 place?

18 MR. PITCHFORD: Yes.

19 MR. BARDIN: Thank you very much.

20 CHAIRPERSON HOOD: Thank you, mr. Bardin. Ms.
21 Gunning, any cross examination?

22 MS. GUNNING: No, thank you.

23 CHAIRPERSON HOOD: And Mr. Pavuk?

24 MR. PAVUK: No.

25 CHAIRPERSON HOOD: Okay. All right, we'll move

1 right on with our witness list. On Opposition first, yes, those
2 in opposition. If I call you and you're a proponent, please let
3 me know before you come to the table so we can correct it.

4 I'm going to call up three at a time. Richard
5 Levine, Cheryl Browning, and Gloria Gibson.

6 MS. BROWNING: I pass, Cheryl Browning.

7 CHAIRPERSON HOOD: You pass?

8 MS. BROWNING: Yes.

9 CHAIRPERSON HOOD: Okay, so I'm going to ask Ms.
10 Anne Vorce, I believe. Hopefully, I'm pronouncing it correctly.
11 Vorce? Okay.

12 I'm taking it in the order that I have here on the
13 witness list. I'm going to ask Mr. Levine to go first, and Ms.
14 Gibson second and Ms. Vorce third.

15 MR. LEVINE: Thank you, Chairman Hood and
16 Commissioners. My name is Richard Levine. I've lived at 3804
17 Alton Place for over 15 years, and my home is about two blocks
18 from this proposed project.

19 From the first, my primary personal concern about
20 this project has been its location and its impact on pedestrian
21 safety. It's right between two confusing and dangerous
22 intersections. Cars exiting this proposed driveway on Albemarle
23 Street during the rush hour will only worsen the traffic and
24 pedestrian safeties that already exist at this site.

25 I have three children, one at each of the

1 neighborhood --

2 CHAIRPERSON HOOD: Mr. Levine, I think some people
3 in the back want to hear your testimony and they can't hear you.
4 So, maybe if you put the mike a little closer.

5 MR. LEVINE: It's not on.

6 CHAIRPERSON HOOD: It's on. Thank you.

7 MR. LEVINE: I have three children, one at each of
8 the neighboring public schools, Wilson High, Diehl Junior High and
9 Jannie Elementary. For the past ten years, I've walked one or
10 more of those kids each and every school morning during rush hour
11 going to Jannie. That's right past this site. So, I know from
12 personal experience how bad these two adjacent intersections are.

13 To the east, there's the six or seven-way
14 intersection that you've heard about, and that's difficult, mostly
15 because there's no traffic light at the 39th and Albemarle leg,
16 and drivers feel they have to be very aggressive to get across
17 there. In my view, the intersection to the west, 40th Street,
18 Fort Drive, and Albemarle Street is even worse.

19 Cars are often on Albemarle Street blocking the
20 cross streets. They're backed up from the traffic lights. There
21 are Metro and AU shuttle buses that are pulling in and out during
22 rush hour, and the drivers turning from Albemarle across the
23 oncoming traffic often can't easily see or they don't pay
24 attention to the pedestrians. That's why I've always walked my
25 kids on those intersections.

1 I agree with Council Member Patterson, who stated
2 in her letter to you that these issues haven't been adequately
3 considered by the developer or by DPW. I think we've heard a
4 suggestion that this is better than of right development because
5 it's better to have one driveway than multiple ones, but I seem to
6 recall even a couple of sessions ago that Mr. Feola acknowledged
7 that it's not likely that any developer developing this property
8 would put in four separate driveways.

9 Also, I think the developer is essentially saying
10 that well, it's already a bad situation. We're only making it a
11 little bit worse, not as worse as originally proposed or as bad as
12 we could have proposed, so the neighborhood shouldn't complain too
13 much. Well, that doesn't seem right to me. It seems to me that
14 if a developer's seeking a valuable zoning change, it ought to
15 show more benefit to the community, let alone a harm to the
16 community.

17 So, pedestrian safety has always been my number one
18 issue. The longer the process has gone on, the more I've become
19 concerned about issues like the precedent to the neighborhood. I
20 think you've heard a lot about that, so I won't go into that at
21 length.

22 I do, however, want to address one
23 other point that I think has come up, and that's what I feel has
24 been the implicit suggestion from the Office of Planning and
25 perhaps from others, that the neighborhood has been intransigent
in insisting on retaining existing zoning and in failing to

1 recognize benefits that could result from PUD development. As one
2 of the so-called intransigents, I guess I want to offer my views.

3 Having sat through four sessions of this hearing, I
4 certainly appreciate that the PUD process could afford an
5 opportunity for a reasonable development for a sensitive design
6 that might be better than some of right developments, but this
7 proposal is not that project, and in my view, it's not even close.

8 I think the way the developer has managed the process to this
9 point sort of assure that we're not going to get anywhere close to
10 that point.

11 You'll recall that the process opened with a
12 proposal for 26 condos that at the set-down hearing for this
13 Commission, Mr. Feola basically admitted was unapprovable as it
14 was, yet that was the developer's opening bid. It allowed it to
15 magnanimously compromise down to the 13 unit townhouse project
16 we've got now, even though it's about the same size and lot
17 coverage as the original proposal.

18 Along the way, I've been at a couple of small
19 neighborhood meetings with Ms. Bamberger, and at one, the T&A
20 president, Ms. Wiss, did propose an alternative way of considering
21 this, a small enclave of housing that would have architecturally
22 sensitive features that would be in tune with the neighborhood.
23 This basically was rejected on the spot.

24 So, I don't see that there's really a process for
25 us to get to anything that is going to be the type of reasonably

1 PUD development that's been suggested. I don't really see how the
2 neighborhood can be expected to design a superior project for this
3 developer. I'm certainly willing to participate in discussions
4 with the Planning Office, with other neighbors, with developers
5 about the developmental feature of my neighborhood. I'm not
6 prepared to develop a project for this site.

7 CHAIRPERSON HOOD: Mr. Levine, let me --and I
8 understand, and you said in your statement that you've been here
9 four nights, and I understand that. Normally, we allow three
10 minutes, and because of the four nights, it's been about four
11 minutes. So, I'm going to ask that you wind it down, and I think
12 we've been fair all the way through this process, but you do have
13 some people behind you who need to be heard to.

14 MR. LEVINE: I appreciate that, Chairman.

15 CHAIRPERSON HOOD: Thank you.

16 MR. LEVINE: I would just conclude by saying as a
17 neighbor, I think I'm faced with a stark choice that the developer
18 has thrust upon us. That's accepting their proposal, which even
19 after a year of wrangling, it is still unwilling to reduce to
20 anything even approaching reasonableness, or to retain the
21 existing zoning. I guess I feel even with the vagaries of of
22 right development, to me the choice of retaining the existing
23 zoning is clearly superior.

24 Thank you, Mr. Chairman.

25 CHAIRPERSON HOOD: Thank you. You can just hold

1 your seat. Let's see, Ms. Gibson.

2 MS. GIBSON: Good evening, Chairman Hood, other
3 chairs. My name is Gloria J. Gibson. I'm a teacher at Woodrow
4 Wilson Senior High School. I'm going to more or less read from
5 the proposal that the environmental ecological science pathway of
6 our Simon Tech Academy proposed on Tuesday, October 17.

7 Soapstone Creek, located next to Wilson Senior High
8 School is actually an outdoor classroom as viewed through the eyes
9 of a teacher. It is not often that one actually has the
10 opportunity to view the headwater region of a stream. It is our
11 desire to use this area as a learning tool. Our biological and
12 environmental science classes, science club, and environmental
13 pathway students will use this area to study the variety of plant
14 life and vegetation, study the variety of animal life residing
15 there, examine this little urban wilderness for the
16 characteristics that classify it as wetlands.

17 View first-hand the actual application of such
18 principles as environmental unity and the Gaia hypothesis. The
19 study of the connectivity between animal life, vegetation, and the
20 earth upon which all life depends.

21 Environmental science pathway at Simon Tech Academy
22 at Woodrow Wilson is in the process of preparing this area for
23 certification as a school yard habitat, sponsored through the
24 National Wildlife Federation Nature Link program. As part of our
25 efforts, we plan to sponsor a spring clean-up effort each March.

1 Students, teachers, administrators, parents, concerned community
2 residents, and others are welcome to take part in this effort.
3 Last year was our first time attempting this. It was quite
4 successful.

5 The students were shocked to find such things as
6 bottles, cans, plastic bags, paper cups, an intact backgammon game
7 17 tires, a shopping cart, dead tree, dishware, car battery,
8 generator, and industrial waste cans, just to name a few things.
9 People annoyingly have not been very kind to this area. We intend
10 to make people aware of what this area is, and how important it
11 is. The groups that have been involved with us to help us with
12 our efforts are our Wilson School family, our Academy, the science
13 department, the custodial staff, the Potomac Watershed
14 Association, some concerned citizens of the Tenleytown area, and
15 the National Wildlife Federation Nature Link Program.

16 In an effort to teach our children the importance
17 of caring for their community, it is our desire that the integrity
18 of this area remain intact for the purpose that it serves, the
19 beauty it displays, and the lessons to be learned.

20 CHAIRPERSON HOOD: Thank you, Ms. Gibson.

21 MS. GIBSON: Thank you.

22 CHAIRPERSON HOOD: Ms. Vorce?

23 MS. VORCE: Good evening, Mr. Chairman. My name is
24 Anne Vorce. I live at 3825 Warren Street, roughly four-and-a-half
25 blocks from the proposed townhome site. We've heard repeatedly

1 during this hearing that the traffic situation resulting from the
2 proposed development will not pose a problem for the citizens of
3 Tenleytown. I'm testifying wearing a citizen hat and an economist
4 hat to offer a contrary view.

