

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
 :
Waterfront 1001 4th Street, : Case No.
LLC - Second Stage PUD at : 02-38D
Square 542, Record Lot 89 :
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Thursday,
June 6, 2013

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

The Public Hearing of Case No. 02-38D by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:
ANTHONY J. HOOD Chairman
MARCIE COHEN Vice Chair
PETER G. MAY Commissioner (NPS)
MICHAEL G. TURNBULL Commissioner FAIA,
(AOC)
ROBERT MILLER Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON

STEPHEN MORDFIN

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

JAMIE HENSON

This transcript constitutes the
minutes from the Public Hearing held on June
6, 2013.

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Anthony Hood, Chairman.5

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

6:33 p.m.

CHAIRMAN HOOD: Good evening,
ladies and gentlemen. This is a Public
Hearing of the Zoning Commission of the
District of Columbia for Thursday, June 6,
2013.

My name is Anthony Hood. Joining
me are Vice Chair Cohen, Commissioner Miller,
Commissioner May and Commissioner Turnbull.

We are also joined by the Office
of Zoning staff, Ms. Sharon Schellin. Office
of Planning, Mr. Lawson and Mr. Mordfin.
District Department of Transportation, Mr.
Henson.

Okay. The subject of this
evening's hearing is Zoning Commission Case
No. 02-38D. This is a request by Waterfront
1001 4th Street, LLC for approval of a Second
Stage PUD for property located at Square 542.

Notice of today's hearing was
published in the DC Register on April 19, 2013

1 and copies of that announcement are available
2 to my left on the wall near the door.

3 This hearing will be conducted in
4 accordance with the provisions of 11 DCMR 3022
5 as follows: Preliminary matters; applicant's
6 case; report of the Office of Planning; report
7 of other Government agencies; report of the
8 ANC, in this case it's ANC-6D; organizations
9 and persons in support; organizations and
10 persons in opposition; rebuttal and closing by
11 the applicant.

12 The following time constraints
13 will be maintained in this meeting: The
14 applicant has requested 20 minutes;
15 organizations 5 minutes; individuals 3
16 minutes. The Commission intends to adhere to
17 the time limits as strictly as possible in
18 order to hear the case in a reasonable period
19 of time.

20 All persons appearing before the
21 Commission are to fill out two witness cards.
22 These cards are located to my left on the

1 table near the door. Upon coming forward to
2 speak to the Commission, please, give both
3 cards to the reporter sitting to my right
4 before taking a seat at the table.

5 When presenting information to the
6 Commission, please, turn on and speak into the
7 microphone, first, stating your name and your
8 home address. When you are finished speaking,
9 please, turn your microphone off, so that your
10 microphone is no longer picking up sound or
11 background noise.

12 The decision of the Commission in
13 this case must be based exclusively on the
14 public record. To avoid any appearance to the
15 contrary, the Commission requests that persons
16 present not engage the Members of the
17 Commission in conversation during any recess
18 or at any time.

19 The staff will be available
20 throughout the hearing to discuss procedural
21 questions.

22 Please, turn off all beepers and

1 cell phones, at this time, so as not to
2 disrupt these proceedings.

3 Would all individuals wishing to
4 testify, please, rise to take the oath? And
5 I'm going to ask, Ms. Schellin, if you can
6 administer the oath?

7 MS. SCHELLIN: Please, raise your
8 right hand.

9 (Whereupon, witnesses were sworn.)

10 MS. SCHELLIN: Thank you.

11 CHAIRMAN HOOD: Okay. At this
12 time, the Commission will consider any
13 preliminary matters.

14 Does the staff have any
15 preliminary matters?

16 MS. SCHELLIN: Yes, sir. First,
17 we have one party status request that is in
18 opposition from the Westminster Presbyterian
19 Church. They are being represented by Rose
20 Waller, so that's the first item.

21 CHAIRMAN HOOD: Okay. Let's take
22 up the request. The party status request is

1 Exhibit No. 21. This is the Westminster
2 Presbyterian Church who has explained why they
3 deserve party status.

4 Let me open it up for discussion.
5 Vice Chair, do you have any comments?

6 VICE CHAIR COHEN: Thank you, Mr.
7 Chairman. The Westminster Presbyterian Church
8 is adjacent to the property that we are having
9 the Public Hearing on and I do believe that
10 they have adequately responded to how they are
11 uniquely affected.

12 So I would recommend that we give
13 them party status.

14 CHAIRMAN HOOD: Okay. Any other
15 discussion? Okay. I have no objections.

16 COMMISSIONER TURNBULL: I would
17 concur, Mr. Chair.

18 CHAIRMAN HOOD: Okay. So I would
19 move that we -- thank you. I would move that
20 we grant Westminster Presbyterian Church party
21 status in this case, 02-38D, yes, and ask for
22 a second.

1 VICE CHAIR COHEN: Second.

2 CHAIRMAN HOOD: It has been moved
3 and properly seconded. Any further
4 discussion?

5 All those in favor?

6 ALL: Aye.

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin, would you record the
9 vote?

10 MS. SCHELLIN: Yes. Staff would
11 record the vote 5-0-0 to grant party status to
12 the Westminster Presbyterian Church in
13 opposition. Commissioner Hood moving,
14 Commissioner Cohen seconding, Commissioners
15 May, Turnbull and Miller in support.

16 CHAIRMAN HOOD: And, Ms. Shiker,
17 you didn't have any objections? Okay. All
18 right. The only thing -- concern and I can
19 talk about this even more later, they asked
20 for 90 minutes for their presentation.

21 Typically what we do is balance it
22 off for what the applicant does is the same

1 thing that we usually allow for the parties.
2 And I think we can continue to keep that in
3 that same sequence. And even 90 minutes, we
4 never do 90 minutes. I think our regulations
5 say 60 minutes, but if the applicant is taking
6 20, then I think we need to -- and I'm saying
7 this so that the party can get ready.

8 If they take 20, then we need you
9 all to do 20. We usually kind of balance it
10 out. Okay. Great.

11 So, Ms. Shiker, were you going to
12 comment on that? Okay. You want them to have
13 90 minutes? Okay. Okay. Because we won't
14 even give you 90 minutes.

15 MS. SHIKER: No, no.

16 CHAIRMAN HOOD: Because we are
17 fair. We won't give them 90, we're not going
18 to give you 90. Okay. All right. So I'm
19 glad we started that off that way.

20 MS. SCHELLIN: Okay.

21 CHAIRMAN HOOD: Okay. What else
22 do we have?

1 MS. SCHELLIN: The next
2 preliminary matter is that we have received
3 the Affidavit of Maintenance. It seems to be
4 in order. And then we move on to proffered
5 expert witnesses. I'll let Ms. Shiker go
6 through those. I think there are some new
7 witnesses or experts. I'm not sure that we
8 have seen them all.

9 CHAIRMAN HOOD: Well, I know two
10 of them we have previously -- let's do the
11 ones that we have not previously accepted,
12 unless my colleagues have a problem with that.

13 Mr. Sher and the transportation,
14 Mr. VanPelt, we have already seen them, so I
15 don't think there are any problems with that.

16 I think the other two, at least I
17 don't remember them previously being accepted.
18 So if we can run through that, Ms. Shiker?

19 MS. SHIKER: Yes. Thank you. We
20 are proffering Gary Steiner from Perkins
21 Eastman as an expert in architecture and I
22 have submitted his r, sum, at Exhibit C to the

1 prehearing submission.

2 We also have Connie Fan from LSG
3 Landscape Architecture. Her r, sum, is also
4 included. And we submit her as an expert in
5 landscape architecture and design. And I
6 would be happy to have them answer any
7 questions, if you have questions for them.

8 CHAIRMAN HOOD: Okay. Let's take
9 Mr. Steiner. Commissioners, any questions?
10 And that's behind Tab D. The r, sum, is behind
11 -- both rŠsumŠs actually are behind Tab D.

12 VICE CHAIR COHEN: No objection.

13 CHAIRMAN HOOD: Any objections to
14 either one of these?

15 VICE CHAIR COHEN: No.

16 CHAIRMAN HOOD: Okay. No
17 objections. Then they will be qualified. We
18 will just make sure that they are on our list
19 from this point forward.

20 MS. SHIKER: Thank you.

21 CHAIRMAN HOOD: Okay. Anything
22 else, Ms. Shiker?

1 MS. SHIKER: No other expert
2 witnesses, no.

3 CHAIRMAN HOOD: Okay. Anything?
4 Do we have any other preliminary matters?
5 Okay. So we are ready to get started. Okay.

6 MS. SHIKER: Mr. Chairman, before
7 I start, I would say to the Chairman and
8 Members of the Board that the record is very
9 full in this case and we would suggest that we
10 do an introductory statement followed by a
11 briefer presentation by the architect to hit
12 the highlights of the design, if the
13 Commission so chose, otherwise, we would be
14 prepared to put a full presentation on, if you
15 would prefer.

16 CHAIRMAN HOOD: Commissioners, let
17 me see, I would like to see you hit the
18 highlights, unless you all want to hit
19 everything. Hit the highlights and if you
20 know what some of the opposition's concerns
21 are, if we can hit those through that process,
22 that would expedite some time.

1 MS. SHIKER: Absolutely.

2 CHAIRMAN HOOD: Great.

3 MS. SHIKER: All right. Thank
4 you.

5 CHAIRMAN HOOD: Thank you.

6 MS. SHIKER: Thank you very much.
7 Good evening. My name is Christy Shiker with
8 the Law Firm of Holland & Knight representing
9 the applicant in the case before you tonight.
10 I am joined by a wide variety of people on our
11 team.

12 I have Deborah Ratner Salzberg,
13 David Smith and Tom Henneberry from Forest
14 City Washington and they are representing the
15 applicant, which is Waterfront 1001 4th
16 Street, LLC. I also have Gordon Fraley from
17 Vornado/Charles E. Smith also representing the
18 applicant; Gary Steiner and Sandy Silverman
19 from Perkins Eastman, the architect for the
20 project; Connie Fan the landscape architect;
21 Mr. VanPelt and Mr. Sher are also here.

22 We are here tonight to request

1 approval for a Second Stage PUD to permit the
2 construction of a residential building on the
3 northwest parcel of the Waterfront Station
4 development. You are probably very familiar
5 with this development as the 13 acre site near
6 the intersection of 4th and M Street, S.W.,
7 and the former site of the Waterside Mall.

8 Waterfront Station has a long
9 history of approvals. It was originally
10 approved as a first stage PUD back in 2003.
11 In 2007, the First Stage PUD was modified to
12 the project that you see today and a Second
13 Stage PUD was approved for the four buildings
14 in the center, the two office buildings and
15 the two residential towers.

16 In that Second Stage PUD, you also
17 had approval for significant open spaces, the
18 Metro Plaza and 4th Street, as well as -- and
19 4th Street going through the center of the
20 project.

21 The two office buildings were
22 constructed and delivered in 2010 and the two

1 residential towers are under construction and
2 anticipated for delivery the end of this year
3 and the first quarter of 2014. If you have
4 been down there, you certainly know the
5 Safeway has been constructed, 4th Street has
6 been dedicated and the Metro Plaza is up and
7 running.

8 The modified First Stage PUD in
9 2007 approved the northwest parcel for either
10 residential or office use. It approved it to
11 have ground floor retail, a maximum height of
12 114 feet and an approximate gross floor area
13 of 406,900 square feet.

14 In this application, we have
15 elected to move forward with the residential
16 building. The building is fully consistent
17 with the First Stage PUD. It's a residential
18 building with ground floor retail having a
19 height of 114 feet and an approximate gross
20 floor area of about 388,000 square feet.

21 The project will include 365
22 residential units, and as you will see

1 tonight, of various types and sizes. We have
2 worked very closely with the Office of
3 Planning and we are pleased to have their
4 support for the project.

5 The Office of Planning had
6 requested three conditions in their report and
7 we have submitted a document into the record
8 today agreeing to those three conditions. The
9 first is to reduce the width of the private
10 drive from 21 to 20 feet and we have agreed to
11 do that and the fire department has okayed
12 that as well.

13 The second is to provide a LEED-
14 score card, which we submitted into the
15 record. The First Stage PUD approved a
16 variety of sustainable design elements, but no
17 level of design and we are committing to the
18 silver design -- silver-LEED design standards
19 as indicated therein.

20 We have also included an
21 additional rendering that the Office of
22 Planning requested to help better understand

1 the south facade.

2 We're also pleased to have DDOT's
3 support. They have five recommendations to
4 the Commission and we have responded to each
5 of those recommendations. Based on my initial
6 discussions with DDOT, I understand that they
7 have satisfied their concerns, but Mr. Henson
8 can talk to that.

9 We have also worked very closely
10 with ANC-6D and, in fact, have collaborated
11 closely with that ANC since the inception of
12 this project. Many of the goals of this
13 project have come from that collaboration and
14 we find that it's a very important working
15 relationship that we have.

16 They have provided conditional
17 support and they have identified a few things
18 that they are concerned about and I just
19 wanted to go through quickly those and how we
20 feel like we have responded and addressed
21 those concerns.

22 The first is their concern

1 regarding the amount of retail. We believe
2 that the northwest building incorporates an
3 appropriate amount of retail space. We have
4 reconfigured it so it can go to up to three
5 retail tenants, which we understood to be one
6 of their concerns.

7 The overall project includes about
8 86,000 square feet today with the
9 incorporation of this retail, it would be over
10 90,000 square feet and we have three more
11 buildings to bring to market to hit that
12 110,000 square feet. We anticipate between
13 20,000 and 30,000 in the M Street office
14 building, so we are on course to at least
15 meet, if not well-exceed, the 110,000
16 requirement in the First Stage PUD.

17 The location of the residential
18 entry we believe that it is efficient site
19 planning. We need to have a residential entry
20 on 4th Street. We think it's better to keep
21 the retail closer to the southern end of the
22 project and continue the retail as it comes up

1 from the south. And Mr. Steiner will talk a
2 bit about that.

3 With respect to the concerns on
4 the traffic analysis, our traffic consultant
5 concluded and DDOT has agreed that the project
6 will have no adverse impact on the
7 transportation system based on current
8 information. This isn't old information. It
9 is -- so a suitable traffic evaluation has
10 been done.

11 With the west facade, we have done
12 some architectural treatments to try to
13 respond to their concerns about the west
14 facade.

15 With respect to construction
16 management, we are committed to entering into
17 a Construction Management Plan. We have
18 provided an initial draft in Exhibit B to the
19 supplemental prehearing submission. We will
20 continue to work with ANC and the neighbors to
21 make sure that the duck pond is protected and
22 we have come up with some potential management

1 measures we could do to help bring comfort to
2 those who are concerned about that.

3 With respect to the tree
4 mitigation, we have done a detailed Tree
5 Mitigation Plan and we agreed that we will not
6 fund the tree -- we will not put payment into
7 the Tree Fund for mitigation. We will do
8 planting within Southwest, just as they have
9 asked.

10 And as we understand, the
11 Westminster Church located to the north of our
12 site has concerns regarding the development.
13 Since February, we have been meeting with the
14 church and trying to address the concerns and
15 we have met and talked with them several
16 times.

17 While the church has indicated
18 concerns relating to height, density and use
19 of the site, those elements have been
20 essentially the same since they were
21 originally approved in 2003 and the plan we
22 present today is fully consistent with what

1 was previously approved.

2 We also understand the church has
3 concerns of construction impacts. We are
4 fully committed to entering into Construction
5 Management Plans to mitigate and reduce those
6 impacts on the church, to its buildings and
7 its programs.

8 Most recently in our discussions,
9 we have agreed to pre- and post-construction
10 structural surveys of their building to ensure
11 that there is no damage. We believe that the
12 residential use and the church use can and
13 should coexist well together. And our team is
14 willing to continue to work with the church
15 during both construction and operation of the
16 building.

17 As I previously stated, this
18 application is a request for a Second Stage
19 PUD. According to the Zoning Regulations,
20 such an application should be approved if the
21 Zoning Commission finds that the application
22 is in accordance with the intent and purpose

1 of the Zoning Regulations with the PUD process
2 and with the First Stage PUD approval.

3 As I stated earlier, the record is
4 full of the information that shows that we are
5 fully in accordance with each of those
6 elements.

7 And at this time, I would ask Mr.
8 Steiner to go through some of the highlights
9 and then our whole team will be available for
10 questions. Thank you.

11 MR. STEINER: Good evening and
12 thank you for the opportunity to present our
13 project this evening.

14 Our Waterfront Station northwest
15 parcel residential building is, as Christy
16 said, fully consistent with the Stage 1 PUD
17 approval. Our building, which is the one that
18 is colored here in the rendering, sits on the
19 northwest parcel. It is a U-shaped building
20 with the courtyard facing to the south. It is
21 very similar in nature to the design of what
22 was originally approved on both the northwest

1 and the northeast parcels and you can see here
2 the northeast parcel shown unchanged from the
3 Stage 1. So we are, in fact, very, very
4 consistent with what was previously approved.

5 Our property sits right here. We
6 are 11 floors, 114 feet tall, consistent with
7 the Stage 1 approval. We are 365 residential
8 units. We are 224 parking spaces, 128 bike
9 spaces in the garage.

10 Site circulation for our site is
11 again consistent with the Stage 1 PUD with
12 two-way traffic on 4th Street, S.W., a private
13 drive that we are putting in which isn't
14 pedestrian-scaled, but also will serve for EMS
15 purposes, McKemie Place and then the extension
16 of the private drive southward from McKemie
17 Place, which is where all the service and
18 parking occurs for our building as well as the
19 east buildings and the rest of the PUD.

20 A little bit of an overview of the
21 site plan itself. One of the primary features
22 of our project is putting in the new private

1 drive that connects McKemie Place to 4th
2 Street. This is a pedestrian-scaled private
3 drive, similar in nature to Cady's Alley in
4 Georgetown.

5 It is capable of supporting
6 vehicular traffic, fire trucks and the like,
7 but the intent is that it is walkable. It
8 will be paved with paving stones. It is a
9 little bit narrower than a traditional street,
10 but DOT and the fire department do support the
11 20 foot width. And it is also done in
12 permeable paving, so it is part of our
13 Stormwater Management Plan.

14 Fronting on the private drive are
15 a number of patios that are part of the
16 residential units that face north across the
17 street to the residential nature of the park
18 and then the church. These are actually
19 townhouse units that have gates and front
20 doors that front on the private drive, again
21 adding to the pedestrian-scale and the quiet
22 nature of the north side of the property.

1 Our main entrance is over on 4th
2 Street at the north corner of the site. 4th
3 Street was the address that we wanted to have
4 for our building. It also provides good
5 access for our residents for a direct path to
6 the Metro.

7 On the west side of the site, we
8 have our loading entrance here and our service
9 entrance here, parking entrance here, which
10 are adjacent to the entry for parking and
11 service for the existing construction that is
12 currently underway. So that remains
13 consistent and it is the service side of the
14 site.

15 We have a private courtyard and
16 garden which is for the use of our residents.
17 And we have preserved the landscaping and the
18 site lighting along the north side of the
19 property between the sidewalk that is part of
20 the park and our north property line.

21 The architecture of the building
22 is contemporary as has always sort of been for

1 this portion of the Southwest neighborhood.
2 We are using a variety of materials that are
3 consistent with and complimentary, but not
4 identical to the existing buildings that have
5 been constructed to date.

6 We have glass bays and the big
7 sort of design concept of this project is
8 protruding glass elements, whether those be
9 bay windows, corner windows or glass balconies
10 that protrude through a field of terra cotta,
11 so we are using a dark brick colored terra
12 cotta as one of the primary materials, as well
13 as a dark colored brick, which we will show
14 you later on.

15 This rendering also shows our
16 rooftop amenity area where we will have a
17 small pool deck and a small pool and a small
18 activity room and the other uses on the roof
19 are primarily for mechanical equipment.

20 A view from McKemie Place looking
21 south at the project and I will note that in
22 this view, we have eliminated many of the

1 trees that are on the park property for
2 clarity purposes, so that you could see the
3 building more clearly, but it does show the
4 nature of the building, the two story
5 townhomes along the private drive, the patio
6 fences, which are made of granite and block
7 and wood fencing.

8 I would also like to point out
9 that we have altered the design of the McKemie
10 Place or the west facing elevation partially
11 in response to requests from the ANC that we
12 provide more texture in a more residential
13 scale.

14 We have added a couple tiers of
15 balconies to this elevation from previous
16 submittals and partly because balconies, if
17 nothing else, signify that this is a
18 residential building and they do convey the
19 notion that it is more like the other sides of
20 the building than different.

21 I would also point out that we
22 have not gone to the extent of creating large

1 glass expanses on this elevation because it is
2 west-facing and we didn't want to have the
3 additional heat gain in the apartments from
4 having large fields of glass.

5 The view from 4th Street looking
6 south at the main entry corner of the
7 building, which we will look at in just a
8 little bit more detail going forward, and this
9 is a new rendering that we prepared at the
10 request of OP. It is a perspective view from
11 the courtyard south of the building looking
12 north. This little diagram in the corner sort
13 of shows your point of view and the cone of
14 vision.

15 So we are actually sort of behind
16 the existing loading dock from the Urban
17 Atlantic building looking up at the south
18 elevation of our building. And the intent
19 here is to show that the parapet wall, which
20 is up here, which is a metal panel parapet
21 wall, and the screen wall, which is up here,
22 which is also metal panels, are really in very

1 different planes and the screen wall recedes
2 quite deeply into the background. So we
3 believe that that is an appropriate design
4 response.

5 This is an enlarged view of the
6 entry lobby at the corner of our private drive
7 and 4th Street. It is a glowing glass box
8 with a large swooping canopy to signify the
9 entry. And here you can see the beginnings of
10 the private drive. It is actually a mountable
11 curb or a driveway apron, so the private drive
12 is elevated, which is part of the traffic
13 calming measures that we are using to give a
14 pedestrian-scale to the private drive.

15 From 4th Street looking north, this
16 is the retail corner of the site. So here we
17 have the three retail entries and, basically,
18 our retail occupies the south portion of our
19 4th Street frontage and it is, essentially,
20 contiguous with the retail in the existing
21 building. And we believe that that's the best
22 location for retail on this site.

1 This is a view of our private
2 drive and our patios to the townhouse units,
3 so you can see a relatively low-scale wall
4 that is made up of a variety of granite and
5 ground face block and wood fencing with
6 flowering trees signifying the entry to the
7 patios. The patios are actually a few steps
8 down from the private drive elevation and that
9 helps to provide another level of privacy for
10 the residents.

11 Our exterior materials and we do
12 have an exterior material board here for
13 anybody who is interested. It's a relatively
14 simple, but yet sophisticated pallet. The
15 primary materials are an iron spot brick with
16 a hand scraped finish, terra cotta panels in
17 a brick color.

18 We have two colors of ornamental
19 metal, which will be used for the screen wall
20 panels and for all the aluminum, including the
21 window wall and windows. They are in two
22 shades of gray, a light gray, kind of silvery

1 gray and a slightly darker gray color.

2 The garden wall base will be a
3 granite and a honed finish and the garden
4 walls will be a ground face block also in a
5 charcoal. All the masonry will get a dark
6 gray or charcoal colored grout. And then at
7 the retail corner on the south corner of 4th
8 Street, we're using a sandstone colored
9 masonry.

10 There are some wood accents on the
11 building. They occur up at the pool deck
12 level. The underside of the main entry canopy
13 and also the garden walls, both at the south
14 end and north of the building and they are in
15 this wood tone. And then we have a clear
16 glass as the -- for all of our glass and that
17 will be on the windows as well as the balcony
18 railings.

19 The main floor plan at the lobby
20 level is essentially a combination of two to
21 three different uses. We have a retail use in
22 the southeast corner. We have a public use in

1 the northeast corner. We have residential
2 units and then we have service in the
3 southwest corner.