5 On August 31, I wrote the Department of Public
6 Works a very detailed letter requesting accident data for the
7 seven intersections closest to the proposed development. DPW
8 responded to my letter on October 13. While I appreciate their
9 efforts, the information they provided to me is inconclusive. It
10 does not support the conclusions in the Office of Planning's final
11 report, which have also been cited during this hearing by the
12 Holiday consultant, Wells & Associates.

13 More precisely, the transportation assessment in
14 the Office of Planning's final report is based on an October 3
15 memorandum from Ken Laden of DPW. In the memo, Mr. Laden writes
16 that DPW records indicate these locations have low accident rates
17 and do not warrant special study for safety improvement at this
18 time.

19 I challenge DPW's authoritative assertion that its
20 records indicate that these locations have low accident rates.
21 According to DPW's response to my August 31 letter, the records
22 they provided covered only the period 1993 to '95. If this is
23 indeed the same evidence backing up DPW's statement, then I would,
24 as an economist, issue a strong challenge to DPW to justify how
25 they would extrapolate trends relevant to the present based on

1 only three years of data collected five to seven years ago.

2 If, however, DPW is basing their assessment on more
3 recent data from a longer continuous period, then I would like to
4 know why they didn't provide me with that data in response to my
5 legitimate August 31 request. Moreover, they did not respond to
6 my questions about assessing the complexity of these seven
7 intersections, which can also be viewed as two intersection
8 clusters.

9 In conclusion, I would simply like to say a close
10 look suggests the transportation assessment of the Office of
11 Planning's final report and cited by the Holiday traffic
12 consultant appears to be based on limited and inconclusive
13 information provided by DPW on the traffic safety question. In
14 sum, they haven't proven their point.

15 In the absence of adequate data provided by the
16 city, we must therefore closely rely on neighborhood perceptions.

17 Most of the Tenleytown community perceives these intersections as
18 unsafe for pedestrians and drivers, even before any additional
19 development takes place. Three public schools are within a short
20 distance of the proposed development. The safety issue pertains
21 to the complexity of the intersections involved and adequate
22 traffic control.

23 Under these circumstances, I cannot understand why
24 District public officials would knowingly increase the public risk
25 in an already dangerous intersection without remedy.

1 Thank you very much to the Zoning Commission, and
2 also, I'd like to say I've appreciated the interest of Council
3 Member Patterson. Thank you.

4 CHAIRPERSON HOOD: Okay, thank you. Colleagues, do
5 we have any questions for any of our panelists at the table? No
6 questions? Thank you all.

7 Moving right along, Cheryl Hanks. Let me just
8 remind everyone that we're taking opponents, if anyone has a copy
9 of this list. The last name I believe is Berman. I think it's
10 Barry -- Becky? Oh, Barry, okay, I'm sorry. Okay, Mr. Barry
11 Berman. Anne Cumin (phonetic)? Cauman, okay, I'm sorry.

12 Cheryl Hanks, if you can begin.

13 MS. HANKS: Sure. Thank you, Commissioners for
14 giving us this chance. My name is Cheryl Hanks. I live on Grant
15 Road close to the development. I'm a real estate agent in D.C.,
16 so I am strongly in favor of affordable housing in the District,
17 especially around Metro stops.

18 I was delighted when one of my clients purchased
19 one of the units at Tenley Hill Condominium Project. I see it as
20 a great model for development, turning a parking lot for rental
21 trucks into 46 units of housing, downzoning from commercial to
22 residential.

23 My real estate colleagues and I have scores of
24 clients who want to move in from Maryland and Virginia because of
25 the quality of life in D.C. neighborhoods. Throughout the city,

1 we are a city where neighbors know each other. We take care of
2 each other's children, pets, gardens. We play together, and we
3 value this.

4 So, while I'd love to see more people enjoying our
5 neighborhoods, I do not want to see this project. I think it is
6 clear that once you upzone a property from R1B to R5B, you set a
7 precedent and make the case for future upzones on this scale. As
8 an agent, I could never recommend that a buyer invest their life
9 savings in a single family home if I believe they could abruptly
10 find themselves next door to a townhouse complex which would lower
11 the resale value of their property.

12 This is not just hypothetical. Recently, there was
13 a lovely home on the market on 39th Street, just three houses from
14 Tenley Circle. I could not have recommended the house to my
15 clients without knowing what decision this board will make because
16 the decision you make will influence the property values of our
17 neighborhood.

18 This precedent, if approved, would undermine the
19 stability of this neighborhood and any neighborhood in the city.
20 When the Tenley neighbors first came together, it was clear we had
21 different issues. The one issue we all agreed on was no more than
22 four, which is to say the principle that developers cannot expect
23 to upzone and flip single family homes from R1 to R5B. I urge you
24 to defeat the zoning change and preserve our stable neighborhood.

25 We are a city of neighbors, not of developments.

1 Finally, I have to say that my experience of these
2 developers, and the Holiday Corporation in particular, has been
3 that they have not earned the community trust. I was at the first
4 meeting shortly after the chapel house was demolished. There were
5 about ten of us there.

6 Someone asked about the tearing down of the chapel
7 house. Ms. Bamberger said that they had nothing to do with it
8 whatsoever, that the previous owner had torn it down. It was
9 entirely their problem. It was torn down when they owned it. It
10 felt disingenuous at best and possibly very cynical half truth,
11 which has been, in our experience, the approach since then.

12 Thank you.

13 CHAIRPERSON HOOD: Mr. Berman.

14 MR. BERMAN: My name is Barry Berman. Is that
15 better?

16 CHAIRPERSON HOOD: There we go.

17 MR. BERMAN: Thank you, sorry.

18 CHAIRPERSON HOOD: Thank you, Mr. Berman. That was
19 the quickest testimony we've had so far.

20 MR. BERMAN: I teach physics at GW, and some of the
21 physics I teach has to do with relativity, but that was awfully
22 fair.

23 I speak as a neighbor living on 39th Street between
24 Alton and Albemarle. My area will be impacted by parking and
25 traffic, just like the others. Two points I wanted to make in

1 particular.

2 One is that Mr. Altman's ideas of growth are
3 misapplied here. The other point is that the Holiday Corporation
4 is one that cannot be trusted.

5 First to Mr. Altman. In his outrageous, I thought,
6 and misguided testimony, he seemed to espouse the view that growth
7 for its own sake is a good thing, and the more growth the better.

8 He used very emotional language like the city has been
9 hemorrhaging population. People left the city because they didn't
10 like the quality of life from the region of the city that they
11 left.

12 Northwest Washington is gaining population, not
13 losing population. I think that just applying a policy of one
14 size fits all is certainly inappropriate here. In fact, increased
15 growth and increased population always leads to more interactions
16 of all kinds between people, some good, some not so good.

17 Roughly, it goes as the square of the number of
18 people, of people live on a surface. That's to say if you double
19 the number of people, you'll get four times the number of
20 interactions. You get four times more traffic problems. You get
21 four times more crime. You get four times more pollution. You
22 also get four times as many people to say hello to in the morning,
23 but in any case, I believe that the burden should be on the Office
24 of Planning to justify any growth. The presumption should be that
25 growth in an existing urban area is bad, not good. So much for

1 Mr. Altman.

2 For the case of the Holiday Corporation their
3 actions, according to Council Member Patanya, amount to illegal
4 enrichment at the expense of the community. Buying a piece of
5 property zoned for single family residences and then seeking to
6 convert it to multiple dwellings, especially in the back door way
7 that they are trying to do it, seems to me a manifestation of pure
8 greed. They do not have the interests of the community in mind.

9 The way they destroyed the historic home that
10 existed on the property, the way they cut down the trees,
11 including a 100-year old walnut tree, the way they obfuscated on
12 the question of height. You heard that yourself. It took Mrs.
13 Gunning quite a long while to extract from them the height of the
14 place, inch by inch.

15 The fact that they have sought on several
16 occasions, including a neighborhood meeting, to downplay the
17 impact of traffic and parking. Who can believe, by the way, that
18 once you try to get out of that driveway, you're ever going to
19 park there again, and who can believe -- would you like it if your
20 neighbors' guests parked in your driveway? So, this idea of
21 having seven extra parking spaces is just pure fantasy.

22 Well, for all these reasons, the surreptitious way
23 in which they've handled themselves, I believe that they cannot be
24 trusted to carry out any agreements they make once they get their
25 zoning variance. This alone, I think, should send a red flag to

1 the Zoning Commission.

2 Thank you for the opportunity to offer my views.

3 CHAIRPERSON HOOD: Thank you. Ms. Cauman?

4 MS. CAUMAN: My name is Anne Cauman. I live at
5 4405 38th Street, N.W., which is a little over two blocks from the
6 Applicant's site. I want to talk about two things. One is that
7 it is neighbor opposition, and I have here a package of petition
8 signatures which I will give to Mr. Bastida. That package is
9 approximately 360 signatures, but there are some duplications
10 there, probably less than 20, but let's call it 340 signatures.

11 They were collected in two different ways. Some
12 were initially collected at early TNA meetings, and then starting
13 in September of this year, as we got closer to a hearing, we began
14 trying to collect more. We collected them going door to door in
15 the neighborhood. The area they basically include is east of
16 Wisconsin and including the west side of Reno Road houses in this
17 area, going down to Warren Street and up to Cumberland Street.

18 In this area, we have collected over 300
19 signatures. I don't think there are 300 houses there. Obviously,
20 some houses have more than one resident. There was enormous
21 unanimity in the area where most affected by this project of
22 opposition to it.

23 The other point I wanted to make and as I talk to
24 it, I'm a parent, and as I talked to people on the other side of
25 Wisconsin, while they did not have the same extreme sense because

1 they were less affected, there were very, very supportive of our
2 concerns and of instability in the neighborhood.

3 I also want to talk on the subject of traffic, and
4 I want to take it to a personal level. I've lived here since '89.

5 The traffic has gotten much worse since Fresh Fields came into
6 the neighborhood. I'm a native of Manhattan, and I used to walk a
7 lot in New York City, and I consider myself streetwise.