4 The service, as we talked about,
5 is accessed from McKemie Drive and the private
6 drive extension south of McKemie. These are
7 the townhouse units that we talked about that
8 are essentially providing residential use and
9 scale to this entire sort of north property
10 side of the property.

11 Here we have our main entry point.
12 We have moved it generally as far north on 4th
13 Street as we could, but we do believe the
14 corner entry is important and the address on
15 4th Street is important in order to give our
16 folks access to Metro.

17 The green area is unsecured, so
18 it's sort of public venue. And then behind
19 the secured elevator lobby is the private
20 amenity space for our residents. In the
21 southwest corner of the building is where we
22 have our retail. Again, as we talked, it is

1 contiguous across this driveway entrance with
2 the existing retail in the building that has
3 been recently constructed.

4 The retail could be subdivided
5 into as many as three different retail spaces
6 or it could be one or it could be two.

7 On the main floors, we have all
8 residential units. We have a variety of
9 shapes and sizes of units. They range from
10 junior one bedrooms all the way up to two
11 bedrooms and dens and then we also have the
12 townhouses and the unit mix is indicated on
13 this page and it has been part of your
14 submittals.

15 But we have a variety of unit
16 sizes. We have a broad unit mix to appeal to
17 a broad range of residents.

18 The roof amenity space is divided
19 into a couple of spaces. We have the pool
20 deck area here with our swimming pool. We
21 have an activity deck here. They are
22 contiguous and then we have our community

1 room.

2 I will point out that the overall
3 proportion of indoor to total amenity space.
4 Our community room is about 19 percent of the
5 total amenity space up on the roof, so we
6 believe we have managed that proportion down
7 to something that is very, very manageable.

8 The rest of the roof is given to
9 mechanical equipment. We have a VRV
10 mechanical system, which is a very new and
11 contemporary system. It's very, very energy
12 efficient and that will help us gain our LEED
13 points.

14 One of the things I wanted to
15 point out with the design of the roof is that
16 we have gone to great lengths to minimize the
17 impact of the roof on the rest of the
18 neighborhood and that includes the location of
19 roof, screen walls, the height of roof screen
20 walls, the height of enclosed spaces and this
21 color-coded key basically shows that the blue
22 areas are 16 feet above the main roof and they

1 are all enclosed.

2 The yellow area is an elevator
3 penthouse. It is the only place on the roof
4 that reaches the 18 foot 6 limit and as we can
5 see it is roughly a 10 x 10 box. The red
6 walls are 12 feet above our main roof and the
7 red solid is an enclosed area. This provides
8 exit egress to our stair, which is over here
9 and our other stair which is over here.

10 And then these dark green walls
11 down at the south end are only 10 feet above
12 the main roof.

13 So we have made as much attempt as
14 we could to minimize the height of all of
15 these screen walls and roofed areas so that we
16 are, in fact, minimizing the impact on the
17 neighborhood.

18 I will point out that because of
19 the stair locations, which are generally
20 governed by the rest of code, that we do have
21 a couple of walls which are variants to the
22 1:1 setback and they occur only here and only

1 here.

2 We have, approximately, 50 percent
3 of our total roof is green roof and those are
4 shown in these green areas around the
5 perimeter and on the main penthouse roof.

6 And I will leave anything else to
7 questions.

8 MS. SHIKER: So that walked us up
9 to the roof and we are -- I think that gives
10 you the highlights of the design of the
11 building and we are happy to answer any
12 questions that you may have to any of our team
13 members and we can answer questions about the
14 landscape design as well, if that is something
15 that there are questions about. Thank you.

16 CHAIRMAN HOOD: Okay. Thank you
17 very much. Did you finish actually? I know
18 you only asked for 20 minutes, but --

19 MR. STEINER: There was really
20 only a little discussion regarding the
21 landscaping and I don't think that that's
22 primary to our presentation.

1 CHAIRMAN HOOD: Okay. Can I just
2 ask you if you could show me a rendering, I
3 looked for it and I may have missed it, where
4 the -- in relationship to the church and the
5 development. If you can show me --

6 MR. STEINER: Well, this rendering
7 begins to show the church, although we didn't
8 render the elevation of the church, this gray
9 mass right here is the church. And we are,
10 approximately, 95 feet at our closest point
11 from our face of building to their corner of
12 church.

13 CHAIRMAN HOOD: So it's 95 feet
14 from the church to the proposed one, to the
15 proposed development?

16 MR. STEINER: To -- yes, to the
17 base of the building.

18 CHAIRMAN HOOD: Okay. I actually
19 am going to open it up for my colleagues, but
20 I actually want to see something in
21 relationship to the church, but we'll go down
22 that line.

1 MR. STEINER: Okay.

2 CHAIRMAN HOOD: Because I looked
3 for that when I saw the proposal, I mean, the
4 renderings. Okay. Let's open it up. I
5 usually let my colleagues go first. Okay. So
6 you must have did a good job. No one has any
7 questions. So what I'll do -- oh, okay. That
8 usually gets everybody to touch their mikes.
9 Vice Chair, go right ahead.

10 VICE CHAIR COHEN: Thank you, Mr.
11 Chairman. The townhouses that line the
12 private street, what is to the north of that?

13 MR. STEINER: To the north of the
14 townhouses?

15 VICE CHAIR COHEN: Yes.

16 MR. STEINER: We have our patios
17 to the townhouses.

18 VICE CHAIR COHEN: Right.

19 MR. STEINER: And then we have the
20 private drive, all of which is on our
21 property. And then north of the private drive
22 there is a green strip that is about 5 feet

1 long -- wide, which is on our property, and
2 then the public park that exists, which is a
3 row of trees and a sidewalk.

4 VICE CHAIR COHEN: What type of
5 lighting are you planning to issue for safety
6 in that area?

7 MR. STEINER: This diagram shows
8 exactly what that area is. So here is our
9 face of townhouses. Here is our patios. Here
10 is our private drive and then the green strip.
11 There is an existing row of pole lights along
12 the sidewalk in the public park.

13 We are also adding five matching
14 pole lights. There is one right here. There
15 is one right here. There is one right here.
16 And then there is two others as you move to
17 the east. Sure. Right here, can you see that
18 little dot? Well, there is a Bullet Point 7
19 and the seven says proposed pole light.

20 VICE CHAIR COHEN: Where?

21 MR. STEINER: Page 50. So we do
22 have five new pole lights along the north

1 property. And they are designed to illuminate
2 the private drive and make it a safe
3 pedestrian environment at nighttime.

4 VICE CHAIR COHEN: In the Office
5 of Planning report, they are talking about
6 extending the terra cotta to the top of the
7 12th Floor in the central part of the building
8 or to use contrasting color. Can you confirm
9 that you have agreed to do this?

10 MR. STEINER: We have not agreed
11 to do that. What we did do was we
12 demonstrated that there was not a monolithic
13 look on the south facade, that's what this
14 diagram was all about, that we have a metal
15 panel parapet wall and that we have a metal
16 panel screen wall.

17 We did not want to bring the terra
18 cotta up to the top. We felt it was important
19 to the overall elevation to not do that, but
20 we also believe that this diagram adequately
21 illustrates that we don't have a massive
22 penthouse wall.

1 VICE CHAIR COHEN: Thank you.

2 CHAIRMAN HOOD: Okay. Thank you.
3 Any other questions? Commissioner Miller?

4 COMMISSIONER MILLER: Ms. Shiker,
5 did you say that -- thank you, Mr. Chairman.
6 Did you say that you submitted something today
7 that shows how you responded to the DDOT and
8 OP or did I miss it?

9 MS. SHIKER: No, that's correct.
10 We did. They should have been -- they were
11 handed in this evening. And the OP document
12 looks like this. It has three tabs. And it
13 provides the response to their three
14 conditions. And the DDOT had the five
15 recommendations and it was a single page and
16 it responds to each of the five
17 recommendations and how we would agree to
18 comply.

19 COMMISSIONER MILLER: Okay. Thank
20 you. Well, let me express my appreciation for
21 your -- for some of the revisions that have
22 been made in response to OP and DDOT and the

1 Commissioners' comments at set-down, including
2 my comments that -- to add the -- add
3 balconies to the south side.

4 And I really don't have any
5 questions. Actually, I think it's a very
6 exciting and a very attractive project and
7 that will continue the revitalization of this
8 Southwest Waterfront neighborhood. And after
9 I review this document that you have
10 submitted, I may have some more questions.

11 CHAIRMAN HOOD: Okay. I think we
12 all have that document now. Thank you, Ms.
13 Schellin.

14 Okay. Let's open it up. Any
15 other questions? Commissioner Turnbull, did
16 you have?

17 COMMISSIONER TURNBULL: Sure.

18 CHAIRMAN HOOD: Commissioner May
19 wanted you to go first.

20 COMMISSIONER TURNBULL: I just had
21 a question. On the lobby, I believe you
22 referred to it as a glowing glass box. Is

1 that your words?

2 MR. STEINER: Yes, sir.

3 COMMISSIONER TURNBULL: And what
4 exactly -- from an amenity standpoint, how
5 does that relate to the neighborhood? Why
6 would we be enthralled by a glowing glass box
7 as an entry? It looks green in the picture.
8 I mean, it looks like it's nuclear.

9 MR. STEINER: This is a rendering
10 of the corner. This is our entry corner. We
11 wanted to signify the entry of the building.
12 There is lobby seating inside the front door.
13 There will be a concierge's desk. You will be
14 able to see the walls illuminated from outside
15 at nighttime, but it's not going to be casting
16 a lot of light out into the neighborhood.

17 It is basically a welcome and it
18 is signifying the location of the entrance.

19 COMMISSIONER TURNBULL: I mean,
20 there is obviously a lot of space being shown.
21 And I think the ANC was concerned about
22 prominent location and they were worried about

1 the retail in talking about this space. And
2 I understand your point of view of it's an
3 entry, going to Metro.

4 From a size standpoint, do you
5 think that this is the right size? I mean, my
6 first feeling is it might be almost too big,
7 but I understand there is a lot of people
8 living -- going to be living in this building
9 and you want to provide a sense of entry and
10 a sense of place coming in.

11 But I just wonder if you could
12 talk about the size and how you arrived at
13 that much seating and how it is laid out?

14 MR. STEINER: Well, yes, I would
15 be happy to. The lobby is not a particularly
16 large space. It's about 30 by 20, give or
17 take. It is room enough for a couple of
18 seating groups for people to wait while they
19 are waiting for a cab or to be picked up or
20 something like that or waiting to be seen by
21 the leasing agents.

22 But it is not by any means a large

1 space for a lobby for residential building
2 with 365 units. So we don't at all believe
3 that it is overly large.

4 COMMISSIONER TURNBULL: Okay. You
5 have a special room for closing. Maybe just--
6 you know, a little locked room that -- is that
7 where you get the people in --

8 MR. STEINER: Absolutely.

9 COMMISSIONER TURNBULL: -- and
10 sign in blood on the lease there?

11 MR. STEINER: Well, it's really a
12 place where private transactions --

13 COMMISSIONER TURNBULL: Right.
14 No, I concur. I'm just kidding. The terra
15 cotta, is this like a rain guard system?

16 MR. STEINER: The terra cotta is
17 part of an exterior wall rain screen system.

18 COMMISSIONER TURNBULL: It is?

19 MR. STEINER: Yes.

20 COMMISSIONER TURNBULL: Okay. The
21 -- on the roof, the mechanical area on the
22 roof, the mechanical farm.

1 MR. STEINER: Yes.

2 COMMISSIONER TURNBULL: How high
3 are those units up there?

4 MR. STEINER: They are about 8
5 feet tall and they sit on dunnage.

6 COMMISSIONER TURNBULL: Really?

7 MR. STEINER: Yes.

8 COMMISSIONER TURNBULL: They are
9 that tall? Really? I think -- you know, we
10 are used to seeing a lot of little smaller
11 little roof farm units, but these are actually
12 substantially --

13 MR. STEINER: Yes, this is not the
14 traditional individual unit --

15 COMMISSIONER TURNBULL: Yes, I was
16 worried about what this thing was beginning to
17 look like, the typical mechanical farm, but
18 this is a more efficient unit you are saying,
19 energy efficient?

20 MR. STEINER: Yes, it is. It is a
21 relatively new system. It is called VRV or
22 VRF.

1 COMMISSIONER TURNBULL: Right.

2 MR. STEINER: And it is, in fact,
3 probably one of the most efficient systems out
4 there, because it balances heating and cooling
5 loads across the building. So if one side is
6 calling for heat and the other side is calling
7 for cooling, the system overall balances that
8 load.

9 COMMISSIONER TURNBULL: Okay.
10 Thank you. That's it for me for now, Mr.
11 Chair. I haven't -- until I, as Mr. Miller
12 said, we read the material.

13 CHAIRMAN HOOD: Okay. Great.
14 Commissioner May?

15 COMMISSIONER MAY: Yes, thank you.
16 So let's stay on the roof while we are talking
17 about roof stuff. And unfortunately, I didn't
18 get a good chance to compare the current
19 proposals for the roof structure heights to
20 what was originally in here, but I know it was
21 a concern when it was set-down.

22 And, you know, it's a concern

1 having multiple heights having -- you know,
2 when it is set-down. And then to come back
3 and say well, now, we only cut it to four
4 different heights. That's still just way off.

5 I mean, maybe I'm just stuporous
6 about this and I -- or maybe I just really
7 like strict adherence to the Zoning
8 Regulations, but there is a reason why we
9 don't want to have unequal heights in the
10 Zoning Regulations and it has to do with
11 minimizing the clutter that appears on the
12 roof.

13 And you know, I don't know what
14 more can be done to simplify it, but I'm not
15 really thrilled about having a 10, a 12, a 16
16 and an 18.5. You know, I understand the
17 benefit of trying to push it down and not
18 putting everything up at 18.5. I can
19 certainly go that far. But, you know,
20 couldn't the 16 come down a foot? Couldn't
21 the, you know, 12 or the 10 go up a couple
22 feet and, you know, you really simplify things?

1 So that what you don't see when
2 you look up at the roof is, you know, a
3 distracting little mini skyline. I mean,
4 that's really what it's all about. It's not
5 seeing that kind of cluttered appearance on
6 the roof.

7 MS. SHIKER: I think that the
8 intent of the revisions to the roof structure
9 were to keep it as low as possibly --

10 COMMISSIONER MAY: I understand
11 that and that's always an intention.

12 MS. SHIKER: And with the --

13 COMMISSIONER MAY: And that's
14 always contrary to what I want.

15 MS. SHIKER: -- U-shaped building,
16 in order to try to achieve the 1:1 setback in
17 the greatest number of places, we also were
18 trying to moderate that height. Now,
19 certainly the 10 foot sections could go up to
20 12 feet and still meet the 1:1 setback and
21 that would eliminate a height level.

22 But again, with the ultimate goal

1 on the design side to reduce it as much as
2 possible, that is why it went to 10 feet.

3 With respect to the 16 foot
4 section and the 12 foot section, there are
5 different equipment and I can have Mr. Steiner
6 talk to that and different needs in those
7 areas, which is why we have them at the
8 different levels and then we have the very
9 small percentage which is less than 1 percent
10 of our roof structure at the 18.5 level.

11 COMMISSIONER MAY: Yes, and that
12 is not the one I care about. The 16, 10 and
13 12. So talk to the difference between the 16
14 and the 12.

15 MR. STEINER: The 16 needs to be
16 there because otherwise our community room and
17 the --

18 COMMISSIONER MAY: I don't care
19 about that.

20 MR. STEINER: Well, I --

21 COMMISSIONER MAY: Tell me about
22 equipment. She said there was equipment in

1 there.

2 MR. STEINER: There is equipment
3 in the yards. So what we can do and I think
4 that --

5 COMMISSIONER MAY: I mean, the
6 yards are not where the 16 feet is though,
7 right?

8 MR. STEINER: No.

9 COMMISSIONER MAY: Right. So I
10 thought you said that there was 16 foot --
11 there was equipment in the 16 foot section
12 that made it necessary to be that tall.

13 MR. STEINER: No, I did not say
14 that.

15 COMMISSIONER MAY: No, no, no, I
16 know you didn't. She did.

17 MS. SHIKER: I might have
18 incorrectly spoke. I knew that there was
19 equipment in the 12 foot section and that we
20 had to have the 16 foot section for the
21 community room. I'll let Mr. Steiner continue
22 on about what could be done to --

1 COMMISSIONER MAY: All right.

2 MS. SHIKER: -- moderate between
3 those heights. I misspoke.

4 COMMISSIONER MAY: Okay. All
5 right.

6 MR. STEINER: What I was going to
7 say is I would submit that the little 18.6
8 elevator override is immaterial.

9 COMMISSIONER MAY: Yes, I agree
10 with that.

11 MR. STEINER: If we are interested
12 in trying to limit the rest of the roof to two
13 different heights, we could certainly raise
14 the screen walls at the south end to match the
15 red, so we would only have 12 and 16.

16 Alternatively, we could probably
17 raise these red walls here, so that the entire
18 east/west bar was at 16.0 and then only the
19 south facing wings would be at 12.0. We could
20 look at doing that, too. There is no hardship
21 in that. It's just a matter of having more
22 walls higher.

1 COMMISSIONER MAY: Right. So the
2 only thing that is driving the 16 foot is so
3 that you could have a 12 foot -- no. It
4 wouldn't be a 12 foot ceiling. It has to do
5 with the fact that you are already 4 feet off
6 the ground, right?

7 MR. STEINER: Yes, sir.

8 COMMISSIONER MAY: So you are --
9 what is the actual finished ceiling height in
10 the community room?

11 MR. STEINER: It's only about 10
12 feet, because we were limiting our overall
13 building height to 130 feet, I believe it was,
14 for the enclosed space.

15 COMMISSIONER MAY: Right. Yes,
16 you would have to do that or else you wouldn't
17 be able to have that space occupiable.

18 MR. STEINER: Correct.

19 COMMISSIONER MAY: Right.

20 MR. STEINER: Correct.

21 COMMISSIONER MAY: Okay. So I
22 mean, if you were to drop it to 8 feet, which

1 would be code minimum in the community room,
2 then you would be down at 14 feet, right?
3 Well, I don't know that I necessarily want to
4 push it that hard. I mean, I was thinking
5 that it was 16 feet and that was giving you a
6 14 foot clear ceiling, which obviously it is
7 not.

8 Again, you know, I'm as much
9 concerned about the clutter that we see as the
10 setback concern, particularly when your
11 setback concern is -- seems to be primarily in
12 the courtyard areas. And I have certainly
13 seen more egregious situations with regard to
14 heights of penthouses on courtyards.

15 But I do think you should look at
16 simplifying it further and if anybody else in
17 the Commission feels or has a view on that, I
18 would like to hear that.

19 I'm just not in the school of, you
20 know, keeping everything the lowest possible
21 is the best. It's not, because it creates
22 this skyline on top of the building and it

1 adds to the clutter and that's really not the
2 intention of the Zoning Regulations.

3 Did you look at the possibility of
4 rotating the stairways 90 degrees to push them
5 back?

6 MR. STEINER: We did. The
7 stairways are part of our sheer elements in
8 the building. They run all the way up and
9 down the building, through the garage and
10 rotating them would basically fall within
11 drive aisles in the parking lanes, so they are
12 fairly well tucked in to work all the way up
13 and down through the building.

14 COMMISSIONER MAY: Okay. Yes,
15 because things like that are not necessarily
16 apparent, but it didn't look like there was
17 anything in the floors where the units are
18 that would prevent rotating them 90 degrees.

19 MR. STEINER: It's mostly about
20 the garage.

21 COMMISSIONER MAY: Right. Okay.
22 Going -- let's go down to the lobby. It's not

1 so much that the lobby is so big. The lobby
2 is bigger than we ordinarily see, I would
3 think, but it's the lobby in conjunction with
4 the leasing center. I mean, normally the
5 leasing center is tucked further back into the
6 building, so that you maximize the retail
7 frontage of your building or the potential
8 retail frontage.

9 Certainly, you know, using the
10 front of the building for a leasing center
11 when you are trying to lease up at the
12 beginning and then moving it to a back is
13 something that occurs. It just seems like it
14 is -- I mean, you are consuming more than 50
15 percent of the 4th Street frontage with non-
16 retail uses.

17 Part of it is the fire control
18 room. Part of it is an airshaft which I don't
19 really like the airshaft on 4th Street either,
20 because that certainly could come, you know,
21 on the alley or some other location. But it
22 just seems incredibly consumptive of the prime

1 retail space for you to have the leasing
2 center there.

3 I mean, what's driving that?

4 MR. STEINER: Well, the leasing
5 center is front and center. It is almost a
6 retail space for our operation.

7 COMMISSIONER MAY: Well, I mean is
8 it something that could be moved later on? I
9 mean, could you lease up the building and
10 then, you know, once it is fully leased up,
11 you move it?

12 MR. STEINER: I would have to
13 defer to my client on that.

14 COMMISSIONER MAY: Okay. Well, I
15 think it might be something worth looking at.
16 All right. Well, unless you have an answer
17 right now.

18 MR. SMITH: How are you? David
19 Smith with Forest City. The leasing office
20 and those functions, ancillary functions to
21 the leasing area need to be in the public
22 domain where you are not bringing people

1 through the building and you have got
2 customers coming through the building.

3 And so that is why those groups of
4 activities were focused right around the
5 lobby. And so there is a secure point to the
6 building right here that keeps those functions
7 to the right public and to the left private.
8 And so we don't want people going through the
9 building who don't live there, don't have a
10 reason to be there.

11 And so that's why we always keep
12 those functions on the public side of the
13 building.

14 COMMISSIONER MAY: Yes.

15 MR. SMITH: And part of the --

16 COMMISSIONER MAY: Okay. But that
17 side of the building could easily be along
18 your private road on -- rather than being on
19 4th Street, couldn't it?

20 MS. SHIKER: You would lose the
21 townhouse units, which was something that has
22 been very supported and --

1 COMMISSIONER MAY: You wouldn't
2 lose all of them. All I know is, you know,
3 what I see here in the plan is not -- it
4 doesn't seem like sufficient justification.
5 I understand that you are going to meet the
6 target for retail and I'm pleased that that is
7 going to be done, but I am sympathetic to the
8 argument that you are not putting enough
9 street-facing retail on 4th Street.

10 I think that is a very good
11 argument. And, you know, there may be things
12 that can happen there in the interim if it
13 doesn't -- if the retail space doesn't lease
14 up right away, but I think you are giving
15 something away here and it is -- you know, if
16 the community is clamoring for it, I think you
17 ought to think really hard about the plan of
18 the first floor of the building.

19 I just want to note, I know that
20 the Zoning Map is indicating the park that is
21 immediately to the north, that strip, and then
22 the two parks at the corners. It is all

1 indicated on your little map at the very
2 beginning as federal zone. I mean, just so
3 everybody understands, it's really just
4 unzoned because it -- while the U.S.
5 Government owns the property, the District of
6 Columbia is fully responsible for all of that
7 parkland.

8 MS. SHIKER: It was transferred.

9 COMMISSIONER MAY: Right.

10 MS. SHIKER: The jurisdiction was
11 transferred.

12 COMMISSIONER MAY: Yes, you all
13 understand?

14 MS. SHIKER: Yes.

15 COMMISSIONER MAY: I just want to
16 make sure everybody understands that.

17 The -- and then can you pass up
18 the materials board? And I guess I'm a little
19 bit confused. When I looked at the materials,
20 when you recap that, I was trying to
21 understand where masonry-type C is being used
22 and masonry-type D. Is masonry-type -- well,

1 yes. Where are masonry-type C and masonry-
2 type D being used? I'm looking at page 24.

3 MR. STEINER: Masonry-type C is
4 now the sandstone colored masonry block on the
5 -- on this board, which is being used at the
6 retail corner on 4th Street.

7 COMMISSIONER MAY: Got it.

8 MR. STEINER: Masonry-type D is --

9 COMMISSIONER MAY: Is it, I mean,
10 a brick?

11 MR. STEINER: No, it's more of
12 like an Arriscraft stone.

13 COMMISSIONER MAY: Oh, is it like
14 an Arriscraft stone or is it Arriscraft stone?
15 Is it 2 x 4 module, is that what the module
16 is?

17 MR. STEINER: No. They will be
18 like large pieces of masonry. They won't be
19 brick sized.

20 COMMISSIONER MAY: Right. I mean,
21 but Arriscraft is -- comes like 2 x 4
22 sometimes. 2 feet tall by 4 feet. Is that

1 what you are talking about?

2 MR. STEINER: No, these will be a
3 little bit smaller than that.

4 COMMISSIONER MAY: All right.

5 MR. STEINER: They will be
6 basically masonry 16 x 8 sized.

7 COMMISSIONER MAY: Got it. Okay.

8 MR. STEINER: The masonry would
9 have --

10 COMMISSIONER MAY: So we have --
11 sorry, 16 x 8? So CMU size?

12 MR. STEINER: Yes, and they will
13 be laid up like masonry.

14 COMMISSIONER MAY: Yes. Okay.
15 The masonry block, 8 x 16, maybe it's just me
16 but when it is, you know, laid up like in a
17 row, it just looks like cinder blocks of a
18 different color when it is that module. So
19 you might want to think about what the actual
20 module size is, since you have some
21 flexibility and you may want to go do
22 something that is a little bit more monumental

1 in scale or maybe something that is a little
2 bit flatter, you know, just something that
3 gives you a little different feeling to it and
4 makes it feel more like stone rather than
5 cinder blocks.

6 MR. STEINER: I'm amenable to
7 that.

8 COMMISSIONER MAY: Yes. Good.
9 And then what is masonry-type D?

10 MR. STEINER: Those are the garden
11 patio walls.

12 COMMISSIONER MAY: Okay. That's
13 what I thought. All right. Thanks. That's
14 all.

15 CHAIRMAN HOOD: Okay. Any other
16 questions? Ms. Shiker, I'm going to switch
17 gears a little bit and talk more about, you
18 know, any time I have a party in opposition
19 and an ANC report conditional, I want to go
20 down those lines.

21 And I understand through the first
22 PUD that we talked about the height and the

1 density. I understand all that. And I can't
2 remember whether the church weighed in at that
3 time or not. But let me just ask, what are
4 some of the programmatic issues that the
5 church has that you are aware of? Since you
6 all have been meeting for so long.

7 And also, I find it very
8 interesting that the ANC has conditional
9 report and still want to continue to have a
10 dialogue with you. And I just find all that
11 interesting. Have you met with -- let's see,
12 you met with the church since February.

13 MS. SHIKER: We have met three
14 times in person and had additional telephone
15 calls with the principals of the church and
16 the applicant. We are aware that they have
17 raised issues about the use, height and
18 density, in general.

19 They, we know as far back as 2006,
20 were involved in process, based on our
21 correspondence and the members of the church
22 and pastoral staff were part of our

1 discussions. We understand that there are
2 concerns about the construction and the
3 possible impacts on their property, which is
4 why we had reached out. We put in the draft
5 construction management plan.

6 We have asked them to specifically
7 tell us what they are concerned about. One of
8 the things they have said is they are very
9 concerned about damage to their stained glass,
10 which is why we have offered and committed
11 tonight to do a preconstruction and post
12 construction survey to make sure that we
13 aren't causing any damage to that and if we
14 are, we are fixing it and we are monitoring
15 it.

16 CHAIRMAN HOOD: All right. And
17 the stained glass, that's a big deal in
18 churches, especially -- I'm not sure how old
19 the church is. I'm not sure -- they probably
20 had it. Some of that, I don't think now can
21 be redone. I'm not sure from what I have
22 heard from another church. It depends on how

1 old it is, so that's a major issue.

2 MS. SHIKER: Which is why we
3 wanted to do everything we can to protect it.
4 We also have -- we are very -- in our
5 construction process, we, and I don't want to
6 misspeak, but, are not driving piles. We have
7 some sheeting and shoring, but there won't be
8 the major vibrations that you have from
9 driving piles, which we think will help
10 protect the glass.

11 CHAIRMAN HOOD: Here is my thing.
12 If we at this point -- and I don't need a
13 whole lot of leverage, but if we are at this
14 point and there is not a clear piece about how
15 we are -- where the problem is or what
16 concerns the church has and then I see the ANC
17 having still a conditional report and looking
18 forward to meeting this, maybe it's time to
19 meet again.

20 I know you all have met since
21 February, but it's always good to have as
22 close -- to close the gap as much as possible.

1 And that's what I -- I know we have the party
2 coming up to tell us about the programmatic
3 issues. And from what I'm hearing from you,
4 you don't know what the programmatic issues
5 are.

6 MS. SHIKER: We -- the only
7 specific programmatic concerns that have been
8 addressed to us are concerns of noise from the
9 residential building, people sitting on their
10 balconies and having noise. As we stated, we
11 are about 100 feet building to building. We
12 certainly think that that will -- you know,
13 its a residential use. It's very compatible
14 with the church use.

15 We are not aware of any other
16 impacts that we would have. They mentioned
17 traffic congestion, generally, in their
18 statement, but they hadn't really talked to us
19 about that before. Then we feel like we have
20 tried to address that.

21 With respect to the ANC
22 conditions, we feel that we had met several

1 times with the ANC before we went to the full
2 ANC and we feel that we have come to terms of
3 or addressed everything except for their
4 desire for additional retail.

5 And we felt that we had a very
6 good reason for why we were doing the retail
7 and the way we are doing it. We have changed
8 it since the original PUD was submitted in
9 December. We increased the size somewhat. We
10 have made it so it is more flexible, so we
11 could get three neighborhood-serving uses.
12 You know, we have heard your comments tonight
13 from Mr. May about that, but we felt like we
14 have responded step-by-step.

15 And with respect to all of their
16 conditions except for the retail, I believe
17 that we have agreed. We have made changes to
18 the west facade. We have agreed on the tree
19 mitigation to do what they have asked. We
20 have agreed on the Construction Management
21 Plan and have, you know, even as early as
22 today, we have been working with our

1 construction team to find out what possible
2 impacts could go to the Southwest duck pond,
3 because we are separated by a right-of-way, so
4 we are concerned -- we are unsure of what
5 impact we may have.

6 And we have been talking about
7 what kind of dust mitigation we can do. Could
8 we check the filters and we are working
9 through that construction management. Those
10 are issues that we would work through outside
11 of the Second Stage PUD because it is what you
12 do in a neighborhood, in a community.

13 We have proffered having a
14 community advisory committee that would be
15 aware of any issues that came up.

16 So with respect to the ANC, I feel
17 like we have attempted to address all of their
18 concerns and the only one we haven't been able
19 to resolve with them was the retail, since
20 they issued their report.

21 CHAIRMAN HOOD: Okay.

22 MS. SHIKER: But Mr. Litsky can

1 certainly speak to that.

2 CHAIRMAN HOOD: Yes, he can. And
3 from briefly looking at his, and I appreciate
4 it, statement he is going to read tonight, but
5 I'll let him read that. He said no reason to
6 hash certain things and I like the way he put
7 it, but my -- I looked at his bottom line, his
8 bottom line said the same thing that we had
9 previously about conditional support.

10 I'm just concerned about what I
11 saw from the ANC letter as well as the church.
12 I know when the Northwest Mall was there,
13 there was a bigger gap between the church and
14 the development. I understand that. I worked
15 there for years, so I understand that issue.

16 But I just want to make sure that
17 at least going forward that everyone's issue
18 at least is looked at and resolved. And that
19 we know what the issues are.

20 Yes, I know we dealt with this in
21 the First Stage and I'm not sure what impact
22 the church has had -- the church had, but I do

1 want to make sure that we try to at least see
2 what the issues are and see if they can be
3 worked out.

4 So I can tell you now, I'm going
5 to be making a suggestion that you go back and
6 meet with the ANC and have some further
7 discussions with the church.

8 MS. SHIKER: Okay.

9 CHAIRMAN HOOD: Okay.

10 MS. SHIKER: Thank you.

11 CHAIRMAN HOOD: Any other
12 questions up here?

13 COMMISSIONER TURNBULL: Yes, Mr.
14 Chair. I wonder if I might go back to an
15 issue on the roof. And maybe I missed it.
16 Are there hours of operation for the roof?

17 MR. STEINER: Yes, there are hours
18 of operation that are managed by our operating
19 -- our management folks. We have on-site
20 property management team and I don't want to
21 be -- it's probably until 9:00 or 10:00, I'm
22 not sure what the exact number is, but there

1 are hours of operation for that and it's
2 monitored by the team.

3 COMMISSIONER TURNBULL: So I am
4 looking at an extreme and probably not past
5 10:00 or --

6 MR. STEINER: Yes.

7 COMMISSIONER TURNBULL: I wonder
8 if we could get that specified for us?

9 MR. STEINER: I will go back and--

10 COMMISSIONER TURNBULL: Okay. The
11 only other thing that I just have concern, I
12 don't know if we talked about or if it was
13 mentioned, lighting. Lighting on the roof,
14 how much down of you -- I don't know if you
15 are going for LEED-silver, the lighting is
16 going to be all downlighting, so it's not
17 going to be glowing like a Christmas tree up
18 there.

19 I wonder if we could get some
20 information on the lighting on the roof, if
21 it's not in the documents?

22 MR. STEINER: The lighting on the

1 roof will be managed so that it doesn't spill
2 out on the street below.

3 COMMISSIONER TURNBULL: Okay. So
4 it will be on the roof, centered on the roof,
5 nothing uplighting? No uplighting?

6 MR. STEINER: There is no
7 decorative lighting for the building face
8 itself.

9 COMMISSIONER TURNBULL: Could you
10 just give us something on that to document for
11 the record? And I would just concur with
12 Commissioner May's early comments, if you
13 could if you would look at that roof screening
14 and I think he has made an excellent point on
15 that. Thank you.

16 CHAIRMAN HOOD: Any other
17 questions up here? Okay. Does the ANC --

18 COMMISSIONER MAY: I'm sorry, Mr.
19 Chairman, you didn't see me waving my finger.

20 I want to talk for a second about
21 the color of the penthouse screen, which is
22 Metal 1 and Metal 2.

1 MR. STEINER: It's both.

2 COMMISSIONER MAY: It's both,
3 okay. And so you are trying to dress it up by
4 having two different colors? Is that the --

5 MR. STEINER: Provide some variety
6 and less monolithic look.

7 COMMISSIONER MAY: Okay. Well,
8 I'm kind of a traditionalist. I don't mind it
9 being a little bit more monolithic and less of
10 a, you know, real object, but I think actually
11 more importantly is the idea that -- and not
12 everybody agrees with this, but darker colors
13 for penthouses make them tend to recede more.
14 I mean, I think it is somewhat counter-
15 intuitive because you expect when it is up in
16 the air, it's up against the sky, that a
17 lighter color is going to blend in more, but
18 actually it doesn't really work that way.

19 The darker colors do tend to
20 recede more and so you see more of the
21 building and less penthouse. So just
22 something to consider. I'm not going to, you

1 know, vote it up or down because you didn't
2 make the penthouse dark enough. But it's
3 something worth thinking about.

4 And I think I actually convinced
5 one of my fellow Commissioners that that's
6 really the correct perspective once before.

7 VICE CHAIR COHEN: You did. I did
8 an unofficial study of roofs.

9 CHAIRMAN HOOD: Okay. Any
10 questions up here? Okay. Does the ANC have
11 any cross-examination? Okay. Does the
12 Westminster -- Ms. Who?

13 MS. WALLER: Waller.

14 CHAIRMAN HOOD: Ms. Waller, I'm
15 sorry. Do you have any cross-examination or
16 the church?

17 MS. WALLER: Yes.

18 CHAIRMAN HOOD: Okay. You can
19 come forward and introduce yourself and ask
20 your questions.

21 CROSS-EXAMINATION

22 MS. WALLER: Mr. Chairman and

1 Members of the Commission, I am Rose Waller
2 with the Law Firm of Motley Waller and I
3 represent Westminster Presbyterian Church. I
4 have a few questions for Ms. -- for the
5 applicant.

6 I was curious, at what point in
7 the Second Stage PUD did the applicant meet
8 with Westminster Presbyterian Church? I'm
9 going to abbreviate that and just say
10 Westminster.

11 MS. SHIKER: I don't think that I
12 can be cross-examined as the attorney, so I
13 will defer to my client to answer.

14 MS. WALLER: Okay. Your client.
15 All right.

16 MR. SMITH: We first met once we
17 had drawings to present. We finished our
18 schematic design process in the end of
19 December beginning of January and we met with
20 them in February.

21 MS. WALLER: So when did you
22 actually meet with them?

1 MR. SMITH: In February.

2 MS. WALLER: In February. Not
3 December.

4 MR. SMITH: Correct.

5 MS. WALLER: Okay. Just wanted to
6 clarify. February of this year, correct?

7 MR. SMITH: Yes.

8 MS. WALLER: Okay. Had the
9 application and the drawings been filed with
10 the Office of Zoning before you met with
11 Westminster?

12 MR. SMITH: Yes, we filed the
13 application in December 10th.

14 MS. WALLER: December 10th of what
15 year?

16 MR. SMITH: 2013 -- 2012.

17 MS. WALLER: 2012, okay. Okay.
18 Now, Westminster is, approximately, 50 feet
19 from your property line. Is that correct?
20 That is covered in the PUD. Is that correct?

21 MR. SMITH: Their property line
22 is, approximately, that, yes.

1 MS. WALLER: 50 feet. Okay.
2 Before the submission of your application, did
3 you discuss with Westminster any of their
4 programs or activities, given that they are --
5 you are closest?

6 MR. SMITH: At -- there was a
7 meeting in, I'm not sure if it was, December
8 or January. I told Reverend Ruth Hamilton
9 that we would be over to the church to present
10 our project and wanted to get on their
11 calendar and we got on the calendar in
12 February.

13 MS. WALLER: And that's December
14 2012 or January 2013?

15 MR. SMITH: That was in February
16 of 2000 -- I'm not sure if it was the end of
17 December or the beginning of January 2000 --

18 MS. WALLER: Of this year?

19 MR. SMITH: Yes.

20 MS. WALLER: Okay. Okay. Before
21 your submissions, did anyone discuss with the
22 Westminster its concerns about privacy and the

1 building balconies and rooftop activities?

2 MR. SMITH: No, we did not. We
3 thought we were a certain distance away from
4 the building that it would not be obtrusive to
5 their property.

6 MS. WALLER: Okay. Did anyone
7 discuss Westminster's concern about the
8 private street that is proposed and the
9 possibility difficulties of their patrons
10 parking?

11 MR. SMITH: The private -- none of
12 the private street was declared to be a part
13 of the mandated and the First Stage for the
14 PUD.

15 MS. WALLER: And why do you need a
16 private street?

17 MR. SMITH: The District --

18 MS. WALLER: Or a private
19 driveway?

20 MR. SMITH: The District --

21 MS. WALLER: Yes?

22 MR. SMITH: -- required us to have

1 that drive.

2 MS. WALLER: Okay. Okay. Before
3 the submission, before your submission, did
4 you discuss with Westminster its concern of
5 its light, air and noise?

6 MR. SMITH: No, we did not.

7 MS. WALLER: Okay. Now, after
8 filing the application, a meeting was held
9 with Westminster, correct?

10 MR. SMITH: Yes.

11 MS. WALLER: Okay. And what was
12 the date of that meeting?

13 MR. SMITH: I don't know the exact
14 date, but it was, I believe, some time in
15 February.

16 MS. WALLER: I think it was March
17 15, 2013. Does that sound about right?

18 MR. SMITH: It could be. I don't
19 recall when exactly the meeting was.

20 MS. WALLER: Okay. And then there
21 was one additional meeting held on May 9th of
22 this year, correct?

1 MR. SMITH: I don't have my
2 calendar in front of me. At least May 9th and
3 there was, I believe, another meeting.

4 MS. WALLER: Okay.

5 MR. SMITH: And a variety of
6 emails and telephone calls.

7 MS. WALLER: Okay. Since those
8 meetings, those two meetings, were there any
9 changes made in the plans to address
10 Westminster's concerns?

11 MR. SMITH: Concerns with respect
12 to?

13 MS. WALLER: Light, noise, air?

14 MR. SMITH: While we did not
15 change the design to talk about that, we did
16 have conversations with the property manager--
17 property management and talked to them about
18 how noise would be mitigated.

19 MS. WALLER: Property management
20 of?

21 MR. SMITH: Our property
22 management staff that manages our buildings to

1 see how it will be managed. How it is
2 typically managed and how noise complaints are
3 adhered to.

4 MS. WALLER: So you never talked
5 to Westminster about it?

6 MR. SMITH: We talked to them
7 once. We talked to them about those issues
8 once we talked to our property management
9 staff.

10 MS. WALLER: Okay. Are you aware
11 of the type of activities performed at
12 Westminster and when those activities take
13 place?

14 MR. SMITH: Some of them. We have
15 asked them for that information. And in a
16 meeting about a week ago, we talked about the
17 Jazz Festival, which we -- jazz nights which
18 we knew about, which were typically, I
19 believe, on Fridays and a couple of days in
20 the week. And there are other activities that
21 they have, but they weren't specific about all
22 of those activities. But the hours of

1 activities that they were concerned about were
2 Friday evenings and Monday evenings.

3 MS. WALLER: Yes, okay. I want to
4 talk about your traffic study. Did the
5 traffic study review the traffic increases and
6 times that are generated due to Westminster's
7 activities?

8 MS. SHIKER: We did not testify to
9 this tonight, but if the Chairman wants these
10 questions to go on, we can pull up our traffic
11 consultant who would be able to better answer
12 these questions.

13 CHAIRMAN HOOD: I think it would
14 be good, but you know, that's what I was
15 thinking when I read the submissions. Again,
16 the ANC goes back on the point about having a
17 meeting. Obviously, you all either had a
18 meeting or I don't know whether you had a
19 meeting or not from the way that cross-
20 examination was going.

21 MS. SHIKER: No. We have had. We
22 have met on three occasions with the church

1 and representatives of the church. I attended
2 two of those meetings. I did not attend the
3 most recent one, but I know that it occurred.

4 CHAIRMAN HOOD: Okay.

5 MS. SHIKER: We have had multiple
6 emails and phone calls. We worked very
7 diligently to get the meetings and in each
8 case it took --

9 CHAIRMAN HOOD: Okay.

10 MS. SHIKER: -- several weeks to
11 get each meeting, because there were many
12 schedules to get together.

13 CHAIRMAN HOOD: And that's hard to
14 do.

15 MS. SHIKER: And it is a church
16 and they have volunteer trustees.

17 CHAIRMAN HOOD: Okay.

18 MS. SHIKER: So we certainly did
19 reach out. I can call my traffic consultant
20 up to answer questions about traffic.

21 CHAIRMAN HOOD: Okay. If you can
22 come up? We just have a few?

1 MS. WALLER: Yes, I just have two
2 questions.

3 CHAIRMAN HOOD: Okay.

4 MS. WALLER: Yes.

5 COMMISSIONER MAY: Yes, anything
6 that was submitted for the record is subject
7 to cross-examination.

8 CHAIRMAN HOOD: Right.

9 COMMISSIONER MAY: So if there is
10 anything that's relevant in there, but if it
11 goes far afield of what is actually in the
12 report.

13 CHAIRMAN HOOD: So this is a
14 church that has those nice concerts in
15 Southwest that I've been hearing about?

16 MS. WALLER: That's correct.

17 CHAIRMAN HOOD: Oh, okay. All
18 right. I learned something. Okay.

19 MR. VANPELT: Could you repeat the
20 question?

21 MS. WALLER: Yes. Did your
22 traffic study review the traffic increases and

1 times that are generated due to Westminster's
2 activities? Did you take that into
3 consideration in your study?

4 MR. VANPELT: Well, our study was
5 really look -- focusing on was the Stage 2
6 application consistent with the Stage 1 PUD.
7 So what we really did was look at the traffic
8 that is generated by the application as it
9 stands now and its consistency with that. So
10 that doesn't necessarily, you know, focus on
11 the activities of the church. It looks at the
12 commuter peak periods which is the times when
13 the network is the most taxed.

14 MS. WALLER: Okay. So it didn't
15 involve the church's activities then?

16 MS. SHIKER: Objection. I don't
17 think that was what the answer was.

18 CHAIRMAN HOOD: I'm sorry, I still
19 was talking about -- I'm sorry, I didn't hear.
20 So can we move on?

21 MS. WALLER: Um-hum.

22 CHAIRMAN HOOD: Okay.

1 MS. WALLER: Okay.

2 CHAIRMAN HOOD: Okay.

3 MS. WALLER: What is the increase
4 in traffic count in the affected parking in
5 the area?

6 MR. VANPELT: The traffic count
7 that this Stage 2 would generate is consistent
8 with what the Stage 1 said that it would
9 generate. And there really won't be any
10 additional parking demand. The site is going
11 to have adequate parking on-site to
12 accommodate the residents that will reside
13 there.

14 MS. WALLER: Okay. I think this
15 next set of -- these next questions are geared
16 toward the applicant. One specifically about
17 the safety measures put in place for
18 Westminster's foot traffic and navigating the
19 private street that is, approximately, 70 feet
20 from the church.

21 MS. SHIKER: I'm sorry, what is
22 your --

1 MS. WALLER: What are the safety
2 measures?

3 MR. SMITH: We have designed the
4 street so that it is as pedestrian-friendly.
5 We decided not to park cars there. We are
6 trying to not invite cars. We would like for
7 that to be mostly pedestrian traffic. There
8 is a raised drive in and out on either side of
9 the street to inhibit cars or discourage, I
10 should say, cars from coming into the --
11 coming onto the private drive.

12 There is also a large sidewalk on
13 the north side of -- on the south side of your
14 property to the north of our property line
15 that most of the folks will be taking on the
16 north side of the trees very close to your
17 property that exists today.

18 MS. WALLER: Okay. So did you
19 take in consideration the people who are
20 members or patrons of the church who are most
21 -- who are seniors, some which are 90 years
22 and older and still travel to the church on

1 their own? Did you take that into
2 consideration?

3 MR. SMITH: We're thinking they
4 would be traveling on the sidewalk that exists
5 today.

6 MS. WALLER: Okay. I now want to
7 talk about the church itself. Did you take
8 into -- did you examine the measurements and
9 location of the huge window in the church's
10 sanctuary?

11 MR. SMITH: We know where that
12 church is, yes. We don't know more about it,
13 but we know where it is and what is on -- the
14 southeast window, yes.

15 MS. WALLER: Did you examine the
16 measurements?

17 MR. SMITH: We have not yet and we
18 told -- we promised them that we would do that
19 before we would start construction.

20 MS. WALLER: Okay. Do you have a
21 rendering of the sight line from that window
22 to your building?

1 MS. SHIKER: I believe the window
2 faces southeast and so there would not be a
3 sight line from southeast looking -- or faces
4 southeast and we would be southwest of the
5 window. There would be a blank wall between.

6 MS. WALLER: Okay. Okay. Are you
7 aware that the window is key and a very
8 important window to Westminster?

9 MR. SMITH: We have been told
10 that.

11 MS. WALLER: Okay. And has any
12 consideration been given to the location of
13 the building and the window?

14 MR. SMITH: Through the design,
15 yes.

16 MS. WALLER: Okay. Have you
17 entered into any agreements with Westminster
18 to accept liability for any damages caused to
19 the church during construction?

20 MR. SMITH: Yes, we have.

21 MS. WALLER: Okay.

22 MR. SMITH: We would be -- we

1 promised them that we would do pre- and post-
2 surveys of their window and then foundation
3 before and after to make sure that we did not
4 damage the window as it is today.