8 In the last 14, 15 months at the intersection of
9 39th and Albemarle, I've nearly been hit twice by cars, and my
10 husband, whose base also largely an urban person, has nearly been
11 hit once. We have an almost 10-1/2 year old who goes to Jannie.
12 My original concern about the project is on traffic. I

13 won't let my kid walk to school, even though he's old enough
14 because I am so concerned about the danger of that intersection,
15 largely based on my own experience. I don't know anything about
16 the studies, but if my husband and I have both nearly been hit,
17 you can understand why I'm concerned about my kid and concerned
18 about even more traffic.

19 Thank you. I also endorse the remarks of Mr.
20 Berman and Mr. Levine in their concerns about traffic and the bad
21 faith we have seen from the developer.

22 CHAIRPERSON HOOD: Okay, thank you, Ms. Cauman. I
23 just have one quick question for you. I see you handed us a
24 petition with you said like 340 names. In your petition draft,
25 were there any residents who were in support and who refused to

1 sign this petition?

2 MS. CAUMAN: There were some residents who refused
3 to sign this petition. In some instances, I don't know. Where I
4 know, it's less than 20, and I didn't personally do all of this
5 myself. Other neighbors would do it and then report back to me.
6 There are very few. The houses that didn't sign are a combination
7 of some people who said no, and when they said no, we don't
8 necessarily know why. They said no, and houses where we went back
9 and back and never reached anybody.

10 CHAIRPERSON HOOD: Okay. Colleagues, any further
11 questions for this panel? No questions. Thank you all.

12 Okay, the last opponent that I have listed is Mrs.
13 Annie Petsonk. Hopefully I pronounced your name correctly. If
14 not, will you come forward? You can correct me. Let me just ask,
15 is there anyone else here that wants to testify in opposition?
16 What happened to our list? It seems to have broken down some.

17 Okay, how many do we have? If you could
18 -- you signed twice? Your name, sir? I'm going to ask Mr.
19 Bastida's staff if we could get a corrected list. We're going to
20 need two cards to give to the reporter. Those who have signed and
21 who've raised their hands, have you all been sworn in?

22 I'll tell you what, let me do it this way, Mr.
23 Bastida, for those who have not been sworn in, including Ms.
24 Cauman because you did give us some testimony, could you stand and
25 be sworn in, please? Thank you.

1 SECRETARY BASTIDA: Thank you. Would you be kind
2 enough that people that didn't sign the sheet that testified, even
3 if they are on the list, would you fill out two witness's cards
4 and hand the reporter one and hand one to me. That way we can do
5 it very quickly and bring it up to date.

6 CHAIRPERSON HOOD: Okay, here's what we're going to
7 do. We can ask for that. We do need two cards, if you can work
8 with them on that, staff, and do that. Since I don't have any
9 names to call, I'm going to ask for two more people to come
10 forward with Ms. Petsonk, and as you come up, you can give us your
11 names. Ms. Petsonk, if you can continue, I know I have probably
12 messed your name up.

13 You may proceed.

14 MS. PETSONK: Thank you, Mr. Chairman and members.
15 My name is Annie Petsonk, and I'd like to congratulate the
16 Chairman on the excellent pronunciation of my name.

17 CHAIRPERSON HOOD: Oh, thank you. I got something
18 right.

19 MS. PETSONK: I live at 4413 39th Street, one-and-
20 one-half blocks from the proposed development. I'm speaking this
21 evening in opposition to the proposed development. I am concerned
22 about its impact on our neighborhood, as well as the precedent
23 that this zoning change would have for further development in our
24 neighborhood.

25 Could I remove the sign that is covering up the

1 photographs? Thank you very much.

2 As an environmentalist, I am opposed to sprawl.
3 Had this developer proposed to fill in our neighborhood by taking
4 over abandoned eyesores on Wisconsin Avenue, that might have been
5 a different story, but instead, this developer came in dark of
6 night, brought its bulldozers, took down a house and trees, and
7 presented the neighborhood with a fait accompli.

8 I've seen that kind of tactic used before on
9 Springland Lane in a situation that you may know well.
10 Effectively, it's like the child who murders their parents and
11 then pleads for leniency because they're an orphan. I don't
12 believe that this kind of bullying tactics should support the
13 zoning change that's requested here, and I'm particularly
14 surprised to hear the developer essentially threatening to build
15 single family houses covered with tennis courts and multiple
16 driveways as a kind of threat if their application is not
17 approved.

18 It may be that in the city, there are insufficient
19 zoning and run-off regulations to protect 150-year old trees from
20 the depredations of single family home development. But if that's
21 the case, then let's address those regulations, such as erosion
22 control plans and so on. Let's not let those kinds of threats
23 allow development whose density, traffic, impact, and effect on
24 character and environment are wholly out of keeping with the
25 neighborhood that is Tenleytown.

1 Thank you.

2 CHAIRPERSON HOOD: Thank you. You should turn your
3 mike on for us, please.

4 MS. DUCHENEAUX: Okay. Mr. Chairman, my name is
5 Ernestine Ducheneaux. I live at 3820 Albemarle Street. I live
6 right next door to Barbara Gunning. My concerns have always been
7 the stream which will be changed and the green space that will be
8 destroyed.

9 I noticed when others were testifying that the
10 developers and their experts told us that they didn't live in the
11 District. Most were from Virginia. I believe that the architect
12 was the only one with a D.C. address. As I listened to the
13 arguments and read newspaper articles, I came away with the
14 conclusion that concerned citizens should be outraged at urban
15 sprawl, and that we should fill in the city spaces before we
16 destroy farmlands that surround our area.

17 But, Mr. Chairman, is it okay to destroy D.C.'s
18 green spaces in the name of progress in order to save Virginia's
19 open spaces? The property in question is only an acre. Can't we
20 save green space for city dwellers, too? Once the property is
21 paved over, the green will be gone forever.

22 CHAIRPERSON HOOD: Thank you.

23 MR. HAENDLER: Mr. Chairman, my name is Frank
24 Haendler. I live at 4561 Grant Road, one-half block from the
25 project site. I would like to comment on and clarify the record

1 in two respects. One is with regard to a point you have
2 frequently touched upon, as has Commissioners Parson and Franklin,
3 and that is, one of the precepts of smart growth, the degree of
4 community involvement in and dialogue about the project.

5 Statements in the Office of Planning report and by
6 the developer seem to imply that there was significant interaction
7 and dialogue on the part of the developer with the association.
8 Actually, interaction was very limited at best. Since July, 1999,
9 there were three meetings between the developer and the Tenleytown
10 Neighbors Association representatives. This was for the most part
11 showing the latest iterations of their plans. The last such
12 meeting was April 12, 2000.

13 However, at the urging of Ellen McCarthy of the
14 Office of Planning, the association sent a letter to the Holiday
15 Corporation dated May 12, 2000, and you have a copy of that in
16 your record. The letter provided the concerns of the community
17 with regard to the latest plan, the current plan, for 17
18 townhouses, as well as the characteristics that the association,
19 the people, would like to see in the project, such as green space,
20 setback, height of the structures, architectures, quote, "without
21 reference to the number of units."

22 The letter concluded, "We await your response." We
23 are still waiting. There never was a response. I, for one,
24 expected the letter to lead to some sort of dialogue with Holiday,
25 dialogue about specifics, the kind of specifics the May 12 letter,

1 which you have, lists. It never happened.

2 Commissioner MacNamara of ANC3E alleged that the
3 Tenleytown Neighbors Association walked away from dialogue with
4 the developer. That, Commissioners, is patently false. No one
5 has ever answered that letter.

6 With regard to the minority report of September 28,
7 suggesting dialogue, I'd like to point out that neither
8 Commissioner MacNamara nor his colleague, Ms. Dixon, who signed
9 that minority report, neither before or after the resolution made
10 any effort at any time to intercede or bring about any sort of
11 dialogue. I think to broach such an idea three weeks before the
12 scheduled first public hearing before this Commission was
13 disingenuous.

14 Lastly, the second point in his testimony,
15 Commissioner MacNamara characterized the Tenleytown neighbors as a
16 small splinter group without community support. He suggested that
17 if they did not like Ms. Dixon's stance, someone should have run
18 against her in the election. Mr. Chairman, given her position, I
19 ran against her. In a last minute campaign of only 16 days, a
20 political neophyte with no name recognition, I ran against the
21 entrenched, incumbent chair of ANC3E, and I lost, 448 to 442. If
22 that is a splinter group with no community support, I ask you.

23 CHAIRPERSON HOOD: Okay, first, let me say, Mr.
24 Haendler?

25 MR. HAENDLER: Yes, sir?

1 CHAIRPERSON HOOD: Your name was on the list. I
2 have to apologize, staff, the name was here, but the only problem,
3 early on -- you may have been a little late -- we had asked that
4 you sign, and yours wasn't signed, so we omitted it because it
5 wasn't signed.

6 Let me just ask a question, and maybe this is the
7 right panel I can ask that to. How long has the Tenleytown
8 Neighborhood Association been in existence?

9 MR. HAENDLER: The Tenleytown Neighbors Association
10 was formed in August, September of 2000. It was a coming -- of
11 '99, I'm sorry. The house came down in July, the end of July,
12 '99, and this galvanized the community, and it's had a good
13 effect. I now know five times as many people as I did beforehand,
14 though I lived there for 16 years. The community came together on
15 this issue, but the community association has no intention of
16 going away, regardless of what happens with this project.

17 CHAIRPERSON HOOD: So, Mr. Haendler, this
18 organization was formed specifically for this project?

19 MR. HAENDLER: It was formed because of what
20 happened. A recognition, however, that this is just the first
21 thing that's going to happen. The Office of Planning says that
22 Wisconsin Avenue, from the Cathedral to Friendship Heights, in the
23 next ten years, is undergoing tremendous development. That's
24 their official position, and we see that an association is
25 necessary because all sorts of things involving Wisconsin Avenue,

1 traffic, green space will come up, and we intend to stay together.