5 MS. WALLER: So you have
6 agreements to accept liability --

7 MR. SMITH: We --

8 MS. WALLER: -- for damage?

9 MR. SMITH: -- have verbal
10 agreements, yes.

11 MS. WALLER: Verbal. Okay.

12 MS. SHIKER: We do not have
13 anything in writing yet, but it is something
14 we have talked about as early as two days ago.

15 MS. WALLER: Okay.

16 MS. SHIKER: Or as recent as two
17 days ago.

18 MS. WALLER: Okay. Speaking of
19 construction, what precautions are going to
20 take place to protect Westminster during the
21 construction period?

22 MR. SMITH: One major factor is

1 that we have -- the ANC, we have a
2 construction group that would meet to discuss
3 any construction problems and that if there is
4 anything that does arise, that we would be
5 alerted. We are several feet from their
6 property and we are maintaining and containing
7 the construction within our property.

8 CHAIRMAN HOOD: Is that in the
9 Construction Management Plan how that is going
10 to operate or how is that? Where is that?

11 MS. SHIKER: The Community
12 Advisory Committee has set up a Construction
13 Management Plan very similar to when we do
14 construction on Capitol Hill and you have very
15 old delicate row houses, so we have setup a
16 similar process to that. The construction
17 line is also setback because of the private
18 drive from the property line about 25 feet, so
19 we are just that much further in terms of the
20 excavation and construction from the church's
21 property.

22 MS. WALLER: Okay. What are the

1 noise mitigation plans that will be put in
2 place to protect Westminster from its program
3 and its uses after the building is in
4 operation?

5 MR. SMITH: We would be working
6 again with our property management staff, such
7 that if there are noise complaints, we have an
8 on-site property management staff 24/7 that
9 would be noted and alerted and they would go
10 to the unit and discuss any problems turning
11 the music down or what have you. But we have
12 on-site property management staff that will
13 handle that.

14 MS. WALLER: Okay.

15 MR. SMITH: And the -- okay.

16 MS. WALLER: Go ahead. Sorry.
17 Okay. We read what you recite with regard to
18 public benefits of your development. However,
19 we don't see a public benefit for the church.
20 Can you tell us the benefits that emanate from
21 the building directly to the community?

22 MS. SHIKER: I will object,

1 because that is outside of the scope of the
2 Second Stage PUD review. The benefits and
3 project amenities were determined in the First
4 Stage and have been almost fully enacted in
5 the balancing test and the Commission found
6 that they were sufficient for the development
7 flexibility requested.

8 We can go through them for the
9 Commission if they would like, but it is
10 certainly not relevant for cross-examination,
11 at this point.

12 CHAIRMAN HOOD: Does anybody need
13 a review of that up here? At least not right
14 now. Okay. I'm going to uphold the
15 objection. If you can ask another question?

16 MS. WALLER: Okay. Is this
17 particular building going to have any
18 affordable housing?

19 MR. SMITH: No.

20 MS. WALLER: Can you tell us the
21 benefits that emanate from this building
22 directly to the church?

1 MS. SHIKER: Objection. Asked and
2 the objection sustained.

3 MS. WALLER: Okay. Okay. You
4 have a shadow study and it does indicate that
5 the building will cast --

6 MS. SHIKER: Objection. There is
7 no study -- shadow study in the record.

8 MS. WALLER: Can I finish my
9 question?

10 MS. SHIKER: There is -- she is
11 asking about something that is not in the
12 record.

13 CHAIRMAN HOOD: Let her finish her
14 question and I will decide whether it is an
15 appropriate question or not.

16 MS. WALLER: Well, that leaves me,
17 do you have a shadow study?

18 MS. SHIKER: We have not submitted
19 a shadow study for the record. There is not
20 one in this case, at this point.

21 CHAIRMAN HOOD: Okay.

22 MS. WALLER: Okay. Did you look

1 into locating the pool in the rec area to away
2 from the church?

3 MR. SMITH: Yes, we did. We felt
4 like the corner where we located the pool was
5 the optimum corner, because of elevator access
6 and also views to the Capitol.

7 MS. WALLER: Okay. I think that
8 is all of my questions.

9 CHAIRMAN HOOD: Okay. All right.
10 Thank you.

11 MS. WALLER: Thank you.

12 CHAIRMAN HOOD: All right. Okay.
13 Let's go to the ANC. I ask Chairperson Litsky
14 if he can come forward? You know what, I must
15 be trying -- somebody must be pushing me
16 trying to get home to watch the game. Let me
17 go to the -- excuse me a second. Let's move
18 to the Office of Planning and then the
19 District Department of Transportation.
20 Forgive me.

21 MR. MORDFIN: Good evening,
22 Chairman and Members of the Commission. I'm

1 Stephen Mordfin with the Office of Planning.

2 OP continues to find the
3 application to be generally in conformance
4 with the First Stage approval of the PUD,
5 which allowed for a 114 story residential
6 building. The proposed building reflect --
7 requests flexibility from roof structure
8 setbacks to permit the stairwell enclosures to
9 be setback a distance less than their height
10 alone, the interior courtyard walls where they
11 would be least visible from the street.

12 Flexibility is also requested to
13 permit roof structures of unequal height
14 reducing the height to the extent possible to
15 minimize visibility from the street. And also
16 request minor flexibility to vary interior
17 components of the building.

18 The applicant did respond to the
19 issues cited in the Office of Planning report
20 that came from either the Office of Planning
21 or from the Commission at the set-down
22 hearing. The benefits and amenities approved

1 as part of the First Stage PUD will continue
2 to be implemented with the construction of
3 this Second Stage application.

4 Therefore, OP supports the
5 proposal as it finds it to be consistent with
6 the First Stage approval, not inconsistent
7 with the Comprehensive Plan. OP finds that
8 the applicant has met the three conditions of
9 approval that are contained within the staff
10 report. Thank you.

11 CHAIRMAN HOOD: Thank you, Mr.
12 Mordfin. Mr. Henson?

13 MR. HENSON: Good evening. My
14 name is Jamie Henson. I'm a planner with the
15 District's Department of Transportation. A
16 few very brief things tonight, mostly
17 discussing what Ms. Shiker spoke of earlier
18 and her response to the five requests that we
19 made.

20 But before we get to that, two
21 other things. From the transportation
22 perspective, DDOT finds the proposal is

1 consistent with the Stage 1 approved
2 application. And as such, the proposed
3 increase to the number of dwelling units would
4 result in minimal increase in trip generation,
5 which would be -- which tells DDOT that it is
6 highly unlikely that the area is going to
7 realize additional congestion.

8 I'll now go to the points that Ms.
9 Shiker and the applicant submitted earlier and
10 just go through the five specific issues that
11 we had requested.

12 The applicant should not sublease
13 vehicle parking spaces to non-site users.
14 Generally, this is a condition we ask. On
15 this particular case, I don't think the Agency
16 is excited about agreeing with it, but we also
17 understand that this was part of a larger PUD
18 where this was contemplated and, frankly,
19 don't think it's very fair to change course in
20 the middle.

21 So with that, we understand where
22 the applicant is coming from and think that is

1 agreeable in principle, although that's not
2 what we would ask for if it was an independent
3 site and this was Stage 1 approval. We are
4 grateful the applicant is providing the
5 transit screen.

6 The concern that we had around the
7 design was about the north/south alley making
8 sure that pedestrian had safe north/south
9 access through that private street. And so
10 what the applicant has proposed is a raised
11 crosswalk at the edge. We think that is good.
12 A great start. We wanted to actually see the
13 design of that and I think what we can do is
14 look at that through the EISF process, through
15 the DCRA permitting process, so I think we can
16 do that because there is a little bit of an
17 issue because it's not on public space.

18 Normally, we would have an
19 opportunity in public space to review that.
20 We won't, because it's not a public space
21 element. So we can talk to the applicant
22 there, but, generally, we want that to be

1 consistent with DDOT's standards, but it seems
2 like the applicant is well on their way to
3 doing that.

4 And the applicant has agreed to a
5 mobility fare as well as making the building
6 ready for chargers, so with that, I'll pause
7 and take questions.

8 CHAIRMAN HOOD: Okay. Thank you
9 both, Mr. Henson and Mr. Mordfin.
10 Commissioners, any questions of either Office
11 of Planning or DDOT? Vice Chair?

12 VICE CHAIR COHEN: Thank you, Mr.
13 Chairman. I just love to ask DDOT questions.
14 Some day I'll understand all of their reviews.

15 MR. HENSON: And we love to answer
16 them.

17 VICE CHAIR COHEN: You mentioned
18 in your original review and we haven't really
19 discussed this, the applicant should not be
20 allowed to have regular access for trucks
21 exceeding the size of the proposed loading
22 facilities. Is that still the case?

1 MR. HENSON: I should probably
2 caveat that to an extent. What we want to see
3 are the trucks coming into the docks that are
4 designed for the docks. What has been our
5 general or fairly constant position in the
6 past few years about larger trucks is we think
7 that applicant should design for a space to
8 have the 55 foot trucks.

9 We understand that it is not very
10 normal even for a large building like this to
11 have those types of trucks. So we want to see
12 that the applicant has some type of space for
13 those. And as long as we can see that the
14 applicant has some type of space for those, we
15 are generally pleased with that. We don't
16 think it is a very good use of space and,
17 frankly, it causes problems for us in the
18 public space when those large trucks begin to
19 come across it.

20 VICE CHAIR COHEN: Thank you.

21 MR. HENSON: Yes.

22 VICE CHAIR COHEN: Because I read

1 all of your reviews, I noticed the one thing
2 that you did not mention is having spaces for
3 the electric cars or electric outlets for
4 cars.

5 MR. HENSON: That was in there.

6 VICE CHAIR COHEN: It was in
7 there?

8 MR. HENSON: That was the one that
9 this was -- I think this was one of the first
10 ones we have asked for. We actually asked for
11 spaces for electric cars on this one. And
12 that's what the applicant responded that they
13 would -- I'm not necessarily getting the
14 language right, but basically they would make
15 the space ready for electric charging
16 locations.

17 VICE CHAIR COHEN: All right. I
18 guess maybe I don't read it as carefully as I
19 thought. And then lastly, this project is
20 exempt from PP, the parking requirements?

21 MR. HENSON: There is some nuance
22 with the street and I'll have to -- maybe

1 somebody can nod. I always forget if 4th
2 Street is public or private, so that would be
3 one question I always forget. But even still,
4 I think that it would not be eligible for RPP,
5 because it is a commercial street.

6 So even if it is public, it's --
7 to my knowledge, it wouldn't be eligible
8 because there are businesses. It's a
9 commercial corridor. It would be like H
10 Street, N.E., or Georgia Avenue. It would be
11 the way we would look at it.

12 VICE CHAIR COHEN: Thank you.

13 MR. HENSON: You're welcome.

14 CHAIRMAN HOOD: Okay. Any other
15 questions? Okay. Let's see where I am.
16 Report of other Government agencies. Did we
17 miss anything? We do have some letters of
18 support from a number of organizations, 26,
19 29, 34, 35 and those names are in the record
20 of different companies that or groups that
21 support this project.

22 Did I miss anything else? Okay.

1 Let's go to the report now of ANC-6D. Mr.
2 Litsky?

3 MR. LITSKY: Good evening,
4 Commissioners. My name is Andy Litsky. I
5 serve as Chairman of ANC-6D representing the
6 16,000 residents of Southwest and Near
7 Southeast.

8 This evening I'll be testifying on
9 behalf of my ANC and I trust that the
10 testimony will be accorded great weight.

11 At a regularly scheduled May 15,
12 2013 meeting, ANC-6D voted 7-all to
13 conditionally support the application by the
14 applicant to construct a residential apartment
15 building on the northwest corner at Waterfront
16 Station. We cast our votes pending the
17 opportunity to further clarify and expand upon
18 several concerns and objections that we have
19 expressed about the proposal before you this
20 evening.

21 Only a portion of which appear to
22 have been addressed in subsequent submissions

1 by the applicant.

2 The ANC-6D is generally supportive
3 of the project as it has been presented.

4 Although, we have had telephone conversations
5 and a very brief discussion this evening with
6 both Ms. Shiker and Mr. Smith, we have had no
7 opportunity since our May 15th meeting to
8 formally engage and review our concerns with
9 the applicant.

10 So this evening, I will review
11 several aspects of the project and its
12 implementation with which we are still
13 expressing our objections. As it is currently
14 configured, the concerns of the ANC have not
15 been satisfied to the extent that we can fully
16 embrace the project at this time.

17 First, there are items that we
18 have noted that the applicant has changed over
19 the course of the past few weeks and we are
20 pleased to note that tonight. ANC-6D is
21 pleased that as of June 5th, at least, the
22 applicants have verbally committed to

1 replacing any trees lost to construction and
2 replacing such trees in caliper, not in total
3 caliper inches, mind you, within the Southwest
4 community as close as possible to the
5 development and the applicant will not solely
6 resort to cutting a check to the Urban
7 Forestry Fund. We would like this committed
8 in writing.

9 ANC-6D also appreciates that the
10 applicant had made attempts to address the
11 non-descript western face of the building as
12 you, too, had pointed out with some of the
13 well-placed balconies. They do something for
14 the property, but we continue to believe that
15 considerable visual interest can be added with
16 the incorporation of more texture.

17 ANC-6D is pleased that the
18 applicant submitted a draft Construction
19 Management Plan. Again, this plan was
20 requested and was submitted four days after
21 our ANC meeting where we pointed out that none
22 had previously existed.

1 We applaud the basics of that
2 plan, but need further explanation of some of
3 the details, especially regarding
4 environmental monitoring, cleanliness of the
5 site and impact on adjacent parcels and crane
6 swing, which is a fairly significant issue in
7 such a compacted space.

8 But on that same topic, we are
9 also concerned that the Construction
10 Management Plan does not address the
11 importance of the Southwest duck pond and the
12 major public park in Southwest. It needs to
13 be known that the park is also located on
14 McKemie Place directly across the street from
15 the northwest parcel site.

16 The applicant has not defined the
17 steps that they will take to preserve and
18 protect the parks fountain and foliage during
19 construction and with construction soon to
20 begin at The Wharf and channel side leisure
21 opportunity disappearing for the duration of
22 that construction, the Southwest duck pond is

1 going to be one of the few outdoor spaces
2 where our community residents can take refuge.

3 Further, the park's fountain has
4 traditionally had difficulty, as many
5 fountains do. Our fear is that dirt, dust and
6 debris kicked up by construction on the
7 northwest parcel will impact its operation as
8 well as significantly impact the enjoyment of
9 this facility by all the residents of
10 Southwest for a period of at least two years.
11 This needs to be addressed forthrightly.

12 The ANC continues to remain
13 concerned that the amount and placement of
14 community-serving retail on the site does not
15 demonstrate good faith effort and adherence to
16 the record of the Zoning Commission 02-38 in
17 the First Stage for the creation of a new
18 Southwest town center. And those are words
19 that the Zoning Commission used itself.

20 We remind the Commission that six
21 years ago our ANC had to do battle with the
22 applicant to maintain our Southwest

1 supermarket on the super block they sought to
2 purchase. And the only Commissioner on this
3 Commission, at that point, was Mr. Hood, so I
4 just want to make sure that the other four
5 Commissioners understand what we have had to
6 go through just to keep the Safeway.

7 So although we won that fight,
8 subsequently we have had little in the way of
9 additional retail coming to Southwest. Yes,
10 we have our Safeway. We fought hard to keep
11 it. We also have a dry cleaners which
12 replaces a dry cleaner, which was removed. We
13 have a restaurant, which replaces a restaurant
14 which was removed. We have a fast food
15 hamburger place, which replaces a Roy Rogers,
16 which was removed. And we have a sandwich
17 shop, which replaces a Blimpy's, which was
18 removed.

19 However, we do want this
20 Commission to recognize its current condition
21 to recognize that the Southwest community
22 still has a net minus of 20 retail facilities

1 from when the EPA buildings were fully
2 occupied on that site.

3 And it is after recouping many of
4 those office workers lost from the EPA into
5 the new District buildings on either side of
6 4th Street with, approximately, an equivalent
7 number in those buildings and the addition
8 mind you of 600 apartment units two blocks
9 north of the applicant's property constructed
10 by Monument Realty at Potomac Place Towers and
11 on the old super block itself with 450 total
12 apartment units, not residents, in the former
13 EPA towers, which will come on-line in the
14 next, you know, six to nine months.

15 And further, of course, if this
16 project is approved on the very block itself,
17 an additional 365 units that will become part
18 of the neighborhood, a lot more people are
19 going to be requiring a lot more services and
20 we need retail on that site.

21 It was last September nearly 10
22 months ago these same applicants sought to

1 delay construction of their office parcels on
2 M Street by two years. When our ANC
3 Commission protested to this Commission about
4 the lack of increased retail activity, leasing
5 activity at Waterfront Station, leasing
6 activity which was and still is controlled by
7 Vornado, one of the applicant partners,
8 although not technically any longer an owner
9 of the property, since that date there have
10 been no signed leases.

11 Although, I understand there is a
12 Letter of Intent for any of the open retail
13 spaces at the Waterfront. That's as of the
14 last time we came and addressed this issue
15 with you guys 10 months ago.

16 Here is where it gets muddy. As
17 this Commission knows only too well, ANC-6D is
18 negotiating more PUDs than any other ANC in
19 the entire city. We have got a lot on our
20 plate and we have a lot of residents coming
21 into the neighborhood who are requiring
22 services.

1 But when we negotiate a deal, we
2 can only hope that it holds. Under the rules,
3 when these buildings are flipped, when these
4 buildings are sold and no one is suggesting
5 certainly not from the ANC that the owners and
6 developments of any of these properties should
7 not have the opportunity to sell what they
8 have constructed, our community should not be
9 left in a lurch when new owners don't
10 necessarily hold fast to the agreements which
11 were subject of hard negotiations between the
12 original developer and the neighborhood.

13 So just what are we to do when
14 retail promises are not fulfilled? Right now,
15 there are still empty stores. It took three
16 years to get telephone contact numbers at all,
17 including the leasing signs. And just as long
18 a time to get banners up on light poles which
19 had been promised early on creating a sense of
20 community in-place.

21 And even today, the fountains,
22 which we have negotiated hard as a community

1 benefit, don't work and they are not operable.
2 And this is in a development that is called
3 Waterfront Station.

4 So I ask you who is responsible
5 for fulfilling the neglected agreements when
6 a property has already been built and flipped?
7 What we can ask for as a punitive measure,
8 what are they going to do give back FAR when
9 the building is already constructed? Are they
10 going to lop off a couple of buildings or a
11 couple of floors off the top?

12 You know, this Commission has to
13 understand that this weighs heavily on our ANC
14 as we approach all of these PUDs and
15 specifically this one, in particular. And
16 that's why we are so insistent that we adhere
17 to the original concept of what this
18 development along 4th Street was meant to
19 accomplish to reintegrate both the north and
20 south sides of Southwest which it does now and
21 to reestablish 4th Street as the main
22 commercial corridor of Southwest.

1 That second object is still
2 contemplated. It is not happening and it is
3 not happening as a part of this, what is
4 before you now. That's what we are after this
5 evening. Southwest doesn't want to have to
6 wait for new buildings to be built on M Street
7 to have more retail, because that's a promise,
8 because promises as we have seen, can be
9 broken.

10 And at that point, there is no
11 recourse. We can no longer wait for this one
12 to be on the come, as they say in Las Vegas,
13 because that's a gamble and a lot can change
14 in two years and we are not gambling any
15 longer.

16 Toward that end, ANC-6D strongly
17 believes there must be an adjustment to the
18 placement and size of the overly large lobby
19 and office space that is placed right on 4th
20 Street, where we believe retail should be.
21 And perhaps be placed on the northern most
22 corner of the former super block.

1 Instead of being a retail anchor
2 for what should be entry to a long promised
3 Southwest neighborhood town center, this is a
4 lost opportunity. It is -- its purpose is
5 only to boldly proclaim with a glowing lobby
6 in the evenings that this is the entrance to
7 a market-rate apartment building.

8 This is not what ANC-6D, this is
9 not what the Southwest neighborhood had
10 envisioned when we enthusiastically embraced
11 the First Stage PUD for the Waterfront's
12 entrance six years ago.

13 And when the applicant cries, as
14 they had at our meeting on the 13th, as I
15 expect they will do tonight, that no retail
16 like a bank perhaps would be willing to take
17 that northwest corner because it's too far
18 away from the Metro or it's too far way from
19 M Street, I do point out that for 25 years
20 there existed in the back on that northwest
21 section a National Bank of Washington 25 years
22 it stood there. It was patronized by the

1 folks who worked at EPA. It was patronized by
2 the people in the neighborhood.

3 I am still at this time a pansy
4 customer, because I originally was a National
5 Bank of Washington customer. So we have
6 loyalty, strong loyalties in Southwest. We
7 need a bank. It would be nice if a bank were
8 on that corner. It can happen again. We just
9 need their leasing agent to have a bit of
10 historic perspective and exhibit some creative
11 marketing skills which we have yet to see.

12 In the First Stage PUD for the
13 larger project, the applicant also provided a
14 Transportation Management Plan. Believe it or
15 not, it was actually listed as a public
16 benefit and a project amenity. Honestly an
17 amenity.

18 However, the attendant to this
19 plan -- and there is no equivalent plan or
20 even an update of the previous plan.
21 Incredibly, I guess, DDOT seems to concur with
22 the transportation person hired by the

1 applicant that there is no need to do so. No
2 need to analyze the impact of reopening a
3 major street had been closed for 40 years, no
4 need to show how traffic and parking is now
5 being handled on this private street with
6 public oversight.

7 No need to address any outstanding
8 pedestrian safety issues that never occurred
9 to anybody six years ago and may actually be
10 apparent now. No need to evaluate how we were
11 assured six years ago that parking on-site was
12 more than sufficient, but also neglected to
13 mention that parking would be handled by a
14 private contractor and that the D.C.
15 Government would be unlikely to pay for
16 parking, so that now we have garage spots in
17 that 1101 building remaining empty and we have
18 Government parking vehicles on the street
19 taking up city spaces, our spaces,
20 neighborhood spaces.

21 So, you know, and again, no need
22 to evaluate how 4th Street itself is used

1 intermittently as both a parking lot, if you
2 have ever been down along that site, you know
3 that there are frequently Government vehicles
4 and EMS vehicles and fire department vehicles
5 parked right in the middle of 4th Street.
6 Right in the middle of 4th Street. It is used
7 as a parking lot, especially for Government
8 vehicles, as well as a major transit point for
9 EMS vehicles and for fire trucks. We need a
10 Transportation Management Plan.

11 As with -- you know about the
12 parking concerns that we have had in Southwest
13 over the course of many years, they are only
14 going to increase. We address them with The
15 Wharf last summer in five hearings before this
16 Commission. We are happy that we are not
17 going to have the summer of Southwest again
18 before you this year, we hope.

19 But with each of the other major
20 PUD developments in Southwest that ANC-6D has
21 approved, where no RPP on the block now
22 exists, we need the applicant to agree and to

1 sign an agreement stating that they will not
2 apply for RPP for this building. And we want
3 this included within the zoning order and as
4 the applicant's traffic consultant testified
5 to upon cross earlier, the site has on-site
6 parking that is sufficient for the site. And
7 so I see no reason why they would not agree to
8 this.

9 So on behalf of ANC-6D, I
10 appreciate the opportunity to testify this
11 evening. I know that we do look forward to
12 sitting with the applicant in the very near
13 future to again review our concerns and work
14 toward complete embrace of this important
15 project.

16 That concludes my testimony. I'm
17 prepared to answer your questions. Thank you.

18 CHAIRMAN HOOD: Okay. Thank you
19 very much, Mr. Litsky. Commissioners, any
20 questions of Mr. Litsky? Commissioner May?

21 COMMISSIONER MAY: The first thing
22 that caught my attention was your reference to

1 the tree replacement. They have agreed to
2 tree replacement in caliper, but not in total
3 caliper.

4 MR. LITSKY: That's what we -- we
5 had asked for caliper and we didn't ask for
6 total caliper.

7 COMMISSIONER MAY: Okay. So --

8 MR. LITSKY: You take out a big
9 tree, put in a big tree. Yes, it costs money.

10 COMMISSIONER MAY: Well, it's also
11 usually not very successful. But the -- so I
12 mean, you are asking for them to replace 20
13 inch trees with 20 inch trees?

14 MR. LITSKY: Well, if we -- we
15 want larger trees. I mean, I think what has
16 happened in other buildings, I know with --
17 I'm not sure what the old Department of
18 Transportation building is now called, they
19 removed a number of very large trees and what
20 they did when they planted along the backside
21 of that, not the 7th Street side of that
22 building, they planted bushes all over the

1 place. I would like trees planted, especially
2 if we wind up having tree removal.

3 Clearly, I don't expect that we
4 are going to have 20 inch caliper trees,
5 that's just not going to happen. But what we
6 don't want is a bunch of bushes to take the
7 place of major Oak trees and major plantings
8 and that's something we would like to discuss
9 with them further.

10 COMMISSIONER MAY: Okay. So I
11 would like -- when the applicant -- when they
12 come back for rebuttal, they can talk to what
13 they intend to plant.

14 But now, you did not ask for total
15 caliper replacement?

16 MR. LITSKY: We did. We asked for
17 caliper replacement, that's what we actually
18 asked for.

19 COMMISSIONER MAY: You asked for
20 identical trees?

21 MR. LITSKY: Yes.

22 COMMISSIONER MAY: Okay. So and I

1 don't know how many of these are -- I mean,
2 what the size of the trees that are being
3 removed or any of that sort of stuff. There
4 are -- there is a separate law about tree
5 preservation and maybe that kicks in here.

6 MR. LITSKY: Um-hum.

7 COMMISSIONER MAY: But generally
8 speaking, you know, I mean, at least on the
9 Park Service, we don't like to plant new trees
10 that are any larger than 4 or 5 inches in
11 caliper, because they just don't grow very
12 well when you bring in larger ones. But you
13 know when you take out a 20 inch tree, you
14 don't replace it with one 5 inch tree, at
15 least, you know, if you have the opportunity
16 to plant more elsewhere within the site.

17 MR. LITSKY: I do take your point,
18 Commissioner May. And again, this was a
19 discussion that was held at our ANC meeting on
20 the 13th. We haven't had subsequent
21 discussions with them about this. And the
22 major point was we didn't want them to sit

1 there and just cut a check and be done with
2 it.

3 COMMISSIONER MAY: Right, right.

4 MR. LITSKY: We want the plantings
5 and our canopy to be preserved in Southwest.

6 COMMISSIONER MAY: Okay. And I
7 think that they did -- were intending to do
8 something more there, but I can't say that I
9 really understood exactly what it was. So
10 they will address that when they come up.

11 So when was the Safeway, the
12 replacement of the Safeway actually at risk,
13 in the previous?

14 MR. LITSKY: Well, yes, in the
15 First Stage PUD. As a matter of fact, I think
16 it was in the Zoning Order originally that has
17 been published that should a supermarket come
18 to pass, and this is when -- there was an old
19 Safeway. There was --

20 COMMISSIONER MAY: Are you going
21 back to the original First Stage?

22 MR. LITSKY: Yes.

1 COMMISSIONER MAY: In 2003?

2 MR. LITSKY: Yes, yes, that's what
3 happened. We had to fight to maintain a
4 supermarket on that site.

5 COMMISSIONER MAY: Right. Okay.
6 I was here then by the way.

7 MR. LITSKY: Oh, oh, were you
8 really?

9 COMMISSIONER MAY: Yes.

10 MR. LITSKY: I'm sorry.

11 COMMISSIONER MAY: I was in that
12 chair over there, but --

13 CHAIRMAN HOOD: I was here, too.
14 And I actually don't remember it that way, Mr.
15 Litsky.

16 MR. LITSKY: Yes, I --

17 CHAIRMAN HOOD: I thought that
18 there was a 17 year lease, at that time.

19 MR. LITSKY: There was a 17 year
20 lease of the -- for the old Safeway.

21 CHAIRMAN HOOD: Of the Safeway
22 that is there now, right?

1 COMMISSIONER MAY: Correct.

2 CHAIRMAN HOOD: Right.

3 MR. LITSKY: No.

4 CHAIRMAN HOOD: Well, not the
5 newer model.

6 MR. LITSKY: The building had a 17
7 year lease.

8 CHAIRMAN HOOD: Right.

9 MR. LITSKY: And the Safeway was
10 not about to move into a new building unless
11 they had an extended lease and I think that
12 lease had to be phased out. But they were
13 asking, and you would have to ask the
14 applicant precisely what the concerns were
15 with Safeway, but the bottom line was that --
16 and again, you can check back in the zoning
17 record that Zoning itself had voted to allow
18 that if, within the course of that 17 years,
19 the old Safeway did not disappear and they did
20 not agree to go into a new building, that
21 should a new supermarket be built south of the
22 Expressway, and everybody anticipated as is

1 happening now, that in a property that at
2 least part of the ownership owns and near
3 southeast at The Yards, that there would be a
4 supermarket.

5 That if a supermarket were built
6 south of the Expressway, that there would be
7 no longer any need to replace the supermarket
8 after 17 years on that property in Southwest
9 and we fought to have that changed.

10 CHAIRMAN HOOD: I remember some of
11 that discussion. Maybe I have forgotten it,
12 but I do remember if there was another grocery
13 located somewhere else --

14 MR. LITSKY: Right.

15 CHAIRMAN HOOD: -- so much --

16 MR. LITSKY: South of the
17 Expressway.

18 CHAIRMAN HOOD: -- a mile or some
19 -- yeah, maybe that was it.

20 MR. LITSKY: Yes. In any case, we
21 -- the point being of all of this is that we
22 had a 35,000 square foot Safeway or a 30,000

1 square foot Safeway. Now, we have 55,000
2 square foot Safeway. It's a lot bigger. It's
3 a lot nicer. We are happy with it. But that
4 wasn't the only retail that we had wanted to
5 come to the site.

6 CHAIRMAN HOOD: Okay.

7 MR. LITSKY: So --

8 CHAIRMAN HOOD: I'll take your
9 word on it. You have been following it.

10 MR. LITSKY: Yes.

11 CHAIRMAN HOOD: I was here, too,
12 in 2003. Okay. I'm sorry.

13 COMMISSIONER MAY: Yes. I can't
14 claim that I really remember all that, but I
15 do remember the old lease, the standing lease
16 for the Safeway and I believe that was
17 actually some -- there was some question
18 about, because I don't think Safeway had
19 exactly signed off on the Stage 1 at that
20 point and that was a contentious issue, right?

21 MR. LITSKY: That's right.

22 COMMISSIONER MAY: So but we were

1 all -- I think we were all lined up to make
2 sure that there was going to -- there would
3 continue to be a grocery store in that
4 location.

5 I guess I have a general question
6 about the traffic concern. I mean, I know --
7 I mean, generally speaking, you know, again,
8 we are -- that's something that is addressed
9 more in the Stage 1 than in the Stage 2. And
10 I don't know that anything is really changed
11 here, but I'm just curious about the concern
12 about traffic and I want to know kind of where
13 the problem really is, because, you know, I go
14 through that area all the time and I have not
15 really detected any long delays, at least
16 along I Street and 4th Street at that
17 intersection at any time.

18 I mean, it always seems to be
19 pretty free-flowing. And I only go through
20 there during rush hour. So I mean, are there
21 -- there may be bigger problems at M Street
22 that I simply never see. But can you tell me

1 where the problems are and what they are?

2 MR. LITSKY: Right. I mean, and
3 what I'm really doing is I'm referring to
4 problems on 4th Street itself.

5 COMMISSIONER MAY: Oh.

6 MR. LITSKY: And we don't ever
7 seem to be able to get, you know, DDOT to
8 address that, because I don't think anybody
9 knows, you know, who is responsible for it.
10 But we -- is it MPD? Is it DDOT? Is it a
11 private street? Is it a public street? Who
12 is running the show?

13 But if you are down there during
14 the day and not during rush hour, I mean, this
15 is a parking lot. There is a center strip and
16 it is parked.

17 COMMISSIONER MAY: Yes.

18 MR. LITSKY: It's parked. So if
19 we have parking on one side of the street and
20 parking on the other side of the street and we
21 have one side of -- one lane going north and
22 one lane going south, if there is somebody

1 that is waiting to pick somebody up,
2 frequently, it backs up because there is no
3 opportunity to go around.

4 COMMISSIONER MAY: Right. This is
5 a relatively narrow street.

6 MR. LITSKY: It's a very narrow
7 street.

8 COMMISSIONER MAY: Yes.

9 MR. LITSKY: And nobody has ever
10 really properly patrolled it to tell whichever
11 largely, usually Government vehicles, to move
12 out of that center lane, which becomes a
13 parking lot. And it concerns us because we
14 find that EMS uses that block. They don't use
15 3rd Street. The fire department uses 4th
16 Street. They don't use 3rd Street.

17 I mean, remember where the fire
18 department is. It's on 4th Street.

19 COMMISSIONER MAY: Um-hum.

20 MR. LITSKY: And so we just have
21 to make sure that in this new configuration of
22 how Southwest is working, that the street is

1 working properly and not to, after the opening
2 of this property, review how this is working,
3 I think is a problem and a concern. And we
4 would like it addressed, if not now,
5 certainly, you know, when you go further on
6 this process. And we just needed to point
7 that out.

8 COMMISSIONER MAY: Right. So yes,
9 I do spend some time there during the day
10 occasionally going to Office of Planning and
11 things like that for other business. And I
12 have experienced some of that. It's not
13 always easy to get through, but the advantage
14 to that is that that's a much more pedestrian-
15 friendly stretch of road than almost any other
16 kind of major commercial strip around town
17 that I -- you know, I mean, just because it's
18 -- the way it has been designed and the fact
19 that just when you go into it and you start to
20 hit, you know, the --

21 MR. LITSKY: The rumble strips.

22 COMMISSIONER MAY: -- rumble

1 strips, the cars that are there, everything
2 just sort of slows down. And so it is really,
3 really good for pedestrians.

4 MR. LITSKY: Absolutely.

5 COMMISSIONER MAY: Yes.

6 MR. LITSKY: I completely agree.

7 COMMISSIONER MAY: All right.

8 Okay. Well, I guess it's hard to have, you
9 know, everything that you want for cars and
10 pedestrians. It is not great for bicycles I
11 will say that. It's just the 4th Street side,
12 but I Street is good.

13 MR. LITSKY: Yes.

14 COMMISSIONER MAY: Actually, I do
15 have a question about the parking. The I
16 Street is rush hour controlled for parking, at
17 least on the south side of the street. And I
18 just don't understand that at all, because
19 there is a bike lane there and there is never
20 really any reason to have two lanes of
21 vehicles going through there, so I don't know
22 why you would not be able to park there during

1 rush hour.

2 MR. LITSKY: You will have to talk
3 to DDOT.

4 COMMISSIONER MAY: Yes.

5 MR. LITSKY: Most of what DDOT
6 does is a puzzle to us.

7 COMMISSIONER MAY: Well, I just
8 think that's --

9 MR. LITSKY: Not necessarily Jamie
10 Henson.

11 COMMISSIONER MAY: -- something
12 that DDOT should take back and take a look at.
13 And it is not just because I got a ticket
14 there for that reason.

15 MR. LITSKY: As did our office
16 manager.

17 COMMISSIONER MAY: No. It just
18 doesn't seem to make sense because the bike
19 lane is there. It doesn't -- it blocks you
20 off from parking, I mean, from having travel
21 lanes in that parking lot.

22 MR. LITSKY: But again, I Street

1 is being looked at by DDOT as a major, you
2 know, east/west thoroughfare now.

3 COMMISSIONER MAY: And it flows,
4 but it's just --

5 MR. LITSKY: It does.

6 COMMISSIONER MAY: -- one lane in
7 each direction really.

8 MR. LITSKY: Well, wait until we
9 wind up having a soccer stadium. Wait until
10 we wind up having fully developed -- you know,
11 there is going to be a soccer stadium, just
12 wait until they spring it on you. Wait until
13 we have fully developed southeast. I mean, I
14 Street is really going to, you know, back up.

15 COMMISSIONER MAY: Yes, okay.
16 Thanks.

17 CHAIRMAN HOOD: Any other
18 questions of Mr. Litsky? Okay. Let me -- oh,
19 Vice Chair?

20 VICE CHAIR COHEN: Thank you for
21 your testimony. I, obviously, was not here
22 under the First Stage PUD, so I just want to

1 make sure I understand something.

2 Your concern about there being a
3 retail desert in that neighborhood. The
4 applicant has committed to provide 110,000
5 square feet of retail, which is required by
6 Stage 1. So I believe what you are saying is
7 that they haven't really met their prior
8 commitments in the buildings that have been
9 developed. Is that correct?

10 MR. LITSKY: Yeah, I mean, well,
11 you know, the standard language is, you know,
12 we're going to use all best efforts and you
13 either do it or you don't. So yes, there are
14 vacant storefronts now. And they have been
15 vacant for -- well, since the beginning. And
16 our concern is that they be filled. Our
17 concern continues.

18 And further, the concern is that,
19 you know, the applicant which was -- who --
20 they were responsible for maintaining the
21 agreements negotiated under the PUD then sold
22 to somebody else. So it's kind of like it's

1 not my job any longer.

2 VICE CHAIR COHEN: And that's how
3 Vornado stepped in as the --

4 MR. LITSKY: Well, Vornado, you
5 know, does leasing, I mean, so in any case
6 it's under their management, but they no
7 longer loan -- no longer own as -- nor the
8 city are responsible. They are responsible
9 for the leasing of those properties. Somebody
10 else is.

11 And so this is part of our
12 concern. We don't want to have to, in this
13 development or any of the others in the
14 neighborhood, wind up having a situation where
15 people build and then leave and then, you
16 know, what are we doing here if people don't
17 fulfill their part of the bargain?

18 In this instance, the new owners
19 are not fulfilling the part of the bargain in
20 terms of, I think, acting strongly enough to
21 fill those vacant storefronts. And my concern
22 would be that perhaps in this new apartment

1 building that they may not exercise the same
2 concern.

3 VICE CHAIR COHEN: Commitment,
4 yes.

5 MR. LITSKY: But meanwhile, you
6 know, we had -- I mean, just to give you a --
7 I was rattling this off. Here is what we did
8 have in Waterside Mall and I know that we had
9 a dry cleaners. We had a Plymouth Dress Shop.
10 We had a Jamaican restaurant. We had a Doc in
11 the Box. We had a book store. We had a video
12 store. We had Harry's Liquor store, which was
13 the best in the city, at one point.

14 We had a Steven's Butcher Shop.
15 We had a High's. We had a Radio Shack. We
16 had a Rack's Repair. We had a card shop, Roy
17 Rogers. We had a luncheonette. We had
18 Jenny's Chinese Restaurant, which still exists
19 on the Waterfront. We had Anne's Wig Shop,
20 which blessedly was able to relocate to the
21 southeast side of our neighborhood. And we
22 had a full-service bank. And I may have left

1 some out.

2 CHAIRMAN HOOD: You mentioned the
3 tailor? There was a tailor.

4 MR. LITSKY: And the tailor.

5 CHAIRMAN HOOD: Right.

6 MR. LITSKY: Thank you very much.

7 CHAIRMAN HOOD: Okay.

8 MR. LITSKY: And he is on the
9 other side as well.

10 CHAIRMAN HOOD: Not that I went to
11 him, but I know he was there.

12 MR. LITSKY: Yes, absolutely. He
13 is over on 10th Street by the Navy Yard. So I
14 mean, we had all of that retail, small
15 merchants, people providing services to the
16 people at Southwest. We have got bupkis now.
17 That's a problem.

18 VICE CHAIR COHEN: The second
19 question that I have is on the parking. You
20 went through your testimony pretty rapidly, so
21 I think I could read it, of course, but you
22 said that the parking in the office building,

1 much of it is empty.

2 MR. LITSKY: Yes, as a matter-of-
3 fact, there was a concern that was raised by
4 residents last year that Government vehicles
5 were parking all over the neighborhood and
6 largely as a result of several agencies in
7 both of those buildings and agencies that come
8 down to do business from other agencies in
9 those office buildings, both at DCRA and with
10 Gandhi's Operation, we have, you know,
11 Government people who drive down there all the
12 time and park with impunity because they are
13 allowed to.

14 And so we raised that concern with
15 the media. Sam Ford came down and did a
16 stand-up and I took him through the basement
17 of that parking lot and the building where our
18 ANC offices are. And there was an entire area
19 complete devoid of parking.

20 VICE CHAIR COHEN: But again, it's
21 a private building, so they are going to
22 charge for parking and no one wants to pay.

1 Is that the --

2 MR. LITSKY: Yes, no one wants to
3 pay, let alone the District of Columbia.
4 However, when this came before the ANC, we
5 never thought to think -- we never thought to
6 ask well, obviously, if there is appropriate
7 parking and it's a District Government
8 building, that parking is going to be allowed
9 for Government vehicles.

10 Instead, you know, the District
11 agencies, none of which are going to pay to
12 park their own vehicles, are going to park on
13 the street because they are free spaces and
14 they don't get ticketed. And so they take up
15 spaces from residents who otherwise would come
16 to go to DCRA or any of the other agencies and
17 they take up spaces by residents in Southwest.
18 And that's a concern.

19 So here we have another building
20 and I'm just pointing that out, because this
21 is something that we had to deal with years
22 ago and it has come home to roost.

1 VICE CHAIR COHEN: And we don't
2 want that to happen again.

3 MR. LITSKY: No, we don't.

4 VICE CHAIR COHEN: So, yes. All
5 right. Thank you. That really is very
6 helpful.

7 CHAIRMAN HOOD: Let me make sure I
8 understand. Due to the change in ownership
9 and some of the things that were proffered or
10 promised or agreed to early on, because the
11 owners changed I guess one or two times, I
12 believe, are you saying that some of the
13 things that were negotiated in the First Stage
14 PUD are not being, with the exception of
15 retail, I have heard you on the retail issue,
16 fulfilled by this new owner because the
17 previous owner made the negotiation.

18 And now that we have another
19 owner, this owner is not fulfilling that. I'm
20 just trying to understand that.

21 MR. LITSKY: Well, again, I don't
22 know what the reason is why some of these

1 things, particularly the retail, is not being
2 handled as we believe it should. But, you
3 know, other small things, particularly even
4 the marketing that we had -- we had asked for
5 the street to be branded. This was going to
6 be a town center.

7 And we waited for three years for
8 flags to be placed as we have them on every
9 great street in the city of Washington. And
10 finally, it showed up 10 months ago when these
11 applicants had come to the Zoning Commission
12 asking for an extension of two years for their
13 property on M Street and 4th.

14 For instance, you know, we don't
15 have the fountains operating. I mean, we had
16 asked for, you know, fountains. They put
17 fountains in there. They are little
18 spritzers, I think there are three or four of
19 them. Certainly it is nothing that you have
20 like Columbia Flats.

21 CHAIRMAN HOOD: But I guess my
22 question is even bigger.

1 MR. LITSKY: There is no -- these
2 things are not operating. What do we do?

3 CHAIRMAN HOOD: And probably I'm
4 just -- you are alerting me to something that
5 may just not be happening here and that's why
6 I'm wondering if this -- those agreements are
7 following all the way through, even if
8 ownership changes.

9 MR. LITSKY: Well, it would seem
10 to me that they should be and that's something
11 that -- I mean, I'm kind of asking you a
12 rhetorical question and it's not really
13 rhetorical. What do we do? What do we do if
14 when we negotiate a PUD and there is not an
15 overriding agency or entity in this city that
16 -- to whom we can go to say hey, you know,
17 these folks negotiated something with us, if
18 they still own the building, I suppose
19 something could be done. If they flipped it,
20 what do you do?

21 CHAIRMAN HOOD: Okay. I actually
22 am going to ask our legal counsel, because I

1 know if that's happening now, I know it has
2 happened in other cases, then I have a
3 concern, a serious concern. And I am going to
4 ask our legal counsel what -- I have a
5 question that I'm going to direct and I'll ask
6 Ms. Schellin to help me remember that I need
7 to do that.

8 COMMISSIONER TURNBULL: Mr. Chair,
9 I think the PUD runs with the land. So it
10 doesn't matter who the owner is. So whatever
11 the -- what is in the order runs with the
12 land. It has to be accommodated.

13 CHAIRMAN HOOD: I think that's how
14 it --

15 COMMISSIONER TURNBULL: I --

16 CHAIRMAN HOOD: My personal
17 opinion, I would agree. If it's not
18 happening, then I have a serious problem,
19 because we sit down here late at night doing
20 this stuff.

21 MR. LITSKY: Right. That is my
22 understanding as well, of course, that it runs

1 with the land. But again, what can be -- what
2 actions can be taken against an entity if,
3 indeed, they are not meeting what -- the
4 responsibilities? That's my question. That's
5 my question. And that's a question I don't
6 think that has been answered.

7 CHAIRMAN HOOD: And we are not
8 just picking on this applicant.

9 MR. LITSKY: No, no, no.

10 CHAIRMAN HOOD: That's a big
11 issue.

12 MR. LITSKY: Clearly not.
13 Absolutely not.

14 CHAIRMAN HOOD: That's a big issue
15 for us.

16 MR. LITSKY: No, no, no,
17 absolutely not.

18 CHAIRMAN HOOD: Okay. At least --

19 MR. LITSKY: This is a much larger
20 question and it is just we have hot and cold
21 running PUDs in Southwest and near southeast
22 and we want to make sure that we have a very

1 clear understanding of how it is we are
2 supposed to do follow-up with all of these and
3 this just being one.

4 CHAIRMAN HOOD: Okay. Okay. All
5 right. Any other questions?

6 VICE CHAIR COHEN: No.

7 CHAIRMAN HOOD: Mr. Miller?

8 COMMISSIONER MILLER: Thank you,
9 Mr. Chairman. I just wanted to thank Mr.
10 Litsky for his very articulate and strong
11 testimony, as usual. On the -- I understand
12 the concern about wanting continuous retail on
13 4th Street.

14 And then the vacant -- this is
15 square footage that is not rented out yet and
16 to be rented out. But when you mentioned the
17 bank where the overly large lobby is, and I
18 realize maybe you need a full-service bank in
19 this neighborhood, but don't you think that
20 that lobby serving 365 households has an
21 entrance seven days a week, you know, day and
22 night would be more activating of the street

1 than a bank?

2 MR. LITSKY: Well, actually, I
3 think we could probably do two things. I
4 mean, it's possible that instead of having it
5 on that corner, you know, and instead of
6 having the office space that is as
7 Commissioner May pointed out as having 4th
8 Street frontage, that there is an opportunity
9 to reorient some of the design of the building
10 to accommodate something that perhaps might be
11 able to be used by a bank.

12 Ms. Wales had a check cashing
13 place at Waterside Mall, too. We don't even
14 have that now.

15 COMMISSIONER MILLER: Okay. Thank
16 you.

17 CHAIRMAN HOOD: Okay. I actually
18 omitted cross-examination of the Office of
19 Planning, DDOT, so what I'm going to do at
20 this time, is ask the applicant does he have
21 any cross of Office of Planning, DDOT or Mr.
22 Litsky?

1 MS. SHIKER: We do not.

2 CHAIRMAN HOOD: Okay. Does -- oh,
3 the -- does the ANC have any cross-examination
4 of Office of Planning or DDOT? Okay. You
5 don't have any cross of yourself either, do
6 you? Okay. Ms. Waller, do you have any
7 cross-examination of either Office of
8 Planning, DDOT or Mr. Litsky? Okay. Thank
9 you very much. And again, thank you for your
10 testimony.