2 CHAIRPERSON HOOD: Okay. Colleagues, any
3 questions? Okay, Ms. -- I don't have your name in front of me --
4 Petsonk. Okay, I want to make sure I do something right.

5 MS. PETSONK: Okay, thank you. I would just like
6 to add a little bit further with regard to the Neighbors
7 Association. In addition to providing a forum for discussing this
8 issue, the neighborhood association has proven, to me as a member
9 of it and as a resident of the area, an important opportunity to
10 learn more about the history of our neighborhood. We have lots of
11 members of the association who've done research over the years
12 about the origins of Tenley and, for example, a study of the
13 different kinds of houses, the architecture of my house and other
14 houses was studied.

15 Also, it represents a kind of gathering of lots of
16 smaller knots of neighbors who -- for example, I live around the
17 corner from Alton Place. I'm an honorary member of the
18 unincorporated Alton Neighbors Association. We have a parade
19 every summer on the Fourth of July. We invite the D.C. Fire
20 Department, and we have generally about 40 people under the age of
21 12 participating in the parade with face painting. It's these
22 kinds of neighborhood groups that have come together, initially
23 around this issue as the galvanizing force, but with a richness
24 and broadness of purpose that is the maintenance of the
25 neighborhood qualities of our area.

1 Thank you.

2 CHAIRPERSON HOOD: Okay.

3 MR. HAENDLER: May I add one point? The history
4 committee of the association has completed all the work with the
5 Office of Historic Preservation everything except one bureaucratic
6 requirement for the designation of Grant Road as an historic
7 district. We've been working with the office. The only thing
8 that still must be done is a walk-around with the office to
9 demarcate the boundaries. Everything else is finished. This is
10 another thing that has been generated and is ongoing.

11 CHAIRPERSON HOOD: Okay. Colleagues, any other
12 questions? I want to thank you again, thank this panel.

13 I have three more names in opposition that were
14 handed to me. Leigh Oliver, Doug Wonderlic, and Dorothy Baird --
15 Biard, I'm sorry.

16 MS. BIARD: That's all right.

17 CHAIRPERSON HOOD: Is there anyone else in
18 opposition that has signed up? Okay, well, if you can come to the
19 table, and you can make sure you fill out two cards. I think that
20 will do it for opposition. This is the last call for anyone in
21 opposition. Going once, going twice, gone.

22 How many people do we have here for support? Okay,
23 two people.

24 You can begin.

25 MS. OLIVER: My name is Leigh Ann Oliver, and I

1 live at 3837 Albemarle Street in that little yellow house right
2 there, next to the oak tree.

3 I'm probably the youngest homeowner in the
4 neighborhood, and I live in about the oldest house. I moved in in
5 July of 1999. My first night there was -- I woke up the next
6 morning, and then looked across the street, and the house was
7 gone. It was terrifying. I didn't know what to do. I just met
8 as many people as I could to find out what was going to happen,
9 and I had all kinds of money put in this house that I loved, and I
10 didn't know how to proceed.

11 My neighborhood has been incredible, I think, in
12 supporting someone who's just out for the first time trying to
13 make a home. I don't know, I have a dog I walk everywhere. I
14 don't have a car. I use the Metro every day. I learn tricks of
15 gardening from people down the street, learn how to cook from them
16 also.

17 But I think they've been incredible, and I'm a
18 little disappointed that I haven't heard more about the people
19 that live here throughout these hearings. There's a lot of legal
20 talk and a lot of things that I understand because I've been
21 listening to this story for over a year-and-a-half, but I can't
22 speak to you in the same way.

23 What I've done to help the situation is try to
24 protect my house because I think it's so important. It was moved
25 there in the 1890's from the Naval Observatory, from what people

1 say, up on logs, drawn by mules after the Navy purchased the land,
2 reputed to be an old slave house. It was moved to the area
3 because it was in keeping with the architecture of other houses
4 along Grant Road that were built by freed slaves, woodworkers, and
5 artisans who lived around Fort Reno. It's very special to me that
6 way, and I think it will be saved, and I'm glad for that.

7 As far as the property across the street goes, I
8 was heartbroken that the trees were taken down, but I'm sure that
9 trees can be rebuilt. I think that fresh water is extremely
10 important, and I would be horrified to see that damaged in any
11 way. I hope it won't.

12 I also think that it would be -- I think that the
13 back row of buildings is unnecessary. I don't understand why they
14 have to build so many houses in this spot. I think it's a very
15 special piece of land, and I don't know why -- I haven't heard any
16 justification, and that's probably good enough. I don't like the
17 height either, but I could go on forever about this. Everyone
18 else has pretty much touched on it.

19 CHAIRPERSON HOOD: Okay, thank you, Ms. Oliver.

20 Next, Mr. Wonderlic?

21 MR. WONDERLIC: Yes, my name is Doug Wonderlic, and
22 I live at 3815 Alton Place. I wanted to cite a couple things from
23 the comprehensive plan. Mr. Feola mentioned, really implied, that
24 the commercial area was not where the housing opportunity area
25 was, just briefly.

1 From the comprehensive plan, Tenleytown, and quote,
2 "Tenleytown is designated as a housing opportunity area with mixed
3 use, medium density, residential and moderate density commercial
4 uses." There really is only one area where this is, and that's
5 the area east of 40th Street. So, I think we've heard the
6 testimony over and over again that this is where the housing
7 opportunity area is. It is not the area that is actually where
8 the site is.

9 Second, we've heard some talk also about the
10 stream. We've heard that over and over again. I think it's
11 really simple. Again, from the comprehensive plan, the
12 development violates the intent of the comprehensive plan for and
13 quote, "stream valleys, which include Rock Creek Park and its
14 tributaries." Development adjacent to these parks must be low
15 density, and this project is not low density. It's moderate
16 density.

17 One last thing I would like to mention, and it has
18 to do with, I think again, faith and trust in the developer.
19 August 3, 1999, three days after they purchased the property, they
20 were cited for four violations related to disturbing the land:
21 Failure to obtain a permit prior to engaging in any earth movement
22 or land disturbing activity, which requires an approved erosion
23 and sedimentation control plan; failure to provide appropriate
24 erosion and sediment control structures prior to or during the
25 first phase of land grading; failure to place adequate erosion

1 control measures timely; failure to notify the department 24 hours
2 prior to beginning construction.

3 This was their first act after purchasing the
4 property, and now today one of their amenities, they're going to
5 clean up the stream that they just polluted. Thank you.

6 CHAIRPERSON HOOD: Thank you. Ms. Biard?

7 MS. BIARD: Thank you, Mr. Chairman. Can you hear
8 me?

9 CHAIRPERSON HOOD: Yes.

10 MR. BIARD: My name is Dorothy Biard, and I reside
11 at 31 Albemarle Street, also known as 4521 Grant Road. I have a
12 110-year old house, four houses from this site. However, I am
13 testifying this evening as chair of the Tenleytown History
14 Committee.

15 It is our committee which has over the past year-
16 and-a-half pursued historic designation for Grant Road. I have
17 one thing that I really want to say. This property that the
18 Holidays have proposed to develop, and it is foggy to me, I must
19 admit, whether it is the two lots they purchased or whether it is
20 the three lots that include the Bregon property.

21 Assuming as Albemarle Associates, their proposal
22 includes the three lots, I would say that this property is
23 surrounded, property line to property line, on one side by the
24 Fort Reno Historic Park. I have for you the historic Washington,
25 D.C. District of Inventory of Sites. I have a blow-up here of it,

1 which I don't know if you can see, but I'll hand it up to you.

2 The Fort Reno is here, and Fort Drive is the
3 ceremonial entrance to it. Tenleytown and Grant Road lost many
4 houses to the creation of that street. It was considered
5 significant and important that it be put in place and that those
6 houses be sacrificed.

7 On its other two sides, directly across the street on Albemarle
8 Street is the first block of the Grant Road historic district,
9 which wraps around to its other side.

10 So, in essence, this piece of ground is surrounded
11 on three sides by either existing or proposed historic district
12 property and on the back side by Wilson High School and this
13 primary wilderness corridor. I would just simply ask you, as you
14 deliberate about what it is you're going to do with the request to
15 change the zoning here, please keep in mind that this is a
16 historic area. This historic district is very much a part of what
17 Tenleytown is.

18 I don't have a copy for you because, as you can
19 see, it is rather extensive, but this is the application that we
20 have filed with the Historic Preservation Division. We have been
21 operating with a grant from ANC3E, and we have the support of
22 historic preservation.

23 I am presenting to you all a copy of Tenleytown.
24 This is the history of our community, which was founded in the
25 late 1700's. We have tried very hard to preserve what we can of

1 it. It matters to us, and in case it isn't really clear to you
2 all, which I'm sure it must be, this is an extraordinary community
3 which has come together, hangs together, and intends to stay
4 together as a place that is identifiable, even though we are
5 within the bounds of Washington, D.C.

6 I will give you at this point this material.

7 CHAIRPERSON HOOD: Thank you. Have you concluded?

8 MS. BIARD: Yes. I am asked by several here to
9 mention the cover of the book that I have just given you, which is
10 a portrait done by a very well known local Washington, D.C. artist
11 of the chapel house, which is the historic house that was torn
12 down on the corner of Albemarle and Nebraska and Grant Road. The
13 woman has just recently died who did it, and we are all very
14 pleased that we were able to have it and for it to be the cover of
15 this reissue of this book. I just call that to your attention.

16 CHAIRPERSON HOOD: Okay, thank you.

17 Mrs. Houghton?

18 MS. HOUGHTON: I haven't been sworn in, sir.

19 CHAIRPERSON HOOD: Oh, you haven't been sworn in.

20 MS. HOUGHTON: My name is Sherry Houghton. I have
21 on 3729 Cumberland Street. I apologize for being the last
22 speaker, but I had hoped that someone else was going to pick up on
23 this point, and I was very surprised that it passed the Office of
24 Planning.