11 Okay. Let's go to organizations
12 and persons in support. I have Commissioner
13 McBee. The only person I have is Commissioner
14 McBee. Anyone else who is present who would
15 like to testify in support? You can come
16 forward at this time. Okay. Commissioner
17 McBee will be the only one that is testifying
18 in support tonight. Good evening.

19 MR. McBEE: Thank you. I thought
20 the light was on. Thank you very much. I
21 appreciate the opportunity to be here this
22 evening. I just want to point out that one of

1 the individuals in back just left and she
2 wanted to make note to the Commission here
3 that there is some inconsistency with the
4 signage.

5 And one sign that she was pointing
6 out said 620-13, so she felt that some of the
7 people out of her community weren't able to
8 come. So I just wanted -- I told her that I
9 would put that forth.

10 So, Chairman Hood, Commissioners,
11 staff, good evening. I'm Ron McBee, Advisory
12 Neighborhood Commission for ANC-6D03
13 testifying this evening for my Single Member
14 District, ANC-6D03 in opposition to the
15 request and in support of the motion passed by
16 our ANC-6D at our regular scheduled business
17 meeting on May 13th with a quorum being
18 established and voted unanimously 7-0 to
19 support the applicant's request for the Second
20 Stage PUD of outstanding issues with the
21 applicant were resolved.

22 In the First Stage PUD approval

1 order, the urban design objectives for the
2 project is to reconnect the site to the
3 neighborhood by breaking it into smaller city
4 blocks, opening it to light and air and public
5 access and create a mixed-use town center for
6 neighborhood-serving retail, apartments and
7 even the activities actuate the area.

8 It will also serve the surrounding
9 neighborhood. While our old Waterside Mall is
10 gone, thank you, this is not happening for our
11 community and residents. We are still
12 correcting pedestrians on safety issues from
13 the First Stage Second PUD that directed the
14 building of the office towers at 1101 4th
15 Street.

16 We have floating or unconnected
17 ADA sidewalk cuts that lead individuals into
18 the street at the southeast corner of the Duck
19 Pond Park and at the Southwest corner of our
20 Southwest library site. It is anticipated
21 that DDOT will finish the ADA accessible route
22 from the Southwest library to the duck pond by

1 the 13th of June.

2 Many signs and markings are
3 missing from the egress points to the parking
4 garages and loading area driveways for public
5 safety. We had two pedestrians hit at the
6 intersection of 4th and M Street, S.W., that
7 began the steady modification and 12 months of
8 dialogue with DDOT engineers to reconfigure
9 that intersection for public and pedestrian
10 safety.

11 With the First Stage PUD, this
12 allowed the reconnecting of 4th Street, S.W.,
13 from I to M Street. This required the
14 bisecting of the town center park that were
15 designed by the noted landscape architects,
16 Wallace, McHarg, Roberts, Todd of
17 Philadelphia.

18 The park is directly behind the
19 Westminster Presbyterian and Christ United
20 Methodist Church facing on I Street and
21 anchored at the east end at the Southwest
22 library and at the west end by the Duck Pond

1 Park.

2 With the creation of the new 4th
3 Street connector, it left remnants of the park
4 that are maintained by the Water Station
5 management. A street lamp located in the park
6 in front of the Christ United Methodist Church
7 is still not lighted after many requests to
8 city agencies.

9 The storm blew over two large
10 trees there at that site. The following limbs
11 were removed, but the ugly tree stumps remain
12 today from a storm that took place about seven
13 months ago.

14 Landscape crews cut less and less
15 of the green area and the litter crews no
16 longer pick up along the new retaining walls
17 to the corner of I and 4th Street. A careful
18 survey was done of the trees before the
19 project began. We are losing several
20 yellowwood trees in the area that are dead and
21 need to be cut down for safety and need to be
22 replaced.

1 Can I continue?

2 CHAIRMAN HOOD: Take two more
3 minutes.

4 MR. McBEE: Okay. In the area of
5 trees that have been advised that need to be
6 removed by the applicant, we understand there
7 is need to propose ginkgo trees and that's
8 just not appropriate as they do not match the
9 trees along the connecting walk for the town
10 center parks nor does it show the applicant's
11 understanding of our landscape and community.

12 The placement of the northwest
13 building for the Waterfront Station complex is
14 unintended consequences, a craving of sort of
15 an uber or mega block along 4th Street cutting
16 to Town Center West Park or duck pond from our
17 community and one could add Arena Stage for
18 those residents from the northwest corner to
19 Southwest.

20 To comply with the First Stage PUD
21 objective, the applicant needs to allow egress
22 between the northwest building and 1101 4th

1 Street. It does not need much to do this.
2 This space should be created consistent with
3 penetrating of the super blocks in our
4 Southwest community.

5 Recent forms for our Southwest
6 neighborhood of Sibley and our civic
7 organization and the D.C. Preservation League
8 as well as the Office of Planning with the
9 Development of Small Area Plan and focused on
10 making our community more walkable, liveable
11 with the breakdown of these blocks for
12 pedestrians at sidewalks.

13 With the -- and let me just add, I
14 won't read the last but one paragraph more and
15 I'll stop. While the rear facing of the
16 northwest building has been modified to
17 include balconies to break the brick facing,
18 I'm still in question myself of the design at
19 this side of the building as it faces the most
20 important cherished park in our Southwest
21 community.

22 Duck Pond Park or our Town Center

1 West Park we have over 40 volunteers who spend
2 time maintaining it and these volunteers have
3 created program in the park with yoga classes,
4 Farmer's Market and fundraising activities for
5 a number of our organizations, Pulse of
6 Southwest, our community garden's group and
7 Arena Stage. This park is also used
8 extensively by the office occupants at 1111 on
9 4th Street.

10 This side of the building needs to
11 reflect rather than be -- than ignore our
12 park. I understand there is more, but I'll
13 stop. You can read that. I appreciate the
14 opportunity and would love to answer any
15 questions that you have for me.

16 CHAIRMAN HOOD: Okay. Let me just
17 say, because in some cases this becomes an
18 issue. Mr. McBee was the only person in
19 support, so I allowed him an additional two
20 minutes. I don't think that was a major
21 issue, but I wanted to put that on the record,
22 because I have had problems in the past when

1 I have done that.

2 The other thing is, Mr. McBee, you
3 mentioned about 620. Ms. Schellin just did
4 some research and all of them say 66.

5 MR. McBEE: Well, she had a
6 picture. Too bad she has left. She took a
7 picture of it.

8 CHAIRMAN HOOD: Okay.

9 MS. SCHELLIN: I just looked at
10 the pictures that they took, that they
11 submitted.

12 MR. McBEE: Yes, she just showed
13 me that.

14 MS. SCHELLIN: Yes.

15 CHAIRMAN HOOD: Because we
16 definitely don't want to give out no wrong
17 information.

18 MR. McBEE: Right.

19 CHAIRMAN HOOD: Okay. So anyway.
20 Commissioners, any questions for Mr. McBee?
21 Is there any cross? Does the applicant have
22 any cross of Mr. McBee?

1 MS. SHIKER: No.

2 CHAIRMAN HOOD: Okay. Does the
3 party, any cross? Okay. We thank you very
4 much.

5 MR. McBEE: Thank you.

6 CHAIRMAN HOOD: We appreciate it.
7 Oh, does the ANC have any cross? Okay. Let's
8 go to the party in opposition. Ms. Waller, if
9 you can bring your team up? I think we have
10 a request or we had a request. Is the request
11 still on the table about expert witnesses, Mr.
12 Bello and -- I don't see him. Okay. I see
13 your experts, okay. Plus we didn't have their
14 rŠsumŠs anyway, so we can negate having to go
15 through that.

16 Okay. And I'm not sure if they
17 have been proffered as experts in front of the
18 Commission anyway, so we don't have to deal
19 with that, right, Ms. Waller?

20 MS. WALLER: Yes.

21 CHAIRMAN HOOD: Okay. Great. If
22 you could turn your microphone on, you may

1 begin.

2 MS. WALLER: Yes, that's correct.
3 Okay. Mr. Chairman and Members of the
4 Commission, I am Rose Waller with the Law Firm
5 of Motley Waller and my client is Westminster
6 Presbyterian Church. They are the party that
7 has filed for party status in opposition to
8 the Second Stage PUD.

9 Westminster has existed for nearly
10 160 years. It has been in its present
11 location for over 45 years. Westminster
12 opposes the approval of the application,
13 because it will be affected by the proposed
14 development and that it will suffer
15 environmental, economic, social and other
16 impacts if the application is approved.

17 Westminster is significantly,
18 distinctively and uniquely affected by this
19 development because it is located closer to
20 this proposed development than any other
21 property owner.

22 Westminster is the adjoining

1 property owner located, approximately, 50 feet
2 from the property line of the proposed
3 building. This development will be at
4 Westminster's back door and, as it is
5 described, will greatly impact our light, air
6 and cause noise pollution.

7 Westminster is not a church that
8 just operates on Sundays. The church has
9 numerous ministries and programs that operate
10 seven days a week. For instance, every Friday
11 evening Westminster has a program that can
12 draw up to 300 people to the church.

13 On Mondays a similar program is
14 held at Westminster that attracts,
15 approximately, 150 people. The church is the
16 center focus of the neighborhood activities
17 where it operates similar to a community
18 center. It provides a haven for people not
19 only those in the main stream, but also for
20 those with severe health issues like HIV/AIDS,
21 those with alternative lifestyles, people with
22 serious addictions and the elderly.

1 The serenity of the Westminster
2 environment gives these people the comfort and
3 security to leave their homes and come to
4 Westminster for support.

5 The proposed development will
6 encroach on this serenity. The building will
7 have active balconies directly behind the
8 church where its residents will have the
9 ability to interfere with the peace and quiet
10 of Westminster. The development will
11 overshadow the church and greatly interfere
12 with the window.

13 The window has a time and been
14 said to have a spiritual impact to some in the
15 congregation. This window is located on the
16 southeast corner of the church and rises from
17 floor to ceiling. It is basically the main
18 source of light to the sanctuary and at times
19 it serves as a spot for people to focus during
20 mediation.

21 The majority of the amenities to
22 the proposed building like its entrance, the

1 location of the rooftop swimming pool and rec
2 area, the ground floor townhouses with outdoor
3 patios, the entrance to the private street,
4 all are located nearest to Westminster and the
5 window, as you can see in the Photo 1.

6 Had the applicant showed some
7 common courtesy and discussed with Westminster
8 its plans, we believe that the impact of this
9 project could have been mitigated. My
10 witnesses will share with the Commission more
11 details of the impact of the proposed
12 development on Westminster.

13 And the first person to give
14 testimony is co-pastor Brian Hamilton.

15 MR. HAMILTON: Mr. Chairman,
16 Members of the Commission, my name is Reverend
17 Brian Hamilton, co-pastor of Westminster
18 Presbyterian Church located at 400 I Street in
19 Southwest. And I'm appreciative for the
20 opportunity to speak with you this evening.

21 I have served Westminster for the
22 past 17 years and I'm also a resident of

1 Southwest residing on the 1200 Block of
2 Carrollsburg Place for all that time.

3 Like many other members and
4 friends of Westminster, I am deeply engaged in
5 our community and care passionately about the
6 common and public life we share. The stories
7 I have heard over the years from past and
8 current residents of Southwest convince me
9 that southwesters share a unique concern for
10 our neighborhood and want the best for each
11 other, especially the more vulnerable
12 residents, the poor, the elderly, those living
13 with physical challenges and our young people
14 who can only aspire to call Southwest home for
15 as long as they choose.

16 Westminster has occupied its
17 current location for nearly 50 years. After
18 urban renewal edicts of the 1950s and '60
19 seized its former location on 7th Street as
20 well as a significant number of member/
21 residents' homes under eminent domain.
22 Westminster has endured and prevailed over its

1 long 160 year life and boldly chose to remain
2 in Southwest witnessing to how deeply rooted
3 we are and always have been in this community.

4 Our current facility was completed
5 in 1965. It is as built configuration is only
6 about half of what was planned because of
7 limitation of funds during that critical
8 period. We are located immediately north of
9 the building in question in this application.

10 Our building is a two story
11 structure that stands, approximately 30 feet
12 high, built with a steel frame and brick and
13 block enclosure. It is approximately, 6,000
14 square feet with a main assembly space on
15 street level and offices meeting space, a full
16 kitchen and mechanical systems on the basement
17 level.

18 Architecturally, the building is
19 mid-century modern with irregular lines, space
20 arrangements and a curved wall in the front of
21 the building into which are built two large
22 sections of full length glass. Two walls have

1 no glass systems at all. A third has a narrow
2 line of windows immediately below the ceiling.

3 The front glass wall is where most
4 light enters the building on the street level
5 providing passive heating in winter months and
6 wonderful exposure to the outside soothing for
7 those gathered within.

8 The total lot size is 135 feet by
9 225 feet, which includes a 25 square foot
10 parking lot enclosed by a perimeter of
11 greenery and accessed at the southwest corner
12 of the lot from McKemie Place.

13 We do have concerns about the
14 physical impact the construction of such a
15 massive building will have on our structure.
16 Current fissures and flaws in our 50 year-old
17 building may well deepen and spread. While
18 engineering assessments are present in post-
19 construction conditions may expose the more
20 obvious damage, we are also concerned about
21 impact that will not be detectable until an
22 extended period in the future, perhaps many

1 years.

2 The loosening of vital joints and
3 the strain on window, door, roof and wall
4 systems may not be apparent immediately. The
5 deep and prevailing shadow that will be in
6 during winter months will drastically reduce
7 the light and heat derived from pre-
8 construction conditions.

9 I'm sorry, I've lost my place
10 here.

11 CHAIRMAN HOOD: I think,
12 Westminster's motto.

13 MR. HAMILTON: Okay.
14 Westminster's motto is not just a church. We
15 are an unofficial community center. Our
16 flexible open space and central location along
17 with extremely low usage fees, if any, makes
18 us the site for many community meetings and
19 events.

20 Westminster is the address of
21 record for four nonprofits: Southwest
22 Renaissance Development Corporation that runs

1 our Jazz and Blues Programs; START at
2 Westminster, our harm reduction program; the
3 Near Southeast/Southwest Community Benefits
4 Coordinating Council and the Southwest Arts
5 Fest, an annual community-led event.

6 In addition, the church hosts
7 weekly yoga classes for varied ages and
8 meeting space for 12 step groups. This
9 afternoon, DDOT used the building for a long
10 bridge study public meeting.

11 We have become the go-to church
12 for many funerals of residents whose families
13 cannot afford funeral home prices. In other
14 words, many, many people in the neighborhood,
15 not just church members count on Westminster
16 continuing the work that it has been doing.

17 In addition to our concerns, we
18 share the concerns you will hear from the ANC-
19 6D. We are not convinced that the developer
20 truly cares about the long-term interests of
21 the neighborhood, neighbors and town center
22 vision. The quick turnaround sale of previous

1 properties in the development, vacant retail
2 sites and lack of timely dialogue with nearby
3 stakeholders does not lead us to trust
4 promises made.

5 Prior to the filing of this
6 application, we were not contacted by the
7 developers to discuss this project and its
8 impact on us nor were we contacted before the
9 Phase 1 PUD filings by the developers nor were
10 we ever contacted by the Office of Planning at
11 any point in the whole process.

12 Only after we expressed our
13 dissent were we approached by the applicant to
14 discuss our concerns after plans had been
15 established and finalized and commitments
16 made. Yet, no property owner contiguous to
17 the development site is any more impacted than
18 we are.

19 Still we hope and plan to be good
20 neighbors. We have always advocated for a
21 higher quality of life of all Southwest
22 residents and greater social, economic,

1 cultural and spiritual opportunities for our
2 community.

3 Given these pressing concerns, we
4 respectfully request the Commission not to
5 approve the plan as submitted, until the
6 developers have made a good faith effort to
7 address the whole range of our concerns.
8 Thank you.

9 MR. KERR: Good evening. I'm
10 George Kerr, Executive Director and co-founder
11 of START at Westminster and the building
12 manager for Westminster D.C. I have been with
13 Westminster since 2005 where I attended an
14 HIV/AIDS activist meeting held at the church.
15 I've been actively involved ever since.

16 START at Westminster is a harm
17 reduction provision awareness initiative.
18 START is an acronym for syringe, treatment,
19 advocacy, resource and training. These
20 reflect the core elements of harm reduction
21 philosophy. Our mission is to reduce the
22 transmission of HIV, hepatitis and other

1 blood-borne diseases by empowering those at
2 risk.

3 Westminster's motto is not a
4 church, but Bullet No. 3, we are --
5 Westminster was -- placed great emphasis on
6 working to empower people living a healthy and
7 fulfilling life. Founded more than 160 years
8 ago, the presently facility built in 1965
9 reflects the forward-looking vision of its
10 parishioners and the surrounding Southwest
11 community at-large.

12 The church statement mission is to
13 be accepting, caring, risk-taking and open to
14 mission -- message of God in people and places
15 to often rejected and ignored.

16 Westminster D.C is not just a
17 church. We are a community center for
18 Southwest neighborhood. Since January alone,
19 Westminster has hosted 22 events, such as
20 galas, fundraisers for basic charter school
21 training, for 12 step programs, documentaries,
22 screenings, jazz night at the movies, sorority

1 events, musical recitals, condominiums, condo
2 association meetings and more.

3 On Sunday morning during our
4 worship service, we have a wonderful view of
5 the sun shining in our beautiful window. This
6 view adds to the serenity of our services and
7 our -- and other community events we hold.

8 We have a natural gardens green
9 space in the front of our church. This is a
10 great place to go out and enjoy the
11 peacefulness of the neighborhood.

12 Some of the major concerns that I
13 have are the building impacts of the
14 Westminster D.C. programs with ongoing
15 construction, the elevation of the noise level
16 was significant, negative impact on our
17 programs, such as church services, meditating,
18 funerals, weddings, yoga session and other
19 activities.

20 The noise pollution also presents
21 significant risk to health of our pollution,
22 especially very young and elderly

1 parishioners. Additional health concerns
2 include perception of worsening of respiratory
3 conditions like asthma, chronic lung disease
4 and generation of dust during construction,
5 the use of McKemie Place, entrance to our
6 parking lot is directly off McKemie Place. It
7 is great concern to us not only while access
8 to our parking lot become more and more
9 congested, but that the construction worker,
10 residents and visitors will illegally park in
11 our space as we have an honor system parking
12 system.

13 The building will over shadow
14 Westminster and obstruct the entrance of light
15 into our building in terms of aesthetics.

16 Further clarification is needed
17 about the use of the private street and its
18 impact on our patrons and programs is the use
19 of the word "private" even in building
20 communities.

21 MS. HAMILTON: I'm going to use
22 the rest of our time. My name is Ruth

1 Hamilton. I have also been a resident of
2 Southwest for 17 years and co-pastor of
3 Westminster Church.

4 I'm going to skip through the
5 first parts of this, which is somewhat
6 repeating some things, but I hope that you
7 will read it as there is additional
8 information.

9 I want to go right to the
10 paragraph that says "We know that you cannot
11 help us protect our view," but it is
12 unbelievable to us that over the last 10 years
13 long before these drawings were presented,
14 that the developers never took the initiative
15 to talk with us about how to design a building
16 that would work with our life that has been in
17 that neighborhood for 50 years.

18 We have yet to find out the effect
19 the new building with balconies and backyards
20 overlooking our services will have on this
21 community and the vitality of our church. In
22 fact, these balconies, if you look at the

1 pictures, many of them are going to look right
2 onto our dumpsters and are going to look right
3 onto the place where our loading aisle is
4 where service trucks come in to deliver food
5 for our weekly jazz and blues programs.

6 And people are paying good money
7 to live in those places looking right onto a
8 parking lot that doesn't look anywhere as nice
9 as the parking lot that they showed on their
10 renderings. We have a very old parking lot.
11 We, as you will see later, live very
12 constrained within a budget and we don't have
13 the money to keep up maybe appearances are
14 going to be required with such a building next
15 to us. And yet, this developer has done
16 nothing to want to give a win-win situation
17 for themselves.

18 Before 4th Street was open, the
19 church used the federal park space in front
20 for the annual September Jazz Festival and
21 other seasonal rituals and we were very
22 pleased when 4th Street was opened again to

1 make the north/south connection.

2 For the last several years then,
3 we have held the September Jazz Festival,
4 which is attended by over 1,000 people on the
5 front lawn spilling over onto the public park
6 there. This annual ritual now of 12 years in
7 September will face new challenges.

8 And again, I wish that the
9 developer had talked with us about how we
10 could work together to make this an ongoing
11 thing that they might want to be part of. One
12 of the biggest concerns that I have about this
13 development is that as the years pass,
14 covenants, as Mr. Litsky said, that were
15 agreed upon by all parties are forgotten or
16 reinterpreted.

17 For instance, when the federal
18 park was passed into city ownership, that
19 included about 15 feet of sidewalk and benches
20 and 50 feet of green space from 4th Street to
21 the front of our Westminster property line.
22 The same is true on the other side of the

1 street in front of Christ Methodist. These
2 are Squares 499, Lots 860 and 861, as
3 identified in Section H of Zoning Commission
4 Order 02-38A, Photo No. 7.

5 It has been our understanding all
6 these years that Vornado/Charles E. Smith has
7 a standing agreement with the city to maintain
8 this important green space, this park space,
9 which also includes the long sidewalks down
10 behind us. As outlined, this was a public
11 benefit maintenance of the public partner to
12 the site.

13 Well, it became apparent that
14 Vornado has forgotten or reinterpreted this
15 commitment. It was clear that a new landscape
16 contractor had been signed when the property
17 was mowed just last week and the workers
18 stopped about 35 short -- feet short of the
19 city property line.

20 Because we have a wedding this
21 weekend, I had to call to seek a remedy to the
22 issue because I had a bridezilla on my back

1 and the current landscape company indicated
2 that they had signed a contract with Vornado
3 to take care of only 15 feet into the
4 property.

5 The new Vornado property manager
6 came right out and responded to my calls.
7 Came out and indicated that he, too, had been
8 told that they were responsible on both sides
9 of 4th Street for only 15 feet from the park
10 benches. This is why the root balls of two
11 large trees are still sitting on the city land
12 in front of Christ Methodist Church, of which
13 I have provided a photo. This is more than
14 six months after a major storm knocked down
15 those two trees.

16 So there is no clear
17 understanding. There is -- nobody has got
18 that agreement that was supposed to be signed
19 with the city agency on the maintenance of
20 that park land.

21 Due to the length of time it is
22 taking for this project to be started, the

1 neighborhood has grown accustomed to the large
2 green space on that northwest plot and it has
3 been used by residents to play games, walk
4 their dogs. Those needs are going to have to
5 be met now through other green spaces in the
6 neighborhood.

7 And as of yet, the developers made
8 no effort, to our knowledge, to contribute to
9 neighborhood efforts to enhance green space,
10 whether to support the dog park, the community
11 garden, the new playground by the library or
12 the nearest neighbor, the Southwest Duck Pond.

13 I'm very concerned that we let
14 this go through. We were all asleep in 2003.
15 We weren't organized as a neighborhood in 2003
16 when this happened, that we would allow this
17 building to have no affordable housing. As a
18 congregation that has diversity at the heart
19 of its identity, we are concerned that
20 residential buildings are going up with no
21 affordable units.

22 Even the 50 percent and 80 percent

1 AMI units going into the Urban Atlantic East
2 and West buildings are laughable to many in
3 our neighborhood, who don't even qualify for
4 the 30 percent AMI.

5 With the Southwest Small Area
6 Plan, it is also unclear whether or not the
7 northeast city-owned land will be developed
8 with affordable units as promised in that
9 original PUD.

10 Forest City did a marvelous job of
11 incorporating mixed-income units at the
12 Foundry Loft in Near Southeast. Why does the
13 city not insist that all residential
14 development share the responsibility for
15 meeting the critical need for affordable
16 housing in D.C.? Just because they do not
17 have to include affordable units, does not
18 mean they shouldn't.

19 Westminster accomplishes many
20 things with its \$270,000 a year budget and no
21 endowment. We are dependent in many ways on
22 parking lot rentals, building use income and

1 support through jazz and blues. We give a lot
2 back to this community.

3 We started Food and Friends and we
4 are -- our cultural institution -- the city
5 paper just called Jazz Night the best jazz
6 audience in D.C. We do not know how this
7 development will affect our work, but we are
8 asking for a degree of respect from this
9 developer, from the Office of Planning, from
10 DDOT and from this Commission for 160 years of
11 commitment to this community, through all of
12 its changes, we ask you to insist that the
13 developers do more than check off boxes and we
14 ask you to withhold approval of this project
15 until they have demonstrated a true desire to
16 be a good neighbor. Thank you.

17 MS. WALLER: In closing, as you
18 have heard from our witnesses, there are seven
19 specific issues that we have with this
20 proposal. One, that the building will block
21 the one main window of the church, noise from
22 the balconies and the rooftop activity that is

1 a major concern. The private drive dangerous
2 to our members.

3 I just have four more things to go
4 through, if you don't mind. The shadows that
5 will cover some of the property, the effect of
6 the construction on our own physical building
7 and the applicant's present failure to follow
8 through on maintenance of the public lot as
9 they said they would. Thank you.

10 CHAIRMAN HOOD: All right. Thank
11 you for your presentation. Let me open it up
12 to see if there are any questions up here.
13 Commissioner May?

14 COMMISSIONER MAY: Sorry, I tried
15 to write as fast as you were speaking, but
16 I've got blocking the window at southeast, the
17 rooftop activities, the private drive, the
18 shadows over the property, construction
19 impacts and maintenance and that added up to
20 six. Did I miss something?

21 MS. WALLER: Okay. Maybe there
22 are six. There are six or seven. Oh, and the

1 applicant's present failure to follow through
2 on the maintenance of the public lot. You've
3 got that one?

4 COMMISSIONER MAY: That was No. --

5 MS. WALLER: Oh, then --

6 COMMISSIONER MAY: -- that's what
7 I had as 6.

8 MS. WALLER: -- their take it or
9 leave it attitude.

10 COMMISSIONER MAY: Oh.

11 CHAIRMAN HOOD: Take it or leave
12 it? Oh.

13 COMMISSIONER MAY: Okay.

14 CHAIRMAN HOOD: The appearance is
15 that they -- I'm sure they didn't tell you
16 take it or leave it.

17 MS. WALLER: No.

18 CHAIRMAN HOOD: This is the
19 appearance.

20 MS. WALLER: Just the appearance.

21 CHAIRMAN HOOD: Oh, the
22 appearance, right.

1 MS. WALLER: Take it or leave it.

2 CHAIRMAN HOOD: Okay.

3 COMMISSIONER MAY: Okay. So you
4 have been in the neighborhood a long time.
5 What was on that site before it was cleared
6 and there is just the grass there now?

7 MR. HAMILTON: In the old
8 neighborhood, that site was the location of
9 the Southwest Club in -- before Urban Renewal.

10 COMMISSIONER MAY: Well, I --

11 MR. HAMILTON: They cleared the
12 whole site.

13 COMMISSIONER MAY: Post-Urban
14 Renewal, immediately before this PUD, what was
15 that site? Was that just parking?

16 MS. HAMILTON: That was parking
17 for the mall.

18 COMMISSIONER MAY: Parking for the
19 mall.

20 MS. HAMILTON: Parking for the
21 mall.

22 COMMISSIONER MAY: Right. Okay.

1 And earlier there was reference to a stained
2 glass window, but the photo you have is just
3 a window. It's not stained glass. It's just
4 a window.

5 MS. HAMILTON: We have installed
6 some stained glass. We have mostly clear
7 glass, which again just goes to show that many
8 of the developers have -- really don't
9 understand this building. Office of Planning
10 doesn't really understand this building,
11 hasn't been in the -- you know.

12 COMMISSIONER MAY: Okay. You are
13 answering a question I didn't ask.

14 MS. HAMILTON: That's something
15 one does.

16 COMMISSIONER MAY: The --

17 MS. WALLER: Well, the mention of
18 the stained glass building came from Christy
19 and not from us.

20 COMMISSIONER MAY: And that's why
21 I'm trying to get clarity.

22 MS. WALLER: All right.

1 COMMISSIONER MAY: So the window
2 that you are concerned about --

3 MS. WALLER: Go ahead.

4 COMMISSIONER MAY: -- is the one
5 on the southeast corner that is clear glass?

6 MS. HAMILTON: That's right.

7 COMMISSIONER MAY: Okay. And is
8 there a stained glass somewhere in the
9 building that you are concerned about?

10 MR. HAMILTON: There is stained
11 glass in the building on the high west wall
12 and they -- we have stained glass installment,
13 standing free, which you can see in the
14 photograph right by the --

15 COMMISSIONER MAY: Standing free?
16 Free-standing?

17 MS. HAMILTON: Free-standing.

18 COMMISSIONER MAY: Okay. All
19 right. So the concern about the glass is not
20 that the glass would be damaged during
21 construction as much as it is that you won't
22 have the view or you won't have the light or?

1 MS. HAMILTON: There was already
2 one major crack in the glass which they will
3 see when they come through to do a pre-
4 engineering, you know, study.

5 COMMISSIONER MAY: Right. But I
6 mean, glass is -- plain glass is not that hard
7 to replace or repair. I mean, replace --

8 MS. HAMILTON: Just there is an
9 expense to it.

10 COMMISSIONER MAY: Right. And --

11 MS. HAMILTON: The church has a
12 limited budget, yes.

13 COMMISSIONER MAY: -- there --
14 understandably. But the developers offered to
15 do pre-construction and post-construction
16 inspections. And so theoretically, the glass
17 will -- there will be no problem when the
18 building is done, your glass will --

19 MS. HAMILTON: I think it --

20 COMMISSIONER MAY: -- still be
21 there.

22 MS. HAMILTON: It will be. We are

1 concerned, if you look at the photograph, the
2 window because -- the Photograph No. 1 of the
3 window where it shows the wall is curved, so
4 even though the window, as the applicant
5 stated, faces southeast, it doesn't really
6 face southeast. It faces -- it doesn't face
7 just directly east, it faces southeast right
8 toward the property.

9 COMMISSIONER MAY: I see that.

10 MS. HAMILTON: So you can clearly
11 see that we will be looking at the property.
12 We won't be looking at --

13 COMMISSIONER MAY: Right.

14 MS. HAMILTON: -- what we are
15 looking at right now.

16 COMMISSIONER MAY: You will be
17 looking --

18 MS. HAMILTON: And we under --

19 COMMISSIONER MAY: -- at the
20 building --

21 MS. HAMILTON: We will be looking
22 at the building.

1 COMMISSIONER MAY: -- as opposed
2 to looking at the lawn or --

3 MS. HAMILTON: That's right.

4 COMMISSIONER MAY: -- looking at
5 the parking lot that used to be there.

6 MS. HAMILTON: That's right. We
7 still have more air that we will ever have.
8 Now, we understand that you can't protect the
9 view as we stated in our testimony.

10 COMMISSIONER MAY: Right. Okay.
11 And you answered my second question, which was
12 whether you participated in the Stage One PUD,
13 but you, I think I understand from your
14 testimony, did not.

15 MS. HAMILTON: We were living in
16 the neighborhood. None of us can recall
17 really any active -- I mean we were interested
18 in getting the mall down, because the mall was
19 so --

20 COMMISSIONER MAY: Right.

21 MS. HAMILTON: -- so that was our
22 interest at the time.

1 COMMISSIONER MAY: So did anybody
2 attend or testify or -- at the Stage 1? I
3 mean, I can't remember who.

4 MS. HAMILTON: I can't remember.
5 That's 10 years ago, that's a long time ago.
6 We were not organized as a church around that
7 issue and we were not organized in the
8 neighborhood, the group that I am, you know,
9 working with now, the Community Benefits
10 Coordinating Council, was not organized until
11 2007.

12 COMMISSIONER MAY: Okay. And then
13 the issue that you were concerned about with
14 the lawnmowing and what Vornado was not doing
15 in terms of maintaining the lot, I mean,
16 that's that entire 50 foot strip between their
17 property and your property where you thought
18 they were supposed to be maintaining that
19 area?

20 MS. HAMILTON: Well, not thought.
21 It is in the -- it is stated right in your
22 document that it is a community benefit that

1 they will do -- continuing for the life of the
2 PUD.

3 COMMISSIONER MAY: That they will
4 maintain the full 50 feet?

5 MS. HAMILTON: Yes, but they will
6 maintain the public north -- the public park
7 north of the site, which is -- which are those
8 two major lots and the sidewalks. That is the
9 public park.

10 COMMISSIONER MAY: Okay. So it's
11 the entirety of all of those.

12 MS. HAMILTON: And that's shown on
13 the map.

14 COMMISSIONER MAY: Right.

15 MS. HAMILTON: It fronts in front
16 of the church. When they took out --

17 COMMISSIONER MAY: I was just
18 trying to understand where the issue was,
19 because it wasn't entirely clear to me.

20 MS. HAMILTON: Oh, it's not --
21 it's hard to see and it's hard to see for them
22 because it -- the way that it has been

1 designed when that park was recaptured, they
2 made it almost look like some of that belongs
3 to the churches, the way they built the wall.

4 So it's hard for just a contractor
5 to come out if they are not clearly given
6 instructions.

7 COMMISSIONER MAY: Right. So
8 Vornado may have just made an honest mistake
9 then.

10 MS. HAMILTON: It's possible, but
11 it was -- it has been handled quite well up
12 until recently, so I'm not certain. And this
13 gentleman said that he was instructed that
14 they only were to care for 15 feet.

15 COMMISSIONER MAY: Okay. 15 of
16 the 50.

17 MS. HAMILTON: 15 feet versus 50.

18 COMMISSIONER MAY: Right.

19 MS. HAMILTON: Yes.

20 COMMISSIONER MAY: They don't
21 sound all that --

22 COMMISSIONER TURNBULL:

1 Commissioner May? Commissioner May, I just
2 pulled up the order.

3 COMMISSIONER MAY: Yes.

4 COMMISSIONER TURNBULL: And it
5 says maintenance of the public park north of
6 the site. The applicant also agreed to
7 maintain the land immediately to the north of
8 the site as a public park amenity after the
9 construction, blah, blah, blah, etcetera.

10 The maintenance of the park site
11 may include trash removal, lawnmowing and
12 planting and continuing for the life of the
13 PUD on the -- governed by an agreement to be
14 entered, etcetera, etcetera, etcetera.

15 So it really doesn't give a
16 dimension. It just says the land to the
17 north. It talks about the park.

18 COMMISSIONER MAY: Okay. Well--

19 COMMISSIONER TURNBULL: Which
20 could include --

21 COMMISSIONER MAY: -- I think the
22 applicant should address that one --

1 COMMISSIONER TURNBULL: I would
2 think so.

3 COMMISSIONER MAY: -- in rebuttal.

4 COMMISSIONER TURNBULL: Right.

5 COMMISSIONER MAY: I would think
6 there is not an intention to kind of short the
7 interpretation of this and somehow minimize
8 their efforts there. It is not in their best
9 interest not to keep up that public park.

10 MS. HAMILTON: Well, the gentleman
11 that -- if you don't mind, sir?

12 COMMISSIONER MAY: Yes.

13 MS. HAMILTON: The gentleman that
14 I spoke to, the new property manager, of
15 Vornado, when he came over he said it seems
16 like I am taking care of more and more land.
17 And again, the Christ Methodist people went to
18 Tommy Wells' meeting this morning in the
19 neighborhood to again register their
20 complaint. Where do they go to help -- get
21 help for the two tree stumps on the --

22 COMMISSIONER MAY: Okay. But we

1 have the --

2 MS. HAMILTON: -- public land?

3 COMMISSIONER MAY: -- principals
4 for Vornado here in the audience.

5 MS. HAMILTON: Right.

6 COMMISSIONER MAY: So I believe
7 that they will address this with a bit more
8 authority than the guy who is out there, you
9 know, answering the call.

10 MS. HAMILTON: Thank you.

11 COMMISSIONER MAY: All right.
12 Thanks. That's it for me.

13 CHAIRMAN HOOD: Any other
14 questions up here?

15 COMMISSIONER TURNBULL: I just had
16 just one question. So you don't recall if you
17 were here for the hearings in 2007?

18 MS. HAMILTON: 2007?

19 COMMISSIONER TURNBULL: That's
20 when we had hearings on opening the street.
21 That it was a continuation of the original one
22 going --

1 MS. HAMILTON: Right.

2 COMMISSIONER TURNBULL: -- back to
3 the -- you know, 10 years ago. But --

4 MS. HAMILTON: I think that we
5 would have been in support of the general
6 drift of where this was going. We wanted to
7 reopen 4th Street.

8 COMMISSIONER TURNBULL: Yes.

9 MS. HAMILTON: We are very in
10 favor of that whole part of the plan.

11 COMMISSIONER TURNBULL: Yes,
12 that's where the Safeway was agreed at 55,000
13 square feet.

14 MS. HAMILTON: Yes.

15 COMMISSIONER TURNBULL: Etcetera.
16 I think it also talked about maintaining the
17 bank and the drug store, I think.

18 MS. HAMILTON: Yes, we definitely
19 were supposed to have a bank.

20 COMMISSIONER TURNBULL: Yes.

21 MS. HAMILTON: Um-hum.

22 COMMISSIONER TURNBULL: I mean,

1 you don't remember any opposition or
2 testifying at that hearing?

3 MS. HAMILTON: No. I don't
4 remember testifying in opposition. We have
5 been in favor. In fact, going back to the
6 issue of talking with the developers, we have
7 had a cordial relationship. We have known Mr.
8 Smith and Mr. Fraley over the years, have
9 spoken to them. In fact, spoke to them, asked
10 them to come to the church on a cordial
11 manner.

12 Back in the summer I asked them to
13 come. They said well, we will try to get to
14 you. They never got back to us and then when
15 they finally did get back to us -- and again,
16 I -- we tried to be cordial. You know, but
17 when they did get back to us, it was already
18 after the -- all these drawings had been
19 submitted. There was no conversation with us
20 about what are you doing here? What are our
21 balconies going to look on, etcetera? What
22 can we do to be a good neighbor? Nothing.

1 They all came when they had to
2 come.

3 COMMISSIONER TURNBULL: It sounds
4 like you may need some more talks.

5 MS. HAMILTON: I believe so.

6 CHAIRMAN HOOD: I can tell you I'm
7 definitely going to be pushing that. Reverend
8 Hamilton, I do remember you and I'm not sure
9 if you were here for -- but you have been here
10 before, correct?

11 MS. HAMILTON: I'm also Chair of
12 the Community Benefits Coordinating Council,
13 so I have testified at the Waterfront PUD
14 hearings.

15 CHAIRMAN HOOD: Okay.

16 MS. HAMILTON: And other hearings.

17 CHAIRMAN HOOD: Well, I saw you
18 quite a bit then. Okay. Any other questions
19 up here? Okay. Vice Chairman and then we'll
20 go to Commissioner Miller.

21 VICE CHAIR COHEN: Okay. Thank
22 you, Mr. Chairman. I noted in your testimony

1 that, you know, the applicant did agree to do
2 assessments prior to post-construction, yet
3 you have some claim that's not going to be
4 enough. At least that's what you said that
5 you are concerned about future impact.

6 But anybody can say that regarding
7 any development. So I'm not sure that that's
8 a very reasonable concern as long as you know
9 what the demolition is going to do. I mean,
10 the construction will do immediately. So I
11 just wanted to mention that.

12 And then I have a couple of
13 questions, are you congregants mostly in the
14 Southwest or do they come from all over the
15 city and outside the city? I was just --

16 MS. HAMILTON: We are a
17 congregation of just at 100 official members.
18 50 percent of them come from Southwest. The
19 rest come from as far away as Waldorf and
20 Manassas. Our jazz night audience, the
21 mailing list is like 5,000 people now and they
22 come from all over the Metro area. But many

1 of the local services are geared toward -- the
2 yogas, etcetera, are geared toward local
3 residents.

4 VICE CHAIR COHEN: So the parking
5 impact is really on the two nights that you
6 mentioned, Friday an Monday nights? Is that
7 correct?

8 MS. HAMILTON: Absolutely. Our
9 Sunday parking lot, you would never know
10 something was happening, because people walk
11 primarily to church or take the Metro.

12 VICE CHAIR COHEN: Okay. And --

13 MS. HAMILTON: We have one very
14 real issue. Our parking lot is jam-packed.
15 We only have 25 spaces in addition then to the
16 driveways and people double park. We just jam
17 it in as much as we can.

18 So again, we are worried that
19 people paying for, you know, wonderful
20 apartments and townhomes right there are going
21 to be dealing with our -- what would have been
22 our issues to and we are wondering what kind

1 of relationship we are going to have going
2 forward.

3 VICE CHAIR COHEN: Well, they will
4 already know it, because they will be made
5 aware of it. I'm sure during the leasing
6 period, but one of the things is is that you
7 may end up expanding your congregation by
8 having this apartment building adjacent to
9 you.

10 MS. HAMILTON: Yes, we look
11 forward to serving the residents that are
12 there.

13 VICE CHAIR COHEN: And how far are
14 you from Greenleaf Apartments, the public
15 housing site?

16 MS. HAMILTON: Two blocks.

17 VICE CHAIR COHEN: Two blocks.
18 That's what I thought. And the people who
19 live there take advantage of some of your
20 excellent -- if you started Food and Friends,
21 I'm very, very impressed with that, but so I
22 assume that they take advantage of some of

1 your services.

2 MS. HAMILTON: They do as much as
3 most churches in the neighborhood. We are one
4 of the few -- we had a large community meeting
5 the other night specifically addressing DCHA's
6 application for a Choice Neighborhood Planning
7 Grant and 135 residents came out to the church
8 for that meeting. Most of those were low-
9 income residents from Greenleaf, because
10 Greenleaf is where the plan is going to take
11 place.

12 VICE CHAIR COHEN: Right.

13 MS. HAMILTON: We are actively
14 involved in trying to organize in the
15 neighborhood.

16 VICE CHAIR COHEN: Okay. Thank
17 you.

18 CHAIRMAN HOOD: Okay.
19 Commissioner Miller?

20 COMMISSIONER MILLER: Thank you,
21 Mr. Chairman. I was actually going to touch
22 on some of the points that the Vice Chair

1 raised. I just wanted to thank the
2 Westminster folks for their testimony and for
3 all you do in the Southwest community and for
4 the city.

5 And reiterate the point that yes,
6 your budget may grow with some of these market
7 rate residents who are right nearby and want
8 to see you grow with them.

9 MS. HAMILTON: Um-hum.

10 COMMISSIONER MILLER: So I think
11 that could be a very productive relationship
12 in the future.

13 MS. HAMILTON: Thank you.

14 CHAIRMAN HOOD: Okay. Any other
15 questions? Reverend Hamilton, it sounds as
16 though, through the testimony and I actually
17 think I picked up on this earlier on, as one
18 of my colleagues put it, some more talks need
19 to be held.

20 You all are open to having a
21 conversation and trying to mitigate? Not that
22 you are going to come in holding hands and

1 saying we all agree. But you are open to
2 trying to mitigate some of these issues and
3 see how you can work it out? And then the
4 good neighbor policy can be on both sides.

5 Obviously, you all have done a
6 plethora of work, a lot of work in that
7 community. I didn't know this was a church
8 that had jazz. I have heard a lot about that,
9 but even in saying that, I think the good
10 neighbor's policy can probably go both ways.

11 And I think what I'm hearing is
12 that it needs another discussion or some
13 discussion needs to be held between the church
14 and the applicant to try to resolve some of
15 these issues as well as with the ANC. I don't
16 want to leave them out.

17 MS. HAMILTON: We have so --

18 CHAIRMAN HOOD: Now, let me ask
19 you this. Reverend Hamilton, do you attend
20 the ANC meetings?

21 MS. HAMILTON: A lot of them. Not
22 as many as Andy and Ron do.

1 CHAIRMAN HOOD: Okay.

2 MS. HAMILTON: And I can't keep up
3 with them.

4 CHAIRMAN HOOD: Okay.

5 MS. HAMILTON: We attend many,
6 many meetings, yes.

7 CHAIRMAN HOOD: Okay. So you
8 think if this Commission was to agree to give
9 you all time to have some conversations, you
10 think that may close some of the gaps and work
11 some of the issues out?

12 MS. HAMILTON: I believe so. I
13 believe it is the only recourse we have is to
14 come to you and ask for your help in getting
15 more conversation with them.

16 It was about four hours before
17 this meeting today that they agreed to the
18 preconstruction inspections. And basically,
19 they said we don't want to talk about anything
20 else until we see how it goes tonight.

21 So we are depending on you to see
22 if there is anything else to work on with them

1 to feel like we have got a relationship going
2 forward. And if not, we will --

3 CHAIRMAN HOOD: Sorry, there goes
4 the night.

5 MS. HAMILTON: Yes.

6 CHAIRMAN HOOD: Who said the
7 certain -- when your discussions --

8 MS. HAMILTON: That was
9 communicated to us in a phone call before.

10 CHAIRMAN HOOD: See how it goes
11 tonight.

12 MS. HAMILTON: Um-hum.

13 CHAIRMAN HOOD: Oh, okay. All
14 right. Interesting. Okay. Any other
15 questions or comments, Commissioners? Okay.
16 I want to thank you all. We are going to do
17 cross-examination.

18 Does the applicant have any cross?

19 MS. SHIKER: I don't have any
20 cross-examination.

21 CHAIRMAN HOOD: Okay. Does the
22 ANC have any cross?

1 CHAIRMAN HOOD: Okay. I want to
2 thank this panel. We appreciate you coming
3 out --

4 MS. HAMILTON: Thank you.

5 CHAIRMAN HOOD: -- for your fine
6 testimony. Okay. Is there individuals who
7 are here, organizations or persons who are
8 here in opposition, besides the party? Any
9 individuals, organizations or persons here in
10 opposition?

11 Okay. Not seeing any, Ms. Shiker,
12 let's do rebuttal and closing. Do you need a
13 minute? Do you need a minute to get it
14 together or you are all right?

15 MS. SHIKER: Just one minute.

16 CHAIRMAN HOOD: Okay. We will
17 take three minutes. We are going to wait
18 about two more minutes for our colleagues to
19 come back. We will take a couple of minutes,
20 if we need it.

21 (Whereupon, at 9:18 p.m. a recess
22 until 9:21 p.m.)

1 CHAIRMAN HOOD: Okay. We are
2 ready whenever you all are ready, we are
3 ready.

4 MS. SHIKER: Thank you, Chairman
5 Hood and Members of the Commission. We just
6 have a brief rebuttal to clarify some of the
7 issues that have come up and to respond and to
8 provide a bit more information for full
9 clarity.

10 With respect to the transfer of
11 ownership in the site, I know there has been
12 some confusion about whether or not the
13 requirements run and if people are keeping up
14 with their side of the bargain.

15 In order to get a building permit,
16 you have to provide evidence of a PUD covenant
17 being recorded against the land. That
18 document is reviewed and approved by the
19 Office of Attorney General and it runs and
20 binds all -- runs with the land and binds all
21 successors and assigns.

22 So all commitments that are set

1 forth in a PUD order run with the land and all
2 owners must abide by that.

3 In this case, when the properties
4 were sold, there were additional covenants
5 that were put on the land to remind everyone
6 that they have these agreements. So the
7 requirements are there and I think as the
8 property manager, Vornado, is certainly
9 hearing things of which there are concerns,
10 and will make sure, you know, that that is
11 conveyed. But those requirements are there
12 and there is no release of those requirements
13 with the sale of land.