25 I am a landscape designer, and I have seen all the

1 different permutations of plans that have been submitted to you
2 all and to us. Among the amenities that are proposed for this
3 project are, I believe it's either 27 or 28 trees. Ten of those
4 trees had better be plastic because they're located in the bumps,
5 the concrete projections between the garages along the single
6 road. There is no way that a tree can live in those spaces.

7 There is no access to water. There is no access to
8 soil. It's solidly paved over. I think that it's disingenuous
9 for the planners to have put those ten trees in there.

10 CHAIRPERSON HOOD: Okay, thank you, Ms. Houghton.
11 Colleagues, any questions of this panel we have in front of us?
12 No question. I want to thank you all.

13 For those that are in support, I'm going to ask
14 Stuart Schwartz and Sheryl Court. Is there anyone else here in
15 support? We thought we saw two ladies, and I thought I saw two
16 ladies, but I guess I only saw one. What about Stuart?

17 MS. COURT: Stuart had to leave, so he asked me to
18 communicate to you his support for the project. He's the
19 executive director of the Coalition for Smarter Growth.

20 CHAIRPERSON HOOD: Okay, so Sheryl.

21 MS. COURT: So, I'm Sheryl Court. I live at 1438
22 Florida Avenue, N.W., Washington, D.C., and I represent the
23 Chesapeake Bay Foundation and the Washington Regional Network for
24 Livable Communities.

25 The Chesapeake Bay Foundation is an 85,000 member

1 non-profit organization dedicated to saving the Chesapeake Bay.
2 The CBF has been concerned and involved in land use and
3 transportation policy issues in the Washington Metropolitan region
4 for many years because of the significant impact of such
5 activities on the bay.

6 The organizations that I represent are particularly
7 concerned about how to accommodate the region's growth in jobs and
8 households in a way that makes the most of our existing
9 transportation facilities and other urban infrastructure, protect
10 our rural resource lands, and enhance the quality of life of our
11 inner suburbs and city.

12 Given our commitment to quality transit oriented
13 development, the Chesapeake Bay Foundation and WRN support the
14 proposed project at this location for 13 well designed housing
15 units approximately 400 or so feet from the Tenleytown Metro rail
16 station because it will provide housing opportunities for people
17 to live in the city and live close to Metrorail. Such proximity
18 to Metrorail, shopping along Wisconsin Avenue and public
19 facilities give future residents the opportunity to not own a car,
20 to drive less.

21 We believe that the 13 new households at this
22 location will enhance the neighborhood by providing more
23 pedestrian based customers to existing shops and more members of
24 the community to enjoy and support the nearby public facilities
25 and parks. Increased pedestrian activity gives life and safety to

1 the streets, and that makes the community more desirable and
2 supports more neighborhood oriented businesses.

3 Providing for well designed and appropriately
4 scaled housing like this project for these kinds of options next
5 to Metro stations is one of the best ways to accommodate the
6 growth our region is experiencing. By locating more households in
7 the District and next to Metro, the region can reduce the amount
8 of pollution and sprawl it generates, make urban neighborhoods
9 more attractive places to live, and support better transportation
10 options.

11 We do have a number of concerns about the proposal.

12 One is we think that it could, in fact, accommodate more units,
13 giving more opportunities and more diversity of housing types.
14 We're disappointed in the increased price of the units now, sort
15 of eroding the argument for more diversity by making them more
16 expensive and not enhancing the economic diversity of households
17 who can live at this location.

18 We also are disappointed that the proposed number
19 of parking spaces has increased from one to two per unit and
20 believe that this kind of parking provisions just encourages more
21 driving rather than encouraging more transit use. We suggest that
22 the developer take the money saved by not providing those parking
23 spaces and offer it to future residents in the form of multi-year
24 transit passes.

25 We're concerned that storm water management

1 measures are fully implemented and maintained and monitored by the
2 city and that the developer work to plant more native trees to
3 protect the stream segment and increase rainwater infiltration and
4 moderate air and water temperatures.

5 In terms of process, please allow us to again
6 express our concerns, and we've done so in other projects,
7 including the Tacoma Metrorail project, that more open and
8 comprehensive planning process such as could take place in the
9 context of a small area plan be substitute for ad hoc decision
10 making by the city. Such a process would allow replanning and
11 rezoning for the area, well ahead of the revelation of developers'
12 plans. This might make rezoning around Metro stations more
13 palatable, and would surely allow citizens to give voice in
14 shaping the new design.

15 So, we support the Albemarle Associates project
16 because we believe that environmentalists must lead the way to
17 more sustainable communities by promoting opportunities for people
18 to live in walkable, transit oriented neighborhoods. As our
19 region grows, we must direct growth to create lively, attractive
20 urban areas while protecting rural reaches of the region for
21 agriculture, recreation, and conservation.

22 Thank you for the opportunity to comment.

23 CHAIRPERSON HOOD: Thank you, Mrs. Court.
24 Colleagues, any questions? No questions. Thank you.

25 MR. BARDIN: Are we allowed to cross examine, Mr.

1 Chairman?

2 CHAIRPERSON HOOD: No, she's in support. She's not
3 a party. Parties cross examine parties.

4 MR. BARDIN: Thank you.

5 CHAIRPERSON HOOD: I believe I'm correct. Since
6 I'm the Chair, I guess I'm correct right now.

7 Okay, Mr. Feola. Let me ask first about how much
8 time you'd like for wrap up?

9 MR. FEOLA: Phil Feola for the Applicant, Mr.
10 Chairman. I think we'll probably take about 20 minutes of
11 rebuttal, and I assume there will be a few questions of cross
12 examination.

13 CHAIRPERSON HOOD: Can we cut it to 15 minutes?

14 MR. FEOLA: Yes, sir.

15 CHAIRPERSON HOOD: Okay.

16 MR. FEOLA: It might be easy if --

17 CHAIRPERSON HOOD: Let me just also state for those
18 who are maybe thinking about cross examine and rebuttal, which I
19 think my colleagues, we've heard quite a bit of discussion. While
20 we want to afford the opportunity, I ask that you keep in mind
21 that we have sat here for four nights. We've been very attentive.

22 Not rushing anything, but we want to make sure that you
23 understand we have heard it. We have heard the -- so, I mean,
24 while this is part of the process, understand that on the back
25 end, we don't still need to keep arguing the case whether you're

1 pro or con.

2 My colleagues and I have sat here, and we've been
3 very attentive, and we'll deal with a lot of these issues in our
4 deliberations. So, with that, Mr. Feola.

5 MR. FEOLA: Mr. Chairman, my first line of
6 questioning is for Mr. Wells, our transportation consultant. Real
7 briefly, Mr. Wells, you've heard a critique of your report by Joe
8 Mehra earlier today. Would you quickly comment on your response
9 to that?

10 MR. WELLS: I'd be happy to. Marty Wells, Wells &
11 Associates, traffic consultant for the Applicant.

12 I have responded to Mr. Mehra's memorandum in a
13 memorandum of my own dated November 2. Very briefly, and I can go
14 through this ad nauseam, but I won't. Let me just say that the
15 data in our report are accurate and current for reasons enumerated
16 in my memorandum. We did, in fact, use the appropriate highway
17 capacity manual methods.

18 The delays calculated by Mr. Mehra and by myself
19 result in the same levels of service due to differences in the
20 definitions of delay between the two different methods. We did
21 verify the delays on the most significant turning movements in the
22 study area.

23 The fact is that this development would generate,
24 the number of trips that would be generated by this development
25 could be counted on both hands, and I don't even need all of my

1 fingers. The fact is that that number of trips would be
2 insignificant in terms of its impacts on the community.

3 The three traffic experts that have testified in
4 this case all agreed that a single driveway would best manage the
5 traffic impacts of this development, whether by right or as
6 proposed, as compared to multiple driveways. The District of
7 Columbia Department of Public Works has no objection to the
8 proposed driveway.

9 Thank you.

10 MR. FEOLA: Mr. Chairman, I'd like to ask a couple
11 of questions of Mr. John Amatetti of ICA.

12 Mr. Amatetti, you've heard concerns from the Park
13 Service and from Mr. Pitchford that the roots of this tree might
14 be underneath the proposed foundations. How deep will these
15 foundations be on the ground?

16 MR. AMATETTI: Foundations for this type of
17 construction are typically 30 inches below grade from the bottom
18 of the foundation to the top of the ground surface.

19 MR. FEOLA: Two-and-a-half feet?

20 MR. AMATETTI: Two-and-a-half feet.

21 MR. FEOLA: Can this foundation be hand dug in the
22 vicinity of the tree?

23 MR. AMATETTI: Yes, they can be.

24 MR. FEOLA: I have no other questions of Mr.
25 Amatetti.

1 Mr. Rolband of Wetlands. Mr. Rolband, you've heard
2 some comments about the potential stream degradation caused by
3 this development. Will the development of this project, if it's
4 approved by the Commission, result in a change of predevelopment
5 conditions as it impacts the stream?

6 MR. ROLBAND: It's been designed so that there will
7 be no significant change in predevelopment hydrology in the post
8 development condition.

9 MR. FEOLA: If this development is built as
10 proposed, will it result in any degradation of that stream?

11 MR. ROLBAND: No, sir, it's our opinion that there
12 will not be any significant degradation due to two reasons. One,
13 the extremely poor quality of the stream system due to the high
14 impervious ratio of the watershed currently, and secondly because
15 of the design of the storm water management system that's
16 provided.

17 MR. FEOLA: Thank you. I have one questions for
18 Mr. Doggett, our urban planner.

19 Mr. Doggett, you've heard testimony from, I
20 believe, Mr. Oberlander and others that in their opinion the
21 project isn't within the housing opportunity noted at Tenleytown.

22 Would you comment on that, please?

23 MR. DOGGETT: Yes. I think the sign is pretty well
24 indicated in that triangle between Wisconsin, Nebraska, and the
25 area including the school. The actual comprehensive plan on item

1 118.7, so it's the criteria for designating housing opportunity
2 areas of the same for those for other areas. They are areas at or
3 near selected Metropolitan stations. They're not necessarily the
4 same areas as the Metro stations.

5 MR. FEOLA: Thank you. Mr. Colbert of Colbert &
6 Associates, our architect.

7 There was a suggestion, I think, by one of the ANC
8 Commissioners last session that it would be inappropriate to build
9 this development because the rears of these townhouses would be
10 fronting on the National Park, that is, Fort Reno Drive. Are, in
11 fact, the design of these units done in such a way as the facades
12 facing the park are the rears of these buildings?

13 MR. COLBERT: No. Actually, we're going to have
14 the same level of architectural detail surrounding the buildings,
15 and the rear would actually be more facing the Wilson High School
16 than the Park Service land.

17 MR. FEOLA: If the project, another item that was
18 stated this evening, I believe, that setbacks and matter of right
19 would provide better protection to the National Park Fort Reno
20 Drive area. Could you tell the Commission what the side yard
21 setbacks are for the R1B zone?

22 MR. COLBERT: That would be eight feet, you know,
23 in a matter of right house.

24 MR. FEOLA: And how far -- what is the distance
25 between the property line that the National Park boundary and the

1 first house proposed?

2 MR. COLBERT: The closest distance is about six
3 feet, but then it veers out to about 20 feet.

4 MR. FEOLA: I think it was Dr. Feldman that
5 testified that matter of right housing on the site would
6 contribute to the neighborhood scale. If you were to design four
7 or five houses on this site, would they likely be in scale with
8 the Tenleytown community?

9 MR. COLBERT: I totally disagree with that because
10 I live around the corner, and they're doing this development on
11 Belt Road where they tore down a very modest size house, which is
12 more in keeping with the Tenley size houses, and they put up two
13 monster houses selling for a million dollars. This is not, in my
14 opinion, what my neighborhood is about. My neighborhood is about
15 more modest size houses and appealing to a wider range of folks.

16 As a matter of fact, Commissioner Hood, you asked
17 me if there up and down Wisconsin Avenue, there are these, you
18 know, in a two block on either side of Wisconsin, you find quite a
19 number of these blocks of row houses, single family row houses,
20 and I've identified several of these that are in a very close
21 proximity to our side, which is actually much smaller, if you look
22 at these rows of townhouses. I have pictures of them in the
23 exhibit that we gave to you earlier.

24 This is a very important exhibit because this
25 shows, for instance, on the Bregon site, this is a matter of right

1 house. If we were to have five of these, it shows how diminutive
2 our houses are. What we've done here is the typology, the
3 architecture, the scaling and detailing of these, including
4 porches, is very in keeping with the Tenleytown neighborhood. We
5 view the same kind of architectural ornaments.

6 These houses are six feet below what's allowed as a
7 matter of right for the building height in that area. However,
8 the way we've done this, we've visually made it look much lower
9 because it's 27 feet to the strong cornice line. Then the way
10 we've included the inside of the -- the height is measured to the
11 ceiling of the top floor. We could have a --this could all be
12 below the ceiling, so this wouldn't even be counted in the 40
13 feet.

14 So, you can see that we're probably at maybe two-
15 thirds or less than that of the actual height that would be
16 permitted in uncontrolled matter of right houses. So, I believe,
17 you know, based on these two exhibits, that it's very in keeping.

18 As a matter of fact, it's not setting a precedent, but it's
19 actually --

20 CHAIRPERSON HOOD: Mr. Colbert, I'm just going to
21 ask that you not repeat your testimony.

22 MR. COLBERT: Okay.

23 CHAIRPERSON HOOD: I think Mr. Feola had asked you
24 a question, and I'm sure you answered it early on.

25 MR. COLBERT: Right.

1 CHAIRPERSON HOOD: So, I'm just going to ask you to
2 stick to the answers to the question. I think you testified to
3 some of that, what I just heard. Mr. Feola?

4 MR. FEOLA: Thank you. My last rebuttal witness is
5 Ms. Bamberger, representing the Applicant here.

6 Ms. Bamberger, there's been a lot of discussion
7 this evening and previous sessions of this hearing that this
8 project is not consistent or is inconsistent with the
9 Comprehensive Plan. Would you care to just comment on that?

10 MS. BAMBERGER: Well, I'm not testifying as an
11 urban planning -- as an expert like Ken is, but I am an urban
12 planner by training. You know, I'm a little befuddled by the
13 whole thing because when we first bought the property, or even
14 before we bought the property, one of the first things I did,
15 trained as an urban planner, is to go look at the Comprehensive
16 Plan and the Ward 3 element. I clearly thought it supported the
17 plan that we wanted to do, and in fact, when you see a housing
18 opportunity area designation on top of our site, that should give
19 you a pretty clear idea that we were headed in the right
20 direction.

21 When the neighbors raised all of their concerns, I
22 went back and reviewed the Comp Plan and the Ward 3 element again,
23 and I'm still convinced that our proposal fits squarely within the
24 intent of what the plan and the housing element said. In fact,
25 let me just give you a couple of things that I drew on. This is

1 from the Ward 3 element, and I'll just summarized these briefly.

2 There is little vacant property available for
3 development. The vacant parcels that do exist are small in size,
4 available for what planners term in-fill development, and even in
5 the aggregate, are not suitable for significant development of new
6 housing in the ward. However, there is underutilized land in the
7 ward that should be the focus for the development of new housing.

8 These areas have been designated in the land use element as
9 housing opportunity areas.

10 To go on, in 1402.2, Ward 3 can meet the housing
11 needs of many current and future residents. The land use element
12 designates several housing opportunities areas in the ward,
13 reflecting the ability of the ward to provide new housing.

14 Continuing in 1402.2, the ward's land use policies
15 as stated in the land use element have been developed to provide
16 the greatest housing densities on those corridors that have the
17 best access to transportation and shopping. Two of the ward's
18 housing opportunity areas are at designated Metro rail stations.

19 Finally, in 1402.4, where the discussion is
20 policies in support of the general housing objectives, one of the
21 things the District government should do is the following. Give
22 zoning preference to projects that include housing near each of
23 the ward's Metro rail stations. I don't know how much more clear
24 it could be than that.

25 MR. FEOLA: Ms. Bamberger, there's been some

1 allegation by opponents of the project that this project doesn't
2 meet the exceptional merit, and I quote, "is not of exceptional
3 merit and in the best interests of this city or country," end of
4 quote, as the regulations call for the waiver of the minimum area
5 requirement. Would you comment on that, please?

6 MS. BAMBERGER: Yes. I think that the Planning
7 Department prepared a chart showing the other cases that had been
8 granted exceptional merit, and as I reviewed the list and compare
9 our project to the other two projects at 26th and L and at Clark
10 Place and Potomac Avenue, not only do I conclude that we comply
11 with those other previous waivers, but that we exceed what they
12 did.

13 I don't want to bore you with the details because
14 we've talked about this before, but again, in terms of looking at
15 exceptional merit or adding new housing, that was one of the
16 criterion. We are compatible with the proposed neighborhood,
17 despite what you've heard here tonight. In fact, I would even
18 argue that the project is exceptional because we fit in so well.
19 We heard testimony last Monday that these townhouses would be
20 found in Reston or Gaithersburg. I defy anybody to find the kind
21 of townhouse that we're proposing in Reston or Gaithersburg.
22 They're 1920's vintage style houses that Eric has designed.
23 Reston didn't even exist in 1920. The same thing holds true for
24 Gaithersburg. So, I maintain that the designs Eric has done are
25 very compatible.

1 I just mentioned, we're consistent with the
2 Comprehensive Plan by being in the housing opportunity area next
3 to a Metro station. Our townhouses are a buffer between the
4 commercial activity to the west and the lower density residential
5 to the east. We've provided a self-imposed restriction on
6 impervious surface coverage. We've got four times more parking
7 and matter of right.

8 We're making all sorts of gestures to improve the
9 creek. We're eliminating a curb cut on Nebraska Avenue. We're
10 installing decorative fencing which the National Park Service had
11 asked us to do. We've, as you know, talked a lot about the tree,
12 and we've entered into a tree preservation plan, offered to
13 provide 25 additional trees in the neighborhood, undergrounding
14 utilities on site, and we're providing two bioretention
15 facilities.

16 I think that you've seen letters of support from
17 other people in the file that indicate that they also believe it's
18 exceptional. One of the former directors of the D.C. Preservation
19 League thought that this project should be approved simply for
20 that reason. So, I think we do meet it.

21 MR. FEOLA: One last question, Mr. Chairman. Much
22 has been stated, especially tonight, about Holiday's unwillingness
23 to compromise on this project. I guess I'd like to hear your take
24 on that allegation.

25 MS. BAMBERGER: Well, quite honestly, I've been

1 doing this for 15 years, and I don't think I've ever compromised
2 on a project more than I've compromised on this one. Think about
3 what we've done. Admittedly, maybe we came in with a density that
4 was too high to begin with, and we heard you loud and clear in
5 March when you told us to go back to the drawing board, but we did
6 go back to the drawing board. We had 26 units. We reduced it to
7 17 units. We got a letter of unanimous opposition to 17 units.

8 So, we came back. We reduced the 17 units to 14
9 units. Still, no indication of willingness to compromise from the
10 community. The no more than four signs were ever present. We
11 then reduced the number of units from 14 to 13, beyond just a
12 density reduction, obviously. That's a 50 percent reduction.

13 We doubled the amount of parking from one spaces to
14 two spaces. We changed the product per the neighborhood request
15 from condominiums to townhouses. There was a concern about too
16 many young people, as you heard before. We increased the price
17 from 275 to 450,000. We decreased the FAR from 1.78 to 1.49. I
18 can't think of anything else we could do. I mean, if you go
19 through the list of what the neighbors said they wanted, we did
20 most of those things. Admittedly they still don't like it, but we
21 certainly can't be faulted for lack of trying.