14 I think one of the big concerns
15 that we heard tonight is about the retail.
16 And I will point out that right now we have
17 constructed over 86,000 square feet of retail
18 in the first two office buildings. 89 percent
19 of it is leased.

20 The space cannot be used for
21 anything else, so there is certainly a
22 financial incentive of any owner of the

1 property to lease that space, because
2 otherwise every month it is just they carry
3 it. And there are active steps being taken to
4 lease that space.

5 We understand there may be a
6 Letter of Intent with another user and there--
7 we anticipate with the incorporation of more
8 residential units coming on-line that that
9 demand will increase further and we are hoping
10 to get -- that those -- indeed, the 11 percent
11 of the retail that is not leased yet filled.

12 We also note that -- so with the
13 ANC, they asked for a prohibition on RPP.
14 This was the first that we heard that tonight.
15 It hadn't come up in any of our discussions
16 and we would certainly be happy to agree to
17 that with them. We feel like the site
18 provides sufficient parking and we -- it's not
19 an RPP site, according to DDOT and our
20 understanding of those rules. So that's
21 certainly something we would be willing to
22 agree to.

1 With respect to the tree
2 mitigation, our testimony is that we have a
3 detailed Tree Mitigation Plan. So with
4 respect to the trees that we are removing as
5 part of the construction, we have specified
6 exactly which trees those are and how they
7 will be replaced and with what types of
8 species.

9 And there are three trees in --
10 just near our north property line, 26 caliper
11 inches. We are replacing those with a total
12 of 24 on the north side of the project, 24
13 caliper inches on the north side of the
14 project and 30 caliper inches in the
15 courtyard.

16 There is another tree that we are
17 going to replace in caliper inches. My
18 understanding from the ANC meeting was they
19 were saying to us we have committed to monitor
20 the trees in the public park to the extent
21 that they are all damaged from the
22 construction. We don't believe they will be

1 and we have protection in place, but if they
2 are, we have agreed to a year after completion
3 of construction, which is two years after
4 excavation, that we would replace those and
5 our mitigation plan said we would either pay
6 into the tree fund or replace.

7 Our commitment to the ANC is we
8 will replace in total caliper inches any tree
9 that is subsequently damaged and we will plant
10 it in either the park or in Southwest in
11 coordination with Urban Forestry. For that
12 mitigation we would not pay into the tree
13 fund.

14 I believe that our commitment is
15 caliper inches. We cannot agree that, you
16 know, if a 15 inch tree dies that we will put
17 in another 15 inch, but we would put in three
18 fives or five threes or whatever when working
19 with Urban Forestry. So it would be a total
20 caliper and this is what our commitment is.

21 With respect to Westminster
22 Church, it is disappointing when two parties

1 come and are at odds with one another in a
2 project. Based on our records, the church or
3 at least members of their staff who have been
4 here tonight have sat on task forces
5 negotiating with our team on the LDDA back in
6 2006 working with us on the First Stage PUD
7 that came and was approved in 2007.

8 And so we are disappointed to hear
9 that they felt that they weren't involved in
10 the process when they were involved in that
11 task force in which the height and density and
12 use was set forth.

13 We do think that the church will
14 benefit from the residential use next to them.
15 There is a 45 foot distance that is all
16 parkland between our two properties. The
17 enhancements that we are going to be doing to
18 our site, to the lighting, to making sure that
19 those trees thrive, I think all of that will
20 help benefit the church's programs for which
21 spill into that public park that is between
22 our properties.

1 We also were surprised to hear
2 they thought today was the first time we
3 offered the pre- and post-construction survey.
4 In our very first meeting, we had offered up
5 construction management. We asked them to
6 write us a list of all of the issues of which
7 they were concerned and we said we would
8 prepare a specific plan to give to them to
9 address those.

10 When we met the second time, we
11 asked again for that document. We didn't
12 receive anything, which is why we put in our
13 supplemental prehearing submission more
14 generically and saying we will continue to
15 work to get that in there. We have always
16 committed to the pre- and post-construction
17 structural surveys, because that's what you do
18 when you are an abutting property owner. It's
19 just what you do and it's the right thing to
20 make sure that everyone is taken care of.

21 We also -- in a recent meeting
22 last week, they were concerned about in -- was

1 it earlier this week? I'm sorry. In the last
2 week, so in the last period, I can't remember
3 when this meeting was, but we -- they asked us
4 to look into putting them on our insurance.
5 We have responded to them on that.

6 I feel that we are -- we have
7 responded that yes, we have worked with our
8 insurance -- our construction insurance and we
9 can put them as an additional insured to make
10 sure that they are protected. We are willing
11 to work with them on all the construction
12 management.

13 It's unfortunate that the
14 testimony came out today that we said we will
15 just see what happens tonight. I'm going to
16 have Mr. Smith talk a little bit about that
17 meeting and the reason why we couldn't agree
18 to some of the requests is because they
19 weren't about construction management.

20 We have agreed about those the
21 whole time. So I'll ask him to speak briefly
22 and then I'm going to ask Mr. VanPelt to speak

1 very briefly about the Friday and Monday night
2 events and the traffic and the available
3 parking on the street.

4 Again, we are not going to be
5 taking up that parking, but there is also
6 quite a bit of availability during even more
7 peak times, and so Mr. VanPelt will talk
8 briefly about that.

9 MR. SMITH: Thank you. And we
10 just want to clarify the statement where the
11 eyebrows were raised that the fact that was
12 said, we will discuss that once we understand
13 where we are tonight. What was actually --
14 that was said, but in context, that was said
15 we would still continue to work with you after
16 this meeting.

17 During our meeting, I believe on
18 Monday night with Reverend Brian Hamilton,
19 Monday afternoon at our offices, we had a
20 very, I thought, good meeting. We didn't
21 necessarily agree on all of the things, but
22 one of the things that was said there was

1 starting to be a list of things that the
2 church needed and, understandably, they need
3 certain things.

4 One of the items was a sprinkler
5 system. They are looking to expand their
6 catering church and so this would help with
7 that. There were also other things talking
8 about their need, helping out with some A&E
9 help with some predevelopment drawing and
10 whether that is -- it was said it wasn't
11 schematic drawings, but maybe something of a
12 rendering or something conceptual that they
13 could take and show to folks.

14 And so an art center expansion,
15 some construction expansion of their facade
16 while we had the crane up. And so those were
17 the things we were talking about that we
18 couldn't agree to at that moment. Part of the
19 reason is we don't understand what all of that
20 is, but we do want to understand where we were
21 tonight.

22 And so they were going to oppose

1 us. I mean, just where we were with those.
2 That was the specific context with about which
3 we were speaking, that's all. So I just
4 wanted to clarify that.

5 MS. SHIKER: It certainly wasn't
6 about construction management or any of the
7 items that we have affirmatively testified
8 today. It was items outside of the scope of
9 this proceeding for which we could help to
10 create a benefit to them.

11 Mr. VanPelt, if you could quickly
12 talk about the parking?

13 MR. VANPELT: Yes, yes. I think,
14 first, you know, it's just we believe that the
15 project has the appropriate amount of parking
16 and I think that -- so as has already been
17 said, we don't really believe it is going to
18 impact the street parking.

19 I think it has been committed to
20 this evening that we agreed to the RPP
21 restriction. I think I agree with Mr. Henson
22 that I don't think that the RPP restriction

1 actually would apply because of the address,
2 so I think, you know, that is really kind of
3 the concern that is kind of off the table. I
4 don't -- the residents here won't be able to
5 get RPP.

6 So I think one of the things we do
7 know from our work on The Wharf and the look
8 at the on-street parking in the neighborhood,
9 I did have some data here with me this evening
10 that said that, you know, within a block of
11 the church, there is, let's see, 94 on-street
12 spaces or parking meters. And I would say our
13 data when we did our inventory, about those on
14 a Saturday night were only 60 percent full.
15 So there was about 40 percent of those spaces
16 were available.

17 I don't necessarily have data-
18 specific for Friday nights or Monday nights,
19 but I would, you know, expect that any
20 evenings that those meters are -- you know,
21 there is quite a bit of availability there.
22 But once again, we don't believe that this

1 project will impact their on-street parking.

2 MS. SHIKER: And finally, I forgot
3 when I was talking about the covenants and the
4 commitments, we do understand that the water
5 feature near the -- it's a -- their sprinkling
6 jets have been -- have not been able to be
7 turned on this season. There is something
8 wrong with them inside and that is currently
9 under review. Now, how to correct that
10 system, it's a system flaw that it wouldn't
11 turn on this year. So we are actively
12 reviewing that.

13 With respect to the mowing
14 incident, that occurred, and Mr. Fraley can
15 answer questions about that, with a change in
16 the contract. There is, approximately,
17 \$135,000 a year spent on the landscape upkeep
18 of the Waterfront Station Project and the
19 parks and it certainly was a mistake and Mr.
20 Fraley if you want to add anything else about
21 it.

22 It's just we did find out about

1 it, but it was when the contract changed to a
2 new company and we were under the impression
3 that it had been resolved, but certainly if it
4 hasn't, we would like the church to let us
5 know, so we can make sure that it is as we go
6 forward.

7 With that, we would offer the
8 clarifications that are needed and we are
9 happy to work and move forward in meeting and
10 in trying to resolve these issues, especially
11 with construction management to set forth
12 exactly what the concerns are and how we can
13 address those.

14 The height density and use have
15 been part of the First Stage PUD since 2003
16 and they have been contemplated for many, many
17 years. And so again, we can work on impacts
18 and how we can support one another as good
19 neighbors. And we would be happy to move
20 forward with that.

21 And at this point, we thank the
22 Commission for their time.

1 CHAIRMAN HOOD: Okay.

2 Commissioners, do we have any questions up
3 here on rebuttal? Any questions on rebuttal?
4 Commissioner May and then we'll go to
5 Commissioner Turnbull.

6 COMMISSIONER MAY: I had a follow-
7 up on the retail question. The original order
8 in the First Stage in 2003 called for a
9 certain amount of retail, but it also
10 specified that it would cover the entire
11 building face along M Street and along 4th
12 Street from M to the northern boundary of the
13 property.

14 Did that change at some point?

15 MS. SHIKER: In the 2007 PUD --

16 COMMISSIONER MAY: Yes.

17 MS. SHIKER: -- and I'm going to--
18 because that is the governing one --

19 COMMISSIONER MAY: Right.

20 MS. SHIKER: -- it was 75,000
21 square feet in the first PUD. It increased to
22 110,000 when we came back for the first -- for

1 the modification to the First Stage.

2 COMMISSIONER MAY: Right.

3 MS. SHIKER: There were drawings
4 showing auctions for where we could locate
5 that, but there was no condition that required
6 it in every location along 4th and M Street.
7 It required it to be located in those places
8 versus other places and those drawings, you
9 know, were significantly greater than the
10 110,000 just showing where it could be located
11 based on building footprints and things like
12 that.

13 As I noted earlier, we are going
14 to be well-over -- we are going to pass that
15 110,000 without a problem.

16 COMMISSIONER MAY: And I'm not
17 concerned about the overall quantity. I mean,
18 if this were the last PUD, the last section or
19 stage --

20 MS. SHIKER: Yes, sure.

21 COMMISSIONER MAY: -- of the full
22 PUD, I might be concerned about that. But I

1 am concerned about the requirement that it
2 cover the entirety of 4th Street. So I guess
3 I should look again at the order from 2007,
4 but the order wouldn't have the drawing and so
5 maybe you need to submit that drawing with
6 your -- you know, if you want to demonstrate
7 that you are fully compliant with the First
8 Stage, then I think you need to demonstrate
9 that you are.

10 Frankly, I -- you know, even if
11 you are, I'm not happy with the retail
12 situation. I think you should take another
13 look at it, but you do want to take a good
14 close look at that, because, you know, you
15 want to make sure that you are compliant
16 whether you go with the existing or whether
17 you decide to modify it.

18 MS. SHIKER: Absolutely. Thank
19 you.

20 CHAIRMAN HOOD: Mr. Turnbull?

21 COMMISSIONER TURNBULL: Yes, thank
22 you, Mr. Chair. Mr. Smith, thank you for your

1 clarification on the meeting. Not looking to
2 twist your arm, but it sounded like you might
3 be willing to work with the church on some of
4 the issues that you would continue your
5 efforts to talk with them and look at some of
6 the other issues that came up. Is it my
7 understanding?

8 MR. SMITH: We will continue to
9 work with them. And we need to understand
10 what their issues are.

11 COMMISSIONER TURNBULL: Yes, I'm
12 not -- you know, I think it is just one of
13 those cases where there was not a meeting of
14 the minds and people -- although you thought
15 you were meeting it, obviously, there was
16 misunderstanding along the way and that
17 happens.

18 MR. SMITH: And it was mentioned
19 in that meeting that we would continue
20 discussions past this hearing.

21 COMMISSIONER TURNBULL: Yes, yes.
22 So I think it is probably an opportunity to

1 continue on with that to resolve that. I
2 think it is a good neighborhood aspect. I
3 think the church would appreciate that to
4 continue on with that. So thank you for your
5 offer on that.

6 CHAIRMAN HOOD: Okay. Any other
7 questions? Vice Chair?

8 VICE CHAIR COHEN: I keep on
9 hitting that. Thank you, Mr. Chairman. I
10 guess I have an observation more than a
11 question. And it's that one of the things
12 that the District of Columbia does not lack is
13 -- are banks. And so Mr. Litsky's testimony
14 that there is no bank in the neighborhood is
15 startling to me.

16 So why is that? Why is -- have
17 you not been able to lease a bank?

18 MR. SMITH: Well, we were working
19 with Bank of America. We did maintain the
20 bank through their lease in 2010, I believe it
21 was. 2009/2010, we did maintain them and they
22 left a couple months early.

1 We tried to make a space for them.
2 We designed the space that is just north of
3 Station 4 south of the lobby, north of Station
4 4 and the West office building for a bank. We
5 even hardened the floors. We couldn't come to
6 an agreement with them.

7 We stopped working. We rejiggered
8 those about a year before the building was
9 finished and we couldn't come to agreements
10 and then we went to TD Bank. We had a signed
11 lease with TD Bank negotiated a very tough
12 lease and they signed the lease and had a
13 couple of outs.

14 And upon selling the building,
15 they took that option and walked the project.
16 And so since then, there have been other banks
17 that the retail leasing person had tried to,
18 with three or four banks, get another bank.
19 A lot of banks are -- a lot of branches are
20 now downsizing and want a smaller space or not
21 putting facilities like that in place, as they
22 are going for a lot smaller.

1 And so that space is there for a
2 bank. And so we had a place for the support
3 bank.

4 VICE CHAIR COHEN: As I said,
5 there is so many, I don't know why they
6 wouldn't go into a neighborhood that has none.
7 It just stumps me.

8 CHAIRMAN HOOD: Commissioner
9 Miller?

10 COMMISSIONER MILLER: Yes, thank
11 you, Mr. Chairman. I just had one question
12 about the -- you said that the new landscape--
13 you'll make sure that the new landscape
14 contractor is taking care of the mowing. Were
15 they also to be responsible for these removal
16 or the grinding down of the tree stumps that
17 we got testimony on that is on city land, but
18 it seems to be part of this same area that is
19 responsible.

20 MS. SHIKER: It is part of the
21 park property. We went out and looked at it
22 today. And -- or I didn't personally, but the

1 team had a person go out and look at it today.
2 And we are not sure if that company will be
3 the one to remove it, but that is now in
4 process of getting those stumps taken out.

5 COMMISSIONER MILLER: Okay. So
6 that's part of it. Thank you.

7 CHAIRMAN HOOD: Okay. Ms. Shiker,
8 help me with the distance. And maybe it's
9 just me, but I have heard 50 feet. I have
10 heard 45 feet. I have heard 100 feet.

11 MS. SHIKER: We have a very well-
12 dimensioned plat that might help you
13 understand.

14 CHAIRMAN HOOD: Because it seems
15 like it depends on who is talking. It's
16 further away and then it gets closer, so maybe
17 it is moving. Is it a moving target?

18 MS. SHIKER: Well, it's that the
19 building is setback. Our proposed development
20 is setback about 25 feet from our north
21 property line. And then we have about a 45
22 foot park and then their building is set to

1 the north of their property line.

2 So if you are talking about
3 building face to building face, that's where
4 we get the 100 foot. If we are talking about
5 property line to property line, that's where
6 you get the 45 to 50 feet.

7 CHAIRMAN HOOD: Okay. Let's go to
8 property line. That's good.

9 MS. SHIKER: And there is -- you
10 can see, where is this, this is the church
11 right here and this red dotted line is their
12 property line. This area in here and all in
13 here is the park. Our property line is -- so
14 this is the sidewalk and then our property
15 line -- oh, no. There is the sidewalk. And
16 our property line is south of all of these
17 trees and then we have about 25 feet before
18 our building starts.

19 Actually, it's more than that.
20 It's 25 feet to where our little patios start
21 and then it's another -- because it's about
22 31, 32 feet, the closest point between our

1 building face and our property line.

2 CHAIRMAN HOOD: So from property
3 line to property line 45 feet?

4 MS. SHIKER: Yes, that is correct.
5 Building to building about 100 feet.

6 CHAIRMAN HOOD: Okay. Is it time
7 for us to leave? Okay. We are going to be
8 out shortly. Oh, they are testing. I thought
9 they wanted us to leave.

10 Okay. I think other than what I
11 think my concern is is to have those
12 discussions again with the ANC as well as the
13 church, whether you do them together, apart,
14 I'm not sure, but I'm sure you all will work
15 that out, because I'm hoping that you all come
16 back in much further, closer and within our
17 jurisdiction with things that we can deal
18 with.

19 But I think it's always good to be
20 a good neighbor. And I think at the end of
21 the -- I'm looking forward to it. So far this
22 Commission has been very successful about

1 sending people away and coming back. I'm not
2 going to name the cases, but I am very proud
3 of this Commission's record, so I'm hoping
4 that it continues. I'm going to be very
5 disappointed if it doesn't.

6 Is there any other questions up
7 here? Do we have any cross on rebuttal from
8 the ANC? Do we have any cross on rebuttal
9 from Ms. Waller? Any cross on rebuttal?

10 Okay.

11 Do you have a closing statement?

12 MS. SHIKER: We would just ask
13 that the Commission consider this at their
14 earliest convenience following our submission
15 of additional work with the community. Thank
16 you.

17 CHAIRMAN HOOD: Okay. Ms. Shiker,
18 I was hoping you were going to ask. You said
19 we would ask for it and I said oh, please,
20 don't do that. Okay. Do we have things that
21 we need? Any closing comments, Commissioners,
22 or things that we are looking for other than

1 a meeting, a successful two meetings or one
2 meeting or whatever or many meetings to make
3 it work.

4 Okay. Ms. Schellin, do you want
5 to go down the list?

6 MS. SCHELLIN: Sure.

7 CHAIRMAN HOOD: And come up with
8 some dates.

9 MS. SCHELLIN: Sure. Let's see,
10 the first thing, you asked for a rendering
11 showing the location of the church and the
12 proposed development, if you are still asking
13 for that.

14 CHAIRMAN HOOD: Yes, I would like
15 to see how the proposal, proposed development
16 ties into the church. Just something that
17 shows me how. I guess, what do you call it,
18 a view. What do you call it? A view of how
19 the church in relationship to the neighbor --
20 I mean, the residential building in
21 relationship to the neighborhood and the
22 church, how all that looks together. Okay.

1 You got me? Okay. Thank you.

2 MS. SCHELLIN: Commissioner May
3 and Commissioner Turnbull asked for them to
4 look at the screen wall heights of the
5 penthouse.

6 Commissioner May asked them to
7 consider the leasing office be located
8 somewhere else besides 4th Street, so that
9 other retail could possibly be located there.

10 And the size of the masonry-type
11 C, I think, is there a smaller size?

12 COMMISSIONER MAY: You know that--

13 MS. SCHELLIN: No?

14 COMMISSIONER MAY: They can do
15 that if they want. It's not -- I'm not
16 looking --

17 MS. SCHELLIN: Delete that?

18 COMMISSIONER MAY: -- for a new
19 submission on that.

20 MS. SCHELLIN: Commissioner
21 Turnbull asked them to provide the hours of
22 the rooftop activities and the lighting on the

1 roof.

2 Commissioner Hood asked them to
3 meet with the ANC regarding issues that they
4 still have and to meet with the Westminster
5 Presbyterian Church to try to work out issues
6 they still have.

7 And Commissioner May asked them to
8 submit a drawing from the 2007 approval with
9 regard to the retail location and that was the
10 list I had. Anything else?

11 CHAIRMAN HOOD: Okay. Let me just
12 say that I don't think we have anything else,
13 do we? Okay. Let me just say the Bernstein
14 Company has provided a letter. Southwest
15 Homeowner provided a letter. USAA Real Estate
16 Company provided a letter and the Waterside
17 Corporate Member, LLC provided a letter.

18 All those letters are in support.
19 I didn't call their names and I don't want to
20 get in trouble.

21 MS. SCHELLIN: Okay.

22 CHAIRMAN HOOD: Okay.

1 MS. SCHELLIN: How long do you
2 think you guys will need to provide these and
3 to meet with the two ANC and the party?

4 MS. SHIKER: Assuming that we can
5 get, you know, commitments from the church and
6 the ANC to meet with us pretty quickly, we
7 think three weeks.

8 MS. SCHELLIN: Three weeks?

9 MS. SHIKER: Would be more than
10 enough time to meet and prepare our responses.

11 MS. SCHELLIN: Okay.

12 CHAIRMAN HOOD: Can we get a
13 commitment that the church and the ANC will
14 meet with the applicant? Can I get that
15 tonight? Okay. That's the commitment. You
16 all just decide the date. We have got half
17 the battle. Okay.

18 Okay. Well, let's be amenable.
19 Let's do what we can to make it work. Okay.
20 Okay.

21 MS. SCHELLIN: Three weeks is more
22 than we usually give, so that's okay. So --

1 MS. SHIKER: We could do quicker
2 if you need us to.

3 MS. SCHELLIN: Well, since we are
4 asking for meeting time, I think that's good,
5 because you are not going to make the first
6 meeting in July anyway.

7 COMMISSIONER TURNBULL: I want to
8 ask you something. I mean, if we are not
9 taking action, isn't the hearing continuing?

10 MS. SCHELLIN: No. The hearing is
11 over. We are just asking for --

12 COMMISSIONER TURNBULL: Follow-up?
13 Okay. All right.

14 MS. SCHELLIN: We are just asking
15 for written submissions.

16 COMMISSIONER TURNBULL: I just
17 want to clarify that.

18 MS. SCHELLIN: The hearing is
19 closing tonight.

20 COMMISSIONER TURNBULL: Okay.

21 MS. SCHELLIN: So if we could have
22 those submissions by July 1st, Monday, and you

1 are going to serve those on all the parties.
2 And remember all submissions in this case are
3 done electronically, so everybody needs to
4 submit on-line through ISIS.

5 Responses from the parties that
6 would be the ANC and the church would be due
7 by, and these are by 3:00 p.m., July 9th,
8 since there is a holiday in between, so
9 instead of July 8th, that would be July 9th,
10 3:00 p.m.

11 Any draft findings of fact,
12 conclusions of law that the parties would like
13 to submit would also be due by July 9th, 3:00
14 p.m.

15 And then we can put this on the
16 calendar for consideration at the meeting for
17 July 29th. And remember, you need to serve
18 all -- each other and then submit through
19 ISIS. I know Mr. Litsky already knows this.
20 He has become a pro. I just want to make sure
21 Ms. Waller understands that everything needs
22 to be submitted through ISIS.

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CHAIRMAN HOOD: Okay. Do we have anything else? We all on the same page? Okay. Great. I want to thank everyone for their participation tonight and this hearing is adjourned.

(Whereupon, the Public Hearing was concluded at 9:47 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Waterfront 1001

Before: DCZC

Date: 06-06-13

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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