22 MR. FEOLA: One last question I thought I'd ask,
23 but --

24 CHAIRPERSON HOOD: This is the last question.

25 MR. FEOLA: This is the last last question. I'm

1 going to ask you to identify that document, if I might.

2 MS. BAMBERGER: This is an e-mail that I guess came
3 from Mr. Levine, who testified earlier to
4 -- it says Levines5 at erols.com. It's an e-mail that came from a
5 Tenleytown Neighbors meeting. It indicates that Frank Hendler
6 passed it on, some advice that he and other Tenleytown neighbors,
7 leaders, received from various community leaders.

8 MR. FEOLA: The Commission can read it in its
9 entirety, but just comment on a couple of the suggestions.

10 MS. BAMBERGER: Well, it may be helpful to kind of
11 run through these because I think they reflect a lot on what
12 you've heard here over the last 16 hours. Some of these you've
13 seen in a previous letter, but number one is do not compromise.
14 You will end up by compromising even further later from your
15 initial compromise. Do not be apologetic. In meetings with
16 Holiday, do some posturing. Ask them to explain, justify traffic
17 study points, paving areas, et cetera.

18 Number two, try to meet as often as possible with
19 the --

20 VICE CHAIRPERSON MITTEN: Could I just interrupt
21 for a second? What exactly are you rebutting with this testimony?

22 MR. FEOLA: The allegations made by a number of
23 members of the community that Holiday was disingenuous, was
24 surreptitious, underhanded.

25 VICE CHAIRPERSON MITTEN: But this doesn't speak to

1 Holiday's demeanor. This speaks to things that the community was
2 doing.

3 MR. FEOLA: Well, that's right. That's exactly
4 right, because I think it takes two people to tango, and there are
5 two sides to this issue. There's an allegation that Holiday
6 wasn't coming to the table. Mr. Handler said they only had three
7 meetings, and this shows that the result of only having three
8 meetings may be in part -- partly their responsibility. We don't
9 need to read it anymore.

10 VICE CHAIRPERSON MITTEN: That would be great.

11 MR. FEOLA: That ends our rebuttal, Mr. Chairman.

12 CHAIRPERSON HOOD: Okay, thank you. I just have
13 one questions. First of all, colleagues, do you have any
14 questions?

15 COMMISSIONER FRANKLIN: I have one.

16 CHAIRPERSON HOOD: Go ahead.

17 COMMISSIONER FRANKLIN: There was some testimony
18 earlier tonight about some confusion as to who tore down the
19 historic house. Could you clarify that?

20 MS. BAMBERGER: Yes. The contract was written in
21 such a way that the owners of the property filed for the permit,
22 and it was their responsibility to have a demolition permit for
23 the house prior to our purchasing it.

24 COMMISSIONER FRANKLIN: But that was a condition of
25 your contract of purchase?

1 MS. BAMBERGER: Correct.

2 COMMISSIONER FRANKLIN: Thank you.

3 MR. FEOLA: And Mr. Franklin, it may have been an
4 old house, but it wasn't a historic house as a landmark noted
5 under the D.C. Historic Preservation Landmark Act.

6 CHAIRPERSON HOOD: Let me just ask Ms. Bamberger
7 one question. I noticed in the submittal that we received this
8 evening, one of your supporters, and this goes back to some
9 testimony I heard about your being straightforward with the
10 community. You have a letter here in support dated November 30.
11 Now, you've already changed it from, what 26 to --

12 MS. BAMBERGER: Thirteen.

13 CHAIRPERSON HOOD: Twenty-six to 14 to 13?

14 MS. BAMBERGER: Correct.

15 CHAIRPERSON HOOD: Your letter of support here that
16 you have, and I'm just wondering, have you been forthcoming to
17 even some people that support you because they're supporting 14
18 townhomes.

19 MS. BAMBERGER: I don't know which letter you're
20 referring to.

21 CHAIRPERSON HOOD: Kim Pronwet.

22 MS. BAMBERGER: I would imagine that some of those
23 letters of support probably just weren't aware of, you know, the
24 latest developments because the switch from 14 to 13, as you know,
25 came in response to the Planning Department's suggestion.

1 CHAIRPERSON HOOD: When did you decide to change
2 that from 14 to 13?

3 MS. BAMBERGER: It was right before the first
4 zoning hearing, which was October 19.

5 CHAIRPERSON HOOD: Okay, and this letter is dated
6 November 30. Okay, thank you.

7 MS. BAMBERGER: Yes, I don't know.

8 CHAIRPERSON HOOD: Okay, and I will let my
9 colleague, Commissioner Mitten's comments stand on this here, on
10 this letter that you were getting ready to read. I think she was
11 totally appropriate, and I think this is purely -- I mean, we
12 weigh things, and we deal with things. A lot of this on here is
13 not true. For example, and I'm going to say this to the community
14 and whoever else, Zoning Commission responds to those when you're
15 angry.

16 I've testified in front of the Zoning Commission
17 before, and I must not have been angry enough. So, I just want to
18 make sure.

19 Colleagues, any other questions? Okay, there are
20 no other questions. I guess we're finally going to bring this to
21 a closing. If anyone has any comments, the record will be left
22 open. Mr. Bastida, can you give me some dates?

23 SECRETARY BASTIDA: Yes, Mr. Chairman. You haven't
24 requested any other documents. Usually you might close the record
25 and then leave the record open for financial facts and conclusions

1 of law for all the parties involved in the case. I would like to
2 know what is your pleasure?

3 CHAIRPERSON HOOD: I would just like to,
4 Colleagues, if it's okay, leave the record open in time enough for
5 those who may want to say something about the rebuttal. Also, for
6 the findings of facts, and I want to make sure that whatever the
7 time frame if, if it's all right with my colleagues, that we leave
8 enough time for all that to be taken care of give people an
9 opportune time to make those submittals.

10 MR. FEOLA: Mr. Chairman, may I interrupt for a
11 second? I don't want to prolong this, but I don't know if any of
12 the other parties had cross examination questions based on
13 rebuttal.

14 CHAIRPERSON HOOD: I would prefer to do that in
15 writing, but if Colleagues, if we have a few minutes, let me ask
16 first. Mr. Bardin?

17 MR. BARDIN: Mr. Chairman, I was puzzled by one
18 thing that Mr. Colbert said. I would much prefer just to read the
19 transcript. I'll see what he actually said, and if I have a
20 problem, I'll file a

21 -- it had to do with this big chart I could only partly see and if
22 that long answer that he was giving. I would just ask that you
23 keep the record open until the transcript comes and we have a
24 reasonable period of time after the transcript to read that.

25 CHAIRPERSON HOOD: Okay, thank you, Mr. Bardin.

1 What about the other parties? I think that might be the best way
2 for us to proceed. How long does it take for us to get a
3 transcript?

4 SECRETARY BASTIDA: Normally three weeks from the
5 day of the hearing.

6 CHAIRPERSON HOOD: Three weeks, and then opportune
7 time to look at the transcript. What are we saying, five, six
8 weeks?

9 SECRETARY BASTIDA: Well --

10 MR. FEOLA: That seems to be excessive. I mean, we
11 had ten minutes of rebuttal. To wait three weeks for them to look
12 at it, I'd rather have him ask the question now.

13 CHAIRPERSON HOOD: Well, I think he said he
14 couldn't ask the question because he didn't get all of the answer.
15 Let me just say, I'm trying to work this out.

16 SECRETARY BASTIDA: Okay, let me address that, Mr.
17 Chairman. The Applicant can request from the recording company to
18 have an expedited transcript that they will do in less than a
19 week, but the Applicant would have to pay for it.

20 MR. FEOLA: The cross examination of rebuttal
21 should happen at rebuttal, and if Mr. Bardin has one question, he
22 can ask it and we can move on.

23 CHAIRPERSON HOOD: Mr. Feola, I threw this six
24 weeks out so we could work with it. That's all I did, and
25 definitely you're working with it. So, Mr. Bastida, if we could -

1 - 30 days? Is 30 days -- oh, you want to ask the question now?

2 MR. BARDIN: Mr. Chairman, it's not just rebuttal,
3 whether it was Mr. Murphy's testimony and others. We left a
4 question with Mr. Murphy about giving us some examples, which I
5 gather he's going to send in. I don't know when you're going to
6 get those, but that is something that you're still waiting for.
7 You remember, a successful example and an unsuccessful example
8 that seemed to him relevant on preserving a tree.

9 In terms of my own personal situation, I'm taking a
10 trip overseas with my wife, leaving December 17, and the
11 Applicant's taken plenty of time on this case, and I don't
12 understand why the kind of time table that the Chairman --

13 MR. FEOLA: We may be talking about two separate
14 things here. If Mr. Bardin is talking about responding to things
15 that come into the record or doing a proposed order, that's
16 perfectly -- I mean, we have to wait for the transcript for that.

17 That's fine.

18 What I was talking about is the limited piece of
19 rebuttal based on what was heard tonight. I guess I'm missing
20 something.

21 MR. BARDIN: I thought the Chair was addressing a
22 broader question to keep the record open.

23 CHAIRPERSON HOOD: Right, I was more broad. I was
24 just giving people an opportune time to respond and leave the
25 record open for whatever else that we wanted to accept. I guess I

1 need to put some parameters around that. So, we don't just want -

2 -

3 COMMISSIONER FRANKLIN: Does Mr. Bardin just have
4 one question? Is that it?

5 MR. BARDIN: I don't know that I have any
6 questions, Commissioner, Franklin.

7 COMMISSIONER FRANKLIN: Oh, well, maybe that solves
8 the problem.

9 MR. FEOLA: There was something about matter of
10 right and the Bregon property with this huge house. It may be
11 that when I read that transcript, that goes away, but I'm much
12 more interested in the question of how long you keep the record
13 open for the supplemental information and then the timing for the
14 findings of fact and conclusions of law.

15 CHAIRPERSON HOOD: Let's go back to that and
16 respond to what I've heard of concern. I think our transcript
17 comes out in three weeks. In all fairness, if we can leave it
18 open for four weeks.

19 COMMISSIONER FRANKLIN: Mr. Bardin, are you going
20 to prepare a proposed finding of fact and conclusions of law for
21 the Commission?

22 MR. BARDIN: Well, that's my plan unless somebody
23 talks me out of it, Commissioner Franklin.

24 COMMISSIONER FRANKLIN: I'm not intending to talk
25 you out of it. I'm just saying that if that is your plan, it

1 seems to me once you look at the transcript, you can propose in
2 your findings of fact and conclusions of law something that
3 addresses this question you have in your mind.

4 MR. BARDIN: I would hope so, yes.

5 COMMISSIONER FRANKLIN: Yes.

6 CHAIRPERSON HOOD: If someone has -- if you come to
7 the table.

8 MS. CAUMAN: I'm Anne Cauman, a member of the
9 community who spoke earlier. As a member of the community who sat
10 through several weeks of hearing and wants to make some comments
11 in writing at the end, because three minutes isn't a long time to
12 respond to what went on in this very long hearing, I'm concerned
13 about a record closing the week after Christmas. Three weeks from
14 today is Christmas Day. It's a holiday period. It's not exactly
15 the time -- I have a kid out of school in that following week.
16 It's not the time I can come sit and read a transcript. I would
17 hope we'd have at least two weeks after our kids were back in
18 school and when we're on a more normal working schedule in order
19 for people who had comments to make.

20 MR. FEOLA: Mr. Chairman, it's not usually the
21 Commission's policy to have anybody but parties participate in the
22 post-hearing materials, to address Ms. Cauman's concern.

23 CHAIRPERSON HOOD: Mr. Feola, you're correct, but
24 in this instance, again, I don't know. Colleagues, you can join
25 in.

1 MR. FEOLA: Well, the Tenley Neighbors Association
2 is a party, and they clearly have a right.

3 CHAIRPERSON HOOD: I think Ms. Cauman, I think you
4 all can filter through that because you all have worked so good
5 together, but none of that has resolved the issue of how much time
6 we're looking at. I'm going to make a Chair's decision, and I
7 understand and I appreciate everyone's patience, and I understand
8 that the community has come down. I know how it is around
9 Christmastime, and I know how it is in August. I've been there.

10 So, I'm going to say five weeks. If anyone has a
11 problem with that, I'm sorry. I think in fairness on all parts,
12 that we deal with five weeks. Mr. Bastida, can you tell me when
13 five weeks will be?

14 SECRETARY BASTIDA: Yes, Mr. Chairman. That would
15 be January 9. Well, January 8, which is a Monday.

16 CHAIRPERSON HOOD: Which allows time for the three
17 week transcript and two weeks for the parties to deal with it. I
18 think that's in fairness.

19 SECRETARY BASTIDA: Okay, but Mr. Chairman, that
20 would be for submitting finding of facts and conclusion of law.

21 CHAIRPERSON HOOD: That's for the whole gamut, the
22 whole thing, everything.

23 SECRETARY BASTIDA: Right, and then we will need a
24 week to let respond to those.

25 MR. FEOLA: There shouldn't be any -- if there's no

1 post-hearing requirements from the Commission, the only thing
2 that's left is the proposed findings of fact and conclusions of
3 law.

4 SECRETARY BASTIDA: That is correct. I just was
5 trying to see how much time we're going to give Mr. Murphy to
6 submit their research for that tree.

7 CHAIRPERSON HOOD: If it's within the five week
8 period, that's how much time.

9 SECRETARY BASTIDA: Yes, but you see, the Applicant
10 and the other parties should have a chance to respond to that
11 submission.

12 CHAIRPERSON HOOD: Okay, well give Mr. Murphy --

13 SECRETARY BASTIDA: Three weeks?

14 CHAIRPERSON HOOD: Three weeks, but does he need
15 the transcript?

16 SECRETARY BASTIDA: I don't think so.

17 CHAIRPERSON HOOD: Okay, well, let's give him three
18 weeks.

19 SECRETARY BASTIDA: Okay. The Commission is
20 leaving the record open for Mr. Murphy to submit his report on the
21 brief by the 26th of December. The Applicant and the parties will
22 have until October 8 -- I'm sorry, January 8 to submit their
23 findings of fact and conclusions of law.

24 VICE CHAIRPERSON MITTEN: Could I just interrupt
25 and say there was another item that was outstanding now that I

1 pulled my notes out from the last meeting, which is the Mr. Bardin
2 has submitted some questions in writing to the Office of Planning,
3 and they were going to respond to those questions.

4 SECRETARY BASTIDA: The Office of Planning
5 submitted that for the record today.

6 VICE CHAIRPERSON MITTEN: Oh, today, all right.

7 COMMISSIONER FRANKLIN: That was submitted during
8 the course of this hearing.

9 VICE CHAIRPERSON MITTEN: Okay.

10 SECRETARY BASTIDA: But thank you, Mrs. Mitten.

11 CHAIRPERSON HOOD: Colleagues, do we have anything
12 else outstanding? So, we're looking at the only thing that we
13 have out now is the National Park Service, which is going to come
14 in on December 26, the day after Christmas.

15 Also, the record will be closing January 8.

16 SECRETARY BASTIDA: That's right, but the record is
17 only open to receive those items as named.

18 CHAIRPERSON HOOD: That's right.

19 COMMISSIONER FRANKLIN: Will Mr. Murphy be reminded
20 of this?

21 SECRETARY BASTIDA: I will call Mr. Murphy tomorrow
22 and will tell him when the deadline is.

23 CHAIRPERSON HOOD: Okay.

24 MR. HITCHCOCK: Excuse me, Mr. Chairman, just one
25 quick question for clarification. Earlier I referred to a

1 response to the Applicant's opposition to our Environmental
2 Protection Act statement. I assume that can come in by the date
3 the record closes?

4 CHAIRPERSON HOOD: Okay, repeat that?

5 MR. HITCHCOCK: Earlier on, I asked about the
6 possibility of submitting a written reply to the Applicant's
7 opposition to our position with respect to the Environmental
8 Protection Act.

9 SECRETARY BASTIDA: You're talking about to show --

10 MR. HITCHCOCK: Two weeks ago, we filed a
11 memorandum dealing with the Environmental Protection Act. Yet,
12 this afternoon, Mr. Feola served a copy of an opposition. Rather
13 than take time, I'd like the opportunity to submit a reply to
14 that. As I understand it, the issue is being presented to the
15 corporation counsel. So, we could get a response in prior to the
16 8th, certainly.

17 MR. FEOLA: There's no reason, Mr. Chairman, for a
18 reply. They made the motion. We opposed it. It's that simple.
19 It's in the record. They don't need another bite at the apple to
20 reargue their position.

21 MR. HITCHCOCK: Well, we don't intend to reargue
22 the position. There are some statements of fact which are simply
23 incorrect. It's a factual matter.

24 MR. FEOLA: There's no provision in the zoning
25 regulations for replies to oppositions to motion.

1 CHAIRPERSON HOOD: Let me say this, though, Mr.
2 Hitchcock. We've received both from the proponent and the
3 Applicant, and so let's just move forward with what we have,
4 colleagues, and we will deal with that question accordingly.
5 Okay? Okay.

6 With that, ladies and gentlemen --

7 MR. FEOLA: One last thing.

8 CHAIRPERSON HOOD: I'm going to get past gentlemen
9 eventually.

10 MR. FEOLA: I did not get a chance to make a
11 concluding statement, and I can put it in writing, three pages, no
12 more. They can do what they want with it. I'll give it to them
13 the same day that Mr. Murphy's thing is due.

14 CHAIRPERSON HOOD: Is that okay, colleagues, or
15 would you like to hear it now?

16 VICE CHAIRPERSON MITTEN: I would love to read it.

17 CHAIRPERSON HOOD: Okay.

18 SECRETARY BASTIDA: Mr. Chairman, if I may have a
19 minute, then for clarification, Mr. Murphy's and Mr. Feola's
20 closing statement are due on Tuesday, December 26. Finding of
21 facts and conclusions of law are due on January 8, on Monday,
22 January 8 of 2001. The record is only open for those items.

23 MR. FEOLA: December 26, is that what you said?

24 SECRETARY BASTIDA: That's correct.

25 CHAIRPERSON HOOD: Ladies and gentlemen, the other

1 members of the Commission and I wish to thank you for your
2 testimony and assistance in this hearing. The record in this case
3 will be kept open until December 26 for the above-said items, for
4 submissions of any additional information.

5 Any special information or reports specifically
6 requested by the Commission must be filed no later than the close
7 of business, at 4:40 p.m. on January 8 in Suite 210 of the
8 building 441 Fourth Street, N.W.

9 The Commission will make a decision in this case at
10 one of its regular monthly meetings following the closing of the
11 record. These meetings are held at 1:30 p.m. on the second Monday
12 of each month with some exceptions, and are open to the public.

13 If any individual is interested in following this
14 case further, I suggest that you contact staff to determine
15 whether this case is on the agenda of a particular meeting. You
16 should also be aware that should the Commission propose
17 affirmative action, the proposed action must be referred to the
18 National Capitol Planning Commission for federal impact review.

19 The Zoning Commission will take final action at a
20 public meeting following receipt of the National Capitol Planning
21 Commission's comments, after which a written order will be
22 published.

23 I want to thank each and every one of you for your
24 patience in helping us to put the issues on the table, and again,
25 four nights is not easy, but I hope that we have been cordial to

1 each and every one, whether you're for or against.

2 With that, I declare this hearing closed.

3 (Whereupon, at 10:33 p.m., the above-referred to
4 hearing was adjourned.)
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